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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

IMMIGRANT DEFENDERS LAW CENTER,
et al.,

Plaintiffs,

v.

CHAD WOLF, et al.,

Defendants.

Case No. 2:20-cv-09893-JGB-SHK

DECLARATION OF KENJI KIZUKA

1 I, Kennji Kizuka, pursuant to 28 U.S.C. § 1746, declare the following is true
2 and correct:

3 1. I submit this declaration, based on my personal knowledge and extensive
4 research on the Department of Homeland Security’s (“DHS”) Migrant Protection
5 Protocols (“MPP”), also known as the Remain in Mexico policy.

6 2. I have witnessed, documented, and researched the enormous barriers the
7 MPP policy creates for asylum seekers returned to life-threatening dangers,¹ including
8 the terrible conditions under which they must attempt to find legal representation and
9 seek asylum protection in the United States.

10 **Research and Expertise**

11 3. I am a senior researcher and policy analyst at Human Rights First, a
12 national non-profit, non-partisan organization that provides pro bono legal services to
13 asylum seekers and advocates for the United States government to uphold its human
14 rights obligations abroad and at home, including respecting the rights of refugees and
15 asylum seekers under U.S. law and international treaty obligations.

16 4. I previously served as an attorney on the refugee representation team at
17 Human Rights First, representing dozens of asylum seekers from Algeria, El Salvador,
18 Guatemala, Honduras, Mexico, and Russia before the Asylum Office, Executive
19 Office of Immigration Review, Board of Immigration Appeals, and federal court. In
20 this capacity, I also mentored attorneys at major U.S. law firms providing pro bono
21 assistance to asylum seekers. Prior to joining Human Rights First, I worked in the
22

23 _____
24 ¹ The U.S. Department of State cautions Americans about traveling to Baja
25 California – the Mexican state on the California-Mexico border where asylum seekers
26 in MPP have been returned through the cities of Tijuana and Mexicali – warning that
“[c]riminal activity and violence occur throughout the state. Particularly notable is the
number of homicides in non-tourist areas of Tijuana.”

27 U.S. Department of State, “Mexico Travel Advisory,” (Sep. 8, 2020), *available at*
28 <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (last accessed Oct. 19, 2020).

1 Children’s Rights Division at Human Rights Watch.² I received a B.S. from
2 Georgetown University’s School of Foreign Service in 2006, a master’s degree in
3 public affairs from Princeton University in 2014, and a J.D. from University of
4 California, Berkeley School of Law, in 2014. I am licensed to practice law in New
5 York.

6 5. Since MPP began in January 2019, I have led Human Rights First’s field
7 research on the effects of the policy, spending weeks in Mexico and interviewing
8 hundreds of asylum seekers returned there. I conducted research on MPP in Mexico at
9 six of the seven ports of entry where MPP is implemented: Tijuana, Mexicali, Ciudad
10 Juárez, Piedras Negras, Nuevo Laredo, and Matamoros; as well as in Monterrey, where
11 a small percentage of individuals relocated after being returned to Mexico pursuant to
12 MPP.

13 6. In addition to asylum seekers, I interviewed dozens of individuals
14 working with MPP returnees, including Mexican immigration officials, migrant
15 shelter staff, pastors and members of religious orders assisting asylum seekers, non-
16 profit legal and social service providers, and private immigration attorneys.

17 7. I also observed U.S. immigration court proceedings at the San Diego and
18 El Paso immigration courts and the temporary immigration court facility erected in
19 Brownsville, Texas, for hundreds of individuals returned under MPP to Matamoros,
20 Mexico. My Human Rights First colleagues observed hearings for over 200
21 individuals at the Laredo MPP tent court, in person and by video from the San Antonio
22

23
24 ² Among other responsibilities, I assisted with field research on attacks against
25 schools and other civilian infrastructure used by Indian police in their conflict with
26 Marxist guerillas. *See*, Human Rights Watch, “Sabotaged Schooling: Naxalite Attacks
27 and Police Occupation of Schools in India’s Bihar and Jharkhand States,”
28 (Dec. 9, 2009), *available at* <https://www.hrw.org/report/2009/12/09/sabotaged-schooling/naxalite-attacks-and-police-occupation-schools-indias-bihar>; Kizuka & Sheppard, “Taking Armed Conflict Out of the Classroom: International and Domestic Legal Protections for Students When Combatants Use Schools,” 2 *Journal of International Humanitarian Legal Studies* 281 (Jan. 2011).

1 immigration court when Customs and Border Protection (“CBP”) would not grant us
2 physical access to the tent court.

3 8. Based on these investigations, I co-authored five full-length human rights
4 reports on MPP for Human Rights First³ as well as a year-in-review report on the MPP
5 policy,⁴ based on additional original research and analysis of publicly released
6 immigration court data.

7 **Asylum Seekers Returned to Mexico under MPP Face Extreme Dangers and**
8 **Deplorable Conditions that Make it Virtually Impossible for Them to Obtain U.S.**
9 **Legal Counsel**

10 9. More than 94 percent of individuals subject to MPP do not have legal
11 representation.⁵ Nearly every asylum seeker in MPP I encountered during my field
12 research was unrepresented. The grave dangers and life-threatening conditions that
13 asylum seekers returned to Mexico face prevent the vast majority of them from

14 ³ Human Rights First, “A Sordid Scheme: The Trump Administration’s Illegal
15 Return of Asylum Seekers to Mexico,” (March 2019), *available at* https://www.humanrightsfirst.org/sites/default/files/A_Sordid_Scheme.pdf; Human
16 Rights First, “Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum
17 Seekers’ Lives and Denies Due Process,” (Aug. 2019), *available at* [https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-](https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf)
18 [2019%20.pdf](https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf); Human Rights First, “Orders from Above: Massive Human Rights
19 Abuses Under Trump Administration Return to Mexico Policy” (Oct. 2019), *available*
20 *at* <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>;
21 Human Rights First, “Human Rights Fiasco: The Trump Administration’s Dangerous
22 Asylum Returns Continue,” (Dec. 2019), *available at* [https://www.](https://www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf)
23 [humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf](https://www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf); Human Rights
24 First, “Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels
25 Asylum Seekers and Children to Escalating Danger,” (May 2020), *available at* [https://www.humanrightsfirst.org/resource/pandemic-pretext-trump-administration-](https://www.humanrightsfirst.org/resource/pandemic-pretext-trump-administration-exploits-covid-19-expels-asylum-seekers-and-children)
26 [exploits-covid-19-expels-asylum-seekers-and-children](https://www.humanrightsfirst.org/resource/pandemic-pretext-trump-administration-exploits-covid-19-expels-asylum-seekers-and-children).

27 ⁴ Human Rights First, “A Year of Horrors: The Trump Administration’s Illegal
28 Returns of Asylum Seekers to Danger in Mexico,” (Jan. 2020), *available at* [https://](https://www.humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf)
www.humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf.

⁵ Syracuse University Transactional Records Access Clearinghouse (TRAC),
“Details on MPP,” *available at* <https://trac.syr.edu/phptools/immigration/mpp/> (last
accessed Oct. 10, 2020) (3,610 out of 63,525 individuals whose current status indicates
an MPP hearing location, through August 2020, had a legal representative registered
with the immigration court).

1 locating and retaining legal counsel to represent them in their immigration
2 proceedings.

3 10. My colleagues at Human Rights First and I track publicly reported cases
4 of violent attacks against asylum seekers returned to Mexico under MPP. This tally
5 aggregates incidents reported during interviews my colleagues and I conducted with
6 asylum seekers and/or their attorneys, incidents reported by other human rights groups
7 (including Human Rights Watch, Amnesty International, and Doctors Without
8 Borders), and incidents reported in published media.

9 11. As of May 13, 2020, Human Rights First identified 1,114 public reports
10 of murder, torture, rape, kidnapping, and other violent assaults against asylum seekers
11 returned to Mexico under MPP,⁶ 265 of these involving children subjected to
12 kidnappings.⁷ Some attorneys representing individuals in MPP report attacks against
13 their clients, but since so few individuals in MPP are represented by counsel, these
14 incidents also necessarily reflect the experience of a very small percentage of the total
15 number of MPP returnees.

16 12. A study by researchers at the University of California San Diego found
17 that nearly one in four individuals in MPP located in Tijuana and Mexicali had
18 experienced or were threatened with violence after being returned to Mexico by DHS.⁸
19 The researchers found that the longer an individual was forced to wait in Mexico, the
20 more likely they were to be the victim of violence, and projected that “[f]or those who
21 have to wait 6 months before their immigration court dates, over half (51.3%) will
22

23
24 ⁶ Human Rights First, “Publicly reported cases of violent attacks on individuals
25 returned to Mexico under the ‘Migrant Protection Protocols’,” (May 13, 2020),
available at <https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks5.13.2020.pdf>.

26 ⁷ See Human Rights First, “Pandemic as Pretext,” p.9.

27 ⁸ Tom K. Wong, “Seeking Asylum, Part 2,” U.S. Immigration Policy Center (Oct.
28 29, 2019), p.9, *available at* <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

1 likely be threatened with physical violence.”⁹ In December 2019, a Salvadoran asylum
2 seeker in MPP was brutally murdered in Tijuana – the first known murder of an
3 individual returned to Mexico under the policy.¹⁰

4 13. The U.S. State Department’s Overseas Security Advisory Council crime
5 and safety report notes that “Mexican government statistics reveal that the five Baja
6 California municipalities – Tijuana, Mexicali, Ensenada, Rosarito, and Tecate – all
7 had a record number of homicides in 2018.”¹¹ According to the Citizens Council for
8 Public Safety and Criminal Justice in Mexico, Tijuana had the highest homicide rate
9 of any Mexican city in 2019.¹² A U.S. Drug Enforcement Agency spokesperson noted
10 in February 2020 that a wave of homicides was the result of a “war for the Tijuana
11 area” among cartels.¹³

12 14. Many attacks on asylum seekers in MPP are perpetrated by members of
13 cartels or other organized criminal groups, often with the participation or complicity
14 of Mexican police and other Mexican officials.¹⁴

15
16 ⁹ *Id.*

17 ¹⁰ Wendy Fry, “Central American migrant who sought U.S. asylum slain in
18 Tijuana,” *LA Times* (Dec. 12, 2019), *available at* [https://www.
19 latimes.com/california/story/2019-12-12/attorney-central-american-in-mpp-program-
murdered-in-tijuana](https://www.latimes.com/california/story/2019-12-12/attorney-central-american-in-mpp-program-murdered-in-tijuana).

20 ¹¹ U.S. Department of State, Overseas Security Advisory Council, “Mexico 2020
21 Crime & Safety Report: Tijuana,” (July 29, 2020), *available at* [https://
www.osac.gov/Content/Report/6da3d429-8e47-4cf5-b483-1949341e677f](https://www.osac.gov/Content/Report/6da3d429-8e47-4cf5-b483-1949341e677f).

22 ¹² Consejo Ciudadano para la Seguridad Pública y la Justicia Penal, “Ranking 2019
23 de las 50 ciudades más violentas del mundo,” (June 1, 2020), *available at* [http://www.seguridadjusticiaypaz.org.mx/sala-de-prensa/1590-boletin-ranking-2019-
de-las-50-ciudades-mas-violentas-del-mundo](http://www.seguridadjusticiaypaz.org.mx/sala-de-prensa/1590-boletin-ranking-2019-de-las-50-ciudades-mas-violentas-del-mundo).

24 ¹³ Alexandra Mendoza, “Fuerte golpe contra el cártel Jalisco Nueva Generación en
25 Estados Unidos. Hay más de 600 detenidos,” *LA Times* (Mar. 11, 2020), *available at* [https://www.latimes.com/espanol/eeuu/articulo/2020-03-11/fuerte-golpe-contra-el-
26 cartel-jalisco-nueva-generacion-en-estados-unidos-hay-mas-de-600-detenidos](https://www.latimes.com/espanol/eeuu/articulo/2020-03-11/fuerte-golpe-contra-el-cartel-jalisco-nueva-generacion-en-estados-unidos-hay-mas-de-600-detenidos).

27 ¹⁴ *See, e.g.*, Human Rights First, “Human Rights Fiasco,” p.13; Human Rights First,
28 “Pandemic as Pretext,” p.9; Human Rights First, “Publicly reported cases of violent
attacks on individuals returned to Mexico under the ‘Migrant Protection Protocols’, as

1 15. Because of this violence and corruption, many U.S.-based attorneys are
2 afraid to visit Mexico in order to represent asylum seekers returned there by DHS
3 under MPP. Individuals assisting asylum seekers returned to Mexico are at risk of
4 kidnapping and violence. For instance, several attorneys in Texas advised my
5 colleagues and me not to travel to Nuevo Laredo, Mexico, because of the dangerous
6 security situation. A U.S.-based attorney working with pro bono law firm volunteer
7 attorneys reported that after she visited a shelter in Nuevo Laredo in 2019, cartel
8 members made unspecified threats that the project she works for should not return to
9 the shelter. Neither she nor other members of her team have returned to the shelter
10 since.

11 16. Neither the U.S. nor Mexican government provide housing or other
12 support to returned individuals. In late 2019, the governor of Baja California scrapped
13 plans to open a government-supported shelter in Mexicali after protests by local
14 residents.¹⁵ The University of California San Diego study found that one in three
15 individuals in MPP in Tijuana and Mexicali (34.5 percent) experienced homelessness
16 while waiting for MPP immigration court proceedings.¹⁶ Some asylum seekers
17 returned to Mexico under MPP manage to find shelter in privately-operated migrant
18

19 compiled by Human Rights First,” (May 13, 2020), p. 63, *available at*
20 [https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks5.1](https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks5.13.2020.pdf)
21 [3.2020.pdf](https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks5.13.2020.pdf) (Guatemalan asylum seeker previously returned to Mexico under MPP was
22 stopped and robbed by police officers in Mexicali in early January 2020); Said
23 Betanzos, “Acusan a policías de Tijuana de violar a migrante,” *Milenio* (Dec. 23,
24 2019), *available at* [https://www.milenio.com/estados/en-tijuana-acusan-a-policias-](https://www.milenio.com/estados/en-tijuana-acusan-a-policias-de-violar-a-migrante)
[de-violar-a-migrante](https://www.milenio.com/estados/en-tijuana-acusan-a-policias-de-violar-a-migrante); Erin Siegal McIntyre, “As Tijuana Locks Down, Migrants At
U.S.-Mexico Border Stuck In Dangerous Limbo,” *HuffPost* (April 3, 2020), *available*
at [https://www.huffpost.com/entry/asylum-seekers-mexico-border-coronavirus](https://www.huffpost.com/entry/asylum-seekers-mexico-border-coronavirus_n_5e86250fc5b63e06281abf22)
[n_5e86250fc5b63e06281abf22](https://www.huffpost.com/entry/asylum-seekers-mexico-border-coronavirus_n_5e86250fc5b63e06281abf22).

25 ¹⁵ “Plans for Migrant Shelter in Mexicali Sidelined After Neighbors Protest,” *LA*
26 *Times* (Nov. 25, 2019), *available at* [https://www.latimes.com/california/story/2019-](https://www.latimes.com/california/story/2019-11-25/plans-for-migrant-shelter-in-mexicali-sidelined-after-neighbors-protest)
[11-25/plans-for-migrant-shelter-in-mexicali-sidelined-after-neighbors-protest](https://www.latimes.com/california/story/2019-11-25/plans-for-migrant-shelter-in-mexicali-sidelined-after-neighbors-protest).

27 ¹⁶ Tom K. Wong, “Seeking Asylum, Part 2,” U.S. Immigration Policy Center (Oct.
28 29, 2019), p.10, *available at* [https://usipc.ucsd.edu/publications/usipc-seeking-](https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf)
[asylum-part-2-final.pdf](https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf).

1 shelters, but many of these shelters are in dangerous areas¹⁷ and the targets of attack.
2 For instance, in 2018 (prior to the implementation of MPP), a shelter for transgender
3 asylum seekers in Tijuana was attacked and set on fire.¹⁸ Due to the COVID-19
4 pandemic, many shelters, including shelters for families and LGBTQ persons in
5 Tijuana, have stopped accepting new residents to prevent transmission of the
6 coronavirus.¹⁹

7 17. At some shelters, security concerns about infiltration by violent criminal
8 cartels is so great that the shelters, including the largest migrant shelter in Ciudad
9 Juarez, for example, restrict access to cellular phones in their facilities to reduce the
10 risk of a criminal entering the facility and using a cellphone to take photographs and
11 record information about migrants that can be used to later target them for kidnapping
12 and extortion. These restrictions—imposed to protect the lives of those residing in the
13 shelters—hamper the ability of returned asylum seekers to contact and communicate
14 with lawyers.²⁰

15 18. In my experience, for asylum seekers forced to remain in Mexico under
16 MPP, merely attempting to meet with an attorney in Mexico can be dangerous. For
17 instance, in November 2019, a Venezuelan refugee was nearly kidnapped at the Nuevo
18 Laredo bus station en route to the port of entry to meet with me. As he exited a bus at
19 the Nuevo Laredo bus station, a group of men approached him, questioning him about
20 where he was from, and tried to force him into a waiting vehicle outside. He managed
21

22 ¹⁷ Said Betanzos, “Investigan disparo en albergue migrante en Tijuana,” *Milenio*
23 (Apr. 3, 2020), available at [https://www.milenio.com/estados/baja-california-](https://www.milenio.com/estados/baja-california-investigacion-balacera-afecto-albergue-migrantes)
24 [investigan-balacera-afecto-albergue-migrantes](https://www.milenio.com/estados/baja-california-investigacion-balacera-afecto-albergue-migrantes) (a bullet hit the interior of a migrant
shelter in Tijuana after an exchange of gunfire between police and suspected
25 criminals).

26 ¹⁸ Gabriela Martínez & Amalia Escobar, “Atacan a migrantes trans en albergue,”
El Universal (May 8, 2018), available at [https://www.eluniversal.com.mx/](https://www.eluniversal.com.mx/estados/atacan-migrantes-trans-en-albergue-de-tijuana)
27 [estados/atacan-migrantes-trans-en-albergue-de-tijuana](https://www.eluniversal.com.mx/estados/atacan-migrantes-trans-en-albergue-de-tijuana).

28 ¹⁹ See Human Rights First, “Pandemic as Pretext,” p.18.

²⁰ See Human Rights First, “Delivered to Danger,” p.14.

1 to push through the men and got into a previously arranged taxi. The man was in Nuevo
2 Laredo at the time, even though an immigration judge at the Laredo MPP tent court
3 recognized him as a refugee in October 2019—the previous month. DHS had returned
4 the man, one of an exceedingly small number of asylum seekers to successfully
5 represent themselves in MPP, to Mexico despite the judge’s decision.²¹ At the port of
6 entry, I represented the man in a request to CBP to permit him to enter the United
7 States.

8 19. The few attorneys who are willing and able to serve asylum seekers in
9 Mexico lack safe, private spaces to meet with clients. Crowded conditions in migrant
10 shelters make it incredibly difficult for lawyers to conduct confidential meetings, and
11 asylum seekers often do not feel safe at these shelters. Human Rights First’s research
12 has repeatedly shown that asylum seekers are frequently targeted for kidnapping,
13 attack, and extortion at or immediately outside migrant shelters.²² For example:

- 14 a. A group of some forty men attacked residents of a migrant hostel with
15 metal bars and pipes in June 2019, a day prior to my visit to migrant
16 shelters in Mexicali, severely injuring several individuals, including a
17 Central American asylum seeker.²³
- 18 b. At another makeshift shelter in Mexicali that I toured in June 2019,
19 hundreds of asylum seekers returned by DHS through MPP to Mexico
20 were lying on the concrete floors of a warehouse-like space in sweltering
21

22 ²¹ My research indicates that DHS returned at least 17 asylum seekers in MPP to
23 Mexico despite the fact that they had already been recognized by an immigration judge
24 as qualifying for U.S. refugee protection and granted asylum or withholding of
25 removal. Human Rights First, “A Year of Horrors,” p.5; *see* Joel Rose, “Trump
Changes Make It Difficult For Migrants To Gain Asylum,” (Jan. 6, 2020), *available*
at <https://www.npr.org/2020/01/06/793895352/trump-changes-make-it-difficult-for-migrants-to-gain-asylum>.

26 ²² *See, e.g.*, Human Rights First, “A Sordid Scheme,” pp.4-5; Human Rights First,
27 “Human Rights Fiasco,” pp.7-9; Human Rights First, “Orders from Above,” p.6, 10;
Human Rights First, “Pandemic as Pretext,” p.9.

28 ²³ *See* Human Rights First, “Delivered to Danger,” p.3.

1 temperatures, including a heavily pregnant woman and many sick
2 children.

3 c. In September 2019, armed, masked men attacked a church-based shelter
4 housing mainly Cuban migrants in Ciudad Juarez. A Cuban asylum
5 seeker said that the armed men threatened to “kill one of these asshole
6 Cubans” and fired their weapons indiscriminately, nearly hitting him.²⁴

7 d. In November 2019, I interviewed asylum seekers in MPP at an
8 overcrowded migrant shelter in Nuevo Laredo. The only private meeting
9 space was located in a storage closet. There was no space available at the
10 shelter where a lawyer could hold confidential attorney-client meetings.
11 Our interview was interrupted several times as staff and residents opened
12 the door looking for food and other supplies. The interview was
13 ultimately cut short when the pastor who brought my colleague and me
14 to the shelter said that it was no longer safe to remain there. According to
15 residents at the shelter, armed men previously broke into the shelter and
16 held terrified asylum seekers at gun point.²⁵

17 e. In February 2020, I accompanied colleagues from Human Rights First
18 who were providing legal information to asylum seekers in Monterrey,
19 Mexico. These asylum seekers had been returned to Mexico under MPP.
20 At one shelter, the only available space to meet with asylum seekers was
21 in a large cafeteria, where the near-constant noise from meal service and
22 other activities in the room made it difficult to hear even when speaking
23 one-on-one. The lack of privacy made some asylum seekers wary of
24

25 ²⁴ See Human Rights First, “Human Rights Fiasco,” p.8.

26 ²⁵ See David Martin Davies, “For Migrants In Nuevo Laredo, ‘Remain In Mexico’
27 Means Remain In Danger,” (Nov. 29, 2019), *available at*
28 <https://www.hppr.org/post/migrants-nuevo-laredo-remain-mexico-means-remain-danger>.

1 discussing sensitive topics. For example, one asylum seeker who
2 identified as LGBTQ asked to speak to me in a corner of the room and
3 would only disclose that information in a whisper.

4 **MPP Blocks Asylum Seekers from Finding Counsel During the Short Period**
5 **Asylum Seekers are in the United States for Immigration Court Hearings**

6 20. In my experience, CBP and the immigration courts conducting MPP
7 hearings block unrepresented asylum seekers in MPP from accessing legal information
8 sessions and screening by pro bono attorneys for representation or other assistance
9 while they are in the United States attending their immigration court MPP hearings.
10 For example, I observed MPP hearings at the San Diego immigration court in June
11 2019. Several attorneys at the court told me that the immigration court was not
12 permitting unrepresented MPP asylum seekers to receive legal information orientation
13 sessions from legal services organizations or generally to meet with pro bono attorneys
14 prior to court even though CBP and ICE were supposed to bring asylum seekers to the
15 court approximately one hour before their scheduled hearings.

16 21. Because pro bono attorneys and legal services organizations have been
17 blocked from meeting with unrepresented individuals in MPP at the immigration
18 courts, some attorneys and groups attempt to speak with individuals in MPP as they
19 line up in Mexico outside U.S. ports of entry just prior to hearings. This practice
20 exposes attorneys to the peril of traveling and walking around in dangerous Mexican
21 border cities often in the pre-dawn hours, as individuals in MPP are frequently
22 instructed to appear at ports of entry at 4:30 a.m. for 8:30 and 9 a.m. hearings, based
23 on the MPP hearing notices I reviewed.

24 22. In my experience, the MPP policy as designed and implemented makes
25 legal representation difficult and blocks asylum seekers from meeting with their
26 counsel. For example, when I visited the San Diego immigration court to observe MPP
27 hearings in June 2019, attorneys were forced to speak with MPP clients in the public
28 waiting room within earshot of other returned asylum seekers, Immigration and

1 Customs Enforcement (ICE) officers, private security guards, and members of the
2 public.²⁶ The immigration court, according to the attorneys I spoke with there, did not
3 provide a private room for client meetings. Attorneys also reported that they are
4 sometimes provided only around twenty minutes to meet with MPP clients before
5 hearings at the San Diego immigration court.²⁷ These meetings are often the first time
6 that the attorneys are meeting with their clients in person, and these meetings take
7 place just moments before the attorneys must appear on behalf of those clients in open
8 court.

9 **The Lack of Access to Counsel for Asylum Seekers in MPP Results in Due Process**
10 **Violations and the Wrongful Denial of Protection to Refugees**

11 23. In my experience, unrepresented asylum seekers in MPP with legally
12 valid asylum claims have been denied protection and likely deported. My analysis of
13 MPP immigration court data shows that asylum seekers in MPP who are represented
14 at their asylum merits hearing are ten times more likely to be granted relief than
15 individuals in MPP who proceed pro se.²⁸

16 24. In February 2020, I interviewed an unrepresented Nicaraguan political
17 activist who had fled to the United States after being threatened for his participation
18 in anti-regime protests. Lacking an attorney and unfamiliar with U.S. immigration
19 court practice, the young man, who was still in his teens, was unaware that he could
20 submit written declarations from witnesses and had not translated photographs he had
21 submitted to the court which showed graffiti in Spanish that had been painted onto the
22 side of his home—crucial evidence in establishing that he was targeted because of his
23 political opinion.

24 _____
25 ²⁶ See Human Rights First, “Delivered to Danger,” p.14.

26 ²⁷ See Human Rights First, “Human Rights Fiasco,” p.26.

27 ²⁸ Human Rights First, “Grant Rates Plummet as Trump Administration Dismantles
28 [U.S. Asylum System, Blocks and Deports Refugees](https://www.humanrightsfirst.org/sites/default/files/AdministrationDismantlingUSAsylumSystem.pdf),” (June 2020), p.8, available at
<https://www.humanrightsfirst.org/sites/default/files/AdministrationDismantlingUSAsylumSystem.pdf>.

1 25. In early March, an immigration judge for the Brownsville MPP
2 immigration court denied his application for asylum, withholding of removal, and
3 Convention Against Torture protection. Without an attorney and fearing months or
4 years in detention, the young man told me by phone from the Port Isabel Detention
5 Center that he waived his right to appeal. even though he continued to fear persecution
6 in Nicaragua.

7 26. In my experience, without legal counsel, asylum seekers in MPP struggle
8 to present their fear of harm in Mexico during non-refoulement interviews and to
9 understand immigration court proceedings, the process of filing asylum applications,
10 and their legal obligations. For instance:

11 a. In June 2019, a Honduran asylum seeker in MPP showed me threatening
12 messages she had received while she was in Mexicali. Without legal
13 representation, the woman attempted to present a printout of the messages
14 during a non-refoulement interview with an asylum officer. Because the
15 interview was conducted by telephone, the woman said she had no way
16 to present this evidence as the CBP officers present refused to review or
17 accept the documents. The asylum officer determined that the woman had
18 not met the elevated screening standard applied to individuals in MPP,
19 and CBP returned the woman to Mexicali.

20 b. An immigration judge at the San Diego immigration court in June 2019
21 repeatedly prevented an unrepresented Guatemalan asylum seeker in
22 MPP, who appeared to be confused about the nature of the proceedings,
23 from asking questions or providing information to the court during his
24 hearing and even instructed the telephonic Mam language interpreter not
25 to interpret the man's statement.²⁹

26
27
28 ²⁹ See Human Rights First, "Delivered to Danger," p.15.

1 c. A Guatemalan asylum seeker in MPP whom I interviewed in Mexicali in
2 June 2019 told me that she feared persecution in Guatemala and wished
3 to be represented by counsel but had forgone her right to legal
4 representation. Because she could not find a legal service provider on the
5 pro bono list provided by the court able to represent her in Mexicali and
6 was unable to pay for private legal counsel, the woman decided to
7 proceed pro se and had been ordered by the immigration judge to file her
8 asylum application at her next hearing in August 2019. Unable to read or
9 write in English, the woman explained that she was uncertain about how
10 she would prepare her application and supporting evidence by the
11 deadline.

12 d. At the San Diego immigration court in June 2019, a pro se asylum seeker
13 who had filed only her I-589 asylum application and a skeletal declaration
14 informed an immigration judge that she was prepared to proceed with her
15 merits hearing the same afternoon. An immigration attorney from a local
16 non-profit who happened to be in court for another case convinced the
17 security guards and ICE officers in the waiting area to allow her to speak
18 with the asylum seeker. After a brief discussion in the public waiting area,
19 the asylum seeker decided not to proceed with her case at that time. Had
20 she proceeded, she would have done so without the benefit of witness
21 statements or corroborating evidence.

22 I declare under penalty of perjury that the foregoing is true and correct to the
23 best of my knowledge and understanding.

24 
25 _____
26 Kennji Kizuka

27 Dated: October 21, 2020
28 New Haven, Connecticut