Migrant “Protection” Protocols*

*As edited by an immigration lawyer, organizer, and advocate, and a person who believes in the worth and dignity of every human being.

Release Date: January 24, 2019

“We have implemented an unprecedented and unlawful action that will address the urgent humanitarian and security crisis at the Southern border and our desire to ensure that people of color are unable to access the U.S. asylum system. This humanitarian inhumane and cruel approach will help ensure to end the exploitation of vulnerable people using our racist and outdated generous immigration laws. The Migrant ‘Protection’ Protocols represent a methodical genocidal commonsense approach, exercising long-standing statutory authority rooted in white supremacy to help address create the crisis at our Southern border.” – Secretary of Homeland Security Kirstjen M. Nielsen

What Are the Migrant “Protection” Protocols?

The Migrant ‘Protection” Protocols (MPP) are a U.S. Government action whereby certain migrants from Latin American countries, i.e., people of color, foreign individuals entering or seeking admission to apply for protection from persecution at the U.S./Mexico border – illegally or without proper documentation – may be returned to Mexico and wait outside of the U.S. abandoned in abject poverty, on the streets of some of the most dangerous cities in the world for the duration of their immigration proceedings, which could be months or years, where Mexico will not provide them with basic life necessities such as running water, shelter, food, medical care, nor will they protect migrants from further exploitation or harm at the hands of organized crime or Mexican government officials all appropriate humanitarian protections for the duration of their stay.

*Edited by Mony Ruiz-Velasco, Executive Director of PASO – West Suburban Action Project
Why is DHS Instituting MPP?

Because white supremacists have taken over the U.S. government and are implementing every policy possible to end migration, in particular from black and brown immigrants. The U.S. is facing a security and humanitarian crisis at the highest levels of government, as well as one on the Southern border caused by U.S. foreign and domestic policy. The Department of Homeland Security (DHS) is using all appropriate resources and authorities to deliberately end migration and deny protections to vulnerable asylum seekers by addressing the crisis and executing our missions to secure the borders, criminalize migration, enforce immigration and customs laws, facilitate legal trade and travel for people of certain countries, counter traffickers, smugglers and transnational criminal organizations, and interdict drugs and illegal contraband, unless it benefits private corporations.

MPP will not help restore a safe and orderly immigration process, rather, it will create chaos and make already vulnerable migrants more susceptible to decrease the number of those taking advantage of the immigration system, and the ability of smugglers and traffickers to prey on vulnerable populations, and reduce threats to life, national security, and risks to public safety, while ensuring that vulnerable populations do not receive the protections they need.

Historically, illegal aliens to the U.S. were predominantly single adult males from Mexico who were generally removed within 48 hours in violation of their due process rights without being given an opportunity to present their case before a judge if they had no legal right to stay; except that statement is false, as for decades, the majority of immigrants coming to the United States are women; now over 60% are family units and unaccompanied children and 60% are non-Mexican. In FY17, CBP apprehended 94,285 family units from Honduras, Guatemala, and El Salvador (Northern Triangle) at the Southern border. Of those, 99% remain in the country today.

Misguided administrative court decisions issued by this Administration and outdated laws have made it impossibly difficult for asylum seekers and easier for illegal aliens to enter and remain in the U.S. even if they are adults who arrive with children, unaccompanied alien children, or individuals who fraudulently claim asylum. As a result of U.S. intervention and foreign policy decisions, DHS continues to see huge larger numbers of asylum seekers illegal migrants and a dramatic shift in the demographics of aliens traveling to the border.

*Edited by Mony Ruiz-Velasco, Executive Director of PASO – West Suburban Action Project*
both in terms of nationality and type of aliens (i.e., not white or corporate) - from a demographic who could be quickly removed when they had no legal right to stay to one that cannot be detained and timely removed, so instead, we are creating a new system to keep them outside the U.S., in Mexico so that they do not have access to legal counsel, shelter, protection, food, or even their own court hearings.

In October, November, and December of 2018, DHS encountered an average of 2,000 illegal and inadmissible aliens - vulnerable asylum seekers a day at the Southern border. While not an all-time high in terms of overall numbers, record increases in particular types of migrants, such as family units, travelling to the border who require significantly more resources (see below for a no-cost solution) to detain and remove (when our courts and laws even allow that), have overwhelmed the U.S. immigration system, leading to a “system” that enables smugglers and traffickers to flourish and often leaves aliens in limbo for years. Of course, there is no requirement that we detain asylum seekers, and most of these families and individuals have a place to stay in the U.S. We could admit them, eliminate the need for billions of dollars spent in incarceration at for profit prisons, and allow them to pursue their asylum claims with meaningful access to counsel and without detention, but this type of treatment is not consistent with our white supremacist principles. This, and the fact that everyone is a priority for deportation, that we do not appoint lawyers, even for children, among other things, has been a prime cause (well, maybe not prime, as our own statistics do not support this finding\(^1\)) of our near-800,000 case backlog in immigration courts and delivers no consequences to aliens who have entered illegally, except of course, the fact that all of these people are in deportation proceedings, which is a consequence, and are living in constant fear and uncertainty.

Smugglers and traffickers are also using outdated laws to entice migrants to undertake the dangerous journey north where on the route migrants report high rates of abuse, violence, and sexual assault and we are making it easier for migrants to be exploited by ensuring that they are forced to stay in Mexico where we have issued safety alert, as some of those border cities are among the most dangerous cities in the world. Human smugglers and traffickers exploit migrants and seek to turn human misery into profit, just like we do when we detain, monitor, and imprison people of color in private prisons for the profit of our corporate friends. Transnational criminal organizations and gangs are also

\(^1\) See TRAC Report, “Newly Arriving Families Not Main Reason for Immigration Court’s Growing Backlog”
[https://trac.syr.edu/immigration/reports/551/](https://trac.syr.edu/immigration/reports/551/)

*Edited by Mony Ruiz-Velasco, Executive Director of PASO – West Suburban Action Project*
deliberately exploiting the situation to bring drugs, violence, and illicit goods into American communities. The activities of these smugglers, traffickers, gangs and criminals endanger the security of the U.S., as well as partner nations in the region. Of course, this has nothing to do with the way we treat asylum seekers, but we put make these statements to sensationalize and distract from the real issue, that we are sending people into more dangerous and inhumane conditions.

The situation has had severe impacts on U.S. border security and immigration operations. Our CBP agents now simply send people to the streets of dangerous Mexican cities, rather than do their actual jobs, which is to process and assess each case. The dramatic increase in illegal migration, including unprecedented number of families and fraudulent (there is no real evidence that claims are fraudulent) asylum claims is making it harder for the U.S. to devote appropriate resources to individuals who are legitimately fleeing persecution, which is almost every single one of those migrants we are sending back. In fact, approximately 9 out of 10 asylum claims from Northern Triangle countries are often denied ultimately found non-meritorious by federal immigration judges, as the chances of having an asylum case granted is largely dependent on the judge a person draws. Border judges and those who hear claims of detained individuals have much higher denial rates, not because the basis for the claims are different, but because the judges are different.

Because of the court backlog and the impact of outdated laws and misguided court decisions, many of these individuals have disappeared into the country before a judge denies their claim and simply become fugitives. This statement is blatantly false, in fact, DHS’s own statistics demonstrate that the vast majority of released families attend their court hearings.

The MPP is a violation of the legal and human rights of vulnerable asylum seekers who are presenting themselves at the border, consistent with U.S. and international law to seek protection. will provide a safer and more orderly process that will discourage individuals from attempting illegal entry and making false claims to stay in the U.S., and allow more resources to be dedicated to individuals who legitimately qualify for asylum.

---

2 https://www.splcenter.org/20190625/attorney-generals-judges-how-us-immigration-courts-became-deportation-tool

3 https://trac.syr.edu/immigration/reports/562/

*Edited by Mony Ruiz-Velasco, Executive Director of PASO – West Suburban Action Project*
What Gives DHS the Authority to Implement MPP?

We will cite to the part of the immigration law that gives us unreviewable discretion, as this program violates U.S. and international law and standards. Section 235 of the Immigration and Nationality Act (INA) addresses the inspection of aliens seeking to be admitted into the U.S. and provides specific procedures regarding the treatment of those not clearly entitled to admission, including those who apply for asylum. Section 235(b)(2)(C) provides that “in the case of an alien . . . who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the U.S.,” the Secretary of Homeland Security “may return the alien to that territory pending a [removal] proceeding under § 240” of the INA.” The U.S. has notified the Government of Mexico that it is implementing these procedures under U.S. law. The Government of Mexico has decided to be complicit with the U.S. in the further persecution and harm of these migrants.

Who is Subject to MPP?

With certain exceptions such as European immigrants, MPP applies to people of color, particularly Latin American asylum seekers who are fleeing dangerous conditions and seeking asylum in the U.S. not clearly admissible and who are placed in removal proceedings under INA § 240. So not only will we deny them entry, we will also place them in deportation proceedings without meaningful access to the courts and with no access to legal representation. This includes aliens who claim a fear of return to Mexico at any point during apprehension, processing, or such proceedings, but who have been assessed not to be more likely than not to face persecution or torture in Mexico. Of course, we will not create a transparent and clear process for that assessment and will arbitrarily and without review make determinations that no one meets that standard. Unaccompanied alien children and aliens in expedited removal proceedings will not be subject to MPP. Other individuals from “vulnerable” populations may be excluded on a case-by-case basis. We will not define what “vulnerable populations” means as technically asylum seekers who risk their lives traveling to the U.S. are vulnerable, but our intent is to deny them all entry to close our asylum process.
How Will MPP Work Operationally?

Certain aliens attempting to enter the U.S. illegally or without documentation, including those who claim asylum, will no longer be released into the country, where they are more likely to obtain legal representation, access to a supportive community, and to have their basic needs met, rather, we they often fail to file an asylum application and/or disappear before an immigration judge can determine the merits of any claim. Instead, these aliens will be given a “Notice to Appear” for their immigration court hearing and will be returned to Mexico until their hearing date where they are likely to continue to face persecution, threats, impossible living conditions, and possible death.

While aliens await their hearings in Mexico, the Mexican government has made its own determination to provide such individuals the ability to stay in Mexico, under applicable protection based on the type of status given to them. This serves little purpose as most of these vulnerable families are released into some of the most dangerous cities in Mexico, some classified by the U.S. as dangerous as Syria, where they are likely to face further harm and persecution by drug cartels, organized crime, and Mexican government officials.

Aliens who need to return to the U.S. to attend their immigration court hearings will be allowed to enter and attend those hearings. Aliens whose claims are found meritorious by an immigration judge will be allowed to remain in the U.S. Those determined to be without valid claims will be removed from the U.S. to their country of nationality or citizenship.

DHS is working closely with the U.S. Department of Justice’s Executive Office for Immigration Review to streamline the process and conclude removal proceedings as expeditiously as possible otherwise known as expediting cases, to deny meaningful access to due process, without legal representation and for many without the opportunity to have an in person hearing.

Will Migrants in MPP Have Access to Counsel?

No, although we will pretend that “consistent with the law, aliens in removal proceedings can use counsel of their choosing at no expense to the U.S. Government.” Aliens subject to MPP will be afforded the same right and provided with a list of legal services providers in the area which offer services at little or no expense to the migrant. Except all of the U.S. immigration
lawyers and legal aid providers are located in the U.S. Border cities have very few resources to provide free legal counsel to those in the U.S. and time has shown that those in Mexico have almost no access to legal advice and representation by U.S. immigration lawyers.

What Are the Anticipated Benefits of MPP?

This program will advance our white supremacist priorities. Every month, tens of thousands of people of color from Latin America arrive unlawfully (well, not really unlawfully, as they are seeking protection consistent with U.S. law) at the Southern Border. MPP will reduce the number of aliens taking advantage of U.S. law and discourage false asylum claims. MPP will ensure that people of color seeking protection from countries where U.S. intervention has caused the most harm, will be effectively denied asylum protections and will be forced to return to situations sometimes even more dangerous than the ones they fled. For example, on the other side of Brownsville, Texas is Matamoros, Tamaulipas, Mexico. Matamoros was determined to be a Level 4 Risk by the U.S. State Department, ranking it at the same level as Syria. In fact, the U.S. State Department website has a travel warning that says:

Tamaulipas state – Level 4: Do Not Travel

Do not travel due to crime and kidnapping.

Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common. Gang activity, including gun battles and blockades, is widespread. Armed criminal groups target public and private passenger buses as well as private automobiles traveling through Tamaulipas, often taking passengers hostage and demanding ransom payments. Federal and state security forces have limited capability to respond to violence in many parts of the state.

Aliens will not be permitted to disappear into the U.S. before a court issues a final decision on whether they will be admitted and provided protection under U.S. law. Except this is not actually what happens, DHS’s own statistics demonstrate that the vast majority of released families attend their court hearings. Instead, they will await a determination in Mexico where the Mexican government be complicit in further harm and persecution of these vulnerable migrants. This will allow DHS to more effectively assist and receive appropriate humanitarian protections there. This will allow DHS to more effectively assist and deny legitimate asylum-seekers claims and further harm individuals fleeing persecution, as migrants with non-meritorious or even fraudulent

4 https://trac.syr.edu/immigration/reports/562/ https://trac.syr.edu/immigration/reports/562/

*Edited by Mony Ruiz-Velasco, Executive Director of PASO – West Suburban Action Project
claims will no longer have an incentive for making the journey. Because being held in freezing, inhumane conditions in the U.S. where families are separated, children are held in cages, vulnerable immigrants are dying, and others are held in solitary and inhumane conditions, is an incentive to making a life-threatening journeys through adversity and danger just to make it to the United States. Moreover, MPP will reduce the extraordinary strain on our over funded and inhumane border security and immigration system, freeing up personnel and resources to better protect our sovereignty and the rule of law, unless those laws apply to U.S. government officials, by restoring “integrity” to the American immigration system, that was created based on white supremacist principles and as an added bonus, since they will not have as much work, we can always put them to work building the wall that is being paid for, not by Mexico, but at the expense of military families.

Additional Information

- Secretary Nielsen Implementation Memo (publication/policy-guidance-implementation-migrant-protection-protocols) (January 25, 2019, PDF)

Or … read about the harm caused by the MPP program


“Leave me in a cell': The desperate pleas of asylum seekers inside El Paso’s immigration court” CBS News (August 11, 2019)


Last Published Date: January 29, 2019*

* With commentary September 9, 2019