January 29, 2021

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(b)(6)

SUBJECT: Complaints Related to the Implementation of the Migrant Protection Protocols (MPP) ¹

PURPOSE

This memorandum provides a summary of our findings as well as policy recommendations regarding implementation of the Migrant Protection Protocols (MPP) by U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).  

SUMMARY

From February 15, 2019, through August 16, 2019, the Office for Civil Rights and Civil Liberties (CRCL) investigated whether CBP, ICE, and USCIS had implemented MPP in accordance with the MPP Guiding Principles and civil rights and civil liberties obligations. CRCL investigated a representative sample of complaints alleging, inter alia, that non-Spanish speakers have been subjected to MPP; that persons with serious health issues, pregnant women, and other vulnerable populations had been subjected to MPP; and that families had been separated during the MPP process. CRCL made key findings that persons defined in MPP Guiding Principles as being not amenable to MPP have been placed in the program; that policies and procedures regarding MPP had been inconsistent; that training for U.S. Department of Homeland Security (DHS) personnel had been lacking; and that issues with limited language proficiency had not been addressed.

COMPLAINTS

From February 15, 2019, through August 16, 2019, CRCL reviewed multiple reports and allegations related to violations of civil rights or civil liberties concerning foreign nationals who were returned to Mexico while pending a proceeding under Section 240 of the Immigration and Nationality Act (INA) pursuant to Section 235(b)(2)(C) of INA, under the program known as MPP. Some of these complaints and matters are on hold due to litigation involving MPP. Due to that litigation, CRCL coordinated with the DHS Office of General Counsel to refine the scope of investigation. Accordingly, this investigation was limited and reviewed the following:

1. Whether CBP, ICE, and USCIS have appropriately implemented DHS, CBP, ICE, and USCIS policies and procedures relating to MPP and whether changes or additions to policies and procedures are needed to ensure that the protection of civil rights and civil liberties is appropriately incorporated into DHS’s implementation of MPP. This investigation will not explore, due to the ongoing litigation, the broader question of whether DHS, CBP, ICE, and USCIS policies and procedures relating to MPP are consistent with any applicable and enforceable non-refoulement obligations.

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2 In order to allow this memorandum to be more freely shared, it does not include personally identifiable information (PII). PII has been included in the attached memorandum to assist those reviewing CRCL’s recommendations who have a need to know that information.
2. Whether CBP had appropriately implemented the MPP Guiding Principles regarding persons not “amenable to” MPP and discretionary determinations with regard to other vulnerable populations.

February through August 2019, CRCL opened complaint investigations on over two dozen specific MPP-related complaints as a representative sample of the issues to be examined during the investigation. In summary, complaints received by CRCL alleged that:

1. Non-Spanish speakers had been subjected to MPP without being provided information about the process in a language they best understand.
2. Persons with serious mental and physical health issues had been subjected to MPP.
3. Pregnant women, including women with near full-term pregnancies, had been subjected to MPP.
4. Other vulnerable populations, including persons with disabilities and LGBTI persons, had been subjected to MPP.
5. Families were separated during the MPP process.

After the completion of this investigation, CRCL continues to receive complaints alleging deficiencies by CBP, ICE, and USCIS in the implementation of MPP and the application of MPP to populations who are not amenable or are otherwise vulnerable. CRCL has also since opened several complaint investigations relating to MPP that are outside of the scope of both the current litigation and this investigation.

BACKGROUND

On January 25, 2019, former Secretary of Homeland Security Kirstjen M. Nielsen issued a memorandum instructing USCIS, CBP and ICE to implement MPP pursuant to Section 235(b)(2)(C) of the INA. That section of the INA provides that certain persons arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States may be returned to that territory pending removal proceedings.

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4 For example, CRCL has opened complaints with allegations of Mexican national children, disabled persons, and non-Spanish speakers being placed in MPP.

5 In the memorandum, titled Policy Guidance for Implementation of the Migrant Protection Protocols, Secretary Nielsen reminded DHS officials to act consistent with the *non-refoulement* principles in the Convention and Protocol Relating to the Status of Refugees, as well as the Convention Against Torture. Specifically, the memorandum states, “a third-country national should not be involuntarily returned to Mexico pursuant to 235(b)(2)(C) of the INA if the alien would more likely than not be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion [unless subject to the persecutor bar to asylum], or would more likely than not be tortured.” This “more likely than not” standard is consistent with the standard of proof for withholding of removal and *non-refoulement* under INA §241(b)(3) and regulations implementing the Convention Against Torture. However, the memorandum indicates that this process is not considered withholding of removal. 8 C.F.R. §208.16(a) states: “An asylum officer shall not decide whether the exclusion, deportation, or removal of an alien to a country where the alien's life or freedom would be threatened must be withheld[.]”
A. CBP’s Role in the MPP Process

Under the MPP policy that was reviewed, when a CBP officer in the Office of Field Operations (OFO) encounters an individual arriving from Mexico at the port of entry or a U.S. Border Patrol (USBP) agent apprehends an individual arriving from Mexico between the ports of entry alleged to be an inadmissible person, they may consider whether they are amenable to MPP and, if so, may return those individuals to Mexico pending a removal proceeding pursuant to section 240 of the INA. The officers or agents initially perform a general intake process of collecting biographic information and biometrics. CBP personnel also conduct a preliminary medical screening. CBP officers and USBP agents then make an MPP amenability determination according to the guidance in the MPP Guiding Principles and applicable local policies. Once an individual is determined to be amenable to MPP, CBP prepares a case file, schedules the individual’s Department of Justice Executive Office for Immigration Review (EOIR) immigration court hearing date using the EOIR scheduling system, prepares documents, and serves those documents on the individual. The served documents include the “Migrant Protection Protocols Initial Processing Information,” also known as a “tear sheet,” which has the port of entry, date, and time when the individual is instructed to appear for the immigration court hearing; a Form I-862, Notice to Appear; a Form I-286, Notice of Custody Determination, and a List of Pro Bono Legal Service Providers in the United States for the immigration court where their hearing will be held. USBP and OFO coordinate returns to Mexico pursuant to MPP with Mexican immigration officials at set times, which may result in the individual being held in CBP custody at a USBP Station or a port of entry for a period of time, sometimes overnight. The intake policy for MPP does not include asking an individual whether they fear persecution or torture in Mexico. To be referred for an assessment regarding an individual’s fear of persecution or torture in Mexico, or a fear of return to Mexico, the individual must affirmatively state a fear of persecution or torture in Mexico, or a fear of return to Mexico. An affirmative statement of this nature will result in CBP coordinating with USCIS for an MPP assessment interview. If USCIS assesses that a person who affirmatively states a fear of return to Mexico is more likely than not to face persecution or torture in Mexico, the individual may not be processed for MPP.

At the time of the appointed hearing date, CBP officers or agents process individuals in MPP who return from Mexico for their immigration court hearing, transferred the individuals to ICE-Enforcement and Removal Operations (ERO) custody for transport to the immigration court, unless the hearing is being held at an immigration hearing facility (IHF), also known as a “port court” or “tent court.” After returning from immigration court, ICE-ERO transfers custody of the individual back to OFO. OFO coordinates with Mexican officials to facilitate the return of those individuals to Mexico after the court hearing, pending the next scheduled immigration court hearing. The same procedures are repeated for the duration of the individual’s removal proceedings.

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6 CRCL has inquired with CBP and it is CRCL’s understanding that CBP does not track the hold times for persons in MPP in summary reporting.

7 Per CBP guidelines, Mexican nationals are not amenable to MPP.

8 If it is determined that it would be a violation of the non-refoulement principle to return the individual to Mexico, the individual may be placed in DHS custody to await their court hearing.
B. ICE’s Role in the MPP Process

Under the program reviewed, at the date and time of a hearing, the individual must report to the designated port of entry. Individuals requiring transportation in order to attend their immigration hearing at an EOIR facility are transferred to ICE ERO’s custody under INA §212(d)(5)(A). ICE ERO maintains physical custody of the individual during transportation and while at the immigration court, primarily using contract guards. In order to facilitate access to counsel as required by INA §240(b)(4)(A), ICE ERO was instructed to depart from the Port of Entry (POE) with the respondent “at a time sufficient to ensure arrival at the immigration court not later than one hour before his or her scheduled hearing time in order to afford the individual the opportunity to meet in-person with his or her legal representative.”

After the immigration court hearing, ICE ERO transports the individual in MPP back to the POE and CBP custody. If the individual has received a grant of relief or an administratively final order of removal, ICE ERO coordinates with CBP to make appropriate custody determinations, pending appeal.

C. USCIS’s Role in the MPP Process

When an individual in MPP affirmatively states a fear of persecution or torture in, or return to Mexico, CBP is instructed to refer the individual to USCIS for an MPP assessment interview to determine whether it is more likely than not that the individual will be subject to persecution or torture if returned to Mexico. USCIS policy requires the MPP assessment interviews, like other asylum and asylum pre-screening interviews, be conducted confidentially and in a non-adversarial manner. These MPP assessment interviews are often conducted telephonically and occur quickly. USCIS is not required to provide a period of rest or evidence-gathering. Counsel is permitted only in limited circumstances.

USCIS uses the “more likely than not” standard when assessing whether an individual subject to MPP will face persecution or torture if returned to Mexico. In order to establish that they would meet the “more likely than not” standard, similar to withholding of removal under INA §241(b)(3) or the Convention Against Torture, asylum officers weigh the credibility of the individual’s testimony, known country conditions in Mexico, and whether the individual is subject to the bars to withholding of removal under INA §241(b)(3)(B). The MPP assessment interview is reviewed by a supervisory asylum officer, who may change or concur with the assessment’s conclusion, and provided by USCIS to CBP. If the standard is met, CBP is to remove the individual from MPP and

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10 CRCL has multiple open complaint investigations relating to allegations of individuals being returned to Mexico after receiving a grant of asylum by the Immigration Judge. Those separate investigations are outside of the scope of this memorandum.

11 USCIS and CBP do not appear to use consistent and agreed-upon terminology for these interviews and assessments. USCIS staff consistently referred to these as “MPP interviews,” whereas CBP personnel often used the term “credible fear” to refer to these interviews, despite this process not relating to credible fear. As these interviews and assessments do not appear in any statute or regulation, CRCL will use “Fear in Mexico” and/or non-refoulement to refer to this interview and assessment process in this memorandum.

12 8 C.F.R. §1208.16 - §1208.18
determine as a matter of discretion which available option to use to process the person, such as placing the individual in expedited removal proceedings, issuing an NTA for removal proceedings under INA §240 or other possible options. The individual may be transferred to ICE custody pending those proceedings.

CRCL’S INVESTIGATION AND ANALYSIS

A. Review of Policy, Guidance, Procedures and Training Materials

CBP MPP Policies and Training Materials

A January 28, 2019 memorandum from former CBP Commissioner Kevin McAleenan to Todd Owen, Executive Assistant Commissioner, Office of Field Operations, and Carla Provost, Chief of the U.S. Border Patrol instructs CBP to commence implementation of MPP and stated that implementation would begin at the San Ysidro port of entry on January 28, 2019. A January 28, 2019 memorandum from Todd Hoffman, Executive Director, Admissibility and Passenger Programs, OFO to Field Operations Directors and the Director of the Field Operations Academy, titled Guidance on Migrant Protection Protocols instructed the OFO San Diego Field Office to implement Section 235(b)(2)(C) of the INA consistent with its existing discretion and authorities. The memorandum stated, “[c]ertain aliens, including vulnerable aliens, criminal aliens, or aliens of interest to the Government of Mexico or the United States, will not be placed into MPP, in accordance with the Guiding Principles for Migrant Protection Protocols issued today by the Enforcement Programs Division (HQ)” (emphasis added).

CBP provided CRCL with a training slide deck relating to the implementation of MPP. The training materials covered the procedural steps of CBP MPP Processing, including a checklist for the identification of inadmissible persons who are arriving on land from Mexico who are potentially amenable to MPP. The training slides further instructed CBP staff on procedures and documentation for referring persons in MPP to USCIS for non-refoulement “Fear in Mexico” determinations. These instructions state that if any member of a family unit claims a fear of returning to Mexico, then all individuals in the family unit must be referred to USCIS. The training slide deck also included procedural instructions for the day before an individual in MPP returns to the Port of Entry (POE) for their hearing before the Executive Office of Immigration Review (EOIR). On the morning of the return to the POE from Mexico, CBP staff are instructed to complete the IHSC-794 on the morning of the return to the POE from Mexico, regarding medical screening of all individuals “to determine if there have been any changes since the last arrival and to ensure there are no potentially contagious illnesses presented in court.”13 The completion of this form does not appear to relate to the determination that an individual has no “known mental or physical health issues” and is therefore amenable to MPP.14 According to the

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13 CBP provided CRCL with a copy of the IHSC-794 used at the San Ysidro POE.

14 The procedures in the slide deck also account for pat-downs, tagging property, and conducting biometric identity verification of the individuals, as well as documenting OFO custody in SIGMA and completing fields addressing the conditions of custody, including the “water accessible,” “room temperature,” and “safe/sanitary conditions” fields in SIGMA.
process outlined, individuals are provided “MPP Tear Sheets” and then transferred to ICE-ERO custody for their EOIR hearing.

OFO staff were instructed that when individuals in MPP return from their EOIR hearings, staff should verify whether they have affirmatively stated a fear of persecution, torture, or return to Mexico and document this in a “Master Roster” with a “Claim Mex Fear at Court” column. The screenshot on this slide indicates that the “Master Roster” is an Excel spreadsheet. OFO personnel then make a copy of the “MPP Subsequent Hearings Information Tear Sheet” in English and Spanish with the updated date and time and update the “Master Roster” with the new hearing date and Return to Mexico (“RTM”) date. OFO is instructed to either retain custody of individuals who claimed a fear of returning to Mexico at court or to transfer those individuals to USBP custody if they were originally apprehended by USBP until USCIS can conduct a “Fear in Mexico” non-refoulement interview. If an individual claiming fear of returning to Mexico is not found by USCIS to be more likely than not to suffer persecution or torture in Mexico, the training slides instructed CBP to include the USCIS “MPP Assessment Notice” in the A-file and upload a copy to SIGMA, then complete the individual’s return to Mexico.

ICE Operational Involvement

ERO San Diego Field Office

CRCL reviewed local guidance and standard operating procedures from the ICE ERO San Diego Field Office detailing their role in custody and transportation of individuals in MPP who return to the United States for an immigration court hearing. According to the guidance reviewed, individuals in medical distress were to remain at the POE. Personal property is kept in storage at the POE while individuals are in custody. The ICE ERO SND guidance states that individuals “in their third trimester of pregnancy should not have been enrolled in [MPP] and are not transported by ERO.15 Similarly, no Unaccompanied Alien Children (UACs) are transported to the MPP immigration court hearing by ERO. The guidance further stated, “Adults who claim to be missing one or [more] family member, especially children, who are scheduled for court should not be transported, to avoid the perception of separating families.”

ICE ERO contract guards (Spectrum) maintained custody of the individuals in MPP while at the immigration court. Immigration court hearings typically conclude between 3:30pm and 5:00pm, at which time Spectrum notifies ERO of the number of detainees who claim fear. ERO notifies the OFO Watch Commander and/or CBP Supervisor that the detainees are en route back to the POE and the number of individuals who claimed fear. The ERO guidance noted that “[a]t the conclusion of each hearing, a new court date or disposition is assigned to the detainees. ERO docket officers track this by running PLAnet16, which is often not updated until the following day.” Each afternoon CBP sends the Form I-216, Record of Persons and Property Transfer to a distribution list that includes ICE ERO deportation officers who manage the MPP docket, indicating participants who failed to appear. The guidance noted, “HQ is tracking what happens to

15 This guidance does not provide any clarification regarding individuals who enter their third trimester of pregnancy after being enrolled in MPP.

16 PLAnet is ICE OPLA’s case management system.
those persons in court. In San Diego, persons who fail to show up most often have their cases terminated without prejudice.” A daily situation report detailed expected movement, including total and actual appearances by persons in MPP with immigration court hearings, claims of fear in Mexico, and hearing outcomes. This situation report appears to be manually prepared.

When reviewing the San Diego procedures, CRCL found that the document provided by ICE ERO had already incorporated several “lessons learned,” including:

- Adjustments were made to ensure that persons in MPP left the POE earlier in order to arrive at the courthouse on time. ERO noted difficulty with getting the Spectrum contractors to adhere to the strict timelines.
- A need for ICE ERO docket officers to adjust to inconsistent practices by Border Patrol and OFO, including scheduling an MPP court date for a respondent in CASE ISS, then sending them out as a family unit to another area of responsibility, or CBP removing persons from MPP enrollment, but not following up with EOIR.
- CBP failing to screen for UACs. The ICE ERO document details a father and daughter who were initially enrolled in MPP together. The 13-year-old girl later appeared at the POE by herself. ICE ERO determined her to be a UAC and had to remind CBP that ICE ERO will not transport UACs to court for an MPP hearing.
- Overcrowding at the San Diego Immigration Court.
- MPP cases extending beyond the 180-day visa issued by the Mexican government and INM refusing to accept the individual being returned to Mexico, leading CBP and ICE to need to find space to detain the individual.

ICE ERO El Paso Field Office

CRCL reviewed the contract procedures utilized by ICE by reviewing documents provided by the ICE ERO El Paso Field Office (El Paso). El Paso provided CRCL with copies of the contract modification and Statement of Work (SOW) for Global Precision Systems, LLC (GPS) to provide transportation and guard services for MPP-related hearings at the immigration court. The SOW provided for the mandatory application of restraints to and from the immigration court room, as well as a pat down screening. The SOW also provided for the distribution of masks and hand sanitizer to MPP participants who appear to have flu or cold-like symptoms, and for GPS to request an additional medical screening for individuals with “clear signs of a contagious illness or [who are] demonstrating violent behavior.” The SOW provided exceptions from pat downs for minors boarding the vehicle with an adult family member, and exceptions for the use of restraints against pregnant women and minors. The SOW included additional requirements for guards, including one male and one female restroom escort.

USCIS MPP Policies, Procedures, Training Materials, and Email Records

USCIS provided CRCL with copies of the USCIS MPP Assessment Notice, the USCIS MPP Worksheet, MPP training slide decks for asylum officers, local MPP standard operations procedures (SOPs) and tip sheets from the Arlington,17 Houston, San Francisco, and Los Angeles

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17 The APSO Processing Center (“ZAC”) at the Arlington Asylum Office has jurisdiction over the majority of MPP cases.
Asylum Offices, and MPP Instructions and Implementation Guidance. USCIS provided procedures and training materials from both the early implementation of MPP in January 2019 as well as updated training materials from July and August 2019. CRCL also reviewed the January 2019 USCIS Policy Memorandum, PM-602-0169, *Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols.*

The USCIS MPP Instructions and Implementation Guidance, dated June 3, 2019, require the Asylum Office to receive a Form I-213, *Notice of Deportable/Inadmissible Alien*, from CBP in order to conduct an MPP assessment interview. Asylum officers are instructed to review available government records to determine whether additional questioning is required about a possible bar to withholding of removal. Asylum officers are instructed to process accompanying spouses and qualifying children together and in cases where no family member is found to be more likely than not to face persecution or torture in Mexico, to fully develop the record for all family members. Asylum officers analyze the facts from the interview and other available evidence and complete an MPP Assessment Worksheet and transmit the worksheet to a supervisor for review, who may change or concur with the assessment’s conclusion. USCIS requires supervisory review of all MPP “Fear in Mexico” cases. The MPP Assessment Worksheet and MPP Assessment Notice are provided to CBP and/or ICE in English and CBP is responsible for serving the individual in MPP a copy of the MPP Assessment Notice. Asylum officers are also instructed to email a copy of the MPP Assessment Worksheet and interview notes to Asylum Division headquarters.

The MPP Assessment Notice provided to individuals in MPP contains the interview location and date, determination date, and basic biographic information about the individuals to whom the assessment applies, in addition to a checklist with the possible outcomes of the assessment.

The MPP Training materials included background information on MPP and the USCIS Asylum Division’s role in ensuring that the United States’ *non-refoulement* commitments are met. The training materials particularly focus on the higher “more likely than not” legal standard and the differences between the Asylum “well-founded fear” standard of proof and the higher standard in withholding of removal cases.

CRCL reviewed copies of local asylum office emails between supervisory staff advising on how to manage the heavy administrative workload of the USCIS MPP interviews and assessments. In these emails, local management warned that the Microsoft Excel-based “Log” of MPP cases was prone to freeze or crash when multiple people attempted to update it. Supervisors also warned staff that CBP sometimes makes mistakes with names and Alien Registration Numbers (“A-Numbers”, a.k.a. “A#”) when referring MPP cases to USCIS and that “The most common mistakes CBP makes are putting the same A# for parent and child, swapping the names and A#s of parent and child, and in one case, assigning the same A# to two different people in two different families.” San Francisco Asylum Office local guidance also referred to the need to instruct officers to schedule rare language interpreters as soon as possible when their applicant needs one.

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19 These standards of proof are both distinct from the “significant possibility” standard applied in credible fear screenings.
and the need to instruct support staff to “keep an eye out for I-213s which indicate that an individual was born in Mexico” in order to flag potential nationals of Mexico who have been placed in MPP. 20

CRCL reviewed a copy of an email exchange in mid-July 2019, between Los Angeles Asylum Office Management and USCIS Asylum Division leadership regarding a case where USBP placed a Guatemalan mother with two Mexican national children into MPP. \[\text{(b)(5)}\]

CBP referred the entire family, including the Mexican national children, to USCIS for MPP Assessments and that USCIS Asylum Division leadership instructed the Asylum Office not to conduct MPP assessments for families containing Mexican nationals, as they were not amenable to MPP. CRCL also reviewed an August 7, 2019, email from a Los Angeles Asylum Office section chief reminding supervisory officers to advise USBP that USCIS is unable to complete an MPP assessment in cases where there are one or more family members who are Mexican nationals and instructing supervisors to contact headquarters if they encounter further issues.

CRCL also reviewed copies of emails from local Arlington Asylum Office staff to CBP raising concerns regarding medical issues and amenability to MPP for individuals referred to USCIS for “Fear in Mexico” assessments. According to local supervisory staff, the asylum office dealt “rather frequently” with cases that appeared to fall within the category of “known physical/mental health issues.” Asylum office staff indicated that CBP staff were reluctant to describe MPP amenability policies in writing and that phone calls from CBP resulted in ambiguous information and a lack of clarity regarding MPP amenability. Some examples are provided below:

- In one October 2019 email exchange, asylum office staff alerted CBP that interview testimony indicated that an 11-year-old boy in MPP had severe epilepsy, with convulsions leading to loss of memory and vomiting. The response from CBP indicated that CBP was aware of the child’s condition and that he had gone through two prior medical screenings while remaining in the MPP program.

- In an email from September 2019 referring a family for a USCIS “Fear in Mexico” MPP Assessment, CBP staff informed USCIS that a four-year-old child in MPP had been medically quarantined and subsequently examined by the Centers for Disease Control and Prevention and found to have chicken pox and that his sister, also a child, had been sexually assaulted in Mexico and transported by CBP to the hospital for medical attention.

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20 The existence of this local guidance could indicate that persons who speak rare languages and Mexican nationals have been placed in MPP in sufficient numbers to necessitate these procedures.
In an October 2019 email exchange, a supervisory asylum officer brought to CBP’s attention that a woman had been placed into the MPP program and returned to Mexico with cervical metaplasia, a serious precancerous disease, for which she was unable to receive treatment in Mexico and which was causing increasing bleeding and pain. The August 15, 2019, hearing was rescheduled two days before the hearing for September 4, 2019. On September 5, 2019, USCIS conducted a fear Assessment, during which the individual testified as to her medical condition but was subsequently returned to Mexico. She returned for another EOIR hearing on October 1, 2019 and was interviewed a second time by the asylum office.

In an August 2019 email exchange, a supervisory asylum officer brought to CBP’s attention that an individual who testified that she had been re-diagnosed with uterine cancer, which had previously been in remission, had been separated from her husband whom she entered the United States with and placed into MPP while he was released to Florida.

In an October 2019 email exchange, a supervisory asylum officer brought to CBP’s attention that a woman referred to USCIS for an MPP “Fear in Mexico” assessment testified that she was pregnant and had previously had surgery on her uterus due to stage one uterine cancer.

In a September 2019 email exchange, a supervisory asylum officer brought to CBP’s attention that a woman referred to USCIS for an MPP Assessment testified that she suffers from diabetes and was having trouble obtaining access to her medication in Mexico, causing her to lose consciousness and experience pain. CBP responded, “In regards [sic] to this request, Diabetes (medicated) is not grounds for exclusion from the MPP program. Subject has been evaluated by our on-site medical team and is on the proper medication. Subject and her family will remain in the MPP program unless she has established a positive Credible Fear of return to Mexico.”

21 This woman remains in MPP and her next hearing is in June 2020.
B. Review of U.S. Government Records for Individual Complaints

As part of its investigation, CRCL reviewed allegations and U.S. government records, including, but not limited to, the following:

Complaint No. 19-10-CBP-0517

CRCL reviewed a July 28, 2019, article from The Guardian titled "'Like a child': the disabled migrant stranded and alone in Mexico". The article reports that 27-year-old Complainant #1 (given a pseudonym in the article), who has a cognitive disability, was separated from his cousin and her son after crossing the U.S.-Mexico border to flee gang violence in El Salvador and returned to Juarez under MPP on March 30, 2019. The article stated that among the papers provided by Complainant #1 was a statement from a doctor saying that he had the cognitive age of a four-year-old child. CRCL received and reviewed an email from CBP providing a timeline of events in Complainant #1’s case on August 5, 2019. The timeline indicated that Complainant #1 was apprehended on March 30, 2019, but was not returned to Mexico until May 9, 2019. On June 27, 2019, Complainant #1’s attorneys brought him back to the POE to ask to be removed from MPP due to mental disability. On June 28, 2019, he was taken to the Ysleta USBP station where the medical staff found him to be “alert to space, time, location and situation,” but also recommended that a psychologist make a determination regarding mental competency. CBP records dated June 28, 2019, indicate that despite the recommendation for a psychologist to make a determination on mental competency, this did not happen because Complainant #1, who CBP had medical records indicating he allegedly had the cognitive capacity of a child, declined. At the same time, the records indicated that on June 27, 2019, USBP denied him a “CIS/Asylum interview” due to “mental disability.” When Complainant #1 returned for his court appointment on July 18, 2019, the notes indicate that there was a “credible fear” interview. CRCL reviewed the USCIS record, and it appears CBP was referring to an MPP “Fear in Mexico” Assessment on July 19, 2019. Finally, the immigration judge during Complainant #1’s July 23, 2019, hearing identified a possible competency issue and said he would conduct a competency hearing on August 16, 2019. CBP then returned Complainant #1 to Mexico despite his pending mental competency hearing. CRCL requested copies of records relating to Complainant #1 from CBP on September 6, 2019. On January 8, 2020, CBP provided records to CRCL, which included a Form I-213 with an August 6, 2019, addendum stating, “The Immigration Judge determined that [Complainant #1] is incompetent to represent himself in removal proceedings and orders that safeguards to be put in place. Due to the subject’s mental health issues, he was returned to the Ysleta Border Patrol Station. [Complainant #1] has been removed from the MPP program.”

22 The cases presented here are a representative sample of the allegations investigated by CRCL. Several MPP cases investigated by CRCL are not detailed in this section for brevity. For example, Complaint No. 19-10-CBP-0566 raises time-in-custody issues that do not relate to the recommendations in this memorandum. In that case, CRCL substantiated allegations that Complainant #2, a Cuban national, was held in CBP custody for 48 days, far longer than the 72-hour period permitted by the CBP National Standards on Transport, Escort, Detention, and Search (TEDS). CBP documents indicate that due to ERO space not being available, she was held in CBP custody in a tent with approximately 100 individuals, until the MPP program expanded beyond Northern Triangle of Central America countries to include Cuban nationals and she was removed to Mexico.
Complaint No. 19-11-CBP-0637

CRCL attempted to investigate allegations that Complainant #3, a 16-year-old autistic boy with limited ability to speak and who is sensitive to touch, was returned to Mexico under MPP. CRCL received and reviewed records from CBP. The records did not include any documentation of a medical screening or medical assessment. Although Complainant #3 was not placed in Expedited Removal and was instead served I-862 NTAs and placed in MPP, the text “CREDIBLE FEAR CLAIM” appears on his I-213. Because CBP does not appear to have (or did not provide) any documentation relating to Complainant #3’s medical condition, CRCL is unable fully investigate the allegations.

Complaint No. 19-11-CBP-0642

CRCL investigated allegations that Complainant #4, a 27-year-old asylum seeker from Nicaragua required a wheelchair and treatment by CBP medical staff for severe back injuries prior to being returned to Mexico under MPP. CRCL received and reviewed records from CBP. While the field on the Personal Search Worksheet relating to illness, medications or medical care is blank, the TEDS Detainee Assessment indicates that Complainant #4 did not identify as having a disability, does not have physical or psychological medical needs, and is able bodied. CBP provided CRCL with copies of several other records, and CRCL reviewed available government systems. No records substantiated the claim that Complainant #4 required a wheelchair and medical treatment for back injuries.

Complaint No. 19-11-CBP-0643

CRCL investigated allegations that Complainant #5, a 6-year-old girl from Honduras, was returned to Mexico with "advanced cerebral palsy and significant developmental delays." CBP provided records to CRCL relating to Complainant #5. The I-213 indicated that she, her parents, and brother were processed into MPP as a Family Unit on May 20, 2019. The I-213 further indicated “CRIPPLED LEG, LEFT” and “CRIPPLED LEG, RIGHT” under “Scars, Marks, and Tattoos.” The records provided to CRCL by CBP did not include any other documentation relating to her health, including no documentation of any medical screening or assessment. The note by CBP that she had two “crippled leg[s]” indicates that CBP was aware that the child had a disability at the time it placed Complainant #5 into MPP and returned her to Mexico.

(b)(5), (b) (7)(E)

Complaint No. 19-11-CBP-0645

CRCL investigated allegations that Complainant #6, a Guatemalan who speaks an indigenous language and has limited Spanish ability was separated from his biological son when being placed into MPP, despite providing a birth certificate. (b)(5), (b) (7)(E)
DOJ-EOIR records list his language as “KEKCHI.”

On January 8, 2020, CBP provided records for Complainant #6, indicating the Complainant #6 was re-united with his child after having been separated after advocacy from his legal representatives.

Complaint No. 19-11-CBP-0650

CRCL investigated allegations that CBP separated a family consisting of common law partners Complainant #7 and Complainant #8 and their children, a girl approximately 22 months old, Complainant #9 and their 6-year-old son, Complainant #10. The allegations received by CRCL stated that Complainant #7 and their daughter, Complainant #9, remained in the United States and were separated from Complainant #8 and their son, Complainant #10, who were returned to Mexico under MPP. The records provided to CRCL by CBP on January 8, 2020, include an Unaccompanied Alien Child screening addendum for Complainant #9, despite the Form I-213 noting that she was accompanied by her mother. The records for her brother, Complainant #10 also include a UAC screening addendum, despite his Form I-213 noting that he was accompanied by his father. The Form I-213 for Complainant #8 and Complainant #10 both contain an addendum indicating that “[t]he family unit (below) is being removed from the MMP program [sic] to reunify the family” and lists all four family members. CBP provided CRCL with copies of emails stemming from an inquiry by the father and son’s attorney relating to their separation. In those emails, CBP personnel state that: “USBP will allow 1 head of household to be processed as a FMUA23 with all children and the other head of household (adult) is processed separately. This is common knowledge. To counter this procedure, heads of household will willingly separate, and each will take a child or children, in order to be processed as separate FMUAs.”

Complaint No. 19-11-CBP-0651

CRCL investigated allegations that Complainant #11 suffered mental health issues while being in the MPP program. CBP records indicate that Complainant #11 was apprehended with her son, Complainant #12. During her USCIS MPP assessment interview, Complainant #11 testified that she had been traveling with her son and sister-in-law. Complainant #11 testified that she witnessed the abduction of her sister in law in Mexico. Complainant #11 further testified that she was abducted by tattooed men in Juarez then taken to a house and raped in front of her son. The asylum officer’s notes indicate that Complainant #11 became unresponsive during the interview. CBP provided email records to CRCL on January 8, 2020, stating that she “was on a telephonic interview with A MPP Asylum Officer when she claimed to having a mental breakdown.” [sic] CBP had contract medical staff evaluate Complainant #11 and they determined that she should be transported to the hospital for a psychiatric evaluation. The email stated that she was screened for depression and sexually transmitted infection and released from the University Medical Center of El Paso Emergency Department, who prescribed her Mirtazapine, hydroxyzine hydrochlorine, and doxycycline hyclate. However, Complainant #11 was not removed from MPP for having a mental health issue or under CBP’s discretion. She was eventually removed from MPP due to a determination by USCIS that she was more likely than not to face persecution or torture in Mexico.

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23 FMUA is the designation used by CBP for Family Unit Aliens.
CRCL investigated allegations that Complainant #13 was placed into the MPP program despite being deaf and mute. Complainant #13 was apprehended on March 28, 2019. CBP “medically released and cleared” Complainant #13 on April 6, 2019, for return to Mexico under MPP with a court hearing on July 24, 2019. As Complainant #13 does not speak or hear Spanish, EOIR had to reschedule her hearing for an interpreter.

C. OFO Briefing to CRCL at Paso Del Norte Port of Entry

On July 17, 2019, CRCL met with CBP leadership at the Paso Del Norte Port of Entry (PDN) for a briefing on the implementation of MPP at the POE. PDN leadership thoroughly explained the MPP process as applied at PDN, including factors considered for amenability determinations and challenges faced by OFO when implementing MPP.

MPP Amenability Determinations at Paso Del Norte

CRCL asked how OFO assesses the category of “known physical or mental health issues” when applying the MPP Guiding Principles at PDN.
CRCL asked PDN leadership how individuals with disabilities are evaluated for amenability to MPP. *(b)(5)*

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CRCL asked PDN leadership how they tracked MPP cases. (b)(5)

D. Review of Component Agency Summary Data Reporting on MPP

USCIS

CRCL reviewed the USCIS Asylum Headquarters MPP Dashboard, which is updated daily and tracks referrals, case outcomes, and pending cases. The USCIS Asylum Division’s summary reporting further parses this data by the individual’s nationality; the POE where they appeared; and whether the claim of fear of persecution or torture in Mexico, or a fear of return to Mexico arose during the individual’s initial arrival to the United States, during the period when the individual returned to the United States for a hearing after having been initially returned to Mexico, or after the individual is apprehended between ports of entry after having been returned to Mexico pursuant to MPP. USCIS provided CRCL with a copy of their current daily report for November 13, 2019, in addition to a “Weekly MPP Report” from August 12-18, 2019. That weekly report indicated that individuals from Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Peru, Uruguay, and Venezuela had been referred to USCIS for MPP Fear in Mexico interviews that week. The weekly report indicated that the Mexican individual’s MPP USCIS record had been administratively closed without an MPP assessment interview. Given the numbers in the USCIS summary reporting, it appears that less than 20 percent of individuals in MPP are referred to USCIS for MPP assessment interviews.

CBP

CBP provided CRCL with summary counts of individuals placed in MPP by OFO and USBP from January 28, 2019, through September 26, 2019. This included 49,455 total individuals returned to Mexico under MPP, of which 856 were accompanied juveniles.25

In response to CRCL’s request for processing times for individuals who are processed for entry into the United States to attend their immigration court hearings, CBP provided that “[t]ypically an individual takes 10 to 20 minutes to process through CBP systems, biometrically identify them,

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25 CBP noted that unaccompanied alien children (UACs) are not MPP amenable.
secure their personal property, and complete a health screening.” CRCL also requested the following summary data, which CBP stated it does not capture:

- The number of individuals who were identified as not amenable to MPP pursuant to the categories in the MPP Guiding Principles;
- The number of LGBT+, intersex, or non-binary gender individuals who have been returned to Mexico pursuant to MPP;
- The number of families with children under 5 years of age who have been returned to Mexico pursuant to MPP;
- The number of persons with disabilities who have been returned to Mexico pursuant to MPP; and
- The number of non-parent (or legal guardian) relatives separated from now-unaccompanied children who have been returned to Mexico pursuant to MPP.

E. Review of Publicly Available EOIR Data on MPP Cases

The EOIR publishes frequently requested agency records disclosed under the Freedom of Information Act (FOIA). This includes anonymized case data from EOIR’s docket. CRCL examined both the data published by EOIR through September 2019 and summary charts from Transactional Access Records Clearinghouse (TRAC), a data gathering, research, and distribution organization at Syracuse University. This data revealed several areas of concern.

Of principal concern to CRCL is the fact that the EOIR data indicates that through September 2019, 57 Mexican nationals were placed onto EOIR’s MPP docket. CRCL brought this information to CBP and EOIR’s attention on November 8, 2019. CRCL was informed by CBP that this was likely a data integrity issue. Despite repeated requests for clarification, no

26 CBP stated in response, “Aliens in the following categories are not amenable to MPP: unaccompanied alien children; citizens or nationals of Mexico; aliens processed for expedited removal; aliens in certain special circumstances; any alien assessed by a USCIS asylum officer as more likely than not to face persecution or torture in Mexico, or other aliens at the discretion of the Port Director/Chief Patrol Agent. To the extent there are considerations for specific serious medical issues, the Port Director and Chief Patrol Agent of each individual location maintain their discretion to review each case on an individualized basis.”

27 CBP stated, in response, “When CBP encounters an alien family unit (consisting of either one or two parents/legal guardians), CBP will not separate the child from either parent/legal guardian unless the specific criteria provided in CBP’s June 27, 2018 Interim Guidance on Preliminary Injunction in Ms. L v. ICE are met. With the appropriate approvals, CBP officers/USBP agents can separate where a parent/legal guardian is being referred for a felony prosecution, the parent/legal guardian presents a danger to the child, the parent/legal guardian has a criminal conviction(s) for felonies or violent misdemeanors, the parent/legal guardian has a communicable disease, or CBP clearly establishes that the familial relationship is not bonafide.[sic] Non-parent or legal guardians are not considered a family unit. As such, CBP does not track this data. The criteria to separate a child from a parent/legal guardian would also render the alien not amenable to MPP. Therefore, no separated parent has been returned to Mexico with the child remaining in the United States.”

28 These frequently requested EOIR records are publicly available at: https://www.justice.gov/eoir/frequently-requested-agency-records.

29 More information about TRAC at Syracuse University is available at: https://trac.syr.edu/aboutTRACgeneral.html. TRAC publishes MPP data and charts at: https://trac.syr.edu/phptools/immigration/mpp/.
During listening sessions conducted by CRCL in the normal course of its community engagement, NGOs expressed concerns to CRCL regarding Mexican nationals subjected to MPP. At the El Paso court, representatives of one NGO said that they directly observed MPP cases involving Mexican nationals. Some were single adults; others were family members in families of mixed nationality. They cited TRAC reports that show, according to EOIR data, that through the end of August 2019, 52 Mexican nationals in MPP hearings had been docketed in EOIR's database. According to the EOIR data at the time, 42 of the 52 Mexican nationals had not yet had a court hearing, seven had showed up to all hearings, and three had been ordered removed in absentia.

Another concern was the issue of non-Spanish-speaking individuals (other than Brazilian nationals) being outside MPP. While the MPP Guiding Principles are silent on the issue of language access and whether non-Spanish speakers are amenable, CRCL received and observed contradictory information on how CBP is addressing this issue. In an email exchange that CRCL reviewed between an NGO regarding indigenous language speaking clients from Guatemala (6 K’iche’ speakers, 2 Chuj speakers, and 2 Q’eqchi’ speakers) and the USBP. The response received from a Supervisory Border Patrol Agent stated, “Non-Spanish speakers are disqualified from MPP. The individuals for whom you are requesting exemption do speak Spanish. Therefore, they will not be removed from MPP.” No reference is made to a policy articulating that non-Spanish speakers are not amenable to MPP, nor is any standard given to what qualifies as sufficient Spanish fluency when making that determination.

CRCL is aware that CBP officially began returning Brazilians to Mexico under MPP. On February 6, 2020, CRCL’s Programs Branch requested that CBP provide a copy of the Portuguese tear sheet being used to process Brazilians in MPP. USBP headquarters replied that the tear sheet had not yet been formally translated, and stated, “[f]or now, we are using an organically made Portuguese tear sheet which must be read by our translation services on the phone.” No justification was given for not complying with CRCL’s information request, despite the 42 U.S.C. §2000-ee1(d) requirement for agency cooperation.

Prior to February 2020, CBP staff informed CRCL that either only Spanish-speaking individuals (or, alternatively, only individuals from Spanish-speaking countries) are amenable to MPP, the nationality data in publicly available EOIR records indicate that the following number of nationals of predominantly non-Spanish speaking countries have been placed in EOIR’s MPP docket:

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Count of Individual Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>7</td>
</tr>
<tr>
<td>Holland [The Netherlands]</td>
<td>7</td>
</tr>
<tr>
<td>Haiti</td>
<td>3</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>3</td>
</tr>
<tr>
<td>Namibia</td>
<td>3</td>
</tr>
<tr>
<td>Cyprus</td>
<td>2</td>
</tr>
<tr>
<td>Gabon</td>
<td>2</td>
</tr>
<tr>
<td>Country</td>
<td>Count</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Guinea</td>
<td>2</td>
</tr>
<tr>
<td>Jamaica</td>
<td>1</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>1</td>
</tr>
<tr>
<td>Uganda</td>
<td>1</td>
</tr>
<tr>
<td>Egypt</td>
<td>1</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>1</td>
</tr>
<tr>
<td>Georgia</td>
<td>1</td>
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<tr>
<td>Sri Lanka</td>
<td>1</td>
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<tr>
<td>Oman</td>
<td>1</td>
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<tr>
<td>Laos</td>
<td>1</td>
</tr>
<tr>
<td>Democratic Republic of Congo</td>
<td>1</td>
</tr>
<tr>
<td>Malawi</td>
<td>1</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>1</td>
</tr>
</tbody>
</table>

**Language** | **Count of Individual Records**
--- | ---
SPANISH | 46,953
SPANISH--SIGN LANGUAGE | 88
MAM | 55
SRANAN TONGO | 31
QUICHE | 26
KONJOBAL | 21
KEKCHI | 20
SRI LANKAN MALAY | 16
QUECHUA | 16
SUDANESE | 9
ENGLISH | 9
SUSU | 7
SOTHO | 7
PALAUAN | 5
QUICHE-ACHI | 5
HONDURAN SIGN LANGUAGE | 4
UNKNOWN LANGUAGE | 4
CHUJ, SAN MATEO IXTATAN | 4
In a telephonic conversation with CRCL on July 26, 2019, EOIR court staff indicated that although CBP usually identifies individuals in MPP as Spanish speakers, EOIR staff often find that the individual speaks a different language than Spanish, typically an indigenous language, and must order an interpreter for that language in order to ensure due process and a full and fair hearing. In discussions with CRCL, individual USCIS asylum officers also indicated that they personally encountered multiple individuals in MPP who required an indigenous language interpreter. [b](5)

Within the 360 records of non-Spanish speaking individuals in the publicly posted EOIR MPP docket records, there were 95 individuals who required a sign language interpreter at their EOIR immigration court hearings. [b](5)

CRCL Findings

1. The application of MPP to certain family members has meant that individuals who are citizens and/or nationals of Mexico were, at times, permitted to withdraw with family members who are placed in MPP. Pursuant to the MPP Guiding Principles, citizens or nationals of Mexico are not amenable to MPP. This includes circumstances where a Mexican citizen or national is part of a family unit that includes non-Mexican citizens or nationals. In
order to preserve family unity and comply with the MPP Guiding Principles, CBP should exclude the entire family unit from MPP if a member of the family is a citizen or national of Mexico.

2. **MPP has been applied to persons who do not speak Spanish as their primary language.** Although the MPP Guiding Principles are silent on the issue, CBP’s stated policy has been, until recently, not to return any non-Spanish speakers to Mexico. (b)(5)

3. **Persons with known mental and physical health issues have been subjected to MPP, including persons with severe medical conditions and disabilities.** The MPP Guiding Principles have stated that individuals with “known physical/mental health issues” are not amenable to MPP. (b)(5)

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30 While CBP’s initial policy was to only enroll aliens from Spanish speaking countries into MPP, CRCL acknowledges that CBP now considers Brazilian nationals to be amenable to MPP.
4. **Medical screenings for individuals being subjected to MPP have not been consistently documented.** When reviewing records provided by CBP in response to CRCL’s information requests, only records for a few cases included forms indicating which health-related questions were asked of applicants and their responses. It is CRCL’s understanding that CBP is piloting a CBP Form 2500, *Alien Initial Health Interview Questionnaire* in some locations. [b](5)

5. **Pregnant women have been subjected to MPP.** CRCL acknowledges that pregnancy is distinct from other medical issues. However, in the course of this investigation, CRCL has received and observed conflicting information from CBP and ICE with regard to whether pregnant women are amenable to MPP. PDN leadership suggested to CRCL that OFO does not place clearly pregnant women into the program, but also stated that pregnancy does not automatically make an individual not amenable and pregnant women can be considered for MPP amenability on a case-by-case basis, weighing factors such as gestational age. The ICE ERO SND guidance received by CRCL expressed a more defined standard that individuals “in their third trimester of pregnancy should not have been enrolled in [MPP] and are not transported by ERO.” In some circumstances, CRCL has heard a possible 5-month standard articulated by CBP and in other circumstances has been told that local agreements with Mexican immigration officials affect whether pregnant individuals are subject to MPP. On December 18, 2019, Border Patrol headquarters stated that it was a case-by-case analysis whether to exclude individuals from being amenable to MPP. [b](5)

6. **When USCIS officials discover facts indicating an individual may not be amenable to MPP due to mental or physical health issues, there is no clear process for removing that individual from the MPP program.** Communications from USCIS to CBP regarding

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31 Although the complaints investigated for this memorandum are from 2019, new MPP cases with serious physical/mental health issues continue to be raised to CRCL’s attention. On February 4, 2020, CRCL inquired with CBP about an individual in the MPP program who is HIV-positive individual and has been diagnosed with AIDS. CBP responded, “Based the results of his medical screening at the POE, [Complainant #14] was transported to a hospital for evaluation and was cleared to travel by a medical professional. Upon conclusion of his hearing and screening, [Complainant #14] was returned to Mexico under MPP.”
individuals who may not be amenable to MPP but are nonetheless in the MPP program and have been referred to USCIS for an MPP Fear in Mexico assessment have been occurring on an ad-hoc basis without centralized or formal procedures. Establishing a procedure and standardized documentation for USCIS to alert CBP to facts arising during the MPP Fear in Mexico interview would have ensured that such information is relayed to CBP for its consideration of whether the individual continues to be amenable to MPP. Standardized documentation was needed to include data fields for all the information CBP would need to re-evaluate MPP amenability due to the newly discovered facts. CBP should also provided a copy to USCIS of detailed guidance regarding factors impacting MPP amenability so that USCIS can appropriately flag information relevant to amenability. Such a process should have also been documented in the MPP case tracking system or database proposed in Recommendation 9.

7. When EOIR or USCIS requires a non-Spanish interpreter because an individual in MPP does not speak sufficient Spanish to present a claim through a Spanish interpreter, no clear process existed to bring this to CBP’s attention. CRCL has been informed by staff at both USCIS and EOIR that they have often had to obtain rare/indigenous language interpreters for individuals in MPP whose primary language is not Spanish. This can lead to delayed processing and wasted time and resources for USCIS and EOIR. Further, individuals who primarily speak a non-Spanish language should not have been placed in MPP, per the unwritten (but consistently stated) CBP policy that MPP is to be applied to Spanish-speakers. While these individuals may speak rudimentary Spanish, such that they are able to provide basic responses to CBP’s questions at the initial inspection, they may lack a degree of Spanish-language fluency to adequately convey information and to fully understand questions asked and information provided during the non-refoulement interview or immigration court hearing. Therefore, CBP have should coordinated with USCIS and EOIR to receive reports of interviews and hearings that are conducted in a language other than Spanish, to inform CBP’s reconsideration of MPP amenability for those individuals. If there was a rule or standard being applied by CBP regarding language and MPP amenability, either due to CBP policy or local agreement with Mexican officials, it should have been clearly articulated and documented both within the agency and shared with the NGO and legal community.

8. Inconsistent informal policies and local procedures lack clarity on the amenability to MPP of LGBTI individuals. PDN leadership stated that under local policy, LGBTI individuals are not considered eligible for MPP, because INM does not accept them for returns. CRCL has also been informed by CBP staff that San Ysidro POE has local guidance indicating that LGBTI individuals are not amenable to MPP. However, there did not appear to be consistent screening in order to apply these exceptions, nor is such an exception clearly articulated in written policy. If there is such an exception, either due to CBP policy or local agreement with Mexican officials, it should have been clearly articulated and documented both within the agency and shared with the NGO and legal community. In a December 18, 2019 meeting with CRCL, Border Patrol headquarters stated that if any LGBTI person stated that they did not want to go back to Mexico, then Border Patrol would not force them to return to Mexico and that LGBTI persons are given a choice if they affirmatively state that they do not wish to be returned to Mexico. However, CRCL has not seen this policy articulated in written guidance or issued in any format to Border Patrol agents.
9. **Unaccompanied Alien Children (UACs) have been subjected to MPP.** Documents provided to CRCL by ICE ERO indicate that CBP has at times placed UACs into the MPP program, in violation of the MPP Guiding Principles.

10. **Families have been separated during the MPP process.** CRCL has substantiated allegations that family units have been separated in the MPP program. In emails provided to CRCL by CBP, CBP personnel state that it is USBP procedure to separate one parent from the rest of the family and only maintain family unity for the other parent and children.

    Married couples and children with their parents or legal guardians should be processed together and scheduled for the same hearing in immigration court. Failing to do so may not only impact the family’s safety and well-being while waiting for their immigration court hearing but may also impact any claims for relief filed by the family. Family members may be witnesses in each other’s defensive claims and may be entitled to derivative status if a parent or spouse is granted relief.

11. **The Department lacks a centralized system for tracking MPP cases and CBP has limited ability to perform reporting and quantitative analysis of the MPP program.**

12. **CBP staff are not adequately trained on the distinction between Credible Fear screenings and other humanitarian screenings and assessments relating to the United States’ non-refoulement obligations.** In the course of this investigation, CRCL has reviewed his also arose repeatedly in communications between CBP and CRCL staff at both the field and headquarters levels. Further, many of the records for individuals in MPP reviewed by CRCL state “CREDIBLE FEAR CLAIM” on the Form I-213, despite the fact that the individuals had already received an NTA, had not received a Form I-860, *Notice and Order of Expedited Removal*, and therefore would not be legally eligible to receive a credible fear screening.
Following the implementation of MPP by DHS, a DHS Senior Leadership-led effort known as the “Red Team” conducted a top-down review of MPP policies and implementation strategies. The Red Team developed recommendations regarding the implementation of MPP and on November 8, 2019, then Acting Secretary Kevin McAleenan directed DHS components to implement those recommendations. On January 14, 2020, the leadership of CBP, ICE, and USCIS issued a joint memorandum in response. The components stated that many of the recommendations had already been addressed and gave further detail regarding ongoing activities designed to make MPP more “effective and efficient.” The ongoing activities included actions to ensure that migrants can access information and speak with DHS officials in their preferred language; reinforcing the avenues by which relevant stakeholders can view MPP proceedings, meet with migrants, or visit temporary hearing locations; standardizing and ensuring the consistency of the information individuals are provided regarding "migrant rights" building on efforts to show "Know Your Rights" videos at temporary hearing locations; advocating with the Government of Mexico, the Department of State, and trusted international organizations to improve the safety and security of MPP migrants while they wait in Mexico; and reinforcing training and standards for those involved in non-adversarial interviewing.

Subsequently, on December 7, 2020 then DHS Acting Secretary Chad Wolf issued a memorandum directing CBP, ICE, and USCIS to take further specific actions to close out the Red Team Report evaluation process. Recommendations in the December 7, 2020 memorandum included developing a DHS.gov MPP landing page; issuing department level guidance to bring greater consistency to MPP operations; issuing additional CBP guidance on document service; and issuing additional CBP guidance on MPP amenability. Concurrently with the issuance of the December 7, 2020 memorandum, the additional guidance was issued and made available on the public MPP website.

CRCL Recommendations

CRCL recommends that:

1. CBP should adhere to the MPP Guiding Principles and not apply MPP to citizens or nationals of Mexico and coordinate with DOJ EOIR to ensure that Mexican citizens and/or nationals who have been erroneously placed into MPP are expeditiously removed from the program.

2. (b)(5)

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32 CRCL acknowledges that there is some overlap between the recommendations contained in this memorandum and the recommendations in the Red Team Report and that some progress towards these recommendations has already occurred.
3. CBP should issue clear written guidance regarding the amenability of late-term pregnant women to MPP, including clear standards for this determination. CBP also should clarify in written guidance whether late term pregnancy constitutes a “known physical/mental health issue” or falls into a different categorical exception to MPP.

7. CBP fully document medical screenings for every individual placed into MPP. Medical screenings should use a standard template form to ensure consistency.

8. CBP should issue clear guidance regarding persons with disabilities, either clarifying that persons with disabilities fall within the principle of “known mental or physical health issue” or amending the Guiding Principles to state that persons with disabilities as not being amenable to MPP and amend the training materials accordingly.

9. CBP should issue clear written guidance regarding LGBTI persons and amenability to MPP.

10. CBP and CRCL develop a process in which subsequent to the issuance of this memo, CRCL has an avenue to raise reports of individuals with specific vulnerabilities who have nevertheless be placed in MPP, for CBP to determine whether to remove the individual from MPP.

13. CBP should not separate family units in MPP unless such separations are consistent with published CBP policies on family separations and such separations cannot be avoided by placing the family into another program, such as expedited removal.
14. Please inform us within 60 days whether you concur or non-concur with these recommendations by emailing a response to ... If you concur, please include an action plan.

It is CRCL’s statutory responsibility to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and the implementation of those decisions. These recommendations are pursuant to that role; we believe they can assist you in making CBP, ICE, and USCIS the best agencies possible. We look forward to continuing to work with you on these important issues.
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