



Welcome the stranger.
Protect the refugee.

Roadmap to Recovery

A Path Forward after the Remain in Mexico Program

January 2021



EXECUTIVE SUMMARY

Introduction

For years, the U.S. government allowed individuals applying for asylum to physically remain in the United States while their cases were adjudicated. However, in January 2019, the Trump administration introduced the Migrant Protection Protocols (MPP), also known as the “Remain in Mexico” program, which fundamentally changed this process by forcing asylum seekers to wait in Mexico for the duration of their immigration court proceedings. This change has created incalculable suffering to asylum seekers along the border. Upholding the United States’ commitment to a humane and compassionate asylum system demands not only the immediate cancelation of the program, but a detailed plan to repair the damage it has caused.

HIAS and partner organizations have been hard at work preparing for the end of MPP. HIAS and Catholic Legal Immigration Network, Inc. (CLINIC) convened a series of meetings over several months with dozens of legal service organizations that work along the southern border to develop a plan for how MPP can be unwound and what resources our organizations can bring to aid the process. Together, the organizations have created a series of recommendations for the new administration to end MPP that account for realities on the ground and minimize confusion and chaos. Our organizations are ready to assist the incoming administration in implementing these recommendations. They are designed to work in tandem with similar efforts by other humanitarian organizations and health and safety organizations to humanely end MPP.

Those of us who have worked with asylum seekers at the border over the past four years were relieved and grateful when, as a candidate, president-elect Biden promised to end MPP within his administration’s first 100 days.¹ Yet there is far more to do than simply ending it. There are currently over 25,000 open immigration cases for people forced to wait in Mexico under MPP.² While many of those people are no longer at the border—and the fates of many are unknown—the new administration must find a way to bring those still waiting in Mexico into the United States in a humane and safe way. The administration must also provide a fair solution to the 40,000 people who were failed by the system and found themselves deported or their proceedings terminated.³ Finally, the Biden administration should do all this while simultaneously providing due process to asylum seekers who were subjected to one of the Trump administration’s other inhumane border policies.

The effects of MPP are devastating. Over 68,000 people have had to wait in areas of Mexico so dangerous they have the same State Department travel advisory level as Syria and Afghanistan.⁴

¹ <https://joebiden.com/immigration/>

² <https://trac.syr.edu/phptools/immigration/mpp/>

³ Id.

⁴ Compare the travel advisory for Tamaulipas (<https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Mexico.html>) with the travel advisory with Syria (<https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/SyrianArabRepublic.html>) and Afghanistan (<https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Afghanistan.html>)

Non-governmental organizations (NGOs) have documented 1300 examples of rape, murder, torture, or other violent acts against those in MPP,⁵ with many more examples likely unreported. While waiting in Mexico, many asylum seekers are unable to legally work, further exacerbating the humanitarian crisis by overwhelming the Mexican shelter system and leading to widespread homelessness. Few asylum seekers in this environment are in any condition to articulate the legal case for their protection, and the overwhelming majority of asylum seekers are unrepresented due to the logistical and safety issues that MPP creates for both clients and attorneys. Only slightly more than 600 cases have resulted in any relief to the asylum seekers. This is a staggeringly low percentage of asylum seekers considering that over 40,000 cases have resulted in removal orders or terminated proceedings.⁶ In short, MPP has created a humanitarian disaster.

At the same time that MPP has forced thousands of asylum seekers to wait in Mexico for their immigration court proceedings in the United States, Trump administration changes to the U.S. asylum system have denied their rights in other ways. The administration signed agreements known as the Asylum Cooperative Agreements (ACAs) with El Salvador, Honduras, and Guatemala, which allow the United States to divert individuals seeking asylum in the United States to these countries instead. The administration also unveiled two closely related programs, the Prompt Asylum Claim Review (PACR) and the Humanitarian Asylum Review Process (HARP), which changed the procedures for asylum seekers during the initial asylum screening procedure known as “Credible Fear Interviews.” Instead of staying in detention stations set up for legal representatives to meet with the asylum seekers, they are instead forced to wait in facilities where they cannot contact lawyers or loved ones except for a single day where they are allowed to make a phone call. Finally, in March 2020, the Centers for Disease Control and Prevention (CDC) issued a directive citing the COVID-19 pandemic and essentially closed the U.S. southern border to asylum seekers.

The following recommendations outline actions the new administration should take before asylum seekers can enter the United States, how asylum seekers should enter the United States, and what procedures should occur after asylum seekers enter the United States to remedy the harm they suffered under the Trump administration’s policies. The report also includes recommendations for longer-term actions to eliminate discriminatory asylum regulations and policies in the future.

There is an urgency to these recommendations. While measures must be in place to ensure an orderly process, every day that MPP remains is another day that thousands are subjected to danger and violence.

⁵ <https://www.humanrightsfirst.org/sites/default/files/HumanitarianDisgrace12.16.2020.pdf>

⁶ <https://trac.syr.edu/phptools/immigration/mpp/>

RECOMMENDATIONS FOR THE ADMINISTRATION TO END MPP



Before Entering the United States

Legal Basis for Admission

- Create a streamlined process for allowing entry into the U.S. to asylum seekers who are currently in MPP or have been previously subjected to MPP; those who have been previously subjected to PACR/HARP; and those who have been subjected to the Asylum Cooperative Agreements. The government should be responsible for proving or disproving membership in the above-named groups, both because the government holds much of the relevant information and to ensure the minimum burden on the asylum seeker.
- Asylum seekers should be allowed to apply for Humanitarian Parole ⁷ to enter the United States, allowing them to pursue their asylum case while in the U.S. The Humanitarian Parole process should be simplified and expedited as much as possible.
- Based on HIAS' expertise as a resettlement agency and our engagement with two earlier humanitarian evacuation programs, HIAS also recommends that the small number of people who could quickly qualify for admission through the U.S. Refugee Admissions Program (USRAP) should be allowed to apply for expedited admission as a refugee. Admission as a refugee provides greater legal and social protections for the applicant and reduces the burden on the backlogged and adversarial immigration courts. If the applicant cannot qualify for expedited admission as a refugee, or indicates that they cannot safely wait for the adjudication of a refugee application, they should be allowed to apply for expedited Humanitarian Parole.
- Work with the Mexican government to ensure that asylum seekers that have been subjected to MPP, PACR/HARP, the ACAs, or expelled due to the CDC's order closing the U.S. southern border to asylum seekers are allowed to pass through Mexico in order to reach the U.S. southern border. The administration should urge and support Mexican officials to allow asylum seekers to pass through Mexico even without the paperwork typically required.

Processing Asylum Seekers at Ports of Entry

- Centralize resources at the following key Ports of Entry (POE), where well-established civil society organizations can provide services to the asylum seekers (while, in consideration of individual safety concerns, location, and resources, continue to allow individuals in MPP to present themselves at any location along the border):
 - a. San Ysidro, CA
 - b. Nogales, AZ
 - c. El Paso, TX
 - d. Laredo, TX
 - e. Hidalgo, TX
 - f. Brownsville, TX

⁷ Humanitarian Parole is an alternative travel documents allowing entry into the U.S. for urgent humanitarian reasons.

- Adequately staff Customs and Border Protection (CBP) officers in these locations as well as apply oversight mechanisms to ensure that each key POE is operating at maximum capacity. When an asylum seeker is encountered in areas other than these key ports of entry, Immigration and Customs Enforcement (ICE) should transport them to the nearest key POE for processing consistent with COVID-19 precautions.
- Create two simultaneous tracks for processing MPP cases at these key POE. Vulnerable asylum seekers—defined as those with a medical condition or mental illness, pregnant women, LGBTQ individuals, and non-Spanish speakers—should be processed immediately upon presenting themselves. For those without these stated vulnerabilities, the administration should process them in phases. To ensure that the system is easy to understand for the asylum seeker, is based on information easily referenced, and generally respects the order that people initially presented at the border, the phase system should operate according to the last three digits of the Alien Registration Number that is given to every asylum seeker when he or she applied for asylum. This plan should begin as quickly as possible. Once begun, the administration should set a goal of completing this phased entry within four weeks.
- Process family units together whenever possible, regardless of the age of the family members. The definition of what constitutes a family⁸ should be expanded to include children under the age of 21; those in common-law marriages without marriage certificates; and non-parental family member caregivers, such as grandparents, aunts, and uncles.

Processing at Consulates

- Allow asylum seekers who were subjected to MPP, as well as related programs such as PACR/HARP and the ACAs, to request admission as a refugee or parole to the U.S. at any embassy or consulate. To facilitate asylum seekers' entry into the U.S., the administration should allow asylum seekers to apply for Advanced Parole,⁹ which would allow asylum seekers to enter the U.S. without a visa. To prove that they are eligible, asylum seekers should only have to show that they were subjected to one of the named programs and have a place to go to in the United States, whether it be family, friends, or a shelter. No fee should be charged to request Advanced Parole. Once given Advanced Parole, asylum seekers can either fly to the United States or present themselves at a land POE to enter to pursue their asylum claims while within the U.S.

Messaging and Communications

- Publicize the above plan at least three weeks before the planned implementation date, in English, Spanish, Brazilian Portuguese, and relevant indigenous languages (including K'iche,

⁸ A family unit is currently defined as “a group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s),” a definition that often leaves out non-parental caretakers, non-married couples, and other nontraditional family structures.

⁹ Advanced Parole is an alternative travel document allowing, in this circumstance, entry into the U.S. at a future date without a visa.

Q'eqchi and Kaqchikel, and Mam). The plan should be posted on official DHS information portals, such as the 1-800 number that asylum seekers call to check the status of their case, DHS websites, and at the physical ports of entry.

- Work closely with NGOs and community-based organizations (CBOs) including but not limited to medical providers, shelters, and legal service providers that directly interact with asylum seekers. These organizations should be briefed so they can prepare to provide support and spread word of the administration's plans as they are within many asylum seekers' trusted networks.
- Draw on the expertise of resettlement agencies in the United States to help meet the needs of the newly arriving asylum seekers who were impacted by the Trump administration's policies. These needs should be funded using the mechanism of the Department of State's Reception and Placement grants for those admitted as refugees, and through funds from the Office of Refugee Resettlement (ORR), modeled on the funding provided to asylum seekers paroled into the United States from Northern Iraq in 1996.¹⁰
- Ensure that the social service providers and shelters along the U.S./Mexico border are also sufficiently resourced so that they can meet the needs of the newly arriving asylum seekers when they first enter the United States.

After Entering the United States

- Ensure that there is a presumption that no asylum seeker will be held in CBP custody for more than four hours, and no asylum seeker should be subjected to ICE detention.
- Provide transportation for all asylum seekers to the nearest migrant shelter in the U.S. after they have been processed.
- Instruct attorneys from the Office of the Principal Legal Advisor (OPLA) within ICE to change venues for all pending MPP cases to the nearest immigration court for the address provided by the asylum seeker, without any action being required by the asylum seeker.
- Reopen the Family Case Management Program as an alternative to detention.

¹⁰ Most recently, ORR handled the 1996/97 admission of Iraqi Kurds who were evacuated to Guam, a U.S. territory, before being brought to the continental United States. In that case, the INS eligibility interviews occurred on Guam itself rather than overseas. Because Guam is U.S. territory, the Kurds were processed as asylees rather than refugees (see Refugee Reports, Vol. 17, No. 12). However, because the evacuation and processing of the Kurds was in all other respects a refugee admissions program, the asylees received R&P services through the voluntary agencies -- unlike other persons granted asylum in the United States. ORR, rather than the State Department, provided the R&P grants to the agencies. "Situation Report: Here Come the Kosovars," US Committee for Refugees and Immigrants, <https://reliefweb.int/report/albania/here-come-kosovars-may-1999>

Correcting the Legal Harm Done

Reopening Cases and Waiving Deadlines

- Require OPLA to automatically file Motions to Reopen to anyone who was issued a removal order pursuant to MPP, whether the removal order was issued *in absentia* or after a hearing, and who present themselves at a Port of Entry or consulate as outlined above. Similarly, the administration should require the Department of Justice's Executive Office for Immigration Review (EOIR) to automatically grant these motions.
- Allow any asylum seeker whose MPP case was terminated by an immigration judge pursuant to MPP to file for affirmative asylum¹¹ with United States Citizenship and Immigration Services (USCIS). Furthermore, the administration should require USCIS to accept these applications and process them like any other affirmative asylum application, to allow asylum officers to directly grant asylum applications instead of forcing the courts to do so.
- Require the Department of Homeland Security (DHS) to rescind all removal orders issued under PACR/HARP and the ACAs. Asylum seekers who were subjected to these programs should be allowed to file for affirmative asylum with USCIS, and the administration should require USCIS to accept jurisdiction.
- Require the Board of Immigration Appeals to automatically remand all MPP cases on appeal to the immigration court in the venue in which the asylum seeker now resides.
- Clarify that the one-year filing deadline for any asylum seeker who has been subjected to MPP, PACR/HARP, or the ACAs begins on the date that the asylum seeker enters the U.S., either under Advanced Parole; if the asylum seeker applied for parole from a U.S. embassy or consulate; or Humanitarian Parole if the asylum seeker applied at the U.S. border.

Addressing Substantive Changes Made Under the Previous Administration

- Issue an automatic stay on any asylum proceedings until the administration has undertaken a full review of recent asylum policy changes. Hearings should not restart until the review is complete and the administration has changed regulations that hurt individuals' asylum claims.

Addressing Those Who Are No Longer in Mexico

- Issue a Guidance Memo instructing immigration judges that asylum seekers being returned to their home country after being subjected to MPP, PACR/HARP, the ACAs, or being expelled due to the CDC's order is not evidence of their safety in their home country, nor does it show that the asylum seekers have availed themselves of the safety of their home country. For asylum

¹¹ Affirmative asylum is when an asylum seeker files an asylum application with USCIS while not in immigration court proceedings. This is in contrast to defensive asylum, where an asylum seeker files an asylum application while in immigration court proceedings or at the border. In these circumstances the asylum application is a defense against being deported.

seekers who were affected by these orders, the Guidance Memo should also explain that any time spent in another country should not be considered evidence of firm resettlement.¹²

Remedy for those who Entered Without Inspection

- Decline to prosecute illegal entry into the U.S. by any asylum seeker in MPP. Instead, for those asylum seekers who entered the U.S. without permission and did not return to Mexico, the administration should waive the entry by designating them for Parole in Place, which allows them to apply for immigration benefits despite already being in the U.S. Furthermore, the administration should allow the asylum seeker to file a Motion to Change Venue to their current location. These Motions to Change Venue should be automatically granted.

Long Term Recommendations to Prevent a Return to MPP

- Use the regulatory process to make it clear that the Department of Homeland Security may not return asylum seekers to contiguous territories to wait while their cases are adjudicated in the United States.
- Pursue robust resettlement strategies to give Central Americans fleeing violence a realistic alternative path toward safety, to both avoid giving a future administration the excuse to restart MPP and to encourage, in a humane way, people to avoid undertaking the dangerous journey from their home countries to seek asylum in the United States. This strategy should include dramatically increasing the overall annual refugee admission goal and increasing the number of slots available for those from Central America; resourcing the proper processing mechanisms for the region to support an increase in refugee admissions; and restarting the Central American Minors (CAM) program that allowed children and certain relatives to apply for refugee status and reunite with eligible relatives in the United States.
- Convene a Truth Commission, either within the administration or in concert with Congress, to explore the harms brought by the Trump administration's immigration policies such as family separation, MPP, and ACAs; build a common narrative about the harm these policies have caused; and give asylum seekers a chance to be heard after being subjected to a multitude of dehumanizing processes while they were seeking safety and protection in the United States.
- Work with Congress to find actions that can be passed in a polarized Congress that will impede a future administration from resurrecting MPP, even if such actions are short of a long-term solution, such as prohibiting funding to return asylum seekers to a contiguous territory while their cases are heard in the United States. Once these actions are accomplished, the administration should continue a sustained push to use these accomplishments to build consensus toward long-term solutions to prevent a future administration from resurrecting these dangerous policies.

¹² Asylum seekers who are “firmly resettled” in another country are typically ineligible for asylum. While the definition may change with the issuance of new regulations on January 11, 2020, see <https://www.federalregister.gov/documents/2020/12/11/2020-26875/procedures-for-asylum-and-withholding-of-removal-credible-fear-and-reasonable-fear-review>, the prior definition generally included those who had been offered permanent resettlement or citizenship in another country.

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About HIAS

Founded in 1881, HIAS is a Jewish humanitarian organization that provides vital services to refugees and asylum seekers in 16 countries. We advocate for the rights of all forcibly displaced people to rebuild their lives. Together, we can create a world in which refugees find welcome, safety, and freedom. **Learn more at [HIAS.org](https://www.hias.org).**

Cover Photo: Asylum seekers wait at the El Chaparral crossing on the US/Mexico Border in Tijuana, Baja California state, Mexico, February 29, 2020. (Guillermo Arias/AFP via Getty Images)

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