



GOVERNMENT
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PROJECT

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November 18, 2019

The Honorable Kathleen Rice
Chairwoman, Subcommittee on Border Security, Facilitation, & Operations
United States House Committee on Homeland Security
Washington, DC 20515

The Honorable Clay Higgins
Ranking Member, Subcommittee on Border Security, Facilitation, & Operations
United States House Committee on Homeland Security
Washington, DC 20515

Re: Written Statement from Douglas Stephens, Esq. in Support of November 19, 2019 Hearing, *Examining the Human Rights and legal Implications of DHS' "Remain in Mexico" Policy*

Dear Committee Chairs,

Below please find a written statement for the record from our client, whistleblower Douglas Stephens, Esq., in support of the U.S. House Committee on Homeland Security's Subcommittee on Border Security, Facilitation, & Operations November 19, 2019 Hearing, *Examining the Human Rights and legal Implications of DHS' "Remain in Mexico" Policy*.

Mr. Stephens is a former Asylum Officer who resigned from USCIS in August 2019. While serving as an Asylum Officer, Mr. Stephens, after conducting five interviews under the Migrant Protection Protocols (MPP or "Remain in Mexico" program), refused to conduct further interviews, believing that implementing MPP violates numerous laws and treaty obligations and poses significant threat of harm to asylum seekers forced to remain in Mexico. After facing retaliation, he documented in writing the reasons for his concerns to his superiors in a seven-point [memo](#).

Mr. Stephens shared his concerns with Senator Jeff Merkley (D-OR), which became an integral part of a report issued by Senator Merkley on November 14, 2019, "[Shattered Refuge: A U.S. Senate Investigation into the Trump Administration's Gutting of Asylum](#)." Mr. Stephens has since spoken on the record to the press, including the [Los Angeles Times](#) and [This American Life](#), motivated to shed light on MPP as an illegal, dangerous, and destructive policy, and to support his former Asylum Officer colleagues who remain in the untenable position of having to implement a policy that is illegal and dangerous. This same motivation prompts his statement to this Committee.

Thank you holding this important hearing and for the opportunity to submit his written statement regarding his decision to engage in protected whistleblowing based on his experience as an Asylum Officer seeing first-hand the illegal and inhumane effects of the Remain in Mexico policy.

Sincerely,
/s/

Dana L. Gold
Counsel for Mr. Douglas Stephens
Senior Counsel & Director of Education
Government Accountability Project

*Examining the Human Rights and legal Implications of DHS’ “Remain in Mexico”
Policy*

U.S. House Committee on Homeland Security
Subcommittee on Border Security, Facilitation and Operations

Written Statement of Douglas Stephens, Esq.

November 19, 2019

Chairwoman Rice, Ranking Member Higgins and other Members of the Subcommittee, thank you for providing the opportunity to provide a written statement relevant to this hearing on *Examining the Human Rights and legal Implications of DHS’ “Remain in Mexico” Policy*.

My name is Douglas Stephens.¹ I was an Asylum Officer in the San Francisco Asylum Office from September 2017 until August 31, 2019. Prior to my service in the asylum corps, I was a Department of Justice (DOJ) staff attorney for the San Francisco Immigration Court from September 2015 to September 2017. While at the Immigration Court, I reviewed 195 cases and drafted 96 judicial decisions. In my two years as an Asylum Officer, I conducted and adjudicated more than 350 Affirmative Asylum interviews, Credible Fear screenings, and Reasonable Fear screenings. I conducted five Migrant Protection Protocol (MPP) interviews, also known as Remain in Mexico interviews.

In late 2018, the Trump administration announced the Remain in Mexico policy. Under the policy, Asylum Officers are tasked with conducting an interview of non-Mexican migrants attempting to enter the United States by the southern border, nominally for the purpose of assessing the likelihood of harm the migrant would face if forced to remain in Mexico during the pendency of his or her removal proceedings before an Immigration Judge. As I am sure you are aware, the policy was slow to be implemented and is subject to ongoing litigation. The San Francisco Asylum Office began conducting MPP interviews on or about June 2019, after the Ninth Circuit Court of Appeals lifted a temporary injunction on the policy. The San Francisco Asylum Office was assigned all MPP interviews originating for migrants that cross the Mexico-Arizona border.

¹ I, Douglas Stephens, am an attorney admitted to the practice of law in California. I received my Juris Doctor and a cross-disciplinary certificate in Human Rights from Emory University School of Law in May 2015. I received my Bachelor of Arts in International Affairs and Peace and Conflict Studies from the University of Colorado in 2007.

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To the best of my recollection, Asylum Officers in San Francisco received two “trainings” on the policy during the office’s weekly, all-hands, training meetings. Both trainings were nearly identical and consisted of nothing more than Training Officers and a Section Chief reviewing a PowerPoint presentation disseminated from RAIIO (Refugee, Asylum and International Operations) headquarters. The first training occurred sometime in early 2019 before the program was enjoined. The second training occurred around June 2019, after the injunction was lifted.

At both trainings, the mood was tense and morale low. Officers raised numerous objections and concerns, including but not limited to the programs legality, the manner of implementation, the office’s jurisdiction to conduct the interviews, and our ethical obligations as government officials and as licensed attorneys. In both trainings, those concerns went largely unanswered. The local San Francisco administration, including the Director and Section Chiefs, appeared empathetic with the concerns raised but could provide no answers, maintaining an “I’m just the messenger” attitude. Notably, despite concerns being raised early in the year, there were still no answers or resolution to those concerns by the second training some four months later.

In tacit recognition of the validity of the objections, the San Francisco Asylum Office first attempted to implement MPP interviews on a rotating volunteer schedule. However, the number of interviews quickly exceeded the number of volunteers, and the interviews became mandatory for all staff. When I left the office at the end of August, MPP interviews were given priority over all other interviews and programs. If there were insufficient officers to meet demand from the border, the officers were pulled out of credible fear and affirmative asylum interviews to do MPP interviews. Additionally, mandatory overtime on nights and weekends was implemented. To my knowledge, that is still the situation in San Francisco, while other offices, like the Los Angeles office, have been able to operate on a volunteer basis.

I was assigned MPP interviews the week of August 5, immediately upon return to San Francisco from a detail to Dilley, Texas, and one week after I had applied for a supervisor position within the office. I was assigned three MPP interviews on August 6, and two on August 7. It is my firm belief that the Remain in Mexico program is illegal, violating the Immigration and Nationality Act and international law. I refused to conduct any more MPP interviews on August 8, 2019.

During those two days that I conducted MPP interviews, and over the following weeks, I had numerous conversations with the other asylum officers in San Francisco. These conversations were always furtive, and behind closed doors. Nobody I spoke to was comfortable with the MPP interviews. Officers who had not yet conducted an MPP interview were generally thankful and were hoping to somehow avoid the assignment. People would volunteer for otherwise undesirable work details so they could avoid being placed on the MPP schedule. A number of officers had already quit due to MPP before I was tasked with the interviews. Many more have left since. My impression was that the majority of the officers who left did so by transferring elsewhere within the agency. Although MPP was the motivation for leaving the asylum office, they often remained quiet about this fact, not wishing to jeopardize their careers. Individuals like myself, who ultimately chose to leave government service entirely, were more vocal about the

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reason they were quitting. I know of at least one individual who took a demotion in order to accelerate the transfer and avoid any complicity with MPP. I know of only one officer who has both refused to conduct MPP and maintained their employment at the asylum office.

The officers who had done MPP interviews were frustrated, angry, and demoralized. Where the previous Credible Fear interviews averaged one to two hours, MPP interviews could take three hours or longer—longer than a normal affirmative asylum interview. However, nobody I spoke to had been able to get approval for a positive² determination, regardless of the facts being presented to them or the level of past harm in Mexico. In the rare instances that an asylum officer in the San Francisco office did make a positive determination, that determination was overridden by supervisors and changed to a negative.

Every officer I spoke to felt deeply concerned about MPP. I discussed at length with a senior asylum officer and fellow lawyer why MPP felt significantly worse than other types of interviews and negative decisions we issue. That was the question I was asking myself when I decided to look into the issue of legality for myself.

Asylum Officers have two fundamental jobs: 1) identify whether or not someone qualifies for asylum protection under the law and provide protection to those individuals; 2) identify potential national security concerns and fraudulent claims to safeguard the security of the United States and maintain the integrity of the asylum program. MPP does none of these things. While under the previous rubric of Credible Fear, both Asylum Officers and CBP were running background checks on applicants; Asylum Officers do not perform any background checks on individuals under MPP. Additionally, the program does nothing to eliminate fraud in the system, which occurs mostly in populations largely unaffected by MPP.

More egregiously, the program actively places asylum seekers in exceptionally dangerous situations. Asylum Officers must be well versed on the political, social, and economic situation in an asylum seeker's home country, or in the case of MPP, in Mexico. Every Officer conducting MPP was aware of the situation in Mexico and danger to migrants being reported, not only in the media but in expert reports from the State Department and the Asylum Corps' own research unit. However, under MPP, instead of offering protection, officers hear credible stories of past harm and feared future harm in Mexico, and then return the asylum-seekers to Mexico—returning them to locations that the officer knows will put the migrant at risk of the exact harms Officers used to protect against.

This is the discomfort felt by every officer I have spoken to: **under MPP we are affirmatively and intentionally harming those same individuals we previously protected. In so doing, we are complicit in the persecution, torture, and other human rights abuses these individuals will face back in Mexico.**

² The term “positive” determinations refers to individuals who “pass” an MPP interview and are not sent back to Mexico; “negative” determinations refers to those who were returned.

Drawing on my experience at the asylum office, the immigration court, and my training as a lawyer, I was able to quickly identify at least seven ways that the MPP program violates the law, my oath to office, or the principles of the refugee program. The obvious illegality of MPP and the resulting harm to asylum seekers is what motivated me to refuse to continue doing the interviews. Had the only problem been a narrow legal question already being litigated, I am not sure I would have refused and would likely have waited for a judicial ruling. However, the scope of the illegality, the numerous violations across multiple sections of the INA and international treaty obligations, leads me to believe that whoever designed the policy was either ignorant of, or willfully blind to, the law. In addition, because the policy is actively causing harm to tens of thousands of individuals, it felt imperative to raise these concerns quickly.

On August 8, I refused to conduct any more MPP interviews or otherwise be involved in the program. I informed my supervisor that I was refusing because I believe the program is illegal in multiple aspects, and that by participating in the program Officers were breaking the law and violating their oath to office. I memorialized my objections and concerns in a memo. On Monday, August 12, I sent that memo as the body of an email to the management of the San Francisco Asylum Office, including the Director, Section Chiefs, and the two supervisors who had reviewed my MPP interviews. I also included my union representative, because management had begun disciplinary proceedings against me for insubordination. I do not know if my concerns were discussed or elevated. Management never responded to my email, addressed my concerns in person, or even acknowledged receipt of my objections. Although I was not present, I was told by other asylum officers that management emphasized that MPP interviews are mandatory work at the next all staff meeting.

Through the union, I was put in touch with Senator Merkley's office because he was conducting a special investigation into possible legal violations within the asylum program. Having received no response from my superiors in USCIS, I decided I should share my concerns with the Senator. Senator Merkley ultimately utilized much of my memo in a report on the destruction of the asylum program, which he published last Thursday, November 14.³ Ultimately, I decided to leave USCIS, feeling that my continued employment there was not in my best interest. Before leaving, I chose to share my memo with all of my San Francisco colleagues in an attempt to support those individuals who were actively struggling with the ethical dilemma of being forced to implement the policy. It is that same motivation—to shed light on an illegal, dangerous, and destructive policy, and to support my former colleagues—that compelled me to speak out publicly.

³ Office of Sen. Jeff Merkley, *Shattered Refuge, A U.S. Senate Investigation into the Trump Administration's Gutting of Asylum* (November 2019), Appendix N: Confidential Whistleblower Email to USCIS Management Regarding Migrant Protection Protocols (August 12, 2019), pp. 77-80, available at <https://www.merkley.senate.gov/imo/media/doc/SHATTERED%20REFUGEE%20-%20A%20US%20Senate%20Investigation%20into%20the%20Trump%20Administration%20Gutting%20of%20Asylum.pdf>.

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I now have the privilege of sharing these concerns about the illegal and dangerous effects of MPP with this committee.

Specific Concerns about the Legality & Adverse Humanitarian Consequences of MPP

MPP has been operating in the following manner. If, and only if, a an asylum-seeker expresses a fear of returning to Mexico to Customs and Border Patrol (CBP) Agents, CBP notifies the San Francisco 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 had 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.⁴

The purpose of the MPP interview is nominally to comply with our countries international obligation to the principal of non-refoulment – to not return someone to a country where it is more likely than not that the migrant be persecuted on account of their race, religion, nationality, political opinion, or membership in a particular social group, or where it is more likely than not they would be subjected to torture. The principal of non-refoulment has been accepted as a *jus cogens* within international law and has been codified in the 1952 Convention of Refugees and the 1967 protocol. It is an essential protection under humanitarian, refugee, international human rights, and customary law. It is codified within our domestic laws at INA § 241(b)(3), and referred to as Withholding of Removal. However, as I explain below, the MPP program almost ensures violation of this principal.

The MPP interviews are also unique from other tasks assigned to the Asylum Corps in a few key ways. First, the interviews are not contemplated in the INA and there are no implementing regulations. Second, an applicant can only be subject to MPP interviews if they are already in removal proceedings under INA § 240. Previously only Immigration Judges adjudicated claims arising from removal proceedings under INA § 240. Third, the burden of proof for a migrant to pass MPP interviews is “more likely than not,”⁵ which is substantially higher than any other interview adjudicated by Asylum Officers. By way of reference, affirmative asylum interviews are to determine if there is a “well-founded fear of harm,” which is usually quantified as a one in ten chance of harm.⁶ Credible Fear interviews are referred to as asylum pre-screening interviews and have an even lower burden of proof, asking if there is a significant possibility an applicant could establish a well-founded fear at a full hearing.⁷ Finally, while in all other contexts an asylum applicant can have their claim reviewed or renew their petition before an Immigration

⁴ The outright denial of representation for an individual in removal proceedings also violates the INA, although I did not explicitly note this objection in my memo.

⁵ This is the same as a “preponderance of the evidence” standard used in most civil litigation.

⁶ See, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987).

⁷ 8 C.F.R. § 208.3(e)(2).

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Judge, a negative determination in MPP is unreviewable and results in the immediate removal of the applicant to Mexico.

With that in mind, I have concluded MPP is illegal for the following reasons, outlined below and with excerpts from the memo I sent to management and the San Francisco Asylum Office staff explaining my objections to conducting interviews under MPP:

1. There is no statutory authority for the MPP, and the program violates US immigration law. What proceedings are to be given to a migrant when they arrive at the border is addressed in INA § 235(b). A careful reading of the statute makes it clear that the provision relied upon by the administration to justify MPP is inapplicable to the population being subject to MPP. Instead, those individuals must be placed in expedited removal proceedings and given a Credible Fear screening. They should not be forced to leave the United States territory while in removal proceedings. The short statutory analysis I provided in my memo is as follows:

The legal question at issue is whether the two provisions governing inspection for applications for admissions—expedited removal under INA § 235(b)(1) and “other aliens” un INA § 235(b)(2)—are mutually exclusive or if CBP can proceed under section (b)(2) even when an applicant falls within the requirements of expedited removal.⁸ The administration has claimed legal authority to implement the MPP pursuant to INA § 235(b)(2)(C), which allows for the return to a contiguous territory of an alien who is subject to admission and inspection procedures under (b)(2). However, section 235(b)(2)(B) provides explicit exceptions to individuals subject to section 235(b)(2) and specifically states that (b)(2) does not apply to aliens subject to inspection under (b)(1). Similarly, section (b)(1) provides an explicit exception for individuals who would otherwise be subject to expedited removal, which is referenced multiple times while describing expedited removal proceedings. INA § 235(b)(1)(F); *see also*, INA § 235(b)(1)(A)(i), (ii). The exclusion language under each provision makes clear that Congress considered and specifically determined who would be excepted from inspection under provision. Individuals subject to inspection under (b)(1) are not subject to provisions of (b)(2). The separation of the two processes for admission, 235(b)(1) and (b)(2), has been recognized by both the Supreme Court and the Attorney General. *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018); *Matter of M-S-*, 27 I&N Dec. 509, 510 (BIA April 16, 2019).

Furthermore, [. . .] whether an applicant for admission is subject to inspection under (b)(1) and (b)(2) is not discretionary. If an immigration officer determines that an individual is removable under INA §§ 212(a)(6)(C) or 212(a)(7) “the officer *shall* order the alien removed” pursuant to expedited removal proceedings. INA §§ 235(b)(1)(A)(i) (emphasis added). The mandatory nature of expedited

⁸ Individuals are subject to expedited removal only if they are removable under INA §§ 212(a)(6)(C) or 212(a)(7).

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removal has not been disputed and conforms with the congressional intent of deterring undocumented migrations. Once an applicant expresses an intent to apply for asylum or a fear of persecution “the officer *shall* refer the alien for an interview by an asylum officer” for credible fear screenings. INA §§ 235(b)(1)(A)(ii) (emphasis added). In other words, individuals who apply for admission in the United States who are removable under INA §§ 212(a)(6)(C) or 212(a)(7) must be placed in expedited removal and must be given a credible fear interview if they request asylum or claim a fear of persecution. The MPP violates the INA because it inappropriately removes individuals who must be inspected and processed under expedited removal and credible fear, and places them in removal proceedings under section (b)(2).

2. The Asylum Office never had jurisdiction to do any of the MPP interviews that I conducted, or, to my knowledge any of the interviews conducted by any other officer at the San Francisco Office. This was a concern I had raised at the trainings and it was reaffirmed as soon as I began MPP interviews. The files we were given did not contain a Notice to Appear (NTA) which is the charging document that places someone in removal proceedings under INA § 240. Nor did the file contain any other charging document that would confer authority to the Asylum Office to conduct interviews. When I was discussing paperwork with an applicant at the end of one interview I learned that she had not been given an NTA or any other paperwork from CBP prior to her interview. This raises serious due process concerns, as the NTA is the document required for removal proceedings to begin and MPP interviews can only occur if someone is already in removal proceedings. Additionally, both statute and regulations require that the NTA provide the individual with a list of warnings if they fail to appear in court and notify them of their rights in removal proceedings, including the right to an attorney and an interpreter. Based on the lack of service to the asylum-seekers before their MPP interviews and the speed at which MPP interviews were being conducted after someone arrived at the border, I seriously doubt that any NTAs were served on an immigration court prior to the interviews. This would, quite literally, make the entire MPP interview extrajudicial.
3. MPP interviews violate our international treaty obligations by discriminating against a particular class of migrants. At the time I objected, the policy targeted specifically individuals from Guatemala, Honduras, Nicaragua, and El Salvador. Although the policy has been expanded to other Latin American countries, the implementation solely on the Southern border highlights the discriminatory intent. If the administration truly believes this policy is legal and justified, there is no explanation that I can think of, other than intent to keep out a certain class of migrants and discriminate based on national origin, race, and financial status, to not also implement MPP on northern land borders, sea borders, and all ports of entry including airports.

MPP violates our country's obligation under the 1967 Protocol. By ratifying the Protocol, the United States, among other things, agreed to not discriminate against

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refugees on the basis of their race, religion, or nationality, and to not penalize refugees for their undocumented entry into the country. However, the MPP both discriminates and penalizes. Implementation of the MPP is clearly designed to further this administration's racist agenda of keeping Hispanic and Latino populations from entering the United States. This is evident in the arbitrary nature of the order, in that it only applies to the southern border. It is also clear from the half-hazard [sic] implementation that appears to target populations from specific Central American countries even though a much broader range of international migrants cross the southern border. It is also demonstrated by the exempting from MPP interviews certain populations from those countries who have a high likelihood of receiving a positive finding.

4. The policy also violates our international obligations under the 1967 Protocol by punishing asylum seekers for requesting protection. MPP is punitive in that it is clearly calculated to limit the future ability of a would-be asylum seeker from ever obtaining immigration status or protection in the United States by significantly increasing the odds they will receive a removal order and thereby be barred from entering the United States or applying for immigration benefits, including possibly, future asylum claims.

Failure of an individual to appear for their Immigration Court dates carries serious consequences, including receiving a removal order without being present in court. It is important to note that one of the frequently cited justifications for making a negative MPP determination and claiming a migrant would be safe in Mexico is their supposed ability to internally relocate in Mexico. In other words, supervisors are enforcing negative MPP decisions because of lack of certainty that persecutors who previously harmed an applicant elsewhere in Mexico would find the applicant at the U.S.-Mexico border, or that a feared persecutor at the border would find the applicant if they moved elsewhere in Mexico. Although this logic strictly complies with non-refoulement, it runs directly counter to the premise that we expect people to wait in Mexico for the pendency of their section 240 removal proceedings, which require their presence in the United States for various hearings over a period of months or years.

[T]he implementation is calculated to prevent individuals from receiving any type of protection or immigration benefits in the future. There is no clearly established policy and system for notifying applicants of changes to hearing dates and times, or for the applicants to provide change of addresses to the courts and Border Patrol. Without a highly functional notice system, the administration has ensured that a high number of applicants will miss their court dates. In such cases, immigration judges are required to order the applicant removed *in absentia*, thereby barring them from entering the United States for 5 to 10 years, subjecting them to reinstated orders of removal if the applicant again seeks protection in the United States, and thereby preventing them from applying for asylum.

5. MPP, as it is currently implemented, also violates the law, in that it severely limits the protected grounds for which an applicant could possibly receive a positive decision and not be returned to Mexico. Critically, along with race, religion, nationality, and political opinion, asylum seekers can receive asylum or protection under non-refoulement for their “membership in a particular social group,” commonly referred to as “PSGs.” Determining whether someone is a member in a particular social group requires a tri-part analysis. The sad irony of MPP is that by returning large numbers of vulnerable migrants to Mexico, we have created exactly the type of group contemplated by the refugee convention and INA.

For example, during the course of one of my five MPP interviews, it became readily apparent that the applicant had experienced significant harm in Mexico on account of his membership in one such potential PSG. I discussed the situation in the middle of the interview with a supervisor and was explicitly told that I was not allowed to make a positive determination on that protected ground and that I should not continue that line of inquiry.

By requiring Asylum Officers to disregard a critical part of the law, the administration is forcing asylum officers to break the law and violate their oath to office. As I wrote in my memo:

Participation in the MPP violates our oath to office. As Asylum Officers we have sworn to “well and faithfully discharge the duties of the office.” SF 61. Those duties include “proper administration of our immigration laws.” *See*, USCIS/RAIO Mission and Core Values, available on the ECN. Assuming that we did have statutory authority and proper jurisdictions for these interviews, policy is preventing us from complying with our sworn duty to properly administer the laws. Individuals subject to MPP are almost certainly members of a particular social group consisting of “non-Mexican migrants traveling through Mexico” or some alternatively phrased variant. Such a group shares an immutable past experience, is particular, and the evidence suggests is socially distinct in Mexico. However, CIS policy regarding which social groups are considered cognizable and the constraint on individual analysis, prohibits officers from analyzing whether such a group is cognizable and if an MPP applicant would be persecuted for their membership in such a group. These arbitrarily imposed restrictions on factual and legal analysis prevent us as officers from faithfully discharging the duties of our office.

6. The manner in which MPP was created and implemented, and in particular the circumvention of the Administrative Procedures Act, assures we are violating our obligations of non-refoulement and are sending individuals back where it is likely they will be harmed. Beyond all of the illegalities already discussed, I believe a significant part of the reason so many individual are being forced into Mexico stems from an inappropriate and misapplied legal standard in the interviews, combined with an interview structure that makes it impossible for an asylum-seeker to meet their burden. Although someone could supposedly pass an MPP

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interview if they showed it was “more likely than not” they would be persecuted or tortured in Mexico, in reality the standard being applied to the interviews is much higher. I objected:

MPP complies with our obligations of non-refoulement in name only. Assuming that statute does delegate DHS authority to implement MPP-type interviews, we have no implementing regulations. The current system is ad hoc and not been subject to notice and comment making or any type of review. The regulatory process is critical to ensure that proceedings such as the MPP does not commit the numerous legal violations already noted. The current process place 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. The description of the MPP read at the beginning of the interview does not even explain what a “protected ground” is or what the applicant is required to prove. The ad hoc implementation, lack of regulations, and high legal standard all but ensure that an applicant is unable to meet his or her burden. Participating in such a clearly biased system further violates our oath of office.

7. Finally, I objected on moral grounds because, as I mentioned previously, the policy makes Asylum Officers complicit the future harm of asylum seekers:

[E]ven if all the above were remedied, the process is still morally objectionable and contrary to the RAIO mission of protection. The Asylum Office would still be complicit in returning individuals to an unsafe and unreasonable situation. One where we would likely find internal relocation unavailable were it the applicant's home country, and in fact regularly do make that determination for Mexican applicants. RAIO research recently reported the high levels of violence and crime specifically targeting migrant communities in Mexico, returned from the MPP. See RAIO Research Unit, News Summary Bulletin July 2019. Additionally, it is unreasonable to make individuals, often without financial resources and caring for small children, to wait an indefinite period of time without employment. The unreasonableness of such a requirement is why the law mandates the application clock and issuance of employment documents if the US government cannot process a request for protection in a timely manner. Assurances by the Mexican government that persons returned to Mexico under the MPP would receive work permits and protection were a key reason that the injunction was stayed. *Innovation Law Lab v. McAleenan*, No. 19-15716, 924, F. 3d 503 (9th Cir. 2019). However, the Mexican government has not fulfilled its promise of providing work permits and protection. See RAIO Research Unit, News Summary Bulletin July 2019.

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While other immigration processes may result in returning someone to a place where they face true risk of harm because they do not qualify for protection or an immigration benefit, such instances occur only after the applicant has received substantially more due process. Even then, those individuals are returned to their countries of nationality, not an arbitrary third country to which they likely have no ties. The MPP is substantively and morally distinct from other aspects of our work.

Conclusion

I do not claim to speak for all Asylum Officers, but I have good reason to believe my concerns are widespread and shared. I have not encountered a single officer that believes we should performing MPP interviews. Every officer I spoke to regarding MPP before I left USCIS, around a dozen officers, disagrees with the policy and the implementation. After sending my memo to the office, I was contacted or spoke with another dozen or so officers who thanked me and supported my decision. Since my name and objections were published in the national media last week, I have been contacted by even more officers.⁹ In total I would estimate I have been in contact with two dozen officers or more, from the San Francisco, Los Angeles, New York, and D.C. offices. One individual thanked me for being willing to be the public face for the officers. I have yet to receive a single negative comment from an Officer.

To conclude, MPP is an illegal program, violating multiple aspects of our laws, endangering the safety of thousands, and placing asylum officers in an impossible position. As an attorney and an officer of the federal government, I had a duty to uphold the law. I urge Congress to protect other government employees who also have the obligation to oppose this policy but do not feel safe coming forward publicly as I have. Asylum is an echo of the core values of our nation: freedom of religion, political opinion, and identity. Our ability and willingness to protect those individuals fleeing persecution and torture establishes us as a leader in human rights and a beacon of hope. I urge you to take steps to end the egregious legal violations that are eviscerating the asylum program, resulted in a humanitarian crises of our own making, and greatly eroded our integrity as a nation.

⁹ Molly O'Toole, *Asylum Officers Rebel Against Trump Policies They Say are Immoral and Illegal*, Los Angeles Times, Nov. 15, 2019, available at <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>; *The Out Crowd*, This American Life, Nov. 15, 2019, available at <https://www.thisamericanlife.org/688/the-out-crowd>.

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