

TO THE HONORABLE MEMBERS OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANIZATION OF AMERICAN STATES:

URGENT REQUEST FOR PRECAUTIONARY MEASURES
REGARDING THE UNITED STATES UNDER ARTICLE 25 OF THE RULES
OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

IN THE NAME OF:

J.L.A.M., D.D.L.S., L.F.O., L.I.M.L., E.C.
ALL ASYLUM SEEKERS PLACED INTO MPP AND
FORCIBLY RETURNED TO MEXICO

Presented in conformity with Article 25 of the Rules of the Inter-American

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I. INTRODUCTION

This request is filed on behalf of five (5) individual Proposed Beneficiaries, identified below, and similarly situated asylum seekers subjected to the “Remain in Mexico” program (officially titled Migrant Protection Protocols (“MPP”) against the United States of America, a member State of the Organization of American States. The Proposed Beneficiaries and all others in the MPP program are asylum seekers¹ detained by the United States at the U.S. southern border, placed in the MPP program, and then forcibly sent back to Mexico to await their asylum proceedings in U.S. Immigration Courts. This request is being filed simultaneously with a related request for precautionary measures against Mexico.

The United States, through its implementation of MPP has subjected Proposed Beneficiaries and others similarly situated to a serious situation where they face immediate danger of violent death or injury as well as other grave and irreparable harms. The urgency of the situation has increased as the situation of undeniable danger faced by those in MPP has escalated dramatically with the outbreak of the COVID-19 pandemic. The Proposed Beneficiaries and others similarly situated are forced to live in conditions that increase their risk of contracting COVID-19 without access to any meaningful medical care. In addition, they are now being forced to remain in Mexico for months, even a year, longer than was initially intended, during which time the physical threat and psychological damage is both immediate and irreparable.

¹ The term “asylum seekers” is used throughout this request because it is a category recognized by international law. Under the laws of the United States, these migrants may also be eligible for other forms of relief, including under the Convention Against Torture or withholding of removal or even under family reunification provisions.

The United States, through the implementation of the MPP program, has delivered the Proposed Beneficiaries and similarly situated asylum seekers into grave danger by forcing them to wait outside the United States for their proceedings, usually in dangerous border towns in northern Mexico where they cannot protect themselves from the pandemic, violating the principle of *non-refoulement* (where Mexico itself has become the country of *refoulement*) as well as the rights to life and personal integrity. The United States is further failing to prevent other human rights violations against asylum seekers in MPP in Mexico, namely the right to health and safety. It is acting with blatant disregard to reports of aggressive kidnappings, rape and other acts of violence committed against asylum seekers in MPP, and the compounded risks created by the COVID-19 pandemic, particularly for persons living in tent encampments, shelters and other temporary living facilities.

The individuals in MPP have not only been forced into a situation whereby they face daily threats and serious threats to their physical security, they have also been placed into serious situation of legal insecurity in Mexico, whereby their status and rights in Mexico are neither clearly documented or established. The combination of physical insecurity and lack of security in legal status in Mexico has contributed to a serious risk of indirect or chain *refoulement* back to the country of origin that the asylum seekers fled.

Those asylum seekers who have, to date, managed to wait out their now-extended time in Mexico to pursue their asylum claims in the United States, face egregious violations of due process and prolonged wait periods that are increasingly likely to functionally block their access to asylum ultimately leading to a real and significant risk of *refoulement* to their country of origin and the harms associated therewith. The complicated bi-national proceedings the United States has created through MPP make it nearly impossible for asylum seekers to attend court

hearings or to access counsel. Prior to the suspension of MPP hearings, justified by the COVID-19 pandemic, MPP hearings were often held by video from temporary structures that could not meaningfully be considered “courts.” Currently, because of the COVID-19 pandemic, all hearings are suspended through July 17, 2020, and it remains unclear what new or different procedures might be put in place when the hearings resume. Furthermore, asylum seekers are required to file for asylum within one year of their “arrival” to the United States: those asylum seekers stranded in Mexico whose hearings have been suspended have no way of filing for asylum until they next appear in court, and therefore many may be left excluded from the protection of asylum. The result is that most claims to asylum for individuals in MPP are likely to never even be heard much less recognized.

The U.S.’s MPP policy poses a particularly grievous range of immediate and irreparable harms to families and vulnerable populations. Despite formally ending family separation in 2018, the United States continues to separate children from their parents under MPP. Vulnerable populations, LGBTQI people, and children are particularly affected by MPP, as their special health, safety, family, and educational needs are ignored.

The Commission has noted that migrants are particularly vulnerable during the current pandemic and has urged States “to ensure that measures to contain the pathogen do not result in a failure to meet their international obligations to protect populations fleeing persecution, conflict, or risks to their lives or integrity.”² The existing harms to asylum seeking women and children

² Press Release: IACHR and OSRESCER Urge States to Guarantee Comprehensive Protection for Human Rights and Public Health during the COVID-19 Pandemic (March 20, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/060.asp.

and other vulnerable communities resulting from MPP are deepened by the pandemic and the U.S. government response.

The Commission has oversight authority to issue precautionary measures that will permit the Proposed Beneficiaries the opportunity to pursue their right to seek and receive asylum and their right to *non-refoulement*, and, in the interim, ensure their immediate right to health and security of person, and the right to family and special protections for children.³ Given the COVID-19 outbreak and the situation of extreme and escalating violence in northeast Mexico, already vulnerable individuals subjected to MPP are now facing exacerbating harms in Mexico, reinforcing that Mexico itself a country of *refoulement* for a significant percentage of persons seeking asylum in the United States. Individuals and families in MPP face aggressive kidnappings, disappearances, and living conditions that are inhumane, and now with the presence of COVID-19, life-threatening.⁴ In addition, MPP has created an unacceptable risk of chain or indirect refoulement to the countries from which they originally fled: while some asylum seekers find themselves detained and deported by Mexican authorities because they are unable to prove lawful status to remain in Mexico throughout the pendency of their hearings in the US, others face the impossible choice of risking life, liberty and personal safety in Mexico versus those same risks in their home country, and accede to pressure to participate in Mexico's program of

³ See, IACHR. Res. 3/2018, MC-860-17, Familias indígenas de la Comunidad Chaab'il Ch'och' respecto de Guatemala, ¶¶ 18-19 (noting the authority of the Commission under Art. 106 of the OAS Charter to issue precautionary measures as part of its role in overseeing compliance with member states human rights obligation, and further articulating the scope of precautionary measures under Inter-American Commission Rules of Procedure, Art. 25, to be issued where necessary to preserve fundamental rights and avoid immediate and irreparable harm). See also, IACHR. MC-731/18. Migrant Children affected by the "Zero Tolerance" Policy regarding the United States of America. <http://www.oas.org/en/iachr/decisions/pdf/2018/64-18MC731-18-US-en.pdf>.

⁴ Human Rights First, Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger, May 13, 2020, at <https://www.humanrightsfirst.org/resource/pandemic-pretext-trump-administration-exploits-covid-19-expels-asylum-seekers-and-children>.

“assisted voluntary returns.”⁵ If the MPP Program is not immediately ended and these asylum seekers allowed into the United States to pursue their claims for relief, the proposed beneficiaries to this request for precautionary measures will suffer further serious harms – in Mexico and potentially in their home countries – and some will certainly die.

The proposed beneficiaries therefore seek the Commission’s immediate adoption of precautionary measures requiring the United States to: end the MPP program to prevent further harms from occurring; process the Proposed Beneficiaries and similarly-situated asylum seekers for entry into the United States where they may securely pursue their claims to asylum; and ensure that asylum seekers are not subjected to immediate and prolonged detention, but instead are paroled into the United States to live with family and loved ones in safety and in circumstances in which they can take measures to protect against infection by COVID-19.⁶

⁵ See Human Rights Watch, “US Move Puts More Asylum Seekers at Risk,” Sept. 25, 2019, at <https://www.hrw.org/news/2019/09/25/us-move-puts-more-asylum-seekers-risk>. See also, Niskanen Center, “Assisted Voluntary Return: Another Opaque Asylum Restriction with a Misleading Name,” Feb. 6, 2020, at <https://www.niskanencenter.org/assisted-voluntary-return-another-opaque-asylum-restriction-with-a-misleading-name/>.

⁶ The present request for precautionary measures follows on an earlier filed request, which was not granted. On January 30, 2020, one year following the implementation of MPP, the Applicants submitted a request for precautionary measures on behalf of eight (8) individual Proposed Beneficiaries and others similarly situated against the United States (MC-75-20) in connection with the implementation of the MPP program. A similar request was filed on behalf of the same eight (8) individual beneficiaries and others similarly situated against Mexico on February 4, 2020. Each request for precautionary measures highlighted the specific ways in which each of the States are violating multiple provisions of the American Declaration on the Rights and Duties of Man and the American Convention of Human Rights through the implementation of and participation in MPP. The requests also recounted the imminent and irreparable harm faced by those trapped in MPP, as well as the harm already suffered. On March 4, 2020, Applicants received notice that the request as to Mexico was not granted, and one day later received notice that the request as to the United States was not granted. No reasons were offered as to why neither request was granted. This request, in addition to a request for precautionary measures sought from the government of Mexico, is not simply a restatement of the earlier request, but instead is a renewed and updated request filed in light of the significantly increased risk the proposed beneficiaries face as a result of increased violence in northeastern Mexico directed at migrant populations compounded by the life-threatening circumstances posed by the COVID-19 pandemic, particularly for those forced to live in over-crowded shelters, tent encampments and other temporary housing for a prolonged period of time. This request reflects the changed and increasingly dire circumstances of the individual beneficiaries and the escalating harm that confronts the Proposed Beneficiaries and others similarly situated.

II. LEGAL REPRESENTATION AND GEOGRAPHIC SCOPE OF REQUEST

The legal representatives presenting this request for precautionary measures are the Immigration Clinic at the University of Texas School of Law; the Transnational Legal Clinic at the University of Pennsylvania Carey Law School; the Latin America Working Group; and the Institute for Women in Migration (Instituto para las Mujeres en la Migración, or IMUMI). The representatives have direct experience with the implementation of MPP along the Texas/Mexico border and have obtained authority from each of the Proposed Beneficiaries to represent them in this matter.

This request for precautionary measures focuses on the implementation of MPP along the Texas-Mexico border. Specifically, the facts detail the implementation of MPP in Brownsville, Texas; El Paso, Texas; and Laredo, Texas; as well as the conditions of the bordering Mexican towns of Matamoros, Tamaulipas; Ciudad Juárez, Chihuahua; and Nuevo Laredo, Tamaulipas.

MPP is currently in effect along nearly the entire southern border of the United States and is causing irreparable harm to all in the program, not just those along the Texas-Mexico border. However, the rollout and implementation of MPP along the Texas/Mexico border beginning a year ago, in March 2019, dramatically expanded the program and has led to increasingly egregious and particular rights violations and harms, as will be described below. The United States is also relying on the MPP infrastructure in place along the Texas-Mexico border to continually expand MPP. In late November 2019, the Department of Homeland Security decided to bus asylum seekers from Tucson, Arizona, over 300 miles east to El Paso, Texas, to be processed into MPP and sent to Ciudad Juárez, Mexico, to await their asylum proceedings in El

Paso.⁷ In this way, the United States is relying on facilities already in place in cities along the Texas-Mexico border to expand the geographic scope of MPP and is using the implementation of MPP along the Texas-Mexico border as a model to expand to other geographic regions. A focus on the Texas-Mexico border thus serves to expose the structural components of MPP that cause grave rights violations for all in the program, regardless of geographic location.

III. THE PROPOSED BENEFICIARIES

This request for precautionary measures is filed on behalf of specific individuals placed into MPP along the Texas border with Mexico, and others similarly situated, who are currently suffering and face imminent risk of additional irreparable harm as a result of the MPP program. The United States, as the country placing each individual in MPP, has the power to end this serious and urgent situation and has knowledge of all specific impacted individuals placed in the MPP program.

The individual Proposed Beneficiaries are asylum seekers from throughout Latin America who were placed in MPP after they arrived in the United States or presented at a U.S. port of entry. The Proposed Beneficiaries have pending asylum cases in Immigration Court in Brownsville, El Paso, or Laredo. The Proposed Beneficiaries fled their home countries as a result of persecution and have a fear of returning to their home countries. They include asylum seekers who have already been forced to return home to an ongoing risk of persecution.

⁷ Arelis R. Hernández et. al, *Trump Administration's 'Remain in Mexico' Program to Shuttle Migrants from Tucson to El Paso*, WASHINGTON POST (Nov. 22, 2019), https://www.washingtonpost.com/immigration/remain-in-mexico-to-shuttle-migrants-from-tucson-to-el-paso/2019/11/22/2f56a484-0cb3-11ea-8397-a955cd542d00_story.html.

The Proposed Beneficiaries include individuals who were kidnapped or assaulted in northern Mexico, some with their entire families, during their efforts to seek asylum in the United States, and who face continued and escalating violence and harm while they continue to wait. The Proposed Beneficiaries also include vulnerable asylum seekers, including members of the LGBTQ community, individuals with existing health issues, and families with young children. The specific dangers faced by these asylum seekers and the special obligations of the United States to address their needs for protection, health care and education cannot continue to be ignored.

The individual named Proposed Beneficiaries are the following (please see Exhibit 1 for detailed declarations for each of the named Beneficiaries)⁸:

A. NUEVO LAREDO

1. L.F.O. (national of Honduras): L.F.O. fled Honduras to seek asylum in the United States together with her husband, an adult daughter and several grandchildren. She and the rest of the family fled after another daughter of L.F.O. was killed in Honduras. L.F.O. and her family were kidnapped in northern Mexico before presenting at the United States border in August 2019. U.S. border officials detained L.F.O., her husband and two grandsons separately from L.F.O.'s surviving adult daughter and her

⁸ Given the particularly vulnerable position of the Proposed Beneficiaries in MPP, the harms they have already endured and the harms they continue to face, we ask that the Proposed Beneficiaries' identities be kept confidential, and only be shared as needed with the U.S. government in the processing of the Precautionary Measures request.

The current COVID-19 pandemic has made communication with the Proposed Beneficiaries more challenging and has increased the risk for Proposed Beneficiaries such that it is not possible to obtain new declarations from them. In many instances, it is only possible to communicate securely with the Proposed Beneficiaries through WhatsApp messages. The information provided here thus includes updates not contained in the attached declarations.

children. All family members were placed into MPP and returned to Nuevo Laredo and were told to present themselves for hearings at the tent courts in Laredo in November 2019. After being returned to Nuevo Laredo, the family members could not find each other to reunite. The adult daughter and her children left Nuevo Laredo for Tijuana, Baja California, because it was too dangerous to remain in Nuevo Laredo. Despite their efforts to transfer the proceedings to the California border, the Immigration Court refused and ordered the adult daughter and her children deported.

L.F.O., her husband, and the two grandsons who remained with them were pressured by Mexican authorities to leave the Nuevo Laredo area even though their hearings were scheduled in Laredo. Mexican authorities told L.F.O. that she and her husband and grandchildren could take a free bus south if they did not want to stay in Nuevo Laredo. These authorities warned the family that they were in danger from the cartels and that the government would not protect them. Unable to contact her daughter, L.F.O. and her husband and two grandchildren boarded the bus provided by the Mexican authorities. The bus took them as far as Mexico City. L.F.O. and her husband realized that it was impossible to return to Laredo for their hearing. They then traveled on their own to Chiapas.

The family made the difficult decision to return to Honduras. Even though the family is in danger in Honduras, L.F.O. and her husband decided that, in Honduras, their grandchildren would at least have other family to protect them if something happened to L.F.O. and her husband. The L.F.O. and her family are currently facing an urgent situation in Honduras where they once again face the threats that originally caused them to flee.

2. L.I.M.L (national of Guatemala): L.I.M.L. fled Guatemala with her husband and two children (ages 5 and 7) because of targeted violence, assaults and threats. The family arrived in Nuevo Laredo in July 2019, where they were kidnapped by cartel members and held for three days, during which time L.I.M.L. and her family were mistreated and extorted, and feared being killed. When the family presented at the border, U.S immigration authorities detained the family for two nights. The authorities then placed the family in MPP, even though L.I.M.L. and her husband both tried to explain that they had been kidnapped in Nuevo Laredo and would be in danger if returned there. The U.S. immigration authorities asked if they had been raped and refused to consider the possibility of allowing the family to remain in the United States for their proceedings when the answer was negative.

The family's initial hearing was scheduled for October 2019 in the tent courts in Laredo; it was conducted by video with a judge sitting in San Antonio, Texas. They received an interview to assess whether they should be returned to Mexico (a *non-refoulement* interview) following their October hearing. It appeared that the asylum officer believed that they should be allowed to remain in the United States. However, border authorities sent them back to Nuevo Laredo anyway and told them to return for another hearing at the end of November 2019. The family received pro se assistance to complete asylum applications for all four family members to present at their November hearing so that the proceedings could advance to a final asylum hearing. However, when the family presented at the border bridge for their hearing, U.S. authorities erroneously determined that L.I.M.L. had lice and refused to allow any family members to present for the video hearing or to submit the asylum applications.

After several additional hearings, a final merits hearing was set for April 17, 2020. However, with the outbreak of COVID-19, that hearing was suspended. The case is currently set for a final hearing on July 20, 2020, a full year after Petitioner and her family were processed into MPP. But it is not certain whether this hearing will take place: the United States government has announced that all MPP hearings have again been suspended, this time at least until July 17, 2020, but with the possibility of additional suspensions beyond that date. L.I.M.L. and her husband and young children must find a way to survive in dangerous Nuevo Laredo during this now indefinite time.

L.I.M.L. and her family have struggled to find housing in Nuevo Laredo and live in constant fear of the cartels. The family does not have access to schools or health care. With the outbreak of the pandemic, it has no longer been possible to work either.

B. MATAMOROS

3. E.C. (national of Guatemala): E.C. abandoned Guatemala because of persecution endured in part due to his sexual orientation. He was detained by U.S. immigration authorities when he attempted to enter the United States in June 2019. Throughout seven days of detention at the border, he was mistreated and was not allowed to make any phone calls. U.S. immigration officials placed E.C. into MPP, gave him English-language documents, and returned him to Matamoros with no further explanation. Since arriving in Matamoros, E.C. has suffered several violent assaults, and a cartel regularly takes money from him. E.C. went to the Mexican police, who told him he is just a migrant and refused to help.

E.C. has had multiple immigration hearings the tent courts in Brownsville, the first in October 2019. Each hearing is conducted by videoconference, with poor

translation. In October 2019, E.C. was also given a *non-refoulement* interview by phone to determine whether he would be returned to Mexico. He was returned to Matamoros after the interview.

He was scheduled for a hearing on the merits of his asylum claim mid-January 2020, seven months after being placed in MPP. With great difficulty, he finally found a lawyer for his merits hearing. On the date of his merits hearing, the judge did not issue a decision after E.C. gave extensive testimony. Instead, the judge told him to return in March 2020 to receive a decision. As a result of the COVID-19 pandemic, the hearing to receive a decision in his case was cancelled. E.C. had to report to the border bridge port of entry on the date of his originally scheduled hearing to receive notice of the new hearing date. He was scheduled for yet another hearing on May 20, 2020 for the sole purpose of receiving a decision in his case. In accordance with the May 10, 2020 announcement extending the suspension of all MPP hearings through June 19, 2020, E.C. was to present himself at the port of entry on June 20, 2020 (on a Saturday, when the immigration courts are closed). Recently, the United States government announced that it was further suspending hearings, at least until July 17, 2020, and E.C. and other people in his situation are not to appear at the port of entry on the scheduled date. E.C. now has no scheduled hearing date to receive the decision in his case, and he is trapped in Mexico indefinitely. If ultimately granted asylum, he will have been forced to remain in Mexico for at least an additional six months after his final asylum hearing as a result of MPP, despite qualifying as a refugee who should be admitted to the United States.

E.C. feels particularly vulnerable in Mexico because he is gay. He knows of at least two men who were assaulted on the bridge between Matamoros and Brownsville for being gay, so he seeks to hide his identity and lives in constant fear.

C. CIUDAD JUÁREZ

4. D.D.L.S. (national of Honduras): D.D.L.S. fled Honduras because of persecution due to her sexual orientation. D.D.L.S. presented herself at the U.S. border in early May 2019, where U.S. immigration officials held her in detention for three days before placing her into MPP, without providing any opportunity for D.D.L.S. to explain her asylum claim or her fear of return to Mexico. D.D.L.S. was forced back to Mexico after being handed several documents in English related to MPP without further explanation.

Back in Ciudad Juárez, D.D.L.S found temporary housing in a shelter. At the shelter, D.D.L.S. experienced discrimination and harassment because of her sexual orientation. She also experienced a direct threat to her safety: cousins of the police officer who had threatened her life in Honduras came and found D.D.L.S. at the shelter and threatened her. When she tried to file a complaint with the Mexican police, administrators at the shelter first told her she needed Mexican papers to file a complaint, and later when she tried a second time, they told her that she could not file a complaint because there were too many people filing complaints.

D.D.L.S. was kicked out of the shelter after three months, and has struggled to find safety and to support herself ever since. She is currently living at a ranch outside of Ciudad Juárez, and works in exchange for a place to stay, but receives no pay.

D.D.L.S. was initially given an identity card and permission to stay in Mexico for six months, but she was not given a work permit. She was scheduled for her first hearing in the El Paso immigration court in November 2019, approximately six months after having first presented herself at the border, and was given a *non-refoulement* interview to determine whether she faced danger in Mexico. Over the course of four to five hours, she explained the discrimination and danger she faced in Mexico, but after the interview, she was forced back to Ciudad Juárez. Her second hearing was scheduled for late January 2020. When she presented herself at the end of January 2020, she gave the judge an application for asylum and the judge urged her to find an attorney before scheduling her for a hearing on the merits on October 28, 2020.

While D.D.L.S. has been able to consult with an American lawyer who explained to her the process, it has been hard for her to follow-up with the lawyer because she has limited money to be able to make calls. The attorney she has been consulting with is not able to represent her in her hearings and has been trying to find an attorney for her, but she has not been successful.

D.D.L.S. is effectively living in hiding at the ranch. She is too scared to venture outside because of the repeated harassment and threats she faces throughout Ciudad Juárez, a fear that is now exacerbated by her fear of getting sick from COVID-19, particularly given her lack of access to medical care.

5. J.L.A.M. (national of Nicaragua): J.L.A.M. fled Nicaragua in May 2019 because of persecution due to his political opposition to the current government. While en route to the U.S. border, municipal police in Chiapas, Mexico detained him and stole his money before releasing him. On July 12, 2019, after having arrived in Ciudad Juárez

and seeking counsel from the Consejo Estatal de Población, he presented himself at the border. U.S. immigration officials detained him and repeatedly insulted him, and threatened him. He was then taken before an immigration officer, who presented him with several documents to sign and threatened him that he would not be able to talk with his family again if he did not sign. The next day in the afternoon, he was violently pushed out the door and forced back across the border into Ciudad Juárez.

J.L.A.M. was immediately detained by a group of municipal police in Ciudad Juárez, who began kicking and insulting him and others detained with him. The officers also took the wallets of the migrants, including J.L.A.M., and stole their money.

J.L.A.M. had his first hearing on September 18, 2019, but did not have a chance to present his case because the judge had run out of time. He was returned to Ciudad Juárez and given another hearing date of December 2, 2019. He was fortunate to find an attorney to represent him at that hearing, and was given a next hearing date of April 23, 2020. That hearing date was cancelled because of the COVID-19 pandemic, and he was told that “migration is closed until further notice.”

He has been living in a shelter, where he has also been the victim of psychological violence and feels very unsafe. Late in 2019, he was leaving a church that he attends and the police aimed their guns at him. J.L.A.M. is currently suffering post-traumatic stress due to the violence and discrimination suffered in Nicaragua, Mexico and the United States, and he fears for his life in Mexico. With the current COVID-19 pandemic, he is living in a state of lock-down, unable to work and earn money, and remains extremely fearful for his own safety. He is also anxious now about his health, and has heightened

anxiety with each day that passes about his family who remains in a situation of extreme danger in Nicaragua and his current inability to help protect them in any way.

6. Other Similarly-Situated Asylum Seekers Subjected to MPP: In addition to the five (5) individually identified proposed beneficiaries and their family members, this request extends to all similarly-situated asylum seekers who attempted to enter the United States and were subsequently placed into MPP and forcibly returned to Mexico.⁹ As the experiences of the individual proposed beneficiaries demonstrate, persons returned to Mexico under MPP have already experienced serious harm, and they are presently subject to a significant risk of additional imminent and irreparable harm to their life and personhood in Mexico. MPP has also exposed asylum seekers to a significant risk of chain refoulement to the home countries they initially fled, while they wait in vain to present their claims for asylum before the U.S. Immigration Courts. Therefore, the benefit of Precautionary Measures should not be limited to the named Petitioners in this request, and extends beyond the named Petitioners to all asylum seekers in MPP. Given the very nature of MPP, the United States itself is best suited to individually identify all asylum seekers subjected to MPP and potentially brought within the scope of this request.

IV. CONTEXT: MPP POLICY, ITS IMPLEMENTATION, AND THE COMPOUNDING HARMS CREATED BY COVID-19

A. Introduction of the MPP Policy, its Implementation and Rapid Expansion

⁹ While the individual proposed beneficiaries were all placed into MPP along the southern U.S. border of Texas, and many of the details contained herein are specific to the dangers faced in Nuevo Laredo, Matamoros, and Ciudad Juarez, the grave threats to asylum seekers placed into MPP described herein apply equally to all asylum seekers forced back into towns and cities along the entire U.S.-Mexican border, where the targeted violence and threats arising from the COVID-19 pandemic are well-documented and indisputable.

On December 20, 2018, former U.S. Secretary of the Department of Homeland Security Kirstjen M. Nielsen announced the issuance of the Migrant Protection Protocols (MPP).¹⁰ Under the MPP program, individuals who arrive in or enter the United States from Mexico without proper documentation, either through an official port of entry or another access point, may be sent back to Mexico for the duration of their U.S. immigration proceedings.¹¹ MPP applies principally to asylum seekers: “Aliens trying to enter the U.S. **to claim asylum** will no longer be released into our country.”¹² By former Secretary Nielsen’s own admission, the MPP program is “an unprecedented action” in the United States.¹³

Former Secretary Nielsen framed MPP as the process of invoking Section 235(b)(2)(C) of the United States’ Immigration and Nationality Act.¹⁴ Section 235(b)(2)(C) states that “in the case of an alien . . . who is arriving on land (whether or not at a designated port of arrival) from a foreign country contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding.”¹⁵ This law does not require the return of migrants to the contiguous countries from which they are arriving, and in fact there are strong legal arguments

¹⁰U.S. Dep’t of Homeland Sec., *Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration* (Dec. 20, 2018), <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration> [hereinafter *Nielsen Announcement*].

¹¹ *Id.*

¹² *Id.*

¹³ U.S. Dep’t of Homeland Sec., *Migrant Protection Protocols* (Jan. 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> [hereinafter *Migrant Protection Protocols*] (“We have implemented an unprecedented action that will address the urgent humanitarian and security crisis at the Southern border. This humanitarian approach will help to end the exploitation of our generous immigration laws. The Migrant Protection Protocols represent a methodological commonsense approach, exercising long-standing statutory authority to help address the crisis at our Southern border.”).

¹⁴ *Nielsen Announcement*, *supra* n. 10 (“Effective immediately, the United States will begin the process of invoking Section 235(b)(2)(C) of the Immigration and Nationality Act.”).

¹⁵ INA 235(b)(2)(C).

under U.S. law suggesting that the provision may *not* be used against asylum seekers.¹⁶ The provision has never before been used to return asylum seekers to Mexico while they await further proceedings. Accordingly, the return of asylum seekers on these grounds is an unlawful policy adopted by the current administration to block migrants from entering the United States to exercise their right to seek asylum.¹⁷

The United States has elsewhere made explicit its goal of deterring and excluding asylum seekers, despite the provisions of U.S. law that require adjudication of claims to protection made at the border or upon arrival in the United States.¹⁸ On January 24, 2019, the Department of Homeland Security (“DHS”) issued a press release emphasizing its goal of deterring migration, including the presentation of asylum claims: “The MPP will . . . discourage individuals from attempting illegal entry and making false claims to stay in the U.S.”¹⁹ The unfounded presumption of “false claims” is paired with the implementation of a program that denies the right to have those claims adjudicated, making clear that the MPP program is intended to defeat access to asylum.

¹⁶ See *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 506 (9th Cir. 2019) (per curiam) (staying the preliminary injunction; that injunction was subsequently stayed by the Ninth Circuit pending Supreme Court review, and the stay of the injunction was affirmed by the Supreme Court, resulting in the ongoing operation of MPP pending a decision on the merits as to its legality).

¹⁷ See *Nielsen Announcement*, *supra* n. 10 (“Catch and release’ will be replaced with ‘catch and return.’ In doing so, we will reduce illegal migration by removing one of the key incentives that encourages people from taking the dangerous journey to the United States in the first place.”).

¹⁸ See INA 208(1) (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum”); see also 8 U.S.C. 1225(b)(1)(A).

¹⁹ *Migrant Protection Protocols*, *supra* n. 13.

By the end of April 2020, the U.S. had sent more than 65,000 migrants back to Mexico to await their U.S. asylum proceedings under the MPP program.²⁰ The program was initially rolled out in San Diego, California, in January 2019 with hearings in Immigration Court for these cases beginning in March 2019.²¹ This was followed by implementation in El Paso and Calexico in March 2019.²² U.S. authorities then expanded the program to Laredo and Brownsville in July of 2019 with initial hearings taking place in south Texas in September 2019.²³ As of April 2020, just over 20,000 migrants have been enrolled in El Paso; over 15,000 in Brownsville; and nearly 13,000 in Laredo.²⁴ At the end of 2019 and beginning of 2020, DHS expanded MPP operations to Eagle Pass, Texas²⁵ and then to Tucson and Nogales, Arizona.²⁶ Asylum seekers presenting on the Arizona border must appear for their asylum hearings in El Paso, Texas. In addition to its rapid geographic expansion of MPP, on the date marking the one-year anniversary of the first asylum seeker returned under MPP, DHS expanded the program to include nationals of Brazil.²⁷

The United States, through MPP, specifically targets family units, especially those from the Northern Triangle of Central America. The DHS explained in its January 24, 2019, press

²⁰ See TRAC Immigration, *Details on MPP (Remain in Mexico) Deportation Proceedings* (April 2020), <https://trac.syr.edu/phptools/immigration/mpp/>.

²¹ See Human Rights First, *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process* 21 (Aug. 2019), <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf>

²² *Id.* at 22.

²³ *Id.*

²⁴ TRAC Immigration, *Details on MPP (Remain in Mexico) Deportation Proceedings* (April 2020), *supra* n. 20 (follow these steps: check “Measure” as “Current Status”; check “Graph Time Scale” as “by Month and Year”; select “Hearing Location” on leftmost dropdown menu).

²⁵ U.S. Dep’t of Homeland Sec., *DHS Expands MPP Operations to Eagle Pass* (Oct. 28, 2019), <https://www.dhs.gov/news/2019/10/28/dhs-expands-MPP-operations-eagle-pass>.

²⁶ Hernández et. al, *supra* n. 7; U.S. Dep’t of Homeland Sec., *DHS Begins MPP Returns at Nogales Port of Entry in Arizona* (Jan. 2, 2020), <https://www.dhs.gov/news/2020/01/02/dhs-begins-mpp-returns-nogales-port-entry-arizona>.

²⁷ U.S. Dep’t of Homeland Sec., *DHS Expands MPP To Brazilian Nationals* (January 29, 2020), <https://www.dhs.gov/news/2020/01/29/dhs-expands-mpp-brazilian-nationals>.

release that it was intentionally broadening its invocation of Section 235(b)(2)(C) of the INA to apply to family units in the Northern Triangle, rather than single men arriving from Mexico:

Historically, illegal aliens to the U.S. were predominantly single adult males from Mexico who were generally removed within 48 hours if they had no legal right to stay; now over 60% are family units and unaccompanied children and 60% are non-Mexican. In FY17, CBP apprehended 94,285 family units from Honduras, Guatemala, and El Salvador (Northern Triangle) at the Southern border. Of those, 99% remain in the country today.²⁸

MPP's targeting of families directly follows on other U.S. immigration policies that have undermined family integrity through family detention and family separation.²⁹ In fact, MPP seems to be a reaction, in significant part, to U.S. federal court decisions prohibiting family separation and limiting family detention to 20 days in most instances.³⁰ As of October 3, 2019, about one-third of the migrants in the MPP program were children under the age of eighteen. Of those children, 4,300 of them were under the age of five and 481 had not even turned one-year-old yet.³¹

Implementing and expanding MPP required the U.S. government to seek the consent and support of the Mexican government, because Mexico is the country to which the asylum seekers are sent while they await their U.S. asylum proceedings. During the summer of 2019, the U.S.

²⁸ *Migrant Protection Protocols*, *supra* n. 13. In practice, the program is applied to nationals of a range of Spanish-speaking Latin American countries, including the countries of the Northern Triangle as well as Cuba and Venezuela.

²⁹ See Michael D. Shear & Zolan Kanno-Youngs, *Migrant Families Would Face Indefinite Detention Under New Trump Rule*, N.Y. TIMES (Aug. 21, 2019), <https://www.nytimes.com/2019/08/21/us/politics/flores-migrant-family-detention.html>; see also Michael D. Shear et. al., *Trump Retreats on Separating Families but Thousands May Remain Apart*, N.Y. TIMES (June 20, 2018), <https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html>.

³⁰ U.S. Dep't of Homeland Sec., CBP FAMILIES AND CHILDREN CARE PANEL FINAL REPORT 2, 8, 27 (Nov. 14, 2019), https://www.dhs.gov/sites/default/files/publications/fccp_final_report_1.pdf (presenting the 20-day limit on family detention as a problem and asserting that MPP has nonetheless controlled the number of families of asylum seekers in the United States).

³¹ Reuters, U.S., *Migrant Policy Sends Thousands of Children, including Babies, Back to Mexico* (Oct. 11, 2019), <https://www.reuters.com/article/us-usa-immigration-babies-exclusive/exclusive-u-s-migrant-policy-sends-thousands-of-babies-and-toddlers-back-to-mexico-idUSKBN1WQ1H1> (analyzing Immigration Court data).

threatened to impose harsh tariffs on Mexican goods unless the Mexican government cooperated with the U.S. government to implement draconian immigration measures.³² The U.S. government only backed off the plan to impose tariffs against Mexico after the Mexican government agreed to expand the MPP program.³³ The United States thus used an economic and political threat to bilateral relations to coerce Mexico to join the U.S. in implementing MPP. The United States has made clear that it has insisted that Mexico cooperate broadly with MPP, stating that “MPP is a core component of U.S. foreign relations and bilateral cooperation.”³⁴

MPP operates alongside other U.S. practices and policies that have blocked migrants, including asylum seekers, at the U.S. southern border. Acting both independently and in conjunction with these other policies, MPP is dismantling the right to seek asylum in the United States. Most recently, the United States has invoked the COVID-19 pandemic to halt all border crossings by asylum seekers, including unaccompanied children, and to return to Mexico individuals encountered along the southern U.S. border without any process at all to determine refugee protection needs.³⁵ This latest measure follows other U.S. efforts to block the border, including metering and the third-country rule. Metering blocks people from seeking asylum at a port of entry at a U.S.-Mexico border crossing by requiring asylum seekers to add their names to

³²*Statement from the President Regarding Emergency Measures to Address the Border Crisis* (May 30, 2019), <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-emergency-measures-address-border-crisis/>.

³³ Donald Trump (@realDonaldTrump) TWITTER (Jun 7, 2019, 5:31PM), <https://twitter.com/realDonaldTrump/status/1137155056044826626>.

³⁴ Dep’t of Homeland Sec., *Assessment of the Migrant Protection Protocols (MPP) 5* (Oct. 28, 2019) [hereinafter DHS Assessment],

https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

³⁵ DHS, *Fact Sheet: DHS Measures on the Border to Limit the Further Spread of Coronavirus* (March 23, 2020), <https://www.dhs.gov/news/2020/03/23/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus>; Reuters, *U.S. Deports 400 Migrant Children under New Coronavirus Rules* (April 7, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-deportations/u-s-deports-400-migrant-children-under-new-coronavirus-rules-idUSKBN21P354>.

a waitlist and wait outside the United States, often for weeks or months, before they legally enter the asylum process.³⁶ The “third-country rule” adds an asylum bar for those who enter or attempt to enter the U.S. across the southern border and who did not apply for asylum in Mexico or another third country through which they traveled.³⁷ This third country policy is paired with agreements between the United States and Guatemala, El Salvador and Honduras to return asylum seekers to “alternative countries” to pursue their asylum claims there rather than in the United States.³⁸ All of these policies act in concert to create almost insurmountable barriers to asylum, placing asylum seekers in grave danger, and ultimately contributing to constructive chain refoulement and danger back in the original country of persecution.

B. The procedures and practices implemented under the MPP have been enacted in total disregard of the threats posed, and fail to protect vulnerable asylum seekers from immediate and irreparable harm.

In its introduction of MPP and implementation thereof, the United States has taken no precautions to ensure that Mexico respects and takes measures to fulfill the human rights of those asylum seekers that the United States sent back to Mexico through the program. The Department of Homeland Security claimed in announcing MPP that the program would “decrease...the ability of smugglers and traffickers to prey on vulnerable populations, and reduce threats to life,

³⁶ STRAUSS CENTER FOR INTERNATIONAL SECURITY AND LAW, METERING UPDATE (Nov., 2019) 1 <https://www.strausscenter.org/campi-content/campi-reports-working-papers.html>; See Dep’t of Homeland Sec. Office of Inspector General, *Special Review- Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Sep. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf#page=8> (acknowledging that metering is a waiting system utilized by CBP). Metering differs from MPP in that border officials refuse to process asylum seekers subjected to metering while asylum seekers placed in MPP are processed by border authorities, placed in U.S. Immigration Court proceedings and then returned to Mexico. Some asylum seekers face a wait period in Mexico as a result of the metering policy and then are processed through MPP and are returned to Mexico to wait for additional months. Individuals subject to metering and MPP must survive in Mexico for particularly lengthy periods of time while they seek to pursue asylum in the United States

³⁷ 8 C.F.R. § 208.13 (2019); 8 C.F.R. § 1208.13.

³⁸ Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, 84 Fed. Reg. 223, 64095 (Nov. 19, 2019).

national security, and public safety, while ensuring that vulnerable populations receive the protection they need.”³⁹ However, MPP has actually increased cartels’ ability to prey on and profit from asylum seekers, since the United States deposits asylum seekers in border cities in Mexico and into the hands of the cartels that extort and exploit them. And the cartels’ violence is on the rise. Immediately before the U.S. suspended all MPP hearings, forcing asylum seekers into longer and – in some cases –indefinite stays in Mexico, the Associated Press reported on Mexican government statistics showing the homicide rate in Mexico increased 8.46% between February and March 2020.⁴⁰

After placing an asylum seeker into MPP, border authorities quickly return the individual to Mexico. The asylum seeker receives a Notice to Appear (NTA), which is a charging document initiating U.S. Immigration Court removal proceedings. The asylum seeker also receives an MPP “tearsheet” that explains how, where and when they will appear for their immigration hearings in the United States.⁴¹ The NTA and tear-sheet provide a hearing date and instructions to appear at a border crossing into the United States on that date. The asylum seekers are then delivered directly into border towns in Mexico with high rates of violence where their status as asylum seekers further increases the danger, as detailed *infra*, Sec. VI.

The minimal protections the United States has put in place to ensure that those most vulnerable to harm are excluded from the MPP program have proven to be insufficient and ineffective. Despite internal guidance regarding certain groups that should be exempt from

³⁹ DHS, Migrant Protection Protocols, *supra* n. 13.

⁴⁰ The Associated Press, *Mexico’s gang violence appears to rise during pandemic* (April 24, 2020), <https://apnews.com/a33c15a157abcf26d52de04bd16ab474>

⁴¹ See Photograph of a “Forma Migratoria Múltiple” issued by Mexican immigration authorities, Annex B.

placement in MPP,⁴² including unaccompanied children and individuals with known physical or mental health issues,⁴³ particularly vulnerable asylum seekers are regularly subjected to MPP and are forced back to Mexico where they face compounded risks to their safety and well-being.⁴⁴ Even before the U.S. government's shutdown of the southern border with Mexico following the outbreak of the COVID-19 pandemic and immediate returns to Mexico even for unaccompanied children, Human Rights First had documented multiple instances in which unaccompanied children and persons with physical and/or mental health issues were sent back to Mexico under MPP.⁴⁵

When the asylum seeker appears at the port of entry on the date of a hearing, they check into the custody of U.S. immigration officials at the port of entry. Asylum seekers are ordered to appear at 4:30 a.m. or 5 a.m. for morning hearings or at 9:00 a.m. for 1:00 p.m. hearings. Once they present to border authorities, asylum seekers are taken to Immigration Court for the day and then returned to Mexico to await their next hearing date. During the time that an asylum seeker is

⁴² U.S. CBP, MPP Guiding Principles (Jan. 28, 2019),

<https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>

⁴³ *Id.* The guidance provides that the following categories of individuals are not amenable to MPP:

- Unaccompanied alien children,
- Citizens or nationals of Mexico,
- Aliens processed for expedited removal,
- Aliens in special circumstances,
 - Returning LPRs seeking admission (Subject to INA Section 212)
 - Aliens with an advance parole document or in parole status
 - Known physical/mental health issues
 - Criminals/history of violence
 - Government of Mexico or USG interest,
- Any alien who is more likely than not to face persecution or torture in Mexico, or
- Other aliens at the discretion of the Port Director

⁴⁴ Human Rights First, *Delivered to Danger* 9, *supra* n.21.

⁴⁵ *Id.* For example, Human Rights First learned of a sixteen-year-old from Honduras who was sent to Tijuana with her one-year-old daughter, despite knowing from the sixteen-year-old's age that neither she nor the one-year-old child was accompanied by an adult parent (the teenager's U.S. immigration documents correctly mark her age as sixteen-years-old).

in the United States for a hearing, their movement is tightly controlled. They may not travel to the court on their own or with counsel but instead must be escorted by immigration officials and must remain within the strict confines of the court complex. Attorneys, family members and witnesses do not have ready access to the asylum seekers during the time that they are in the U.S. since they are in the tightly-regulated custody of immigration authorities.

Pre-pandemic, the time between initial return to Mexico and the first hearing before a judge was usually around two months. Completing the immigration process takes multiple hearings, each one typically being scheduled around two months apart. Throughout this lengthy and indeterminable time period of the process, the U.S. repeatedly returns the asylum seeker to dangerous Mexican border cities to wait for the next hearing. The asylum seeker must remain in Mexico between hearings and periodically present at the U.S. border to appear for hearings.

Even after the judge makes an initial ruling, there may be appeals by either party, which further lengthen and confuse the process. An asylum seeker may be returned to Mexico during this appeals process or may be placed in immigration detention in the United States after waiting for months in Mexico for a decision on the protection claim.⁴⁶

This lengthy Immigration Court process, during which asylum seekers must wait in Mexico in life-threatening conditions, has become more prolonged and potentially indefinite. On March 23, 2020, the United States announced that all MPP hearings were suspended in response to the COVID-19 pandemic, and a similar announcement on April 1, 2020 extended the

⁴⁶ Maya Srikrishnan, *An Asylum Seeker Scored a Rare Win Under Remain in Mexico so Why Wasn't She Released?* (Sep. 19, 2019), <https://www.voiceofsandiego.org/topics/news/an-asylum-seeker-scored-a-rare-win-under-remain-in-mexico-so-why-wasnt-she-released/>.

suspension through the end of April.⁴⁷ On May 10, 2020, the United States announced that it was suspending all hearings through June 19, 2020.⁴⁸ On June 16, 2020, the United States announced a new extension to the suspension of hearings, and reiterating the announcement from May that no one should report to the bridge or port of entry to receive notifications of new hearings or other documents at least until July 17, 2020. The announcement indicates that the U.S. government is re-evaluating the possibility of restarting the MPP hearings on a weekly basis and reserves the possibility of further extending the suspension of hearings. Thus, the time during which asylum-seekers in Mexico are exposed to serious risks to their health and safety has been extended in many cases to a year or more, and now has become indefinite. There is a significant likelihood of additional delays even when the MPP hearings resume, in light of large number of cases that have accumulated in the MPP backlog, as well as the general immigration court backlog due to the pandemic-induced hearing suspensions in immigration courts across the country, thus extending the asylum seekers' exposure to severe risks to health and safety for months if not years more.

As a result of this now further prolonged, complicated and excessively difficult process, the Proposed Beneficiaries and all individuals in MPP face a risk of grave and urgent situation where they face irreparable harm in the form of threats to physical safety and security in person, as well as the risk of chain refoulement to their home countries. Specifically, the Proposed Beneficiaries and other similarly situated asylum seekers in MPP face an immediate and ongoing risk of sexual assault, physical assault, kidnapping, lack of necessary medical treatment, and

⁴⁷ Joint DHS/EOIR Statement on MPP Rescheduling (April 1, 2020), <https://www.dhs.gov/news/2020/04/01/joint-dhseoir-statement-mpp-rescheduling>.

⁴⁸ Joint DHS/EOIR Statement on the Rescheduling of MPP Hearings (May 10, 2020), <https://www.dhs.gov/news/2020/05/10/joint-dhseoir-statement-rescheduling-mpp-hearings>.

even death, risks that are now compounded by the likelihood of contracting COVID-19 and resulting grave illness or death due to inhumane living conditions and the lack of protection and medical care.⁴⁹ In addition, as noted above, many asylum seekers may not be subject to the one-year filing deadline statutory bar to asylum in the United States because they have no means to submit their applications within the one-year deadline from Mexico.

The United States purports that the danger faced by asylum seekers returned to Mexico is mitigated by the use of *non-refoulement* interviews that are available to those in MPP who express a fear of returning to Mexico. In theory, these interviews are intended to permit individuals who face danger in Mexico if returned there to await their asylum proceedings to be removed from MPP. However, these interviews have been ineffective at ensuring that those in danger in Mexico will be allowed to enter the United States for the remainder of their asylum proceedings.

First, these *non-refoulement* interviews are not guaranteed; the asylum seeker must know to express, unprompted, a fear of returning to Mexico. Second, the interviews are perfunctory proceedings generally conducted by telephone often without the presence of an attorney even where the asylum seekers have secured representation. Third, asylum seekers must meet a very high standard in the interview to receive a favorable decision.⁵⁰ They must show that it is more

⁴⁹ Doctors without Borders, *U.S. Must Include Asylum Seekers in COVID-19 Response Rather than Shut Border* (March 27, 2020), <https://www.msf.org/us-must-include-asylum-seekers-covid-19-response> The New York Times Opinion, *The Impending Mass Grave Across the Border from Texas* (April 12, 2020) (describing the lack of proper hygiene conditions and the lack of medical attention for those awaiting MPP proceedings in the crowded refugee encampment in Matamoros, Mexico).

⁵⁰ Kirstjen M. Nielsen, Sec. U.S. Dept. Homeland Sec’y, *Policy Guidance for the Implementation of the Migrant Protection Protocols* (Jan. 25, 2019), https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf [hereinafter, *DHS, Policy Guidance*].

likely than not that they will be persecuted on account of a protected ground in Mexico or face torture at the hands of a Mexican government official.

The non-*refoulement* interviews rarely result in favorable results. Only 13% of asylum seekers who express fear of returning to Mexico have been allowed into the United States for the remainder of their asylum proceedings.⁵¹ One legal services provider reported that all of the nearly 60 individuals it had assisted in obtaining a fear of Mexico screening in 2019 were sent back to Mexico after their interview.⁵²

In a challenge brought in federal court seeking an end to MPP, the U.S. Court of Appeals for the Ninth Circuit considered the reports of harm and found that “it is clear from the text of the MPP, as well as from the extensive and uncontradicted evidence in the record, that the MPP violates the anti-*refoulement* obligations” of the United States. The court also found that “uncontradicted evidence . . . shows that there is extreme danger to asylum seekers who are returned to Mexico.” Nonetheless, the court agreed to allow the program to continue pending a ruling on a temporary injunction from the Supreme Court.⁵³ On March 11, 2020, the Supreme Court ruled that the MPP program could continue while the litigation proceeds forward.⁵⁴

The Commission itself has noted that MPP is “contrary to . . . obligations in the area of human rights, particularly in regards to the right to request and receive asylum and the principle of non-*refoulement*.”⁵⁵ Prior decisions of the Commission have further explicitly recognized that

⁵¹ See DHS Assessment, *supra* n. 34.

⁵² *Id.* at 11.

⁵³ See *Innovation Law Lab v. Wolf*, Case 19-1576, Dkt Entry 96, pp. 5-6 (March 4, 2020).

⁵⁴ Amy Howe, *Court grants government’s request to enforce “Stay in Mexico” policy* (March 11, 2020), <https://www.scotusblog.com/2020/03/court-grants-governments-request-to-enforce-remain-in-mexico-policy/>.

⁵⁵ See *IACHR Expresses Deep Concern about the Situation of Migrants and Refugees in the United States, Mexico, and Central America*, IACHR Press Release (July 23, 2019).

States may violate their human rights obligations by sending asylum seekers back across the border to countries from which they have arrived because of the violation of the right to seek asylum and the risk of chain or indirect *refoulement* resulting in return to the country of origin.⁵⁶

V. THE COMMISSION IS COMPETENT TO HEAR THIS REQUEST AND ISSUE THE PRECAUTIONARY MEASURES SOUGHT HEREIN

The United States' implementation of MPP not only acts in direct contravention of its obligations, under the Charter Organization of American States ("OAS Charter") and the American Declaration of the Rights and Duties of Man ("Am. Decl."),⁵⁷ it has created a serious and urgent situation whereby asylum seekers are placed into a situation where their health, safety and liberty are all at imminent risk.⁵⁸ Articles 18 and 20 of the Commission's statute direct the Commission to receive, examine, and make recommendations concerning alleged human rights violations committed by any OAS member state, while the Commission's Rules of Procedure empower the Commission to issue precautionary measures when a member state acts in a way that places individuals at grave risk of immediate and irreparable harm.⁵⁹ The Commission should act quickly to condemn the United States' actions and call for an end of MPP.

⁵⁶ Inter-American Commission on Human, Report 78/11, John Doe, et al. v. Canada, Merits 12.586 (2011) at ¶¶ 92, 99-112.

⁵⁷ American Declaration of the Rights and Duties of Man, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II.82, doc. 6, rev. 1.

⁵⁸ April 25(2) of the Rules of Procedure of the Inter-American Commission on Human Rights.

⁵⁹ Article 23 of the Commission's Rules provides that "[a]ny person . . . legally recognized in one or more of the Member States of the OAS may submit Petitions to the Commission . . . concerning alleged violations of a human right recognized in . . . the American Declaration . . ." See also, Inter-American Commission on Human Rights, Res. 3/2018, "Strengthening of the processing of requests for precautionary measures," May 10, 2018. Articles 49 and 50 of the Commission's Rules confirm that such Petitions may contain denunciations of alleged human rights violations by OAS member states that are not parties to the American Convention on Human Rights.

The precautionary measures “may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members.”⁶⁰ In the present case, as detailed above, we have directly identified five beneficiaries; we also maintain that the group of people subject to MPP is identified and identifiable by the United States government, since the United States has processed each individual subjected to MPP and effectuated their forcible return to Mexico. The Commission has previously issued precautionary measures to petitioners similarly facing forced relocation to situations where the rights to life and personal integrity were at risk. The Commission has previously found precautionary measures of a collective nature were warranted for individuals and families facing forced displacement from the Laguna Larga community in light of evidence that members of that community faced significant negative health consequences and other grave humanitarian risks and threats to physical safety associated with displacement that the Commission recognized as creating a “serious risk situation” to the rights to life and personal integrity of the proposed beneficiaries.⁶¹

Similarly, in a precautionary measures request to protect indigenous persons of the Pemon Ethnic Group in the San Francisco de Yuruaní or “Kumaracapay” Community in Venezuela, the petitioners alleged that both state and private actors had subjected them to serious physical attacks and that the risk of continued violence remained.⁶² The Commission granted the issuance of precautionary measures calling on Venezuela to:

⁶⁰ *Id.* at Art. 25(3).

⁶¹ Inter-American Commission on Human Rights, Resolution 36/2017, MC 412/17 – Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala.

⁶² Inter-American Commission on Human Rights, Resolution 7/19, PM 181/19 – Indigenous Persons of the Pemon Ethnic Group in the San Francisco de Yuruaní or “Kumaracapay” Community and One Other, Venezuela.

[E]nsure that its officers respect beneficiaries' rights and refrain from using force in any way incompatible with the applicable international standards; and to protect beneficiaries' rights from likely events that might be perpetrated by third parties in the current context⁶³

The Commission recognizes as “urgent” a situation, such as that presented herein, where “the . . . risk is likely to continue and be exacerbated over time, such that in light of the imminent materialization of the risk, it is necessary to immediately adopt measures to protect the rights to life and personal integrity.”⁶⁴ The Proposed Beneficiaries' situation is urgent, and with each passing day, more individuals are subjected to MPP and every person awaiting resolution of their immigration cases from Mexico is exposed to serious violence and, now, risk of COVID-19 contagion. As detailed in Sec. VI below, the lives and personal integrity of the proposed beneficiaries are threatened by possible kidnapping, assault, and rape by organized crime groups that operate with impunity in northeastern Mexico.⁶⁵ These immediate threats are compounded by the by the very real and present threat of infection with COVID-19, particular in camps, informal settlements, and shared living spaces such as shelters, and lack of meaningful access to medical care should they fall ill.⁶⁶ The fact that the U.S. knowingly puts individuals seeking the U.S.' international protection in harm's way in Mexico⁶⁷ or in third countries of chain *refoulement*, does not limit but in fact highlights the U.S.' responsibility for these harms.⁶⁸

⁶³ *Id.*

⁶⁴ <http://www.oas.org/es/cidh/decisiones/pdf/2019/61-19MC1045-19-NI.pdf>.

⁶⁵ *See, e.g.*, Pandemic as Pretext, *supra* n. 4. *See also*, Human Rights Watch, DHS-OIG Formal Complaint ‘Regarding Remain in Mexico,’ June 2, 2020, Annex B.

⁶⁶ *See, e.g.*, The Nation, “Refugees in the Time of Covid-19: Fleeing Gangs and stalked by violence, thousands of asylum seekers trapped in Mexico now face the pandemic,” Annex B.

⁶⁷ <https://www.humanrightsfirst.org/resource/year-horrors-trump-administration-s-illegal-returns-asylum-seekers-danger-mexico>.

⁶⁸ *See, e.g.*, Doe v. Canada, *supra* n. 56, ¶¶ 95-96 (Canada could not avoid responsibilities for violation of the right to asylum and other rights by returning asylum seekers to United States, particularly where no inquiry made into treatment received in the United States).

Despite ongoing litigation in the United States and Mexico⁶⁹ and repeated denunciation by civil society organizations, media, and individuals in MPP themselves about the serious danger the program exposes them to, these actions have not brought about an end to the program. The supposed safeguards on the program have proved wholly inadequate to prevent these harms, as the vulnerable population exemption categories are routinely ignored by authorities. Even persons who have experienced kidnapping or rape and have expressed their fear of returning in light of past harm and the immediacy of the threats of further harm that face them in Mexico are consistently considered not to meet the non-refoulement standard employed by the U.S. to remove individuals from MPP.

The Proposed Beneficiaries cannot continue to wait for the resolution of litigation in the United States in the hopes that it will ultimately be successful.⁷⁰ The first litigation challenging MPP was filed in the federal courts of the United States in July 2019, but almost a year later, the U.S. courts have not halted the program for more than a few days. Since the filing of this litigation, the United States continued to expand the program, and the individual Proposed Beneficiaries named here received no protection from the U.S. courts.⁷¹ Asylum seekers have suffered as a result of implementation of MPP, and the courts have not acted to mitigate the

⁶⁹ Exhaustion of domestic remedies does not play a role in assessing whether precautionary measures should be granted. *See* Rules of Procedure of the Inter-American Commission on Human Rights, Art. 25. The ongoing litigation is relevant, though, to the extent that it has served to put the U.S. on clear notice that its actions are causing harm. *Id.* at 25(6)(a).

⁷⁰ While there is no requirement that proposed beneficiaries exhaust domestic remedies under Art. 25 of the Commission's Rules of Procedure, the history of litigation and complaints is set forth here to demonstrate that the U.S. is on notice of the severe harms that the MPP program is exacting on individuals, and yet rather than take action to cease the program, the U.S. has moved to expand the program, and has taken no steps to guarantee the right to life and security of person for those people it forcibly returns to Mexico to await their asylum proceedings.

⁷¹ *See* DHS, *DHS Begins MPP Returns at Nogales Port of Entry in Arizona (Jan. 2, 2020)*, <https://www.dhs.gov/news/2020/01/02/dhs-begins-mpp-returns-nogales-port-entry-arizona>.

harms. As of January 20, 2020, there were nearly 800 reported victims of violence and abuse as a result of placement in MPP; by May 13, 2020, that number had risen to more than 1,100.⁷²

The Proposed Beneficiaries identified herein have directly experienced harms as a result of MPP and continue to be at great risk of additional harm despite the litigation. They have attempted to seek their own removal from MPP but have failed to succeed in challenging the applicability of MPP in their individual cases, and they have no further recourse within their individual cases.⁷³ The urgency of this request and the immediate and irreparable harm faced by the Proposed Beneficiaries and all asylum-seekers subjected to MPP is discussed in greater detail below.

VI. THE UNITED STATES' PRACTICE OF RETURNING ASYLUM SEEKERS TO MEXICO TO AWAIT THEIR COURT HEARINGS HAS CREATED AN URGENT SITUATION WHEREBY THE PROPOSED BENEFICIARIES FACE IMMEDIATE AND IRREPARABLE HARM

The actions of the United States in its implementation of MPP, which interfere with migrants rights to seek asylum and *non-refoulement*, are directly endangering the physical safety of asylum seekers along the U.S./Mexico border and are creating imminent risk of irreparable harm. At its core, this request for precautionary measures seeks protection for asylum seekers against immediate threats to the right to life and physical integrity recognized in Article I of the American Declaration on the Rights and Duties of Man, and the right to asylum recognized in Articles I and XXVII of the American Declaration of the Rights and Duties of Man.⁷⁴ By

⁷² See Human Rights First, *Publicly Reported Cases of Violent Attacks on Individuals Returned to Mexico under the "Migrant Protection Protocols"*, <https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks-20Jan2020.pdf>, updated May 15, 2020,

<https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks5.13.2020.pdf>.

⁷³ DHS Policy Guidance, *supra* n. 50.

⁷⁴ These rights are also recognized in Principles 1 and 55-56 respectively of the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking (Resolution 04/19 approved by the Inter-American Commission on Human Rights on December 7, 2019).

knowingly returning the Proposed Beneficiaries and similarly-situated asylum seekers to dangerous Mexican border cities, where their basic safety is at risk and now their health as well, and by denying the right to obtain or even seek asylum, the United States has put asylum seekers directly in harm's way.

The United States is acting in direct violation of its obligation of *non-refoulement* through the forced return of individuals to extremely dangerous conditions in Mexico where they face “a real and foreseeable risk of persecution, death, torture, and other cruel, inhuman, and degrading treatment or punishment, enforced disappearance or other irreparable harm.”⁷⁵ In addition, the situation of grave physical and legal insecurity within Mexico is contributing to a significant risk of chain or indirect *refoulement* to their country of origin, as evidenced by the story of proposed beneficiaries L.I.M.L. and her family. The MPP program is also creating an urgent situation whereby asylum seekers face a greater likelihood of *refoulement* to harm in countries of origin due to the procedural and substantive barriers to asylum that cause concrete violations of the rights to asylum and physical integrity as well as additional human rights violations.⁷⁶ The newly adopted Inter-American Principles on the Human Rights of All Migrants,

⁷⁵*Id.*, Preamble (reaffirming the principle of *non-refoulement*). The right to *non-refoulement* is clearly established in the 1951 Convention Relating to the Status of Refugees, and is reiterated in Article 7 of the International Covenant on Civil and Political Rights. UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, at Article 33(1); UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999; *see also* 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 (explaining how ICCPR Article 7 has come to mean that states have an obligation not to send refugees to places where they would likely suffer torture). Principle 6 of the newly-adopted Inter-American Principles on the Human Rights of All Migrants, which prevents *refoulement* to any State “where there are substantial grounds for believing that the migrant’s life might be threatened or that the migrant would be subjected to torture or cruel, inhuman or degrading treatment or punishment.”

⁷⁶ Specifically, the United States has introduced structural and procedural barriers through MPP that effectively deny migrants the right to seek asylum (Am.Decl. Art. XXVII), and fail to protect their right to life, liberty and personal security (Am. Decl. Art. I). Those barriers directly implicate the right to a fair trial (Am.Decl. Art. XVIII), the right to due process (Am.Decl. Art. XXVI), and further contribute to violations of the right to preservation of health and

reinforces the need for States to act in a manner that ensures the right to life and physical integrity (Principles 1 and 2), the right to health (Principle 35), the right to asylum and *non-refoulement* (Principles 6, 55 and 56), the right of protection of the family and family unity (Principles 32 and 33), and the rights of children and migrants in vulnerable situations (Principles 10 and 16). As noted above, and outlined in greater detail below, the failure of the United States to uphold these principles is putting asylum seekers in a serious and urgent situation in Mexico and, to the degree it leads to either indirect *refoulement* or direct *refoulement* to their home country, is putting asylum seekers back into the serious and urgent situation in their home countries that they originally fled.

A. Delivering Asylum seekers into Danger in Mexico

The United States has forcibly returned Proposed Beneficiaries and similarly situated asylum seekers to a situation in Mexico where their life and safety are in immediate risk. Under Article I of the American Declaration, “[e]very human being has the right to life, liberty and the security of his person.”⁷⁷ This right exists alongside the right to health and well-being under Article XI.⁷⁸ Furthermore, as a *jus cogens* norm codified in various international treaties⁷⁹, a state is prohibited from returning individuals to a territory where the individual is at risk of persecution or torture.

In elaborating on the right to security contained in Article I of the American Declaration, the Commission has stated:

wellbeing (Am. Decl. Art. XI), and the right to protection of the family (Am.Decl. Art. VI), and the right to protection for mothers and children (Am.Decl. Art. VII).

⁷⁷ Am. Decl, Art. I.

⁷⁸ Am. Decl., Art. XI.

⁷⁹ See, e.g., the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

As for the effects of acts of violence or crime committed by private persons in violation of the right to the security or integrity of one's person, States have an obligation to ensure this right to all persons subject to their jurisdiction,⁸⁰ by implementing effective preventive measures and actions.⁸¹

The new Inter-American Principles on the Rights of All Migrants further elaborate that States must protect migrants “from any type of violence . . . , whether exercised by State institutions . . . or by individuals, groups, or private entities.” Similarly, Article 9 of the International Covenant on Civil and Political Rights also recognizes the right to security, and the UN Human Rights Committee has clarified that this right requires governments to protect people against bodily or mental injury and threats in the public sphere, from governmental or private actors.⁸²

The risks to life and personal safety and security that asylum seekers in MPP confront are extensive and well-documented. One study found that between 21-24% of migrants in MPP have reported receiving threats of violence while in Mexico, and of those, over 50% reported that the threats turned into actual violence, including beatings, robbery, and extortion.⁸³ As of May 7, 2020, there were 1,114 public reports of violence including murder, rape, torture, assault and kidnapping against asylum seekers returned to Mexico under MPP.⁸⁴ Among those who suffered direct violence are 265 children subjected to kidnapping or attempted kidnapping after having been

⁸⁰ As explained *supra*, the Proposed Beneficiaries and similarly-situated asylum seekers placed in MPP are still subject to the United States' jurisdiction as individuals who have applied for asylum in its territory and are awaiting immigration proceedings conducted by U.S. courts, despite the fact that they are awaiting their proceedings in the physical territory of Mexico.

⁸¹ IACHR, Report on Citizen Security and Human Rights (2009),

<http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.V.htm#B>.

⁸² UN Human Rights Committee. General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35 (Dec. 16, 2014), <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC35-Article9LibertyandSecurityofperson.aspx>.

⁸³ U.S. Immigration Policy Ctr., *Seeking Asylum: Part 2* 7 (2019), <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

⁸⁴ See *Pandemic as Pretext*, *supra* n. 4. This is up from the nearly 800 cases of reported violence as of January 20, 2020. See Human Rights First, *Publicly Reported Cases of Violent Attacks on Individuals Returned to Mexico under the “Migrant Protection Protocols,”* Annex B. <https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks-20Jan2020.pdf>.

returned to Mexico under MPP.⁸⁵ These numbers do not even begin to account for the high rates of targeted violence against persons in MPP that have not been reported, largely out of fear.

For example, several of the individual Proposed Beneficiaries seeking precautionary measures have been kidnapped in northern Mexico in connection with their placement in MPP. Others have suffered repeated assaults by criminal organizations during the time that they have been forced to await asylum proceedings while on the Mexico side of the Texas/Mexico border. Nonetheless, the United States has repeatedly returned them to the very site of those past harms, callous to the very real threat that those same harms or worse will be inflicted upon the asylum seekers again.

The situation has become more urgent with the outbreak of the COVID-19 virus, which has resulted in a rise of violence, and – more significantly – presents extreme danger to the health of persons subjected to MPP, particularly those forced into inhumane living conditions. The United States places asylum seekers in a situation where they are at great risk of infection and cannot access medical care such that many will become gravely ill or die.

1. Ongoing and Urgent risks to the safety, security and overall well-being in asylum seekers in Nuevo Laredo and Matamoros, Tamaulipas

The United States sends asylum seekers to Nuevo Laredo and Matamoros, respectively, if they are apprehended near Laredo or Brownsville and placed in MPP proceedings in the border tent courts in those two south Texas cities. The United States is also now placing asylum seekers in proceedings in the Laredo and Brownsville border tent courts even if they present themselves at other locations along the south Texas border, including McAllen and Eagle Pass. These

⁸⁵ Human Rights First, Press Release, *With Asylum Effectively Blocked at Southern Border, Those Seeking Safety Face Escalating Violence, Punishing Conditions* (May 13, 2020), <https://www.humanrightsfirst.org/press-release/asylum-effectively-blocked-southern-border-those-seeking-safety-face-escalating>.

asylum seekers must then travel into Nuevo Laredo and Matamoros in order to appear for their hearings.

Nuevo Laredo and Matamoros are notoriously dangerous. The United States of America's own State Department designates the entire region as so unsafe that Americans should not travel there.⁸⁶ The State Department designates Tamaulipas state, home to both Nuevo Laredo and Matamoros, as a Level 4: "Do Not Travel" zone due to "crime and kidnapping."⁸⁷

According to the State Department, U.S. government employees:

may only travel within a limited radius between the U.S. Consulates in Nuevo Laredo and Matamoros and their respective U.S. Ports of Entry. U.S. government employees may not travel between cities in Tamaulipas using interior Mexican highways and they must observe a curfew between midnight and 6:00 a.m. in the cities of Matamoros and Nuevo Laredo.⁸⁸

The State Department writes, of the Level 4 designation, that:

Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common. Gang activity, including gun battles and blockades, is widespread. Armed criminal groups target public and private passenger buses as well as private automobiles traveling through Tamaulipas, often taking passengers hostage and demanding ransom payments. Federal and state security forces have limited capacity to respond to violence in many parts of the state.⁸⁹

In 2019, the Commission issued two precautionary measures in cases of alleged forced disappearances that occurred in Tamaulipas State. MC 719/19, Nabor Santiago Santiago, orders measures to protect Mr. Santiago, who was deported from the United States, received in Mexico by Mexican immigration authorities ("INM") in Matamoros, and subsequently allegedly

⁸⁶ U.S. Dept. of State, Mexico Travel Advisory, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

kidnapped by a human trafficking ring to perform forced labor and for ransom; his whereabouts are unknown since May 3, 2019.⁹⁰ MC 870/19 regards the alleged forced disappearance of Pastor Aaron Casimiro Méndez Ruiz and Alfredo Castillo, who worked in Casa AMAR, a migrant shelter in Nuevo Laredo, by members of a drug cartel in August 2019.⁹¹ Both precautionary measures demonstrate the situation of extreme danger that migrants and migrants' human rights defenders face in northern Mexico and in Tamaulipas State in particular; this situation of extreme danger is widely recognized, including by the U.S. Department of State.⁹²

Nuevo Laredo is particularly violent and dangerous for asylum seekers, as violence has recently flared in the city.⁹³ The Tamaulipas State Police do not control the cartels operating in the city, and cartels single out migrants for extortion, threats of violence, murder, and kidnapping.⁹⁴ The director of a non-profit religious shelter disappeared when he attempted to protect migrants staying at his shelter in Nuevo Laredo.⁹⁵ One Proposed Beneficiary on this request was kidnapped with her entire family, including her two young children, as soon as the family entered Nuevo Laredo.

Asylum seekers appearing in the Laredo border court for their hearings regularly report having been kidnapped near the international bridge after returning to Mexico through MPP or

⁹⁰ <http://www.oas.org/es/cidh/decisiones/pdf/2019/39-19MC719-19-MX.pdf>.

⁹¹ <http://www.oas.org/es/cidh/decisiones/pdf/2019/51-19MC870-19-MX.pdf>

⁹² <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>

⁹³ Business Insider, *Gun Battles on the Border with the US Show how Deeply Cartels have Embedded Themselves in Mexico* (Sept. 20, 2019), <https://www.businessinsider.com/violence-flaring-in-nuevo-laredo-mexico-shows-influence-of-cartels-2019-9>.

⁹⁴ Doctors without Borders, *Mexican City of Nuevo Laredo not a Safe Place for People Seeking Asylum* (July 3, 2019), <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/mexican-city-nuevo-laredo-not-safe-place-people-seeking-asylum>

⁹⁵ L.A. Times, *Pastor's Kidnapping Underscores Threats to Migrants Returned to Mexican Border Towns* (Sept. 2, 2019), <https://www.latimes.com/world-nation/story/2019-09-01/kidnapping-of-pastor-in-mexican-border-town-dramatizes-threats-to-migrants>

upon entering or leaving Nuevo Laredo. Specific instructions to appear for morning hearings by presenting at the international border bridge at 4:30 or 5 am (well before the end of the U.S. State Department's midnight to 6:00 a.m. curfew)⁹⁶ heightens the risk of danger.

In addition to the persistent threat of violence, it is nearly impossible for asylum seekers to find a place to stay while awaiting their court dates in Nuevo Laredo. In Nuevo Laredo, migrants are not permitted to stay near the international border bridge, and in any case, conditions there are extremely dangerous. Neither the Mexican government nor the U.S. government provide any shelter for migrants in MPP in Nuevo Laredo. Non-profit shelters turn away people enrolled in MPP because of limitations on capacity, the likelihood of a lengthy stay and the danger that cartels will target the shelter if asylum seekers in MPP reside there. Virtually every asylum seeker appearing in Laredo for MPP proceedings has had difficulty finding safe long-term shelter.

Asylum seekers forced back to Matamoros also face danger. In October 2019, asylum seekers protested the dangerous conditions they were subjected to in Matamoros. They shared stories of mass kidnappings and mass rapes of asylum seekers.⁹⁷ One Proposed Beneficiary has experienced repeated physical assaults at the hands of cartels who have tracked him despite his efforts to move around the city to avoid them.

Furthermore, the housing and healthcare situation in Matamoros has been horrific since the implementation of MPP in the area. With the outbreak of COVID-19, it is now desperate.

⁹⁶ Dept. of State, Mexico Travel Advisory, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁹⁷ BuzzFeed, *Asylum-Seekers Protesting Squalid Conditions Shut Down a U.S. Border Crossing for 15 Hours* (Oct. 11, 2019), <https://www.buzzfeednews.com/article/adolfoflores/asylum-seekers-protesting-bridge-close-matamoros-texas>.

As of November 2019, more than 1,500 asylum seekers were living in a tent-encampment near a plaza adjacent to the U.S. port of entry in Matamoros, Mexico.⁹⁸ One commentator has called the camp an “impending mass grave.”⁹⁹

These tent facilities existed, in limited numbers, even before MPP was implemented in Brownsville, due to the metering policy that limited the number of asylum seekers who could be processed into the U.S. per day.¹⁰⁰ Under MPP, the size of the tent encampment grew dramatically.¹⁰¹ Adults and children live in tents and under tarps and blankets (often patched together with garbage bags).¹⁰² Entire families often share small tents. Safe drinking water is a scarcity in the tent encampment.¹⁰³ Asylum seekers line up, usually for half an hour or more, to fill receptacles with drinking water.¹⁰⁴ Asylum seekers also wait in line to bathe and wash clothing in the Rio Grande River, where the bodies of asylum seekers have washed ashore.¹⁰⁵ Other asylum seekers sleep outside with no shelter, while some are eventually able to find hostels, shelters, or apartments with no guarantee of long-term stability.¹⁰⁶ The likelihood that the COVID-19 will decimate this camp is great if MPP continues in place.

⁹⁸ NPR, *Mexican Official Tries To Move Asylum-Seekers Stuck In Tent Camps* (Nov. 9, 2019), <https://www.npr.org/2019/11/09/777686672/mexican-official-tries-to-move-asylum-seekers-stuck-in-tent-camps>

⁹⁹ The New York Times Opinion, *The Impending Mass Grave Across the Border from Texas* (April 12, 2020) (describing the lack of proper hygiene conditions and the lack of medical attention for those awaiting MPP proceedings in the crowded refugee encampment in Matamoros, Mexico).

¹⁰⁰ Texas Observer, *In Matamoros, Asylum Seekers Wait, and Wait, and Wait* (July 2, 2019), <https://www.texasobserver.org/in-matamoros-asylum-seekers-wait-and-wait-and-wait/>

¹⁰¹ Texas Tribune, *Conditions Deteriorating at Makeshift Camp on the Rio Grande where Thousands Await U.S. Asylum* (Oct. 25, 2019),

<https://www.texastribune.org/2019/10/25/conditions-deteriorating-migrant-camp-thousands-await-asylum/>

¹⁰² AP News, *Tents, Stench, Smoke: Health Risks are Gripping Migrant Camp*, (Nov. 14, 2019), at <https://apnews.com/337b139ed4fa4d208b93d491364e04da>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Washington Post, *The Father and Daughter who Drowned at the Border were Desperate for a Better Life, Family Says* (June 26, 2019), <https://www.washingtonpost.com/world/2019/06/26/father-daughter-who-drowned-border-dove-into-river-desperation/>.

¹⁰⁶ *Id.*

2. Ongoing danger to the security, safety and overall well-being of asylum seekers returned to Ciudad Juárez, Chihuahua

Ciudad Juárez, where asylum seekers must reside or present when placed in MPP proceedings in the Immigration Court in El Paso, presents significant security concerns for migrants as well. The State Department designates Chihuahua state, home to Ciudad Juárez, a Level 3: “Reconsider Travel” zone, noting:

Violent crime and gang activity are widespread. While most homicides appear to be targeted assassinations carried out by criminal organizations, turf battles between criminal groups have resulted in violent crime areas frequented by U.S. citizens. Bystanders have been injured or killed in shooting incidents.¹⁰⁷

Asylum seekers are particularly unsafe in Ciudad Juárez. They have difficulty finding stable housing, often have very few resources, and are easily identifiable as targets for crime because of their status as migrants. The Mexican government has established a shelter for migrants in an old factory in Ciudad Juárez, but at the most it can hold only 3,000 people and it is designed only for short-term stays.¹⁰⁸

As of September 2019, four migrants had been killed in Juárez since the inception of MPP in the area in March 2019.¹⁰⁹ Forcibly returning asylum seekers to Ciudad Juárez to wait for many months, if not indefinitely, puts them in danger of death, kidnapping, and extortion.

3. Particularly vulnerable populations placed into MPP face compounding risks of persecution

¹⁰⁷ Department of State Mexico Travel Advisory

<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

¹⁰⁸ El Paso Times, *Mexico to Open Juárez Shelter for Asylum Seekers Sent Back by Migrant Protection Protocols* (July 31, 2019), <https://www.elpasotimes.com/story/news/2019/07/31/juarez-shelter-help-remain-mexico-policy-returned-asylum-seekers/1870514001/>.

¹⁰⁹ The Atlantic, *Trapped in Juarez: Life in the Migrant Limbo* (Sept. 16, 2019),

<https://www.theatlantic.com/international/archive/2019/09/us-mexico-mpp-ciudad-juarez/597796/#Correction1b>.

The Proposed Beneficiaries on this request include parents of young children between the ages of 4 and 9 who have been placed in MPP. These children are especially vulnerable to violence as well as infection and possible death in Mexico.

Also included among the Proposed Beneficiaries identified in this request for Precautionary Measures are asylum seekers who identify as gay. The United States has forced their return to Mexico despite their sexual orientation and the known persecution endured by LGBTQ persons in Mexico. Even when these Proposed Beneficiaries secured *non-refoulement* interviews and described the violence and threats they experienced on account of sexual orientation, the U.S. returned them to Mexico to await further proceedings there.

As a result of MPP and suspension of all MPP hearings, asylum seekers, including children, persons with disabilities, LGBTQ persons and others with compounding vulnerabilities, are trapped in Mexico. They face life-threatening danger.

B. THREAT OF INDIRECT OR CHAIN-*REFOULEMENT* TO THE ORIGINAL COUNTRY OF PERSECUTION

Asylum seekers in MPP are forced to decide between two risks, the danger and health threat they face in Mexican border cities and the danger they fled in their home countries, a danger that is compounded by the insecurity of legal status granted in Mexico. Some decide to abandon their efforts to seek asylum in the United States and return to danger in their home countries rather than face ongoing harm in Mexico. As a result, the risk that asylum seekers in MPP will be subjected to chain or indirect *refoulement* to the original country of persecution is high and may be intended.

Mexico, through its cooperation in MPP, is complicit in this violation and in some instances is itself acting in violation of the principle of *non-refoulement*, which leads to

responsibility on the part of the United States for chain *refoulement* after having returned these asylum seekers to Mexico in the first place.¹¹⁰ As MPP has rolled out, Mexican authorities have engaged in actions that actively coerce or force asylum seekers to return to southern Mexico and then on to their home countries. Mexican authorities have urged asylum seekers in MPP, particularly those returned to Nuevo Laredo, to board buses that take them south to Chiapas, Mexico, to the border with Guatemala.¹¹¹ Asylum seekers returned to Mexico through MPP find themselves in dangerous, unfamiliar towns, with uncertain futures, no legal status, no family networks and no authorization to work. Fearing for their safety and their children's safety, some have made the "choice" to take these buses rather than remaining homeless in dangerous circumstances in cities such as Nuevo Laredo. Once in southern Mexico, without any status or any transportation, many resort to returning to their home countries despite dangers awaiting them there.¹¹² During the pandemic, the risks for those returned to Mexico's southern border are exacerbated given that many may remain stuck at Mexico's southern border due to border closures amidst COVID-19 prohibiting them from entering Guatemala or returning to their home countries, leaving them in situations of abandonment and subjecting them to the possibility of being detained for violating curfews or restrictions to movement if they decide to cross into Guatemala, Honduras or El Salvador.¹¹³

¹¹⁰ As described in the separate request for precautionary measures filed against Mexico, the U.S. violations do not relieve the Mexican State of responsibility.

¹¹¹ L.A. Times, *Stymied by U.S. Policies, Many Migrants on the Border are Heading Home* (Aug. 4, 2019), https://www.latimes.com/world-nation/story/2019-08-03/stymied-by-u-s-asylum-policies-many-migrants-on-the-border-are-headed-home?_amp=true.

¹¹² DHS Assessment, *supra* n. 34 (highlighting voluntary returns and abandonment of claims as a positive development and describing actions of Mexican authorities and the International Organization for Migration furthering this purpose). *See also, supra* n. 5, re. the practice of "assisted voluntary returns" from Mexico.

¹¹³ *See* Letter from Civil Society Organizations to the Mexican Government, April 10, 2020, at <https://www.lawg.org/wp-content/uploads/Carta-al-gobierno-de-Meixico-COVID-19-041020.pdf>. *See also*, Prensa

One Proposed Beneficiary on this request was coerced by Mexican authorities to travel away from the border and eventually returned with her family to her home country. After being placed in MPP and sent to Nuevo Laredo with her husband and her young grandchildren, and having been separated by U.S. authorities from other family members, the Proposed Beneficiary and her family boarded a bus provided by the Mexican government that took her to Mexico City. She saw no other option when the Mexican authorities told her that she would likely be kidnapped by the cartels in Nuevo Laredo, and the Mexican government would not offer protection if she refused to get on the bus. Knowing that she could not feasibly and safely return for her court dates in Laredo, she decided to continue traveling south to her dangerous home in Honduras.

In other instances, Mexican authorities may formally detain and deport individuals in MPP. There is no functioning process that grants asylum seekers in MPP clear legal status under Mexican law. When asylum seekers in MPP are returned by the United States to Mexico, Mexican authorities issue them a paper document known as a Multiple Migration Form.¹¹⁴ The form usually indicates that the asylum seeker is allowed to remain in Mexico up until the next hearing in Immigration Court in the United States. The form is not an identification card or other permanent document showing status. In some cases, a box is marked on the form providing “humanitarian status” to asylum seekers in Mexico. In these cases, the form could potentially serve as a basis to obtain work authorization and identification, although it does not appear that

Libre, “Coronavirus: Alejandro Giammettei confirma seis casos de covid-19 y anuncia cierre de fronteras,” March 16, 2020, at <https://www.prensalibre.com/guatemala/comunitario/coronavirus-alejandro-giammattei-confirma-seis-casos-de-covid-19-y-anuncia-cierra-de-fronteras/>.

¹¹⁴ See Photograph of a “Forma Migratoria Múltiple” issued by Mexican immigration authorities, Annex B.

asylum seekers in MPP actually qualify for humanitarian status under Mexican law.¹¹⁵ In any case, asylum seekers rarely receive information about the process for receiving work authorization or identification purposes even if those were available. In many other cases, the form does not include any checked box and does not indicate a grant of humanitarian status or any other status.

Because many asylum seekers returned to Mexico through MPP are provided with no clear indication as to their status in Mexico, they face the possibility of detention and deportation by Mexican authorities. Asylum seekers are particularly at risk of such forced returns if they are transported to southern Mexico by Mexican authorities rather than being permitted to remain in the U.S./Mexico border area where authorities are aware of the functioning of the MPP program.

The proposed beneficiaries fled their home countries due to immediate and grave threats to their life, safety and personal freedom.¹¹⁶ These threats are now exacerbated in light of the health and safety crisis brought on by the COVID-19 pandemic. With regard to the health risks posed by the COVID-19 pandemic, the Center for Strategic and International Studies has reported:

The public health care infrastructure [in Latin America] is overloaded in the best of times.... [A]pproximately one in three Latin Americans, especially those with lower incomes, do not have regular access to health care.... Some countries already have very few critical care resources, which will be further stretched beyond capacity as the pandemic spreads. Even if care is available in poorer

¹¹⁵ See Mexican Immigration Law, Art. 52, V. (setting out the grounds for a humanitarian visa, which include status as a victim of a crime, as a child or as an asylum seeker in Mexico).

¹¹⁶ See, e.g., Physicians for Human Rights, *"If I went back, I would not survive." Asylum Seekers Fleeing Mexico and Central America*, October 2019, at <https://phr.org/our-work/resources/asylum-seekers-fleeing-violence-in-mexico-and-central-america/>. See also, Human Rights Watch, "Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse," Feb. 5, 2020, at <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and>.

neighborhoods, hospital and clinics in those areas frequently lack intensive care units or proper equipment to care for those who become critically ill.¹¹⁷

The risks extend beyond the direct threat to life and well-being posed by COVID and the lack of adequate medical care. CSIS further noted, “As the pandemic evolves in Latin America, social unrest could also become a serious issue for the region’s governments.”¹¹⁸ In response to the pandemic, countries throughout the region are implementing increasingly repressive and punitive measures, while also using the pandemic as cover for increased repression of social leaders and human rights defenders.¹¹⁹ Even those not directly targeted are at risk: the majority of employment in Latin America is in the informal sector, and individuals have no means to sustain themselves and their families if forced to stay home. Furthermore, women throughout the region are being subjected to alarming increases in rates of gender-based violence,¹²⁰ as are members of the LGBTQ community and transgender persons face and increase in violence and harm.¹²¹ The very real dangers that asylum seekers in MPP face if forced back to their home countries clearly establish the need to ensure their rights to non-*refoulement* are fully respected and protected.

C. FUNDAMENTALLY FLAWED ASYLUM PROCEEDINGS UNDER MPP HAS CREATED A SERIOUS SITUATION THAT HAS GRAVE IMPACTS ON THE RIGHT TO SEEK ASYLUM¹²²

¹¹⁷ Center for Strategic and International Studies (CSIS), “Covid-19 Exposes Latin America’s Inequality,” April 6, 2020, at <https://www.csis.org/analysis/covid-19-exposes-latin-americas-inequality>.

¹¹⁸ *Id.*

¹¹⁹ Latin America Working Group, “COVID-19 in Latin America and the Caribbean: A Deadly Virus in a Vulnerable Region,” April 22, 2020, at <https://www.lawg.org/covid-19-in-latin-america-and-the-caribbean-a-deadly-virus-in-a-vulnerable-region/>.

¹²⁰ International Rescue Committee, Press Release, “IRC data shows an increase in reports of gender-based violence across Latin America,” June 9, 2020, at <https://www.rescue.org/press-release/irc-data-shows-increase-reports-gender-based-violence-across-latin-america>.

¹²¹ *Id.*

¹²² Am. Decl., Art. XXVII.

AND TO NON REFOULEMENT, RESULTING IN INDIVIDUALS BEING PLACED INTO FURTHER DANGER

Through its implementation of MPP, the United States has: 1) created significant geographic, temporal, and procedural barriers that make it difficult and sometimes impossible for asylum seekers to appear in court; 2) imposed substantial barriers to Petitioners' and similarly-situated asylum seekers' ability to secure legal representation; 3) used inadequate "court" facilities to prevent meaningful participation in asylum proceedings; and 4) failed to provide Petitioners and similarly situated asylum seekers in the MPP program with adequate translation, undermining the ability of asylum seekers to understand and participate in their own proceedings. These impediments to participation in asylum proceedings place the asylum seekers directly at risk of *refoulement* to their country of original persecution,¹²³ Principles 50 and 51 of the Inter-American Principles on the Human Rights of All Migrants recognize the need for certain due process guarantees to be met so as to "avoid unnecessary delays" and to "not unduly prolong the suffering caused by remembering events that happened and to promote appropriate handling of the risk of retraumatization as a result of those proceedings."

As the Commission has recognized in its grant of Precautionary Measures in *Matter of D.S. regarding the United States of America*, "Article XXVII ensures an asylum seeker a hearing that complies with due process standards to determine refugee status."¹²⁴ Implicit within this due

¹²³ The Commission has maintained that the right to due process of law under Article XXVI applies to immigration proceedings. As the Inter-American Commission wrote: "to deny an alleged victim the protection afforded by Article XXVI simply by virtue of the nature of immigration proceedings would contradict the very object of this provision and its purpose to scrutinize the proceedings under which the rights, freedoms and well-being of the persons under the State's jurisdiction are established." IACHR, Report No. 81/10, Case 12.562, Wayne Smith, Hugo Armendariz, et al.

¹²⁴ IACHR, *Matter of D.S. regarding the United States of America*, Precautionary Measures Resolution 21/2016 (April 9, 2016), <https://www.oas.org/en/iachr/decisions/pdf/2016/MC152-16-EN.pdf>.

process right is the right to a meaningful individualized determination of refugee status. Similarly, the Inter-American Principles on the Human Rights of All Migrants, Principle 55, requires an “adequate and individualized analysis” of applications for refugee protection. Principle 56 further sets out that States must provide “fair and efficient status-determination procedures for asylum seekers and those claiming protection from refoulement, who are under their effective control, whether or not they are within the State’s territory.” Where these procedures are so flawed, the Commission has deemed it appropriate to grant precautionary measures to ensure the harms that come from *refoulement* are not realized.

1. Physical Exclusion From Immigration Court Hearings

Through MPP, the United States prevents asylum seekers from pursuing asylum and participating in their immigration proceedings, effectively blocking their access to asylum and resulting in group-based exclusion from the United States and a denial of protection. In order to pursue their asylum claims, individuals in MPP must arrive on time to multiple Immigration Court hearings in the United States, despite being forced to live in Mexico in between hearings, and must attempt to present an asylum claim at these hearings. Asylum seekers in MPP face extreme difficulty and danger in attending their U.S. Immigration Court hearings.¹²⁵

Asylum seekers who do not appear for hearings receive *in absentia* deportation orders (even though they are not in the United States to be deported). These orders mean that their cases have ended without a chance to seek asylum and carry harsh negative impacts on the possibility to seek immigrant or non-immigrant status in the future. *In absentia* removal rates in MPP are

¹²⁵ See Human Rights First, *Delivered to Danger*, *supra* n. 21 (“[A]ylum seeker[s] . . . missed their initial immigration court hearing in early July because they had been kidnapped and were being held for ransom in Ciudad Juárez at the time. A judge at El Paso immigration court ordered them removed in absentia.”)

high. Data shows that as of the end of April 2020, of the 30,193 MPP cases resolved in Texas in which the asylum seeker was ordered removed, nearly 26,624 were removed in absentia.¹²⁶ The overwhelming majority of asylum seekers were ordered removed simply because they were not able to re-cross the border and attend court.

There are several serious barriers to appearing for hearings. First, the prevalence of kidnapping that asylum seekers experience makes it impossible to attend hearings in some cases.¹²⁷ Asylum seekers have missed their hearings because they were kidnapped at the time of their hearings. In one case, for example, a mother and her young sons were kidnapped at the time of the scheduled hearing.¹²⁸ Another sibling had been erroneously placed into separate proceedings with a later hearing date. When the boy appeared for his MPP hearing before a San Antonio Immigration Court, his mother and siblings presented with him. The judge explained that the mother and one child had already been ordered deported in absentia. The judge reopened the cases when she learned that the family had been kidnapped on the prior hearing date and was therefore unable to attend the hearing.

In another case, on September 25, 2019, a mother and her two young children expressed a fear of returning to Mexico because they had witnessed a kidnapping the night before their hearing date.¹²⁹ They had been riding in the car with another family including a father and a 16-year old daughter. The father had been kidnapped. The kidnapping victim had been scheduled to

¹²⁶ TRAC, *Details on MPP (Remain in Mexico) Deportation Proceedings* (April 2020), <https://www.trac.syr.edu/phptools/immigration/mpp/> (follow these steps: check “Measure” as “Current Status”; check “Graph Time Scale” as “by Month and Year”; select “Immigration Court State/Texas” on leftmost dropdown menu; select “Outcome” on center dropdown menu; check “Hearing Attendance” on rightmost dropdown menu).

¹²⁷ See Human Rights First, *Delivered to Danger*, *supra* n. 21.

¹²⁸ See Court Observation Notes, Annex B.

¹²⁹ *Id.*

appear in court that day before the San Antonio Immigration Court but was unable to do so. The court ordered him deported in absentia despite the explanation of the kidnapping provided to the judge by another family in MPP.

In addition, U.S. and Mexican government officials are directly thwarting asylum seekers from appearing for their Immigration Court hearings by relocating asylum seekers subjected to MPP to locations far from the northern Mexico border, as noted above. With the encouragement of the United States, Mexican authorities bus asylum seekers in MPP as far south as Chiapas.¹³⁰ These relocations create an insurmountable barrier for many asylum seekers who must return to a designated port of entry to be processed into the United States for their hearings. No transportation is provided back to the northern Mexican border. In fact, the Mexican government has urged bus companies not to provide transportation to individuals lacking clear immigration status, which includes those in MPP.¹³¹ Furthermore, Mexican authorities may subject asylum seekers in MPP to detention and deportation, particularly if they are found in southern Mexico without Mexican immigration paperwork. It goes without saying that individuals detained or deported by Mexican authorities cannot attend their hearings in the United States.

Finally, the high rate of missed hearings is due in part to lack of adequate notice. The Notices to Appear issued to those subjected to MPP are deficient. These forms, in the MPP context, are frequently addressed to placeholder addresses that have no relationship to the

¹³⁰ L.A. Times, *Mexico Sends Asylum Seekers South - With no Easy Way to Return for U.S. Court Dates* (Oct. 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>

¹³¹ National Migration Institute of Mexico, Bulletin No. INM/DGJDHT/213/2019, Directed to Bus Company Owners Operating in Mexico (April 16, 2019).

migrants¹³² or sometimes merely to “Facebook.”¹³³ They reveal the extent to which the authorities fail to take basic steps to ensure that they can communicate with asylum seekers in Mexico regarding the changes in hearing dates or other case developments.

This lack of notice has become exacerbated by the changes in processing and rescheduling of hearings since the outbreak of COVID-19. When the United States first suspended hearings through April 2020, asylum seekers were required to report to the port of entry on their previously scheduled hearing date where they were given a new “tear-sheet” with a new hearing date. They were forced to run the risk of violence or illness without access to asylum proceedings. After appearing at the bridge on their previously-scheduled hearing date, they learned that those proceedings had been postponed and they would have to risk their lives and that of their family members for another several months before getting their next opportunity to have their claims heard. As noted above, on May 10, 2020, the U.S. extended the suspension of all MPP hearings through June 19, 2020. The announcement posted on the Department of Justice’s Immigration Court website and social media accounts instructs asylum seekers to appear at the border bridge one month after their originally scheduled hearing dates. But the U.S. had no method for ensuring this information is communicated to those migrants for whom travel to the ports of entry present grave risks to their personal safety, and who have been instructed that if they fail to show up for their hearing, they will be ordered deported *in absentia*. On May 11 and 12, 2020, it is reported that more than 100 asylum seekers traveled to the El Paso

¹³² Women’s Refugee Commission, *Chaos, Confusion and Danger: The Remain in Mexico Program in El Paso* (April 2019), <https://www.womensrefugeecommission.org/images/zdocs/ElPaso-Report.pdf>.

¹³³ BuzzFeed News, *Border Patrol Agents are Writing “Facebook” as a Street Address for Asylum-Seekers Forced to Wait in Mexico* (Sept. 27, 2019), <https://www.buzzfeednews.com/article/adolfoflores/asylum-notice-border-appear-facebook-mexico>.

port of entry for their hearings, completely unaware of the change, and were met by CBP officials who refused to explain the situation. Most of the 94% of asylum seekers unrepresented by counsel have limited knowledge of or means to check the automated phone system, government social media accounts, or web-based platforms for updates on their hearing dates and any changes to policies pertaining the scheduling of hearings.¹³⁴

2. Lack of Access to Counsel

The Commission has previously recognized the centrality of legal representation to fundamental rights within the immigration context,¹³⁵ and its importance to preserving the right to a fair trial, the right to due process of law, and the right to receive asylum.¹³⁶ The Commission has also recognized that international standards may require governments to “ensure that lawyers and legal services are available to all persons subject to the State’s jurisdiction”¹³⁷ In providing recommendations to the United States with regard to the treatment of migrant families and children, the Commission has urged the United States to ensure access to legal representation, explaining that “[a]ccess to legal counsel . . . ensures adequate attention to the protection needs of persons, ensuring access to mechanisms of international protection.”¹³⁸ Principle 50 of the Inter-American Principles on the Human Rights of All Migrants requires that migrants have

¹³⁴ Human Rights First, *Pandemic as Pretext* 13 *supra* n. 4.

¹³⁵ IACHR, Report on Immigration in the United States: Detention and Due Process, OEA/Ser.L/V/II., doc. 78, rev. 10 (Dec. 30, 2019), <https://www.oas.org/en/iachr/migrants/docs/pdf/migrants2011.pdf>.

¹³⁶ *Id.* at 21-22.

¹³⁷ IACHR, Access to Justice for Women Victims of Violence in the Americas, 20 Jan 2007, OAS/Ser.L/V/II., Doc. 68, ¶54, <http://www.cidh.org/women/Access07/chap1.htm>. Note that, although Petitioners and similarly-situated asylum seekers are not physically within the United States’ territory as they await their court proceedings in Mexico, they are still subject to the United States’ jurisdiction as individuals who have applied for asylum in its territory and are awaiting U.S. immigration court proceedings.

¹³⁸ IACHR, Refugees and Migrants in the United States: Families and Unaccompanied Children, OEA/Ser.L/V/II.155, doc. 16 (July 24, 2015), <https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>.

access to counsel for their immigration proceedings, including a “cost-free” attorney if necessary.

Despite international norms pertaining to access to counsel in asylum proceedings, few migrants in MPP are able to access representation by an attorney or their U.S. immigration proceedings.¹³⁹ Approximately 96.5% of the 49,195 asylum seekers in the program in Texas were unrepresented as of the end of April 2020.¹⁴⁰ Frequently, on a docket of hundreds of cases, only a handful of asylum seekers will have a legal representative present in court.¹⁴¹

Immigration judges provide asylum seekers in MPP with a list of pro bono attorneys and organizations to call to seek representation when they appear for their first hearing in immigration court; however, almost none of the organizations on that list are accepting MPP clients. Most U.S. attorneys are unwilling to represent individuals in the MPP program because it would involve potentially dangerous travel to Mexico to meet with clients, among other logistical concerns. One Proposed Beneficiary described calling the numbers on the list of pro bono attorneys given to him by the court. Few answered and those who did explained that they could not take his case. One attorney he managed to contact specifically told him that it was too dangerous for lawyers to cross into Matamoros.

At a minimum, visiting Mexico to work with MPP clients is time-consuming and expensive for attorneys. Most attorneys are located away from the border and so would need to

¹³⁹ In the United States, non-citizens in immigration proceedings do not have a right to government-appointed counsel, though they do have the “privilege” to be represented if they secure their own counsel. INA 292.

¹⁴⁰ TRAC, *Details on MPP (Remain in Mexico) Deportation Proceedings* (April 2020), *supra* n. 20 (follow these steps: check “Measure” as “Current Status”; check “Graph Time Scale” as “by Month and Year”; select “Hearing Location” on leftmost dropdown menu; select “Represented” on center dropdown menu; check “Represented” on rightmost dropdown menu) (last visited June 9, 2020).

¹⁴¹ *See* Court Observation Notes, Annex B.

travel to the border and then also cross the international border. Crossing the border requires approval from Mexican and United States immigration officials. Law school clinic students who might represent clients typically require approval for travel into northern Mexico and may not receive it at all or in a timely manner. For example, student attorneys from the Immigration Clinic went to Laredo in September 2019 hoping to be able to cross into Nuevo Laredo to meet with Petitioners. However, the University of Texas did not grant approval to travel to Mexico and they were consequently unable to enter Mexico. Similarly, student attorneys from the Transnational Legal Clinic who wished to cross into Juarez to provide volunteer assistance to individuals in MPP were prohibited by their sponsoring organization from doing so.

The current COVID-19 pandemic has compounded the problem of access to legal services and related resources. Most academic institutions and legal services providers are following state stay-at-home orders and implementing their own travel restrictions and cannot travel to Mexico at this time. Furthermore, the COVID-19 pandemic has forced many shelters that housed asylum seekers in MPP to close their doors and turn people away, not only leaving asylum seekers at a heightened state of insecurity, but also making it harder for them to connect with any resources to support them as they navigate the complex procedures and requirements for applying for asylum, and making it less likely that they will ultimately be able to connect with a legal services provider.

MPP makes representation incredibly challenging in ways that extend beyond just travel restrictions, which create almost insurmountable barriers to effective representation, and lead most attorneys to refuse to handle MPP matters.¹⁴² Proper preparation for an asylum claim

¹⁴² See Annex C, Declarations of Nicolas Palazzo and Constance Wannamaker.

requires hours of client interviews, and any court proceeding can be subject to unpredictable time crunches. When asylum seekers are enrolled in MPP, the potential for attorney/client meetings is extremely limited. Representation through the use of technology (e.g. Skype and WhatsApp) does not solve the problem. It is very difficult to gain the trust of traumatized asylum seekers over such technology and develop the level of detail needed to present an asylum claim. Full and effective representation is not possible, and many attorneys simply will not handle MPP cases in these circumstances.

The lack of counsel has a significant impact on immigrants' ability to receive a fair hearing and secure protection. In 2017 (two years prior to the implementation of MPP), only 10% of asylum seekers without representation were granted protection. In contrast, 46% of those with representation were granted protection.¹⁴³ General Immigration Court data show that non-detained immigrants with representation were nearly five times more likely than their unrepresented counterparts to obtain immigration relief, such as asylum.¹⁴⁴ Given other barriers to presentation of an asylum claim for individuals in MPP, access to counsel is likely to have an even greater impact.

3. Video Hearings and Other Impediments to a Fair Hearing

For those individuals who were able to cross the border to attend their hearings before the U.S. suspended all MPP hearings, they were met with completely deficient hearing procedures. It is important to recognize the deficiencies in due process that have contributed to Petitioners' current state of danger. Because the procedures do not ensure that asylum seekers receive a

¹⁴³ *Id.*

¹⁴⁴ See American Immigration Council, *Access to Counsel in Immigration Court* (Sept. 28, 2016), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>

prompt and fair decision on their claim for protection, asylum seekers remain in danger in Mexico for prolonged periods and face a great likelihood of direct or indirect return to their home countries.

The “court” facilities and procedures used in Texas for MPP cases preclude any meaningful participation of asylum seekers in the proceedings. In Laredo and Brownsville, for example, asylum seekers appear via video before judges located in San Antonio or Harlingen or elsewhere, from temporary tent facilities located within the ports of entry in Laredo and Brownsville. In El Paso, asylum seekers in MPP are bussed to the pre-existing El Paso Immigration Court for non-detained individuals, where many have hearings via video with judges in Dallas or elsewhere in Texas.

a. Restrictions on Access to the Immigration Courts and Lack of Court Involvement in the Proceedings

Access to the Brownsville and Laredo border court facilities is tightly restricted. For months, the press and the public were denied access, although some very limited observation was subsequently permitted. Generally, only attorneys who have a pre-existing agreement to represent a client called to appear before the court on that particular day may enter. This lack of transparency prevents accountability for the manner in which the facilities are run and asylum hearings are conducted.

In addition, the Laredo and Brownsville facilities are not really courts at all. In the facilities themselves, there are no Immigration Court personnel available. The Department of Homeland Security trial attorneys (T.A.s), the immigration judges, and even the interpreters, are all located elsewhere, often in courtrooms in San Antonio or Harlingen. The government employees located at the facility are responsible only for immigration enforcement. In effect, the

facility is a temporary detention center, run by immigration enforcement officers, to which asylum seekers must present themselves in order to access court proceedings conducted by video. One Proposed Beneficiary describes how he remained in the tent court complex for 11 hours, in connection with a brief initial hearing, and received no food or water during that time and was not permitted to go to the bathroom.

The dearth of legal or court knowledge at the facility paired with a lack of transparency creates an incredible risk of harm for migrants. Asylum seekers may be turned away from their hearings by law enforcement officers. For example, one Proposed Beneficiary on this request was denied access to her video hearing, along with her entire family, because of an erroneous conclusion that she had lice. As a result, nobody in the family could file the asylum applications they were prepared to present, and the proceedings were delayed. The judge reset the hearing for a later date, but meanwhile the Proposed Beneficiary and her family could not move forward with their asylum claims and the U.S. returned them back to dangerous conditions in Mexico while they awaited several more months for their next hearing.

Unlike in Brownsville and Laredo, asylum seekers in MPP in El Paso more typically appear before the Immigration Court in person. However, while immigration hearings should be open to the public,¹⁴⁵ observation of MPP dockets is often forbidden on the purported grounds that there is not enough room in the court. Even attorneys representing individuals in MPP are not permitted to sit in on other hearings on the docket on a day when they are appearing. Instead, they must wait downstairs in the lobby of the building where the Immigration Court sits.¹⁴⁶ This

¹⁴⁵ 8 C.F.R. 1003.27

¹⁴⁶ See Court Observation Notes, Annex B.

preventable barrier to observation of MPP's adjudication puts asylum seekers at risk by blocking transparency and accountability.

Furthermore, when the U.S. initially implemented MPP in El Paso, trained volunteers could assist asylum seekers in reviewing paperwork and filing applications and could even address the court briefly regarding the status of a particular case. In July of 2019, however, the Immigration Court in El Paso stopped this practice specifically for those in MPP. Asylum seekers in MPP now must sit for hours in the El Paso court waiting for their hearings without the benefit of any meaningful legal orientation or opportunity to speak with prospective counsel even during the time that they are within the United States for the day.

b. Video Hearings from “Court” Facilities in Laredo and Brownsville

The proceedings also lack basic safeguards that permit asylum seekers to interact effectively with the court, particularly given the emphasis on video hearings. At the facilities in Laredo and Brownsville, asylum seekers, many of them families with young children, attend most hearings all together in one big room. Asylum seekers take turns at a small table in the front of the room with two chairs that face a giant television screen with video showing the immigration judge and interpreter in San Antonio. The microphone rests on the table, so sound is easily accidentally muffled. The video habitually cuts out approximately once every forty minutes. While asylum seekers in El Paso appear in the court rooms used for non-detained immigration dockets, they are still often conducted by video-conference with judges located remotely, with similar difficulties.

The use of video to conduct the hearings deprives asylum seekers of any real opportunity to present their claims for protection to the court. Communicating a traumatic personal

experience via video between a facility and a distant court is near impossible. The video appearance is distancing and dehumanizing; the asylum seeker cannot even look the judge in the eyes nor can he or she approach the bench. As a result, the use of video makes it much more likely that an asylum claim will be denied, particularly since the applicant's credibility is central to the adjudication. Routine technical failings exacerbate inherent difficulties with using video technology as a replacement to in-person court hearings.

Access to court via video alone weakens the judicial process and harms the asylum seekers ability to present their case. The Commission has previously expressed concern over "the increasing reliance on video conferencing for immigration proceedings," lamenting, among other things, that "video conferencing diminishes the quality of a detainee's legal representation."¹⁴⁷ The Commission has written that "it has received information indicating that video conferencing creates additional obstacles for complete and accurate interpretation, greatly reducing detainees' ability to understand and participate effectively in their proceedings."¹⁴⁸ Video conferencing creates a disconnect between the immigrant and the judge, inhibiting the presentation of effective testimony.

4. Language Barriers to Participation in Hearings

Asylum seekers in MPP also face obstacles to their meaningful participation in the hearings that will determine their fate as a result of interpretation problems. The interpretation services provided by the Immigration Courts is selective and non-simultaneous. Throughout the

¹⁴⁷ IACHR, Report on Immigration in the United States: Detention and Due Process, *supra* n. 135.

¹⁴⁸ *Id.* at para. 406.

hearing, the attorney for DHS and the judge engage in discussions that go completely uninterpreted. These exchanges are often of a substantive nature.

The problems with interpretation are amplified if Spanish is not the asylum seeker's best language. The availability and quality of interpreter for indigenous languages is limited. Asylum claims are fact specific and the nuances of language are important to accurately communicate those facts. For example, one asylum seeker was placed into MPP with her mother and brother. Her mother speaks almost no Spanish and her brother speaks limited Spanish. Both her mother and brother speak Q'eqchi', an indigenous dialect in Guatemala. The court was unable to provide an interpreter who spoke Q'eqchi' at this family's court date. Instead, the court asked the one Spanish-speaking member of the family to translate not only for her mother and brother, but also for another unrelated asylum-speaker who exclusively spoke Q'eqchi'.

5. Overall Impact of Procedural Barriers in MPP

The cumulative impact of the various procedural barriers to presenting an asylum claim in MPP results in a denial of due process central to protecting the right to seek asylum. The final impact of these due process violations is that it is nearly impossible for asylum seekers in MPP to secure protection in the form of asylum or other related forms of relief, since they do not have a fair and full opportunity to present their claims. As a result, individuals in MPP are at great risk of return to danger and persecution in their home countries. The U.S. has given no indication that it will seek to improve due process for asylum seekers in MPP, and instead, the Department of Justice's move to hold hearings for unaccompanied minors in detention in the United States by video technology signals that the situation may only worsen once MPP hearings are ultimately resumed.

D. FAMILY SEPARATION AND HARMS TO CHILDREN PERPETUATED UNDER MPP

The entire MPP program is targeted largely at families with children, placing the rights to protection of the family and to special protections for children, as set forth in Articles VI and VII of the American Declaration and Principles 10, 32 and 33 of the Inter-American Principles on the Human Rights of All Migrants, at immediate risk. MPP also perpetuates ongoing family separations.¹⁴⁹ These family separations under MPP follow on a prior U.S. policy of active and intentional removal of children from their parents at the U.S. southern border. In 2018, the United States began using a “Zero Tolerance” criminalization of irregular border crossings to separate migrating parents from their children who had arrived at the border with them. This tactic was a calculated attempt to deter people from seeking asylum in the United States. The honorable members of this Commission issued Precautionary Measures against the United States due to the family separations caused by the “Zero Tolerance” policy. Specifically, this honorable Commission found that the rights to family, life, personal integrity, and identity were at risk.¹⁵⁰

The zero-tolerance policy formally ended on June 20, 2018.¹⁵¹ However, the United States has used MPP to continue separating children from their parents, even after a U.S. federal court and the U.S. President formally ended family separation. In multiple cases, children arrived at the U.S.-Mexico border with a parent but have been separated, rendered unaccompanied by DHS officials, and transferred to unaccompanied minor facilities across the United States, while

¹⁴⁹ Principle 61 of the Inter-American Principles on the Human Rights of All Migrants, which explicitly prohibits the separation of families “at any stage of the process.”

¹⁵⁰ IACHR, Resolution 64/28 (Aug. 16, 2018), <https://www.oas.org/en/iachr/decisions/pdf/2018/64-18MC731-18-US-en.pdf>.

¹⁵¹ The White House, Executive Orders: *Affording Congress an Opportunity to Address Family Separation* (June 20, 2018), <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>

their parents were subjected to MPP.¹⁵² In one reported case, a woman went into labor shortly after arriving in the United States and was placed into MPP by U.S. CBP officials, while her child – a U.S. citizen – was in the Neonatal Intensive Care Unit. Officials told the mother that her baby would be placed into the U.S. foster care system. It is nearly impossible to secure reunification of parents and children when the location of family members is unknown due to the precarity of life in northern Mexican border towns where violence is ubiquitous.¹⁵³

MPP also creates significant difficulties in maintaining family unity even for those families that are not directly separated by the United States through MPP. Family members who do not belong to the same nuclear family unit (e.g. aunts or cousins) are often separated with some family members placed in MPP and others sent into detention in the United States to await their proceedings. For example, one Proposed Beneficiary was separated, during MPP processing, from her adult daughter and her grandchildren with that daughter. As a result, the Proposed Beneficiary was coerced into boarding a bus in Nuevo Laredo that led to her eventual return to Honduras while her adult daughter made her way to Baja California.

In addition, threatening family separation is a technique used to control the actions of asylum seekers, both in the United States and in Mexico. For example, on November 1, 2019, the Mexican child welfare agency threatened to separate families in an attempt to force them out of a tent encampment at Matamoros. The authorities used the possibility of separation to pressure families into a shelter in a dangerous part of Matamoros where kidnappings and violence are

¹⁵² See Letter from Women’s Refugee Comm’n to Cameron Quinn, Office of Civil Rights & Civil Liberties, and Joseph Cuffari, Inspector Gen., Dep’t of Homeland Sec. (Aug. 16, 2019), <https://www.womensrefugeecommission.org/images/zdocs/Separation-of-families-via-the---Migrant-Protection-Protocols---WRC-complaint-to-DHS.pdf>.

¹⁵³ See Human Rights Watch, *US: Family Separation Harming Children, Families* (July 11, 2019), <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families>.

common and where it is more difficult to access the port of entry where asylum seekers must present for their asylum hearings.¹⁵⁴

Yet other families are confronting the “choice” of whether to send their children on their own across the border where they believe they will be safer and perhaps reunified with other family, based on the pre-pandemic policy of excluding unaccompanied minors from MPP.¹⁵⁵ The result is in an increase in unaccompanied minors attempting to cross the border, resulting in *de facto* family separation. MPP is thus aggravating the risk of family separation, and irreparable harm to children as a result, for which reason this Commission should grant the requested precautionary measures.

VII. REMEDIES: U.S. MEASURES OF PROTECTION REQUESTED – ARTICLE 25(4)(C)

It is critical that the Inter-American Commission on Human Rights immediately issue precautionary measures ordering an end to the MPP program. Such measures are necessary to prevent immediate and irreparable harm to the Proposed Beneficiaries and similarly-situated asylum seekers subjected to MPP, as detailed above. In accordance with Article 25(4)(c) of the Commission’s Rules of Procedure requiring a description of measures of protection requested,¹⁵⁶ the Proposed Beneficiaries request the Inter-American Commission to adopt the following Precautionary Measures requiring the United States to officially end the MPP program, and calling upon the United States to take the following specific actions:

¹⁵⁴ Texas Public Radio, *New Migrant Shelter in Mexico Comes With Threat of Family Separation* (Nov. 1, 2019), <https://www.tpr.org/post/new-migrant-shelter-mexico-comes-threats-family-separation>.

¹⁵⁵ Los Angeles Times, *The New Family Separation: Migrant Parents Stranded on Border Send Kids Across Alone* (Nov. 27, 2019), <https://www.latimes.com/world-nation/story/2019-11-27/the-new-family-separation-migrant-parents-stranded-on-border-send-kids-across-alone>.

¹⁵⁶ Article 25(4)(c) of Rules of Procedure of the Inter-American Commission on Human Rights.

1. Officially announce an end to the MPP program and cease the placement of any asylum-seekers in MPP going forward.
 - a. When an asylum seeker presents at a U.S. port of entry or arrives in the U.S., that asylum-seeker must be allowed to stay in the U.S. for the duration of that person's asylum proceedings and must be given adequate resources and support during that person's stay in the U.S., including access to due process of the law and the protection of family integrity.
 - b. The U.S. must eliminate the use of the temporary tent facilities designed and constructed specifically for the MPP program and must not repurpose these tent facilities for use with any other immigration-related program.
2. Accept those previously placed in MPP back into the U.S. to pursue their asylum claims within U.S. borders.
 - a. For those who have already been placed in MPP: facilitate a process to allow them to return to the United States to continue their asylum proceedings, including through the provision of funding for safe travel to border ports of entry; accept into its borders anyone who was placed into MPP from any entry point along the U.S. border and allow them to remain in the U.S. for the duration of their asylum proceedings; and facilitate release to family members and loved ones to guard against future risks and rights violations associated with the use of the carceral system of detention in civil immigration matters.
 - b. Re-open the asylum cases of any asylum-seekers who were placed in MPP and were not able to appear at their hearings in the United States and received *in*

absentia orders, and as a result face immediate and irreparable harm associated with *refoulement* to their home country.

- c. Re-open the asylum cases of any asylum-seekers who were placed in MPP and then returned to their countries of origin and are now facing the very immediate and irreparable harm they originally fled. The United States must not prejudice the person for returning back to their country of origin as a result of placement in MPP.
 - d. Restart asylum proceedings for anyone who was denied asylum while they were placed in MPP, allowing them to re-enter the United States and apply for asylum from within the United States with no prejudice from the earlier proceeding.
3. Work with officials in the United States, Mexico and Origin Countries, together with non-governmental organizations, to reunify family members who have been separated as a result of MPP.