



Forced Apart: How the “Remain in Mexico” Policy Places Children in Danger and Separates Families February 24, 2020

The “Remain in Mexico” policy, or so-called “Migrant Protection Protocols (MPP),” has not only mandated the return of more than 60,000 asylum seekers,¹ including at least 16,000 children,² to dangerous conditions in Mexico, it also represents yet another devastating form of family separation under the Trump administration.

Already, MPP has forced hundreds of children apart from their parents and other family members. The Department of Health and Human Services (HHS) reported that, from October 1, 2019 to January 13, 2020, it received referrals of over 350 unaccompanied children now in the U.S. whose families remained in Mexico.³ In a number of such cases, children’s parents disappeared amid widespread kidnappings and other harm perpetrated by criminal groups against MPP asylum seekers, leaving the affected children alone in Mexico and facing heightened peril. Though the Department of Homeland Security (DHS) maintains that unaccompanied children are not subject to MPP, it is clear that numerous children have *become* unaccompanied due precisely to this policy.

KIND is now serving approximately 60 children impacted by MPP. Informed by KIND’s direct observations, this report: (1) examines how MPP forces families apart and the harmful consequences of these separations for affected children; (2) describes inefficiencies in the immigration court system created by MPP family separations; and (3) recommends actions that the administration and Congress should take to mitigate these consequences and prevent future such separations.

Family Separations Under MPP and Consequences for Impacted Children

Children are typically rendered unaccompanied by MPP—and separated from their families—in one of two ways.

The first category of family separations under MPP involves children who arrive at the U.S. border with their parents or legal guardians to request humanitarian protection. DHS places these families together in MPP, transporting them to border cities in Mexico. There the families must attempt to survive some of the world’s most dangerous places for weeks and even months while waiting for their court hearing. Many families are forced to live in makeshift tents, temporary shelters, or on the streets—unprotected

¹ Julian Aguilar, “Migrants, advocates mark the anniversary of ‘remain in Mexico’ with fear, anger and trepidation” The Texas Tribune (Jan. 30, 2020); <https://www.texastribune.org/2020/01/30/migrants-advocates-mark-anniversary-remain-mexico/>.

² Kristina Cooke, Mica Rosenberg, Reade Levinson, “Exclusive: U.S. migrant policy sends thousands of children, including babies, back to Mexico” Reuters (Oct. 11, 2019); <https://www.reuters.com/article/us-usa-immigration-babies-exclusive/exclusive-u-s-migrant-policy-sends-thousands-of-children-including-babies-back-to-mexico-idUSKBN1WQ1H1>.

³ Priscilla Alvarez, “At least 350 children of migrant families forced to remain in Mexico have crossed over alone to US” CNN (Jan. 24, 2020); <https://www.cnn.com/2020/01/24/politics/migrant-children-remain-in-mexico/index.html>.

from the elements and without access to basic necessities, medical care, or means of safety. These families are uniquely vulnerable to violence and exploitation and may be targeted on account of their nationality and status as asylum seekers. Indeed, human rights monitors have reported more than 800 violent assaults, kidnappings, and even murders of asylum seekers returned to Mexico under MPP.⁴

Sadly, as a result of the danger and unique vulnerabilities these families face, many parents have been victims of crimes, leaving children all alone without any support or protection in dangerous border towns. As such, children have been forced to go back alone to U.S. officials and ask for protection again—this time as an unaccompanied child. In some instances, parents never returned after going to work. In another case, a child’s mother disappeared after she set out to make a report about men who had previously kidnapped her. Left alone in Mexico, without anyone to care for them and fearing for their safety, these children crossed alone into the U.S. in search of protection and were transferred to the care of the U.S. Office of Refugee Resettlement (ORR) as unaccompanied children.⁵ Many of these children are ages 10 or younger and are severely traumatized, having fled grave threats to their lives in their home countries only to witness horrific violence and conditions while waiting in Mexico for their U.S. asylum proceedings. Children like Marco, Sara, Vanesa, and Rosa.*

Marco, a 16-year-old boy, fled to the U.S. with his mother, Lucia,* to escape gang threats in Honduras. After entering, they were held in separate facilities for four days before being given an immigration court date in three months and told to return to Mexico to wait. They came back to the United States to attend their hearing, but their case was continued for another two months, and they were again told to return to Mexico. While in Mexico, both mom and child were working at a restaurant. Based on threats received by a local drug cartel against the child that he must work for them or face death, Marco decided that he must separate from his mother and present himself at a port of entry. His mother remains in Mexico.*

Sara, Vanesa,* and Rosa,* ages 15, 12, and 9, fled to the U.S. with their mother after facing violent threats from gangs in their home country of Honduras. At the U.S. border, CBP placed the family in MPP and sent them back to Mexico to wait for their U.S. asylum cases. One day, their mother, Moraya,* went out to look for work to support the family, but never returned. Following their mother’s disappearance and alone in Mexico with no one to care for them, the children presented themselves at the U.S. border. They are now in ORR custody in New York. With the help of attorneys, they were able to find their mother, who remains separated from them in Mexico waiting for her asylum hearing.*

For children such as Marco, Sara, Vanesa, and Rosa,* these family separations cause profound psychological damage while erecting further barriers to potentially life-saving humanitarian protection in the United States. Many children have already experienced significant harm both in their countries of origin and while waiting with their families in Mexico. The potential disappearance of a parent in Mexico—and uncertainty about a parent’s safety and well-being—adds immeasurably to a child’s psychological and emotional strain and makes it even more difficult for that child to discuss—whether with her attorney, an asylum officer, or an immigration judge—traumatic experiences at the core of her claim for legal protection. Additionally, children may be unaware of the circumstances that led their family to flee their countries of origin or may have been protected from learning about the threats facing them. Without the support and assistance of a parent or family member, children may be unable

⁴ Human Rights First, “Marking One Year of the Horrific “Remain in Mexico” Policy – Over 800 Violent Attacks on Asylum-Seekers” (Jan. 22, 2020); <https://www.humanrightsfirst.org/press-release/marking-one-year-horrific-remain-mexico-policy-over-800-violent-attacks-asylum-seekers>.

⁵ Homeland Security Act of 2002, 6 U.S.C. § 279 (defining “unaccompanied alien child”).

to provide detailed information or documentation that is necessary to prove their eligibility for asylum. MPP, then, not only results in these children's devastating separation from their parents, it also undermines their ability to effectively present protection claims.

MPP Family Separations Involving Other Family Members

The second category of family separations under MPP involves affected children who request protection at the U.S. border with a family member other than a parent or legal guardian, such as a grandparent, aunt, uncle, or sibling. Under U.S. law, children who do not have lawful immigration status and who are not with a parent or legal guardian when they are apprehended are deemed unaccompanied and transferred to the care and custody of ORR. While DHS may separate children from family members outside of MPP, separations under MPP present additional concerns and trauma for children.

Specifically, once such family members are placed in MPP and sent to Mexico, they are no longer available to serve as a sponsor for a child following the child's release from ORR custody. As a result, children may face prolonged stays in ORR custody if they do not have another family member or contact in the U.S. who can serve as a sponsor. Returned family members may also have documents and information that are critical to a child's case for protection. Attorneys frequently face difficulty in communicating with family members detained in U.S. immigration custody due to restricted telephone access and limited visitation policies in Immigration and Customs Enforcement (ICE) facilities. Placement of family members in MPP transforms this already difficult task into a nearly impossible one, necessitating that attorneys and children establish contact with family members living in another country who may be without access to safe shelter, a telephone, or a fixed address. Moreover, this substantial distance from loved ones exacerbates the trauma of vulnerable children who have already endured acute harm and rely on the now-separated family members for emotional support.

Inefficiencies in the Immigration Court System Arising from MPP Family Separations

Immigration court inefficiencies resulting from MPP family separations contribute to the immigration court backlog, which has increased dramatically from just over 600,000 cases in Fiscal Year 2017 to more than 1.1 million at present.⁶ Currently, DHS is creating a new case—and issuing a new Notice to Appear (NTA) for immigration proceedings—to each child who seeks humanitarian protection by entering the U.S. alone after having been sent to dangerous conditions in Mexico with his or her family under MPP. As a result of this government practice, many children now effectively have two pending court cases and initial hearings—twice as many for the immigration court system to administer. Yet the government is not affirmatively eliminating duplicate proceedings. As a consequence, the immigration court backlog needlessly rises.

In addition to further straining the court system, the government's practice compounds the obstacles impeding unaccompanied children's pursuit of legal relief while squandering vital attorney resources that are often provided on a pro bono basis. For example, information about the location and timing of the initial hearing in the child's MPP case is frequently unavailable or unclear. Attorneys must work to track down this information and request a change in the location of court proceedings, as the child is often no longer near the border but in ORR custody elsewhere in the United States. If such information

⁶ TRAC Immigration, "Immigration Court Backlog Tool" (accessed Feb. 22, 2020); https://trac.syr.edu/phptools/immigration/court_backlog/.

is not provided and a child misses a court hearing, the child could potentially be ordered removed from the country in absentia, even while in the custody of ORR. And if an affected child lacks counsel—as do the majority of unaccompanied children⁷—it may prove all but impossible for her to obtain details about her MPP hearing, rectify duplicate proceedings, and avoid a nonsensical *in absentia* deportation order. Finally, the administrative complications stemming from concurrent hearings prolong the time children must spend in ORR custody, as they cannot obtain release until resolution of the status of their court cases.

Conclusion and Recommendations

MPP has caused a humanitarian crisis for asylum seekers returned to Mexico, where they face widespread kidnappings, sexual assault, and other often-existential threats. But the suffering created by this policy extends well above our southern border. Hundreds of children located throughout the U.S. have been forced apart from their families and rendered unaccompanied directly on account of MPP. These vulnerable children in our midst—boys and girls like Marco, Sara, Vanesa, and Rosa*—urgently need solutions. Their well-being, and ultimately their lives, could hang in the balance. The administration and Congress must therefore take swift action to mitigate the consequences of family separations that have already occurred under this policy and to prevent such separations in the future. Below are three key recommendations to those ends.

1. Rescind MPP to prevent the traumatic separation of families, to ensure the safety of all asylum seekers—not least vulnerable children—and to advance the full and fair consideration of their protection claims.
2. Require that the Department of Homeland Security and the Office of Refugee Resettlement document and track any separations of a child from a parent, legal guardian, or other family member, and that the agencies facilitate routine communication between children and their family members.
3. Direct the Department of Homeland Security and the Executive Office for Immigration Review to fairly and promptly eliminate any duplicate court proceedings for unaccompanied children who were previously in MPP with their families.

⁷ See KIND, KIND Fact Sheet (accessed Feb. 22, 2020); <https://supportkind.org/resources/kind-fact-sheet/>.