



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

**SUBMITTED TO THE HOUSE COMMITTEE ON HOMELAND SECURITY SUBCOMMITTEE ON
BORDER SECURITY, FACILITATION, & OPERATIONS**

**HEARING ON EXAMINING THE HUMAN RIGHTS AND LEGAL
IMPLICATIONS OF DHS's 'REMAIN IN MEXICO' POLICY**

November 21, 2019

Contact:
Jorge Loweree
Policy Director
JLoweree@immigrantcouncil.org
Phone: 202-507-7543

1331 G Street NW,
Suite 200
Washington, D.C.
20005

The American Immigration Council (“Council”) is a non-profit organization that has worked to increase public understanding of immigration law and policy—and the role of immigration in American society—for over 30 years. We write to thank the Subcommittee for scheduling this hearing to discuss the so-called Migrant Protection Protocols (“MPP”) and their impact on asylum seekers and on the rule of law in the United States.

Since MPP was first announced, the Council has sought to draw attention to this dangerous and unlawful program. We have documented the risks that asylum-seeking families face in Mexico. We have visited the border to talk to people who have been sent back to Mexico, observed MPP court hearings in El Paso and Harlingen, and participated in briefings on MPP. Today, we write to highlight our experience with the problems that MPP has created both for asylum seekers and the system of humanitarian protections that has existed in the United States for decades.

We also write to elevate the voices of people who have been subject to MPP, through the stories of Lucia and Rosalia,¹ mothers currently detained in the South Texas Family Residential Center (“STFRC”) in Dilley, Texas. We hope that our experience with these issues may provide the Subcommittee with additional insight and context to inform this debate.

MPP has placed tens of thousands of vulnerable people at significant risk of harm in Mexico.

When MPP was first announced on December 20, 2018, the Council immediately had serious concerns about the prospect of requiring vulnerable families to wait in Mexico. In response to the

¹ Given the sensitivity of the issues discussed, we have given these mothers pseudonyms. Their stories were collected through the Council’s presence at Dilley through the Dilley Pro Bono Project.

announcement, through our partnership with the Dilley Pro Bono Project, we undertook a study of 500 asylum-seeking mothers who were then detained at the STFRC. We asked the mothers whether they had been afraid for their lives in Mexico and whether they or their family had faced harm in Mexico during the journey to the United States. Our study showed conclusively that Mexico was not a safe place for asylum-seeking families to wait months at the border:

- 90.3% of respondents said that they did not feel safe in Mexico.
- 46% of respondents reported that they or their child experienced at least one type of harm while in Mexico.
- 38.1% of respondents stated that Mexican police mistreated them.

Nearly 30% of mothers reported that they had been robbed in Mexico on their way to the United States, while 17% reported that a member of their family had been physically harmed while traveling to the border. Widespread corruption among Mexican law enforcement officers also amplified fears held by the mothers, as 28% expressed that a Mexican official had demanded a bribe, and 9.5% reported that a Mexican official had threatened them with physical harm at some point during the journey to the border.

The Council, along with the American Immigration Lawyers Association (AILA) and the Catholic Legal Immigration Network (CLINIC), sent a letter to then-Department of Homeland Security (DHS) Secretary Kirstjen Nielsen, detailing the results of our study and urging her to abandon the plans to expand MPP.² Unfortunately, Secretary Nielsen did not heed our warning.

One woman profiled in the letter, *Concepción*,³ reported that she was kidnapped and raped by a cartel member, who threatened to kill her 5-year-old child and sell his organs if she reported him to the police. Two women, *Aracely* and *Fatima*, were kidnapped by Mexican police officers and then sold to members of a cartel, who held them for ransom in a stash house where they observed gang members torturing other migrants. Another woman, *Carolina*, was extorted by men wearing Mexican federal police uniforms, who entered the house she was staying in and demanded money. She observed them sexually assaulting another woman who could not pay.

Since we sent our letter in February, other organizations have documented the harms that occur to people subject to MPP. A study of 607 asylum seekers in Tijuana and Mexicali who had been sent back to Mexico found that 23.1% of asylum seekers, and 21.9% of asylum-seeking families, had “been threatened with physical violence while in Mexico as they await[ed] their immigration court dates.”⁴

² Letter to The Honorable Kirstjen M. Nielsen, Secretary, Department of Homeland Security, *Substantial Evidence Demonstrating Catastrophic Harms That Will Befall Migrants in Mexico with Continued Implementation and Further Expansion of Migrant Protection Protocols*, Feb. 6, 2019,

https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/letter_urges_sec_nielsen_end_migrant_protection_protocols_policy.pdf.

³ These names are also pseudonyms.

⁴ U.S. Immigration Policy Center, UC San Diego, *Seeking Asylum: Part 2* (Oct. 29, 2019), <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>, at 4.

Similarly, the organization Human Rights First documented more than 340 instances of rape, kidnapping, extortion, and assault against people in MPP through September 2019.⁵

The stories of mothers currently detained at the STFRC highlight the continued harms that people sent back under MPP face. These extraordinary stories demonstrate the extreme harm that women and children face after being sent back under MPP, and how USCIS's fear screening process is patently inadequate.

Lucia's Story: The horrific consequences of MPP—Violations of CBP policy and inadequate fear screenings lead to a nightmare for a mother and her daughter.

Lucia is a mother from South America who first sought asylum at an Arizona port of entry in July 2019 along with her 9-year-old disabled daughter. When she attempted to request asylum, she was physically prevented from crossing the bridge by officials who grabbed her and her daughter and dragged them away from the port of entry. A kind stranger bought her a bus ticket to the California-Mexico border, where they again sought asylum. This time, she was permitted to enter and begin the asylum process.

After three days in CBP custody, Lucia and her daughter were returned to Mexico to wait for an MPP hearing. This occurred even though Lucia's daughter is disabled and should have been exempt from MPP as a vulnerable individual in "special circumstances."

After Lucia and her daughter were returned to Mexico, they briefly found a shelter in which to stay but were forced to leave when the shelter demanded payment, which Lucia could not pay. A man offered to let Lucia and her daughter live with his family and do domestic work for pay. However, when Lucia and her daughter went to his house, they learned he lived alone and works for a dangerous Mexican cartel. He locked them in the house, forced Lucia to do all of his housework for no pay, and inappropriately touched Lucia's daughter sexually. After much pleading and the intervention of a third party, the man let Lucia attend her MPP hearing, but threatened to kill Lucia and her daughter if they did not return after the court hearing.

Terrified for her life, at the court hearing, Lucia begged to be taken out of MPP to protect herself and her daughter. But despite having been kidnapped and sexually assaulted in Mexico, Lucia did not pass USCIS's fear interview and was sent back to Mexico a second time to await a new court hearing.

As before, Lucia and her daughter were sent back under MPP even though they should have been exempt from MPP because Lucia's daughter is disabled. In direct violation of the MPP guiding principles, CBP officers sent them back to Mexico anyway. This time, the consequences were even more severe. Just a few blocks from the port of entry in Tijuana, men with knives stopped Lucia and her daughter and abducted them.

Lucia describes the horrors that followed:

⁵ Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy*, Oct. 1, 2019, <https://www.humanrightsfirst.org/sites/default/files/hrforordersfromabove.pdf>, at 2.

The men drove us in a car overnight. They took us to a place that I believe was [redacted], Mexico and kept us there for thirteen days. They didn't give us food or water. They tied my daughter up in a sheet so she could not move. They beat us repeatedly. They took off all of our clothes, touched us sexually, raped us, and masturbated in front of us. They often would not let us go to the bathroom. When they did let us, they would grab us and walk us to the bathroom and we would have to go in front of them. The men told me that I did not have rights because I am [redacted], called me a dog and trash, and said they would light me on fire.

During the time Lucia and her daughter were subjected to this horrific ordeal, her kidnappers extorted thousands of dollars from family members in the United States under threat of her death. When her family managed to pay, the kidnappers drove Lucia and her daughter to the border. They took Lucia's daughter into their hands and dragged her over the border wall. They then demanded that Lucia cross as well or the men would abandon her daughter in the desert. Lucia climbed over the wall but injured herself doing so.

Immigration officials eventually found Lucia and her daughter and took them to the STFRC in order to facilitate their deportation, unbeknownst to Lucia. At the STFRC, she learned she had been given a deportation order because she missed her second court date while she was kidnapped. She asked an immigration judge to reopen her case, and her motion was granted. The experience in Mexico has forever traumatized Lucia's daughter:

My daughter's emotional state has completely changed since these terrifying experiences. She stays in our room and cries. She does not want to go to school. She thinks that everyone is going to abuse her. She is very afraid to return to [redacted] or Mexico.

Rosalia's story: Language problems, vulnerability, hunger, and how transportation problems and CBP's requirement to arrive at court at 3:30 AM led to a family missing court

Rosalia is a mother from Guatemala who, along with her 2-year-old daughter, fled her country to seek asylum in the United States. Rosalia's first language is Mam, and she does not speak Spanish fluently. In June 2019, Rosalia and her daughter arrived at the Calexico port of entry, where they requested asylum.

After two days in CBP custody, Rosalia and her daughter were sent back to Mexicali with a notice to appear for court in Tijuana in October, telling her she needed to arrive at 3:30 AM. Although they had arrived at the port of entry with a suitcase full of clothing, CBP officers confiscated the suitcase, leaving them without any spare clothing or the rest of their belongings.⁶

For days after Rosalia and her daughter were released, they were barely able to obtain food to eat and experienced near-starvation, to the point that Rosalia was afraid her daughter would die. She describes the agonizing situation after being sent back under MPP:

⁶ The Office of Inspector General has documented similar practices of CBP disposing of people's belongings at the El Paso Del Norte Processing Center, see Dep't of Homeland Security, Office of Inspector General, Management Alert - DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center (Redacted), May 30, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>, at 6.

I had no money but I found a migrant shelter that allowed us to stay there for three nights for free. They then started to charge 35 pesos per night. A woman gave me 50 pesos, which I used for the shelter. I wanted to buy food but I was afraid that my daughter would be harmed if we slept in the street. My daughter barely ate for three days. Sometimes people would give us cookies, but I had nothing else to give her. She was sick and weak and cried a lot. Sometimes she fainted. I was afraid that she would die. After three days, I was able to call my sister, who was planning on receiving me here in the United States. She sent me a little money for food.

For the next four months, Rosalia lived in the shelter in Mexicali, waiting for their October court date. She lived the entire time in fear of being kidnapped. Men followed her every time she left the shelter to get groceries and would ask her to go with them. Others in the shelter told her those men would force her into prostitution if she went with them.

On the day before her hearing, Rosalia and her daughter went to the bus station in Mexicali to take a bus to Tijuana. Because the first bus was full, she had to wait for a second bus. Unfortunately, this meant she arrived at the Tijuana port of entry at 4:00 AM, not 3:30 AM.

Because Rosalia and her daughter arrived half an hour late, the CBP officers told her it was too late for her to go to court. A CBP officer told her that he would contact the judge to reschedule a court date and told her to come back on October 10. When she returned three days later, the CBP officers told her there was nothing they could do and told her to go away. In reality, the Immigration Judge had terminated her removal proceedings, though Rosalia was not provided with any notice of this.

Desperate, afraid, and unsure what to do, Rosalia and her daughter crossed between ports of entry a week later. They turned themselves in to Border Patrol officers and asked for asylum again. She was eventually transferred to the SFTRC, where she received a reasonable fear interview. She is currently waiting for an immigration judge to review the decision she received.

MPP does damage to the rule of law and must be ended

As the stories of Lucia and Rosalia show, MPP actively prevents asylum seekers from having their day in court, exposes families and children to homelessness and hunger, and puts them at grave risk of harm.

Lucia's story demonstrates the most extreme problems with MPP. CBP repeatedly violated its procedures by sending her and her daughter back under MPP, given her daughter's clear medical problems. CBP violated this "guiding principle" of MPP both when it sent her back the first time and when it sent her back after her first court hearing. In addition, given that Lucia and her daughter were sent back to Mexico after they had already been kidnapped and sexually assaulted there certainly calls into question the adequacy of the fear screening. And the fact that Lucia was then ordered removed for missing a hearing that she could not attend because she had been kidnapped a second time demonstrates the way that MPP interferes with peoples' opportunities to have a day in court.

Rosalia's story demonstrates the ways that MPP strips people of opportunities and puts them at risk even when they are not the victims of violence. Although Rosalia was not the target of physical harm in Mexico, she did not have food for several days, causing her daughter to faint repeatedly. She also missed her 3:30 AM court hearing, despite efforts to appear on time.

America has always provided refuge for those seeking to flee persecution. But with MPP, our government has abandoned the basic principles of humanitarian protection that are enshrined in our laws and damaged the ideals of due process that underly our system of justice. As these stories show, even people who are desperately trying to follow all of the government's rules find themselves unable to do so because of the dangerous conditions resulting from MPP.

In light of the foregoing facts, we urge the Subcommittee to take steps to end this dangerous and ill-advised program. We thank you for the opportunity to submit this statement, and for the Subcommittee's efforts to engage in a thoughtful conversation.