

February 14, 2019

Secretary Kirstjen M. Nielsen
Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C. 20016

CC: Secretary of State Michael Pompeo

Re: NGO Concerns with Implementation & Expansion of Unilateral Migrant Protection Protocols/
"Remain in Mexico" Program

Dear Secretary Nielsen:

The undersigned civil society organizations from the United States, Mexico, and Central America write to you to express our deep concerns with the Trump Administration's new policy which has been misleadingly called "Migrant Protection Protocols" (MPP). Implemented in its first phase at the San Ysidro/Tijuana port of entry and set to expand to other ports of entry along the U.S.-Mexico border, the policy keeps non-Mexican asylum seekers that arrive by land at the U.S. southern border in Mexico throughout the duration of their immigration proceedings in the United States. We urge you to immediately halt this policy and to refrain from expanding it to additional locations and to asylum seeking families.

Many of our organizations wrote to you and to Mexican officials last year to express opposition to the implementation of any bilateral agreements or initiatives that are similar to the MPP.ⁱ Together, our organizations bring years of experience documenting human rights violations and crimes against migrants along the U.S.-Mexico border and within Mexico, including directly serving refugees and migrants in Central America, Mexico, and the United States. It is precisely for this reason that we wish to communicate the following concerns regarding the implementation of the program and to urge the Department of Homeland Security (DHS) to retract it immediately.

The MPP violates U.S. and international law regarding the processing of asylum seekers at the U.S.-Mexico border. U.S. law is clear that asylum may be sought at a port of entry or after crossing into the United States, and the Immigration and Nationality Act (INA) lays out the process for asylum seekers to have their claims heard in the United States.ⁱⁱ Moreover, the program violates U.S. treaty obligations as it puts refugees at risk of *refoulement* or return to their country of persecution as well as the prohibition on returning individuals to any country where they may face persecution.

Risks for Asylum seekers in Mexico

The MPP also assumes that conditions in Mexico, and particularly along Mexico's northern border, are safe for asylum seekers while they wait for their immigration proceedings. There is substantial evidence documented by our organizations, the U.S. State Department, and the Mexican government to refute this and to point to a situation of extreme violence and insecurity along Mexico's northern border.ⁱⁱⁱ

Tijuana, the city where asylum seekers are being sent to wait for their proceedings in the current phase of the MPP, has seen a dramatic increase in the level of homicides for the last five years, reaching record levels in 2018 and making it one of the deadliest cities in the world currently.^{iv} Mexico's northern border states, such as Tamaulipas, Coahuila, Nuevo Leon, and Chihuahua, also continue to rank among the states with the highest number of registered disappearances in the country.^v The U.S. State Department currently has travel warnings on all six of Mexico's northern border states, urging citizens not to travel to Tamaulipas, to reconsider travel to Coahuila, Chihuahua, Nuevo Leon, and Sonora, and to exercise increased caution in travel to Baja California, all due to high levels of violent crime.^{vi} The violence perpetuated in these cities comes not only from organized crime but also from systemic corruption and abuses within Mexican law and migration enforcement agencies who at times work in collusion with criminal groups. Over thirty disappearances were attributed to the Mexican Navy, for example, in Nuevo Laredo, Tamaulipas in 2018.^{vii} In addition, the 2017 U.S. State Department human rights country report on Mexico highlighted collusion between the state government of Coahuila and organized crime in carrying out disappearances.^{viii}

While the information above demonstrates a broader situation of violence, corruption, and impunity along some of Mexico's northern border states and cities, asylum seekers and migrants, in particular, have long faced human rights violations and crimes in their transit through Mexico. Civil society organizations and migrant shelters have documented multiple cases of torture, murder, disappearances, kidnappings, robbery, extortion, and sexual and gender-based violence that migrants and asylum seekers suffer at the hands of criminal groups in Mexico. The perpetrators of this persecution often act in collusion with Mexican migration and law enforcement. Multiple reports, issued by U.S. and Mexican organizations and migrants shelters in Mexico, illustrate that, while many crimes against migrants occur in the southern part of Mexico, migrants are victims of abuse throughout the country, including in northern border states.^{ix} The Inter-American Commission on Human Rights (IACHR) has previously noted crimes against migrants in its reports and NGOs have noted the specific risks migrants face in each of Mexico's border states in documents submitted to the IACHR.^x As the MPP would force asylum seekers to wait in Mexico for prolonged periods of time, it is likely that more migrants would be exposed to such risks and violence, or would turn to smugglers to cross the border between ports of entry and in more precarious conditions.

The murders of two unaccompanied Honduran children in Tijuana in December demonstrates the vulnerability of asylum seekers trapped in border cities and towns.^{xi} Many asylum seekers are fleeing extreme sexual and gender-based violence or threats from gangs in their home

countries. By the time they arrive in northern Mexico, they are severely traumatized. The vulnerability of asylum seekers forced to wait in Mexico is compounded by the Mexican government's consistent failure to investigate and prosecute crimes against asylum seekers and migrants. According to one NGO report, 99 percent of the crimes migrants face in Mexico remain in impunity.^{xii} Civil society shelters operating along Mexico's northern border have limited capacity to assist migrants who have been victims of crime, offer them shelter for extended periods of time, and often are also directly threatened for their work protecting migrants.^{xiii}

Asylum seekers fleeing to the U.S. who are forced to remain in Mexico will be unable to access their support networks, thereby intensifying their trauma. One of the most valuable resources survivors of violence have to help in their recovery is the support of friends, family, and fellow countrymen. Many of the individuals who choose to flee to the United States do so because they have connections through friends or family. These contacts can prove invaluable for asylum seekers survivors of torture or other trauma, as their contacts help them navigate within a new culture and language.

Asylum seekers returned under the MPP would also face challenges in accessing broader services while waiting in Mexico. This has been made evident by civil society reports documenting the lack of access to services and shelter faced by migrants in the city of Tijuana since November 2018.^{xiv} These risks are compounded for women, unaccompanied children,^{xv} and the LGBTI community. Even with the issuing of humanitarian visas, migrants face difficulty in accessing employment and housing.

Initial reports from the media^{xvi} and civil society representatives who interviewed asylum seekers returned under the MPP indicate that the information provided to them on how to seek legal counsel was wholly insufficient or they were not questioned regarding their potential fear to return to Mexico, leading to the potential to violate the principle of non-refoulement. This is compounded by the obstacles in seeking legal counsel for U.S. immigration proceedings from Mexico to begin with, without even considering the limited resources or ability asylum seekers have to navigate proceedings in a foreign language.

The MPP will not address the "security and humanitarian crisis" on the U.S.-Mexico border as DHS asserts. Rather, the program will cause great harm and unnecessarily expose asylum seekers to human rights violations and violence. The resources dedicated to the execution of the program by the implementing agencies could be much better spent to alleviate the backlog of asylum seekers along the border which has been exacerbated by other illegal actions taken by Customs and Border Protection (CBP) to turn asylum seekers away from ports of entry and to limit their entry on a daily basis through practices such as "metering." The MPP will not deter individuals from seeking asylum in the United States. We urge DHS to retract it and to immediately focus instead on processing asylum seekers in an effective and timely manner, with respect for family unity, meaningful due process, and access to seek legal counsel.

Signed

United States

Al Otro Lado

Alliance San Diego

Amnesty International USA

Asylum Seeker Advocacy Project

Casa de Esperanza: National Latin@ Network for Healthy Families and Communities

Center for Human Rights & Constitutional Law

Center for Victims of Torture

Central American Resource Center (CARECEN) - DC

Chicago Religious Leadership Network on Latin America - CRLN

Church World Service

Coalition for Humane Immigrant Rights - CHIRLA

Evangelical Lutheran Church in America

Freedom Network USA

HIAS

Hope Border Institute/Instituto Fronterizo Esperanza

Human Rights First

Immigration Equality

International Labor Rights Forum (ILRF)

International Refugee Assistance Project (IRAP)

Just Neighbors Ministry

Kids in Need of Defense

Latin America Working Group (LAWG)

Lutheran Immigration and Refugee Service

Maryknoll Office for Global Concerns

Mennonite Central Committee U.S. Washington Office

National Advocacy Center of the Sisters of the Good Shepherd

National Center for Transgender Equality

National Council of Jewish Women

National Immigrant Justice Center

National Immigration Law Center

National Survivor Network

NETWORK Lobby for Catholic Social Justice

Northern Illinois Justice for Our Neighbors

Oxfam America

Refugees International

Sanctuary for Families

Sister Parish, Inc.

Sisters of Mercy of the Americas - Institute Justice Team

South East Asian Faith Initiatives

The Florence Immigrant & Refugee Rights Project

TN Justice for Our Neighbors

U.S. Committee for Refugees and Immigrants
Unitarian Universalist Service Committee
Washington Office on Latin America
Women's Refugee Commission

United States and Mexico

Congregation of the Sisters of Our Lady of Charity of the Good Shepherd, US Provinces
Kino Border Initiative

Mexico

Asylum Access Mexico (AAMX)
Caloría, Por una Tierra para Todas y Todos
Casa Monarca. Ayuda Humanitaria al Migrante, A.B.P.
Centro de Derechos Humanos Fray Matías de Córdova
Cuerpo Académico Procesos Transnacionales y Migración CA-230
Instituto para las Mujeres en la Migración
La 72, Hogar - Refugio para Personas Migrantes
Sin Fronteras IAP
Voces Mesoamericanas

Guatemala

Asociación Coordinadora Comunitaria de Servicios para la Salud -ACCSS-
Casa del Migrante Guatemala
Pop noj

El Salvador

Foundation Cristosal

ⁱ See previous letters here: Civil society letter to Mexican government regarding concerns over “Remain in Mexico” plan, December 21, 2018, <https://www.womensrefugeecommission.org/news/press-releases-and-statements/3396-civil-society-letter-to-mexican-government-re-235b2c>, NGO Statement Opposing Mexico as a ‘Safe’ Third Country, May 22, 2018, <https://www.wola.org/wp-content/uploads/2018/05/NGO-Statement-on-U.S.-Mexico-STC-Agreement-5.22.18.pdf>

ⁱⁱ Human Rights First, “Remain in Mexico” Plan, November 2018, <https://www.humanrightsfirst.org/sites/default/files/Remain-in-Mexico.pdf>

ⁱⁱⁱ Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública, Acciones y Programas: Incidencia delictiva, January 24, 2019, https://www.google.com/url?q=https://www.gob.mx/sesnsp/acciones-y-programas/incidencia-delictiva-87005?idiom%3Des&sa=D&ust=1549570783790000&usg=AFQjCNEwXZkafcsQtFloh-oZNuK_1GU_gQ

^{iv} Kate Linthicum, “Meth and murder: A new kind of drug has made Tijuana one of the deadliest cities on Earth”, January 30, 2019 <https://www.latimes.com/world/mexico-americas/la-fg-mexico-tijuana-drug-violence-20190130-htmstory.html>

^v Lily Folkerts, Annie Gallivan, Latin America Working Group, Trouble for Turn Backs: Risks for Migrants in Mexico’s Northern Border States, 2018, <https://www.lawg.org/trouble-for-turn-backs-risks-for-migrants-in-mexicos-northern-border-states/>

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- ^{viii} U.S. Department of State, Country Reports on Human Rights Practices for 2017, 2017, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>
- ^{ix} Red Migrante Sonora (RMS), Y la impunidad continúa. Segundo informe de la Red Migrante Sonora, June 2017, <https://www.kinoborderinitiative.org/wp-content/uploads/2017/12/Informe-RMS.pdf>, and José Knippen, Clay Boggs, and Maureen Meyer, An Uncertain Path, November 2015, https://www.wola.org/sites/default/files/An%20Uncertain%20Path_Nov2015.pdf
- ^x Daniella Burgi-Palomino, Latin America Working Group (LAWG), Maureen Meyer, Washington Office on Latin America (WOLA), Joanna Williams, Kino Border Initiative, Situation of Impunity and Violence in Mexico's Northern Border Region, March 2017, <https://www.wola.org/wp-content/uploads/2017/04/Situation-of-Impunity-and-Violence-in-Mexicos-northern-border-LAWG-WOLA-KBI.pdf> and Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS), The Human Rights Situation in Mexico, December 31, 2015, <http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf>
- ^{xi} Wendy Fry, "Two migrant caravan teens slain in Tijuana", December 18, 2018, <https://www.latimes.com/local/lanow/la-me-ln-migrant-caravan-teens-killed-tijuana-20181218-story.html>
- ^{xii} Ximena Suárez, Andrés Díaz, José Knippen, and Maureen Meyer, Access to Justice For Migrants in Mexico, July 2017, https://www.wola.org/wp-content/uploads/2017/07/Access-to-Justice-for-Migrants_July-2017.pdf
- ^{xiii} Red Zona Norte, Postura de la Red Zona Norte sobre los Protocolos de Protección a Migrantes, January 24, 2019, <https://www.kinoborderinitiative.org/wp-content/uploads/2019/02/Red-Zona-Norte-Statement-on-MPP.pdf>
- ^{xiv} American Friends Service Committee, Latinoamérica Y el Caribe, Universidad Iberoamericana de México - Tijuana, Misión de Observación, November 2018, <http://tijuana.ibero.mx/?doc=quienessomos/observacion.html>
- ^{xv} Although the MPP does not apply to unaccompanied children, unaccompanied children face obstacles imposed by Mexican immigration officials who prevent them from accessing the POE in San Ysidro and other ports, and by CBP Officials, who have turned unaccompanied children back to Mexico, sometimes directly to Mexican immigration officials, in violation of the Trafficking Victims Protection Reauthorization Act. As a result, unaccompanied children face extreme vulnerability and dangers in Northern Mexican border towns, regardless of the fact that the MPP does not apply to their cases. See: Kids in Need of Defense (KIND), The Protection Gauntlet: How the United States is Blocking Access to Asylum Seekers and Endangering the Lives of Children at the U.S. Border, December 21, 2018, <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>
- ^{xvi} Sarah Kinoshian, "'They're playing with our lives' say the first migrants returned under new Mexico policy", February 5, 2019, <https://www.pri.org/stories/2019-02-05/they-re-playing-our-lives-say-first-migrants-returned-under-new-mexico-policy>