



POLICY & ADVOCACY REPORT

VOLUME 4 | ISSUE NO. 26 | October 2021

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Migrant Protection Protocols: What They Are, How They Affect Asylum Seekers, and What Can Be Done to End Them

By Chloe Canetti

The Migrant Protection Protocols (MPP) policy, also referred to as Remain in Mexico, is a program that was implemented by the Trump administration in response to an increase in asylum seekers at the southern border. The program requires asylum seekers, both from Mexico and from other countries, to stay in Mexico while their asylum cases are pending in U.S. immigration courts. The policy has had grave effects on the safety of migrants, who are forced to stay in Mexico in dangerous and inadequately resourced camps. Reports of attacks and human rights abuses against the migrants are rampant, and basic necessities such as shelter and medical care are lacking. This snapshot details the effects of MPP on asylum seekers, the court case over the policy, and steps the Biden administration can take to end the policy for good.

Effects of MPP on Asylum Seekers

MPP has had a devastating effect on over 70,000 asylum seekers who have been subjected to the program so far [1]. The Department of Homeland Security (DHS) has been sending people to wait in some of Mexico's most dangerous cities, knowing that many of the cities to which it sends migrants are on the State Department's "Do Not Travel" list [2]. In fact, in the first two years of MPP, Human Rights First documented "at least 1,544 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against asylum seekers" in MPP [3]. In a survey by Human Rights Watch, nearly half of the 71 people interviewed said they were extorted not only by gangs, but also by Mexican immigration agents and police [4]. When migrants were unable to pay the bribes, the agents would detain them, threaten to kill them, or "hand them over to cartels." [5]

The dangers do not just lie outside of the migrants' makeshift camps, but within. Migrants living in the border camps report that they live in tents made of plastic tarps, and that they do not have access to bathrooms or sanitation [6]. There is no sewage or garbage disposal, leading to disease and infections in the camps [7]. Children are unable to attend school, and their parents cannot work because the Mexican government does not issue them IDs that prove their work authorization [8]. As a result, they remain in the unsanitary camps, due to both the danger and lack of opportunity awaiting them outside.

In its implementation of MPP, DHS has continuously failed to account for the dangers many migrants face in Mexico. People fleeing persecution [9] in their home countries have a right to seek asylum at the U.S. border, according to Article 14 of the Universal Declaration of Human Rights that guarantees "the right to seek and to

enjoy in other countries asylum from persecution.” The 1951 Refugee Convention also states that no state “shall expel or return... a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion [10]. However, under MPP, migrants are not regularly screened to determine whether they have a fear of persecution, and instead are expected to affirmatively state their fear of return in order to be placed in asylum proceedings [11]. Those who do not affirmatively disclose their fear are sent back to Mexico, and even those who do are often still denied the chance to proceed to the next stage in the screening process [12]. Living in Mexico also makes it extremely difficult for them to find legal counsel and attend their immigration hearings in the United States. As a result, in the first year of MPP, only 7.5% of asylum seekers were able to access a lawyer and 1% were granted asylum [13].

The MPP Court Case: Texas v. Biden

MPP was put in place under the previous administration, but right before President Trump left office in January of 2021, his administration made an agreement with the state of Texas that Texas would help DHS with immigration enforcement, and in return DHS would have to consult Texas before making any changes to the MPP program. Right after taking office, the Biden administration suspended and then published a memorandum terminating MPP. As a result, Texas and Missouri sued, claiming damages not only for not consulting Texas on the move, but also for expenses the states claimed they would have to pay to accommodate new immigrants. This case is called Texas and Missouri v. Biden Administration [14].

The judge in Texas v. Biden ruled in favor of Texas and Missouri, finding that DHS’s memorandum did not properly justify the agency’s reason for ending MPP, and ordering that the program be reinstated. Judges are required to give great deference to agency policies like MPP, but can strike them down if they are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” [15]. The judge in this case found that the administration’s decision to end MPP was arbitrary, given that DHS did not give enough reasoning for the decision.

The court concluded that DHS had failed to consider the “positive” deterrent effect MPP had on migration, the costs to states as a result of ending the program, or any alternative and less drastic actions that could be taken instead of shutting down the program altogether. The judge stated that the program must remain in effect “until such a time as it has been lawfully rescinded in compliance with the APA [Administrative Procedures Act] and until such a time as the federal government has sufficient detention capacity to detain all [noncitizens] subject to mandatory detention” [16].

As a result of this ruling, the Biden administration has attempted to reinstate MPP in compliance with the court order. However, MPP was set up as an agreement with the Mexican government and the Mexican government has since refused to cooperate with the reinstatement [17]. An update from the administration on October 15th states that the administration anticipates being able to reinstate the program by mid-November, but only if the Mexican government agrees to the plan [18].

Next Steps: How Biden can End MPP

Due to the court ruling in *Texas v. Biden*, the Biden administration is legally required to reinstate MPP until it can give a more thorough justification for ending it. However, the administration still has the power to end MPP, by writing a new memorandum stating its reasoning and addressing the judge's concerns over ending the program. In doing so, the administration can end MPP in compliance with the court order. This will be a vital step in restoring the rights, dignity, and safety of asylum seekers in the United States.

References

- [1] "Mexico: Abuses Against Asylum Seekers at US Border." Human Rights Watch (Mar. 5, 2021), <https://www.hrw.org/news/2021/03/05/mexico-abuses-against-asylum-seekers-us-border#>.
- [2] "Delivered to Danger: Trump Administration Sending Asylum Seekers and Migrants to Danger." Human Rights First (Feb. 19, 2021), <https://www.humanrightsfirst.org/campaign/remain-mexico>.
- [3] Id.
- [4] "Mexico: Abuses Against Asylum Seekers," Human Rights Watch (2021).
- [5] Id.
- [6] Lebrija, Jorge. "Conditions Worsen at Asylum Seekers' Camps in North Mexico." Border Report (July 6, 2021), <https://www.borderreport.com/hot-topics/immigration/conditions-worsen-at-asylum-seekers-camps-in-north-mexico/>.
- [7] Id.
- [8] "Mexico: Abuses Against Asylum Seekers," Human Rights Watch (2021).
- [9] Universal Declaration of Human Rights art. 14, Dec. 10, 1948.
- [10] United Nations Convention Relating to the Status of Refugees art. 33, July 28, 1951.
- [11] "The 'Migrant Protection Protocols.'" American Immigration Council (Oct. 6, 2021), <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.
- [12] Id.
- [13] Id (noting that by December 2020, only 521 people out of over 42,000 MPP cases were granted asylum).
- [14] *Texas & Minnesota v. Biden*, 2:21-cv-00067-Z (N.D. Tex. Aug. 13, 2021).
- [15] Id. at 34.
- [16] Id at 52.
- [17] Stern, Mark Joseph. "The Judicial Crusade to Revive Trump's Border Policy Isn't Going so Well." Slate (Sept. 20, 2021), <https://slate.com/news-and-politics/2021/09/trump-biden-mexico-border-migrants-judges.html>.
- [18] Defendant's First Supplemental Notice of Compliance with Injunction, *Texas & Minnesota v. Biden*, 2:21-cv-00067-Z (N.D. Tex. Aug. 13, 2021).

United States Issue Updates

New DHS Enforcement Priorities Memo

On September 30, the Department of Homeland Security (DHS) issued a memo to define the agency's priorities for immigration enforcement and deportation that goes into effect on November 29. The memo identifies three priority groups for detention and deportation: individuals whom DHS believes pose a threat to national security; individuals that DHS believes present a "current threat to public safety, typically because of serious criminal conduct"; and individuals who are attempting to enter the United States without permission as well as those who entered without permission after November 1, 2020. The memo also prohibits DHS from arresting, detaining, and deporting individuals based on political statements or opinions, as CBP did during the migrant caravans of 2018 and 2019 per the Office of the Inspector General. The September 30 memo supersedes earlier memos from January and February of this year. To read the memo, click [here](#).

ORR Issues Policy Letters to Authorize Benefits for Afghans

On October 14, the Office of Refugee Resettlement released a pair of policy letters that formally authorize Afghan parolees to receive the same resettlement benefits as refugees. Parole is a waiver of entry that DHS grants for humanitarian reasons. Only immigrants with certain statuses are eligible for refugee and mainstream benefits and services, and until Congress authorized them as eligible in late September, Afghan parolees were ineligible. Benefits include resettlement assistance such as housing placement and basic medical care, as well as eligibility for mainstream benefits including Medicaid, SNAP, Social Security, and TANF. Read the letters [here](#) and [here](#).

U.S. Government to Reopen Borders for Vaccinated Travelers on Nov. 8

The Biden administration announced that it will lift travel restrictions to fully vaccinated travelers beginning on November 8. The current pandemic restrictions have been in place since March 2020, and they limit many individuals from tourist travel or from visiting to shop or see family in the country. Non-U.S. citizens who travel by air will be required to show proof of full vaccination before boarding their flights, as well as a negative Covid-19 test result. Land borders will be reopened as well for vaccinated travelers. The United States will accept the Pfizer, Moderna, and Johnson & Johnson vaccines, as well as "vaccines that have been listed for emergency use by the World Health Organization," according to a spoken announcement by White House Assistant Press Secretary Kevin Munoz. Munoz tweeted confirmation of the announcement as well; read it [here](#).

Biden Administration Announces Reimplementation of MPP in November

On October 15, the Biden administration filed a status update in the Northern District of Texas that it intends to reimplement the so-called Migrant Protection Protocols (MPP), also known as the "Remain in Mexico" program. The Biden administration filed a memo to terminate MPP on June 1; a Texas court ruled that the memo was not properly justified and ordered that the Biden administration "reinstate MPP in good faith."

United States Issue Updates (Cont'd)

The administration said in the document that it will submit a plan to the Mexican government for their approval that would provide increased access to legal representation, faster court hearings, and better screening for particularly vulnerable individuals. Mexican Secretary of Foreign Affairs Marcelo Ebrard has been publicly critical of MPP in recent months. To read the status update, click [here](#).

U.S. Government Announces Additional Aid to Central America

On October 15, the Department of State's Bureau of Population, Refugees, and Migration announced that it had made an additional \$20 million available for humanitarian needs for vulnerable migrants in Central America and Mexico. In the recently completed 2021 Fiscal Year, U.S. humanitarian assistance to the region reached \$331 million. The announcement comes amidst a trend of Central American governments passing laws that criminalize whistle-blowers and outlaw swathes of civil society. To read the announcement, click [here](#).

Around the World in International Migration

Bangladesh and the United Nations Sign Deal to Aid Relocated Rohingya Refugees

Bangladesh plans to relocate 80,000 of the nearly 1.1 million Rohingya refugees currently residing in the Cox Bazar area to an island in the Bay of Bengal, joining another 19,000 Rohingya already on the island. The Cox Bazar refugee settlement is the largest in the world, and has been plagued by water shortages, widespread disease, flooding, and landslides, leading to further displacement of an already displaced population of Rohingya, most of whom fled their native Myanmar after facing persecution in 2017. UNHCR noted improvements of infrastructure after a recent visit to the island due to a \$112 million investment by the Bangladeshi government, and an agreement was signed on October 10 to work collaboratively in providing aid to the Rohingya relocated to the island. This decision to collaborate indicated a change of thinking from the United Nations, who had previously criticized the Bangladeshi government's relocation efforts because of the island's inhabitability. Most Rohingya refugees do not want to relocate, citing uninhabitable conditions, and a fear of not being able to leave the island if desired.

European Union Fails to Make Clear Resettlement Pledge for Afghans

Despite a call from the UN High Commissioner for Refugees for countries to keep borders open to potentially half a million displaced Afghans, the European Union has not yet made a clear commitment to resettle a concrete number of Afghans over the next five years. European Commissioner for Migration Ylva Johansson has said that a goal of 42,500 Afghans across all EU member states is "doable," but that it will require member states to individually make their own pledges. EU officials have floated the establishment of external partnerships with countries neighboring Afghanistan to aid in the protection of Afghans, harkening back to a 2016 deal with Turkey to stop Syrian migrants from crossing into Europe. However, Afghan refugees have already made claims about violent pushbacks at the Iran / Turkey border, and another EU deal could exacerbate already high tensions.

At Least 10 Migrants Killed Near Tripoli Amidst Libyan Government's Crackdowns on Asylum Seekers

In early October, Libyan forces swept through Tripoli arresting thousands of asylum seekers and migrants and sending them to detention. Libya's lack of a national asylum law means asylum seekers are all considered to be illegal migrants, therefore subjecting them to abuse, arrest, and detention. Mass escapes from two detention centers subsequent to the crackdown resulted in guards using live ammunition, killing at least 10 people in total, and injuring more. Surviving escapees and other migrants have gathered in front of a community day center run by UNHCR, pleading to be prioritized for resettlement flights to other countries. UNHCR says it is calling for an end to arbitrary detention in Libya, and for the restarting of humanitarian flights out of the country, which were suspended by Libyan authorities earlier this year.

Around the World in International Migration (Cont'd)

Poland Passes Legislation Effectively Legalizing Migrant Pushbacks at Border

Poland's nationalist government has now enshrined expulsions and pushbacks of migrants and asylum seekers at its border. Human rights groups have been criticizing inhumane and violent pushbacks since a surge of migrants across Polish borders began over the past few months – six people have been found dead near the border since the surge. However, border officials claim they are acting in accordance with the legislation, which includes a procedure whereby a person caught illegally crossing the border can be immediately ordered to leave, and that the chief of Poland's Office of Foreigners has the authority to disregard an application for international protection. This legislation seemingly violates international law, which states that all migrants have the right to claim asylum, and cannot be sent back to their home country if their lives or well-being are in danger. The Polish government cites security reasons for the necessity of the legislation.

More than 91,000 Migrants Have Crossed Panama's Dangerous Darien Gap this Year on the way to North America

56,600 Haitian migrants have made the journey across the Darien gap from January to September of this year, representing more than half of the 91,000 total migrants, a figure which triples the previous record of 30,000 migrants who crossed in 2016, according to IOM. The Darien Gap is a 1.4 million acre jungle stretch on the Panamanian-Colombian border, and migrants who cross it are faced with 66 roadless miles of tumultuous rivers, mountains, and venomous snakes, as well the danger of gangs and traffickers along the way. The Darien Gap is part of a perilous route to North America from Central or South America. Panama said this week that more than 50 migrants have died in the Darien Gap so far in 2021, and that figure is likely well below the actual death count. The Darien Gap route has come under great scrutiny as tens of thousands of Haitians, most of whom had made the journey, have been expelled from the U.S.-Mexico border in recent weeks.



USCRI's Action and Resources on Afghanistan

For more information about the crisis in Afghanistan, resources for Afghan allies, and updates, please check out the links below:

[Resources for Afghan Allies](#)

[Human Faces of the Crisis in Afghanistan](#)

[USCRI Statement Calling for Extension of Evacuations](#)

[USCRI Snapshot: Humanitarian Parole for Afghan Evacuees](#)

Upcoming Meetings & Events

Leading the Way 2021: Trusted Solutions for a Brighter Future – October 25 + October 26

From 3-5pm ET pm Monday October 25 and Tuesday October 26, join the National Immigration Forum for Leading the Way. LTW is a multiday convening that brings influential speakers from a variety of backgrounds to engage in critical conversations about one of the most pressing challenges our country faces — immigration. Click [here](#) to register.

Migration Working Group: Immigration Policies & Labor Market Experiences – October 26

Join CERC Migration on Tuesday October 26 from 4:30-6:30 ET to explore innovative migration research. The October Migration Working Group addresses the theme, immigration policies and the labor market experiences of foreign-born workers. The Migration Working Group meets monthly to discuss the migration research of emerging and established scholars. Register [here](#).

Journey to Justice: Hope and Healing - October 28

On Thursday October 28 at 7pm ET, join Tahirih Justice Center for an evening of hope and healing where we will virtually come together across the country to honor the resiliency of immigrant survivors of gender-based violence on their journey to justice after an especially difficult year. To register, click [here](#).

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