



**Statement of the American Civil Liberties Union**  
**prepared for the “Remain in Mexico” Hearing before**  
**the Homeland Security and Government Affairs Committee**  
**January 16, 2025**

The American Civil Liberties Union (“ACLU”) is a nonpartisan public interest organization with 4 million members and supporters, and 53 affiliates nationwide—all dedicated to protecting the principles of freedom and equality set forth in the Constitution. The ACLU has a long history of defending civil liberties, including immigrants’ rights. The ACLU vigorously defends the constitutional right of due process for both citizens and immigrants, and advocates for policies that protect these rights.

The ACLU challenged the Migrant Protection Protocols policy (also known as “Remain in Mexico”) and led the litigation challenging the Title 42 program, both of which left vulnerable asylum seekers stranded in Mexico in life-threatening circumstances and in violation of U.S. and international law. We have participated in other litigation over the years concerning the civil liberties of immigrants and to protect the rights of refugees and people seeking asylum, and we routinely advocate in Congress and state legislatures for policies that promote due process and protections for immigrants.

### **A. Introduction**

This statement addresses the many reasons this devastating and illegal policy—the Migrant Protection Protocols—should never be resurrected. The Migration Protection Protocols (MPP) policy was one of the most abusive and egregious of President Trump’s attacks on the asylum system, exposing vulnerable people to violence and murder. The policy was a boon to organized crime in Mexico and inflicted horrendous and lasting harm on asylum seekers, including their minor children.

The ACLU represented multiple clients in our challenge to MPP who were subject to horrific violence from cartels while waiting in Mexico for their asylum appointments. These included:

- An asylum seeker from El Salvador who, after being returned to Mexico, was kidnapped by cartel members and repeatedly gang raped in front of her 3-year-old child;
- An asylum seeker from Guatemala who was sent back to Mexico with her young children, aged six and eight, who had already been kidnapped and assaulted when she got to the border and then was subjected to two more attempted kidnappings and an attempted sexual assault when returned to Mexico;
- An asylum seeker from Venezuela who was kidnapped by a cartel after being returned to Mexico, along with his three-year-old son.

The MPP program was a human rights disaster when implemented in 2019, and since then successive bans and border shutdown policies created a well-documented dangerous situation for people seeking asylum at the southern border. Policies that prevent access to asylum and expel people en masse to another country with no individualized consideration of the dangers they face violate our *nonrefoulement* obligations, federal law, and basic decency. They do not offer any sustainable solutions to the real needs of our border, asylum, and immigration systems, as previous experience demonstrates. Rather than revisit this catastrophic policy that fueled cartels' expansion in Mexico and sent asylum seekers to their deaths, our federal government should instead invest in meaningful, forward-looking solutions, including investments in port processing and our asylum and immigration court systems. As previous experience shows, MPP is a pathway to cruelty and chaos, and it should never be resurrected.

## **B. Migration Protocols Policy under Trump 1.0**

On December 20, 2018, Department of Homeland Security (“DHS”) Secretary Nielsen announced an “unprecedented” change to the existing policy. In what DHS described as an “historic action to confront illegal immigration,” Nielsen announced a new policy, dubbed the “Migrant Protection Protocols” (“MPP”), under which DHS would begin requiring noncitizens who seek admission from Mexico “illegally or without proper documentation” to be “returned to

Mexico for the duration of their immigration proceedings.”<sup>1</sup> According to DHS, the new policy would address the problem of noncitizens who allegedly “game the system” and “disappear into the United States,” and deter migrants from making “false” asylum claims at the border “while ensuring that vulnerable populations receive the protections they need.”<sup>2</sup> On January 25, 2019, a memorandum issued by Nielsen stated that implementation of the forced return policy would be “on a large-scale basis”<sup>3</sup>; the policy proceeded to be applied across ports of entry, requiring individuals and families to wait in Mexico for their asylum hearings in the U.S.

The MPP Guidance gave officers at the border enormous discretion to decide whether to allow someone seeking safety to enter the U.S. for their hearing or to subject them to this policy, even if a person required to wait in Mexico had no resources, shelter or legal status in Mexico and was likely to face kidnapping and other horrendous abuse upon their return. Although the Guidance carved out an exception for individuals who were “more likely than not” to face persecution or torture if returned to Mexico, immigration officials were not required to ask applicants if they faced such a fear, nor even to inform them that they were being sent back to Mexico. Instead, asylum seekers needed to affirmatively state such a fear and meet the demanding “more likely than not standard” required to obtain “withholding of removal” -- without notice that they faced return to Mexico, and without the opportunity to consult with anyone. There was also no guarantee of an interpreter to assist at the interview, which might take place soon after the individual arrived from a traumatic and dangerous journey. Nor was there any meaningful opportunity to appeal a determination that they didn’t meet an exception to the policy and so should not be returned to

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<sup>1</sup> U.S. Department of Homeland Security, Press Release, “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration,” Dec. 20, 2018, <https://www.dhs.gov/archive/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of Homeland Security, Memorandum from Kristjen Nielsen, *Policy Guidance for 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](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf).

wait in Mexico. Indeed, as documented by the ACLU and other immigrant and human rights organizations, numerous asylum seekers told the immigration officials about the harms they had already experienced in Mexico but were nonetheless returned. And, as evidenced by our own clients' experiences, even when they were subjected to horrendous abuse after their return, including kidnappings, rape, and torture, there was no opportunity to revisit the officers' negative fear determination until they returned to the port of entry for their scheduled removal hearings – hearings that were placed on indefinite hold after the Title 42 policy was adopted, leaving them literally stranded in hiding in Mexico

### **C. MPP Violates U.S. Law, Including Binding Treaty Obligations**

A bedrock principle of U.S. and international law known as *nonrefoulement* prohibits the United States from returning individuals to countries where they are more likely than not to face persecution, torture, or cruel, inhuman, or degrading treatment. This duty is codified in the Immigration and Nationality Act's ("INA") withholding of removal provision, 8 U.S.C. § 1231(b)(3), and ensures compliance with U.S. treaty obligations, including the Refugee Convention and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. International law prohibits the *en masse* expulsion of asylum-seekers to a third country to await asylum processing because, absent individualized review, there is a heightened risk of erroneous removal to places where an individual will be persecuted or tortured, in violation of binding human rights law.<sup>4</sup>

The entire MPP policy was in clear violation of U.S. non-refoulement obligations and federal law, and it left people seeking asylum not only in danger of violence, persecution and extortion in Mexico, as further described below, but also deprived them of their right to seek

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<sup>4</sup> *Innovation Law Lab v. Mcaleenan* Amicus Brief: UN High Commissioner on Refugees, No. 19-15716, July 10, 2019, <https://www.aclu.org/cases/innovation-law-lab-v-wolf?document=innovation-law-lab-v-wolf-supreme-court-stay-order#legal-documents>.

asylum. There is no functioning asylum system in Mexico, and Central American asylum seekers who were required to wait in Mexico under MPP faced a substantial risk of being involuntarily repatriated to the countries they had fled. Intergovernmental and human rights organizations documented widespread instances of Mexican officials returning Central American migrants to their home countries despite their fears of persecution or torture, without any meaningful process—an experience that some of the ACLU clients knew first-hand.

In February 2019, the ACLU, with our partners Southern Poverty Law Center and Center for Gender & Refugee Studies challenged the MPP policy in *Innovation Law Lab v. Wolf*, a case on behalf of 11 individual asylum seekers and organizational plaintiffs. Although the district court enjoined the policy, the injunction was stayed by a motions panel pending appeal to the Ninth Circuit. In February 2020, the Ninth Circuit Court of Appeals affirmed the district court’s injunction, finding the policy unequivocally illegal because it was not authorized by the Immigration and Nationality Act and because MPP lacked “sufficient safeguards to comply with DHS’s admitted legal obligation not to return any alien to a territory where his or her ‘life or freedom would be threatened.’”<sup>5</sup> This decision, however, was stayed by the Supreme Court. Thus, despite the district court and Ninth Circuit decisions, MPP remained in effect until the Biden administration suspended new enrollments in MPP on January 21, 2021, and then in June 2021, formally ended the policy. Two states—Texas and Missouri—sued DHS to keep this program alive, but in June 2022, the Supreme Court confirmed that the administration could end this devastating program.

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<sup>5</sup> *Innovation Law Lab v. Wolf*, No. 19-15716 (9th Cir. 2020).

In the two-and-a-half years it was in effect, however, MPP created a human rights disaster at the border, exposing vulnerable asylum seekers to torture, kidnapping, rape, and murder, and fueling organized crime on the Mexico side of the border.

#### **D. The Violent Effects and Legacy of MPP**

The Remain in Mexico/MPP policy put tens of thousands of people in direct harm, living in border camps in Mexico where they were sitting ducks for drug cartels who preyed upon vulnerable asylum seekers waiting in Mexico for months on end to present their claims in the United States. These harms were illustrated in another lawsuit the ACLU and partners brought in April, 2020, *Nora v. Wolf*. The lawsuit was brought on behalf of 26 asylum seekers—12 adults and their 14 minor children—who pursuant to MPP were returned to one of the most dangerous regions of Mexico, Tamaulipas, where they were assaulted, kidnapped, raped and tortured by organized groups that controlled the region.

Among our plaintiffs were:

- An asylum seeker from El Salvador who, after being returned to Mexico, was kidnapped by cartel members and repeatedly gang raped in front of her 3-year-old son. Although she told U.S. immigration officials what happened and pleaded with them to allow her to pursue her asylum claim in the U.S, the officials refused. As a result, she and her son were forced to remain in Mexico in hiding, in fear for their lives.
- An asylum seeker from Honduras, and her daughters, aged 16 and 10, were also kidnapped by cartel members after being sent back to Mexico. The mother and 16-year-old daughter were gang raped over a period of days. Although they attempted to relocate to find safety, their attackers found them and kidnapped and raped them again.
- An asylum seeker from Guatemala was sent back to Mexico despite telling U.S. authorities about how she and her two young children, six and eight, had been kidnapped, starved and threatened with death. After being returned to Mexico she was subjected to two more attempted kidnappings and an attempted sexual assault. She then made the difficult decision to send her children across the border by themselves.

- An asylum seeker from Venezuela and his three-year-old son were kidnapped by the cartel after being returned to Mexico. He was forced to work long hours under threat of death. Cartel members also threatened to sell his son to organ traffickers.
- Yet another of our clients, an asylum seeker from Honduras, was kidnapped and repeatedly gang raped in front of her children, ages five and one, over a period of days. Barely one month later she was kidnapped again and again raped in front of her children.

The experience of our clients was by no means unique. Human Rights First documented 1,544 allegations of extreme abuse, including homicide, rape, and kidnapping, faced by individuals placed in MPP from January 2019 to February 2021,<sup>6</sup> noting that MPP “effectively delivers asylum seekers into the hands of cartels.”<sup>7</sup>

Moreover, the federal government itself has acknowledged the devastating harm that Remain in Mexico inflicted on vulnerable asylum seekers, including children.<sup>8</sup> A 2021 memorandum from the Department of Homeland Security, supporting the decision to end this program, observed that when MPP was in effect: “there were pervasive and widespread reports of MPP enrollees being exposed to extreme violence and insecurity at the hands of transnational criminal organizations that prey on vulnerable migrants as they waited in Mexico for their immigration court hearings in the United States.”<sup>9</sup> Detailing the abysmal and dangerous conditions in the camps that housed families and individuals enrolled in MPP, the memorandum noted, “But

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<sup>6</sup> Human Rights First, *Delivered to Danger: Trump Administration sending asylum seekers and migrants to danger*, Feb. 19, 2021, <https://www.humanrightsfirst.org/campaign/remain-mexico>.

<sup>7</sup> Human Rights First, “Any Version of ‘Remain in Mexico’ Policy Would Be Unlawful, Inhumane, and Deadly,” Sept. 9, 2021, <https://humanrightsfirst.org/library/any-version-of-remain-in-mexico-policy-would-be-unlawful-inhumane-and-deadly/>.

<sup>8</sup> Secretary of Homeland Security Alejandro Mayorkas, Memorandum, Termination of Migrant Protection Protocols, Oct. 2021, [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-memo.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-memo.pdf); *see also* Biden v. Texas, Brief of Solicitor General, Petition for Writ of Certiorari, at 11, [https://www.supremecourt.gov/DocketPDF/21/21-954/206810/20211229162636127\\_Biden%20v.%20Texas%20-%20Cert%20Petition.pdf](https://www.supremecourt.gov/DocketPDF/21/21-954/206810/20211229162636127_Biden%20v.%20Texas%20-%20Cert%20Petition.pdf).

<sup>9</sup> U.S. Department of Homeland Security, *Explanation of the Decision to Terminate the Migrant Protection Protocols*, at 12 (October 29, 2021), [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-justification-memo-508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf).



as bad as conditions often were in the makeshift border camps, migrants gathered there because the threat of violence and kidnapping in surrounding areas outside of the camps could be greater.”<sup>10</sup> Confirming our own clients’ experiences, DHS noted the rampant kidnapping of asylum seekers subject to MPP, referencing evidence from Médecins Sans Frontières (Doctors Without Borders) noting that 75% of its patients who were in Nuevo Laredo in October 2019 due to MPP reported having been kidnapped<sup>11</sup>, as well as evidence from a December 2019 UNHCR Rapid Protection Assessment, finding “children represented about half (48%) of targets for physical violence, and about half (48%) of kidnapping victims.”<sup>12</sup>

Unfortunately, MPP was not the only program that left asylum seekers stranded, en masse, in Mexico and subject to violence. In March 2020, using the COVID-19 pandemic as its justification, the Trump administration invoked Title 42 and closed the southern U.S. border, effectively shutting down the asylum system.<sup>13</sup> Under Title 42’s mass expulsion policy, which the Biden administration kept in place until May 2023, people seeking safety were immediately removed from the United States with no consideration of their claims for protection. Depending on their nationality, they were either simply sent back across the border to Mexico — as happened to thousands of Haitians<sup>14</sup> — or they are sent back to their countries of origin. Human Rights First documented over 13,000 cases of serious and violent attacks against migrants—including rape,

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<sup>10</sup> *Id.* At 13-14.

<sup>11</sup> *Id.* citing Médecins Sans Frontières, *The devastating toll of ‘Remain in Mexico’ asylum policy one year later*, Jan. 29, 2020, <https://www.msf.org/one-year-inhumane-remain-mexico-asylum-seeker-policy>.

<sup>12</sup> *Id.* Citing UNHCR, Rapid Protection Assessment: MPP Returnees at the Northern Border of Mexico 15, Dec. 2019.

<sup>13</sup> 85 Fed. Reg. 17,060, 17,061 (Mar. 26, 2020); 85 Fed. Reg. 56,424 (Sept. 11, 2020) (final rule)

<sup>14</sup> Julia Neusner, Human Rights First, *A Year After Del Rio, Asylum Seekers Expelled Under Title 42 Are Still Suffering*, Sept. 22, 2022, <https://humanrightsfirst.org/library/a-year-after-del-rio-haitian-asylum-seekers-expelled-under-title-42-are-still-suffering/>.

kidnapping, and murder—between January 2021 and June 2022 alone, and those cases continued throughout the time that Title 42 was in effect.<sup>15</sup>

In *Huisha-Huisha v. Mayorkas*, a case brought by the ACLU and partners challenging the exclusion of asylum seekers under Title 42, the Court of Appeals for the D.C. Circuit observed that asylum seekers faced horrible abuses when turned away at the U.S. border. Judge Walker, writing for the Court, noted the uncontested evidence that families were clearly expelled to danger: “the record is replete with stomach-churning evidence of death, torture, and rape.”<sup>16</sup> Indeed, the Court noted that for those required to return across the bridge and back to Mexico, it was as if they were “forced to walk the plank into those places.”

The current emergency border authority<sup>17</sup>, introduced by the Biden administration in June 2024, and the asylum bans that preceded it,<sup>18</sup> have continued to leave asylum seekers vulnerable to kidnapping, sexual assault, extortion, murder and torture. These are disastrous and illegal limitations on the right to seek asylum that benefit drug cartels, for whom vulnerable migrants are an easy and consistent target. Indeed, as a November 2024 report from *ProPublica* documented, drug cartels are now kidnapping migrants in Mexico at an unprecedented scale: “a new phase of mass kidnapping for profit has emerged at the country’s southern border that is different in

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<sup>15</sup> Human Rights First, *Human Rights Stain, Public Health Farce*, (2022), <https://humanrightsfirst.org/library/title-42-human-rights-stain-public-health-farce/>.

<sup>16</sup> *Huisha-Huisha v. Mayorkas*, 642 F. Supp. 3d 1 (D.D.C. 2022).

<sup>17</sup> The White House, A Proclamation on Securing the Border, June 4, 2024, <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/06/04/a-proclamation-on-securing-the-border>.

<sup>18</sup> See e.g., Human Rights First, *Trapped, Preyed Upon and Punished: One Year of the Biden Administration Asylum Ban* (May 2024), <https://humanrightsfirst.org/library/trapped-preyed-upon-and-punished/>; Medecins Sans Frontieres, “Biden order limiting asylum at southern border will harm people’s health,” June 4, 2024, <https://www.doctorswithoutborders.org/latest/biden-order-limiting-asylum-southern-border-will-harm-peoples-health>; Human Rights Watch, “Agents Block, Mistreat Mexican Asylum Seekers,” Dec. 4, 2024, <https://www.hrw.org/news/2024/12/05/us-agents-block-mistreat-mexican-asylum-seekers>; National Immigration Project & Together & Free, *FACING AN IMPOSSIBLE CHOICE Experiences of Asylum Seekers in Matamoros and Reynosa Two Months into the Biden Asylum Ban* (2023), [https://nipnlg.org/sites/default/files/2023-07/2023\\_Facing-An-Impossible-Choice.pdf](https://nipnlg.org/sites/default/files/2023-07/2023_Facing-An-Impossible-Choice.pdf).

character and scale than what has happened in the past, underscoring how effective Mexican cartels are in adapting their strategies to exploit new policies from Washington.”<sup>19</sup>

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The existing asylum bans and border shutdown policies have only fueled this dangerous situation and should be revoked, and any attempt to reinstate Title 42 or MPP and put even more people seeking safety in danger, regardless of their claims and despite this documented pattern of abuse, must be rejected outright. These policies do not offer any solutions to improve border processing or address asylum and immigration court backlogs and are not an effectual way to improve our immigration court system or address real needs at the border. The only thing these illegal and devastating policies offer is danger to vulnerable asylum seekers, including children. We urge lawmakers to invest in real solutions for our border and immigration systems and not to endorse any revival of harmful policies like MPP.

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<sup>19</sup> Emily Green, *ProPublica*, “Held for Ransom in Animal Pens, Migrants Face Mass Kidnappings as U.S. and Mexico Ramp Up,” Nov. 1, 2024, <https://www.propublica.org/article/immigration-mexico-us-migrants-mass-kidnappings-cartels-border>.