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

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

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 Jurez, 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 Jurez. 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 Jurez.

US agents took them to the Paso del Norte international bridge, connecting El Paso with Ciudad Jurez, 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 Jurez while they waited. Instead, they bought bus tickets back to Nogales. It's a long way from Jurez, 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. Were 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. Aarn Mndez, 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. 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.

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 Atencion a Migrantes), a facility established by the Chihuahua state government to assist Mexican nationals and migrants arriving in Ciudad Jurez 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 Poblacion (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 (Comisin Mexicana de Ayuda a Refugiados), the government agency that adjudicates applications for refugee recognition and complementary protection.

coyote 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.

Hielera 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 Migracin), 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).

While the MPP remains in place:

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 Jurez 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 Jurez. 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 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 MPPs expansion,^[4] an investigation of the challenges asylum seekers with disabilities and chronic health conditions face in Ciudad Jurez 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 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.

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 Jurez, 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 Jurez, 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 Jurez-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. Its 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 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 separate, narrower lawsuit filed by the ACLU has challenged the governments 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 MPPs 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]

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 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 Americas 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. Its complicated. Its another reality. Theres a lot of prejudice and discrimination. Here in the shelter [in Ciudad Jurez], everybody speaks Spanish. The culture, the customs, the food for them, its familiar. Even after seven months, we havent 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]

DHS policy guidance states that unaccompanied children should not be placed in the MPP.^[30] and groups in Ciudad Jurez, 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 governments request for bond and ordered the girl and her daughter released on their own recognizance to allow them to join the girls 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 didnt believe he was a minor and returned him to Mexico under the MPP, Linda Rivas, executive director of Las Americas, Immigrant Advocacy Center told Human Rights Watch.^[33]

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 Womens 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 instead prepared to deport her, lawyers told the *Los Angeles Times*.^[38] The chief patrol agent for the Border Patrols 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]

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 Mara 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 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 Jurez, 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.[\[47\]](#)

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 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. Julin, 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 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.

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.

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.[\[59\]](#)

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. Its difficult to walk into peoples 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 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, hearingsrepeated preliminary appearances, each requiring a full-day trip across the border, that could have been avoided by legal representation or orientation sessions.

Video hearings create further barriers for peoples 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.

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

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 the persons address as Facebook, according to news reports.[\[69\]](#) Commenting on such practices, the immigration judge noted in one case reviewed by Human Rights Watch:

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 [persons] answer on the notice.[\[71\]](#)

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.[\[73\]](#)

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 Mexico pending resolution of their deportation proceedings.[\[75\]](#) Instead, DHS left these fields blank on the initial notices and then amended the notices at peoples 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. Mara 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 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.

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 boards 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 persons 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 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]

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]

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 EOIRs 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 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 judges decision.[\[103\]](#)

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 Mara Q., her husband, 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, Julin 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:

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 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.

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 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 *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 themselves 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.[\[115\]](#)

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.

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 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 EOIRs 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 Jurez 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 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]

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]

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 persons 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.

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 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. Julin 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 didnt 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 positive response. Twelve didnt 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 Jurez 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]

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 Jurez 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 Jurez 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 couldnt do anything. They just handed us some papers. They didnt 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]

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, Hector 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, Hector 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:

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 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:

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 Jurez, explained the procedure: If you say youre 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 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 USCISs 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.[\[157\]](#)

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 dont have their phones with them, so if they had photos or screen shots of messages, they wont be able to access them, observed Constance Wannamaker, an immigration attorney in El Paso.[\[159\]](#)

Decisions on nonrefoulement interviews are summary in nature. Theyll 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 subjects fear of Mexico to be unreasonable.[\[161\]](#) The asylum officers 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 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:

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.

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:

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 Florencias 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.[\[169\]](#)

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 cant 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 theyll 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.[\[172\]](#)

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.

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 Jurez. 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 sons 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 sons 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 daughters health. Instead, immigration officials placed the family in the MPP and sent them to Ciudad Jurez.[\[176\]](#)

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, Youre not a good mother. You dont know how to take care of your children. That really made me afraid, Renata A. told Human 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 didnt find out their parole was denied until they were back in Mexico, Gonzalez told Human Rights Watch.[\[177\]](#)

After 7-year-old Sofa 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 psychologists 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 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 Kiche or other Indigenous languages—frequently face discrimination and experience additional 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 Womens 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 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]

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 Atencion a Migrantes, or Migrant Assistance Center], a facility established by the Chihuahua state government to assist Mexican nationals and others arriving in Ciudad Jurez 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 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, Mdecins Sans Frontiers (MSF) reports:

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 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 Jurez, 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 prosecutors 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:

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 Jurez. The customers can tell Im not Mexican. My accent isnt a Mexican accent, and they ask where Im from. Then the harassment starts. Some of the customers will say indecent things, unwelcome things. I try not to speak while Im 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 dont 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]

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

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 Jurez 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 wasnt right. He backed down, but it really intimidated me.^[213]

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 persons 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.

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 womans 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 sons 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 wasnt 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 shed had notice of her hearing because she had not been spoken to in her native language by 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 persons account of being kidnapped does not amount to exceptional circumstances warranting reopening of the case. Often the judge will say that there isnt sufficient proof. But the country conditions are well-documented. Its 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 sons 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.[\[219\]](#)

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.[\[222\]](#)

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 were going through here [in Ciudad Jurez]. 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.[\[224\]](#)

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 Jurez, 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 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 Jurez, the number of asylum seekers and migrants in that city quickly surpassed those in Tijuana. Ciudad Jurez hosted some 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 Jurez, 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 Jurez*.[\[231\]](#)

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.[\[233\]](#)

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 camps 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 camps 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 rivers 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 warnings, the camps 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 Jurez, 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 arent followed. People arent 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 theyd 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.[\[244\]](#)

Migrant shelters along the border criticized the lack of official directives on what procedures they should take during the pandemic [\[245\]](#) 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 Jurez, 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.[\[249\]](#)

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.[\[250\]](#)

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 countrys 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 Mexicos 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.[\[257\]](#)

Chihuahua state officials said they had made specific efforts to include migrants sent to Ciudad Jurez 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 Jurez appeared to have greater access to health services than those we interviewed elsewhere along the border. Thats not to say there arent valid complaints, a state health official told us. It may be that not all medicines are available. We cant 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 organizations 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 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 Jurez since their arrival in February 2020. Weve been here seven months and she hasnt seen a pediatrician, Renata A., her mother, told Human Rights Watch in September.[\[263\]](#)

The federal shelter in Ciudad Jurez 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. Its 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 Jurez, Tania Guerrero said, People placed in MPP are living in a city where medical resources are already very limited for its own population. Now its even worse. The hospitals are saturated with Covid cases. They say they cant take people for other needs because they say those arent emergencies. The hospitals arent 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:

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 Salom 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 its 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 Jurez.[\[270\]](#) Chihuahua state officials 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 Jurez 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 Jurez, whether her 13-year-old son was in school, she replied, No, he doesnt have papers from Mexico. She added, I have no idea if theres 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 Jurez and seeking asylum in the United States. In Tabasco we tried to put our son in kindergarten, but the school didnt accept him. They didnt let him register. They said we needed a CURP and other identification.[\[275\]](#) A CURP (Clave nica de Registro de Poblacin, roughly translating to individual registration number) is an identity number for people resident in Mexico and Mexicans residing abroad.[\[276\]](#) The website of Mexicos Ministry of Public Education includes CURP certificate as among the recommended requirements for enrollment in preschool, primary education, and secondary education.[\[277\]](#)

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 Jurez, there are kids who have not been going to school for at least a year. There are a few reasons: families dont know if their children have the right to go to school, they dont know how to enroll their children, and theyre scared, she said, adding, Theres 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 Jurez shelter where she and her daughter stayed until early 2020.[\[282\]](#) In Tijuana, a mother in the Embajadores de Jess shelter began to offer informal activities after the suspension of the mobile classroom program, the *New York Times* reported.[\[283\]](#)

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 Macas 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]

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 Jurez with her husband and their three daughters, said, We didn't know we could 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 Jurez. 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 Macas 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 (Comisin 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 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, Macas told Human Rights Watch.^[294]

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 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:

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, Hector C., from Honduras, told us.^[297]

Many described changes in their childrens behavior, causing the parents increasing feelings of anxiety for their childrens well-being. Its 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:

In another case, an 8-year-old girl who was sexually assaulted by a man staying at her shelter in Ciudad Jurez 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 childrens exposure to trauma.[301]

The girls 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 Mdecins Sans Frontires 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]

Another 23-year-old Honduran woman, Juliana T., described significant changes in her 7-year-old daughters behavior and functioning after the girl was sexually assaulted while in a shelter in Ciudad Jurez. 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, well be locked up for several days, Santiago told us.[306]

We heard many such accounts. Hector 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 daughters 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 wouldnt look at the immigration agent. She started wetting the bed. She has nightmares and wakes up screaming. Shell scream, Police, police! The police are going to take us away! The police are coming to get us! This isnt how she was before the 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 peoples distress. When Julin 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 isnt a good place for them, and weve 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 Tijuanas 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]

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 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.[\[316\]](#)

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 Guatemalas incapacity to provide asylum seekers with a full and fair procedure to examine their claims.[\[319\]](#)

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 dont have to let you in.[\[323\]](#) Under a practice known as metering, CBP accepted a limited number of people each day for asylum processingsometimes, 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[] . . . Americas positionas 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 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 theres 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 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, Murphys complaint said, adding that Cuccinelli asked for the changes because the reports description of country conditions undermine[d] President Trumps 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 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.

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 significantin many cases insurmountablebarriers 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 hearing[\[341\]](#) 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.

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.

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 MPPs 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]

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:

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]

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 provision^[361] 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 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]

This report is based on research undertaken in Ciudad Jurez 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 childrens rights at Human Rights Watch; Ryan Matlow, a child clinical psychologist and Director of Community Programs for Stanfords Early Life Stress and Resilience Program and member of Stanfords 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.

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[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.
- [48] Human Rights Watch interview with Blanca M., Ciudad Jurez, January 7, 2020.
- [49] Human Rights Watch interview with Julin M., Ciudad Jurez, January 7, 2020.
- [50] Human Rights Watch interview with Blanca M., Ciudad Jurez, 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.
- [53] Human Rights Watch interview with Nuria J., Ciudad Jurez, January 9, 2020.
- [54] Human Rights Watch interview, Ciudad Jurez, January 7, 2020.
- [55] Human Rights Watch interview with Blanca M., Ciudad Jurez, 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).
- [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 Cant Help You Here*, pp. 33-35.
- [60] Human Rights Watch remote interview with Luis M. Gonzalez, September 28, 2020.
- [61] Julin 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).
- [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).
- [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 Abro, 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).
- [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).
- [72] Womens 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 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 Mara Q., Tijuana, November 24, 2019.
- [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 Migracin [Immigration Law], art. 53(V), *Diario Oficial de la Federacin*, May 25, 2011, as amended, *Diario Oficial de la Federacin*, April 13, 2020, http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_130420.pdf (accessed October 15, 2020). See also Reglamento de la Ley de Migracin [Regulations for the Immigration Law], art. 137, *Diario Oficial de la Federacin*, September 28, 2012, as amended, *Diario Oficial de la Federacin*, 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.
- [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 persons 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).

[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, CBPs Explanation for Writing Fake Court Dates on Migrants Paperwork Doesnt 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).

[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).

[101] Human Rights Watch remote interview with Kennji Kizuka, October 21, 2020. See also Human Rights First, *Human Rights Fiasco: The Trump Administrations 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 Administrations 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, CBPs Explanation for Writing Fake Court Dates on Migrants Paperwork Doesnt 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, Crdenas, 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>.

[105] Human Rights Watch interview with Mara 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 Julin M., Ciudad Jurez, January 7, 2020.

[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.

[113] Human Rights Watch interview with Blanca M., Ciudad Jurez, January 7, 2020.

[114] Human Rights Watch interview with Wendy G., Ciudad Jurez, January 7, 2020.

[115] Human Rights Watch interview with Nicola A., Ciudad Jurez, January 11, 2020.

[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/departments-justice-and-department-homeland-security-announce-plan-restart-mpp-hearings> (accessed July 18, 2020). See also Julin 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.

[119] Rafael Carranza, Asylum Hearings at US-Mexico Border Wont 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_3dfbb00a-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 Julin M., March 26, 2020.

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

[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.

[129] These accounts are consistent with the findings of previous Human Rights Watch research. See Human Rights Watch, *We Cant 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*.

[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)).

[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 Julin M., Ciudad Jurez, January 7, 2020. See also Human Rights Watch, *OIG Complaint*.

[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_0.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).

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- [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.
- [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 Commissioners 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.
- [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 UNHCRs 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 persons life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.
- [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.).
- [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. Atty Gen.*, 518 F.3d 185, 203 (Congress intended to protect refugees to the fullest extent of our Nations 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).

[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).

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