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Hearing on the Humanitarian Aspects of the United States Migratory Crisis  
U.S. House of Representatives  
House Foreign Affairs Committee  
Subcommittee on Africa, Global Health, Global Human Rights, and International  
Organizations

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I would like to thank Chairwoman Bass for providing the opportunity to give a statement on the humanitarian impact of the current migratory crisis in the U.S. I appreciate your visit to our region and interest in monitoring the situation along the Southern Border of the United States.

My name is Kate Clark, and I am the Senior Director of Immigration Services at Jewish Family Service of San Diego. I am also an Immigration Attorney who has been practicing here in San Diego since 2010.

Since 1918, Jewish Family Service of San Diego (JFS) has responded to the urgent needs of immigrants at the Southwest Border fleeing violence and persecution. JFS remains steadfast in its commitment to this critical work, especially as the needs of asylum-seeking families have increased over the last year.

My testimony today is a direct result of my personal experience as a pro bono legal service provider and more recently as a staff member working at the Jewish Family Service's Migrant Family Shelter. Jewish Family Service, who operates the shelter, seeks to draw the Subcommittee's attention to the need to protect asylum seekers arriving along the Southern Border of the U.S. The majority of my testimony will first, focus on the Migrant Protection Protocols (MPP), commonly referred to as the "Remain in Mexico" policy, and second, the

release of asylum-seeking families into the U.S. after being processed by the Department of Homeland Security (DHS).

### **I. Migrant Protection Protocols**

On January 28, 2019, the Department of Homeland Security announced the MPP program, initially started as a pilot at the San Ysidro Port of Entry, just a few miles from where this hearing is taking place.<sup>1</sup> Since January 2019, the U.S. has forced a certain class of asylum seekers to return to Mexico through the pendency of their immigration proceedings under the MPP program. The pilot program began with returning individual asylum seekers back to Mexico and later expanded to include family units and was implemented across the U.S.-Mexico Southern Border.

Under MPP and according to DHS’s own guidance, “[u]naccompanied alien children and aliens in expedited removal proceedings will not be subject to MPP” and “[o]ther individuals from vulnerable populations may be excluded on a case-by-case basis” including individuals with significant medical diagnoses.<sup>2</sup>

#### **A. Vulnerable Populations**

In one example of my experience with vulnerable populations subjected to MPP, I give you testimony of how my day began early on the morning of August 18, 2019. I left my house in San Diego at 2:45 a.m. and crossed into Tijuana, Mexico just after 3:45 a.m. The purpose for this early morning trip across the border was to accompany our clients, a 16-year-old unaccompanied minor mother, who I will call “A,” and her 1-year old child, who I’ll refer to as “B,” who had

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<sup>1</sup> Department of Homeland Security; Implementation of the Migrant Protection Protocols (January 28, 2019) available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/Implementation%20of%20the%20Migrant%20Protection%20Protocols.pdf>

<sup>2</sup> Department of Homeland Security; Migrant Protection Protocols (January 24, 2019) available at <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

been enrolled by Border Patrol into the MPP program, despite clear guidance against unaccompanied minors being enrolled into MPP.<sup>3</sup>

Our clients were requested to appear at the San Ysidro Port of Entry at 4:30 a.m. to be transported to court for a 7:30 a.m. hearing at the San Diego Immigration Court. On top of the obvious logistical hurdles individuals and families who have been forced to return to Mexico have to face just to show up at the right place and the right time to be transported to court, our clients, an ever-vulnerable pair of an unaccompanied minor mom and infant, faced traveling through Tijuana in the dark of night to present themselves at the border.

This is a journey we as a legal service provider didn't feel was appropriate, safe, or possible without accompaniment. As such, we make it a matter of practice to accompany almost all of our clients to present at the port of entry, due to issues we've observed and experienced ourselves during the accompaniment process.

Today, I can report that our client, the unaccompanied minor mother and her infant child, are now in the U.S. But, unfortunately, this result can only be attributed to significant advocacy and litigation in court.<sup>4</sup>

Consistently, Jewish Family Service of San Diego fields calls for other vulnerable populations who have been enrolled into MPP, despite DHS's own guidance. These vulnerable populations include individuals with significant medical conditions including high risk pregnancies, cancer, HIV, etc.

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<sup>3</sup> Department of Homeland Security; Policy Guidance for Implementation of the Migrant Protection Protocols (January 25, 2019) available at [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf)

<sup>4</sup> Wall Street Journal; Trump's Return-to-Mexico Policy Overwhelms Immigration Court (September 5, 2019) available at <https://www.wsj.com/articles/trumps-return-to-mexico-policy-overwhelms-immigration-courts-11567684800>

Indeed, much oversight and attention are needed to ensure DHS and its numerous sub-agencies are adhering to the policies it created.

## **B. Provision of Legal Services & Legal Representation**

In direct response to the Administration's implementation of MPP, JFS's work to meet the needs of vulnerable immigrants has expanded beyond San Diego to Tijuana and Mexicali, where over ten thousand asylum-seekers are waiting to appear before an Immigration Judge. At this point, as just one of two non-profit legal service providers in our region providing legal representation to returned individuals and families, we have been forced to focus our resources, time, and attention on supporting the most vulnerable of MPP cases who come into contact with JFS. Less than two percent of individuals forced to return to Mexico under MPP have been able to secure representation due to the obvious hurdles of logistics and geographic distance.<sup>5</sup>

With each call we field, each consult we conduct, and each interaction we have with returned individuals and families, several common themes remain:

- (1) lack of understanding of the process,
- (2) uncertainty about why they are being returned,
- (3) queries about what the next steps are, and
- (4) questions about when they will be able to be in a safe situation.

On a weekly basis, JFS continues to hear stories of family separation and individuals with significant medical conditions being enrolled into MPP, despite guidance otherwise prohibiting this from happening.

To alleviate some of this confusion, JFS has formally made requests to the U.S. Department of Justice, Executive Office of Immigration Review, the U.S. Immigration Court

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<sup>5</sup> TRAC; MPP Data (July 29, 2019) available at: <https://trac.syr.edu/whatsnew/email.190729.html>

system, to provide “Know Your Rights” presentations or “Legal Orientation Programs” to the MPP dockets at the San Diego Immigration Court while MPP enrollees are transported to court. Both of these presentations are available in many immigration courts and detention centers across the country. We’ve even offered to serve as a “Friend of the Court” and assist pro se individuals/families on MPP dockets. All of this would be done at no cost to the U.S. government. Yet, our requests, were categorically denied with no reason or justification provided.

### **C. Access to Counsel**

For the less than two percent of the MPP population who are fortunate enough to have retained counsel, significant and concerning hurdles remain. JFS has represented dozens of individuals who, through counsel, have expressed a fear of return to Mexico, triggering their right to a determination of whether they could be sent back to Mexico yet again. This review process, referred to as the duty of non-*refoulement*, is an obligation that arises from a treaty, and thereby implemented by statute in the U.S. Essentially, the U.S. is bound not to return individuals to a country where their life or freedom would be threatened on account of enumerated grounds. 8 U.S.C. § 1231(b)(3).

Our clients who express a fear of returning to Mexico while in court are taken into DHS custody and face an imminent non-*refoulement* interview with DHS officials that could determine whether they live or die if forced to return to Mexico. Notably, while detained, pending the non-*refoulement* interview, my staff, and other attorneys representing individuals enrolled into MPP are regularly denied the ability to speak confidentially to our clients and adequately prepare them for the high stakes non-*refoulement* interview. Moreover, DHS refuses to allow retained counsel to participate in the interview.

Often our clients and others are detained for days and some up to a week, struggling to survive, and without the ability to communicate with their retained counsel.

Earlier this month, the ACLU Foundation of San Diego & Imperial Counties filed a class-action lawsuit demanding that asylum seekers subjected to MPP be allowed to consult with their attorneys in preparation for and during their non-refoulement interviews. JFS represents the lead plaintiff family in the ACLU lawsuit in their immigration proceedings, and as a result of the ACLU's lawsuit, the family was granted a motion for a temporary restraining order guaranteeing access to their lawyer in preparation for and during their non-refoulement interviews. With the assistance of JFS lawyers, our clients were prepared for and passed their interviews, underscoring the critical importance of having access to a lawyer in such high-stakes proceedings. The larger lawsuit is ongoing.

In sum, the government-sponsored MPP program has caused unnecessary suffering and harm to over 55,000 asylum seekers forced to return to Mexico and has completely overwhelmed the U.S. immigration courts—while still not giving those subject to it a chance to explain why they left their home countries and the fear they have of returning there.

## **II. Family Units Granted Entry into U.S. & End of “Safe Release Program”**

In response to an increased number of asylum seeking Central American families and unaccompanied minors who arrived at the U.S.-Mexico border, and reportedly, due to a lack of detention space and processing capacity, DHS ended a long-standing practice known as “safe release” in late October 2018 across the Southern Border. Notably, after this change in process, DHS began a new process, known as “quick release.” Under “quick release” DHS began releasing people directly into the interior of the U.S. throughout many local border communities. Often, families were left vulnerable, stranded, and without an ability to communicate with their

points of contact and family inside the U.S. They were left at bus stations, airports, and streets in cities along the Southern Border.<sup>6</sup>

On October 26, 2018, the San Diego Rapid Response Network (SDRRN), a coalition of human rights and service organizations, attorneys, and community leaders dedicated to aiding immigrants and their families in the San Diego border region, received a call through its 24-hour emergency hotline. A community bystander reported she saw 40-plus migrant families, with very young children, dropped off at the bus station in downtown San Diego. Immediately, in partnership with SDRRN, JFS crafted an emergency migrant shelter to house these individuals. Night after night, more and more families were being dumped into our community, and JFS along with the SDRRN responded. To date, we continue to receive families each night. In one year's time, we have sheltered and provided healthcare, legal services, and travel coordination to more than 19,000 asylum seekers released from the DHS in San Diego County. The majority are traveling to destinations across the U.S., and it is in those final destinations that these families will continue their asylum proceedings, most without legal representation. Our job at the shelter is to make sure they are healthy and then connect and reunify them with their family in other parts of the U.S.

We are fortunate to be at a place where we regularly engage in communication and dialogue with various DHS agencies including Immigration Customs Enforcement, Customs Border Protection-Office of Field Operations, and Border Patrol regarding the number of individuals who are now dropped off directly at our shelter on a daily basis. This wasn't always the case, and we are grateful for their cooperation, in the best interest of serving the families released from the Government's custody.

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<sup>6</sup> UCSD, U.S./Mexico Center; The Release of Families Seeking Asylum Across the U.S. Southwest Border (October 2019) available at: [https://usmex.ucsd.edu/files/report\\_release-of-families-seeking-asylum.pdf](https://usmex.ucsd.edu/files/report_release-of-families-seeking-asylum.pdf)

We have received families at our shelter every single night since late October 2018. We are supported by a robust team of medical staff to triage the need of all families released to our shelter. We've seen cases of chicken pox, scabies, lice, flu, and other communicable conditions, exacerbated by close quarters in detention, with little to no medical screening and treatment happening while in detention. Most families who come to our facility are dehydrated. We've consistently heard reports of Border Patrol facilities who have highly chlorinated water, serving old and half-frozen burritos, with the air conditioner at full blast, and the families being stripped down to one layer of clothing. I personally have seen a pregnant mother who was released from DHS custody who was in active labor.

In a study conducted by the [U.S. Immigration Policy Center](#) at the University of California, San Diego, based on data collected from 7,300 asylum-seeking families at the JFS Migrant Family Shelter, the researchers found that just over one out of every three individuals experienced sub-standard conditions and mistreatment while being held in immigration detention facilities along the U.S.-Mexico border.

These are only a few of the cases and reports that we've encountered over the last ten months. It is my sincere request and hope that through these hearings and your inquiries, as well as this testimony and the testimony of my colleagues to this court, that it will result in much needed international attention to the urgent and escalating situation along the U.S./Mexico border, and in turn, result in productive changes in U.S. policies and procedures. Thank you.