



The “Migrant Protection Protocols”

In December 2018, the Trump administration announced the creation of a new program called the “Migrant Protection Protocols” (MPP 1.0)¹—often referred to as the “Remain in Mexico” program. The program went into effect in January 2019 and was used to send nearly 70,000 migrants back to Mexico before it was suspended, and then terminated, after President Biden took office.² In August 2021, a federal court in Texas ordered the Department of Homeland Security (DHS) to reinstate MPP.³ On December 3, 2021, the Biden administration formally reinstated MPP, and began sending individuals back to Mexico under MPP 2.0 on December 6, 2021.⁴

Under MPP, individuals who arrive at the southern border and ask for asylum (either at a port of entry or after crossing the border between ports of entry) are given notices to appear in immigration court and sent back to Mexico.⁵ They are instructed to return to a specific port of entry at a specific date and time for their next court hearing.⁶ MPP is distinct from a separate process known as “metering,” whereby U.S. Customs and Border Protection (CBP) officials turn asylum seekers away from ports of entry without processing them or providing any specific date or time to return.⁷

Experience with the first iteration of MPP showed that the program did not provide due process to migrants. Representation rates for the nearly 70,000 people subjected to MPP 1.0 were exceedingly low and are likely to remain low under MPP 2.0. Data suggests that just 7.5 percent of individuals subject to MPP 1.0 ever managed to hire a lawyer,⁸ though the true representation rate may be even lower because that number includes individuals who were initially placed into MPP and then were later taken out of the program and allowed to enter the United States.

The lack of counsel, combined with the danger and insecurity that individuals face in border towns, made it nearly impossible for anyone subject to MPP to successfully win asylum. By December 2020, of the 42,012 MPP cases that had been completed under MPP 1.0, only 521 people were granted relief in immigration court.⁹

In March 2020, in response to the COVID-19 pandemic, all pending MPP 1.0 hearings were suspended temporarily, and then later indefinitely.¹⁰ This decision left tens of thousands of people in Mexico awaiting their hearings in a state of limbo. Despite the indefinite suspension of MPP hearings, the Trump administration placed over 6,000 people into MPP from April 2020 through January 2021.¹¹ Individuals placed into MPP during this period were primarily those who CBP could not rapidly “expel” under a public health order known as “Title 42,” which was also instituted in March.¹² These individuals were predominantly of nationalities that Mexico had refused to permit the United States to expel into its territory, including Cubans, Ecuadorians, Nicaraguans, and

Venezuelans.¹³

On the campaign trail, President Biden promised to end MPP.¹⁴ Hours after his inauguration, DHS officially stopped placing any new people into MPP.¹⁵ Over the next few months, the Biden administration began a process of “winding down” MPP 1.0, which included admitting nearly 13,000 people who had been waiting in Mexico and allowing them to seek asylum from within the United States.¹⁶ This wind-down was halted in August 2021 when the Biden administration was ordered to reinstate MPP.

How the Migrant Protection Protocols Were Carried Out Under Trump

From January 2019, when the MPP process began, through December 2020, at least 70,000 people were returned to Mexico to await court hearings, according to the nonpartisan Transactional Records Access Clearinghouse.¹⁷ The exact number of individuals subject to MPP since its inception has never been disclosed by DHS, although the department eventually began posting monthly data on MPP in August 2020 as required by Congress.¹⁸

The federal government placed people into MPP at seven U.S. border towns:¹⁹

1. San Ysidro, CA
2. Calexico, CA (individuals returned to Mexico at Calexico were required to travel to the San Ysidro port of entry for hearings)
3. Nogales, AZ (individuals returned to Mexico at Nogales were required to travel to the El Paso port of entry for hearings)
4. El Paso, TX
5. Eagle Pass, TX (individuals returned to Mexico at Eagle Pass were required to travel to the Laredo port of entry for hearings)
6. Laredo, TX
7. Brownsville, TX

Many individuals were sent to Mexico under MPP at a location far from where they arrived at the border. For example, some families who crossed the border near Yuma, Arizona, were transported by CBP to the Calexico port of entry hundreds of miles away to be returned to Mexico.²⁰ Similarly, individuals who crossed in the Border Patrol’s Big Bend Sector were transported hundreds of miles and sent back to Mexico in El Paso.²¹

In San Diego and El Paso, individuals who returned for court hearings arrived at the port of entry, were briefly “paroled” into the United States for the purpose of going to court, and then were transferred into the custody of

Immigration and Customs Enforcement (ICE) for transport to the local immigration court.²² According to a copy of ICE’s MPP Standard Operating Procedures obtained through a Freedom of Information Act request, in El Paso individuals were given just one hour after arriving at court to speak with their attorney.²³ In Laredo and Brownsville, individuals who returned for court hearings were taken to “tent courts” built next to the port of entry, where they appeared in front of immigration judges through video teleconferencing equipment.²⁴

According to the U.S. government’s “guiding principles” for MPP, certain groups were considered exempt from the MPP 1.0 process:²⁵

- Unaccompanied children
- Citizens or nationals of Mexico
- Individuals processed for expedited removal
- Individuals in “special circumstances,” including:
 - Individuals with “known physical/mental health issues”
 - Individuals with criminal records or a history of violence
- Individuals determined by an asylum officer to be “more likely than not” to face torture or persecution in Mexico on the basis of race, religion, nationality, political opinion, or membership in a particular social group

The decision to send a person or family back to Mexico under MPP was discretionary and was made by individual CBP officers or Border Patrol agents. Individuals who crossed the border at the same time were sometimes treated differently, with one person sent back under MPP and the other person permitted to seek asylum through the normal process. In some situations, this led to families being separated at the border, with one parent sent back to Mexico and the other parent and the child allowed to enter the United States.²⁶

CBP also retained discretion to take any individual out of MPP on a case-by-case basis.²⁷ In addition, CBP had stated that it did not subject individuals to MPP who were from countries where Spanish is not the primary language (for example, Cameroon or India), although nothing in the MPP “guiding principles” required their exclusion.²⁸ In December 2019, Acting CBP Commissioner Mark Morgan threatened to end this exemption and send individuals from non-Spanish-speaking countries back to Mexico under MPP, emphasizing that the policy could be changed at any moment.²⁹ On January 29, 2020, DHS officially announced that it had expanded MPP to Brazilian nationals.³⁰

CBP implemented its MPP 1.0 “guiding principles” inconsistently across the border. For example, there were reports of CBP officers sending back individuals with serious medical issues in violation of the guidelines.³¹ On

December 7, 2020, DHS issued “supplemental guidance” on MPP.³² The guidance made few substantive changes to the operation of MPP but confirmed a number of troubling practices by which DHS carried out the program, including forcing individuals to wait in Mexico during the course of any appeal of a positive decision in their case.³³

Under MPP, CBP officers did not ask asylum seekers if they were afraid of returning to Mexico. A person who feared harm in Mexico was required to “affirmatively” assert that fear if they wanted to be taken out of MPP.³⁴ If an asylum seeker did so, the person had to be referred to an asylum officer for an interview about their fear.³⁵ Individuals generally were held in CBP custody for these interviews and were not allowed access to an attorney.³⁶ Some individuals reported being handcuffed throughout the interview process.³⁷

Government estimates of the number of people who passed these interviews ranged from 1 percent to 13 percent.³⁸ After MPP began, some asylum officers who conducted these interviews spoke out about pressure to deny people and send them back to Mexico, calling the interviews “lip service.”³⁹ The labor union representing asylum officers filed an amicus brief with the Ninth Circuit Court of Appeals asking the court to strike down MPP as a directive that was “fundamentally contrary to the moral fabric of our nation and our international and domestic legal obligations.”⁴⁰

In December 2019, an internal DHS analysis of MPP 1.0 revealed serious flaws in the screening process that called into question whether asylum seekers were consistently provided even the limited protections available under the program.⁴¹ These flaws included CBP’s reported use of “a pre-screening process that preempts or prevents a role for USCIS [U.S. Citizenship and Immigration Services] to make its determination,” and reports that “CBP officials pressure USCIS [asylum officers] to arrive at negative outcomes.”⁴²

These findings were supported by a study of 607 people sent back to Mexico under MPP 1.0, which determined that just 40.4 percent of asylum seekers who expressed a fear of returning to Mexico to CBP were given the required fear-screening interview.⁴³

Prior to the indefinite suspension of MPP hearings, many individuals were forced to wait months to have their asylum case decided or even receive an initial hearing.⁴⁴ During the time these asylum seekers remained in Mexico, it was extremely difficult to obtain counsel. According to an independent analysis of data obtained from the Executive Office for Immigration Review (EOIR)—the office that oversees the immigration courts—roughly 7.5 percent of asylum seekers in MPP had a lawyer.⁴⁵ Through the end of December 2020, just 5,285 people subject to MPP had secured lawyers out of 70,467 people who had been placed in MPP proceedings.⁴⁶

Many asylum seekers placed into MPP experienced extreme danger in Mexico. Individuals sent to the Laredo or Brownsville courts had to reside or pass through the Mexican state of Tamaulipas, which the State Department classifies as the same level of danger as Syria, Afghanistan, and Iraq.⁴⁷ Many asylum seekers and families were

kidnapped and assaulted after having been sent back to Mexico, sometimes within hours of crossing back over the border.⁴⁸

According to Human Rights First, through February 2021 there were at least 1,544 publicly documented cases of rape, kidnapping, assault, and other crimes committed against individuals sent back under MPP.⁴⁹ Multiple people, including at least one child, died after being sent back to Mexico under MPP and attempting to cross the border again.⁵⁰

The U.S. government did not provide support to individuals sent back to Mexico, leaving people to fend for themselves. Many were homeless during their time in Mexico.⁵¹ In some locations on the border, the Mexican government created shelters that could house some—but not all—of the people sent back.⁵² Private shelters also provided housing for some individuals sent back under MPP. In Matamoros, a tent camp sprang up in 2019 where thousands of asylum seekers eventually resided along the Rio Grande in squalid conditions with no running water or electricity.⁵³

Given these conditions, thousands of people subjected to MPP were unable to return to the border for a scheduled court hearing and were ordered deported for missing court.⁵⁴ Some missed hearings because the danger and instability of the border region forced them to abandon their cases and go home.⁵⁵ Others missed hearings because they were the victims of kidnapping or were prevented from attending because their court paperwork was stolen.⁵⁶

Complicating matters, the Mexican government and the United Nation’s International Organization for Migration provided buses traveling from the U.S.-Mexico border to the Mexico-Guatemala border for individuals who chose to abandon their cases and go home. However, multiple reports indicated that some individuals sent back under MPP were coerced onto these buses and ended up hundreds of miles from the border with no way to get back for their court dates.⁵⁷ In total, 44 percent of all people sent back to Mexico under MPP were unable to return to court for a hearing.⁵⁸

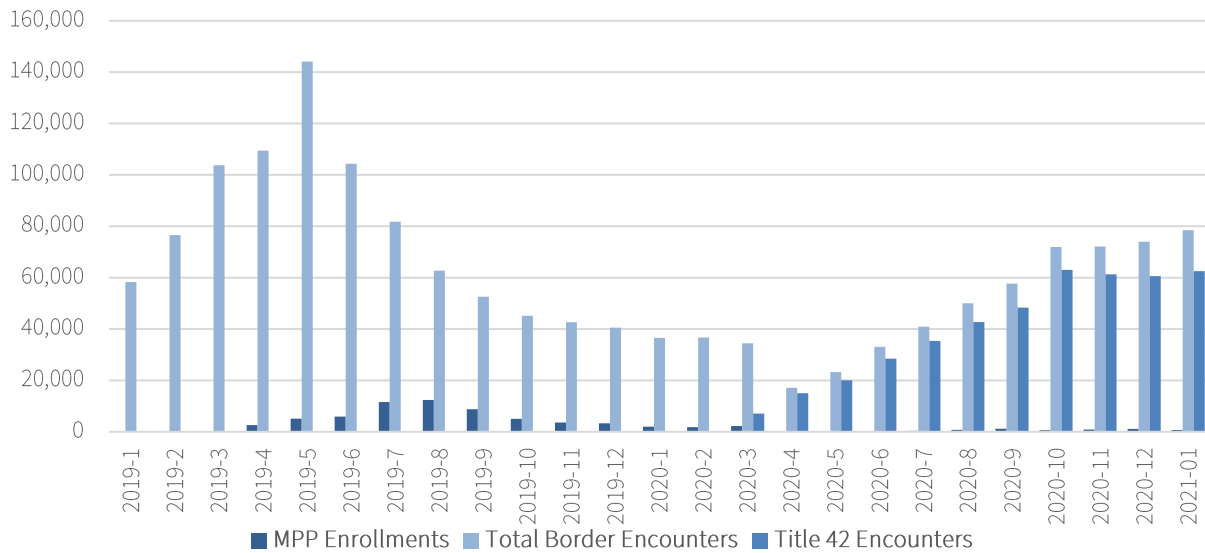
The Effect of the COVID-19 Pandemic on MPP

On March 23, 2020, in response to the COVID-19 pandemic, both DHS and EOIR suspended MPP 1.0 hearings across the border, and the courts that carried out MPP hearings temporarily shut down.⁵⁹ From March through July, MPP hearings were periodically re-suspended, each time creating more uncertainty among those still waiting for a court date.⁶⁰ Finally, on July 17, 2020, DHS and EOIR formally admitted that the program would be indefinitely suspended during the pandemic.⁶¹

Despite the possibility that those with pending cases might have to wait two to three years in Mexico before a hearing, the Trump administration refused calls to admit those in MPP with pending cases into the United States.

In total, CBP subjected over 6,000 people to MPP following the suspension of hearings,⁶² sending them to Mexico to wait for an unknown period. During this time, MPP was almost entirely replaced by Title 42, with hundreds of thousands expelled under that policy during Trump’s last months in office (Figure 1).⁶³

Figure 1: Enrollments in MPP Compared to Expulsions Under Title 42, January 2019 to January 2021



Source: U.S. Customs and Border Protection data.⁶⁴

Along with worsening conditions in shelters at the border and pandemic-related restrictions imposed across Mexico, the indefinite suspension of MPP led many people with pending cases to abandon their hope of seeking protection.

Many of those subject to MPP 1.0 returned to their home countries,⁶⁵ while others tried to enter the United States again.⁶⁶ At least 700 children who were part of families subject to MPP were sent across the border alone by their parents.⁶⁷ In total, DHS has said that nearly 25 percent of all people subject to MPP 1.0 eventually tried to cross the border a second time.⁶⁸

Developments Under the Biden Administration

On January 20, 2021, the same day that President Biden took office, DHS suspended all new enrollments in MPP, preventing any new people from being sent back to Mexico.⁶⁹

Beginning in February 2021, the Biden administration began formally winding down MPP. The first phase of this

“wind down” involved processing into the United States those waiting in Mexico who had pending MPP cases. This began on February 26, 2021.⁷⁰ In order to be processed, individuals first had to be registered by the United Nations High Commissioner for Refugees (UNHCR), which verified that individuals were eligible for the MPP wind-down.⁷¹ Those in Mexico had to register through “Conecta,” a service set up by UNHCR.⁷² Individuals also needed a negative COVID-19 test prior to being processed into the United States.⁷³

By early March, the infamous refugee camp in Matamoros had been emptied and nearly everyone inside processed into the United States and allowed to pursue asylum.⁷⁴ In June, the Biden administration announced that it would also process individuals subject to MPP who had been ordered deported for missing their court hearings.⁷⁵ Over the next five months, just over 13,000 people were processed into the United States.⁷⁶

On August 15, as part of a lawsuit brought by the states of Texas and Missouri, a federal judge ordered the Biden administration to “enforce and implement MPP *in good faith* until such a time as it has been lawfully rescinded in compliance with the APA [Administrative Procedure Act] **and** until such a time as the federal government has sufficient detention capacity to detain all [noncitizens] subject to mandatory detention under Section 1255 without releasing any [noncitizens] *because of* a lack of detention resources.”⁷⁷ Despite the extraordinary and unprecedented nature of this decision, which forced the Executive branch to engage in diplomatic negotiations with Mexico, the Supreme Court refused to temporarily halt the order while it went through the appeals process.⁷⁸

Following that decision, in September the Biden administration disclosed that it had begun internal deliberations about reinstating MPP and was engaged in diplomatic negotiations with the government of Mexico, and that no person could be sent back to Mexico without that country’s cooperation.⁷⁹ On December 2, 2021, the Biden administration announced that it had reached a deal with Mexico and would be reinstating MPP along the border in the following weeks.⁸⁰

The first returns under a reinstated MPP 2.0 occurred on December 8, 2021, when two men were sent from El Paso, TX, to Ciudad Juárez.⁸¹ As of the time of publication, DHS has not announced what, if any, actions it will take regarding individuals who are still in MPP 1.0.

Comparing MPP 1.0 and MPP 2.0

When the Biden administration reinstated MPP in December 2021, it did not revive the program in the same form as it existed under the Trump administration. Instead, the Biden administration made a series of changes, expanding it in some ways and limiting it in others.

Most notably, the Biden administration expanded the group of people who can be placed into MPP. Under MPP 2.0, CBP can apply MPP to all Western Hemisphere nationals (excluding Mexicans),⁸² a larger group of people than MPP 1.0, which was limited only to nationals of Spanish-speaking countries and Brazil. This expanded population means that MPP will now be applied to Haitians and other Caribbean nationals who were previously exempt under MPP 1.0. This expansion was not required by the court order and appears to stem from a desire to deter Haitian nationals coming to the border.

Individuals will be placed into MPP 2.0 at the same seven ports of entry that were used in MPP 1.0, and the locations of court hearings will also remain the same. The initial returns under MPP 2.0 occurred in El Paso, and MPP 2.0 is expected to be completely expanded across the border by February 2022.⁸³ Unlike in the first iteration of MPP, individuals will not be eligible for MPP 2.0 if they seek asylum at a port of entry, because Title 42 remains in effect and the ports of entry are still shut to asylum seekers.⁸⁴

The first 200 individuals placed into MPP 2.0 in El Paso in December 2021 were all single adults from Nicaragua, Venezuela, Cuba, Ecuador, or Colombia,⁸⁵ nationalities which Mexico does not accept for Title 42 expulsions. This is a stark difference from MPP 1.0, which mainly targeted nationals of Guatemala, Honduras, and El Salvador. This suggests that MPP 2.0 will initially be used to complement Title 42, rather than supplant it.

Although MPP 2.0 will eventually be applied to a greater pool of nationalities, it also includes more individualized exemptions than MPP 1.0. The Biden administration has expanded the vulnerability screening categories, clarifying that individuals “with a known mental or physical health issue” includes those with “a disability or a medical condition related to pregnancy.”⁸⁶ These groups were not necessarily covered under previous guidance for MPP 1.0, which limited exemptions for “known physical or mental health issues” primarily to those who were determined to be “not fit to travel.”⁸⁷ In addition, DHS has created new exemptions for individuals “with particular vulnerabilities given their advanced age,” and “those at risk of harm in Mexico due their [sic] sexual orientation or gender identity.”⁸⁸ As with MPP 1.0, unaccompanied children remain exempt from MPP 2.0.⁸⁹

The most significant change made to MPP 2.0 is an expansion of the process by which someone can be removed from the program due to a fear of persecution or torture in Mexico. Unlike MPP 1.0, in which CBP was forbidden from asking migrants if they had a fear of returning to Mexico, in MPP 2.0 CBP officers will be required to ask every person in the program about their fear of returning to Mexico.⁹⁰ All those who say they are afraid will be given a *nonrefoulement* interview with an asylum officer. Unlike MPP 1.0, in which individuals had to prove it was “more likely than not” that they would be persecuted or tortured in Mexico, under MPP 2.0 individuals only have to prove that there is a “reasonable possibility” of persecution or torture in Mexico in order to be exempted from the program.⁹¹ In addition, MPP 2.0 will no longer actively prevent people from speaking to an attorney during the *nonrefoulement* interview process, and each person will be given 24 hours prior to the interview to contact a

lawyer. However, because there are still very few lawyers available, it remains unclear how exactly this will work in practice.

As part of its agreement with Mexico, the Biden administration has also promised that it will take more steps to increase access to counsel and safety in Mexico for individuals put into MPP. This includes a promise that the Department of State will “assist in coordinating safe transportation in Mexico to and from the [ports of entry] for noncitizens enrolled in MPP.”⁹² However, in the days following MPP 2.0 restarting in El Paso, the State Department provided no details about this assistance, and multiple shelter providers indicated that they had not been contacted by either the Department of State or Mexican government officials.⁹³

Another key change made to MPP by the Biden administration is a promise that all vaccine-eligible individuals placed into the program will be vaccinated while in CBP custody if they have not previously been vaccinated.⁹⁴ In addition, those coming back to the United States for court hearings will be required to show proof of vaccination in order to be admitted for those hearings.⁹⁵ The Biden administration has not explained whether this means that CBP will refuse court hearings for people who choose to remain unvaccinated, lose proof of their vaccination status, or have children too young to be vaccinated.

Finally, the Biden administration says that it will work with the immigration court system to ensure that all MPP 2.0 cases are heard within an average of six months—a promise also made by the Trump administration about MPP 1.0.⁹⁶ Specifically, according to the Biden administration, “DHS will coordinate with EOIR to align the number of new MPP enrollments with the number of cases EOIR states it generally can complete within 180 days of filing the [Notice to Appear] with EOIR.”⁹⁷ It remains unclear whether this means DHS will halt new enrollments into MPP 2.0 if the immigration courts are becoming backlogged and average case processing times rise above six months.

As MPP 2.0 rolls out along the border in 2022, it remains to be seen how many of the promises the Biden administration has made about improvements to the program will be met. The underlying problems with MPP 1.0 have not been solved; asylum seekers will still face dangerous conditions while waiting in Mexico; people in the program will still find it difficult to access lawyers; and the exemption process will likely be applied inconsistently along different parts of the border.

Endnotes

1. U.S. Department of Homeland Security, “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration,” December 20, 2018, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.
2. Secretary Alejandro N. Mayorkas, U.S. Department of Homeland Security, “Termination of the Migrant Protection Protocols Program,” June 1, 2021, https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf.
3. Memorandum Opinion and Order, *Texas v. Biden*, No. 2:21-cv-00067-Z (N.D.T.X. Aug. 13, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.94.0.pdf>.
4. “First migrants returned under ‘Remain in Mexico’ policy,” *The Associated Press*, December 8, 2021, <https://abcnews.go.com/International/wireStory/migrants-returned-remain-mexico-policy-81641867>.
5. Human Rights Watch, “‘We Can’t Help You Here’: US Returns of Asylum Seekers to Mexico,” July 2, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.
6. *Ibid.*
7. American Immigration Council, “Policies Affecting Asylum Seekers at the Border” (Washington, DC: January 29, 2020), <https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border>.
8. Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings (through October 2021)” (Syracuse, NY: Syracuse University, last accessed December 15, 2021), <https://trac.syr.edu/phptools/immigration/mpp/>.
9. Administrative Record, *Texas v. Biden*, No 2:21-cv-00067-Z, ECF No. 6 at AR554, <https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.94.0.pdf>.
10. U.S. Department of Homeland Security, “Joint DHS/EOIR Statement on MPP Rescheduling,” March 23, 2020, <https://www.dhs.gov/news/2020/03/23/joint-statement-mpp-rescheduling>; Executive Office for Immigration Review, U.S. Department of Justice, “Department of Justice and Department of Homeland Security Announce Plan to Restart MPP Hearings,” July 17, 2020, <https://www.justice.gov/opa/pr/department-justice-and-department-homeland-security-announce-plan-restart-mpp-hearings>.
11. U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Migrant Protection Protocols FY2021,” last accessed December 15, 2021, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy2021>; U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Migrant Protection Protocols FY2020,” last accessed December 15, 2021, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy-2020>.
12. See American Immigration Council, “A Guide to Title 42 Expulsions at the Border” (Washington, DC: October 15, 2021), <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>; Human Rights First, “Illegal Expulsions by the Department of Homeland Security under the March 20, 2020 Order by the Centers for Disease Control and Prevention,” April 16, 2020, <https://www.humanrightsfirst.org/resource/illegal-expulsions-department-homeland-security-under-march-20-2020-order-centers-disease>.
13. See Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings (through October 2021)” (Syracuse, NY: Syracuse University, last accessed December 15, 2021), <https://trac.syr.edu/phptools/immigration/mpp/>.
14. Mimi Dwyer, “Factbox: U.S. president-elect Biden pledged to change immigration. Here’s how,” *Reuters*, January 15, 2021, <https://www.reuters.com/article/us-usa-biden-immigration-promises-factbo/factbox-u-s-president-elect-biden-pledged-to-change-immigration-heres-how-idUSKBN29K1X1>.
15. U.S. Department of Homeland Security, “DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program,” January 20, 2021, <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program>.
16. Coalition Letter, “RE: Urgent Actions the Biden Administration Must Take Following Supreme Court Decision on MPP,” August 30, 2021, <https://www.humanrightsfirst.org/sites/default/files/NGO%20letter%20on%20Urgent%20Actions%20the%20Biden%20Administration%20Must%20Take%20Following%20Supreme%20Court%20Decision%20on%20MPP.pdf>.
17. Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings (through October 2021)” (Syracuse, NY: Syracuse University, last accessed December 15, 2021), <https://trac.syr.edu/phptools/immigration/mpp/>.
18. U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Migrant Protection Protocols FY 2020,” last accessed

December 15, 2021, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy-2020>.

19. U.S. Department of Homeland Security, “DHS Begins MPP Returns at Nogales Port of Entry in Arizona,” January 2, 2020, <https://www.dhs.gov/news/2020/01/02/dhs-begins-mpp-returns-nogales-port-entry-arizona>.
20. Rafael Carranza, “How Trump’s ‘Remain in Mexico’ program affects Arizona border despite no formal policy,” *Arizona Republic*, October 10, 2019, <https://www.azcentral.com/story/news/politics/immigration/2019/10/10/remain-mexico-program-affects-arizona-border-despite-no-formal-policy/3866006002/>.
21. Carlos Morales, “Migrant Protection Protocols Quietly Expands To Big Bend Sector,” *Marfa Public Radio*, September 13, 2019, <https://marfapublicradio.org/blog/migrant-protection-protocols-quietly-expands-to-big-bend-sector/>.
22. Office of the Principal Legal Advisor, El Paso, TX, “Migrant Protection Protocols Standard Operating Procedures,” June 2019, 506 (Obtained through FOIA) (hereinafter MPP Standard Operating Procedures), on file with author; Human Rights Watch, “‘We Can’t Help You Here’: US Returns of Asylum Seekers to Mexico,” July 2, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.
23. MPP Standard Operating Procedures, 507.
24. American Immigration Lawyers Association, “DHS and DOJ Are Opening Secretive Port Courts Along the Southern Border” (Washington, DC: September 6, 2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-dhs-and-doj-are-opening-secret>.
25. See U.S. Customs and Border Protection, “MPP Guiding Principles,” January 28, 2019, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.
26. Robert Moore, “3-Year-Old Asked To Pick Parent In Attempted Family Separation, Her Parents Say,” *NPR*, July 15, 2019, <https://www.npr.org/2019/07/15/741721660/follow-up-what-happened-after-a-border-agent-asked-toddler-to-pick-a-parent>.
27. U.S. Customs and Border Protection, U.S. Department of Homeland Security, “MPP Guiding Principles,” January 28, 2019, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.
28. Camilo Montoya-Galvez, “U.S. says asylum seekers encountered along entire southern border can now be returned to Mexico,” *CBS News*, September 27, 2019, <https://www.cbsnews.com/news/remain-in-mexico-u-s-says-it-can-now-return-asylum-seekers-to-mexico-along-entire-southern-border/> (noting that “the U.S. government has generally only returned non-Mexican Spanish-speaking migrants to Mexico”).
29. Camilo Montoya-Galvez, “‘Remain home’: Trump officials say policies responsible for sharp drop in border apprehensions,” *CBS News*, December 10, 2019, <https://www.cbsnews.com/news/trump-administration-touts-sixth-consecutive-monthly-drop-in-migrant-apprehensions-at-the-mexican-border/>.
30. U.S. Department of Homeland Security, “DHS Expands MPP to Brazilian Nationals,” January 29, 2020, <https://www.dhs.gov/news/2020/01/29/dhs-expands-mpp-brazilian-nationals>.
31. Gustavo Solis, “Remain in Mexico: Migrants who may not be subject to policy continue to end up in Mexico,” *San Diego Union Tribune*, October 14, 2019, <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-10-14/remain-in-mexico-migrants-who-should-not-be-subject-to-policy-continue-to-end-up-in-mexico>.
32. U.S. Department of Homeland Security, “Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols,” December 7, 2020, https://www.dhs.gov/sites/default/files/publications/supplemental_policy_guidance.pdf.
33. *Ibid.*
34. U.S. Customs and Border Protection, U.S. Department of Homeland Security, “MPP Guiding Principles,” January 28, 2019, 1, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.
35. *Ibid.*
36. U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, “Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols,” January 28, 2019, 3, <https://www.uscis.gov/sites/default/files/document/memos/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf> (“DHS is currently unable to provide access to counsel during the assessments.”).
37. American Civil Liberties Union of San Diego & Imperial Counties, “ACLU: Asylum Seekers Subject to Trump’s Remain in Mexico Policy Must be Given Access to Counsel,” November 5, 2019, <https://www.aclusanidiego.org/aclu-asylum-seekers-subject-to-trumps-remain-in-mexico>.

[policy-must-be-given-access-to-counsel/](#).

38. Julio-Cesar Chavez and Andy Sullivan, “Few migrants seeking U.S. asylum successfully claim fear of waiting in Mexico,” *Reuters*, June 28, 2019, <https://www.reuters.com/article/us-usa-immigration-crossings/few-migrants-seeking-u-s-asylum-successfully-claim-fear-of-waiting-in-mexico-idUSKCN1TT2UP> (statement of Acting USCIS Director Ken Cuccinelli that just 1% of people are taken out of MPP); U.S. Department of Homeland Security, “Assessment of the Migrant Protection Protocols (MPP),” October 28, 2019, https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (“As of October 15, 2019, USCIS completed over 7,400 screenings to assess a fear of return to Mexico. ... Of those, approximately 13% have received positive determinations.”).
39. Dara Lind, “Exclusive: Civil servants say they’re being used as pawns in a dangerous asylum program,” *Vox*, May 2, 2019, <https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit>.
40. Maria Sacchetti, “U. S. asylum officers say Trump’s ‘Remain in Mexico’ policy is threatening migrants’ lives, ask federal court to end it,” *Washington Post*, June 27, 2019, https://www.washingtonpost.com/immigration/u-s-asylum-officers-say-trumps-remain-in-mexico-policy-is-threatening-migrants-lives-ask-federal-court-to-end-it/2019/06/26/863e9e9e-9852-11e9-8d0a-5edd7e2025b1_story.html.
41. Hamed Aleaziz, “Here’s the Draft Report Revealing How US Border Officials Pressured Asylum Officers to Deny Entry to Immigrants,” *Buzzfeed News*, December 4, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/asylum-officers-pressured-border-mexico-draft-dhs-report>.
42. Ibid. See also U.S. Department of Homeland Security, Office of Operations Coordination, “The Migrant Protection Protocols Red Team Report,” December 2019, 6, <https://www.documentcloud.org/documents/6567986-DHS-Docs.html> (“At some locations, CBP uses a pre-screening process that preempts or prevents a role for USCIS to make its determination.”).
43. Tom Wong, *Seeking Asylum: Part 2* (U.S. Immigration Policy Center, University of California, San Diego, October 29, 2019), <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.
44. Aaron Reichlin-Melnick, “Chaos and Dysfunction at the Border: The Remain in Mexico Program Firsthand,” *ImmigrationImpact.com*, September 9, 2019, <http://immigrationimpact.com/2019/09/09/remain-in-mexico-program-firsthand/>.
45. Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings (through October 2021)” (Syracuse, NY: Syracuse University, last accessed December 15, 2021), <https://trac.syr.edu/phptools/immigration/mpp/>; Transactional Records Access Clearinghouse, “Access to Attorneys Difficult for Those Required to Remain In Mexico” (Syracuse, NY: Syracuse University, July 29, 2019), <https://trac.syr.edu/immigration/reports/568/>.
46. Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings (through October 2021)” (Syracuse, NY: Syracuse University, last accessed December 15, 2021), <https://trac.syr.edu/phptools/immigration/mpp/>.
47. U.S. Department of State, “Mexico Travel Advisory,” *Travel.State.Gov*, April 9, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.
48. Emily Green, “Trump’s Asylum Policies Sent Him Back to Mexico. He Was Kidnapped Five Hours Later By a Cartel,” *VICE News*, September 16, 2019, https://www.vice.com/en_us/article/pa7kkg/trumps-asylum-policies-sent-him-back-to-mexico-he-was-kidnapped-five-hours-later-by-a-cartel.
49. Human Rights First, “Delivered to Danger,” current as of February 19, 2021, <https://www.humanrightsfirst.org/campaign/remain-mexico>.
50. Nicole Chavez, “A Honduran mother and her toddler drowned in the Rio Grande trying to enter the US, authorities say,” *CNN*, September 19, 2019, <https://www.cnn.com/2019/09/19/us/honduran-mother-son-drowning-texas/index.html>.
51. Carlos Sanchez, “Migrants Stuck in Squalid Mexican Tent Camps Begin Asylum Process,” *Texas Monthly*, September 17, 2019, <https://www.texasmonthly.com/news/migrants-mexico-tent-camps-asylum/>.
52. Delphine Schrank, “Asylum seekers cling to hope, safety in camp at U.S.-Mexico border,” *Reuters*, October 16, 2019, <https://www.reuters.com/article/us-usa-immigration-mexico-matamoros-feat/asylum-seekers-cling-to-hope-safety-in-camp-at-us-mexico-border-idUSKBN1W1DY>.
53. Nomaan Merchant, “Squalid conditions at migrant camp shows need for help,” *The Associated Press*, November 14, 2019, <https://apnews.com/337b139ed4fa4d208b93d491364e04da>.
54. Through the end of September, nearly 40% of people subject to MPP did not appear for a scheduled court hearing. See Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings (through October 2021)” (Syracuse, NY:

Syracuse University, last accessed December 15, 2021), <https://trac.syr.edu/phptools/immigration/mpp/>.

55. Gus Bova, “Migrants at Laredo Tent Court Tell Stories of Kidnappings and Violence While Pleading Not to Be Returned to Mexico,” *Texas Observer*, September 16, 2019, <https://www.texasobserver.org/migrants-at-laredo-tent-court-tell-stories-of-kidnappings-and-violence-while-pleading-not-to-be-returned-to-mexico/>.
56. Mica Rosenberg, Kristina Cooke, and Daniel Trotta, “Thousands of Central American migrants take free rides home courtesy of U.S. government,” *Reuters*, August 21, 2019, <https://www.reuters.com/article/us-usa-immigration-returns/thousands-of-central-american-migrants-take-free-rides-home-courtesy-of-us-government-idUSKCN1VB07L>.
57. Patrick J. McDonnell, “Mexico sends asylum seekers south — with no easy way to return for U.S. court dates,” *Los Angeles Times*, October 15, 2019, <https://www.latimes.com/world-nation/story/2019-10-15/buses-to-nowhere-mexico-transport-migrants-with-u-s-court-dates-to-its-far-south>.
58. Secretary Alejandro N. Mayorkas, U.S. Department of Homeland Security, “Termination of the Migrant Protection Protocols Program,” June 1, 2021, https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf.
59. Executive Office for Immigration Review, U.S. Department of Homeland Security, “Joint DHS/EOIR Statement on MPP Rescheduling,” March 23, 2020, <https://www.dhs.gov/news/2020/03/23/joint-statement-mpp-rescheduling>.
60. Sandra Sanchez, “DHS again delays MPP hearings to end of June as pandemic precaution,” *Border Report*, May 11, 2020, <https://www.borderreport.com/news/top-stories/mpp-hearings-now-moved-back-to-june-22-by-dhs-in-confusing-statement-attributing-to-covid-concerns/>.
61. U.S. Department of Homeland Security, “Department of Homeland Security and Department of Justice Announce Plan to Restart MPP Hearings,” July 17, 2020, <https://www.dhs.gov/news/2020/07/17/department-homeland-security-and-department-justice-announce-plan-restart-mpp>.
62. U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Migrant Protection Protocols FY 2021,” last accessed December 15, 2021, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy2021>; U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Migrant Protection Protocols FY 2020,” last accessed December 15, 2021, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy-2020>.
63. U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Migrant Protection Protocols FY 2021,” last accessed December 15, 2021, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy2021>; U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions,” last updated December 14, 2021, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>; U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Southwest Land Border Encounters,” last updated December 13, 2021, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.
64. Ibid.
65. Anna-Catherine Brigida, “Refugees Hold the Line Against a Pandemic,” *U.S. News*, December 17, 2020, <https://www.usnews.com/news/best-countries/articles/2020-12-17/migrant-camp-on-mexicos-border-limits-the-spread-of-covid-19>.
66. U.S. Customs and Border Protection, U.S. Department of Homeland Security, “Migrant Protection Protocols FY 2021,” last accessed December 15, 2021, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy2021> (providing statistics on new apprehensions of individuals previously subject to MPP).
67. Camilo Montoya-Galvez, “700 children crossed the U.S. border alone after being required to wait in Mexico with their families,” *CBS News*, January 15, 2021, <https://www.cbsnews.com/news/children-who-crossed-the-u-s-border-after-their-families-were-required-to-wait-in-mexico-are-being-denied-legal-safeguards-suit-says/>.
68. Secretary Alejandro N. Mayorkas, U.S. Department of Homeland Security, “Termination of the Migrant Protection Protocols Program,” June 1, 2021, https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf (“more than one-quarter of individuals enrolled in MPP were subsequently reencountered attempting to enter the United States between ports of entry”).
69. U.S. Department of Homeland Security, “DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program,” January 20, 2021, <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program>.
70. Julian Resendiz, “BREAKING: US to begin processing registered asylum-seekers on Feb. 26 in El Paso,” *Border Report*, February 18, 2021,

- <https://www.borderreport.com/hot-topics/immigration/breaking-us-to-begin-processing-registered-asylum-seekers-on-feb-26-in-el-paso/>
71. United Nations High Commissioner for Refugees, “UN agencies begin processing at Matamoros,” February 24, 2021, <https://www.unhcr.org/en-us/news/press/2021/2/6035b7db4/un-agencies-begin-processing-matamoros.html>.
 72. United Nations High Commissioner for Refugees, “Conecta,” last accessed December 15, 2021, <https://conecta.acnur.org/>.
 73. United Nations High Commissioner for Refugees, “UN agencies begin processing at Matamoros,” February 24, 2021, <https://www.unhcr.org/en-us/news/press/2021/2/6035b7db4/un-agencies-begin-processing-matamoros.html>.
 74. Laura Gottesdiener, “Mexican camp that was symbol of migrant misery empties out under Biden,” *Reuters*, March 7, 2021, <https://www.reuters.com/article/us-usa-immigration-mexico-feature/mexican-camp-that-was-symbol-of-migrant-misery-empties-out-under-biden-idUSKBN2A70GB>.
 75. Amnesty International, “Biden Expands Plan to Bring Back Asylum Seekers Forced to Wait in Dangerous Border Towns Under Trump’s Remain in Mexico Policy,” June 23, 2021, <https://www.amnestyusa.org/press-releases/biden-expands-plan-to-bring-back-asylum-seekers-forced-to-wait-in-dangerous-border-towns-under-trumps-remain-in-mexico-policy/>.
 76. Coalition Letter, “RE: Urgent Actions the Biden Administration Must Take Following Supreme Court Decision on MPP,” August 30, 2021, <https://www.humanrightsfirst.org/sites/default/files/NGO%20letter%20on%20Urgent%20Actions%20the%20Biden%20Administration%20Must%20Take%20Following%20Supreme%20Court%20Decision%20on%20MPP.pdf>.
 77. Memorandum Opinion and Order, *Texas v. Biden*, No. 2:21-cv-00067-Z (N.D.T.X. Aug. 13, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.94.0.pdf>.
 78. James Fredrick, “The Supreme Court Reinstated Trump’s ‘Remain In Mexico’ Policy For Asylum-Seekers,” *NPR*, August 25, 2021, <https://www.npr.org/2021/08/25/1031067084/the-supreme-court-reinstated-trumps-remain-in-mexico-policy-for-asylum-seekers>.
 79. Defendants’ Monthly Status Report Pursuant to Court’s Injunction, *Texas v. Biden*, No. 2:21-cv-00067-Z, ECF 106 (N.D.T.X Sept. 15, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.106.0.pdf>.
 80. U.S. Department of Homeland Security, “DHS, Justice, and State Prepare for Court-Ordered Reimplementation of MPP,” December 2, 2021, <https://www.dhs.gov/news/2021/12/02/dhs-justice-and-state-prepare-court-ordered-reimplementation-mpp>.
 81. Jose Luis Gonzalez, “U.S. Sends First Migrants to Mexico in Reboot of Trump-Era Policy,” *Reuters*, December 8, 2021, <https://www.usnews.com/news/us/articles/2021-12-08/first-migrants-sent-to-mexico-from-u-s-under-reboot-of-trump-era-scheme>.
 82. Robert Silvers, Under Secretary, Office of Strategy, Policy and Plans, U.S. Department of Homeland Security, “Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols,” December 2, 2021, https://www.dhs.gov/sites/default/files/publications/21_1202_plcy_mpp-policy-guidance_508.pdf.
 83. Jose Luis Gonzalez, “U.S. Sends First Migrants to Mexico in Reboot of Trump-Era Policy,” *Reuters*, December 8, 2021, <https://www.usnews.com/news/us/articles/2021-12-08/first-migrants-sent-to-mexico-from-u-s-under-reboot-of-trump-era-scheme>; U.S. Department of Homeland Security, “DHS, Justice, and State Prepare for Court-Ordered Reimplementation of MPP,” December 2, 2021, <https://www.dhs.gov/news/2021/12/02/dhs-justice-and-state-prepare-court-ordered-reimplementation-mpp>.
 84. ACLU of New Mexico, “Q&A: What you need to know about MPP, the Trump-era migrant policy reinitiated by Biden,” December 13, 2021, <https://www.aclu-nm.org/en/news/qa-what-you-need-know-about-mpp-trump-era-migrant-policy-re-initiated-biden>.
 85. Julia Neusner, Twitter, December 28, 2021, <https://twitter.com/JuliaNeusner/status/1475944175229181953> (sharing data provided by Mexico’s immigration agency).
 86. Robert Silvers, Under Secretary, Office of Strategy, Policy and Plans, U.S. Department of Homeland Security, “Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols,” December 2, 2021, 5, https://www.dhs.gov/sites/default/files/publications/21_1202_plcy_mpp-policy-guidance_508.pdf.
 87. U.S. Department of Homeland Security, “Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols,” December 7, 2020, https://www.dhs.gov/sites/default/files/publications/supplemental_policy_guidance.pdf.
 88. Robert Silvers, Under Secretary, Office of Strategy, Policy and Plans, U.S. Department of Homeland Security, “Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols,” December 2, 2021, 5, https://www.dhs.gov/sites/default/files/publications/21_1202_plcy_mpp-policy-guidance_508.pdf.

89. Ibid., 4.
90. Ibid., 5.
91. Ibid., 5-6.
92. Ibid., 7.
93. Lizbeth Diaz, “Already stretched, Mexican shelters fret over migrant influx under MPP reboot,” *Reuters*, December 2, 2021, <https://www.reuters.com/world/americas/already-stretched-mexican-shelters-fret-over-migrant-influx-under-mpp-reboot-2021-12-03/>.
94. Robert Silvers, Under Secretary, Office of Strategy, Policy and Plans, U.S. Department of Homeland Security, “Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols,” December 2, 2021, 5, https://www.dhs.gov/sites/default/files/publications/21_1202_plcy_mpp-policy-guidance_508.pdf.
95. Ibid.
96. Ibid., 7.
97. Ibid.