

Recommendations from Mexican Civil Society Organizations to the Biden-Harris Administration

Restitution and Support for Asylum Seekers Subjected to MPP

This document contains practical and logistical recommendations from Mexican civil society organizations working with refugees and migrants throughout Mexico, to assist the Biden-Harris administration in ending the MPP program, including detailed recommendations regarding:

- Support for shelters and CSOs throughout Mexico and Central America;
- Working with UNHCR and its partner organizations to identify beneficiaries;
- Facilitating safe travel for MPP asylum seekers;
- Providing additional support to COMAR; and
- Dismantling other harmful immigration policies

Introduction

Over the past 4 years, the disastrous immigration and foreign affairs policies of the Trump administration have wreaked havoc upon the rights of refugees and migrants, not only in the US, but throughout the region and the world. These policies have been acutely felt in Mexico, where refugees have been forced to remain temporarily or permanently rather than seek asylum in the US. This has had deleterious effects on thousands of migrants as well as on Mexico's humanitarian infrastructure, which is currently overstressed to the point of breaking.

In particular, the Migrant Protection Protocols ("MPP" or "Remain in Mexico") metering (limiting the number of asylum seekers admitted per day at ports of entry), expulsions under Title 42 of the US Code Section 265 ("Title 42 expulsions"), Asylum Cooperative Agreements ("ACAs") and other policies and practices have sent hundreds of thousands of migrants and asylum seekers back to Mexico and Central America, many of whom remain in precarious situations for months on end, and others who have given up hope and decided to seek asylum in Mexico or return to their home countries. Mexico's asylum system is facing unprecedented backlogs, its shelters are overrun, and organized criminal networks are profiting handsomely off of the vulnerabilities created by these policies. The COVID-19 pandemic has only exacerbated the challenges faced by migrants and asylum seekers.

The Biden-Harris administration has an enormous opportunity to restore the US's leadership in refugee protection, and to strengthen regional protection to ensure those fleeing persecution can find new opportunities to rebuild their lives. Reversing the Trump administration's concerted war on asylum seekers and refugees will be a significant task, however, requiring resources, time, and a comprehensive vision. It will also demand cooperation and coordination with a host of actors across several countries that have been helping refugees navigate the increasingly hostile landscape throughout the Trump years.

This document contains recommendations from Civil Society Organizations working on the ground in Mexico, to assist the Biden-Harris Administration in ending MPP and facilitating an orderly and humane reversal of these horrendous policies. The undersigned organizations work hand-in-hand with the communities throughout Mexico affected by the Trump anti-immigrant agenda, and will be instrumental partners in identifying, advising and assisting victims.

This document complements the MPP working group recommendations from the various border regions, with a focus on the interior and southern border of Mexico. Similarly, this document is meant to provide logistical recommendations to complement the policy recommendations laid out in the Humanitarian Protection Chapter of the “Big Book,” responding to practical challenges that may arise with the end of MPP and other destructive policies, and envisioning gaps where a Mexico-centric focus is necessary to protect migrant and refugee rights.

Restoring faith in the US asylum system will be a monumental task. Yet, over the past four years civil society groups have developed comprehensive networks across borders and throughout the region to identify and redress the gross human rights violations stemming from the Trump immigration practices. This network is well prepared to advise and partner with the Biden-Harris administration to ensure it can follow through with its campaign promises.

Fundamental Principles

This document is based upon fundamental principles of non-discrimination, dignity and respect for all peoples regardless of migration status. It further assumes, in line with international law, a right to seek asylum and not be forcibly returned to danger (*non-refoulement*), nor face punishment for the manner in which an asylum seeker crosses a border. The recommendations in this document are aimed at protecting the best interests of children and preserving family units, through reunification wherever possible. Finally, the undersigned organizations firmly believe in a right to restitution for individuals and families whose rights have been violated through MPP and other policies that trampled upon these fundamental principles.

A Rights-Based Approach to Ending MPP

The Migrant Protection Protocols (“MPP”) has been among the most devastating policies the Trump administration created to dissuade refugees from seeking asylum in the US. Under MPP, more than 67,000 asylum seekers were sent back to Mexico to await hearings. Of these, nearly 10,000 people were still awaiting their initial hearing as of September 2020, and 32,918 people were tried *in absentia* when

they failed to show up for their initial hearing.¹ Fewer than 1% of asylum seekers subjected to MPP have been granted asylum. Given the indefinite postponement of MPP hearings during the COVID-19 pandemic, Big Book contributors estimate 20,000 MPP cases will likely remain open on inauguration day.

The asylum seekers subjected to MPP have been victims of a litany of human rights abuses. Asylum seekers returned to Mexico under MPP are extremely vulnerable to crimes, ranging from robbery, assault, and sexual and gender-based violence, to organized kidnapping schemes by Mexican cartels.² These vulnerabilities, as well as poor, inconsistent, and often unlawful methods of notice regarding court dates, have led to many instances of asylum seekers missing hearing dates and being tried *in absentia*.³

Mexico provides MPP asylum seekers with temporary immigration documents (*Forma Migratoria Múltiple*, “FMM” by their Spanish acronym), which do not permit them to work. Thus, MPP returnees must rely on charity for subsistence, and their temporary status makes access to education, healthcare, and other basic rights generally inaccessible.

Most MPP returnees stay close to the US-Mexico border so they can report periodically to a port of entry, as required, to get new US Immigration Court paperwork and renew their FMMs. Although these regions are extremely violent, the financial costs and dangers associated with travel back and forth to the border regions mean there are few other options.

Nonetheless, other asylum seekers subjected to MPP have been transported throughout the country by the Mexican government, including to areas near the Mexico-Guatemala border. Others have abandoned hope and sought repatriation with assistance from the International Organization for Migration (“IOM”). According to IOM reports, at least 1,400 MPP asylum seekers were “voluntarily”

¹ See “Details on MPP (Remain in Mexico) Deportation Proceedings,” TRAC Immigration, Sept. 2020. Available at:

<https://trac.syr.edu/phptools/immigration/mpp/> (last visited Nov. 8, 2020)

² See, e.g. “Delivered to Danger,” Human Rights First, May 2020 (documenting at least 1,114 publicly reported cases of murder, rape, torture, kidnapping and other violent assaults against MPP returnees). Available at

<https://deliveredtodanger.org/> (last visited Nov. 8, 2020.); “The Out Crowd,” *This American Life*, Nov. 15, 2019. Available at:

<https://www.thisamericanlife.org/688/the-out-crowd> (last visited Nov. 8, 2020).

³ See Flores, Adolfo, “Border Patrol Agents Are Writing “Facebook” As A Street Address For Asylum-Seekers Forced To Wait In Mexico,” *Buzzfeed*, Sept. 27, 2019. Available at:

<https://www.buzzfeednews.com/article/adolfoflores/asylum-notice-border-appeal-facebook-mexico> (Last visited Nov. 10, 2020).

returned under this program,⁴ after signing declarations acknowledging that such return may jeopardize US asylum claims. Still others have returned to their home countries, either voluntarily or forcibly.

The undersigned organizations applaud the new administration's commitment to end MPP on day one, and support the recommendations in the "Big Book" to parole MPP returnees into the US. A safe and orderly end to MPP will require a massive effort by government bodies, multilateral institutions, Civil Society Organizations, migrant and refugee-led organizations, religious organizations and shelters to communicate accurate and timely information and identify individuals who may benefit from revised or new policies. The Biden-Harris administration can facilitate these efforts by enacting the following policies and practices:

- **Support shelters and CSO's throughout Mexico and Central America**

As detailed in other working group recommendations and the Big Book, shelters on the US-Mexico border will require both financial support and significant supplies of Personal Protective Equipment ("PPE") to provide dignified living spaces to the thousands of asylum seekers awaiting parole. These shelters should also have access to sufficient supplies of any COVID-19 vaccine approved at the time, and trained staff to administer it.

This is necessary, but insufficient, as MPP asylum seekers are dispersed throughout Mexico and Central America. The Biden-Harris administration should designate a point person in PRM to liaise with the Mexican Secretaries of Governance and Foreign Affairs, UNHCR, IOM, shelter directors throughout Mexico, and civil society leaders to identify urgent and ongoing needs and direct support, including PPE and humanitarian aid.

Beyond providing humanitarian and medical assistance to these shelters, the Biden-Harris administration should support a cadre of US-trained attorneys and/or paralegals to convey accurate and timely information about the termination of MPP, parole procedures, and other changes to US immigration laws. The US government should also support installation of communications technology throughout Mexican shelters to facilitate communication between US-based legal service providers and asylum seekers in Mexico. There is currently extremely limited capacity of organizations and individuals in Mexico who can competently advise on US immigration law, particularly in areas beyond the US-Mexico border region. Supporting CSOs and shelters who can ramp up this capacity will help to ensure

⁴ See, "Portazo de EU a migrantes" *El Universal*, 26 Feb. 2020. Available at: <https://www.eluniversal.com.mx/nacion/portazo-migrantes-agoniza-programa-de-asilo-de-trump>; OIM, "Informe de Situación, América Central y México, 4, Nov 2018 - 5 Ene. 2020" Available at: https://rosanjose.iom.int/SITE/sites/default/files/Reportes/avr-america_central_mexico-infografia-20200105-esp_1.pdf (last visited 18 Nov. 2020).

proper screening of MPP asylum seekers can take place, allow refugees and migrants to act upon accurate information, and facilitate communication among stakeholders regarding policy and legal changes.

In Mexico, the Secretary of Governance should establish a joint task force with civil society organizations, shelters, UNHCR and IOM to coordinate resource allocation, including vaccine distribution, legal advice, and identification of beneficiaries of new immigration policies. This task force should have open lines of communication with officials in DHS, HHS, the Consular Offices, and other US Government actors involved in the unwinding of Trump immigration policies.

- **Work with UNHCR and its partner organizations to identify beneficiaries**

One of the primary challenges in implementing the termination of MPP will be to identify and communicate with asylum seekers who may be eligible for parole under a phased entry scheme, or other new programs aimed at addressing the harms of the Trump immigration policies. The Biden-Harris administration should work closely with UNHCR and its partner organizations in civil society to communicate with asylum seekers throughout Mexico and Central America regarding changes in US law and policy.

The US government should dedicate resources to information-sharing campaigns within shelters, refugee-led community groups, CSOs and Mexican government agencies, including the Mexican Commission on Refugees (“COMAR”) to ensure that asylum seekers understand specific eligibility criteria for parole or other benefits. COMAR records data regarding asylum seekers who previously sought protection in the US, and should work with US officials to communicate new or changed information regarding US asylum claims to these individuals. The US government must also establish clear lines of communication between advocates and DHS / consular officials to communicate regarding specific cases. The Biden-Harris administration should work closely with its embassies and consulates in Mexico and Central America to communicate clear information to MPP asylum seekers regarding parole.

- **Facilitate safe travel for MPP asylum seekers**

The US government owes restitution to the thousands of families who suffered human rights violations under the manufactured tragedy of MPP. Beyond simply paroling former MPP asylum seekers in advance of their hearings, the Biden-Harris administration should take affirmative steps to ensure safe passage to a designated port of entry in accordance with the parole schedule, and should implement procedures to reopen cases decided *in absentia* with fast-track procedures for hearing claims.

First, the new administration should reverse the foreign policy pressure of the Trump administration, which led Mexico to increase detention, deportation and militarization of the southern border. This pressure, and Mexico's swift crackdown on migration, has pushed migrants and asylum seekers to increasingly dangerous migration routes.⁵ In its place, the administration should encourage Mexico to invest in mechanisms that protect asylum seekers against refoulement, allow MPP asylum seekers to travel to the US border via regular, safe channels, and minimize the vulnerabilities of migrants and asylum seekers transiting through Mexico.

Mexico should be encouraged to issue Temporary Humanitarian Visas to all MPP asylum seekers, both within Mexico and at ports of entry, granting them a right to transit throughout the country before their court dates. The Biden-Harris administration should support Mexico in implementing clear protocols to protect MPP asylum seekers in transit from contracting COVID-19, by providing free testing, sanitary materials, lodging and transit that provides for social distancing, and isolation and treatment for those who test positive. Once a vaccine is available it should be available, free of charge, to all asylum seekers entering Mexico. In all cases involving minors, US officials should collaborate closely with Mexico's child protection system to identify children who have been separated from family members and facilitate safe passage for reunification. All MPP asylum seekers who were transported away from the US-Mexico border by INM and/or IOM should be provided with transportation back to the border in line with the parole schedules.

The Biden-Harris administration should support IOM in facilitating air travel where feasible or necessary to bring MPP asylum seekers to the US according to their parole schedule. This is particularly important for asylum seekers who have either voluntarily returned to their countries of origin or been deported by Mexico, as well as for those asylum seekers in the interior of Mexico. This will both alleviate the pressure at land ports of entry, and will reduce opportunities for organized criminal groups to prey upon transiting asylum seekers.

- **Provide additional support to COMAR**

Finally, the US Government must take measures to address the ways MPP and other restrictive US asylum policies have overwhelmed the Mexican asylum system. There are currently around 80,000 pending asylum claims in front of COMAR.⁶ Concurrent

⁵ See, e.g. "El naufragio de un grupo de africanos en Chiapas revela una nueva ruta migratoria por el Pacífico" *El País*, 14 Oct. 2019 (detailing a group of Cameroonian migrants who drowned while travelling Pacific maritime route to avoid Mexican immigration authorities). Available at: https://elpais.com/internacional/2019/10/12/actualidad/1570833110_016901.html (Last visited Nov. 10, 2020).

⁶ See "México acumula 80,000 solicitudes de refugio de migrantes," *Telemundoareadelabahia*, 23 Jul. 2020,

with the implementation of MPP in 2019, asylum petitions in Mexico grew 172%, from 29,630 in 2018 to 70,630 in 2019.⁷ By October 2019, ten months into the implementation of MPP, at least 13,000 asylum seekers in Mexico had been waiting for a decision since 2018, in violation of Mexican law.⁸ In short, MPP and other policies restricting US asylum led to an overwhelming of Mexico's asylum system, to the point of near collapse.

Whereas many of the claims brought under MPP should be granted asylum in the US, other asylum seekers will choose to stay in Mexico. It is both a moral obligation, and in the foreign policy interests of the US government to support Mexico's asylum system to allow for more efficient and just responsibility sharing in response to refugee situations in the region.

The Biden-Harris administration should commit significant resources to UNHCR and to COMAR to ensure that Mexico's promising asylum system is able to fulfill its obligations to asylum seekers in Mexico. This investment will allow Mexico to uphold its protection obligations toward refugees who prefer to seek asylum in Mexico or whose claims are based on Mexico's more expansive refugee definition.

- **Dismantling of other harmful immigration policies**

Although not the focus of this document, the undersigned organizations strongly urge the Biden-Harris administration to end all of the Trump immigration measures aimed at deterring lawful and irregular migration by punishing asylum seekers. The coordination mechanisms discussed in this document will assist in an orderly end to metering, ACAs, Title 42 expulsions, Family Separations under Zero Tolerance, and the Third Country Transit Ban, all of which should be priorities for the new administration to dismantle immediately. Victims of these policies, like those subjected to MPP, should be offered restitution including safe passage to the US and pathways to legal status.

Conclusion

The human rights catastrophe brought about by the Trump administration's immigration policies has caused irreparable harm to tens of thousands of individuals and families. In an effort to deter people from lawfully seeking asylum,

Available at:

<https://www.telemundoareadelabahia.com/noticias/mexico/mexico-acumula-800-00-solicitudes-de-refugio-de-migrantes/2095379/> (Last visited 10 Nov. 2022)

⁷ See "Estadística, Octubre 2020" COMAR, 1 Nov. 2020. Available at:

https://www.gob.mx/cms/uploads/attachment/file/544676/CIERRE_DE_MARZO_2020_1-abril-2020_-2_1_.pdf (Last visited 10 Nov. 2020).

⁸ See "New COMAR data shows over 13,000 asylum applicants waiting since 2018"

the Trump administration tore families apart, exposed refugees to kidnapping, rape and murder, and delivered thousands of refugees back to countries in which they have faced persecution, in violation of international law.

During the same period, however, these policies spurred coalitions of civil society organizations, refugee-led organizations, religious organizations, shelters and certain government institutions to develop harm mitigation strategies. The networks that have grown out of this tragedy are now indispensable for redressing these harms. A firm, clear commitment from the Biden-Harris administration, backed by significant financial resources, to work with the undersigned organizations and implement the policies detailed herein and in the related documents, will be an important first step in restoring the US' role as a leader in refugee protection.

Signed,

Asylum Access México (AAMX) A.C.
Centro de Derechos Humanos Fray Matías de Córdova A.C.
The Coalition for Humane Immigrant Rights (CHIRLA)
Fundación Para La Justicia y el Estado Democrático de Derecho
Instituto para las Mujeres en la Migración A.C. (IMUMI)
Kids in Need of Defense (KIND - Mexico)
Sin Fronteras IAP