

Three Cases for the Immediate Reversal of the Department of Homeland Security's Deadly Migrant Protection Protocol (MPP)

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Asylum seekers at a makeshift shelter in Ciudad Juarez (Photo credit: Public Radio International)

Better known as “Remain in Mexico,” the Migrant Protection Protocol (MPP), which went into effect January 2019, is a duplicitous *non-entrée* policy masquerading as a humanitarian solution meant to address the thousands of Central American asylum seekers at the U.S. – Mexico border. This policy returns “certain foreign individuals entering or seeking admission to the U.S. from Mexico—illegally or without proper documentation” to Mexico to await immigration hearings. In other words, MPP is used to turn away asylum seekers at the border. As a result, 46,000 asylum seekers await hearings in Mexico in what Doctors Without Borders' Sergio Martin compares to a “warzone.”

The MPP represents one piece of a broader policy agenda intending to keep asylum seekers out of the United States. This policy has left thousands in immediate physical danger, brought about an explosion of corruption and organized crime in the region, and manufactured a crisis at the border. Complementary efforts include the “safe third country” agreement with Guatemala and attempts to deny asylum to those failing to apply in Mexico, Guatemala, or an official port of entry. This essay details how the MPP is not only dangerous for asylum seekers, but legally dubious and catastrophically ineffective.

1. The MPP puts asylum seekers at a heightened risk of violence.

Prior to the MPP, asylum seekers could affirmatively seek asylum by presenting themselves at a port of entry. There, they could make their claim and await their case’s decision in the United States. Under the MPP, they are now returned to the U.S.-Mexico border where the lack of shelter space often pushes impoverished migrants onto the streets, where they face homelessness and economic precarity and also extreme risk of trafficking, sexual exploitation, and murder. Border cities like Ciudad Juárez, the most populous city in Chihuahua, will become home to thousands of migrants as they await their immigration hearings. Coinciding with MPP’s implementation, the city has seen a dramatic increase in homicides. The International Rescue Committee interviewed over 200 families affected by MPP, who described a context of rampant gang recruitment, kidnapping, sexual abuse, and gang violence. Indigenous, LGBT+, and female migrants are especially vulnerable to hate crimes and dangerous attention from criminal enterprises betting that their identities make them less of a priority for an already overwhelmed and corrupt Mexican police. By requiring asylum seekers to remain in Mexico, the U.S. is sending migrants to a country that lacks the resources and political will to ensure their safety.

2. The MPP is often illegal in practice.

Through the MPP, the United States denies protections to many *entitled* to protection in accordance with international law. The United States’ actions stand in defiance of the United Nations’ High Commissioner on Refugees determination that refugees cannot be returned to a country where they would face persecution on account of their ethnicity, political viewpoints, or membership of another particular identity group. The MPP fails to

comply on multiple fronts. It denies many the opportunity to make relevant non-refoulement claims until their official hearings. As the U.S. Customs and Border Protection assigns border officers to stand in as asylum officers due to high caseloads and low resources, many migrants do not receive proper evaluation from a qualified professional. Worse yet, according to numerous reports and lawsuits, many who fit the required criteria for refugee protections are denied anyway. Despite a federal judge ruling that the United States could not block asylum seekers that entered irregularly, the MPP seeks to accomplish this same end by proxy.

Finally, the MPP has already been ruled in violation of the Immigration and Nationality Act, Affirmative Procedure Act, and the US's obligations to international human rights law but remains in place for an alleged lack of other viable policies.. To maintain a policy deemed illegal for reasons of practicality sets a dangerous precedent wherein convenience takes priority over legality.

3. The MPP is ineffective.

The MPP fails to meet its stated goals and ultimately incentivizes irregular migration. According to the Department of Homeland Security (DHS), "The MPP will provide a safer and more orderly process that will discourage individuals from attempting illegal entry and making false claims to stay in the U.S., and allow more resources to be dedicated to individuals who legitimately qualify for asylum." The opposite occurred. Asylum officers themselves say that under the MPP's guidelines, requirements for non-refoulement claims were "near impossible to meet."

While the Trump administration continues to implement this ineffective policy, DHS's own Inspector General found that turning people away at ports of entry leads to an increase in border crossings between ports. The MPP does not provide a "safer" or "more orderly process," but it does make legal channels as dangerous as staying home, leaving many little choice but to risk their lives crossing between ports, leaving thousands missing and dead. CBP officials have corroborated this claim. Instead of protecting migrants, the MPP exacerbates the conditions pushing many asylum seekers northward. Continued enforcement in the face of such evidence should cast doubt on the DHS's stated motives.

What is to be done?

As resources dwindle and migrant flows intensify, this crisis will only worsen unless the United States immediately invests in real solutions. A lasting solution must recognize surges in Central American migration flows as desperate developments in a decades-long migration. The United States urgently needs to hire immigration judges and all other

personnel needed to proactively process the 733,000 immigration cases pending as of July 2018 while expanding complementary protections and alternate paths such as humanitarian visas.

Finally, the binding “convention” definition of a refugee urgently requires reconsideration. The MPP would not be possible under international law if not for a gap between the recognized definition of a refugee and the factors pushing individuals to flee their home states in search of refuge. The current definition is limited to a narrow view of persecution based on World War II and Cold War-era authoritarianism. Though the United Nations High Commissioner on Refugees expanded its definition to include generalized violence and natural disasters, it largely operates in a “parallel universe,” as states are not party to the mandate of the UNHCR. Because of this, push-factors such as climate disasters, war, and generalized non-state violence do not qualify as grounds for refugee status despite leaving hundreds of thousands with little choice but to flee their homes. As climate change, instability, and conflict drive unprecedented international migrant flows, the question of the current refugee law regime’s efficacy becomes increasingly urgent. Until then, this massive gap in the legal system will leave many fleeing for their lives not only facing tear gas and razor wire but a draconian policy wall?

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Fersan’s advocacy and development work focuses on women, LGBT and immigrant rights in the U.S., Lebanon, the Middle East and North Africa. She founded Global Nexus Solutions, LLC a Los Angeles based consulting firm bringing together a network of experts and advisors specializing in global public affairs, fundraising and advocacy. Fersan’s scholarship focused on Syro-Lebanese immigration to the United States and Brazil, it’s effect on the economy through brain drain and ways to turn it into an economic gain for Lebanon. She

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