MPP is a core component of the U.S. Government's efforts to address the migration crisis along the U.S.-Mexico border. MPP streamlines existing avenues for aliens in removal proceedings who qualify for humanitarian protection in the United States to receive it in order to support an orderly and timely completion of U.S. immigration processes. At the same time, MPP provides a deterrent to illegal entry into the United States, and it prevents "catch and release" from DHS custody, including for those whose claims of fear to return to their home countries prove not to be merit relief or protection from an immigration judge.

Further information about how DHS is meeting the intended goals of MPP can be found on the MPP Metrics and Measures Publication Page (/publication/metrics-and-measures) .

Last Published Date: April 14, 2020

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

ACTION

MEMORANDUM FOR THE ACTING SECRETARY

FROM: U.S. Customs and Border Protection
U.S. Immigration and Customs Enforcement
U.S. Citizenship and Immigration Services
Office of Operations Coordination
Office of Strategy, Policy, and Plans

SUBJECT: **Closing out the Migrant Protection Protocols Red Team Report Evaluation Process**

Purpose: To seek concurrence on a series of actions that will close out the Migrant Protection Protocols (MPP) Red Team Report evaluation process.

Background: Since its inception in January 2019, MPP has been a critical tool in managing irregular migrant flows at the U.S.-Mexico border. We have carefully considered the recommendations in the "The Migrant Protection Protocols Red Team Report" (October 25, 2019). Building on the items highlighted in the January 14, 2020 memorandum "Response to the Migrant Protection Protocols Red Team Report," in which we identified areas where we had already begun making improvements to MPP, we have identified additional action items to improve the program:

- Develop a DHS.gov MPP Landing Page—DHS recently created and published MPP landing pages on DHS.gov—available in both English and Spanish—on which DHS makes information about MPP, including measures and metrics, as available and updated as practicable.

- Issue a Departmental-level Guidance Memo—This memorandum, which would be issued by the Office of Strategy, Policy, and Plans, would articulate a broad policy vision on several topics identified as part of our review process on which further clarity is warranted. It would

seek to bring greater consistency to MPP operations to ensure the long-term viability of the program.

- Issue U.S. Customs and Border Protection (CBP) Guidance on Document Service—This memorandum, which would be issued by CBP, would provide additional guidance on the completion and service of documents related to MPP enrollment.

- Issue CBP Guidance on MPP Amenability—This memorandum, which would be issued by CBP, would intend to clarify how CBP Office of Field Operations (OFO) officers and U.S. Border Patrol (USBP) agents may exercise their discretion in determining whether individuals are amenable to be returned to Mexico under Section 235(b)(2)(C) of the Immigration and Nationality Act (INA), as implemented through MPP, and to standardize CBP's application of MPP to amenable aliens.

These items taken together, alongside previous improvements, would broadly implement the Red Team Report recommendations by way of increased transparency, updated guidance, and clearly articulated policy perspectives. We recommend that, as with previous practice, these memoranda be made publicly available on the new DHS.gov MPP landing page and that these programmatic improvements be accompanied by thoughtful and organized engagement with Congress, the media, and other relevant stakeholders. With your concurrence on these items, and with our commitment to continual reassessment and programmatic development of MPP, we would consider the Red Team Report evaluation process concluded.

Signature Level Justification: Because the MPP is founded on Secretary-level policy guidance, your approval of these steps is required.

Timeliness: We recommend implementing these actions as soon as practicable.

Recommendation: Proceed with the issuance of the three memoranda and their publication on the DHS.gov MPP landing page, as described above:

Approve/date DEC 0 7 2020 Disapprove/date _____

Modify/date _____ Needs discussion/date _____

Attachments:
A. "Supplemental Policy Guidance for Implementation of the Migrant Protection Protocols"
B. "Supplemental Migrant Protection Protocols Guidance, Initial Document Service"
C. "Supplemental Migrant Protection Protocols Guidance, MPP Amenability"

Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols (December 7, 2020)

Background: Since its inception in January 2019, the Migrant Protection Protocols (MPP) remain a critical tool in managing irregular migrant flows at the U.S-Mexico border. Building on former Acting Secretary McAleenan's direction to ensure that MPP is the most effective and efficient program possible, Acting Secretary Wolf requested that the Department of Homeland Security (DHS) Components continue to refine processes and implement best practices related to MPP.

Purpose: As a continuation of efforts to improve MPP, several principles have been identified that either enshrine developments implemented after MPP's inception or provide further enhancement and clarity for the MPP process.

Therefore, having secured Acting Secretary Wolf's approval, and without prejudice to previous policy guidance, U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and the Office of Operations Coordination (OPS), with support from other offices as needed, should take necessary action to ensure that MPP operations reflect these principles:

Access to Information About MPP

Actions to Provide Program Information
DHS should continue to make every reasonable effort to ensure that aliens in MPP have access to information about the program. This includes, but is not limited to, a plain-language indication by CBP personnel of pertinent information in an alien's service packet in the alien's preferred language (using interpretation resources, as needed) and maintaining the MPP landing page on DHS.gov in English and Spanish which consolidates MPP-related information and resources. Additionally, as local infrastructure, resources, and processing allow this could also include "Know Your Rights" presentations and videos, etc.

Information Regarding Access to Counsel
Components should continue to ensure the ability to have retained counsel participate telephonically in USCIS's MPP *non-refoulement* assessments -- where it does not delay the

interview, or as required by court order.[1] Aliens subject to MPP continue to have a right to be represented by counsel in removal proceedings before an immigration judge at no cost to the government.

Regular Release of Statistics
Next, DHS should make every reasonable effort to regularly release DHS's MPP-related statistics. To that end, DHS and/or its Components should continue to provide publicly-available information regarding MPP.

Appeals

As is currently the practice, where an immigration judge grants an MPP alien relief or protection from removal, but ICE has reserved appeal to the Board of Immigration Appeals, ICE will take custody of the alien and will determine whether to detain or release the alien into the United States pending the administrative appeal[2].

Family Units

Definition of Family Unit
For the purposes of MPP, DHS defines a family unit as a group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s). Every effort should continue to be made to maintain the integrity of family units pending completion of removal proceedings, consistent with applicable law and policy.

Consolidation of Individual Cases of Family Unit Members
If, for any reason, the individual cases of family unit members processed pursuant to MPP have not already been consolidated, DHS entities should work with DOJ, to the extent possible, to identify and link cases of these individuals. DHS and DOJ may also consider case consolidations in other reasonable instances, such as domestic partnerships, on a case-by-case basis.

Adjudication of Expressions of Fear of Return to Mexico
If any member of a family unit in MPP expresses a fear of returning to Mexico, then the entire family unit will await the adjudication of that claim before any return to Mexico can proceed, so long as there is not an independent basis to separate members of a family unit. If any member of a family unit establishes that he/she is more likely than not to suffer persecution on account of a protected ground or torture in Mexico, the entire family unit must not be processed for MPP or, if currently in MPP and in the United States together, must be removed from MPP and reprocessed as appropriate.

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[1] This policy both updates and supersedes in part section *A. Interview* of USCIS' January 28, 2019 Policy Memorandum PM-602-0169 which notes, "DHS is currently unable to provide access to counsel during the assessments."
[2] If an immigration judge grants an MPP alien's application for relief or protection from removal or orders the alien removed from the United States, and appeal is not reserved by either party, the alien should be processed in accordance with standard procedures applicable to final order cases.

Grants of Relief or Protection from Removal
If any member(s) of a family unit processed under MPP is/are granted relief or protection from removal, the family member(s) (regardless of nationality) not granted relief or protection should be taken into ICE custody. A determination will be made regarding whether to detain or release the alien(s) into the United States pending completion of removal proceedings (including an administrative appeal) of all members of the family unit.

Mixed-Nationality Family Units

Non-Mexican national or citizen members of mixed-nationality family units may be considered for processing through MPP if doing so maintains family unity. This applies even if one or more member(s) of the family unit might be of a nationality that is otherwise not generally amenable to MPP.

Mexican Citizen/National Family Member
In the case of a family member who is a Mexican citizen or national, in order to maintain family unity, the Mexican citizen/national would be allowed to voluntarily withdraw his/her application for admission through a Form I-275 or be voluntarily returned to Mexico with the rest of the non-Mexican citizen/national family unit.

Mexican Citizen/National Family Member Expressing Fear of Return to Mexico
If the Mexican citizen/national (or a parent or legal guardian on behalf of a Mexican citizen/national child) expresses fear of return to Mexico, that individual must no longer be voluntarily returned to Mexico with the rest of the family unit. Any withdrawal or return of such an individual to Mexico would not be voluntary given that the individual expressed a fear of return to Mexico. In that instance, and because the family unit cannot be separated pursuant to MPP, the entire family unit must not be processed for MPP or, if previously processed for MPP, the family unit must be removed from MPP and reprocessed as appropriate.

Unaccompanied Alien Children (UACs)

CBP Processing of UACs
Any child who arrives at the border and is determined to be a UAC will be processed as such by CBP in accordance with existing UAC processing procedures, including transfer to the Department of Health and Human Services (HHS) and generally processed for removal proceedings pursuant to Section 240 of the Immigration and National Act (INA). UACs are not amenable to MPP.

CBP Providing of UAC Information to HHS
When CBP encounters a UAC who it can confirm was, in fact, previously processed as part of a family unit and returned to Mexico under MPP, CBP should provide HHS's Office of Refugee Resettlement (ORR) with all relevant identifying information for the UAC and those previously processed into MPP with him/her (e.g. full name(s), alien number(s), and processing location) when ORR assumes custody of the UAC. Providing this information will ensure that ORR has all options available when considering UAC placement and appearances at hearings.

Known Physical and Mental Health Issues

In an instance where there is any doubt as to whether an alien should be included in MPP owing to a known physical or mental health issue, CBP should err on the side of exclusion.

Aliens Determined Not Fit to Travel
Generally, aliens who are determined not to be fit to travel by medical personnel should be excluded from MPP. Exemptions from MPP for aliens with known physical or mental health issues are decided on a case-by-case basis. DHS officials should carefully evaluate and provide appropriate responses for those in special circumstances, which could include exclusion from MPP.

Expressions of Need for Medical Attention
If at any time an alien expresses a need for medical attention, or if a CBP agent or officer observes that medical attention is warranted, that alien will be referred to on-site medical staff. The on-site medical staff will both screen the alien and make the determination about his/her immediate medical needs and whether emergent care is required. In this situation, CBP is to follow the guidance issued in its "Enhanced Medical Support Directive."[3]

Case-by-Case Determination of Exemption from MPP
Following CBP's medical evaluation process -- which should consider potential physical and/or mental health issues related to an alien's disclosure of personal history -- determinations as to whether an alien is exempt from MPP due to known physical or mental health issues are generally to be made on a case-by-case basis at the local level with supervisory review. The Port Director or Chief Patrol Agent of each location should use his/her discretion to determine amenability on a case-by-case basis considering the totality of the circumstances. Aliens who receive medical clearance and are fit for travel, as determined by medical personnel, are amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determines otherwise.

Use of Restraints

Aliens subject to MPP are not a detained population, including during transportation to and from immigration court hearings.

To the extent CBP is required to use restraints during MPP processing, CBP should continue to follow the National Standards on Transport, Escort, Detention and Search (TEDS). To the extent ICE or contract staff is required to use restraints during MPP processing or transportation, ICE or contract staff should continue to follow the Performance-Based National Detention Standards (PBNDS) 2011 and relevant supplemental guidance, including the ICE Enforcement and Removal Operations (ERO) Memorandum on Use of Restraints (ERO 11155.1).

[3] https://www.cbp.gov/document/directives/cbp-enhanced-medical-efforts

Interagency Collaboration

Collaboration with DOS
Recognizing that DHS does not have the statutory authority to provide foreign assistance and deferring to DOS's internal regulations and procedures, DHS should, to the greatest extent possible, regularly collaborate with DOS to identify programs or other efforts that support MPP aliens' options to access safe shelters and MPP-related information during their time in Mexico.

Collaboration with DOJ and HHS
Further, DHS should also regularly collaborate with DOJ and HHS to exchange appropriate case-related and statistical information tied to the implementation of MPP and related processes.

Ongoing Improvement

Notwithstanding the above-mentioned items, DHS should continue to evaluate MPP operations and effectiveness and make continued adjustments, as needed, to improve the integrity and operation of the MPP program including in areas not specifically articulated in this memorandum.

As further potential improvements are identified by CBP, ICE, USCIS, the Office of Strategy, Policy and Plans (PLCY), the Office of Operations Coordination (OPS), the Office of the General Counsel (OGC), the Office of Civil Rights and Civil Liberties (CRCL), etc., all interested parties, including interagency partners, should collaborate to find the most appropriate outcome to reinforce the integrity of MPP.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Supplemental Migrant Protection Protocols Guidance

Date: December 7, 2020

Topic: Initial Document Service

HQ POC/Office: Enforcement Programs Division

- Effective immediately, in accordance with the January 28, 2019 Commissioner's Memorandum, and consistent with existing discretion and authorities in implementing Section 235(b)(2)(C) of the Immigration and Nationality Act, when placing an amenable alien into the Migrant Protection Protocols (MPP), U.S. Customs and Border Protection (CBP) Office of Field Operations Officers or U.S. Border Patrol Agents must also take the following actions, in addition to previously issued guidance, regarding service packet issuance:

  1. **Completing, Serving and Explaining the Documents to the Alien.** If the officer/agent is not fluent in the alien's preferred language, he/she should utilize in-person or telephonic interpretation to complete and serve the documents to the alien, including any explanation of the documents.

  2. **Completing the Form I-862 Notice to Appear (NTA).** When filling out the NTA for aliens being placed into MPP, officers/agents should affirmatively inquire as to whether the alien has an address in Mexico. DHS is obligated to record the alien's answer to this question on the NTA filed with the immigration court. If the alien cannot provide an address in Mexico, the officer/agent should notate on the NTA that the alien "failed to provide address" and advise the alien of the need to update this information with the court by filling out and mailing in or bringing to court the EOIR-33 form* once an address is secured.

  3. **Completing the CBP Form 838 and Form 839 Tear Sheets.** There is no need to read the tear sheet to the alien, as each alien should be presented a copy for his/her records. However, pertinent information in the service packet should be verbally identified for the alien in plain language.

- The following documents should be served to the alien before transferring them to Mexico through the applicable port of entry to the National Migration Institute:
  - Form I-862 Notice to Appear
  - CBP Form 838 or Form 839 Initial Processing Information
  - EOIR List of Pro Bono Legal Service Providers*
  - EOIR-33 Change of Address*

*The version of each of these forms provided to the MPP aliens should correspond to the immigration court where the NTA is issued.

Supplemental Migrant Protection Protocols Guidance

Date: December 7, 2020

Topic: MPP Amenability

HQ POC/Office: Enforcement Programs Division

- In accordance with the Commissioner's Memorandum of January 28, 2019 and the *Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols (December 7, 2020)*, and consistent with existing discretion and authorities in implementing Section 235(b)(2)(C) of the Immigration and Nationality Act (INA), this guidance intends to clarify how U.S. Customs and Border Protection (CBP) Office of Field Operations (OFO) Officers and U.S. Border Patrol (USBP) Agents may exercise their discretion in determining whether individuals are amenable to be returned to Mexico under INA Section 235(b)(2)(C) and to standardize CBP's application of the Migrant Protection Protocols (MPP) to amenable aliens.

- The categories of individuals identified in the Guiding Principles for Migrant Protection Protocols issued on January 28, 2019 by the OFO Enforcement Program Division as not amenable to MPP remain unchanged. CBP should continue to follow the existing practice of referring to U.S. Citizenship and Immigration Services (USCIS) any alien, whether before or after they are processed under MPP, who expresses a fear of persecution, torture, or return to Mexico.

- Though a particular situation may not in and of itself be considered a physical or mental health issue, conditions related to an alien's disclosed personal history (e.g. pregnancy, prior illness, or any other disclosed medical condition) should be taken into account during the medical assessment process, and may, on a case-by-case basis, constitute grounds for an alien to be excluded from MPP.

Mental and Physical Health Issues

- For the purposes of MPP, an "emergent medical condition" is defined as a medical issue such as injury, illness, or infection posing an immediate threat to life, limb, or eyesight requiring immediate medical attention. Any aliens with an emergent medical condition will be transported to receive appropriate care, consistent with current practice. Aliens who receive medical clearance and are fit for travel, as determined by medical personnel, remain amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determine otherwise.

- For the purposes of MPP, a "pre-existing medical condition" is defined as a current medical issue such as injury, illness, or infection not requiring immediate, significant medical attention. Aliens with pre-existing medical conditions determined not to require ongoing, emergent medical care, and who are fit for travel, as determined by medical personnel,

remain amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determine otherwise.

- For the purposes of MPP**,** a "significant disability" is defined as a physical or mental impairment that substantially limits the alien from meaningfully participating in removal proceedings. Individual aliens with a significant disability, not traveling as a part of a family unit with a caregiver, are to be excluded from MPP. Aliens with a significant disability who are traveling with a caregiver as a part of a family unit, and who are fit for travel, as determined by medical personnel, remain amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determine otherwise.

Other Situations

- Pregnant females are generally amenable under the MPP Guiding Principles. Pregnancy in and of itself does not preclude an alien from remaining amenable under MPP guidelines.

- In cases where an alien self-identifies as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming, CBP documents this self-identification on the Detainee Assessment for National Standards on Transport, Escort, Detention, and Search (TEDS). Sexual orientation in and of itself does not preclude an alien from remaining amenable under MPP guidelines. Officers and agents are reminded that if an alien expresses a fear of return to Mexico for any reason, including based on sexual orientation, they are to refer the individual to USCIS.

Additional Case Review

- Officers and agents make determinations based on the facts and circumstances known to the officer or agent at the time. Local offices should use their judgement to determine which cases should be referred to OFO and USBP Headquarters for further consideration.

- In all cases, when considering amenability, the Chief Patrol Agent or Port Director of each individual location maintains their discretion to review each case on an individualized basis.

Migrant Protection Protocols Metrics and Measures

The Migrant Protection Protocols (MPP) are a U.S. Government (USG) action whereby citizens and nationals of countries other than Mexico arriving in the United States by land from Mexico -- whether or not at a port of entry (POE) -- may be returned to Mexico pursuant to Section 235(b)(2)(C) of the Immigration and Nationality Act (INA) while their U.S. removal proceedings are pending under Section 240 of the INA.

DHS remains committed to using all available tools to address the unprecedented security and humanitarian crisis at the southern border of the United States. At the peak of the crisis in May 2019, there were more than 4,800 undocumented aliens attempting to cross the border into the United States daily. MPP is a core component of the USG's efforts to address the migration crisis along the U.S.-Mexico border.

The following are the intended goals of MPP and measurements of how those goals are currently being met.

1. **Goal: MPP streamlines existing avenues for aliens in removal proceedings who qualify for humanitarian protection in the United States to receive it.**

    - **Metric:** MPP provides a streamlined pathway for aliens to defensively apply for protection or relief from removal, while upholding *non-refoulement* obligations through screenings of fear in Mexico.

        - **Data measurement:** Number of INA Section 240 removal proceedings for aliens subject to MPP which resulted in a grant of relief.

MPP Aliens Granted Relief
531

*As of December 31, 2020.
** "Relief" in this context refers to asylum, statutory withholding of removal and withholding of removal under the Convention Against Torture.

        - **Data measurement:** Number of MPP aliens referred to U.S. Citizenship and Immigration Services (USCIS) for *non-refoulement* assessment interviews based on the alien's assertion of a fear of persecution or torture in, or returning to, Mexico.

Number of MPP Aliens Referred to USCIS for Non-Refoulement Assessments
19,707

* As of December 31, 2020
** If USCIS assesses that an alien who affirmatively states a fear of return to Mexico is more likely than not to face persecution on a protected ground or torture in Mexico, the alien is no longer amenable for MPP.

2. **Goal: MPP supports an orderly and timely completion to U.S. immigration processes.**

   - **Metric:** MPP provides a pathway for aliens to proceed efficiently through the U.S. immigration court processes, as compared to non-detained dockets.

     - **Data measurement:** The number of cases completed by immigration judges since MPP's inception.

MPP Case Completion		
Total Enrolled in MPP	**Total Cases Completed**	**Case Completion Percentage**
68,039	**44,014**	**65%**

* As of December 31, 2020.
** "Total Enrolled" includes only cases in which the notice to appear (NTA) was filed.
*** "Cases Completed" includes only initial case completions, i.e. it excludes cases that were "completed" a second time due to a motion to reopen or a remand.

3. **Goal: MPP prevents "catch and release" into the United States, including for those whose claims are later found to be non-meritorious.**

   - **Metric:** MPP decreases the number of aliens released into the interior of United States for the duration of their U.S. removal proceedings.

     - **Data measurement:** Number of aliens enrolled in MPP by Customs and Border Protection (CBP) across the Southwest Border (SWB).

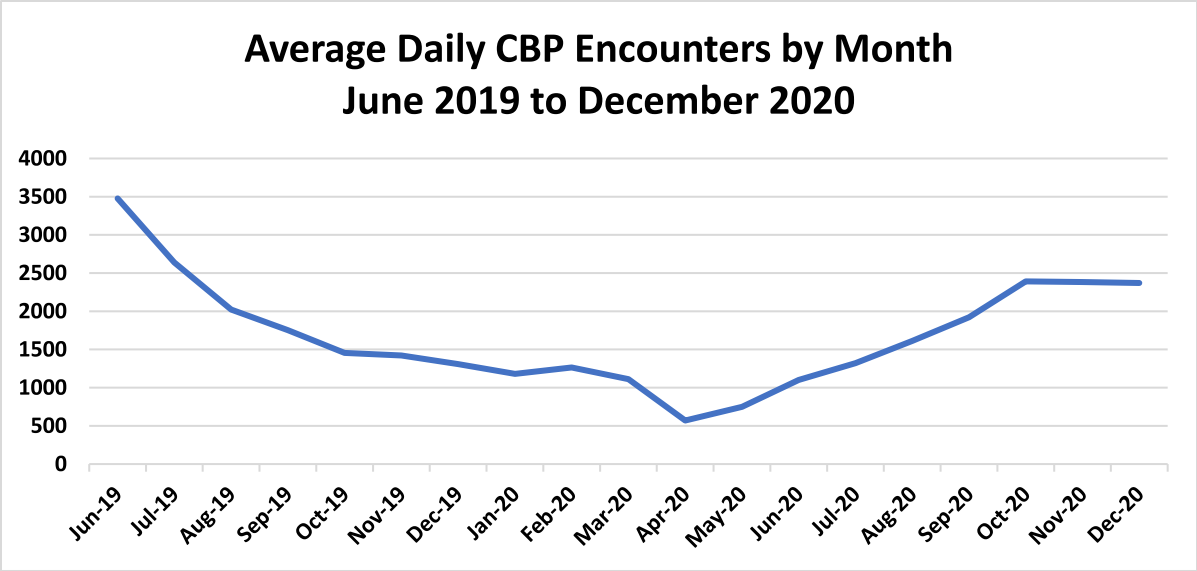
Number of Aliens Enrolled in MPP
68,039

* As of December 31, 2020.
** "Total Enrolled" includes only cases in which the NTA was filed.

4. **Goal: MPP provides a deterrent to illegal entry.**

   - **Metric:** MPP implementation contributes to decreasing the volume of inadmissible aliens arriving in the United States on land from Mexico (including those apprehended between the POEs).

- **Data measurement:** Number of enforcement encounters along the SWB.



Measuring *In Absentia* Removal in Immigration Court

By Ingrid Eagly, Esq. and Steven Shafer, Esq.

SPECIAL REPORT | JANUARY 2021

American Immigration

ABOUT THE AUTHORS

Ingrid Eagly is a Professor of Law at the UCLA School of Law. An expert on immigration law, Eagly is an affiliated faculty member of the UCLA Center for the Study of International Migration. She earned an A.B. from Princeton University and a J.D. from Harvard Law School.

Steven Shafer is a managing attorney at the Esperanza Immigrant Rights Project in Los Angeles. Before pursuing law, Shafer spent a decade as a social scientist at Princeton University and the Harvard Business School. Shafer earned a B.A. from Yale University, a M.A. in sociology from Princeton University, and a J.D. from UCLA School of Law.

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CONTENTS

Executive Summary

Do immigrants attend their immigration court hearings? This question is central to current debates about the immigration court system. Contrary to claims by the government that most immigrants fail to appear in immigration court, our analysis of data provided by the federal government reveals that 83% of all nondetained immigrants with completed or pending removal cases from Fiscal Years (FY) 2008 through 2018 attended all of their court hearings. Among those who were represented by counsel during the same time period, 96% attended all of their court hearings. Moreover, we reveal that 15% of those who were ordered deported because they didn't appear in court successfully reopened their cases and had their removal orders rescinded. This crucial finding suggests that many individuals who fail to appear in court wanted to attend their hearings but never received notice or faced hardship in getting to court.

Key Findings

- 83% of nondetained immigrants with completed or pending removal cases attended all their hearings from 2008 to 2018.
- 96% of nondetained immigrants represented by a lawyer attended all of their hearings from 2008 to 2018.
- 15% of all removal orders for failure to appear issued from 2008 to 2018 were successfully overturned. In some years, as many as 20% of all orders of removal for missing court were later overturned.
- Individuals who appliedy for relief from removal hadve especially high rates of appearance.
- Appearance rates variedy strongly based on the immigration court's location.
- The Executive Office for Immigration Review's method for measuring the rate at which immigrants fail to appear in court presents a limited picture of the frequency of missed court appearances.

This report presents these and other key findings from a recent study of the rate at which immigrants appear for hearings in U.S. immigration court. The findings stand in marked contrast to the bold and inconsistent claims made by former President Donald Trump and members of his administration about purportedly dismal court appearance rates. Indeed, former President Trump repeatedly shared misinformation that noncitizens never or rarely appear in court. Policymakers have relied on these assertions about purported failures to appear to drive key decisions, including to expand reliance on immigration detention and to reduce access to asylum. Appearance rates have also been pivotal to the debate about building a border wall, which the Trump administration sought to justify by claiming that those who cross the southern border simply "vanish" into the country and never come to court.

This report provides accurate information, based on independent analysis of government data, of the rate at which immigrants attend court. It sheds light on the concerted effort made by immigrants to comply with the law so as to increase transparency to policymakers and the public. The report provides a detailed analysis of the frequency of *in absentia* orders and discusses the important relationship between appearance rates and representation by counsel, applications for relief, and court location. Taken together, this data-driven report lays bare the lie that noncitizens never appear in court. It also serves as a necessary guide for the newly elected administration of President Joe Biden, which has the opportunity to take a fresh look at immigration policy and implement the data-driven policy recommendations discussed in the report's conclusion.

About the Data

This report analyzes the government's own court records in immigration cases. Using the Freedom of Information Act (FOIA), these court records were obtained from the Executive Office for Immigration Review (EOIR), the division of the Department of Justice (DOJ) that conducts immigration court proceedings. EOIR periodically updates these data, and we analyzed data tables made available by EOIR as of November 2, 2018. These data included 8,253,223 immigration court proceedings, with completed and pending cases dating back to 1951.

To conduct the analysis, we limited our data to 2,797,437 nondetained removal proceedings from the period between fiscal years 2008 and 2018. These proceedings included both individuals who were never detained and those who were released from detention. Each of these immigration court proceedings contained one or more hearings.

For more information regarding the data and methodology used in this analysis, see Ingrid Eagly and Steven Shafer, "Measuring *In Absentia* Removal in Immigration Court," *University of Pennsylvania Law Review* 168, no. 4 (2020): 817-876.

Introduction

Throughout much of the 20th century, immigrants that the United States sought to deport were required to present themselves to "Special Inquiry Officers" for the former Immigration and Naturalization Service (INS), who in 1973 were authorized to wear judicial robes and use the title of "immigration judge." At those hearings, immigration judges would choose whether to issue a deportation order. In 1983, immigration judges became part of the Department of Justice (DOJ) and housed within a new agency, the Executive Office for Immigration Review (EOIR).

Prior to 1990, immigration judges had discretion over how to handle missed court appearances. For example, they could hold a hearing and dismiss, continue, or administratively close the case. In 1990 the law was amended to require immigration judges to order a noncitizen who missed even one court hearing deported. This type of deportation without the individual being present in court is called *in absentia* removal, based on the Latin phrase meaning "in the absence of."

Today, immigration judges must order removal *in absentia* if the noncitizen is not in court at the scheduled hearing, provided the government can first establish by "clear, unequivocal, and convincing evidence" that the noncitizen is subject to removal and that written notice of the hearing was provided. Those subject to *in absentia* removal are generally barred from seeking admission to the United States or relief from removal for a period of years.

Since the 1990 law took effect, U.S. government officials have routinely relied on a purported rise in the prevalence of *in absentia* removal orders to support major policy shifts to the immigration system and buttress legal arguments defending those changes. For example, in 1995 Congress relied on government-produced statistics showing a "high rate of no-shows for those criminal aliens released on bond" to change the immigration law to require noncitizens with certain convictions be mandatorily detained pending deportation without access to a bond hearing. In 2002, the solicitor general cited those same government *in absentia* statistics as persuasive authority in defending against a challenge to the constitutionality of mandatory detention. The U.S. Supreme Court later relied on the government's statistical claims to uphold the constitutionality of mandatory detention for immigrants with criminal convictions as reasonable to prevent "an unacceptable rate of flight."

More recently, DOJ officials have repeatedly told the public that many asylum seekers "simply disappear and never show up at their immigration hearings," thus justifying tighter restrictions on the asylum law and even criminal prosecution of asylum seekers to prevent the court system from being "gamed." Claims about failures to appear have also been relied upon by the Department of Homeland Security (DHS) to justify the so-called Migrant Protection Protocols (MPP) program that requires migrants to remain in Mexico to await their immigration court hearings. The Department of Health and Human Services and DHS have also prominently relied on purportedly high *in absentia* rates to argue in favor of radically restructuring the established system that protects children against long-term detention.

Summary entry of a removal order when someone does not appear for a hearing—without the opportunity for the individual to respond and without regard to the merits of the individual's eligibility for relief—has been controversial and raises serious due process concerns. The practice also differs markedly from the criminal system, where failure to appear at trial is generally treated with issuance of an arrest warrant, not adjudication of the criminal charges without the defendant present in court. For example, pursuant to Federal Rule of Criminal Procedure 43, a defendant's presence in court is required to begin a trial and cannot be waived. This is very different from the immigration court system, where there is no requirement that a noncitizen be present before concluding the hearing with the entry of a removal order.

Although much is at stake, government officials offer no verifiable empirical support for their claims that migrants "never" or rarely come to court. Therefore, scholars, members of the press, and other experts have turned to the annual report published by the statistical division of EOIR. The EOIR's annual statistics yearbook has typically included a measurement of the *in absentia* removal rate but has offered only a sparse description of the method used to reach their measurement. This report offers an independent analysis of EOIR's method for calculating *in absentia* removal and discusses the policy implications of these findings.

The Overwhelming Majority of Immigrants Appear for Their Immigration Court Hearings

This report relies on the government's own court data to provide reliable measurements of *in absentia* removal orders. Specifically, to calculate the rate at which immigrants have been ordered removed for failing to appear in court, we analyzed data released by EOIR, the agency within DOJ that contains the immigration courts. Because almost all *in absentia* orders take place in nondetained cases, we limited our analysis to those cases where the immigrant was never detained by ICE or had been detained and then released. In total, we analyzed 2,797,437 nondetained removal proceedings from the period between fiscal years 2008 and 2018.

We examined these data using three different analytical methods for calculating *in absentia* removal.

First, we replicated the method of calculating the *in absentia* rate generally used by EOIR in its annual statistics reports, which divides the number of *in absentia* removals issued at the initial case completion stage of a case by the total number of initial immigration judge decisions issued during the fiscal year. Initial immigration judge decisions are the first on-the-merits decisions by the immigration judge to order removal, grant relief, or terminate the case. This report refers to EOIR's approach to measuring the *in absentia* rate as the "IJ decisions" method.

Second, we analyzed the rate at which immigrants were ordered removed for failure to appear among all cases which reached an initial case completion of any kind, including both initial immigration judge decisions and other immigration judge completions, such as administrative closures. Administrative closure is a discretionary docket-management

tool that immigration judges have used for decades. Through this practice, a judge removes a case from the active docket, thereby putting the case on indefinite hold and allowing the noncitizen to remain in the United States. We call this the "all completions" method.

Third, we analyzed the rate at which immigrants were ordered removed for failure to appear as a percentage of both all initial case completions (including initial immigration judge decisions and other immigration judge completions) and pending cases. Pending cases are not yet resolved and have ongoing hearings to rule on motions and applications for relief. Pending cases ballooned from 156,714 in 2008 to 707,147 in 2018. This report calls this approach that includes pending cases the "all matters" method.

Table 1: *In Absentia* Removal Rate (Initial Case Completions), by Method (Nondetained Only)

	IJ Decisions		Other		*In Absentia* Removal Rate (Among . . .)		
Fiscal Year	*In Absentia*	Not *In Absentia*	Other IJ Completions	Pending	IJ Decisions	All Completions	All Matters
2008	24,882	60,337	8,020	144,996	29%	27%	8%
2009	22,071	57,640	6,803	178,156	28%	26%	6%
2010	23,852	64,357	7,883	212,053	27%	25%	6%
2011	21,739	65,417	5,235	246,153	25%	24%	5%
2012	18,990	60,344	14,994	275,132	24%	20%	4%
2013	20,940	56,727	27,243	303,015	27%	20%	4%
2014	25,587	46,655	29,845	372,884	35%	25%	5%
2015	37,994	45,467	41,003	393,651	46%	31%	6%
2016	33,896	47,579	47,071	443,658	42%	26%	5%
2017	41,374	45,684	28,055	559,855	48%	36%	5%
2018	44,764	63,975	9,046	673,580	41%	38%	5%
Summary Statistics							
Total	316,089	614,182	225,198	673,580	34%	27%	17%
Average	28,735	55,835	20,473	345,739	34%	27%	5%
(SD)	(9,092)	(7,990)	(14,877)	(163,990)	(8%)	(6%)	(1%)

Source: Authors' analysis of Executive Office for Immigration Review data, FY 2008–2018

Table 1 provides the findings from this analysis. Each of these three methods yielded a different *in absentia* rate for nondetained immigrants during the period from 2008 to 2018.

- First, using the government's IJ decisions method, the *in absentia* rate was 34%.
- Second, using the all completions method, the *in absentia* rate was 27%.
- Third, using the all matters method, the *in absentia* rate was 17%.

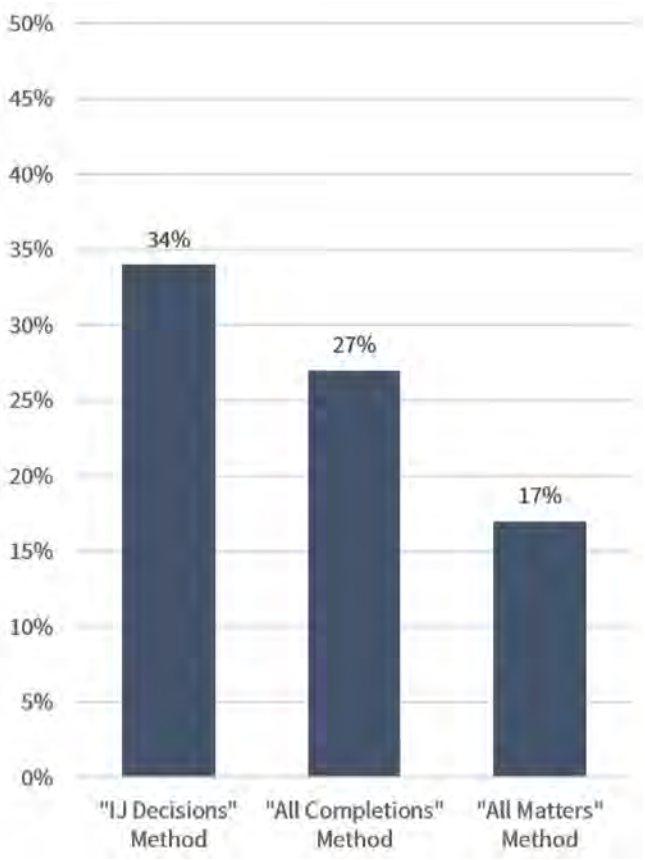
When the same data were analyzed using the government's IJ decisions method, nondetained immigrants appear to miss court much more often. The government measurement is twice as high as the all matters approach—34% of the time compared to just 17% of the time. That means that under the all matters approach, immigrants have appeared for all scheduled hearings in 83% of all pending and completed cases over an 11-year period.

Of the three methods, the all matters method is the most reliable measurement of the rate at which immigrants appear in court. First, unlike the government's IJ decisions method, the all matters method includes all judicial decisions, including decisions to administratively close a case, in its analysis. Because administrative closure reached a rate as high as one-fourth of all initial case completions from 2008–2018, the failure to include such closures makes the government method significantly less inclusive of what is happening in immigration court.

Second, unlike the government's IJ decisions method, the all matters method includes pending cases. If immigration cases were quickly decided on their merits, excluding pending cases when measuring the *in absentia* removal rate—as EOIR does—might make sense. But given the immense and growing backlog in the immigration courts, cases can drag on for many years before a decision is reached. During this time, immigrants who diligently are attending all of their court hearings should not be excluded from calculations of appearance rates.

Because the government's IJ decisions method excludes pending cases, it does not account for the hundreds of thousands of cases each year in which immigrants appear for a hearing while their case wends its way through the lengthy court process. Given the flaws with the government's IJ decisions method, and its tendency to overstate the rate at which immigrants fail to appear in court, we recommend against the method's use whenever possible.

Figure 1: *In Absentia* Removal Rate, by Calculation Method (Nondetained Only)



Source: Authors' analysis of Executive Office for Immigration Review data, FY 2008–2018

The Majority of Immigrants Came to Court if Given a Second Chance

The immigration court compliance rates discussed above reveal that the vast majority of immigrants have attended their court hearings. For those who do miss their hearings, a crucial question is whether they were made aware of their court date and time in accordance with due process. Indeed, court appearance rates must be considered against the backdrop of a pervasive failure of DHS to include the time and date of hearings in the charging documents given to individuals in removal proceedings. In a 2018 oral argument before the U.S. Supreme Court, counsel for the government admitted that "almost 100%" of notices to appear issued over the previous three years had omitted the time and date of the court proceeding. These pervasive defects in notice are part of the reason why noncitizens do not appear in court. This reality has made it hard for individuals—particularly if they do not speak English, are unfamiliar with the court system, or do not have lawyers—to figure out when and where to go to court.

To address these notice deficits, we evaluated how often immigration judges identified failures to appear that occurred because of notice issues. Looking at the cases of individuals who were never detained, we found that immigration judges adjourned fewer than 1% of initial hearings due to potential notice issues. However, when judges did adjourn these missed hearings due to notice issues, we found that 54% of these individuals appeared in court at the next hearing.

This is an essential data point. First, it reveals that, although notice issues were prevalent during the time period of this study and the government has the burden to prove proper service of notice, notice issues were rarely identified or challenged by immigration judges. Second, it demonstrates that when immigration judges did pay attention to notice issues, the majority of noncitizens made it to court after the notice issue was addressed.

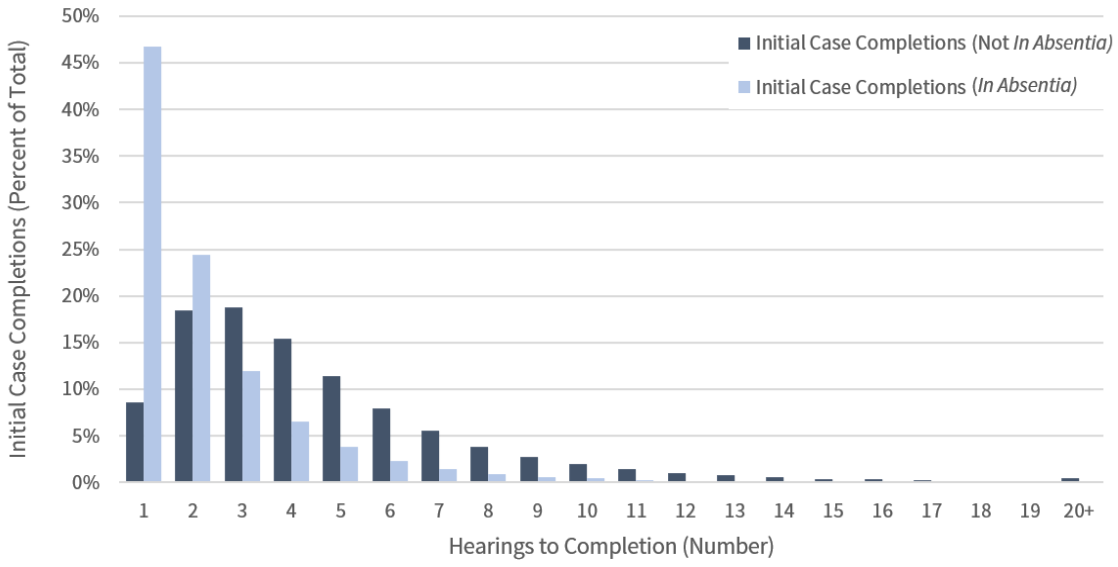
Immigrants Were More Likely to Miss Court in the Early Stages of the Removal Process

Each immigration proceeding contains one or more hearings. The first hearings in a case are generally referred to as "initial master" hearings (also commonly known as "master calendar" hearings), which are scheduled to allow for general administration of the case, including the taking of pleadings, requests for time to find an attorney or time to prepare a case, and the filing of applications for relief. Some cases proceed on to an "individual" hearing (also commonly known as "merits" hearing) in which the immigration judge adjudicates the substance of the claim for relief, such as asylum or cancellation of removal.

As seen in Figure 2, 47% of *in absentia* removal orders occurred at the very first hearing in the case. The pattern was very different among initial case completions that did not result in an *in absentia* order. Less than 9% of non-*in absentia* decisions were completed at the first hearing. These patterns, along with the other data reported above, suggest that some immigrants who fail to appear at their first hearing may not have received notice about the court proceeding.

Figure 2 also reveals that once individuals have begun the court process, they were more likely to appear in court. In other words, the more an immigrant becomes invested in the court process through awareness of how the system works and familiarity with the procedural requirements, the less likely the person is to fail to appear.

Figure 2: Number of Hearings Before Initial Case Completion, by Decision Type (Nondetained Only)



Source: Authors' analysis of Executive Office for Immigration Review data, FY 2008–2018

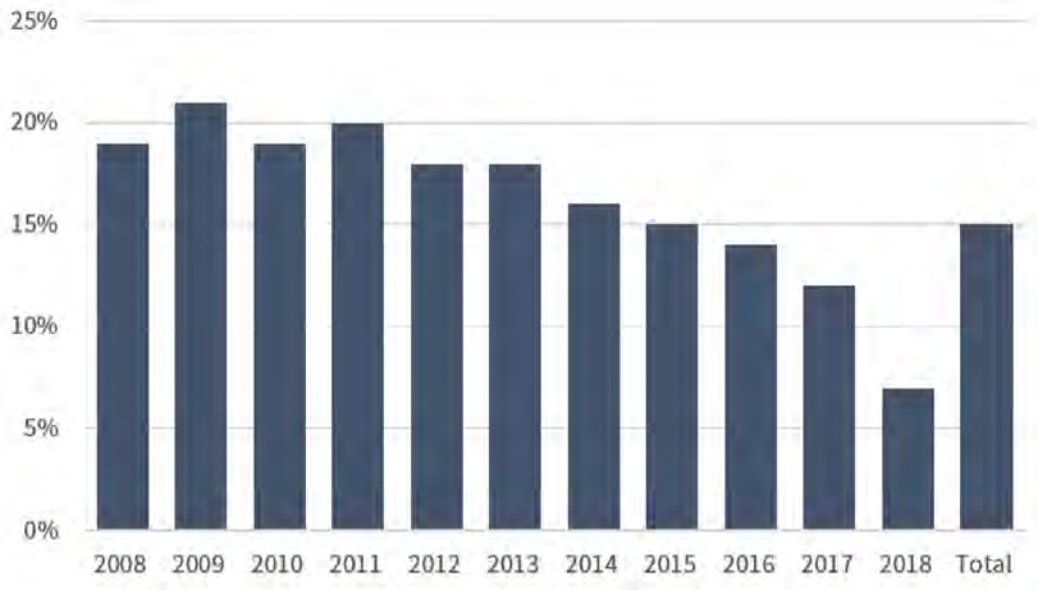
A Significant Portion of Immigrants Ordered Removed for Missing Court Later Overturned That Order

Immigrants may overturn a removal order for failure to appear in court in two specific circumstances, both of which require the immigrant to prove they did not intentionally or negligently fail to appear:

- When a motion to reopen is filed within 180 days of the order of removal, demonstrating that "exceptional circumstances" prevented the immigrant from appearing in court and led to the failure to appear.
- When the immigrant can prove that they never received notice of the scheduled hearing.

We relied on the EOIR data to examine what happened after the initial *in absentia* order was entered. From 2008 to 2018, nearly 20% of all *in absentia* removal orders were challenged through a motion to reopen. These motions were overwhelmingly successful, and fully 15% of those who were ordered removed *in absentia* during that period successfully reopened their cases and had their deportation orders rescinded (see Figure 3 & Table 2). This crucial finding suggests that many individuals who failed to appear in court wanted to attend their hearings but never received notice or faced hardship in getting to court.

Figure 3: Rate at Which *In Absentia* Orders Are Overturned, by Fiscal Year Order of Removal Order Entered (Nondetained Only)



Source: Authors' analysis of Executive Office for Immigration Review data, 2008–2018

Table 2: Reopening of *In Absentia* Removal Orders, by Fiscal Year (Nondetained Only)

Fiscal Year	*In Absentia* Removal at Initial Completion	Successful Motion to Reopen	Reopened (Percent)
2008	24,882	4,716	19%
2009	22,071	4,560	21%
2010	23,852	4,651	19%
2011	21,739	4,331	20%
2012	18,990	3,464	18%
2013	20,940	3,799	18%
2014	25,587	4,188	16%
2015	37,994	5,558	15%
2016	33,896	4,589	14%
2017	41,374	4,812	12%
2018	44,764	3,284	7%
Total	316,089	47,952	15%

Source: Authors' analysis of Executive Office for Immigration Review data, FY 2008–2018

In reviewing Figure 3, note how older cases had a higher rate of reopening than newer cases. For cases that received an *in absentia* order in 2008, 19% were reopened by the end of our study period. In contrast, only 7% of *in absentia* orders entered in 2018 had been reopened at the end of 2018. This outcome makes sense given that many individuals with *in absentia* orders may not yet be aware that they were ordered removed and need time to make a motion to reopen in immigration court. Given the legal complexity of such a motion, individuals may also need time to find and retain counsel. Over time, therefore, we can expect the percentage of *in absentia* cases that are reopened to rise.

Higher Rates of Appearance in Court Were Associated with Having a Lawyer, Applying for Relief from Removal, and Court Location

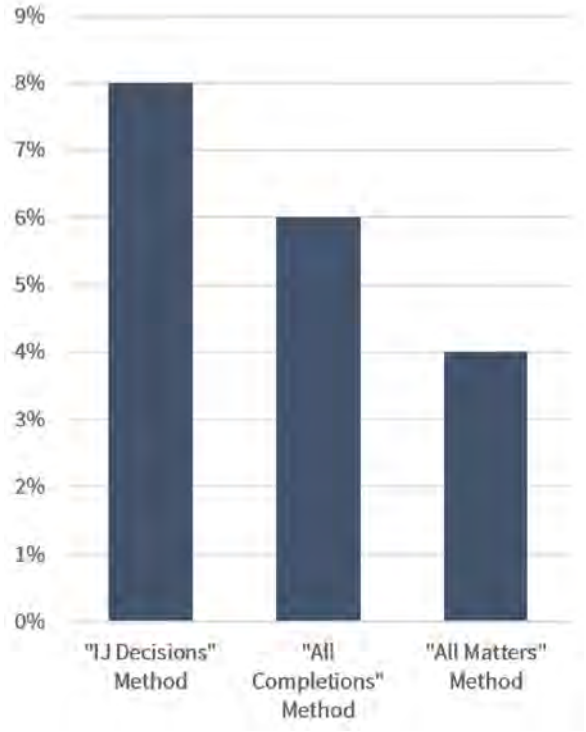
We also analyzed three factors associated with showing up in immigration court: having a lawyer, applying for relief from removal, and court location.

Attorney Involvement

Noncitizens have a right to be represented by counsel in immigration proceedings, but generally not at the expense of the government. To evaluate the relationship between representation and *in absentia* removal rates, we examined the rate of *in absentia* removals among those who had counsel between 2008 and 2018.

The data reveal that individuals with counsel rarely failed to show up in court. Even using the government's IJ decision method, persons with counsel were ordered removed *in absentia* just 8% of them time. When using the all matters method, those with counsel were ordered removed *in absentia* in just 4% of cases (see Figure 4).

Figure 4: *In Absentia* Removal Rate for Individuals Represented by Counsel, by Calculation Method (Nondetained Only)



Source: Authors' analysis of Executive Office for Immigration Review data, FY 2008–2018

We also find that most cases with failures to appear involved unrepresented litigants. Overall, only 15% of those who were ordered removed *in absentia* during our study period had an attorney. By contrast, 86% of those with an initial completion not ending *in absentia* had counsel (see Figure 4).

We also find that the ability to reopen an *in absentia* removal case is mainly reserved for those who find a lawyer. That is, among those who were able to successfully reopen their case after an *in absentia* removal order, 84% had a lawyer representing them.

As these striking statistics suggest, attorneys play a vital supporting role in ensuring that their clients make it to court. Attorneys can make sure their client knows when and where to appear and how to keep the court updated on any change of address. Without a lawyer, some immigrants attend their check-in appointments with ICE believing erroneously that it is their court date and then miss their actual court date. Others have reported missing their hearings after being given Notices to Appear (NTAs) with no court date or with a fake court date at an erroneous location. Unrepresented litigants may also encounter challenges in completing the necessary court documents to reschedule an immigration court hearing or to notify the court about a change of address. For example, despite policy to the contrary, immigration courts do not always accept notifications of changes of address before proceedings have formally begun, making it impossible to receive notice at a new address.

Applying for Relief

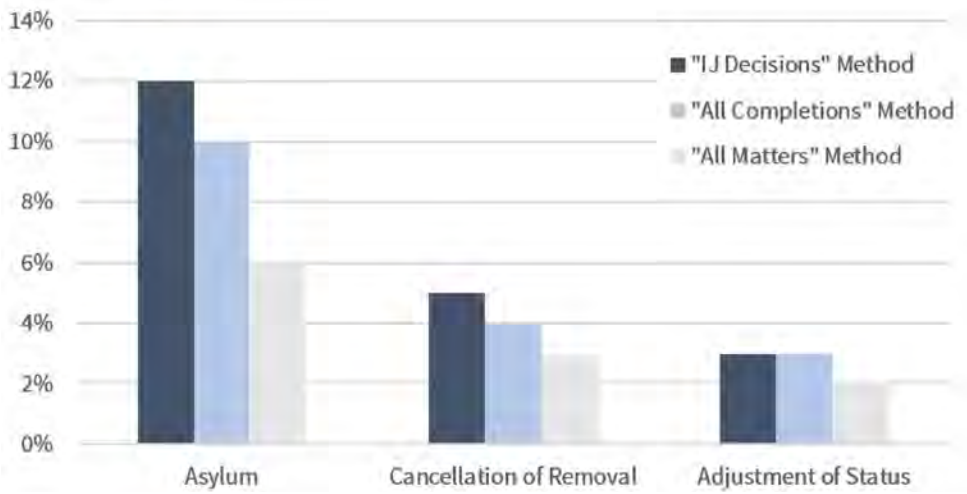
Immigration removal proceedings are best understood as occurring in two stages. In the first stage, the immigration judge decides whether to sustain the charge of removability alleged by DHS in the NTA against the individual, who is referred to in immigration court as the "respondent." If the charge is sustained and the respondent is found to be subject to removal, the respondent can seek relief from removal in the second stage. There are numerous forms of relief in immigration court. The most commonly sought are asylum, cancellation of removal, and adjustment of status. To qualify for relief, a respondent must satisfy the applicable statutory eligibility requirements and convince the judge that the case merits the favorable exercise of discretion. A respondent who wins relief will be able to remain lawfully in the United States.

Across the 11 years of our study period, 48% of individuals in removal proceedings who were not detained sought some form of relief prior to the initial completion in their cases. Among these individuals who sought relief, 72% submitted an asylum application; 28% applied for cancellation of removal for lawful permanent residents or non-lawful permanent residents; and 10% applied for adjustment of status.

Overall, 95% of all litigants with completed or pending applications for relief attended all of their court hearings between 2008 and 2018. This result makes sense: individuals pursuing claims for relief in court have a strong incentive to fight for permission to remain in the United States.

Figure 5 presents the *in absentia* rates for nondetained respondents who sought relief in immigration court, organized by the most common types of relief (asylum, cancellation of removal, and adjustment of status). We present these findings using all three possible measurements for *in absentia* removal: as percentages of all initial immigration judge decisions on the merits, all initial case completions, and all matters. Focusing on the all matters approach, only 6% of those seeking asylum failed to appear during the study period, while only 3% of those seeking cancellation of removal and 2% of those seeking adjustment of status did.

Figure 5: *In Absentia* Removal Rate, by Application Type and Calculation Method (Nondetained Only)



Source: Authors' analysis of Executive Office for Immigration Review data, FY 2008–2018

These findings are noteworthy because they reveal that immigrants seeking relief are highly likely to come to court. Such statistics have not traditionally been released by the federal government, which generally provides only overall rates—not rates among those seeking relief from removal.

Court Location

The *in absentia* rate also varied by court location. Currently, there are more than 60 different cities in the United States that host immigration courts, and approximately 460 immigration judges appointed by the attorney general of the United States. As seen in Table 3, the variation in *in absentia* removal rates by city was striking, ranging from a high of 54% in Harlingen, Texas, to a low of 15% in New York City. The three courts that handled the highest numbers of cases involving individuals who were not detained—San Francisco, Los Angeles, and New York—also had among the lowest *in absentia* removal rates.

Some of these differences across jurisdictions no doubt reflect different migrant populations at these court locations. In column 3 of Table 3 we calculate by jurisdiction the percentage of nondetained initial case completions that involved respondents who were never detained (as opposed to being released from detention). In Harlingen, Texas, for example, only 20% of initial case completions were for never-detained respondents; the remaining 80% were for individuals who were released from detention. Interestingly, however, there was still wide variation in the *in absentia* removal rates across cities with similar proportions of never-detained cases. For example, approximately two-thirds of the dockets in both San Francisco and Dallas were composed of cases of individuals who were never detained, but the *in absentia* removal rate in San Francisco was 19%, compared to 41% in Dallas.

This deviation in appearance rates may also reflect differences in local court practices. For example, some local courts may have better and more timely systems in place for scheduling court hearings and notifying respondents about their upcoming court hearings. A 2017 DOJ on-site review of the immigration court in Baltimore, Maryland, found that the court was so understaffed as caseloads grew that administrators were unable to enter change-of-address paperwork sent to the court into their computer system. This problem means that respondents would not receive their court notices, which the report warned "can result in respondents being ordered removed [for failure to appear in court] through no fault of their own." As our data reveal, 33% of respondents in the Baltimore court were ordered removed for failure to appear.

Table 3: *In Absentia* Removal as a Percentage of Initial Case Completions, by Court Location (Nondetained Only)

City	Initial Case Completions	Never-Detained (% of total)	Active IJs (2008—2018)	*In Absentia* Rate
Harlingen, TX	16,535	20%	8	54%
Houston, TX	46,691	56%	17	46%
New Orleans, LA	17,633	53%	12	45%
Charlotte, NC	36,619	78%	4	44%
San Antonio, TX	26,444	19%	16	42%
Dallas, TX	34,193	69%	9	41%
Chicago, IL	41,253	60%	13	38%
Memphis, TN	26,225	75%	7	36%
Atlanta, GA	37,845	66%	10	35%
Arlington, VA	41,022	67%	15	33%
Baltimore, MD	33,407	76%	9	33%
Orlando, FL	39,334	79%	9	29%
Philadelphia, PA	20,015	73%	8	28%
Kansas City, MO	17,862	57%	13	28%
Cleveland, OH	14,423	60%	11	28%
Newark, NJ	30,641	65%	18	27%
Miami, FL	85,383	77%	37	26%
Boston, MA	33,517	73%	12	24%
Denver, CO	18,722	57%	10	23%
Los Angeles, CA	135,393	74%	54	23%
Seattle, WA	22,113	61%	5	19%
San Francisco, CA	59,257	68%	31	19%
San Diego, CA	18,583	50%	10	17%
Phoenix, AZ	25,140	42%	5	16%
New York, NY	149,444	76%	48	15%

Source: Authors' analysis of Executive Office for Immigration Review data, FY 2008–2018

Another court practice that is associated with whether respondents came to court is the length of delay between the issuance of the NTA and the initial court date. Looking only at all initial case completions among never detained, we found that the average time between the filing of the NTA and the initial hearing was 239 days for cases that ended with *in absentia* orders. By comparison, on average there were only 167 days between the filing of the NTA and the first hearing in never-detained cases that did not end with *in absentia* removals. The median number of days showed similar patterns: 153 days median for cases ending *in absentia*, compared to 101 days median for cases not ending *in absentia*. This finding suggests that, on average, long delays can make it harder for people to receive proper notice, remember their court hearings, and remain in contact with the court.

The availability of counsel in different jurisdictions may be an additional contributing factor to variation in failures to appear. In previous work, we found that some cities have very few practicing immigration attorneys. These problems were most acute in smaller cities where detained courts tend to be located. For example, we found that Lumpkin, Georgia, where the Stewart Detention Center is located did not have a single practicing immigration lawyer in 2015, and Oakdale, Louisiana, had only four. As a result, the rate of

Notably, those cities with the highest *in absentia* removal rates using the all case completions method also had the lowest representation rates (Table 3). For example, in Harlingen, Texas, where 54% of nondetained respondents were ordered removed for failing to appear, only 41% of nondetained respondents had counsel. In sharp contrast, 85% of nondetained respondents in New York City's immigration court had counsel, and only 15% were removed for not appearing in court.

In summary, attorney representation, seeking relief, and court assignment were all associated with variation in *in absentia* removal rates. Individuals who filed claims for relief (such as asylum or cancellation of removal) were very unlikely to miss court: 95% attended all of their court hearings over the 11 years of our study in pending and completed nondetained cases. Those who obtained lawyers also almost always came to court: 96% attended all court hearings in pending and completed nondetained cases. In addition, the prevalence of *in absentia* removals varied widely based on court location, ranging from a low of 15% of all initial case completions in New York City, to a high of 54% in Harlingen, Texas.

Conclusion

A key insight of this report is that the method chosen for measuring failures to appear in court matters. As we have set forth, the method adopted by the government to measure annual rates of *in absentia* removals—as a percentage of initial immigration judge decisions on the merits—ignores a large number of court cases in which respondents have not missed any court hearings. In particular, the government's measurement ignores cases that are administratively closed, an essential tool that has been used by immigration judges over the past decade to remove cases indefinitely from the immigration court's docket. The government's measurement also ignores the historically high number of backlogged cases pending in immigration courts today. These backlogs matter because nondetained deportation cases now take many court hearings and several years to resolve, and during this time immigrants continue to appear for their court hearings. This report has argued that counting administrative completions and pending cases in the *in absentia* removal measurement is a necessary complement to the government's measurement that enhances public understanding of the rate at which noncitizens are complying with their court dates. We recommend that future statistical reporting by EOIR include these measurements.

The analysis of over a decade of government data presented here also has immediate relevance to the consideration of policy questions in which statistics on failures to appear in court play a central role. The findings presented in this report are particularly important as the new administration of President Joe Biden considers how to reform the immigration system, including the immigration courts. The "timely and fair" adjudication of asylum and other cases by immigration judges is a vital component of the Biden plan "for securing our values as a nation of immigrants."

In particular, this report supports four meaningful policy reforms:

1. reducing reliance on detention and programs such as the Migrant Protection Protocols (MPP) that keep asylum seekers in Mexico while awaiting court hearings;
2. ensuring access to counsel for individuals in removal proceedings;
3. reforming the *in absentia* law and enhancing judicial training; and
4. establishing an independent Article I immigration court.

First, our finding that the vast majority of nondetained respondents attended their court hearings supports releasing far more people from custody rather than creating stricter detention rules and expanded detention capacity. Further improvement in court appearance rates could also be attained by learning from the proven success of other court systems in providing reminder calls, postcards, and text messages with the accurate time and date of the hearing. In addition, ICE could ensure that individuals who are scheduled for agency check-ins are educated on the court process and provided transportation assistance to court if necessary. Our analysis showing that asylum seekers are very likely to attend their court hearings similarly undermines arguments that asylum seekers should be prevented from entering the country out of a fear they will not come to court.

Second, further enhancements in appearance rates could be fostered by expanding funding for pro bono lawyers and know-your-rights programs. Our data show that individuals with attorneys have near-perfect attendance rates. Over the 11 years of our study, 96% of represented individuals in completed or pending courts attended all of their court hearings (Figure 4).

Third, this report's findings support giving immigration judges greater independence and training to give individuals a second chance to come to court. Our independent analysis of federal data reveals that in those cases where individuals were given another opportunity to come to court, more than half did show up at the next hearing. One significant reform along these lines would be to amend the immigration law to give judges greater discretion to provide immigrants more chances to come to court, as the law allowed prior to 1990. Even if the law is not changed, EOIR could work to train judges to more carefully scrutinize notice issues at the first hearing to ensure that proper notice was provided before issuing any removal orders, making sure that DHS has met its burden to prove by clear, unequivocal, and convincing evidence that a person has received proper notice.

Finally, this report supports the creation of an independent structure for the immigration courts. The federal tax and bankruptcy courts provide precedent for creating specialized federal courts under Article I of the United States Constitution. Such an independent court structure would help to reduce the prevalence of unwarranted *in absentia* removal orders by giving immigration judges more authority over their dockets and individual case decisions. As an independent court, judges would feel less pressure to meet case quotas and approve removal orders, allowing them to focus proper attention on notice deficiencies. Judges would also have more flexibility to use court continuances to give respondents further opportunity to come to court.

Endnotes

1. The findings in this report were first published in Ingrid Eagly and Steven Shafer, "Measuring *In Absentia* Removal in Immigration Court," *University of Pennsylvania Law Review* 168, no. 4 (2020): 817-876.

2. In the final presidential campaign debate in 2020, President Trump claimed that "less than 1%" of immigrants "come back" to court. "Debate Transcript: Trump, Biden Final Presidential Debate Moderated by Kristen Welker," *USA Today*, October 23, 2020, https://www.usatoday.com/story/news/politics/elections/2020/10/23/debate-transcript-trump-biden-final-presidential-debate-nashville/3740152001/ [https://perma.cc/8VWA-G443]. President Trump made similar remarks throughout his term in office. See e.g., Remarks During a Roundtable Discussion on Tax Reform in Cleveland, Ohio, 2018 Daily Compilation of Presidential Documents, May 5, 2018, 2 ("Our immigration laws are a disgrace . . . . We give them, like, trials. That's the good news. The bad news is, they never show up for the trial. . . . Nobody ever shows up."); Remarks Prior to a Working Lunch with President Kersti Kaljulaid of Estonia, President Raimonds Vejonis of Latvia, and President Dalia Grybauskaite of Lithuania and an Exchange with Reporters, 2018 Daily Compilation of Presidential Documents, April 3, 2018, 3 ("We cannot have people flowing into our country illegally, disappearing, and, by the way, never showing up to court."); Remarks at the American Farm Bureau Federation's 100th Annual Convention in New Orleans, Louisiana, 2019 Daily Compilation of Presidential Documents, January 14, 2019, 6 ("Tell me, what percentage of people come back [for their trial]? Would you say 100 percent? No, you're a little off. Like, how about 2 percent? [Laughter] . . . Two percent come back. Those 2 percent are not going to make America great again, that I can tell you. [Laughter]"); Remarks at the National Federation of Independent Businesses 75th Anniversary Celebration, 2018 Daily Compilation of Presidential Documents, June 19, 2018, 5 ("Do you know, if a person comes in and puts one foot on our ground . . . they let the person go; they say show back up to court in 1 year from now. One year. . . . But here's the thing: That in itself is ridiculous. Like 3 percent come back.").

3. For example, amid claims that migrants will not come to court, President Trump called for $4.2 billion in additional funding to dramatically increase the federal government's capacity to detain immigrants. See "President Donald J. Trump Calls on Congress to Secure Our Borders and Protect the American People," White House, January 8, 2019, https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-calls-congress-secure-borders-protect-american-people/ [https://perma.cc/M7EG-RZ98].

4. On November 9, 2018, President Trump issued a proclamation drastically reducing access to asylum, supported in part by a claim that "many released aliens fail to appear for hearings." Proclamation No. 9822, 83 Fed. Reg. 57,661 (November 9, 2018).

5. See, e.g., "Remarks by President Trump in Cabinet Meeting," White House, January 2, 2019, https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-cabinet-meeting-12/ [https://perma.cc/6WJH-M6J7] (arguing that "[t]he United States needs a physical barrier, needs a wall, to stop illegal immigration" and claiming that without a wall asylum seekers will enter the country and instead of coming to court will "vanish[] and escape[] the law").

6. "Evolution of the U.S. Immigration Court System: Pre-1983," Executive Office for Immigration Review, U.S. Department of Justice, April 30, 2015, https://www.justice.gov/eoir/evolution-pre-1983 [https://perma.cc/QCT8-SHHV].

7. "Evolution of the U.S. Immigration Court System: Post-1983," Executive Office for Immigration Review, U.S. Department of Justice, April 30, 2015, https://www.justice.gov/eoir/evolution-post-1983 [https://perma.cc/ZJF2-VR4J].

8. Immigration and Nationality Act (I.N.A.) § 242(B)(c)(3), 8 U.S.C. § 1252(b) (1988); see also William R. Robie, Chief Immigration Judge, Executive Office for Immigration Review, to All Immigration Judges, Operating Policy and Procedure Memorandum 84-2: Cases in Which Respondents/Applicants Fail to Appear for Hearing, March 7, 1984, 1, http://libguides.law.ucla.edu/ld.php?content_id=38258649 [https://perma.cc/W2WH-WDP9] (describing operating policy and procedures for how immigration judges may proceed if a respondent fails to appear).

9. See Immigration Act of 1990, Pub. L. No. 101-649, § 545(a), 104 Stat. 4978, 5063 (codified as amended at 8 U.S.C. § 1229a(b)(5)(a) (2018)) (providing that any noncitizen "who . . . does not attend a proceeding under section 242, shall be ordered deported under section 242(b)(1) in absentia").

10. The term removal has been used since 1997 to refer to the decision of an immigration judge to order an individual removed from the United States. Prior to April 1997, removal proceedings were separated into distinct procedures for exclusion and deportation. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 308(d)(4)(B), 110 Stat. 3009-546, 3009-585 (amending a section of the immigration law by "striking 'exclusion or deportation' and inserting 'removal'").

11. Executive Office for Immigration Review, U.S. Department of Justice, *FY 2013 Statistics Yearbook*, 2014, Glossary of Terms, 7, https://www.justice.gov/sites/default/files/eoir/legacy/2014/04/16/fy13syb.pdf [https://perma.cc/U3WF-W7S3] [hereinafter *EOIR 2013 Yearbook*].

12. I.N.A. § 240(b)(5)(A), 8 U.S.C. § 1229a(b)(5)(A) (2018); see also 8 C.F.R. § 1003.26 (2019) (defining *in absentia* hearings and identifying factors sufficient to order a respondent deported *in absentia*). EOIR defines an *in absentia order as "[a]n order issued when an immigration judge determines that a removable alien received the required notice about their removal hearing and failed to appear." EOIR 2013 Yearbook*, 7.

13. See generally I.N.A. § 212(a)(6)(B), 8 U.S.C. § 1182(a)(6)(B) (providing that failure to appear without reasonable cause renders a noncitizen inadmissible for five years); I.N.A. § 240(b)(7), 8 U.S.C. § 1229a(b)(7) (stating that failure to appear for a removal hearing bars a noncitizen from relief for ten years).

14. S. Rep. No. 104-48, 32 (1995); see also ibid. ("Congress should consider requiring that all aggravated felons be detained pending deportation. Such a step may be necessary because of the high rate of no-shows for those criminal aliens released on bond."). The resulting mandatory detention rules for those with convictions are codified at I.N.A. § 236(c), 8 U.S.C. § 1226(c).

15. Brief for Petitioners at 19, Demore v. Kim, 538 U.S. 510 (2003) (No. 01-1491), 2002 WL 31016560 (arguing that "more than 20% of criminal aliens who were released on bond or otherwise not kept in custody throughout their deportation proceedings failed to appear for those proceedings").

16. Demore v. Kim, 538 U.S. 510, 519-20 (2003); see also ibid. at 519 ("Once released, more than 20% of deportable criminal aliens failed to appear for their removal hearings.").

17. "Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review," U.S. Department of Justice, October 12, 2017, https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review [https://perma.cc/675Y-TW7U].

18. Ibid. See also "Attorney General Sessions Delivers Remarks on Immigration Enforcement," U.S. Department of Justice, April 11, 2018, https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-immigration-enforcement [https://perma.cc/ZBN7-55FZ] (claiming that "loopholes in our laws [are] being exploited by illegal aliens" who, after release from detention, "simply disappear[]—never show[] up for their hearings in immigration court").

19. In announcing the MPP on December 20, 2018, then-DHS Secretary Kirstjen Nielsen claimed that without the new program asylum seekers would simply "disappear into the United States, where many skip their court dates." U.S. Department of Homeland Security, "Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration," press release, December 20, 2018, https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration [https://perma.cc/ZSS3-3SWB] (internal quotation marks omitted); see also U.S. Department of Homeland Security, "Migrant Protection Protocols," press release, January 24, 2019, https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols [https://perma.cc/KZH4-D3SR] (justifying the Trump administration's MPP program based in part on the claim that migrants released into the country "disappear before an immigration judge can determine the merits of any claim").

20. See, e.g., Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 83 Fed. Reg. 45,486, 45,494 (proposed September 7, 2018) (codified at 8 C.F.R. pts. 212, 236; 45 C.F.R. pt. 410) ("While statistics specific to family units have not been compiled, the reality is that a significant number of aliens who are not in detention either fail to appear at the required proceedings or never actually seek asylum relief, thus remaining illegally in the United States."); see also "Acting Secretary of Homeland Security Kevin K. McAleenan on the DHS-HHS Federal Rule on Flores Agreement," U.S. Department of Homeland Security, August 21, 2019, https://www.dhs.gov/news/2019/08/21/acting-secretary-mcaleenan-dhs-hhs-federal-rule-flores-agreement [https://perma.cc/82YS-V9E4] (quoting the Acting Secretary of Homeland Security Kevin K. McAleenan claiming that the majority of removal orders issued to families have been issued *in absentia*, thus benefitting those with "meritless claims" for asylum).

21. See, e.g., Matter of Lei, 22 I. & N. Dec. 113, 121 (B.I.A. 1998) (Rosenberg, Board Member, concurring in part and dissenting in part) ("It is difficult to imagine what could be more prejudicial to a respondent charged with being deportable from the United States than denial of an opportunity to be present at his deportation hearing where he might provide any defenses to the charges against him, or advance any claims he may have for relief from deportation."); Matter of Villalba-Sinaloa, 21 I. & N. Dec. 842, 847-48 n.2 (B.I.A. 1997) (Rosenberg, Board Member, dissenting) (urging the majority to consider constitutional concerns when interpreting the statutory provision for *in absentia* removal).

22. Failure to appear is often treated in state court systems as a misdemeanor crime to be adjudicated separately from the merits of the underlying case. See, e.g., Ariz. Rev. Stat. Ann. § 13-2506(A)(1), (B) (2019); Cal. Penal Code § 1320(a) (2019).

23. Fed. R. Crim. P. 43(a); see also Crosby v. United States, 506 U.S. 255, 262 (1993) ("The language, history, and logic of Rule 43 support a straightforward interpretation that prohibits the trial *in absentia* of a defendant who is not present at the beginning of trial."). If, however, the defendant fails to appear after already appearing at the beginning of the trial, the trial may continue under certain circumstances. Fed. R. Crim. P. 43(c).

24. See Jennifer Lee Koh, "Removal in the Shadows of Immigration Court," *Southern California Law Review* 90, no. 2 (2017): 181, 218 (explaining that unlike in criminal court, a respondent's failure to appear in immigration court constitutes an "automatic loss for the noncitizen").

25. See generally "Statistics Yearbook," Executive Office for Immigration Review, U.S. Department of Justice, updated August 30, 2019, https://www.justice.gov/eoir/statistical-year-book [https://perma.cc/X6GZ-BGQ4] (containing links to Statistics Yearbooks from fiscal year 2000 through fiscal year 2018).

26. We note that the EOIR's 2018 Yearbook included measurements of total *in absentia* removals, but for the first time eliminated a calculation of the *in absentia* removal rate. Compare Executive Office for Immigration Review, U.S. Department of Justice, *Statistics Yearbook: Fiscal Year 2018*, 2019, 33, https://www.justice.gov/eoir/file/1198896/download [https://perma.cc/EVP7-SN2D] (providing data on the number of *in absentia* orders issued in fiscal years 2014–2018), with Executive Office for Immigration Review, U.S. Department of Justice, *Statistics Yearbook: Fiscal Year 2017*, 2018, 33, https://www.justice.gov/eoir/page/file/1107056/download [https://perma.cc/DC4B-YUDQ] (reporting *in absentia* rates in addition to the numbers of *in absentia* orders).

27. The authors acknowledge the foundational work of other researchers that has also contributed to public understanding of appearance rates in immigration court, including the Transactional Records Access Clearinghouse (TRAC), the Catholic Legal Immigration Network, the Asylum Seeker Advocacy Project, and the Vera Institute of Justice. See, e.g., "Details on Deportation Proceedings in Immigration Court," TRAC Immigration, updated December 2020, https://trac.syr.edu/phptools/immigration/nta [https://perma.cc/D2KV-UVQ5] (select "Hearing Attendance," "Immigration Court State," and "Month and Year Case Began," and click link for "Not Present at Last Hearing (Absentia Decision)") (organizing *in absentia* totals by state and time period); "Priority Immigration Court Cases: Women with Children," TRAC Immigration, updated May 2018, https://trac.syr.edu/phptools/immigration/mwc [https://perma.cc/6THA-MWUX]; Asylum Seeker Advocacy Project and Catholic Legal Immigration Network, Inc., *Denied a Day in Court: The Government's Use of In Absentia Removal Orders Against Families Seeking Asylum*, 2019, 15, https://asylumadvocacy.org/wp-content/uploads/2018/04/Denied-a-Day-in-Court-2019-Update.pdf [https://perma.cc/96EB-CTR8] [hereinafter *Denied a Day in Court*] (discussing how families may miss court hearings in part due to lack of notice); Eileen Sullivan, et al., *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program* (Vera Institute of Justice, 2000), 33, 36, https://www.vera.org/publications/testing-community-supervision-for-the-ins-an-evaluation-of-the-appearance-assistance-program [https://perma.cc/2AWQ-66ML] (finding that roughly 90% of noncitizens who were supervised appeared in court, compared with 71% of nonparticipants); Vera Institute of Justice, "Evidence Shows That Most Immigrants Appear for Immigra-

tion Court Hearings," October 2020, https://www.vera.org/publications/immigrant-court-appearance-fact-sheet [https://perma.cc/LD7B-25TG] (summarizing research on appearance rates).

28. These data were made available for download to researchers by EOIR. See "Executive Office for Immigration Review," U.S. Department of Justice, accessed January 23, 2021, https://www.justice.gov/eoir [https://perma.cc/L2AV-VLYR] (providing a link to download court data under the heading "EOIR Case Data"). We analyzed data tables made available by EOIR as of November 2, 2018.

29. EOIR defines an "initial case completion" as the first dispositive decision issued by the immigration judge in a case. *EOIR 2013 Yearbook*, 7. Under this approach, EOIR does not count decisions to change venue or transfer a case as an initial case completion.

30. Ibid., P1 (calculating the "*in absentia* rate" as the percentage of initial immigration judge completions that end in *in absentia* removal); see also Executive Office for Immigration Review, U.S. Department of Justice, *FY 2014 Statistics Yearbook*, 2015, P1, https://www.justice.gov/sites/default/files/eoir/pages/attachments/2015/03/16/fy14syb.pdf [https://perma.cc/U8DF-4JVS]; Executive Office for Immigration Review, U.S. Department of Justice, *FY 2015 Statistics Yearbook*, 2016, P1, https://www.justice.gov/eoir/page/file/fysb15/download [https://perma.cc/WH27-CH6J]; Executive Office for Immigration Review, U.S. Department of Justice, *FY 2016 Statistics Yearbook*, 2017, B2 & tbl.4, https://www.justice.gov/eoir/page/file/fysb16/download [https://perma.cc/VT6Z-P5UM]. Note that while the EOIR 2017 Yearbook uses a similar approach, EOIR narrowed its definition of relevant case types and its calculation of relevant immigration judge completions.

31. Brian M. O'Leary, Chief Immigration Judge, Executive Office for Immigration Review, to All Immigration Judges, All Court Administrators, All Attorney Advisors and Judicial Law Clerks, and All Immigration Court Staff, Operating Policies and Procedures Memorandum 13-01: Continuances and Administrative Closure 2-3, March 7, 2013, https://libguides.law.ucla.edu/ld.php?content_id=38258569 [https://perma.cc/643J-CE6J].

32. Ibid., 2 (instructing immigration judges to grant requests for administrative closure "in appropriate circumstances"); see also Executive Office for Immigration Review, U.S. Department of Justice, *Immigration Court Practice Manual*, 2018, 86, https://www.justice.gov/eoir/page/file/1084851/download [https://perma.cc/57QL-C32K] ("Once a case has been administratively closed, the court will not take any action on the case until a request to recalendar is filed by one of the parties."). In 2018, the Attorney General issued a decision to greatly restrict the practice of administrative closure. Castro-Tum, 27 I. & N. Dec. 271 (A.G. 2018). However, on August 29, 2019, the Fourth Circuit Court of Appeals abrogated *Castro-Tum*, finding that the immigration law unambiguously permits immigration judges to control their own dockets. Romero v. Barr, 937 F.3d 282, 286, 292-94 (4th Cir. 2019).

33. See U.S. Government Accountability Office, *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*, GAO-17-438, 2017, 22, https://www.gao.gov/assets/690/685022.pdf [https://perma.cc/54GQ-LE2C] (finding that EOIR's case backlog more than doubled between fiscal years 2006 and 2015).

34. Transcript of Oral Argument at 52, Pereira v. Sessions, 138 S. Ct. 2105 (2018) (No. 17-459) (Frederick Liu, Assistant to the Solicitor General, Department of Justice, responding to Justice Anthony M. Kennedy).

35. Each time a hearing ends, the immigration court enters an "adjournment code" that describes the reason why the hearing was adjourned. One of these codes indicates that notice was sent or served incorrectly. See MaryBeth Keller, Chief Immigration Judge, Executive Office for Immigration Review, to All Immigration Judges, All Court Administrators, All Attorney Advisors and Judicial Law Clerks, All Support Staff, Operating Policies and Procedures Memorandum 17-02: Definitions and Use of Adjournment, Call-Up, and Case Identification Codes, October 5, 2017, 3, https://libguides.law.ucla.edu/ld.php?content_id=38258359 [https://perma.cc/LTH2-DE7A] (including Adjournment Code 10, to be used when an "[a]ttorney and/or alien does not appear at the scheduled hearing due to the notice of hearing containing inaccurate information, or, alien/attorney appears but has not received adequate notice of hearing of the proceedings").

36. Analyzing never-detained cases, we found that 11,121 out of a total of 1,285,947 initial hearings, or .86%, were adjourned due to lack of notice. This calculation measures the number of hearings that were adjourned with code 10, "Notice Sent/Served Incorrectly." Use of adjournment code 10 in the EOIR data dates back to the 1980s.

37. Analyzing both completed and pending cases, we found that 5,981 out of the 11,121 hearings adjourned for lack of notice at the initial-hearing stage did not end *in absentia*, compared to 5,140 that did result in an *in absentia* order.

38. I.N.A. § 240(b)(5)(A), 8 U.S.C. § 1229a(b)(5)(A) (2018).

39. Of the 1,155,469 initial completions in our All Custody Removal Sample, only 4,344 cases (0.37%) were excluded from the analysis due to lack of hearing-level data.

40. I.N.A. § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C).

41. Of the 316,089 cases where initial completion occurred through an *in absentia* removal order, 18% (n = 56,877) of those respondents sought to reopen their cases by filing motions to reopen.

42. Judges granted 84% of these motions (n = 47,952). Overall, 15% of those ordered removed *in absentia* had a successful motion to reopen (n = 47,952 of 316,089).

43. A motion to reopen based on lack of notice of the hearing can be brought at any time. See I.N.A. § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii) (2019) (noting that an alien can file a motion to reopen at "any time"). Of course, individuals who do not obtain counsel or otherwise learn about the motion to reopen process may never bring such a motion in court. Additionally, although cases with *in absentia* orders may be reopened, *in absentia* orders cannot be appealed. Matter of Guzman-Arguera, 22 I. & N. Dec. 722 (B.I.A. 1999) (holding that the Board of Immigration Appeals has no jurisdiction over direct appeals of *in absentia* orders).

44. See I.N.A. § 240(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A) ("[T]he alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings."); Orantes-Hernandez v. Thornburgh, 919 F.2d 549, 554 (9th Cir. 1990) ("[A]liens have a due process right to obtain counsel of their choice at their own

expense.").

45. Of the 316,089 *in absentia* orders issued in removal proceedings at the initial case completion over the 11-year period of our study, only 47,350 were represented by counsel.

46. Of the 839,380 immigration judge initial case completions not issued *in absentia* in removal proceedings over the 11-year period of our study, 719,226 were represented by counsel.

47. Of the 47,952 respondents who successfully reopened their cases after an initial *in absentia* order, 40,303 were represented by counsel at their most recent proceeding.

48. Individuals motivated to fight their case may also be more likely to seek out an attorney. Yet serious notice deficits and confusion about immigration court would suggest that even motivated individuals may not get the chance to engage the process.

49. Persons released awaiting their immigration court hearings are often told to report periodically to a deportation officer.

50. See, e.g., Tatiana Sanchez, "Confusion Erupts as Dozens Show Up for Fake Court Date at SF Immigration Court," *San Francisco Chronicle*, January 31, 2019, https://www.sfchronicle.com/bayarea/article/Confusion-erupts-as-dozens-show-up-for-fake-13579045.php [https://perma.cc/BHJ2-CQ3X] (reporting that some attorneys contend that ICE is sending notices to appear "with court dates it knows are not real").

51. See *Denied a Day in Court*, 15.

52. Mark Pasierb, Chief Clerk of Immigration Court, to All Immigration Judges, All Court Administrators, All Attorney Advisors and Judicial Law Clerks, and All Immigration Court Staff, memorandum, June 17, 2008, 6, https://libguides.law.ucla.edu/ld.php?content_id=52153727 [https://perma.cc/3CUT-QHWZ] ("EOIR-33/ICs are accepted even if no Notice to Appear has been filed.").

53. See, e.g., "AILA-EOIR Liaison Meeting Agenda Questions and Answers" (October 21, 2008), 3, https://www.justice.gov/sites/default/files/eoir/legacy/2009/01/29/eoiraila102108.pdf [https://perma.cc/D8SK-8NEL] (reporting rejections of changes of address forms in cases where the notice to appear had not yet been filed with the court).

54. Asylum is a form of discretionary relief available to individuals who qualify as refugees by demonstrating past persecution or a "well-founded fear of persecution" based on the noncitizen's race, religion, nationality, political opinion, and/or membership in a particular social group. I.N.A. § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A) (2018); I.N.A. § 208(b)(1)(A), 8 U.S.C. § 1158(b)(1)(A). Applicants for asylum may also be considered for relief under withholding of removal and protection under the United Nations Convention Against Torture by satisfying more stringent standards. See I.N.A. § 241(b)(3), 8 U.S.C. § 1231(b)(3) (providing statutory requirements for demonstrating eligibility for withholding of removal); 8 C.F.R. §§ 1208.16, 1208.17, 1208.18 (discussing the standards for withholding of removal and deferral of removal under the Convention Against Torture).

55. Cancellation of removal is a form of relief available to both lawful permanent residents and undocumented individuals who have lived for a minimum number of years in the United States and who satisfy certain requirements. I.N.A. § 240A(a)-(b), 8 U.S.C. § 1229b(a)-(b).

56. Adjustment of status is a form of relief available to any noncitizen who is determined eligible for lawful permanent resident status based on a visa petition approved by the United States Citizenship and Immigration Services. I.N.A. § 245, 8 U.S.C. § 1255.

57. I.N.A. § 240(c)(4), 8 U.S.C. § 1229a(c)(4).

58. EOIR Form I-589 includes an application for asylum and withholding of removal, and also offers the opportunity for an application of withholding of removal under the Convention Against Torture. See U.S. Citizenship and Immigration Services, Department of Homeland Security, and Executive Office for Immigration Review, U.S. Department of Justice, "I-589, Application for Asylum and for Withholding of Removal," updated September 30, 2019, https://www.uscis.gov/i-589 [https://perma.cc/6MJU-W5NY] (listing the information that an applicant is required to provide to apply for asylum and withholding of removal). We use the term "asylum application" to refer to all three forms of relief.

59. For purposes of our analysis, we did not consider voluntary departure to be a form of relief.

60. During the study period, there were 829,083 completed and pending cases with applications for relief on file (n = 549,053 initial completions with such applications, and n = 431,752 initial immigration judge decisions with filed applications). Of these individuals, only 43,250 had an *in absentia* removal order, leading to *in absentia* rates of 5% for all matters, 8% for initial case completions, and 10% for immigration judge decisions.

61. See Oren Root, National Director, Appearance Assistance Program, Vera Institute of Justice, "The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Removal Proceedings," April 2000, 2, https://www.vera.org/publications/appearance-assistance-program-alternative-to-detention [https://perma.cc/T7FW-WXYA] (arguing that individuals with claims for relief are "good candidates for supervised release, as they have an incentive to appear at their hearings").

62. In 2018, EOIR began to occasionally report in press releases and other documents statistics on *in absentia* rate among those seeking asylum. See, e.g., U.S. Department of Justice, "Executive Office for Immigration Review Releases Court Statistics, Announces Transparency Initiative," press release, May 9, 2018, https://www.justice.gov/opa/pr/executive-office-immigration-review-releases-court-statistics-announces-transparency [https://perma.cc/T3EA-3JAK].

63. "EOIR Immigration Court Listing," Executive Office of Immigration Review, U.S. Department of Justice, updated January 22, 2001, https://www.justice.gov/eoir/eoir-immigration-court-listing [https://perma.cc/T69X-KN6C].

64. "Office of the Chief Immigration Judge," Executive Office of Immigration Review, U.S. Department of Justice, updated December 7, 2020, https://www.justice.gov/eoir/office-of-the-chief-immigration-judge [https://perma.cc/GWA9-P86E].

65. Ani Ucar, "Leaked Report Shows the Utter Dysfunction of Baltimore's Immigration Court," *Vice News*, October 3, 2018, https://news.vice.com/en_us/article/xw94ea/leaked-report-shows-the-utter-dysfunction-of-baltimores-immigration-court [https://

perma.cc/K6J6-DGWT].

66. Ibid. (internal quotation marks omitted).

67. To address the potential relationship between delays in court scheduling and *in absentia* removal, we narrowed our analysis from all initial case completions to only never-detained initial case completions with no prior change of venue or transfer (*n* = 745,031 of 1,155,469). Of the remaining 745,031 initial case completions, we excluded 4,678 cases (less than 1%) with missing or erroneous NTAs. Finally, to focus on more active cases, we narrowed the analysis further, excluding the 3% of remaining cases (*n* = 21,638) with NTAs dated prior to 2006. By taking these steps, we attempt to better isolate the potential impact of delays in receiving a hearing notice on court appearances.

68. Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no. 1 (2015): 42.

69. Ibid., 40 ("In the busiest twenty nondetained court jurisdictions, representation rates reached as high as 87% in New York City and 78% in San Francisco. At the low end of these twenty high-volume nondetained jurisdictions, only 47% of immigrants in Atlanta and Kansas City secured representation.").

70. Ingrid Eagly and Steven Shafer, "Measuring *In Absentia* Removal in Immigration Court," *University of Pennsylvania Law Review* 168, no. 4 (2020): 870–71 & fig.6.

71. This high representation rate reflects the 2014 establishment of a project known as the New York Immigrant Family Unity Project, which provides free legal representation to any individual in New York's immigration court who is unable to afford counsel. "New York Immigrant Family Unity Project," Bronx Defenders, accessed January 23, 2021, https://www.bronxdefenders.org/programs/new-york-immigrant-family-unity-project [https://perma.cc/DZ26-62X3].

72. Ingrid Eagly and Steven Shafer, "Measuring *In Absentia* Removal in Immigration Court," *University of Pennsylvania Law Review* 168, no. 4 (2020): 870–71 & fig.6.

73. Ibid., 869.

74. Ibid., 865.

75. Ibid., 869.

76. "The Biden Plan for Securing Our Values as a Nation of Immigrants," Biden-Harris, accessed January 23, 2021, https://joebiden.com/immigration/ [https://perma.cc/Y2Y9-HWVD].

77. Alissa Fishbane, Aurelie Ouss, and Anuj K. Shah, "Behavioral Nudges Reduce Failure to Appear for Court," *Science* 370, no. 6517 (2020).

78. See note 37, *supra*.

79. See generally Iris Gomez, "The Consequences of Nonappearance: Interpreting New Section 242B of the Immigration and Nationality Act," *San Diego Law Review* 30, no. 1 (1993): 75, 78-80 (explaining how the immigration law gave judges greater discretion on how to treat missed court appearances prior to 1990).

80. In 2018, Senators Mazie K. Hirono, Kirsten Gillibrand, and Kamala Harris introduced the Immigration Court Improvement Act, a bill that would insulate immigration judges from top-down political interference. "Sen. Mazie K. Hirono, Hirono, Gillibrand, Harris Introduce Bill to Insulate Immigration Judges from Political Interference," press release, April 18, 2018, 1, https://hirono.senate.gov/news/press-releases/hirono-gillibrand-harris-introduce-bill-to-insulate-immigration-judges-from-political-interference [https://perma.cc/CPR4-748M].

81. The Federal Bar Association (FBA) recently completed a report proposing model legislation to establish an Article I immigration court. See Federal Bar Association, *Congress Should Establish an Article I Immigration Court*, accessed January 23, 2021, https://www.fedbar.org/government-relations/policy-priorities/article-i-immigration-court [https://perma.cc/CQ5D-C2AU]. The FBA proposal is supported by the union representing immigration judges, the National Association of Immigration Judges. See Hon. A. Ashley Tabaddor, President, National Association of Immigration Judges, to Elizabeth Stevens, President, Federal Bar Association, Immigration Law Section, letter, March 15, 2018, https://www.naij-usa.org/images/uploads/publications/NAIJ_endorses_FBA_Article_I_proposal_3-15-18.pdf [https://perma.cc/LC29-BVH3] (endorsing the Federal Bar Association's proposed legislation due to the "proven . . . conflicts of interest" that arise when immigration courts can be used as "political pawn[s] by various administrations on both sides of the aisle").

82. Although the creation of an Article I immigration court would solve many problems within the court system, as Amit Jain has warned, such a change must be accompanied by other procedural and substantive forms. Amit Jain, "Bureaucrats in Robes: Immigration 'Judges' and the Trappings of 'Courts,'" *Georgetown Immigration Law Journal* 33, no. 2 (2019): 324.

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

January 20, 2021

MEMORANDUM FOR: Troy Miller
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection

Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement

FROM: David Pekoske
Acting Secretary

SUBJECT: **Suspension of Enrollment in the Migrant Protection Protocols Program**

Effective January 21, 2021, the Department will suspend new enrollments in the Migrant Protection Protocols (MPP), pending further review of the program. Aliens who are not already enrolled in MPP should be processed under other existing legal authorities.

Federal Register
Vol. 86, No. 23
Friday, February 5, 2021

Presidential Documents

Title 3—

The President

Executive Order 14010 of February 2, 2021

Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.,* it is hereby ordered as follows:

Section 1. *Policy.* For generations, immigrants have come to the United States with little more than the clothes on their backs, hope in their hearts, and a desire to claim their own piece of the American Dream. These mothers, fathers, sons, and daughters have made our Nation better and stronger.

The United States is also a country with borders and with laws that must be enforced. Securing our borders does not require us to ignore the humanity of those who seek to cross them. The opposite is true. We cannot solve the humanitarian crisis at our border without addressing the violence, instability, and lack of opportunity that compel so many people to flee their homes. Nor is the United States safer when resources that should be invested in policies targeting actual threats, such as drug cartels and human traffickers, are squandered on efforts to stymie legitimate asylum seekers.

Consistent with these principles, my Administration will implement a multipronged approach toward managing migration throughout North and Central America that reflects the Nation's highest values. We will work closely with civil society, international organizations, and the governments in the region to: establish a comprehensive strategy for addressing the causes of migration in the region; build, strengthen, and expand Central and North American countries' asylum systems and resettlement capacity; and increase opportunities for vulnerable populations to apply for protection closer to home. At the same time, the United States will enhance lawful pathways for migration to this country and will restore and strengthen our own asylum system, which has been badly damaged by policies enacted over the last 4 years that contravened our values and caused needless human suffering.

Sec. 2. *United States Strategies for Addressing the Root Causes of Irregular Migration and for Collaboratively Managing Migration in the Region.* (a) The Assistant to the President for National Security Affairs (APNSA), in coordination with the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the heads of any other relevant executive departments and agencies, shall as soon as possible prepare:

(i) the United States Strategy for Addressing the Root Causes of Migration (the ''Root Causes Strategy''); and

(ii) the United States Strategy for Collaboratively Managing Migration in the Region (the ''Collaborative Management Strategy'').

(b) The Root Causes Strategy shall identify and prioritize actions to address the underlying factors leading to migration in the region and ensure coherence of United States Government positions. The Root Causes Strategy shall take into account, as appropriate, the views of bilateral, multilateral, and private sector partners, as well as civil society, and it shall include proposals to:

(i) coordinate place-based efforts in El Salvador, Guatemala, and Honduras (the ''Northern Triangle'') to address the root causes of migration, including by:

(A) combating corruption, strengthening democratic governance, and advancing the rule of law;

(B) promoting respect for human rights, labor rights, and a free press;

(C) countering and preventing violence, extortion, and other crimes perpetrated by criminal gangs, trafficking networks, and other organized criminal organizations;

(D) combating sexual, gender-based, and domestic violence; and

(E) addressing economic insecurity and inequality;

(ii) consult and collaborate with the Office of the United States Trade Representative, the Secretary of Commerce, and the Secretary of Labor to evaluate compliance with the Dominican Republic-Central America Free Trade Agreement to ensure that unfair labor practices do not disadvantage competition; and

(iii) encourage the deployment of Northern Triangle domestic resources and the development of Northern Triangle domestic capacity to replicate and scale efforts to foster sustainable societies across the region.

(c) The Collaborative Management Strategy shall identify and prioritize actions to strengthen cooperative efforts to address migration flows, including by expanding and improving upon previous efforts to resettle throughout the region those migrants who qualify for humanitarian protection. The Collaborative Management Strategy should focus on programs and infrastructure that facilitate access to protection and other lawful immigration avenues, in both the United States and partner countries, as close to migrants' homes as possible. Priorities should include support for expanding pathways through which individuals facing difficult or dangerous conditions in their home countries can find stability and safety in receiving countries throughout the region, not only through asylum and refugee resettlement, but also through labor and other non-protection-related programs. To support the development of the Collaborative Management Strategy, the United States Government shall promptly begin consultations with civil society, the private sector, international organizations, and governments in the region, including the Government of Mexico. These consultations should address:

(i) the continued development of asylum systems and resettlement capacities of receiving countries in the region, including through the provision of funding, training, and other support;

(ii) the development of internal relocation and integration programs for internally displaced persons, as well as return and reintegration programs for returnees in relevant countries of the region; and

(iii) humanitarian assistance, including through expansion of shelter networks, to address the immediate needs of individuals who have fled their homes to seek protection elsewhere in the region.

Sec. 3. *Expansion of Lawful Pathways for Protection and Opportunity in the United States.* (a) The Secretary of State and the Secretary of Homeland Security shall promptly review mechanisms for better identifying and processing individuals from the Northern Triangle who are eligible for refugee resettlement to the United States. Consideration shall be given to increasing access and processing efficiency. As part of this review, the Secretary of State and the Secretary of Homeland Security shall also identify and implement all legally available and appropriate forms of relief to complement the protection afforded through the United States Refugee Admissions Program. The Secretary of State and Secretary of Homeland Security shall submit a report to the President with the results of the review.

(b) As part of the review conducted pursuant to section 3(a) of this order, the Secretary of Homeland Security shall:

(i) consider taking all appropriate actions to reverse the 2017 decision rescinding the Central American Minors (CAM) parole policy and terminating the CAM Parole Program, *see* ''Termination of the Central American Minors Parole Program,'' 82 FR 38,926 (August 16, 2017), and consider initiating appropriate actions to reinstitute and improve upon the CAM Parole Program; and

(ii) consider promoting family unity by exercising the Secretary's discretionary parole authority to permit certain nationals of the Northern Triangle who are the beneficiaries of approved family-sponsored immigrant visa petitions to join their family members in the United States, on a case-by-case basis.

(c) The Secretary of State and the Secretary of Homeland Security shall promptly evaluate and implement measures to enhance access for individuals from the Northern Triangle to visa programs, as appropriate and consistent with applicable law.

Sec. 4. *Restoring and Enhancing Asylum Processing at the Border.* (a) *Resuming the Safe and Orderly Processing of Asylum Claims at United States Land Borders.*

(i) The Secretary of Homeland Security and the Director of the Centers for Disease Control and Prevention (CDC), in coordination with the Secretary of State, shall promptly begin consultation and planning with international and non-governmental organizations to develop policies and procedures for the safe and orderly processing of asylum claims at United States land borders, consistent with public health and safety and capacity constraints.

(ii) The Secretary of Homeland Security, in consultation with the Attorney General, the Secretary of Health and Human Services (HHS), and the Director of CDC, shall promptly begin taking steps to reinstate the safe and orderly reception and processing of arriving asylum seekers, consistent with public health and safety and capacity constraints. Additionally, in furtherance of this goal, as appropriate and consistent with applicable law:

(A) The Secretary of HHS and the Director of CDC, in consultation with the Secretary of Homeland Security, shall promptly review and determine whether termination, rescission, or modification of the following actions is necessary and appropriate: ''Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists,'' 85 FR 65,806 (October 13, 2020); and ''Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes,'' 85 FR 56,424 (September 11, 2020) (codified at 42 CFR 71.40).

(B) The Secretary of Homeland Security shall promptly review and determine whether to terminate or modify the program known as the Migrant Protection Protocols (MPP), including by considering whether to rescind the Memorandum of the Secretary of Homeland Security titled ''Policy Guidance for Implementation of the Migrant Protection Protocols'' (January 25, 2019), and any implementing guidance. In coordination with the Secretary of State, the Attorney General, and the Director of CDC, the Secretary of Homeland Security shall promptly consider a phased strategy for the safe and orderly entry into the United States, consistent with public health and safety and capacity constraints, of those individuals who have been subjected to MPP for further processing of their asylum claims.

(C) The Attorney General and the Secretary of Homeland Security shall promptly review and determine whether to rescind the interim final rule titled ''Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims,'' 83 FR 55,934 (November 9,

2018), and the final rule titled ''Asylum Eligibility and Procedural Modifications,'' 85 FR 82,260 (December 17, 2020), as well as any agency memoranda or guidance that were issued in reliance on those rules.

(D) The Attorney General and the Secretary of Homeland Security shall promptly review and determine whether to rescind the interim final rule titled ''Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,'' 84 FR 63,994 (November 19, 2019), as well as any agency memoranda or guidance issued in reliance on that rule. In the interim, the Secretary of State shall promptly consider whether to notify the governments of the Northern Triangle that, as efforts to establish a cooperative, mutually respectful approach to managing migration across the region begin, the United States intends to suspend and terminate the following agreements:

(1) ''Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims,'' 84 FR 64,095 (July 26, 2019).

(2) ''Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims,'' 85 FR 83,597 (September 20, 2019).

(3) ''Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Claims,'' 85 FR 25,462 (September 25, 2019).

(E) The Secretary of Homeland Security shall promptly cease implementing the ''Prompt Asylum Case Review'' program and the ''Humanitarian Asylum Review Program'' and consider rescinding any orders, rules, regulations, guidelines or policies implementing those programs.

(F) The following Presidential documents are revoked:

(1) Executive Order 13767 of January 25, 2017 (Border Security and Immigration Enforcement Improvements).

(2) Proclamation 9880 of May 8, 2019 (Addressing Mass Migration Through the Southern Border of the United States).

(3) Presidential Memorandum of April 29, 2019 (Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System).

(4) Presidential Memorandum of April 6, 2018 (Ending ''Catch and Release'' at the Border of the United States and Directing Other Enhancements to Immigration Enforcement).

(5) Presidential Memorandum of April 4, 2018 (Securing the Southern Border of the United States).

(G) The Secretary of State, the Attorney General, and the Secretary of Homeland Security shall promptly take steps to rescind any agency memoranda or guidance issued in reliance on or in furtherance of any directive revoked by section 4(a)(ii)(F) of this order.

(b) *Ensuring a Timely and Fair Expedited Removal Process.*

(i) The Secretary of Homeland Security, with support from the United States Digital Service within the Office of Management and Budget, shall promptly begin a review of procedures for individuals placed in expedited removal proceedings at the United States border. Within 120 days of the date of this order, the Secretary of Homeland Security shall submit a report to the President with the results of this review and recommendations for creating a more efficient and orderly process that facilitates timely adjudications and adherence to standards of fairness and due process.

(ii) The Secretary of Homeland Security shall promptly review and consider whether to modify, revoke, or rescind the designation titled ''Designating Aliens for Expedited Removal,'' 84 FR 35,409 (July 23, 2019), regarding the geographic scope of expedited removal pursuant to INA section

235(b)(1), 8 U.S.C. 1225(b)(1), consistent with applicable law. The review shall consider our legal and humanitarian obligations, constitutional principles of due process and other applicable law, enforcement resources, the public interest, and any other factors consistent with this order that the Secretary deems appropriate. If the Secretary determines that modifying, revoking, or rescinding the designation is appropriate, the Secretary shall do so through publication in the *Federal Register*.

(c) *Asylum Eligibility.* The Attorney General and the Secretary of Homeland Security shall:

(i) within 180 days of the date of this order, conduct a comprehensive examination of current rules, regulations, precedential decisions, and internal guidelines governing the adjudication of asylum claims and determinations of refugee status to evaluate whether the United States provides protection for those fleeing domestic or gang violence in a manner consistent with international standards; and

(ii) within 270 days of the date of this order, promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a ''particular social group,'' as that term is used in 8 U.S.C. 1101(a)(42)(A), as derived from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
February 2, 2021.

[FR Doc. 2021–02561
Filed 2–4–21; 8:45 am]
Billing code 3295–F1–P

U.S. Department of Homeland Security

DHS Announces Process to Address Individuals in Mexico with Active MPP Cases

Release Date: February 11, 2021

En español (/news/2021/02/11/departamento-de-seguridad-nacional-dhs-anuncia-proceso-para-atender-individuos-en-m)

WASHINGTON – Building on a series of Executive Orders last week, the Biden Administration is announcing another step in our phased strategy to reform the nation's immigration system. Beginning on February 19, the Department of Homeland Security (DHS) will begin phase one of a program to restore safe and orderly processing at the southwest border. DHS will begin processing people who had been forced to "remain in Mexico" under the Migrant Protection Protocols (MPP). Approximately 25,000 individuals in MPP continue to have active cases.

Individuals should not take any action at this time and should remain where they are to await further instructions. We will soon announce a virtual registration process that will be accessible from any location. Once registered, eligible individuals will be provided additional information about where and when to present themselves. Individuals should not approach the border until instructed to do so.

"As President Biden has made clear, the U.S. government is committed to rebuilding a safe, orderly, and humane immigration system," said Secretary of Homeland Security Alejandro Mayorkas. "This latest action is another step in our commitment to reform immigration policies that do not align with our nation's values. Especially at the border, however, where capacity constraints remain serious, changes will take time. Individuals who are not eligible under this initial phase should wait for further instructions and not travel to the border. Due to the current pandemic, restrictions at the border remain in place and will be enforced."

Through a whole-of-government approach, DHS, the Department of State, and the Department of Justice will collaborate with international partners—including the Government

of Mexico and international and non-governmental organizations—to safely process eligible individuals to pursue their cases in the United States.

This new process applies to individuals who were returned to Mexico under the MPP program and have cases pending before the Executive Office for Immigration Review (EOIR). Individuals outside of the United States who were not returned to Mexico under MPP or who do not have active immigration court cases will not be considered for participation in this program and should await further instructions. Similarly, those individuals in the United States with active MPP cases will receive separate guidance at a later date.

This announcement should not be interpreted as an opening for people to migrate irregularly to the United States. Eligible individuals will only be allowed to enter through designated ports of entry at designated times. We will provide instructions in the coming days for how individuals with active MPP cases may remotely register for in-processing. We will continue to enforce U.S. immigration law and border security measures throughout this process.

The United States and our partners will employ all necessary safety precautions in accordance with the Centers for Disease Control and Prevention (CDC) guidance, including mandatory face coverings and social distancing. Individuals processed through this program will be tested for COVID-19 before entering the United States. DHS will only process individuals consistent with its capacity to safely do so while fully executing its important national security and trade and travel facilitation missions.

A Fact Sheet announcing the process to address individuals outside the United States with active MPP cases (/news/2021/02/18/fact-sheet-dhs-announces-process-address-individuals-outside-united-states-active) is also available.

Topics: Border Security (/topics/border-security), Citizenship and Immigration Services (/topics/immigration-and-citizenship-services), Homeland Security Enterprise (/topics/homeland-security-enterprise), Immigration and Customs Enforcement (/topics/immigration-enforcement), Secretary of Homeland Security (/topics/secretary-homeland-security)
Keywords: Asylum (/keywords/asylum-applications), Immigration (/keywords/immigration), Immigration Enforcement (/keywords/immigration-enforcement), Immigration Reform (/keywords/immigration-reform), Migrant Protection Protocols (MPP) (/keywords/migrant-protection-protocols-mpp), President Biden (/keywords/president-biden), Secretary Alejandro Mayorkas (/keywords/secretary-alejandro-mayorkas)

Last Published Date: February 19, 2021

#SaveAsylum

REPORT ABUSES

TAKE ACTION

MORE RESOURCES

Delivered to Danger

Trump Administration sending asylum seekers and migrants to danger

FORCED RETURNS TO MEXICO: AT LEAST 1,544 PUBLICLY REPORTED CASES OF MURDER, RAPE, TORTURE, KIDNAPPING & OTHER VIOLENT ASSAULTS

Current as of February 19, 2021

SHARE

TRUMP ADMINISTRATION SENDING ASYLUM SEEKERS AND MIGRANTS TO DANGER

Mario Tama/Getty Images

Joe Raedle/Getty Images

John Moore/Getty Images

The U.S. government is forcing asylum seekers and migrants, including at least 16,000 children and nearly 500 infants (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) under the age of one, to return to Mexico under the "Migrant Protection Protocols"—better known as the "Remain in Mexico" policy.

In Mexico, waiting months for immigration court hearings in the United States, these families and other returned asylum seekers and migrants face grave dangers.

As of February 19, 2021, there are at least 1,544 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 under this illegal scheme. Among these reported attacks are 341 cases of children returned to Mexico who were kidnapped or nearly kidnapped.

DOWNLOAD THE LIST
(HTTPS://WWW.HUMANRIGHTSFIRST.ORG/SITES/DEFAULT/FILES/PUBLICLYREPORTEDM

These figures are likely only the tip of the iceberg, as the vast majority of the more than 68,000 (https://trac.syr.edu/phptools/immigration/mpp/) individuals already returned to Mexico have not been interviewed by reporters or human rights researchers, let alone spoken to an attorney. Nintety-four percent (https://trac.syr.edu/phptools/immigration/mpp/) of the individuals stranded by the Trump Administration in Mexico lack a U.S. lawyer to help them apply for asylum.

#StopMPP | MPP Explained

MPP Explained RAICES

U.S. government officials know that these regions of the border are extremely dangerous. The U.S. State Department's travel advisories warn U.S. citizens not to travel to some of the same Mexican border towns where U.S. authorities send asylum seekers to wait for immigration court hearings. These areas are designated as level 4 threats—the same danger assessment as for Afghanistan, Iraq, and Syria.

Senior Trump Administration officials claim that they don't believe (https://www.texastribune.org/2019/09/18/texas-border-tent-courts-erected-virtual-asylum-hearings/) that the refugees and migrants the U.S. has returned to Mexico are being kidnapped and attacked there. But this willful blindness is no defense for a policy that clearly jeopardizes the safety and very lives of the children, women, and men sent back to Mexico.

HOLD THE TRUMP ADMINISTRATION ACCOUNTABLE

Report human rights abuses against people forced by the Trump Administration to remain in danger.

SUBJECT=REPORT%20OF%20HUMAN%20RIGHTS%20ABUSE%20AGAINST%20RETURNE

#DeliveredToDanger: Eduardo's Kidnapping

Eduardo*, a Nicaraguan political activist seeking asylum in the U.S. was kidnapped in Mexico, the Trump Administration sent him back there anyway. Human Rights First

MOMMY, I DON'T WANT TO DIE.

— A 7-year-old girl to her mother after the Trump Administration returned them to Nuevo Laredo, where they were kidnapped

The Trump Administration falsely claims this dangerous policy is an alternative to separating families at the border and holding them in detention centers. In reality, the program is yet another move by President Trump and his administration's leadership to block, ban, and frighten asylum seekers from asking for protection in the United States—even if those policies cost refugees their lives.

The following are just a few of their stories —

MURDERED

A Salvadoran father returned to Mexico by the Trump Administration was brutally stabbed to death and possibly tortured in Tijuana in November 2019. The man and his wife and two children had reportedly repeatedly (https://www.latimes.com/california/story/2019-12-12/attorney-central-american-in-mpp-program-murdered-in-tijuana) told immigration officers, an immigration judge and asylum officers that they feared being returned to Mexico but they were not removed from the program. The man's widow said (https://www.telemundo20.com/noticias/local/migrante-muere-en-espera-de-asilo/1971748/): “I told the judge that I was afraid for my children because we were in a horrible, horrible place, and we didn’t feel safe here."

KIDNAPPED AND RAPED

Two Cuban women were repeatedly raped in Mexico, then returned there by the Trump Administration to more danger. In April 2019, armed men (https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019 .pdf) abducted three Cuban asylum seekers–Lilia*, Yasmin* and Yasmin’s partner–while waiting for a taxi near Ciudad Juárez. **Imprisoned for a week, Lilia and Yasmin were repeatedly raped by multiple men.** Eventually ransomed, the three spent weeks in hiding until they were finally able to request asylum at the El Paso port of entry, where they had placed their names on the asylum wait “list” three weeks prior to the kidnapping. However, U.S. border officers returned Lilia and Yasmin to Ciudad Juárez without giving them a chance to explain their fear of being returned there. Back in Mexico, Yasmin said, “we feel totally destroyed.” She added, **“I’m afraid of the men who kidnapped and raped us… we almost never go out.… We’re still in hiding. Everyone here can tell that we’re Cuban**

because of the way that we dress, the way that our faces and bodies look, and the way that we talk. I'm afraid that what happened to me before will happen to me again."

YOU'RE LITERALLY SENDING PEOPLE BACK TO BE RAPED AND KILLED.

-Former U.S. asylum officer

An Afro-Honduran woman returned to Mexico by the Trump Administration was kidnapped and raped. After the U.S. government sent a Honduran woman back to Mexico, she was reportedly (https://diario.mx/juarez/secuestraron-federales-a-migrante-20190618-1528960.html) kidnapped by a group of men in Mexican federal police uniforms and repeatedly raped. According to her attorney, Linda Rivas of Las Americas Immigrant Advocacy Center in El Paso, she is a member of the Afro-Caribbean Garifuna minority. Customs and Border Protection officers returned her to Ciudad Juárez even though she told them she "had a target on her back" because of her race. They expelled her without giving her an opportunity to explain her fear to an asylum officer.

Another Honduran asylum seeker returned to Mexico was kidnapped, raped, and forced into sexual slavery: After U.S. border officials returned Gisela* (https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019 .pdf) to Mexico, a trafficker kidnapped her as she left a migration office. She was raped and forced into sexual slavery for three months. She escaped only when one of her captors assisted her in exchange for sex. Forced into hiding at a Juárez church shelter, she was not safe even there. The parish priest told her that an unknown man had come looking for her.

I'M AFRAID OF THE MEN WHO KIDNAPPED AND RAPED US... WE ALMOST NEVER GO OUT. WE'RE STILL IN HIDING.

— Yasmin*, Cuban asylum seeker returned by Trump Administration to Ciudad Juárez

TORTURED

A Honduran boy and his parents were kidnapped, and the father was tortured and disappeared: According to El Diario (https://diario.mx/usa/actualidad/nos-mandaron-a-la-boca-del-lobo-a-sufrir-secuestros-y-extorsiones-inmigrantes-20190921-1565325.html), a three-year-old boy from Honduras and his parents were kidnapped after U.S. border officials returned them to Nuevo Laredo. The boy's parents were separated, and the woman reported hearing the kidnappers beat and electrocute her husband. When she last saw him lying on the ground, beaten and bleeding, he told her, "Love, they're going to kill us." The woman and her three-year-old son were released but she does not know if her husband is alive.

LOVE, THEY'RE GOING TO KILL US.

— A Honduran asylum seeker returned by the Trump Administration to Mexico tells his wife after being tortured by their kidnappers

TAKE ACTION

Tell the incoming Biden Administration to end the illegal forced return of asylum seekers and migrants to danger.

TAKE ACTION
(HTTPS://HUMANRIGHTSFIRST.QUORUM.US/CAMPAIGN/29629/)

human rights first
American ideals. Universal values.
(https://www.humanrightsfirst.org)

WOLA
Advocacy for Human Rights in the Americas
(https://www.wola.org)

imumi
Instituto para las Mujeres en la Migración A.C.
(https://www.imumi.org)

WOMEN'S REFUGEE COMMISSION
(https://womensrefugeecommission.org)

LATIN AMERICA WORKING GROUP
(https://www.lawg.org)

AILA AMERICAN IMMIGRATION LAWYERS ASSOCIATION
(https://www.aila.org)

(https://www.phr.org/)

(https://www.refugeesinternational.org/)

(https://www.immigrationequality.org/)

(https://www.hrw.org/)

(http://www.hias.org)

(http://www.immdef.org)

ACCOUNTABILITY

FILE A COMPLAINT WITH THE DEPARTMENT OF HOMELAND SECURITY

OFFICE OF INSPECTOR GENERAL
(HTTPS://HOTLINE.OIG.DHS.GOV/#STEP-1)

OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES
(HTTPS://WWW.DHS.GOV/PUBLICATION/FILE-CIVIL-RIGHTS-COMPLAINT)

REPORT ABUSES AGAINST RETURNED ASYLUM SEEKERS AND MIGRANTS TO HUMAN RIGHTS INVESTIGATORS

- Send an email with information on human rights abuses under the Remain in Mexico policy to report@humanrightsfirst.org. Investigators will contact you to follow up on your report.

REPORTS OF HUMAN RIGHTS ABUSES UNDER THE REMAIN IN MEXICO POLICY

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AMERICAS-TEST-2

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Mexican camp that was symbol of migrant misery empties out under Biden

By Laura Gottesdiener

MATAMOROS, Mexico (Reuters) - A sprawling camp in the Mexican city of Matamoros, within sight of the Texan border, has since 2019 been one of the most powerful reminders of the human toll of former President Donald Trump's efforts to keep migrants out of the United States.

finally allowed to cross the border to press their claim to stay in the United States.

President Joe Biden last month rolled back the program - known as the Migrant Protection Protocols (MPP) - that had forced asylum seekers to wait in Mexico.

Biden's wife, Jill, visited the camp during last year's presidential campaign to witness the difficult conditions first hand.

"If it hadn't been for this camp, I don't think they would have ever ended MPP," said Honduran asylum seeker Oscar Borjas, one of the few remaining residents who has not yet been permitted to cross.

The last few people remaining in the camp were relocated to more secure locations identified by international aid groups where they could complete required paperwork, a U.S. official told Reuters late on Saturday.

Like hundreds of asylum seekers expelled from the United States to this crime-ridden town, Borjas began sleeping near the foot of the international bridge across the Rio Grande out of fear and necessity.

But the migrants also intended to make a statement, he said: a visible reminder of the human toll of the MPP program. "We were there so that people would see us; see it wasn't fair what they were doing to us."

As of Friday, some 1,127 people in the MPP program across Mexico have been permitted to enter the United States since Biden rescinded the policy last month. More than half of those were from the Matamoros camp, according to the U.N. refugee agency. More than 700 enrolled in the program have been processed across the border in Brownsville, Texas, according to officials.

Once home to more than 3,000 people, the camp now stands deserted, as nearly all remaining residents left voluntarily for shelters over the weekend after receiving assurances from the United Nation's refugee agency that their asylum cases would still be considered

FDA approves Biogen's Alzheimer's drug despite controversy over mixed clinical trial ...

On Saturday, agents from Mexican migration agents began dismantling the camp's ramshackle structures.

"I don't know what I'll do now. I can't go back," said Borjas, who said he faces the threat of murder in Honduras for supporting an opposition party.

"LET'S UNITE"

Slideshow (7 images)

The Trump administration touted the MPP program as part of its successful efforts to reduce immigration and cut down on what it called fraudulent asylum claims.

Since 2019, the policy pushed more than 65,000 migrants back into Mexico as their asylum cases wound through U.S. courts. The majority gave up waiting and left Mexico. Thousands m

Mexican migrant that was symbol of migrant misery empties out under Biden | Reuters

But in Matamoros, which had scant resources for migrants, families opted to sleep in the plaza at the foot of the bridge.

"We said 'Let's unite' and that's how the camp in Matamoros began," said Honduran asylum seeker Josue Cornejo, who was returned to Matamoros along with his wife and their children in August 2019.

Parents scavenged cardboard to stop the summer heat radiating off the pavement from burning their children's skin. The men formed a guard watch.

Aid workers arrived. So did Matamoros' criminal groups, which doled out beatings and siphoned off donations, migrants say.

As the camp population ballooned, the tents sprawled from the plaza to the wooded banks of the Rio Grande, where residents braved contamination and undercurrents to bathe and wash their clothes.

The migrants resisted federal government efforts to house them in a makeshift shelter miles from the border.

Life took root in a way migrants say they had never expected, making the lengthy wait in Mexico slightly more bearable.

They formed church groups, supply distribution tents and kitchens with handmade earthen ovens and stoves improvised from old washing machines.

Nicaraguan asylum seeker Perla Vargas and other migrants launched a tent school that provided music, dance, English and Spanish classes to dozens of children each day, including her two grandchildren.

There were quinceaneras, romances, and at least one wedding.

Consuelo Tomas, an indigenous Q'anjob'al Guatemalan asylum seeker, gave birth inside the

Slideshow (7 images)

camp and named her newborn Andrea in honor of the child's grandmother, who died years earlier trying to cross the Sonoran desert to reach the United States.

Insecurity and hardship reigned.

The weather whiplashed between scorching heat and freezing cold. Human rights groups documented kidnappings and rape of asylum seekers in Matamoros. Occasionally, migrants' bodies washed up along the river bank.

Some mothers, including Salvadoran asylum seeker Sandra Andrade, sent their children to cross the U.S. border alone illegally out of concern for their safety.

MATAMOROS TO WASHINGTON

At times, the camp served as the launch pad for protests: from a blockade of the international bridge that halted traffic for hours to demonstrations and all-night vigils opposing Trump's re-election.

Aaron Reichlin-Melnick, policy counsel at the American Immigration Council, said that MPP program might have succeeded in obscuring the plight of these migrants from the American public if it were not for the Matamoros camp.

"It was the one place where you couldn't deny that what we were doing was inflicting harm on people," he said.

Last month, the Biden administration said it would allow about 25,000 migrants in MPP to enter the United States to pursue their cases. Matamoros camp residents were to be among the first in line, it added.

Buoyed by the news, migrants had prepared for their departure in late February: snapping farewell photographs and snipping haircuts for fellow migrants. The sound of bachata music rang out as children hopped about, rehearsing for their final dance recital. Andrade packed up her remaining protest signs and distributed donated pairs of tiny sneakers.

"It's so the kids can cross into the United States in brand new shoes," she said.

Reporting by Laura Gottesdiener in Matamoros, Mexico; Editing by Daniel Flynn and Alistair Bell

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FDA approves Biogen's Alzheimer's drug despite controversy over mixed clinical trial ...

U.S. Department of
Homeland Security

Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border

Release Date: March 16, 2021

There is understandably a great deal of attention currently focused on the southwest border. I want to share the facts, the work that we in the Department of Homeland Security (DHS) and across the government are doing, and our plan of action. Our personnel remain steadfast in devotion of their talent and efforts in the service of our nation.

The situation at the southwest border is difficult. We are working around the clock to manage it and we will continue to do so. That is our job. We are making progress and we are executing on our plan. It will take time and we will not waver in our commitment to succeed.

We will also not waver in our values and our principles as a Nation. Our goal is a safe, legal, and orderly immigration system that is based on our bedrock priorities: to keep our borders secure, address the plight of children as the law requires, and enable families to be together. As noted by the President in his Executive Order, “securing our borders does not require us to ignore the humanity of those who seek to cross them.” We are both a nation of laws and a nation of immigrants. That is one of our proudest traditions.

The Facts

We are on pace to encounter more individuals on the southwest border than we have in the last 20 years. We are expelling most single adults and families. We are not expelling unaccompanied children. We are securing our border, executing the Centers for Disease

Control and Prevention's (CDC) public health authority to safeguard the American public and the migrants themselves, and protecting the children. We have more work to do.

This is not new. We have experienced migration surges before – in 2019, 2014, and before then as well. Since April 2020, the number of encounters at the southwest border has been steadily increasing. Border Patrol Agents are working around the clock to process the flow at the border and I have great respect for their tireless efforts. To understand the situation, it is important to identify who is arriving at our southwest border and how we are following the law to manage different types of border encounters.

Single Adults

The majority of those apprehended at the southwest border are single adults who are currently being expelled under the CDC's authority to manage the public health crisis of the COVID-19 pandemic. Pursuant to that authority under Title 42 of the United States Code, single adults from Mexico and the Northern Triangle countries of El Salvador, Guatemala, and Honduras are swiftly expelled to Mexico. Single adults from other countries are expelled by plane to their countries of origin if Mexico does not accept them. There are limited exceptions to our use of the CDC's expulsion authority. For example, we do not expel individuals with certain acute vulnerabilities.

The expulsion of single adults does not pose an operational challenge for the Border Patrol because of the speed and minimal processing burden of their expulsion.

Families

Families apprehended at the southwest border are also currently being expelled under the CDC's Title 42 authority. Families from Mexico and the Northern Triangle countries are expelled to Mexico unless Mexico does not have the capacity to receive the families. Families from countries other than Mexico or the Northern Triangle are expelled by plane to their countries of origin. Exceptions can be made when a family member has an acute vulnerability.

Mexico's limited capacity has strained our resources, including in the Rio Grande Valley area of Texas. When Mexico's capacity is reached, we process the families and place them in immigration proceedings here in the United States. We have partnered with community-based organizations to test the family members and quarantine them as needed under COVID-19 protocols. In some locations, the processing of individuals who are part of a family unit has strained our border resources. I explain below additional challenges we have encountered and the steps we have taken to solve this problem.

Unaccompanied Children

We are encountering many unaccompanied children at our southwest border every day. A child who is under the age of 18 and not accompanied by their parent or legal guardian is considered under the law to be an unaccompanied child. We are encountering six- and seven-year-old children, for example, arriving at our border without an adult. They are vulnerable children and we have ended the prior administration's practice of expelling them.

An unaccompanied child is brought to a Border Patrol facility and processed for transfer to the Department of Health and Human Services (HHS). Customs and Border Protection is a pass-through and is required to transfer the child to HHS within 72 hours of apprehension. HHS holds the child for testing and quarantine, and shelters the child until the child is placed with a sponsor here in the United States. In more than 80 percent of cases, the child has a family member in the United States. In more than 40 percent of cases, that family member is a parent or legal guardian. These are children being reunited with their families who will care for them.

The children then go through immigration proceedings where they are able to present a claim for relief under the law.

The Border Patrol facilities have become crowded with children and the 72-hour timeframe for the transfer of children from the Border Patrol to HHS is not always met. HHS has not had the capacity to intake the number of unaccompanied children we have been encountering. I describe below the actions we have taken and the plans we are executing to handle this difficult situation successfully.

Why the Challenge is Especially Difficult Now

Poverty, high levels of violence, and corruption in Mexico and the Northern Triangle countries have propelled migration to our southwest border for years. The adverse conditions have continued to deteriorate. Two damaging hurricanes that hit Honduras and swept through the region made the living conditions there even worse, causing more children and families to flee.

The COVID-19 pandemic has made the situation more complicated. There are restrictions and protocols that need to be followed. The physical distancing protocol, for example, imposes space and other limitations on our facilities and operations.

The prior administration completely dismantled the asylum system. The system was gutted, facilities were closed, and they cruelly expelled young children into the hands of traffickers.