



HUMAN
RIGHTS
WATCH

“Like I’m Drowning”

Children and Families Sent to Harm by the US ‘Remain in Mexico’ Program



“Like I’m Drowning”

**Children and Families Sent to Harm by
the US ‘Remain in Mexico’ Program**

Copyright © 2021 Human Rights Watch

All rights reserved.

Printed in the United States of America

ISBN: 978-1-62313-8868

Cover design by Rafael Jimenez

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.hrw.org>



“Like I’m Drowning”

Children and Families Sent to Harm by the US ‘Remain in Mexico’ Program

- Map of the US-Mexico Border..... i**
- Glossary..... ii**
- Summary.....1**
- Recommendations 9**
 - To the US Department of Homeland Security (DHS)9
 - To the US Department of Justice.....11
 - To the US Department of State 12
 - To the Centers for Disease Control and Prevention 12
 - To the US Congress 12
 - To the Mexican Government 13
- Methodology.....15**
- I. “Remain in Mexico”18**
 - Rollout of the Program.....20
 - Unaccompanied Children Sent to Mexico22
 - Family Separation Under the MPP23
 - Arbitrary, Distant Transfers24
 - The Ordeal of Getting to Court.....25
 - Due Process Failures27
 - Lack of Access to Counsel28
 - Impediments Caused by Video Hearings30
 - Inaccurate Notices31
 - Procedural Short-Circuits33
 - Fake Court Dates.....37
 - Detention in Cold, Overcrowded Holding Cells39
 - Abusive Immigration Agents41
 - The Uneven Response to the Pandemic.....42
- II. Illusory Safeguards Against Return to Harm..... 46**

Near Impossibility of Success in Nonrefoulement Interviews	47
Requests for Interviews Ignored.....	50
Due Process Shortcomings.....	51
Absurd Outcomes	55
Humanitarian Exemptions Rarely Granted	57
Sent to Danger.....	62
Abducted and Ordered Deported in Absentia.....	66
Nonrefoulement Interviews and Humanitarian Exemptions Suspended	69
III. Lives in Limbo	70
Overcrowded Shelters and Informal Camps	70
Overstretched Health Care Services	75
A Year or More Without School.....	79
Challenges in Finding Work	82
Mexico’s Underfunded Refugee Protection System	82
IV. Damage to Mental Health.....	85
V. The Trump Administration’s Attack on Asylum	92
VI. US Violations of Domestic and International Law	97
The Prohibition on Returns to Torture or Other Ill-Treatment	98
US Asylum Law	100
Acknowledgments.....	102

Map of the US-Mexico Border



© 2020 John Emerson for Human Rights Watch

Glossary

ACA	Asylum Cooperative Agreement
BIA	Board of Immigration Appeals, the branch of the Executive Office for Immigration Review (EOIR) that hears administrative appeals of the decisions of immigration judges. The EOIR is an agency of the US Department of Justice, and BIA decisions may be overturned by the Attorney General.
Border Patrol	The US Customs and Border Protection (CBP) agency responsible for immigration enforcement at land borders other than at official border stations (“ports of entry”).
CAIM	Migrant Assistance Center (Centro de Atención a Migrantes), a facility established by the Chihuahua state government to assist Mexican nationals and migrants arriving in Ciudad Juárez from the United States.
CBP	US Customs and Border Protection, the branch of the US Department of Homeland Security that includes the Border Patrol and the Office of Field Operations.
CDC	US Centers for Disease Control and Prevention
CFI	Credible fear interview, a procedure for people who have entered the United States without valid travel documents, are apprehended at or near a border crossing, and state that they are afraid to return to their home countries. In such cases, if an asylum officer finds a significant possibility of persecution, the person is allowed to apply for asylum before an immigration judge. (If the person has returned to the United States after being deported, they receive a “reasonable fear interview.”)

COESPO	Consejo Estatal de Población (State Population Council), an agency of state governments in Mexico that is responsible for the development and oversight of public policy in areas such as health, education, and social development, including among groups such as women, Indigenous peoples, people living with disabilities, migrants, children and adolescents, and older persons.
COMAR	Mexican Commission for Refugee Assistance (Comisión Mexicana de Ayuda a Refugiados), the government agency that adjudicates applications for refugee recognition and complementary protection.
<i>coyote</i>	A slang term for a person who engages in the smuggling of migrants.
DACA	Deferred Action for Childhood Arrivals
DHS	US Department of Homeland Security
DOJ	US Department of Justice
EOIR	Executive Office for Immigration Review, the agency of the US Department of Justice that includes the immigration courts and the Board of Immigration Appeals.
HARP	The “Humanitarian Asylum Review Process,” a pilot program in operation in El Paso, Texas, that fast-tracked asylum screenings for Mexican families. An ACLU lawsuit filed in December 2019 sought to halt the use of HARP and a similar fast-track pilot program known as PACR.
<i>Hielera</i>	Literally “freezer,” the name commonly given to CBP holding cells because immigration agents set the temperature of many of these cells at a level that is uncomfortably cold.
ICE	US Immigration and Customs Enforcement, the agency of the US Department of Homeland Security that enforces immigration laws in the interior of the United States.

INM	The National Institute of Migration (Instituto Nacional de Migración), the Mexican government agency charged with enforcement of the immigration laws.
MPP	Migrant Protection Protocols, also known as the “Remain in Mexico” program.
NRI	Nonrefoulement interview, an assessment for people subject to the MPP to determine whether it is more likely than not that they will be subject to torture or persecution on account of a protected ground if sent to Mexico.
OFO	Office of Field Operations, the branch of CBP responsible for immigration and customs enforcement at regular border crossings, or “ports of entry.”
ORR	Office of Refugee Resettlement, the agency of the US Department of Health and Human Services responsible for the care and custody of unaccompanied children.
PACR	Prompt Asylum Claim Review Process, a fast-track asylum screening pilot program that, like HARP, operated in El Paso in 2019. PACR applied to single adults and families from Central America and elsewhere who were subject to a ban on US asylum because they transited through a country where they could have sought asylum.
Port of entry	An official border crossing point
Removal	The term used in US immigration law for “deportation.”
UNHCR	The United Nations High Commissioner for Refugees, also known as the UN Refugee Agency and by its Spanish acronym, ACNUR (Agencia de la ONU para los Refugiados).
USCIS	US Citizenship and Immigration Services, the branch of the US Department of Homeland Security that adjudicates visa petitions, naturalization

applications, and asylum applications (other than those made in the course of a removal, or deportation, hearing).

Summary

When Cecilia P., a 36-year-old woman from Venezuela, arrived in the Mexican town of Nogales in November 2019 with her 13-year-old daughter and 3-year-old son, she went to the border crossing to the United States and tried to apply for asylum. She learned she would have to wait. As at most border crossings between Mexico and the United States, US officials were only accepting a few people seeking asylum each day and on some days none at all. She put her name on a list maintained by Mexican federal officials, wrote down the number they gave her, and checked back every day.

Mexican and US officials allowed her and her children to enter the United States in December 2019. Cecilia was relieved: she assumed she would soon be able to explain her case to officials. If she received asylum, she planned to stay with her sister, already in the United States, while she and her children found their footing.

Instead, US Customs and Border Protection (CBP) agents told her they were returning her and her family to Mexico. She and her family would get an asylum hearing in the United States, officials said, but until an immigration judge decided their case, they would have to wait in Mexico. In addition, they would not be sent back to Nogales, where they had just spent several weeks, but instead to Ciudad Juárez, a border town about 550 km (340 miles) away, a city with one of the highest murder rates in the world and infamous for the unusually high numbers of women killed there over the last three decades. Cecilia tried to explain that she had no family or friends in Mexico and was afraid of what might happen to her and her children there, especially in Ciudad Juárez. Their response, she said, was to tell her to get her children on the CBP bus that would take her and her family to El Paso, directly across the border from Ciudad Juárez.

US agents took them to the Paso del Norte international bridge, connecting El Paso with Ciudad Juárez, early in the morning. “The officials leave you there to do what you want with your life,” she said. “We were completely lost.” She called her sister to try to get some idea of where they could go. Another Venezuelan woman, Berenice Q., a 24-year-old sent to Mexico with her 4-year-old son, was in the same predicament.

While the two women and their children waited together for Cecilia's sister to call them back, four men attacked them. "It was clear from what they were saying they wanted to rape us," Cecilia said. "One grabbed me. Another one grabbed my friend. We started to scream. Some people came up and helped drive the men off. The children were completely traumatized."

Shaken, they found a room in a nearby hotel. Cecilia had a little money with her, but Berenice had nothing, so Cecilia paid for both of them. Their court dates were three months away, and they decided they couldn't remain in Ciudad Juárez while they waited. Instead, they bought bus tickets back to Nogales. "It's a long way from Juárez, 10 hours of travel, but at least we know people there, we thought to ourselves," Cecilia said, referring to the time they spent there before US authorities allowed them to enter the United States.

A few hours into the journey, the bus stopped, and two uniformed officers boarded the bus. They identified themselves as agents of the National Migration Institute (Instituto Nacional de Migración, INM) and ordered everybody to show identification. When Cecilia and Berenice showed their passports and stamped Mexican entry forms, the agents had them disembark and enter a van marked with the INM logo. The agents accused them of travelling to Nogales in order to attempt another crossing into the United States. "We're going to tear up your permits and deport you if you don't give us a hundred dollars each," one said. The women begged the agents to let them go, saying they did not have that much money. "Solve it, I don't know how you'll solve it, but crying isn't going to fix anything. If you don't have the money, I'll rip up the permits and with one call, you'll be deported," the agent replied. When Cecilia opened her purse to show them what she had, they took everything she had, about 2,500 pesos (US\$120) and let them return to the bus. More than 20 months later, they and their children are still waiting in Mexico; they have only had preliminary hearings on their requests for asylum in the United States.

The US Department of Homeland Security (DHS) has placed more than 69,000 people in its "Remain in Mexico" program since January 2019. This number includes families with children of all ages, some of them with disabilities, including newborns, infants, and toddlers.

Experiences like those of Cecilia and Berenice are common among those subjected to the program. Before the program began, people seeking asylum, including those who applied

at border stations, would remain in the United States while their asylum case was considered. Court dates were often months away because US immigration courts are chronically understaffed, and the large number of cases that go forward without legal representation slows down proceedings. In the meantime, people seeking asylum could often live with family members or friends and seek help to prepare their cases.

Under the “Remain in Mexico” program, people seeking asylum have to wait in Mexico and return periodically to the United States for immigration court hearings. Formally known as the “Migration Protection Protocols” (MPP), the program is anything but protective: it has sent people to some of Mexico’s most dangerous cities and needlessly and foreseeably exposed them to considerable risk of serious harm. People interviewed for this report, including children, described rape or attempted rape and other sexual assault, abduction for ransom, extortion, armed robbery, and other crimes committed against them. In many cases, their attackers targeted them as they arrived in Mexico after their initial placement in the MPP or on their way back from court hearings, or as they left the migrant shelters where they stayed. In some cases, Mexican immigration officers or police committed these crimes.

These accounts are consistent with previous Human Rights Watch research and the findings of other investigations. In Matamoros and Nuevo Laredo, two of the Mexican cities to which US authorities have sent people after placing them in the MPP, Human Rights Watch identified 32 separate instances of kidnapping or attempted kidnapping of people placed in the MPP between November 2019 and January 2020. Most of these kidnappings involved multiple victims and included at least 38 children. Human Rights First, a nongovernmental human rights organization, has tracked more than 1,100 reported cases of murder, rape, kidnapping, torture, and assault of people sent to Mexico under the MPP.

In theory, the Remain in Mexico program has two safeguards against return to harm, but neither is effective in practice. First, US officials are not supposed to send people to Mexico under the program if an asylum officer finds that they are likely to face threats to their lives or freedom or if they would be tortured there. Former asylum officers have said authorities interpret this rule to require near certainty of harm. And even threats of serious harm do not qualify unless they are linked to one of the protected grounds for refugee status (race, religion, national origin, political opinion, or membership in a particular

social group). In the case of torture, authorities require proof that ill-treatment would be by a state agent.

The second safeguard is that DHS has said that it will not place “vulnerable” people in the MPP, including unaccompanied children and people with “[k]nown physical/mental health issues.” DHS has refused to specify what conditions qualify for these humanitarian exemptions. In practice, exceptions are rarely granted.

Cecilia and Berenice twice sought unsuccessfully for their families to be removed from the MPP because of the extortion they faced by Mexican immigration agents. We repeatedly heard of other cases in which people told asylum officers that they had suffered kidnapping attempts by members of cartels, rape or other violent attacks by other private actors, or acts of extortion by Mexican officials. But in nearly every case asylum officers denied their requests to remain in the United States. Others tried to tell agents that they or their children had serious health conditions that required specialized care or were living with disabilities that meant they could not live safely and in conditions of dignity in shelters in Mexico, also to no avail. In some cases, people said immigration agents simply ignored their requests to explain why they were afraid to go to Mexico.

Commenting on DHS’s approach to such requests, Alexandra Miller, an attorney based in Tucson for the Florence Immigrant and Refugee Rights Project, said in July 2020, “We’ve been put into a corner where we can only escalate the [most] extreme cases. But the fact is that everybody in the MPP is at extreme risk.”

As a result, thousands of people are concentrated in dangerous Mexican border towns indefinitely, living lives in limbo, many dependent on the generosity of humanitarian groups and volunteers for accommodation, food, and health care. Migrant shelters in Ciudad Juárez and Tijuana quickly filled, and a large shelter run by Mexican federal authorities in Ciudad Juárez also quickly hit capacity soon after it opened in late 2019. In Matamoros, dangers in the city have led as many as 2,600 people to live in an informal camp on the banks of the river marking the border between Mexico and the United States, a location prone to flooding. In Nuevo Laredo, asylum seekers as well as those who try to help them also face particularly serious risks. The Rev. Aarón Méndez, a pastor who ran a migrant shelter, was kidnapped in August 2019, likely by members of the cartel that had repeatedly targeted the shelter and those staying there.

Asylum hearings under the MPP raise serious due process concerns. Most people processed under the MPP are unrepresented. Even for those who are in the United States, it is difficult to secure legal assistance for asylum cases—the United States does not provide publicly funded lawyers to people facing deportation who cannot afford an attorney, and the number of pro bono and low-cost lawyers cannot meet the need. Those who are sent to Mexico face particularly formidable barriers to legal representation. Few attorneys are able to take on pro bono clients who are physically located across an international border, and those who do consistently describe serious obstacles to interviewing their clients safely, obtaining necessary documents, and preparing clients adequately for court hearings. Adding to these difficulties, DHS has only undertaken to allow attorneys one hour to meet with clients prior to hearings, and in fact US immigration agents have often given attorneys even less preparation time and sometimes barred them from meeting with clients at all.

When immigration judges dismissed charges because of inaccurate or incomplete DHS filings, DHS sent people to Mexico even though they were no longer in deportation proceedings. DHS issued notices with fictitious court dates, in some instances explicitly—and falsely—stating that the immigration judge had ordered the person to return for another hearing. DHS did the same with some people who had in fact received asylum. DHS appeared to end this practice in December 2019, after members of Congress wrote to the DHS Office of Inspector General.

Prior to the end of March 2020, when MPP hearings were suspended in response to the Covid-19 pandemic, families were often required to report to designated border crossing points at 4:00 a.m., requiring them to travel through and to unsafe locations well before dawn. Those sent to Mexicali, Nogales, or Piedras Negras were assigned to immigration courts in San Diego or El Paso, meaning that they had to make journeys of 160 to 600 km (100 to 375 miles) to reach their designated border crossing points.

All family members, including young children, must appear and sit quietly for each court hearing. Families interviewed said that they were frequently required to wait for hours for a brief hearing, and agents have told parents they risked being sent back to Mexico without seeing a judge if their children made noise or could not sit still.

Families said that after each hearing, they were locked up in cold, often overcrowded immigration holding cells, with men and teenage boys held separately, sometimes overnight or longer, before US officials returned them to Mexico. Some said they were considering abandoning their asylum cases because their children were so afraid of being detained again.

The program has faced several legal challenges, all pending at this writing. In one of these cases, a federal appeals court found in February 2020 that the program violated federal law and international treaties and caused “extreme and irreversible harm.” The Supreme Court will review the appellate court’s ruling in 2021.

“Remain in Mexico” is one element of a larger, sustained attack on asylum and other protections for people fleeing harm and seeking safety in the United States.

US immigration authorities placed substantially fewer people in the Remain in Mexico program in the four months following March 21, 2020, when an order issued by the US Centers for Disease Control and Prevention (CDC) effectively closed the border to asylum seekers purportedly in response to the Covid-19 pandemic. The order, based upon an unprecedented interpretation of an obscure provision of the 1944 Public Health Services Act, authorizes US border agents to summarily expel people who cross land borders without valid entry documents. Summary expulsions do not place people in the MPP. Instead, they are simply turned away with no opportunity to seek asylum, see an immigration judge, or, in the case of unaccompanied children, receive the specific protections provided for in federal law. The order allows the expulsion of noncitizens without any assessment, or finding, of infection with the SARS-CoV-2 virus or the opportunity to isolate or quarantine to avoid the possibility of transmission. The order does not apply to all who arrive in the United States, allowing for example people who may be infected or who are arriving from countries with explosive transmission to enter without screening or testing if they have valid entry documents.

In another response to the Covid-19 pandemic, MPP hearings have been postponed since the end of March, leaving people seeking asylum stranded indefinitely in Mexico. Some people have had their hearings rescheduled for May or June 2021, lawyers told Human Rights Watch. “People are telling me, ‘MPP kills us from the inside out,’” said Tania

Guerrero, an El Paso-based lawyer with the Estamos Unidos Project of the Catholic Legal Immigration Network (CLINIC).

Living conditions for people waiting in Mexico were bad before the pandemic and have gotten worse, Human Rights Watch repeatedly heard. “The only thing that gets me through each day is that I am doing this for my children. I tell myself I have to be strong for my children. But I feel like I am drowning,” said Delfina L., a 34-year-old woman from Honduras, in June.

Assessing the Remain in Mexico program, Michael Knowles, a longtime asylum officer who spoke as president of the union that represents asylum officers, told a congressional subcommittee in November 2019, “These policies are illegal, they’re immoral, and they’re the basis for human rights abuses on behalf of our nation.” He added, “I don’t know a single asylum officer in the country who believes this is a good policy.”¹

The new US administration is an opportunity for a badly needed reset of US asylum policies. Among other urgent steps, the Biden administration should revert to the global norm of allowing asylum seekers to remain in the country where their claims are heard. In line with the president-elect’s campaign promises, the Biden administration should immediately terminate the MPP program and cease all returns of asylum seekers to Mexico.

The Departments of Homeland Security, Justice, and State should develop a plan for the tens of thousands of people placed in the program to report to a US border crossing and be allowed to reenter the United States until their asylum claims are resolved. Reentries should follow a fair and orderly process and be as expeditious as possible. At a minimum, people who should never have been in the MPP under a reasonable interpretation of the “vulnerable population” standard set forth in 2019 by the administration of President Donald J. Trump—including anybody who is pregnant, has medical conditions requiring specialized treatment or care, is living with a disability, or who is lesbian, gay, bisexual, or transgender—should be allowed to return to the United States as soon as possible.

¹ Tanvi Misra, “‘Remain in Mexico’ Policy Faces Internal Critiques at House Hearing,” *Roll Call*, November 19, 2019, <https://www.rollcall.com/2019/11/19/remain-in-mexico-policy-faces-internal-critiques-at-house-hearing/> (accessed July 6, 2020).

Permission to return for families, particularly those with newborns and young children, should also be expedited.

The US government should safeguard asylum seekers' right to a fair and timely hearing, including by establishing an adequately resourced, independent immigration court system and by providing, at a minimum, for court-appointed legal representation for asylum seekers who are members of vulnerable groups.

The incoming administration should acknowledge that the MPP is an abject failure by the United States to uphold the right to seek asylum and to afford protection to people seeking safety. The severe harms the MPP has inflicted on tens of thousands of people cannot be wholly undone, but US efforts to reverse the program should put people in a position as close as possible to the situation they would have been in if they had not been sent to Mexico, should include specific assistance to help them recover from the hardships and anguish the program has imposed on them, should publicly acknowledge these harms, and should commit never to repeat them.

Recommendations

To the US Department of Homeland Security (DHS)

- Immediately stop sending people to Mexico under the Migrant Protection Protocols (MPP) and instead, in line with international norms, allow people to seek asylum from within the United States.
- Expeditiously allow people it has already sent to Mexico under the MPP to return to the United States, striking an appropriate balance between the need to allow people who have spent many months in Mexico to enter the United States promptly with the necessity of ensuring that entries are orderly. To do so:
 - DHS should accept and grant, on a rolling basis, parole requests from at least the following groups of vulnerable people who should be deemed “not amenable to MPP” under a reasonable interpretation of MPP policy guidance, along with their families: people who are pregnant, have medical conditions requiring specialized treatment or care, are living with a disability, or who are lesbian, gay, bisexual, or transgender.
 - DHS should develop and implement a plan to allow all others placed in the MPP to report to a US border crossing and be allowed to reenter the United States pending resolution of their asylum claims. This plan should not require people to wait until their next scheduled immigration court hearing.
 - This plan should include provision for all people placed in the MPP, including those whose hearings were terminated or otherwise closed by an immigration judge, regardless of whether any appeal was made; those who received in absentia removal orders; and those whose cases are under review by the Board of Immigration Appeals or the federal courts.
 - The plan should also make provision, in coordination with the US Department of State, for pre-processing at a US consulate in Mexico or in other countries where people placed in the MPP have relocated.
 - The plan to progressively close down the Remain in Mexico program should include provision for adequate notice of these arrangements by a variety of means, including regular radio announcements in Mexico in Spanish, Portuguese, and the most common Indigenous languages spoken in Guatemala, including K’iche’, Q’eqchi’, Kaqchikel, and Mam. DHS should

- coordinate with the Department of State to implement these outreach efforts.
- People removed from the MPP should receive specific assistance to help them recover from the hardships and damage the program has imposed on them. Such support should include medical care and mental health services.
- Until the Remain in Mexico program is fully rescinded, take at least the following steps:
 - Direct Border Patrol agents and other CBP officers to allow people placed in the MPP to receive nonrefoulement interviews, screenings that give them the opportunity to be removed from the MPP if they are likely to face harm in Mexico.
 - Require CBP to accept requests at ports of entry for humanitarian parole, the mechanism that allows people to enter the United States temporarily on humanitarian grounds.
 - Direct asylum officers conducting nonrefoulement interviews to apply a standard of review equivalent to that used in the “credible fear” screenings employed for asylum seekers who are placed in expedited removal proceedings. Border Patrol agents and other CBP officers should not conduct nonrefoulement interviews.
 - Following the recommendations of DHS’s Red Team Report, add specific protocols to determine the best language for communication with Indigenous-language speakers during nonrefoulement interviews and ensure that the person being interviewed understands the questions asked and is able to make informed decisions.
 - Direct US Customs and Border Protection (CBP) agents to stop requiring people seeking asylum at ports of entry to wait at the border before making their claim, the practice known as “metering.” All individuals who express an intention to seek asylum in the United States or who state that they fear return to their home countries or to Mexico should be paroled into the United States pending resolution of their asylum claims. In line with international standards, the detention of asylum seekers should be a measure of last resort; DHS should apply a presumption of release for all people seeking asylum.

- End fast-tracked asylum screening under the pilot programs known as the Prompt Asylum Claim Review (PACR) and the “Humanitarian Asylum Review Process” (HARP).
- End the cooperative agreements on asylum with El Salvador, Guatemala, and Honduras, which lack the capacity to provide a full and fair procedure for determining asylum claims and to provide effective protection for people found to be refugees.
- For those asylum seekers not qualifying for presumption of release, restore the 48-hour waiting period before conducting credible fear interviews in US Immigration and Customs Enforcement (ICE) detention facilities and permit in-person orientation sessions in all ICE detention facilities, including family immigration detention centers.

To the US Department of Justice

- Restore the ability of immigration judges to grant continuances and terminate or administratively close cases.
- Withdraw decisions by the Attorney General not in line with international standards, including *Matter of A- B-* and *Matter of L- E- A-*, which announced interpretations of the term “particular social group” that unduly restrict claims made by people who face persecution because of their family ties or who are targeted by nonstate actors, including gangs, in circumstances where the state is unable or unwilling to protect them from harm.
- Review and rescind regulatory changes and proposed changes that restrict access to asylum. These include the bar to asylum imposed on July 16, 2019 (and vacated by a federal court in June 2020), for anybody who passed through a country where they could have claimed asylum; proposed changes to standards for asylum claims announced on June 15, 2020; a proposed asylum bar announced on July 9, 2020, for those coming from or transiting through countries affected by Covid-19 or another pandemic; proposed fees for asylum applications; the proposed rule announced on September 23, 2020, that would set a 15-day filing deadline for some asylum applications and restrict the use of evidence from sources other than the US government; and the asylum eligibility bars for certain convictions, including those for unauthorized entry or reentry, published on October 21, 2020.

To the US Department of State

- Develop and implement a variety of means to provide adequate notice of arrangements to permit people placed in the MPP to return to the United States pending resolution of their asylum claims. Notice should be provided by a variety of means, including regular radio announcements in Spanish, Portuguese, and the most common Indigenous languages spoken in Guatemala, including K'iche', Q'eqchi', Kaqchikel, and Mam.
- Carry out pre-processing at US consulates in Mexico or in other countries where people placed in the MPP have relocated, in order to facilitate their reentry to the United States pending resolution of their asylum claims.

To the Centers for Disease Control and Prevention

- Rescind the summary expulsion order issued on March 20, 2020, and renewed on October 13, 2020, which authorizes the summary expulsion of noncitizens arriving at the border, bypassing normal immigration removal processes regardless of any finding of disease or contagion.

To the US Congress

- Establish an independent immigration court system, removing the adjudication of immigration matters and the review of determinations made in immigration matters from the control of the US Department of Justice.
- Provide, at a minimum, for court-appointed legal representation for unaccompanied children and for adult asylum seekers who are members of vulnerable groups.
- Provide sufficient resources for additional immigration judges as well as to US Citizenship and Immigration Services for additional asylum officers.
- Consider creating an individualized “complementary protection” standard for arriving asylum seekers who are not able to meet the 1951 Refugee Convention standard but who would face a serious threat to life or physical integrity if returned because of a real risk of (1) cruel, inhuman, or degrading treatment or punishment; (2) violence; or (3) exceptional situations, for which there is no adequate domestic remedy.

- Do not provide additional funding to DHS for immigration enforcement without specific measures to ensure appropriate and effective oversight and accountability for abuses and to stop and prevent abusive policies.
- Prohibit any appropriated funds from being used to implement the Migrant Protection Protocols or any subsequent revisions to those protocols, except to the extent funding is necessary to rescind the protocols, allow people placed in them to reenter the United States, and repair the harm done by the protocols.
- Mandate the provision of rehabilitative services, including psychosocial support, for people placed in the Migrant Protection Protocols.

To the Mexican Government

While the MPP remains in place:

- Do not accept asylum seekers sent by the United States to Mexico under the MPP unless the US and Mexican governments can ensure they are able to safely stay in Mexico, and so long as the US government can ensure they receive due process in their immigration proceedings.
- Improve screening for people from vulnerable groups and refuse to accept such persons. Do not accept asylum seekers sent by the United States who under a reasonable interpretation of MPP guidance should not be placed in the program, including people with disabilities, who are pregnant, who have medical conditions requiring specialized treatment or care, or who are lesbian, gay, bisexual, or transgender.
- Help those placed in the MPP to find adequate housing.
- Clearly communicate to DHS the current shelter capacity in each sector and refuse to accept anyone DHS attempts to transfer outside of those parameters.
- Issue humanitarian visas to people placed in the MPP, including those now in Mexico under the MPP.
- Ensure that everyone placed in the MPP receives the necessary documentation and information on how to work legally and how to access public health care and education in Mexico. This should include an explanation of:
 - What legal documents are required to work and how to obtain them.
 - Which types of public health services those placed under the MPP can use and how to access those services.
 - How to enroll children in public schools.

- Instruct public health and education authorities to ensure that those placed in the MPP program have equal access to these services.
- Ensure access to justice and to appropriate services for survivors of crimes in Mexico.

Methodology

This report is based on 52 interviews with people placed in the Migrant Protection Protocols (MPP) and sent to Mexico. We also spoke with some people who had been “metered” and were waiting to be allowed to enter the United States to claim asylum, and others who had been summarily expelled under an order issued by the US Centers for Disease Control and Prevention (CDC) in March 2020, purportedly in response to the Covid-19 pandemic.

The research team conducted private face-to-face interviews with 47 people in Ciudad Juárez and Tijuana who were placed in the MPP. After the onset of the Covid-19 pandemic prevented further in-person interviewing, the team spoke to an additional five people by telephone or video calls.

These interviews were conducted in Spanish or Portuguese by researchers fluent in those languages. Interviews were conducted according to the principles and practices of trauma-informed interviewing, including child-sensitive approaches where relevant.² In-person interviews took place in November 2019 in Tijuana and in January and March 2020 in Ciudad Juárez. Remote interviews took place between April and October 2020. The research team was composed of two lawyers, a pediatrician, a clinical psychologist, and two law students. Four members of the research team were female, and two were male.

The researchers informed all interviewees of the nature and purpose of our research, and our intention to publish a report with the information gathered. They informed each potential interviewee that they were under no obligation to speak with us, that Human Rights Watch does not provide humanitarian services, legal assistance, health treatment

² See Ryan Matlow and Victor Carrion, *Trauma Informed Techniques for Interviewing Immigrant Children: Recommendations for Attorneys and Other Professionals*, DigitalMedic, Stanford Center for Health Education, and University of Texas Rio Grande Valley School of Medicine, 2019, https://4a07ry48spy847yi1v2f88gj-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/Recommendations_2019-11_04.pdf (accessed December 18, 2020); Thomas D. Lyon, “Interviewing Children,” *Annual Review of Law and Social Science*, vol. 10 (2014), pp. 73-89, <https://www.annualreviews.org/doi/pdf/10.1146/annurev-lawsocsci-110413-030913> (accessed December 18, 2020); Jodi A. Quas and Thomas D. Lyon, “Questioning Unaccompanied Immigrant Children: Lessons from Developmental Science on Forensic Interviewing,” *Society for Research in Child Development Child Evidence Brief No. 6*, October 2019, <https://www.srcd.org/research/questioning-unaccompanied-immigrant-children-lessons-developmental-science-forensic> (accessed December 16, 2020).

services, or clinical care, and that they could stop speaking with us or decline to answer any question with no adverse consequences. They obtained oral consent for each interview. Interviewees did not receive material compensation for speaking with Human Rights Watch.

The team also reviewed case files for most of the 52 people interviewed for this report. These materials included documents issued by US Customs and Border Protection (CBP) agents and immigration courts as well as, where available, medical records and police reports relating to harms suffered in Mexico.

In addition to interviewing people who were in the MPP, the team conducted more than 40 interviews with lawyers, health professionals, shelter staff and volunteers, and others working with migrant families on both sides of the US-Mexico border.

This report also draws on previous Human Rights Watch research on the MPP, including a July 2019 investigation in which the Hope Border Institute and Human Rights Watch interviewed 19 asylum seekers and observed 69 MPP immigration court hearings,³ a follow-up investigation analyzing the MPP's expansion,⁴ an investigation of the challenges asylum seekers with disabilities and chronic health conditions face in Ciudad Juárez published in October 2019,⁵ a detailed complaint Human Rights Watch submitted to the US Department of Homeland Security (DHS) Inspector General and to DHS' Office of Civil Rights and Civil Liberties,⁶ an October 2020 report that included information on the

³ Human Rights Watch, *"We Can't Help You Here": US Returns of Asylum Seekers to Mexico*, July 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

⁴ "US Move Puts More Asylum Seekers at Risk: Expanded 'Remain in Mexico' Program Undermines Due Process," Human Rights Watch news release, September 25, 2019, <https://www.hrw.org/news/2019/09/25/us-move-puts-more-asylum-seekers-risk>.

⁵ "Mexico: Risks at Border for Those with Disabilities," Human Rights Watch news release, October 29, 2019, <https://www.hrw.org/news/2019/10/29/mexico-risks-border-those-disabilities>.

⁶ "US: Investigate 'Remain in Mexico' Program," Human Rights Watch news release, June 2, 2020, <https://www.hrw.org/news/2020/06/02/us-investigate-remain-mexico-program>; Letter from Nicole Austin-Hillery, Executive Director, US Program, Human Rights Watch, to Joseph Cuffari, Inspector General, US Department of Homeland Security, and Cameron Quinn, Officer for Civil Rights and Civil Liberties, US Department of Homeland Security, June 2, 2020 [OIG Complaint], <https://www.hrw.org/news/2020/06/02/dhs-oig-formal-complaint-regarding-remain-mexico>.

obstacles lesbian, gay, bisexual, and transgender people face to asylum in the United States,⁷ and other reporting.⁸

Human Rights Watch sought comment from CBP and the Executive Office for Immigration Review (EOIR), the agency of the US Department of Justice that oversees the immigration courts, but had not received responses by the time of publication.

This report uses pseudonyms for all children and adults placed in the MPP, those required to wait at the border before beginning the asylum process (the practice known as “metering”), or those summarily expelled under the March 2020 CDC order. Human Rights Watch has also withheld the names and other identifying information of some lawyers and other humanitarian workers who requested that we not publish this information.

In line with international standards, the term “child” refers to a person under the age of 18.⁹ As the United Nations Committee on the Rights of the Child and other international authorities do, we use the term “unaccompanied children” in this report to refer to children “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”¹⁰ “Separated children” are those who are “separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives,”¹¹ meaning that they may be accompanied by other adult relatives.

⁷ Human Rights Watch, *“Every Day I Live in Fear”: Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States*, October 2020, <https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador>.

⁸ “US: ‘Remain in Mexico’ Program Harming Children,” Human Rights Watch news release, February 12, 2020, <https://www.hrw.org/news/2020/02/12/us-remain-mexico-program-harming-children>; “US: Covid-19 Policies Risk Asylum Seekers’ Lives,” Human Rights Watch news release, April 2, 2020, <https://www.hrw.org/news/2020/04/02/us-covid-19-policies-risk-asylum-seekers-lives>.

⁹ Convention on the Rights of the Child, art. 1, November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990). The United States has signed but not ratified the convention.

¹⁰ UN Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6 (September 1, 2005), para. 7. The Committee on the Rights of the Child issues authoritative guidance on the Convention on the Rights of the Child.

¹¹ *Ibid.*, para. 8.

I. “Remain in Mexico”

Over the last two years, US immigration authorities have sent more than 69,000 people to Mexico while they wait for their asylum hearings in US immigration courts,¹² including families with children of any age. By one estimate, children under the age of 18 were one-third of all those sent to Mexico; more than 4,000 were under the age of five, and nearly 500 were less than one year old.¹³ In January 2019, the US Department of Homeland Security (DHS) began to send people to Tijuana under the program, formally known as the Migration Protection Protocols (MPP) but more commonly called “Remain in Mexico.” By the beginning of 2020, DHS was also sending people to Mexicali, Nogales, Ciudad Juárez, Nuevo Laredo, and Matamoros. In some cases, DHS sent people to places far from where they entered—in some instances, to the opposite coast.

About one-third of those placed in the MPP have been given immigration court hearings in El Paso. Most were sent to Ciudad Juárez, the city directly across the border, but that total also includes people sent to Nogales and told to make their own way to the Ciudad Juárez-El Paso border crossing, some 550 kilometers (340 miles) away, for each of their immigration court hearings.

Before the MPP, when asylum seekers were often allowed to stay with family members in the United States, many of these cases would have been heard in immigration courts across the country. DHS placed more than 23,000 MPP cases in the El Paso immigration court.¹⁴ As a consequence, “MPP has completely bogged down the system,” a lawyer in El Paso said in January 2020. “Now the court is a mess. It’s completely overwhelmed. Sometimes there are hundreds of people waiting in court for master calendar hearings,” the preliminary hearings in which people tell the court how they intend to proceed with

¹² Transactional Records Access Clearinghouse (TRAC) Immigration, Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings” (data through November 2020), <https://trac.syr.edu/phptools/immigration/mpp/> (accessed December 22, 2020). Select “initial filing” measure, “month and year” graph time scale, “all” hearing locations.

¹³ Kristina Cooke, Mica Rosenberg, and Reade Levinson, “Exclusive: U.S. Migrant Policy Sends Thousands of Children, Including Babies, Back to Mexico,” *Reuters*, October 11, 2019, <https://www.reuters.com/article/us-usa-immigration-babies-exclusive/exclusive-u-s-migrant-policy-sends-thousands-of-babies-and-toddlers-back-to-mexico-idUSKBN1WQ1H1> (accessed October 16, 2020).

¹⁴ TRAC Immigration, Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings” (data through November 2020), <https://trac.syr.edu/phptools/immigration/mpp/> (accessed December 22, 2020). Select “initial filing” measure, “month and year” graph time scale, “MPP Court El Paso” hearing location.

their cases.¹⁵ Lawyers described similar conditions in Brownsville and Laredo, both in Texas and assigned 16,950 and 13,500 cases respectively,¹⁶ where DHS and the US Department of Justice set up temporary “tent courts” to handle the large number of cases.

As of July 17, 2020, just 523 people had received grants of asylum or withholding of removal out of nearly 44,000 MPP cases DHS considered completed, a grant rate of slightly more than 1 percent for the MPP cases concluded in the first year-and-a-half of the program.¹⁷ By comparison, in fiscal year 2018 (the period from October 2017 to September 2018), the asylum grant rate was about 35 percent.¹⁸

At least four lawsuits challenging the validity of the MPP were pending at this writing. One, filed in federal district court in California, resulted in a February 2020 ruling by a federal appeals court that the program is “invalid in its entirety” because it is inconsistent with federal immigration laws.¹⁹ The Supreme Court stayed that order to allow the government to seek review; in October, it announced that it would consider the case in 2021.²⁰ A

¹⁵ Human Rights Watch interview with lawyer, El Paso, January 5, 2020. See also Human Rights Watch, “*We Can’t Help You Here*,” p. 36.

¹⁶ TRAC Immigration, Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings” (data through November 2020), <https://trac.syr.edu/phptools/immigration/mpp/> (accessed December 22, 2020). Select “initial filing” measure, “month and year” graph time scale, “MPP Brownsville Gateway International Bridge” and “MPP Laredo, Texas – Port of Entry” hearing locations.

¹⁷ Department of Homeland Security, “Migrant Protection Protocols Metrics and Measures,” n.d., pp. 1-2, https://www.dhs.gov/sites/default/files/publications/migrant_protection_protocols_metrics_and_measures_o.pdf (accessed September 25, 2020). TRAC Immigration’s analysis of immigration court data found 530 grants of asylum or withholding of removal through November 2020 (no MPP cases were heard between the end of March and December 2020). TRAC Immigration, Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings” (data through November 2020), <https://trac.syr.edu/phptools/immigration/mpp/> (accessed December 22, 2020). Select “initial filing” measure, “month and year” graph time scale, “all” hearing locations, sort by “outcome,” and view “grant relief” result.

¹⁸ See TRAC Immigration, “Asylum Decisions by Custody, Representation, Nationality, Location, Month and Year, Outcome and More” (data through September 2020), <https://trac.syr.edu/phptools/immigration/asylum/> (accessed October 31, 2020). Select “fiscal year” graph time scale, sort by “immigration court” and select “all,” sort by “fiscal year of decision” and select “2018,” sort by “decision,” add results for “asylum granted” and “other relief granted,” and divide by total number of decisions rendered.

¹⁹ *Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1095 (9th Cir. 2020), *stay granted*, 2020 WL 1161432 (U.S. Mar. 11, 2020), *cert. granted*, 592 U.S. ___ (U.S. Oct. 19, 2020). For the district court’s ruling in the case, see *Innovation Law Lab v. Nielsen*, 366 F. Supp. 3d 1110 (N.D. Cal. 2019).

²⁰ See *Wolf v. Innovation Law Lab*, 2020 WL 1161432 (U.S. Mar. 11, 2020); *Wolf v. Innovation Law Lab*, No. 19-1212, 592 U.S. ___ (U.S. Oct. 19, 2020) (order granting petition of writ of certiorari). See also Caitlin Dickerson, “Confusion on the Border as Appeals Court Rules Against Trump’s ‘Remain in Mexico’ Policy,” *New York Times*, February 28, 2020, <https://www.nytimes.com/2020/02/28/us/migrants-court-remain-in-mexico-mpp-injunction.html> (accessed February 28, 2020); Nicole Narea, “The Supreme Court Just Allowed Trump to Continue Sending Migrants Back to Mexico,” *Vox*, March 11, 2020, <https://www.vox.com/2020/2/28/20907053/remain-in-mexico-mpp-supreme-court-opinion> (accessed October 13, 2020); Robert Barnes, “Supreme Court to Review Trump’s Border Wall Funding and ‘Remain in Mexico’ Program,” *Washington*

separate, narrower lawsuit filed by the ACLU has challenged the government’s decision to extend the MPP to the Mexican border state of Tamaulipas.²¹ A third case, filed in October 2020, challenged the use of the MPP in California.²² And a case filed in November 2020 challenged the placement of people with disabilities in the MPP.²³

Although US immigration authorities summarily expelled most people who crossed the US-Mexico border after March 20, 2020,²⁴ CBP has continued to place some in the MPP—some 4,400 in the first eight months after the summary expulsion order took effect, including at least 1,100 in September 2020 alone.²⁵

Rollout of the Program

Then-DHS Secretary Kirstjen Nielsen announced the MPP in December 2018, justifying the program in part by saying that it would “allow us to focus more attention on those who are

Post, October 19, 2020, https://www.washingtonpost.com/politics/courts_law/supreme-court-remain-in-mexico-border-wall/2020/10/19/b592a658-120a-11eb-bc10-40b25382f1be_story.html (accessed October 20, 2020).

²¹ *Nora v. Wolf*, Complaint, No. 1:20-cv-00993-ABJ (D.D.C. filed April 16, 2020). See also *Nora v. Wolf*, Memorandum Opinion, No. 20-0993 (D.D.C. June 25, 2020) (ordering that “any plaintiffs who were returned to Mexico without nonrefoulement interviews” should receive an interview by July 2, 2020).

²² *Immigrant Defenders Law Center v. Wolf*, Complaint for Injunctive and Declaratory Relief, No. 2:20-cv-9893 (C.D. Cal. filed October 28, 2020).

²³ *E.A.R.R. v. US Department of Homeland Security*, Class Action Complaint for Declaratory and Injunctive Relief, No. 3:20-cv-02146 (S.D. Cal. filed November 2, 2020).

²⁴ US Customs and Border Protection (CBP), “Migrant Protection Protocols FY 2020, Southwest Border Enrollments in MPP,” n.d., <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy-2020> (accessed December 16, 2020); CBP, “Migrant Protection Protocols FY 2021, Southwest Border Enrollments in MPP,” n.d., <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols> (accessed December 16, 2020). See also Human Rights First, *Humanitarian Disgrace: US Continues to Illegal Block, Expel Refugees to Danger*, December 2020, <https://www.humanrightsfirst.org/resource/humanitarian-disgrace-us-continues-illegally-block-expel-refugees-danger> (accessed December 22, 2020).

²⁵ CBP reports that it placed 4,400 in the MPP between April and November 2020: 215 in April, 124 in May, 208 in June, 382 in July, 767 in August, 1,167 in September, 649 in October, and 887 in November. CBP, “Migrant Protection Protocols FY 2020, Southwest Border Enrollments in MPP”; CBP, “Migrant Protection Protocols FY 2021, Southwest Border Enrollments in MPP.” Data from the Executive Office for Immigration Review (EOIR) collected by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University shows 204 new MPP cases in April 2020, 136 in May, 215 in June, 379 in July, 814 in August, 1,130 in September, 662 in October, and 972 in November. See TRAC Immigration, Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings” (data through November 2020), <https://trac.syr.edu/phptools/immigration/mpp/> (accessed December 22, 2020). Select “initial filing” measure, “month and year” graph time scale, “all” hearing locations, and sort by “month and year case began.” TRAC cautions that “enduring issues of data quality remain a real concern” with EOIR asylum data. TRAC Immigration, “After EOIR Fixes Most Egregious Data Errors, TRAC Releases New Asylum Data—But with a Warning,” September 16, 2020, <https://trac.syr.edu/whatsnew/email.200916.html> (accessed September 29, 2020). Some of these data quality issues are evident when sorting MPP filings by month and year the case began: EOIR records a handful of MPP cases as beginning in the years from 2009 to 2018 even though the MPP was not implemented until January 29, 2019.

actually fleeing persecution.”²⁶ DHS expanded the program to apply to people who entered the United States at or near Calexico, California, and El Paso, Texas, in March 2019; Laredo and Brownsville, Texas, in July 2019; Eagle Pass, Texas, in October 2019; and Nogales, Arizona, in January 2020.²⁷

In its first year, the program only applied to nationals of Spanish-speaking countries, including Cubans, Ecuadorians, and Venezuelans as well as those from Central America’s Northern Triangle, but DHS began subjecting Brazilians to the program at the end of January 2020.²⁸ Brazilians placed in the MPP told Human Rights Watch the experience was very difficult for them. “It’s complicated. It’s another reality. There’s a lot of prejudice and discrimination. Here in the shelter [in Ciudad Juárez], everybody speaks Spanish. The culture, the customs, the food—for them, it’s familiar. Even after seven months, we haven’t adjusted,” said Renata A., a 38-year-old woman from Brazil. Other boys in the shelter called her 12-year-old son a “Brazilian weakling” and began hitting him while they were playing soccer, she told Human Rights Watch, texting us a photo showing her son with a black eye. Language barriers made it difficult to access even the minimal services other families received in the shelter, she said.²⁹

²⁶ US Department of Homeland Security, “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration,” December 20, 2018, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration> (accessed October 14, 2020).

²⁷ See Nick Miroff, “U.S. Has Sent 240 Migrants Back to Mexico Under Experimental Policy, Which Has Expanded Along California Border,” *Washington Post*, March 12, 2019 (citing DHS officials who described expansion of MPP “in recent days to the Calexico port of entry in California”), https://www.washingtonpost.com/immigration/us-has-sent-240-migrants-back-to-mexico-under-experimental-policy-which-will-expand-along-california-border/2019/03/12/d7742bfc-44ed-11e9-90fo-0ccfeec87a61_story.html (accessed September 25, 2020); Aaron Montes, “El Paso Begins Trump Policy That Sends Migrant Asylum Seekers Back to Mexico,” *El Paso Times*, March 16, 2019 (updated March 21, 2019), <https://www.elpasotimes.com/story/news/immigration/2019/03/16/trump-immigration-metering-policy-migrant-protection-protocols-implemented-el-paso-juarez/3177682002/> (accessed September 25, 2020); Riane Roldan, “Asylum Seekers Will Appear Before Judges via Teleconferencing in Tents as ‘Remain in Mexico’ Program Expands to Laredo,” *Texas Tribune*, July 9, 2019 (expansion of MPP to Brownsville), <https://www.texastribune.org/2019/07/09/remain-mexico-program-expands-laredo-texas/> (accessed September 25, 2020); Jay Root, “Trump Administration Will Soon Expand ‘Remain in Mexico’ Policy for Migrants to Busiest Part of the Border,” *Texas Tribune*, July 18, 2019, <https://www.texastribune.org/2019/07/18/migrants-could-soon-be-returned-mexico-busiest-patch-border-officials/> (accessed September 25, 2020); Department of Homeland Security, “DHS Expands MPP Operations to Eagle Pass,” October 28, 2019, <https://www.dhs.gov/news/2019/10/28/dhs-expands-mpp-operations-eagle-pass> (accessed September 25, 2020); Department of Homeland Security, “DHS Begins MPP Returns at Nogales Port of Entry in Arizona,” January 2, 2020, <https://www.dhs.gov/news/2020/01/02/dhs-begins-mpp-returns-nogales-port-entry-arizona> (accessed September 25, 2020).

²⁸ Department of Homeland Security, “DHS Expands MPP to Brazilian Nationals,” January 29, 2020, <https://www.dhs.gov/news/2020/01/29/dhs-expands-mpp-brazilian-nationals#> (accessed September 25, 2020).

²⁹ Human Rights Watch telephone interview with Renata A., September 29, 2020.

Unaccompanied Children Sent to Mexico

DHS policy guidance states that unaccompanied children should not be placed in the MPP,³⁰ and groups in Ciudad Juárez, El Paso, and Tijuana agreed that border agents were generally allowing unaccompanied children to enter the United States if they were accompanied by a lawyer or a Mexican official.³¹

But Human Rights Watch heard of several instances in which CBP placed unaccompanied children into the MPP. In one case, Luis M. Gonzalez, supervising immigration attorney at the Jewish Family Service of San Diego, told us that a 16-year-old Honduran girl contacted his office after CBP agents sent her and her 1-year-old daughter to Mexico in mid-2019 after placing them in the MPP. After DHS rebuffed their request to remove the girl and her daughter from the MPP, Gonzalez and his colleagues presented her birth certificate to the immigration judge and pointed out that CBP had correctly listed her date of birth on the documents they prepared before sending her and her daughter to Mexico. “DHS counsel kept refusing to agree she was an unaccompanied child. They wanted to send her and the baby back to Mexico while they investigated,” Gonzalez said. “Then they wanted the judge to set a bond to release the girl and her daughter, at least \$1,500 for each of them.” The immigration judge rejected the government’s request for bond and ordered the girl and her daughter released on their own recognizance to allow them to join the girl’s mother, who lives in the United States.³²

In another case, when Border Patrol agents apprehended a 17-year-old along with his mother and his siblings, they separated him from his family. “The Border Patrol took the position that his birth certificate was false. They didn’t believe he was a minor and

³⁰ See US Customs and Border Protection, “MPP Guiding Principles,” January 28, 2019, p. 1 (listing “unaccompanied alien children” as among the categories of people “not amenable to MPP”), <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf> (accessed July 2, 2020). See also US Department of Homeland Security, “Migrant Protection Protocols,” January 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> (accessed July 2, 2020); US Department of Homeland Security, “Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols,” December 7, 2020, p. 3, https://www.dhs.gov/sites/default/files/publications/supplemental_policy_guidance.pdf (accessed December 16, 2020).

³¹ Human Rights Watch interviews with Casa YMCA, Tijuana, November 22, 2019; Nicole Ramos, Border Rights Project Director, Al Otro Lado, Tijuana, November 25, 2019; Linda Rivas, executive director, Las Americas Immigrant Advocacy Center, El Paso, January 5, 2020.

³² Human Rights Watch remote interview with Luis M. Gonzalez, supervising immigration attorney, Jewish Family Service of San Diego, September 28, 2020.

returned him to Mexico under the MPP,” Linda Rivas, executive director of Las Americas, Immigrant Advocacy Center told Human Rights Watch.³³

Family Separation Under the MPP

Immigration agents routinely separate children from adult relatives who are not parents, including grandparents, aunts and uncles, and older siblings.³⁴ In addition, Human Rights Watch heard accounts indicating that US border agents are still separating families in some cases, for instance by allowing one parent to remain in the United States and placing the other in the MPP even when the family is travelling together and ask to be kept together,³⁵ and the Women’s Refugee Commission has documented cases of parents and legal guardians whom US immigration agents separated from their children, placing the parents in the MPP and transferring their children to the custody of the US Department of Health and Human Services.³⁶

Additional accounts of forced family separation have appeared in news reports. In one of these cases, in October 2020, after a Honduran woman gave birth on her own in a field in Eagle Pass, Texas, Border Patrol agents transported the woman and her baby to a local hospital.³⁷ When the hospital arranged to have the child transferred to a neonatal intensive care unit in San Antonio, agents prevented the woman from remaining with her child and

³³ Human Rights Watch interview with Linda Rivas, January 5, 2020.

³⁴ Letter from Leah Chavala, Policy Advisor, Migrant Rights and Justice, Women’s Refugee Commission, to Cameron Quinn, Officer for Civil Rights and Civil Liberties, Department of Homeland Security, and Joseph Cuffari, Inspector General, Department of Homeland Security, “Separation of Families via the ‘Migrant Protection Protocols,’” August 16, 2019 (complaint detailing 20 cases of families separated during MPP processing), <https://docs.house.gov/meetings/JU/JU01/20190906/109889/HHRG-116-JU01-20190906-SD008.pdf> (accessed October 14, 2020). See also, for example, Kate Morrissey, “Grandmother Separated from 2-Year-Old When Released into U.S. After Being in ‘Remain in Mexico’ Program,” *San Diego Union-Tribune*, January 21, 2020, <https://www.sandiegouniontribune.com/news/immigration/story/2020-01-21/grandmother-separated-from-child-when-both-were-released-into-u-s-after-remaining-in-mexico-for-months> (accessed October 14, 2020); Human Rights Watch, “*We Can’t Help You Here*,” pp. 42-45.

³⁵ Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020; Human Rights Watch remote interview with Cindy Woods, managing attorney, Proyecto de Ayuda para Solicitantes de Asilo, Texas RioGrande Legal Aid, September 11, 2020.

³⁶ Letter from Leah Chavala to Cameron Quinn and Joseph Cuffari, August 16, 2019, pp. 5-9.

³⁷ US Customs and Border Protection, “Border Patrol Agents Rescue Woman in Labor,” October 9, 2020, <https://www.cbp.gov/newsroom/local-media-release/border-patrol-agents-rescue-woman-labor> (accessed October 16, 2020).

instead prepared to deport her, lawyers told the *Los Angeles Times*.³⁸ The chief patrol agent for the Border Patrol’s Del Rio sector stated in a tweet, “Due to strict COVID-19 restrictions in the neonatal intensive care unit, the mother could not join the child in the aircraft or at the hospital.”³⁹ The hospital disputed that statement.⁴⁰ After publication of the *Los Angeles Times* story, border agents released the woman and allowed her to reunite with her child.⁴¹

Arbitrary, Distant Transfers

US immigration agents sent some people to distant border towns—in some cases, on the opposite coast—without explanation. Other people were sent to border towns relatively close to where they crossed into the United States but given court hearings elsewhere along the border. In either case, these decisions exposed people to additional danger by making them undertake lengthy journeys to unfamiliar towns.

When US authorities expanded the MPP program to cover people who entered the United States near Calexico, California, DHS sent some to Tijuana, about 180 kilometers (110 miles) west. For instance, Kuymi P. said that after she, her husband, and their daughter entered the United States, “Immigration caught us. They took us to a place where they held us for two days. They said they would send us to Tijuana.”⁴² But most people were returned to Mexicali, across the border from Calexico, with orders to report to a border station in Tijuana, Nicole Ramos of Al Otro Lado told Human Rights Watch.⁴³ In one such case, CBP transferred María Q., a 41-year-old Honduran woman, and her family from Yuma, Arizona, to Calexico, California, about 100 kilometers (60 miles) west, and sent them across the border into Mexicali with a court hearing scheduled in San Diego, California, across the border from Tijuana. “From Mexicali, we had to make our way here,” she told us when we

³⁸ Molly O’Toole, “U.S. Border Agency Said It ‘Rescued’ a Honduran Woman and Newborn. Then It Separated Them and Detained Her,” *Los Angeles Times*, October 9, 2020 (updated October 11, 2020), <https://www.latimes.com/politics/story/2020-10-09/border-agency-said-rescued-honduran-who-just-gave-birth-in-field-hours-later-officials-separated-her-from-newborn-and-detained-her> (accessed October 16, 2020).

³⁹ Austin Skero (@USBPChiefDRT), Twitter (October 9, 2020, 10:06 p.m. EST), <https://twitter.com/USBPChiefDRT/status/1314749010708705285> (accessed October 16, 2020).

⁴⁰ O’Toole, “U.S. Border Agency Said It ‘Rescued’ a Honduran Woman and Newborn.”

⁴¹ *Ibid.*

⁴² Human Rights Watch interview with Kuymi P., Tijuana, November 25, 2019.

⁴³ Human Rights Watch interview with Nicole Ramos, November 25, 2019.

spoke with her in Tijuana. “The immigration agents didn’t give us any directions. They didn’t tell us where there were shelters,” she said.⁴⁴

People sent to Nogales must make their way to Ciudad Juárez, a 550-kilometer (340-mile), seven-and-a-half-hour journey by the most direct route through Mexico, to attend hearings in El Paso; no MPP cases are heard in Tucson, Arizona, where the nearest immigration court is located. Those sent to Piedras Negras, across the border from Eagle Pass, Texas, must travel to Laredo, the nearest immigration court, 180 kilometers (110 miles) away by the most direct route.

DHS also flew some people across the country before sending them to Mexico. Some people told us they were sent from the Rio Grande Valley in Texas to San Diego, and from there to Tijuana. Henrique C., from Honduras, said that he and his two children entered the United States near Reynosa in August 2019 and were detained in McAllen, Texas. “An agent announced, ‘We’re going to process you. We’re going to send you to wait for your court in Tijuana.’ When we heard that, everybody started to cry.”⁴⁵

In another such case, Alejandra Q., a 53-year-old woman from Honduras, told us that after she, her husband, and their 15-year-old son entered the United States near Reynosa in June 2019, immigration officials held them for three or four days in Texas before flying them to San Diego. They spent another three days in immigration holding cells in San Diego before US immigration authorities sent them to Tijuana with an initial hearing date in January 2020.⁴⁶ Similarly, Karina E., a 26-year-old Guatemalan woman, said that she, her husband, and their 5-year-old son also entered the United States near Reynosa in June 2019, spent four days in a holding cell in Texas, and then another five days in detention in San Diego before US immigration authorities sent her to Tijuana.⁴⁷

The Ordeal of Getting to Court

Getting to court can be difficult and dangerous even for those sent directly across the border from the US city where their court hearings are scheduled. Many people showed us

⁴⁴ Human Rights Watch interview with María Q., Tijuana, November 24, 2019.

⁴⁵ Human Rights Watch interview with Henrique C., Tijuana, November 26, 2019.

⁴⁶ Human Rights Watch interview with Alejandra Q., Tijuana, November 26, 2019.

⁴⁷ Human Rights Watch interview with Karina E., Tijuana, November 26, 2019.

CBP documents directing them to report at 4:00 a.m., requiring them to travel well before dawn through neighborhoods that were often unsafe. Some families spent the night on the sidewalk near the border crossing because they had no reliable way of getting to the border after nightfall. Once in the United States, people described long hours waiting in hallways with guards ordering young children to sit silently and still. Many of those we interviewed said they spent a night in a cold immigration holding cell each time they attended a court hearing.

Blanca M., 31, attended her first immigration court hearing in August 2019 with her husband and their three daughters, all under age 5. “We had nothing to eat from 9 a.m. to 3 p.m.,” she said. “The officials wanted us to keep the kids quiet. Really I was at the point of giving up.”⁴⁸ They had the same experience at later court hearings. Julián, her husband, said that when they went to court in November 2019, “One guard kept saying, ‘Those of you with children, control them. If your children are fucking around, I can take away your court hearing.’ It’s almost impossible to get a 1-year-old to stay seated in a chair.”⁴⁹ Reflecting on the long waits to see the judge, Blanca said, “They make people wait a long time. We think it’s meant as a punishment.”⁵⁰

Others gave similar accounts, matching the reports of other groups.⁵¹ Micaela H., a 27-year-old Guatemalan woman, told us that on the day of her immigration court hearing in November, she arrived at 3:00 a.m., an hour ahead of the time CBP agents had instructed her to arrive. A bus took her and others to court in San Diego, about 25 km (16 miles) from the border station, and she saw the judge at 8:00 a.m. Asked what she did in the four hours between 4:00 a.m. and seeing the judge other than taking the bus, she replied, “We just waited. They didn’t say why.”⁵²

“We wait in a hallway, seated in chairs,” said Nuria J. “The kids are right there with us. There’s nowhere else for them. They can’t play. The guards don’t permit them to move around. They reprimand you if the kids get out of the chairs. You sit all day. It’s a long

⁴⁸ Human Rights Watch interview with Blanca M., Ciudad Juárez, January 7, 2020.

⁴⁹ Human Rights Watch interview with Julián M., Ciudad Juárez, January 7, 2020.

⁵⁰ Human Rights Watch interview with Blanca M., Ciudad Juárez, January 7, 2020.

⁵¹ See, for example, Policy Research Project on Mexico’s Migratory Policy, *Migrant Protection Protocols: Implementation and Consequences for Asylum Seekers in Mexico*, Policy Research Project Report No. 218, Lyndon B. Johnson School of Public Affairs, May 2020, p. 20, <https://repositories.lib.utexas.edu/handle/2152/81991> (accessed December 18, 2020).

⁵² Human Rights Watch interview with Micaela H., Tijuana, November 23, 2019.

time.”⁵³ Another woman said: “If you have a baby and you need to change your baby’s diapers, they’ll give you a diaper. But there’s no place to go. You have to change your baby on the floor, right there in the hallway.”⁵⁴

The early arrival times are in part to allow time for CBP-required health screenings, including lice checks, before people are transported to the immigration court, but as the accounts of Micaela and others suggested, these procedures take a fraction of the time available between the reporting time and the time of the hearing. If all family members do not pass the health screening, including the lice checks, the family is rescheduled for another hearing, lawyers and people in the MPP told Human Rights Watch.⁵⁵

As was the case with Blanca, some families said they were thinking of abandoning their asylum claims because the process was so traumatic for their children.

Due Process Failures

The Remain in Mexico program has significant due process shortcomings. These include barriers in access to counsel, disruptions and alienation when hearings are conducted by video, deficient notice resulting in the loss of rights and creating the risk that people may not appear at hearings through no fault of their own, and questionable procedural tactics by DHS and dubious interpretations of newly issued asylum regulations by some immigration judges. In perhaps the most shocking of these abusive practices, DHS agents returned people to Mexico after immigration judges terminated their deportation hearings (meaning that the judge dismissed the deportation charges and closed the case) and in some instances even after they received grants of asylum. As a consequence, people in the MPP are denied their right to a full and fair hearing and deprived of the right to seek asylum.

⁵³ Human Rights Watch interview with Nuria J., Ciudad Juárez, January 9, 2020.

⁵⁴ Human Rights Watch interview, Ciudad Juárez, January 7, 2020.

⁵⁵ Human Rights Watch interview with Blanca M., Ciudad Juárez, January 7, 2020; Human Rights Watch remote interview with Denise Gilman, Clinical Professor of Law and Director, Immigration Clinic, University of Texas at Austin School of Law, September 21, 2020. See also American Immigration Lawyers Association (AILA), “Policy Brief: Questions Remain After AILA Joins Laredo Tent Court Tour,” January 30, 2020, p. 3, <https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-questions-remain-after-aila-joins> (accessed December 18, 2020); Molly Hennessy-Fiske, “Medical Screenings Are the Latest U.S. Tactic to Discourage Asylum Seekers, Advocates Say,” *Los Angeles Times*, December 10, 2019, <https://www.latimes.com/world-nation/story/2019-12-10/migrants-returned-to-mexico-barred-from-u-s-courts> (accessed September 7, 2020).

Lack of Access to Counsel

Deportation proceedings are a high-stakes process that affords minimal protection at the best of times. US immigration law is complicated, particularly with respect to asylum, and immigration court filing requirements afford little latitude to people who represent themselves. Unlike defendants in criminal cases, people facing deportation, including children, are not entitled to have lawyers appointed for them if they cannot afford one.⁵⁶ The network of nonprofit legal services organizations and pro bono or low-cost private attorneys who provide representation in deportation cases cannot meet the need. Particularly in asylum cases, having legal representation can significantly increase people’s chances of success.⁵⁷ People who do not win asylum under this difficult process have been returned to death or other serious harm.⁵⁸

People sent to Mexico under the MPP face additional formidable obstacles. Few of the pro bono or low-cost legal service providers represent people in the MPP. For those that do, the time and expense involved in crossing the border, difficulties in finding private spaces to interview clients, and safety concerns can significantly limit their time with clients, impeding their ability to prepare cases. Even mundane tasks such as copying documents or getting signatures on forms become onerous when lawyers and clients are separated by an international border.⁵⁹

⁵⁶ Instead, the Immigration and Nationality Act states that people facing deportation “shall have the privilege of being represented (at no expense to the Government)” by the counsel of their choice. Immigration and Nationality Act § 292, codified at 8 U.S.C. § 1362.

⁵⁷ A review by the US Government Accountability Office (GAO) of outcomes of completed asylum applications decided between May 2007 and FY 2014 found that for asylum claims made in deportation proceedings between May 2007 and September 2014, applicants who were represented were granted asylum at a rate 1.8 times higher than unrepresented applicants. US Government Accountability Office, *Asylum: Variation Exists in Outcomes of Applications Across Immigration Courts and Judges*, GAO Report GAO-17-72, November 2016, p. 33, <https://www.gao.gov/assets/690/680976.pdf> (accessed December 18, 2020). But of the 530 MPP cases in which asylum or withholding of removal was granted through November 2020, represented applicants were only slightly more likely than unrepresented applicants to receive relief. TRAC Immigration, Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings” (data through November 2020), <https://trac.syr.edu/phptools/immigration/mpp/> (accessed December 22, 2020) (select “initial filing” measure, “month and year” graph time scale, “all” hearing locations, “outcome,” and sort by “grant relief” and “represented” status). These outcomes for MPP cases may be explained in part by marked disparities between immigration courts, another factor highlighted by the GAO report, and by new restrictions on access to asylum imposed by the Trump administration, as discussed in Section V. The El Paso immigration court, which received one-third of the MPP caseload, has one of the highest asylum denial rates in the country. See TRAC Immigration, “Asylum Decisions Vary Widely Across Judges and Court—Latest Results,” January 13, 2020, <https://trac.syr.edu/immigration/reports/590/> (accessed October 16, 2020).

⁵⁸ Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse*, February 2020, <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and>.

⁵⁹ See also Human Rights Watch, “*We Can’t Help You Here*,” pp. 33-35.

“Access to clients in Mexico is always difficult,” Luis Gonzalez, a senior staff attorney with Jewish Family Service of San Diego, told Human Rights Watch, describing problems with getting permission to visit certain shelters and, for those living in private accommodation, the risks of meeting where they live. “It’s difficult to walk into people’s homes. These areas are not the safest, and people coming from the US are readily identified. If we go into some neighborhoods, we put everyone in the house at risk,” Gonzalez said, explaining that any perceived US connection carries a risk of extortion and kidnapping.⁶⁰

Some of these barriers could be mitigated in part by orientation sessions and the opportunity to meet with lawyers individually in court prior to initial hearings, initiatives that have long been in use in immigration courts across the country and in family immigration detention centers. In fact, until June 2019 in the El Paso immigration court, pro bono attorneys and other trained volunteers could meet with people on the day of their hearings to go over their case, assist them with completing asylum applications, and provide translations of documents. But the court suspended these activities that month.⁶¹ Similarly, when Kennji Kizuka of Human Rights First observed MPP hearings in the San Diego immigration court, lawyers told him that the court did not permit legal service organizations or pro bono attorneys to meet with people seeking asylum or to provide orientation sessions.⁶² The Laredo and Brownsville tent courts also did not permit orientation sessions or the opportunity for people to meet lawyers who did not already represent them, observers found.⁶³

DHS policy documents state that people who attend MPP hearings will be available to speak with their lawyers for one hour before their case is called.⁶⁴ In practice, lawyers who

⁶⁰ Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020.

⁶¹ Julián Aguilar, “In El Paso Court, Migrants No Longer Get Legal Advocates or Pre-Hearing Briefings on Their Rights,” *Texas Tribune*, July 11, 2019, <https://www.texastribune.org/2019/07/11/el-pasos-backlogged-immigration-court-halts-assistance-asylum-seekers/> (accessed October 16, 2020). See also Human Rights Watch, “US Move Puts More Asylum Seekers at Risk.”

⁶² Human Rights Watch remote interview with Kennji Kizuka, Senior Researcher and Policy Analyst, Refugee Protection, Human Rights First, October 21, 2020.

⁶³ Human Rights Watch remote interview with Alysha Welsh, Managing Attorney, Washington Office, Human Rights First, October 30, 2020. In fact, no observers at all were allowed in the tent courts until December 2019. See Michelle Hackman, “U.S. Opens Immigration ‘Tent Courts’ to Public,” *Wall Street Journal*, December 29, 2019, <https://www.wsj.com/articles/u-s-opens-immigration-tent-courts-to-public-11577620801> (accessed November 1, 2020).

⁶⁴ US Immigration and Customs Enforcement, Memorandum from Nathalie R. Asher, Acting Executive Associate Director, to Field Office Directors, Enforcement and Removal Operations, “Migrant Protection Protocols Guidance,” February 12, 2019, p. 3, <https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2019/ERO-MPP-Implementation-Memo.pdf> (accessed December 19, 2020).

represent clients in MPP hearings often have far less time to meet with them on the day of the hearing. The American Immigration Lawyers Association heard from its members that contractors at the Laredo tent courts “frequently limit the attorney-client preparation time to 30 or 45 minutes.”⁶⁵ In some cases, lawyers cannot meet their clients at all: when Denise Gilman, a law professor at the University of Texas at Austin, tried to observe MPP hearings in El Paso in November 2019, she spoke to a lawyer who told her that the court personnel required attorneys to wait in the building lobby instead of in the courtroom or on the floor where the court is located, making it logistically impossible to see clients at all.⁶⁶

Without the benefit of legal representation or orientation sessions, immigration court hearings are often bewildering. For many people, the experience of attending the first hearing is disconcerting because they expect to be able to tell the judge why they left their home countries. Instead, they receive a 12-page asylum application in English, a directive to complete the application in English and provide English translations of all supporting documents, and another court date, the sole purpose of which is to receive their completed application and set an individual hearing to consider it. Many of those Human Rights Watch interviewed had attended four or five such initial, or “master calendar,” hearings—repeated preliminary appearances, each requiring a full-day trip across the border, that could have been avoided by legal representation or orientation sessions.

Impediments Caused by Video Hearings

Video hearings create further barriers for people’s ability to understand the proceedings and effectively convey the elements of their claims. For hearings in Brownsville and Laredo, Texas, where DHS set up temporary “tent courts,” the judge and the DHS lawyer are physically located in Harlingen, El Paso, Port Isabel, or San Antonio.⁶⁷ Some of the judges who hear MPP cases assigned to El Paso are based in Fort Worth and also appear by video.

⁶⁵ AILA, “Policy Brief: Questions Remain After AILA Joins Laredo Tent Court Tour,” January 30, 2020, p. 4.

⁶⁶ Human Rights Watch remote interview with Denise Gilman, September 21, 2020; Denise Gilman, Notes from Visit to El Paso Immigration Court, November 4, 2019, submitted in support of Urgent Request for Precautionary Measures, *J.L.A.M. et al.* (Inter-American Commission on Human Rights) (on file with Human Rights Watch).

⁶⁷ Human Rights Watch telephone interview with Alysha Welsh, October 30, 2020; AILA, “Policy Brief: Public Access to Tent Courts Now Allowed, But Meaningful Access Still Absent,” January 10, 2020, p. 2, <https://www.aila.org/advo-media/aila-policy-briefs/public-access-tent-courts-allowed-not-meaningful> (accessed July 14, 2020).

In a submission to the Inter-American Commission on Human Rights, the University of Pennsylvania Law School’s Transnational Legal Clinic and the University of Texas School of Law’s Immigration Clinic described video proceedings in the tent courts as “distancing and dehumanizing,” observing:

[T]he Laredo and Brownsville facilities are not really courts at all. In the facilities themselves, there are no Immigration Court personnel available. The Department of Homeland Security attorneys, the immigration judges, and even the interpreters, are all in San Antonio or Harlingen. The government employees located at the facility are responsible only for immigration enforcement. In effect, the facility is a temporary detention center, run by immigration enforcement officers, to which asylum seekers must present themselves in order to access court proceedings conducted by video.

[A]sylum seekers take turns at a small table in the front of the room with two chairs that face a giant television screen with video showing the immigration judge and interpreter in San Antonio. The microphone rests on the table, so sound is easily accidentally muffled. The video cuts out approximately once every forty minutes, and all communication between the facility in Laredo and the court in San Antonio is lost at such moments.⁶⁸

Inaccurate Notices

Most of the notices viewed by Human Rights Watch listed incorrect addresses for the person facing deportation, meaning that the immigration court had no reliable way to alert people of changes to the date and time of their hearing. Alternatively, some notices listed

⁶⁸ Letter from Denise Gilman, Co-Director, Immigration Clinic, University of Texas School of Law, and Sarah H. Paoletti, Director, Transnational Legal Clinic, University of Pennsylvania School of Law, to Dr. Paulo Abrão, Executive Secretary, Inter-American Commission on Human Rights, January 5, 2019, pp. 11-12, <https://law.utexas.edu/wp-content/uploads/sites/11/2020/02/2020-02-IC-IACHR-Hearing-Request-MPP.pdf> (accessed December 19, 2020).

the person’s address as “Facebook,” according to news reports.⁶⁹ Commenting on such practices, the immigration judge noted in one case reviewed by Human Rights Watch:

DHS does not provide an actual address for the respondents. The address provided by DHS in this case, and in virtually all MPP cases, merely lists the respondents’ address as *domicilio conocido*, Tijuana, Baja California, Mexico or *domicilio conocido*, Mexicali, Baja California, Mexico. This is the only “address” obtained by DHS in the vastly overwhelming majority of MPP cases. The address is completely inadequate. The term *domicilio conocido* literally translates as “known domicile.” It generally is used as a mailing address where the recipient lives in a small village where the postal worker also knows where everyone lives. However, in cities the size of Tijuana and Mexicali there is no reasonable possibility that correspondence sent to respondents at *domicilio conocido* will actually be received by respondents, particularly since respondents are not Mexican and have no prior residence in Mexico.⁷⁰

New guidance issued by CBP in December 2020 advises agents to “affirmatively inquire” if a person has an address in Mexico and notes that “DHS is obligated to record the [person’s] answer” on the notice.⁷¹

⁶⁹ Adolfo Flores, “Border Patrol Agents Are Writing ‘Facebook’ as a Street Address for Asylum-Seekers Forced to Wait in Mexico,” *BuzzFeed News*, September 26, 2019 (updated September 27, 2019), <https://www.buzzfeednews.com/article/adolfoflores/asylum-notice-border-appear-facebook-mexico> (accessed October 16, 2020); Debbie Nathan, “U.S. Border Officials Use Fake Addresses, Dangerous Conditions, and Mass Trials to Discourage Asylum-Seekers,” *The Intercept*, October 4, 2019, <https://theintercept.com/2019/10/04/u-s-border-officials-use-fake-addresses-dangerous-conditions-and-mass-trials-to-discourage-asylum-seekers/> (accessed October 16, 2020).

⁷⁰ Decision of the Immigration Judge, Immigration Court, San Diego, September 12, 2019, pp. 4-5 n.1 (on file with Human Rights Watch; name and file number withheld). Similarly, for those whose cases were terminated by immigration judges for defects in Notices to Appear, discussed below in this section, and then appealed by DHS, the absence of an address means that there is no reliable way for the Board of Immigration Appeals or the immigration court to notify people if their case is reopened. “If the BIA remands, I don’t know how people will be notified. DHS documents listed a lot of addresses as ‘*domicilio conocido*,’” Luis Gonzalez said. Human Rights Watch remote interview with Luis Gonzalez, September 28, 2020.

⁷¹ US Customs and Border Protection, “Supplemental Migrant Protection Protocols Guidance: Initial Document Service,” December 7, 2020, p. 1, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Dec/Supplemental-Migrant-Protection-Protocols-Guidance-Initial-Document-Service.pdf> (accessed December 16, 2020).

In some cases, people received notices listing the wrong date for their immigration court hearing.⁷² Because the likely consequence of not appearing at the exact date and time of an immigration court hearing is a deportation order issued in absentia, this defect is particularly serious.

These were not the only obvious errors or omissions we saw on documents prepared by CBP agents. In one of many examples, when we read Magdalena I., a 27-year-old Ecuadorian woman, the papers CBP gave her before placing her in the MPP, she stopped us when we told her that according to the record of her interview, she had told agents she entered the United States in San Luis, Arizona. She told us she could not have provided that answer because she did not know where she crossed the border. The documents also stated that her 4-year-old daughter left Ecuador “to look for work.”⁷³

Procedural Short-Circuits

In many cases, DHS employed a procedural sleight of hand to deprive people of the opportunity for release. To accomplish this, immigration agents did not completely fill out Notices to Appear, the document they prepare upon apprehension to initiate deportation proceedings. The agent who prepares a Notice to Appear should select one of three options to indicate whether the person being charged is “an arriving alien” (for example, someone who requests asylum at an official border crossing), is “present in the United States without admission” (after an irregular entry), or was “admitted but . . . removable for specified reasons” (such as overstaying a visa or committing a crime). The distinction is important because people who are apprehended within the United States, including people who entered irregularly, are generally eligible for bond hearings to determine if they can be released upon the deposit of a sum sufficient to guarantee their appearance at their immigration court hearings.⁷⁴ In addition, only “arriving aliens” are subject to return to

⁷² Women’s Refugee Commission, *Chaos, Confusion, and Danger: The Remain in Mexico Program in El Paso*, 2019, p. 5, <https://s333660.pcdn.co/wp-content/uploads/2020/04/Chaos-confusion-and-danger-Remain-in-Mexico.pdf> (accessed December 18, 2020).

⁷³ Record of Sworn Statement in Administrative Proceedings, Yuma Border Patrol Station, November 14, 2019, p. 2 (on file with Human Rights Watch; name and file number withheld).

⁷⁴ See Immigration and Nationality Act § 236, codified at 8 U.S.C. § 1226. People “arriving” in the United States and placed in expedited removal proceedings are subject to mandatory detention, meaning that they are ineligible for release on bond. INA § 235(b)(1)(B)(iii)(IV), codified at 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Bond eligibility for those who are transferred from expedited removal to full removal proceedings is currently being litigated. See *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019) (overruling B.I.A. precedent and holding that a person who is transferred from expedited removal proceedings to full removal

Mexico pending resolution of their deportation proceedings.⁷⁵ Instead, DHS left these fields blank on the initial notices and then amended the notices at people’s first MPP hearing to state that they were “arriving aliens,” on the theory that they had “arrived” in the United States at the time they crossed the border to attend their hearing.

This practice is both disingenuous and illogical. The government created the very circumstances it then used to deny rights: if it did not send people to Mexico under the MPP, they would not have to cross the border to attend their hearings. In addition, for those whose initial entry was irregular, that fact is the basis for the initiation of deportation proceedings against them, and the amended notices Human Rights Watch viewed did not alter the descriptions in the original notices detailing dates and places of alleged irregular entry. In fact, the documents Human Rights Watch reviewed in cases where DHS issued amended notices contained detailed information about individuals’ apprehension within the United States, often noting the exact longitude and latitude where Border Patrol agents made the apprehension.⁷⁶ As one immigration judge observed, people “cannot be both arriving aliens and aliens present without admission or parole. These are mutually exclusive categories.”⁷⁷

In other cases, immigration agents issued inaccurate Notices to Appear, with the same result that people were ineligible for release on bond. María Q. and her family entered without inspection near Yuma, Arizona, and were in the United States when CBP agents apprehended them. Nonetheless, their charging documents issued in Yuma alleged, “You are an arriving alien.”⁷⁸

Similarly, some immigration judges treated each court appearance as an “arrival” in the United States as the basis for finding that people were ineligible for asylum. These rulings

proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond); *Padilla v. U.S. Immigration and Customs Enforcement*, Order on Motions re Preliminary Injunction, No. C18-928 MJP (W.D. Wash. July 2, 2019), *affirmed in part and vacated and remanded in part*, *Padilla v. Immigration and Customs Enforcement*, No. 19-35565 (9th Cir. March 27, 2020).

⁷⁵ Section 235(b)(2)(C) of the Immigration and Nationality Act, the statutory authority DHS relied on to create the MPP, provides, “In the case of an alien . . . *who is arriving* on land . . . from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 240” (emphasis added).

⁷⁶ For example, Record of Deportable/Inadmissible Alien, San Luis, Arizona, October 12, 2019 (on file with Human Rights Watch; name and file number withheld) (noting “arrest coordinates”).

⁷⁷ Decision of the Immigration Judge, San Diego Immigration Court, September 19, 2019 (name and file number withheld), AILA Doc. No. 19102440 (posted October 24, 2019).

⁷⁸ Human Rights Watch interview with María Q., Tijuana, November 24, 2019.

relied on the third-country asylum transit bar, which provided that a person was ineligible for asylum in the United States if they had travelled through another country without seeking protection there.⁷⁹ Until the end of March, when MPP hearings were postponed in response to the pandemic, two of the four judges hearing MPP cases in El Paso were interpreting the transit bar to apply to people who entered the United States before July 16, 2019, the date the bar took effect, because they crossed the border after that date to attend immigration court hearings.⁸⁰ (A federal district court vacated the bar at the end of June 2020).⁸¹

In some instances, immigration judges treated humanitarian visas issued in Mexico as evidence of “firm resettlement,” another legal bar to asylum, lawyers told Human Rights Watch.⁸² In fact, Mexican humanitarian visas are temporary; they do not afford permanent status in Mexico.⁸³

We heard some accounts of people not allowed to cross the border to attend their hearing even though they arrived well before the actual time of their hearing. “They won’t be processed by DHS if they show up a few minutes after the time they were told to appear at the port of entry; 4:00 a.m. if they have a morning hearing or 9:00 a.m. if their hearing is in the afternoon,” Luis Gonzalez, of the Jewish Family Service of San Diego, said of the practice at the San Ysidro border crossing. He added, “The court notice only lists the time of the hearing itself, so that confuses people.”⁸⁴ The border crossing time appears on a separate form that is sometimes issued only in English, Human Rights Watch saw when we reviewed the notices and other papers people received when they were placed in the MPP.

⁷⁹ The third-country asylum bar is discussed more fully in Section V.

⁸⁰ Human Rights Watch telephone interview with Nicolas Palazzo, June 16, 2020.

⁸¹ *Capital Area Immigrants’ Rights Coalition v. Trump*, Civil Action No. 19-2117 (D.D.C. June 30, 2020).

⁸² Human Rights Watch telephone interviews, July 2020.

⁸³ Ley de Migración [Immigration Law], art. 53(V), *Diario Oficial de la Federación*, May 25, 2011, as amended, *Diario Oficial de la Federación*, April 13, 2020, http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_130420.pdf (accessed October 15, 2020). See also Reglamento de la Ley de Migración [Regulations for the Immigration Law], art. 137, *Diario Oficial de la Federación*, September 28, 2012, as amended, *Diario Oficial de la Federación*, May 23, 2014, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LMigra.pdf (accessed October 15, 2020). For an overview of Mexican law and practice on the issuance of humanitarian visas, see Human Rights Watch, *Closed Doors: Mexico’s Failure to Protect Central American Refugee and Migrant Children*, 2016, pp. 74-79, <https://www.hrw.org/report/2016/03/31/closed-doors/mexicos-failure-protect-central-american-refugee-and-migrant>.

⁸⁴ Human Rights Watch remote interview with Luis Gonzalez, September 28, 2020.

The attorney general has limited the authority of immigration judges to order continuances, which postpone hearings to a later date.⁸⁵ More recently, the Board of Immigration Appeals has ruled that immigration judges may not terminate proceedings even if immigration officials list incorrect addresses and leave other sections of the charging document blank.⁸⁶ The board’s decisions were a response to the practice of some judges in the San Diego immigration courts of rescheduling or terminating cases if the charging documents were inaccurate or incomplete.

Other immigration courts that handle MPP cases did not follow the practice of the San Diego immigration judges. Cindy Woods, a managing attorney with Texas RioGrande Legal Aid, commented, “In Laredo, judges have always issued in absentia orders” when a person failed to appear, regardless of the information on the Notice to Appear. She knew of only one case in which a judge ordered a continuance in a case where the individual facing deportation was not in court; in that case, a lawyer explained the reasons for the person’s failure to appear.⁸⁷

Any deportation order, including one issued in absentia, can be “reinstated,” meaning that it can be carried out immediately as if it had just been issued, if the person subsequently returns to the United States irregularly.⁸⁸ This summary procedure precludes access to asylum (although a person subject to reinstatement can seek withholding of removal under the stricter standard for that form of protection) and is not subject to administrative review.⁸⁹ A deportation order can only be reinstated if the person reenters “after having been removed or having departed voluntarily, under an order of removal”⁹⁰ A person who is outside the country when a deportation order is issued, as in the case of most

⁸⁵ *Matter of L- A- B- R-*, 27 I. & N. Dec. 405 (A.G. 2018).

⁸⁶ See *Matter of Rodriguez*, 27 I. & N. Dec. 726 (B.I.A. 2020); *Matter of Herrera-Vasquez*, 27 I. & N. Dec. 825 (B.I.A. 2020). In each of these cases, as in many others reviewed by Human Rights Watch, CBP agents listed the person’s address as “*domicilio conocido*” (“residence known”). In addition, in *Matter of Herrera-Vasquez*, immigration agents had not completed a “classification checkbox” specifying whether the government was charging the person as an “arriving alien,” an “alien present in the United States who has not been admitted or paroled,” or a person who was “admitted to the United States, but [is] removable for the reasons stated below.” 27 I. & N. Dec. at 828 & n.2. The classification affects whether the person is eligible for release on bond and, arguably, whether they should be placed in the MPP. See *Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1084-85 (9th Cir. 2020), *stayed*, 140 S. Ct. 1564 (2020).

⁸⁷ Human Rights Watch remote interview with Cindy Woods, September 11, 2020.

⁸⁸ See Immigration and Nationality Act § 241(a)(5), codified at 8 U.S.C. § 1231(a)(5).

⁸⁹ 8 C.F.R. §§ 208.31, 241.8(d). See *Matter of L- M- P-*, 27 I. & N. Dec. 265 (B.I.A. 2018); *Matter of G- N- C-*, 22 I. & N. Dec. 281 (B.I.A. 1998).

⁹⁰ Immigration and Nationality Act § 241(a)(5).

people issued in absentia orders while in the MPP, has not left the United States “under an order of removal” and should not be subject to reinstatement of removal.⁹¹ Nonetheless, the government has reinstated the removal orders of at least some people who made irregular entries after they were ordered deported in absentia while in the MPP, lawyers told Human Rights Watch.⁹²

Fake Court Dates

Well before the board restricted immigration judges’ authority to terminate proceedings, DHS responded to orders of termination by sending people to Mexico even though the immigration judge had dismissed the charges against them and closed their cases, meaning that they were no longer in deportation proceedings. Because Mexican immigration authorities do not accept people transferred by US immigration authorities unless they have an immigration court date, DHS issued notices with court dates that were fictitious. Some of these notices explicitly—and falsely—stated, “At your last court appearance, an immigration judge ordered you to return to court for another hearing.”⁹³ Other notices misleadingly stated that “an immigration judge will determine whether you are removable from the United States,” referred to “the date of your hearing before an immigration judge,” and gave a date and time to arrive at a port of entry “to ensure that you have time to be processed, transported to your hearing and meet with [your] attorney or representative.”⁹⁴

⁹¹ See, for example, American Immigration Council and National Immigration Project, “Reinstatement of Removal Practice Advisory,” May 23, 2019, p. 2, https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/reinstatement_of_removal.pdf (accessed December 18, 2020).

⁹² Human Rights Watch remote interview with Cindy Woods, July 7, 2020.

⁹³ Gustavo Solis, “CBP’s Explanation for Writing Fake Court Dates on Migrants’ Paperwork Doesn’t Make Sense, Lawyers Say,” *San Diego Union-Tribune*, November 13, 2019 (quoting CBP-issued notice), <https://www.sandiegouniontribune.com/news/immigration/story/2019-11-13/cbps-explanation-for-writing-fake-court-dates-on-migrants-paperwork-doesnt-make-sense-lawyers-say> (accessed October 16, 2020). See also Hamed Aleaziz, “US Border Officials Are Issuing Fake Court Notices to Keep Out Immigrants Who Have Won Asylum,” *BuzzFeed News*, December 10, 2019 (reproducing CBP-issued notice with identical language in a case in which a person had in fact been granted asylum), <https://www.buzzfeednews.com/article/hamedaleaziz/immigrants-asylum-turned-away-us-border> (accessed October 16, 2020); Joel Rose, “This Migrant Won in Immigration Court, and the U.S. Sent Him to Mexico Anyway,” NPR, January 9, 2020 (identical language used in notice issued by CBP in another case in which a person had won asylum), <https://www.npr.org/2020/01/09/794587498/this-migrant-won-in-immigration-court-and-the-u-s-sent-him-to-mexico-anyway> (accessed October 16, 2020).

⁹⁴ For example, Migrant Protection Protocols Initial Processing Information, n.d. (on file with Human Rights Watch; name and file number withheld) (undated notice issued by CBP before return to Mexico after termination of proceedings).

In one such case, Clara P., a 25-year-old Honduran woman, told us that after her immigration hearing in September 2019, DHS held her for seven days and then returned her to Mexico.⁹⁵ The papers she showed us included an order from the immigration judge terminating proceedings and a CBP-issued notice instructing her to return to the port of entry in December 2019 to be “transported to your hearing.”⁹⁶ During our interview, Human Rights Watch called EOIR’s immigration case status information number and confirmed that she had no court hearing scheduled on that day or any other.

Others we spoke with in Tijuana, including Santiago F., a 30-year-old man from Guatemala, were also given fictitious court dates and returned to Mexico after their deportation proceedings were terminated.⁹⁷

After immigration advocates met with Mexican immigration officials to explain that a termination of the case meant that the person was no longer facing deportation and would not have another immigration court hearing, INM began refusing to accept people with termination orders, said Luis Gonzalez, the attorney with Jewish Family Service of San Diego. “But the people who were sent back before that were stuck, with no recourse unless DHS counsel appealed the termination order,” he told us.⁹⁸

In some instances, DHS returned or attempted to return people after they received asylum, apparently on the theory that the government had thirty days to appeal the asylum decision.⁹⁹ In November 2019, Kennji Kizuka, a senior staff attorney with Human Rights First, met a Venezuelan man in Nuevo Laredo whom DHS had returned to Mexico the previous month after an immigration judge granted the man asylum.¹⁰⁰ Kizuka identified 16

⁹⁵ Human Rights Watch interview with Clara P., Tijuana, November 23, 2019.

⁹⁶ Migrant Protection Protocols Initial Processing Information notice issued to Clara P., September 20, 2019.

⁹⁷ Human Rights Watch interview with Santiago F., Tijuana, November 23, 2019.

⁹⁸ Human Rights Watch remote interview with Luis Gonzalez, September 28, 2020.

⁹⁹ DHS policy guidance on the MPP claims that the government has the authority to send people to Mexico even if an immigration judge grants them asylum, as long as the government has reserved the right to appeal: “If the immigration judge continues proceedings or enters an order upon which either party reserves appeal, ERO [Enforcement and Removal Operations] will transport the alien back to the POE [port of entry], whereupon CBP officers will take custody of the alien to return the alien to Mexico to await further proceedings.” US Immigration and Customs Enforcement, “Migrant Protection Protocols Guidance,” February 12, 2019, p. 2.

¹⁰⁰ Human Rights Watch remote interview with Kennji Kizuka, October 21, 2020. See also Kennji Kizuka (@KennjiKizuka), Twitter, November 6, 2019 (5:58 p.m. EST), <https://twitter.com/KennjiKizuka/status/1192214749381046272> (accessed July 16, 2020).

other cases in which DHS sent people to Mexico with fake hearing notices after immigration judges granted them asylum or withholding of removal.¹⁰¹

After media reports and a December 2019 letter from more than 50 members of Congress to the DHS Office of Inspector General,¹⁰² DHS appeared to end returns to Mexico of people who won asylum or withholding, lawyers told Human Rights Watch. New DHS guidance issued in December 2020 states that ICE “will determine whether to detain or release the alien into the United States”—but no longer claims the authority to keep the person in the MPP and return them to Mexico—in cases where a person has received a grant of asylum or withholding of removal and the government has reserved the right to appeal the immigration judge’s decision.¹⁰³

Detention in Cold, Overcrowded Holding Cells

After their initial entry, whether irregularly or at a border station, people often spend a night or more—in some cases several weeks—in CBP holding cells. These cells are often uncomfortably cold, and in fact migrants and CBP agents commonly refer to these cells as *hieleras*, meaning “freezers.”¹⁰⁴ When CBP agents apprehended María Q., her husband,

¹⁰¹ Human Rights Watch remote interview with Kennji Kizuka, October 21, 2020. See also Human Rights First, *Human Rights Fiasco: The Trump Administration’s Dangerous Asylum Returns Continue*, December 2019, p. 2, <https://www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf> (accessed December 18, 2020) (reporting that DHS returned four people to Mexico in November 2019 after they were granted asylum); Human Rights First, *A Year of Horrors: The Trump Administration’s Illegal Returns of Asylum Seekers to Danger in Mexico*, January 2020, p. 5, <https://www.humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf> (accessed December 18, 2020).

¹⁰² See Gustavo Solis, “CBP Agents Wrote Fake Court Dates on Paperwork to Send Migrants Back to Mexico, Records Show,” *San Diego Union-Tribune*, November 7, 2019, <https://www.sandiegouniontribune.com/news/immigration/story/2019-11-07/cbp-fraud> (accessed October 16, 2020); Gustavo Solis, “CBP’s Explanation for Writing Fake Court Dates on Migrants’ Paperwork Doesn’t Make Sense, Lawyers Say,” *San Diego Union-Tribune*, November 13, 2019, <https://www.sandiegouniontribune.com/news/immigration/story/2019-11-13/cbps-explanation-for-writing-fake-court-dates-on-migrants-paperwork-doesnt-make-sense-lawyers-say> (accessed October 16, 2020); Hamed Aleaziz, “US Border Officials Are Issuing Fake Court Notices to Keep Out Immigrants Who Have Won Asylum,” *BuzzFeed News*, December 10, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/immigrants-asylum-turned-away-us-border> (accessed October 16, 2020); Joel Rose, “This Migrant Won in Immigration Court, and the U.S. Sent Him to Mexico Anyway,” *NPR*, January 9, 2020, <https://www.npr.org/2020/01/09/794587498/this-migrant-won-in-immigration-court-and-the-u-s-sent-him-to-mexico-anyway> (accessed October 16, 2020); Letter from Members of Congress to Joseph V. Cuffari, Inspector General, US Department of Homeland Security, “Cárdenas, Correa, Escobar Call for Investigation into Reports of CBP Officials Issuing Fake Court Notices to Asylees,” December 20, 2019, <https://cardenas.house.gov/media-center/press-releases/c-rdenas-correa-escobar-call-investigation-reports-cbp-officials-issuing> (accessed October 16, 2020).

¹⁰³ US Department of Homeland Security, “Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols,” December 7, 2020, p. 2. See also *ibid.*, p. 3.

¹⁰⁴ See Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells*, 2018, <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

and their three sons, ages 4, 11, and 16, near Yuma, Arizona, “we spent two days in the famous *hielera*. For me this was really bad, especially when they separated my oldest son from me. We had never been separated before. He was 16, so he went with his father. The younger boys stayed with me.”¹⁰⁵ Rosalyn G., from Cuba, spent five days in a holding cell in San Ysidro after she sought asylum at the border station.¹⁰⁶

CBP usually separates men from their children in these holding cells, and teenage boys are also held apart from their parents and younger siblings. When Salvador E. and his wife, Marla, and their five children were held in the Chula Vista Border Patrol Station for two days, Salvador asked if some of their sons could stay with him so that his wife did not have to care for all of their children. Border agents refused his request, he told us.¹⁰⁷

In addition to the time they spend in these holding cells before they are processed in the MPP and sent to Mexico, families must often spend a night or more in detention each time they appear in court. For example, Julián M. said that after he and his family had a court hearing in October, they were held in an overcrowded El Paso immigration holding cell. He told us:

The cell I was in had a capacity of 38. There was a sign. It was in English, but I understood the word “capacity,” and right next to it was the number 38. We all counted ourselves. There were 112 of us in that cell. At first there were 99. Then the guards brought 13 more. The 13 didn’t fit. We were all sleeping on the floor. An official told us to get up so everyone could fit in the cell. He had a stun gun. He threatened us with it, saying, “If you don’t get up, I’ll shoot you with the stun gun.” Of course everyone immediately got up. Nobody slept that night.¹⁰⁸

In a similar account, Santiago F., a 30-year-old from Guatemala, told us that after each of the court hearings he and his 5-year-old son attended in late 2019 in San Diego, they spent three nights in immigration holding cells. After one hearing, immigration officials

¹⁰⁵ Human Rights Watch interview with María Q., Tijuana, November 24, 2019.

¹⁰⁶ Human Rights Watch interview with Rosalyn G., Tijuana, November 25, 2019.

¹⁰⁷ Human Rights Watch interview with Salvador E., Tijuana, November 24, 2019.

¹⁰⁸ Human Rights Watch interview with Julián M., Ciudad Juárez, January 7, 2020.

inexplicably transported him and his son to Calexico and held them there overnight before sending them across the border to Mexicali. Santiago had to buy bus tickets for them to travel back to their shelter in Tijuana.¹⁰⁹

People also described unusually lengthy periods of detention after immigration judges terminated their deportation proceedings, meaning that they were no longer facing deportation. For instance, after an immigration judge terminated proceedings in Karina E.'s case, she spent five nights in detention.¹¹⁰ Similarly, when the judge terminated proceedings against Clara P., a 25-year-old woman from Honduras, she and her two-year-old son spent seven days in detention. Her son did not eat the food they were given while they were locked up and lost weight during the time they were held, she told us.¹¹¹

We heard many other accounts of children showing significant anxiety, intense fear, and changes in behavior as immigration court appointments approach, changes that parents linked to the distress their children suffered during their time in holding cells. These parents told us they felt they were forced to choose between subjecting their children to trauma and missing their immigration court hearings.

Abusive Immigration Agents

We heard numerous accounts of abusive treatment by immigration agents. “A man, an agent, took us to the cells, banging on the doors. ‘Sit down there on the floor,’ he said. He used really racist words, really strong words. ‘You’re not in your country,’ he said. The way he spoke was really rude. I felt bad when I heard him say those things,” Henrique C., from Honduras, said of his first day in a McAllen holding cell in August 2019. He said the guards were worse in the San Diego holding cell where he spent another four days before being sent to Tijuana. “I saw an official—there was a boy who wanted another cookie. The official almost smacked the boy in the face with the door when he slammed it shut.”¹¹²

In another example, while Blanca M. and her family were in immigration holding cells after their second court appearance, in October 2019, her baby fell seriously ill. At first, she

¹⁰⁹ Human Rights Watch interview with Santiago F., Tijuana, November 23, 2019.

¹¹⁰ Human Rights Watch interview with Karina E., Tijuana, November 26, 2019.

¹¹¹ Human Rights Watch interview with Clara P., Tijuana, November 23, 2019.

¹¹² Human Rights Watch interview with Henrique C., Tijuana, November 26, 2019.

said, the immigration agents refused to listen to her when she asked for medical attention. “They slammed the door in my face. The way they reacted was cruel,” she said. She eventually persuaded agents to arrange for the baby to be taken to the hospital.¹¹³

Others told us that guards threatened to detain them longer if they complained about their treatment or were otherwise seen to be noncompliant. Wendy G., 32, from Honduras, was held in a *hielera* with her 12-year-old daughter and 10 and 8-year-old sons in August and again in September after each of her court hearings. “It was really cold both times,” she said. “Some of the guards shouted at us. . . . They would give us food that was still frozen. They told us we risked being locked up more days if we misbehaved.”¹¹⁴

We heard one account of immigration agents destroying documents that a family had brought with them to support their asylum claim. In that case, Nicola A., a 37-year-old Cuban woman, told us that she and her family crossed into the United States near Nogales “with the idea and intention of turning ourselves in to US immigration authorities” to seek asylum. Border Patrol agents took them to a detention center in Tucson to be processed. There, she tried to explain to an immigration agent why she and her family were seeking asylum. “We had extensive evidence and documentation of our political persecution in Cuba, including citations, fines, and arrest records from Cuban authorities. The immigration official took all of our records, and, in front of us, tore them up and threw them in the garbage,” she said.¹¹⁵

The Uneven Response to the Pandemic

Immigration courts suspended MPP cases at the end of March 2020; at this writing, MPP hearings had not resumed. In itself, the extended postponement of these cases was not unreasonable in light of the public health emergency in Texas and California. But the piecemeal nature of postponements, the erratic and often last-minute communications that announced them, and the reporting requirements DHS imposed until mid-July 2020 placed significant burdens on and were an unnecessary source of additional stress for people in the MPP.

¹¹³ Human Rights Watch interview with Blanca M., Ciudad Juárez, January 7, 2020.

¹¹⁴ Human Rights Watch interview with Wendy G., Ciudad Juárez, January 7, 2020.

¹¹⁵ Human Rights Watch interview with Nicola A., Ciudad Juárez, January 11, 2020.

Across the country, initial decisions to postpone hearings were made with no notice during the second week of March,¹¹⁶ seven days or more after the immigration judges' union, the union representing immigration trial attorneys, and the immigration bar called for the temporary closure of all immigration courts.¹¹⁷

The Executive Office for Immigration Review (EOIR) extended the closure five times before the end of 2020. Its most recent order, announced at the end of the day on July 17, the last business day before hearings would have recommenced, stating that hearings would resume only when all of the US border state reopening stages, health advisories from the State Department and the CDC, and Mexican government designations for each of its states bordering the United States reached specific levels.¹¹⁸ Assessing the challenges in fulfilling all of these criteria, the *Arizona Republic* observed, "The changes likely mean that

¹¹⁶ Some immigration courts closed in March after staff reported exposure to or contraction of Covid-19. See Executive Office of Immigration Review (@DOJ_EOIR), Twitter (March 10, 2020, 11:46 p.m. EDT), https://twitter.com/DOJ_EOIR/status/1237585757545480192 (accessed July 3, 2020); Executive Office of Immigration Review (@DOJ_EOIR), Twitter (March 23, 2020, 10:19 p.m. EDT), https://twitter.com/DOJ_EOIR/status/1242282632337068035 (accessed July 3, 2020); Executive Office of Immigration Review (@DOJ_EOIR), Twitter (March 24, 2020, 2:36 p.m. EDT), https://twitter.com/DOJ_EOIR/status/1242520585420394497 (accessed July 3, 2020).

Elsewhere, EOIR initially postponed only preliminary, or "master calendar," hearings, and then only for people not in detention, meaning that individual "merits" hearings continued for those not in detention and all hearings continued for people who were detained. On March 13, the immigration courts in Boston, Los Angeles, Newark, New York City, Sacramento, and San Francisco postponed initial ("master calendar") hearings for people not in detention through April 10; none of these courts handled MPP cases. Executive Office of Immigration Review (@DOJ_EOIR), Twitter (March 13, 2020, 11:13 p.m. EDT), https://twitter.com/DOJ_EOIR/status/1238664636188237824 (accessed July 3, 2020). On March 15, EOIR announced, "All non-detained aliens' master calendar hearings scheduled 03/16-04/10 are postponed. Usual operations for filings except Seattle. All other hearings proceeding." Executive Office of Immigration Review (@DOJ_EOIR), Twitter (March 15, 2020, 10:49 p.m. EDT), https://twitter.com/DOJ_EOIR/status/1239383175882776576 (accessed July 3, 2020).

Reporters who asked EOIR in mid-March about MPP hearings were directed to the Department of Homeland Security. Bob Moore (@BobMooreNews), Twitter (March 15, 2020, 4:14 p.m. EDT), <https://twitter.com/BobMooreNews/status/1239646317791424515> (accessed July 3, 2020).

¹¹⁷ See National Association of Immigration Judges, American Federation of Government Employees Local 511, and American Immigration Lawyers Association (AILA), "Immigration Judges, Prosecutors and Attorneys Call for the Nationwide Closure of All Immigration Courts: Position on Health and Safety of the Immigration Courts During the COVID-19 Pandemic," March 15, 2020, <https://www.naij-usa.org/images/uploads/newsroom/2020.03.15.00.pdf> (accessed July 3, 2020); AILA, "Immigration Judges, Prosecutors, and Attorneys Renew Call for Immediate Closure of All Immigration Courts," March 22, 2020, <https://www.aila.org/advo-media/press-releases/2020/close-immigration-courts> (accessed July 3, 2020).

¹¹⁸ US Department of Justice, "Department of Justice and Department of Homeland Security Announce Plan to Restart MPP Hearings," July 17, 2020, <https://www.justice.gov/opa/pr/department-justice-and-department-homeland-security-announce-plan-restart-mpp-hearings> (accessed July 18, 2020). See also Julián Aguilar, "Federal Immigration Officials Announce Plans for Resuming 'Remain in Mexico' Hearings During the Coronavirus Pandemic," *Texas Tribune*, July 17, 2020, <https://www.texastribune.org/2020/07/17/mpp-remain-in-mexico-texas-asylum-hearings-resume-coronavirus/> (accessed July 19, 2020).

The July 17 announcement also stated, "Once the criteria are met, the Departments will provide public notification at least fifteen calendar days prior to resumption of the hearings with location-specific details." "Department of Justice and Department of Homeland Security Announce Plan to Restart MPP Hearings," July 17, 2020.

migrants already waiting in Mexico will have to continue doing so for an even longer, undetermined amount of time in often precarious conditions.”¹¹⁹

The precipitous timing of some of the EOIR’s closure announcements meant that some families only learned that their hearings had been postponed after long, arduous journeys. For instance, a pregnant 22-year-old Cuban woman and her husband travelled for 10 hours on crowded buses from Nogales to Ciudad Juárez in mid-May, learning only after they arrived that hearings had again been postponed.¹²⁰

In addition, for the first several months, the procedures the agencies adopted for people to receive their rescheduled hearing dates were unnecessarily burdensome. Until May 10, DHS and EOIR instructed people to go to the border on the original date of their hearing to receive a new notice, or “tear sheet,”¹²¹ an approach that did not take into account the difficulties migrant families face to get to border stations before dawn. One man whose attorney had already given him a copy of his rescheduled hearing notice told Human Rights Watch that when he went alone to the border crossing early in the morning, without his wife and young children, to confirm the rescheduled date, CBP agents said he should have come with his entire family and told him not bringing them risked their deportation in absentia.¹²²

The agencies then instructed people to appear one month after the date of their hearings without clarifying what they should do if the day the following month fell on a weekend.¹²³ Speaking to us in June, when that instruction was in effect, Nicolas Palazzo, a lawyer with Las Americas Immigrant Advocacy Center, commented, “The vast majority of people still do not know that they are not required to go to the bridge to get a tear sheet. Logistically speaking, the lack of clear information has been a nightmare for both CBP and our

¹¹⁹ Rafael Carranza, “Asylum Hearings at US-Mexico Border Won’t Restart Until COVID-19 Criteria Met; Longer Wait Time Likely,” *Arizona Republic*, July 18, 2020, <https://www.azcentral.com/story/news/politics/immigration/2020/07/18/asylum-hearings-will-not-resume-until-new-covid-19-criteria-met-mexico-us/5463264002/> (accessed July 19, 2020).

¹²⁰ Human Rights Watch remote interview with Alexandra Miller, July 7, 2020; Curt Prendergast, “Asylum Seekers Face Changing Policies, Postponed Court Dates,” *Arizona Daily Star*, June 13, 2020 (updated September 26, 2020), https://tucson.com/news/local/asylum-seekers-face-changing-policies-postponed-court-dates/article_3dfb00a-718a-5bc7-a100-6594e88c7dca.html (accessed July 3, 2020).

¹²¹ Joint DHS/EOIR Statement on MPP Rescheduling, March 23, 2020.

¹²² Human Rights Watch telephone interview with Julián M., March 26, 2020.

¹²³ Joint DHS/EOIR Statement on the Rescheduling of MPP Hearings, May 10, 2020.

clients.”¹²⁴ And Alexandra Miller, Border Action Team managing attorney for the Florence Immigrant and Refugee Rights Project in Tucson, told Human Rights Watch in early July, “Now that people theoretically don’t have to get the tear sheets, many are going anyway because they have been misled so many times. They don’t trust CBP. They have no faith in the system.”¹²⁵

Once immigration courts reopen for MPP hearings, US authorities should allow people to cross the border on their new court dates if they bring valid photo identification and their original paperwork, attorneys told Human Rights Watch.¹²⁶

An additional concern is that asylum applications must be filed within one year of the date of arrival in the United States. People who are not represented by lawyers typically submit their asylum applications at one of their initial hearings and are unlikely to be aware that EOIR set up an electronic filing process in response to the pandemic. “There’s no information in Spanish about this. How would a pro se respondent know they could send in an application electronically, and where they should send it?” Cindy Woods asked.¹²⁷

With the latest postponement, some hearings have been rescheduled to May or June 2021, lawyers told Human Rights Watch. Commenting on her clients’ reactions to these successive delays in immigration court hearings, Constance Wannamaker, an immigration lawyer in El Paso, said, “There’s overwhelming desperation.”¹²⁸

¹²⁴ Human Rights Watch telephone interview with Nicolas Palazzo, June 16, 2020.

¹²⁵ Human Rights Watch remote interview with Alexandra Miller, July 7, 2020.

¹²⁶ Human Rights Watch telephone interview with Nicolas Palazzo, June 16, 2020.

¹²⁷ Human Rights Watch remote interview with Cindy Woods, September 11, 2020.

¹²⁸ Human Rights Watch telephone interview with Constance Wannamaker, October 2, 2020.

II. Illusory Safeguards Against Return to Harm

Mexican towns along the border with the United States can be very dangerous, especially for people whose demeanor and speech mark them as newcomers and who lack the resources to stay in hotels or in rented accommodation in safer neighborhoods. Human Rights Watch heard repeated accounts of migrant families beaten, robbed, or subjected to other serious harm in circumstances that suggest their assailants targeted them because of their national origin or ethnicity. Women and girls described actual or attempted rape or other sexual assault, also in circumstances suggesting they were targeted because they were not Mexican or because they were Indigenous or transgender. Some of those responsible for extortion and other serious abuses appear to have been Mexican government officials—police or immigration agents who identified themselves as such, wore uniforms and drove vehicles bearing official insignia, in some cases took people to police stations, and often threatened people with arrest or deportation if they did not hand over money and other valuables.¹²⁹

The “Remain in Mexico” program theoretically incorporates two safeguards against sending people to harm while they wait for their US asylum hearings. First, in purported compliance with the principle of nonrefoulement, US asylum officers are supposed to interview people who express fear of being sent to Mexico and determine if their lives or freedom would be likely threatened in Mexico. CBP is not supposed to place in the MPP those found more likely than not to face torture or persecution in Mexico. Second, CBP is supposed to consider humanitarian exceptions on a case-by-case basis—for example, high-risk pregnancies, other serious medical issues, disabilities, and transgender status.

In practice, people rarely receive the benefits of these safeguards; the standard applied is nearly impossible to meet. “The general idea US officials seem to have is that being kidnapped, raped, or extorted is to be expected,” one attorney commented.¹³⁰

¹²⁹ These accounts are consistent with the findings of previous Human Rights Watch research. See Human Rights Watch, *“We Can’t Help You Here,”* pp. 20-27; Human Rights Watch, “US Move Puts More Asylum Seekers at Risk”; Human Rights Watch, OIG Complaint.

¹³⁰ Human Rights Watch remote interview, September 2020. See also Human Rights Watch, OIG Complaint.

In fact, some families who received denials of their requests to be removed from the MPP on humanitarian grounds or based on their fear of serious harm in Mexico were subsequently abducted on their way to immigration court, attorneys told Human Rights Watch. Most then received in absentia deportation orders when they did not appear at their hearings.¹³¹ Immigration judges frequently deny motions to reopen in absentia deportation orders even when abduction was the reason for a person's failure to appear.¹³²

CBP has suspended most nonrefoulement interviews since the US government effectively closed the border to asylum seekers at the end of March 2020.

Near Impossibility of Success in Nonrefoulement Interviews

Immigration agents do not always give people nonrefoulement interviews when requested. Those who do get interviews often report that they did not have the opportunity to fully explain why they feared return to Mexico. Even if they do, the excessively high standard applied in these interviews means that very few are removed from the MPP.

According to policy guidance issued by then-DHS Secretary Kirstjen Nielsen, US immigration agents are supposed to refer anybody “who has expressed a fear of return to Mexico” for a nonrefoulement interview.¹³³ (Many people placed in the MPP told us that CBP agents often referred to these interviews as “credible fear interviews,” the term for a

¹³¹ Human Rights Watch remote interview with Cindy Woods, September 11, 2020; Human Rights Watch remote interview with Denise Gilman, September 21, 2020.

¹³² Ibid.

¹³³ US Department of Homeland Security, “Policy Guidance for Implementation of the Migrant Protection Protocols,” January 25, 2019, p. 4 n. 5, https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf (accessed December 19, 2020). Accord US Customs and Border Protection, “Supplemental Migrant Protection Protocols Guidance: MPP Amenability,” December 7, 2020, p. 1, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Dec/Supplemental-Migrant-Protection-Protocols-Guidance-MPP-Amenability.pdf> (accessed December 16, 2020); US Immigration and Customs Enforcement, “Migrant Protection Protocols Guidance,” February 12, 2019, p. 3 (requiring referral to asylum officer “If an alien subject to the MPP affirmatively states to an ERO [Enforcement and Removal Operations] officer that he or she has a fear of persecution or torture *in Mexico*, or a fear of return *to Mexico*”); US Immigration and Customs Enforcement, Memorandum from Ronald D. Vitiello, Deputy Director and Senior Official Performing the Duties of the Director to Executive Associate Directors and Principal Legal Advisor, “Policy No. 11088.1: Implementation of the Migrant Protection Protocols,” February 12, 2019, p. 2, <https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2019/ICE-Policy-Memorandum-11088-1.pdf> (accessed December 19, 2020) (an asylum officer will conduct a nonrefoulement assessment of “a third-country national who affirmatively states a fear of return to Mexico (including while in the United States to attend a removal hearing)”).

different screening process,¹³⁴ and some of the paperwork we reviewed used this term.) Immigration agents are not required to ask people if they fear being sent back to Mexico,¹³⁵ and every family we interviewed said agents did not proactively ask that question. CBP did not refer some people who asked for interviews, Human Rights Watch heard.

Moreover, many people told Human Rights Watch that the prospect of additional time in an immigration holding cell dissuaded them from asking for nonrefoulement interviews even if they experienced threats or actual harm. Julián M., a 28-year-old from Honduras, said that the second time he, his wife, and their three young daughters went to El Paso for an immigration court hearing, “we didn’t ask for a [nonrefoulement] call. If we did, we would have to spend another night in the cells.”¹³⁶

Those who have received nonrefoulement interviews described summary hearings that take place by telephone, sometimes in the middle of the night or very early in the morning. It is not clear that the official conducting the interview has access to any documents people try to show them to corroborate their accounts. In the few cases where people have lawyers, CBP has often not permitted the lawyer to attend the interview, whether in person or by telephone.

Human Rights Watch heard of very few cases in which people succeeded in persuading US authorities that they should not be sent to Mexico. Cindy Woods, a managing attorney with Texas RioGrande Legal Aid, said she and other attorneys helped prepare 50 asylum seekers for nonrefoulement interviews in Brownsville, El Paso, and Laredo before March 2020, when CBP stopped offering such interviews. “Out of these fifty, none received a

¹³⁴ People placed in expedited removal proceedings who indicate an intention to apply for asylum or a fear of persecution or torture are referred for “credible fear” interviews (or in some cases, “reasonable fear” interviews). Those placed in the MPP are not in expedited removal proceedings. On credible fear interview screenings, see Human Rights First, “Credible Fear: A Screening Mechanism in Expedited Removal,” Issue Brief, February 9, 2018, <https://www.humanrightsfirst.org/resource/credible-fear-screening-mechanism-expedited-removal> (accessed October 15, 2020).

¹³⁵ See CBP, “MPP Guiding Principles,” pp. 1-2 (referral to asylum officer if a person “affirmatively states” fear). See also US Department of Homeland Security, “Assessment of the Migrant Protection Protocols (MPP),” October 28, 2019, pp. 7, 9, https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (accessed December 19, 2020).

¹³⁶ Human Rights Watch interview with Julián M., Ciudad Juárez, January 7, 2020. See also Human Rights Watch, OIG Complaint.

positive response. Twelve didn't even get an interview when they requested one," she said.¹³⁷

Government data establishes that nonrefoulement interviews are rarely successful. A DHS assessment found that of the approximately 7,400 "fear screenings" completed by October 15, 2019, 13 percent received positive determinations.¹³⁸ An analysis of immigration court data by the news agency *Reuters* found that less than 1 percent of MPP cases had been removed from the MPP docket, meaning that they were allowed to remain in the United States while their asylum cases were pending.¹³⁹ These cases include people who were removed from the MPP for humanitarian reasons as well as those who passed nonrefoulement interviews.

In one of the few successful cases we heard of, family members and their lawyers had to go to extreme lengths to prevail and were only successful on their third attempt. In that case, a 41-year-old Guatemalan woman was kidnapped, held against her will for 12 days, sexually assaulted in front of her 10-year-old daughter, and had her legs burned with acid in Ciudad Juárez in July 2019 before she and her daughter escaped and sought asylum in the United States. Even after hearing her account, CBP agents denied her request not to return her to Mexico under the MPP. In January 2020, lawyers with Las Americas Immigrant Advocacy Center walked her to the border and helped her ask for a nonrefoulement interview with an asylum officer. That request to be allowed to remain in the United States while her asylum case was being heard was also denied. In March 2020, after a third interview, US immigration authorities released her with an ankle monitor to reunite with family members in Kansas.¹⁴⁰

¹³⁷ Human Rights Watch remote interview with Cindy Woods, September 11, 2020.

¹³⁸ Department of Homeland Security, "Assessment of the Migrant Protection Protocols," p. 5. In a more recent analysis, DHS reported that its agents had referred just over 18,000 people for nonrefoulement assessment interviews as of June 18, 2020, but it did not say what percentage of that total was successful. Department of Homeland Security, "Migrant Protection Protocols Metrics and Measures," n.d., p. 1, https://www.dhs.gov/sites/default/files/publications/migrant_protection_protocols_metrics_and_measures_o.pdf (accessed September 25, 2020).

¹³⁹ Reade Levinson, Mica Rosenberg, and Kristina Cooke, "Exclusive: Asylum Seekers Returned to Mexico Rarely Win Bids to Wait in U.S.," *Reuters*, June 12, 2019, <https://www.reuters.com/article/us-usa-immigration-returns-exclusive/exclusive-asylum-seekers-returned-to-mexico-rarely-win-bids-to-wait-in-us-idUSKCN1TD13Z> (accessed September 25, 2020).

¹⁴⁰ Email from Nicolas Palazzo, staff attorney, Las Americas Immigrant Advocacy Center, to Michael Garcia Bochenek, Human Rights Watch, July 13, 2020; Adolfo Flores, "An Asylum-Seeker Who Was Kidnapped and Tortured with Acid Begged US Border Officers Not to Send Her Back. They Did Anyway," *BuzzFeed News*, March 6, 2020 (updated March 7, 2020), <https://www.buzzfeednews.com/article/adolfoflores/asylum-seeker-tortured-mexico> (accessed July 13, 2020).

Requests for Interviews Ignored

Human Rights Watch heard repeated accounts of people denied a nonrefoulement interview even though they requested one or expressed fear of being sent to Mexico.

For example:

- Nicola A., from Cuba, said that she and her family did not receive a nonrefoulement interview even though they told immigration agents that they had been kidnapped while in transit through Mexico.¹⁴¹
- Marisela F., a 21-year-old from Honduras, told us that she did not have an interview before she was sent to Ciudad Juárez in December 2019 with her husband and their 5-year-old son even though she and her husband said they were afraid they would face harm in Mexico. While one of the papers they received before they were sent to Ciudad Juárez stated, “Attached is a credible fear worksheet,” they had no memory of ever receiving such a worksheet and had no copy of one among the papers from their legal proceedings.¹⁴²
- Maria Q., a 41-year-old from Honduras, said that when she tried to tell immigration agents she was afraid of being returned to Mexico, “They said they couldn’t do anything. They just handed us some papers. They didn’t pay attention to what we needed or what we said.”¹⁴³

Lawyers we spoke with also described cases of people who said CBP denied them an interview. For instance, Tania Guerrero, an attorney with the Estamos Unidos Asylum Project of CLINIC, told us in mid-January 2020, “People are now being denied interviews, with no reason given and no documentation of denial.” She said she had heard of more than 10 such cases in El Paso in a single week that month.¹⁴⁴ Similarly, among the plaintiffs in a lawsuit challenging the expansion of the MPP to Tamaulipas, one “was not allowed to speak at all when she was processed by CBP,”¹⁴⁵ and CBP turned away two others who crossed the bridge from Matamoros to Brownsville without an interview.¹⁴⁶

¹⁴¹ Human Rights Watch interview with Nicola A., Ciudad Juárez, January 11, 2020.

¹⁴² Human Rights Watch interview with Marisela F., Ciudad Juárez, January 10, 2020.

¹⁴³ Human Rights Watch interview with María Q., Tijuana, November 24, 2019. For additional accounts, see Human Rights Watch, OIG Complaint.

¹⁴⁴ Human Rights Watch telephone interview with Tania Guerrero, attorney, Estamos Unidos Asylum Project of the Catholic Legal Immigration Network (CLINIC), January 18, 2020.

¹⁴⁵ *Nora v. Wolf*, Plaintiffs’ Memorandum in Support of Motion for Preliminary Injunction, p. 19 n.13.

¹⁴⁶ *Ibid.*

Due Process Shortcomings

Many of those we spoke with told us that nonrefoulement interviews were cursory and that the officials conducting the interviews did not give them an opportunity to explain their fears fully. For instance, during Salvador E.'s nonrefoulement interview in San Diego, he started to explain why he was afraid for his family if they had to return to Mexico. The asylum officer asked him if the family had been attacked, tortured, or assaulted in Mexico. When he said they had not, the officer told him they did not qualify for an exemption from the MPP and ended the interview before Salvador had a chance to explain that the family had been the victims of an aborted kidnapping attempt, armed robbery, burglary, and threats on separate occasions. Salvador believed the family was targeted in each instance because they are migrants.¹⁴⁷

In another case, Héctor C. said he only spoke briefly with officials before he was sent to Mexico. “They did not ask me any real questions except whether I wanted to be returned to Honduras or Mexico. How is that even a choice?”¹⁴⁸

In fact, Héctor did not understand the purpose of this interview. When Human Rights Watch reviewed the documents he received while in immigration detention, we found a document in English stating that he had received a nonrefoulement interview. “I never knew that until now,” he replied. He continued:

You say that it says here, on page 3, that the US Border Patrol advised me of my rights? They did not. The form says I have no fear of returning to Honduras? That is a lie. I explained clearly that I am afraid of returning to Honduras and why. . . . It also says that I am not afraid to be in Mexico? That is not true. I am afraid to be in Mexico and I told them so. . . . I am afraid of being in both countries and clearly told them so, but that is not what they wrote down.¹⁴⁹

Similarly, when the American Immigration Lawyers Association (AILA) observed the Laredo tent courts in January 2020, it “heard reports that some asylum seekers were rushed

¹⁴⁷ Human Rights Watch interview with Salvador E., Tijuana, November 24, 2019.

¹⁴⁸ Human Rights Watch interview with Héctor C., Tijuana, November 24, 2019.

¹⁴⁹ Human Rights Watch interview with Héctor C., Tijuana, November 24, 2019.

through the interview process in about 10 minutes and did not feel they had the opportunity to explain their situation.”¹⁵⁰

Douglas Stephens, a former asylum officer who conducted five MPP nonrefoulement interviews in August 2019 and then refused to do any more, described the interviews in these terms:

If, and only if, an asylum-seeker expresses a fear of returning to Mexico to Customs and Border Patrol (CBP) [a]gents, CBP notifies the [Asylum] Office. Interviews are conducted telephonically that same day. Officers remain in their home office and conduct a three-way call with migrants being held in a CBP detention facility on the border and a third-party interpreter. The telephone connections are bad; the line is often fuzzy or has static, and calls are frequently dropped. The asylum seeker is denied access to legal representation during the interview and the interview will not be postponed to give the applicant an opportunity to find and confer with counsel.¹⁵¹

Consistent with Stephens’ description, the official conducted the nonrefoulement interview by telephone in every case Human Rights Watch reviewed. Nelly O., a 27-year-old Honduran woman in Ciudad Juárez, explained the procedure: “If you say you’re afraid of going back to Mexico, they put you in a cell in the *hielera* [the “freezer,” referring to an immigration holding cell]. You wait for a call. . . . When the call comes, it could be nighttime. You spend the entire night in the *hielera*.”¹⁵²

As Stephens noted, at least through November 2019, DHS did not permit lawyers to attend nonrefoulement interviews. Under the terms of a January 2019 policy memorandum, “provided the MPP assessments are part of either primary or secondary inspection, DHS is currently unable to provide access to counsel during the assessments given the limited

¹⁵⁰ AILA, “Policy Brief: Questions Remain After AILA Joins Laredo Tent Court Tour,” January 30, 2020, p. 4, <https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-questions-remain-after-aila-joins> (accessed July 5, 2020).

¹⁵¹ Written Statement of Douglas Stephens, Esq., to the US House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, November 18, 2019, p. 5, <https://www.whistleblower.org/wp-content/uploads/2019/11/111819-cover-letter-Testimony-of-Douglas-Stephens-for-the-House-Homeland-Security-Committee-FINAL.pdf> (accessed July 6, 2020).

¹⁵² Human Rights Watch interview with Nelly O., Ciudad Juárez, January 9, 2020.

capacity and resources at ports-of-entry and Border Patrol stations as well as the need for the orderly and efficient processing of individuals.”¹⁵³

By the beginning of 2020, DHS was allowing attorneys to attend interviews by telephone, but this practice was not consistent. Nearly every attorney interviewed by Human Rights Watch described cases in which DHS did not call them even though they had submitted written requests in advance and even after their clients asked CBP and the interviewing officer to contact them. For example, Alexandra Miller, a managing attorney with the Florence Project, said that CBP often failed to call her for these hearings; when they have called, it has been without notice.¹⁵⁴

New DHS guidance issued in December 2020 states that immigration officers “should continue to ensure the ability to have retained counsel participate telephonically in USCIS’s MPP *non-refoulement* assessments—where it does not delay the interview, or as required by court order.”¹⁵⁵

The publicly available DHS policy guidance states that nonrefoulement interviews are conducted by asylum officers, officials who work with US Citizenship and Immigration Services (USCIS), rather than by CBP agents.¹⁵⁶ Nevertheless, in September 2019, *The Intercept* reported that CBP agents had begun conducting these interviews instead of asylum officers.¹⁵⁷

¹⁵³ US Citizenship and Immigration Services, Policy Memorandum 602-0169: “Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols,” January 28, 2019, p. 3, <https://www.uscis.gov/sites/default/files/document/memos/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf> (accessed December 19, 2020).

¹⁵⁴ Human Rights Watch interview with Alexandra Miller, July 7, 2020.

¹⁵⁵ US Department of Homeland Security, “Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols,” December 7, 2020, pp. 1-2.

¹⁵⁶ See, for example, US Customs and Border Protection, “Supplemental Migrant Protection Protocols Guidance: MPP Amenability,” December 7, 2020, p. 1; US Department of Homeland Security, “Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols,” December 7, 2020, p. 1.

¹⁵⁷ Debbie Nathan, “An Asylum Officer Speaks Out Against the Trump Administration’s ‘Supervillain’ Attacks on Immigrants, *The Intercept*, September 13, 2019, <https://theintercept.com/2019/09/13/asylum-interview-immigration-trump/> (accessed October 13, 2020).

The standard, “more likely than not,”¹⁵⁸ is high, requiring a person to show at least a 51 percent probability of harm. In addition, asylum officers deny many cases for failure to establish that the harm a person fears is because of their race, religion, nationality, political opinion, or membership in a particular social group.

Even if the standard were lower, it is not clear how most people would corroborate their accounts. While they are detained, “their documents are locked up. They don’t have their phones with them, so if they had photos or screen shots of messages, they won’t be able to access them,” observed Constance Wannamaker, an immigration attorney in El Paso.¹⁵⁹

Decisions on nonrefoulement interviews are summary in nature. “They’ll just get one piece of paper with their name, A-number, and three check boxes,” Luis Gonzalez told Human Rights Watch.¹⁶⁰ The case files Human Rights Watch reviewed either had such check boxes or were similarly terse. For instance, Kuymi P., a 28-year-old Ecuadorian woman, showed us documents that included the notation “credible fear claim,” noting that she told Border Patrol agents that she had a fear of returning to Mexico and then stating, “CIS Asylum officer found subject’s fear of Mexico to be unreasonable.”¹⁶¹ The asylum officer’s decision cannot be appealed.

Although asylum officers are supposed to reach their decisions independently, some asylum officers have described pressure by supervisors to issue negative decisions.¹⁶² In addition, an internal DHS draft report found that “some CBP officials pressure USCIS to arrive at negative outcomes when interviewing migrants on their claim of fear of

¹⁵⁸ See US Department of Homeland Security, Policy Guidance for Implementation of the Migrant Protection Protocols, January 25, 2019, p. 3 (“a third-country national should not be involuntarily returned to Mexico pursuant to Section 235(b)(2)(C) of the INA if the alien would more likely than not be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion . . . or would more likely than not be tortured”); US Department of Homeland Security, Assessment of the Migration Protection Protocols, October 28, 2019, p. 9 (“In conducting MPP assessments, asylum officers apply a ‘more likely than not’ standard . . .”).

¹⁵⁹ Human Rights Watch remote interview with Constance Wannamaker, immigration attorney, October 2, 2020.

¹⁶⁰ Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020.

¹⁶¹ Record of Deportable/Inadmissible Alien, San Luis, Arizona, September 16, 2019, p. 4; Human Rights Watch interview with Kuymi P., Tijuana, November 25, 2019.

¹⁶² See Dara Lind, “Exclusive: Civil Servants Say They’re Being Used as Pawns in a Dangerous Asylum Program,” *Vox*, May 2, 2019, <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit> (accessed October 13, 2020); Charles Tjersland Jr., “I Became an Asylum Officer to Help People. Now I Put Them in Harm’s Way,” *Washington Post*, July 19, 2019, https://www.washingtonpost.com/outlook/i-became-an-asylum-officer-to-help-people-now-i-put-them-back-in-harms-way/2019/07/19/1c9f98fo-a962-11e9-9214-246e594de5d5_story.html (accessed October 13, 2020).

persecution or torture.”¹⁶³ The draft report also noted, “At some locations, CBP uses a pre-screening process that preempts or prevents a role for USCIS to make its determination.”¹⁶⁴

Stephens, the former asylum officer, wrote to his supervisors before resigning to say:

MPP complies with our obligations of non-refoulement in name only. . . . The current process places on the applicants the highest burden of proof available in civil proceedings in the lowest quality hearing available. This is a legal standard heretofore reserved for an immigration judge in a full hearing. However, here we are conducting the interviews telephonically, often with poor telephone connections, while at the same time denying applicants any time to rest, gather evidence, witnesses, or other relevant information and, most egregious of all denying them access to legal representation.¹⁶⁵

Absurd Outcomes

US authorities have denied requests for release from the MPP even when people offer detailed, substantiated accounts of being targeted by Mexican police because of their national origin.

In one such case, Mexican federal police stopped a Salvadoran family as they approached the bridge to seek asylum from US immigration authorities. The officers confirmed that the family was not Mexican and then escorted the family to a police station, took their phones and money, and held them for two days without food and water until a relative arranged to send a total of \$4,500 in separate wire transfers to five names the police sent her.

¹⁶³ DHS Office of Operations Coordination, “The Migrant Protection Protocols Red Team Report,” n.d., p. 6, published in Hamed Aleaziz, “Here’s the Draft Report Revealing How US Border Officials Pressured Asylum Officers to Deny Entry to Immigrants,” *BuzzFeed News*, December 4, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/asylum-officers-pressured-border-mexico-draft-dhs-report> (accessed September 25, 2020). *BuzzFeed News* made the draft available on its website with the following note: “To protect sources, BuzzFeed News has retyped the draft to resemble the original.”

¹⁶⁴ DHS Office of Operations Coordination, “The Migrant Protection Protocols Red Team Report,” p. 6.

¹⁶⁵ Written Statement of Douglas Stephens, Esq., to the US House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, November 18, 2019, p. 10. See also Molly O’Toole, “Asylum Officers Rebel Against Trump Policies They Say Are Immoral and Illegal,” *Los Angeles Times*, November 15, 2019, <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal> (accessed July 5, 2020).

The family had no doubt that the men who abducted them were federal police. “They were wearing federal police uniforms, with a Mexican flag seal on their arms,” Florencia M. said in a declaration submitted to CBP in November 2019 when the family requested a second nonrefoulement interview. She continued:

They took us to an office where there were other police. The ones that had brought us in from the street were two guys, one tall and skinny that the others called “Chief.” The other one was short, chubby, and bald. We knew they were Federal Police because they all had the uniform, they had the Mexican flag on their arm . . . they had police badges. The office had lots of computers, other police working on the computers, with a lot of signs on the walls with police things.¹⁶⁶

Her husband, Vicente O., stated, “The men who took us looked like Mexican Federal Police. They were dressed like them with black boots, black pants. They had pistols in their belts and hats that said *Federal*.”¹⁶⁷ Their 13-year-old son, Ian, gave a similar description: “They had black boots and black pants. On their sleeves was the Mexican flag and the words *Mexican Federal Police*. They wore badges on their chests and on their belts. They had pistols on their belts and small telephones on their chests.”¹⁶⁸

The family unsuccessfully tried to explain these events as the basis for their fear of return to Mexico in an initial nonrefoulement interview before they were placed in the MPP. In November 2019, when they attended their first immigration court hearing, they requested another nonrefoulement interview. The family provided detailed declarations recounting their abduction and extortion together with corroborating evidence that included an account from Florencia’s mother, whom the officers contacted to demand a ransom, along with transcripts of voice messages, photographs of text messages sent to her with details for the wire transfers, and copies of the wire transfer receipts that show ransom payments made. Human Rights Watch reviewed these documents. Their request to be removed from the MPP was again denied.¹⁶⁹

¹⁶⁶ Declaration of Florencia M., November 25, 2019 (on file with Human Rights Watch).

¹⁶⁷ Declaration of Vicente O., November 25, 2019 (on file with Human Rights Watch).

¹⁶⁸ Declaration of Ian V., November 25, 2019 (on file with Human Rights Watch). Additional reports of asylum seekers being abducted by Mexican police for a short period of time and extorted are included in Human Rights Watch, *OIG Complaint*.

¹⁶⁹ Human Rights Watch interview with Nicolas Palazzo, June 16, 2020.

Luis Gonzalez of the Jewish Family Service of San Diego added that asylum officers appeared to base denials in part on the assumption that people could be safe in Mexico if they travelled to another part of the country.¹⁷⁰ “That fails to take into consideration that they can’t easily leave border cities because they have to be back for their hearings. If they go elsewhere in the country, when it comes time for their hearings they’ll face additional expenses and risk. Being somewhere else also makes it much more difficult to find counsel,” he explained.¹⁷¹ In addition, migrants face risks throughout Mexico.¹⁷²

Humanitarian Exemptions Rarely Granted

CBP policy guidance states that “vulnerable” persons “will not be placed into MPP.”¹⁷³ The guidance does not precisely define vulnerability but notes that people with “[k]nown physical/mental health issues” are among those who are “not amenable to MPP.”¹⁷⁴

The humanitarian exemption, which would result in parole into the United States, has been erratically implemented throughout the period that the MPP has been in effect. Human Rights Watch identified numerous cases in which CBP placed people with disabilities, high-risk pregnancies, or other needs that require specialized, ongoing treatment and care in the MPP or declined to remove them from the MPP once it became aware of these needs.

¹⁷⁰ A USCIS policy memorandum instructs asylum officers to take into account “whether residing in another region of Mexico to which the alien would have reasonable access could mitigate against the alleged harm.” US Citizenship and Immigration Services, Policy Memorandum 602-0169: “Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols,” January 28, 2019, p. 4.

¹⁷¹ Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020.

¹⁷² See, for example, René Leyva-Flores, César Infante, Juan Pablo Gutiérrez, Frida Quintino-Pérez, María José Gómez-Saldivar, and Cristian Torres-Robles, “Migrants in Transit Through Mexico to the US: Experiences with Violence and Related Factors, 2009-2015,” *PLoS ONE*, vol. 14 (2019), <https://pubmed.ncbi.nlm.nih.gov/31433820/> (accessed December 19, 2020).

¹⁷³ US Customs and Border Protection, Memorandum from Todd A. Hoffman, Executive Director, Admissibility and Passenger Programs, Office of Field Operations, to Directors, Field Operations, Office of Field Operations, and Director, Field Operations Academy, Office of Training and Development, “Guidance on Migrant Protection Protocols,” January 28, 2019, p. 1, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20OFO%20Memo%201-28-19.pdf> (accessed December 19, 2020).

¹⁷⁴ US Customs and Border Protection, MPP Guiding Principles, January 28, 2019, p. 1. Also included among those “not amenable to MPP” are “[o]ther aliens at the discretion of the Port Director.” *Ibid.* See also US Customs and Border Protection, “Supplemental Migrant Protection Protocols Guidance: MPP Amenability,” December 7, 2020, p. 1. Policy guidance issued in December 2020 instructs, “In an instance where there is any doubt as to whether an alien should be included in MPP owing to a known physical or mental health issue, CBP should err on the side of exclusion.” US Department of Homeland Security, Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols, December 7, 2020, p. 4.

In one such case, Kamila A., 37, left Honduras in 2019 with her 6-year-old son, Christopher, because he had faced bullying and, she strongly suspected, sexual assault in their community. She explained, “My son is developmentally delayed. Last year an evaluation said he functions as a 3-year-old. . . . One day, I found blood in his underwear. I knew the other children mocked and harassed him because he was different, but when I saw the blood, I feared someone was sexually abusing him,” she said.

Christopher and Kamila were placed in the MPP in August 2019 and sent to Ciudad Juárez. The following month, she told us, “One of the boys at the shelter told my son to open his mouth. The boy stuck his penis in my son’s mouth. He threatened my son not to tell me or anybody else.”

After their first immigration court hearing in October 2019, “I told [CBP] about my son’s sexual assault and that he was mentally disabled, but they returned us to Mexico anyway,” she said. In December, another boy sexually assaulted Christopher. Other children also regularly mocked him. The week before we spoke to Kamila and Christopher, she said, “A group of boys were making fun of him, calling him ‘stupid’ and ‘crazy.’ They hit him on the head with a screwdriver. You can see the wound where it cut his head.”¹⁷⁵

In another case, a Brazilian family apprehended by CBP near Calexico in February 2020 showed immigration agents medical records for their 1-year-old daughter, who was born with congenital hydrocephalus, a rare condition that causes excessive cerebrospinal fluid to accumulate in brain cavities and requires specialized treatment to prevent brain damage. CBP disregarded the medical reports and the parents’ request to remain in the United States because of their daughter’s health. Instead, immigration officials placed the family in the MPP and sent them to Ciudad Juárez.¹⁷⁶

With the help of the Las Americas Immigrant Advocacy Center, the family twice sought a humanitarian exemption from the MPP. In response to their first request, made in April 2020, “the first official we saw said things like, ‘You’re not a good mother. You don’t know how to take care of your children.’ That really made me afraid,” Renata A. told Human

¹⁷⁵ Human Rights Watch interview, Ciudad Juárez, January 2020.

¹⁷⁶ Human Rights Watch telephone interview with Renata A., September 29, 2020. Human Rights Watch reviewed copies of the medical records Renata A. and her husband showed CBP.

Rights Watch, explaining that the comments made her worry that US officials would take her children from her.

The following cases are among others Human Rights Watch heard:

- A 10-year-old boy who suffers from convulsions was placed in the MPP along with his family even though “he needs specific medication on an ongoing basis,” Luis Gonzalez said, adding that the family had been unable to get adequate medical care in Mexico. When the boy and his mother attended an immigration court hearing, “we sent in a parole request and asked for a doctor to see him. We didn’t find out their parole was denied until they were back in Mexico,” Gonzalez told Human Rights Watch.¹⁷⁷
- After 7-year-old Sofia T. was sexually assaulted in the shelter where she and her mother, Juliana L., a 23-year-old from Honduras, were staying, the two made an urgent request to be paroled into the United States on humanitarian grounds. They gave a copy of a psychologist’s evaluation to CBP when they made the request at the end of December 2019.¹⁷⁸ CBP denied their request.

In September 2019, Human Rights Watch documented six cases in which persons with disabilities, four of them children, were placed in the MPP.¹⁷⁹

Lawyers and aid workers Human Rights Watch spoke with told us that these accounts were not unusual. Indeed, reports from other groups and news accounts have described people placed in the MPP even though they had epilepsy, heart conditions, other serious medical conditions, or significant psychosocial disabilities.¹⁸⁰ CBP guidance issued in December 2020 explicitly limits MPP exemptions for disabilities to people with a “significant” disability, defined as one that “substantially limits the alien from meaningfully

¹⁷⁷ Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020.

¹⁷⁸ Parole request and psychologist’s evaluation on file with Human Rights Watch.

¹⁷⁹ Human Rights Watch, “US Move Puts More Asylum Seekers at Risk.” See also Human Rights Watch, “Mexico: Risks at Border for Those with Disabilities.”

¹⁸⁰ See, for example, Human Rights First, *A Year of Horrors: The Trump Administration’s Illegal Returns of Asylum Seekers to Danger in Mexico*, 2020, p. 3; Jonathan Blitzer, “How the U.S. Asylum System Is Keeping Migrants at Risk in Mexico,” *New Yorker*, October 1, 2019 (a Honduran woman, diabetic and running out of insulin, placed in the MPP with her 12-year-old son), <https://www.newyorker.com/news/dispatch/how-the-us-asylum-system-is-keeping-migrants-at-risk-in-mexico> (accessed September 25, 2020); Adam Gabbatt, “‘Like a Child’: The Disabled Migrant Stranded and Alone in Mexico,” *Guardian*, July 28, 2019 (27-year-old Salvadoran man with a cognitive disability placed in the MPP), <https://www.theguardian.com/us-news/2019/jul/27/mexico-disabled-migrant-stranded-trump> (accessed September 25, 2020); Human Rights Watch, “*We Can’t Help You Here*,” pp. 31, 33.

participating in removal proceedings.”¹⁸¹ Even if a person is living with a disability deemed “significant” under this new guidance, they may still be placed in the MPP if they are travelling with other family members.¹⁸²

Human Rights Watch also heard accounts of people denied a humanitarian exemption even though they faced high-risk pregnancies or were near their due date and risked having no safe place to deliver their babies in Mexico. For instance, at a time when El Paso immigration authorities were typically exempting pregnant women from the MPP, they turned away a pregnant woman from Cuba. “She was seven months pregnant, but CBP told her they thought she was only four months pregnant. I had sent her medical records in advance to CBP. The records clearly showed” how far along with the pregnancy the woman was, said Constance Wannamaker, an immigration lawyer in El Paso who was representing her. CBP ultimately reversed its decision and allowed the family to enter the United States after Wannamaker persuaded government lawyers to review the file.¹⁸³ New CBP guidance issued in December 2020 states that “[p]regnancy in and of itself does not preclude” placement in or continued processing under the MPP.¹⁸⁴

In other cases, CBP denied humanitarian exemptions to people with health conditions that could not be accommodated with dignity in the circumstances in which they were living after US officials sent them to Mexico. “I had a case of a pregnant woman who had to be carried across the bridge because she had a broken foot. She couldn’t walk. She couldn’t move around by herself in the shelter. She couldn’t go to the bathroom by herself. She was relying on her 14-year-old son to take her to the bathroom. CBP wouldn’t let her in,” Wannamaker said.¹⁸⁵

People whose first language is not Spanish—for example, Guatemalans who speak K’iche’ or other Indigenous languages—frequently face discrimination and experience additional

¹⁸¹ US Customs and Border Protection, “Supplemental Migrant Protection Protocols Guidance: MPP Amenability,” December 7, 2020, p. 2.

¹⁸² “Aliens with a significant disability who are traveling with a caregiver as a part of a family unit, and who are fit for travel, as determined by medical personnel, remain amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determine otherwise.” *Ibid.*

¹⁸³ Human Rights Watch remote interview with Constance Wannamaker, October 2, 2020.

¹⁸⁴ US Customs and Border Protection, “Supplemental Migrant Protection Protocols Guidance: MPP Amenability,” December 7, 2020, p. 2.

¹⁸⁵ Human Rights Watch telephone interview with Constance Wannamaker, October 2, 2020.

hardship in Mexico,¹⁸⁶ meaning that they should also be considered for exemption from the MPP. In fact, DHS policy guidance suggests that people whose first language is not Spanish should not be placed in the MPP at all. Nevertheless, Human Rights Watch interviewed Indigenous families placed in the MPP who spoke only limited Spanish, and lawyers we spoke with described similar cases.¹⁸⁷

In one such case, CBP placed an Indigenous Guatemalan woman and her 2-year-old daughter in the MPP in August 2019 even though she did not speak Spanish. With the help of pro bono lawyers in Texas, she asked several times to be released from the MPP and allowed to reunite with her partner and their 4-year-old son, who are in the United States. Her requests for humanitarian parole have all been rejected.¹⁸⁸

Another barrier to receiving a humanitarian exemption is the apparent practice, at least in San Diego, of requiring people to apply to the branch of CBP that originally processed them. For those who entered the United States at a regular border crossing, that means seeking parole from the Office of Field Operations (OFO). “People who were processed by OFO can walk up to the port of entry to request parole. But if they entered without inspection and were picked up by the Border Patrol, OFO will tell us we have to submit the request to the Border Patrol. They’ll also tell us the people seeking parole have to present themselves in person. How is someone supposed to ask the Border Patrol for parole in person?” Gonzalez said, noting that as a practical matter the only way for somebody in Mexico to see a Border Patrol agent in person would be to make an irregular entry and then be apprehended.¹⁸⁹

We did not hear of such a requirement elsewhere. But when the Women’s Refugee Commission observed MPP hearings in El Paso in April 2019, it reported: “When asked by the immigration judge, DHS attorneys in court could not identify a process for requesting

¹⁸⁶ See generally Jennifer Medina, “Anybody Speak K’iche’ or Mam? Immigration Courts Overwhelmed by Indigenous Languages,” *New York Times*, March 19, 2019, <https://www.nytimes.com/2019/03/19/us/translators-border-wall-immigration.html> (accessed September 24, 2020).

¹⁸⁷ Human Rights Watch telephone interview with Nicolas Palazzo, staff attorney, Las Americas Immigrant Advocacy Center, June 16, 2020; Human Rights Watch remote interview with Denise Gilman, September 21, 2020. See also Human Rights Watch, “*We Can’t Help You Here*,” p. 32.

¹⁸⁸ Actualizaciones a la solicitud de MC-616-20 (Inter-American Commission on Human Rights submitted August 3, 2020), pp. 1-2; Human Rights Watch remote interview with Denise Gilman, September 21, 2020.

¹⁸⁹ Human Rights Watch remote interview, Luis M. Gonzalez, September 28, 2020.

parole, refusing to even specify which component of DHS (CBP, ICE, US Citizenship and Immigration Services (USCIS)) might be the appropriate one to submit a request to.”¹⁹⁰

Sent to Danger

Human Rights Watch and other groups have consistently documented sexual assaults and other violent attacks, armed robbery, extortion, and other crimes committed against migrants sent to Mexico since the start of the “Remain in Mexico” program. Commenting on the ways migrants are targeted, Linda Rivas, executive director of Las Americas Immigrant Advocacy Center, a nonprofit legal services organization based in El Paso, said that the perpetrators of such crimes “target people who look lost. They target the places where migrants are dropped off, like the bus station or the CAIM [the Centro de Atención a Migrantes, or Migrant Assistance Center],” a facility established by the Chihuahua state government to assist Mexican nationals and others arriving in Ciudad Juárez from the United States.¹⁹¹

Two of the cities to which CBP sends people, Matamoros and Laredo, are among the most dangerous in Mexico. Both are in the state of Tamaulipas, which the US Department of State designates as a “Level 4: Do Not Travel” zone, citing “crime and kidnapping” as one of the reasons for this designation.¹⁹² In these two cities, Human Rights Watch identified 32 separate instances of kidnapping or attempted kidnapping of asylum seekers subject to the MPP—mostly by criminal organizations but in at least one case by a Mexican federal official—between November 2019 and January 2020. At least 38 children were kidnapped

¹⁹⁰ Women’s Refugee Commission, *Chaos, Confusion, and Danger: The Remain in Mexico Program in El Paso*, 2019, p. 4, <https://s333660.pcdn.co/wp-content/uploads/2020/04/Chaos-confusion-and-danger-Remain-in-Mexico.pdf> (accessed September 17, 2020).

¹⁹¹ Human Rights Watch interview with Linda Rivas, January 5, 2020. Chihuahua’s Migrant Assistance Center (Centro de Atención a Migrantes, CAIM) is located near the Paso del Norte international bridge. See Gobierno del Estado de Chihuahua, “Inaugura Gobernador Centro de Atención a Migrantes en Juárez y encabeza sesión de Coespo,” February 26, 2019, <http://chihuahua.gob.mx/contenidos/inaugura-gobernador-centro-de-atencion-migrantes-en-juarez-y-encabeza-sesion-de-coespo> (accessed October 13, 2020).

¹⁹² The State Department’s travel advisory for Tamaulipas also states: “Organized crime activity—including gun battles, murder, armed robbery, carjacking, kidnapping, forced disappearances, extortion, and sexual assault—is common along the northern border and in Ciudad Victoria. Criminal groups target public and private passenger buses as well as private automobiles traveling through Tamaulipas, often taking passengers hostage and demanding ransom payments. Heavily armed members of criminal groups often patrol areas of the state in marked and unmarked vehicles and operate with impunity particularly along the border region from Reynosa northwest to Nuevo Laredo. In these areas, local law enforcement has limited capability to respond to crime incidents.” US Department of State, Bureau of Consular Affairs, “Mexico Travel Advisory,” September 8, 2020, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (accessed September 17, 2020).

or subject to kidnapping attempts in these incidents. In all, at least 80 people were kidnapped in these incidents, and a further 19 experienced kidnapping attempts.¹⁹³

Other groups have also documented high numbers of kidnappings and attempted kidnappings in both cities. For example, Médecins Sans Frontières (MSF) reports:

In September 2019, 43.9 percent of our patients sent to Mexico under the MPP program in Nuevo Laredo (18 of 41) had recently been kidnapped and an additional 12.2 percent (5 of 41) had been the victim of an attempted kidnapping. In October, the percentage of kidnappings among those received under the MPP program increased to 75 percent (33 of the 44 new patients).¹⁹⁴

A lawsuit filed by the ACLU named seven adults who, together with their families, were kidnapped in the state of Tamaulipas after they were placed in the MPP.¹⁹⁵ News reports relate similar accounts.¹⁹⁶ The dangers for people staying in the Matamoros camp were so high that some parents reportedly sent their children to the United States on their own.¹⁹⁷

To avoid these dangers, people placed in the MPP and sent to Nuevo Laredo often relocate to Monterrey, 220 km south, or Piedras Negras, about 175 km northwest along the border

¹⁹³ Human Rights Watch, OIG Complaint.

¹⁹⁴ Médecins Sans Frontières (MSF), *No Way Out: The Humanitarian Crisis for Migrants and Asylum Seekers Trapped Between the United States, Mexico and the Northern Triangle of Central America*, February 2020, p. 31, <https://www.msf.org/report-no-way-out-central-american-migration> (accessed December 19, 2020).

¹⁹⁵ See *Nora v. Wolf*, Plaintiff's Memorandum in Support of Motion for Preliminary Injunction, No. 1:20-cv-00993-ABJ (D.D.C. filed May 1, 2020), pp. 1-2.

¹⁹⁶ See, for example, Emily Green, "Trump's Asylum Policies Sent Him to Mexico. He Was Kidnapped 5 Hours Later by a Cartel," *Vice News*, September 16, 2019 ("VICE News spoke with multiple asylum-seekers who have been kidnapped or narrowly escaped being kidnapped upon being returned to Mexico."), <https://www.vice.com/en/article/pa7kkg/trumps-asylum-policies-sent-him-back-to-mexico-he-was-kidnapped-five-hours-later-by-a-cartel> (accessed September 29, 2020); Kevin Sieff, "When They Filed Their Asylum Claim, They Were Told to Wait in Mexico. There, They Say, They Were Kidnapped," *Washington Post*, August 9, 2019, https://www.washingtonpost.com/world/the_americas/when-they-filed-their-asylum-claim-they-were-told-to-wait-in-mexico-they-say-they-were-kidnapped/2019/08/09/6133c2d6-b95f-11e9-8e83-4e6687e99814_story.html (accessed September 29, 2020).

¹⁹⁷ See, for example, Kevin Sieff, "In Squalid Mexico Tent City, Asylum Seekers Are Growing So Desperate They're Sending Their Children over the Border Alone," *Washington Post*, November 22, 2019, https://www.washingtonpost.com/world/the_americas/in-squalid-mexico-tent-city-asylum-seekers-are-growing-so-desperate-theyre-sending-their-children-over-the-border-alone/2019/11/22/9e5044ec-0c92-11ea-8054-289aef6e38a3_story.html (accessed September 29, 2020); Priscilla Alvarez, "At Least 350 Children of Migrant Families Forced to Remain in Mexico Have Crossed over Alone to US," *CNN*, January 24, 2020, <https://www.cnn.com/2020/01/24/politics/migrant-children-remain-in-mexico/index.html> (accessed September 29, 2020).

and across the river from Eagle Pass, Texas. “Very few stay in Nuevo Laredo,” Cindy Woods, a managing attorney with Texas RioGrande Legal Aid, told Human Rights Watch.¹⁹⁸

Ciudad Juárez, located northwest of Nuevo Laredo and immediately across the border from El Paso, Texas, saw a 31 percent increase in homicides in June 2020 compared to the same month in 2019.¹⁹⁹ As a whole, the state of Chihuahua has the second-highest rate of femicides, gender-motivated killings of women, in Mexico.²⁰⁰ Human Rights Watch documented 29 reports of harm to asylum seekers in a July 2019 report,²⁰¹ and in 2020, advocates and humanitarian workers were seeing an increase in assaults on people seeking asylum in the United States. “Cuban shelters are being targeted. Central Americans are also being targeted,” Linda Rivas, executive director of Las Americas Immigrant Advocacy Center, told us.²⁰²

In one case reviewed by Human Rights Watch, Esteban G., a 36-year-old from Cuba, reported to the Chihuahua state prosecutor’s office that he saw three hooded men enter the shelter where he, his wife, and their 6-year-old daughter were staying. He told prosecutors:

I heard many screams from the other people [staying at the hostel] because [the armed men] were hitting them, and I heard one of the individuals say to the others, “Kill one of them so they can see we’re not playing.” The individuals stayed about 10 minutes. After people started saying the individuals had left, I saw young men with bruises, and they said the backpacks, documents, cell phones [and] money of many Cuban brothers had been stolen.²⁰³

¹⁹⁸ Human Rights Watch remote interview with Cindy Woods, September 11, 2020.

¹⁹⁹ Martín Orquiz, “Junio: 172 asesinatos en Ciudad Juárez,” *La Verdad*, July 2, 2020, <https://laverdadjuarez.com/index.php/2020/07/02/junio-172-asesinatos-en-ciudad-juarez/> (accessed July 2, 2020).

²⁰⁰ Héctor Tovar, “Chihuahua, segundo lugar en feminicidios,” *El Heraldo de Juárez*, October 2, 2020, <https://www.elheraldodejuarez.com.mx/local/chihuahua-segundo-lugar-en-feminicidios-noticias-ciudad-juarez-mujeres-asesinadas-5833909.html> (accessed December 2, 2020). See generally José Miguel Vivanco (Human Rights Watch), “Mexican Government Paralyzed in the Face of a Wave of Femicides,” *Los Angeles Times*, March 3, 2020, <https://www.hrw.org/news/2020/03/03/mexican-government-paralyzed-face-wave-femicides>.

²⁰¹ Human Rights Watch, “*We Can’t Help You Here*,” p. 20.

²⁰² Human Rights Watch interview with Linda Rivas, January 5, 2020.

²⁰³ Witness statement, September 12, 2019 (on file with Human Rights Watch).

Describing the same attack, another man told a reporter that one of the armed assailants hit him in the face so hard he fell to the floor.²⁰⁴

Women described ongoing harassment on the streets and in places where they work in circumstances that suggest they were targeted because of the countries they came from. For instance, Juana G., a 34-year-old woman from Honduras, said that she was sexually harassed in the restaurant where she works in Ciudad Juárez. “The customers can tell I’m not Mexican. My accent isn’t a Mexican accent, and they ask where I’m from. Then the harassment starts. Some of the customers will say indecent things, unwelcome things. I try not to speak while I’m working.”²⁰⁵ Her 16-year-old son, Thiago B., told us in a separate interview, “There is a customer from the restaurant where my mom works who bothers my mother and threatens me. We tried to report it, but the police say they don’t care about reports from migrants.”²⁰⁶

Other cities to which people have been sent under the MPP are also unsafe for them. In Mexicali and Tijuana, one-quarter of more than 600 asylum seekers who participated in an October 2019 study by the US Immigration Policy Center of the University of California San Diego said they were threatened with physical violence while they waited in Mexico for their immigration court hearings.²⁰⁷

Overall, one year after the Remain in Mexico program went into effect, Human Rights First had collected more than 800 accounts of violent attacks on asylum seekers in Mexican border towns.²⁰⁸ By mid-May 2020, the group had tracked more than 1,100 reported cases of murder, rape, kidnapping, torture, and assault of asylum seekers sent to Mexico under the MPP. Of those, 265 were kidnappings or attempted kidnappings of children.²⁰⁹

²⁰⁴ Hérica Martínez Prado, “Asaltan en albergue a migrantes cubanos,” *Diario de Juárez*, September 3, 2019, <https://diario.mx/juarez/asaltan-en-albergue-a-migrantes-cubanos-20190902-1557808.html> (accessed July 12, 2020).

²⁰⁵ Human Rights Watch interview with Juana G., Ciudad Juárez, January 13, 2020.

²⁰⁶ Human Rights Watch interview with Thiago B., Ciudad Juárez, January 10, 2020.

²⁰⁷ Tom K. Wong with Vanessa Ceceña, *Seeking Asylum: Part 2* (San Diego: US Immigration Policy Center, University of California San Diego), October 2019, p. 4, https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf?fbclid=IwARo7M_jP1Wy8Kln85dojnwoKobiz-MR7XeAIT77c9afuRlnkd7sHL21FE1Q (accessed July 2, 2020).

²⁰⁸ Human Rights First, “Marking One Year of the Horrific ‘Remain in Mexico’ Policy—Over 800 Violent Attacks on Asylum-Seekers,” January 22, 2020, <https://www.humanrightsfirst.org/press-release/marking-one-year-horrific-remain-mexico-policy-over-800-violent-attacks-asylum-seekers> (accessed July 2, 2020).

²⁰⁹ Human Rights First, *Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger*, May 2020, p. 2, <https://www.humanrightsfirst.org/sites/default/files/PandemicAsPretextFINAL.pdf> (accessed July 2, 2020).

In some instances, people described abuses by Mexican officials. Edwin F., a 28-year-old from Honduras staying in a shelter in Ciudad Juárez with his wife and 5-year-old son, said in January 2020:

Yesterday the police stopped a group of us. They asked all of us where we were from. They searched through our phone history as if we were coming to do harm to the country. They held us close to half an hour while they searched us, even our son. They asked for money. I didn't have any.²¹⁰

His wife, Marisela, 21, said that when the police officers searched her: "I had some sanitary pads in a shopping bag. They dumped them out on the ground. Everything I had, they dumped out on the ground."²¹¹ The encounter traumatized their 5-year-old. "He became really anxious," his father said. "He started to cry uncontrollably."²¹²

We also heard accounts of Mexican police harassing migrants on buses as they travelled from one part of the border to another. Delfina L., a 34-year-old from Honduras, said that a police officer stopped and boarded her bus when she was returning to Ciudad Juárez from an immigration court hearing in Laredo in January. "He wanted me and my children to get off the bus. The other passengers objected, they said it wasn't right. He backed down, but it really intimidated me."²¹³

Abducted and Ordered Deported in Absentia

People who miss immigration court dates typically receive in absentia deportation orders, which can be enforced immediately if they are found in the United States and can be "reinstated" without the possibility of applying for asylum if they return irregularly. It is possible to reopen a deportation case after an in absentia order if, among other grounds, the immigration judge is persuaded that the person's failure to appear was due to exceptional circumstances. A kidnapping is by any measure an exceptional circumstance. Nonetheless, attorneys told Human Rights Watch that reopening such cases was very difficult.

²¹⁰ Human Rights Watch interview with Edwin F., Ciudad Juárez, January 10, 2020.

²¹¹ Human Rights Watch interview with Marisela F., Ciudad Juárez, January 10, 2020.

²¹² Human Rights Watch interview with Edwin F., Ciudad Juárez, January 10, 2020.

²¹³ Human Rights Watch interview with Delfina L., Ciudad Juárez, January 13, 2020

In one case, a Guatemalan woman told an immigration judge in September 2019 that she had nearly been kidnapped with her 10-year-old son and 6-year-old daughter the night before, as they travelled to Nuevo Laredo for their court hearing. She went on to tell the judge that a man and his 16-year-old daughter with whom they were travelling and whose case had been called earlier that morning, had been abducted by the same cartel members. Denise Gilman, a law professor who was observing in court, confirmed that the man and his daughter had been ordered deported in absentia earlier that day when they did not appear at their hearing. Despite the woman's testimony, the immigration judge did not revoke the deportation order against the man and his daughter.²¹⁴

In another case, a woman explained to the immigration judge at her February 2020 court hearing in Laredo that her 17-year-old son was not in court with her and the rest of their family because he had been kidnapped by members of a cartel. When the immigration judge verified that the boy was not in court, he told the woman he would order CBP to request a nonrefoulement interview for her and the rest of her children. He did not tell her what he would do with her son's case. Alysha Welsh, an attorney with Human Rights First who was observing court hearings that day, later confirmed that the judge ordered the boy deported in absentia. "This boy had been taken by a cartel because the US government sent him back to Nuevo Laredo. It was clear from her evident distress, from the desperation in her voice, that she wasn't making the kidnapping up. She was so worried for his safety and the safety of her other two children," Welsh told us.²¹⁵

And in a third case, an Indigenous Ecuadorian woman and her child who were placed in the MPP missed their court date in Laredo because they were kidnapped, their attorney told Human Rights Watch. Her first effort to reopen her case was unsuccessful because the private attorney whom she hired failed to submit a declaration from her or any other evidence to support the motion to reopen. Her next attorney, Cindy Woods, told us, "We documented the ineffective assistance she received, got a declaration from her brother and proof of payment of the ransom amount. There were questions about whether she'd had notice of her hearing because she had not been spoken to in her native language by

²¹⁴ Human Rights Watch remote interview with Denise Gilman, September 21, 2020; Court Observation Notes, pp. 9-10, submitted as Annex B to Request for Precautionary Measures, *JLAM et al.* (Inter-American Commission on Human Rights submitted June 22, 2020).

²¹⁵ Human Rights Watch telephone interview with Alysha Welsh, October 30, 2020.

anyone. The judge denied all motions even though it was very clear she had been failed multiple times.”²¹⁶

Government attorneys generally vigorously oppose motions to reopen by people who testify that their failure to appear was because they were kidnapped, we heard. “The basic response from DHS is to oppose these motions, characterizing respondents’ detailed declarations as ‘self-serving.’ On occasion, DHS will take the position that people ‘collaborated with terrorists’ by making arrangements to pay a ransom. Sometimes DHS will blame them for what happened, saying, ‘Your *coyote* situation went wrong,’” Woods told Human Rights Watch.²¹⁷

Immigration judges often find that a person’s account of being kidnapped does not amount to exceptional circumstances warranting reopening of the case. “Often the judge will say that there isn’t sufficient proof. But the country conditions are well-documented. It’s unconscionable to me,” said Woods.²¹⁸

In a rare success, a woman and one of her teenage sons were able to get their case reopened. “It was only because the other son’s hearing was set for a different date, which turned out to be after their kidnappers released them, that the mother managed to get in front of a judge,” said Denise Gilman, a law professor at the University of Texas at Austin, who was observing hearings that day. “She explained very apologetically why she hadn’t appeared at her own hearing. The judge reopened her case and consolidated it with her sons’. That’s one of the few times I’ve seen an in absentia order set aside and a case reopened when a person didn’t appear because of a kidnapping.”²¹⁹

²¹⁶ Human Rights Watch remote interview with Cindy Woods, September 11, 2020.

²¹⁷ Ibid. People found to have provided “material support” to a terrorist organization are barred from receiving asylum or withholding of removal. Immigration and Nationality Act, §§ 208(b)(2)(A)(v), 212(a)(3)(B)(iv)(VI), 241(b)(3)(B)(iv). There is no exception to the bar for support provided under duress. See *Matter of M- H- Z-*, 6 I. & N. Dec. 757 (B.I.A. 2016); *Matter of A- C- M-*, 27 I. & N. Dec. 303, 206 (B.I.A. 2018). See also Steven H. Schulman, “Victimized Twice: Asylum Seekers and the Material Support Bar,” *Catholic University Law Review*, vol. 59 (2010), pp. 949-63, <https://scholarship.law.edu/cgi/viewcontent.cgi?article=3215&context=lawreview> (accessed December 19, 2020); Tyler Anne Lee, “When ‘Material’ Loses Meaning: *Matter of A- C- M-* and the Material Support Bar to Asylum,” *Columbia Human Rights Law Review*, vol. 51 (2019), pp. 378-431, <http://hrhr.law.columbia.edu/files/2019/11/51.1.6-Lee.pdf> (accessed December 19, 2020).

²¹⁸ Human Rights Watch remote interview with Cindy Woods, September 11, 2020.

²¹⁹ Human Rights Watch remote interview with Denise Gilman, September 22, 2020.

Nonrefoulement Interviews and Humanitarian Exemptions Suspended

In response to the Covid-19 pandemic, the general practice has been not to hold nonrefoulement interviews or consider humanitarian requests for families in the MPP to return to the United States.

When an attorney with Texas RioGrande Legal Aid contacted an asylum officer in May 2020 to confirm that her client would receive a nonrefoulement interview, noting that he had previously been kidnapped by a cartel and continued to be at risk, she received the following reply: “I checked with the Laredo Port of Entry and they have indicated that non-refoulement interviews are not being conducted at this time at the POE due to the COVID-19 pandemic.”²²⁰

Similarly, attorneys in El Paso told us CBP had not scheduled nonrefoulement interviews or considered any requests for humanitarian exceptions since March 20, 2020, when the CDC order went into effect. In one case, Nicolas Palazzo, a lawyer with Las Americas, submitted a request for a humanitarian exemption from the MPP for a family with two very sick children. “We submitted a request for medical evaluation, but they were turned away. They received no nonrefoulement interviews and no medical evaluations,” he told Human Rights Watch.²²¹

Since March 20, one family represented by Jewish Family Service of San Diego has received parole, a case that is one of the few instances Human Rights Watch identified of DHS granting parole during the pandemic. “It’s the only time we’ve been successful” after that date, Luis Gonzalez told us.²²²

²²⁰ Email from CBP to Hillary Rich, Texas RioGrande Legal Aid, May 12, 2020 (on file with Human Rights Watch).

²²¹ Human Rights Watch telephone interview with Nicolas Palazzo, June 16, 2020.

²²² Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020.

III. Lives in Limbo

People sent to Mexico under the MPP must navigate unfamiliar surroundings in a country that is not their own. Many lack the resources necessary to rent a place for themselves and their family to live and must depend on the network of migrant shelters, mostly run by religious or other nonprofit groups, many of which are at or near capacity. Health care is, in practice, limited to basic services; frequently, the only health services those in the MPP receive are services provided by nongovernmental organizations and volunteers. Most children in the MPP have not attended formal education since they left their home countries. Moreover, by sending thousands of people to Mexican border towns who would otherwise have dispersed throughout the United States, the MPP has placed considerable strain on the limited housing, health services, and support that are available.

Nearly everybody interviewed for this report described the sense that their lives were in limbo. Summarizing this sentiment, when we spoke to her in January 2020, Tania Guerrero, the CLINIC project attorney, told us, “The women I speak to tell me, ‘Nobody understands what we’re going through here [in Ciudad Juárez].’ They have been here eight months. They’re exhausted, alone, miserable. They want to get on with their lives. The level of disillusionment and despair they feel is profound.”²²³ Speaking to us again in June, she said that fear of the pandemic and delays with court hearings have increased people’s sense of desperation. “They’re reaching the point where they feel they have no more to give. They’re confronting a continuous struggle that seems never-ending,” she said.²²⁴

Overcrowded Shelters and Informal Camps

Migrant shelters in Mexican border towns quickly reached capacity as the United States rolled out its “Remain in Mexico” program. Some shelters began to use whatever space they had available, making garages, auditoriums, and courtyards available for families to set up individual tents. In the Buen Pastor shelter in Ciudad Juárez, families slept in between pews in the chapel, rolling out bedding every night and carefully packing it back up with the rest of their possessions during the day. Those who could afford to do so

²²³ Human Rights Watch telephone interview with Tania Guerrero, January 18, 2020.

²²⁴ Human Rights Watch telephone interview with Tania Guerrero, June 16, 2020.

rented rooms in private homes or shared apartments, but many could not continue to do so as their asylum cases dragged on and their resources ran low, we heard. Conditions were particularly dire in Matamoros, where anywhere between 1,000 and 2,600 people or more, including children of all ages, have been living in tents, with inadequate access to clean water or proper sanitation, along the river that marks the international border.

Illnesses spread quickly in cramped quarters, and the people we spoke with described daily struggles to maintain hygienic conditions for themselves and their children. Skin diseases, varicella (chickenpox), and respiratory and intestinal infections were particularly common, health officials and volunteer health providers told us.

The pandemic has exacerbated the difficulties people faced. Some shelters imposed extended lockdowns, while others seemed to disregard basic protocols. Staff in many shelters were particularly critical of the lack of government guidance and support, including the provision of masks, to help them respond appropriately to the pandemic.

Health care services in Tijuana, the first city to which US authorities sent people, were quickly strained. Between April and August 2019, DHS assigned more than 6,200 MPP cases to the San Ysidro port of entry, immediately across the border from Tijuana.²²⁵ As a result, by July 2019, many migrant shelters were operating close to capacity.²²⁶ When Human Rights Watch visited the city in November 2019, every shelter provider we interviewed told us they were using all available space in their facilities. And in response to the Covid-19 pandemic, many shelters in Tijuana reduced their capacity.²²⁷

After US authorities began to send people to Ciudad Juárez, the number of asylum seekers and migrants in that city quickly surpassed those in Tijuana. Ciudad Juárez hosted some

²²⁵ TRAC Immigration, Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings” (data through November 2020), <https://trac.syr.edu/phptools/immigration/mpp/> (accessed December 22, 2020). Select “initial filing” measure, “month and year” graph time scale, “MPP Court San Ysidro Port” hearing location, and sort by “month and year case began.”

²²⁶ See, for example, Wendy Fry, “Tijuana Shelters Overwhelmed by U.S. Crackdown,” *Baltimore Sun*, July 12, 2019, <https://www.baltimoresun.com/tijuana-shelters-overwhelmed-by-u-s-immigration-crackdown-story.html> (accessed July 26, 2020).

²²⁷ See Juan Miguel Hernández, “Limitan espacios en albergues migrantes,” *El Sol de Tijuana*, March 27, 2020, <https://www.elsoldetijuana.com.mx/local/limitan-espacios-en-albergues-migrantes-5023213.html> (accessed October 18, 2020).

16,000 asylum seekers and migrants at the end of May 2019, an estimated 17,000 in June 2019,²²⁸ and more than 19,000 migrants in November 2019.²²⁹

Until early January 2020, some people stayed in two makeshift camps near the international bridges. Many of those in the camps were Mexican nationals, mostly from Guerrero, Michoacán, and Zacatecas, who intended to seek asylum in the US and were forced to wait under the US “metering” policy, under which US border agents restricted the number of applicants accepted each day.²³⁰ State authorities evicted people from the camps in January 2020 and bussed them to shelters.

In February 2020, the Mexican immigration agency, the National Migration Institute (Instituto Nacional de Migración, INM) estimated that there were between 13,000 and 15,000 migrants in Ciudad Juárez, a number that included people who were metered and those who had not yet attempted to enter as well as people placed in the MPP. Eighteen migrant shelters in the city, including the Leona Vicario federal shelter, housed about 1,200 people that month, the coordinator of COESPO’s migrant assistance program told *El Heraldo de Juárez*.²³¹

In Nuevo Laredo, Tamaulipas, where asylum seekers, migrants, and shelter workers face significant risks of kidnapping and other serious harm at the hands of organized crime, the Nazareth shelter is one of the few relatively secure refuges, housing between 120 and 180 people on a typical day.²³² DHS has assigned more than 13,500 MPP cases to the Laredo tent court.²³³

²²⁸ Jesús Estrada and Rubén Villalpando, “Disminuye en junio en Ciudad Juárez el número de migrantes,” *La Jornada* (Mexico City), June 24, 2019, <https://www.jornada.com.mx/ultimas/estados/2019/06/24/diminuye-en-junio-en-ciudad-juarez-el-numero-de-migrantes-7612.html> (accessed October 17, 2020).

²²⁹ Paola Gamboa, “Juárez, refugio de 19 mil migrantes,” *El Heraldo de Juárez*, November 23, 2019, <https://www.elheraldodejuarez.com.mx/local/juarez-refugio-de-19-mil-migrantes-4492585.html> (accessed October 17, 2020).

²³⁰ For a fuller discussion of the US “metering” policy, see Section V.

²³¹ Paola Gamboa, “Hay 15 mil migrantes en CJ,” *El Heraldo de Juárez*, February 24, 2020, <https://www.elheraldodejuarez.com.mx/local/hay-15-mil-migrantes-en-cj-noticias-de-ciudad-juarez-4880242.html> (accessed October 17, 2020).

²³² See Anna-Catherine Brígida, Acacia Coronado, and Emily Kinskey, “Solicitantes de asilo y migrantes en peligro por políticas estadounidenses en la pandemia,” *Ejecentral*, June 30, 2020, <https://www.ejecentral.com.mx/solicitantes-de-asilo-y-migrantes-en-peligro-por-politicas-estadounidenses-en-la-pandemia/> (accessed October 18, 2020).

²³³ TRAC Immigration, Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings” (data through November 2020), <https://trac.syr.edu/phptools/immigration/mpp/> (accessed December 22, 2020). Select “initial filing”

In Matamoros, in the Mexican state of Tamaulipas across the border from Brownsville, Texas, some 2,600 asylum seekers were staying in tents near the international bridge at the end of March 2020; in September, the camp's estimated population had fallen to about 1,000.²³⁴ Overcrowding and inadequate sanitation in the camp has resulted in a high incidence of intestinal and respiratory infections and skin diseases, MSF has reported.²³⁵ Global Response Management, which has offered medical services in the camp since September 2019, has observed that "living conditions in the camp remain poor," with limited space, little protection from the elements, and an insufficient number of latrines and showers. Water shortages leave camp residents to bathe in the Rio Grande, which can contaminate the water and increase the spread of waterborne illnesses such as E. coli, infectious conjunctivitis, cellulitis, and other diseases.²³⁶

The camp's location, along a dirt levee as close as possible to the river that marks the international border, makes it vulnerable to flooding. A downpour accompanied by heavy winds on a single morning in May 2020 destroyed about 40 tents and sent water coursing through the camp.²³⁷ In late July, the river's level rose by three-and-a-half meters (12 feet) when the first Atlantic hurricane of the year hit Texas, forcing camp residents to crowd their tents together on higher ground.²³⁸ In addition to the destruction flooding caused, rising waters brought more rats, snakes, and mosquitos to the camp. And in response to flood

measure, "month and year" graph time scale, "MPP Court Laredo, Texas – Port of Entry" hearing location, and sort by "month and year case began."

²³⁴ See Anna-Catherine Brigida, Acacia Coronado, and Emily Kinskey, "Solicitantes de asilo y migrantes en peligro por políticas estadounidenses en la pandemia," *Ejecentral*, June 30, 2020, <https://www.ejecentral.com.mx/solicitantes-de-asilo-y-migrantes-en-peligro-por-politicas-estadounidenses-en-la-pandemia/> (accessed October 18, 2020); Jasmine Aguilera, "Migrants Stranded in Mexico Have 1 Year to File for Asylum. COVID-19 Is Making that Deadline Nearly Impossible," *Time*, September 25, 2020, <https://time.com/5888791/covid-19-asylum-seekers-mexico/> (accessed October 17, 2020).

²³⁵ Médecins Sans Frontières (MSF), *No Way Out: The Humanitarian Crisis for Migrants and Asylum Seekers Trapped Between the United States, Mexico and the Northern Triangle of Central America*, February 2020, p. 30.

²³⁶ Global Response Management, "Medical Summary for Refugee Camp: Matamoros," n.d., pp. 3-4, <https://www.humanrightsfirst.org/sites/default/files/GRM%20Report%20on%20Conditions%20in%20Matamoros.pdf> (accessed October 18, 2020).

²³⁷ Erin Sheridan, "Downpour Sends Asylum Camp into Disarray," *Brownsville Herald*, May 18, 2020, <https://www.brownsvilleherald.com/2020/05/18/5-19-a3-rail-migrant-camp-flooding1/> (accessed October 17, 2020).

²³⁸ Lexie Harrison-Cripps, "Asylum Seekers in Mexico Suffer Following Hurricane Hanna," *Aljazeera*, August 2, 2020, <https://www.aljazeera.com/news/2020/8/2/asylum-seekers-in-mexico-suffer-following-hurricane-hanna> (accessed October 17, 2020).

warnings, the camp’s portable toilets were temporarily removed at the directive of the company that owns them.²³⁹

In Nogales, Sonora, “there is no formal data from the local government” on the number of people US authorities have sent after placing them in the MPP, said Alma Cota de Yanes, the director of a community group in Sonora.²⁴⁰ One shelter in Nogales housed about 40 people per night in July 2020, a number that included people who had been deported or expelled from the United States as well as people who were placed in the MPP and were awaiting asylum hearings.²⁴¹

In response to the pandemic, many shelters, including those in Tijuana and Nogales, adopted lockdown policies that in principle put strict controls on entry and exit. In Ciudad Juárez, however, many people in the MPP program work in *maquilas*, factories on the outskirts of the city, which have generally continued to operate and have become sites of Covid-19 outbreaks that have infected hundreds of workers.²⁴² “The protocols for exiting and entering shelters aren’t followed. People aren’t tested,” Guerrero said.²⁴³

Some shelters have strict time limits and have required people to leave even during the Covid-19 pandemic. In Tijuana, “a woman called us after she and her son were kicked out of their shelter. They were told they’d exceeded the amount of time they could stay in the shelter, and now they were on the street with nowhere to go,” Luis Gonzalez, a lawyer in San Diego, told Human Rights Watch.²⁴⁴

²³⁹ Erin Sheridan, “Rio Grande May Crest; Threatens Migrant Camp,” *Brownsville Herald*, July 29, 2020, <https://www.brownsvilleherald.com/2020/07/29/wait-see-rio-grande-expected-crest-force-evacuations/> (accessed October 17, 2020).

²⁴⁰ Human Rights Watch remote interview with Alma Cota de Yanes, director, Fundación del Empresariado Sonorense, A.C. (FESAC), June 26, 2020.

²⁴¹ Email from Alma Cota de Yanes, director, Fundación del Empresariado Sonorense, A.C. (FESAC), to Michael Garcia Bochenek, Human Rights Watch, June 29, 2020.

²⁴² See, for example, Crisstian Villicaña, “Maquilas de la frontera, en alerta roja por rebrote de Covid,” *El Sol de México*, October 26, 2020, <https://www.elsoldemexico.com.mx/republica/sociedad/maquilas-de-la-frontera-en-alerta-roja-por-rebote-de-coronavirus-covid-19-contagios-coepris-immex-5935293.html> (accessed December 2, 2020); Natalie Kítroeff, “As Workers Fall Ill, U.S. Presses Mexico to Keep American-Owned Plants Open,” *New York Times*, April 30, 2020 (updated May 2, 2020), <https://www.nytimes.com/2020/04/30/world/americas/coronavirus-mexico-factories.html> (accessed December 2, 2020); Jesús Estrada and Rubén Villalpando, “Covid: Obreros de ‘maquilas’ se van a paro por falta de protección,” *La Jornada* (Mexico City), October 25, 2020, <https://www.jornada.com.mx/ultimas/estados/2020/10/25/covid-obreros-de-2018maquilas2019-se-van-a-paro-por-falta-de-proteccion-2226.html> (accessed December 2, 2020).

²⁴³ Human Rights Watch telephone interview with Tania Guerrero, June 16, 2020.

²⁴⁴ Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020.

Migrant shelters along the border criticized the lack of official directives on what procedures they should take during the pandemic²⁴⁵ and expressed concerns about their inability to isolate those who develop symptoms.²⁴⁶ In many cases, shelter workers said, they depended on nongovernmental organizations for the personal protective equipment and other supplies they needed to prevent the spread of Covid-19.²⁴⁷

A hotel quarantine program in Ciudad Juárez, an IOM initiative known as the “Hotel Filtro,” provides 14 days of quarantined shelter, food, and access to primary health care for people who have just arrived in the city, after which they can go to a regular shelter if there is space available.²⁴⁸ Two women we spoke with who stayed in the Hotel Filtro spoke positively about the initiative and their experiences while at the hotel.²⁴⁹

Overstretched Health Care Services

As a general rule, people placed in the MPP as well as health professionals and other service providers said that access to specialized treatment and medications was difficult; basic services were in principle available. For instance, “in Mexico there is no charge for vaccinations. That applies to everybody,” a Chihuahua state official told us.²⁵⁰

²⁴⁵ Alberto Pradilla, “Deportaciones exprés y albergues sin protocolo: el impacto del COVID-19 en la migración,” *Animal Político*, March 21, 2020, <https://www.animalpolitico.com/2020/03/deportaciones-albergues-impacto-covid-19-migracion/> (accessed June 26, 2020).

²⁴⁶ Elena Reina and Elías Camhaji, “Los migrantes varados en México, desarmados frente al coronavirus,” *El País*, March 21, 2020, <https://elpais.com/internacional/2020-03-20/los-migrantes-varados-en-mexico-desarmados-frente-al-coronavirus.html> (accessed June 26, 2020).

²⁴⁷ See Karen Ballesteros, “Albergues para migrantes, en el olvido y la desprotección en la pandemia,” *Contralínea*, June 14, 2020, <https://www.contralinea.com.mx/archivo-revista/2020/06/14/albergues-para-migrantes-en-el-olvido-y-la-desproteccion-en-la-pandemia/> (accessed October 18, 2020).

²⁴⁸ Human Rights Watch interview with Tania Guerrero, June 16, 2020; Ana Cristina Sedas et al., “Situational Brief: Transit Migration in Mexico During the COVID-19 Pandemic,” *Lancet Migration Situational and Policy Briefs: COVID-19 and Migration*, May 27, 2020, para. 4.4, https://1bec58c3-8dcb-46bo-bb2a-fd4addfob29a.filesusr.com/ugd/188e74_16722de523cb4f12a0901f79e4db8cbc.pdf?index=true (accessed June 25, 2020);

“Un hotel atiende a migrantes en cuarentena por COVID-19 en Ciudad Juárez,” *Agencia EFE*, May 19, 2020, <https://www.efe.com/efe/america/sociedad/un-hotel-atiende-a-migrantes-en-cuarentena-por-covid-19-ciudad-juarez/20000013-4250442> (accessed October 18, 2020); Viridiana García, “Inauguran hotel filtro para migrantes en Ciudad Juárez para afrontar pandemia,” *Contralínea*, May 12, 2020, <https://www.contralinea.com.mx/archivo-revista/2020/05/12/inauguran-hotel-filtro-para-migrantes-en-ciudad-juarez-para-afrontar-pandemia/> (accessed October 18, 2020).

²⁴⁹ Human Rights Watch telephone interview with Delfina L., June 25, 2020; Human Rights Watch telephone interview with Amalia G., June 26, 2020.

²⁵⁰ Human Rights Watch interview, Ciudad Juárez, January 7, 2020.

Mexican law establishes the right to receive emergency medical care necessary for the preservation of life regardless of migration status.²⁵¹ Beginning in December 2014, the Ministry of Health allowed migrants to have access to health services for 90 days under the country's national health insurance program, known as Seguro Popular,²⁵² although compliance by health care providers with this directive was uneven.²⁵³ In addition, public health researchers have found that a high level of mistrust in approaching health services meant that many people did not attempt to access services to which they were entitled.²⁵⁴

A change in Mexico's national health coverage announced in November 2019 took effect in January 2020, eliminating Seguro Popular and establishing a new entity, the Institute of Health for Well-Being (Instituto de Salud para el Bienestar, INSABI), to provide free health care, including medication, for those who do not have access to social security.²⁵⁵ The change created confusion and raised questions about the ability of state health services to meet the needs of Mexicans as well as non-nationals sent to Mexico under the MPP.²⁵⁶ An assessment published in May 2020, five months after the change, observed that "while Seguro Popular provided migrants in transit with health coverage for 90 days, specific guidelines for migrant access to INSABI health care services are not yet publicly available."²⁵⁷

²⁵¹ Ley General de Migración, art. 8 ("Los migrantes independientemente de su situación migratoria, tendrán derecho a recibir de manera gratuita y sin restricción alguna, cualquier tipo de atención médica urgente que resulte necesaria para preservar su vida.")

²⁵² Gobierno de México, Secretaría de Salud, "Otorgan seguro popular a migrantes," December 28, 2014, <https://www.gob.mx/salud/prensa/otorgan-seguro-popular-a-migrantes-7519> (accessed June 26, 2020).

²⁵³ René Leyva Flores et al., *Acceso a servicios de salud para los migrantes centroamericanos en tránsito para México*, Central America-North America Migration Dialogue (CANAMID) Policy Brief Series No. 5, 2015, p. 9, <http://www.canamid.org/publication?id=PB05> (accessed December 20, 2020).

²⁵⁴ *Ibid.*, p. 7.

²⁵⁵ See Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley General de Salud y de la Ley de los Institutos Nacionales de Salud [Decree by which various provisions of the General Health Law and the Law of the National Institutes of Health are amended, added and repealed], *Diario Oficial de la Federación*, November 29, 2019. See also "Adiós al Seguro Popular; Insabi funcionará a partir de este 1 de enero," *Aristegui Noticias*, January 1, 2020, <https://aristeguinoticias.com/0101/mexico/adios-al-seguro-popular-insabi-funcionara-a-partir-de-este-1-de-enero/> (accessed June 26, 2020); "Se publica el Decreto que modifica la Ley General de Salud y la de los Institutos Nacionales de Salud," December 10, 2019, <https://codigof.mx/se-publica-el-decreto-que-modifica-la-ley-general-de-salud-y-la-de-los-institutos-nacionales-de-salud/> (accessed November 30, 2020).

²⁵⁶ Maribel Ramírez Coronel, "Al Insabi se le vendrá encima la realidad," *El Economista*, January 8, 2020, <https://www.economista.com.mx/opinion/Al-Insabi-se-le-vendra-encima-la-realidad-20200108-0014.html> (accessed June 26, 2020).

²⁵⁷ Ana Cristina Sedas et al., "Situational Brief: Transit Migration in Mexico During the COVID-19 Pandemic," *Lancet Migration Situational and Policy Briefs: COVID-19 and Migration*, May 27, 2020, para. 3.3, https://1bec58c3-8dcb-46bo-bb2a-fd4addfob29a.filesusr.com/ugd/188e74_16722de523cb4f12a0901f79e4db8cbc.pdf?index=true (accessed June 25, 2020).

Chihuahua state officials said they had made specific efforts to include migrants sent to Ciudad Juárez in their health programs, including mental health programming, and told us the state has a team of health providers that regularly visit migrant shelters throughout the city.²⁵⁸ In fact, the families we spoke with in Juárez appeared to have greater access to health services than those we interviewed elsewhere along the border. “That’s not to say there aren’t valid complaints,” a state health official told us. “It may be that not all medicines are available. We can’t always cover 100 percent of the need. This is primary care,” he said.²⁵⁹

In Baja California, we heard of some instances in which people in the MPP were able to access state health services. For instance, in urgent cases, Jewish Family Services of San Diego has been able to connect people to health services in Tijuana by contacting the local UNHCR office, said Luis Gonzalez, the organization’s supervising immigration attorney.²⁶⁰

More commonly, we heard that people depend on private initiatives, whether from organized efforts such as those of the Refugee Health Alliance in Tijuana and Global Response Management in the Matamoros migrant camp, or sporadic individual offers of medical care and donations of medication to shelters across the border.²⁶¹

People have received care for specialized or urgent health needs inconsistently, if at all. For example:

- A woman living with HIV told us that she had struggled to get medication during her time in the MPP, sometimes going a week or more before she could find another supply. In December 2019, a health clinic gave her two months’ worth. They were

See also Megan Diamond, Luke Testa, Carissa Novak, Kathryn Kempton-Amaral, Alejandro Olayo-Méndez, and Thalia Porteny, *A Population in Peril: A Health Crisis Among Asylum Seekers on the Northern Border of Mexico*, Harvard Global Health Institute, July 2020, p. 7, https://globalhealth.harvard.edu/wp-content/uploads/2020/07/A_Population_in_Peril.pdf (accessed December 20, 2020).

²⁵⁸ Human Rights Watch interview, Ciudad Juárez, January 7, 2020.

²⁵⁹ Human Rights Watch interview, Ciudad Juárez, January 7, 2020.

²⁶⁰ Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020.

²⁶¹ See, for example, Dianne Solis, “Asylum-Seekers in Matamoros Migrant Camp Fear They’ll Be Forgotten,” *Brownsville Herald*, September 9, 2020, <https://www.brownsvilleherald.com/2020/09/09/asylum-seekers-matamoros-migrant-camp-fear-theyll-forgotten/> (accessed October 16, 2020); Julie Watson, “Volunteers Step in to Keep Asylum Seekers Healthy on Border,” Associated Press, December 18, 2019, <https://apnews.com/article/3d8f23344bece9fff142ec6a11625d81> (accessed July 25, 2020); Acacia Coronado, “Field Hospital Begins Construction in Matamoros Migrant Camp in Response to COVID-19,” *Texas Observer*, April 29, 2020, <https://www.texasobserver.org/field-hospital-begins-construction-in-matamoros-migrant-camp-in-response-to-covid-19/> (accessed July 16, 2020).

three months past their expiration date, but she was happy to get them, she said.²⁶²

- The parents of a 1-year-old girl born with congenital hydrocephalus said that they had been unable to get medical care for her in Ciudad Juárez since their arrival in February 2020. “We’ve been here seven months and she hasn’t seen a pediatrician,” Renata A., her mother, told Human Rights Watch in September.²⁶³

The federal shelter in Ciudad Juárez had an outbreak of chicken pox when we visited in January 2020. “Of about 900 migrants in the shelter, there were 121 with chicken pox at the beginning of the week. It’s a serious situation,” a state health official told us.²⁶⁴ To isolate those with the illness, the shelter relocated everybody else—families with children of all ages, along with single unrelated adults—into a single large space that resembled an airplane hangar or cleared-out factory floor.

The Covid-19 pandemic placed considerable strain on health services along the border. In Ciudad Juárez, Tania Guerrero said, “People placed in MPP are living in a city where medical resources are already very limited for its own population. Now it’s even worse. The hospitals are saturated with Covid cases. They say they can’t take people for other needs because they say those aren’t emergencies. The hospitals aren’t taking non-Covid cases.”²⁶⁵

A Covid-19 assessment published in May 2020 observed that Mexico had established “no surveillance strategy for migrant populations”²⁶⁶ and added:

While the Mexican government’s efforts to include refugees in the national COVID-19 response have been acknowledged by the United Nations High Commissioner for Refugees (UNHCR), such efforts have not included or

²⁶² Human Rights Watch interview, January 2020.

²⁶³ Human Rights Watch telephone interview with Renata A., September 29, 2020.

²⁶⁴ Human Rights Watch interview, Ciudad Juárez, January 7, 2020. See also “Brote de varicela obliga a cierre temporal de albergue de migrantes en norte de México,” Reuters, December 28, 2019, <https://lta.reuters.com/article/inmigracion-mexico-varicela-idLTAKBN1YWooZ> (accessed October 18, 2020).

²⁶⁵ Human Rights Watch telephone interview with Tania Guerrero, June 16, 2020.

²⁶⁶ Ana Cristina Sedas et al., “Situational Brief: Transit Migration in Mexico During the COVID-19 Pandemic,” *Lancet Migration Situational and Policy Briefs: COVID-19 and Migration*, May 27, 2020, para. 2.5, https://1bec58c3-8dcb-46bo-bb2a-fd4addfob29a.filesusr.com/ugd/188e74_16722de523cb4f12a0901f79e4db8cbc.pdf?index=true (accessed June 25, 2020).

reached all distress migrants equally. Those living in overcrowded and unsanitary conditions, as so many are, struggle to abide by physical distancing or sanitary self-protection strategies. Popular fear and suspicion exacerbate already latent xenophobic tendencies, which further distance this population from equitable and high-quality access to healthcare and social support. Local actors have noted the absence of necessary staff, “stuff” (personal protection equipment), space (for shelter, quarantine and isolation), systems (coordination and rapid response by the local health governance) and social support—the so-called “five Ss” described by the prominent public health expert Paul Farmer.²⁶⁷

A Year or More Without School

None of the children in the families Human Rights Watch spoke with for this report was enrolled in school, and most had been out of the formal education system for more than a year at this writing.

By law, children in Mexico can attend public schools regardless of their migration status.²⁶⁸ But when we asked whether children were enrolled and attending classes in regular schools, many parents replied that they were fearful of sending their children to school, a reflection both of the dangers they had experienced in Mexico and the risks they had faced in their own countries.

These accounts were typical, we heard. Sister Salomé Limas, a social worker at the Madre Assunta shelter in Tijuana, told us that most of the women who stay in the shelter are afraid that their children will face harm if they attend local schools.²⁶⁹ “Some families are reluctant to let children go because their children are survivors of kidnapping, and it’s traumatic for the children and their parents for the children to be somewhere else for much of the day,” Tania Guerrero said of families in Ciudad Juárez.²⁷⁰ Chihuahua state officials

²⁶⁷ Ibid.

²⁶⁸ Ley General de Educación [General Education Law], art. 9(X), *Diario Oficial de la Federación*, September 30, 2019; Ley de Migración [Immigration Law], art. 8, *Diario Oficial de la Federación*, May 25, 2011, as amended, *Diario Oficial de la Federación*, April 13, 2020.

²⁶⁹ Human Rights Watch interview with Sister Salomé Limas, social worker, Instituto Madre Assunta, Tijuana, November 22, 2019.

²⁷⁰ Human Rights Watch interview with Tania Guerrero, June 16, 2020.

said they had heard the same from parents. “Many prefer not to send their children out of fear. But in reality it is a right to go to school,” one official told us.²⁷¹

In addition, some people told us they worried their children would face harassment from other students because they were not from Mexico. “I wanted to put my son in school, but I worry about bullying,” Marisela F., a 21-year-old Honduran woman, told us, explaining that she and her family had experienced a lot of discrimination in Ciudad Juárez and elsewhere in Mexico because they were from Central America.²⁷² Tania Guerrero said that after city and state officials developed an initiative to enroll migrant children, “Some children decided not to attend because they were mocked for the way they spoke or dressed.”²⁷³

Some people did not seem aware that they could enroll their children in local schools. When we asked Nuria J., a 37-year-old Honduran woman in Ciudad Juárez, whether her 13-year-old son was in school, she replied, “No, he doesn’t have papers from Mexico.” She added, “I have no idea if there’s a school here.”²⁷⁴

In a few cases, people told us their children had been turned away by schools elsewhere in Mexico. Marisela F., the 21-year-old Honduran woman, said that she and her family spent five months in Tenosique, in the state of Tabasco, before travelling to Ciudad Juárez and seeking asylum in the United States. “In Tabasco we tried to put our son in kindergarten, but the school didn’t accept him. They didn’t let him register. They said we needed a CURP and other identification.”²⁷⁵ A CURP (Clave Única de Registro de Población, roughly translating to “individual registration number”) is an identity number for people resident in Mexico and Mexicans residing abroad.²⁷⁶ The website of Mexico’s Ministry of Public Education includes “CURP certificate” as among the recommended requirements for enrollment in preschool, primary education, and secondary education.²⁷⁷

²⁷¹ Human Rights Watch interview, Ciudad Juárez, January 7, 2020.

²⁷² Human Rights Watch interview with Marisela F., Ciudad Juárez, January 10, 2020.

²⁷³ Human Rights Watch interview with Tania Guerrero, June 16, 2020.

²⁷⁴ Human Rights Watch interview with Nuria J., Ciudad Juárez, January 9, 2020.

²⁷⁵ Human Rights Watch interview with Marisela F., Ciudad Juárez, January 10, 2020.

²⁷⁶ See Acuerdo para la Adopción y Uso por la Administración Pública Federal de la Clave Única de Registro de Población, *Diario Oficial de la Federación*, October 23, 1996.

²⁷⁷ Gobierno de México, Secretaría de Educación Pública, Recomendaciones Generales para el Proceso de Inscripción y Reinscripción, August 21, 2019, <https://www.gob.mx/sep/articulos/recomendaciones-generales-para-el-proceso-de-inscripcion> (accessed November 1, 2020).

Constance Wannamaker, an immigration lawyer in El Paso, told us that the only families she knew of whose children were attending school were a handful who had managed to send their children to private schools. “In Juárez, there are kids who have not been going to school for at least a year. There are a few reasons: families don’t know if their children have the right to go to school, they don’t know how to enroll their children, and they’re scared,” she said, adding, “There’s a real fear of kids being harassed or discriminated against in school or kidnapped on their way to or from school.”²⁷⁸

Groups and individuals volunteered their time to offer classes and other activities in some shelters. In Tijuana, for example, Santiago F.’s 5-year-old son, Mateo, was attending classes two days a week taught by volunteer teachers who came to their shelter.²⁷⁹ The Tijuana initiative, a mobile classroom program affiliated with the School Box Project, had to suspend its in-person activities in March due to the Covid-19 pandemic; in response, the volunteer who had brought the mobile learning program to three Tijuana shelters organized virtual classes for the shelter.²⁸⁰ In Matamoros, a “sidewalk school” organized by the volunteer group Team Brownsville gathered children together on a concrete plaza near the international bridge, where teachers gave them lessons in subjects such as math, reading, social studies, geography, music, and English.²⁸¹

Some shelters have organized their own classes. For example, a woman who had been a teacher in Honduras offered informal classes in the Ciudad Juárez shelter where she and her daughter stayed until early 2020.²⁸² In Tijuana, a mother in the Embajadores de Jesús shelter began to offer informal activities after the suspension of the mobile classroom program, the *New York Times* reported.²⁸³

²⁷⁸ Human Rights Watch remote interview with Constance Wannamaker, October 2, 2020.

²⁷⁹ Human Rights Watch interview with Santiago F., Tijuana, November 23, 2019.

²⁸⁰ Myriam Vidal Valero and Rodrigo Pérez Ortega, “Kids Seeking Asylum Find Some Measure of It in One Makeshift School,” *New York Times*, August 18, 2020, <https://www.nytimes.com/2020/08/18/parenting/migrant-children-school-border.html> (accessed September 8, 2020).

²⁸¹ Nicole Narea, “The Abandoned Asylum Seekers on the US-Mexico Border,” *Vox*, December 20, 2019, <https://www.vox.com/policy-and-politics/2019/12/20/20997299/asylum-border-mexico-us-iom-unhcr-usaid-migration-international-humanitarian-aid-matamoros-juarez> (accessed October 18, 2020); Dylan Baddour, “US-Mexico Border: The ‘Sidewalk School’ Teaching Migrant Children,” *Aljazeera*, April 14, 2020, <https://www.aljazeera.com/features/2020/4/14/us-mexico-border-the-sidewalk-school-teaching-migrant-children> (accessed October 18, 2020).

²⁸² Human Rights Watch interviews, Ciudad Juárez, January 7, 2020.

²⁸³ Vidal Valero and Pérez Ortega, “Kids Seeking Asylum Find Some Measure of It in One Makeshift School.”

Challenges in Finding Work

When they are sent to Mexico, people in the MPP receive a stamped paper form—usually used for tourists and other short-term visitors—giving them a stay of up to 180 days in the country. Even before immigration courts suspended MPP hearings in response to the pandemic, most cases were not resolved within this time. We heard that Mexican authorities have generally renewed temporary stays as long as a person’s asylum case remains pending.

Mexican authorities on the border tell people they have the right to work in Mexico during the time they are in the MPP, but the paper record of admission, the only Mexican document the people we interviewed had received, is not work authorization. “The reality is that this document does not in itself permit work, and many employers will not accept it,” Alejandra Macías of Asylum Access told Human Rights Watch.²⁸⁴ “Police and immigration agents away from the border have no idea what that paper means,” Denise Gilman, a law professor at the University of Texas at Austin, commented.²⁸⁵

For migrants, jobs are scarce, particularly in Matamoros and Nuevo Laredo. In addition, people may be fearful of leaving their children unsupervised, and in the case of parents of all but the oldest children, unable to do so. “We see a lot of single parents with children. It’s very complicated for them to work in Mexico, because they don’t have anyone to care for their children while they’re on the job,” said Luis Gonzalez, supervising immigration attorney at the Jewish Family Service of San Diego.²⁸⁶

Mexico’s Underfunded Refugee Protection System

None of the families we spoke with had sought asylum in Mexico. Most were unaware that was an option. For instance, Ana J., a 31-year-old from Honduras staying at a shelter in Ciudad Juárez with her husband and their three daughters, said, “We didn’t know we could

²⁸⁴ Human Rights Watch telephone interview with Alejandra Macías, Asylum Access, July 1, 2020.

²⁸⁵ Human Rights Watch interview with Denise Gilman, September 21, 2020.

²⁸⁶ Human Rights Watch remote interview with Luis Gonzalez, September 28, 2020.

ask for asylum here.”²⁸⁷ Delfina L., 34, also from Honduras, told us, “Nobody ever spoke of this possibility.”²⁸⁸

A few had humanitarian visas, temporary status issued at one-year intervals to people who meet specific conditions, including those who are victims of serious crime. But others who appeared to qualify for them had not heard of that option or had only recently become aware of the possibility. A woman who was raped in Monterrey said that she did not know about the humanitarian visa until months later, when she made a police report on behalf of another woman in Ciudad Juárez. “The officer said this was an option, but that was the first time I had heard of it,” she told us.²⁸⁹ In fact, Mexico’s immigration agency does not have uniform criteria for issuing humanitarian visas, Mexican lawyers observed. “Each delegation has its own approach,” Alejandra Macías of Asylum Access said, referring to the state-level offices of the National Migration Institute. For example, some delegations require victims of crime to supply both a complaint and a certification from prosecutors that the Attorney General’s office has recognized the person as the victim of a crime. Other delegations simply do not issue humanitarian visas, she said.²⁹⁰

The Mexican refugee protection system does not offer an effective alternative to asylum in the United States. The Mexican refugee agency, known as the Mexican Commission for Refugee Assistance (Comisión Mexicana de Ayuda a Refugiados, COMAR), has received an increasing number of applications for refugee recognition in recent years. Its staffing and budget have not kept pace: its 2019 budget was its lowest in seven years. For 2020, its budget was equivalent to just \$28 per application, based on its estimate that it would receive 85,000 applications during the year, as compared with \$575 per application received in 2013, an analysis by the University of Texas at Austin’s Strauss Center for International Security and Law found.²⁹¹ Nearly half of those who sought refugee

²⁸⁷ Human Rights Watch interview with Ana J., Ciudad Juárez, January 7, 2020.

²⁸⁸ Human Rights Watch interview with Delfina L., Ciudad Juárez, January 13, 2020.

²⁸⁹ Human Rights Watch interview, January 2020.

²⁹⁰ Human Rights Watch telephone interview with Alejandra Macías, Asylum Access, July 1, 2020.

²⁹¹ Policy Research Project on Mexico’s Migratory Policy, *Migrant Protection Protocols: Implementation and Consequences for Asylum Seekers in Mexico*, Policy Research Project Report No. 218, Lyndon B. Johnson School of Public Affairs, May 2020, p. 13.

recognition in 2018 were still waiting for a decision in October 2019, Asylum Access found when it analyzed government data.²⁹²

A 30-day time limit to apply for refugee recognition is enforced even for those who only become aware of the possibility of seeking safety in Mexico once they are at its northern border. Asylum Access has had success in some cases in getting individual exemptions from this limit, but only after seeking and obtaining an *amparo*, a remedy for violations of constitutional rights.²⁹³

A requirement that those seeking refugee recognition in Mexico present themselves for weekly signatures at the COMAR office has been suspended during the pandemic. But a source of stress for applicants is that COMAR does not provide people with a document giving them some security that they will not be deported while their asylum case is pending, Macías told Human Rights Watch.²⁹⁴

²⁹² Asylum Access, “Cifras nuevas de la COMAR demuestran que hay más de 13.000 solicitantes de asilo esperando decisiones desde 2018,” January 9, 2020, <https://asylumaccess.org/cifras-nuevas-de-la-comar-demuestran-que-hay-mas-de-13-000-solicitantes-de-asilo-esperando-decisiones-desde-2018/> (accessed December 2, 2020).

²⁹³ Human Rights Watch telephone interview with Alejandra Macías, Asylum Access, July 1, 2020.

²⁹⁴ *Ibid.*

IV. Damage to Mental Health

Salvador E. and his wife, Marla, fled death threats from gang members in El Salvador, leaving their homes in January 2019. They travelled north with their five children, ages 1 to 12, hoping to join Marla's mother and sisters, all US citizens, in Utah. In Guatemala, they were robbed of all of their money, so they stayed with a relative in Belize for a time while they worked to earn money to continue their journey.

As they moved on from Veracruz, Mexican immigration agents apprehended the family and detained them for 40 days. After they were released, they travelled to Monterrey, where Marla was robbed at knifepoint.

They made their way to Baja California and walked through a gap in the wall on the US side of the border. Once in California, they walked along the border fence until they saw a Border Patrol station, which they approached to request asylum. After two days in immigration holding cells, CBP sent them to Tijuana. They felt unsafe in the first shelter they found, so they rented a room. A few days after they moved to the room, they returned to it one afternoon to find they had been robbed. Suspecting that they had been set up by their landlord, they confronted her but quickly left the premises when she threatened to call the police to have them arrested.

When we spoke to Marla and Salvador in November 2019, they had found another shelter. Nevertheless, they said in combination, the moves and the dangers they had faced weighed on them. They each described constantly feeling stressed. Marla had begun to have regular headaches. In addition, she said, "I feel lost."²⁹⁵

Like Marla, Salvador, and their family, many people face violent attacks, extortion, and other serious abuse on their journey through Mexico. Some spend time in immigration detention; others are preyed upon by Mexican authorities. In some instances, they are subjected to violence from the same groups that caused them to flee their homes. In many of the events described to Human Rights Watch, people appeared to be targeted because

²⁹⁵ Human Rights Watch interview with Marla E. and Salvador E., Tijuana, November 24, 2019.

they were migrants—they were singled out for violent attacks or other serious abuse because they looked or sounded like they were from somewhere else.

These traumatic events hurt their mental well-being, people told us. For instance, a Cuban woman told Human Rights Watch:

After we arrived in Puebla [Mexico], we were abducted by members of an armed group and held along with 80 others in a building resembling a warehouse. We were held captive for five days in the warehouse and were extorted for ransom They subjected us to many abuses while we were there. It is really difficult to talk about what we faced there. Even thinking about it now makes me very upset, and I think it will be a long time before I can talk about it without feeling great distress.²⁹⁶

Being placed in the MPP added to their stress, they said. “I have headaches and am worried all the time. I cannot sleep. I want to be able to take care of our family and protect them I am very distressed about our situation,” Héctor C., from Honduras, told us.²⁹⁷

Many described changes in their children’s behavior, causing the parents increasing feelings of anxiety for their children’s well-being. “It’s hardest on our son,” said Edwin F., choking up as he described the changes in his 5-year-old son during the three months they had been in Mexico. He continued:

He isn’t prepared mentally for these things. We’ve seen a change in him. . . . Before he was more easygoing. Now he’s easily bothered, more irritable, gets angry easily. He’s anxious and impulsive now, he doesn’t control himself. He was more well-behaved in Honduras. Now he misbehaves. We’ve seen a complete change in the boy. We didn’t want this life for our son.²⁹⁸

²⁹⁶ Human Rights Watch interview, name and location withheld, January 2020.

²⁹⁷ Human Rights Watch interview with Héctor C., Tijuana, November 24, 2019.

²⁹⁸ Human Rights Watch interview with Edwin F., Ciudad Juárez, January 10, 2020.

In another case, an 8-year-old girl who was sexually assaulted by a man staying at her shelter in Ciudad Juárez was having nightmares several times a week. When we spoke to her and her father one week after the assault, she said that she often feared that scary people would hurt her.²⁹⁹ Her father said that after the assaults, which took place over several days in December before she reported them, she often shook with anxiety when she was distressed. He noticed other changes in her behavior: for example, she sought more attention from him and was more disruptive than before, including by being defiant toward requests from him and others. He said she also had begun to come to him and cry after interactions with other children; before the assaults, she was usually able to resolve conflicts with other children without his help, he told us.³⁰⁰

Such behavioral changes are common reactions among children to exposure to traumatic stress, especially when there has been a rupture in trust and security in parent-child attachment. Increased difficulty with emotional regulation is another common outcome of children's exposure to trauma.³⁰¹

The girl's father told us that he had noticed changes in his own behavior as well. He was always on the lookout for danger and felt sad, increasingly negative, and hopeless, he said.³⁰² His hypervigilance and reduced sense of trust and confidence in others are consistent with anxiety and posttraumatic stress.³⁰³ Research by Médecins Sans Frontières and Physicians for Human Rights, among other groups, has also found that the experience of being sent to Mexico under the MPP had adverse impacts on mental health.³⁰⁴

²⁹⁹ Human Rights Watch interview, Ciudad Juárez, January 2020.

³⁰⁰ Human Rights Watch interview, Ciudad Juárez, January 2020.

³⁰¹ See, for example, American Psychological Association, *Children and Trauma: Update for Mental Health Professionals* (2008), <https://www.apa.org/pi/families/resources/update.pdf> (accessed July 12, 2020); Julian D. Ford, Joseph Spinazzola, Bessel van der Kolk, and Damion J. Grasso, "Toward an Empirically Based Developmental Trauma Disorder Diagnosis for Children: Factor Structure, Item Characteristics, Reliability, and Validity of the Developmental Trauma Disorder Semi-Structured Interview (DTD-SI)," *Journal of Clinical Psychiatry*, vol. 79 (2018), pp. e1-e9; Joseph Spinazzola, Bessel van der Kolk, and Julian D. Ford, "When Nowhere Is Safe: Interpersonal Trauma and Attachment Adversity as Antecedents of Posttraumatic Stress Disorder and Developmental Trauma Disorder," *Journal of Traumatic Stress*, vol. 31 (2018), pp. 631-642.

³⁰² Human Rights Watch interview, Ciudad Juárez, January 2020.

³⁰³ See, for example, Richard A. Bryant and Allison G. Harvey, "Attentional Bias in Posttraumatic Stress Disorder," *Journal of Traumatic Stress*, vol. 10 (1997), pp. 635-44; T. Dalgleish, A.R. Moradi, M.R. Taghavi, H.T. Neshat-Doost, and W. Yule, "An Experimental Investigation of Hypervigilance for Threat in Children and Adolescents with Post-Traumatic Stress Disorder," *Psychological Medicine*, vol. 31 (2001), pp. 541-47.

³⁰⁴ See Médecins Sans Frontières, "The Devastating Toll of 'Remain in Mexico' Asylum Policy One Year Later," January 29, 2020, <https://www.msf.org/one-year-inhumane-remain-mexico-asylum-seeker-policy> (accessed October 30, 2020); Médecins Sans Frontières, "Hopelessness and Anxiety: The Consequences of Waiting for US Asylum," December 18, 2019,

Another 23-year-old Honduran woman, Juliana T., described significant changes in her 7-year-old daughter's behavior and functioning after the girl was sexually assaulted while in a shelter in Ciudad Juárez. Juliana said her daughter suffers from nightmares and other sleep problems, intrusive thoughts and feelings, avoidance of trauma reminders, memory difficulty, and hypervigilance. Her daughter is no longer interested in school, socializing, or play, is afraid to go out in public, and demonstrates increased aggression toward her family, Juliana told us.³⁰⁵

The experience of immigration detention in the United States was also traumatic, we heard. Santiago F., a 30-year-old Guatemalan man, said that his 5-year-old son, Mateo, became so frightened when they were locked up after their court hearings that he had to hold his son to comfort him the entire time they were in the *hielera*. “Mateo used to be a very active and happy boy, but now he is quiet and sad. He gets very nervous whenever we have appointments with the US immigration officials because he knows that immediately after court, we’ll be locked up for several days,” Santiago told us.³⁰⁶

We heard many such accounts. Héctor C., a 42-year-old Honduran man, said that being locked up for two days in a Yuma holding cell badly affected his 3-year-old daughter. “The girl was traumatized. After that, she would not let anybody get close to her for a long time,” he told us.³⁰⁷

Renata A. gave a similar account, telling us that her 5-year-old daughter's behavior changed markedly after their detention in CBP holding cells in California, Arizona, and Texas. “The whole time we were interviewed by the CBP agents, she hung on to our legs and wouldn't look at the immigration agent. She started wetting the bed. She has nightmares and wakes up screaming. She'll scream, ‘Police, police! The police are going to take us away! The police are coming to get us!’ This isn't how she was before the

<https://www.msf.org/reality-asylum-seekers-mexico-us-border> (accessed October 30, 2020); Physicians for Human Rights, *“If I Went Back, I Would Not Survive”: Asylum Seekers Fleeing Violence in Mexico and Central America*, October 2019, p. 24, https://phr.org/wp-content/uploads/2019/10/PHR-Asylum-Seekers-Fleeing-Violence-Report-October-2019_FINAL_English.pdf (accessed December 20, 2020). See also Diamond et al., *A Population in Peril*, p. 7.

³⁰⁵ Human Rights Watch interview with Juliana T., Ciudad Juárez, January 7, 2020.

³⁰⁶ Human Rights Watch interview with Santiago F., Tijuana, November 23, 2019.

³⁰⁷ Human Rights Watch interview with Héctor C., Tijuana, November 24, 2019.

immigration agents detained us. This is new; it started after we were in immigration detention,” Renata said.³⁰⁸

Even before immigration courts suspended MPP hearings in response to the pandemic, lengthy waits for court dates added to people’s distress. When Julián M. heard in November that he and his family would wait four months for their merits hearing, he said, “I felt desperate.” He was most concerned for the well-being of his daughters, ages 5, 3, and 1, he said. “The shelter isn’t a good place for them, and we’ve been here for months already.”³⁰⁹

Staff at migrant shelters said such reactions were common. “People have a sense of despair and hopelessness. Confronting this reality, many go into a state of depression,” Melissa Soto Osuna, a staff member at Tijuana’s Casa del Migrante, told Human Rights Watch in November 2019.³¹⁰

Exposure to stress, adversity, and trauma is known to have a cumulative impact: increased frequency and duration of exposure to stress and adversity correspond with increased risk for psychological distress and long-term impairment in health and functioning. That means that exposure to stress, adversity, and trauma resulting from placement in the MPP compounds with prior trauma exposure in countries of origin and in transit to significantly increase the likelihood, intensity, and complexity of psychological disturbance and impairment in functioning for affected individuals and families. Such adverse impacts are particularly pronounced for children, including adolescents, because of increased vulnerability associated with the impact of trauma and adversity exposure on child development.³¹¹

³⁰⁸ Human Rights Watch telephone interview with Renata A., September 29, 2020.

³⁰⁹ Human Rights Watch interview with Julián M., Ciudad Juárez, January 7, 2020.

³¹⁰ Human Rights Watch interview with Melissa Soto Osuna, Tijuana, November 22, 2019.

³¹¹ See Spinazzola et al., “Toward an Empirically Based Developmental Trauma Disorder Diagnosis for Children”; National Scientific Council on the Developing Child, “Excessive Stress Disrupts the Architecture of the Developing Brain,” Harvard University Center on the Developing Child Working Paper No. 3, updated edition—January 2014, <https://developingchild.harvard.edu/resources/wp3/> (accessed December 16, 2020); Bruce S. McEwen, “Stressed or Stressed Out: What Is the Difference?” *Journal of Psychiatry & Neuroscience*, vol. 30 (2005), pp. 315–318, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1197275/> (accessed December 20, 2020); Monica Bucci, Sara Silvério Marques, Debora Oh, and Nadine Burke Harris, “Toxic Stress in Children and Adolescents,” *Advances in Pediatrics*, vol. 63 (2016), pp. 403–428; Vincent J. Felitti, Robert F. Anda, Dale Nordenberg, David F. Williamson, Alison M. Spitz, Valerie Edwards, Mary P. Koss, and James S. Marks, “Relationship of Childhood Abuse and Household Dysfunction to Many of the

The general conditions and experiences of individuals and families in the MPP correspond to factors associated with trauma exposure and posttraumatic stress reactions.³¹² Individuals and families in the MPP consistently described a sense of disempowerment and helplessness, coupled with a chronic sense of threat and danger of assault, persecution, and general instability and insecurity. The long-term and ambiguous nature of their life on the border, with no clear timeline for court hearings or protection, intensifies the stress, anxiety, and trauma they experience, we heard.

The prolonged sense of helplessness imposed by the MPP may have long-term repercussions. Prolonged and inescapable insecurity can cause distress that can become a “way of being” for many people.³¹³

The psychological impact of the MPP on children and families is particularly marked. The prevention of childhood distress in the face of trauma and adversity is largely dependent upon the presence of a stable and supportive caregiving relationship and environment.³¹⁴ A stable and supportive caregiving environment promotes child and family resilience by providing security, validation, and emotional support.³¹⁵ The MPP does not facilitate such an environment for children and their families; instead, children and their families

Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study,” *American Journal of Preventive Medicine*, vol. 14 (1998), pp. 245-258, [https://www.ajpmonline.org/article/S0749-3797\(98\)00017-8/abstract](https://www.ajpmonline.org/article/S0749-3797(98)00017-8/abstract) (accessed December 20, 2020).

³¹² The experience of trauma is subjective, and experiences of challenges or threats that entail a perceived lack of control or agency are more likely to be experienced as traumatic, resulting in increased likelihood of negative psychological and health outcomes. Julian D. Ford, Damion J. Grasso, Jon D. Elhai, and Christine A. Courtois, “Etiology of PTSD: What Causes PTSD?” *Posttraumatic Stress Disorder: Scientific and Professional Dimensions*, (Second Edition—2015, pp. 81-132; US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Trauma and Justice Strategic Initiative, “SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach,” SMA14-4884, July 2014, https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf (accessed December 16, 2020).

³¹³ Research on “learned helplessness” has found that that exposure to inescapable and repeated pain or threat leads to generalized beliefs and behaviors associated with a lack of perceived control, resulting in reduced efforts for change or resolution, and associated symptoms of depression and behavioral withdrawal (including low motivation, lethargy, and detachment). See, for example, Lyn Y. Abramson, Martin E.P. Seligman, and John D. Teasdale, “Learned Helplessness in Humans: Critique and Reformulation,” *Journal of Abnormal Psychology*, vol. 87 (1978), pp. 49-74; Susan Nolen-Hoeksema, Joan S. Girgus, and Martin E.P. Seligman, “Learned Helplessness in Children: A Longitudinal Study of Depression, Achievement, and Explanatory Style,” *Journal of Personality and Social Psychology*, vol. 51 (1986), pp. 435-42, <https://ppc.sas.upenn.edu/sites/default/files/lhchildrendepaches.pdf> (accessed December 20, 2020).

³¹⁴ National Scientific Council on the Developing Child, “Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience,” Harvard University Center on the Developing Child Working Paper No. 13 (2015), <https://developingchild.harvard.edu/resources/supportive-relationships-and-active-skill-building-strengthen-the-foundations-of-resilience/> (accessed December 16, 2020).

³¹⁵ See Margaret E. Blaustein and Kristine M. Kinniburgh, *Treating Traumatic Stress in Children and Adolescents: How to Foster Resilience Through Attachment, Self-Regulation, and Competency*, Second Edition—2019; Louis Cozolino, *The Neuroscience of Human Relationships: Attachment and the Developing Social Brain*, (Second Edition—2014).

frequently face food and shelter insecurity, assault, harassment, and discrimination, significantly disrupting the stability of the caregiving environment and the security of family relationships. As a result, placement in the MPP can be expected to correspond with long-term difficulties in parenting, family functioning, child behavior, child development, and overall health and well-being.

Particularly after the onset of the pandemic, many of those we interviewed described daily struggles to cope. Some said that the only thing that kept them going was their recognition that their children depended on them. Describing her mental state, Delfina L., a 34-year-old Honduran woman, told us, “I spend every day feeling like I am drowning.”³¹⁶

³¹⁶ Human Rights Watch telephone interview with Delfina L., June 25, 2020.

V. The Trump Administration's Attack on Asylum

The MPP was part of a more general, sustained attack the Trump administration levelled on asylum and other protections for people fleeing harm and seeking safety in the United States. Under Trump, the US government abandoned a decades-long commitment to refugee resettlement. It introduced technical changes to rules and administrative caselaw to sharply restrict asylum standards, foreclosing most claims by women seeking protection from abusive partners and people fleeing gang violence. It routinely flouted court orders, including directives to release children to relatives in the United States. It forcibly separated parents from their children. It held children travelling on their own for weeks in squalid, packed holding cells. And it has used the Covid-19 pandemic as a pretext to summarily expel more than 316,000 people, including at least 8,800 unaccompanied children,³¹⁷ without the pretense of due process, and moving to bar asylum for anybody coming from a country affected by Covid-19.

The administration began processing some asylum seekers under a streamlined process that afforded inadequate due process protections. It initiated an agreement with Guatemala under which it transferred asylum seekers from El Salvador and Honduras to that country to pursue asylum there rather than in the United States,³¹⁸ despite Guatemala's incapacity to provide asylum seekers with a full and fair procedure to examine their claims.³¹⁹

³¹⁷ US Customs and Border Protection (CBP), "Migrant Protection Protocols FY 2020, Southwest Border Enrollments in MPP," n.d., <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy-2020> (accessed December 16, 2020); CBP, "Migrant Protection Protocols FY 2021, Southwest Border Enrollments in MPP," n.d., <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols> (accessed December 16, 2020); Camilo Montoya-Galvez, "Nearly 9,000 Migrant Children Have Been Expelled Under Pandemic Border Policy, Court Documents Say," *CBS News*, September 11, 2020, <https://www.cbsnews.com/news/8800-migrant-children-have-been-expelled-under-pandemic-border-policy-per-court-documents/> (accessed December 22, 2020).

³¹⁸ Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, 84 Fed. Reg. 64,095 (November 20, 2019); Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, 84 Fed. Reg. 63,994 (November 19, 2019). See also Kevin Sieff, "The US Is Putting Asylum Seekers on Planes to Guatemala—Often Without Telling Them Where They're Going," *Washington Post*, January 14, 2020, https://www.washingtonpost.com/world/the_americas/the-us-is-putting-asylum-seekers-on-planes-to-guatemala--often-without-telling-them-where-theyre-going/2020/01/13/of89a93a-3576-11ea-a1ff-c48c1d59a4a1_story.html (accessed July 19, 2020).

³¹⁹ Human Rights Watch and Refugees International, *Deportation with a Layover: Failure of Protection Under the US-Guatemala Asylum Cooperative Agreement*, May 2020, <https://www.hrw.org/report/2020/05/19/deportation->

It also took steps to direct asylum seekers to official border crossings, including an agency rule and presidential proclamations that purported to render ineligible for asylum anybody who entered the United States irregularly.³²⁰ But many people who went to border stations, or “ports of entry,” to apply for asylum found that CBP agents prevented them from crossing the international boundary with variations on the message “there is no processing capacity,”³²¹ the border post is “too full,”³²² or “Trump says we don’t have to let you in.”³²³ Under a practice known as “metering,” CBP accepted a limited number of people each day for asylum processing—sometimes, nobody at all.³²⁴

The Trump administration rolled out many other restrictions on asylum, in furtherance of a policy to end what it described as “the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens.”³²⁵ If left in place, these restrictions would “dismantle[] . . . America’s position as a global leader in refugee assistance,” the union representing asylum officers said.³²⁶ These additional restrictions include fast-tracked asylum screening in CBP holding cells with limited access to counsel,³²⁷ limited time to prepare for screening interviews and a ban on know-your-rights

layover/failure-protection-under-us-guatemala-asylum-cooperative; Eleanor Acer, “Sweeping Guatemala Agreement Illegal and Inhumane,” August 1, 2019, <https://www.humanrightsfirst.org/blog/sweeping-guatemala-agreement-illegal-and-inhumane> (accessed July 19, 2020).

³²⁰ Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 Fed. Reg. 55,934 (November 9, 2018); Addressing Mass Migration Through the Southern Border of the United States, 83 Fed. Reg. 57,661 (November 9, 2018); Addressing Mass Migration Through the Southern Border of the United States, 84 Fed. Reg. 3,665 (February 7, 2019); Addressing Mass Migration Through the Southern Border of the United States, 84 Fed. Reg. 21,229 (May 8, 2019).

³²¹ Stephanie Leutert, Ellie Ezzell, Savitri Arvey, Gabriella Sanchez, Caitlyn Yates, and Paul Kuhne, *Asylum Processing and Waitlists at the U.S.-Mexico Border*, Robert Strauss Center for International Security and Law, Center for US-Mexican Studies, and Migration Policy Centre, December 2018, p. 4.

³²² “US: Mexican Asylum Seekers Ordered to Wait,” Human Rights Watch news release, December 23, 2019, <https://www.hrw.org/news/2019/12/23/us-mexican-asylum-seekers-ordered-wait>.

³²³ Human Rights First, *Crossing the Line: US Border Agents Illegally Reject Asylum Seekers*, May 2017, p. 5, <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf> (accessed December 20, 2020).

³²⁴ See also Human Rights Watch, “US: Mexican Asylum Seekers Ordered to Wait.”

³²⁵ Executive Order: Border Security and Immigration Enforcement Improvements, January 25, 2017, § 11, <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/> (accessed July 16, 2020).

³²⁶ Zolan Kanno-Youngs, “Asylum Officers Condemn What They Call ‘Draconian’ Plans by Trump,” *New York Times*, July 15, 2020, <https://www.nytimes.com/2020/07/15/us/politics/asylum-officers-trump.html> (accessed July 16, 2020).

³²⁷ See American Immigration Council, “Policies Affecting Asylum Seekers at the Border: The Migrant Protection Protocols, Prompt Asylum Claim Review, Humanitarian Asylum Review Process, Metering, Asylum Transit Ban, and How They Interact,” Fact Sheet, January 2020, p. 8, https://www.americanimmigrationcouncil.org/sites/default/files/research/policies_affecting_asylum_seekers_at_the_border.pdf (accessed October 26, 2020).

orientation sessions in US Immigration and Customs Enforcement (ICE) detention,³²⁸ a bar on asylum for people who transited through countries without seeking protection there,³²⁹ a new asylum bar for those who come from or transit through countries affected by Covid-19 or another pandemic,³³⁰ fees for making asylum applications,³³¹ a 15-day filing deadline for some asylum and withholding of removal applications,³³² and other restrictions on asylum eligibility.³³³

The flurry of new policies rendered unpredictable and arbitrary what had been relatively clear, reliable criteria for determining who received which type of deportation proceeding. “All of a sudden there’s MPP, meaning people are sent to Mexico, and the potential for applying the ACA [the Asylum Cooperative Agreement], meaning they might go to Guatemala,” said Alexandra Miller, an attorney in Tucson. “Now add Covid Title 42 [summary expulsions] to the list. The effect is to astronomically increase the uncertainty people face.”³³⁴

In addition, administration officials appear to have acted in ways that hurt the integrity of the asylum adjudication process. A whistleblower complaint made in September 2020 by a senior DHS official, Brian Murphy, stated that Ken Cuccinelli, acting as DHS deputy

³²⁸ See Hamed Aleaziz, “Immigrant Asylum-Seekers May Get Less Time To Prepare Their Cases Under A New Trump Administration Rule,” *BuzzFeed News*, July 9, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-asylum-seekers-less-time-to-prepare> (accessed July 16, 2020); *L.M.-M. v. Cuccinelli*, Complaint, Civ. Action No. 19-2676 (D.D.C. filed September 6, 2019), paras. 172, 175, 178, 182, 187.

³²⁹ Asylum Eligibility and Procedural Modification, 84 Fed. Reg. 33,829, 33,830 (July 16, 2019); Human Rights First, *Asylum Denied, Families Divided: Trump Administration’s Illegal Third-Country Transit Ban*, July 2020, <https://www.humanrightsfirst.org/sites/default/files/AsylumDeniedFamiliesDivided.pdf> (accessed December 20, 2020).

³³⁰ Security Bars and Processing, 85 Fed. Reg. 41,201 (July 9, 2020). See also Human Rights Watch, “Public Comment Opposing Proposed Asylum Bars,” August 10, 2020, <https://www.hrw.org/news/2020/08/10/public-comment-opposing-proposed-asylum-bars>.

³³¹ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (November 14, 2019) (proposed rule); 84 Fed. Reg. 67,243 (December 9, 2019) (extending comment period to December 30, 2019). See also Jessica Bolter and Doris Meissner, “USCIS Fee Increase Proposed Rule Could Represent the Latest Step in Reshaping Immigration to the United States,” *Migration Policy Institute*, December 2019, <https://www.migrationpolicy.org/news/uscis-fee-hike-could-be-latest-step-reshape-immigration> (accessed October 12, 2020).

³³² Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 59,692 (September 23, 2020).

³³³ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, final rule, 85 Fed. Reg. 80,274 (December 11, 2020); Procedures for Asylum and Bars to Asylum Eligibility, 85 Fed. Reg. 67,202 (October 21, 2020). See also Bill Frelick (Human Rights Watch), “For World Refugee Day, the US Plans to Reject Them All,” *The Hill*, June 20, 2020, <https://www.hrw.org/news/2020/06/20/world-refugee-day-us-plans-reject-them-all>; Bill Frelick (Human Rights Watch), “The Trump Administration’s Final Insult and Injury to Refugees,” December 11, 2020, <https://www.hrw.org/news/2020/12/11/trump-administrations-final-insult-and-injury-refugees>.

³³⁴ Human Rights Watch telephone interview with Alexandra Miller, July 7, 2020.

secretary, asked for changes to information in intelligence reports in order to minimize references to “high levels of corruption, violence, and poor economic conditions” in El Salvador, Guatemala, and Honduras. “The intelligence reports were designed to help asylum officers render better determinations regarding their legal standards,” Murphy’s complaint said, adding that Cuccinelli asked for the changes because the reports’ description of country conditions “undermine[d]” President Trump’s “policy objectives with respect to asylum.”³³⁵

Not all of these measures were creations of the Trump administration, and in other instances the administration implemented practices for which the groundwork was laid decades ago. Expedited removal proceedings and the option of requiring people seeking asylum to wait in Mexico for US immigration court hearings were authorized by legislation signed by President Bill Clinton in 1996.³³⁶ Under President George W. Bush, immigration authorities expanded the use of expedited removal.³³⁷ The Obama administration made extensive use of prolonged family detention,³³⁸ regularly violated the 1997 settlement agreement that set minimum standards for immigration detention of children,³³⁹ and

³³⁵ *In the Matter of Brian Murphy, Principal Deputy Under Secretary, Department of Homeland Security Office of Intelligence and Analysis*, Whistleblower Reprisal Complaint (DHS Office of Inspector General submitted September 8, 2020), p. 9, https://intelligence.house.gov/uploadedfiles/murphy_wb_dhs_oig_complaint9.8.20.pdf (accessed September 10, 2020).

³³⁶ See Donald Kerwin, “From IIRAIRA to Trump: Connecting the Dots to the Current US Immigration Policy Crisis,” *Journal on Migration and Human Security*, vol. 6 (2018), pp. 192-204, <https://journals.sagepub.com/doi/pdf/10.1177/2331502418786718> (accessed December 20, 2020); Eleanor Acer and Olga Byrne, “How the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Has Undermined US Refugee Protection Obligations and Wasted Government Resources,” *Journal on Migration and Human Security*, vol. 5 (2017), pp. 356-78, <https://journals.sagepub.com/doi/pdf/10.1177/233150241700500207> (accessed December 20, 2020). For assessments of the treatment of asylum seekers placed in expedited removal proceedings prior to 2017, see Elizabeth Cassidy and Tiffany Lynch, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, US Commission on International Religious Freedom, 2016, <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf> (accessed July 16, 2020); Human Rights Watch, “*You Don’t Have Rights Here*: US Border Screening and Returns of Central Americans to Risk of Serious Harm”, 2014, <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>; US Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal*, 2005, <https://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal> (accessed July 16, 2020).

³³⁷ See Alison Siskin and Ruth Ellen Wasem, *Immigration Policy on Expedited Removal of Aliens*, Congressional Research Service, 2008, pp. 6-7; Human Rights Watch, “*You Don’t Have Rights Here*: US Border Screening and Returns of Central Americans to Risk of Serious Harm”, p. 20.

³³⁸ See “US: Trauma in Family Immigration Detention,” Human Rights Watch news release, May 15, 2015, <https://www.hrw.org/news/2015/05/15/us-trauma-family-immigration-detention-o>.

³³⁹ See, for example, *Flores v. Johnson*, Order re Plaintiffs’ Motion to Enforce Settlement of Class Action and Defendants’ Motion to Amend Settlement Agreement, No. CV-85-4544 (C.D. Cal. July 24, 2015); Julia Preston, “Judge Orders Release of Immigrant Children Detained by U.S.,” *New York Times*, July 25, 2015, <https://www.nytimes.com/2015/07/26/us/detained-immigrant-children-judge-dolly-gee-ruling.html> (accessed October 22, 2020); Kiera Coulter et al., “A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Protection,” *Journal on Migration and Human*

employed border turnbacks, particularly of Haitians seeking asylum,³⁴⁰ among other abusive practices. But no previous US administration has made such systematic use of these provisions or deployed them so aggressively against children. The effect is an all-out assault on asylum, putting many people, including children, at risk of serious harm.

Security, vol. 8 (2020), pp. 96-110, <https://journals.sagepub.com/doi/pdf/10.1177/2331502420915898> (accessed December 20, 2020).

³⁴⁰ See Stephanie Leutert, et. al, *Asylum Processing and Waitlists at the U.S.-Mexico Border*, p. 3; Human Rights First, *Crossing the Line*, p. 8.

VI. US Violations of Domestic and International Law

The US Department of Homeland Security (DHS) and the US Department of Justice (DOJ) initiated and expanded the “Remain in Mexico” program even though senior administration officials knew or should have known that most people sent to Mexico under the program would have to rely on the limited, overstretched humanitarian services available in Mexican towns bordering the United States and that they would face significant—in many cases insurmountable—barriers to legal representation for their asylum claims. Other serious due process shortcomings of the Remain in Mexico program include deficient notice, resulting in the loss of rights and creating the risk that people may not appear at hearings through no fault of their own; questionable procedural tactics by DHS; and dubious interpretations of newly issued asylum regulations by some immigration judges. As a consequence, people placed in the MPP are denied their right to a full and fair hearing³⁴¹ and deprived of the right to seek asylum.³⁴²

Expulsions or returns to ill-treatment are prohibited under international law.³⁴³ From the start of the program, DHS and DOJ had ample warning of overcrowded shelters, serious threats to peoples’ lives and safety, food insecurity, concerns about the ability to maintain good hygiene, and the heightened risk these conditions posed for the spread of contagious diseases. DHS has refused most requests for exemption or release from the MPP on humanitarian grounds, as Human Rights Watch and other groups have found. And at the beginning of the pandemic, when Mexican states on the US border had few or no known cases of Covid-19, DHS rejected calls to release people from the MPP to allow them to join family members or friends in the United States while their asylum claims proceed.

³⁴¹ See International Covenant on Civil and Political Rights (ICCPR), art. 14(1), December 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976; ratified by United States June 8, 1992); Universal Declaration of Human Rights, art. 10, G.A. Res. 217 (III), U.N. Doc. A/RES/217(III) (December 10, 1948).

³⁴² Universal Declaration of Human Rights, art. 14; UN High Commissioner on Refugees (UNHCR), Executive Committee of the High Commissioner’s Programme, Conclusion on International Protection No. 85 (XLIX) (October 9, 1998), para. f (“reaffirm[ing] that the institution of asylum, which derives directly from the right to seek and enjoy asylum from persecution set out in Article 14 of the Declaration, is among the most basic mechanisms for the protection of refugees.”).

³⁴³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, December 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987; ratified by United States October 21, 1994); ICCPR, art. 7.

In these and other ways, the Remain in Mexico program violates the United States' obligations under the Refugee Protocol, the Convention against Torture, the International Covenant on Civil and Political Rights (ICCPR), and customary international law. It is inconsistent with the Refugee Act of 1980, enacted to bring the United States into compliance with its obligations under the Refugee Protocol, which commits the United States to respect the principle of nonrefoulement and the other refugee rights enumerated in the Refugee Convention.

The Prohibition on Returns to Torture or Other Ill-Treatment

People placed in the MPP are at risk of serious harm in Mexico, including sexual assault and other violent attacks, armed robbery, and extortion, often at the hands of organized crime and in some instances by Mexican immigration agents or police.³⁴⁴ The MPP's woefully inadequate safeguards against return to such harm violate the Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR), which prohibit expulsions or returns in circumstances where people would face a substantial risk of torture or, in the case of the ICCPR, exposure to other ill-treatment.³⁴⁵

They also violate the customary international law prohibition on refoulement,³⁴⁶ which in the case of returns to risk of torture, is a peremptory norm of international law.³⁴⁷ These obligations are in addition to the nonrefoulement provision of the Refugee Convention.³⁴⁸

³⁴⁴ See Section II, "Sent to Danger."

³⁴⁵ Convention against Torture, art. 3; ICCPR, art. 7; Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment) (March 10, 1992), para. 9 ("States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement."). The Human Rights Committee provides authoritative interpretations of the ICCPR.

³⁴⁶ See, for example, UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, para. 15 (stating UNHCR's view that the prohibition of refoulement is a rule of customary international law).

³⁴⁷ See, for example, *Prosecutor v. Anto Furundzija*, Trial Chamber Judgment (International Criminal Tribunal for the former Yugoslavia (Dec. 10, 1998), para. 144 ("This prohibition is so extensive that States are even barred by international law from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.")).

³⁴⁸ Refugee Convention, art. 33. This provision bars expulsions or returns to territories where a person's life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.

There are no exceptions to the prohibition of refoulement under the Convention against Torture.³⁴⁹ The UN Committee against Torture, the treaty body that provides authoritative guidance on states' obligations under the Convention against Torture, has observed:

Each state party must apply the principle of non-refoulement in any territory under its jurisdiction or any area under its control or authority, or on board a ship or aircraft registered in the State party, to any person, *including persons requesting or in need of international protection, without any form of discrimination and regardless of the nationality or statelessness or the legal, administrative or judicial status of the person concerned under ordinary or emergency law.*³⁵⁰

Compliance with the nonrefoulement obligation under the Convention against Torture requires individual, impartial, and independent examination of “[e]ach case” in a way that provides “essential procedural safeguards.”³⁵¹ In particular, “[c]ollective deportation, without an objective examination of the individual cases with regard to personal risk, should be considered as a violation of the principle of nonrefoulement.”³⁵²

Under the ICCPR, states are obligated not to extradite, deport, expel, or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm.³⁵³ As with the nonrefoulement obligation of the Convention against Torture, the obligation under the ICCPR does not allow for exceptions.³⁵⁴

³⁴⁹ Committee against Torture, General Comment No. 4 on the Implementation of Article 3 of the Convention in the Context of Article 22, U.N. Doc. CAT/C/GC/4 (September 4, 2018), para. 9 (“The principle of ‘non-refoulement’ of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture is . . . absolute.”). The Committee against Torture provides authoritative interpretations of the Convention against Torture.

³⁵⁰ *Ibid.*, para. 10 (emphasis added).

³⁵¹ *Ibid.*, para. 13.

³⁵² *Ibid.* See also *ibid.*, para. 18(a) (calling on states to take steps to ensure “the right of each person concerned to have the case examined individually and not collectively”).

³⁵³ Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment) (March 10, 1992), para. 9; Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004), para. 12.

³⁵⁴ Human Rights Committee, General Comment No. 20, para. 3 (“The text of article 7 allows of no limitation.”).

US Asylum Law

The current US asylum framework is the product of the Refugee Act of 1980,³⁵⁵ “a clear statement of intention of the United States Congress to move away from a refugee and asylum policy which, for over forty years, discriminated on the basis of ideology, geography and even national origin, to one that was rooted in principles of humanitarianism and objectivity.”³⁵⁶

In enacting the Refugee Act of 1980, Congress intended to implement the United States’ obligations under the Protocol relating to the Status of Refugees (the Refugee Protocol), which incorporated the substantive protections of the Convention relating to the Status of Refugees (the Refugee Convention).³⁵⁷ Congress enacted the Refugee Act “with the understanding that it is based directly upon the language of the Protocol and it is intended that the provision be construed consistent with the Protocol.”³⁵⁸ As the US Supreme Court observed, “The principal motivation for the enactment of the Refugee Act of 1980 was a desire to revise and regularize the procedures governing the admission of refugees into the United States,”³⁵⁹ and to make “U.S. statutory law clearly reflect . . . [US] legal obligations under international agreements.”³⁶⁰

In particular, the “withholding of removal” provision³⁶¹ tracks the prohibition of refoulement in article 33 of the Refugee Convention. As the US Supreme Court observed in 1993, the “history of the 1980 Act does disclose a general intent to conform our law to Article 33 of the Convention.”³⁶² Similarly, the US Court of Appeals for the Third Circuit has

³⁵⁵ Pub. L. No. 96-212, 94 Stat. 102 (March 17, 1980).

³⁵⁶ Deborah Anker, “The Refugee Act of 1980: An Historical Perspective,” *In Defense of the Alien*, vol. 5 (1982), p. 89.

³⁵⁷ Protocol relating to the Status of Refugees (Refugee Protocol), Jan. 31, 1967, 606 U.N.T.S. 267 (accession by United States November 1, 1968). The Refugee Protocol removed the temporal and geographic restrictions contained in the Refugee Convention. See Refugee Protocol, art. I.

³⁵⁸ H.R. Conf. Rep. No. 96-781, at 20 (1980).

³⁵⁹ *INS v. Stevic*, 467 U.S. 407, 425 (1984).

³⁶⁰ *Ibid.* at 426 n.20. See also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987) (noting that “one of Congress’ primary purposes was to bring United States refugee law into conformance with” the Refugee Protocol); *INS v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999) (same); *Negusie v. Holder*, 555 U.S. 551 (2009) (same); *Marincas v. Lewis*, 92 F.3d 195, 198 (3d Cir.1996) (“[T]he Refugee Act was enacted to fulfill our treaty obligations under the [1967] U.N. Protocol for the benefit of aliens . . . who claim to be fleeing persecution in their homelands.”); *Yusupov v. Att’y Gen.*, 518 F.3d 185, 203 (“Congress intended to protect refugees to the fullest extent of our Nation’s international obligations.”).

³⁶¹ Immigration and Nationality Act § 243(b)(3), codified at 8 U.S.C. § 1253(b)(3). Separately, protection against removals to countries where a person would “more likely than not” be tortured are set forth in regulations. See 8 C.F.R. §§ 208.16(c), 1208.16(c).

³⁶² *Sales v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 178 (1993).

stated, “The adoption of essentially identical language to that contained in Article 33 . . . is important because it is one of the strongest indicators that Congress intended to incorporate the understanding of the Protocol developed under international law into the U.S. statutory scheme.”³⁶³

³⁶³ *Yusupov*, 518 F.3d at 203 n.32 (3d Cir. 2008) (citing *Haitian Centers Council*, 509 U.S. at 180 & n. 36; *Cardoza-Fonseca*, 480 U.S. at 429, 432, 437).

Acknowledgments

This report is based on research undertaken in Ciudad Juárez and El Paso from November 2019 to March 2020 and remote interviews carried out between March and October 2020. The research team consisted of Warren Binford, professor of law and director of the Clinical Law Program, Willamette University; Michael Garcia Bochenek, senior counsel on children’s rights at Human Rights Watch; Ryan Matlow, a child clinical psychologist and Director of Community Programs for Stanford University’s Early Life Stress and Resilience Program and member of Stanford’s Human Rights in Trauma Mental Health Program; Hannah Rule, law student, Willamette University; Patricia Stonerod, law student, Willamette University; and Ewen Wang, a pediatrician and professor of emergency medicine, Stanford University Medical Center.

Michael Garcia Bochenek wrote the report, with contributions from Warren Binford, Ryan Matlow, and Ewen Wang. Hannah Rule provided research assistance.

Zama Neff, executive director of the Children’s Rights Division; Maria McFarland Sánchez-Moreno, senior legal advisor; and Tom Porteous, deputy program director, edited the report. Joe Amon, director of global health and clinical professor of Community Health and Prevention at the Dornsife School of Public Health, Drexel University, reviewed the sections on health services and the impact of the Remain in Mexico program on mental health. Ximena Casas, researcher, Women’s Rights Division; Bill Frelick, director, Refugee and Migrant Rights Division; Neela Ghoshal, associate director, Lesbian, Gay, Bisexual, and Transgender Rights Division; Amanda Klasing, interim co-director, Women’s Rights Division; Tyler Mattiace, Mexico researcher; Grace Meng, associate director, US Program; Carlos Ríos Espinosa, senior researcher, Disability Rights Division; and Ariana Sawyer, researcher, US program, also reviewed the report. Delphine Starr, coordinator, Children’s Rights Division; Travis Carr, Digital coordinator, Fitzroy Hepkins, senior administrative manager; and José Martínez, administrative officer, produced the report.

We appreciate the willingness of the Leona Vicario Migrant Integration Center in Ciudad Juárez to allow us to visit and make staff available to answer our questions, and to the Chihuahua State Population Council (COESPO) for meeting with us.

Human Rights Watch is particularly grateful to the many nongovernmental organizations and individuals who generously assisted us in the course of this research, including Abara Borderland Connections, El Paso, Texas; Border Community Alliance, Nogales, Arizona; Casa del Migrante, Ciudad Juárez, Chihuahua; Casa del Migrante, Tijuana, Baja California; Casa YMCA para Menores Migrantes, Tijuana; Alma Cota de Yanez, director, Fundación del Empresariado Sonorense, A.C. (FESAC), Ciudad Obregón, Sonora; Luis M. Gonzalez, supervising immigration attorney, Jewish Family Service of San Diego, San Diego, California; Jodi Goodwin, attorney, Harlingen, Texas; Tania Guerrero, attorney, Estamos Unidos Asylum Project of CLINIC, El Paso; Denise Gilman, clinical professor of law and director, Immigration Clinic, University of Texas at Austin, Austin, Texas; Iglesia Alabanzas al Rey, Ciudad Juárez; Instituto Madre Assunta, Tijuana; Juventud 2000, Tijuana; Kennji Kizuka, senior researcher and policy analyst, Refugee Protection, Human Rights First, New York; Las Americas Immigrant Advocacy Center, El Paso; Alejandra Macías, Asylum Access, Mexico City; Alexandra Miller, managing attorney, Border Action Team, Florence Immigrant and Refugee Rights Project, Tucson, Arizona; Casey Miller, San Antonio, Texas; Alejandro Olayo-Méndez, S.J., assistant professor, School of Social Work, Boston College, Boston, Massachusetts; Refugee Health Alliance; Templo Embajadores de Jesús, Tijuana; Erika Pinheiro, litigation and policy director, Al Otro Lado, Tijuana; Nicole Ramos, Border Rights Project director, Al Otro Lado, Tijuana; Texas Civil Rights Project; Amy Thompson, postdoctoral researcher, El Colegio de Sonora, Hermosillo, Sonora; Constance Wannamaker, attorney, El Paso; Alysha Welsh, managing attorney, Washington office, Human Rights First, Washington, D.C.; Joanna Williams, director of education and advocacy, KINO Border Initiative, Nogales, Arizona; and Cindy Woods, managing attorney, Proyecto de Ayuda para Solicitantes de Asilo, Texas RioGrande Legal Aid.

Finally, we would like to thank the children and adults who were willing to share their firsthand experiences in the hope of improving the lives of others who follow them in seeking safety in the United States.

“Like I’m Drowning”

Children and Families Sent to Harm by the US ‘Remain in Mexico’ Program

In the two years since the “Remain in Mexico” program began in January 2019, the US Department of Homeland Security (DHS) has sent more than 69,000 people to Mexico while their US asylum claims are pending. This number includes families with children of all ages, some of them with disabilities, including newborns, infants, and toddlers. The program applies to nationals of all Latin American countries, including Brazilians and members of Indigenous communities who do not speak Spanish.

Formally known as the “Migration Protection Protocols” (MPP), the program is anything but protective: it has sent people to some of Mexico’s most dangerous cities and needlessly and foreseeably exposed them to considerable risk of serious harm. Those interviewed for this report described being subjected to rape or attempted rape and other sexual assault, abduction for ransom, extortion, armed robbery, and other crimes, in many cases immediately after US authorities sent them to Mexico or as they returned from US immigration court hearings. In some cases, Mexican immigration officers or police committed these crimes.

In theory, the MPP has two safeguards against return to harm, but neither is effective in practice. First, US officials are not supposed to send people to Mexico under the program if an asylum officer finds that they are likely to face threats to their lives or freedom or if they would be tortured there. Second, DHS has said that it will not place “vulnerable” people in the MPP. These exemptions are rarely granted, even though Human Rights Watch found many cases that would qualify.

MPP hearings were suspended in March 2020 in response to the Covid-19 pandemic and had not resumed by the end of December 2020. Thousands of people are concentrated in dangerous Mexican border towns indefinitely, living lives in limbo, many dependent on the generosity of humanitarian groups and volunteers for accommodation, food, and health care. Many of the people interviewed for this report described changes in their children’s behavior, causing parents increasing feelings of anxiety for their children’s well-being.

The Biden administration should immediately terminate the MPP program and allow those placed in the MPP to reenter the United States and remain until their asylum claims are resolved.



A Honduran migrant mother and child wait in line for a dinner provided by volunteers at a makeshift encampment occupied by asylum seekers sent back to Mexico from the U.S. under the “Remain in Mexico” program, officially named Migrant Protection Protocols (MPP), in Matamoros, Tamaulipas, Mexico, October 27, 2019.

© 2019 REUTERS/Loren Elliott