

Humanitarian Disgrace: U.S. Continues to Illegally Block, Expel Refugees to Danger

The Trump Administration continues to break U.S. laws and treaty obligations that protect refugees from persecution, returning to danger people seeking protection at the southern border. In addition to implementing its notorious “Remain in Mexico” program, the Trump Administration has weaponized public health powers since the beginning of the pandemic to ban children, families, and adults from requesting asylum at official ports of entry and to expel those who cross the border in search of protection – delivering them back either to the countries they fled or to escalating violence in Mexico.

The Department Homeland Security (DHS) is expelling refugees without providing them the protection safeguards required by Congress, using as pretext orders that the Centers for Disease Control and Prevention (CDC) issued on the instructions of White House officials and over the objections of the CDC’s own senior experts. The March 2020 order, indefinitely extended in May and reissued in October, has led to secret expulsions of asylum seekers, including dissidents flown back to Nicaragua and handed over to the very authorities who jailed and tortured them. At the same time, crossings by U.S. citizens and others deemed “essential” have continued with 40 million pedestrians and vehicle passengers entering through the southern border between April and September 2020.

Under Remain in Mexico – the perversely named “Migrant Protection Protocols (MPP)” – the administration continues to return asylum seekers and other migrants to areas of Mexico where violence is escalating. Asylum seekers from, among other countries, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, and Venezuela are forced to wait in Mexico for U.S immigration court hearings delayed indefinitely since March 2020 because of the pandemic. Many have been kidnapped, raped, and assaulted. The number of reported attacks continues to rise – now at least 1,314 – despite reduced in-person research due to pandemic-related travel restrictions.

This is both a humanitarian disgrace and a legal travesty.

Turning away asylum seekers at the border spurns the U.S. commitment to providing safe haven to refugees and serves no public health rationale, as public health experts have repeatedly stressed. These experts note that fair treatment of refugees does not undermine efforts to combat COVID-19, and that these goals “are not in conflict and can be served side by side.” U.N. Refugee Agency (UNHCR) legal guidance makes clear that a public health emergency cannot justify “blanket measure[s]” blocking asylum seekers and, in November 2020 the UNHCR Assistant High Commissioner for Protection urged states to ensure that “measures restricting access to asylum must not be allowed to become entrenched under the guise of public health.”

The administration’s effective elimination of humanitarian protections at the border violates U.S. asylum and anti-trafficking laws, due process protections, and treaty obligations. In late November 2020, a federal court preliminarily blocked DHS from using the CDC order to expel unaccompanied children, finding that the administration is unlikely to show that U.S. public health laws authorize expulsions. In early 2021, the Supreme Court will consider a challenge to MPP, which the Ninth Circuit found likely violates U.S. immigration laws and treaty mandates to prevent the return of refugees to persecution.

Remain in Mexico and CDC expulsions are on a long list of illegal and dangerous Trump Administration policies aimed at curtailing asylum and punishing those who seek U.S. protection, including a ban on asylum for people

who cross into the United States between ports of entry, a ban on asylum for people who travel through other countries (where they are not safe), and agreements to send asylum seekers to third countries – Guatemala, Honduras and El Salvador – that are not safe for refugees and do not have effective asylum systems.

An amicus brief submitted by the union representing U.S. Citizenship and Immigration Services (USCIS) asylum officers described these policies as “an assault” on the U.S. commitment to the persecuted. Along with new regulations that decimate asylum, these policies not only illegally turn away refugees but prevent those who manage to receive limited forms of protection from bringing their children and spouse to safety – leaving refugees with the choice of pursuing U.S. protection or remaining permanently separated from their families.

In early November 2020, a Biden campaign spokesperson told CBS News that, if elected, he would “direct the CDC and DHS to review this policy and make the appropriate changes to ensure that people have the ability to submit their asylum claims while ensuring that we are taking the appropriate COVID-19 safety precautions, as guided by the science and public health experts.” The Biden campaign also pledged, on its first day, to end MPP.

Instead of blocking people seeking humanitarian protection, the U.S. government should employ measures recommended by public health experts – such as distancing and masks, health screenings, testing, and use of non-congregate settings – to expeditiously process and parole asylum seekers under existing legal authority, pending immigration court proceedings. Case management alternatives to detention can be employed where asylum seekers sheltering with family or friends need additional appearance support.

To gather information for this report, Human Rights First researchers interviewed asylum seekers, immigration attorneys, academic researchers, humanitarian volunteers, and legal monitors. The interviews were conducted remotely because of pandemic-related restrictions on movement in both the United States and Mexico. Staff also reviewed reports from the media and human rights organizations. This report builds on our prior reporting on MPP in March 2019, August 2019, October 2019, December 2019, January 2020, and May 2020.

Key findings:

- ☑ **The Trump administration continues to wield the CDC order to block and expel asylum seekers, turning them back to escalating violence in Mexico and other highly dangerous places, including El Salvador, Guatemala, Haiti, Honduras, and Nicaragua, where their lives are at risk.**
- ☑ **Asylum seekers denied U.S. humanitarian protection due to the CDC order include:** prominent political dissidents who were flown back to Nicaragua where they were detained by the very authorities that had initially jailed and tortured them; a transgender Honduran asylum seeker to Mexico; Ethiopian and other African asylum seekers expelled to Tijuana; a pregnant asylum seeker expelled to Mexico while experiencing contractions who had been repeatedly raped there; a Nicaraguan asylum seeker, who having been hospitalized for nine days for dialysis, was expelled to Mexico in a hospital gown without socks, shoes, or underwear; and a Guatemalan asylum seeker, who after being kidnapped for a month in Mexico, was beaten by a U.S. border agent with a baton while being expelled to Nogales, Mexico.
- ☑ **The CDC order is also blocking asylum seekers from requesting protection at ports of entry, pushing some to undertake dangerous crossings.** A Cuban man has been presumed dead since July 2020 when he attempted to cross the Texas desert to seek protection as U.S. ports of entry were not accepting asylum seekers. Many asylum seekers – including people from Burundi, Cameroon, Cuba, Democratic Republic of Congo, El Salvador, Guatemala, Haiti, Honduras, Mexico, and Venezuela – are waiting in Mexico, blocked from requesting asylum. Those who had arrived at the border before the CDC order were already forced to wait on so-called “metering” lists.

- ✔ **Under the CDC order, the administration has expelled at least 8,800 unaccompanied children and probably as many as 14,000, including children as young as five** (as of September 2020). Children expelled to danger include: a 12-year-old Guatemalan asylum seeker with physical and learning disabilities expelled to Guatemala while his mother waited in Mexico under MPP and a 15-year-old asylum seeker expelled back to Guatemala after fleeing sexual abuse at the hands of her stepfather.
- ✔ **The Trump Administration is turning away and expelling refugees at the border using debunked public health claims that senior CDC and public health experts have rejected.** In issuing its initial March order, CDC cited DHS claims that it needed to avoid holding asylum seekers and migrants in custody and lacked capacity to conduct testing. Yet DHS is detaining asylum seekers in border facility cells and immigration jails for days or weeks in order to expel them when they test negative for COVID-19. Border Patrol detained a two-year-old Haitian boy and his asylum-seeking parents for nearly three weeks in September before releasing them. DHS, under the Trump Administration, has refused to scale-up areas appropriate for processing, continuing to choose to use long-criticized congregate areas and keeping asylum seekers detained rather than using its legal parole authority do that asylum seekers can shelter with U.S. family and contacts.
- ✔ **DHS continues to return asylum seekers to Mexico under MPP where they face life-threatening danger**, including an LGBT Cuban woman returned under MPP in August 2020 who had been repeatedly sexually assaulted in Cuba because of her sexual orientation. As of December 15, 2020, Human Rights First has tracked 1,314 incidents of murder, rape, kidnapping, torture, and assault. But this count is only the tip of the iceberg, as the overwhelming majority of returned people have not spoken with human rights investigators or journalists (COVID-19-related restrictions have further limited reporting). Of the reported attacks, 318 were kidnappings or attempted kidnappings of children. Other victims include a Cuban asylum seeker beaten and raped by Mexican police in Ciudad Juárez, a gay Honduran asylum seeker kidnapped in Matamoros, and a Honduran asylum seeker drugged and raped while looking for work in Ciudad Juárez.
- ✔ **Violence in Mexico—and the dangers of harm facing asylum seekers forced back there—is on the rise.** The country's homicide rate for 2020 is likely to be the highest in decades, according to Mexican government data. Drug cartels have reportedly taken advantage of the pandemic and reductions in security operations, including in the state of Tamaulipas, where tens of thousands of asylum seekers have been returned under MPP. In October 2020, the *New York Times* reported that cartel members kidnap and assault asylum seekers in the Matamoros encampment. In November 2020, the Mexican federal prosecutor for Ciudad Juárez confirmed that cartels have effectively deputized organized criminal groups to kidnap and extort migrants in the areas they control.
- ✔ **Asylum seekers forced back into Mexico under MPP and the CDC order face brutal conditions, made worse by the COVID-19 pandemic.** Many shelters have shut down or restricted new arrivals while unemployment has soared, and asylum seekers find it increasingly difficult to obtain food, pay rent, and access medical care. The Matamoros encampment, where approximately 600 migrants live, was battered by hurricanes and heavy rains throughout the summer, causing insects and feces to wash up from the river. Asylum seekers unable to access medical care during the pandemic include: a seven-year-old suffering from seizures and developmental delays who has difficulty eating, speaking, and communicating; a Honduran asylum seeker suffering from a rectovaginal fistula that requires surgery as a result of being raped in Ciudad Juárez; and a paraplegic Honduran asylum seeker.
- ✔ **DHS is expelling and turning back asylum seekers without using the refugee protection measures required by U.S. law. Torture screenings for CDC expulsions are virtually non-existent.** Customs

and Border Protection (CBP) referred only 85 out of more than 43,000 migrants expelled under the CDC order for screening through May. Nearly half were referred in the first four days the CDC order was used. While these screenings are inadequate and flout U.S. non-refoulement obligations, the vast majority of refugees expelled under the CDC order are denied any opportunity to explain their fear of return. **CBP has also largely refused to permit MPP fear screening interviews, which have always been legally deficient, farcical and perfunctory**, leading to returns of asylum seekers subsequently harmed in Mexico including a Honduran asylum seeker who was kidnapped and sex trafficked after she was found to not have a fear of return to Mexico where she had been previously kidnapped and raped. Since the start of the pandemic, CBP has denied the vast majority of people in MPP who face harm in Mexico fear interviews. Between April and October 2020, only 1,159 people placed in MPP were screened – just seven percent of the total screenings in the eight months before the CDC order.

- ☑ **There are approximately 23,000 pending MPP cases, leaving many asylum seekers returned to Mexico under MPP waiting indefinitely in danger** in the wake of the COVID-19 closure of immigration courts. According to immigration court schedules analyzed by [TRAC](#), **70 percent of those with postponed MPP hearings will have been waiting in Mexico for one year or more by January 2021**, when the Biden Administration takes office. Those with pending MPP proceedings as of October 2020 include **6,463 Cubans, 5,422 Hondurans, 3,979 Guatemalans, 2,142 Ecuadorians, 1,408 Venezuelans, 1,397 Salvadorans, 813 Nicaraguans, and 445 Brazilians**.

Human Rights First urges the incoming Biden Administration to adopt the recommendations in our blueprint to uphold refugee and asylum protections, including:

- ☑ **Immediately withdraw the discredited CDC order and rescind the Health and Human Services (HHS) final rule authorizing the CDC order**. UNHCR legal guidance confirms that entry measures relating to COVID-19 should not prevent people from seeking asylum and may not deny entry to persons at risk of refoulement.
- ☑ **End MPP and all other policies and practices that violate U.S. asylum and immigration law and U.S. Refugee Convention obligations**: immediately revoke the DHS memorandum implementing MPP; rescind the rules implementing the asylum entry ban, the third-country transit asylum ban, and so-called asylum cooperative agreements, and settle pending litigation; revoke memoranda authorizing turn-backs and orchestrated reductions of asylum processing at ports of entry and fast-track deportation programs that detain asylum seekers in inadequate border facilities and block them from legal counsel; and halt all attempts to send asylum seekers to other countries, including El Salvador, Honduras, Guatemala, and Mexico, that do not meet the legal requirements for safe-third country agreements under U.S. law.
- ☑ **Employ effective and humane policies that uphold U.S. laws and treaties and implement measures recommended by public health experts to safeguard asylum seekers, CBP personnel, and public health**, such as social distancing, appropriate personal protective equipment, providing hand sanitizer, testing and health screenings, reducing processing delays, repurposing outdoor areas and nearby locations to facilitate distancing and ventilation, and using legal parole authority rather than congregate detention – steps that CBP and the Border Patrol should already be taking.
- ☑ **Direct CBP to parole asylum seekers in MPP – all of whom have already been processed by CBP, have immigration court cases, and can be swiftly transited through ports of entry – into the United States and restore timely and orderly processing of asylum seekers and unaccompanied children at ports of entry**, as well as ensuring humane processing that upholds U.S. refugee and anti-trafficking law along the border.

- ☑ **Provide redress for asylum seekers denied a fair opportunity to pursue their requests for U.S. refugee protection** under Trump Administration policies that have blocked, turned back and expelled them to danger.
- ☑ **Address human rights abuses in the countries that refugees are fleeing and support regional resettlement initiatives to provide other pathways to safety.**

Human Rights First recommends that Congress:

- ☑ **Withhold appropriations used to carry out MPP, CDC expulsions, and any other programs or policies that violate U.S. legal obligations to protect refugees.**
- ☑ **Adopt the Asylum Seeker Protection Act and the Refugee Protection Act of 2019.**
- ☑ **Hold oversight hearings to establish accountability for the violation of U.S. refugee law and treaty obligations and harms to refugees under Trump Administration policies.**
- ☑ **Conduct official visits, when safe given the COVID-19 pandemic, to Mexican border towns, CBP facilities and Border Patrol stations on the southern border, and immigration courts, to ensure DHS does not continue to violate U.S. law and treaty obligations.**

Asylum Seekers, Children Expelled and Turned Away to Danger

Through the CDC order, the Trump Administration has attempted to eliminate asylum and other humanitarian protections at the southern border in contravention of U.S. refugee, anti-trafficking and immigration laws and treaty obligations. The expulsion of children and asylum seekers under the March 2020 CDC order joins a barrage of policies implemented by the Trump Administration with the aim of blocking, deterring, and turning away people seeking refuge at the U.S. southern border. Despite repeated criticism from public health experts and revelations that senior CDC experts objected to the order, which was drafted by a political appointee at the Department of Health and Human Services, the CDC indefinitely extended the order on May 19, 2020 and re-issued it with minor modifications on October 13, 2020. In late November 2020, a federal court issued a preliminary injunction blocking DHS from expelling unaccompanied children under the CDC order, finding the government was not likely to prevail on its assertion that the U.S. public health laws cited as authority for the order authorize expulsions. Despite the injunction, DHS continues to block unaccompanied children and asylum seekers who seek protection at ports of entry and expel families and adult asylum seekers who cross the border in search of safety.

- **DHS has used the CDC order to expel over 260,000 migrants and asylum seekers** between March and October 2020 without providing access to the protection systems required by U.S. law – returning them to the countries they fled and sending some non-Mexican asylum seekers to danger in Mexico. **These expulsions include at least 7,600 individuals in families and 8,800 unaccompanied children.**
- **DHS has sent more than 68,000 people through MPP to some of the most dangerous parts of Mexico as of November 2020**, including 4,400 returned since March 2020 even as all MPP immigration court hearings have been cancelled. Some 23,000 MPP cases are still pending, with many people still stranded in danger in Mexico. Some asylum seekers and migrants returned to their countries due to the dangers of waiting in Mexico and the risks of COVID-19, while some are feared or reported missing.
- As of November 2020, **DHS had stranded approximately 15,000 asylum seekers on “metering” lists** along the southern border under its illegal practice of reducing the number of asylum seekers processed at ports of entry, causing back-ups of waiting asylum seekers in Mexico. DHS stopped accepting asylum

seekers at ports of entry, including from these lists, in March 2020 after the issuance of the CDC order. However, the precise number of people waiting to request asylum at the border is unclear, as many people on “metering” lists may have abandoned their claims due to violence against migrants in Mexico or may have been expelled under the CDC order after crossing the border to seek protection.

DHS has expelled thousands of asylum seekers from the United States using the CDC order. These expulsions take place without the screening interviews required under U.S. law and treaty obligations – resulting in the return of refugees to the very dangers they were attempting to escape, including to Brazil, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, and Nicaragua, among other countries. In addition, DHS is expelling many non-Mexican asylum seekers to extreme danger in Mexico, including refugees from Cameroon, Cuba, Ecuador, El Salvador, Ethiopia, Eritrea, Ghana, Guatemala, Haiti, Honduras, Somalia, and Uganda, among others. The Black Alliance for Just Immigration reported that CBP appears to frequently expel African asylum seekers to Tijuana even when they inform U.S. officers that they are seeking asylum and fear harm in Mexico. **Among those expelled under the CDC order, as of early September 2020, were 7,000 individuals in families expelled by DHS to Mexico – despite the fact that any who were asylum seekers were being returned directly to their country of feared persecution - and 600 families transferred to Immigration and Customs Enforcement (ICE) custody for expulsion by air directly to the countries they fled or left.**

DHS has used the CDC order to expel refugees to the very countries from which they fled persecution and torture without the legal processes Congress requires to screen asylum seekers, including:

- **In July 2020, DHS expelled a prominent political dissident, Valeska Alemán, labeled as the “face of rebellion” by local newspapers, to Nicaragua under the CDC order without an opportunity to seek asylum,** as reported by the *Washington Post*. Alemán sought refugee protection in the United States after Nicaraguan authorities detained and tortured her. DHS officers refused to give her a protection screening interview or consider evidence that she was likely to be tortured or killed if expelled to Nicaragua. After her expulsion, government authorities in Nicaragua jailed and interrogated Alemán, and she remains under surveillance by the police, who have searched the house where she is staying.
- **DHS expelled opposition activist, Moises Alberto Ortega Valdivia, and his family to Nicaragua in July 2020 under the CDC order after they attempted to request asylum at the U.S.-Mexico border,** as reported by the *Washington Post* and covered in a recent episode of *This American Life*. On the flight expelling the family to Nicaragua, Ortega Valdivia was forced to swallow five pages of his asylum paperwork out of fear that Nicaraguan police would discover it. He, his wife, and nine-year-old daughter fled after government agents imprisoned and tortured him—including by attaching live wires to his genitals. Nicaraguan police also beat Ortega Valdivia’s wife while pregnant and she later suffered a miscarriage. After his expulsion to Nicaragua, authorities took Ortega Valdivia to jail, interrogated him, and searched his home.
- In October 2020, the Border Patrol expelled a young Mexican asylum seeker under the CDC order after he attempted to request refugee protection after crossing into the United States. Border Patrol expelled the young man through the Nogales port of entry at midnight, when temperatures were freezing and humanitarian services were unavailable. He told Kino Border Initiative (KBI) that Mexican immigration authorities refused to help him, and he was forced to sleep outside at the bus station.
- CBP used the CDC order to expel a Mexican asylum seeker to Matamoros, Mexico with her two-day-old infant, who had been born in the United States after the woman went into labor while in the custody of Border Patrol.

- A Cuban asylum seeker expelled to Nogales under the CDC order in October 2020 reported that a Mexican asylum seeker traveling with him was transported by Border Patrols agent to the rural port of entry at Sasabe, Arizona and expelled to Mexico there under the CDC order.

DHS has also used the CDC order to immediately turn away and expel non-Mexican asylum seekers across the border to highly dangerous areas of Mexico. Border Patrol carries out expulsions to Mexico in a manner that further endangers lives. Agents expel asylum seekers and migrants in the middle of the night to dangerous areas, putting them at risk of violence and exploitation, and intentionally transport asylum seekers hours from the areas where they crossed the border and force them into Mexico through remote ports of entry where humanitarian assistance is extremely limited. CBP has also expelled migrants in need of urgent medical attention, including a woman with a broken arm, a woman in extreme pain who could not walk, and a man with a bleeding head wound who was carried across the border by other migrants, according to attorney Taylor Levy who observed CDC order expulsions in Ciudad Juárez. Dora Rodriguez, a volunteer with *Salvavision* told Human Rights First that the organization has treated multiple migrants and asylum seekers suffering from dehydration and other injuries who CBP had expelled through the remote Sasabe port of entry. “If we were not there to help these people, there would be nobody.” Expulsions to Mexico under the CDC order include:

- **In April 2020, Border Patrol agents used the CDC order to expel to Mexico two Honduran children and their pregnant asylum-seeking mother, who had been repeatedly raped in Mexico, in the middle of the night while she was in the midst of contractions.** The woman had to be rushed to a hospital. Border Patrol agents near Nogales, Arizona had ignored the woman’s pleas not to be returned to Mexico where she feared further harm and immediately expelled the family, telling the woman to seek protection in Mexico, according to the Florence Immigrant and Refugee Rights Project (Florence Project).
- **Using the CDC order, Border Patrol agents expelled a Cuban asylum seeker, who was seven months pregnant, and her husband in September 2020.** The couple, who had waited ten months in Mexico to request asylum in the United States, repeatedly expressed fear of returning to Mexico but were immediately expelled. The couple told KBI that rather than refer them for a fear screening interview, a Border Patrol agent suggested that the only way the woman could remain in the United States would be to break her own water to prematurely induce labor.
- **In September 2020, Border Patrol expelled a Nicaraguan asylum seeker to Mexico, who had been hospitalized for nine days and required dialysis for kidney damage resulting from dehydration, in a hospital gown without socks, shoes, or underwear.** Despite repeatedly expressing fear of being returned to Mexico, Border Patrol agents removed him from the hospital in a wheelchair before he had been medically cleared for release and expelled him to Nogales, according to KBI, who later provided the man humanitarian aid.
- **Border Patrol agents threatened to separate a Guatemalan asylum seeker from her two young children, ages five and eight, in October 2020, when she begged them not to expel the family to Mexico.** The agents handed the family over to Mexican migration officers at a Texas port of entry, who held the family in a Mexican immigration detention center for days. The officers told the family they were being deported to Guatemala. Instead, they were bused several hours south and dumped in Veracruz, which had the second highest number of reported kidnappings and femicides in Mexico in 2020.
- **In October 2020, CBP expelled a Guatemalan asylum seeker to Nogales, Mexico under the CDC order even though he repeatedly expressed to CBP officers his fear of returning to Mexico where he had been kidnapped for a month and threatened.** As CBP officers expelled the man through the downtown Nogales port of entry at 2 a.m., the man pleaded with the agents not to expel him to Mexico. A

CBP agent beat the man with his baton, leaving him bruised and with difficulty walking, according to KBI advocates who tended to the man.

- **CBP officers expelled a transgender asylum seeker from Honduras under the CDC order around May 2020 when she attempted to request refugee protection in the United States.** She told an advocate from the Florence Project that she explained to CBP officers that she feared persecution in Mexico, where violence and discrimination against transgender individuals is well documented, but they immediately expelled her there.
- **An Ethiopian man fleeing political persecution reported that DHS expelled him and other African asylum seekers to Mexico under the CDC order.** In September 2020, CBP officers drove the Ethiopian man and a Cameroonian asylum seeker more than 100 miles to expel them through the San Ysidro port of entry after they crossed the border near the Calexico port of entry to seek refugee protection. Two French-speaking Black asylum seekers with them were immediately expelled at the Calexico port of entry. The man reported that other African asylum seekers have also been expelled to Mexico after crossing the border near Calexico, including a pregnant Cameroonian asylum seeker, a Ghanaian asylum seeker, and a Ugandan asylum seeker twice expelled under the CDC order. It appears that CBP may be expelling to Mexico people, including these African asylum seekers, with temporary humanitarian visas or other permits even though these documents do not confer permanent residence. Returning asylum seekers to Mexico places them at risk of refoulement to the countries they fled, as Mexico's asylum system remains deeply flawed.
- **In October 2020, Border Patrol agents expelled a Guatemalan asylum seeker to Nogales, Mexico under the CDC order without his diabetes medication, which the agents had seized and discarded along with his other property.** The man went days without medication, according to KBI.
- **Border Patrol expelled a 10-year-old Honduran girl and her asylum-seeking mother, who was in her sixth month of a high-risk pregnancy and suffering from thyroid problems, under the CDC order.** The family was immediately expelled through a Texas port of entry, according to attorneys from the Florence Project, even though the woman told officers that she had been robbed in Mexico and feared for her safety there.
- **CBP is using the CDC order to expel asylum-seeking women who have given birth in the United States.** The non-profit organization *Al Otro Lado* is providing legal services to five asylum seekers expelled under the CDC order with newborn U.S.-citizen infants including a Haitian woman expelled to Tijuana in the middle of the night, Honduran women expelled to Reynosa and Tijuana, and a Mexican asylum seeker expelled to Matamoros. One woman was expelled immediately after a Cesarean section without adequate time in the hospital to recover. None of the women were provided birth certificates for their babies, making it difficult to establish their citizenship and potentially leaving the children stateless.

The CDC order has also been used by DHS to expel at least 8,800 unaccompanied children seeking asylum and other humanitarian protection in the United States as of early September 2020. The ACLU estimates that as of November 2020, as many as 14,000 unaccompanied children may have been expelled under the CDC order. These expulsions, which are carried out without trafficking and refugee safeguards required under U.S. law, place children at further risk of persecution, kidnapping, abuse, and exploitation. At least 2,220 children have been expelled by plane to the countries where many were fleeing persecution, including El Salvador, Guatemala, and Honduras. In addition, DHS has expelled at least 6,500 unaccompanied children to Mexico including hundreds of non-Mexican children, in violation of an agreement with the Mexican government prohibiting the return of non-Mexican unaccompanied children there. Even after the November 2020 court ruling blocking

summary expulsions of unaccompanied children, DHS illegally expelled at least 66 more children under the CDC order, including 32 children sent to Guatemala. Some of the children expelled under the CDC order include:

- **A 15-year-old Guatemalan girl fleeing sexual abuse at the hands of her stepfather was expelled by DHS back to Guatemala under the CDC order in November 2020**, according to a *CBS News* report. CBP officers denied the girl, whose biological father is in the United States and who brought records detailing the abuse she had suffered, an opportunity to present evidence of her persecution or to speak with a lawyer before expelling her.
- **CBP expelled a 12-year-old Guatemalan asylum-seeking child with physical and learning disabilities to Guatemala in August 2020 under the CDC order**. According to *Reuters* the boy and his mother had been waiting months in Ciudad Juárez for their MPP hearing. After a stranger tried to kidnap the boy, his mother allowed him to present himself to U.S. officials to request asylum, hoping that her son would be safe in the United States and able to reunite with family there.
- **In April 2020, a 13-year-old Salvadoran girl was expelled to El Salvador by DHS under the CDC order after requesting refugee protection at the border**. The agency expelled the girl to El Salvador without contacting her mother, even though the girl had told CBP officers that her mother, a former Salvadoran police officer, had been granted asylum in the United States and had provided her mother's phone number.
- **A five-year-old Honduran boy was expelled under the CDC order to Mexico after crossing the U.S.-Mexico border in September 2020**, according to a report in the *New York Times*. The boy's mother, with whom he had been waiting in a migrant shelter in Matamoros to seek asylum, sent him across the border when living conditions in the shelter became unbearable. For days after his expulsion, the woman was not able to reunite with her son, who had been handed over to a Mexican child welfare agency.
- **A 15-year-old Salvadoran girl was expelled alone to Mexico by CBP under the CDC order**, according to the *New York Times*. The girl's father in El Salvador only learned of her expulsion to Mexico when he received a phone call from the Salvadoran consulate in Mexico.

In March 2020, CBP ports of entry virtually stopped processing asylum seekers. **Between April and October 2020, only 270 individuals were referred for fear screenings by CBP port of entry officers**. At the same time, an estimated 15,000 asylum seekers' names were on so-called "metering" lists waiting to request asylum, as a result of CBP's illegal reductions in asylum processing at ports of entry prior to the pandemic. However, some list "managers" have closed their metering lists, leaving asylum seekers without any means to enter these illegal and highly flawed queues.

Asylum seekers waiting in Mexico to request protection include individuals from Brazil, Burundi, Cameroon, Cuba, Democratic Republic of Congo, El Salvador, Guatemala, Haiti, Honduras, and Mexico among other countries. Many have been waiting more than a year, including a Cuban family in Tijuana waiting since August 2019. However, it is unclear how many individuals remain waiting at these ports of entry, as some asylum seekers have abandoned their attempts to request protection at ports of entry due to widespread violence and virulent discrimination in Mexico that threatens their safety and lives, as discussed in detail below.

Blocking asylum seekers from requesting protection at U.S. ports of entry pushes some refugees to undertake dangerous border crossings. An October 2020 report by the DHS Office of Inspector General found that CBP's policy of reducing the number of asylum seekers processed at ports of entry – referred to as metering – pushed some asylum seekers to cross the border between ports of entry. With DHS using the CDC order to block asylum processing at ports of entry and as a result of the dangers asylum seekers face in Mexico, some

asylum seekers have undertaken dangerous border crossings away from ports of entry, and in increasingly remote areas of the border, that cost refugees their lives. Indeed, 2020 is shaping up to be one of the deadliest years on record for migrants at the border. For instance, in early December 2020, Ariana González Nieves, a 19-year-old Cuban woman drowned near Del Rio, Texas while attempting to cross the Rio Grande. The whereabouts of María Tasej Gonon, a 23-year-old Guatemalan woman who passed out in the desert while crossing the border near Laredo, Texas in September 2020, remain unknown. Refugees further endangered by DHS's effective elimination of asylum protections at ports of entry include:

- **Ibrain Wencislao Pérez Suárez, a 30-year-old Cuban political activist, has been missing since mid-July 2020 after he crossed the southern border to seek asylum, as U.S. ports of entry were not accepting asylum seekers due to the CDC order.** Pérez Suárez told his partner in Cuba that because U.S. ports of entry were closed to asylum seekers and he could not afford to continue to support himself in Mexico, he would cross the border to request protection. Pérez Suárez's partner and 7-year-old daughter, who have not heard from him since he was preparing to attempt to cross the border and walk through the Texas desert, continue to search for information about his whereabouts.
- **With processing of asylum effectively blocked at ports of entry due to the CDC order, a Nicaraguan asylum seeker nearly died after being abandoned in the desert by a guide in September 2020.** Without food or water for days, the man was hospitalized for 9 days and required dialysis for kidney damage resulting from dehydration. As discussed above, he was later expelled to Nogales alone and in a hospital gown, according to KBI.
- **In October 2020, a Cuban asylum seeker forced to remain in Mexico under MPP who had been repeatedly attacked in Mexico was injured after attempting to cross into the United States between ports of entry.** Despite a dislocated knee and a severe injury to her eye, CBP returned the woman to Matamoros without providing her medical attention.
- **With no way to seek asylum at ports of entry, a 53-year-old Cuban asylum seeker fell off a border wall while attempting to enter the United States to seek refugee protection in August 2020, leaving his left arm paralyzed. The man was subsequently returned to Mexico by CBP under MPP.** He fled Cuba with his wife and children due to political persecution arising from his refusal to disseminate government propaganda in his position as a high school director. In Ciudad Juárez, where the family is waiting for their MPP hearings, the man has been unable to receive physical therapy, according to attorney Nicolas Palazzo.
- **Many asylum seekers reported to Human Rights First, some of whom had been returned to Mexico under MPP, that they crossed the border between ports of entry to seek safety due to brutal conditions and life-threatening dangers.** These include an Ethiopian asylum seeker who said he crossed the border as he could no longer support himself while waiting months to apply for asylum and has faced severe discrimination in Tijuana; a Cuban asylum seeker in MPP who crossed the border after Mexican police kidnapped, beat, and raped her in Ciudad Juárez in June 2020; and two Cuban children and their asylum-seeking mother who fled across the border near Nogales after escaping from their kidnappers. CBP expelled or returned all of them to Mexico.

Since MPP hearings were suspended in March 2020, the Trump Administration has returned an additional 3,513 asylum seekers and other migrants to danger in Mexico under the disastrous MPP policy, as of **October 2020**. The vast majority of individuals DHS is currently returning to Mexico under MPP are from Cuba, Nicaragua, and Venezuela. New MPP cases filed with the immigration courts since April 2020 include 2,075 Cubans, 211 Nicaraguans, and 113 Venezuelans. With MPP courts closed, these asylum seekers now face

indefinite waits, many in highly dangerous areas, for MPP hearings to resume. By the time the Biden Administration takes office in January 2021, **70 percent of the 23,000 individuals with pending MPP cases will have been waiting - many in danger in Mexico - for one year or more for U.S. immigration court hearings.** Some of the asylum seekers DHS returned to Mexico under MPP during the pandemic include:

- **In August 2020, CBP returned an LGBT Cuban asylum seeker to Ciudad Juárez under MPP who had been repeatedly sexually assaulted in Cuba because of her sexual orientation.** Police there frequently harassed and insulted her, and an officer forced her to have sex with another woman at gunpoint, according to attorney Nicolas Palazzo with Las Americas Immigrant Advocacy Center (Las Americas). The woman and her partner were also the victims in Cuba of a gang-rape by three men.
- **A Venezuelan family placed by CBP in MPP in July 2020 and returned to Piedras Negras is seeking refugee protection in the United States because of persecution they suffered for their opposition to the Venezuelan government.** Two members of the family were attacked by *colectivos*, pro-government armed groups, because of their work with the *Primero Justicia* opposition party and participation in anti-government protests, according to an attorney representing clients in MPP.
- **In July 2020, CBP returned a Cuban couple to Mexico under MPP who were persecuted in Cuba due to their participation in anti-government demonstrations and membership in UNPACU, a coalition of dissident organizations.** As a result of their political work, they were beaten and threatened with death. Authorities seized their store and placed them under house arrest. The husband was also kidnapped and beaten multiple times in Cuba, including a kidnapping where he was held for more than 10 days, according to Las Americas.
- **A Cuban asylum seeker returned under MPP in July 2020 who is the granddaughter of a political prisoner was arrested in Cuba, beaten and told by police that she would be disappeared if she continued to participate in opposition marches.** The woman, who is trained as a physical therapist, had refused to serve on a medical mission to Venezuela and had participated in a peaceful political demonstration against the government, according to Las Americas.

DHS is increasingly holding families, adults, and unaccompanied children in Border Patrol holding cells and ICE immigration jails for days or weeks before then expelling them under the CDC order after they test negative for COVID-19. The agency's refusal to allow these individuals to request asylum under U.S. law further undermines the Trump Administration's claim that the CDC order was implemented, and remains necessary, because of the unavailability of testing and to avoid holding asylum seekers in congregate settings. DHS is also blocking legal services organizations from contacting asylum seekers held under the CDC order, subjecting them to virtually incommunicado detention in ICE immigration jails where DHS negligence has contributed to widespread and deadly outbreaks of COVID-19. Refugees and children subject to potential expulsion under the CDC order and detained for days or weeks in inadequate Border Patrol cells and immigration jails that needlessly place them at risk of exposure to COVID-19 include:

- **A two-year-old Haitian boy and his asylum-seeking parents were needlessly held in the Comstock, Texas Border Patrol station for nearly three weeks in late September 2020,** before being released, according to immigration documents reviewed by Human Rights First. The boy's mother was nearly nine-months pregnant at the time.
- **The Border Patrol has detained children as young as eight-months-old for up to 18 days in Border Patrol stations that lack basic facilities to care for children and fail to provide proper protective gear,** according to litigation brought under the Flores Settlement Agreement. Children held by CBP at Weslaco Border Patrol Station reported that they did not have access to soap or hand sanitizer and that

there was no social distancing. An eight-year-old boy said he was separated from his mother and didn't know where she was. "I feel very alone... it is very cold. It is always very cold... I have not received a new mask. My mask is dirty on the inside... I think many people here will get sick from COVID. That makes me feel scared."

In addition, DHS used private contractors to detain at least 860 children in hotels along the border before expelling them under the CDC order until September 2020 when a federal court blocked DHS from holding migrant children in unregulated facilities, often completely cut off from attorneys. The children, many of whom were traveling alone, were supervised with little oversight by transportation workers who were not licensed childcare providers, according to the New York Times. According to Andrew Lorenzen-Strait, a former ICE deputy assistant director for custody management, "kids may be exposed to abuse, neglect, including sexual abuse, and we will have no idea." ICE reportedly detained children at a Quality Suites in San Diego; Hampton Inns in Phoenix and in McAllen and El Paso, Texas; a Comfort Suites Hotel in Miami; a Best Western in Los Angeles; and an Econo Lodge in Seattle. Government documents obtained by Human Rights First through a Freedom of Information Act (FOIA) request indicate that CBP falsely instructed Border Patrol agents that the "TVPRA [Trafficking Victims Protection Reauthorization Act] does not apply under [CDC order expulsions] if [unaccompanied children and families] are not brought into facilities," which may explain why DHS has sought to detain children in hotel rooms.

Instead of jailing and expelling asylum seekers, DHS has the legal authority to parole asylum seekers and release them to shelter with family in the United States. A recent study of asylum seekers waiting at the U.S.-Mexico border found that 92 percent had family or friends in the U.S. with whom they could shelter. Under U.S. law immigration authorities are required to transfer unaccompanied children to the authority of the Office of Refugee Resettlement for placement with family or other community sponsors. Public health experts have emphasized that social distancing, use of masks, use of outdoor processing and other safety measures can safeguard asylum seekers, unaccompanied children as well as DHS staff and the general public while asylum seekers are processed at ports of entry and border patrol stations.

DHS is capable of rapidly processing and releasing asylum seekers. Asylum seekers previously processed by CBP but returned to Mexico under MPP can be swiftly transited through ports of entry. For instance, in July 2020, a 10-year-old Venezuelan girl with a kidney disorder and her asylum-seeking parents and baby brother who had been returned to Mexico under MPP were rapidly paroled into the United States at the San Ysidro port of entry. When the family's request for parole, which had been submitted in May 2020 by the family's attorney at Make the Road New Jersey, was approved, the family reported to the port of entry, received pre-prepared parole paperwork, and were processed at the port in a matter of minutes.

Violence Grows in Mexico: At Least 1,300 Publicly Reported Cases of Rape, Kidnapping, and Assault

Despite escalating violence in Mexico, DHS continues to expel and return thousands of asylum seekers there instead of allowing them to remain safely in the United States while their claims are decided. During the pandemic, DHS is using MPP to return asylum seekers mainly from Cuba, Nicaragua, and Venezuela, and has been using the CDC order since March 2020 to expel other asylum seekers and migrants, including unaccompanied children.

Violence in Mexico has continued to rise during the pandemic. In September 2020, the Mexican government predicted that homicides in 2020 would reach a new record high despite reductions in mobility due to the pandemic, likely surpassing 2019 when the country suffered its highest homicide rate in more than two decades.

Drug cartel violence has reportedly increased as cartels take advantage of reductions in government security operations. One of Mexico’s most powerful cartels, the Jalisco New Generation Cartel, has increased its activities in Tamaulipas, a state already designated by the U.S. Department of State at the highest risk level, where tens of thousands of asylum seekers have been returned under MPP. As of November 2020, Tijuana alone had suffered over 1,800 murders and Ciudad Juárez recorded over 1,500 murders.

Cartels, criminal organizations, and other bias-motivated perpetrators target asylum seekers and migrants in Mexico for kidnapping, robbery, rape, and assault. In November 2020, the prosecutor for the northern zone of Chihuahua state, which encompasses Ciudad Juárez, confirmed that cartels effectively authorize (and charge fees to) organized criminal groups that kidnap and extort migrants in the areas they control.

Organized criminal groups specifically target asylum seekers the United States returns to Mexico. The security situation in Matamoros, where hundreds of asylum seekers live in a tent encampment, has deteriorated further in recent months. In October 2020, the New York Times reported that cartel members kidnap and assault asylum seekers when “camp residents have violated the gang’s rules about when and where they are permitted to roam outside their tents.” A man claiming to be a member of the Juárez Cartel told VICE news that the cartel’s targeting of Cuban asylum seekers for kidnapping was the result U.S. policies that “keep[] people stuck in our country.” The man, who described how the cartel extorts family members in the United States of abducted asylum seekers, claimed that asylum seekers whose families fail to pay will “end up where they end up, maybe a mass grave.”

The Trump Administration is continuing to deliver asylum seekers and migrants to this deadly violence.



Human Rights First has tracked at least 1,314 public reports of murder, torture, rape, kidnapping, and other violent attacks against asylum seekers and migrants returned to Mexico under MPP. This tally includes 318 children in the MPP program who were kidnapped or subjected to kidnapping attempts. But this count is only the tip of the iceberg, as the overwhelming majority of returned individuals have not spoken with human rights investigators or journalists. The true number of attacks is likely far greater. A U.C. San Diego study

of MPP found that nearly one quarter of individuals returned to Tijuana and Mexicali had been threatened with violence while waiting for their U.S. immigration court hearings.

Given travel restrictions in the United States and Mexico, tracking of attacks has become increasingly difficult as few researchers, journalists, or attorneys have been able to meet with and interview individuals forced to remain in Mexico. Many asylum seekers expressed hesitation to divulge details of attacks against them, fearing retaliation by organized criminal groups. A Cuban asylum seeker told Human Rights First, “these are very sensitive topics, and if the information reaches the ears of someone it shouldn’t, a life can end.” An advocate working with asylum seekers in Ciudad Juárez said he was aware of many attacks against asylum seekers there, but that the victims, fearing retaliation, would not permit him to share information.

The Trump Administration is well-aware of the extreme and growing violence in Mexico that asylum seekers returned under MPP face there. In February 2020, a Drug Enforcement Agency spokesperson noted that a wave of homicides in Mexico was the result of a “war for the Tijuana area” among cartels. In early April 2020, the U.S. Consulate ordered U.S. government employees to take shelter after reports of “multiple gunfights and blockades throughout the city of Nuevo Laredo.” The U.S. State Department has also designated the state of Tamaulipas, where DHS has returned more than 30,000 asylum seekers under MPP through the cities of Nuevo Laredo and Matamoros, as a Level Four threat – the same threat level assigned to Afghanistan, Iran, Libya, and Syria.

Individuals returned under MPP by DHS have been raped, assaulted, and threatened in Mexico while waiting for their U.S. immigration court hearings, including by cartels, criminal organizations, Mexican authorities, and other individuals who target asylum seekers because of their status as migrants, gender, sexual orientation, race, and other protected grounds. Some of those harmed include:

- **An October 2020 article by *Buzzfeed News* reported that Francisco*, a 24-year-old Honduran refugee, was returned under MPP to Mexico where he had been kidnapped and raped by a Mexican police officer.** After being returned to Matamoros, a Mexican immigration official forced Francisco to make weekly extortion payments, threatening to hand him over to a cartel if he refused. An immigration judge at the Brownsville MPP court later found that Francisco qualified for asylum.
- **In August 2020, an immigration judge granted asylum to a lesbian woman from Honduras who had been kidnapped and sexually assaulted in June 2019 by men in Mexican police and military uniforms after CBP returned her to Ciudad Juárez under MPP.** The woman was also forced to watch a friend being raped and another person executed by their captors. While escaping, she suffered a serious foot injury that required surgery. Although she was removed from MPP in July 2019, DHS detained the woman until August 2020 in the El Paso Processing Center immigration jail where she contracted COVID-19 after being denied parole, according to her attorney Héctor Ruiz with the Santa Fe Dreamers Project.
- **A Cuban asylum seeker in MPP who had been returned to Mexico under MPP was kidnapped in Ciudad Juárez in June 2020 by Mexican police, who beat and raped her.** After she was released, she immediately crossed between ports of entry, visibly injured, in the hope of protection. When she was apprehended, she begged U.S. immigration officials for medical attention and a fear interview. She was denied both and returned to Juárez, according to an immigration attorney who represents clients in MPP.
- **In June 2020, a Honduran asylum seeker who CBP had returned to Ciudad Juárez in November 2019 with her two-year-old son was raped by a man who had offered her a job as a housekeeper.** The man lured her to his house with the promise of employment, drugged her with a spiked drink, and raped her. According to attorney Nicolas Palazzo with Las Americas, the woman filed a complaint with Mexican police, but no investigation has been conducted.

- **In November 2020, a gay Honduran man who had been returned to Mexico by CBP under MPP was kidnapped in Matamoros.** Charlene D’Cruz, an attorney with Project Corazon, who were assisting the man to file an asylum application, reported that the man managed to escape and is currently in hiding.
- **A Cuban asylum seeker returned to Mexico under MPP was kidnapped in Nuevo Laredo in the summer of 2020, detained for days, deprived of food and water, and beaten.** The men who abducted the Cuban asylum seeker demanded that he provide contact information for relatives who could pay a \$5,000 ransom, which he refused to do. After days in captivity, he was able to escape, according to an immigration attorney who represents clients in MPP.
- **In July 2020, members of a Mexican cartel attempted to kidnap a 17-year-old Honduran boy in Tijuana who had been returned to Mexico under MPP** in October 2019 along with his parents and two siblings. Since the kidnapping attempt, the children and their mother rarely leave the house. They were also forced to relocate repeatedly in search of safer accommodations.
- **In June 2020, an *in absentia* removal order issued against an Afro-Honduran family who was kidnapped on the way to their MPP hearing, and held hostage for months, was rescinded by the Laredo MPP court.** The family – a teenage boy and his mother who belong to the Garifuna minority community – were abducted at the Nuevo Laredo bus station in December 2019 on the way to attend their MPP hearing at the Laredo tent facility. A non-profit attorney, who assisted the family to reopen their case, reported that the child is severely traumatized from their ordeal in Mexico, where the family has also faced chronic homelessness and repeated instances of labor exploitation, as they attempt to survive while waiting for their U.S. immigration court hearings.
- **In October 2020, a Nicaraguan asylum seeker returned by CBP to Mexico under MPP was robbed by police in Tijuana while looking for shelter after he could no longer pay rent for the room where he was living.** Earlier Mexican police in Tijuana had beaten the man after they realized he was a Nicaraguan migrant. He filed a complaint with the police, which has not been investigated, and continued to face repeated harassment by police officers, according to immigration attorney Margaret Cargioli with the Immigrant Defenders’ Law Center (IDLC).
- **In May 2020, an Afro-Cuban asylum-seeking couple were kidnapped immediately after CBP returned them to Nuevo Laredo under MPP and held by armed men in a room covered in blood where migrants with missing body parts moaned on the floor.** After four terrifying days the couple managed to escape but are terrified that they will be required to return to Nuevo Laredo to attend their U.S. immigration court MPP hearings.
- **Around September 2020, a Honduran asylum seeker returned to Tijuana under MPP was threatened by a cartel there that also sent messages to her relatives in Honduras expressing animus against Honduran migrants and threatening that they had something horrible and unexpected in store for her.** The woman told a Human Rights First researcher: **“I left a country that wasn’t safe only to land in a place that’s the same or worse.”**
- **In August 2020, unknown individuals burned down a home in Mexicali where a Salvadoran asylum seeker returned to Mexico under MPP with her toddler and other migrants were living, leaving them homeless.** The woman attempted to report the arson to Mexican police, but they refused to take her statement or issue a police report, according to an attorney from IDLC.
- **In October 2020, armed men invaded the home of a Honduran asylum-seeking couple and their two young children who had been returned to Mexicali under MPP.** The terrified family filmed the

incident as the men searched for an unknown individual and attempted to present the video to the police to file a complaint, who refused, telling the family since they were migrants, they had "no rights." According to HIAS, the family fled Mexicali after the incident in an attempt to find safety in another city.

Farcical Protection Interviews, Vulnerable Asylum Seekers Turned Away

Through MPP and the CDC order, the Trump Administration has effectively eliminated humanitarian protections at the southern border. DHS has unilaterally and illegally replaced the procedures Congress established to provide access to asylum and screen asylum seekers at the border. Instead of referring people who pass preliminary interviews into the full asylum system, DHS is using farcical screening interviews that are rigged at every stage against asylum seekers and intended to block them from applying for asylum and quickly return them to danger.

The fear screening process for MPP, which is supposedly intended to determine whether individuals returned to Mexico would face persecution or torture there, fails to protect the asylum seekers and migrants CBP forces to remain in Mexico under MPP. Families with children already traumatized from brutal kidnappings and women who fear being sexually assaulted again have been returned to Mexico after these faulty screenings. These interviews lack the basic safeguards Congress created to prevent the deportation of asylum seekers to persecution, including the credible fear process and other safeguards designed to assure access to asylum hearings. An updated MPP policy guidance document issued in December 2020 that DHS billed as "improvements" to MPP indicates that individuals are not entitled to counsel during fear screenings where it would "delay the interview" unless "required by court order." An asylum officer speaking to Vox reportedly stated that the standard for fear of Mexico screenings is "all but impossible to meet." A former asylum officer who resigned in protest over MPP decried the fear interview process as "practically ensur[ing]" the violation of international law.

In the wake of the CDC order, CBP is severely limiting asylum seekers returned to Mexico from requesting protection through these highly flawed MPP fear-screening interviews. **Between April and November 2020, just 1,159 individuals placed in MPP were even permitted fear screenings**, according to government data, which is just seven percent of the total number screened in the eight-month period before the CDC order was issued. Attorneys report that CBP has allowed only a handful of asylum seekers to request fear interviews at ports of entry since April 2020. An attorney from the Florence Project, who accompanied a Cuban asylum seeker to the Nogales port of entry in September 2020 to request an MPP fear screening and also a torture screening, was told by a CBP officer that CBP would not refer the man for screening. The few fear interviews being conducted appear to be of individuals in CBP custody who are newly placed into MPP or who have fled again into the United States after being returned to Mexico. Even before this apparent policy shift, a study by U.C. San Diego researchers found CBP officers failed to refer to screening interviews 60 percent of individuals placed in MPP in California who expressed a fear of Mexico.

Asylum seekers returned to Mexico after farcical MPP fear screenings despite having suffered attacks and/or fearing significant harm include:

- **A Cuban asylum seeker in MPP was returned to Ciudad Juárez after a farcical March 2020 fear screening during which she suffered vaginal bleeding and was told the interview would be terminated if she did not calm down.** The woman, who had been dragged down an alley, beaten, and kicked in the stomach while pregnant, suffered a miscarriage as a result. She suffered vaginal bleeding and severe pain in CBP custody while waiting for the fear interview but was denied medical attention. The asylum officer interviewing her did not permit her to submit evidence during a call that dropped five times. The woman's husband who received a separate fear screening interview was asked irrelevant questions during the interview, including the spelling of apparently random words. The couple were subsequently

returned to Ciudad Juárez, where they have been threatened and the woman attacked again in July 2020, according to immigration attorney Nicolas Palazzo.

- **CBP returned a Cuban woman and her two children, one of whom has a severe disability, were returned in Mexico under MPP after a fear screening interview despite having been assaulted in southern Mexico and kidnapped in Nogales.** The mother told a Florence Project advocate that she and her children were forced into a car in Nogales and driven to a deserted area in the mountains where they were held hostage for three days. The family escaped, crossed into the United States and turned themselves in to Border Patrol in Arizona to ask for asylum. The officer who interviewed the mother about her fear of Mexico told her to “move states.”
- An Afro-Cuban asylum seeker and her teenage son did not pass a fear screening interview and were returned to Mexico under MPP despite having been kidnapped and held hostage in Reynosa. In July 2020, one of the kidnappers found the woman, assaulted and robbed her. She told Human Rights First, **“we have to hide all the time. We are terrified they will find us. We cannot live in peace. We are in constant fear.”**
- **A Honduran asylum seeker, who was kidnapped and raped after being returned to Ciudad Juárez under MPP with her 11-year-old daughter, was subsequently kidnapped and sex-trafficked** after she did not pass a farcical fear screening. During the first kidnapping in December 2019, the woman was raped by multiple men, dressed in makeup and heels, and photographed. The family managed to escape and cross the border for protection. But CBP returned them to Ciudad Juárez after she described the attack during a fear screening. After her return, the woman was again kidnapped and sex trafficked by men who threatened to force her daughter into prostitution. On one occasion she recognized a police officer who had previously helped her to file a report at one of the houses where she was being held, according to attorney Nicolas Palazzo.

Asylum seekers recently denied MPP screenings by CBP despite expressing serious fears about being returned to Mexico include:

- A Honduran couple and their three children were denied a fear interview after their seventeen-year-old son was nearly kidnapped by a Mexican cartel in Tijuana in July 2020. CBP officers refused to refer them for an interview. The family had been returned by DHS to Mexico under MPP in October 2019.
- In July 2020, Border Patrol agents refused to refer a Cuban couple who had been kidnapped for an MPP fear screening and instead returned them to Nogales. A government official in southern Mexico had put the couple in contact with the woman who then kidnapped them. The couple had managed to escape their abductors after being held hostage for months but continued to receive threatening messages claiming that the kidnapper knew they were hiding in Nogales. The couple told KBI that after expressing their fear of return, the Border Patrol agent who processed them replied, “you think I am here to solve your problems? All Cubans come here with the same story... you are going back no matter what and you will have to figure out what to do.” Both were returned to Nogales without a fear screening.
- In late May 2020, two Nicaraguan asylum seekers, who had been returned to Mexico in April 2020, were refused a fear screening interview despite having been kidnapped in Nuevo Laredo and followed by their kidnappers after their escape. At the Nogales port of entry, where KBI advocates accompanied them, CBP officers refused to refer them for interview and threatened to detain them, which the couple said they would prefer rather than being forced to remain in Mexico.

The Trump Administration is also denying asylum seekers it expels under the CDC order fear screenings required under U.S. law. CBP claims that in carrying out CDC order expulsions it “is not operating pursuant to its authorities under Title[] 8”—the section of U.S. law codifying the protections and processing procedures Congress adopted for asylum seekers—according to internal guidance provided by DHS to Border Patrol agents and first reported in a Pro Publica exposé. Instead, the Border Patrol guidance indicates that agents may refer asylum seekers for limited torture screenings in very narrow circumstances – where the individual makes an “affirmative, spontaneous and reasonably believable claim.” To pass these limited torture screenings asylum seekers must establish a more likely than not probability of torture if returned to their country. This is not the legal standard applied to preliminary fear screenings, but rather the standard immigration judges use to determine - after a full immigration court hearing - whether an individual qualifies for full protection under the Convention against Torture. As a result of this rigged process, very few asylum seekers subject to the CDC order have even been permitted these inadequate interviews, and fewer still have passed them.

- Between March 20 (when the CDC order was issued) and May 27, 2020, CBP referred only 85 individuals out of more than 43,000 asylum seekers and migrants expelled under the CDC order to be screened for a fear of torture, according to a CBS News report. Government records obtained through FOIA by Human Rights First show that nearly half (41) of these referrals were made in the first four days the CDC order was used by CBP, meaning that **during the rest of March, April and May 2020, CBP allowed less than one asylum seeker subject to the CDC order per day, on average, to request protection.**
- **CBP expelled well-known Nicaraguan opposition activist, Moises Alberto Ortega Valdivia, and his family to Nicaragua in July 2020 under the CDC order without referring them for a fear screening.** Ortega Valdivia, who speaks fluent English, had told Border Patrol agents in Texas that he was seeking asylum and presented extensive documentation of the persecution and torture he suffered in Nicaragua.
- **Asylum seekers expelled under the CDC order to Nogales, Mexico have frequently reported to KBI that Border Patrol agents refuse to refer them for fear screening despite affirmative explanations that they fear return to Mexico.** For instance, a Salvadoran woman expelled with her eight- and one-year-old children in October 2020, who explained to a Border Patrol agent that she feared being returned to Mexico where she had been robbed in a nearby town, the agent told her, “it doesn’t matter, there are gangs in the US just like in Mexico.” In September 2020, Border Patrol agents expelled an asylum-seeking Honduran couple and their baby without any fear screening despite the couple articulating their fear of returning to Mexico where they were repeatedly detained and told to seek asylum at the Nogales port of entry, where they were also refused a protection screening. A Salvadoran asylum seeker was twice refused fear screening by Border Patrol agents in October 2020 who expelled her under the CDC order to Mexico, despite her efforts to explain the abuse she had suffered in Mexico.

CBP also continues to return and refuse to remove vulnerable asylum seekers placed in MPP in violation of internal MPP policy restricting the return to Mexico of individuals with “known physical/mental health issues.” In November 2020, *Al Otro Lado* and several individual plaintiffs filed a class-action lawsuit challenging DHS’s continued return of individuals with disabilities and health conditions and their family members to Mexico in violation of the agency’s own policy. Documents obtained through FOIA by Human Rights First show that CBP is intentionally using MPP as a “reliable alternative” to “expel[] pregnant females,” despite the DHS policy prohibiting the return of individuals with known health issues. In December 2020 supplemental policy guidance, DHS announced that “where there is any doubt as to whether a[person] should be included in MPP owing to a known physical or mental health issue, CBP should err on the side of exclusion.” Some of the many individuals with evident and serious health conditions whom CBP has and continues to force to remain in Mexico under MPP, include:

- Among the vulnerable asylum seekers forced to remain in Mexico under MPP despite severe health conditions and disabilities included in the *Al Otro Lado* [suit](#) are: a woman with a pituitary tumor whose 13-year-old child has only one functioning lung; a seven-year-old child with a heart murmur; an eight-year-old boy who has urethral malformation that requires surgery; a seven-year-old child who has seizures, an intellectual disability, and urinary tract problems; a 16-year-old boy with a brain injury that causes memory problems and headaches; a seven-year-old child with developmental delays and seizures; a 14-year-old child with an amputated leg; and a one-year-old baby with congenital hydrocephalus, which causes a buildup of fluid around her brain and spinal cord.
- A five-year-old boy from El Salvador who is partially deaf and suffers from myelomeningocele, a condition where the spinal cord and nerves develop outside the body, has been in MPP since October 2019 and is not receiving needed medical care due to prohibitive costs and COVID-19 restrictions, according to Las Americas.
- A [seven-year-old girl](#) with lissencephaly, a condition that causes seizures and development delays, was returned to Matamoros with her mother under MPP. The child has difficulty eating, speaking, and communicating and suffers from impaired neurological and respiratory functions. After being returned to the MPP encampment in Matamoros, the child's mother was unable to obtain needed medications, resulting in the girl's hospitalization.
- A 19-year-old Honduran whose leg was amputated due to cancer was placed by CBP in MPP in September 2019 but has yet to have a single hearing due to immigration court cancellations, according to Las Americas. The young man does not have access to medical care or physical therapy in Mexico, necessary prosthetics, or even crutches.
- CBP returned a pregnant Salvadoran asylum seeker to Nuevo Laredo under MPP who had suffered repeated rapes in Mexico and experiencing bleeding as a result of the pregnancy. When the woman went into labor in August 2020 after being returned to Mexico, she was forced to wait, bleeding on the street outside the hospital, until the very late stages of her delivery before being provided medical aid, according to an attorney from *Proyecto de Ayuda Para Solicitantes de Asilo* (PASA).
- A Honduran asylum seeker who suffered a car accident in Mexico and is now paraplegic as a result is living in a shelter with his 17-year-old daughter after being returned to Ciudad Juárez under MPP in February 2020. Unable to walk without a wheelchair or crutches, he has been unable to obtain medical care or physical therapy while living in Mexico, according to attorney Nicolas Palazzo.
- A three-year-old Venezuelan girl, who suffers from multiple serious health conditions requiring continuous medical care including spinal hypoplasia, which makes it difficult for her to sit for long periods of time, was returned to Mexico under MPP in March 2020. While in CBP custody, the girl was twice transported to a hospital as she was crying uncontrollably but no diagnostic testing was conducted. Upon return to Nogales, an ultrasound scan identified a kidney disorder causing the child's pain.

COVID-19 Makes Desperate Circumstances Even Worse

Asylum seekers forced to remain in Mexico under MPP or expelled there under the CDC order are stranded in brutal conditions, made worse by the pandemic; many are without safe and secure housing, adequate medical care, or sufficient food. Due to COVID-19 restrictions, [shelters](#) are often [closed](#) to new arrivals and lack adequate resources. Other shelters, including three of Mexicali's main shelters, [shut down](#) entirely in recent months due to lack of federal funding. In [Piedras Negras](#), shelters remain closed due to COVID-

19 as of December 2020. Some shelters do not allow residents to leave to search for work or purchase necessities due to the pandemic, leaving them without any income and totally dependent. The many who are living outside of shelters – in migrant hotels, rented apartments, or on the streets – have largely lost the little work they managed to find, and many are facing eviction and hunger as their savings quickly run out.

With shelters accommodating fewer residents since the start of the pandemic, asylum seekers are left to sleep on the streets or bear the financial burden of paying rent. Many of those living in the streets are targeted by criminal organizations. Asylum seekers who rent housing are vulnerable to abuse and exploitation, and many are reluctant to report abuses to Mexican authorities because of widespread discrimination and fear of deportation. A Venezuelan asylum seeker told Human Rights First that after arriving in Hermosillo, he arranged to rent an apartment for his family and paid a man purporting to be the building owner. The man took the money, but they were not given access to the apartment. A Honduran asylum seeker who paid to rent a room in Matamoros with her husband and young daughter said that immediately after they moved in, the building owner attacked the family, threw their belongings in the street, and locked them out.

Other asylum seekers struggling to survive outside of shelters include:

- Asylum seekers from Cameroon, Uganda, and Ethiopia – unable to seek protection in the United States due to the CDC order – who were sharing a room in a Tijuana hotel suffered terrible conditions and threats and extortion by Mexican authorities. According to an Ethiopian asylum seeker living there, **“the conditions are very horrible. We have to buy everything like bed sheets and everything that we need. They give us these rotten mattresses. There are a lot bugs and animals. But we stay here because this is one of the few places that we can rent in Tijuana.”** When the African residents complained about conditions, the manager summoned INM officers, who handcuffed them, chained some together, and stole their money. In November 2020, a new owner evicted the group because he said that he “does not like Africans,” as the Ethiopian asylum seeker recounted to Human Rights First.
- **A Cuban asylum-seeking couple fleeing political persecution who have been living in Reynosa since being returned to Mexico under MPP in September 2019 with their three-year-old son spent all their savings to rent an unheated apartment for the past three months.** They have been unable to find work since the pandemic began and now cannot afford blankets or warm clothing. They live in fear of the men who tried to kidnap their son and of the Mexican authorities who could deport them because they were unable to renew their Mexican permits. The mother told Human Rights First she considered trying to cross the border between ports of entry because she does not know how her family can survive.
- **A Guatemalan woman stranded in Tijuana with her son under MPP lost her factory job around May 2020 due to COVID-19 and has struggled to buy basic necessities and pay rent.** Her son also lost his factory job in June 2020. Without financial help from family in the United States they would not have been able to survive, according to attorneys from IDLC.
- **The parents of a seven-year-old child with a congenital heart defect, who were returned to Mexicali under MPP, are struggling to care for him and make ends meet as he requires medical supervision at all times due to his condition.** The family’s housing arrangement will end soon, and they are at risk of becoming homeless.

In addition to difficulties affording food and shelter, access to already extremely limited medical care for asylum seekers stranded in Mexico has become even more restricted during the COVID-19 pandemic.

- **A 54-year-old Honduran asylum seeker, who was returned under MPP in the fall of 2019 with her children and was raped by two men in Ciudad Juárez, suffers from a rectovaginal fistula as a**

result of the rape, which causes her bowel contents to leak. She requires surgery but has not been able to obtain medical treatment since April 2020 due to COVID-19 shutdowns.

- **A pregnant Cuban asylum seeker returned to Mexico under MPP experienced brutal medical neglect in Mexico due to her lack of legal status.** She was denied prenatal treatment in Piedras Negras and when she went into labor in September 2020 was repeatedly turned away at Mexican hospitals. At the hospital that finally accepted her, she was forced to wait on the street in the middle of the night before ultimately being allowed into the hospital. The woman fainted twice in the waiting room and was forced to walk out of the hospital with her baby the next day, despite needing multiple stitches due to tearing during delivery. She was not provided antibiotics or pain medications and developed an infection around her stitches, according to attorneys working with PASA.
- **A pregnant 21-year-old indigenous asylum seeker from Guatemala, who has placed by CBP in MPP in January 2020, has been turned away by multiple hospitals in Tijuana where she tried to get a sonogram,** according to Adam Howard, who is assisting the woman's attorney in representing her.
- Since March 2020, a woman returned to Tijuana under MPP who has hypertension, hyperglycemia, scoliosis, kidney stones that require surgery, PTSD, and panic attacks, has not been able to obtain medication for her panic attacks. She is afraid to undergo the operations she needs because she does not know what would happen to her two children who were returned to Mexico with her, if she were to die.
- Three Cuban asylum seekers including an Afro-Cuban woman who all suffer from asthma have been repeatedly turned away in Tijuana when trying to obtain medical care, including inhalers, according to Adam Howard, who is assisting their attorney in representing them.

Due to the pandemic many asylum seekers waiting to seek protection in the United States are unable to work or have lost the minimal work they could find to pay for rent, food, and medical expenses. As businesses have closed and the unemployment rate has risen in Mexico, asylum seekers struggling to find work have endured discriminatory treatment and exploitation.

- A Venezuelan asylum seeker who has been languishing in MPP since August 2019 lost his grocery store job when the pandemic hit and is running out of resources to support himself. He was fired when his employer dismissed immigrant workers to open up positions for Mexican nationals. In June 2020, a cartel threatened him when he refused to work for them, forcing him to go into hiding. He is losing hope: **“I am without work and living in fear. If I return to my home country, they will probably take my life. The difference is at home I would die in my own country. Here they would throw me in a pit and nobody would know. . . . I am exhausted and I do not have the strength to pursue the dreams I had before. I have considered suicide, but God has stopped me.”**
- In October 2020, a Cuban asylum seeker returned to Mexico under MPP was fired after suffering a serious hand injury on the job, which required reconstructive surgery. His employer refused to pay his medical expenses. When the man asked for five weeks of unpaid wages, his employer threatened to “disappear” him. The man was too afraid to make a police complaint because he feared Mexican authorities would deport him. Without health insurance, the man could not afford to return to the hospital for follow up care after the initial operation, and his injury became infected.
- In October 2020, a Mexican police officer asked a Cuban asylum seeker for his immigration documents and told him that Central American immigrants who were trying to work in Mexico were “parasites” because there were not enough jobs for Mexicans.

For asylum seekers with expired FMMs, as discussed above, or who lack legal status in Mexico as they wait to request asylum in the United States, it is generally impossible to obtain formal employment. Many asylum seekers have been forced into exploitative informal labor arrangements.

- An Ethiopian asylum seeker expelled to Tijuana under the CDC order was paid just 80 pesos (U.S. \$4) for washing some 30 cars.
- An Afro-Cuban asylum seeker who applied for a job as a cleaner in a distribution warehouse in spring 2020 was told that Black immigrants could only work in nude bars or as sex workers.

An estimated 600 asylum seekers remain in the MPP encampment in Matamoros sleeping in tents on the banks of the Rio Grande. During a presidential debate in October, now President Elect Biden condemned MPP for forcing asylum seekers to stay “in squalor on the other side of the river.” Asylum seekers living in the camp must cope with frequent flooding from heavy rain and hurricanes, rotting food and garbage, insects, and feces washed up from the Rio Grande. An asylum seeker told the *New York Times*: **“You have to withstand everything here: sun, water, cold, heat, we have it all.”** Hurricanes during the summer months flooded the camp, damaged tents, destroyed asylum seekers’ possessions, and brought an infestation of rats, snakes, and mosquitos. A Salvadoran asylum seeker told Human Rights First that he decided to send his two young children across the border alone when they became sick from conditions in the camp. His 12-year-old son developed a severe rash all over his body and his 10-year-old daughter showed signs of malnutrition. The onset of cold temperatures brings a new host of dangers for those living in the camp. Asylum seekers living in the camp also suffer violence and threats at the hands of a powerful drug cartel operating in Matamoros. In October 2020, the *New York Times* reported that cartel members kidnap and attack migrants if they leave their tents at certain times. A Honduran asylum seeker told the *Nation* that **“more than anything, we are worried about our physical safety, about violence. There is a gang that controls the camp. They rape women, they beat up men.”**

Due to COVID-19 most American volunteer organizations have halted their services in the encampment to reduce the risk of transmission of the virus from the United States. Although some basic food provisions are still distributed through donations from local organizations, asylum seekers have reported that they are desperate without access to work or income and do not have enough to take care of their children. Global Response Management and Doctors without Borders provide healthcare and have implemented measures in the camp that have successfully prevented the widespread transmission of COVID-19, including through the use of masks, hand-washing stations, and vitamin distribution. In April 2020, INM erected a chain-link fence around the encampment and began restricting people’s movements into and out of the camp. As a result, residents must rely on donations for basic necessities and cannot leave the camp to obtain firewood or wash their clothes in the river. Attorneys recently reported to Human Rights First that INM has been instructing people to leave the camp and threatening them with deportation, creating further instability and chaos.

These terrible conditions for asylum seekers stranded in Mexico, compounded by the ever-present threat of serious violence and the trauma asylum seekers have suffered in their home countries, take a devastating toll on the mental health of asylum seekers.

- An Afro-Honduran woman from the Garifuna ethnic group and her daughter have been left traumatized and suffering from depression after enduring discrimination and violence in Tijuana while indefinitely stranded in Mexico under MPP. The woman reported that people in the street have shouted at her and her daughter to “go back” to where they came from, and a resident at the shelter where they were staying tried to attack her daughter. A June 2020 gun fight in front of the shelter left two people dead, further traumatizing the family who have had difficulty sleeping since the incident, according to attorneys at IDLC.

- A girl living in the Matamoros MPP encampment with her parents is despondent and at times refuses to eat because of the family’s dire situation, according to a recent *News Week* article. The girl’s father reports that they feel in constant danger from criminal groups in the area and that snakes have become a new danger in the encampment.
- A Cuban woman twice attempted suicide after CBP returned her and her husband to Ciudad Juárez under MPP. In Mexico members of an organized crime group that had raped the woman in Nicaragua had located the couple in Mexico, leaving the woman desperate and afraid that she would be attacked again, according to HIAS, who spoke with the family in August 2020.
- An 8-year-old Salvadoran asylum-seeking girl returned to Mexico under MPP in January 2020 suffers from severe depression and post-traumatic stress disorder as a result of persecution she experienced in her home country, which has been exacerbated by continued harassment in Mexico. The girl and her family are sleeping on the kitchen floor of an acquaintance, unable to find a shelter able to accommodate them, according to advocates from Jewish Family Services of San Diego. Since the fall of 2020, the girl has also been experiencing paranoia and recurring auditory hallucinations telling her to kill herself.
- An Afro-Cuban teacher and her 16-year-old son, who were returned to Mexico under MPP in September 2019 are traumatized and terrified to leave the abandoned house where they have been living in Reynosa. The family was kidnapped and attacked in Mexico. The woman told Human Rights First, **“we have no hope, and we are living with so much fear. We cannot see any light. Being in MPP is slowly killing us. We are hungry and cold, and we have suffered so much harassment because we are Black. Only my faith and my child give me the strength to wake up each day and continue.”**

MPP Chaos Deprives Asylum Seekers of Due Process, Further Undermines Access to Counsel

In July 2020, DHS indefinitely suspended all MPP hearings, which had been postponed for several periods starting in late March 2020, effectively blocking asylum seekers in MPP from any opportunity to receive refugee protection in the United States. Asylum seekers and migrants with pending MPP hearings include thousands of individuals from Central America as well as Cuba, Nicaragua and Venezuela among other countries, according to government data analyzed by TRAC. There are approximately 23,000 pending MPP cases, meaning many asylum seekers returned to Mexico under MPP are waiting indefinitely in danger in the wake of the COVID-19 closure of immigration courts. According to immigration court schedules analyzed by TRAC, **70 percent of those with postponed MPP hearings will have been waiting in Mexico for one year or more by January 2021, when the Biden Administration takes office.** This scheduling chaos threatens the due process rights of asylum seekers and further undermines already limited access to attorneys for individuals DHS returns to Mexico under MPP.

Pending MPP Cases as of October 2020, by nationality	
Cuba	6,463
Honduras	5,422
Guatemala	3,979
Ecuador	2,142
Venezuela	1,408
El Salvador	1,397
Nicaragua	813
Brazil	445

Asylum seekers who have been forced to wait for more than a year for their immigration hearings, include:

- A Venezuelan asylum seeker who received death threats after denouncing state corruption has been languishing in MPP since August 2019. After narrowly escaping an attempt on his life by Venezuelan government agents, the man fled to the U.S. border and was returned to Mexico under MPP. His next

MPP hearing at the Brownsville MPP court, initially scheduled for April 2020, was delayed twice because of the pandemic and is now scheduled for January 2021.

- A Cuban couple and their teenage son who fled Cuba to request asylum after being persecuted for their political beliefs and after their five-year-old daughter died due to poor medical care have been stranded in MPP since September 2019. Their next MPP asylum hearing at the Brownsville MPP court, initially scheduled for April 2020, has been repeatedly postponed due to COVID-19 court closures and is now scheduled for January 2021. The family, who was extorted and robbed in Mexico, all recently lost their jobs due to the pandemic.

When, and if, MPP hearings resume, many asylum seekers will not know the date of their rescheduled proceedings because DHS fails to notify them of scheduling changes. U.S. immigration law requires DHS to provide individuals in removal proceedings with written notice “of any change or postponement in the time and place of such proceedings,” but the agency has not provided asylum seekers paper hearing notices at ports of entry for postponed MPP hearings since June 2020. Instead, DHS announced that information on rescheduled hearings would be made available through the immigration court website, which is only in English and Spanish, and telephone hotline. Yet even months after the cancellation of MPP hearings and the suspension of document service at ports of entry, on some days scores of asylum seekers still arrive at the Ciudad Juárez port of entry on the date of their scheduled MPP hearing. At some ports of entry CBP officers hand out slips of paper instructing asylum seekers to call the court’s information hotline for updates on rescheduled hearing dates, instead of providing hearing information. Prior to the pandemic, DHS often failed to provide notices with the correct address for asylum seekers to present themselves for MPP court and did not translate these notices into a language the asylum seeker could understand, according to an October 2020 amicus brief filed by legal service providers.

Asylum seekers who are unaware of the need to check, or lack the technology to access, the immigration court website/hotline, are not literate, and/or speak an indigenous language are not likely to receive notice of rescheduled MPP hearings. In addition, faults with these information systems, which are common, also threaten to prevent asylum seekers from learning of the date of their rescheduled hearings.

- **A Honduran man fleeing political persecution whose May 2020 MPP hearing at the Brownsville MPP tent court was cancelled has been unable to ascertain the date of his rescheduled hearing.** The automated case information line and website indicate that information on his case is “unavailable.” According to an attorney with HIAS, the man attempted to ask a CBP officer at the Brownsville port for information about his hearing date but was told that the officer did not have information about his case.
- **CBP officers have falsely informed some asylum seekers whose hearings were rescheduled that because they did not come to the bridge on the date their hearings were originally supposed to take place, they had been ordered deported *in absentia*.** CBP officers falsely told a Cuban asylum seeker who did appear at the port of entry for a postponed May 2020 hearing that he had been ordered deported and that the EOIR printout indicating he had a hearing set for September 2020 was incorrect, according to immigration attorney Taylor Levy.

In addition to extensive delays that expose asylum seekers to life-threatening dangers and conditions in Mexico, the suspension of MPP hearings denies asylum seekers in MPP their only opportunity to meet in person with immigration attorneys in the United States. DHS already limited these brief meetings to individuals who already had an attorney registered in their case and only during the minutes before MPP hearings. In October 2020, Immigrant Defenders Law Center, Jewish Family Services of San Diego and several individuals returned to Mexico under MPP filed a class action lawsuit in federal court challenging the MPP policy for blocking asylum seekers from access to legal counsel and “depriv[ing] asylum seekers of access to the information and tools

necessary to defend against refoulement and to meaningfully present their asylum claims.” Since the pandemic, the few organizations able to provide basic legal support to migrants in some shelters in Mexico have had even more difficulty reaching asylum seekers—especially those recently returned from the United States. In Ciudad Juárez, for instance, CLINIC was previously providing legal services and trainings in shelters to around 100 asylum seekers per week, according to Luis Guerra, an advocate with the organization. Now, CLINIC meets with only about five asylum seekers per week.

The suspension of MPP hearings also threatens to undermine the asylum eligibility of individuals stranded in Mexico. Under U.S. law, asylum seekers must generally file an application for asylum within one year of their last arrival to the United States. While it would be absurd and improper to apply this rule to asylum seekers in MPP, it is not clear how adjudicators rule will apply this flawed rule to asylum seekers returned to Mexico under MPP, but because of the MPP hearing delays, many will be unable to file their applications in person before the one-year-filing deadline. While asylum seekers may file an application by mail, doing so from Mexico is costly and difficult, particularly for individuals who are not represented by an attorney. For instance, few unrepresented asylum seekers will be aware that they must file a copy of the asylum application with the DHS attorney representing the government and a certificate of service with the immigration court. Because the vast majority of asylum seekers in MPP lack stable addresses in Mexico where they can receive mail, applications rejected by the immigration court cannot be returned to them for correction and re-filing.

Other errors by DHS may prevent asylum seekers returned to Mexico under MPP, particularly those without legal representation, from requesting U.S. humanitarian protection where DHS fails to file the notice to appear (NTA), a document required to initiate removal proceedings, with the immigration court. In these cases, immigration judges may close the case for failure to prosecute leaving the asylum seekers without an opportunity to request asylum in court. For example:

- **The MPP cases of at least two Cuban asylum-seeking families were closed as a result of DHS’s failure to file NTAs preventing them from even applying for refugee protection.** The immigration court informed PASA, who has been assisting the families, that the cases were closed for failure to prosecute, as DHS had not filed the NTAs provided to the families when they were returned to Mexico in June 2020 by the date of their rescheduled MPP hearing in September 2020. DHS also failed to file NTAs for a third family from Venezuela also returned to Mexico under MPP in June 2020, who have been unable to obtain information on their rescheduled hearing. Without future hearing dates, the families were initially unable to renew their temporary Mexican migration documents, putting them at risk of deportation by Mexican officials. Members of the two Cuban families who had managed to find jobs in Mexico to support their families as they wait for U.S. immigration court hearings lost their employment due to their inability to renew their Mexican migration permits.

No Public Health Rationale to Close Border to Asylum Seekers

The highly flawed and roundly-criticized March 2020 CDC order - used by the Trump administration and DHS to effectively eliminate humanitarian protection at the border and which the Trump Administration claims is intended to prevent the introduction of COVID-19 to the United States – was issued despite repeated objections by senior CDC medical experts. The CDC experts warned officials that such an approach - pushed by White House Senior Advisor Stephen Miller – lacked a public health justification, as the *Wall Street Journal*, *Associated Press*, and *CBS News* reported. Despite these objections, Vice President Pence called the CDC Director and instructed the agency to issue the order, which a Department of Health and Human Services (HHS) lawyer – a Trump Administration political appointee – wrote, according to the *Associated Press* and *CBS News*. While the CDC order was presented as an urgent response to the pandemic, a New York Times report revealed that it “was in

large part repurposed from old draft executive orders and policy discussions that have taken place repeatedly” since the administration came into office, with the idea of invoking public health powers “on a ‘wish list’ of about 50 ideas to curtail immigration” crafted early on by Stephen Miller. The CDC order, which was subsequently indefinitely extended on May 19, 2020, and re-issued with minor modifications on October 13, 2020, as well as a separate Trump Administration proposed rule to use public health to deny refugees protection, have been described by public health experts as “immigration policy masquerading as a public health policy.” Despite these major flaws, Vice President Pence called the CDC Director and instructed the agency to issue the order, which a Department of Health and Human Services (HHS) lawyer – a Trump Administration political appointee – wrote, according to the *Associated Press* and *CBS News*. While the CDC order was presented as an urgent response to the pandemic, a New York Times report revealed that it “was in large part repurposed from old draft executive orders and policy discussions that have taken place repeatedly” since the administration came into office, with the idea of invoking public health powers “on a ‘wish list’ of about 50 ideas to curtail immigration” crafted early on by Stephen Miller. The CDC order, which was subsequently indefinitely extended on May 19, 2020, and re-issued with minor modifications on October 13, 2020, as well as a separate Trump Administration proposed rule to use public health to deny refugees protection, have been described by public health experts as “immigration policy masquerading as a public health policy.”

In May 2020, leading epidemiologists and public health experts wrote to the HHS Secretary and CDC Director urging that the March CDC order be rescinded – a call which they reiterated to DHS and DOJ leaders in August 2020. Explaining that the nation’s public health laws should not be used as a pretext for overriding humanitarian laws and treaties that provide life-saving protections to refugees seeking asylum and unaccompanied children, the letter expressed the experts’ grave concerns that the administration was using the “imprimatur” of the CDC “to circumvent laws and treaty protections designed to save lives and enable the mass expulsion of asylum seekers and unaccompanied children.” The letter concluded that the CDC order is based on specious justifications, and “fails to further public health and disregards alternative measures that can protect public health while preserving access to asylum and other protection.” The experts urged the administration to “use rational, evidence-based public health measures to safeguard both the health of the public and the lives of adults, families, and unaccompanied children seeking asylum and other protection,” and recommended, among other measures, that U.S border officials:

facilitate social distancing through demarcations and the use of outdoor and other areas for processing; require wearing of masks or similar cloth coverings over the face and nose for both officers and persons crossing into the United States; use plexiglass barriers and/or face shields for officers during interviews and identity-checks; provide hand-sanitizer and other handwashing for both officers and other persons; and provide requisite distance, as well as masks and other measures, in transport. . . . [I]nstead of holding individuals in facilities widely recognized as dangerous and unsanitary, CBP has the discretion and legal authority to parole adults and families seeking asylum or other legal protection, and the government could facilitate the expeditious release of unaccompanied children from custody.

The CDC order relies on inaccurate assertions about DHS detention and alternatives to detaining asylum seekers in immigration jails. In concluding that alternatives to suspending entry of asylum seekers and other migrants were not viable, the CDC order relied on incorrect and insufficient DHS assertions that the (now barred) individuals likely lack homes or places in the United States to self-isolate and that these individuals must necessarily be held in congregate areas in CBP custody for hours or days. A recent study found that around 92 percent of people returned to Mexico under MPP have family or close friends who live in the United States. Moreover, the CDC order erroneously pointed to CBP’s own flawed processing and detention choices at the border as justification for expelling asylum seekers and unaccompanied children. Contrary to DHS’s claims, CBP

has adequate space and staff to process asylum seekers and unaccompanied children at ports of entry in compliance with recommended public health measures and could swiftly complete processing of asylum seekers and unaccompanied children in as little as one to two hours (even before the pandemic).

At the same time that the Trump Administration is blocking refugees from seeking asylum protection in the United States, supposedly on the ground that processing asylum seekers in DHS border facilities would risk contagion, border crossings by U.S. citizens and other border traffic deemed “essential” have continued with more than **40 million pedestrians, car, bus and train passengers entering the United States through the southern border between April 2020 and September 2020**, according to data from the Bureau of Transportation Statistics.

Currently Mexico and the United States are both experiencing widespread and sustained levels of COVID-19 transmission. Some border communities, particularly along the Texas-Mexico border, are facing serious challenges in containing the spread of COVID-19. Government and non-governmental organizations on both sides of the border are currently undertaking efforts to address the pandemic. Medical and refugee assistance organizations, shelters and others assisting asylum seekers in these regions report that they have implemented public health measures – such as social distancing, masks, hygiene kits, testing, and the use of “filter” spaces, at hotels and in other locations – to help protect asylum seekers and that these measures have helped minimize the spread of COVID-19 in migrant shelters and the refugee encampment in Matamoros.

The DHS Office of the Inspector General, in a September 2020 report, stated that U.S. Border Patrol stations and CBP ports of entry reported that they have implemented measures to process travelers and detained individuals including use of personal protective equipment, use of disinfectant, risk assessments to determine potential exposure to COVID-19, monitoring for symptoms, distribution of masks, processing in outdoor environments, and consulting with local medical personnel. Yet some CBP officers and Border Patrol agents continue to fail to use basic public health measures to prevent the spread of COVID-19 to the public.

Mexico Complicit in U.S. Schemes to Block Asylum

Mexican police, immigration officials and other government authorities are directly involved in kidnappings, extortion and other violent attacks against asylum seekers returned by DHS to Mexico, as discussed above and extensively documented in Human Rights First’s prior research. In addition, the Mexican government is facilitating U.S. violations of international protections for refugees by agreeing to receive Mexicans and Central Americans expelled under the CDC order. Mexico also continues to receive non-Mexican asylum seekers and migrants returned under MPP. Mexico detains some individuals expelled by the United States and fails to consistently provide asylum seekers with an opportunity to seek protection, officially deporting some and illegally attempting to force others to cross the southern Mexican border to Guatemala or dumping them in southern Mexico. Such deportations raise serious concerns about the potential widescale return of asylum seekers, including those expelled from the United States, by Mexico to the countries they were fleeing.

- The number of individuals deported by Mexican migration authorities has been increasing in recent months, with more than 5,500 Central Americans deported in October 2020, according to Mexican government data. INM agents have often failed to inform detained individuals of their right to seek asylum in Mexico, pressuring asylum seekers not to file applications, and failing to forward requests to the Mexican asylum agency.

Asylum seekers in MPP are at increased risk of deportation because Mexican migration authorities are creating hurdles for them to renew Mexican migration permits (*forma migratoria múltiple* or FMM). Many also report being unable to obtain employment or have been fired because they are unable to renew their FMM’s. A Salvadoran

asylum seeker in MPP, who had been working in a factory to support her family, was fired in September 2020 because her FMM expired and she was unable to renew it.

Because FMMs for those in MPP are typically valid only until their next MPP hearing, permits for nearly all asylum seekers in MPP have expired during the pandemic. INM generally renews FMMs only when presented with updated U.S. documents indicating the individual's next MPP hearing. But many asylum seekers have been unable to receive these documents, as discussed above, or cannot travel hundreds of miles during the pandemic to the port of entry where they were returned to Mexico in order to renew the permit. In late April 2020, INM issued a new policy to permit renewal of FMMs in any INM office upon presentation of an expired MPP FMM, but asylum seekers continue to report that they have been denied renewals. Other asylum seekers report that INM officers have demanded bribes to renew their permits. A Cuban asylum seeker in MPP was denied an FMM renewal in August 2020 by INM officers in Matamoros, one of whom later offered to sell him an FMM for 4,000 pesos (US \$200), which he could not pay. The man is now without legal status in Mexico while he waits indefinitely for his next U.S. immigration court hearing.

Individuals with expired FMMs may be detained and deported by INM. Although Mexican police do not have authority to enforce immigration laws they often harass and arrest individuals who appear to be migrants. For instance, in the fall of 2020, a Ugandan asylum seeker was stopped and extorted by Mexican federal police in Tijuana, who threatened to jail and deport the man thereby forcing him to hand over his entire weekly wage, which he had just collected. KBI also reported that a Cuban asylum seeker travelling by bus to Nogales was recently extorted by Mexican federal police who refused to release the woman's daughter until she paid them, even though both had valid temporary visas. In May 2020, Mexican President López Obrador gave the Mexican army and marines authority to detain migrants, further increasing the likelihood of abuses against asylum seekers. Human Rights Watch found that deploying the military as a police force in Mexico "has produced widespread human rights violations – including executions, enforced disappearances, and torture."

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Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

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Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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ACKNOWLEDGEMENTS

This report was written and researched by Rebecca Gendelman, Julia Neusner, and Kennji Kizuka. Eleanor Acer, David Mizner, and Jennifer Quigley contributed edits to the report. Ashley Panzera designed the map. We are grateful for the support of the Stanford Law School Public Interest Fellowship. Human Rights First thanks the donors and foundations who provide invaluable support for the organization's research on access to asylum and representation of asylum seekers. We are thankful to all the practitioners, organizations and experts that provided information to inform this report. Particularly, we thank the numerous asylum seekers who bravely shared their stories in hopes of bettering the system for all those who seek protection and refuge in the United States.