

DECLARATION OF KATHRYN SHEPHERD

I, Kathryn Shepherd, declare as follows:

I make this declaration based on my own personal knowledge and declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the National Advocacy Counsel for the Immigration Justice Campaign at the American Immigration Council (“Council”). The Immigration Justice Campaign is a joint initiative between the Council, the American Immigration Lawyers Association (“AILA”) and the American Immigrant Representative Project (“AIRP”) which seeks to protect due process and justice for detained immigrants. I focus on legal advocacy and policy related to individuals held in ICE custody and asylum-seeking women and children detained in family detention centers around the country. Prior to joining the Council, I was the Managing Attorney of the CARA Pro Bono Project (now the “Dilley Pro Bono Project,” or “DPBP”¹) in Dilley, Texas. I previously ran a private practice in Houston, Texas, focused exclusively on asylum cases. I hold a J.D. from St. John’s University School of Law and am licensed to practice law in Texas and New York.

2. I was involved in a survey created for the purpose of collecting information on the extent to which asylum-seeking migrants had experienced or witnessed harm in Mexico before crossing our southern border. I oversaw the creation of the survey and provided guidance to the DPBP staff who disseminated the survey to detained families in the South Texas Family Residential Center (STFRC). Five hundred female asylum seekers detained with their minor children responded in writing in Spanish to the survey. All detained families doing a legal services intake

¹ The Dilley Pro Bono Project is a joint initiative of the Council, AILA, Catholic Legal Immigration Network, Inc. (CLINIC), and other partners.

with the DPBP between January 16 and January 29, 2019, were presented with the opportunity to complete the survey, but were advised that survey participation was optional. Participants were instructed to limit their answers to what they had experienced and witnessed while traveling through Mexico on their way to the United States. Of the respondents, 54.6% were Honduran, 27.4% Guatemalan, 15.5% Salvadoran, and 2.5% from other Latin American countries.

3. Additionally, ten mothers detained at the STFRC who took part in the survey also provided detailed sworn statements to DPBP staff regarding the harm they experienced in Mexico. They provided first-hand accounts of the grave violence encountered by themselves, their children, and other vulnerable asylum seekers, which could befall thousands of migrants if the government's policy of forcibly returning migrants to Mexico continues and is expanded. These statements are representative of the hundreds of examples reported in the above survey.

4. The Council, AILA, and the Catholic Legal Immigration Network submitted the results of the survey, including the sworn statements, to Homeland Security Secretary Nielsen in a letter dated February 6, 2019. I was the primary author of the letter and coordinated the collection of sworn statements and analysis of the data for its incorporation into the letter.

5. The key findings of the survey, as well as the key points communicated to Secretary Nielsen, are as follows:

Increasing Levels of Violence and Instability in the Mexico Border Region

6. Mexican border towns are not safe places for asylum seekers—and especially migrant vulnerable families—to wait for an immigration court hearing in the United States. U.S. law has adopted the international legal principle of *non-refoulement*, which requires that governments do

not return individuals to a country where their life or freedom would be threatened.² Importantly, this mandate refers to *any* country where an individual's life or freedom may be at risk, not just a person's country of origin. For this reason, current conditions in Mexico are extremely relevant to any analysis of the appropriateness and legality of implementing the Migrant Protection Protocols ("MPP").

7. The violence and instability that migrants face on the Mexican side of the U.S.-Mexico border are well-documented. Some regions of the U.S.-Mexico border are considered by the State Department to be among the most dangerous locations in the world. For example, the border state of Tamaulipas, through which tens of thousands of asylum seekers travel each year on their way to the United States, has been designated a Level 4 "Do Not Travel" risk by the State Department.³ As of January 2019, only 12 countries in the world are designated at Level 4, including Afghanistan, North Korea, Syria, and Yemen.⁴

8. The State Department has also documented numerous risks to Central American migrants in Mexico. In the 2017 Country Report on Human Rights Practices for Mexico, the State Department listed "violence against migrants by government officers and organized criminal groups" as one of the "most significant human rights issues" in Mexico.⁵ The report also lists major threats to migrants from kidnappings and homicides. These threats come not just from

² UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>.

³ U.S. Dep't of State, Bureau of Consular Affairs, *Mexico Travel Advisory*, TRAVEL.STATE.GOV, November 15, 2018, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁴ U.S. Dep't of State, *Travel Advisories*, TRAVEL.STATE.GOV (last accessed Feb. 5, 2019), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>.

⁵ U.S. Dep't of State, *Country Reports on Human Rights Practices for 2017: Mexico* (2018), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277345>.

Mexican criminal organizations and corrupt government officials, but also from the very organizations that many Central American migrants are fleeing. As the State Department observed, “Central American gang presence spread farther into the country [in 2017] and threatened migrants who had fled the same gangs in their home countries.”⁶

9. Tijuana—the Mexican city where the MPP has first been implemented—was the site of 2,518 murders last year, a record high and nearly seven times the total in 2012.⁷ Last year, the State Department’s Overseas Security Advisory Council observed that “Tijuana is an important and lucrative location for Transnational Criminal Organizations, narco-traffickers, and human smuggling organizations,” and that in 2017, the state of Baja California saw an overall 84% increase in murders.⁸ Not surprisingly, many asylum seekers have already suffered significant violence while being forced to wait in Tijuana; in December 2018, two Honduran children were murdered while forced to wait their turn to request asylum at the San Ysidro Port of Entry.⁹

Evidence of Harm to Asylum Seekers in Mexico

10. According to the results of the survey, the asylum seekers reported overwhelmingly that Mexico was a dangerous place for them and their children: 90.3% of respondents said that they did not feel safe in Mexico, and 46% reported that they or their child experienced at least one type of harm while in Mexico, with some reporting multiple types of harm.

⁶ *Id.*

⁷ Kate Linthicum, *Meth and murder: a new kind of drug war has made Tijuana one of the deadliest cities on Earth*, L.A. Times (January 30, 2019), <https://www.latimes.com/world/mexico-americas/la-fg-mexico-tijuana-drug-violence-20190130-htmlstory.html>.

⁸ U.S. Dep’t of State, Bureau of Diplomatic Security, *Mexico 2018 Crime and Safety Report: Tijuana, United States*, OSAC.GOV, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=23376> (last accessed Feb. 4, 2019).

⁹ Wendy Fry, *Two migrant caravan teens killed in Tijuana*, The San Diego Union-Tribune (Dec. 18, 2018), <https://www.sandiegouniontribune.com/news/border-baja-california/sd-me-migrant-children-killed-12182018-story.html>.

- Robbery or attempted robbery (32.8%)
- Threats (17.2%)
- Physical Harm (12.6%)
- Kidnapping or attempted kidnapping (5.1%)
- Sexual assault (2%)

11. Many respondents also reported fearing for their safety in Mexico because they had witnessed incidents of harm that happened to others: 48% of respondents reported that they witnessed at least one type of harm to another person while in Mexico.

- Robbery or attempted robbery (29.4%)
- Threats (20.4%)
- Physical Harm (17.2%)
- Kidnapping or attempted kidnapping (7.2%)
- Sexual assault (6.3%)

12. Furthermore, asylum seekers reported that not only did the Mexican government fail to protect them from these dangers, but government officials were often the perpetrators of crimes against migrants: 38.1% of respondents stated that a Mexican official mistreated them in at least one way.

- Demanded bribes (28.2%)
- Verbal intimidation (18%)
- Made them feel uncomfortable (15.5%)
- Threatened them (9.5%)
- Harmed them physically or sexually (1.5%)

First-Hand Accounts of Violence Faced by Asylum Seekers in Mexico

13. The following are case summaries from the ten sworn statements described above.

Pseudonyms are used for the safety of the participants.

14. **Rape and Threats to Her Child** – *Concepción* fled through Mexico from Honduras with her 5-year old son. While traveling through Mexico, they stayed with a group of other women and children in a house to avoid sleeping on the street. One night, a cartel member grabbed her

while she lay in bed with her 5-year-old son and raped her. She recounts: “He threatened me, saying he would kidnap me to sell me in prostitution and would take my child to sell his organs if I did not have sex with him. He said that he had connections in the Gulf Cartel [and] that white women like me sold the best, and that children’s organs also sold very well.” She does not trust that Mexican police would protect her from this type of harm because they required bribes of her and other migrants when they were stopped at a road checkpoint, and strip searched those who did not pay.

15. **Kidnapped and Sold by Police and Held for Ransom** – *Aracely* and *Fatima* fled Mexico separately with their 4-year-old daughter and 6-year-old son, respectively. They were both kidnapped by Mexican police a few days apart and sold to a cartel who held them for ransom. Mexican police regularly operate in concert with criminal gangs and cartels by targeting migrants and selling them to the gangs and cartels for money. *Aracely* reported: “A man told us that they were from a cartel and that everything would be fine if our families paid the ransom. They took everything we had and they made us call our families and have them send \$7,000 dollars [for each of us]. I heard the men saying that . . . the police who guard the river, had sold us to them.” *Fatima* stated: “We saw some people there who had been beat up. I saw a man whose whole face and arm were bruised and swollen, and he was vomiting blood My son has been shaking and can’t sleep because of what happened to us. He frequently tells me that he is still afraid.”

16. **Sexual Assault and Police Extortion** – While fleeing from Honduras through Mexico, *Viviana* stayed for four nights in a room with three other women. The man who was supposed to be guarding them sexually assaulted her on three occasions while her 10-year-old son slept next to her. She stated: “I didn’t have anywhere else to go to be safe, and I didn’t feel that I could ask

for help from the Mexican police because every time we took a bus, Mexican police would demand money from migrants on the bus. If a woman didn't have money, they would tell her that they were going to deport her and take her child.”

17. **Sexual Assault** – *Maybelin* and her 2-year-old daughter were persecuted in her native Guatemala due to her membership in an indigenous group. On her way to safety in the United States, she was repeatedly sexually assaulted at a house in Mexico where she was staying. She recalls: “I felt that I could not leave that unsafe situation, because I had nowhere to go in Mexico, and I had heard that the Mexican police did not protect migrants and might even deport me back to danger in Guatemala.” She therefore had to continue staying there until she could enter the United States.

18. **Extortion and Death Threats by Mexican Police** – *Luisa* escaped gang threats in El Salvador with her 15-year-old daughter. While traveling through Mexico, they were forced to pay the Mexican police three times. The final time, they didn't have the amount of money the police demanded. She states: “They grabbed my daughter, who was crying, and took her off the bus. Then they order[ed] me to get off the bus in the middle of nowhere. The uniformed men said to give them 7,000 pesos for each of us or we would both die there. The men said that if we didn't pay, he would tell the driver to leave and we would be kidnapped and killed.”

19. **Extortion and Threats to Children by Mexican Police/Witnessed Sexual Assault** – *Carolina* fled Guatemala with her 9-year-old son, her sister, and her nephew. She was extorted and threatened twice by armed Mexican federal police. During one of these incidents, the police entered a house in which she was staying. She reports: “The officers were wearing black uniforms, bullet-proof vests, with their faces covered except for their eyes They said that if

we did not pay, they would take our children from us and tie and lock them up.” Carolina and her son then witnessed the sexual assault of another woman who did not have enough money to pay.

20. **Witnessed Extortion/Threats/Apprehension by Mexican Police** – *Belkis* fled domestic violence in Guatemala with her 11-year-old son. She was terrified her husband was following them and could find them in Mexico, and felt she would only be safe from him once she arrived to the U.S. One day, the Mexican state police approached them in a group of about 40 migrants, and randomly selected 26 people to go with them on a bus. They said that they would extort those migrants’ families and beat them, including the children, if the families did not cooperate. *Belkis* says: “The people were crying, and begging God for help. The officials ordered them onto the bus. I do not know what happened to those people.”

21. **Attempted Kidnapping** – *Valery* escaped domestic violence in Honduras to seek asylum in the United States with her 10-year-old son. On her way through Mexico, they narrowly escaped attempted kidnapping by two unknown men, who tried to force a group of migrants they were a part of into a car. She states: “I felt unsafe the entire time I was traveling [in Mexico]. I knew that the threat of kidnapping was real because I had seen it happen before. Once, . . . a car pulled up next to a young woman . . . [a man] forced a woman into a car while she screamed I do not know what happened to her.”

Conclusion

22. As the survey results described above demonstrate, the MPP will put asylum seekers at grave risk of harm by forcing them to remain in Mexico pending their immigration court proceedings. It threatens to jeopardize meaningful access to asylum and other humanitarian protections under our immigration laws.

23. The MPP also will exacerbate a humanitarian crisis on our southern border. For example, thirty-one migrant shelters along the border recently signed a joint letter signaling their lack of capacity to safely house the potentially large number of individuals to be returned under the MPP for the lengths of time they will need to wait in Mexico.¹⁰ These shelters warn that asylum seekers will be forced to live in limbo, exposed to fear and uncertainty, without the means to address basic needs.

Dated: February 18, 2019

A handwritten signature in black ink, appearing to read "K. Shepherd", written over a horizontal line.

Kathryn Shepherd

¹⁰ See Red Zona Norte de Casas y Centros de Derechos Humanos para Migrantes, *Postura de la Red Zona Norte sobre los Protocolos de Protección a Migrantes*, Feb. 8, 2019, <https://www.kinoborderinitiative.org/wp-content/uploads/2019/02/Red-Zona-Norte-Statement-on-MPP.pdf> (last accessed Feb. 16, 2019).