

## Disinformation and Spin: Trump Administration Deploys Troops to Border, Paints Asylum Seekers and Attorneys as Threat

On March 6, 2020, as the Trump administration asked the U.S. Supreme Court to freeze a February 28 ruling halting its forced return of asylum seekers to Mexico, government officials announced the deployment of 160 troops to two U.S. border posts. The stated reason for this dramatic show of military force: a senior Customs and Border Protection (CBP) official claimed the ruling had led “large groups” to “mass” at southern border posts and that a future Supreme Court ruling “could disrupt port of entry operations.” That same day, Trump administration lawyers told the Supreme Court that halting returns was “virtually assured to cause chaos at the border,” claiming “large groups of migrants” had “attempt[ed] to cross the border” in the aftermath of the February 28 ruling.

But media reports and public accounts by asylum seekers and attorneys who lined up in Mexico following the decision to enjoin the “Remain in Mexico” policy (officially called the “Migrant Protection Protocols” (MPP)) present a different reality. Groups of asylum seekers with their lawyers—ranging from a few families to several dozen people and up to about 150 individuals in Ciudad Juárez—waited peacefully in Mexico at ports of entry for CBP to comply with the ruling. Instead, U.S. border officials activated armed officers on both sides of the border in what appeared to be an effort to treat – and later portray - asylum seekers and attorneys waiting in Mexico as a threat and intimidate them into leaving.

These modest numbers were and are manageable for CBP, which has the capacity to process greater numbers of asylum seekers at ports of entry, handles thousands of pedestrians daily at these locations, and has been regularly taking in and turning back large groups of asylum seekers during asylum and MPP processing. Former CBP Commissioner Gil Kerlikowske has stated that CBP is equipped to handle these numbers and has handled larger migration flows in the past with fewer resources than it has today.

Under MPP, Trump administration officials have returned thousands of asylum seekers from Cuba, El Salvador, Guatemala, Honduras, Nicaragua and Venezuela to Mexico. These men, women and children have been sent to some of the most dangerous areas of Mexico, including areas so dangerous that Americans are directed by the U.S. State Department not to travel, or reconsider, travel. In Mexico they must wait for many months and in some cases over a year for their asylum cases in U.S. immigration court. So far over 1,000 asylum seekers subjected to this policy have been kidnapped, tortured, assaulted or attacked after their return to Mexico, as documented by Human Rights First, other researchers, and reporters.

Instead of trying to falsely paint asylum seekers and their attorneys as a threat, Trump administration, Department of Homeland Security (DHS) and CBP officials should work with legal and refugee assistance organizations to end the dangerous and illegal Remain in Mexico policy in a prompt, humane and orderly manner. Last week, over 150 legal representation, refugee assistance, faith-based, human rights, and community groups wrote to Acting DHS Secretary Chad Wolf, urging him to end MPP and allow asylum seekers to pursue refugee protection from safety in the United States, as required by U.S. law and treaties. These organizations affirmed that they stand ready to assist in providing legal representation and humanitarian assistance to asylum seekers in the United States and asked to meet with U.S. agencies to plan for a prompt, humane, and orderly end to the MPP. They

urged that asylum seekers subjected to MPP, who have already suffered so much in Mexico, should not be subjected to additional harsh or punitive policies—including policies that block them from legal representation in their asylum proceedings—and should absolutely not be jailed in detention facilities and prisons.

DHS and CBP have had many months to plan for an end to MPP, as they have long known that their legally flawed policy could be halted by the courts. Yet they failed to communicate with attorneys, refugee assistance organizations and shelters or to devise a humane and orderly approach to process in MPP asylum seekers.

The information in this factsheet is drawn from accounts of the media, attorneys, and refugee assistance organizations. All in all, asylum seekers followed the “rules” on February 28, as they lined up in Mexico to present themselves at official ports of entry to seek asylum in the United States, while CBP ignored the court’s ruling and treated peacefully gathered asylum seekers, attorneys and aid workers as a security threat.

## **Court Finds Forced Returns to Mexico Likely Violate U.S. Law and Treaty Obligations**

On February 28, 2020, the U.S. Court of Appeals for the Ninth Circuit ruled that the asylum seekers and non-profit organizations challenging MPP were likely to show that the policy violates the Immigration and Nationality Act and U.S. obligations under the Refugee Protocol. The court restored an injunction previously issued by the district court for the Northern District of California on April 8, 2019.

As news of the February 28 ruling spread, attorneys representing asylum seekers stranded in Mexico asked CBP officials about their plans to comply with the court’s ruling, but CBP refused to accept individuals in MPP at ports of entry and some CBP officers said they were waiting for guidance from DHS officials. Some asylum seekers, along with some attorneys, lined up in Mexico at the approaches to several ports of entry to request admission to the United States pursuant to the Ninth Circuit’s decision. Journalists observing border crossings did not report incidents of asylum seekers trying to force their way into the United States at ports of entry, and a declaration from a high-level CBP official makes no reference to any attempt by asylum seekers to rush ports of entry that night.

Nevertheless, CBP treated waiting asylum seekers and attorneys as a threat. CBP officials deployed armed officers in riot gear at one bridge to conduct an “exercise,” called in Mexican police and National Guard who threatened to detain waiting asylum seekers and advocates, and CBP officers used a blinding strobe light directed towards the eyes of a humanitarian aid worker accompanying two asylum seeking families at another port of entry. After the Ninth Circuit stayed its ruling later the same day, allowing MPP to go back into effect, asylum seekers still gathering at ports of entry calmly dispersed.

On March 4, 2020, the Ninth Circuit extended the stay until March 11 but held that on March 12, the lower court injunction would go into effect only in the Ninth Circuit (California and Arizona). DHS subsequently asked the Supreme Court to stay the Ninth Circuit’s decision, and announced immediate deployment of U.S. troops to two border posts, painting a picture of a massive effort to rush the border completely at odds with the reality that unfolded when the Ninth Circuit’s ruling briefly enjoined MPP. DHS’s petition to the Supreme Court described asylum seekers as a “threat” claiming that “mere hours after the Ninth Circuit’s February 28 decision, counsel for aliens subject to MPP began contacting DHS to demand that their clients be admitted to the United States” and that “large groups of migrants attempting to cross . . . forced road closures and the complete closure or suspension of operations at multiple ports of entry.”

DHS's statements reflect disinformation and spin. Attorneys contacting DHS to request that clients be admitted to the United States pursuant to a court order hardly constitutes a "threat." Further, as the below information demonstrates, asylum seekers who arrived at the border on February 28 did so in an orderly manner, did not attempt to rush or forcefully cross at ports of entry en masse, and peacefully dispersed after they were provided additional information about CBP plans or learned the Ninth Circuit's decision was stayed. While asylum seekers attempted to follow the "rules," CBP ignored the court's ruling and continued to implement MPP.

In litigation challenging CBP's practice of turning away asylum seekers at ports of entry, a CBP officer admitted that supervisors have previously "instructed them to lie about not having space to process asylum-seekers at the border and turning them away." CBP continues to turn away asylum seekers at ports of entry and despite a 19 percent budget increase CBP sharply decreased – halved – the number of asylum seekers it processed in October 2019, as compared to the same month in 2016 during the Obama administration when CBP processed more than 20,000 asylum seekers.

## Asylum Seekers Line Up at Ports of Entry

### Tijuana / San Ysidro

Across from the U.S. port of entry at San Ysidro California – a large border post which handles over 29,000 pedestrians daily, about 30 MPP asylum seekers, including a Venezuelan mother with her one-year-old son, and some attorneys lined up in Tijuana, Mexico to request they be allowed to enter the United states to pursue their pending asylum claims in U.S. immigration court. The San Ysidro port of entry has space to process at least 300 asylum seekers. The LA Times reported that, "[o]ne CBP supervisor raised his voice during a tense exchange with the attorneys, but the group of asylum seekers was orderly and took care not to block other border foot traffic."

An attorney who arrived at the Mexican side of the port of entry at 7:00 p.m. and stayed late into the night described the waiting process as "**calm, orderly, and boring**," with children sitting on concrete and later falling asleep.

Initially, CBP officers told asylum seekers that they would not permit anyone in MPP to enter the port. Later CBP officers told attorneys that asylum seekers would be processed under all "applicable laws" but would not be permitted access to counsel during processing, claiming that lawyers are not entitled to represent clients at ports of entry. Lawyers present at the port began to prepare clients to request entry on their own, but CBP ultimately did not permit anyone in MPP to approach the port. There were no reports of disturbances by asylum seekers, and, according to CBP, the border crossing was not closed at any point.



© Ryan Devereaux. Asylum-seeking families in Tijuana line up at the San Ysidro port of entry following the Ninth Circuit's ruling on MPP.

## Mexicali / Calexico

Two families totaling three adults and three children accompanied by aid workers from Border Kindness lined up in Mexicali, Mexico, to request entry to the United States via the U.S. port of entry in Calexico on the evening of February 28 after the decision was issued. The Calexico border post can handle some 10,000 people crossing on foot daily, according to data from the Bureau of Transportation Statistics. An aid worker from Border Kindness with a copy of ruling in hand asked to speak with a CBP supervisor when CBP officers refused to process the families. When CBP officers noticed that one of the aid workers, who was on the Mexican side of the border, was recording the interaction, the officers shined a blinding light at the asylum seekers and later shined an intense strobe light in the eyes of one of the aid workers who was attempting to speak with the CBP officers. CBP officers dispatched a private security guard to contact Mexican authorities. Local police and three, armed Mexican National Guard troops arrived and threatened to arrest one of the aid workers if the group refused to leave the port of entry area.

## Nogales / Nogales

Several families of MPP asylum seekers lined up in Nogales, Mexico, in the wake of the February 28 ruling. CBP officials at the Tucson field office told attorneys that CBP officers at the Nogales, Arizona port of entry, which handles more than 9,000 pedestrian crossings each day, would not process any MPP asylum cases that day or over the weekend.

## Ciudad Juárez / El Paso

At the Paso del Norte bridge in Ciudad Juárez, a group of around 150 asylum seekers—mostly or entirely Cubans—arrived at the port of entry asking that CBP officers at the El Paso port of entry process their asylum claims. A report in the Texas Tribune described asylum seekers calmly waiting: “Some were seen taking selfies or video chatting with relatives and there was no mad rush toward Texas.” The Deputy Commissioner of CBP official based in DC later claimed that there were 250 to 350 Cuban asylum seekers present, an estimate significantly greater than that of the journalists reporting from Ciudad Juárez that evening. A local TV station reported that the asylum seekers “asked officials to let them cross to El Paso because most of them are afraid to continue living in Juárez because of the violence.” More than 20,000 pedestrians pass through El Paso ports of entry each day, so the port should have the ability to manage 150 asylum seekers or more who were, in any event, waiting in Mexico.

CBP refused to process in waiting asylum seekers, including families with sick children—one with a congenital heart defect and an infant who had been repeatedly hospitalized—requesting fear screening interviews. Attorneys with their clients were told that no asylum seekers would be allowed into the port. Mexican security guards stood on the bridge and forced asylum seekers to leave after CBP refused to let them approach the port of entry. These



© Jose Luis Gonzalez. Asylum seeking families, many from Cuba, wait at the Paso del Norte bridge in Ciudad Juárez following the Ninth Circuit ruling on February 28.

families were sent away by CBP in violation of the United States' non-refoulement obligations under U.S. and international law and CBP's own guidance on MPP.



© Joel Angel Juarez. Asylum seekers wait in Ciudad Juárez after U.S. officials close the international bridge.

CBP officers in riot gear and local police patrolled on the El Paso side of the bridge, and CBP asked Mexico to deploy National Guard troops to the bridge in Ciudad Juárez. Concrete barriers were put in place to stop people from crossing. Meanwhile, migrants calmly waited for permission to cross, including a 28-year-old man from Cuba, who said, "If God wants us to, we will cross." An attorney reported to Human Rights First that people were "standing around" waiting for their cases to be resolved. CBP closed the Paso del Norte bridge on Friday night around 7:20 p.m. and reopened it at 6:00 a.m. on Saturday. The bridge was closed to all traffic. CBP claimed that it needed to "eliminate the ability for a large group of migrants that had formed on the Mexican side of the border to illegally and forcefully surge through the ports of entry," despite the fact that reports

and photos of the port of entry indicate asylum seekers waiting in Mexico for permission to enter. After around 9:00 p.m., an attorney witnessed Mexican military vehicles heading toward the bridge.

When word spread that the injunction had been stayed and MPP was back in effect, migrants and asylum seekers began to disperse, according to the local ABC affiliate.

## Nuevo Laredo / Laredo

In notoriously dangerous Nuevo Laredo, Mexico, a handful of asylum seekers in MPP lined up to present themselves at the Laredo, Texas port of entry after the Ninth Circuit MPP ruling to request CBP process them into the United States to continue their asylum claims. A local attorney reported that traffic on the bridge continued as usual and that MPP asylum seekers were "waiting on the sidelines." The port would certainly not have been overwhelmed by this number as it handles more than 10,000 people crossing by foot daily, and has capacity for 60 to 80 asylum seekers. Around 4:30 p.m., a Human Rights First attorney spoke by phone to local CBP chief counsel in Laredo, who said that CBP had no system in place to process MPP asylum seekers pursuant to the Ninth Circuit order and that any arriving at the Laredo port of entry would not be accepted. An asylum-seeking family from Venezuela in MPP, represented by Human Rights First, presented at the port of entry but was turned away by CBP and told the border was closed to asylum seekers. Pastor Lorenzo Ortiz, who runs several migrant shelters in Nuevo Laredo for asylum seekers in MPP, reportedly counseled asylum seekers calling him for advice following the Ninth Circuit decision "to just wait" given the "confusion" surrounding the ruling.

## Reynosa / Hidalgo

According to an immigration attorney representing MPP asylum seekers, about 60 mostly Cuban asylum seekers lined up at the international bridge between Reynosa and the Hidalgo, Texas port of entry, which regularly sees more than 6,000 daily pedestrians crossings, after the Ninth Circuit's MPP ruling. CBP officers told attorneys and asylum seekers at the bridge that they were waiting on advice from DHS counsel on how to process individuals in

MPP but would not allow any to approach the port of entry at that time. A CBP official confirmed that after the port director “clarified the status of Port operations as they related to MPP,” the gathered asylum seekers “dispersed.” Nonetheless CBP briefly halted vehicle and pedestrian traffic at the Hidalgo border crossing.

## Matamoros / Brownsville



© Reynaldo Leaños Jr. Asylum seekers and attorneys wait for information from CBP on the Gateway International Bridge on February 28 in the wake of the Ninth Circuit’s ruling on MPP.

About 60 asylum seekers in MPP and some of their lawyers lined up on the Gateway International Bridge in Matamoros on February 28 to seek to be processed into the United States at the Brownsville port of entry following the Ninth Circuit’s ruling. Some 8,500 people cross on foot at that port of entry each day. The port facility previously accommodated around 20 asylum seekers at a time but now regularly processes dozens of asylum seekers appearing for MPP tent court hearings at the port. Lawyers accompanying clients to the port of entry reported that they were told the port officials were waiting for guidance from the DHS Office of Chief Counsel and would not admit any MPP asylum seekers.

Around 6:30 p.m., CBP briefly closed the bridge, deployed CBP officers in riot gear with plastic shields in what appeared to be an “exercise” to intimidate the small number of asylum seekers peacefully waiting on the Mexican side of the bridge, and contacted Mexican officials. Asylum seekers and journalists said that they were told that Mexican marines would forcibly remove asylum seekers from the bridge, leading many to disperse in fear that the Mexican military’s threatened use of force could endanger those waiting.

By 8:00 p.m. a Buzzfeed reporter in Matamoros tweeted: “Only a few people left on the bridge. Groups of CBP and Border Patrol agents are still on the bridge as well, but it’s calm.”



© Reynaldo Leaños Jr. On February 29, volunteer attorneys provide information to asylum seekers in the Matamoros tent encampment about the Ninth Circuit’s rulings.