



**Mayor's Office of
Immigrant Affairs**
Bilta Mostofi
Commissioner

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**Testimony of Deputy Commissioner and General Counsel Sonia Lin
NYC Mayor's Office of Immigrant Affairs**

Before a hearing of the New York City Council Committee on Immigration:

“Oversight - The Dismantling of the U.S. Asylum System and the Impact on Immigrant New Yorkers.”



Thank you to Chair Menchaca, and the members of the Committee on Immigration. My name is Sonia Lin, and I am the Deputy Commissioner and General Counsel of the Mayor's Office of Immigrant Affairs (MOIA).

My testimony today discusses this federal administration's systemic dismantling of the asylum system and how the many barriers that have been erected to prevent those fleeing persecution – including those fleeing gang and domestic violence – from accessing humanitarian relief have harmed not only asylum seekers but also communities in the U.S., including here in New York City. I will highlight the City's response to these attacks, and share how MOIA has worked with City agencies and partners to support New Yorkers affected by the Trump Administration's damaging policies and actions.

Introduction

New York City is home to a large and diverse immigrant population. Immigrants enrich our communities and culture, drive our economy, and are instrumental in all aspects of city life. As the ultimate city of immigrants, we recognize how much immigrants contribute, and we know that a thriving city is closely connected to our immigrant communities' inclusion and participation in civic life.

It is thus in the City's best interest to welcome immigrants and support them as they make this city their home. As we all know, immigrants come to New York from many places, for many different reasons. Unfortunately, for some people, migration is necessitated because of violence and persecution in their home countries. We recognize the vulnerability of those seeking humanitarian protection and are committed to supporting asylum seekers and other humanitarian migrants in connecting to resources and services that will assist them as they build a new life.

Barriers to Asylum Access

Our country has a proud history of welcoming those fleeing violence and persecution and of protecting those who face danger in their home country. Indeed, under federal and international law, immigrants with a well-founded fear of persecution have a right to seek protection by applying for asylum in the U.S. To qualify for asylum, an individual must show that they have a well-founded fear of persecution in their home country based on at least one of the enumerated, protected grounds: race, religion, nationality, political opinion, or membership in a particular social group. This last category is critical because it provides relief to those who fear imminent persecution for a particular reason specific to their experience, but who do not neatly fall into the other four categories. In evaluating whether a petitioner has established their membership in a "particular social group," courts have determined that membership in a "particular social group" recognizes those fleeing from domestic violence as well as those fleeing gang violence.

Through a slew of new policies, proposed rules, and legal interpretations, however, the Trump Administration has systemically undermined our legal and moral commitment to asylum seekers. Those seeking protection now face enormous barriers to even requesting asylum and accessing due process rights in the course of making their applications. Newly arrived asylum seekers also



face the prospect of dehumanizing detention under deplorable conditions at the border or – even more dangerous – a lengthy, uncertain wait in Mexico as their cases are processed in the U.S.

In addition, asylum seekers at the border and in immigration courts throughout the U.S. must navigate a system with enormous backlogs and strict case completion quotas for immigration judges that affect individuals' ability to access counsel and prepare their cases. Furthermore, through the interventions of Attorney General Sessions and Attorney General Barr, asylum seekers have also had to contend with legal changes to asylum eligibility, specifically the narrowing of what constitutes "membership in a particular social group" to exclude domestic violence survivors and those fleeing gang violence, disrupting legal precedent.

As relief through the asylum system becomes harder and harder to access, the stakes for individuals could not be higher. Central America, and particularly the North Triangle – El Salvador, Honduras, and Guatemala – continues to struggle with high levels of gang violence. El Salvador is commonly referenced as a country with some of the most gang violence in the world. In light of these conditions, those who are turned back or deported from the U.S. face serious danger. A recent Human Rights Watch report found that in recent years, at least 138 people deported to El Salvador were subsequently killed, with the majority of these deaths taking place less than a year after those deported returned to El Salvador. Human Rights Watch also confirmed at least 70 cases of sexual assault or other violence perpetrated against those deported. These reports were confirmed through official records, interviews with families, and media accounts, but Human Rights Watch believes that the actual toll is much higher due to underreporting.

Impact on New York City & City Response

The Trump Administration's attacks on asylum seekers exacerbate human suffering by preventing individuals with claims for asylum from pursuing and obtaining relief. They also prevent individuals from achieving more stable lives in the U.S., creating negative repercussions for cities like New York that are home to many asylum seekers and their families.

As local government, we are on the frontlines of connecting our most vulnerable residents to services and resources. We know the importance of supporting immigrant families and how it benefits our city and our work supporting public safety, public health, and the well-being of our communities. By contrast, the Trump Administration's efforts to create a hostile environment for immigrants negatively impact these goals and instead promote fear, confusion, and a lack of trust.

As such, the City has a strong interest in the fairness of the U.S. asylum system, and in supporting asylum seekers in accessing humanitarian relief. Toward that end, we are proud to have worked with the City Council in making historic levels of investment, together \$58 million, in immigration legal services, funding a continuum of services and a wide range of excellent providers, so that immigrant communities, including asylum seekers, can access free, high-quality legal help.

We recognize that these investments are jeopardized by the ways in which the Trump Administration has undermined the asylum system. We have thus engaged in advocacy opposing the attacks on asylum seekers and the asylum system. This advocacy has included the submission of regulatory comments in opposition to various proposed and final rules impacting asylum seekers. Most recently, we submitted a comment in January strongly opposing a proposed rule that would expand bars to asylum. This Proposed Rule would rob individuals of due process and further exacerbate the issue of the United States applying bars to asylum that are far more broad than was ever intended for asylum. Our office has also commented in opposition to Proposed Rules that attack work authorization for asylum seekers, which would compromise the ability of asylum seeking New Yorkers to earn a living.

The City in December also submitted a comment expressing grave concern about U.S. Citizenship and Immigration Services' proposed fee schedule that would, among other things, impose for the first time a fee for asylum applications. Mayor de Blasio co-led a sign-on letter of over 50 mayors opposing this proposed fee schedule. If the change goes into effect, the U.S. would join only three other countries (Australia, Fiji, and Iran) in the world that charge a fee for asylum applications.

Last, we conduct consistent outreach and engagement of immigrant communities about services and resources available to them, and recently partnered with the State and non-profit service providers to make informational materials available to New Yorkers recently granted asylum. In collaboration with the State Office of New Americans and Office of Temporary Disability Assistance and together with the refugee resettlement organizations CAMBA, HIAS, International Rescue Committee, and Catholic Charities, we worked with the Immigration Court and the New York and New Jersey Asylum Offices – both of which serve New York City residents – to make available palm cards about resources dedicated to those granted asylum. Services include: cash assistance and access to benefits, employment help, referrals to educational supports, and additional resources. Asylees in New York can call the Office of New Americans hotline at 1-800-566-7636 to be connected to local agencies for benefits that can play a crucial role in their integration and empowerment.

Thank you for the opportunity to testify before the Committee.

Testimony of New York Legal Assistance Group

Hearing on Res 1173-2019

“Resolution in support of the amicus brief submitted by the District of Columbia and the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, calling on the U.S. Court of Appeals for the D.C. Circuit to maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence.”

Submitted to the Committee on Immigration,

New York City Council

February 10, 2020

Testimony of New York Legal Assistance Group

New York Legal Assistance Group (NYLAG) is a non-profit public interest organization that provides free legal services to New Yorkers experiencing poverty. Our Immigration Protection Unit represents New Yorkers facing a variety of legal obstacles related to immigration, but a large number of these clients seek our assistance in making defensive asylum claims in removal proceedings. Currently, many asylum applicants NYLAG serves are women accompanied by young children, who have fled the Northern Triangle nations of Guatemala, Honduras, and El Salvador to escape gang violence and gender-based violence.

The Trump administration has already subjected people traveling as family units from Northern Triangle countries to expedited timelines for removal hearings and decisions that deprive asylum applicants of their right to due process under the Fifth Amendment. The new rules discussed in this Committee hearing, systematically disfavoring asylum claims based on gang violence and domestic violence, would place an additional profound burden on this same class of asylum applicants. On behalf of our clients, NYLAG thus enthusiastically supports Resolution 1173 in support of amici state governments in *Grace v. Barr*.

In recent years, the population of people immigrating to the United States from Northern Triangle nations has increasingly been composed of women and children.¹ They are often fleeing gang violence, domestic violence, or other forms of violence directed at women.² Moreover, there is significant overlap in their home countries between violence perpetrated by gangs and violence directed at women, for a variety of reasons.³ Contrary to the arguments of the Trump Administration, these are not merely scattered instances of persecution by non-state actors, but rather are pervasive problems, which persist because of prevailing cultural norms in our clients' home countries and because of these governments' inability or unwillingness to hold perpetrators accountable.⁴

¹ Daniel Gonzalez, *The 2019 migrant surge is unlike any we've seen before. This is why*, USA Today, Sep. 25, 2019, <https://www.usatoday.com/in-depth/news/nation/2019/09/23/immigration-issues-migrants-mexico-central-america-caravans-smuggling/2026215001/>; U.S. Customs and Border Control, U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2020, <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>.

² Maria Fernanda Perez Arguello and Bryce Couch, *Violence against women driving migration from the Northern Triangle*, Atlantic Council, Nov. 8, 2019, <https://www.atlanticcouncil.org/blogs/new-atlanticist/violence-against-women-driving-migration-from-the-northern-triangle/>; School of International Studies Task Force. 2017. *The Cycle of Violence: Migration from the Northern Triangle*. Seattle, WA: University of Washington, https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/38696/Cycle%20of%20Violence_Task%20Force%20Report%202017%20FINAL.pdf?sequence=4&isAllowed=y.

³ Tamar Ziff, *The Toxic Intersection of Violence Against Women in the Northern Triangle and the Trump Administration's Anti-Immigration Policies*, The Dialogue, Sep. 11, 2019, <https://www.thedialogue.org/blogs/2019/09/the-toxic-intersection-of-violence-against-women-in-the-northern-triangle-and-the-trump-administrations-anti-immigration-policies/>.

⁴ *Sexual and Gender Based Violence (SGBV) & Migration Fact Sheet*, Kids in Need of Defense, January 2017, <https://supportkind.org/wp-content/uploads/2017/02/SGBV-and-Migration-Fact-Sheet.pdf>.

Currently, as women travelling with children, these asylees are placed on the “Family Unit” docket, which is composed mostly of people from Northern Triangle nations.⁵ In accordance with rules imposed last year,⁶ the Family Unit docket is subject to expedited timelines for hearings and decisions that make it nearly impossible for an immigrant to competently present a defensive asylum case. Specifically, every case on this docket must reach resolution within one year. This is despite the reality that the average asylum case takes two years to reach completion.⁷ This truncated timeframe systematically deprives asylees of sufficient time to find counsel, to gather evidence relevant to their asylum claims, and to pursue viable avenues collateral relief typical in removal proceedings, such as U-Visa status and Special Immigrant Juvenile Status (SIJS).

Below are just a few of many examples of NYLAG clients severely burdened by these timelines. Each one these asylum applicants would be hindered further by the new substantive changes challenged in *Grace v. Barr*⁸:

Nadia is originally from a rural town in Honduras where she worked hard to support her three minor daughters. In Honduras, she was subjected to gender-based violence and gang violence. In 2009, her father murdered her mother. After being released from prison in 2012, he frequently threatened to kill Nadia and her siblings. Nadia escaped to the City of San Pedro Sula and lived there for several years before being targeted by gangs. In 2018, after she returned to her rural town, her father became more aggressive and persisted with similar threats. Having no other place to go to protect her daughters and herself, Nadia came to the U.S., seeking refuge. NYLAG picked up Nadia’s case at the end of October of 2019. As her one-year asylum deadline falls on February 13, 2020, NYLAG is barely able to adequately prepare her for her ultimate hearing.

Alma fled Honduras with her 11-month-old son and traveled through Guatemala and Mexico before seeking asylum in the U.S. in March 2019. In Honduras, Alma was persecuted on account of her race, nationality, and political opinion, and subjected to gang violence and gender-based violence. Alma is a black Garifuna woman who was raised in the United States, which made her particularly vulnerable in Honduras. She endured severe violence from her ex-partner, a member of 18th Street Gang who at one point directed his cousin to stab Alma as a threat. Alma’s mother was active in a Garifuna rights group in Honduras, which also made her a target of violence. NYLAG picked up Alma’s removal case in August 2019, and in January 2020 her individual hearing was scheduled for May 2020. NYLAG has felt significant time pressure in preparing this complex case in

⁵ Senator Jeff Merkley, Shattered Refuge: A U.S. Senate Investigation into the Trump Administration’s Gutting of Asylum, Nov. 2019, pg. 29-30, <https://www.aila.org/File/Related/19032731b.pdf>; U.S. Customs and Border Control, U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2020, <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>.

⁶ See James R. McHenry III, Director of Executive Office for Immigration Review, Memorandum on Tracking and Expedition of “Family Unit” Cases (Nov. 2018), <https://www.justice.gov/eoir/page/file/1112036/download>; James R. McHenry III, Director of Executive Office for Immigration Review, *Memorandum on Case Priorities and Immigration Court Performance Measures* (Jan. 2018), <https://www.justice.gov/eoir/page/file/1026721/download>.

⁷ See Syracuse University, TRAC Immigration, *Immigration Court Backlog Tool* (updated Aug. 2019), https://trac.syr.edu/phptools/immigration/court_backlog/.

⁸ For purposes of anonymity, fictional first names are used.

the time allotted. Preparation involves persuasively arguing for each of these complex grounds for asylum in written briefs, gathering supporting affidavits from the client and from witnesses in Honduras, and gathering and translating varied documentary evidence from Honduras.

Nuriel is an ethnically Garifuna little person from Honduras. In her home country, she was persecuted on account of her race and disability and subjected to gender-based violence. She has two young children with whom she entered the United States in March 2019. Her partner, who was not a little person, was violent toward her in Honduras, especially when drunk, and often in front of her children. She did not call the police, because she was afraid that he would retaliate and because she was not confident that the police would help. She is afraid to return to Honduras out of fear of the same man and the same realities of police indifference to domestic violence against women. She also had trouble financially supporting her children in Honduras, because employers refused to hire her on account of her race and her status as a little person. NYLAG picked up her case in September 2019, and her final hearing is scheduled for July 2020. Preparing Nuriel's complex asylum case within this timeframe has proven extremely challenging.

But it has been even harder to pursue several strong claims for collateral relief, all of which are as a practical matter foreclosed by the limited time period allotted to prepare her case. For instance, she intends to apply to USCIS for a U-Visa on account of sexual violence she experienced after her arrival in the United States; but this requires first obtaining a certification from the New York Police Department that she has been a victim of a crime, and The NYPD certification process is notoriously slow. Her children have viable claims for SIJS status, but obtaining such status requires first obtaining a Special Findings Order from family court, before filing for SIJS with USCIS; and the latter process is severely backlogged. She may be removed before she has the opportunity to assert her legal rights.

Not included among these examples are many cases that NYLAG has been forced to turn down due to truncated timelines. In some instances, clients applying for asylum on the Family Unit docket are not able to find us until one or two months before their hearing, which under current rules cannot be rescheduled to accommodate this reality of delays in finding counsel. Time as well as resource constraints prevent us from preparing a defensive asylum application to any extent under such circumstances; and our ethical obligations as lawyers prohibit us from accepting cases knowing that immovable deadlines preclude us from providing even minimally competent representation.

NYLAG stands with immigrant New Yorkers who have fled gang violence and gender-based violence in their home countries. On behalf of clients directly harmed by the erosion of their substantive as well their procedural legal rights, we wholeheartedly support this resolution.

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TESTIMONY BEFORE THE NEW YORK CITY COUNCIL'S COMMITTEE ON IMMIGRATION

Presented on February 10, 2020

Thank you to Chairperson Menchaca for the opportunity to present testimony on the immense challenges facing vulnerable immigrants seeking refuge in the United States and the federal government's continued assault on longstanding asylum protections. The Legal Aid Society's Immigration Law Unit has been steadfast in its commitment to fighting these harmful policies by ensuring that marginalized New Yorkers, including asylum seekers, have access to quality representation and through impactful federal litigation challenging the pernicious changes to law and policy under the Trump administration.

I. Background on The Legal Aid Society

The Legal Aid Society ("Legal Aid"), the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for private counsel. It is an indispensable component of the legal, social, and economic fabric of New York City — passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform. The Society's unique value is in its ability to go beyond any one case to create more equitable outcomes for individuals, and broader, more powerful systemic changes for society as a whole. Through three major practice areas—Civil, Criminal, and Juvenile Rights—the Society's more than 2,000 attorneys, paralegals, support and administrative staff, and volunteers coordinated by our Pro Bono program, together handle approximately 300,000 cases each year in city, state, and federal courts through a network of borough, neighborhood, and courthouse-based offices in 26 locations in New York City. We provide comprehensive legal services to fulfill our mission that no New Yorker should be denied access to justice because of poverty.

Legal Aid's commitment goes back to our founding in 1876 when we sought to defend the individual rights of German immigrants who could not afford to hire a lawyer. Though Legal Aid has broadened its practice, we have remained committed to our original mission: helping low-income immigrant communities in New York City. Our Civil Practice represents low-income individuals and families facing a range of civil legal issues, including those affecting immigration, housing and homelessness, health care, government benefits and disability benefits, family law and domestic violence, aging, HIV/AIDS, tax and consumer, education, and employment. Over the last fiscal year, the Civil Practice worked on approximately 52,500

individual cases and legal matters, benefitting almost 135,000 low-income children and adults. At the same time, the Society's law reform representation benefits millions of low-income families and individuals in New York City, and the landmark rulings in many of these cases have a statewide and national impact.

Much of our Immigration Law Unit's recent practice has been focused on fighting against federal policy changes that hurt immigrants both on behalf of individual clients and systemically. On the immigrant defense side, this work has taken various forms, including but not limited to filing emergency habeas petitions in federal district court to free our clients from ICE detention and allow them to return home to their families and jobs; filing a federal court class action against the US Department of Homeland Security (DHS) for its wrongful denials of Special Immigrant Juvenile Status to young people aged 18 to 21; filing amicus briefs in several matters; and advocating for separated children and families, including obtaining a Temporary Restraining Order (TRO) preventing the government from moving our minor clients out of Office of Refugee Resettlement (ORR) custody without 48 hours' notice and allowing legal consultation with the child/family to enable informed decisions about their legal rights and potential claims. Following the case's transfer to be litigated in the context of a class action brought by the ACLU, we represented and advocated on behalf of approximately 100 New York children in federal district court in San Diego, until each child's reunification status was satisfactory.

II. The Attorney General Decisions in *Matter of A-B-* and *Matter of L-E-A-* Instill Fear in New York City Immigrant Communities and Deny Access to Asylum for Many Vulnerable New Yorkers

The harsh reality that asylum-seeking family units (adults with children) face cannot be overstated. These families have made the difficult decision to leave everything behind to seek protection in the United States. Now, these families arrive in the United States only to be greeted with further fear and uncertainty, given the ever-changing asylum law landscape under President Trump. The Northern Triangle of Central America – comprised of Guatemala, El Salvador, and Honduras – where most of these families come from, is unable to protect their citizenry from both gender-based violence and the transnational gangs that operate as de facto governments.¹ The Trump administration is trying to turn its back on these vulnerable families in defiance of longstanding asylum law principles and international treaty obligations.

It was only in 2014 that the Board of Immigration Appeals rightfully recognized that domestic violence survivors were a group in need of protection under United States asylum law.² However, in a drastic reversal of course, Attorney General Jeff Sessions issued the decision, *Matter of A-B-*, in order to foreclose asylum relief for domestic violence and gang violence survivors.³ Attorney General Sessions' stated goal in issuing this decision was to deter Central American asylum seekers from coming to the United States.⁴

¹ Amelia Cheatam, *Central America's Turbulent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (Oct. 1, 2019), <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>.

² *Matter of A-R-C-G-*, 26 I&N Dec. 338 (B.I.A. 2014).

³ 27 I. & N. Dec. 316, 316 (A. G. 2018).

⁴ Katie Benner and Caitlin Dickerson, *Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum*, N.Y. TIMES (July 11, 2018), <https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>.

As a non-profit legal services provider, Legal Aid witnesses firsthand the uncertainty and fear that the *Matter of A-B*- decision has instilled in immigrant communities. Many community members first learned through different news sources that Attorney General Sessions had issued a decision excluding domestic violence and gang violence survivors from receiving asylum. Families in immigration court proceedings feared what would happen to them given the change in asylum law. Many families in proceedings had been told that they would qualify for asylum based on the existing law, but after *Matter of A-B*-, their future in the United States became uncertain.

These fears became a reality as the number of asylum grants in immigration court dramatically dropped after Attorney General Session's decision in *Matter of A-B*-. The Transactional Records Access Clearing House (TRAC) analyzed historical data on asylum grant rates in immigration court and found the following:

“Only very recently beginning in June of [2018] did denials climb again. This latest rise corresponded with decisions announced by former Attorney General Sessions that strictly limited the grounds on which immigration judges could grant asylum. Central American women and children fleeing from gang and domestic violence no longer were deemed asylum candidates. Not surprisingly, following this new hard line on immigration enforcement, the rate of asylum denials has recently climbed.”⁵

On July 29, 2019, Attorney General Barr issued *Matter of L-E-A*, another precedential decision that further limits asylum eligibility for individuals who fear being harmed in their home countries on account of a familial relationship.⁶

III. The Following Stories Represent Countless Other New York City Community Members Directly Impacted By *Matter of A-B*-

Ms. B

Ms. B is in immigration proceedings with her teenage son A. She also has two other United States citizen children. Ms. B. fears death at the hands of her former partner in Honduras. An Immigration Judge denied Ms. B's case based on the rationale in *Matter of A-B*-. Prior to *Matter of A-B*-, Ms. B's case would have been easily granted by an Immigration Judge. Ms. B appealed the Immigration Court's denial of her case to the Board of Immigration Appeals. Ms. B's son has an approved petition for Special Immigrant Juvenile and hence a permanent path to remain in the United States. If Ms. B were to receive a final denial in her immigration court case, her son would be able to remain in the United States but she would be forced to return to Honduras where she would be in grave danger.

⁵ Transactional Records Access Clearing House, *Asylum Decisions and Denials Jump in 2018* (Nov. 29, 2018), <https://trac.syr.edu/immigration/reports/539/>.

⁶ *Matter of L-E-A*-, 27 I&N Dec. 581 (A.G. 2019); Brian Rowe, *New decision could impact family-based asylum claims*, NATIONAL CATHOLIC REPORTER, Aug. 16, 2019, <https://www.ncronline.org/news/justice/new-decision-could-impact-family-based-asylum-claims>.

*Ms. Z*⁷

Ms. Z was repeatedly beaten and harassed by her former partner in Honduras. Ms. Z's former partner kidnapped her daughter by force. Ms. Z called the police on several occasions but they always said that they would not interfere with family affairs. Ms. Z fled to the United States with her minor daughter. Ms. Z had her final immigration court hearing prior to the Attorney General Sessions' decision in *Matter of A-B-*. In her case, the Immigration Judge stated his intent to grant her asylum and was only awaiting final security clearance. Then, *Matter of A-B-* came down prior to the next court date where Ms. Z would receive her decision. Ms. Z's lawyer submitted supplemental briefing to support Ms. Z's case, but the Immigration Judge denied her case based on the rationale in *Matter of A-B-*.

Ms. O

Ms. O was brutally raped and physically abused by her now ex-partner in her home country. Eventually, Ms. O tried to leave her abuser and start a new relationship with another person. In response, her abuser asserted ownership over her and raped her. She eventually fled to the United States with her two young children. In 2019, an Immigration Judge denied her case pursuant to *Matter of A-B-*.

IV. The Trump Administration Rushes Asylum-Seeking Families Through Immigration Proceedings, Further Trampling on Their Due Process Rights

In continuation of their assault on vulnerable populations, the Trump administration released a policy requiring immigration court judges in certain jurisdictions to expedite family unit cases.⁸ This November 2018 policy directs immigration court judges to issue a decision in family unit cases within one year after docketing.⁹ The Trump administration expedited family unit cases only months after Attorney General Sessions sought to make it more difficult for family units to gain asylum based on claims relating to domestic violence and gang violence. This policy change is contrary to any notions of due process because it hinders family units' ability to present their asylum claims. It is extremely challenging for these families units to find counsel and prepare their cases in such a short time frame. For immigration service providers, capacity to take on representation of family units even on a normal timeframe is limited because representing family units is often very resource-intensive and time-consuming. Many of these family unit cases require simultaneous representation on an asylum claim as well as navigating the family court process for minor children who qualify for Special Immigrant Juvenile Status (SIJS). Additionally, family units often have a range of complex social needs that further complicate providers' ability to provide effective representation. Many, if not most, survivors of gender violence suffer emotional harm and need to seek mental health treatment in the United States. Finally, many organizations do not have capacity to represent individuals with expedited cases because these hearings are scheduled so quickly and organizations are already booked out far into the future with hearing dates for current clients.¹⁰

⁷ Ms. Z is a client of Catholic Charities Immigrant and Refugee Services.

⁸ EOIR, Tracking and Expedition of "Family Unit" Cases, PM-1904 (Effective Date: Nov 16, 2018).

⁹ *Id.*

¹⁰ Beth Fertig, *Fast-Tracking Families Through Immigration Court*, WNYC NEWS, Apr. 2, 2019, <https://www.wnyc.org/story/fast-tracking-families-through-immigration-court/>.

Because of all of these changes, funding for legal representation and social work support for family units is more crucial than ever. At Legal Aid, our social workers provide critical support for these families and facilitate access to mental health and other services which enable them to stabilize their lives. Having attorneys work collaboratively with social workers has also proven incredibly beneficial to the outcome of our client's cases. Further funding would allow Legal Aid to expand our social work capacity and more fully meet the needs of vulnerable immigrant New Yorkers.

V. The Trump Administration Takes Aim at Child Asylum Seekers and Families

Rampant poverty and violence has driven an unprecedented number of young people to seek protection from the U.S. The number of unaccompanied children entering the United States from the Northern Triangle of Central America has risen dramatically in recent years. The majority of these children and families are asylum seekers fleeing extreme violence, domestic abuse, gangs, and instability in their home countries.¹¹

Not only do the Attorney General's decisions in *Matter of A-B-* and *Matter of L-E-A-* foreclose meritorious asylum claims these young people and families may have, the Trump administration has also implemented numerous other policies shamelessly designed to deter families from seeking asylum at the southern border. These policies have included expanding detention and increasing family separations which have only in turn exacerbated the humanitarian crisis at the border. They have also had devastating consequences for asylum seekers and compromised the safety and wellbeing of vulnerable children seeking protection in the United States. Research shows that harsh immigration enforcement policies have consistently undermined the health, economic security, and overall wellbeing of children in immigrant families.¹² These policies have only further threatened the lives of children and families, many of whom have experienced significant trauma during migration and in their home countries. The trauma and stress children and families experience fleeing persecution is further exacerbated by the trauma of family separation upon arrival in the U.S. The psychological and emotional harms that result from forced separation of a child from their parents can be devastating.¹³

Most notably, in April 2018, the Trump administration implemented a "zero tolerance" policy which directed authorities to detain and criminally prosecute all adults caught entering the U.S. without authorization. As a result, nearly 3,000 minors were forcibly separated by U.S. Immigration and Customs Enforcement (ICE) from their guardians and re-categorized as unaccompanied minors. At least 371 separated children, including infants as young as 9 months old, were brought to New York under the jurisdiction of the Office of Refugee Resettlement (ORR).¹⁴ These children were taken in by social services agencies and placed in temporary foster care shelters, many of which are located here in New York City or in the surrounding counties. In addition to inflicting trauma on these children, the separation of families puts a

¹¹ *Id.*

¹² Heather Koball, Randy Capps, Sarah Hooker, et al., *Health and Social Service Needs of U.S. Citizen Children with Detained or Deported Immigrant Parents*, MPI, 2015, <http://www.migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents>.

¹³ Am. Academy of Pediatrics, *Adverse Childhood Experiences and the Lifelong Consequences of Trauma*, at p. 2 (2014)

¹⁴ Robbins, Liz, *Hundreds of Children Separated Have Quietly Been Sent to New York*, The New York Times <https://www.nytimes.com/2018/06/20/nyregion/children-separated-border-new-york.html>

strain on the child welfare system. Legal Aid represented many of these children and witnessed firsthand the many challenges encountered in the complex reunification process.

The policy of forcibly separating already-traumatized children from their parents drew widespread attention and criticism. In June 2018, the Trump administration halted the “zero tolerance” policy but family separations have continued under the guise of fitting into a narrow exception to the order — that the parent poses a danger to the child, or has a serious criminal record or gang affiliation.¹⁵

In other instances, promises of reunification have been used to coerce noncitizens into “voluntary” deportation. Immigrants have been told they will be reunified with their children only if they agree to consent to their deportations.¹⁶ In some instances, separated parents are being given forms by ICE labeled “Separated Parents Removal Form,” even though effectuating the court-ordered reunification process bars any threats to make reunification conditional upon voluntary deportation.¹⁷ Parents are also inaccurately told that they do not have the right to pursue their asylum claims, in an effort to coerce separated families into voluntary deportation upon reunification. Desperate to be reunified with their families, noncitizen children and parents might give in to these inappropriate tactics without fully understanding their rights. Reunification cannot be made conditional on “voluntary” repudiation of viable forms of humanitarian immigration relief, and noncitizen families must be safeguarded against such potential abuses.

In June of 2019, the Trump administration moved to significantly limit vital protections for certain asylum-seeking children under the Trafficking Victims Protection Reauthorization Act (TVRPA) by reversing a longstanding policy that gave USCIS jurisdiction over asylum applications filed by unaccompanied minors. The new policy was adopted without advance notice or opportunity for public comment and required asylum officers to re-determine whether an asylum applicant who was already found to be an “unaccompanied minor” continued to meet the statutory definition of that term on the date of filing for asylum. Under the policy, unaccompanied minors who filed their asylum applications after turning 18 or after being reunited with a parent or legal guardian, faced the prospect of having USCIS refuse to adjudicate their application and having to raise their claims only in an adversarial removal proceeding. Additionally, affected children would have to file their asylum applications within one year of arriving in the United States, even though the TVRPA excepts unaccompanied children from the one-year deadline. A district court judge has blocked USCIS from implementing this policy and directed the government to retract any adverse decision in an individual case and reinstate consideration of such cases.

As advocates continue to contend with the implications of these misguided and harmful policies, it has become clear that children asylum seekers and unaccompanied minors represent a particularly vulnerable immigrant group. Despite the fact that noncitizen children face a

¹⁵ Bala, Nila and Rizer, Aruther, *Trump's family separation police never really ended. This is why.*, NBCNews <https://www.nbcnews.com/think/opinion/trump-s-family-separation-policy-never-really-ended-why-ncna1025376>

¹⁶ Samuels, Brett, *Migrants Told They'll Be Reunited with Children if They Sign Voluntary Deportation Order*, The Hill, <http://thehill.com/latino/393856-migrants-told-theyll-be-reunited-with-children-if-they-sign-voluntary-deportation>

¹⁷ Chapin, Angelina, *ICE Officials Are Pressuring Separated Parents to Sign Deportation Forms*, https://www.huffingtonpost.co.uk/entry/immigration-officials-pressure-separated-parents-deportation-form_us_5b3c060ee4b09e4a8b28656e?guccounter=1

complex immigration system with numerous hurdles, including cultural and language barriers and the susceptibility of their age, this vulnerable population is not guaranteed a right to counsel. Noncitizen children are not entitled to a court-appointed attorney during immigration proceedings, making it vastly more likely their claims will fail if they are unable to obtain representation. Children who are left to face immigration proceedings on their own have almost no chance of successfully presenting their case and winning asylum (less than ten percent), whereas those who are able to obtain counsel are five times more likely to succeed on their claim.¹⁸ Legal Aid urges the Council to take steps to ensure these children are receiving effective legal support and provide the necessary funding for these critical legal services.

VI. To Deter Immigrants from Accessing Benefits That They Rightly Deserve, the Trump Administration Seeks to Drastically Increase Application Filing Fees and Eliminate Fee Waivers

Another set of draconian policies the Trump Administration has proposed is to drastically increase fees and eliminate fee waivers, which would overly burden our clients when applying for commonly-accessed immigration benefits.¹⁹ If these changes were adopted, many of our clients would be forced to take on financial debt to apply for immigration benefits for which they are eligible; others will simply not apply for benefits at all. Our clients will be left marginalized from civic engagement and vulnerable to exploitation and separation from their communities and families. Legal Aid views these proposed increases as yet another addition to the litany of attacks that the immigrant community is forced to endure under the Trump regime.

We are uniquely concerned about the harm that increased fees would cause to our most vulnerable client populations – namely, asylum seekers who have very recently escaped persecution, children who have been the victims of abuse, neglect, and abandonment, and our clients with disabilities and chronic mental health conditions.

USCIS plans to impose a \$50 fee for those filing affirmative asylum applications, which would inhibit our most vulnerable asylum-seeking clients from submitting applications.²⁰ Legal Aid's clients who apply for affirmative asylum often apply immediately after escaping horrific abuse and persecution. Some of our clients arrive in the United States with no assets, having fled with nothing more than the shirts on their backs. Others are children who are dependent on the adults with whom they live who are also struggling financially. We also represent clients who are trafficking victims who are often leaving behind years of control and exploitation, and have limited funds as a result. Even a \$50 application fee would make this application inaccessible.

USCIS also plans to eliminate fee waivers for most immigration forms, unless the law specifically requires the agency to grant a waiver or the agency has exercised their favorable discretion under parameters in the proposed regulation.²¹ Fee waivers allow our most needy clients to access their immigration benefits without regard to cost. But under the proposed

¹⁸ Arulanantham, Ahilan, *Immigrant Children Do Not Have the Right to an Attorney Unless They Can Pay*, *Rules Appeals Court*, American Civil Liberties Union, <https://www.aclu.org/blog/immigrants-rights/deportation-and-due-process/immigrant-children-do-not-have-right-attorney>

¹⁹ U.S. Citizenship and Immigration Services Fee Schedule (hereinafter "Proposed Rule"), 84 Fed. Reg., 62326-27 Table 19 (proposed Nov. 14, 2019) available at <https://www.federalregister.gov/documents/2019/11/14/2019-24366/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>

²⁰ Proposed rule, 62318-20, Section V. P. 1.

²¹ Proposed rule, 62299, Section 3.A

changes, fee waivers would no longer be available for commonly-used immigration forms such as applications for work permits, adjustment of status to permanent resident, replacement of green card, and naturalization.²²

In addition to getting rid of fee waivers for certain applications, USCIS proposes to drastically increase their filing fees making immigration benefits like naturalization less accessible for low-income people. USCIS purports to justify these increased fees in the name of administrative efficiency. But since 2010, USCIS has increased filing fees by weighted averages of 10 percent and then later by another 21 percent, but has not achieved any associated improvement in processing times, backlogs, or customer service. During that same period, USCIS' backlog has increased by more than 6,000 percent,²³ the overall average case processing time had increased 91 percent between 2014 and 2018,²⁴ and USCIS has removed language from its resources that stated any commitment to customer service.²⁵ USCIS's suggestion that their organizational shortcomings can be remedied through the collection of additional money in fees paid by immigrant applicants is plain wrong.

In this light, Legal Aid views these proposed fee increases as a deliberate attack on low-income immigrants, in an effort to limit their security and civic participation.

VII. The Administration Plans to Expand Already Draconian Rules To Further Deny Asylum To Vulnerable Populations

Continuing with its assault on the rights of those seeking refuge in the United States, the Trump Administration has proposed a set of punitive rules that would radically expand bars to asylum eligibility based on an applicant's prior involvement with the criminal justice system.

Bars to asylum eligibility based on criminal conduct already exist, and those bars are already overly harsh and sweeping in scope.²⁶ For instance, if an asylum-seeker's conviction is considered an "aggravated felony," it is *per se* a "particularly serious crime" and serves as a mandatory bar to asylum²⁷ -- the adjudicator is bound to deny asylum, even to an applicant who has a legitimate fear of persecution in her home country. The "particularly serious crime" bar to asylum was originally envisioned only for extreme circumstances where the applicant had been convicted of an especially abhorrent crime, such as murder or rape.²⁸ But the "aggravated felony" jurisprudence has metastasized to encompass much less serious offenses, such as

²² Proposed rule, 62299, Section 3.A.

²³ See *Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services: Hearing before the House Subcomm. on Immigration of the H. Comm. On the Judiciary*, 116th Cong. (2019) (joint written testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, USCIS, and Michael Valverde, Deputy Associate Director, Field Operations Directorate, USCIS).

²⁴ Am. Immigr. Law. Assoc., AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels under the Trump Administration (2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

²⁵ See Max Greenwood, *Immigration Agency Removing 'Nation of Immigrants' from Mission Statement*, THE HILL, Feb. 22, 2018, <https://thehill.com/homenews/administration/375112-us-immigration-agency-to-remove-reference-to-us-as-nation-of>; see also Policy Alert: USCIS Public Services No. PA-2019-03 (May 10, 2019).

²⁶ The existing categorical bars to asylum eligibility are discussed in detail on p. 69641 of the Proposed Rules.

²⁷ 8 U.S.C. §§ 1158(b)(2)(A)(ii) and (B)(i).

²⁸ See Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951, Article 33*, 142(9) (UNHCR Div. of Int'l Prot. Ed. 1997) (1963).

misdemeanor shoplifting, simple misdemeanor battery, bail jumping or the sale of counterfeit DVDs.²⁹

Rather than reining in the criminal bars to asylum, the Trump Administration proposes even more obstacles to qualifying for asylum, as follows: (1) *any* conviction of a felony offense; (2) any conviction for “smuggling or harboring” under 8 U.S.C. § 1324(a), even if the asylum seeker committed the offense for the purpose of bringing her own spouse, child or parent to safety; (3) any conviction for illegal reentry under 8 U.S.C. § 1326; (4) any conviction for an offense “involving criminal street gangs,” with the adjudicator empowered to look to any evidence to determine applicability; (5) any second conviction for an offense involving driving while intoxicated or impaired; (6) any conviction *or mere accusation of conduct* for acts of battery involving a domestic relationship; (7) and any conviction for several newly defined categories of misdemeanor offenses, including *any* drug-related offense except for a first-time marijuana possession offense, any offense involving a fraudulent document, and fraud in public benefits.³⁰

These draconian measures would further perpetuate the criminalization of immigration and poverty. As a public defender organization, Legal Aid sees intimately how our criminal laws disproportionately target poor people of color, as do our immigration laws. The Administration’s proposed expansion of asylum bars would further punish poor people of color ensnared in a racist criminal justice system. Turning away asylum-seekers based on the proposed regulatory changes would unnecessarily put vulnerable people at risk of danger and even death.

The Board of Immigration Appeals has cautioned that, “in light of the unusually harsh consequences which may befall a [noncitizen] who has established a well-founded fear of persecution; the danger of persecution should generally outweigh all but the most egregious of adverse factors.”³¹ The Administration’s proposals grossly skew this calculus to penalize asylum-seekers for the most minor offenses or mere accusations of misconduct.

VIII. We Must Use Federal Litigation to Combat the Trump Administration’s Anti-Immigrant Policies and Practices

Yet another difficulty our clients in removal proceedings face is that under the Trump Administration, the immigration court system has become increasingly politicized. As a result, the agency is much more likely to implement the administration’s nativist and anti-immigrant agenda rather than uphold the rule of law.

One way in which agency decision-making has become increasingly politicized is that the Attorney General has drastically expanded his use of the power to certify cases to himself, and

²⁹ 8 U.S.C. § 1101(a)(43). *See also* Nancy Morawetz, “Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms,” *Harvard Law Review* 113 (2000): 1939-40 (criticizing the “Alice-in-Wonderland-like definition of the term ‘aggravated felony’”); Melissa Cook, “Banished for Minor Crimes: The Aggravated Felony Provisions of the Immigration and Nationality Act as a Human Rights Violation,” *Boston College Third World Law Journal* (2003): 293.

³⁰ Proposed Rule, 84 Fed. Reg. 69640, 69645 available at <https://www.federalregister.gov/documents/2019/12/19/2019-27055/procedures-for-asylum-and-bars-to-asylum-eligibility>

³¹ *Matter of Pula*, 19 I.&N. Dec. 467, 474 (BIA 1987).

used this power to change the face of immigration law. While under President Obama, the Attorney General certified only four cases in eight years,³² the Attorneys General under President Trump have, in just three years, already issued at least nine precedential decisions,³³ steadily chipping away at the rights of immigrants in removal proceedings. *Matter of A-B-* and *Matter of L-E-A-* were both issued after former Attorney General Jefferson B. Sessions certified those cases to himself.

Moreover, the Board of Immigration Appeals, which sits in appellate review of decisions issued by immigration judges, has itself increasingly become a politicized body whose decision-making reflects the administration's immigration priorities.³⁴ The administration has packed the Board by increasing its membership from 17 to 21 members³⁵ while installing new members who, as immigration judges, had very high rates of asylum denials.³⁶

As a result of these changes, Legal Aid's clients are increasingly unable to access justice before the agency. To ensure that they get a fair day in court, Legal Aid is at the forefront of litigation in federal court—all the way from the district courts to the United States Supreme Court—challenging long-standing changes to law and policy under the Trump administration.

We are doing so in a myriad of ways. First, Legal Aid's Immigration Law Unit has grown its "federal practice" from one attorney with no dedicated paralegal support to four attorneys and a paralegal, all of whom work primarily on cases pending before the federal district and circuit courts. Amongst our many cases, we have appeals pending before the Second Circuit that touch on the issues raised by *Matter of A-B-*, and *Matter of L-E-A-*. We intend to continue to pursue appeals that will limit the damage from these and other new Attorney General and Board of Immigration Appeals precedents.

We also regularly file habeas corpus cases challenging our clients' arbitrary and often prolonged incarceration while they litigate their immigration cases. Asylum-seekers, many of whom have suffered trauma, are at high risk of suffering severe irreparable harm when they are imprisoned by ICE.³⁷ By securing their release from unnecessary detention, we are able to ensure that our clients can litigate their immigration cases while at liberty.

³² See Jeffrey Chase, The AG's Certifying of BIA Decisions (Mar. 29, 2018), available at <https://www.jeffreyschase.com/blog/2018/3/29/the-ag-certifying-of-bia-decisions>.

³³ *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018); *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018); *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018); *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018); *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019); *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019); *Matter of Thomas and Thompson*, 27 I&N Dec. 674 (A.G. 2019); *Matter of Castillo Perez*, 27 I&N Dec. 664 (A.G. 2019).

³⁴ Recent precedential decisions the BIA has issued that rollback protections for immigrants are *Matter of J.J. Rodriguez*, 27 I&N Dec. 762 (B.I.A. 2020); *Matter of Mayen*, 27 I&N Dec. 755 (B.I.A. 2020); *Matter of O-F-A-S-*, 27 I&N Dec. 709 (B.I.A. 2019); *Matter of Siniauskas*, 27 I&N Dec. 207 (B.I.A. 2018).

³⁵ Katrina Braun, The Trump Administration is using immigration courts to advance its deportation agenda (Oct. 22, 2019), available at <https://www.acluofnorthcarolina.org/en/news/trump-administration-using-immigration-courts-advance-its-deportation-agenda>

³⁶ See Tal Kopan, AG William Barr promotes immigration judges with high asylum denial rates, S.F. Chronicle (Aug. 23, 2019), available at <https://www.sfchronicle.com/politics/article/AG-William-Barr-promotes-immigration-judges-with-14373344.php>.

³⁷ Numerous studies document the adverse health impacts of detention on asylum-seekers. See e.g., See Katy Robjant, Rita Hassan & Cornelius Katona, Mental Health Implications of Detaining Asylum Seekers: Systematic

Finally, attorneys in our Immigration Law Unit have teamed up with our colleagues in Legal Aid’s Law Reform Unit to bring class action litigation seeking to enjoin some of the Trump administration’s most pernicious and destructive policies. These challenges include arbitrary denial of relief to young immigrants, unjustified changes to the ‘public charge’ rules of admissibility, and ICE’s policy and practice of arresting non-citizens during their appearance in state courts.³⁸

IX. Conclusion

Taken together, the policy and practice changes of the Trump Administration constitute a gratuitous and harsh attack on immigrants in general, and on asylum-seekers in particular. The Legal Aid Society urges the Council to increase funding for legal service providers, including continuing to fund our work in federal court and expanding social work capacity, so that we have the personnel and resources necessary to handle increasingly complex cases in an increasingly hostile environment. We also urge the Council to support programs to assist low-income immigrants with the increasingly burdensome cost of accessing immigration benefits.

Respectfully,

The Legal Aid Society

Review, 194 BRIT. J. PSYCHIATRY 306 (2009), available at <http://bit.ly/2xFo3wx> (reviewing ten studies on detained asylum-seekers in the U.S., U.K., and Australia)

³⁸ *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019) (granting summary judgment in challenge to arbitrary denial of special immigrant juvenile status (“SIJS”) to youth in New York aged 18 to 21); *Make the Road v. Cuccinelli*, -- F. Supp. 3d ---, 2019 WL 5484638 (S.D.N.Y. Oct. 11, 2019) (granting preliminary injunction in challenge to new rule by the U.S. Department of Homeland Security regarding ineligibility for admission or adjustment of status for individuals deemed likely to become “public charges”); *stay granted*, ---S. Ct.--, 2020 WL 413786 (Jan. 27, 2020); *Make the Road v. Pompeo*, 19-cv-11633 (filed Dec. 19, 2019) (challenging a new rule by the U.S. Department of State, revisions to the Foreign Affairs Manual, and a Presidential Proclamation on health insurance for intending immigrants, all aimed at increasing public charge denials for individuals outside the U.S.); *Doe v. U.S. Immigration and Customs Enforcement*, 19-cv-8892 (filed Sep. 25, 2019) (challenging ICE’s policy and practice of arresting non-citizens during their appearance in state courts).

Testimony of Immigrant Justice Corps

on

**THE DISMANTLING OF THE U.S. ASYLUM
SYSTEM AND THE IMPACT ON IMMIGRANT
NEW YORKERS**

Presented before

**The New York City Council
Committee on Immigration**



Presented by:

**Immigrant Justice Corps
Jojo Annobil, Executive Director**

February 10, 2020



Testimony of Immigrant Justice Corps on The Dismantling of the U.S. Asylum System and the Impact on Immigrant New Yorkers

February 10, 2020

Immigrant Justice Corps is delighted to submit testimony regarding the Trump administration's systematic efforts to dismantle our asylum system and, perhaps more pertinent for today's discussion, the impact on New Yorkers. As a non-profit institution dedicated to ensuring that every immigrant has meaningful access to justice, we are very grateful to the New York City Council for continuing to uphold our city's longstanding tradition of welcoming and supporting our fellow immigrants—from those who have called our city their home for years to newcomers who, for unimaginable reasons, recently journeyed in search of peace and shelter in our neighborhoods. It is with that tradition in mind that IJC submits this testimony to stress two key points: (1) that while it may seem like changes to our asylum system are limited to our nation's southern border, the cumulative and real-life impact is being felt on the streets of our city; and (2) locally, this body must continue to show its leadership in supporting programs that mitigate the harmful nature of this administration's policies.

Organizational Information

Immigrant Justice Corps (IJC) is the country's first and only fellowship program dedicated to meeting the need for high-quality legal assistance for immigrants seeking a path to lawful status, citizenship and fighting deportation. IJC's goal is to use legal assistance to lift immigrant families out of poverty – helping them access secure jobs, quality health care and life-changing educational opportunities. Inspired by the Katzmann Study Group on Immigrant Representation,¹ IJC brings together the country's most talented law school and college graduates, connects them to New York City's best legal and community institutions, leverages the latest technologies, and fosters a culture of creative thinking that produces new strategies to reduce the justice gap for immigrant families, ensuring that immigration status is no longer a barrier to social and economic opportunity. Now in our sixth year, IJC has trained and placed more than 200 Justice Fellows (law graduates) and Community Fellows (college graduates) in support of our mission to increase both the quantity and quality of immigration legal services. All our fellows are lawyers, law school graduates, Department of Justice accredited representatives, or in the process of becoming accredited representatives. Today, an IJC fellow can be found on almost every corner of our country, from

¹ See Steering Comm. of the N.Y. Immigrant Representation Study Report, *New York Immigrant Representation Study Report, Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings* (pt. 1), 33 CARDOZO L. REV. 357 (2011).

New York to California and from Texas to Minnesota. Thus, while we are headquartered in New York City, our collective experience is national in scope.

General Comments

Since IJC's founding in 2014, our fellows have provided legal services to over 70,000 immigrants and their families and have been able to help immigrants secure lawful status or avoid deportation in 93% of these cases. Furthermore, since 2015, we have—on several occasions—deployed our staff and fellows to meet the need of immigrant communities across the country, including to represent asylum-seeking families in detention centers in Texas and to assist migrants who, due to the Trump administration's policies, have been forced to remain in Mexico during the pendency of their immigration proceedings. Thus, our organization is intimately familiar with asylum law and procedures, making us uniquely qualified to comment on the profound changes we are witnessing locally and nationally.

To be sure, immigration law and court procedures have always been challenging. But what we are seeing today, locally and nationally, is the purposeful weaponization of our immigration system. For those who depend on a justice-oriented system based on impartiality, transparency, and inclusion to decide who merits asylum, such aspirations have been surgically excised from immigration proceedings. Indeed, in three short years we have witnessed the steady implementation of procedural and substantive policies built with a single purpose: to render asylum illusory for more and more people, including New Yorkers. Thus, while the City Council has taken great strides to improve the lives of immigrants and their families in our city—indeed, setting an example for the nation in providing universal representation to detained immigrants—this body must remain vigilant of ongoing changes to our asylum system.

A. Through a Concerted Effort, the Trump Administration has Implemented More than a Dozen Substantial Changes to our Asylum System.

In hindsight, the roadmap for many of the policies that produced the current state of our asylum system was revealed just five days after President Trump's inauguration. Indeed, on January 25, 2017, President Trump signed a series of Executive Orders relating to immigration, one of which became infamous for its focus on banning nationals from Muslim-majority countries.² However, on that same day, he also signed Executive Order 13767.³ Among other things, Order 13767 called for:

1. "Expedit[ing] determinations of apprehended individuals' claims of eligibility to remain in the United States";⁴

² See generally Executive Order No. 13769, *Protecting the Nation from Foreign Terrorist Entry into the United States*, 82 Fed. Reg. 8977 (2017); *Trump v. Hawaii*, 138 S. Ct. 2392, 2403, (2018) (upholding subsequently modified iterations of the same ban).

³ See Executive Order 13767, *Border Security and Immigration Enforcement Improvements*, 82 Fed. Reg. 8793 (2017).

⁴ *Id.*

2. “Ensur[ing] that aliens described in section 235(b)(2)(C) of the [Immigration & Nationality Act] are returned to the territory from which they came pending a formal removal proceeding”;⁵ and
3. “[E]nd[ing] the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens.”⁶

Taken together, these directives—though disguised in technocratic terminology—set the stage for more than a dozen vital policy changes to our asylum system. In my testimony today, I will focus on just a few to illustrate how these three directives signaled the rapid erosion of principles and safeguards meant to protect asylum seekers.⁷ My hope is to highlight the many ways in which these policies have been designed to work in tandem, rather than in isolation, to affect asylum-seekers everywhere, including New York.

i. The vanishing value of impartiality and independence in Immigration Courts.

First, the Trump administration leveraged one of our immigration system’s greatest hidden flaws: the fact that, unlike most impartial court systems, our immigration courts are by statute and design, subject to review by the U.S. Attorney General and thus agents of the Department of Justice.⁸ Indeed, not too long after Order 13767 directed the federal government to “expedite” the determination of whether someone is eligible to remain in the United States, then-Attorney General Jeff Sessions unilaterally reviewed and decided a case called *Matter of E-F-H-L*.⁹ This case had been decided by an appellate immigration tribunal in 2014 and was considered binding precedent within the immigration court system.¹⁰ Originally, back in 2014, *Matter of E-F-H-L* solidified what most immigration courts, scholars, and likely most Americans, viewed as an uncontroversial hallmark of any impartial and transparent judicial proceeding: a person’s right to be heard in the face of impending governmental action. Specifically, this case ensured that all asylum-seekers had the “opportunity to provide oral testimony and other evidence” in support of their claim.¹¹ But without notice to the public and in a single-page order, the Attorney General overruled this case.¹²

Consistent with Executive Order 13767, the Trump administration immediately seized on the quickest way to “expedite” the removal of asylum-seekers: eliminating the need to hear from them.

But the Trump administration went further. A month after vacating *Matter of E-F-H-L*, the Department of Justice issued a directive imposing case-completion quotas on all immigration

⁵ *Id.* at 8795.

⁶ *Id.*

⁷ A table of these substantial changes is annexed as Appendix A.

⁸ See 8 U.S.C. §1103(a)(1); 8 C.F.R. §1003.1(h)(1) (describing the Attorney General’s authority to certify cases from the immigration court system to himself for review); see also Amit Jain, *Bureaucrats in Robes: Immigration “Judges” and the Trappings of “Courts”*, 33 Geo. Immigr. L.J. 261, 292 (2019) (recounting an Immigration Judge’s experience that “Justice Department officials had ‘role confusion’ in that they viewed IJs [Immigration Judges] as ‘attorneys representing a client, namely, the U.S. government.’”).

⁹ 27 I&N Dec. 226 (A.G. 2018).

¹⁰ *Matter of E-F-H-L*, 26 I&N Dec. 319 (BIA 2014).

¹¹ *Id.* at 324.

¹² *Matter of E-F-H-L*, 27 I&N Dec. 226 (A.G. 2018).

judges, including those serving in the New York City Immigration Court.¹³ Later that year, in November 2018, the Department of Justice instructed immigration judges to impose a new heightened standard for adjournments requested by immigrants seeking asylum.¹⁴ DOJ coupled those instructions with another memo calling for the expediting of “Family Unit” or “FAMU” cases—largely asylum-seekers from Central America—in ten immigration courts, including New York.¹⁵ Almost overnight, it became common practice to see many (confused) asylum-seekers in New York receiving a four-page hearing notice in English in which their preliminary and final hearings were scheduled mere months apart. Perhaps equally troubling, some cases that had been pending before the “FAMU memo” was published were accelerated.

ii. **Forcing Asylum Seekers to Wait in Mexico & Expanding Expedited Removal Authority.**

That same month, in November 2018, the White House issued Proclamation 9822, which sought to prohibit asylum for any individual who, prior to their arrival in the United States, had not presented themselves at a port of entry along the southern border.¹⁶ Unknown to most of the public, however, was the fact that the Department of Homeland Security (“DHS”) had been, since at least September 2018, “regulating the flow of asylum-seekers at ports of entry through ‘metering,’” a policy which allowed border patrol “officers to stand at the international line [between Mexico and the U.S.]” and stop would-be asylum seekers before they could enter a port of entry.¹⁷ Taken together, therefore, the federal government was, with one hand, trying to penalize asylum-seekers if they did not present themselves at ports of entry, but with the other hand, thwarting their arrival at those ports.¹⁸

Two months later, in January 2019, DHS intensified its efforts to virtually seal off the southern border to folks seeking asylum. Dubbed the “Migrant Protection Protocols,” DHS’s new policy forced individuals seeking asylum to wait in Mexico while their immigration court hearings advanced in “tent courts.” Unlike most American courts, these tent courts operate under a shroud of secrecy along the southern border.¹⁹ Sadly, as of January 21, 2020, the federal government has forced over 50,000 people, “including at least 16,000 children and nearly 500 infants under the

¹³ EOIR Performance Plan, Adjudicative Employees, <http://cdn.cnn.com/cnn/2018/images/04/02/immigration-judges-memo.pdf>; see also Tal Kopan, *Justice Department rolls out case quotas for immigration judges*, CNN, April 2, 2018, <https://www.cnn.com/2018/04/02/politics/immigration-judges-quota/index.html>.

¹⁴ Guidance Regarding the Adjudication of Asylum Applications Consistent with INA § 208(d)(5)(A)(iii), James R. McHenry III, Director of EOIR, November 19, 2018, <https://www.justice.gov/eoir/page/file/1112581/download>.

¹⁵ Tracking and Expedition of “Family Unit” Cases, James R. McHenry III, Director of EOIR, November 16, 2018, <https://www.justice.gov/eoir/page/file/1112036/download>.

¹⁶ Proclamation 9822, Addressing Mass Migration Through the Southern Border of the United States, 83 Fed. Reg. 57661 (2018).

¹⁷ Office of Inspector General, Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84 (Sept. 27, 2018) available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

¹⁸ Of course, the law has—for good reason—never conditioned asylum on a person’s manner of entry, which is why ultimately this proclamation was enjoined by a federal court. See *O.A. v. Trump*, 404 F. Supp. 3d 109, 147 (D.D.C. 2019); 8 U.S.C. § 1158(a)(1) (“[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival) irrespective of such alien’s status, may apply for asylum.”).

¹⁹ Molly Hennessy-Fiske, *Tent courts open as latest hurdle for migrants seeking asylum in the U.S.*, L.A. TIMES, Sept. 16, 2019

age of one, to return to Mexico” under this policy.²⁰ Given the secretive and remote nature of these courts, it is unsurprising that “[n]inety-six percent of the individuals stranded by the Trump Administration in Mexico lack a U.S. lawyer to help them apply for asylum.”²¹

Importantly, while it may seem like this policy’s impact was limited to our southern border, it was not. In fact, many of the affected migrants have family ties in places like New York City. Indeed, our organization represented a father—who we helped win asylum last year—whose 19-year old daughter was subjected to this policy and forced to remain in Mexico. The stress and anxiety he felt after hearing that his daughter would be forced to stay in Mexico was more than justified. Indeed, “there are at least 816 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against asylum seekers and migrants forced to return to Mexico.”²²

Some might say all of this was Kafkaesque. But that would imply a level of fantasy to what, unfortunately, was and continues to be all too real.

Along the same lines of limiting access to asylum, in July 2019, DHS announced a pair of regulatory rules with nationwide effect. The first rule added a new ground of asylum ineligibility for people who, prior to reaching the United States, failed to seek protection while passing through a third-country during their journey to the U.S.²³ The second rule expanded the use of “expedited removal,” a process by which a person can be removed without ever seeing a judge, to cover much of the interior of the United States.²⁴ While both rules are subjects of ongoing litigation, the Supreme Court has allowed the federal government to enforce the “third-country” asylum bar while that case makes its way through the courts.²⁵

iii. **Changing Who Qualifies for Asylum.**

Simultaneously, while all these procedural changes were put into effect, the Trump administration began revising key substantive areas of asylum law that had favored foreign nationals seeking protection in the United States.

In the summer of 2018, for example, the Attorney General—again using his unique quasi-judicial authority over immigration judges—issued a decision called *Matter of A-B-*, which overruled a prior precedential case that had recognized a specific type of gender-based asylum claim.²⁶ A year later, in the summer of 2019, Attorney General William Barr built off *Matter of A-B-* and decided *Matter of L-E-A-*, where he overruled another precedential decision that had recognized certain family-based asylum claims.²⁷ Like a closed feedback loop, these cases achieved their likely goal of eliminating a significant pool of people who would have qualified for asylum under pre-existing

²⁰ Human Rights First, *Trump Administration Sending Asylum Seekers and Migrants to Danger*, Jan. 21, 2020, available at <https://www.humanrightsfirst.org/campaign/remain-mexico>

²¹ *Id.*

²² *Id.*

²³ Asylum Eligibility and Procedural Modifications, 83 Fed. Reg. 33829 (2019).

²⁴ Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (2019)

²⁵ *Barr v. East Bay Sanctuary Covenant*, 140 S. Ct. 3 (2019).

²⁶ *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018).

²⁷ *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019).

law. Indeed, these cases contributed to a success rate of 1% for cases subjected to the “Remain in Mexico” policy mentioned earlier.²⁸

And New York has not been immune to this trend. A few blocks from City Hall, the “asylum denial rate in the New York City immigration court rose from a mere 15 percent in fiscal year 2016...to 44% in fiscal year 2019,” which, put into context, amounts to a 192% total increase in asylum denials.²⁹

More recently, the federal government published a proposed regulation that would add seven new grounds of ineligibility for folks seeking asylum.³⁰ And for the first time ever, the federal government plans on charging a fee for asylum,³¹ while simultaneously increasing the amount of time, to about a year, before an asylum-seeker is eligible to receive work authorization.³² While some of these regulations have not gone into effect just yet, the net impact has been to amplify the climate of fear most asylum-seekers have come to know under this administration.

B. Despite the concerted effort to dismantle our asylum system, New York City should continue to mitigate the harm being inflicted on immigrant communities.

Given the changes to our asylum system, the rapid acceleration of many cases, and the increased enforcement tactics that have provoked a climate of fear in immigrant communities,³³ it is important for the City Council to continue its steadfast support for immigrants and programs that can mitigate the damage caused by changes to our asylum system.

For instance, because of the acceleration I mentioned earlier of “Family Unit” cases in New York’s Immigration Court, many asylum-seeking New Yorkers are having a hard time finding representation. I speak from experience. Indeed, with IJC fellows in over 30 different host organizations throughout New York City, we see firsthand the struggle to meet the need for qualified legal representatives. For example, many are being turned away for lack of capacity. In turn, and perhaps by design, the absence of competent counsel in accelerated asylum hearings is contributing to a higher rate of denial.

Yet, in light of the systemic changes I mentioned earlier, people seeking asylum need competent counsel more than ever. By way of example, in one of the cases IJC handled last year, our clients (a mother and child) from Central America had their “final merits hearing” accelerated without notice by about a whole year. When we fortunately yet inadvertently learned of this change, it upended our client’s timeline for obtaining evidence from her home country, and it affected our ability to plan for the defense of other clients in their removal cases. Thus, rather than planning for a trial in a year, our client had to prepare for a trial in less than 2 months. But-for the fact that she had legal representation through our program, however, she would not have been able to file an

²⁸ AP, *US Finds Ally in Mexico as Asylum Policy Marks First Year*, N.Y. TIMES, Jan. 30, 2020.

²⁹ Paul Moses, *Here’s Why the Rejection Rate for Asylum Seekers Has Exploded in America’s Largest Immigration Court in NYC*, THE DAILY BEAST, Dec. 2, 2019.

³⁰ Procedures for Asylum and Bars to Asylum Eligibility, 84 Fed. Reg. 69640 (2019).

³¹ Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES, Nov. 8, 2019.

³² Asylum Application, Interview, and Employment Authorization for Applicants, 84 Fed. Reg. 62374 (2019).

³³ See e.g., Teo Armus, *ICE Officers shot a man in the as he tried to intervene in an arrest*, WASHINGTON POST, Feb. 7, 2020 (documenting ICE’s shooting of a man outside his front door during an arrest).

emergency motion to adjourn her accelerated trial that met the federal government’s new stringent standard—which I mentioned earlier—for granting adjournments. Moreover, she would not have been able to rapidly identify and gather the evidence that would prove crucial to her case. Nor would she have been able to explain to the Immigration Court why, despite the pair of Attorney General decisions in *Matter of L-E-A-* and *Matter of A-B-*, she still had a valid claim for asylum. And, ultimately, she would not have *won* asylum if she had been forced to go through that accelerated process on her own.

In addition to continuing to support vital legal services programs for immigrants, the City Council should continue to invest and expand access to social services for asylum-seekers. Today, many New Yorkers who are seeking asylum are in dire need of trauma-informed services. Our program is often tasked with the responsibility of representing individuals who have suffered vicious forms of persecution. Thus, by the time they arrive in our city, many continue to exhibit various forms of mental health conditions, including post-traumatic stress disorders. As lawyers, we are not equipped to treat these conditions. But we see firsthand how—if left untreated—these conditions can impact a person’s ability to meaningfully participate in their own asylum proceedings. For instance, we have seen asylum-seekers struggle to testify about the atrocities they have suffered in their home countries, which some immigration judges mistakenly interpret as signs of dishonesty. However, in today’s world of accelerated asylum hearings, it is becoming increasingly difficult to connect asylum-seekers with free or low-cost mental health services that may better inform an immigration court’s understanding of the person before them. And sadly, given the addition of fees to asylum applications and the new waiting-period barriers being imposed on asylum-seekers who need lawful authorization to work, it is unlikely that they’ll be able to pay market-rate for such services.

As always, we commend the City Council for its continued leadership in funding essential immigration legal services. We urge the City Council to remain vigilant and engaged with the immigrant community and our partner organizations so we can continue to support New York’s asylum-seeking families.³⁴

Submitted by,

Jojo Annobil

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³⁴ Harold A. Solis, Supervising Attorney at Immigrant Justice Corps, contributed to this testimony.

APPENDIX A
Timeline of Key Changes to Asylum System

Date	Change Enacted	Type of Change	Area Affected
1/25/2017	President Trump Signs Executive Order 13767	Both Procedural and Substantive	Nationwide
03/05/2018	Attorney General Decides Matter of E-F-H-L-, 27 I&N Dec. 226 (A.G. 2018)	Procedural	Nationwide
04/2018	DOJ Formally Announces Zero Tolerance and Family Separation Policies	Both Procedural and Substantive	Nationwide
04/03/2018	Department of Justice Announces Quotas for Immigration Judges	Procedural	Nationwide
06/11/2018	Attorney General Decides Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018)	Substantive	Nationwide
09/27/2018	DHS Office of General Inspector reveals and confirms "metering" policy by CBP	Both Procedural and Substantive	Southern Border
11/09/2018	DHS Publishes Interim Rule (Asylum Ban 1.0) prohibiting asylum for individuals who do not present themselves at a port of entry	Procedural	Southern Border
11/16/2018	Department of Justice's FAMU Policy Revealed	Procedural	Nationwide
01/24/2019	DHS announces "Migrant Protection Protocol" (AKA Remain in Mexico Policy)	Procedural	Southern Border
07/16/2019	(Asylum Ban 2.0) Federal Government Announces Regulatory Amendment prohibiting asylum for individuals who failed to seek protection in 3rd country	Both Procedural and Substantive	Nationwide
07/23/2019	DHS Announces Expansion of Expedited Removal Authority	Procedural	Nationwide
07/29/2019	Attorney General Decides Matter of L-E-A- II, 27 I&N Dec. 581 (A.G. 2019)	Substantive	Nationwide

09/11/2019	Supreme Court permits federal govt to implement Asylum Ban 2.0 while litigation moves forward	Both Procedural and Substantive	Nationwide
09/09/2019	DHS Announces Proposed Rule to Eliminate 30-day processing requirement for initial Asylum-based EAD	Procedural	Nationwide
09/16/2019	Secret tent immigration courts begin to show up along the Southern Border	Both Procedural and Substantive	Southern Border
11/14/2019	DHS announces proposed rule to extend the time an asylum seeker must wait before being able to apply for an EAD and excluding EWIs from applying for EAD altogether	Both Procedural and Substantive	Nationwide
11/19/2019	DHS/EOIR announce interim final rule that allows U.S. to remove asylum seekers to Guatemala, Honduras, and El Salvador	Both Procedural and Substantive	Nationwide
12/19/2019	DHS/EOIR publish joint propose rule adding 7 new bars to asylum	Substantive	Nationwide



**Testimony submitted to the New York City Council
Committee on Immigration**

**Monday, February 10, 2020 1:00 p.m.
Committee Room, City Hall, New York, New York**

RE: Oversight - The Dismantling of the U.S. Asylum System and the Impact on Immigrant New Yorkers.

Res 1173 - In support of the amicus brief submitted by the District of Columbia and the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, calling on the U.S. Court of Appeals for the D.C. Circuit to maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence.

Thank you for this opportunity to testify about the impact that dismantling the U.S. Asylum system has on Legal Services NYC's clients. Our names are Carolina Guiral and Luis Rosario Rodriguez, and we are staff attorneys at Bronx Legal Services, an office of Legal Services NYC. Legal Services NYC fights poverty and seeks racial, social and economic justice for low-income New Yorkers. We work within the Family and Immigrant Unit, providing legal immigration services to immigrant communities in the Bronx. Most people we work with are survivors of violent crimes, both in the U.S. and abroad. We also participate in the Bronx Immigration Partnership, a network of around twenty organizations and agencies that work together to create a coordinated safety net of legal and social services for Bronx residents on immigration-related matters.

We are here today to share the impact the City Council’s resolution would have to help our clients get asylum-related protections if they have a well-founded fear of persecution due to domestic or gang-related violence.

The Bronx is home to around 1.4 million residents.¹ It is New York City’s fastest-growing borough due to its increasingly diverse immigrant population. More than half of the population (56%) in the Bronx is Hispanic or Latino.² 36% of Bronx residents identify as Black or African American and 39% of Bronx residents identify as “Some Other Race” from White, Black or African American, American Indian and Alaska Native, Asian, Native Hawaiian or other Pacific Islander.³ The Bronx has nearly half a million foreign-born residents,⁴ three-quarters of whom are from Latin America.⁵ The majority of Latin Americans in the Bronx are from the Dominican Republic (42%) or Central America (21%).⁶

The recent changes in asylum law provide less protection than what international law requires. The U.N. Special Rapporteur on Violence Against Women’s mandate established a “due diligence” standard that makes nations responsible for acts or omissions that result in violence against women committed by *either state or private actors*.

¹ United States Census Bureau, QuickFacts Population Estimate July 1, 2019 Bronx County (Bronx Borough), New York, available at <https://www.census.gov/quickfacts/bronxcountybronxboroughnewyork> (last visited January 23, 2020).

² *Id.*

³ *Id.*

⁴ United States Census Bureau, QuickFacts Population Estimate July 1, 2019 Bronx County (Bronx Borough), New York, available at <https://www.census.gov/quickfacts/bronxcountybronxboroughnewyork> (last visited January 23, 2020).

⁵ American FactFinder, Selected Social Characteristics in the United States, 2011-2015 ACS 5-Year Estimates, available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF> (last visited Jan. 23, 2020).

⁶ *Id.*

The United States recently changed asylum law suddenly to take away protections to immigrant survivors of domestic and gang-related violence. Two of our clients' lives illustrate the impact of the sudden change in asylum law. We will call them Karol and Jessica. Karol and Jessica's lives brought them to Bronx Legal Services to seek immigration help. They are now leading a parallel and tenuous existence as they wait to learn how their immigration cases can move forward. Both understood that the law was on their side and both held out hope that this country's immigration system offered them the relief they needed. But in recent years, that hope has turned to doubt in our legal system.

Karol is a Honduran woman and the mother of four children. Karol fled Honduras after she endured years of abuse at the hands of her ex-partner, a violent man who belonged to a drug cartel. After fleeing Honduras to the United States in 2012, she began a relationship with a U.S. citizen who turned into an abusive partner. Karol reported the abuse to the police and got an order of protection in New York. Because of the domestic violence Karol experienced in Honduras and in the United States, she is eligible for asylum and the U visa for victims of crime. However, recent changes in our immigration laws limited asylum-related protections for people like Karol who have a well-founded fear of persecution due to domestic or gang-related violence. Now, the future of her immigration court case is uncertain. This uncertainty is like a dark shadow in her life, keeping her from moving forward and causing her constant anxiety how she might be deported to Honduras, where she probably will be killed.

Jessica, a woman from El Salvador, operated an ice cream parlor with her husband in Usulután. In El Salvador, Jessica suffered extortion payments and death threats from the Mara Salvatrucha ("MS") for many years when she didn't pay them promptly. In 2014,

Jessica and her children fled El Salvador. Soon after arriving in the United States, they applied for asylum. Cases like Jessica's were never certain to succeed but at the time, asylum law in the U.S. favored her arguments: there were protections for victims of gang violence if they are members of a "particular social group" that faces persecution in their home country. Due to changes in law that appear to be directly targeting Central Americans like Jessica and Karol, the threshold for qualifying for asylum based on persecution due to gang violence and family ties is very high and in some cases seemingly impossible.

The changes have impacted our case because persecution based on gang violence and family ties had been long been recognized as particular social groups by appeals courts in the United States and under international refugee laws. The recent changes make it harder for vulnerable people like Jessica and her children to qualify as members of a "socially distinct" group. The uncertainty has caused Jessica, a resilient and hard-working mother, to fear for her and her children's future because they might be deported. It has destroyed her sense of safety for herself and her family.

The recent changes severely limit protections under international law and send a discouraging message to our clients seeking safety in the U.S. Under this resolution to match U.S. asylum laws with international law standards, clients like Karol and Jessica would have a better sense of the strength of their case and would have confidence that immigration courts would apply the law in a fair and consistent way.

Thank you.

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**Testimony of Pooja Asnani, Co-Director, Immigration Intervention Project
Sanctuary for Families
Submitted to the New York City Council, Committee on Immigration
Chair, Council Member Carlos Menchaca
Hearing on February 10, 2020**

Good afternoon. My name is Pooja Asnani. I am the Co-Director of the Immigration Intervention Project at Sanctuary for Families, the nation's largest immigration legal practice for domestic violence and trafficking victims. We are so grateful to City Council Member Menchaca and the Committee on Immigration for the opportunity to testify today. We are also immensely grateful for the Council's funding via initiatives including the Immigrant Opportunities Initiative, which has been a lifeline for our immigration legal services for many years.

Today, we are proud to be here in support of this committee's proposed resolution to condemn the Trump Administration's methodical attempt to dismantle asylum protections, and its resulting impact on immigrant New Yorkers.

At Sanctuary for Families, we represent and advocate on behalf of thousands of survivors of domestic violence, trafficking and other forms of gender-based violence in a range of immigration cases, including asylum—a crucial protection created under international law and enshrined in our Immigration and Nationality Act.

From Sanctuary's work representing hundreds of asylum seekers over the years, we have learned firsthand how they leave behind their homes, their loved ones, and everything they know to flee life-threatening violence. After enduring unimaginable hardship in their home countries and on the dangerous journey to the U.S., they look to America for safety, protection and justice.

But the U.S. government, through a series of executive actions and sweeping regulatory changes, has done everything in its power to shut down access to asylum for those vulnerable immigrants.

Matter of A-B-

Former Attorney General Jeff Sessions' 2018 ruling in *Matter of A-B-* has been one of the Administration's most devastating attacks on asylum seekers who turn to the U.S. for protection from gender-based violence. As a result of this decision, numerous asylum seekers fleeing domestic violence and gang violence—including many Sanctuary clients—face an incredible uphill battle. For those seeking safety from the Northern Triangle countries of El Salvador, Guatemala and Honduras—where those forms of violence are highly prevalent—asylum approval rates have plummeted by 38%.

I think of our client "Silvia"—a young woman from Honduras, who testified last summer before an immigration judge in an asylum hearing. She spoke compellingly under oath about the years of domestic violence and sexual abuse she endured at the hands of the father of her two children. She explained how her former partner threatened to kill her with a machete; how he constantly reminded her that she was "his woman"; and how he said he would find her and kill her if she ever left him. Against all odds, Silvia managed to flee Honduras—a country with one of the highest rates of femicide in the world—finding safety in New York City. And yet, last summer, after months of preparing her case with the help of her immigration attorney, Silvia was told by the judge that she was not eligible for asylum protection. The immigration judge believed Silvia's story, but said that due to Matter of A-B-, she could not be granted asylum. Silvia is now fighting for her right to stay here on appeal.

FAMU Dockets

More recently, the Trump Administration created the "family unit" docket to fast-track the asylum cases of newly arrived families, often giving them just a few months to find legal counsel, collect evidence, prepare witnesses and testimony, and present legal arguments. For most asylum seekers impacted by this policy, this represents an outright denial of due process.

Last fall, "Maribel" came our office two days before the merits hearing on her asylum case. She had fled to the United States from Guatemala with a small child in her arms, having suffered years of physical and sexual violence at the hands of her former partner.

Upon arrival in the U.S., Maribel was "fast-tracked"—given just 7 months to find a lawyer and prepare her case for asylum—because her case was designated "FAMU". Barely fluent in Spanish, let alone in English, Maribel had immense difficulty finding legal representation.

Although Sanctuary immediately took on her case, the immigration judge refused our request for more time to prepare her asylum claim, instead adjourning the hearing for a month later. My colleague and I worked with Maribel late into the night, on weekends, and during our vacations, to prepare her affidavit and legal arguments, gather and assemble the evidence, and prepare her for trial. On the hearing date, Maribel testified credibly and compellingly. Five months later—despite the court's haste in scheduling Maribel's hearing—it has not yet issued a decision on her asylum claim.

Fortunately for Maribel, Sanctuary's intervention most likely spared her from receiving an order of deportation on the date of her first merits hearing. But the reality is that few asylum seekers are able to find legal representation and prepare their case under such time constraints. To expect that is to deny the asylum seeker the right to due process.

No matter who is in the White House, people fleeing violence must be provided safety and justice. The U.S. government must uphold its moral and legal obligations and provide every asylum seeker with a fair opportunity to present their case before a judge.

We therefore call on the City Council to stand with the most vulnerable New Yorkers in supporting this resolution and condemning these destructive actions by the Trump Administration.

Thank you very much for your time today.



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**Testimony by Tiana Marisol Cherbosque
Family Reunification Coordinator, Anti-Trafficking Initiative
Submitted to the New York City Council, Committee on Immigration
Chair, Council Member Carlos Menchaca
Hearing on February 10, 2020**

Good afternoon. My name is Tiana Marisol Cherbosque and I am the Family Reunification Coordinator at Sanctuary for Families, one of New York City's leading providers of comprehensive services for survivors of gender-based violence. Our thanks to Council Member Menchaca and the Committee on Immigration for the opportunity to testify today.

As a Family Reunification Coordinator, I help reunify our clients with their children, many of whom are in imminent danger in their home countries. In my time working with immigrant survivors of gender-based violence, there has never been a more difficult time for their children to exercise their right to seek asylum at the border. This is a direct result of the current administration's anti-asylum policies that further endanger those who flee violence and persecution and seek safety in the United States.

In past years, our clients' children fleeing violence and persecution were able to travel to the border port of entry, legally undergo a credible fear interview, and enter the United States to reunify with their parents or family members in New York City while they petitioned for asylum. However, under this administration's "Remain in Mexico" policy, these same vulnerable children seeking the U.S. government's protection are forced to wait in Mexico for months on end in extremely dangerous encampments, often without adequate access to food and shelter, and further exposed to heightened risk of violence, abuse, and human trafficking.

The chilling effect of today's anti-asylum policies harm any individual seeking asylum at the border. But, as I have personally seen, the effect on families of domestic violence and trafficking survivors is particularly devastating.

Last week I received a call from my client who I will refer to as "Claudia," a victim of domestic violence who suffered abuse in Mexico and the United States. Claudia has a pending application for U Nonimmigrant Status, which will likely take another 5-10 years to be adjudicated. Meanwhile, her children are in danger of being kidnapped and tortured by their abusive father in Mexico for the second time. Claudia has made several attempts to bring her children to the U.S. legally so that they, too, may live in safety. Facing one denial after another, the family is desperate and the children might have no other choice but to seek asylum at a U.S. port of entry.

Claudia's children will endure a perilous 26 hour journey to the Southern border. Once they arrive at the border, it will likely be months before they will even be called for an interview regarding their fear of returning to Mexico. During this period of waiting, the children will *not* be provided with safe shelter or support. Her children will need to remain in Mexico despite their actual fear of staying in Mexico. Claudia's children will likely need to sleep on the streets given the lack of vacancies at nearby migrant shelters. In the absence of shelter, the children are at increased risk of human trafficking, cartel kidnappings, and violence.

Claudia must make a decision no parent should ever have to make. Fully aware of these amplified dangers that her children will face at the U.S. border, Claudia must decide whether they should endure this journey in search of safety in the U.S. or continue to suffer the abuses and threats to their lives should they remain in Mexico.

We call on you to stand with Claudia and her children by supporting this resolution and affirming your commitment to protecting the rights of both survivors and asylum seekers, particularly those experiencing gender-based violence, in New York City and beyond.

Thank you for the opportunity to testify today.



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We call on you to stand with Claudia and her children by supporting this resolution and affirming your commitment to protecting the rights of both survivors and asylum seekers, particularly those experiencing gender-based violence, in New York City and beyond.

Thank you for the opportunity to testify today.



**NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION**

**OVERSIGHT: THE DISMANTLING OF THE U.S. ASYLUM SYSTEM AND THE
IMPACT ON IMMIGRANT NEW YORKERS**

**TESTIMONY BY RALUCA ONCIOIU,
DIRECTOR OF IMMIGRATION LEGAL SERVICES,
CATHOLIC CHARITIES COMMUNITY SERVICES,
ARCHDIOCESE OF NEW YORK**

FEBRUARY 10, 2020

I. INTRODUCTION AND OVERVIEW

Good afternoon, Honorable Chairperson and committee members. My name is Raluca Oncioiu and I am the director of Immigration Legal Services and the Immigration Hotlines at Catholic Charities Community Services, Archdiocese of New York. For more than four decades, Catholic Charities Community Services (Catholic Charities) has been committed to welcoming New York's immigrants—be they families seeking to reunify, children, refugees, the undocumented, or day laborers. This commitment is rooted in respect for the human dignity of each person and for the value each individual brings to our communities of work, of family, and of faith. We are grateful for today's hearing on the effects that diabolical efforts to undermine the U.S. asylum system, fundamental principles of human rights, and refugee protection are having on our community.

On a daily basis - through our immigration legal services, immigration court helpdesk, community-driven *pro bono* programming, work with unaccompanied immigrant children, and statewide and citywide immigration hotlines – members of our legal staff confront the tragic unraveling of substantive and procedural protection for the most vulnerable among us: refugees fleeing persecution. We talk about an invisible wall, but it is much worse than that: it is a hatchet mercilessly slashing decades of legal precedent and procedural safeguards that used to protect refugees.

II. THE WORK OF CATHOLIC CHARITIES

Catholic Charities serves all individuals in need residing in all five New York City boroughs and seven counties of the Lower Hudson Valley. Two-thirds of those we provide immigration legal services to are New York City residents, including unaccompanied minors, young mothers with children, and asylum seekers from all over the world, but particularly from Central America and Mexico.

The work of Catholic Charities in New York City is broad, diverse, and focused on responding to individual crises as well as addressing core needs that can cause crises. Catholic Charities provides a comprehensive range of professional human services to immigrants, including: eviction prevention; case management to help people access benefits and resolve financial and family issues; emergency food; specialized assistance for the blind and visually impaired; after-school, drop-out prevention and employment programs for low-income, at-risk and/or court-involved youth; sports and recreational programs for children and youth; and supportive housing programs for adults with mental illness. Our services are provided in our community centers, parishes, regional offices, New York City public schools, NYCHA housing developments, HRA offices, and partnering community-based agencies. Each year, CCCS works with thousands of households to manage crises and to help families achieve long term stability in immigration status, income, housing, and nutrition. The issues our clients face are often multi-faceted and complex, and it frequently takes the cooperation of several agencies to arrive at lasting solutions.

Catholic Charities' Immigrant and Refugee Services responds to the needs of thousands of immigrants and refugees each year, through services in five principal areas: immigration legal services, including innovative and community driven models, unaccompanied minors programming, English as a Second Language (ESL/ESOL) and cultural learning at our International Center, refugee resettlement services, and general informational and referral services through the New York State New Americans Hotline and the ActionNYC Hotline.

III. THE ASYLUM SYSTEM IS BEING SYSTEMATICALLY UNDERMINED, AFFECTING OUR COMMUNITIES

The United States asylum system is under a multi-pronged attack by the Trump administration. First, there are changes in law reversing decades of precedent and directly affecting substantive decisions as to qualification of asylum seekers for protection. Second, there are changes in law, policy and procedure that place enormous stress on the ability of applicants to present their cases within restricted time periods, to find counsel, and to navigate an immigration court system increasingly characterized by chaos. These changes drastically increase the burden on applicants and attorneys to present more comprehensive evidence, to make more nuanced and complex legal arguments, to access interpretation, evaluation and expert services within increasingly circumscribed time limits, etc. The changes also limit attorneys' caseload capacity by requiring more extensive work on meritorious cases which would easily have been granted relief in prior years and building a record with an eye to federal litigation, possibly adding years of commitment to each client's case.

Below are various legal, policy and procedural changes affecting the United States asylum system and their effect on immigrant New Yorkers.

Changes in Case Law:

- ❖ *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), a decision by the Attorney General that seeks to undermine the ability of people fleeing from domestic violence and gang related violence from obtaining asylum.
- ❖ *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019), a decision by the Attorney General that seeks to undermine the ability of persons fleeing gang-related violence to seek asylum because of persecution based on their family connections.
- ❖ *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018), a decision by the Attorney General narrowing the circumstances in which continuances can be granted for purpose of allowing an immigrant in removal proceedings to pursue collateral relief.
- ❖ *Matter of Mayen*, 27 I&N Dec. 755 (BIA 2020), a decision issued by the Board of Immigration Appeals (BIA) further restricting the ability of Immigration Judges to grant continuances on cases in which the immigrant wishes to seek “collateral” protection from removal such as U and T non-immigrant status, or protection under the Violence Against Women Act (VAWA).

These decisions seek to fundamentally undermine critical protections for survivors of domestic/family violence and gang violence. These types of asylum cases now require far more intensive documentation and production of evidence, including greater need for interpretation, as well as medical, psychological, and country condition experts. This consumes applicant and attorney resources, both financial and temporal. These decisions undermine years of precedential case law and are causing far more persons to be denied critical protections, exposing them and their children to mortal danger, and tearing families apart.

Matter of L-A-B-R- and *Matter of Mayen* compound the cruelty, limiting immigration judges from continuing immigration proceedings for the time necessary for persons who have alternate forms of protection, authorized by law, to obtain those protections and achieve secure immigration status.

Esperanza is a 25-year-old female from Ecuador who entered the United States in 2014. Today, she lives in the Bronx with her husband and is currently in her third trimester of pregnancy. Esperanza is also part of an indigenous group in Ecuador. Esperanza left Ecuador because she was suffering familial abuse at the hands of her father and chafed against the machismo that exists in Ecuadorean society. As a young girl, Esperanza was treated as a servant by her grandfather and grew up without any happy memories as a young girl. Her only salvation was going to school, which taught her the importance of equality and women’s rights. Esperanza attended school as a way to empower herself against the physical, mental, and emotional abuse she endured from her family. The government of Ecuador did not protect Esperanza from her father’s abuse because of an ineffective judicial system and law enforcement authorities who do

not effectively address domestic violence.

Esperanza applied for asylum and had her merits hearing in November 2019. Due to *Matter of A-B-*, however, her asylum case was denied. *Matter of A-B-* misinterpreted longstanding precedent which stated that if the persecutor is not the government, the applicant must show that the government is unable or unwilling to provide protection. *A-B-* incorrectly suggests that the applicant needs to show that the government condones the harm or is completely helpless to protect the victim. The judge followed this erroneous standard in denying asylum to Esperanza, because some purported legal protections existed on the books in Ecuador to assist Esperanza, even though country condition evidence showed these protections to be wholly ineffective.

Alicia is a single mother of four children. She is of Garifuna ethnicity and fled Honduras to escape death threats by the Mara 18. Unable to find a job due to her ethnicity, Alicia operated a store out of her home to support her family. In 2016, gangs started to control the neighborhood and in 2017, members of the Mara 18 demanded a monthly extortion fee from Alicia's store, threatening her, her children and siblings with death if she did not pay. Alicia knew that other people in her neighborhood had been killed by gangs in similar circumstances. After reporting the threats to the police to no avail and trying to hide at the house of a friend only to be tracked down by the gang, Alicia had to flee to safeguard her life and that of her children.

Alicia and her children walked, took busses and trains, and crossed the Rio Grande. They were detained by the U.S. immigration authorities at the border and were placed in removal proceedings. In 2018, Alicia and her children applied for asylum with the assistance of Catholic Charities.

For the last two years, Alicia and her children have lived secure and free from gang threats and violence in New York. The children - ages 13, 8, and 6 (twins) – finally have a happy life: they attend school and have access to health care, nutrition and basic necessities. Two weeks ago, the Immigration Judge denied asylum and issued deportation orders to Alicia and her four children. Even after finding Alicia credible and acknowledging that Garifuna people are targeted for violence in Honduras, the judge followed *Matter of A-B-* to find that she did not prove that the government of Honduras condoned and was completely helpless at protecting her from gang threats.

Changes in Policy and Procedure:

- ❖ Creating the FAMU docket in removal proceedings, generally restricting the number of continuances granted to unrepresented asylum-seekers to find attorneys, and forcing asylum-seekers to quickly file applications - long before the one-year filing deadline set out by law – or abandon their claims to asylum.

FAMU is a special, accelerated docket reserved for adults who enter the United States with minor children, thus mostly families seeking refuge from Honduras, El Salvador and Guatemala. These cases are prioritized for completion, allowing very little time for families to find legal representation and – if representation is secured – for their lawyers to develop and support the

asylum claims. FAMU cases are required to be scheduled for their Individual Hearings within six months, and are to be granted one very brief continuance in order to find an attorney.

The expedited nature of the FAMU docket and the restriction on the number of continuances to find representation and prepare applications for relief undermine the ability of asylum seekers and their representatives to effectively present their cases. The parents and children on the FAMU docket are particularly vulnerable and are often the most affected by the changes in law outlined above. Nonetheless, they are rushed through the immigration court process, not allowed time to find affordable, or free, representation, and threatened by judges with the abandonment of their claims and deportation if they do not present their applications after very few, short, continuances.

It is very disturbing to see Immigration Judges requiring that *pro se* respondents file an I-589 application for asylum at their next Master Calendar Hearing, and ordering removal when they fail to do so, even though that date is well in advance of the one-year filing deadline, and may only be their second appearance before the court. This practice raises a number of due process concerns. In particular, many respondents have not been given enough time to seek counsel to assist them in preparing their asylum applications. There are often language barriers that make it difficult for respondents to understand what is being required of them and how they would go about obtaining and completing an I-589 application. It is worth noting that many recent arrivals who are on the FAMU docket speak indigenous languages and do not always understand Spanish well. There is rarely access to a non-Spanish language interpreter during master calendar hearings. If the respondent is not ready with a completed I-589 application at the next hearing (which is often a very brief adjournment from the last hearing) the Judge may then order removal. As a result, individuals with valid claims to asylum are not being afforded a meaningful opportunity to apply for relief. Recently, we have witnessed several judges issue orders of removal after the second Master Calendar Hearing if the unrepresented respondents did not appear with completed asylum applications.

❖ Limiting availability of interpreters at the New York City Immigration Court.

The court has stopped providing interpreters for initial Master Calendar Hearings, and instead plays a video “advising” respondents of their rights in court. The video is available only in English and Spanish, is replete with legal jargon, is thus very complicated and confusing to many respondents, and cannot adequately assist *pro se* individuals to understand court proceedings. After unrepresented respondents watch this video, they are given new hearing notices and told to return on the new date. But without an interpreter present, respondents are unable to ask any questions of the Judge, and the Judge is not able to advise respondents of any relevant filing deadlines, including the one year filing deadline for asylum.

In addition, there was a change where the judges are limited to how many interpreters they can have per day. As a result, hearings that were scheduled years in advance are being rescheduled the day of because there is no interpreter available.

There is also an issue with the quality of the interpretation. At Individual Hearings, it becomes very clear that not all interpreters are competent to fully translate and capture the meaning of the

asylum applicant's responses, even if the language is as common as Spanish. If the applicant speaks a rare language, there is pressure from judges to either stipulate to the evidence, thus preventing the individual from exercising full due process rights to participate in the hearing. Because interpreters are sometimes flown cross-country to meet court needs, they are only available for a certain amount of time to translate, which pressures judges to expedite hearings, potentially short-changing the applicant's due process rights. Lawyers are faced with either moving forward on an individual hearing with a shaky interpreter or adjourning the case, thus causing even more delays in the case.

We are seeing an increase in the number of families who primarily speak indigenous Central American languages and speak little to no Spanish. They often insist on attempting to speak Spanish, even when it is evident that they cannot communicate effectively in Spanish, possibly due to years of discrimination they suffered in their home countries because of their indigenous heritage. The Court often phrases the language question as "is Spanish your best language?" rather than "what is your best language?" From our experience, these families are generally just responding that they do speak Spanish, and as a result are not able to understand the proceedings. Even worse, sometimes, when the Judge is unable to find an interpreter for a particularly rare language, unrepresented respondents are pressured to proceed in Spanish, ensuring that they will not have the opportunity to understand the questions being asked of them. Because these indigenous communities have traditionally been very isolated in their countries of origin, they sometimes do not understand the purpose or nature of removal proceedings. And since the Court's new "advisal video" is not played in indigenous languages, the immigration court process remains deeply confusing and unclear, and these unrepresented families never get a fair opportunity to meaningfully present their asylum claims.

- ❖ Imposing "metrics" on immigration judges, such as case completion quotas and speed-related adjudication benchmarks, which creates pressure to deny cases in a mechanical, bureaucratic way, lacking meaningful review.

Judges appear to be highly motivated to finish cases even if doing so sacrifices due process. We have had requests to have longer hearing times scheduled be denied even when the case involves a family unit where different claims are presented. We are told only an hour and a half will be allotted which is not enough time.

At the individual hearing there is pressure to have the attorney stipulate to the contents of the affidavit and then deny the claim. In two recent individual hearings, judges have asked attorneys if they are willing to stipulate that the client testified consistent with their written declarations and to forgo testimony. In one case, that meant that the hearing began with the government attorney cross-examining the client, without first going through direct examination. This seems to be a time-saving measure on the part of the judges, but it is confusing for attorneys and undercuts a client's "day in court." Most recently, we had an immigration judge ask whether we would agree to have the entire case adjudicated "on the papers," without direct or cross examination. The client did not consent, bravely saying that she wanted to be heard. But the trend towards "doing away" with client testimony is troubling, especially since some attorneys may feel pressured to go along with the judge's procedural suggestions, or incorrectly believe that a request to stipulate is a positive indication of how the judge is inclined to rule.

Finally, the judges are deciding cases day of and often times reading off boilerplate denials that fail to discuss the facts presented and issues that arise in the case.

❖ Failing to file Notices to Appear (NTA) with the Immigration Court.

Those who are apprehended at the border are issued Notices to Appear (NTA), which formally places them in removal proceedings. The next step is for Immigration and Customs Enforcement (ICE) to serve the NTA on the Immigration Court in order to start the removal proceedings. Lately, there are long delays in filing NTAs with the Immigration Court, which makes it very difficult for respondents to change their address or submit a Motion to Change Venue in a timely manner.

During the time before an NTA is filed, the Immigration Court has no record of the particular respondent, and will not accept a change of address form or Motion to Change Venue. However, there is often only a brief period of time between the filing of the NTA and the first hearing date in court, so by the time the respondent has had a chance to file a Motion to Change Venue it is too late for the Immigration Judge to review and rule on it prior to the hearing date. This is a big issue for many respondents who have relocated to other parts of the country where they have family support and housing, and do not have the financial resources to travel far away to attend a court hearing. Many respondents have their first hearings scheduled in Immigration Court in Texas or California, where they were first detained or near where they first entered the country. Many respondents are unaware they even need to submit a Motion to Change Venue and think submitting the blue change of address form is enough to transfer their case to a different court. There is also confusion because respondents may be reporting to ICE while waiting for their NTA to be filed with the court and think that informing their ICE Deportation Officer of the address change is enough to change their address with the court, although this is not the case. Also many respondents do not speak English and need help filling out the *pro se* Motion to Change Venue.

When NTAs are not filed with the immigration court, asylum-seekers are in limbo, unable to file their asylum applications or apply for work authorization. Moreover, they are confused about when and where they have to go to court, which increases the likelihood that they will miss their first court date when the NTAs are finally filed, leading to *in absentia* removal orders. Even if respondents avoid *in absentia* removal orders, they may miss filing for asylum before the one-year deadline if the NTAs are not served on the court and they do not get scheduled for a hearing on time.

❖ Rescheduling or advancing court hearings with little lead time and sometimes with no notice to the respondents and their attorneys.

Cases are often assigned dummy dates for hearings and then are rescheduled, often without adequate notice. This likely contributes to many *in absentia* orders for those who are unrepresented and plays havoc with the abilities of legal representatives to manage their caseloads. Additionally, in the chaos of overwhelmed courts, documents filed, including motions and evidentiary packages sometimes do not appear to be reaching the respondents' files.

In the past month, our lawyers had three individual hearings cancelled on the day of the hearing. In one case, the Immigration Judge had never received the 300+ page submission that had been filed in person with the court clerk and asked us to re-file it. In the second case, the Immigration Judge admitted to “double booking” her individual hearings and so did not have time to hear our case that day. In the third case, there were no Spanish interpreters available that afternoon.

The preparation that goes into preparing for an Individual Hearing, for both a client and an attorney, is significant. Hence, rescheduling case on the day of the hearing—sometimes for a year later—creates unpredictability and inefficiency for attorney workloads and anxieties for the asylum seekers. In addition to the general issues caused by a delay in any type of litigation (respondents forgetting details of their claims, witnesses no longer being available, material changes in conditions in the respondents’ circumstances, etc.), these delays have caused cases to be postponed until after a precedential decision that negatively impacts the claim. For example, the Court postponed two Catholic Charities cases from before the *Matter of L-E-A-* decision to after that decision, which likely will lead to a denial of the claims.

- ❖ Barring asylum protections to persons who enter the United States through the southern border with Mexico on or after July 16, 2019, who have not applied for asylum in the countries they transited through prior to entering the United States.

The requirement that asylum seekers crossing the southern border make, and be denied, asylum claims in countries of transit fundamentally undermines the rights of refugees to seek protection. This creates an impenetrable barrier to asylum because the countries of transit do not have developed or effective asylum systems and present enormous dangers for the refugees in transit. This also creates a situation in which those seeking protection can only access forms of relief (withholding of removal and protection under the Convention Against Torture) which carry a higher burden of proof and which do not, if granted, allow the person granted relief to become a permanent resident and fully integrate into society.

- ❖ Scheduling the interviews for newly-filed affirmative asylum applications before USCIS within 21 days and restricting the ability of applicants to get adjournments.

On the affirmative asylum front, the speed with which asylum interviews are being scheduled after submission of the asylum application, limits the ability to find representation and also undermines applicants’ rights to advocate for their own protection. It is exceptionally difficult to pull together the necessary evidence in the short time provided. Those who have counsel, have only a short time to prepare evidentiary packages and to prepare for the interview. Lack of time to adequately prepare claims means that applicants are more likely to be denied asylum and be placed in removal proceedings.

- ❖ Rejecting asylum applications for leaving answers blank on the I-589 asylum application form.

Recently, USCIS started to make it more difficult for asylum-seekers to take the first step in applying for protection by rejecting applications for small and often meaningless omissions (for

example, leaving the space for “middle name” blank if the applicant does not have a middle name).

- ❖ Proposing a \$50 application fee for submission of affirmative asylum applications and proposing to allow USCIS to take more time than the current 90 days to produce employment authorization documents for asylum-seekers.

The application for asylum never had an application fee, as it is true of most applications for humanitarian relief. USCIS’ recent proposals to attach a \$50 fee to affirmative asylum applications and to lengthen the period of time the agency can take to issue employment authorization cards to asylum seekers, put the asylum process out of reach for indigent New Yorkers. Requiring people who fled persecution with only the clothes on their backs to come up with \$50 and then denying them the ability to support themselves by taking a long time to issue work permits is deliberately cruel and designed to discourage refugees from seeking protection in the United States.

IV. Recommendations

Continue to fund immigration legal services. Catholic Charities is grateful for the Council’s and the Mayor’s support of immigration legal services at a historic level. We are grateful for New York City’s commitment to providing access to justice for vulnerable immigrants through initiatives that include ActionNYC, Immigrant Opportunity Initiative (IOI), Immigrant Children Advocates Relief Effort (ICARE), New York Immigrant Family Unity Project (NYIFUP), etc. Increasing direct service capacity at this crisis point is crucial and must take into account the fact that asylum cases have become more complicated and time-consuming for both substantive and procedural reasons, as outlined above.

Expand the Immigration Court Helpdesk. The Immigration Court Helpdesk (ICH) program is a non-detained deportation counterpart to the screening process that exists for NYIFUP. It was initially created by the Department of Justice to assist immigrants in removal proceedings in understanding their rights and learning to navigate the immigration system effectively. At the New York City Immigration Court, Catholic Charities provides immigrants facing removal with information about the immigration court process, individual screenings, and *pro se* assistance for those who cannot find representation and need to file their asylum applications before the one-year deadline. Catholic Charities currently offers ICH services 10 days per month. Given the challenges facing asylum applicants, we encourage the Council to support the expansion of ICH to cover every day the immigration court is in session. This will ensure our attorneys are present to provide group orientations and individual screenings, and to assist more asylum-seekers who cannot find representation with *pro se* asylum applications.

Fund interpretation/translation services. As described above, there is a shocking lack of language access at the New York Immigration Court. In order to explain the immigration court process to asylum-seekers, elicit the information necessary to assess their asylum claims, flesh out their asylum applications, translate their supporting documents, and prepare them for individual hearings or affirmative asylum interviews, lawyers need funding for interpreter services.

We thank the New York City Council for its vision, leadership and interest in protecting New York's newest and most vulnerable residents, those fleeing from persecution and violence in their homelands.

Thank you for your time and attention.



February 10, 2020

**Testimony of Samah Mcgona Sisay, Staff Attorney and Equal Justice Works Fellow,
on Behalf of African Services Committee Before The Council of the City of New York
Committee on Immigration, Regarding The Dismantling of the U.S. Asylum System and the
Impact on Immigrant New Yorkers**

Good afternoon, Chair Menchaca and members of the Committee on Immigration. My name is Samah Mcgona Sisay and I am an immigration staff attorney and Equal Justice Works fellow at African Services Committee where I lead the Black Immigrant Gender Justice Initiative which is sponsored by BNY Mellon and Sullivan & Cromwell LLP. Thank you for the opportunity to testify today.

African Services Committee is a nonprofit organization based in West Harlem that was founded in 1981 by Ethiopian refugees and today is dedicated to assisting immigrants from across the African Diaspora. We provide health, housing, legal, educational, and social services to 10,000 immigrant New Yorkers each year.

African Services Committee's Black Immigrant Gender Justice Initiative specifically provides free legal services to African and Caribbean immigrant women—including cisgender women, transgender women, and gender non-conforming femmes—who have faced various forms of gender-based violence. A majority of people receiving legal services in this program are women who have fled their home countries after experiencing extreme domestic and intimate partner violence and not being able to rely on their countries of origin for protection. The United States, and specifically New York, has become a place where many of these women are able to experience safety and independence for the first time.

African Services Committee joins the other organizations here today in emphasizing the need to maintain the availability of asylum protection for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence.

Through our work, we have witnessed the increasing need for asylum access for survivors of domestic and intimate partner violence and the impact former U.S. Attorney General Sessions' 2018 decision in *Matter of A-B-* has had on immigration service providers and immigrant New Yorkers. Our office has had to spend more resources and time on asylum claims related to domestic and intimate partner violence, limiting the number of immigrant New Yorkers we can serve each year. Most importantly, our community is afraid. We have seen an increase in fearful calls from immigrant women with pending asylum cases because they believe they will no longer be protected by the

United States. I spoke to one woman from Burkina Faso who declared that sending her back to her country of origin would be like sending her to her death because her husband, who she was forced to marry, would eventually kill her and her government would do nothing to protect her.

In conclusion, the attempt by *Matter of A-B-* to characterize domestic violence as a “private” matter that our government does not have a responsibility to address is legally inaccurate and harmful to immigrant New Yorkers. We strongly encourage the City to pass a resolution affirming its support of asylum protection for individuals and families fleeing domestic or gang-related violence. Thank you for the opportunity to testify and I welcome any questions.

Testimony: Prathiba Desai, Staff Attorney at Her Justice
Hearing: Oversight - The Dismantling of the U.S. Asylum System and the Impact on Immigrant New Yorkers
Hosted: Committee on Immigration
Date: February 10, 2020

Thank you, Chair Menchaca and Council Members, for this opportunity today to speak in support of Resolution 1173 on behalf of Her Justice. Her Justice is a New York City-based nonprofit organization that uses a unique “pro bono first” approach to train and mentor volunteer attorneys from top firms across the City to provide free legal services to women living in poverty in the areas of family, matrimonial and immigration law. Our clients come from all five boroughs of New York City. Approximately 75% of our clients are domestic violence survivors and almost three-quarters of our clients are mothers. More than half of our clients were born abroad.

Our immigration practice focuses on the substantial needs of immigrant survivors of intimate and gender-based violence to access immigration relief for stability and security for themselves and their families. As an attorney at Her Justice, I have represented individuals who have applied for various forms of immigration relief, including asylum, based on having survived some form of violence including domestic violence, intimate partner violence, sexual assault, and human trafficking. I have travelled to the United States border to assist mothers, with their children, who were seeking asylum and being held at the South Texas Family Residential Center in Dilley, Texas. Through my work representing survivors and asylum seekers in New York and at the border, I have witnessed first-hand how the recent changes to immigration law implemented by our federal administration have impacted those women.

The anti-immigrant policies and messaging from the federal government make clear that they are trying to dismantle previously established precedent that protected this particularly vulnerable population. The decision of Attorney General Sessions in *Matter of A-B* to reverse established legal precedent and deprive domestic violence survivors of their previous access to asylum relief is a disturbing example. We know firsthand how harmful this policy change is to immigrant survivors. Her Justice conducts immigration consultations at several of the Family Justice Centers in New York City. At these consultations we screen victims of domestic violence, many of whom would be clearly eligible for asylum under the prior asylum policies. Now, we must advise these clients that although they fled domestic violence and they are afraid for their lives should they have to return to their home countries, the robust immigration policies that once would have protected them may no longer be available.

These changes in policy have stoked fear and panic in our immigrant and survivor communities. The United States is seen by many around the world as a place that is safe and values protection

and justice. Many have fled to the United States for those reasons. Instead, many have been met with the threat of being locked up in immigration detention centers, being separated from their children, or being forced to wait in unsafe countries while awaiting a hearing on their asylum claims.

Today, we are here to stand with asylum seekers and immigrant survivors of violence. We thank the City Council for recognizing the needs of these vulnerable New Yorkers.

Thank you very much for your consideration of these comments.



NEW YORK CITY COUNCIL

IMMIGRATION COMMITTEE

OVERSIGHT HEARING
THE DISMANTLING OF THE U.S. ASYLUM SYSTEM
AND
THE IMPACT ON IMMIGRANT NEW YORKERS

Committee Room
14th Floor
250 Broadway
New York, New York 10007

1:00 p.m., Monday, February 10, 2020

The New Sanctuary Coalition thanks the New York City Council, Committee on Immigration, for holding hearings on the dismantling of this nation's immigration system and the impact of this deterioration on New Yorkers. The consequences of this deterioration were tragically manifest last Thursday by the Immigration and Customs Enforcement's unnecessary shooting of a young man during a botched operation in Brooklyn.

The New Sanctuary Coalition (NSC) is a multi-faith immigrant-led organization that creates support systems for and empowers those navigating the immigration system, by bringing together citizen volunteers and affected community members – our Friends –. We do this to achieve two primary goals: 1) equip Friends with the knowledge they need to navigate the violence and injustice within the immigration system by advocating for themselves and ultimately lead the movement, and 2) train and mobilize citizens and faith leaders to support and fight alongside our Friends, providing public witnessing against the injustice and bureaucracy and advocating for urgently needed changes to the system. We believe that no human being is illegal and that everyone has the right to live free of violence and oppression.

Some of our incredible volunteers work at our Wednesday night pro se clinic, where affected community members master complicated federal immigration procedures and forms such as asylum applications, while others provide accompaniment for those who must face armed officers, black robed judges, or complicated proceedings in a language that most of them do not understand, in windowless rooms where there, hope for a future without violence is often destroyed by inhumane and arbitrary policies, such as, but not limited to the Matter of A-B, the Matter of L-E-A and the fast tracking of asylum cases under “Family Unit” dockets.

In June 2018, Attorney General Jeff Sessions issued a decision in which under the pretext that domestic violence is a private matter that the United States government does not have the responsibility to address, he denied asylum to a woman who survived the extreme violence inflicted by her ex-husband in El Salvador and sought protection in this country. This decision constitutes one of the most devastating attacks on asylum seekers, it doesn't just deny asylum to a woman, but to thousands like her who endure and bravely escape the brutality at the hands of their husbands, partners or males relatives.

Months after, on November 16, 2018, the Director of the Executive Office for Immigration Review, James McHenry III, circulates a memorandum to clarify the fast tracking of “Family Unit” cases explaining that “these cases are being docketed in an expeditious manner with the expectation that they will be completed within one year or less”. This cannot be seen as anything else than a policy designed to further punish and rush thousands of families through this already confusing and terrifying immigration system, with the intention of deporting these families as quick as possible and hopefully deter others from seeking protection in this country.

On July 29, 2019, Attorney General William Barr issues a decision known as the Matter of L-E-A, explicitly denying asylum to those who are fleeing persecution on account of their family ties by stating that most nuclear families do not qualify as “particular social groups”, with complete disregard for decades of legal precedent and despite the fact that the victims of gangs and organized criminal violence are more often than not, targeted as families.

CONCLUSION

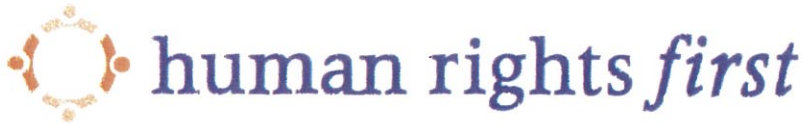
All these policies are nothing but proof of a deteriorating immigration system and the systematic and cruel attempts of this administration to attack asylum seekers and strip them of any vestige of due process. Week after week, NSC continues to stand in solidarity with pro se affected community members who must face challenges in the form new judges with no independence from the Attorney General and who are instructed to satisfy performance quotas by fast-tracking “family unit” cases with no regards for due process, unduly burdening asylum seekers by imposing draconian deadlines, threatening immigrants with “moving forward with the cases” and talking about voluntary departure or deportation orders, jeopardizing their ability to produce evidence to support their claim, find adequate counsel, and almost guaranteeing their deportation. In addition to that, we witness the video-teleconferencing (VTC) hearings with one or more parties present in different locations, as well as interpreters who are asked by immigration judges to translate all that the same time for several pro se respondents who speak different languages in order to save time.

What we are desperate for you to understand is that the meaning our affected community members find in these policies is that all the violence they endured and the sacrifices they made are not enough...That they withstood, managed to survive and escape all the abuse and savagery was not enough...that it was not enough for them to have the courage to file a police report against a man or an international gang and be told by these authorities that they “don't get involved in problems between couples” or “there is nothing to do” ...nothing but continue to be raped, threatened or killed as a consequence of their need to seek protection for themselves and their families. Nor it is enough to make the decision to leave behind everything you know and have for the hope of safety, and it is certainly not enough to endure all the hardship of the journey in order to save their children from extreme violence..not enough...none of this has been enough to secure life and safety...rather it has only lead them to face more violence and discrimination here in this country.

In light of the exposed above, the courts must overturn the *Matter of A-B-* and the *Matter of L-E-A* rulings and affirm the United States' commitment to protect asylum seekers who have survived gender-based violence and other harms. Our leaders in Congress must advance laws

that restore justice to our asylum system. Our local governments must stand with asylum seekers and demand policies that protect their rights, while ensuring the access to free or low-cost counsel and representation for indigents and those with limited means. Our communities must stand with affected asylum seekers and uphold their right to seek protection.

Thank you for this opportunity to expose the problems friends experience in the federal immigration system. The New Sanctuary Coalition hopes that the information we have provided is useful to the Immigration Committee. If the Committee has questions NSC would be pleased to provide further information.



American ideals. Universal values.

February 10, 2020

New York City Council
Committee on Immigration
New York, NY 10007

Dear Committee on Immigration:

Enclosed please find Human Rights First's two most recent reports on the Migrant Protection Protocols (MPP), submitted as written testimony for the New York City Council's February 10, 2020 hearing on Resolution 1173-2019. The reports are entitled: "A Year of Horrors: The Trump Administration's Illegal Returns of Asylum Seekers to Danger in Mexico" and "Human Rights Fiasco: The Trump Administration's Dangerous Asylum Returns Continue."

Thank you very much for your time.

Respectfully,

Becky Gendelman
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A Year of Horrors: The Trump Administration's Illegal Returns of Asylum Seekers to Danger in Mexico

Since January 2019, the Trump Administration has forcibly returned thousands of asylum seekers to Mexico under a policy it absurdly dubbed as the “Migrant Protection Protocols” (MPP). Waiting months in Mexico for their hearings, asylum-seeking men, women, and children from Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Venezuela and other countries have faced life-threatening dangers. Despite overwhelming evidence that this illegal policy is leading to kidnappings, torture, sexual assaults, legal representation barriers, and the denial and abandonment of genuine refugee protection requests, Trump Administration and Department of Homeland Security (DHS) officials continue to implement, expand, and tout this horrific policy as a “success.” In January 2020, the House Judiciary Committee initiated an [investigation](#) of the “legality” of the MPP policy and its “impact on vulnerable populations.”

Below are some key facts and figures on the devastating impact on asylum seekers and migrants after a year of the Trump Administration's immoral and illegal Remain in Mexico policy:

- Under MPP, **DHS officers have returned more than 59,000 asylum seekers and migrants to wait in danger in Mexico.** As of December 2019, **DHS sent at least 26,000 individuals to Nuevo Laredo and Matamoros in the notoriously dangerous state of Tamaulipas**, which the U.S. State Department designates as a Level 4 “Do Not Travel,” the same threat assessment given to Afghanistan, Iran, Libya, and Syria. Since November 2019, the U.S. Consulate in Nuevo Laredo has issued repeated warnings regarding [“violence between Mexican authorities and criminal organizations,”](#) [“multiple gunfights throughout the city of Nuevo Laredo,”](#) [“blockades on major highways,”](#) and [“gun battles in various locations”](#) and reminded U.S. citizens that “organized crime activity (including gun battles, murder, armed robbery, carjacking, kidnapping, forced disappearances, extortion, and sexual assault) is common.”
- **DHS officials expanded MPP in December 2019, requiring asylum seekers to undertake dangerous travel through Sonora, Mexico.** DHS now directs asylum seekers it sends to Mexico through the Nogales, Arizona port of entry to appear at MPP immigration court in El Paso, meaning they must travel through the same region of Sonora where in November 2019 cartel members massacred nine members of an American family. DHS is also [reportedly](#) considering sending Brazilians to Mexico under MPP – even though few speak fluent Spanish, making them easy targets for kidnappers and extortionists.
- **While Trump Administration and DHS officials tout MPP as one of DHS's “most successful initiatives,” claiming it has reduced the number of asylum seekers arriving at the southern border, the policy has in fact “succeeded” in delivering asylum seekers to kidnapping and assault and terrifying asylum seekers with genuine refugee claims into abandoning their requests for protection.** Mark Morgan, acting Commissioner of U.S. Customs and Border Protection (CBP), has even dismissed the hundreds of public reports of cases of torture, rape, kidnapping, and assault against people in the MPP program as [“anecdotal stuff.”](#)
- As of January 21, 2020, Human Rights First has tracked at least **816 public reports of murder, torture, rape, kidnapping, and other violent attacks against asylum seekers and migrants returned to Mexico under MPP.** But our count is only the tip of the iceberg, as the overwhelming majority of returned individuals have not spoken with human rights investigators or journalists. The actual number of attacks is certainly much

higher. A [study](#) by the U.S. Immigration Policy Center covering only returns to Tijuana and Mexicali – but not El Paso, Nuevo Laredo, or Matamoros where the risk of violent attacks is more acute – found that one in four returned asylum seekers had been threatened with violence. Recently documented attacks on those returned to Mexico through MPP include:

- a Salvadoran asylum seeker [murdered](#) in Tijuana in November 2019 after DHS returned him there,
- an asylum seeking father [tortured](#) in front of his 3-year-old son during their kidnapping ordeal in Reynosa, and
- a young Cuban asylum seeker [raped](#) in Mexico after being returned by DHS to Matamoros.

- **Asylum seekers returned to Mexico are targeted for kidnapping and assault** in shelters, in taxis and buses, on the streets while looking for food, work, and shelter, on their way to and from U.S. immigration court, and even while seeking help from Mexican police and migration officers. Asylum seekers who have moved to other parts of Mexico in an attempt to find safer places to wait for their MPP hearings have been [targeted](#) by kidnappers while in transit, at bus stations, and at airports, when returning to border cities for their hearings. Some other recent examples of attacks on MPP returnees include:

- a 12-year-old Honduran girl and her mother [kidnapped](#) at the Nuevo Laredo bus station and nearly kidnapped again after being returned to Mexico by DHS following an MPP immigration court hearing,
- a Cuban asylum seeker returned by DHS officers to Matamoros [abducted](#) from a taxi while going to buy food in Reynosa, severely beaten, and ordered to pay his kidnappers \$500 month to remain in the area while he waits for his MPP hearing in Brownsville, and
- a young gay, HIV+ asylum seeker from Honduras [kidnapped](#) in Nuevo Laredo in late December immediately after DHS officers returned him there when a U.S. immigration judge rescheduled his final asylum hearing.

- DHS had returned, as of September 2019, some [16,000 children and 500 infants](#) to danger in Mexico. Our [tally](#) of attacks on MPP returnees identified at least **201 publicly reported cases of kidnapping or attempted kidnapping of children in MPP**. Other children have been sexually assaulted including two young girls who were [reportedly](#) molested by a man targeting children in the Matamoros encampment. As the length of time children spend at risk of kidnapping, [child trafficking](#), and [sexual assault](#) in Mexico under MPP grows, some parents make the desperate [decision](#) to [send](#) their children alone to safety in the United States.
- The men, women, and children returned to Mexico under MPP include **7,709 Cubans, 15,009 Guatemalans, 21,786 Hondurans, 1,414 Nicaraguans, 7,668 Salvadorans, and 2,046 Venezuelans**, among other nationalities, as of late December 2019, according to immigration court data analyzed by [TRAC](#).
- **Asylum seekers are returned to suffer horrific conditions, often without access to safe shelter, sufficient food, proper sanitation, or adequate medical care – conditions that are deteriorating as the months of waiting grow.** In Ciudad Juárez, cramped conditions in migrant shelters led to an [outbreak](#) in mid-January 2020 of nearly 200 cases of chicken pox. Despite nearly a year of asylum seekers being returned to Mexicali, Mexican federal authorities have still not opened a government-run [shelter](#) there. A recent [study](#) by the U.S. Immigration Policy Center found that one-third of families and single adults returned to Tijuana and Mexicali had experienced periods of homelessness. In Matamoros, **children under five make up one quarter of the 2,500 asylum seekers living in tents by the port of entry, enduring sometimes near-freezing temperatures after being returned by DHS to await U.S. immigration court hearings**, according to Helen Perry an American nurse practitioner organizing volunteer emergency medical care for the camp. In early January 2020, she told to Human Rights First researchers that her clinic has seen multiple cases of

sexual and physical assault, children suffering from malnutrition, severe flu, appendicitis, fistula, sepsis, and other life-threatening conditions, and attended to a child who later died after being struck by a car. Multiple children have reported to clinic staff that they fear human traffickers are targeting the camp, including a young girl who said an unknown man approached her, held his hand up to indicate her height, and said that she about the “right size.” Asylum seekers at the camp fear moving to other parts of Matamoros due to the acute danger of kidnapping and violent attack and because the few volunteer attorneys willing to enter Matamoros will only come as far as the port of entry plaza to provide legal information.

- **Religious and humanitarian workers** struggling to aid asylum seekers and protect them from attack have themselves been **threatened and harmed** for their work, including pastors Aaron Mendez and Ricardo Alcaraz, who were abducted in Nuevo Laredo in the summer of 2019 and remain missing to date.
- **DHS has returned hundreds of vulnerable asylum seekers and migrants in violation of internal MPP policy, including children with cancer, autism, Cerebral Palsy, and brain seizures, adults with limited mental capacity, seizure disorders, and at least two deaf, nonverbal individuals, many pregnant women and LGBTQ persons, as well as dozens of Mexican nationals and at least one unaccompanied child who are not even eligible for MPP.** Some vulnerable people recently returned to Mexico under MPP include:
 - Carlos, a two-year-old Honduran boy with profound developmental disabilities and epilepsy,
 - Erica, a seven-year-old Salvadoran girl with Down’s Syndrome and a related heart defect, and
 - a transgender Guatemalan woman sent to the tent encampment in Matamoros, where LGBTQ individuals have been threatened and attacked.
- **The screening process for MPP, which is supposed to prevent the return of individuals to persecution or torture in Mexico, is rigged at every stage – leading to returns of families with children already traumatized from brutal kidnappings and women who fear being sexually assaulted again.** Over the course of the year, screening interviews, which were highly flawed to begin with, have become increasingly cursory, farcical, and hostile. Some MPP fear interviews last just minutes, consist of yes-or-no questions, and/or focus on issues not relevant to fear of Mexico. A former asylum officer who resigned in protest over MPP decried the fear interview process as “practically ensur[ing]” the violation of international law. On January 14, 2020, a federal district court issued a preliminary injunction requiring that DHS to allow individuals receiving MPP fear screening but only in California to speak with and be represented by their attorneys during these interviews. Recent examples of individuals returned to danger in Mexico after farcical MPP fear screenings include:
 - a seven-year-old girl who had been sexually abused in Mexico who was returned to Matamoros by DHS officers in December 2019 after she did not pass a telephonic MPP fear screening interview with an asylum officer, according to her attorney, Jodi Goodwin, and
 - a Cuban asylum seeker in her 20’s raped after being returned by DHS officers to Matamoros failed a farcical MPP fear screening, according to her attorney Norma Gonzalez Sepulveda, who was not given an opportunity to participate in the interview. The asylum officer conducting the interview asked primarily yes-or-no questions and suggested that if the young woman was afraid, she should go elsewhere in Mexico. The woman moved to another region of Mexico but missed her asylum merits hearing in November 2019 because she could not afford transportation to return to the border.
- **More than ninety-five percent of MPP returnees did not have lawyers, as of the end of December 2019, according to immigration court data analyzed by TRAC.** Without access to attorneys or legal information, asylum seekers are unable to prepare their asylum applications, gather critical documentation, or submit

certified English translations of evidence in court. **Only 187 asylum seekers (out of 29,309 completed MPP cases) had been granted refugee protection, as of the end of December 2019, according to TRAC's analysis of immigration court data – an abysmal 0.6% grant rate for MPP cases**, though increasingly asylum eligible refugees are being granted only the deficient protection of withholding of removal. Despite the severe security, geographic, and logistical impediments to legal representation, DHS officials including, Ken Cuccinelli, senior official performing the duties of director of U.S. Citizenship and Immigration Services, expect American “NGO lawyers” to cross into Mexico to represent asylum seekers subjected to MPP regardless of deadly violence in most return locations or to represent their clients through “a phone call.” Once again, DHS is giving only lip service to providing access to legal representation. Even setting aside the security and logistical barriers to cross-border representation, return locations in Mexico overwhelmingly lack safe, confidential spaces for attorney-client communications, and “telephone calls” are a deficient method for conducting highly complex asylum legal representation, which often requires asylum seekers to recount to their lawyers traumatic information relating to torture, sexual assault, and other persecution.

- **DHS continues to shield MPP from public scrutiny by imposing absurd and unjust restrictions on public access to immigration court hearings in secretive tent courts in Laredo and Brownsville, Texas.** Although now allowing the public to watch initial scheduling hearings, DHS has barred some reports and independent legal observers from monitoring individual asylum hearings at the tent courts and has prohibited some observers from bringing paper or writing utensils to take notes. On January 20, 2020, guards at both the Brownsville and Laredo MPP tent courts refused to allow Human Rights First researchers to observe individual asylum hearings and stated that even with the permission of the asylum seeker and his or her attorney, if represented, members of the public will not be permitted to view these hearings in tent courts. At the same time, the administration recently began scheduling MPP tent court cases with immigration judges at the Fort Worth Immigration Adjudication Center, which is not open to the public, effectively cutting off public access to final asylum hearings by removing the option to observe from the judge's courtroom. Former immigration judge Ilyce Shugall, who observed Laredo MPP hearings remotely for Human Rights First in November 2019, wrote that DHS procedure regarding the tent courts “violates the regulations governing immigration proceedings and, more fundamentally, our country's commitment to courts being open to public scrutiny.”
- **Immigration judges have ordered asylum seekers deported if they are unable to attend their court hearings because they are kidnapped or face other dangers on the perilous journey to the tent courts.** Immigration judges have publicly stated that they are under pressure from DOJ to order asylum seekers deported who do not appear for hearings. For instance:
 - In January 2020, immigration lawyers in Harlingen reported that a man who had missed an MPP hearing because he had been kidnapped was ordered deported by an immigration judge in Brownsville.
 - A pregnant Salvadoran asylum seeker reported during an MPP hearing observed by Human Rights First in November 2019, that her husband had been missing in Mexico since September. DHS requested, and the immigration judge issued, an in absentia deportation order.
- **Even if asylum seekers have a well-founded fear of persecution and are eligible for asylum, the Trump Administration's third-country asylum transit ban is being applied to bar refugees from Cuba, Venezuela, and elsewhere in MPP from receiving asylum, which leaves some refugees separated from their children and others in legal limbo.** Issued as an interim final rule on July 16, 2019, the third-country transit ban eliminates asylum for virtually all asylum seekers entering or attempting to enter the southern U.S. border on or after July 16. In November 2019, Human Rights First witnessed immigration judges deny asylum

to Cuban asylum seekers who had attempted to seek asylum at ports of entry before the rule went into effect but were turned away under DHS's policy of reducing access to asylum through metering. Other recent cases denied asylum and other refugee protection because of the third-country transit ban include:

- In late December 2019, an immigration judge for the Laredo MPP tent court recognized a Venezuelan woman as a refugee but denied the woman's children, an 8-year-old boy and 4-year-old twin girls, any protection from deportation whatsoever. The judge found the family ineligible for asylum because of the transit ban and that only the woman qualified for the higher withholding of removal standard, but not her children. Had the woman been granted asylum her children would have received protection from deportation to Venezuela through her asylum grant.
- A Cuban woman and her 11-year-old son were denied asylum by an immigration judge presiding at the Brownsville MPP tent court in mid-January 2020 solely because they had sought asylum at the port of entry after the transit ban went into effect, according to their attorney Ayra Toro. Instead, the judge granted them withholding of removal, which will leave the woman and her son in a permanent state of legal limbo in the United States.

- **DHS returned to Mexico at least 17 recognized refugees with fake hearing notices after immigration judges granted them asylum or other refugee protection.** Following pressure from attorneys, the media, and members of Congress, DHS appears to have halted returning refugees to Mexico after they win protection. However, instead of releasing these recognized refugees through parole or case management (or other alternatives to detention), DHS sends some to immigration jail while it considers whether to appeal the immigration judge's decision and while such appeals are pending. For instance:

- DHS detained a Venezuelan family of three in late-January after they were granted withholding of removal (due to the transit ban) from an immigration judge at the Brownsville MPP tent court even though the government attorney did not reserve the right to appeal, meaning the judge's decision is final. According to their attorney, Jodi Goodwin, the family is currently being held in a CBP *hielera*.
- In mid-January 2020, a Cuban woman was recognized as a refugee and granted the limited protection of withholding of removal by an immigration judge at the Brownsville MPP tent court. She was denied asylum because the judge found that the woman had requested asylum at the port of entry in July after the transit ban went into effect and was therefore ineligible for asylum on that basis, according to her attorney Kou Arie Sua. DHS is detaining the woman pending a decision to appeal.
- In early-January 2020, an immigration judge for the Brownsville MPP court granted a Cuban asylum seeker withholding of removal, finding that he was not eligible for asylum due to the transit ban as the man had sought protection at a U.S. port of entry in mid-September, according to his attorney, Aglae Eufrazio. As a result of being denied asylum, the man is unable to petition for his wife and son, who remain in danger in Cuba, to come to the United States. DHS is currently holding the man in an immigration jail while deciding whether to appeal the judge's grant of refugee protection.

- **MPP is not only a humanitarian and due process disaster; it's also illegal.** Both U.S. law and treaties ratified by the United States prohibit the government from returning asylum seekers to persecution and torture. The MPP policy also flouts asylum laws and due process protections Congress adopted for refugees seeking protection at the border. The U.N. Refugee Agency has made clear in an amicus brief in a suit challenging MPP that fear-screening procedures like those used for MPP "lack key safeguards required by international law" as "applicants do not have access to counsel in the screening procedure; a decision is not appealable by the applicant; and applicants cannot meaningfully prepare their refugee status determination claims by meeting with lawyers and/or receive notice of upcoming court dates, or otherwise be assured of due

process in their full asylum hearings.” An amicus [brief](#) by the union for asylum officers from USCIS, who conduct these screenings, states that, “MPP fails to provide even the basic procedural protections available to asylum applicants subject to [expedited removal].”

- **While the number of asylum seekers and migrants being placed in MPP appears to have slowed, DHS is using other illegal policies that block asylum seekers from speaking with attorneys and the opportunity to apply for protection in the United States.** These include: [metering](#) – the illegal policy of turning back asylum applicants at ports of entry; [asylum cooperative agreements](#) – through which the administration began sending asylum seekers to [Guatemala](#) and has taken steps to finalize an asylum-seeker transfer agreement with [Honduras](#); and [fast-track deportation procedures](#) at CBP facilities, including the Prompt Asylum Claim Review (PACR) and the Humanitarian Asylum Review Process (HARP), that effectively block asylum seekers from accessing legal representation before or during credible fear interviews.



Recommendations

Human Rights First urges the Trump Administration to:

- ☑ **Cease MPP and all other policies and practices that violate U.S. asylum and immigration law and U.S. Refugee Protocol obligations**, including the third-country transit asylum ban, fast-track asylum-seeker deportation procedures including PACR and HARP, turn-backs and orchestrated reductions on asylum processing at ports of entry, and all attempts to send asylum seekers to countries, including El Salvador, Honduras, Guatemala, and Mexico, that do not meet the legal requirements for safe-third country agreements under U.S. law. Instead, the United States should employ [effective and humane strategies](#) that uphold U.S. laws and treaty obligations.

- ☑ **Direct CBP to restore timely and orderly asylum processing at ports of entry and ensure humane conditions for those held temporarily under CBP custody**, meeting all legal standards, including the Flores Settlement Agreement and internal DHS detention policies.

Human Rights First recommends that Congress:

- ☑ **Withhold appropriations to DHS and the Department of Justice (DOJ) used to carry out MPP and other forced return programs by adopting the Asylum Seeker Protection Act;**
- ☑ **Adopt the Refugee Protection Act;**
- ☑ **Hold MPP oversight hearings; and**
- ☑ **Continue to conduct official visits to Mexican border towns, CBP facilities, and Border Patrol stations on the southern border, and immigration courts including tent facilities to monitor the massive human rights violations caused by MPP.**

Human Rights Fiasco: The Trump Administration's Dangerous Asylum Returns Continue

In January 2019, the Trump Administration started forcibly returning asylum seekers to Mexico under a new policy farcically dubbed the “Migrant Protection Protocols” (MPP). Waiting months in Mexico for their hearings, asylum-seeking men, women, and children from, among other countries, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, and Venezuela face life-threatening dangers. Despite overwhelming evidence that this illegal policy is a human rights catastrophe, Trump Administration and Department of Homeland Security (DHS) officials continue to implement, defend, and expand it.

In October, DHS expanded MPP returns from Arizona and began forced returns through Eagle Pass, Texas to Piedras Negras, Mexico. There and in other dangerous border cities, including Tijuana, Mexicali, Ciudad Juárez, Nuevo Laredo, and Matamoros, asylum seekers and migrants returned under MPP face peril wherever they turn. They have been beaten, kidnapped, and raped in shelters, on the way to and from U.S. immigration court hearings, and on the street while looking for work, housing, and food.

Trump Administration and DHS officials are turning a blind eye to these human rights abuses, touting MPP as an alternative to family separation, a way to reduce “overcrowding” in detention facilities, and one of DHS’s “most successful initiatives,” which has “achieved operational effectiveness” by reducing the number of asylum seekers arriving at the southern border. These claims of “success” by DHS officials ignore the severe harms inflicted on the asylum seekers and migrants returned to Mexico under MPP. Mark Morgan, acting Commissioner of U.S. Customs and Border Protection (CBP), has even dismissed the hundreds of public reports of cases of torture, rape, kidnapping, and assault against people in the MPP program as “anecdotal stuff.”

MPP is not only immoral; it's also illegal. Both U.S. law and treaties ratified by the United States prohibit the government from returning asylum seekers to persecution and torture. At the same time, the policy flouts asylum laws and due process protections Congress adopted for refugees seeking protection at the border.

The administration is using MPP in tandem with other illegal policies, including turn-backs and the third-country transit asylum ban, to subvert U.S. law. The result is effectively a near-ban on asylum. DHS has forced more than 60,000 asylum seekers and other migrants to wait in Mexico under MPP. In addition, some 21,000 are stranded in Mexico due to metering—the illegal policy of turning back asylum applicants at ports of entry. In November, the administration also began to take steps toward implementing asylum-seeker transfer agreements with Guatemala, Honduras, and El Salvador.

This report is based on interviews with asylum seekers stranded in Mexico, attorneys, court monitors, academic researchers, and Mexican government officials; field research in October and November in Ciudad Juárez, Nuevo Laredo, Piedras Negras, and Tijuana; observation of MPP immigration court hearings in November and December; and reports from human rights organizations, legal monitors, and the media. Human Rights First observed proceedings at the Laredo MPP tent court remotely from the San Antonio immigration court because CBP denied Human Rights First's requests for access to the facility, just as it denied us access to the Brownsville tent court in September. This report builds on our March 2019, August 2019, and October 2019 reports. Human Rights First found:

- Trump Administration and DHS officials continue to direct the forced return of men, women and children seeking refuge to some of the most dangerous areas of Mexico despite**

widespread reports that they are targeted for kidnapping, torture, rape, and other violent attacks. Those harmed include: a 9-year-old disabled girl and her mother kidnapped near the Tijuana port of entry and repeatedly raped; an asylum seeker kidnapped and raped in front of her three-year-old son after being sent by DHS to Matamoros; and a 7-year-old Honduran girl abducted from the Mexican migration office in Nuevo Laredo after an MPP tent court hearing. On hearing kidnappers threaten to murder migrants whose families failed to pay ransom, the girl said, “**Mommy, I don’t want to die.**” Instead of briefly passing through these dangerous regions to reach the U.S. border to request refugee protection, thousands of asylum seekers are stranded in peril for months. DHS now acknowledges that the wait is at least two to four months for an initial hearing, much longer for a final merits hearing.

- ☑ **There are now at least 636 public reports of rape, kidnapping, torture, and other violent attacks against asylum seekers and migrants returned to Mexico under MPP** – a sharp increase from October when Human Rights First identified 343 attacks. On November 13, U.S. Senator Ron Johnson entered Human Rights First’s prior report on MPP into the Congressional record apparently as proof, in his view, that only 343 of the thousands of returned asylum seekers had been targets of violence. But our count of kidnappings and violent assaults is only the tip of the iceberg. The overwhelming majority of returned individuals have not spoken with human rights investigators or journalists, so the actual number of attacks is certainly much higher. A recent study by the U.S. Immigration Policy Center at UC San Diego found that one in four people in MPP in Tijuana and Mexicali have been threatened with physical violence. The study did not include the extremely dangerous MPP return locations of Ciudad Juárez, Matamoros, or Nuevo Laredo.
- ☑ **Human Rights First’s tally of attacks includes at least 138 publicly reported cases of kidnapping or attempted kidnapping of children in the MPP program.** The extreme dangers children in MPP face while waiting months in Mexico have pushed some desperate parents to send them alone into the United States at ports of entry.
- ☑ **Despite claims by DHS officials that returned asylums seekers in MPP are safe in migrant shelters in Mexico, they are targeted for kidnapping, rape, robbery, and assault in these very shelters**, as well as: immediately after DHS returns them; as they go to and return from MPP hearings in the United States; and while they search for shelter, food, and work. They are attacked because of their race, gender, sexuality, nationality, and status as migrants.
- ☑ **The MPP screening process, which returns asylum seekers to wait in grave danger despite credible fears of persecution, appears to be increasingly cursory and adversarial.** Asylum officers, now potentially including border agents allowed by the Trump Administration to act as asylum officers, aggressively question victims of violence, including children, in an apparent effort to undermine their accounts. In other cases, interviews last only a few minutes and consist principally of yes-or-no questions. As a result, virtually everyone is sent back to Mexico regardless of the danger or the trauma they have faced. Returned asylum seekers include a sexual assault survivor who had bruises on her body and sobbing children who had been kidnapped. An investigation by U.S. Senator Jeff Merkley’s office found it “virtually impossible” for asylum seekers to pass MPP fear screenings.
- ☑ **DHS is returning and attempting to return some of the very few refugees who manage to receive asylum or other protection back to danger in Mexico with fake hearing notices.** In late November, the agency returned to notoriously dangerous Nuevo Laredo four Cuban and Venezuelan refugees granted asylum by U.S immigration judges where they remain at risk of kidnapping and attack, as of the date this report was published.

- In violation of its own policy, DHS returns vulnerable individuals, including those with serious medical issues, pregnant women including those with late-term pregnancies, LGBTQ persons, and Mexican nationals.** A pregnant asylum seeker suffered a miscarriage while trying to run away from persecutors after DHS returned her to Ciudad Juárez. An internal DHS report acknowledged that CBP has been illegally placing Mexican nationals into MPP.
- Refugees and other migrants are stranded in Mexico in often inhumane and horrific conditions.** As winter temperatures begin to drop, conditions for the many individuals stranded without proper shelter, particularly in Matamoros, have grown ever more desperate. Helen Perry, a nurse practitioner and Global Response Management's operations director, said: "Speaking from having seen other humanitarian crises in the world, this is one of the worst situations that I've seen. It's only going to get worse, and it's going to get worse rapidly." Despite claims by DHS that Mexico provides housing and humanitarian aid, shelters are minimal and dangerous.
- MPP and the tent courts are a due process charade** that effectively denies nearly all asylum seekers legal representation in immigration court removal proceedings. Ninety-eight percent of all returned individuals were unrepresented through September, according to data from the immigration courts. MPP endangers the safety not only of refugees, but also American lawyers and volunteers who are forced to cross into areas of Mexico plagued by kidnappings and other violence.
- Asylum seekers who miss MPP court hearings because of kidnappings are being ordered deported.** A pregnant Salvadoran woman in Laredo court told an immigration judge that her husband had gone missing in Mexico and couldn't attend court. The judge ordered him deported. A 9-year-old disabled girl and her mother missed their immigration court hearing while being held captive and raped. They were ordered removed by an immigration judge in San Diego.

Human Rights First urges the Trump Administration to:

- Cease MPP and all other policies and practices that violate U.S. asylum and immigration law and U.S. Refugee Protocol obligations,** including the third-country transit asylum ban, turn-backs and orchestrated reductions on asylum processing at ports of entry, and all attempts to send asylum seekers to countries, including El Salvador, Honduras, Guatemala, and Mexico, that do not meet the legal requirements for safe-third country agreements under U.S. law. Instead, the United States should employ effective and humane strategies that uphold U.S. laws and treaties.
- Direct CBP to restore timely and orderly asylum processing at ports of entry and ensure humane conditions for those held temporarily under CBP custody,** meeting all legal standards, including the Flores Settlement Agreement and DHS internal detention policies.

Human Rights First recommends that Congress:

- Withhold appropriations to DHS and the Department of Justice (DOJ) used to carry out MPP and other forced return programs;**
- Adopt the Refugee Protection Act;**
- Hold MPP oversight hearings; and**
- Conduct official visits to Mexican border towns, CBP facilities and Border Patrol stations on the southern border, and immigration courts including tent facilities to monitor the massive human rights violations caused by MPP.**



At Least 636 Publicly Reported Cases of Rape, Kidnapping, and Assault

Instead of allowing asylum seekers to remain safely in the United States while their asylum claims are decided, as required by the U.S. Refugee Act and subsequent immigration law, the Trump Administration – through MPP – delivers asylum seekers and migrants to rape, kidnapping, torture, and other violent assaults in Mexico. **From the moment that asylum seekers are dumped in Mexico under MPP, they are forced to risk their lives daily to remain in Mexico waiting for U.S. immigration court hearings.** Vulnerable asylum seekers and migrants, including pregnant women, children, and people with disabilities, are kidnapped, raped, and assaulted in shelters, in taxis and buses, on the streets, on their way to U.S. immigration court, and even while seeking help from Mexican police and migration officers. There is virtually no escape from the violence: asylum seekers who flee border cities to wait elsewhere in Mexico for MPP hearings are attacked in those regions, on their journeys there, as well as on their way to and returning from immigration courts in the United States.

During its most recent research, Human Rights First researchers identified an additional 201 previously unreported cases of individuals in the MPP program who were harmed in Mexico. Although likely a gross underestimate of the harm to returned asylum seekers and migrants given the limited monitoring and investigation of the program to date, review of published media accounts, human rights reports, court filings, and other publicly available information reveal that **at least 636 individuals subject to MPP have been violently attacked or threatened in Mexico** – a sharp increase from early October when Human Rights First identified 343 publicly reported attacks against individuals in MPP.

There are certainly well over 636 cases of kidnappings, rape, torture, and assault as the vast majority of asylum seekers and migrants returned under MPP have not been interviewed by reporters or human rights organizations. This count is only the tip of the iceberg. For example, a recent [study](#) by the U.S. Immigration Policy Center at UC

San Diego found that one in four people in MPP in Tijuana and Mexicali have been threatened with physical violence while waiting for court hearings. The study did not include the extremely dangerous MPP return locations of Ciudad Juárez, Matamoros, or Nuevo Laredo. Human Rights First will continue to periodically update the number of reports of kidnappings and assaults it has tracked on www.deliveredtodanger.org, a new initiative launched in collaboration with the American Immigration Lawyers Association, Instituto para las Mujeres en la Migración, Latin America Working Group, Physicians for Human Rights, Refugees International, Washington Office on Latin America, and Women's Refugee Commission.

Children Kidnapped and Vulnerable Individuals in Grave Danger

Children have not been spared from the kidnappings, sexual assault, and other violent attacks on asylum seekers and migrants DHS returns to Mexico through MPP. Among the overall number of attacks, **Human Rights First has tracked at least 138 children in the MPP program who were kidnapped, or subjected to kidnapping attempts, in Mexico to date.** Given the limited monitoring of MPP returnees, the number of children targeted as they wait in danger in Mexico is certainly much larger. Over 16,000 children have been returned to Mexico under MPP, as [Reuters](#) reported in October. Children kidnapped or otherwise harmed in MPP include:

- **A disabled nine-year-old girl was twice kidnapped and repeatedly sexually assaulted** after DHS sent the child and her asylum-seeking mother, Lucia, to Tijuana, according to a statement submitted by the American Immigration Council (AIC) to Congress. Lucia said that the men who kidnapped them the second time “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.”
- **A two-year-old boy was kidnapped in September from a house in Ciudad Juárez while his mother was doing chores in another room,** according to Tania Guerrero of Catholic Legal Immigration Network's (CLINIC) Estamos Unidos Project. DHS had sent the family to Mexico under MPP.
- **A Honduran boy and his asylum-seeking father were abducted the same day DHS returned them to Nuevo Laredo by kidnappers who threatened to take the boy's kidneys,** according to an account first published by [Vice News](#) and recently included on an episode of [This American Life](#).
- **Seven and ten year-old-girls were threatened with rape by kidnappers** who also abducted their brother and father, an asylum seeker from Honduras, after DHS returned the family to Nuevo Laredo.
- **A three year-old-boy was kidnapped along with his mother, who was raped in front of him,** when DHS sent the family to Matamoros.
- **A 12-year-old Salvadoran girl was nearly abducted from her mother in Monterrey** after they were sent by DHS to Nuevo Laredo under MPP then dumped by Mexican authorities in Monterrey. Armed men chased the family and grabbed the girl, but her mother managed to wrestle her back and escape.
- A seven-year-old Honduran girl returned by DHS to Nuevo Laredo told her asylum-seeking mother **“Mommy, I don't want to die”** after overhearing the men who kidnapped them discussing murdering migrants who could not pay ransom.
- Some parents are so terrified for the safety of their children that some have begun to send them alone to ports of entry to be treated as unaccompanied minors and taken to shelters in the United States. Government data reported by [CNN](#) indicates that at least 135 children who were returned to Mexico under MPP are now in the care of the U.S. Department of Health and Human Services, the agency

charged with the care of unaccompanied minors. Taylor Levy, an immigration attorney representing asylum seekers returned to Ciudad Juárez under MPP, said that since at least July she has been fielding inquiries from parents desperate to protect their children by sending them into the United States alone.

DHS continues to return vulnerable asylum seekers and migrants to Mexico in violation of internal MPP policy. DHS claims “individuals from vulnerable populations may be excluded on a case-by-case basis;” yet, the agency returns vulnerable individuals including those with “known physical/mental health issues,” LGBTQ persons, and Mexican nationals who are not eligible for MPP. Those returned in violation of the policy include:

- A disabled nine-year-old girl who was subsequently kidnapped with her mother and repeatedly raped and a 16-year-old Cuban boy diagnosed with lupus and heart and kidney disorders;
- **LGBT asylum seekers**, including a 20-year-old gay Honduran man who is HIV+ and was separated from other asylum-seeking family members and returned to Nuevo Laredo, an LGBT Cuban woman who had been robbed and threatened in Nuevo Laredo while waiting on the metering list, and a gay asylum seeker from Cuba who was robbed and threatened in Mexico but subsequently returned to Matamoros;
- **Pregnant women**, including several with late-term pregnancies, such as a pregnant Honduran asylum seeker under MPP suffered a miscarriage when she fell while trying to escape from persecutors who had followed her from Honduras, a Venezuelan asylum seeker who suffered serious post-natal complications after giving birth to twins in Mexico who DHS had returned in late September to Nuevo Laredo while eight months pregnant, a Salvadoran woman whose husband had gone missing months earlier who was returned again to Mexico after an MPP hearing in early November while eight-and-a-half months pregnant, and a 28-week pregnant Nicaraguan woman with a six-year-old child who told the judge she was afraid to be in Mexico but was not referred for a non-refoulement interview;
- **Indigenous asylum seekers** particularly from Guatemala who are not native-speakers of or fluent in Spanish, including Rosalía, a native Mam speaker sent by DHS to Mexicali; and
- At least 57 **Mexican nationals**, according to immigration court data analyzed by Syracuse University's Transactional Records Access Clearinghouse (TRAC) – in clear violation of MPP, which explicitly exempts “citizens or nationals of Mexico.” An internal DHS review reportedly found CBP places some Mexican nationals in MPP and acknowledged the need to “address situations where families are placed in MPP and returned to Mexico despite having at least one immediate family member who is Mexican.”

Asylum Seekers Risk Their Lives to Appear in U.S. MPP Courts

Asylum seekers in MPP are at great risk of kidnapping while going to and from U.S. ports of entry to attend immigration court hearings because they are easily identifiable as migrants. Asylum seekers, many of whom spend months waiting on metering lists at ports of entry are forced to wait months more to attend MPP hearings. Wait times for initial hearings are far longer than the 45 days that DHS had initially claimed, with the agency now acknowledging that asylum seekers are waiting between two and four months just for a first hearing. Government data analyzed by TRAC shows that 25 percent of asylum seekers in MPP whose cases were filed with the immigration court in May (1,204 out of 5,080) were still waiting for an initial hearing – four months later – in September. Forty-eight percent of MPP cases filed in June (2,854 out of 5,973) had already been waiting three months for an initial hearing, as of the end of September. Some asylum seekers have already been in Mexico under MPP for nine months waiting for final merits hearings. In early December 2019, asylum seekers appearing in the Laredo MPP tent court, who had already been waiting in Mexico for months due to metering and months

more for their initial hearings, were scheduled for final merits hearings in March 2020 – another three months away. Asylum seekers who have been attacked before or after appearing for MPP hearings include.

- **Lucia and her disabled nine-year-old daughter**, as discussed above, **were returned by DHS to Tijuana following an MPP hearing in San Diego, they were kidnapped just blocks from the port of entry, held for nearly two weeks and repeatedly raped.**
- **A Honduran asylum seeker and his two children, a 12-year-old boy and a 16-year-old girl, were kidnapped while returning from a Laredo MPP tent court hearing in September.** During another hearing in November, observed by a Human Rights First researcher, the family begged not to be sent to Mexico. The girl, sobbing, said that when they return to court “bad people” approach them. The boy said to the judge, “I hope you can help us, please. I don’t want to return to Mexico. We run a lot of risk.”
- In late October, **a Venezuelan asylum seeker was kidnapped while returning to Nuevo Laredo for an MPP hearing at the port of entry tent court in Laredo.** Immediately after getting off of a bus from Monterrey five men approached him and a Guatemalan asylum seeker traveling with him. The two were taken from the bus station in separate vehicles. “I started to cry in the truck. One guy told me to calm down and shut up or he would beat me.” The man was taken to two different houses where the cartel held a dozen other migrants including a Colombian man with a toddler and Nicaraguan family with a nine-month-old baby. The kidnappers punched the Nicaraguan mother in the neck, as they forced her to call family members to beg for a ransom to be paid. The kidnappers released the man after several days of captivity. He fears returning to Nuevo Laredo for his next hearing in December, as his abductors recorded his details from his passport into a notebook and took a photograph of him.
- A 13-year-old boy and his mother were nearly kidnapped in Nuevo Laredo while walking from the bus station toward the port of entry to attend an MPP hearing in Laredo in late September. An armed man and woman approached the family, took photos of them and tried to force them into a waiting vehicle. They escaped on foot to the office of the Instituto Nacional de Migración (National Migration Institute – INM) but so feared leaving that they missed the hearing. A Mexican migration officer eventually ordered the family to get out, saying “it wasn’t [INM’s] problem.” A local pastor, who happened to arrive, hid the family in the back of a passenger van and spirited them from the parking lot of INM building to a shelter.
- A Venezuelan refugee returned by DHS to Mexico after an immigration judge granted him withholding of removal at the Laredo MPP tent court was nearly kidnapped in November while returning to the port of entry to request to be allowed to enter the United States. At the Nuevo Laredo bus station, a group of around ten men surrounded the Venezuelan man. He managed to push his way through, jump into a waiting taxi, and immediately walk onto the international bridge to Laredo, Texas, to escape.
- In mid-October, a Honduran asylum seeker and her daughter told an immigration judge at the Laredo MPP tent court that they had been kidnapped and assaulted in Nuevo Laredo. According to a court monitor attending the hearing from San Antonio, the woman said that if she didn’t return for her next court hearing, “[i]t’s because something happened to me in Nuevo Laredo.”

Asylum Seekers Targeted at Shelters

Asylum seekers returned by DHS to Mexico under MPP are under serious threat of kidnapping and assault, even inside of migrant shelters, which overwhelmingly lack protection from Mexican authorities. Further asylum seekers in MPP are attacked outside of migrant shelters when the very limited beds in these facilities are full as well as when asylum seekers go out in search of work, food, and other necessities.

Despite widely available evidence of the dangers facing asylum seekers forced to wait in Mexico, acting CBP Commissioner Morgan claimed that migrant shelters in Mexico have “persistent law enforcement present” and that “safety was okay.” Yet since August, at least three individuals who reportedly attempted to prevent organized criminal groups from kidnapping or assaulting migrants in Nuevo Laredo shelters, including pastors Aaron Mendez and Ricardo Alcaraz, were abducted and remain missing. Attacks against migrant shelters in Guadalajara and Tlaxcala have also recently taken place. Many incidents go unreported because of fears of reprisal, as in the case of pastor Alcaraz whose family received threats after they publicly denounced his kidnapping. In Ciudad Juárez, Uber and taxi drivers reportedly refuse to pick up migrants at shelters because of the danger that kidnappers and extortionists will target them and their passengers.

- Despite claims by DHS of “persistent law enforcement” presence, **only one of the 14 shelters with MPP returnees visited by Human Rights First researchers in Tijuana, Mexicali, Ciudad Juárez, Piedras Negras, and Nuevo Laredo had government-provided security.**
- In Nuevo Laredo, **asylum seekers returned by DHS under MPP described attacks and/or threats against at least five migrant shelters since MPP began there.**
 - Human Rights First reviewed several reports that armed cartel members opened fire outside of a church-based shelter that they later entered, threatening to kidnap migrants. A Venezuelan asylum seeker returned by DHS to Nuevo Laredo reported that cartel members threatened a pastor at the same shelter.
 - Asylum seekers in MPP at a Nuevo Laredo church-run shelter housing some 70 individuals, including many children, told Human Rights First researchers in November that armed cartel members had recently broken in, terrifying those at the shelter.
 - A Cuban asylum seeker returned by DHS to Mexico stated that in August cartel members had robbed him inside of a church offering shelter to migrants in Nuevo Laredo.
 - MPP returnees at another religiously affiliated shelter in Nuevo Laredo visited by researchers said that cartel members were frequently outside and that they were to go outside fearing abduction. Even though the shelter is near the port of entry, the pastor drives asylum seekers there to attend MPP immigration court hearings to reduce the risk of kidnapping. An asylum seeker in MPP at a shelter run by a Catholic priest reported that he had seen men he believed were cartel lookouts circling the building.
 - Another pastor was threatened by cartel members while transporting migrants to a shelter in Nuevo Laredo.
 - A 25-year-old Honduran woman and her three young children – all under 5 – who crossed the border near Piedras Negras were kidnapped upon exiting a taxi in front of a shelter in Nuevo Laredo after DHS returned them there in mid-October. Men in white vans intercepted the family, held them captive for five days, and demanded money from family members, according to an academic researcher who spoke with the relatives.
- Migrant shelters in Ciudad Juárez have also been targeted. In September, armed, masked men attacked a church-based shelter in Ciudad Juárez housing mainly Cuban migrants, according to a Cuban asylum seeker who was sleeping in the shelter with his partner and nine-year-old daughter at the time. The men shouted: “asshole Cubans, open up,” as they forced their way into the shelter. The armed men threatened to “kill one of these asshole Cubans” and fired their weapons indiscriminately, nearly hitting the Cuban man. At another shelter on the outskirts of Ciudad Juárez, a Honduran asylum seeker who DHS had

returned under MPP was nearly abducted by four masked men in a black van who repeatedly came to the shelter where she was staying and interrogated other migrants about her whereabouts.

- A Honduran asylum seeker returned by DHS to Nuevo Laredo with her 10-year-old daughter was forced to flee a church shelter in Monterrey in September because cartel members had demanded that the church make an extortion payment for each Honduran migrant staying in its facility.

Asylum seekers in MPP who cannot find space in or avoid migrant shelters, which have been targets of attacks, are also at risk of kidnapping and assault in migrant hotels and other accommodation.

- **A disabled nine-year-old girl was sexually assaulted after she and her mother, Lucia, were placed in MPP by DHS and sent to Tijuana,** according to AIC. The family were forced from a migrant shelter demanding payment and had moved into the house of a local man in exchange for Lucia doing domestic work. The man, who turned out to work for a cartel, locked them in the house, forced Lucia to work without pay, and sexually assaulted the girl.
- **A 12-year-old Salvadoran girl was nearly raped after she, her father, and younger brother were returned by DHS to Ciudad Juárez under MPP.** After the Casa Migrante told the family that they could not extend their stay due to limited capacity at the shelter, the family rented a room in a local home. While the girl's father was out purchasing food, the husband of the house's owner tried to rape the girl. The man threatened to have the girl's father arrested and deported, if she reported him to the police.
- In early July, armed cartel members attacked a home where several Cubans were renting rooms while waiting for permission to approach the port of entry at Laredo to request asylum. The cartel members announced they were searching for "foreigners," roughed up the elderly Mexican couple renting out the home, beat several of the men and placed rifles to their heads, robbed the group, took their photos and ordered them to leave the city. **DHS returned these asylum seekers to Nuevo Laredo through MPP, telling one man that his fear of the cartel was "outside their [CBP's] jurisdiction."**
- While waiting on CBP's metering list at the Laredo port of entry, **a Venezuelan asylum-seeking family with a 7-year-old daughter reported that armed men kidnapped numerous individuals from the migrant hotel where they were staying in July.** In the early hours of the morning, a group of men abducted migrants from the rooms on either side of theirs, firing guns into the air outside. The family fled to a shelter but did not remain there long because the pastor running the shelter was kidnapped.
- An asylum-seeking Venezuelan family with 16- and 11-year-old girls and 10- and 3-year-old boys were robbed in a migrant hotel after DHS returned them to Nuevo Laredo. A hotel manager said he was powerless to stop the cartel from entering the hotel. Men had previously tried to kidnap one of the girls, as the family passed through the Nuevo Laredo bus station.

Returned asylum seekers forced to venture onto the streets or take public transportation to purchase food or in search of work to support themselves and hire attorneys to represent them are also targets of attack because of their nationality, race, gender, and status as migrants.

- **Nicole, a pregnant asylum seeker from Honduras suffered a miscarriage after she fell while escaping from her persecutors** who had tracked her and her husband to where the family was attempting to hide while waiting for their MPP hearing in El Paso, according to Tania Guerrero, an attorney with CLINIC.
- A 28-year-old Salvadoran asylum seeker sent to Nuevo Laredo by DHS under MPP went missing in September after leaving a shelter in Nuevo Laredo to work for the day. The man was still missing at the

time his 8-year-old son and wife, who was due to give birth in mid-November, appeared at their master calendar hearing in early November at the Laredo MPP tent court.

- In November, a Salvadoran asylum seeker and her two young children, who DHS returned to Matamoros, were abducted in a taxi while trying to reach a nearby store to purchase food. The taxi driver handed the family over to kidnappers who held them for seven days while attempting to extort the woman's relatives, according to Charlene D'Cruz, an immigration attorney heading the Lawyers for Good Government project at the Matamoros tent encampment. **D'Cruz said that abductions are so common in Matamoros that "most people expect that they're going to be kidnapped at some point."**
- A Cuban asylum-seeking couple were robbed and pushed to the ground while walking to a store in Mexicali, where the pair had moved after DHS returned them to Nuevo Laredo. The couple had previously been abducted, robbed, and threatened in Reynosa. Another couple seeking asylum from Cuba were abducted from the street in Mexicali in August, according to their attorney Margaret Cargioli from the Immigrant Defenders Law Center. The family is afraid to venture outside now because the kidnappers took their phones and recorded their biographical information.
- A 51-year-old member of a Cuban opposition party said that he and his adult sons, who were returned to Nuevo Laredo by DHS, have been repeatedly targeted because of their nationality. In one incident, men shouted at them on the street: "asshole Cubans, you're fucked." Then **in late October, a group of men cornered the family in the street, beating the older man with a board.**
- Lizbeth, a Salvadoran asylum seeker who was returned by DHS to Mexico through MPP, was savagely beaten in the street by two men with a belt while returning from a convenience store to the home where she had found accommodation on the outskirts of Tijuana, according to her attorney Siobhan Waldron.
- After being returned to Ciudad Juárez by DHS, a Venezuelan asylum seeker was robbed while walking in downtown Juárez. The assailant used the woman's stolen phone to threaten and extort her family members in the United States claiming he knew where the woman lived. When the woman's family stopped answering the calls, a man with a photo of the woman appeared near her home in Juárez asking about her. She reported the incident to authorities, but the police did not conduct any investigation.
- Armed men cut a 33-year-old Venezuelan asylum seeker with a knife as he was searching for a migrant shelter in Nuevo Laredo when the man refused to get in their truck. DHS later returned the man under MPP despite the attack. A former police officer, the man stated that fears going outside the shelter where he is staying. "You cannot understand how bad it is," he said.
- In November, a female asylum seeker from Honduras returned by DHS to Matamoros was kidnapped near the tent camp just feet from the local INM office and the building where Lawyers for Good Government is assisting MPP returnees with asylum applications, according to attorney Charlene D'Cruz.
- In September, the 18-year-old son of a Venezuelan asylum seeker returned by DHS to Nuevo Laredo was nearly kidnapped while working at a fruit and vegetable stand where he and his mother had found work. A passerby intervened to stop five men from kidnapping the young man when they began interrogating him about whether he was a foreigner. The young man had previously received a graze wound on his neck during a shooting near the stand.
- **Kidnappings of asylum seekers in MPP from the bus station in Nuevo Laredo are common**, including: a family seeking asylum from Venezuela with daughters ages seven and two; two Honduran asylum-seeking sisters and their three children held captive for five days and threatened with death if their

family did not pay ransom; and, a Guatemalan family with two boys who were kidnapped from the station while waiting for a bus to Monterrey while on the port of entry asylum metering list.

Individuals and families who attempt to relocate away from the border region are still kidnapped and attacked – sometimes in transit to these regions or on return to MPP hearings, as well as in cities like Monterrey, where Mexican authorities dump returned asylum seekers without assistance.

- A 4-year-old Honduran boy and his 23-year-old asylum seeker mother were kidnapped in Monterrey after being bused there following their return to Nuevo Laredo by DHS. On the second night of their captivity, one of the kidnapers began to sexually assault the woman but was interrupted by another of the kidnapers who set the family free.
- A 3-year-old Salvadoran boy and his mother were kidnapped while attempting to reach Monterrey after DHS returned them to Nuevo Laredo. Family members were forced to pay a ransom to secure their release. The family went into hiding in the house of Good Samaritan who is providing them with food because they fear going outside.
- A group of men stopped and threatened a Venezuelan asylum seeker traveling from Nuevo Laredo, where she had been returned by DHS under MPP, to Toluca. The men asked whether the woman was Venezuela or Cuban and gave a “first warning” to the minister traveling with the woman at the time.
- An asylum seeker from Ecuador was abducted in September while traveling to Monterrey after being returned to Nuevo Laredo by DHS. The kidnapers removed her from a car and took her to a series of houses where they demanded money for her release.
- A group of men beat and robbed a Salvadoran asylum seeker returned by DHS to Nuevo Laredo in July when he stepped out of the migrant shelter in Monterrey to purchase food for himself and his daughter.
- A Venezuelan asylum seeker in MPP, who was later granted withholding of removal at the Laredo tent court facility, was beaten by a group of men with sticks in Monterrey. On another occasion armed men in a vehicle nearly kidnapped him while he was traveling in a taxi in Monterrey.
- Cartel members in Monterrey sent extortion demands and threatening messages to a Cuban asylum seeker placed in MPP by DHS and returned to Nuevo Laredo in July. The man was forced to relocate again to another part of Mexico. He had previously been assaulted three times while in Reynosa.
- Another Cuban asylum seeker sent by DHS to Nuevo Laredo who had moved to Monterrey was kidnapped there and released only after he and his family paid a significant ransom.

Mexican Authorities Complicit

Mexican migration and police officers are responsible for and/or complicit in the kidnapping, rape, assault, and extortion of asylum seekers and migrants returned by DHS to Mexico under MPP. Some attacks have been carried out inside of Mexican migration installations and police stations, as discussed below. In fact, the U.S. Department of State reported in its 2018 assessment of human rights in Mexico that migrants are victimized by police, immigration officers, and customs officials. Mexican authorities also consistently fail to investigate or prosecute reported crimes against migrants.

Trump Administration officials when questioned about the dangers facing those returned to Mexico by DHS have repeatedly asserted that Mexico shelters and ensures humanitarian assistance for asylum seekers in MPP

(though no written agreement with Mexico detailing specific responsibilities – including for safety and security in notoriously dangerous areas – has been publicly released). But the mere assertion that Mexico is responsible does not relieve the United States of its responsibility to protect refugees seeking asylum at and within its borders. This attempt to evade and shift responsibility for refugee protection to Mexico is particularly disingenuous given the documented history of kidnappings, killings, and disappearances in Mexico and along the border, the targeting of refugees and migrants in Mexico, and the extensive documentation of corruption among Mexican authorities – including migration officials. The Mexican government should and must do more, but the United States must uphold its asylum laws and treaty commitments and stop refouling asylum seekers and migrants to places where they face persecution, torture, and other human rights abuses. Some example of Mexican officials' complicity and collaboration in these attacks, include:

- In mid-September, **cartel members openly kidnapped returned asylum seekers inside the INM building in Nuevo Laredo** following U.S. immigration court hearings, including the seven-year-old Honduran girl and her mother mentioned above. The woman overheard a Mexican migration officer tell the kidnappers the number of migrants returned from court that day and the men counting victims to abduct. The family tried to escape in the car of local pastor, but cartel members forced the vehicle to stop a few blocks away, abducted them, and held them in a house with some 20 other kidnapped migrants. A cartel member threatened to kill the woman if she reported the kidnapping to the police and **bragged “the man from migration gave you to us.”**
- In late July, **a woman with a baby girl in her arms, who DHS had just returned to Mexico under MPP, were abducted from the parking lot behind the INM building in Nuevo Laredo.** According to a Venezuelan asylum seeker returned the same day, armed men entered the parking lot, which is enclosed by a concrete wall and metal fencing, and forced the family into their vehicle. INM officials and a patrol of Mexican soldiers who passed by shortly afterwards did nothing to investigate or respond to the abduction.
- DHS returned a Salvadoran asylum seeker, her husband, and three young children to Mexico in October even though they had been kidnapped and threatened by Mexican federal police in Ciudad Juárez. **The officers brought the family to what appeared to be a police station, demanded ransom from the woman’s family in the United States saying that they “would never see them again,” if they failed to pay, and even threatened to take away the woman’s children and put them up for adoption.**
- **In Ciudad Juárez, Mexican police attacked a Salvadoran asylum seeker, throwing him to the ground, kicking and robbed him in front of his two children as they approached the port of entry to attend an MPP court hearing in August.** The man was walking with his children in the early morning hours to report to CBP at the port of entry by 4:30 am for their hearing. When the man was able to show the police his MPP court documents, they released him but stole his money.
- Mexican migration agents in Nuevo Laredo also appear to have been involved in the near kidnapping of a Honduran asylum seeker, her husband, and son in late September after DHS sent them to Nuevo Laredo. As the family and other migrants were walking from the INM building after Mexican migration told them to leave or get on a bus for the southern Mexican border, men in vans abducted more than a dozen migrants, including the Honduran woman. Her husband and son managed to run back to the INM office. **Mexican immigration officers were either directly participating in or permitting the men to kidnap asylum seekers from the INM building because the kidnappers showed the woman a photo of her family crying inside the building to pressure her to convince them to come out.** The family managed to escape with a pastor who spirited them to a shelter in Monterrey, according to an academic researcher who interviewed migrant families in Monterey in mid-October.

- In mid-October, a **Venezuelan asylum-seeking family of five including two girls ages eight and ten were nearly kidnapped at the Nuevo Laredo airport while returning for an MPP hearing.** The family had moved to another Mexican city after nearly being kidnapped outside of a shelter in Nuevo Laredo. As they passed through internal migration controls, a Mexican migration official took photos of the family and their documents with what appeared to be her personal cell phone. When the family challenged the official, they were allowed to proceed. However, upon exiting the terminal a group of men immediately approached them and tried to force the family into a waiting vehicle – indicating to the family that the migration official had sent their photos to the kidnapers. The family narrowly managed to escape abduction by pushing their way back into the terminal.
- **Mexican police asked for a bribe when a former judge seeking asylum from Cuba and her husband attempted to report an assault against the man in southern Mexico,** according to their immigration attorney Natalie Cadwalader-Schultheis of Justice for Our Neighbors. The couple refused to pay and the police failed to investigate the attack even though it had been captured on a film by a nearby security camera. The couple were also robbed and threatened at gunpoint with other Cuban asylum seekers in Reynosa, but DHS returned them to Matamoros under MPP nonetheless.
- **Mexican police have repeatedly threatened, wrongfully detained, and extorted the clients of** Constance Wannamaker, an immigration attorney representing asylum seekers returned to Ciudad Juárez under MPP. Police there threatened to beat a Honduran asylum-seeking client and demanded money from him. Two Cuban asylum-seeking clients, one of whom was pregnant, were also repeatedly detained and extorted by Mexican police in Juárez and in Tapachula in southern Mexico.
- Lisa Knox, an immigration attorney who represents asylum seekers in MPP said she had been alerted by her clients to **multiple instances of physical assault and abuse by Mexican police in Tijuana against returned asylum seekers.** One Honduran asylum seeker told her that he been attacked in Tijuana, and in another incident, Mexican police had detained him and called him a “dirty Honduran.”
- A Cuban asylum-seeking client of Kenna Giffen, an immigration attorney working with asylum seekers returned to Matamoros, told Giffen that **Mexican police had entered a church in Reynosa sheltering migrants and demanded money.** The police detained those who refused to pay from the church.

U.S. Officials Continue MPP Returns Despite Widespread Human Rights Abuses

Despite extensive reports of attacks on asylum seekers in Mexico, Trump Administration officials continue to deny the massive human rights fiasco that has resulted from MPP. In November, CBP’s acting Commissioner Morgan referred to the hundreds of reports of violence against asylum seekers from human rights organizations, academic researchers, and journalists, as “**anecdotal stuff.**” In late October, outgoing acting DHS Secretary McAleenan denied hearing any “verified incident” of Mexican authorities handing migrants to cartels nor of the widely reported abduction in August of Pastor Mendez, who was reportedly attempting to protect migrants in his shelter from cartels.

Public denials by DHS officials of the grave harms suffered by asylum seekers in Mexico fly in the face of warnings and evidence from the U.S. Department of State of the deadly dangers in the regions where DHS is returning individuals through MPP. The Tamaulipas region, which encompasses Nuevo Laredo and Matamoros, is designated as a Level Four threat, the same level threat assigned to Afghanistan, Iran, Libya, and Syria. In mid-

November, as cartel violence in the region spiked while the Trump Administration continued to expand its dangerous forced return policy, the U.S. Consulate in Nuevo Laredo issued a travel warning advising U.S. citizens and personnel to avoid public places. The State Department has also indicated that Mexican police officers and security forces have been implicated in kidnappings, rape, and other human rights abuses against migrants.

In the past two years, violence across Mexico has reached renewed highs. This year has seen some 90 murders daily, many linked to drug cartels, which places the country on track to repeat the record high of nearly 36,000 homicides in 2018. That year a quarter of all murders were concentrated in five cities, including Tijuana and Ciudad Juárez, where DHS is forcibly returning asylum seekers under MPP. In November, gang warfare in Ciudad Juárez escalated with pitched gun battles in the city's streets. Overall, federal crimes in Mexico, including kidnapping, increased by 18 percent in 2018. In September of this year, there were 65 reported kidnappings in Nuevo Laredo, likely a small fraction of the total given factors that deter reporting, including the ineffectiveness of the Mexican police and their complicity in human rights abuses.

Refugee protection professionals implementing MPP have warned that the policy delivers asylum seekers to death, kidnapping, and rape. An asylum officer who resigned in protest condemned MPP, writing that by participating in sham fear-screening interviews he was “**literally sending people back to be raped and killed.**” Michael Knowles, president of a union representing employees of the U.S. Citizenship and Immigration Services (USCIS) and a longtime asylum officer, testified before Congress that MPP is an “**unmitigated disaster**” and stated that “[t]hese policies are . . . the basis for human rights abuses on behalf of our nation.” He said: “**I don’t know a single asylum officer in this country who believes [MPP] is a good policy.**” Asylum officers and government officials reportedly told the L.A. Times that asylum officers across the country are requesting transfers, retiring early, and quitting to avoid enforcing inhumane immigration policies, including MPP.

Notwithstanding extensive, publicly available information (including from U.S. government sources) of the extreme danger migrants in Mexico face, there is no publicly available information showing that the Trump Administration assessed the potential level of harm to asylum seekers before initiating forced returns to Mexico under MPP. Over the last two months, DHS officials have continued to expand these returns, yet have declined when asked by members of Congress to say whether they are reviewing the forced return program in light of these extensive reports of harm. When asked by Representative Nanette Barragán at an October 30 hearing whether DHS had assessed harms asylum seekers might suffer under MPP, then acting DHS Secretary McAleenan dodged the question ultimately offering only that, “[a]ssessments were done on Mexicans’ ability to manage this program jointly with the United States.” A DHS “assessment” of MPP dated October 28 fails to even mention the extensive reports of kidnappings and assaults in MPP, or any assessment of harms suffered by asylum seekers. The document absurdly claims that MPP is an “indispensable tool in . . . restoring integrity to the immigration system.” In contrast, a November report by Senator Merkley found that “[t]he administration’s MPP program put[s] thousands at risk as they await their asylum hearings in dangerous Mexican border towns.”

At a November 13 Senate Homeland Security and Governmental Affairs hearing, Senator Gary C. Peters asked acting CBP Commissioner Morgan whether DHS was considering revisiting its use of MPP in light of the very troubling reports of kidnappings, sexual assaults, and other harms to asylum seekers. In response, Morgan did not indicate that DHS officials would reconsider their use of MPP, instead testifying that “those things” are not happening when people stay in shelters, but only when they leave shelters. Taylor Levy, an El Paso based immigration attorney who has represented asylum seekers in Ciudad Juárez, reported that she had informed Morgan’s staff of the violence and kidnappings right outside of a Juárez shelter they were visiting – including that people had been raped and beaten in front of their children. Many asylum seekers, as detailed in this report and other accounts, have been attacked at shelters in Mexico, and while traveling back and forth to shelters to attend MPP hearings, buy food or conduct other essential activities. Morgan also attempted to dismiss reports of

kidnappings, assaults, and other attacks by stating that “the data is not substantiated by the Mexican military or national guard.” However, efforts to pretend these attacks are not happening – on the grounds that Mexican authorities have not provided data on them to DHS – is both disingenuous and absurd given the well-documented failures of Mexican officials to protect migrants and refugees, their complicity in attacks against migrants and refugees, and the extensive criminal activities of cartels more broadly in border and other regions of Mexico.

Sham Protection Interviews Increasingly Cursory and Adversarial

DHS’s MPP screenings appear rigged against asylum seekers at every stage. Screening interviews have become increasingly cursory, farcical, and hostile. DHS officials overrule some asylum officers’ decisions that MPP returnees face serious danger in Mexico. In addition, CBP officers also continue to fail to refer individuals who express fear of return for fear-screening interviews, and immigration judges routinely do not ask asylum seekers if they are afraid to return to Mexico and sometimes do not refer them for screenings. Some asylum seekers even report being restrained in handcuffs during MPP fear-screening interviews. As a result, very few asylum seekers have been removed from MPP, even when they suffer serious harms and/or threats in Mexico.

The MPP screening process is a sham that lacks the basic safeguards Congress created to prevent the deportation of asylum seekers to persecution through the credible fear screening process and other safeguards to assure access to asylum hearings. In an amicus brief submitted in the suit challenging MPP, the U.N. Refugee Agency made clear that MPP fear-screening procedures “lack key safeguards required by international law” as “applicants do not have access to counsel in the screening procedure; a decision is not appealable by the applicant; and applicants cannot meaningfully prepare their refugee status determination claims by meeting with lawyers and/or receive notice of upcoming court dates, or otherwise be assured of due process in their full asylum hearings.” An amicus brief by the union for asylum officers from USCIS, who conduct these screenings, states that “MPP fails to provide even the basic procedural protections available to asylum applicants subject to [expedited removal].” The design and implementation of the MPP screenings makes clear that they are not intended to protect asylum seekers and migrants at risk in Mexico but to expedite their return despite these risks.

DHS has publicly defended the small percentage of individuals who pass MPP fear screenings by audaciously suggesting that asylum seekers – who are fleeing violence in their home countries are unlikely to harbor legitimate fears of return to Mexico because they “voluntarily entered Mexico en route to the United States” – disingenuously ignoring the difference between passing through a dangerous area with the much greater risk faced by those placed in MPP who are forced to remain in a highly dangerous area for many months.

Fear-screening interviews conducted by asylum officers have become increasingly farcical, cursory, adversarial, and seemingly rigged against asylum seekers.

- **Some MPP fear interviews last just minutes, consist of yes-or-no questions, and/or focus on issues not relevant to fear of Mexico.** Credible fear interviews conducted by trained asylum officers generally take several hours to complete. Yet two unrepresented asylum seekers from Honduras and Venezuela returned to Tijuana told attorney Lisa Knox in late November that their MPP fear interviews lasted about five minutes. An Ecuadoran asylum seeker kidnapped in September in Nuevo Laredo with her daughter, told her attorney Esmeralda Sosa, that she was asked only a few questions even though she had presented evidence in the form of text messages from the kidnapers during an MPP screening. Sosa was not permitted to attend or monitor. A Salvadoran asylum seeker, who had nearly been kidnapped in Nuevo Laredo, indicated that the officer conducting her 15-minute-long interview principally asked about the route she and her children took to the United States and “why they had come illegally.”

The aggressive questioning made her afraid to fully recount what had happened, in part, because she feared her responses might be shared with Mexican migration officials who she had seen speaking to one of the men who tried to kidnap her.

- A former asylum who resigned in protest over MPP decried the fear interview process as “practically ensur[ing]” the violation of international law. He wrote, “[t]he current **process places on the applicants the highest burden of proof in civil proceedings in the lowest quality hearing available . . .** we are conducting the interviews telephonically, often with poor telephone connections, while at the same time denying applicants any time to rest, gather evidence, present witnesses, and, most egregious of all, denying them access to legal representation.” Another asylum officer speaking to Vox reportedly stated that the standard for fear of Mexico screenings is “all but impossible to meet.”
- **DHS continues to generally refuse access to attorneys during MPP screening interviews even where it has the physical capacity to do so.** Several attorneys representing asylum seekers at the Laredo and Brownsville MPP facilities told Human Rights First that CBP had not permitted them to be present with their clients during MPP fear-screening interviews; only two attorneys reported that after repeated requests to the Houston Asylum Office and local CBP officers that they were permitted to sit in on interviews conducted at the Brownsville tent facility. DHS has generally maintained that it cannot provide access to counsel during fear screenings because of “limited capacity and resources at ports-of-entry and Border Patrol stations.” But this inadequate claim does not explain why attorneys are excluded from monitoring interviews telephonically and does not account for why the agency chose to conduct MPP fear-screening interviews in CBP facilities where attorneys are routinely barred. In November, a **federal district court issued a temporary restraining order** in a suit brought by Jewish Family Services and the ACLU of San Diego and Imperial Counties, **finding that the Administrative Procedure Act “provides a right of access to retained counsel for [MPP] interviews”** and requiring DHS to grant the plaintiffs, a family of Guatemalan asylum seekers returned to Tijuana under MPP, access to their lawyers before and during MPP fear-screening interviews while in CBP custody.
- **Although asylum seekers frequently report being told by DHS that they cannot pass MPP fear screenings without corroborating evidence, which is often difficult for many to secure at that stage, even those who have evidence are blocked from presenting it, as DHS lacks processes to allow individuals or their attorneys to submit evidence.** Attorney Kenna Giffin reported that DHS would not allow her to submit medical and other documentary evidence of behalf of a Cuban asylum seeker who had been sexually assaulted in Mexico because she had made the request for interview in court and they would not accept a same-day submission of evidence. An attorney representing a Cuban asylum seeker who was gang raped in Mexico and returned to Nuevo Laredo was told by an asylum officer that medical evidence regarding the assault was “not needed.” The officer conducting the interview telephonically was uncertain as to how to receive documents at the time of the interview from an MPP tent court. Neither woman passed the MPP screening interview. In early December, a lawyer representing an asylum seeker in the Laredo MPP court requested during the hearing an MPP fear interview for her client and inquired as to where she could send documentary evidence. Neither the immigration judge nor the DHS attorney could explain how to submit evidence for the telephonic MPP screening interview.
- **The percentage of individuals who pass DHS’s farcical fear of Mexico screenings remains very low.** Figures from DHS published in late October indicate that fewer than 1,000 people were found by asylum officers to meet the unduly high Mexico fear standards – 13 percent of the 7,400 individuals actually provided MPP fear screenings. It is also unclear how many of the asylum seekers referred for fear-screening interviews were referred by an immigration judge, or whether the passage rate has shifted

over time as MPP has expanded. But the overall percentage of individuals removed from MPP with genuine fears of remaining in Mexico is likely much lower than the 13 percent calculated by DHS given CBP's widespread failure to refer the majority of individuals who indicate a fear of return, as the UC San Diego [study](#) found, and efforts by CBP to dissuade or punish asylum seekers who request such interviews, likely many asylum seekers who fear return to Mexico have not been referred for interview at all. For instance:

- A Venezuelan asylum seeker said that after a negative MPP fear-screening decision a CBP officer at the Laredo port of entry told him to not bother requesting another interview because “they’re not taking anyone out” of MPP.
 - Another Venezuelan asylum seeker told attorney Lisa Knox that she was held in isolation for two days in a CBP cell in San Ysidro without access to drinking water after requesting a fear interview.
 - One immigration attorney, who represents clients returned to Matamoros, reported that she does not request MPP fear screenings for some clients with legitimate fears of returning to Mexico because those returned after interview, which the vast majority do not pass, are often released at night, heightening the dangers they face.
- [TRAC](#) data shows that as of September only **one percent** of individuals (659 out of 47,313) scheduled for MPP immigration court hearings had been removed from the program (this figure includes those who were removed at the discretion of CBP for reasons other than passing the MPP fear screening).

DHS officials have overturned positive MPP fear-screening determinations and pressured USCIS asylum officers to determine that asylum seekers and migrants do not meet the MPP fear-screening standard.

- The Merkley [report](#) on MPP found that **DHS political appointees interfere in MPP fear screenings, overturning decisions by professional asylum officers** that individuals have met the high screening threshold. According to the report’s findings, “decisions that migrants should remain in the U.S. for their safety were forwarded on to supervisors, and in some cases all the way up to headquarters,” where they were frequently reversed. One whistleblower said getting final approval to remove asylum seekers who face harm in Mexico from the MPP program requires “Herculean efforts.”
- The internal DHS [review](#) of MPP reported on by BuzzFeed reportedly concluded that “**some CBP officials pressure USCIS to arrive at negative outcomes when interviewing migrants on their claim of fear of persecution or torture**” in Mexico under MPP.

The vast majority of individuals have been returned after MPP screening interviews even when they have been previously targeted in Mexico. Indeed, the Merkley report concluded that is “**virtually impossible for any asylum-seeker—regardless of the actual danger they face—to be granted permission to leave Mexico.**”

Some of those returned by DHS after screening despite having suffered serious harms in Mexico include:

- DHS returned [a nine-year-old disabled girl and her mother](#) after failing an MPP fear screening even though they had been held against their will, subject to labor exploitation, and the girl sexually assaulted. After failing the screening, the girl and her mother were abducted blocks from port of entry in Tijuana by armed men, who repeatedly raped them over the course of nearly two weeks in captivity.
- In mid-November, an asylum-seeking woman who had been raped in front of her three-year-old son was returned to Matamoros after she did not pass an MPP fear-screening interview, according to attorney Jennifer Harbury. The woman and her son had previously been kidnapped in Reynosa and returned to Mexico under MPP without being referred for a fear screening.

- A Cuban woman kidnapped and gang raped in Nuevo Laredo when she first arrived there to seek asylum at the port of entry did not pass an MPP fear-screening interview. The attackers said, “this is what we do to Cubans here.” After DHS initially returned her to Nuevo Laredo, the women lived in hiding, only leaving to receive treatment for her trauma and to attend an MPP court hearing. During a fear-screening interview in November after that hearing, an asylum officer asked the woman for proof that “the attackers believed they were targeting [her] because [she is] Cuban” and concluded that despite the serious harm she suffered in Mexico that her fear of return to Mexico was insufficient to justify removing her from MPP.
- A Guatemalan man and his nine-year-old son, who were twice nearly kidnapped in Mexico, did not pass an MPP fear screening after aggressive questioning of the boy by an asylum officer. The officer questioned the nine-year-old child about details of the kidnapping attempts, one of which occurred just a day after the family was returned to Mexico, resulting in the nine-year-old becoming confused, overwhelmed, and crying, according to an attorney who spoke with Human Rights First.
- An asylum seeker from El Salvador and his six-year-old son who were kidnapped, robbed, and extorted multiple times, including by Mexican police, were returned by DHS to Mexico after failing to pass an MPP fear screening, according to their attorney Constance Wannamaker. Though the family’s account was deemed credible, as indicated by the interview worksheet, the asylum officer found that they did not meet the standard to establish a more likely than not probability of harm in Mexico.
- A Cuban asylum seeker, who was the victim of two kidnappings in Reynosa and who was physically abused and sexually assaulted after being returned under MPP, did not pass a fear screening in November, according to her attorney Kenna Giffen. The woman who was referred for interview following a hearing in the Brownsville tent court fainted in terror of being returned to Mexico and was put into a wheelchair. DHS did not permit the woman to be represented by counsel during the interview.
- A Honduran asylum seeker who did not pass an MPP fear screening had been repeatedly stripped and searched for money by men in Mexican police uniforms who threatened to kidnap her older son and had been followed and threatened by men in Mexicali. The woman was found not credible and the family returned to Mexico. The woman reported to her attorney Troy Elder of Immigrant Defenders Law Center, who DHS did not allow to be present during the interview, that the asylum officer interviewing her and her sons questioned the boys about whether they “like” Mexico in what appeared to her to be an attempt to contradict her fear of remaining there.

CBP officers continue to routinely fail to even refer asylum seekers and migrants for fear screenings, even if they affirmatively express a fear of return to Mexico. In a survey of individuals returned by DHS to Tijuana and Mexicali, the U.S. Immigration Policy Center at UC San Diego found in a report published in an October 2019 that 60 percent of those who expressed a fear of return to Mexico to a CBP officer were not referred for a fear screening with an asylum officer. An internal DHS report by senior officials charged with reviewing the implementation of MPP found – according to a November 14 BuzzFeed article – that CBP officers fail to refer asylum seekers for fear screenings and that asylum officers. Asylum seekers returned to Mexico without screenings include:

- **An asylum-seeking woman was not referred by CBP for an MPP fear interview before being sent to Matamoros even though she was kidnapped and raped in front of her three-year-old son.** The woman was still bleeding days after the attack and in need of additional medical attention when she met with attorney Jennifer Harbury in November. Before being returned to Mexico, the woman had tried to explain that she and her son had been kidnapped in Reynosa before crossing into the United States to seek asylum, but CBP sent them back without referring them to an asylum officer for an MPP screening.

- **CBP officers in Laredo failed to refer a Guatemalan family with two children for a fear-screening interview even though they explained that they had been kidnapped from the Nuevo Laredo bus station, held for days, and threatened that they would have to pay to remain in the city.** The CBP officer processing the family when they were allowed to enter the port of entry after waiting on a metering list said kidnapping was immaterial to fear of Mexico unless the person was raped or seriously injured.
- Immigration attorney Lisa Knox reported that **CBP officers refused to refer her asylum-seeking client from Honduras for an MPP fear-screening interview after he had been attacked and robbed in Mexicali by men with machetes.** The man also informed the private security guards transporting him back to Mexico from the immigration court that he feared return but was not referred for an MPP fear interview. Similarly, a Salvadoran asylum seeker who had been kidnapped in Ciudad Juárez and escaped by climbing out of a window after DHS sent her to Juárez under MPP was not referred for a fear-screening interview even though she specifically requested one.
- **CBP officers accused a 32-year-old Nicaraguan woman fleeing political persecution of lying about having been kidnapped and raped by cartel members** in Nuevo Laredo after DHS returned her there in July. After a ransom was paid, the cartel had forced her to cross the river. When she attempted to express her fear of return to Mexico, a CBP officer accused her of lying and sent her to Nuevo Laredo.
- A Salvadoran asylum seeker abducted with her three children in Monterrey was not referred by CBP for an MPP screening despite the woman describing her fear of being returned to Mexico. A CBP officer told the woman that, “everyone has to go back.” After being returned by DHS to Tijuana in October, the woman received a death threat in November from men involved in her family’s kidnapping.
- **A teenage Venezuelan girl was returned with her father and brother to Ciudad Juárez even though she had been the victim of an attempted sexual assault in Mexico,** which has left her symptoms of continued trauma, according to attorney Tania Guerrero of CLINIC. Despite explaining their fear of return to Mexico, CBP sent them to Ciudad Juárez in September.
- An asylum-seeking woman from Cuba reported that CBP refused to listen when she recounted having been kidnapped with her husband in Nuevo Laredo and held with other migrants who were being beaten by cartel members. After being forced to wait on the metering wait list at the Laredo port of entry, **a CBP officer told the woman in response to her fear of Mexico: “I don’t want to hear it. You can tell it to the judge at your hearing.”**

Immigration judges often fail to ask asylum seekers if they are afraid to return to Mexico during hearings and sometimes fail to refer them for an MPP screenings even when they express fear of return:

- During MPP hearings in November and December at the San Antonio immigration court, where immigration judges conduct remote proceedings for asylum seekers returned to the notoriously dangerous city of Nuevo Laredo, **Human Rights First observed only one judge in November affirmatively ask whether asylum seekers in court feared return to Mexico.** However, that judge was not inquiring about fear of return to Mexico in December hearings. Researchers monitored the hearings of 185 individuals before seven different immigration judges. Some asylum seekers may be reluctant to raise their fear of return for fear that they will be asked to share details of violence and threats they have suffered in front of their children and to do so via video-teleconference from a remote courtroom where they cannot see who may be listening to their statements in the judge’s courtroom.
- **DHS attorneys offer specious legal arguments in an attempt to block non-refoulement interviews and return asylum seekers to danger.** For example, a family of three asylum seekers from El Salvador,

who had previously failed an MPP fear screening, told an immigration judge from the Laredo MPP tent court that they had received new threats and feared return to Mexico. The DHS trial attorney argued that new threats were not a “changed circumstance” warranting another non-refoulement interview, as they had been threatened on prior occasions.

■ **Some immigration judges fail to refer asylum seekers for non-refoulement interviews despite expressed fears of harm.**

- A 28-week pregnant Nicaraguan asylum seeker with a six-year-old child in the Laredo MPP court in November told an immigration judge that she feared remaining in Mexico. Because she had not passed a prior MPP screening, the judge did not request that DHS refer her for interview.
- An asylum seeker from Honduras with a toddler in her arms told an immigration judge during her MPP hearing in November that she was afraid to be returned again to Nuevo Laredo, but the judge merely asked the woman when she would prefer her next hearing and did not ask DHS to ensure she received an MPP fear screening.
- A woman kidnapped from the Nuevo Laredo INM office in mid-September after being returned to Mexico following an earlier MPP hearing reported that she was not referred for a fear interview even after explaining to an immigration judge in October that she had been kidnapped. She recalled that the judge told her, “this happens and there’s nothing we can do.”
- A Honduran asylum seeker with a seven-year-old daughter told an immigration judge during a Laredo MPP hearing in December monitored by Human Rights First that she feared return to Mexico. The judge disregarded her fear and scheduled another hearing. Only after the asylum seeker repeated that she was afraid of going back to Mexico did the judge refer her for an MPP screening.

Third-Country Transit Ban Blocks MPP Asylum Seekers

In July, the Trump Administration issued as an [interim final rule](#) that bars individuals seeking protection at the southern U.S. border on or after July 16, 2019, from receiving asylum if they have [transited through third countries](#) en route to the United States. Given the rule’s extremely narrow and essentially insurmountable exceptions, the vast majority of asylum seekers, including many of those in the MPP program are barred from receiving asylum in the United States if they did not apply for asylum in a transit country – even if they would have been in danger and at risk of return to persecution. This new regulatory asylum bar is an attempt to contravene the law established by Congress that merely passing through a third country is not a basis to deny asylum. U.S. immigration law bars refugees who transit through other countries from asylum only if they “firmly resettled” in the transit country, or if the United States has a formal return agreement with a country where refugees are both safe from persecution and would have access to a full and fair procedure to seek asylum.

With the third country transit asylum ban in place, even if an immigration judge finds that a refugee subject to the transit ban has a well-founded fear of persecution (the standard for asylum), that refugee will be ordered deported unless they meet the much more stringent requirements for withholding of removal or protection under the Convention against Torture (CAT). In [FY 2017](#), only about seven percent of withholding and five percent of CAT applications were granted. Effectively cut off from attorneys in the United States by MPP, few will meet the excessively high requirements to receive these [highly deficient](#) forms of protection face barriers to a stable life in the United States, have no pathway to legal permanent

residence or citizenship, and are often left separated from their families, as these limited deportation protections do not allow the refugee's children or spouse to be brought to, or remain in, safety in the United States. For example:

- A Venezuelan refugee was denied asylum at the Laredo MPP tent court in October solely because he entered the United States to apply for asylum days after the third-country transit ban was implemented. An immigration judge ruled the man, a former police officer who refused to comply with an order to arrest opposition protestors, was a refugee entitled to withholding of removal – a form of relief from deportation that will leave him permanently separated from his three children in Venezuela who remain at risk.
- A Venezuela woman was granted withholding of removal and CAT protection in late November at the Laredo MPP tent court by an immigration judge. Determining the woman was a refugee entitled to protection, the immigration judge would have granted the woman asylum but for the third-country transit asylum ban, according to her attorney David Robledo. The woman had sought asylum based on political persecution in Venezuela in late July just after the ban went into effect.

DHS was initially applying the third country transit asylum ban even to asylum seekers who arrived at the U.S. border to seek protection prior to July 16 who had been turned away by CBP officers or forced to place their names on waiting lists at a U.S. port of entry. However, in mid-November, a federal district court hearing a challenge to the government's practice of metering asylum seekers at the southern border entered a preliminary injunction, prohibiting the government from applying the asylum ban to those who tried to seek asylum at ports of entry before the rule went into effect. The Executive Office for Immigration Review, the office within DOJ in charge of the immigration courts issued guidance to immigration judges several days later. Nonetheless, some immigration judges appear unaware of the district court ruling and continue to deny asylum to those who should be covered by the injunction. For asylum seekers in MPP, 98 percent of whom are unrepresented, there is a particularly high risk of erroneous denials of asylum given that these individuals are unlikely to be aware of the evidence they must provide to demonstrate that they attempted to request asylum prior to July 16.

- At the Laredo MPP tent court in early December, a Cuban woman and her one-year-old son were determined by an immigration judge to be refugees were denied asylum on account of the third-country transit ban even though they had attempted to apply for asylum before July 16. The immigration judge, who appeared confused about the scope of third-country asylum transit ban and incorrectly stated that the ban applies to asylum *applications* filed on or after July 16 (rather than considering the date of the asylum seeker attempted seek protection at southern U.S. border), granted the family withholding of removal instead of asylum. The government attorney reserved the right to appeal the judge's decision and the family was transferred to a family detention center in Texas.
- During another Laredo MPP hearing in December the same immigration judge denied asylum to an unrepresented Cuban refugee and her two sons because of the third-country asylum transit ban. Although the family had gone to request asylum at the Laredo port of entry in late June and had been told by an official to register on the metering list, the immigration judge found the family ineligible for asylum under the mistaken understanding that the third-country transit asylum ban depends on the date an asylum seeker files their asylum application in court. This refugee family was denied asylum and given only the limited relief of withholding of removal as a result.
- In Laredo MPP master calendar hearings observed by a Human Rights First court monitor in December, an immigration judge advised all asylum seekers present that they were ineligible for asylum under the transit ban without inquiring whether they had attempted to request asylum prior to July 16, thus entirely disregarding the preliminary injunction.

Stranded in Appalling Conditions

Under the Trump Administration's MPP policy, DHS dumps asylum seekers in Mexico to wait for months even though they do not have access to adequate shelter, food, healthcare, or other humanitarian necessities. Acting CBP Commissioner Morgan has stated that the U.S. government does not track what happens to individuals the agency returns to Mexico under MPP. A recent study by the U.S. Immigration Policy Center at UC San Diego found that one out of every three people in MPP have been homeless after being returned to Tijuana and Mexicali while waiting for MPP hearings. The governor of Baja California recently scrapped plans to open a government-supported shelter in Mexicali after protests by local residents. An internal report by DHS reportedly concluded that some asylum seekers lose their space at shelters when they travel to MPP court hearings, leaving even more stranded and in danger. Wait times for initial hearings are far longer than the 45 days that DHS had initially claimed, with the agency now acknowledging that asylum seekers are waiting between two and four months for a first hearing. The lack of safe shelter leaves thousands homeless and exacerbates the already high risk of kidnapping, extortion, assault, and exploitation in border areas in Mexico.

- In Matamoros, the tent encampment visited by Human Rights First in October has grown to an estimated 1,500 to 2,000 people sleeping in hundreds of tents in the port of entry plaza and surrounding sidewalks. Some tents are patched together with garbage bags. Asylum seekers live in unsanitary and deteriorating conditions. According to a November article from the Associated Press, "near the wooden toilets, the air smells like feces. Flies buzz around toilet paper discarded on the ground. A volunteer uses a shovel to remove waste that has pooled in front of a set of toilets." Asylum seekers and migrants in the tent camp lack access to adequate, safe drinking water, and are forced to bathe and wash clothes in the Rio Grande, which is contaminated with bacteria. In mid-November temperatures dropped to near freezing, making conditions in the tent camp even worse. Helen Perry, a nurse practitioner and Global Response Management's operations director, said: "**[H]aving seen other humanitarian crises in the world, this is one of the worst situations that I've seen. It's only going to get worse, and it's going to get worse rapidly.**"
- Many children have fallen sick as a result of the conditions in the Matamoros tent camp. A Nicaraguan asylum seeker living in a damaged tent with her eight-year-old daughter told the Associated Press that her daughter had been diagnosed with pneumonia but was running out of antibiotics. In November, a gravely ill two-year-old toddler diagnosed with possible sepsis by a volunteer doctor in Matamoros and was left by CBP outside in the cold rain for hours because the Brownsville port of entry refused to remove the child and her parents from MPP to enter the United States to seek emergency medical care. Only after the intervention of five attorneys, an additional medical evaluation by a CBP nurse practitioner, and coverage by the media did CBP relent.
- Despite these conditions, many asylum seekers prefer to remain in the plaza camp near the port of entry, which they believe is safer than venturing into Matamoros, where many have been kidnapped, according to attorney Charlene D'Cruz who works with unrepresented asylum seekers there. They also fear moving away from an area where attorneys from the United States can cross into in order to provide legal counsel without venturing into even more dangerous areas. Trust in local authorities among returned asylum seekers is low, particularly after an incident in early November when a video of a Mexican child welfare officer threatening to separate children from families in the camp circulated widely. While some asylum seekers have relocated to a municipal shelter recently opened in Matamoros, with capacity of just 300 it is reportedly already full, according to the Washington Post.

- The Mexican government has also bused asylum seekers in MPP from Matamoros and Ciudad Juárez among other MPP return locations to southern Mexico – with some abandoning their requests for asylum given the dangers in Mexico, while others are unaware that these one-way tickets will likely prevent them from returning for MPP hearings.

MPP and Tent Court Due Process Farce Continues

The Trump Administration is eviscerating asylum protections for refugees at the southern U.S. border with its MPP policy, port of entry asylum turnbacks, the third-country transit asylum ban, and the implementation of asylum seeker transfer agreements with El Salvador, Guatemala, and Honduras.

MPP is a due process charade that restricts access to counsel, legal information, and the ability of asylum seekers to attend and participate in immigration hearings. Immigration judges have ordered asylum seekers deported when they have missed court because they were kidnapped in Mexico. DHS even returns some asylum seekers to Mexico *after* immigration judges grant them asylum or other protection in the United States. Refugees with legitimate protection needs are giving up on their cases because of the grave dangers they face in Mexico and risking further persecution and torture by returning to their home countries. With immigration courts instructed by DOJ to speed up MPP cases, immigration judges are under pressure to make rapid rulings. One frustrated immigration judge in San Antonio was overheard by a Human Rights First researcher in November telling a courtroom assistant: “You’re going to hear me scream every day that I can’t get through these dockets.” Another judge with 92 people on his docket in early December conducted a group master calendar hearing for 12 people simultaneously, raising concerns about their ability to understand the removal proceedings against them.

In yet another attack on U.S. due process, DHS continues to use secretive tent courts in Laredo and Brownsville, Texas, for MPP hearings. Referring to these tent courts, immigration judge Ashley Tabaddor, president of the National Association of Immigration Judges, said: “We don’t do stuff behind closed doors. That is not what America is about. . . . **we are moving closer and closer to a model that doesn’t resemble anything in the American judicial system.**”

Stranding asylum seekers in Mexico creates fundamental barriers to attend U.S. immigration court hearings that can result in asylum seekers being ordered deported and terrifies some asylum seekers into abandoning their asylum claims. Some asylum seekers are being ordered removed *in absentia* because they were kidnapped at the time of hearings or were otherwise unable to arrive at the port of entry at the precise time designated by CBP. Other asylum seekers, having been kidnapped, assaulted, or otherwise terrorized in Mexico, are withdrawing their claims for asylum and risking their lives to return to their home countries.

- **Immigration judges have publicly stated that they are under pressure from DOJ to order asylum seekers deported who do not appear for hearings.** According to reports from immigration court staff to Human Rights First, some immigration judges are even instructing court clerks to pre-print *in absentia* removal orders for all of their MPP cases in anticipation of ordering the vast majority deported. Those ordered removed after missing court include:
 - Asylum-seeker Elizabeth, missed an MPP hearing in El Paso and was ordered removed *in absentia* because she was searching for her two-year-old son who had been kidnapped.
 - Rosalia and her two-year-old daughter, who were returned to Mexicali, missed court in San Diego in October because they arrived a few minutes after 3:30 in the morning – the time CBP had

instructed them to present at the port of entry. CBP officers refused to transport them to the immigration court and the family was ordered removed *in absentia*.

- The children and mother of a Colombian asylum seeker who did not appear at the Laredo MPP court with her for their hearing in December were ordered removed *in absentia*. The woman explained that she could not afford to bring her family from Guadalajara because she had to hire an attorney to file charges against a man who had sexually abused her daughter and that she could not even afford to see a doctor for cancer treatment.
- At a Laredo MPP hearing in December an immigration judge informed a Guatemalan asylum seeker that her daughter's *in absentia* removal order was unlikely to be reopened on the basis that her daughter was afraid of traveling through the border region to attend her MPP hearing in Brownsville. The judge told her, "to be blunt, being afraid is probably not going to cut it."

■ **Even individuals who have been reported to immigration judges as having been kidnapped at the time of their hearings are being given *in absentia* removal orders.** In early November, an eight-and-a-half-month pregnant Salvadoran woman appeared in the Laredo MPP tent court with her eight-year-old son. While crying, she told the judge that her husband was supposed to appear in court as well but he had gone missing in Mexico in September and she hadn't seen him since. DHS asked for him to be deported *in absentia*, claiming that they were asking for a deportation order because it would not be possible to give notice to the husband regardless. The husband was subsequently ordered deported.

■ **The extreme dangers faced in Mexico push some asylum seekers to risk persecution and torture in their home countries.**

- Two Venezuelan men – who were kidnapped as they attempted to approach the Laredo port of entry to seek asylum, beaten, ransomed, forced across the border by their abductors, and again threatened with kidnapping by the same men on the bridge just after DHS returned them to Nuevo Laredo – are so afraid for their lives that they have been forced to abandon their U.S. asylum claims. According to immigration attorney David Robledo who unsuccessfully requested that DHS provide the men a remote MPP fear screening, the men have relocated to another city in the interior of Mexico but are too afraid to return to the border region to attend MPP court.
- A 36-year-old Venezuelan woman seeking asylum said she is so afraid to remain in Mexico under MPP that she wants to formally withdraw her asylum application and leave as soon as possible. However, the woman fears risking the safety of her 11- and 13-year-old sons to pass through Nuevo Laredo, after previously having been threatened with kidnapping. Given the dangers, she was uncertain if she would attend their MPP immigration court hearing to inform the court of her decision.
- In November, a Honduran woman with a two-year-old boy, who DHS returned to Nuevo Laredo under MPP, told an immigration judge during a hearing monitored by a Human Rights First researcher that she had been kidnapped with her baby, and said, "If I am to be deported, I would like to be deported to my own country, not Mexico."
- Another Honduran woman appearing in the Laredo MPP tent court with her two-year-old daughter in November, burst into tears, and asked an immigration judge for voluntary departure because she "never imagined the road would be difficult." The government attorney asked for a removal order instead, which the immigration judge ultimately entered.

MPP seriously interferes with the right, guaranteed under Section 292 of the Immigration and Nationality Act, to be represented by a lawyer.

- **Nearly 98 percent of MPP returnees did not have lawyers, as of the end of September, according to immigration court data analyzed by TRAC.** Only 939 out of 46,654 individuals in MPP court proceedings have legal counsel registered with the immigration court.
- Very few asylum seekers appearing at the Laredo tent court were represented by an attorney during the first week of November and the first week of December when Human Rights First observed MPP hearings from the San Antonio immigration court. Only 42 of the 185 individuals who attended court had a lawyer.
- At two shelters Human Rights First visited in Nuevo Laredo in November only three individuals out of more than 30 returned under MPP were represented by counsel. At another makeshift shelter researchers visited in Nuevo Laredo, a pastor working with the shelter said that to his knowledge none of the approximately 70 MPP returnees in the shelter, many of them Central Americans, had a lawyer.

These abysmal representation rates are the predictable consequence of a policy that effectively prevents asylum seekers from searching for attorneys in the United States as well as the acute safety concerns that prevent many U.S.-based legal services organizations and individual immigration attorneys from representing asylum seekers returned to Mexico. In December, an immigration judge hearing cases at the Laredo MPP tent court acknowledged to an unrepresented asylum seeker that MPP “makes it difficult for attorneys to represent people.”

- U.S.-based attorneys attempting to represent asylum seekers in MPP face severe dangers to travel to regions where DHS returns asylum seekers including Nuevo Laredo and Matamoros in Tamaulipas. In mid-November, as cartel violence in the region spiked, the U.S. Consulate in Nuevo Laredo issued a travel warning advising U.S. citizens and personnel to avoid public places.
- The few lawyers willing to enter dangerous regions in Mexico to meet with clients risk their lives to do so. A shooting half a block from the port of entry in Ciudad Juárez prevented a Cuban asylum seeker returned to Mexico through MPP from reaching the international bridge where her immigration attorney, Constance Wannamaker, had arranged to meet. The client later told her attorney that a dead body had been dumped from a car directly in front of her house. John Anthony Balli, an attorney representing a Cuban client in Nuevo Laredo in MPP reported that because of escalating violence there in November, neither he nor his staff could risk visiting the city to obtain crucial evidence needed for a merits hearing scheduled only two weeks away.
- Asylum seekers appearing for hearings in the Laredo MPP tent court in November told immigration judges that efforts to search for attorneys were fruitless. A woman with two sons told an immigration judge that from the list of phone numbers for legal services providers distributed by CBP only one attorney had answered her many calls but had told her he could not accept her case because she was in Mexico. Another asylum seeker noted that, “no one will take our cases.” When asked if he wanted more time to find representation, the man said that after a month and a half of searching he had concluded that finding a lawyer willing to represent him in Mexico was impossible. **“I’ve run out of time. I’m exhausted. Whatever happens to me should happen now,”** he said.
- **The terror of remaining in Mexico pushes some unrepresented asylum seekers to ask for earlier hearings rather than accept additional time to find an attorney or prepare evidence in support of their asylum claims.** During hearings monitored by a Human Rights First researcher, an unrepresented Venezuelan asylum seeker said he wanted the next available hearing even though an immigration judge

offered him time to gather documents in support of his case. An unrepresented Honduran asylum seeker with a toddler told an immigration judge she feared remaining in Nuevo Laredo and asked for an earlier hearing to get out of Mexico, rejecting the judge's offer of additional time to search for an attorney.

MPP immigration court proceedings implemented by DHS and DOJ create fundamental barriers to due process. Restrictions by DHS and the immigration courts on access to attorneys, who could help prepare asylum applications, collect and submit evidence, and represent them in court, as well as the use of tent court hearings undermine asylum seekers' right to legal representation and to understand and participate in their own removal proceedings. The failure of DHS and DOJ to provide proper notice of immigration hearings to asylum seekers returned to Mexico can result in immigration judges issuing removal orders or terminating proceedings where asylum seekers miss hearings. As a result, few returned asylum seekers are likely to win their cases, despite many having valid claims.

- **DHS restrictions at MPP courts severely limit access to counsel for asylum seekers.** Then acting DHS Secretary McAleenan claimed in September that the agency “built space for aliens to meet with their attorneys to protect [the] right [to counsel]” at the MPP tent courts in Brownsville and Laredo. However, the very few attorneys representing clients in MPP hearings at these facilities said that DHS allows at most one hour for client meetings before hearings, even when attorneys represent multiple individuals with hearings on the same day and frequently denies requests to meet with clients after hearings, citing capacity constraints. An attorney representing an MPP client before the San Diego immigration court said lawyers often have only around twenty minutes to meet with clients before hearings because of delays in processing the individuals appearing for MPP hearings. This time is completely insufficient to consult with clients and prepare their asylum applications. Human Rights Watch found in September that the El Paso immigration court had prevented lawyers from meeting with clients prior to MPP hearings.
- **None of the MPP courts permit legal services providers and volunteer attorneys to offer legal information or meet with unrepresented individuals to assess their cases for representation.** For many asylum seekers forced to wait in Mexico, these immigration court hearings are the only opportunity to meet in person with attorneys, as many lawyers cannot travel to Mexico because of safety and other concerns. By barring legal presentations and consultations at these initial MPP hearings, DHS officials are further limiting the ability of unrepresented asylum seekers to secure legal representation and legal assistance.
- In MPP hearings observed by Human Rights First and other court monitors, **unrepresented asylum seekers struggle to understand how to complete asylum applications in English and submit certified English translations of evidence in support of their cases.** For instance, an immigration judge hearing cases for the Laredo MPP court refused in December to accept evidence that an asylum seeker had tried to request asylum prior to the July implementation of the third-country transit ban because it had not been translated to English. In November, a judge presiding in a case at the Laredo MPP tent court told a family: “These [asylum] applications are in English, and neither of you read or write English. And you’re in a country where most people speak Spanish. So all I can tell you is to do your best.” Another judge hearing cases for the Brownsville tent court encouraged asylum seekers to reach out to family or friends for help. Given the lack of access to legal representation and translation help, many have no choice but to have asylum applications and documents translated by individuals who will understandably make many mistakes – mistakes which government attorneys may subsequently cite as evidence of “inconsistencies” or a lack of credibility.
- While stranded in Mexico, **asylum seekers also face barriers to gather and submit evidence to support their asylum applications.** For instance, during an MPP hearing observed by Human Rights

First, an immigration judge told an asylum seeker with a video in support of his case that he had to submit a translated transcript of the video and still shots. For unrepresented asylum seekers sleeping in makeshift tents on the streets, gathering evidence, translating it, and printing it is often an insurmountable obstacle. Even immigration judges hearing MPP cases are aware of the difficulty asylum seekers face in submitting evidence to the court when they are required by DHS to remain in Mexico. An immigration judge in San Antonio in November explained that she was not requiring a Cuban asylum seeker to submit evidence in advance of his next hearing because she recognized it would be almost impossible for him to access the MPP tent court prior to his hearing in order to submit it.

- **DHS issues faulty immigration documents to asylum seekers in MPP with erroneous hearing dates and/or without an address, which may cause some asylum seekers to miss their hearings.** In November, Human Rights First observed an immigration judge in San Antonio tell an asylum seeker who had attempted to appear at the Laredo MPP tent court on the date DHS had instructed to return the next day because the hearing date in DHS and DOJ's records did not correspond. For asylum seekers in MPP, many of whom are sleeping in shelters, living on the streets, or moving from place to place due to threats and attacks, DHS has been listing the addresses of shelters, even shelters where they have never been, as well as using "Facebook" as an address and claiming to contact asylum seekers through social media. Other documents list no address at all. An internal DHS report that BuzzFeed reported on in November reportedly found that some people are forced to give up their space in their shelters when they travel to the United States for court hearings, leaving them with no address to receive important notices from the immigration court. Asylum seekers returned to Mexico under MPP who miss hearings because of faulty notices may be ordered removed *in absentia* and are physically prevented by DHS from going to court later (because they are not allowed to enter the United States from Mexico) to explain their absence and request to re-open their cases. While some immigration judges in San Diego appear to be terminating proceedings in cases with faulty DHS hearing notices, this practice can leave asylum seekers stuck in Mexico and in legal limbo, unable to pursue their asylum applications.
- **Requests by some asylum seekers for additional time to consult with an attorney were denied** during Laredo MPP hearings observed by Human Rights First in December. One judge forced asylum seekers to respond to the removal charges lodged by the government against them despite their requests for more time to find a lawyer, undermining asylum seekers' due process rights.
- **The use of video conferencing (VTC) for immigration hearings threaten the due process rights of asylum seekers.** All hearings conducted in the tent courts in Laredo and Brownsville are conducted remotely with immigration judges in permanent courthouse facilities. Already human rights monitors and journalists watching these hearings via VTC have reported flaws in translations and interruptions in video feeds. A 2017 report commissioned by the immigration courts found that VTC may be so disruptive that "due process issues may arise." Judges reported that it is difficult to interpret body language and nonverbal communication, which some judges consider in making credibility determinations.

DHS is returning some asylum seekers to danger in Mexico even after they win their cases – typically issuing false hearing notice documents. Since August, when DHS attempted to return to Mexico the first person granted asylum under MPP – an Evangelical Christian church leader from Honduras and Human Rights First client – the agency has returned numerous individuals *after* they have won asylum or other protection in U.S. immigration court, including:

- A Cuban asylum seeker and three Venezuelan asylum seekers granted asylum at the Laredo MPP tent court in late November were returned by CBP to notoriously dangerous Nuevo Laredo. Their attorneys were told that CBP policy is now to return to Mexico all individuals who win asylum pending appeal.

- A Venezuelan asylum seeker ruled by a U.S. immigration judge to be a refugee entitled to withholding of removal in October was returned by CBP to Nuevo Laredo despite this favorable ruling. When he attempted to return to the U.S. port of entry in early November to request that CBP allow him to enter the United States through the Laredo port of entry he was nearly kidnapped at the Nuevo Laredo bus station.
- A Guatemalan woman who was granted asylum without an attorney by an immigration judge in San Diego in September was returned by CBP to Tijuana along with her 6-year-old son.

An article in the San Diego Union Tribune previously reported that DHS had returned to Mexico at least 14 others whose immigration proceedings had already concluded. Those returned to Mexico have typically been issued MPP hearing notices purporting to schedule them for additional proceedings in immigration court even though no such hearing is set to take place. The agency appears to issue these fake notices to convince Mexican officials at ports of entry that these individuals have active MPP cases, as the Mexican Foreign Affairs Ministry has said Mexico will only accept individuals through MPP with upcoming hearing dates. CBP has acknowledged that the date on these documents does not correspond to an additional hearing but claims that these notices are issued to allow individuals returned to Mexico to check whether the government has appealed the decision of the immigration judge. However, these claims fail to explain why the document CBP is issuing is titled “subsequent hearings information,” states “[a]t your last court appearance, the immigration judge ordered you return to court for another hearing,” and fails to mention an appeal status check-in. Moreover, individuals determined by an immigration judge to be refugees entitled to protection under U.S. law should NOT be returned to Mexico by CBP but instead should be released into the United States, even if their cases should go on to appeal.

DHS’ categorical denial of public and press access to MPP tent courts in Brownsville and Laredo interferes with court monitoring efforts to ensure that hearings are conducted fairly and consistently.

- Immigration court regulations provide that “[a]ll hearings . . . shall be open to the public” except in limited circumstances as determined by the presiding immigration judge. Yet CBP is denying public and press access to hearings at the tent courts in Laredo and Brownsville. In late October, a CBP public liaison officer informed Human Rights First via email that “these [tent court] facilities are not be to in-person public access at this time” and that “[i]n upcoming weeks . . . we will explore opportunities to allow for NGOs to request access to view the space outside of hearing hours.” To date, the agency has not granted Human Rights First, despite repeated requests, access to the facilities, let alone to monitor immigration hearings inside the Laredo and Brownsville tent courts.
- While hearings at these facilities may be observed from the courtroom of the judge presiding via VTC, the schedule of hearings and judges assigned to them has not been made public, making it difficult for court monitors and journalists to determine from where to watch MPP proceedings. For instance, in November, immigration court personnel at times declined to provide a Human Rights First researcher the names and courtroom locations of the immigration judges hearing MPP cases at one of two San Antonio immigration court locations. Other court monitors have reported arriving late to hearing observations because they have needed to check both locations for MPP hearings.
- It is crucial that the public and human rights monitors have access to the tent courts. Observing hearings remotely is not equivalent to monitoring in the physical courtroom with the asylum seekers and migrants. Given the size and angle of the television screens linked to the remote hearing location, as well as the distance to the observation area, it can be difficult for observers to see how many people are attending the hearing and to gather other crucial information.

ON HUMAN RIGHTS, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Houston, Los Angeles, New York, and Washington D.C.

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**AMERICAN IMMIGRATION LAWYERS ASSOCIATION
NEW YORK CHAPTER
2019-2020**

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Re: Hearing on Resolution No. 1173 in Support of the Amicus Brief Submitted by 20 States and the District of Columbia calling on the U.S. Court of Appeals for the D.C. Circuit to Maintain Availability of Asylum Protection for Persons Seeking Asylum from Domestic and Gang Related Violence

Dear City Council Members.

We are submitting this testimony on behalf of the New York Chapter of the American Immigration Lawyers Association (AILA), the nation's largest professional organization of immigration lawyers. We thank you for the opportunity to contribute to this forum.

AILA has over 15,000 members nationwide, with more than 1,800 members in New York whose practices span the entire spectrum of immigration law. Because of our knowledge, experience and expertise in immigration law – including the daily experiences of our members advocating for clients in front of the immigration court, thereby personally witnessing the havoc wreaked by the politically motivated restrictions placed upon the immigration judges deciding the life and death matters of men, women and children seeking the protection of asylum – we are well-

positioned to discuss the Council's proposal to support the *amicus brief* submitted by twenty states and the District of Columbia in support of the holding in *Grace v. Barr*. To this end, we strongly encourage the New York City Council to join in supporting the *Amici* stance that asylum protections should be preserved for individuals facing persecution on account of their membership in particular social groups.

Given the devastating humanitarian toll of *Matter of A-B-* on immigrants escaping persecution based on domestic and gang related violence, and the near foreclosure of the ability to receive asylum protection as a result of this case, it is imperative that the Circuit Court of the District of Columbia not disturb the finding in *Grace v. Barr* that *Matter of A-B-* has impermissibly heightened the standards for asylum claims, and we applaud the Council's decision to join the *Amici*.

We also take this opportunity to emphasize the need for independent Article I immigration courts. The abysmal decline in asylum approvals resulting from the Attorney General's decision in *Matter of A-B-* reveals the chilling ease with which our asylum protections can be dismantled by political motivations and anti-immigrant stances. Now, more than ever, *Matter of A-B-* and other certified cases reveals the ease with which due process can be denied to immigrants. The only way to guarantee judicial independence and allow immigration judges to act as neutral arbiters of fact and law is to remove the immigration courts from the Department of Justice's control, and we also urge the Council to take a stance on this matter.

A. The Amicus Curiae Position to Support Grace v. Barr Correctly Supports the Stance that Individuals Fleeing from Domestic and Gang-Related Violence Should Receive a Fair Opportunity to Seek Asylum in the U.S.

Under asylum law, protection may be granted to an individual fleeing persecution at the hands of their government on account of five grounds, one of which is membership in a particular social group. Should the persecution come from a non-governmental actor, the

persecuted individual must demonstrate that the government is unable or unwilling to protect them from the harm.

In *Matter of A-B-*, the Attorney General attempts to overturn this well settled federal protection allowing the grant of asylum to individuals suffering fleeing domestic and gang-related violence on account of their membership in particular social groups (“PSG”). In fact, the instruction given by the Attorney General in *Matter of A-B-* urges immigration judges to find that it will be nearly impossible to establish eligibility for asylum if the persecution is on account of membership in a PSG and the violence is domestic or gang-related, even though all requests for asylum should be decided on a case by case basis and have been recognized as valid bases for asylum.

This decision improperly heightens the standards by which asylum is granted and effectively bars asylum claims on a near categorical basis for individuals fleeing domestic and gang-related violence in the “Northern Triangle” (comprised of El Salvador, Guatemala and Honduras). The decision creates a new standard that is politically motivated and designed to illegally prevent persons from applying for and attaining a grant of asylum.

The *Amici* correctly point out in their brief that *Matter of A-B-* “*contravenes both existing statutes and precedent from multiple courts of appeals.*” Not only do the *Amici* correctly explain the illegality of this decision, but they also point out that upholding this decision harms the economies of the *Amici* states. In a telling fact, the *Amici* explains that immigrants comprise a large and growing percentage of each respective states’ populations, and that nationally immigrants generated \$72.3 billion in business income in 2015 alone.

To deny asylum protection on a wholesale basis on the incorrect and illegal belief that it cannot be granted if the persecution is domestic or gang-related not only forecloses an immigrant’s legal rights, but also deprives the United States of economic and financial gain and participation.

B. The Decision in Matter of A-B- Highlights the Urgent Need for Independent Article I Immigration Courts

It is important to recognize and pay heed to the anti-immigrant stance and bias of the current federal administration and the former Attorney General, as these opinions have certainly played a prominent role in the decision to certify *Matter of A-B-*. As it stands, immigration judges are classified as government employees working for the Department of Justice, and report to the Attorney General. As a DOJ employee, a judge’s decisions are constrained by the limitations placed by the Attorney General, even though a judge is tasked with the responsibility of enforcing federal immigration laws and granting asylum protection to refugees where it is legally required.

While previous administrations have allowed immigration judges to operate with a fair level of independent decision making, this current administration has engaged in a series of case certifications designed to restrict judicial independence and curtail asylum approvals. Should a judge refuse to comply with the Attorney General, the unfortunate consequence may be the loss of their position. Already, a large percentage of immigration judges have resigned from their positions in protest, and an even larger percentage of new judges with ICE prosecutor backgrounds have been appointed as replacement. Thus, as Immigration Judge Tabaddor warns, immigration judge have become “prosecutors in a judge’s robe.”¹

The recent actions of the Attorney General have shown that an immigration court housed under the Department of Justice cannot fairly enforce the laws, and in fact are being illegally constrained from doing so. The lower court’s finding in *Grace v. Barr* attempts to right this wrong, but in reality, until the immigration court has true judicial independence it will continue to be subject to the political whims of the executive branch.

C. Humanitarian Considerations Supporting the Amicus Curiae Position

Should NYC residents seeking asylum from domestic and gang-related violence be prevented from doing so by *Matter of A-B-*, there will continue to be a devastating human toll resulting in death and in the tearing apart of families. AILA-NY members witness the cruel and unjust impact of the United States’ immigration system on a daily basis. We see the how the combination of overly harsh rules, inflexible policy and nonsensical laws leads to massive suffering.

The news already reports that asylum seekers who have been denied as a result of *Matter of A-B* have been killed and abused upon their return. In El Salvador alone, at least 200 persons denied asylum have died upon their return between 2013 - 2018.² Many of these deportees have left behind US citizen children in New York. Every father or mother who is denied asylum and removed means a child grows up without a parent. There are real, human victims to the Attorney General’s overreach – who suffer the agonizing emotional, psychological and physical trauma that can last a lifetime (and which the City will likely need to address in other areas).

Far too many immigrants have been swept up by an overzealous immigration enforcement system that does not see them as individuals deserving of rights and respect.³

¹ Patt Morrison, How the Trump administration is turning judges into “prosecutors in a judge’s robe”, LOS ANGELES TIMES (Aug. 29 2018), <https://www.latimes.com/opinion/op-ed/la-ol-patt-morrison-judge-ashley-tabaddor-20180829-htm1story.html>

² Nicole Acevedo and Adiel Kaplan, “Hundreds deported from U.S. to El Salvador have been killed or abused, new report says”, NBC News, (Feb. 5, 2020), <https://www.nbcnews.com/news/latino/hundreds-deported-u-s-el-salvador-have-been-killed-or-n1126906>

³ “From October 2005 through December 2010, the parents of 13,521 U.S. citizen children were apprehended in New York. This data is often not obtained by the agency, so the actual number is likely much higher. The parents of at least 7,111 U.S.

We echo the findings of the Insecure Communities, Devastated Families report noting the extreme stress that immigrant families suffer in the wake of the immigration enforcement actions and deportation system:

"ICE's policies have devastating effects on families in New York City. U.S. Citizen children are forced to endure the trauma of possibly permanent separation from a parent. Parents risk losing their parental rights while in detention. The city is forced to pay millions in additional social services when families lose economic support. According to the Applied Research Center, when parents of U.S. citizen children are detained, their children can end up in the care of local child welfare departments, like New York City's Administration for Children's Services. In every case that was studied, parents detained by ICE were unable to appear at dependency hearings, even when detained in the same jurisdiction as those hearings. On top of the burdens of physical incarceration itself, ICE's 'inconsistent' policy of providing phone access to parents for a telephonic appearance causes detainees to miss important hearings vital to the maintenance of their parental rights. ICE detention on its own, even without deportation, 'can result in children moving into permanent placements and ultimately into adoption.' The study also emphasized the 'traumatic effects on both parent and child' of separation due to immigration detention."⁴

In sum, AILA supports the efforts of the City Council to support the Amicus Curiae position in *Grace v. Barr* to restore integrity to our immigration laws and courts. Significantly, the Constitution, federal courts, human rights and sound public policy all support this position as well. We commend the City Council for taking concrete steps to ensure that immigrants feel welcomed, protected and safe in New York City.

Thank you.



Sylvia Livits-Ayass
Chapter Chair

citizen children were deported during this same period. The parents of at least 10,208 U.S. citizen children were detained without bond. At least 7,186 New Yorkers detained by ICE had U.S. citizen children. 87% of the resolved cases of individuals with U.S. citizen children have resulted in deportation." INSECURE COMMUNITIES, DEVASTATED FAMILIES: New Data on Immigrant Detention and Deportation Practices in New York City. NYU School of Law Immigrant Rights Clinic, Immigrant Defense Project, Families for Freedom. July 23, 2012. Available at http://familiesforfreedom.org/sites/default/files/resources/NYC%20FOIA%20Report%202012%20FINAL_1.pdf

⁴ INSECURE COMMUNITIES, DEVASTATED FAMILIES: New Data on Immigrant Detention and Deportation Practices in New York City.

Joint Testimony of Unlocal, Inc. and Central American Legal Assistance (CALA)

Unlocal, Inc., and Central American Legal Assistance (CALA) are small non-profit organizations litigating a large number of asylum claims before the three New York Immigration Courts hearing non-detained removal proceedings. Our legal staff are in court regularly, on the front lines of an increasingly difficult fight for due process in the face of policies aimed at rapid deportation of Central American families. As our offices have observed the same assault on due process in our daily practice, we submit joint testimony on this issue.

We are a nation founded, at least in part, on the premise of sheltering those in need of refuge. But asylum, our commitment to protecting those seeking safety at our shores, is dying a violent and intentional death. The relentless bombardment of drastic policy and legal changes instituted by this administration make it effectively impossible to seek asylum, let alone obtain it.

In the last 18 months, the Attorney General has issued multiple decisions that radically change the legal landscape, specifically Matter of A-B- and Matter of L-E-A-. These decisions attempt to undo more than three decades of legal precedent and severely curtail who our law protects, and, while made to read like legally sound decisions, are in fact issued by outcome-oriented policy makers seeking to restrict asylum eligibility.

These decisions have had immediate and devastating impact on asylum-seekers right here in New York.

An example: Claudia, a young woman in her early 20s, fled her native El Salvador with her very young daughter in the summer of 2018. She fled because her former partner—a member of the Mara Salvatrucha, a violent and nearly omnipotent power in El Salvador—was on the verge of killing her. She had suffered years of physical, psychological and sexual torture. He raped her frequently. He repeatedly choked her. He repeatedly threatened to kill her while holding a gun to her head. He invited other gang members to their home, who also threatened to kill her and her daughter. On her final attempt to leave him—because she had attempted many times—he stabbed her in the chest. Hearing her screams, a neighbor appeared, the partner fled the scene, and this was Claudia’s chance to escape.

When Claudia arrived in the United States, she was unquestionably eligible for asylum based on well-established case law at the time. By the time her case was heard, the law had changed, and despite our best efforts to convince the Immigration Judge that Claudia continued to be eligible for asylum, the Judge denied her application for relief. Her appeal is pending.

Claudia and her daughter are part of the New York community. They live, work and go to school here. They are entitled to protection under our law. But they have been locked out, at least for now.

Also in the last 18 months, the administration has implemented a nationwide “FAMU” or “family unit” policy, which requires Immigration Judges to hear and rule on asylum applications within one year of the person’s arrival in the United States. While this may appear to be a reasonable policy – let’s get asylum seekers their day in court as quickly as possible – the reality is that it

locks people out of obtaining legal representation, with attorneys of all kinds – private and non-profit – simply unable to respond to the need in the required time frame. Many are left to appear in court themselves and have almost no chance at success.

When I first met Claudia in December 2018, we didn't realize she was part of FAMU because it was still a very new program. When we appeared for our very first hearing in court in February 2019, we were informed that her trial had already been scheduled for April 2019—scheduled before she even obtained legal representation—and that all evidence had to be submitted by March. This was simply impossible considering the majority of her evidence was in El Salvador. How would we ever obtain the required evidence in such a short time period? How would we ever prepare the legal arguments in such a short period of time? How could I possibly fit in another trial to my already very overloaded schedule and still provide effective representation?

It was simply impossible, and because of it I had to request to be allowed to withdraw from Claudia's case if the Court refused to adjourn her hearing.

Just two weeks before the April date, the Court did adjourn her hearing, rescheduling it to July 2019 and then, a week before the hearing and after countless hours of work, rescheduled it again to early September 2019, when her application was ultimately denied.

This constant scheduling without notice, rescheduling, advancing and adjourning at the last minute, even having the court location changed at the last minute, has become a normal part of the chaotic practice of representing immigrants in the New York immigration courts. A CALA client was ordered removed in absentia just last week because he went to the Immigration Court located at 26 Federal Plaza instead of 201 Varick St. It makes it impossible for small non-profit organizations to represent a large number of immigrants (which is desperately needed right now) because we are constantly dropping everything to put out the latest scheduling fire. As another example, CALA had one case that was scheduled for December 2019, advanced to October, adjourned again to December, advanced again to November, adjourned again to February, advanced again to December, adjourned to January and is now scheduled for February. The case has been before four different judges and we have never been given more than a week's notice of scheduling changes. It is a full-time job to follow just ONE case, let alone prepare evidence, legal arguments, and prepare traumatized asylum seekers for their day in court.

In the past 12 months, the Remain in Mexico Policy, the Third Country Asylum Ban, and the "Asylum Cooperative Agreements" with Guatemala, El Salvador and Honduras, have dealt devastating blows to asylum protections and asylum-seekers.

Just recently, UnLocal represented a Cuban family seeking political asylum who is subject to the Remain in Mexico program. Their hearing was conducted in a tent court in Texas. The Immigration Judge and prosecutor appeared by video and their faces periodically disappeared from the screen, or the hum from the air conditioner was so loud that the Judge could not hear well. The Immigration Judge appeared to have made up her mind before the hearing even began, finding that the harm perpetuated by the Cuban government was not related to the client's political opinion—a dumbfounding and illogical conclusion. The attorney who represented the family wrote in reflection,

“I came away from the hearing feeling that MPP proceedings offer only the thinnest pretense of due process, and even that was sacrificed in the name of efficiency and the likely anti-immigrant sentiments among the newly appointed judges.”

These drastic changes are, at best, legally questionable—and are very likely illegal. Every single day, due process is bruised and battered just a few blocks north of here. Rushing to finish cases, extremely limited access to legal representation, a labyrinth of constantly changing laws—FAMU is a humanitarian and legal disaster happening right down the block. And every day we are confronted with devastating policy decisions couched in legalese, drastic changes to the legal landscape made by an agency meant to carry out policy priorities, priorities governed exclusively by an anti-immigrant purpose.

Americans believe ourselves to be a compassionate people, to believe in the rule of law, to believe in the power of our nation’s immigrant identity. What we are witnessing today--the relentless attack on asylum protections and the undermining of the rule of law--demonstrates our capacity for just the opposite. And we must be concerned about this. We must be concerned for families like Claudia’s, and we must be concerned that respect for the rule of law and due process is eroded with every legal and policy development instituted by this administration.

Thank you.

**Bowen
Public
Affairs
Consulting**

Testimony before the New York City Council Committee on Immigration
Carlos Menchaca, Chair
February 10, 2020

My name is Andrea Bowen, Principal of Bowen Public Affairs Consulting. I'm a transgender woman, and a coordinator of the transgender, gender non-conforming, and non-binary, or TGNCNB, Solutions Coalition, which advocates for community-based economic justice and anti-violence strategies to support TGNCNB New Yorkers. Thank you Chair Menchaca, Council members and staff of the Committee on Immigration, for this hearing, and for the opportunity to speak today.

As you're well aware and wonderfully pro-active about, the TGNCNB community is one population subject to persecution in home countries, and TGNCNB people who are denied asylum could be killed due to transphobic violence in their home countries. Unfortunately, for several years now, organizations that are particularly adept at serving TGNCNB immigrants have faced long wait lists. One provider of TGNCNB immigration legal services noted having a wait list going back one year, which can be problematic to people seeking asylum and special juvenile immigrant status. This specific provider notes, "because TGNCNB New Yorkers experience homelessness, staying engaged in their case is not the most pressing survival need, which makes cases take longer and cost more. That's why we need money for this population—they're navigating additional systemic barriers and their cases can be more complex and time-consuming. Lawyers who aren't transphobic and who can keep clients engaged are in demand."

Yet another provider of TGNCNB legal services noted that, among cases where they provided full support, 44% were full legal representation for TGNCNB clients, compared to 38% last year. Furthermore, I have been told repeatedly by legal services practitioners that City funding for immigration legal services, and that's both per-case funding and the number of deliverables expected from providers, does not match the complexity of TGNCNB immigration cases.

To that end, in the upcoming FY21 budget, I am working with six organizations, known for being providers of legal services, who all agree that there is a need and urgency to bolster the broader system of direct legal services for TGNCNB immigrants. I will be working with these organizations to seek \$800,000 through discretionary funding to increase the number of attorneys in the system, and also backfill positions that are underfunded and therefore providing legal direct services staff too few resources to deal with challenging cases.

I will work with you, your staff, and fellow Council Members and staff, as budget season proceeds to provide more detail to these asks, but I appreciate the opportunity to go on the record presently and outline this issue and request. You can ask me further questions at andy@bowenpublicaffairs.com.



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Maritza Suarez
AVP Client

Good afternoon, Chair Menchaca and thank you to the City Council for hearing my testimony today on the importance of Resolution 1173-2019, in support of maintaining the availability of asylum related protections for individuals with a well-founded fear of persecution due to domestic violence or gang-related violence. My name is Maritza Suarez and I am an asylee from Ecuador who won my asylum case with the help of New York City Anti-Violence Project. I identify as a transgender woman and my pronouns are she/her/hers.

In Ecuador, I suffered extreme forms of violence from police, family members and my abusive ex-partner.

The primary reason why I fled to the United States was to escape abuse from my ex partner. One of the most extreme forms of harm I endured in Ecuador was when he severely beat me. He was a very possessive and jealous person. He was a very machista man. He threatened to kill me if I ever left the relationship.

I felt trapped because I could not seek police protection in Ecuador for the abuse I suffered. Police in Ecuador do not protect LGBT survivors of domestic violence and gender based violence. They do not believe our stories and they think we deserve to be harmed because of who we are. I feared the police would instead harm me for being in a relationship with a man, so I kept my abuse a secret and fled to the United States to seek safety.

Unfortunately, my suffering did not end when I entered the United States. I was detained by immigration and held in a men's detention center for 2 months. A lot of the men in the detention center taunted me for being transgender.

The process of applying for asylum is not easy. It was very difficult for me and I faced many obstacles. At one point I did not have a lawyer and I did not know how I would win my case by myself. Thank God I found help through my lawyers at Anti-Violence Project.

It worries me to see that asylum is harder for people like me who are escaping domestic and gender based violence. We lack basic rights and protections in our home countries, and it worries me to see that we are losing those rights here too.

I respectfully ask that the City Council continue to support and protect asylum seekers from the harm being done to us by this Administration. I hope that asylum seekers continue to find safety and thrive in New York City.



February 10, 2020

The Council of The City of New York
Committee on Immigration
Hearing on Resolution 1173

Testimony from Make the Road New York

Thank you to the Committee on Immigration for holding this hearing today. Make the Road New York is a non-profit community-based membership organization with more than 23,000 low-income members dedicated to building the power of immigrant and working-class communities of color to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. We operate five community centers in New York, in Bushwick; Jackson Heights; and Port Richmond, Staten Island as well as in Long Island and Westchester County. In these offices, our legal department represents thousands of immigrants each year including clients applying for asylum affirmatively and defensively.

Countless New Yorkers including Make the Road New York members and clients have had their cases disrupted and their lives put at risk by Attorney General Jeff Session's reckless and unlawful decision in *Matter of A-B-*. This decision disrupted a long line of case precedence by career judges and undermines the claims of those fleeing horrific sexual and domestic violence and violence from gangs in their home countries.

Many of Make the Road New York's asylum clients are from Mexico and the Northern Triangle (El Salvador, Guatemala and Honduras) and many have escaped sexual, domestic or gang-based violence for which they could not find protection and safety in their own country. Without this protection, they face certain physical injury or death if they are deported from the United States.

One of our clients, who we will call Sandra, suffered from repeated acts of domestic violence at the hands of her husband in Guatemala. When Sandra finally gained the courage to leave her abuser, she had nowhere to turn. Even though she filed a complaint, the Guatemalan police failed to take any action to protect her or even to investigate her claim. Right around June of 2018, as the Attorney General issued the *Matter of A-B-* decision, Sandra's worst fears came true when her husband came to her home, held a gun to her head and threatened to kill her and burn her house down with her children and mother inside. Since Sandra could not find safety in her own community and her own country, she fled that very night with her young children, ranging in age

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301 GROVE STREET
BROOKLYN, NY 11237
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92-10 ROOSEVELT AVENUE
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STATEN ISLAND
161 PORT RICHMOND AVENUE
STATEN ISLAND, NY 10302
718 727 1222

LONG ISLAND
1090 SUFFOLK AVENUE
BRENTWOOD, NY 11717
631 231 2220

WESTCHESTER
46 WALLER AVENUE
WHITE PLAINS, NY 10605
914 948 8466

from four to twelve years old.

Sandra's asylum application remains pending but the Attorney General's decision in *Matter of A-B-* puts her at risk of losing her asylum case and being deported to Guatemala. If her case was decided before June of 2018, she would have likely won and not have to live with the constant fear that she will be sent back to Guatemala where she believes her estranged husband will carry out his threats.

Matter of A-B- is a reckless, politically motivated and poorly reasoned decision that rewrites long-standing legal precedent. This decision is part of a larger systematic dismantling of our asylum system that puts hundreds of thousands of asylum seekers at risk. Between the multiple travel bans, the Remain in Mexico policy, sending asylum seekers to Guatemala, and other harmful decisions issued by the Attorney General, the attack on asylum seekers is part of this federal administration's racist immigration policies.

On behalf of Sandra, and all of our Make the Road New York members, we thank Councilmember Carlos Menchaca for his leadership and urge the City Council of New York to pass Resolution 1173.



To: New York City Council
From: Stephanie Lopez, Managing Attorney of The Door's Legal Services Center
Re: Resolution No. 1173 in support of *Matter of AB*
Date: February 10, 2020

The Door is a comprehensive youth development organization that assists vulnerable young people, between the ages of twelve and twenty-four, access a variety of services such as housing, GED classes, job training and legal services. Our Legal Services Center represents many young people in New York City in their Special Immigrant Juvenile Status (SIJS) and asylum claims. For years, we have represented unaccompanied children who by and large are fleeing violence in their home countries. Most recently, we began representing such children while they are detained in local Office of Refugee Resettlement shelters in the State of New York and are awaiting reunification with a family member or family friend. All of these children are placed in removal proceedings and are expected to apply for relief to avoid their deportation.

The current administration has made it its prerogative to create obstacles for people who seek refuge in this country. Many of our clients, who are children, have been subjected to violence in their home country by their family, strangers or by gangs. Many of the policies of the current administration and decisions issued by the Attorney General have made our clients more vulnerable to deportation to their country of origin where they are unsafe. Due to the recent erosion of asylum related protections for families and children we are in support of Resolution No. 1173 to ensure that survivors of domestic violence and gang violence receive the protection they desperately need and urge this Council to condemn this administration's curtailment of due process rights of immigrants seeking asylum.

In representing countless young people, we have seen how the current administration has assaulted a very vulnerable community with its policies and Attorney General decisions which have overturned long standing Board of Immigration Appeals precedent. First, In July 2019, the Trump administration published the Interim Final Rule (IFR) which banned all people, including children who traveled through another country to reach the United States via the southern border from applying for asylum. As such, anyone who entered the United States on or after July 16, 2019 is barred from applying for asylum, regardless of the merits of his or her asylum case. The IFR places children and families at a higher risk of swift deportation as they are unable to present their asylum claims. The IFR is patently ridiculous. It demands that children, regardless of age, trauma history, or language skills, apply for asylum in a transit country. The unaccompanied children we serve, by definition, come to the United States alone, without adult support or guidance. They are fleeing circumstances that are pervasive throughout Central America and Mexico, and they cannot be expected to apply for asylum in countries where they have no support, and where they likely be exposed to continued violence and victimization.

Serving New York City Youth Since 1972

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Second, on May 31, 2019, USCIS issued a memo with instructions to asylum officers. The memo limits crucial protections for unaccompanied asylum-seeking children. Specifically, if the child turned 18 or obtained a guardian through a family court process, the child would no longer be considered an “unaccompanied child” (UAC). No longer considered a UAC, the child would have to pursue the asylum claim in immigration court—an extremely adversarial setting that can prove to be overwhelming and traumatic for a child. Fortunately, in November 2019, after litigation, the Government agreed to not apply the policy memo.

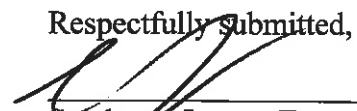
Third, the Attorney General at the time, Jefferson Sessions directed the Board of Immigration Appeals to review two decisions. Unsurprisingly, the Attorney General decisions overturned decisions from the Board and in so doing, his decisions redefined and limited the ability of children and families to obtain asylum.

Both the *Matter of L-E-A* and *Matter of A-B* decisions have had disastrous effects on the viability of the asylum claims of children and families. Well settled law in many federal circuits held that a family unit could be considered a particular social group. *Matter of L-E-A* held that in an ordinary case a nuclear family will not be considered a “particular social group” because nuclear families are not inherently socially distinct. After the implementation of the decision many asylum seekers have been found to have failed to meet the requirement proving they have been persecuted because of their membership a particular social group despite being targeted for violence because they are members of a family in their country of origin.

In *Matter of A-B* the Attorney General unilaterally precluded domestic violence survivors from obtaining asylum. In so doing, the decision barred asylum claims for people who are harmed by non-state actors. Despite their home country’s acquiescence to the violence. Additionally, this decision proved to discourage children and families to pursue asylum claims when they are subject to *any* violence—including gang violence. Even though many countries are unwilling and unable to protect people from the persistent gang violence. Gangs in many countries are *de facto* government actors and are given free reign because of the deep seeded corruption in many countries in Central America and Mexico. As such, children and families fleeing institutionalized gang violence are unable to find permanent safety in the United States.

Due to the blatant roll back of protections for asylee seekers, we ask that this council pass this resolution to protect not only survivors of domestic violence, but all asylum seekers.

Respectfully Submitted,



Stephanie Lopez, Esq.



Domestic
Violence
Project

Testimony to the NYC Council Committee on Immigration
Chelsea Whipp of the Domestic Violence Project
cwhipp@urbanjustice.org

February 12, 2020

New York City Council
Committee on Immigration
250 Broadway
New York, New York 10007

Re: Resolution 1173-2019

Members of the Committee:

ES¹ first encountered the abusive partner in the Northern Triangle, their area of origin. After conceiving their second child, ES' abuser became physically, emotionally, and sexually abusive. A week after the birth of their second child, the abuser brutally raped ES in front of both children, causing extreme blood loss and injury. Sadly, this was not uncommon. Throughout the relationship, ES was brutally raped, victimized, and dehumanized. When the abuser returned from work, the abuser would inspect ES' genitals to ensure ES had not been with anyone else. As time went on, the violence against ES escalated further. ES was beaten with a belt; experienced a sprained wrist from a vicious arm twisting; attacked with a knife resulting in a severed finger; and stabbed almost clear through the foot with a screwdriver.

The Domestic Violence Project of the Urban Justice Center (heretofore "DVP") submits this written testimony in support of Resolution 1173-2019. DVP supports the amicus brief submitted by the District of Columbia² calling on the U.S. Court of Appeals for the D.C. Circuit to

¹ In order to protect a survivor's identity, pseudonyms will be used throughout.

² The amicus brief was joined by the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia and Washington.

maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence.

At DVP, we consider domestic violence in any type of intimate partner relationship, regardless of gender identity, sexual orientation, religion, immigration or other status to be a human rights violation. Since our founding in 2003, our project has provided legal advocacy, direct legal representation, case management, financial empowerment, safety planning, and crisis counseling to survivors of domestic violence. Our efforts have proved successful: we are able to reach approximately 1,100 survivors a year, of whom approximately 60% are immigrants.

In the course of our work with non-citizen survivors of domestic violence, we frequently encounter clients who have experienced brutal domestic and familial violence in their home countries. These clients often come from countries where the police and government do not protect victims of domestic or familial violence, and where the act of reporting the violence to a government agency only places the victim at a greater risk. They flee their homes and their loved ones to come to the United States because they have no other option for survival. They hope that in the United States, they will receive asylum and protection from the violence, often for the first times in their lives. Their journeys are perilous, and many face additional abuses and violence along the way. On their journey to safety, some are stopped by Customs and Border Protection, locked up in detention facilities, separated from their children and forced into this confusing and prejudicial immigration system. Those victims who have already filed or expect to file an asylum application, whether affirmatively or defensively, will have their cases undermined by the Attorney General's decisions in *Matter of A-B-* and *Matter of L-E-A-*.³

³ Although Resolution 1173-2019 is focused upon the pernicious effects of *Matter of A-B-*, we note that another decision issued by the Attorney General, *Matter of L-E-A-*, has also wrought havoc on the asylum claims of vulnerable survivors of family- and gang-based violence. *Matter of L-E-A-* purports to limit family-based particular social groups. Although the decision does not fundamentally change existing law vis-à-vis family-based PSGs, it has been used extensively by immigration adjudicators to deny legitimate asylum claims.

At DVP, we have seen firsthand the devastating effects of *Matter of A-B* and *Matter of L-E-A*. ES, the victim highlighted at the beginning of this testimony along with two other matters highlighted below, provide a representative snapshot of the way in which these decisions have prevented vulnerable survivors of violence from obtaining safety in the United States.

In the Northern Triangle, ES is part of a racial minority group where police protection is often difficult to come by. The police do not monitor villages where this group lives and the closest town with a police station is a 6- to 8-hour bus ride away. Additionally, police in ES' country do not take domestic violence seriously and, therefore, would fail in protecting ES. After suffering years of brutalization by the abuser, a local gang murdered ES' abuser. Unfortunately, this gang turned its attention to ES. They made terrifying phone calls threatening to kill ES and the children if ES did not pay a debt owed by the abuser. ES took their oldest child and fled to the United States, hoping to escape the threat of violence by the gang members and the memories of brutal assaults experienced.

ES and child were stopped at the border trying to enter the United States and were held in detention for a week. They entered the country approximately a week after the Executive Office for Immigration Review (EOIR) issued a memo announcing a new policy expediting the adjudication of Family Unit ("FAMU") cases. This new policy dictated that cases, like ES', where parents/guardians were apprehended together with their children were to be completed within one year. This policy compromises due process and overwhelms immigration judges, whose dockets were already unwieldy due to administrative policies limiting judges' ability to close or terminate cases. ES and child were classified as "FAMU," putting them at a disadvantage before they even had their first master calendar hearing. At ES' individual hearing, the Immigration Judge denied ES' asylum claim. In the judge's decision, they specifically mentioned that ES' particular social groups, based on domestic violence, were not meaningfully distinguishable in light of *Matter of A-B*-, and that any family-based particular social groups were foreclosed by *Matter of L-E-A*-. In actuality, *Matter of L-E-A*- explicitly does not entirely

foreclose family-based PSGs, but adjudicators have chosen to ignore that fact. If ES' appeal is denied, ES will face deportation to a country where a viable threat of gang violence and potential death exists.

Unfortunately, ES' experience is not unique. In another asylum matter, DVP represented a young person from the Northern Triangle ("SG"). SG experienced familial violence perpetrated by the father in addition to threats and violence by local gang members. At only twelve years of age, a gang member assaulted SG. This attack led SG to flee and seek safety and protection in the United States. SG's parents had already relocated to the United States and SG was reunited with them. Although SG escaped further gang violence, SG (and SG's mother) did not escape ongoing violence by the father. In 2015, SG filed for asylum; however, SG's attorney failed to elucidate the family violence-related claims or develop fully the gang-related claims. As a result, SG's case was referred from the asylum office to immigration court. Following a particularly serious attack by SG's father, SG called for police assistance. Ultimately, the abusive father was deported. SG's father blames SG for his deportation, increasing the risk that SG would face severe violence or death if forced to return to the home country.

Because of the ballooning backlog of cases in immigration court, SG's individual hearing was scheduled for January 2020. This delay resulted in SG's case being significantly undermined by *Matter of A-B-* and *Matter of L-E-A-*. The immigration judge felt the case was weak with no nexus between the violence SG experienced and SG's membership in a family-based particular social group. Rather than conduct the hearing, the judge suggested adjourning the case and wait for adjudication of the petition for Special Immigrant Juvenile Status (SIJS). SG was pressured to accept the continuance. If SG chose to proceed with the hearing, the judge indicated that a denial of asylum would result in the issuance of removal order and refusal of a continuance. Terrified of a removal order, SG agreed to the continuance. While this outcome may not appear as dire as others, it does make clear the judge felt emboldened to pressure SG to accept the continuance because of the decisions reached by Attorney General Sessions.

The effects of the Attorney General's decisions are far reaching. Many non-citizen New Yorkers filed for asylum prior to *Matter of A-B-* and *Matter of L-E-A-*. These individuals are awaiting asylum interviews and individual hearings in a climate of hostility and new obstacles.

In 2017, YO, a DVP client from the Northern Triangle, filed a domestic violence based asylum claim. YO will face significant obstacles at their individual hearing in 2022. YO's abuser inflicted severe physical and sexual violence upon YO. In the most severe instance of abuse, YO's abuser threw YO down the stairs, causing significant brain trauma. YO was in a coma, and remained in the hospital for over a month. Although YO survived, the yearlong recovery was arduous and the effects are still felt today. As of this writing, YO suffers migraines, dizziness, and extreme mood swings all caused by the attack.

After the assault, YO's abuser was deported back to the Northern Triangle where they have proceeded to stalk and threaten YO's sibling, who bears a resemblance to YO. Understandably, YO fears returning to a country where the abuser may cause serious physical injury or death. YO will unlikely be able to seek protection from the police or government because domestic violence is not an issue taken seriously in the home country. In 2017, when we filed YO's asylum application, we were confident in the merits of the asylum claim. Now, post *Matter of A-B-*, and in light of ongoing attacks on asylum, we fear YO will be wrongfully barred from a form of relief they are clearly eligible for, and, instead face removal and certain violence in the home country.

While *Matter of A-B-* and *Matter of L-E-A-* themselves are problematic decisions that are counter to law, the root of the problem is the power of the Attorney General to certify cases to themselves and issue decisions that align with their or the administration's beliefs and policies, regardless of whether those decisions contradict decades of established caselaw. The role of Immigration Judges and members of the Board of Immigration Appeals (BIA) in shaping

immigration law is compromised when the finality of their decisions is left up to the whims of whoever the Attorney General in office may be. In order for us to be effective practitioners and advocates for our vulnerable clients, we need to be able to rely upon the decisions made by IJs and the BIA. We therefore ask the Committee to adopt Resolution 1173-2019 and stand in solidarity with the practitioners and non-citizen New Yorkers affected by the Attorney General's biased decisions in *Matter of A-B-* and *Matter of L-E-A*.

We urge Congress to enact laws that address the issues created by *Matter of A-B-* and *Matter of L-E-A-*. In order to restore justice and fairness to our asylum system and prevent further drastic changes in asylum law from being enacted through decisions issued via an Attorney General's self-certification authority, we recommend that Congress enact statutory changes to end the practice entirely. The self-certification power is alleged to give the Attorney General the power of agency head review, to ensure consistency in the decisions reached and policy created. In reality, it is part of a system that prevents the Immigration Court from being a neutral and independent arbiter, and turns it into a tool to be used to further the policy goals of the executive branch. It has been used to overturn years of consistent decisions regarding the eligibility of certain asylum-seekers. This has certainly been the case with the Attorney General's decisions in *Matter of A-B-* and *Matter of L-E-A-*. Countless asylum applicants who applied relying on years of caselaw recognizing particular social groups arising from domestic violence and family relationships are now in danger once again. There is a real possibility their cases will be denied and, therefore, once again these victims will be exposed to their abusers and the domestic violence. Those who are currently fleeing persecution in their home countries are similarly likely to have their cases denied and be removed to certain harm or death in their home countries. For those coming as a "family unit" as defined by EOIR, that return could be within a year of their escape from danger. Many of these asylum-seekers come from the Northern Triangle region of Guatemala, El Salvador, and Honduras, an area that President Trump has consistently targeted in his attacks on immigrants and asylum-seekers. It is therefore no surprise that the Attorney



Domestic
Violence
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Testimony to the NYC Council Committee on Immigration
Chelsea Whipp of the Domestic Violence Project
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General's decisions, in conjunction with other policy changes promulgated by EOIR, have particularly harmed asylum-seekers from the Northern Triangle and their families.

In closing, we appreciate the City Council's continued work in fighting for the rights, safety, and security of immigrant New Yorkers. We look forward to continuing to work with you to advocate for vital policy changes that will protect immigrant survivors of domestic and familial violence.

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New York City Council Committee on Immigration

**Oversight Hearing on the Dismantling of the U.S. Asylum System
and the Impact on Immigrant New Yorkers**

Statement by the Center for Gender & Refugee Studies
February 10, 2020

The Center for Gender & Refugee Studies (CGRS) welcomes the opportunity to submit written testimony for this important hearing on the dismantling of the U.S. asylum system and the impact on immigrant New Yorkers, and on City Council Resolution No. 1173, sponsored by Council Member Carlos Menchaca.¹

CGRS was founded in 1999 by Professor Karen Musalo following her groundbreaking legal victory in *Matter of Kasinga*² to meet the needs of asylum seekers fleeing gender-based violence. CGRS is an internationally respected resource for asylum, renowned for our knowledge of the law and ability to combine sophisticated legal strategies with policy advocacy and human rights interventions to protect the fundamental rights of refugee women, children, LGBTQ individuals, and others. We take the lead on emerging issues, participate as counsel or *amicus curiae* in strategic impact litigation,³ maintain an extensive library of litigation support materials, host an unsurpassed database of asylum records and decisions, and work in coalition with immigrant, refugee, LGBTQ, children's, and women's rights networks. We also engage in international human rights work to address the underlying causes of forced migration that produce refugees – namely, violence and persecution committed with impunity when governments fail to protect their citizens.

As a critical part of our mission, CGRS serves as a resource to decision makers to promote laws and public policies that recognize the legitimate asylum claims of those fleeing persecution, with a special focus on women, children, and LGBTQ refugees. Our goal is to create a framework of law and policy that responds to the rights of these groups and aligns with international human rights norms.

¹ Res. No. 1173, in support of the *amicus* brief submitted by the District of Columbia and the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, calling on the U.S. Court of Appeals for the D.C. Circuit to maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence.

² *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

³ See, e.g., *Matter of A-B*, 27 I&N Dec. 316 (A.G. 2018); *Grace v. Barr*, 344 F.Supp.3d 96 (D.D.C. Dec. 18, 2018), appeal docketed, No. 19-5013 (D.C. Cir. Jan. 30, 2019); *Innovation Law Lab v. McAleenan*, 924 F.3d 503 (9th Cir. 2019); *Damus v. Nielsen*, No. 18-578, 313 F.Supp.3d 317 (D.D.C. Jul. 2, 2018); *U.T. v. Barr*, No. 1:20-cv-00116-EGS (D.D.C.).

THE TRUMP ADMINISTRATION'S MYRIAD ATTACKS ON THE U.S. ASYLUM SYSTEM

Over the past three years, we have witnessed an unprecedented assault on the right to seek asylum in the United States. The Trump Administration's radical anti-asylum policies have severely undermined protections for survivors of gender-based violence, children, and families seeking refuge in this country. Our statement will briefly highlight a few of the Administration's most significant efforts to gut access to asylum protection.

I. CHANGING THE REFUGEE DEFINITION: *MATTER OF A-B-* AND *MATTER OF L-E-A-*

U.S. regulations authorize the Attorney General to refer individual asylum cases to herself to bring clarity and conformity to the law.⁴ However, in cases known as *Matter of A-B-* (A.G. 2018) and *Matter of L-E-A-* (A.G. 2019), the Trump Administration has taken advantage of this power to issue nationally binding decisions that have had the opposite effect. The *A-B-* and *L-E-A-* decisions reverse decades of established asylum law in order to accomplish the Administration's impermissible goal of deterring asylum seekers and expediting their deportation. These decisions have also injected confusion into the system, leading to inconsistent and arbitrary decision-making.

***MATTER OF A-B-*: SLAMMING THE DOOR ON DOMESTIC VIOLENCE SURVIVORS**

In 2018, then-Attorney General Jeff Sessions exercised what was formerly a rarely used power of his office to self-certify an approved asylum appeal in *Matter of A-B-*. In doing so, he unraveled decades of legal precedent protecting women from domestic violence.⁵ CGRS's client, Ms. A.B., had credibly testified that she endured 15 years of abuse by her husband, including beatings, rapes, and specific, detailed threats on her life. She had fled to different parts of El Salvador, divorced her husband, and twice taken out restraining orders against him. Yet her husband continued to track her down, abuse her, and threaten to kill her without consequence.

While the immigration judge denied her claim, the Board of Immigration Appeals (BIA or Board) found that protection was warranted based on established legal precedent and the horrific violence Ms. A.B. had endured in her home country. In June 2018, Sessions reversed the BIA's grant of asylum to Ms. A.B. and vacated the previously controlling Board precedent decision in *Matter of A-R-C-G-* (BIA 2014), which had affirmed that domestic violence may serve as a basis for asylum. In his decision, Sessions made the broad, sweeping pronouncement that "generally," claims involving domestic violence or gang brutality perpetrated by nongovernmental actors would no longer qualify for asylum.

***Matter of A-B-* Found Unlawful as Applied to Credible Fear Screenings**

In December 2018, the U.S. District Court for the District of Columbia granted a nationwide injunction, requested by CGRS and co-counsel, which blocked the application of the legal standards

⁴ 8 C.F.R. §§ 1003.1(h)(1)(i) (referral authority); 1003.1(g) (precedent decision designation).

⁵ See, e.g., Blaine Bookey, *Gender-based Asylum Post-Matter of A-R-C-G-: Evolving Standards of the Law*, 1 SOUTHWESTERN J. INT'L L. 22 (2016); Karen Musalo, *Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law*, HARVARD INT'L REV. (2014).

articulated in *Matter of A-B-* in credible fear proceedings, the initial screening process for asylum seekers in expedited removal. In *Grace v. Whitaker*,⁶ the court found *Matter of A-B-*'s standards to be inconsistent with existing legal precedents and Congressional intent behind the enactment of the Refugee Act of 1980, which was to bring the United States into compliance with its international treaty obligations. The injunction remains in effect, prohibiting asylum officers and immigration judges from using the *Matter of A-B-* standards in the credible fear process. The government has appealed this decision, and the case remains pending at the D.C. Circuit Court of Appeals.

***Matter of A-B-* Has Resulted Too Often in a Categorical Prejudgment of Asylum Claims**

While the use of Sessions' *Matter of A-B-* ruling is currently enjoined in credible fear proceedings, both the Department of Homeland Security (DHS) in its training of asylum officers and the Department of Justice in its guidance to immigration judges and the BIA have instructed that *Matter of A-B-* must be used in adjudicating asylum claims on their merits. This has led to widely disparate outcomes.⁷ Many adjudicators are summarily and categorically foreclosing protection in cases as a "matter of law" because they involve domestic violence, "instead of considering individual facts and fair application of law to those individual facts."⁸

Immigration judges have been reported:⁹

- Premitting or threatening to premit cases based on the case "type";
- Discouraging respondents from requesting relief;
- Successfully convincing asylum seekers that their claims will inevitably fail, so it is in their best interest to give up without looking for an attorney and instead take voluntary departure orders; and
- Issuing removal orders without holding merits hearings.

This prejudgment and lack of individualized determination has led to a complete failure of due process for asylum seekers, who are being deprived the opportunity to fully and fairly litigate their claims. Central American asylum seekers, many of whom are fleeing domestic violence and gang brutality, have faced particularly heightened obstacles to protection post-*Matter of A-B-*. In fact, in the year following *Matter of A-B-*, asylum grant rates for individuals from El Salvador, Guatemala, and Honduras fell to an average of 15 percent, compared to a 24 percent grant rate in the year prior to the decision.¹⁰ The New York City Immigration Court experienced a particularly dramatic shift, with grant rates for Salvadoran, Guatemalan, and Honduran asylum seekers dropping nearly 15

⁶ *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018).

⁷ See Kate Jastram and Sayoni Maitra, *Matter of A-B- One Year Later: Winning Back Gender-Based Asylum Through Litigation and Legislation*, 18 SANTA CLARA J. INT'L L. 48 (2020).

⁸ See "The Attorney General's Judges: How the U.S. Immigration Courts Became a Deportation Tool," June 29, 2019 available at <https://www.splcenter.org/20190625/attorney-generals-judges-how-us-immigration-courts-became-deportation-tool>.

⁹ *Id.*

¹⁰ According to data from the Syracuse University Transactional Records Access Clearinghouse (TRAC) Asylum Decision tool, available at <https://trac.syr.edu/phptools/immigration/asylum/>.

percentage points.¹¹ All other countries saw virtually no change in grant rates during that time frame.

There is no doubt that this was the Trump Administration's desired result. Former Attorney General Sessions' goal was to deter asylum seekers from seeking refuge at the U.S. border, without regard for our country's moral and legal obligations. In fact, the very same day that he announced the *Matter of A-B-* decision, Sessions lectured immigration judges on the virtues of the Administration's shameful "zero tolerance" policy, which criminalized asylum seekers and tore thousands of children from the arms of their parents.¹²

MATTER OF L-E-A-: TARGETING ASYLUM SEEKERS FLEEING FAMILY RELATED PERSECUTION

Through his sweeping July 2019 ruling in *Matter of L-E-A-*, Attorney General William Barr attempted to impose a general rule denying protection to individuals fleeing persecution on account of family ties, a common basis for fear-of-gang claims raised by Central American asylum seekers.¹³ Asylum has been available to applicants who fear persecution based on their family membership since 1985, when the BIA explicitly named kinship a valid characteristic of a particular social group in the seminal *Matter of Acosta* decision. Since then, every U.S. Court of Appeals that has addressed this issue has agreed with the BIA, with many of the courts finding that the family is in fact the "prototypical" or "quintessential" social group.¹⁴ Attorney General Barr's blatant disregard of over three decades of unanimous precedent exposes the intent underlying his decision, which was to further erode asylum protections for families fleeing epidemic levels of violence in Central America.

The *Matter of L-E-A-* ruling has put countless families and children with meritorious asylum claims at risk of deportation to life-threatening persecution. Just days after the decision was issued, an immigration judge relied on *L-E-A-* to deny asylum to a Salvadoran woman who was threatened by gang members who had kidnapped and severely beaten her brothers.¹⁵ Another immigration judge reportedly stated that in their view, after *L-E-A-* an asylum seeker would have to be in a family as well known as the Kennedys to be granted protection on the basis of family-related persecution.

II. DRACONIAN SOUTHERN BORDER POLICIES

While substantive attacks limiting (or narrowing) the refugee definition in cases such as *Matter of A-B-* and *Matter of L-E-A-* continue to pose significant obstacles to those in U.S. asylum proceedings, the Trump Administration has also imposed draconian policies that prevent individuals from even applying for protection in the United States. These policies have trapped tens of thousands of

¹¹ See "Here's Why the Rejection Rate for Asylum Seekers Has Exploded in America's Largest Immigration Court in NYC," December 2, 2019 available at <https://www.thedailybeast.com/heres-why-the-rejection-rate-for-asylum-seekers-has-exploded-in-americas-largest-immigration-court-in-nyc?ref=scroll>.

¹² See <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-largest-class-immigration-judges-history>.

¹³ *Matter of LE-A-*, 27 I. & N. Dec. 581 (A.G. 2019).

¹⁴ See, e.g., *Bernal-Rendon v. Gonzales*, 419 F.3d 877, 881 (8th Cir. 2005); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015); *Rios v. Lynch*, 807 F.3d 1123, 1128 (9th Cir. 2015); *Gonzalez Ruano v. Barr*, 922 F.3d 346, 353 (7th Cir. 2019).

¹⁵ Case on file with CGRS, CGRS Case No. 34097 (IJ Dec. Aug. 5, 2019).

asylum seekers in Mexico and Central America, where they face grave dangers, and have sown chaos and confusion at our southern border. Below we discuss the current status of the most significant of these policies.

ASYLUM BAN 1.0 (ENTRY BAN)

In November 2018, the Trump Administration sought via proclamation to ban individuals who did not enter the United States through an official port of entry (POE) from applying for asylum. While the proclamation would still permit them to pursue withholding of removal and relief under the Convention Against Torture (CAT), these forms of humanitarian protection are much more difficult to obtain and confer far fewer benefits than asylum. In *East Bay Sanctuary Covenant v. Trump*, the U.S. District Court for the Northern District of California issued a temporary restraining order, the Ninth Circuit denied the government's emergency motion for a stay pending appeal, and the Supreme Court similarly declined to grant a stay.¹⁶ Thus, the ban is not currently in effect. This policy was also successfully challenged in *O.A. et al. v. Trump*.

MIGRANT PROTECTION PROTOCOLS

In January 2019 the Trump Administration commenced implementation of its Migrant Protection Protocols (MPP), also known as the "Remain in Mexico" policy. Under MPP, the U.S. government returns asylum seekers arriving at the southern border without documents to wait in Mexico for the duration of their immigration proceedings. While limited exceptions purportedly exist for individuals who fear danger in Mexico, unaccompanied children, pregnant women, and people with serious medical issues, the Administration has returned many such individuals to Mexico. To date, the Trump Administration has forcibly returned nearly 60,000 asylum seekers, including over 16,000 children and infants. At least 26,000 asylum seekers have been sent to the cities of Nuevo Laredo and Matamoros in the notoriously dangerous state of Tamaulipas, which the U.S. State Department has assigned the same "Category 4" travel advisory level reserved for war zones. Human Rights First has documented at least 816 public reports of murder, torture, rape, kidnapping, and other violent attacks against asylum seekers and migrants returned under MPP, a figure that represents only the tip of the iceberg.¹⁷

In *Innovation Law Lab v. McAleenan*, a legal challenge brought by CGRS, the ACLU, and the Southern Poverty Law Center, the U.S. District Court for the Northern District of California preliminarily enjoined MPP in April 2019.¹⁸ However, the Ninth Circuit stayed the preliminary injunction pending the government's appeal, allowing the policy to continue.¹⁹ The Ninth Circuit heard oral arguments in October 2019 and the case remains pending.

¹⁶ *East Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 864 (N.D. Cal. 2018).

¹⁷ See "A Year of Horrors: The Trump Administration's Illegal Returns of Asylum Seekers to Danger in Mexico," January 22, 2020 available at <https://www.humanrightsfirst.org/resource/year-horrors-trump-administration-s-illegal-returns-asylum-seekers-danger-mexico>.

¹⁸ *Innovation Law Lab v. Nielsen*, 366 F. Supp. 3d 1110 (N.D. Cal. 2019).

¹⁹ *Innovation Law Lab v. Nielsen*, No. 19-15716 (9th Cir. April 12, 2019).

ASYLUM BAN 2.0 (TRANSIT BAN)

Through the Transit Ban, also known as the “Third Country Transit Rule,” the Trump Administration is seeking to categorically deny asylum to all non-Mexican nationals entering the United States at the southern border, leaving them with only the opportunity to pursue withholding of removal and CAT protection. The rule, effective July 16, 2019, bars asylum for any individual who has passed through a third country that has ratified the major refugee protection treaties *en route* to the southern border unless they (a) applied for protection from persecution or torture in a third country and received a final judgment denying such protection; or (b) meet the definition of a “victi[m] of a severe form of trafficking” under 8 C.F.R. § 214.11. This rule is currently in effect nationwide after the United States Supreme Court granted a stay of the preliminary injunction issued in the lawsuit *East Bay Sanctuary Covenant v. Barr*.²⁰ The government’s appeal of the preliminary injunction is pending in the Ninth Circuit.

The Transit Ban has also been challenged with respect to asylum seekers turned back, or “metered,” at POEs.²¹ In *Al Otro Lado v. Wolf*, the District Court for the Southern District of California preliminarily enjoined the application of the Transit Ban to asylum seekers who were unlawfully prevented from accessing the U.S. asylum process because they had been subjected to metering before the Transit Ban went into effect.²² The preliminary injunction prohibited the government from applying the Transit Ban to members of the provisional class of “all non-Mexican asylum seekers who were unable to make a direct asylum claim at a U.S. POE before July 16, 2019 because of the U.S. Government’s metering policy, and who continue to seek access to the U.S. asylum process.” On December 20, 2019, after the government appealed the decision, the Ninth Circuit granted an emergency temporary stay of the preliminary injunction.²³

ASYLUM COOPERATIVE AGREEMENTS

In 2019 the Trump Administration signed so-called asylum cooperative agreements (ACAs) with El Salvador, Guatemala, and Honduras. The ACAs enable the U.S. government to “transfer” asylum seekers to these countries, rather than process their claims in the United States. U.S. law provides for such transfers pursuant to a “safe third country” agreement if the asylum seeker will actually be safe and have access to a full and fair asylum procedure in the country to which the United States is sending them. El Salvador, Guatemala, and Honduras utterly fail to meet these standards. All three countries lack the capacity to handle more than a minuscule number of asylum claims and are plagued with rampant gender- and gang-related violence that has forced thousands of their own citizens to seek asylum in the United States.

²⁰ *Barr v. East Bay Sanctuary Covenant*, No. 19A230, 588 U.S. ___ (Sept. 11, 2019).

²¹ “Metering” is the U.S. government’s practice of limiting the number of individuals who can request asylum at the border each day, forcing asylum seekers to put their names on a list and wait for weeks or even months just for the opportunity to initiate the asylum process. The Trump Administration has subjected thousands to this practice. In November 2019, there were approximately 21,398 asylum seekers on waitlists in 11 Mexican border cities. See “Metering Update,” November 2019 available at https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf.

²² *Al Otro Lado v. McAleenan*, No. 17-cv-02366-BAS-KSC (S.D. Cal. 2019)

²³ *Al Otro Lado, Inc. v. Wolf*, No. 19-56417 (9th Cir. Dec. 20, 2019).

The Administration rushed these unprecedented and unlawful changes through without the customary period for public comment. On November 19, 2019, the Administration promulgated an Interim Final Rule to provide for the immediate implementation of the ACAs. On November 20, the Administration published the Guatemala agreement in the Federal Register. The first transfer reportedly occurred on November 21, and to date, the Trump Administration has sent nearly 400 asylum seekers to Guatemala, most of them women and children.²⁴

In *U.T. v. Barr*, CGRS, the ACLU, the National Immigrant Justice Center, and Human Rights First are challenging the Interim Final Rule, as well as agency guidance implementing the Guatemala ACA, in a lawsuit before the U.S. District Court for the District of Columbia.²⁵

III. CREATING EVEN MORE OBSTACLES TO PROTECTION

The Trump Administration has used administrative rulemaking to further curtail access to asylum. Below we describe several rules proposed by the Trump Administration in the past six months which would erect new barriers to protection and cause significant financial hardship to asylum seekers.

RESTRICTING ACCESS TO WORK AUTHORIZATION

In the fall of 2019, DHS published two proposed rules that would make the employment authorization process for asylum seekers far lengthier and more burdensome. The first, published on September 9, would eliminate the 30-day deadline for U.S. Citizenship and Immigration Services (USCIS) to respond to an asylum seeker's application for work authorization.²⁶ The second rule was published on November 14 and, among other harmful provisions, would double the waiting period to apply for work authorization, making asylum seekers ineligible for a full year after filing their asylum application.²⁷ This rule would also preclude from work authorization entirely asylum seekers who enter the country without inspection, and those who fail to apply for asylum within one year after entering the United States.

Extending the time period before asylum seekers can lawfully work – or barring them from work authorization altogether – would exacerbate their already economically precarious and socially vulnerable situations. Asylum seekers are not entitled to most forms of government assistance and social welfare benefits and can support themselves and their families only by working. Denying them the opportunity to do so would put asylum seekers at greater risk of hunger, homelessness, and potentially abusive living situations, as well as trafficking and other coercive employment practices. CGRS has submitted comments expressing opposition to both rules, which violate U.S. law, as well as our country's international legal obligations to refugees.

²⁴ See "Women and children make up majority of asylum-seekers sent to Guatemala under Trump deal," February 4, 2020 available at <https://www.cbsnews.com/news/woman-and-children-make-up-majority-of-asylum-seekers-sent-to-guatemala-under-trump-deal/>.

²⁵ *U.T. v. Barr*, No. 1:20-cv-00116-EGS (D.D.C.).

²⁶ Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications (Sept. 9, 2019) DHS Docket No. USCIS-2018-0001.

²⁷ Asylum Application, Interview, and Employment Authorization for Applicants (November 14, 2019) DHS Docket No. USCIS-2019-0011-0001.

IMPOSING PROHIBITIVE APPLICATION FEES

On November 14, 2019, DHS published another proposed rule which would significantly increase application and petition fees across the immigration spectrum.²⁸ Among other fee hikes, the rule would impose a new \$50 fee for affirmative asylum applications and increase the employment authorization application fee to \$490. Only three other countries in the world – Australia, Fiji, and Iran – impose a fee for affirmative asylum applications, and even those countries provide fee waivers to those who cannot afford to pay it. A \$50 application fee could be prohibitive for many of the most vulnerable asylum seekers. The \$490 filing fee for work authorization applications would create an enormous obstacle for indigent asylum seekers as well, further delaying their ability to lawfully work and leaving many, particularly women and LGBTQ people, at risk of abuse and exploitation. CGRS has submitted comments expressing strong opposition to this rule as well.

PROPOSING NEW BARS TO ASYLUM

On December 19, 2019, DHS and the Department of Justice published yet another rule proposing seven new criminal bars to asylum eligibility.²⁹ All seven bars run afoul of the United States' legal obligations to refugees. Notably, the proposed rule would bar from asylum those who reenter the country without inspection after a previous deportation, in violation of both U.S. law and the Refugee Protocol, which prohibits countries from penalizing asylum seekers on account of their unlawful presence or entry in the country where they are seeking safe haven. This new bar is especially shameful given the patchwork of restrictive border policies described above, which have all but shut down access to the United States at official POEs, forcing desperate asylum seekers to find other means to enter the country. CGRS is also particularly concerned about a new bar proposed in the rule related to perpetrators of domestic violence, which in practice would put survivors of such violence at risk of being denied protection. The other five bars proposed implicate broad categories of criminal behavior and would undoubtedly result in the exclusion of refugees who have not committed particularly serious crimes. CGRS submitted comments expressing our opposition to this rule in January 2020.

²⁸ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements (November 14, 2019) DHS Docket No. USCIS-2019-0010.

²⁹ Procedures for Asylum and Bars to Asylum Eligibility (December 19, 2019) EOIR Docket No. 18-0002, A.G. Order No. 4592-2019; RIN 1125-AA87, 1615-AC41.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/10/20

(PLEASE PRINT)

Name: Andra Bowen

Address: 147 S 12th St Apt 10 Bklyn 11217

I represent: Anti-Violence Project

Address: 116 Nassau St 3rd Fl NYC, NY

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: RALUCA ONCIOIU

Address: CATHOLIC CHARITIES

I represent: 53 BOERUM PL.

Address: 80 MAIDEN LANE

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Date: _____

(PLEASE PRINT)

Name: Topo Amabil

Address: 171 Battery Place

I represent: Imperial Justice Corps

Address: _____

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Appearance Card

2

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jessie Pimentel

Address: _____

I represent: New York City Anti Violence Project

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Maritza Suarez

Address: _____
(testifying in Spanish)

I represent: New York City Anti Violence Project

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/10/2020

(PLEASE PRINT)

Name: Tiana Marisol Cherbosque

Address: _____

I represent: Sanctuary for Families

Address: _____

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: P. [unclear]

Address: _____

I represent: _____

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Rebecca Press

Address: _____

I represent: _____

Address: _____

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Appearance Card

5720

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Dan Smulian

Address: _____

I represent: Catholic Charities Community Services Immigration Legal

Address: 80 Maiden Lane, 13th Fl

New York NY 10038

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1173-2019

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Rebecca Gendelman

Address: 75 Broad Street 3rd Floor, New York NY

I represent: Human Rights First

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 1173 Res. No. 1173

in favor in opposition

Date: 2/10/2020

(PLEASE PRINT)

Name: Prathiba Desai

Address: _____

I represent: Her Justice

Address: 100 Broadway, NY, NY 10005

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: NEENA DUTTA/IMMIGRATION

Address: 150 BROADWAY, Ste 1001

I represent: AILA NY (American Immigration

Address: lawyers Association)

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Appearance Card

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in favor in opposition

Date: 1/16/20

(PLEASE PRINT)

Name: Uchechukwu C. Okafor

Address: 585 7th Avenue

I represent: _____

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/10/20

(PLEASE PRINT)

Name: Bianna Krong

Address: 1258 10th Ave, SF, CA 94122

I represent: Center for Gender & Refugee Studies

Address: 260 McAllister St., SF, CA 94102

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 5/10/2020

(PLEASE PRINT)

Name: Caroline Clinical Supervisor

Address: 219 East 10th St, 10th FL, NYC

I represent: NYC Social Agency

Address: _____

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I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 2/10/2020

(PLEASE PRINT)

Name: Luis Rosario Rodriguez

Address: 349 East 149th Street, 10th FL

I represent: Praxis Legal Services

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Samah McGona Sisay

Address: _____

I represent: African Services Committee

Address: 429 W 127th Street NYC 10027

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 2/10/2020

(PLEASE PRINT)

Name: Amy Post

Address: 199 Water St. FL 3, NY, NY 10039

I represent: The Legal Aid Society

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Alice Sturm Sutter (PLEASE PRINT)

Address: _____

I represent: _____

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/10/2020

Name: Melissa Chandler (PLEASE PRINT)

Address: _____

I represent: New Sanctuary Coalition

Address: 239 Thompson St.

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 02/10/20

Name: Aadhithi Padmanabhan (PLEASE PRINT)

Address: 199 Water Street 3rd Floor

I represent: The Legal Aid Society

Address: same

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/10/20

(PLEASE PRINT)

Name: Alexandra H. Gonzalez-Perez

Address: Catholic Migration Services

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Admin

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/10/2020

(PLEASE PRINT)

Name: SONIA LIN

Address: DEPUTY COMMISSIONER & GENERAL COUNSEL

I represent: MOIA

Address: _____

Please complete this card and return to the Sergeant-at-Arms