

Any Version of “Remain in Mexico” Policy Would Be Unlawful, Inhumane, and Deadly

On August 24, 2021, the U.S. Supreme Court [denied](#) a request to stay a federal court ruling that orders the U.S. government to re-implement the Trump administration’s Remain in Mexico program (officially designated the “Migrant Protection Protocols,” or “MPP”). This deadly policy effectively delivers asylum seekers into the hands of cartels and corrupt Mexican government agents who kidnap, rape, torture, traffic, and extort them and their family members. The policy requires asylum seekers to wait in Mexican border cities while their U.S. immigration court cases are pending, rather than processing them into the United States to seek asylum while living safely with [family members or friends](#). MPP was one of the Trump administration’s numerous policies designed to erode the U.S. asylum system and deter refugees from requesting protection by subjecting them to unimaginable terrors. It fueled chaos, disorder, and suffering.

During the two years that the Trump administration implemented MPP, Human Rights First tracked at least [1,544](#) publicly reported cases of violent attacks against people returned to Mexico under the program and forced to wait in danger for their U.S. immigration court proceedings. Since President Biden took office, Human Rights First has tracked another [6,356](#) additional reports of kidnapping, rape, human trafficking, torture, and other violent attacks against migrants expelled or blocked in Mexico, forced to endure the same dangers as individuals forcibly returned to Mexico under MPP.

Despite the [action](#) President Biden took to end MPP starting in February 2021, his administration has now [confirmed](#) that it plans to re-implement MPP [reportedly](#) instituting a “gentler” version of MPP. As this factsheet explains, that is impossible. **No version of MPP can ever be legal, safe, or humane.** In September 2021, dozens of members of Congress [wrote](#) in a letter to the administration that “[i]t is abundantly clear that the United States cannot safely reinstate MPP and that any attempt to return people seeking safety to harm in Mexico will violate U.S. and international legal obligations to refugees.” The president of the union representing U.S. asylum officers told [CBS News](#) that “[t]he reinstatement of MPP will place thousands of asylum seekers in harm’s way and deny them the right to a fair hearing of their claims.”

The Biden administration rightly ended this cruel and illegal program and should not renege on its commitment. Instead, the administration should:

- **Take all necessary legal [steps](#) to immediately issue a new policy memo that provides a fuller explanation for the decision to terminate MPP and that resolves any Administrative Procedure Act issues identified by the district court in its [ruling](#);**
 - **Take all lawful and necessary steps to preserve the MPP wind down and continue processing individuals previously subjected to MPP into the United States; and**
 - **End the cruel and unlawful Title 42 policy, which subjects asylum seekers and migrants to the same brutal harms as MPP, and immediately restore access to asylum at the border, including at ports of entry.**
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Asylum Seekers Returned Under MPP and Other Government Policies Suffer Persecution, Torture, and Other Serious Harms in Mexico

Returning asylum seekers and migrants to Mexico under MPP is dangerous and inhumane, if not a [death sentence](#).

Asylum seekers returned to Mexico under MPP have been brutally murdered. A Salvadoran asylum seeker was [killed](#) in Tijuana in November 2019 after DHS returned him there under MPP. A 19-year-old Cuban asylum seeker who had been returned under MPP in 2019 by the Trump administration was [fatally shot](#) in Ciudad Juárez in May 2021 just days before he was scheduled to be processed into the United States under the Biden administration's MPP wind down. We will likely never know the true human toll of MPP. A very small percentage of asylum seekers and migrants were able to speak with reporters, attorneys, or human rights researchers about the violence they suffered after being returned to Mexico under MPP. The more than [1,500](#) reports of violent attacks against individuals in MPP that Human Rights First tracked while the policy was in effect are likely the tip of the iceberg.

These kidnappings and attacks are frequently perpetrated by cartels that exercise control over territory in Mexico and [target](#) asylum seekers and migrants for kidnappings, extortion, and other attacks, often with the complicity of Mexican police and immigration officers (see below). They frequently [kidnap](#) migrants for weeks or months, holding them in [deplorable conditions](#) and extorting ransom payments from U.S. relatives, targeting them due to their ties to the United States. Criminal organizations targeted asylum seekers immediately after they were first returned by DHS to Mexico under MPP on international bridges as well as outside of and at times within Mexican migration offices at ports of entry. Asylum seekers were also vulnerable to attacks as they traveled back and forth to U.S. ports of entry on the border to attend MPP immigration court hearings. For instance, a seven-year-old Honduran girl was [abducted](#) with her mother from inside the Mexican migration office in Nuevo Laredo immediately after DHS returned them to Mexico following an MPP immigration court hearing. On hearing kidnappers threaten to murder migrants whose families failed to pay ransom, the girl said, "Mommy, I don't want to die."

Given the cartels' broad territorial power and complicity by some Mexican government officials, asylum seekers and migrants have been [tracked](#) down by persecutors even after fleeing to different states within Mexico. Five of Mexico's states are [designated](#) by the U.S. Department of State as a Level Four threat due to pervasive crime and kidnapping—the highest threat assessment and the same level assigned to Afghanistan, Iran, Libya, and Syria—including the border state of Tamaulipas where the U.S. government sent thousands of migrants to [danger](#) under MPP. These grave dangers are also [pushing](#) many of Mexico's own citizens to flee the country and seek refugee protection.

Violence against non-Mexican asylum seekers returned to Mexico often amounts to persecution and torture. Returned individuals are persecuted for the same reasons that caused them to flee their home countries, including their gender, sexuality, race and/or ethnicity. Human Rights First has [documented targeted attacks against](#) women, LGBTQ, and Black individuals, as well as other vulnerable asylum seekers returned to Mexico under MPP or expelled under the [Title 42 policy](#). For instance, in June 2019, a Honduran asylum seeker from the Afro-Caribbean Garifuna community was [kidnapped](#) by a group of men in Mexican federal police uniforms and repeatedly sexually assaulted after DHS returned her to Ciudad Juárez. According to her attorney, the woman was targeted in Mexico because of her race, gender, and nationality. The 2020 U.S. State Department report on Mexico [documented](#) widespread violence against women, people with disabilities, and LGBTQ individuals. The report confirms that organized criminal groups [target](#) vulnerable groups for homicide, torture, kidnapping, extortion, and

human trafficking. Indigenous people also face serious harms in Mexico, including forced labor and death threats.

African, Caribbean, and other Black asylum seekers face severe anti-Black [violence](#) and [discrimination](#) while stranded in Mexico under U.S. government policies. Mexican government agents and cartels continue to target and brutally attack Black asylum seekers blocked from requesting protection in the United States. Survey data collected by AI Otro Lado from mid-June to mid-August 2021 [shows](#) that nearly 20 percent of Haitian asylum seekers in the northern Mexican border region were victims of abuse by the police, including beatings, extortion, and threats. Recent [attacks](#) against Black asylum seekers and migrants include an Afro-Honduran asylum seeker who was beaten so severely by Coahuila state police that he is now blind in one eye and a Haitian LGBTQ man who was raped and robbed in Tijuana. The Mexican government also targets Haitians for deportation to Haiti and unlawful forced removals to Central America. In southern Mexico, Mexican police and immigration officials have attacked Haitian asylum seekers and attempted to block them from seeking protection, including a [Haitian man](#) holding his two-year-old daughter.

The Mexican Government's Complicity in Attacks Against Asylum Seekers and Cartels' Territorial Power Make Clear that MPP Cannot Be Implemented Safely

Mexican authorities [carry out](#), [collaborate in](#), and turn a [blind eye](#) to violent attacks against asylum seekers and migrants, including through collusion with cartels and other criminal organizations that exercise [control](#) over Mexican territory. This violence is not limited to the U.S.-Mexico border region. Migrants and asylum seekers are subjected to kidnappings and violent attacks throughout the country, including in southern Mexico. U.S. policies that force asylum seekers to wait in Mexico inevitably endanger them and expose them to exploitation and extortion. No version of MPP can be safely implemented.

In many instances, Mexican police themselves attack, torture, rob, and extort migrants. A dozen Mexican police officers were [charged](#) in a massacre in Tamaulipas that left 19 people, including at least 13 Guatemalan migrants, dead in January 2021. Other [recent reports](#) of attacks by Mexican government agents against asylum seekers have included 23 Nicaraguan asylum seekers who were handed over to a cartel by Mexican police in Reynosa, five Jamaican LGBTQ asylum seekers violently attacked and tased by police in Tijuana, and a Venezuelan political activist who was sold by Mexican immigration officials to the cartel and held captive for six days. While MPP was in effect, Mexican police and immigration officials [reportedly](#) turned over returned asylum seekers directly to the cartels, who kidnapped and extorted them.

In southern Mexico, migration officials, Mexican National Guard, and other enforcement agencies [continue](#) to use [violence](#) and excessive use of force against asylum seekers. Many Mexican [asylum seekers](#) have [fled](#) their homes in southern Mexico due to death threats, attacks, and the murder of family members by cartels.

The Mexican government [fails](#) to protect the thousands of asylum seekers and migrants who have been returned to or blocked in Mexico due to U.S. policies. Many are forced to sleep in highly dangerous informal [encampments](#) along the border subject to violent attacks, kidnapping, and extortion by the criminal organizations that control them. During the implementation of MPP, a squalid 2000-person encampment grew in Matamoros as the government returned asylum seekers to Mexico. In recent months, encampments in Reynosa, Tijuana, and other Mexican border cities have sprung up as the Biden administration continues to expel people to Mexico under the Title 42 policy.

Even those individuals who manage to find a migrant shelter where they can sleep are often not safe. Shelters and asylum seekers staying in them are [targeted](#) for attack by cartels and Mexican [authorities](#) who rob, kidnap, and threaten the residents. While MPP was in effect, for instance, cartel members [abducted](#) a pastor who was the director of a migrant shelter in Nuevo Laredo because he attempted to protect Cuban asylum seekers residing there from kidnapping. The complicity of the Mexican government in targeting migrant shelters confirms that MPP cannot be implemented humanely and that there is no safe space for migrants to wait for their immigration proceedings in Mexico.

Policies that Force Asylum Seekers to Wait in Mexico for U.S. Asylum Processing Endanger Asylum Seekers, Attorneys, and Humanitarian Workers

Policies that force asylum seekers to undergo U.S. asylum processing in Mexico create serious security threats both to asylum seekers and to legal and humanitarian groups assisting them. For instance, when the Biden administration permitted individuals to apply for exemptions to the Title 42 expulsion policy while waiting in dangerous regions in Mexico, criminal groups took advantage of the opaque exemptions to [defraud](#) desperate asylum seekers, falsely pretending to submit exemption requests in exchange for exorbitant fees. Some asylum seekers [reported](#) being charged by shelter operators merely to speak with the organizations facilitating exemptions, even though these organizations do not charge for their services and requesting an exemption does not involve any fee. Attorneys assisting with this process [said](#) that criminal organizations cloned their telephone numbers to contact asylum seekers, or otherwise claimed to be involved in exemption requests, to kidnap asylum seekers.

While MPP was in effect, many U.S. attorneys and humanitarian groups were unable to travel to dangerous Mexican border regions to represent asylum seekers stranded under the policy because they [feared](#) for their safety and did not have the resources or time to travel to Mexico to prepare clients' asylum cases. This fear was justified: U.S. based attorneys were [threatened](#) with kidnapping and violence in connection with their representation of people in MPP. Resurrecting MPP in any form would endanger U.S. attorneys and other groups assisting asylum seekers by forcing some to travel to dangerous regions—including those the U.S. Department of State [warns](#) U.S. citizens to avoid due to kidnapping and crime.

MPP Violates U.S. Refugee Law, Non-Refoulement Obligations, and Due Process Protections

MPP is an illegal policy that violates U.S. refugee law, treaty obligations, and due process protections for asylum seekers. Any attempt to reimplement MPP would be unlawful.

By returning people through MPP to Mexico where they had faced or were likely to face horrific danger, including rape, torture, kidnappings, human trafficking, and other violence, the U.S. government violated its obligation under the Refugee Convention, the Refugee Protocol, and the Convention against Torture to avoid *refoulement* (return) of individuals to persecution or torture. As noted above, many asylum seekers forced to remain in Mexico under MPP were attacked because of their gender identity, sexual orientation, race, nationality, and/or migration status.

MPP, and other policies like Title 42 that return asylum seekers to Mexico, also raise serious concerns about chain *refoulement*, or onward illegal return to countries of persecution, which the Refugee Convention prohibits. The Mexican government frequently [detains](#) and [deports](#) asylum seekers without giving them an opportunity to apply for refugee protection, [including](#) those [returned](#) to Mexico by the United States. Many asylum seekers report that Mexican officials have demanded bribes to avoid illegal deportations, including Cuban, Ethiopian, Haitian, Honduran, Salvadoran, and Venezuelan asylum seekers, who spoke with Human Rights First in 2021. Since May 2021, under pressure from the U.S.

government, Mexico has flown at least [13,000](#) migrants from northern to southern Mexico, including asylum seekers expelled by the United States under the Title 42 policy, to accelerate their deportation, [forcing](#) some across the border to Guatemala without an opportunity to apply for asylum in Mexico. In August, Mexico began [busing](#) at least 300 migrants and asylum seekers a day, including those expelled by the United States, to the Mexico-Guatemala border and forcing them to cross into Guatemala without allowing them to apply asylum. Those unlawfully transported to Guatemala, some of whom had been previously expelled by the United States, [included](#) migrants and asylum seekers from Honduras, Nicaragua, El Salvador, Cuba, Haiti, Venezuela, Belize, Colombia, the Dominican Republic, and Guatemala.

On February 28, 2020, the U.S. Court of Appeals for the Ninth Circuit [ruled](#) that MPP is likely inconsistent with 8 U.S.C. § 1225(b), which does not authorize the return of asylum seekers as was carried out under MPP, and likely violates the United States' treaty-based non-*refoulement* obligations which are [codified](#) under U.S. law. In an [amicus brief](#) to the U.S. Supreme Court in the challenge to MPP, the U.N. Refugee Agency criticized MPP for risking the return of refugees to persecution noting that “th[e] failures of the MPP create the very real risk that asylum-seekers returned to Mexico will be subject to refoulement or chain-refoulement, in violation of the United States' international obligations.” An [amicus brief](#) submitted by the union for U.S. asylum officers wrote that “MPP fails to provide even the basic procedural protections available to asylum applicants subject to [expedited removal].”

In addition, MPP is a due process [charade](#) that drastically [restricts](#) access to counsel, legal information, and the ability of asylum seekers to attend and participate in their own immigration hearings. Just to reach U.S. immigration courts, asylum seekers were [forced](#) to risk kidnapping and violence. Many were [abducted](#) while traveling through border regions to attend hearings or directly outside ports of entry before or after their hearings. As a result, *in absentia* removal orders were issued in at least [44 percent](#) of MPP cases. Immigration judges have [ordered](#) asylum seekers in MPP deported when they missed court hearings even after being informed that the asylum seekers were kidnapped in Mexico. As a result of these dangers, [refugees](#) with protection needs have [given up](#) on their cases rather than [risk their lives](#) to attend court, and some have even [returned](#) to their home countries at risk of further persecution because of the harms they had suffered while trapped in Mexico.

MPP also seriously interferes with the right, guaranteed under Section 292 of the INA, to be represented by a lawyer during immigration court proceedings. The vast majority of MPP returnees were not able to find lawyers, according to immigration court data analyzed by the Syracuse University Transactional Records Access Clearinghouse ([TRAC](#)). As of December 2020, [97 percent](#) of individuals in MPP whose cases had been decided did not have an attorney. By contrast, in non-MPP proceedings, only [nine percent](#) of non-detained asylum seekers whose cases concluded in fiscal year 2018 did not have legal representation at any point during their proceedings. As described above, many U.S. attorneys and humanitarian groups are unable to travel to dangerous Mexican border regions to represent asylum seekers stranded under the policy because they fear for their safety. Some were threatened with kidnapping and violence in connection with their representation of people in MPP.

As a predictable consequence of the program's severe and inherent due process deficiencies, very few asylum seekers in MPP have been granted relief. Of 71,038 individuals subjected to MPP, only [723](#)—approximately one percent—have been granted relief. This miniscule grant rate is a result of a policy that blocks, deters, and punishes asylum seekers, and makes the act of requesting U.S. protection so dangerous that many ultimately have no choice but to give up. MPP, and any program like it, is cruel and utterly unfixable.