

April 15, 2020

Via Electronic Mail

Chad F. Wolf
Acting Secretary of Homeland Security
Office of the Executive Secretary
MS 0525
Department of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528-0525
Email: chad.wolf@hq.dhs.gov

Kenneth T. Cuccinelli
Senior Official Performing the Duties of the
Director

Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave., NW
Washington, D.C. 20229

EJ 0j EMC /P < 20a2-6(a)1300 FT/Protg 29ij EMC 5 W
U.S. Customs and Border Protection
Office of Field Operations
1300 Pennsylvania Ave., NW
Washington, D.C. 20229
Email: todd.c.owen@cbp.dhs.gov

impossible without access to legal representation. As of February 2020, only 6.2 percent of noncitizens forced to remain in Mexico under MPP had obtained legal representation.² In comparison, for asylum decisions issued in Fiscal Year 2019, 84 percent of non-detained asylum seekers and 54 percent of detained asylum seekers were represented in their immigration proceedings.³ Accordingly, we are writing to elaborate on the factors that currently impede such access and to recommend steps that could be taken to reduce these barriers before MPP hearings resume.

I. BACKGROUND

Under MPP, DHS forces a significant number of asylum seekers who arrive at the southern border to remain in Mexico for the duration of their immigration proceedings. Between MPP's implementation in January 2019 and October 2019, over 55,000 migrants were required to return to Mexico under MPP.⁴ Although this policy is troubling in many respects, some of which are the subject of pending litigation,⁵ we are writing to explain how implementation of MPP is depriving asylum seekers of their right to access counsel in violation of federal law.⁶

Legal representation in immigration proceedings can determine whether a noncitizen is granted asylum and allowed to remain in the United States. Represented noncitizens detained in the United States are over 10 times more likely than those appearing *pro se* to succeed in their immigration cases.⁷ The success rate for released noncitizens represented by counsel is more than five times greater than for released individuals appearing *pro se*.⁸

DHS's MPP guidance acknowledges the need for asylum seekers to be able to access counsel during the pendency of their immigration cases. On January 14, 2020, DHS component agencies issued a memorandum listing recommendations from DHS senior leadership to “reinforce the avenues by which . . . attorneys . . . can view MPP proceedings, meet with migrants (if appropriate), or visit temporary hearing locations”; “[s]tandardize and ensure the consistency of the information individuals are provided regarding ‘migrant rights’”; and facilitate access to counsel for MPP respondents.⁹ In addition, a February 2019 memorandum by U.S. Immigration and Customs Enforcement (“ICE”) states that asylum seekers subject to MPP must be allowed

² TRAC, *Details on MPP (Remain in Mexico) Deportation Proceedings* (through Feb. 2020), available at <https://trac.syr.edu/phptools/immigration/mpp/>.

³ TRAC, *Asylum Decisions by Custody, Representation, Nationality, Location, Month and Year, Outcome and more* (Feb. 2020), available at <https://trac.syr.edu/phptools/immigration/asylum/> (filters set to “Fiscal Year of Decision,” “Custody,” and “Represented”).

⁴ U.S. Dep’t of Homeland Sec., *Assessment of the Migrant Protection Protocols (MPP)* (Oct. 28, 2019), available at https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

⁵ See, e.g., *Innovation Law Lab v. Wolf*, 951 F.3d 986 n/

Non-profit organizations and news media have published numerous reports detailing the shocking conditions in which asylum seekers are living while trapped in Mexico.¹³ Asylum seekers have been forced to live in makeshift camps or on the streets of Mexico's northern border cities with very limited means to support themselves and their children.¹⁴

In addition, many of the cities along Mexico's northern border where asylum seekers are forced to wait are extremely dangerous, which has led to Department of State travel warnings for many of the border areas where asylum seekers subject to MPP are returned.¹⁵ Human Rights First has documented "at least 1,001 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against asylum seekers and migrants forced to return to Mexico by the Trump Administration" as of February 28, 2020.¹⁶ The U.S. Immigration Policy Center at the University of California at San Diego interviewed 607 asylum seekers subject to MPP and found that approximately a quarter of them had been threatened with physical violence while in Mexico and that over half of those threats had led to actual experiences of physical violence.¹⁷

Given these dire circumstances, asylum seekers subject to MPP have limited ability and are generally unable to seek out the few legal service providers who are willing to assist them. Many do not have access to a phone to contact available attorneys, most of whom are located in the United States. Those who have access to a phone often do not have reliable cell phone service, access to the internet, or even the resources to make international calls to attorneys or non-profit organizations in the United States.

With respect to the few asylum seekers who are able to connect with legal service providers, many

B. Legal Services Providers Are Impeded from Identifying, Screening and Advising Potential Clients in MPP

Due to the conditions in Mexico described above, the demand for legal representation far outweighs the number of

from obtaining legal representation at all. Moreover, as explained below, it is often impossible or unsustainable for attorneys based in the United States to travel frequently to Mexico to meet with prospective or actual clients.²²

C. Legal Services Providers Are Unable to Adequately Represent Clients in MPP

MPP also presents enormous challenges for lawyers who are retained to represent asylum seekers physically located in Mexico. By forcing asylum seekers to remain in Mexico, MPP substantially impedes lawyers' ability to reliably, timely, and effectively communicate with their clients. To provide legal services to such individuals, U.S.-based attorneys must choose between costly travel to dangerous Mexican border cities to meet with their clients or preparing an asylum case without a meaningful opportunity for attorney-client consultation.

In order to provide competent representation to asylum seekers subject to MPP, lawyers must have reliable, sufficient, and confidential access to their clients. To establish eligibility for asylum, an applicant must provide a specific and detailed account of prior persecution. It is imperative for the attorney and client to build enough trust that the client feels comfortable disclosing sensitive information and traumatic past experiences. Face-to-face communication is essential for building that trust, especially given the likelihood of linguistic, cultural, and/or psychological barriers. Attorneys must understand the context of their clients' fears and experiences, requiring a number of meetings. In addition, attorneys must spend time informing and advising clients, ensuring that they understand the proceedings and various strategy options; discussing and collecting supporting evidence; confirming the accuracy and completeness of filings; obtaining their clients' signature on legal documents; and addressing collateral issues that arise as a result of clients being trapped in Mexico. Because

III. CONCLUSION

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