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*Refugees Not Welcome Here: An Analysis of Human Rights Transgressions Under the
Migrant Protection Protocols*

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By Claire Marie Haxton

A thesis presented in partial fulfillment of the requirements for completion of the Bachelor of
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Croft Institute for International Studies
Sally McDonnell Barksdale Honors College
The University of Mississippi

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List of Abbreviations

ACLU	American Civil Liberties Union
BDSP	Biometric Data Sharing Program
CBP	Customs and Border Protection
CPI	Corruptions Perception Index
DHS	Department of Homeland Security
HRF	Human Rights First
IOM	International Organization for Migration
MPP	Migrant Protection Protocols
MPI	Migration Policy Institute
OHCHR	Office of the Nations High Commissioner for Human Rights
PTD	Prevention through Deterrence
TRAC	Transactional Records Across Clearinghouse
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
USCIS	United States Citizenship and Immigration Services

Abstract

CLAIRE MARIE HAXTON

Refugees Not Welcome Here: An Analysis of Human Rights Transgressions Under the Migrant Protection Protocols

(Under the direction of Dr. Kate Centellas)

On December 20, 2018 the Trump administration released a statement announcing the signing of an executive order implementing a new asylum program called the Migrant Protection Protocols. Under this legislation, third party nationals arriving at the United States' southwestern border seeking asylum would be forced to remain in Mexico throughout the processing of their asylum application. This new protocol promised to limit false asylum cases and streamline meritorious applications while preventing migrants from exploiting loopholes in the former asylum system. However, critics argue that the Migrant Protection Protocols further endanger refugees and infringe on their human rights. This study aims to answer whether the Migrant Protection Protocols violates the United States' international obligations under the 1951 UN Refugee Convention by identifying a causal relationship between this legislation and the violation of two human rights: due process through legal representation and non refoulement. The Migrant Protection Protocols is also evaluated as an extension of the Prevention through Deterrence immigration strategy utilized by the United States since the mid-1990s. I seek to establish a normative trend of human rights violations under this legislation using two databases, the TRAC database on MPP court proceedings and the Human Rights First database on publicly reported cases of violent attacks on individuals returned to Mexico under the "Migrant Protection Protocols." From there, I use a combination of testimonial data collected from human rights advocates, lawsuit transcripts, and newspapers to emphasize the individual impact of these human rights violations on refugees and their families placed under the Migrant Protection Protocols. The results indicate that the Migrant Protection Protocols clearly cause a gross violation of refugees' human rights protected under the 1951 UN Refugee Convention. This research reveals how a deterrence-based strategy used to handle incoming asylum seekers raises the human costs and serves as a recommendation for future administrations as to why the Prevention through Deterrence strategy should not be considered a solution to an overwhelmed asylum system.

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Chapter 1: Introduction

Defining the Migrant Protection Protocols

The term “refugee” is defined by Amnesty International as “a person who has fled their own country because they are at risk of serious human rights violations and persecution there” (*Refugees, Asylum-Seekers, and Migrants*, n.d.). This definition continues to state that “seeking asylum is a human right” and that “refugees have a right to international protection”. The decision for someone to uproot themselves and their families in order to embark on a perilous journey is one that is extremely costly and is not taken lightly.

What are the conditions that lead a person to make the decision to uproot their lives by crossing borders in search of refuge? For 38 year old Germán, the decision to flee his stable life in Honduras working as an accountant came when overnight he transformed into a target of a local gang who ultimately kidnapped him seeking information about his clients. Refusing to put his clients at risk of extortion from the gang, Germán suffered brutal beatings to the point where his only option was to flee the only life he’d ever known (*With Love From Central America*, 2019).

Unfortunately, Germán’s story follows a common narrative that is shared among migrants fleeing from the Central American region, specifically the Northern Triangle. In 2017, the Migration Policy Institute tallied just over 3.5 million immigrants stemming from Central America; of that total, the Northern Triangle countries embodied 85.5% (O’Connor et al., 2019). Gang violence, soaring homicide rates, and widespread poverty exacerbated by extreme weather patterns resulting in crop failure are just a handful of the reasons individuals from the Northern Triangular region, consisting of Guatemala, Honduras, and El Salvador,

choose to flee their homes in search of the potential for safety and prosperity in other countries in the Western Hemisphere, including the United States.

In recent years, this forced migration stemming from the Northern Triangle captured the attention of the media as caravans consisting of thousands of migrants travelled throughout Central America into Mexico destined for the southwest U.S.-Mexico border (Alvarez, 2019). In response, former President Donald Trump threatened to declare a national state of emergency at the arrival of the refugees, stating in a string of tweets that hidden among the caravaners travelling to the United States were “stone cold criminals” and “unknown Middle Easterners” (Vazquez, 2018). This xenophobic rhetoric serves as an extension to his crackdown approach towards the perceived issue of immigration, a stance generated widespread support during the 2016 election, according to an opinion study conducted by the Center for Immigration Studies (Gimpel, 2017).

Ultimately in December 2018, the Trump administration announced an executive order aimed at controlling and mitigating the influx of third country asylum seekers arriving at the southwest border. This plan, called the Migrant Protection Protocols (MPP) and often referred to as “Remain in Mexico”, aimed to combat illegal immigration by preventing individuals from unlawfully entering the United States by exploiting loopholes in the current asylum system. The MPP was cited as a solution to the overwhelming backlog of pending asylum applications occurring in recent years by deterring migrants from inaccurately claiming asylum. The DHS reports that asylum proceedings in the United States increased by 2000 percent in the past five years causing a backlog of over 786,000 cases (*Nielsen Announces Historic Action*, 2018). This executive order would reduce the number of applicants who falsely claim grounds for asylum in an attempt to gain entry to the United

States and essentially “disappear”, while streamlining the meritorious asylum cases creating an overall “safer”, more “efficient” process of applying for asylum. According to former Secretary of Homeland Security Kirstjen Nielsen, this new protocol removes an incentive for people to embark on the perilous journey to the United States (2018).

Under this legislation, any refugee seeking asylum in the United States would be forced to wait in Mexico until their asylum applications were approved by the United States Immigration Court. This executive order applies specifically to individuals from third party countries (Mexico does not qualify as a third party country given it’s shared border with the United States), who travelled through Mexico in order to reach the United States and apply for asylum. This affects all refugees arriving from South and Central America, however the Northern Triangular region is particularly impacted as it’s migrants encompass the vast majority of third country nationals applying for asylum status in the United States (Long, 2019). Their natives, alongside natives from other countries such as Venezuela, Nicaragua, etc., are forced to reside in Mexican border communities while awaiting the progression of their asylum applications. Since the initiation of this policy in 2019, the DHS placed over 70,000 individuals in the program and forced them to relocate to Mexican border communities as they wait in uncertainty for their asylum applications to be processed and determined by the United States. An initial press release published by the Department of Homeland Security announcing the protocol lists the anticipated benefits of the MPP as the following:

- Illegal immigration and false asylum claims are expected to decline.
- Aliens will not be able to disappear into the U.S. before court decision.
- More attention can be focused on more quickly assisting legitimate asylum-seekers, as fraudsters are disincentivized from making the journey.

- Precious border security personnel and resources will be freed up to focus on protecting our territory and clearing the massive asylum backlog.
- Vulnerable populations will get the protection they need while they await a determination in Mexico (*Nielsen Announces Historic Action*, 2018)

The Migrant Protection Protocols did lead to an initial drop in crossings across the US-Mexico border, resulting in positive feedback from the Department of Homeland Security (DHS). In an assessment of the Migrant Protection Protocols after its implementation, the DHS cites the MPP as “a cornerstone of DHS’s ongoing efforts to restore integrity to the immigration system—and of the United States’ agreement with Mexico to address the crisis at our shared border.” (*Assessment of the Migrant Protection Protocols*, 2019).

However, the procedures utilized to enforce this policy raise several humanitarian concerns for the tens of thousands of individuals subjected to this new protocol. Since the initial implementation of this policy, the MPP continually received criticism from human rights advocacy organizations for facilitating a multitude of human rights violations. Limited shelter capacity in Mexican border cities leaves asylum applicants in desperate conditions similar to those from which they are seeking asylum (*Q&A*, 2020). In addition to increased exposure to crime and exploitation, such as kidnapping, extortion, and rape, critics raised concerns about whether this legislation hinders refugees’ right to due process by limiting access to resources and legal representation, inhibiting their ability to present a strong asylum case in the United States’ courts (*6 Points About the U.S.-Mexico Migration Agreement*, 2019). The onset of the COVID-19 pandemic in 2020 further elevates the impact of the MPP’s shortcomings in Mexican cities along the US-Mexico border, as these communities are ill-equipped to implement global health guidelines to combat the spread of the virus,

leaving refugees in limbo increasingly vulnerable to the coronavirus, among other diseases (Navarrete & Sanchez, 2020).

Understanding the impacts of this shift towards denial of entry on refugees is essential as the United States holds an obligation to provide humanitarian aid and protection to asylum seekers. As a signatory party of the 1951 UN Refugee Convention, which calls for the international protection of refugees regardless of race, nationality, religion, etc. the United States is contractually committed to upholding the standards outlined in the treaty. A violation of human rights under the Migrant Protection Protocols would signify a breach in this agreement, leaving the United States to blame for undermining international protocol and placing the lives of refugees in danger.

The research question addressed in this analysis is as follows: *How does the Migration Protection Protocols impact human rights for refugee seekers along the US-Mexico border?* By answering this question, the success of this protocol as well as the United States' commitment to uphold international refugee protocol is evaluated. Through analysis of primary sources consisting of testimonial data collected from refugees alongside quantitative data produced by nonpartisan sources, this research successfully identifies a correlation between the Migrant Protection Protocols and a gross violation of the human rights internationally guaranteed to all refugees, regardless of language, religion, or country of origin. First, this study will establish the reasonable cause for migrants to seek asylum in the United States, solidifying their status as refugees. This will be done by evaluating the current economic, security, and governmental conditions in the Northern Triangle. From there, I seek to analyze how these refugees' right to both due process through legal counsel and non refoulement are inherently violated under the Migrant Protection Protocols.

Limiting asylum seekers access to legal representation not only significantly diminishes the chance at achieving legal entry into the United States, it is an infringement on their universal right to due process. Not only that, but this research will also bring to light how the MPP actively raises the risk of refugee seekers suffering from violence as a direct result of being forced to reside in dangerous border communities. Individuals placed under the MPP are at risk of falling victim to crimes such as kidnapping, extortion, assault, rape, etc. all of which are common occurrences in the areas designated as “safe” by the DHS for MPP participants to reside in. I use a combination of both quantitative data to establish overarching trends among MPP participants, coupled with individual testimonies to illustrate the shared narrative among MPP participants.

Furthermore, this policy will be critically evaluated as a perpetuation of the United States’ immigration normative measures adopted in the past three decades referred to as “Prevention through Deterrence”. Prevention through Deterrence (PTD) is the term used to describe a set of immigration policies aimed towards disincentivizing migrants from crossing borders to limit illegal immigration. This is often achieved by altering the cost-benefit balance behind the decision to cross the border by ensuring that the costs of entry are so high that it outweighs the benefits of illegal entry. This type of strategy is employed in several regions of the world, attempting to control ports of entry into the country and limit the presence of illegal immigration, but not without costs. Understanding how the MPP qualifies as a PTD policy, and the implications of extending a deterrence-based strategy to the United States asylum system reveals the sinister reality behind the MPP: the potential that the Trump administration is fully aware of the risks posed to refugee seekers under this legislation, yet chooses to blatantly ignore these human costs.

Extending the PTD strategy as a coping mechanism for handling the entrance of refugees is a gross miscarriage of our nation's history and responsibility to protect the vulnerable populations who arrive at our borders seeking safety and refuge. The United States has historically served as a welcomer of those fleeing persecution and violence; under the MPP, this precedent is endangered. Overall, this legislation violates international refugee norms, the United States' history of accepting the "tired and poor" and directly leaves an already vulnerable group of human beings further victimized by outside violence and persecution, with no safe haven to turn to.

This thesis will add to the preexisting research established by human rights organizations and scholars outlining the risks of PTD policies by revealing the ramifications of extending this type of policy to asylum seekers arriving to the United States. First, the PTD strategy will be defined and analyzed using the literature published by past researchers. From there, two variables: legal representation and refoulement under the MPP, will be examined from both a quantitative and qualitative approach using both descriptive statistics and testimonial data. Conclusions from this data will be drawn and an analysis of the MPP as a form of PTD will be discussed, illustrating that intentionally raising the costs of applying for asylum in the United States is unethical and a violation of human rights. Finally, I discuss how the MPP will be approached by the new administration in office and the need for a complete and swift dismantling of the program.

Chapter 2: Background Information

Defining Prevention through Deterrence

The measures used by the Trump administration to deter migrants from crossing the U.S.-Mexican border go hand in hand with the overarching strategy, known as Prevention through Deterrence. The United States adopted this strategic handling of immigration in the mid-90s under the Clinton administration in order to curb the entry of illegals through urban ports of the southwest border. This strategy was first employed in El Paso in 1993 with “Operation Blockade” and then again in 1994 in San Diego with “Operation Gatekeeper”, however quickly became the standard procedure across the southwest border throughout the borderlands of California, New Mexico, Arizona, and Texas. The United States Customs and Border Protection (CBP) amassed a wide assortment of increased technology and manpower at the border, increasing border apprehensions in urban ports of entry and funneling illegal entries into the Sonoran desert. CBP assumed that the harsh, dangerous terrain of the Sonoran desert would in itself act as a natural barrier for illegal immigration by deterring people from undergoing the desert journey to illegally cross the border (Ewing, 2014). By redirecting the flow of migration into higher risk areas, the government reasoned that the illegal entry of humans across the border would eventually reduce itself, as the cost of crossing these dangerous environments would inherently outweigh the benefit of illegal entry to the United States. Since the adoption of this immigration strategy, well over 3,400 individuals have perished attempting to cross the Sonoran desert since 1999 (*Humane Borders*, 2021).

Jason de Leon, an anthropologist specialized in Western Hemispheric migration towards the United States, studies the effects of this policy on the livelihood of migrants. In his book *Land of the Open Graves*, de Leon delivers a heartbreaking visualization of the human costs of this PTD strategy by recording the experiences of migrants crossing the Sonoran desert through photos and interviews. He concludes through this ethnographic research that the adoption of PTD is actually largely unsuccessful in deterring migrants from making the dangerous trek across the border while exponentially increases the human costs of illegal immigration. In other words, he discovers migrants are willing to risk it all to enter the United States, even if it means crossing the Sonoran desert by foot and even if it results in death. De Leon states “rather than being deterred from attempting illegal entry, many aliens have instead risked injury and death by trying to cross mountains, deserts, and rivers. Many have died since the implementation of this policy and the correlation between the funneling of people toward desolate regions of the border and an upsurge in fatalities is strong. Still, even when the connection between PTD and migrant death is recognized by the federal government, there is generally a refusal to causally link the two phenomena” (2015, p. 35). According to De Leon, PTD continues to dictate immigration policy in the United States to this day despite evidence of it’s proven lack of success and the obvious consequences to human life.

The fatal impact of PTD is in De Leon’s words “neither random nor senseless, but rather part of a strategic federal plan that has rarely been publicly illuminated and exposed for what it is: a killing machine...” (2015, p. 3) The United States government is fully aware of the risks associated with PTD and funneling illegal immigrants through the Sonoran desert, yet under this strategy places the culpability of increased human costs on

environmental factors or the migrant's personal decision to embark on a potentially fatal journey despite knowing the risks. The same is true for the Migrant Protection Protocols; the following analysis illustrates that the risk of human rights transgressions occurring under the MPP is clear to the United States through both quantitative and qualitative data publicly available, yet the Trump administration still classified this program as an ethical success. Further examination of the Trump administration's efforts to cap asylum entrances, both world wide and from Latin America, as well as preventing the initial arrival of refugees from the Northern Triangle through passing various bilateral agreements in Central America establish a clear motive to avoid the responsibility of aiding asylum seekers within the United States' borders. The MPP is a strategic piece of legislation that places the blame of protecting asylum seekers in the hands of the Mexican government, who under the MPP are tasked with the responsibility of protecting the participants by providing them with humanitarian visas and protection as well as basic necessities for survival (*Nielsen Announces Historic Action*, 2018). Fueled by this desire to keep refugees out of the United States, the Trump administration resorted to this PTD inspired policy, in hopes that the being placed in Mexico, a far more dangerous territory than the United States, would deter migrants from even attempting to seek asylum in the United States.

De Leon is not the only researcher to examine the correlation between Prevention through Deterrence and an increase in human costs along the U.S.-Mexican border. Other researchers found similar conclusions pointing towards an overall ineffectiveness in deterrence policies in their ability to dissuade people from crossing borders deterrence policies to be largely ineffective in dissuading people from crossing borders. One researcher, Margaret Edwards, combines the existing historical background of PTD as a strategic

approach to immigration policy along the U.S. Mexico borders with testimonial data collected from human rights advocates situated along the southwest border. She attempts to humanize the data and illustrate the reality of the human costs associated with PTD from a human rights point of view. Edwards concludes that the PTD policy is built on the pretense that people migrating toward the United States, whether their intention is to seek entrance through asylum or temporary citizenship, base their decision on a simple cost-benefit analysis. The article states that “The strategy was founded with the purpose of tipping the scale so that migrants might feel as though the decision to enter the US came at such a cost—both literally and figuratively—that there were more benefits to remaining in their home country.” (Edwards, 2019, p. 32) However, through her interviews with lawyers and advocates based along the Mexico border, she comes to the conclusion that when faced with life threatening situations, the United States’ attempts to increase the costs of crossing the border to the point where it’s no longer a viable option are fruitless, given that many migrants are facing life threatening situations in their homes of origin. She also concludes that asylum seekers along the Southwest border are deeply victimized by PTD due to the fact that they have already taken on immeasurable risks to even simply arrive at the border; at this point they are willing to do whatever it takes to reach their final, targeted destination which to them symbolizes the safety and stability they never experienced in their home countries. They’ve reached the point of no return, and are willing to take on additional risks to reach their goals. In Edward’s words “this cruelty is most apparent amongst asylum-seekers. When refugees are denied entry, they are often forced to cross illegally which could lead to apprehension, prosecution and criminal charges” (Edwards, 2019, p. 35).

The conclusions drawn by Edwards are relevant and crucial when discussing the potential human costs of the Migrant Protection Protocols. This policy applies solely to third party nationals, the majority of whom are individuals escaping from the dangerous, unstable living conditions they experienced in their country of origin. Just as Edwards concludes, many of these individuals put their lives on the line to even arrive at the southwest border. Given the analysis established through her research, it is clear that attempting to deter these individuals from entering the United States is highly unlikely, as these participants are already escaping risky, dangerous situations in the countries they are fleeing. This means that strategically increasing the costs of applying for asylum in the United States is not a viable option as the individuals placed under the MPP simply have no other option. Instead, the MPP becomes a catalyst for human rights transgressions along the US-Mexico border, supporting my hypothesis.

Thomas Gammeltoft-Hansen and Nikolas F. Tan also add to the literature of deterrence based immigration policies on a more international scale. They focus their research on what they refer to as the “deterrence paradigm” on the formation of global refugee protection policy. The deterrence paradigm is defined by Gammeltoft-Hansen and Tan as the dominance of deterrence policies as a response to the arrival of asylum seekers to developed states. While their research mainly targets the refugee patterns occurring in the Eastern hemisphere, their discussion of the risks associated with “Offshore Asylum Processing and Protection Elsewhere”, or relocating asylum seekers outside of the borders of the recipient nation, fits perfectly with the occurrences happening in the Western hemisphere under the MPP, given that the United States is offshoring their asylum seekers to the neighboring country of Mexico. They emphasize the dangers of offshore asylum processing

stating that “offshore asylum processing and resettlement set disturbing precedents for the mistreatment of asylum seekers and refugees forcibly relocated away from the state where they sought protection” as it not only causes occurrences of overcrowding and ill treatment of refugees, it leaves asylum seekers more vulnerable to outside threats (Gammeltoft-Hansen & Tan, 2017, p. 36). The data analyzed in my research supports this claim and illuminates how relocating asylum seekers under the MPP to dangerous border communities in Mexico increases their risk of being targeted by criminals in Mexico and falling victim to violent crimes as they are no longer protected by United States law enforcement.

Research aimed at understanding other areas of immigration policy enacted by the Trump administration helps support the narrative that Trump seeks to limit the entry of illegal immigrants at any cost. Sophia Jordán Wallace of University of Washington and Chris Zepeda-Millan of University of California Los Angeles utilize public opinion data to measure the success and effectiveness of Trump’s punitive immigration policies in their book entitled *“Walls, Cages, and Family Separation” Race and Immigration Policy in the Trump Era*. Through their research, they identify deterrence as a strong motive behind several other immigration measures enacted by Trump’s administration, including construction of the border wall, inhumane detention centers, and familial separation. Ultimately, they conclude that despite the harsh nature of these policies, there is strong reason to believe that these measures are largely unsuccessful in serving as a deterrent to migrants from attempting to relocate to the United States. They even suggest that increasing the costs associated with migration are an intended outcome of Trump’s immigration policies stating “inhumane conditions in detention inflict trauma and harm onto children and their families without actually serving any tangible policy benefit beyond dehumanizing migrants. Cynically, one

may suggest this might be the intended goal of such policies.” (Wallace & Zepeda-Millán, 2020, p. 12). They argue that increased dehumanization is designed to serve as a deterrence, making migrants think twice before illegally entering. Yet, as established earlier, the promise of a prosperous life pushes humans to take on seemingly unbearable risks, especially if they have nowhere else to go.

Even though these policies are proven to fail in curbing the influx of migration aimed toward the United States, the Trump administration continued to push for their continuation throughout his four years in office and potential second term despite the potential for human rights violations (Kapur, 2020). Although this study focuses primarily on the analysis of the border wall and detention centers within the United State and not the MPP itself, these varying measures share similar deterrence motivations. The Trump administration’s desire to decrease not only entry of illegal immigrants, but also the entry of asylum seekers, is illustrated by his attempt to slash the refugee ceilings in the United States during his administration, which will be discussed in greater detail later on. Based on the failure of the policies discussed by Wallance and Zepeda-Millan to function as a deterrence from crossing along the southern border, it is reasonable to hypothesize that the MPP, which is engages in similar deterrence tactics, also fails to incentivize asylum seekers originating from attempting to seek refuge in the United States, especially given the conditions they are escaping in their countries of origin.

Extending Prevention through Deterrence to Refugee Seekers

When looking at the connection between the overall immigration strategy being used by the United States and this specific piece of legislation adopted by the Trump legislation to handle the entrance of asylum seekers, there are several parallels to be drawn that classifies

the Migrant Protection Protocols as a form of Prevention through Deterrence. Under my hypothesis that the MPP increases human rights transgressions for refugee seekers along the border, I further hypothesize that by increasing the inherent costs of applying for asylum in the United States, the government is actively engaging in a form of PTD to deter migrants from even attempting to seek asylum, or coming to the United States. The initial motivation behind passing the Migrant Protection Protocols according to DHS was to “reduce illegal migration by removing one of the key incentives that encourages people from taking the dangerous journey to the United States in the first place.” (*Nielsen Announces Historic Action*, 2018) Similar to how PTD, which applied for all migrants seeking to cross the border, raises the costs of illegally crossing the border so dissuade any attempts, it is reasonable to hypothesize that the MPP uses this same line of reasoning to prevent asylum seekers from attempting a completely legal and internationally protected process.

However, as researchers have found that PTD policies do not halt the flow of people from arriving at the border with intentions to cross, neither does the MPP. This program received tens of thousands of new participants in the fiscal years following its implementation, even despite the COVID-19 pandemic in 2020 which left the world unable to travel. After its initial implementation in 2019 which produced over 46 thousand individuals enrollments in MPP, TRAC reported 20,762 new participants in 2020 and 3,343 new cases in January of 2021 before the program ceased new enrollments (TRAC, 2021). These figures point towards an ineffectiveness at deterring the arrival of refugees at the border of the United States.

These participants are subjected to stay in areas that can only be described as refugee camps. Immigration shelters in MPP cities built to accommodate migrants are unable to

house the tens of thousands of MPP participants being relocated to these areas, leaving many asylum seekers left in overcrowded, makeshift tent communities with little to no resources necessary for survival. MPP participants in these communities live their lives in limbo, as they are faced with an application process that could take months, even years to complete. These vulnerable areas serve as a breeding ground for the spread of disease (especially during the COVID-19 pandemic), as well as a target for criminal attacks, such as kidnapping, assault, robberies, etc. (Sanchez, 2019). It is clear that the human costs of applying for asylum have increased dramatically under the MPP, yet the numbers of new participants in 2020 and 2021 reveal a failure to deter.

Changes in Asylum Procedure Under the Trump Administration

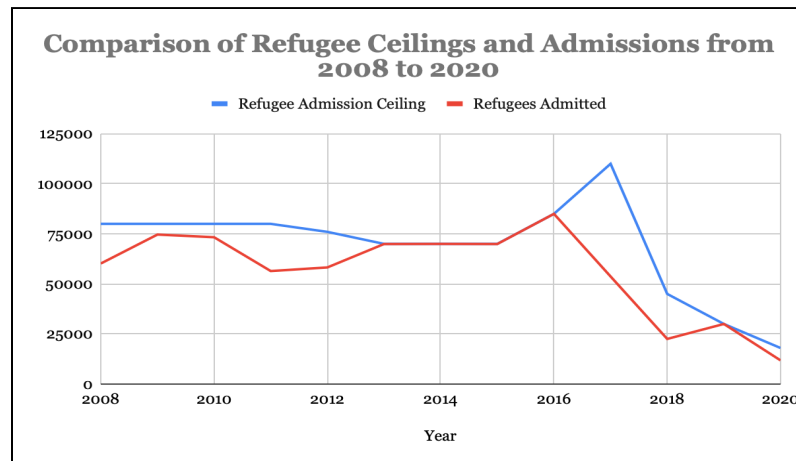
The Migrant Protection Protocols is just one of several extreme measures taken by the Trump administration during his four year term to limit not only the entrance of illegal immigrants, but asylum seekers as well. Understanding these trends aimed to close the borders to outsiders during Trump's presidency provides insight behind the motivations behind the establishment of the MPP, to decrease asylum applicants altogether. From the initial start of his 2016 presidential campaign, Trump's promises of immigration crackdown and walls along the southwest border established immigration as a central component to Trump's political agenda (Corasanti, 2016). Throughout his four year term, the extreme actions taken in order to fulfill campaign promises, including separation of familial units, raised extreme controversy among human rights activists and everyday Americans themselves. Although these actions were directed towards people crossing the border under illegal circumstances, it is worth noting that Trump's administration took active steps to prevent people from crossing into the United States with cases of asylum, which is perfectly

legal. The Trump administration limited the entrance of refugees in a way that the United States had never experienced before, and the data reflects this.

In the years of 2016 to 2020, President Donald Trump successfully cut the United States' refugee program to a mere fraction of previous administrations. In the current 2021 fiscal year, Trump released his plans to further cut the number of accepted refugees from 18,000 to 15,000 (Kanno-Youngs & Shear, 2020). Given the recent election, it is unclear whether or not this number will be maintained, however the 2020 cap of 18,000 refugees permitted into the United States is also extremely low in comparison to previous administrations.

The following chart with data collected from the Department of State Bureau of Population, Refugees, and Migration Refugee Processing Center (*Refugee Admissions Report, 2021*) shows the refugee ceilings, or the highest number of refugees permitted to enter, compared to the number of refugees admitted in each fiscal year from 2008 to 2020. This time range allows for comparison between the Obama and Trump administrations. It is clear that during the Trump administration, there is a sharp decline in both the amount of refugees allowed to enter as well as the number of refugees that actually entered.

Figure 1



Throughout the two terms of the Obama Administration, the refugee ceiling was consistently capped at around 70-80 thousand refugees. On the other hand, the Trump administration experienced a sharp increase in the number of refugees permitted to enter the United States at the start of his term coupled with a subsequent decrease in the actual number of refugees accepted. This spike is likely a spillover from Obama's foreign policy. After the fiscal year of 2017, Trump effectively lowers the ceiling of refugees admitted to less than half of the average ceiling under the Obama administration. This emphasizes that Trump's campaign promise that he would "build the wall" extends beyond the physical construction of a barrier along the southwest border, as he essentially sought to limit the entry of everyone, including asylum seekers. Lowering the limit of refugees admitted into the United States supports the anti-immigration rhetoric that helped him win the election in 2016.

Based on this precedent of limiting the entrance of refugees, the Migrant Protection Protocols can be viewed as an effective tool to further dismantle the ability of refugees to successfully seek asylum in the United States. The inability to undergo asylum procedures under the protection of the United States borders, coupled with the sharp decrease in annual refugee acceptances approved by the Trump administration makes seeking asylum in the United States a dangerous endeavor with little chance of success. The Trump administration's implementation of a policy that blocks the entrance of refugee seekers and relocating them to a more dangerous territory is a clear indication of their willingness to put nationality before humanity.

Bilateral Agreements with the Northern Triangle

In addition to slashing the admissions ceilings for refugees, the Trump administration has taken further measures to inhibit the migration of asylum seekers to the southern border

through establishing bilateral migration agreements with all three Northern Triangle countries. These agreements are aimed at keeping asylum seekers from evacuating the Northern Triangle region, despite the fact that conditions that endangers its citizens to the point of evacuation are shared within the region. There are three different types of contracts shared between the United States and the Northern Triangle countries: Border Security Arrangements, Biometric Data Sharing Program (BDSP) Arrangements, and Temporary Agricultural and Non-Agricultural Workers Programs Agreements. According to the DHS, these three agreements all share the common goal of “developing a safer and more prosperous region so that Central Americans can feel confident in creating futures in their home countries” (*DHS Agreements With Guatemala, Honduras, And El Salvador*, n.d.).

Figure 2 shows a graphic created by the DHS outlining the bilateral agreements effective in each country of the Northern Triangle.

Figure 2



These agreements essentially grant the United States the authority to return asylum seekers arriving to their borders back to the countries they pass through en route to the United States and require them to apply for asylum in the countries they pass through before they are permitted to seek asylum in the United States (Karas, 2019). That means if a migrant were escaping from El Salvador or Honduras, they would first have to apply for asylum in Guatemala. Researchers at the Migration Policy Institute (MPI) fear that these “safe third country” agreements will further refole refugees escaping dire conditions in neighboring countries while further destabilizing countries, such as Guatemala, who are already under-resourced by requiring them to absorb refugees from neighboring countries (Fratzke, 2019).

Media sources based in the Northern Triangle provide insight into the impact of these agreements on the countries involved. An article published by El Pais (a Spanish periodical that includes a focus in Central America) casts doubts on the ability of Guatemala to uphold the standards of this agreement. An article they published entitled *El pacto migratorio con EE UU pone a prueba la capacidad de Guatemala (The migratory pact with the United States puts Guatemala's capacity to test)* illustrates some of the issues faced by the Northern Triangle countries resulting from these agreements, especially for Guatemala given that it's shared border with Mexico makes it necessary for migrants headed north to travel through their territory.

The article includes a statement from Jordán Rodas, a human rights attorney based in Guatemala, saying “La falta de condiciones dignas para los guatemaltecos en educación, salud o nutrición son, precisamente, las que orillan a los connacionales a migrar. ¿Con qué capacidad en Estado brindará a miles de personas de otros países?... Eso no tiene sentido,

carece de lógica, es ilegal y antiético” which directly translates to “The lack of decent conditions for Guatemalans in education, health or nutrition are precisely those that lead nationals to migrate. With what capacity in the State will it provide thousands of people from other countries? ... That makes no sense, it lacks logic, it is illegal and unethical.” (Elías, 2019). It is highly unlikely that Guatemala holds the capacity to serve as a safe, third party country for asylum seekers originating from Honduras or El Salvador given that Guatemala suffers similar, precarious conditions in which these migrants are escaping.

Overall, these bilateral agreements established by the Trump administration serve as evidence of a motivation to keep asylum seekers from arriving in the United States, further supporting the narrative that President Trump is utilizing the PTD strategy to its full capacity. The impact of these bilateral agreements, in addition to the hypothesized impact of the MPP, is that these types of measures simply raise the human costs of migration instead of effectively providing aid to the refugees fleeing subjection to dire conditions.

Conditions Driving Forced Migration in the Western Hemisphere

Understanding the conditions of the countries of origin for the vast majority of these MPP participants provide context to understand that these people are justified in their desire to apply for asylum in the United States. This section focuses on the conditions of the Northern Triangle as this region serves as the origin for the majority of MPP participants, although it is worth noting that there are several other individuals placed under the MPP seeking asylum from other Western hemispheric nations as well. The conditions they are escaping give them credible cases as potential asylum seekers in the United States.

Central America is a region that struggles with economic instability, extreme violence, and political impunity. El Salvador, Guatemala, and Honduras, which make up the

Northern Triangle, are three of the five most dangerous nations in the western hemisphere and the most dangerous region in the world not actively engaged in war (Mathema, 2016). This regional turbulence is the source of increased migration patterns stemming from the Northern Triangle towards the United States. According to the Pew Research Center, the number of immigrants in the United States stemming from the Northern Triangle has risen over 25% in the past 15 years, outpacing growth in migration from any other area of Latin America (Cohn et al., 2017). The UN Refugee Agency also reports a 2,249% increase in the number of people who have sought refuge in surrounding countries in the Western Hemisphere, such as Guatemala and Belize, between the years of 2011 and 2016 (*Central America Refugee Crisis*, 2021). These figures come at no surprise after hearing about the reality of life faced by people living in this region. Before understanding the ramifications of the MPP, it is necessary to understand the socioeconomic conditions that serve as a catalyst for this growth in migration, which can only be described as a humanitarian crisis.

Push Factors

There are several determinants, known as push factors, that force individuals to flee voluntarily from the Northern Triangle. Deteriorating security and economic conditions within this region are considered to be a high threat conflict requiring immediate international attention (Stares, 2020, p. 5). Organized crime and political corruption are rampant in this region, and as these issues intensify, the number of people choosing to flee surges.

Economically, this region is considered one of the poorest in the world. El Salvador, Guatemala, and Honduras all held three of the lowest annual GDP per capita in Latin America with all three totaling under 5,000 USD in 2017 (Cheatham, 2019). Approximately one third of all jobs in Central America are still based in agriculture, an industry that has

suffered at the hands of climate change in recent years (Tharoor, 2019). The Northern Triangle is centrally located in what is referred to as the “Dry Corridor”, an area that is notorious for food insecurity due to poor rainfall resulting in curbed agricultural productivity. Recent climate change is also attributed as the root cause for a fungal disease destroying coffee production in the Northern Triangle, a crop that fuels local economies, causing extreme economic decline in Honduras and Guatemala. Not only does this decrease access to food among citizens, it raises the rate of unemployment for people who previously depended on seasonal, agricultural work to sustain their livelihood (Chapman, 2017, p.5).

Widespread poverty leaves residents of the Northern Triangle increasingly vulnerable to organized crime and gang violence. El Salvador is notorious for its high homicide rates, earning itself the most violent country in the hemisphere, however its neighboring countries, Guatemala and Honduras, are not far behind (*Five Facts about Migration*, 2016). Data supplied from the Institute of Health Metrics and Evaluation shows that in 2015, the homicide rate in El Salvador caused a staggering 112.2 deaths per 100,000 people. Honduras also tallied a homicide rate of 110.6 deaths per every 100,000 people and Guatemala received 33.5. For reference, in 2015, the United States’ homicide rate was tallied as 5.8 (Roser & Ritchie, n.d.). These homicide rates are just one of many indicators revealing the impact of organized crime and the presence of gangs on the livelihood of everyday citizens.

Prominent street gangs such as Mara Salvatrucha (MS13) and the Barrio 18 exert control over poor neighborhoods and compete amongst each other for territory for lucrative businesses, such as drug trafficking. These violent groups take advantage of everyday citizens, utilizing kidnapping, extortion, and recruitment of minors to profit off even the most economically vulnerable people (Robbins, 2018). Extortion rates, commonly referred to as

“impuestos de guerras” or “war taxes” by Hondurians and “renta” or “rent” by Salvadorians, are financially crushing, especially for a population of people who are already living in extreme poverty. Data compiled by a Honduran newspaper, La Prensa, reports that in 2015 alone Salvadorians paid approximately 390 million dollars in extortion fees, Hondurians paid around 200 million dollars and Guatemalans paid 61 million dollars (“Imperios de La Extorsión’ Están En Honduras y El Salvador”, 2015). The consequence for insubordination is torture and subsequent death.

Victims of violence perpetrated by gangs are virtually unprotected by public institutions and receive little to no support from their governments, both local and national. Police forces in all three countries are plagued by corruption and violence. Extrajudicial killings and human rights abuses enacted by police officers are a common occurrence (*Five Facts about Migration*, 2016). The underfunding of police forces causes officers themselves to be vulnerable to organized crime and are faced with a decision to support local gangs or risk facing consequences for themselves and their families.

Corruption reaches far beyond local police forces. In 2018, the same year the DHS announced the MPP program, all three Northern Triangle countries were labeled as “highly corrupt” according to Transparency International’s Corruption Perception Index (CPI). On a scale of 1 to 100, 1 equaling highly corrupt, Honduras scored a 29, Guatemala scored a 27, and El Salvador scored a 35, making them 3 of the most corrupt nations in the world (*Corruption Perceptions Index*, 2018). Governments in the Northern Triangle struggle to provide access to essential social services for their citizens. Embezzlement of funds coupled with extremely low tax collection rates contribute to lack of services, low educational attainment, and social instability (Meyer & Taft-Morales, 2019). Without access to necessary

services and institutions, citizens of the Northern Triangle are faced with increased vulnerability to the presence of organized crime.

Pull Factors

The characteristics of a destination country that attract individuals to leave their home states are defined as pull factors (Arthur, 2018). Pull factors that motivate people to migrate to the United States include opportunity for economic stability and growth, low poverty and violence levels, as well as access to education (*Push or Pull Factors*, 2019).

Two other pull factors cited as motivations for migration stemming from the Northern Triangle include family reunification and the “word of mouth” phenomenon. According to an MPI Fact Sheet entitled *Trends in Unaccompanied Child and Family Migration from Central America*, approximately one in five Salvadorians and one in 15 Guatemalans and Hondurans currently reside in the United States (Rosenblum & Ball, 2016). This raises the probability that migrants leaving the Northern Triangle have familial connections in the United States, prompting them to emigrate from their home countries in an attempt to reunify their families. Families residing in the United States also offer the opportunity for migrants to use their familial connections to secure housing and employment while maintaining social relationships based around cultural norms with others from the same background (Qui, 2018). In addition, the United States visa program permits citizens and green card holders to petition to bring over immediate family members, making it more plausible for people to migrate to countries where they can reunite with their families. The term “chain migration” is often used in place of family reunification, however in recent years chain migration has received a negative connotation from critics, including Trump and his supporters, who place blame on this pattern of immigration for allegedly stealing jobs from Americans and increasing the threat to national security (Burnett, 2018).

Additionally, the word of mouth effect contributes as a pull factor driving migrants to the United States. Scott Rampell describes this phenomenon in his journal entitled *Credible Fears, Unaccompanied Minors, and the Causes of the Southwestern Border Surge* as when “individuals learn about actual or allegedly successful ways to enter the United States and mimic the pattern that has been successful.” (Rampell, 2015, p. 363). Upon hearing stories of other people successfully entering the United States experiencing an improvement of day to day life, others are inspired to follow suit and pursue the same journey

Protection of Refugees under International Legislation

By establishing a credible case for fleeing their country of origin, refugees are immediately protected by international law established by the United Nations. An important international document to understand when evaluating the United States’ legislative approach to handling refugees is the UN 1951 Refugee Convention and the subsequent 1967 Protocol created as an amendment to the Convention. The UN passed the 1951 Refugee Convention to establish the right of any human being to seek asylum from persecution in Europe following the events that transpired as a result of World War II until 1951 (*Refugee Convention*, 1951). The 1967 Protocol reaffirmed this human right to seek refuge while removing the geographic and temporal limitations of the 1951 Refugee Convention, certifying that any human being regardless of location or time frame could legally escape persecution in their home country and seek refuge in another nation.

The 1951 Refugee Convention and the additional 1967 Protocol are essential in universally defining the term “refugee” as well as the rights entitled to them. They also provide a framework for the legal obligations of States to protect refugees entering their borders in search of asylum (1951). In 1968, the United States Senate ratified this

convention with President Lyndon B. Johnson publicly stating that “given the American heritage of concern for the homeless and persecuted, and our traditional role of leadership in promoting assistance for refugees, accession by the United States to the Protocol would lend conspicuous support to the effort of the United Nations toward attaining the Protocol’s objectives everywhere” (Johnson, 1968-69) solidifying its entry into force later that year. Since the ratification of this convention, the United States is legally bound to uphold the 1951 Refugee Convention and anyone seeking asylum is entitled access to the rights and treatment outlined by these legal documents.

Article 1 of the 1951 Refugee Convention defines the term refugee as applying “to any person who has a fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” (1951, p.14). Under the 1951 Refugee Convention and the 1967 Protocol, any person falling under this definition is entitled to a series of rights. Throughout this study, the 1951 Refugee Convention will be referenced to define a certain right protected by these documents and guaranteed to them in which the contracting states are obliged to uphold.

The New Colossus engraved on the Statue of Liberty symbolizes the United States’ long standing tradition of serving as a sanctuary for refugees stating “Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, the tempest-tossed to me, I lift my lamp beside the golden door!” (Hunter, 2018) This poem illustrates a commitment to preserving diversity in

the United States. As a signatory party of the 1951 Refugee Convention, the United States vows to uphold the standards it outlines. This research reveals that not only does the MPP undermine the symbolic nature of the New Colossus and the United States as a protector of the weak, the United States is also violating its international commitment to protect the rights and liberties of refugees seeking asylum.

Chapter 3: Methodology

In order to measure the impact of the Migrant Protection Protocols on refugee rights, I will be using a mixed methods approach. The human rights being evaluated will be analyzed using a combination of quantitative and qualitative data. This combination of data sources will attempt to overcome the limitations and fill in the gaps created by a lack of centralized data recording human rights violations caused by immigration policy. Using both of these types of data, I will be able to see if there exists a correlation between the implementation of the MPP and a rise in cases of human rights violations, deeming this policy as inhumane towards refugees.

This study evaluates the impact of the passage of the MPP focusing on two specific human rights outlined by the 1951 UN Refugee Convention: the right to legal representation and the right to non refoulement. In this thesis, the right to legal representation is defined as having access to legal resources as well as access to attorneys as necessary during MPP court proceedings. Non-refoulement is defined as not returning asylum seekers to a country in which they are vulnerable to persecution. These specific variables were selected based on their explicit protection under the 1951 Refugee Convention which serves as an international framework for the minimum protection that signatory states are obligated to provide to refugees within their borders. Additionally, the right to legal representation and non refoulement are symbolic of an asylum seekers access to both due process during the proceedings of their application, as well as safety and protection while undergoing this application process, both of which make up the bare minimum requirements of what is

expected by signatory states to provide any incoming refugees under the 1951 UN Refugee Convention (1951).

Utilizing a combination of both quantitative and qualitative data effectively illustrates both the overall trends occurring under the Migrant Protection Protocols while also drawing attention towards the profound impact that this legislation has on individuals. By highlighting both personal testimonies as well as the larger patterns occurring under the MPP, this study demonstrates that the atrocities that do generate media attention, which will be analyzed from a qualitative approach, are not unique occurrences given the trends established by the quantitative data.

Through identifying the increased risks created under the MPP, this study also illustrates how the MPP utilizes the same line of reasoning present in the Prevention through Deterrence immigration strategy: increase the costs of entering the United States to the point where it is life threatening to do so in order to dissuade people from trying. The MPP was created to deter refugees from even attempting to undergo the asylum process in the United States by increasing the costs associated with this process. The Trump administration's slashing of the refugee ceilings and passing of strict bilateral agreements in the Northern Triangle demonstrates a commitment to preventing the entry of asylum seekers. Through making the process of applying for asylum even more dangerous and difficult along the Southwest border, the Trump administration is essentially using the PTD strategy to limit the arrival of asylum seekers, a strategy which is claimed to be unsuccessful in its aim with fatal consequences. The failures of the MPP program illustrated by this study will provide a new piece of evidence to the overall failures of the Prevention through Deterrence immigration strategy adopted by the United States.

The quantitative data being evaluated will be analyzed using descriptive statistics which adequately summarizes the information collected by non profit, nonpartisan sources and allows the overall trends occurring under the Migrant Protection Protocols to be effectively illustrated. To evaluate the participants' ability to access legal representation during their asylum application process, the data provided by the Transactional Records Across Clearinghouse (TRAC) sponsored by Syracuse University. This database provides independent, nonpartisan information regarding federal spending, staffing, and enforcement ("TRAC", 2021). They also collect comprehensive data about United States immigration enforcement and court proceedings. Within this database exists an information tool designed especially to track the data of immigration cases assigned to the MPP program, specifically the deportation proceedings. This database entitled "Details on MPP (Remain in Mexico) Deportation Proceedings" collects data from the court hearings of MPP participants in the United States. This specific tool will be used to show overall the rate at which MPP participants are able to access legal representation and how this correlates to both hearing attendance and overall success of asylum applications.

The quantitative data utilized to evaluate the adherence to non refoulement under the MPP is a database created by Human Rights First (HRF), an independent, international human rights organization based out of NYC and Washington D.C. They are listed as a nonprofit, nonpartisan organization which works to eradicate the presence of political biases that may alter the credibility of the data provided by their services. The database being utilized is entitled "Publicly reported cases of violent attacks on individuals returned to Mexico under the "Migrant Protection Protocols" which is a running collection of reports of violence against participants of the MPP. After establishing the potential risks for refugees

being forced to undergo their asylum proceedings on the Mexican side of the border, HRF created this database as a tool to document the dangers faced by people under this policy and centralize these reports of violence. Although human rights organizations are known to be fairly critical of government entities, the UN recommends that governments take into account the data collected by third party organizations in order to evaluate whether the policies being put forward are positively or negatively impacting migrants. One of the recommended principles and guidelines of the UN Office of the High Commissioner (OHCHR) is outlined as the following:

“States should consider encouraging independent monitoring of human rights at international borders and establishing or strengthening systematic reporting mechanisms, including through facilitating cooperation between border authorities and other actors including police, national human rights institutions, parliamentarians, civil society and international organizations [and] supporting all relevant actors to bring complaints in the event of violations of human rights at borders.” (Hussein, n.d., p. 13)

Under this guideline, the information published by HRF through this database should be taken into account when analyzing the successes and failures of the MPP.

The qualitative data being analyzed is designed to highlight individual testimonies of the conditions faced by refugees under the MPP. The testimony of a senior advocate for Refugees International who spent significant time in Mexican border communities interacting with refugees under the MPP will be used to analyze the impact of the MPP on the ability to secure legal representation. The second source of qualitative, testimonial data is gathered from legal transcripts from two complaints filed against senior representatives of the Department of Homeland Security. These two cases are *Immigrant Defenders Law Center v. Wolf* filed in October of 2020 and *American Immigration Council v. USCIS* filed in May 2020. These complaints both provide details of the plights of MPP participants in their lack

of ability to secure legal representation as well as an inability to utilize their legal resources liberally and in a confidential environment.

The sources of qualitative data employed to analyze the impact of the MPP on the refugees' right to non refoulement are third party media sources based out of Mexico. The motivation behind testimonies published on Spanish language media platforms is to collect and incorporate testimony in the native language of the MPP participants. The two media sources being consulted are El Diario and Telemundo20. These sources both cover news in Mexican border cities; El Diario covers news occurring in Ciudad Juarez, Chihuahua and Telemundo20 covers news from Tijuana, Baja California. Both of these cities are destinations for refugees under the MPP to reside in throughout the duration of their asylum proceedings, making them central to the situation at hand.

The wide variety of sources being consulted aims to provide a holistic analysis of the effectiveness of the United States in protecting the human rights of their asylum seekers under the Migrant Protection Protocols. Additionally, to incorporate the point of view that defends the Migrant Protection Protocols, press releases and statements from the Department of Homeland Security are referenced to show the measures, or lack thereof, taken by the United States in maintaining MPP participants rights to both legal counsel and non refoulement.

Chapter 4: Data Analysis

Legal Representation

Legal representation and assistance is a right that is explicitly protected by the 1951 Refugee Convention. Article 16 states “All refugees shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.” (*Refugee Convention*, p. 21). *Cautio judicatum solvi* is defined as “payment of security for legal costs” (Lalevee, 2003). Given this, refugees are rightfully entitled to public legal assistance free of cost under international law. However, since immigration and asylum cases are considered civil sanctions rather than criminal sanctions, they are not technically protected under the sixth amendment (Eagly & Shafer, 2016). This is how the United States is able to justify processing cases of immigration and asylum through the legal system without requiring any legal representation, a practice that is highly controversial among human rights advocates.

The Department of Homeland Security is adamant in their claims that the United States is effectively fulfilling their obligations to the 1951 Refugee Convention, even under the MPP. According to a press release released by DHS in January of 2019 states “Consistent with the law, aliens in removal proceedings can use counsel of their choosing at no expense to the U.S. Government. Aliens subject to MPP will be afforded the same right and provided with a list of legal services providers in the area which offer services at little or no expense to the migrant.” (*Migrant Protection Protocols*, 2019) The data will show that

providing this list of legal services proves ineffective in aiding migrants in securing legal representation as over 90% of MPP participants are reported at court hearings without the presence of legal assistance in the form of representation.

Although the MPP requires its members to file for asylum in Mexico, they are still required to report for hearings in courts located across the border in the United States. The majority of MPP court hearings occur in the following port locations along the southwest border: El Paso, Brownsville, Laredo, San Ysidro, and Calexico. DHS officials are tasked with providing MPP participants a “tear sheet” that notifies participants when and which port of entry they are required to report to in order to be transported to their hearings (Walters, 2020). Failure to be present at the assigned date and location results in automatic denial of asylum and potential deportation back to their country of origin. Access to legal representation plays a critical role in ensuring that MPP participants are fully aware of when and where they need to be present in order to ensure their case can be fully presented in a United States court of law. MPP participants often hold no permanent residence while waiting in limbo in Mexico; many of them reside in overcrowded “tent communities” and cannot be easily reached by DHS (Liautaud, 2020). Attorneys act as a liaison between MPP participants and the DHS, ensuring that the line of communication between the two parties remains intact.

Overall Trends

This section of data exhibits both how access to legal representation is manifested under the Migrant Protection Protocols and the implications of these results in both rates of application approvals and rates of recorded attendance at court hearings. The TRAC database provides insight into the lack of legal representation under the MPP, as well as data

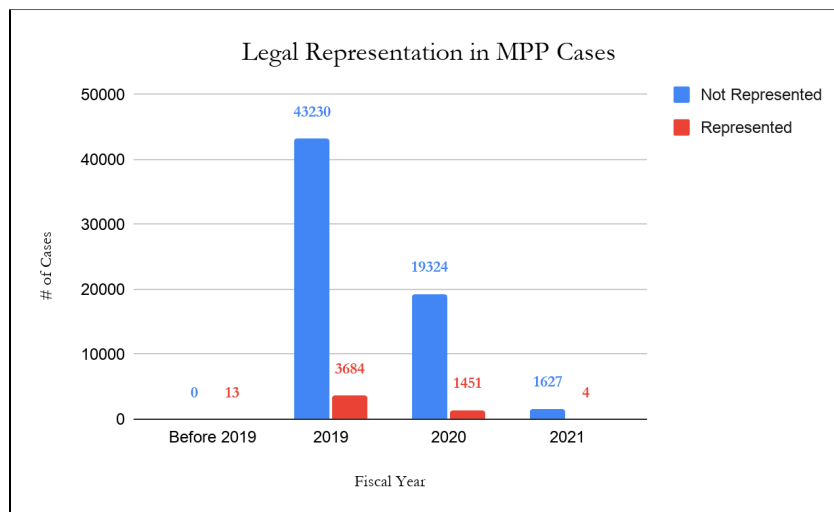
illustrating the implications of not having legal representation. This data establishes an overall trend of asylum seekers under the MPP being unable to obtain an attorney and how this counters one of the overall goals behind passing the MPP given by the DHS, which is to simplify the process of asylum for meritorious cases. These cases are dealt with through Immigration Court, which serves under the executive branch rather than the judicial branch. This is worth noting because all the cases taking place within this court do not deal with criminal charges, instead they focus on relief and removal proceedings; therefore individuals subjected to this court of law do not necessarily have criminal charges levied against them (*About the Data*, n.d.).

This database successfully measures whether the immigration cases filed under the MPP have any type of legal representation present during any proceedings. The data shows the proportion of MPP cases with legal representation in comparison to MPP cases that do not have legal representation is extremely disproportionate. The fiscal year represents the year in which the deportation proceedings were initiated, not when the case was held before a court which explains why there are MPP cases that occur before 2019 even though the Migrant Protection Protocols was not implemented until January of 2019. The following data analysis examines the MPP cases filed before January 6, 2021 which according to TRAC equates to 69,333. The updated number of cases filed under MPP according to TRAC is 71,021 (TRAC, 2021).

The data compiled from the MPP tool of the TRAC database reveals that a vast majority of MPP hearings are void of legal representation with the exception of MPP cases that occurred before 2019. According to the data, approximately 92.6% of immigration cases filed under the MPP are undergoing proceedings without any legal representation. Figure 3

illustrates the disproportionate comparison of MPP cases with and without the presence of legal representation:

Figure 3



Furthermore, access to legal representation holds a positive effect over immigration hearing attendance rates, or who actually shows up to the border to be transported by DHS to one of the southwest border immigration courts. According to the TRAC MPP data, out of the 5,148 total MPP participants with recorded access to legal representation, 88.1% are reported as “Always Present at Hearings” whereas only 4% were reported “Not Present at Last Hearing” and therefore subjected to Absentia Decision. When MPP participants do not have the advantage of legal representation, the percentage of perfect attendance at immigration hearings plummets. Of the total number of MPP participants without legal representation, which adds up to 64,185, only 35.6% are reported as “Always Present at Hearings”. On the other hand, the rate of absences at immigration hearings increases significantly when MPP participants do not have legal representation. 47.9% of the total MPP participants without legal representation were reported as “Not Present at Last Hearing”

and subjected to Absentia Decision. Table 1 provides a visual breakdown of this data since the initiation of the program:

Table 1

Attendance Rates (& Total Number) of MPP Participants with Legal Representation vs Attendance Rates of MPP Participants without Legal Representation as of January 6, 2021			
	Always Present at Hearings	Not Present at Last Hearing (Absentia Decision)	Still Waiting for First Hearing
Represented	88.1% (4,535)	4% (213)	7.8% (400)
Not Represented	35.6% (22,757)	47.9% (30,717)	16.6% (10,711)

Legal representation is also shown to hold a powerful effect over the outcome of immigration proceedings for MPP participants. With access to legal representation, MPP participants are less likely to receive removal orders and more likely to achieve their designated goal of grant relief. For the MPP immigration cases that lack legal representation, approximately half of cases are met with removal, or deportation orders. In addition, MPP participants who are fortunate enough to have access to legal counsel are less likely to prematurely terminate their proceedings or submit to voluntary departure. Table 2 provides a visual representation of the ratio of outcomes for the MPP immigration cases with and without legal representation since the initiation of the program.

Table 2

Proceeding Outcome Rates (& Total Number) of MPP Immigration Cases with Legal Representation vs Proceeding Outcome Rates of MPP Immigration Cases without Legal Representation as of January 6, 2021		
	Represented	Not Represented
Removal Order	17.1% (880)	49.5% (31,798)
Grant Relief	6.9% (355)	0.4% (260)
Pending	71.6% (3,688)	36.3% (23,273)
Other*	4.4% (225)	13.8% (8,854)
<i>*Other represents cases that were concluded with terminate proceedings, voluntary departure, or other closure</i>		

Overall, this data shows that under the MPP, there is not only an obvious lack of legal representation present at court hearings for asylum applicants arriving to the United States at the southwest border, but there is also a positive correlation between presence of legal representation and both attendance rates and proceeding outcomes in MPP immigration cases, in which participants present their case of asylum in front of a judge. Legal representation is shown to increase both of these outcomes, which exponentially increases the likelihood of a successful asylum application process.

The DHS claims that refugees take advantage of the United States' backlogged asylum system to gain entry into the country and "disappear" before they are ordered to present their case to a judge (*Migrant Protection Protocols*, 2019). However, this data shows that refugees with access to legal counsel are far more likely to be present at court hearings, which occur across the border in the United States. Under the MPP, gaining access to legal representation is made far more difficult, meaning the chances of undergoing the application process without an attorney are more likely (as illustrated by the TRAC data and the testimonies provided). Under this logic, there are likely to be more missed hearings under

the MPP, both eliminating the participants' chances to receive refugee protection in the United States and counteracting one of the proclaimed intentions of the MPP as outlined by the DHS.

Testimony Data

The following testimony gives a firsthand account of how the Migrant Protection Protocols itself limits the applicants' ability to secure legal representation and utilize legal resources. Through testimonies such as these, it is more clear how the MPP program is to blame for reducing the participants' access to legal representation, making it more difficult to secure asylum protection in the United States despite having a potentially meritorious case for asylum.

Yael Schacher, a senior U.S. advocate for Refugees International, has spent approximately 6 months working directly with MPP participants. Her testimony delivered to the Inter-American Commission on Human Rights in August of 2019 provides a more personal examination of how the MPP directly, and negatively, impacts participants' ability to access the necessary resources to undergo the asylum application process, including access to legal counsel. Schacher attended immigration hearings in both San Diego and El Paso between the months of March and August of 2019 and reported several issues that MPP participants are facing that inherently limit their access to legal counsel and inhibit the due process of their applications.

The first issue Schacher brings up is the initial inability of MPP participants to secure an attorney to assist them through the asylum application procedure. She states in her testimony, "Each time I have been to court and asylum seekers have said they have tried and failed to find attorneys, the judge has urged them to try harder." (*Remain in Mexico Policy Is*

Undermining Asylum, 2019). In addition, Schacher discusses how the inability for cases to be legally represented prevents the advancement of protection norms for future cases of asylum stating the following, “Many asylum seekers subject to MPP with clearly meritorious claims are not able to find attorneys to pursue their cases and so the U.S. asylum system is starved of cases that could advance protection norms.” (2019). For example, she interviews a woman in Tijuana whom she believes holds a compelling case for asylum based on claims of domestic violence. Since she is unable to secure any type of legal representation, her case will likely fail to make it to the final stages of the asylum proceeding process, preventing it from setting a strong precedent for future asylum claims.

For the 7.4% of MPP participants who are actually able to secure an attorney, Schacher reports an overall difficulty for attorneys in assisting their clients during their court hearings. She states while observing MPP court proceedings in El Paso, that “Attorneys now have to wait downstairs and have minimal access to their clients; observers are frequently told that they cannot watch the court hearings.” These types of occurrences make it complicated for MPP participants to utilize their attorneys when they need them most. Overall, Schacher provides a concerning account of both a failure of MPP participants to access legal counsel, an inability of attorneys to aid their clients, and how this lack of legal counsel inhibits the establishment of asylum precedent for certain claims, such as domestic violence, which paves the path for future asylum seekers to successfully qualify for asylum status in the United States.

In addition to Yael Schacher’s personal testimony, the reality of access to legal representation under the MPP is clearly illustrated in various lawsuits against senior members of the DHS, who played an integral role in orchestrating the implementation of this executive

order. One lawsuit filed against Chad Wolf, an acting secretary of homeland security at the time of the initiation of MPP, reveals how the MPP program obstructs individuals from access to legal counsel. Not only does this lawsuit cite that the vast majority (93%) of MPP participants are left to navigate the asylum application process without any type of legal aid, they bring to light how the small proportion of MPP participants that were fortunate enough to secure legal counsel were limited in their access to the attorneys they hired. In the complaint filed in October 202 for *Immigrant Defenders Law Center v. Wolf*, the following testimony was recorded:

“The Protocols’ “Deprivation of Counsel” Policy has obstructed legal representation for nearly 93 percent of impacted individuals. Under that policy, Defendants limit attorney-client consultations occurring in the United States for the relatively few individuals subject to the Protocols who have legal representation to an illusory one-hour window before a scheduled hearing, without any assurance of or mechanism for confidentiality. In practice, legal representatives rarely, if ever, have even a full hour to meet with their clients. Individuals without representation, including Plaintiffs Anthony Doe, Hannah Doe, and Jacqueline Doe, are left to navigate the complexities of U.S. asylum law, including the ever-changing, logistically complicated Protocols, on their own.

Even though Defendants are required to provide asylum seekers in MPP with a list of free or low-cost legal service providers, the list that the government provides consists primarily of organizations that do not provide representation to asylum seekers trapped in Mexico. And Defendants continually have thwarted the efforts of the few legal service providers whose mission includes representing individuals subject to the Protocols—including Plaintiffs Immigrant Defenders Law Center and Jewish Family Service of San Diego—to screen, advise, represent, or otherwise assist individuals subject to the Protocols.” (*Immigrant Defenders Law Center v. Wolf*, 2020)

This testimonial excerpt reveals several issues with how legal representation for MPP participants is manifested under this asylum protocol. Not only are the gross majority of MPP candidates lacking access to resources needed to secure legal representation, but organizations seeking to aid asylum seekers along the border are unable to provide their services for several individuals due to barriers constructed by the DHS. Asylum seekers who

are represented are not provided sufficient contact with their attorneys as needed, making it increasingly difficult to relay and share necessary information throughout the application process. Lastly, attorneys report the failure on the government's side to provide an environment where asylum seekers can converse with their attorneys privately, a clear violation on their right to confidentiality.

Forcing asylum seekers to secure legal representation in the United States while confining them to the borders of a different country limits their access to legal resources in the United States that are designed to aid people without the financial resources to buy the services of an attorney. This issue is further exacerbated by the closure of borders during the COVID-19 pandemic. The testimony drawn from another lawsuit filed against the United States Citizenship and Immigration Services. *American Immigration Council v. USCIS* details this in the transcript stating the following:

“Individuals subject to the MPP, many of whom are indigent or grapple with trauma and other psychological issues, also lack food and shelter and experience logistical hurdles to participation in court proceedings in the United States. For example, they do not have access to key safeguards such as *pro bono* counsel and legal education programs, which are often available to noncitizens in the U.S.” (*American Immigration Council v. USCIS*, 2020)

Ultimately, based on this testimony, it is clear that the MPP is a direct barrier to non-citizen asylum seekers having access to the legal resources necessary to properly present themselves in a United States immigration court. These testimonies illuminate the issues that are a direct consequence of placing an international border between refugees and the legal counsel they require to successfully secure asylum status in the United States. Unlike the words of the DHS stating that the MPP increases efficiency of the asylum proceeding

process, this protocol is actually making it more difficult for asylum seekers to acquire legal representation and subsequently use their resources to the fullest extent.

These barriers to legal representation and counsel being reported under the MPP show a failure on behalf of the United States government and forces such as the DHS to provide adequate services to asylum seekers under the MPP. Allowing asylum seekers to reside in the United States while applying for asylum gives them easier access to both securing legal representation and unconstrained access to converse with their lawyers in confidentiality when necessary. By relocating asylum seekers to Mexico, MPP participants are less likely to secure access to legal representation, a direct result of the frontier barrier blocking them from American legal services. It is clear that access to legal counsel is absolutely necessary to ensure that these asylum seekers have a fair chance at fully presenting their case in a United States immigration court.

Although these individual testimonies only bring light to a few stories of the thousands of MPP participants, based on the conclusions created through the statistical analysis of the TRAC MPP data, it is clear that these few testimonial cases are a fair representation of the struggles faced by MPP participants when it comes to finding and utilizing legal counsel. The quantitative data paints a picture of a widely shared absence of legal presence during this process, and these testimonial cases shine a magnifying glass on how this data plays out in real life.

Non Refoulement

Another aspect of the Migrant Protection Protocols which calls into question its legality is whether or not delivering asylum seekers to Mexico to await the outcome of their case is considered an act of refoulement. Refoulement occurs when a recipient nation returns

an asylum seeker to a country where there is probable cause that they will face persecution or their lives are known to be in jeopardy. The 1951 UN Refugee Convention defines non refoulement as the prohibition of expulsion or return to a potentially dangerous territory. Under Article 31 of this document, “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. (1951, p. 30). Under this definition, the United States is bound from delivering migrants claiming asylum into territories in which they feel persecuted or endangered.

In addition to the 1951 UN Refugee Convention, The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 1984 and entered into force in 1987, also denounces the act of refoulement. Torture is defined by the Convention as the following: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person... It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” (*Convention Against Torture*, 1987) Article three section 1 of the Convention against Torture explicitly states “No party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” (1987). Furthermore, Section 2 of Article 3 demands that States must take all relevant evidence into consideration to prevent refoulement of any kind stating “For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights” (1987). Just as the

United States is legally bound to the 1951 Refugee Convention, the United States also recognizes the UN Convention against Torture by signing onto the Convention on April 18, 1988 (*Convention against Torture Senate Consideration*, 1990).

Given the United States' role as a signatory party to these two international conventions, they are bound by law to ensure that by returning refugee seekers to remain in Mexico during the processing of their asylum applications their lives are not being jeopardized. However, given the conditions of the Mexican border cities that MPP participants are being forced to stay in, refoulement is extremely likely for these individuals. Figure 4 below offers a visual representation of the location of MPP participating cities in Mexico and the travel advisory status they received by the United States as of September 2020. Arrows point to the locations of the following MPP recipient cities: Tijuana, Mexicali, Nogales, Ciudad Juárez, Nuevo Laredo, and Matamoros. These areas were transformed into MPP hubs based on their proximity to preexisting immigration courts on the United States side of the southwest border. The colored areas of the map represent the level of travel advisory the United States Department of State designated. Of the seven Mexican border cities that serve as a recipient location for MPP participants, four of them are located in areas that the United States Department of State has advised to "Reconsider travel" and one city, Matamoros, is located in a "Do not travel" area. According to the United States State Department who assigned these cities as safe destinations for MPP participants, these areas are under advisory for high rates of crime and kidnapping (*Mexico Travel Advisory*, 2020).

Figure 4



(“Mexico Travel Advisory”, 2020)

The conditions that MPP participants are subjected to in these recipient cities along the southwest border are nothing short of inhumane. MPP participants awaiting court dates are struggling to fulfill day to day necessities. Although the bilateral agreement between the United States and Mexico states a guarantee on behalf of the Mexican government to provide MPP participants with shelter, guaranteed work authorization, medical care, and education for children, it is clear from first hand witnesses that these promises are not being kept. According to the American Civil Liberties Union (ACLU), the influx of migrants situated in these cities leave preexisting shelters overwhelmed, forcing many MPP participants to live in tent shelters in the streets (Mukpo, n.d.). These conditions leave an already vulnerable population further at risk of becoming targets for violent crimes such as kidnapping, robbery, sexual assault, etc. An article published by the Niskanen Center, a D.C.-based think tank that advocates for immigration reform, describes the areas populated by MPP participants as “unofficial refugee camps” which house over 60,000 men, women and children awaiting updates to their asylum status in the United States, many of whom have little to no access to adequate shelter and necessities such as food and clean drinking water. Very limited

resources are being provided to the migrants in limbo by NGOs and faith-based organizations, however since neither country has declared an official emergency, the UNHCR is unable to provide outside aid in these makeshift refugee camps. (Van Fossen, 2020).

The United States Department of Homeland Security defends the Migrant Protection Protocols as an “endeavor to provide safety and security for migrants” assuring that this executive order fulfills the United States’ commitments to non refoulement. An assessment of the Migrant Protection Protocols conducted by the DHS in October of 2019 states that in order to prevent any circumstances of refoulement, any third-country person claiming fear of returning to Mexico is immediately transferred to the U.S. Citizenship & Immigration Services (USCIS) to undergo a fear-assessment interview. The fear-assessment interviews, also referred to as credible fear screenings or interviews, are conducted in person, virtually, and over the phone. The interviewing officer is tasked with determining “whether the alien, if returned to Mexico, would be more likely than not persecuted on account of a protected ground, or would be more likely than not tortured in Mexico.” Legal representation is not provided to MPP participants who elect to undergo a fear-assessment interview with USCIS. (*Migrant Protection Protocols Policy*, n.d.)

From there, the USCIS either exempts the interviewee from the MPP program based on a credible belief that he or she would be subject to persecution or torture in Mexico, or the individual is immediately returned to Mexico under the program. In the DHS’s words, fear screenings are a “well-established part of MPP” and are “consistent with U.S. law implementing the *non-refoulement* obligations imposed on the United States” (*Assessment of the Migrant Protection Protocols*, 2019). However, human rights advocates have indicated

that credible fear interviews are not always available to MPP participants upon request, especially since the Customs and Border Protection (CBP) agency halted MPP hearings during the coronavirus pandemic in 2020 (Human Rights First, 2020). Without these fear-assessment interviews, there is no way for individuals to alert CBP or DHS agents of incidents of refoulement occurring under the MPP program.

The following synthesis of quantitative and qualitative data provides sufficient evidence that despite the claims of the Department of Homeland Security, participants of the MPP are indeed being subjected to refoulement by being forced to undergo asylum proceedings on Mexican soil. First, the overall trends of refoulement occurring throughout the MPP program will be illustrated utilizing information collected from a rolling database compiled by Human Rights First consisting of publicly reported cases of violent attacks on MPP participants. From there, testimonial data will be consulted in order to highlight individual stories of refoulement victims under the MPP to emphasize the severity of these claims on the lives of refugee seekers.

Overall Trends

Reported incidents of refoulement occurring under the Migrant Protection Protocols are incredibly high and should not be classified as isolated events. To raise awareness of the MPP's impact on the lives and liberties of asylum seekers under the program, Human Rights First compiled a running database of attacks on individuals who were returned to Mexico upon being subjected to the MPP. The data provided by the HRF database is a clear illustration of how the MPP is a clear violation of the United States' contractual obligation to nonrefoulement under the 1951 UN Convention and the The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

As of February 2021, just over two years after its initial implementation, HRF reports 1,544 cases of violent attacks against individuals placed under the Migrant Protection Protocols (*Publicly reported cases, 2021*). Given that approximately 70,000 people have been placed in this program since its initiation, over 1 in 70 are publicly reported as victims of violence under the MPP. These cases include accounts of assault, kidnappings, robberies, rapes, gang threats, police extortions, etc. According to an analysis conducted by HRF as part of their research into the effects of the MPP, individuals returned to Mexico under this program are directly targeted given their vulnerable status reporting the following: “MPP frequently delivers asylum seekers into the hands of corrupt law enforcement officials and organized criminal groups, who target them on account of their gender, race and nationality. Returned individuals are frequently kidnapped outside of Mexican migration buildings, indicating a clear nexus to their status as migrants”. This is a direct violation of the non-refoulement obligations of both international treaties (1951 & 1987) in which the United States is a signatory party.

The database compiled by HRF is the only centralized source of data that illustrates the repetitive nature of refoulement cases under the Migrant Protection Protocols, making it a strong piece of evidence to exhibit refoulement as a common occurrence under the MPP. To an extent, the definition of refoulement leaves room for interpretation by States to consider what constitutes as life or freedom being threatened, however the United Nations Human Rights Office of the High Commissioner (OHCHR) provides these recommendations for states to follow when considering what potential situations would classify as refoulement:

“The prohibition of *refoulement* has been interpreted by some courts and international human rights mechanisms to apply to a range of serious human rights violations, including torture, and other cruel, inhuman or degrading treatment, flagrant denial of the right to a fair trial,

risks of violations to the rights to life, integrity and/or freedom of the person, serious forms of sexual and gender-based violence, death penalty or death row, female genital mutilation, or prolonged solitary confinement, among others. Some courts and some international human rights mechanisms have further interpreted severe violations of economic, social and cultural rights to fall within the scope of the prohibition of *non-refoulement* because they would represent a severe violation of the right to life or freedom from torture or other cruel, inhuman or degrading treatment or punishment. For example, degrading living conditions, lack of medical treatment, or mental illness have been found to prevent return of persons.” (“The Principle of Non-Refoulement”, n.d.)

The data compiled by HRF in their database clearly violates these interpretations, even at the most basic level. Although all of these instances recorded by the database reveal a violation to the life and liberties of the individuals placed under the MPP, reported crimes such as murder, kidnapping, rape, and trafficking reveal the harrowing dangers faced by asylum seekers who are forced to await the determination of their asylum status on the Mexican side of the border. Additionally, reports of gang threats and extortion reveal that the victims of these crimes are being directly targeted, once again clearly violating the non refoulement obligations provided by the United Nations. Table 3 provides a visual representation of the level of these crimes as presented by the data compiled by HRF in their database.

Table 3

Violent Crimes Reported in HRF Database		
Type of Incident	No. of Victims	Proportion*
Kidnapping/Attempted Kidnapping	864	56.0%
Rape/Attempted Rape	108	7.0%
Sexual Assault/Abuse/Exploitation	65	4.2%
Human Trafficking	12	1.1%
Extorsion	236	15.3%
<i>*Proportion calculated out of 1544 cases reported</i>		

These are all very serious crimes and the perpetrators of this violence against MPP participants more often than not go unpunished. One of the most alarming rates noted in the database is the rate of kidnappings occurring among MPP participants. About 56% of the reports collected by this database include occurrences of kidnappings or attempted kidnappings. This is unsurprising given that one of the reasons for an increased security risk in Mexico, specifically the border state Tamaulipas, is crime and kidnapping (*Mexico Travel Advisory*, 2020). Overall, these figures establish a repetitive trend of serious and violent crimes occurring to participants of the MPP when returned to Mexico to await their court proceedings. By allowing asylum seekers to undergo the application process in the United States, refugees can avoid being victims of these types of crimes until they receive their final application decision. Overall, these figures illustrate that refoulement is indeed occurring under the MPP, making it a violation of the international treaties in which the United States is a signatory party.

Although this database is the closest collection of centralized data available to record the human rights transgressions occurring to individuals under the MPP, this is just the “tip of

the iceberg” according to HRF (*Delivered to Danger*, 2021). These reports represent a small percentage of the nearly 70,000 individuals placed under the MPP since its initiation. However, this low percentage of refoulement reports does not equate to a low level of occurrence. Many of the reports compiled into the HRF database are reported to HRF by legal representatives of MPP participants. Given that the vast majority of MPP participants are not equipped with legal representation (*TRAC*, 2021), it is difficult for occurrences of refoulement to be recorded and submitted. Additionally, there exists numerous reports of asylum seekers presenting cases of refoulement to the judges and federal agents present at their court hearings, simply to be ignored or brushed to the side (*Delivered to Danger*, 2021). It is certain that the cases recorded in the database do not represent the actual total number of human rights transgressions that occur as a result of the MPP. Below, I will discuss two specific cases of refoulement to provide an in depth representation of the violence and trauma experienced by MPP participants victimized by refoulement.

Individual Stories

The victims of these crimes are more than just a quantitative figure or a number. These are human beings with families, fleeing from violence and poverty in hopes of having a small chance at living a prosperous life in a country like the United States. The following data contains two cases covered by the media which illustrate the personal impacts of the Migrant Protection Protocols, both for the victims of violence and their families. However, as the previous data analysis illustrates, these are just two of thousands of cases of violence, the majority which are never reported nor receive media coverage.

The first case that serves as a prime example of refoulement is illustrated in an El Diario article entitled *Secuestraron federales a migrante*, which translates directly to

“Federalists kidnapped migrant”. This article depicts the case of a Honduran woman, alongside two other women, who were forcibly kidnapped by federal agents and handed over to a group of criminals where the unnamed Honduran woman was sexually assaulted and raped. The incident occurred on June 10th, 2019, approximately a month after she was returned to Ciudad Juarez, Mexico by DHS under the MPP on May 15th. The victim, in her words, gives a graphic account of her assault (TW: sexual violence depicted):

“Me preguntaron de qué nacionalidad era, les dije que de Honduras entonces me dice: ven conmigo, me agarra la cabeza, me agacha y me saca de la casa y me sube a un carro negro, nos llevan a otra casa. Me taparon los ojos con tape gris y una persona de sexo masculino me dio vuelta y me bajó el pantalón. Le dije que yo andaba en mi período y me dejó, se fue”...“volvió a entrar esta persona y me obligó a tener sexo oral, me puso la pistola en la cabeza y me preguntó si yo sabía cuál era ese sonido. Le dije que sí y él me dijo que tenía que hacer todo lo que dijeran, me desnudó y me penetró, después se salió, regresó y me dio agua”. (“Secuestraron federales a migrante”, 2019)

Translation:

“They [federal agents] asked me which nationality I was, I told them I was from Honduras so they told me ‘come with me’, they grabbed my head, bend me over, and take me out of the house and put me in a black car and we go to another house. They taped my eyes with grey tape and a male person turned me over and pulled my pants down. I said that I was on my period and he let me be and left”... “he returned and forced me to have oral sex, he put a gun to my head and asked if I knew what that sound was. I told him yes and he told me I had to do whatever they said, he undressed me and penetrated me, after he left, he returned and gave me water”

It is unclear from the article whether or not this woman was provided with a credible fear assessment upon her first court appearance on May 15th, 2019, however it is reasonable to assume that she felt endangered by being returned to Mexico based on her immediate plans to enter the United States utilizing a coyote upon being sent back to Mexico. This horrific account shows that this woman suffered extreme abuse and endangerment at the hands of Mexican federal agents, she was targeted based on her nationality. This is a direct

violation of the non refoulement clause of the 1951 UN Refugee Convention which explicitly states that refugees shall not be returned to territories in which they are targeted based on their nationality (1951).

This woman is not the only victim of the MPP whose story garnered local media attention. Telemundo 20 published an article in December 2019 entitled *Migrante muere en espera de asilo* which chronicles the brutal murder of a 35 year old Salvadorian man who was brutally murdered in Tijuana while undergoing asylum proceedings under the MPP. The man travelled with his wife and two children to the United States and took the measures necessary to apply for asylum and enter the United States legally, including presenting themselves at the San Ysidro Port of Entry bordering San Diego as refugee seekers. After waiting four months in Tijuana, the family had their first hearing in San Diego in which the wife reports the following:

“Le dije al juez que yo tenía miedo por mis niños porque estábamos en un lugar horrible, horrible, aquí no nos sentimos seguros”... “Me dijeron ‘¿A tu esposo lo han golpeado? ¿A ti te han golpeado? ¿Han sufrido agresiones? ¿No confían en la ley de México? ¿Por qué no pueden creer en la protección si les pasa algo?’” (González, 2019)

Translated to:

“I told the judge that I was afraid for my children because we were in a horrible, horrible place, where we didn’t feel safe”... “They asked me ‘Did they attack your husband? Did they attack you? Have you suffered aggressions? You don’t trust the law in Mexico? Why can’t you believe in the protection [of Mexican law] if something happens to you’”

Despite these pleadings, just over a month after being sent back to Mexico, the husband was brutally murdered in the Zona Norte area of Tijuana. Zona Norte is referred to as the “red light district” in Tijuana and commonly recognized as one of the most dangerous areas of Tijuana (“Imparable Violencia En Zona Norte De Tijuana,” 2019). An article published by the Los Angeles Times entitled *Central American migrant who sought U.S.*

asylum slain in Tijuana provides further insight into the sheer brutality of this man's murder stating that "a Baja California death certificate says the husband and father died Nov. 20 of stab wounds to his neck. It also says he had cuts and stab wounds all over his torso that a Baja California investigator confirmed could indicate torture" (Fry, 2019). In addition to this clear violation of non refoulement experienced by this man and his family, it is reported in this article that the original fear interview undergone by the family occurred without any legal representation present, and they were subsequently sent back to the exact location they begged the judges not to return them to, without any explanation.

As previously stated, these are just two cases of violence that detail the trauma of refoulement experienced under the MPP. Combining both the testimonial data provided through these media coverages with the figures collected from the HRF running database of publicly reported cases of violence against MPP participants show how this trauma extends far beyond these two victims. Although the exact number of victims remains unknown, this data is evidence that repeated occurrences of refoulement are indeed occurring under the MPP.

Chapter 5: Conclusions

Overall Assessment of the Migrant Protection Protocols

After analyzing two different databases alongside testimonial data, this research reveals a strong, causal relationship between the Migrant Protection Protocols and a substantial level of human rights transgressions against its participants. Despite the assurances of the DHS, this study successfully identifies a direct correlation between the existence of the MPP and a violation of human rights through inability to secure and utilize legal representation in the asylum application process as well as the occurrence of refoulement. The Trump administration's desire to prevent the entrance of asylum seekers by deterring them from attempting the process establishes a clear connection to the Prevention through Deterrence immigration strategy, which is proven to not only fail in its goal of deterrence, but raise the human costs associated with migration. These conclusions point to an overall failure of the MPP to succeed in its goal as well as a gross violation of an international obligation to welcome and protect asylum seekers under the 1951 Refugee Convention.

Legal Representation

I hypothesized that under the MPP, the refugee participants' right to legal counsel would be compromised. The basis of this hypothesis comes from the assumption that it would prove to be inherently more difficult to secure legal counsel without being able to cross the southwest border to seek an attorney in person. Additionally, the poor living conditions faced by MPP participants forced to remain in Mexico would also limit the ability

of applicants to secure legal counsel as this task would come second to simply focusing on surviving in the dangerous environment they are placed in.

Despite the statements of assurance from the DHS that MPP participants will be provided resources to access legal counsel, these “resources” are clearly not aiding asylum seekers in securing legal representation. The data illustrated from the TRAC database shows that the gross majority of MPP participants undergo their asylum proceedings without any legal representation. For MPP participants, an attorney not only provides legal advice; they are able to provide proper translation, serve as a resource to report human rights abuses, and aid the participants in knowing exactly when and where they need to be to attend their court hearings. MPP participants with legal representation are just over 50% more likely to show up to every single court hearing, ensuring a fair chance at having their application processed. Even with a meritorious case for asylum, MPP participants are not likely to be accepted by the United States as an asylee without access to legal counsel.

The testimonial data further corroborates the quantitative data, providing a first hand perspective at the challenges faced by MPP participants in both securing legal counsel, and having proper access to their attorneys. Yael Schacher reports instances in which MPP participants have minimal access to their lawyers during court proceedings. In addition, expelling observers from court proceedings, as reported by Schacher, limits public accountability by preventing people from observing how the cases are being handled. The complaint filed under *Immigrant Defenders Law Center v. Wolf* provides additional evidence to show that under the MPP, asylum seekers not only lack access to resources necessary to obtain legal representation, but that those who are legally represented are unable to fully utilize the services provided by their attorneys. In the complaint filed under *American*

Immigratin Council v. USCIS, this claim is further supported by testimony detailing how the MPP directly prevents asylum seekers from accessing pro bono legal services which are typically made available to non-citizens within the United States who require legal representation and aid. These are all gross violations of the standards outlined by the 1951 UN Refugee Convention which explicitly states that refugees are to have access to the same legal representation that would be available to the contracting states' nationals.

When analyzing how this plays into the PTD strategy in preventing migrants from seeking entry into the United States, the evidence reveals that the United States government is strategically creating hoops for asylum seekers to jump through in order to secure legal counsel, potentially to deter them from trying to apply for asylum. If asylum seekers are aware of the difficulties in both securing legal representation and subsequently using their counsel (should they be lucky enough to have counsel), it could be viewed as an impossible feat to undergo altogether. For this reason, the barriers created by the MPP through complicating the process of securing full access to legal representation categorizes it as an extension of PTD, which is proven not only to be an unsuccessful strategy, but a dangerous one given the increased human costs for those attempting to seek refuge.

Non Refoulement

I hypothesized that under the MPP, returning asylum seekers to Mexico instead of allowing them to reside within the United States' boundaries would increase the risk of falling victim to targeted violence and crime. I based this hypothesis on the idea that the migrants arriving to the southern border seeking asylum are in an extremely vulnerable situation, as they are easily identifiable as foreigners which makes them an easy target for violence. Additionally, given the elevated crime rates of border communities, as outlined by

the travel advisories published by the United States' Department of State (*Mexico Travel Advisory*, 2020), it is reasonable to assume that MPP participants would be more likely to fall victim to targeted crime in Mexico than they would be if permitted to reside in the United States.

The data reveals an obvious violation to the MPP participants' right to non refoulement. By forcing the asylum applicants to remain in a territory where their lives and well beings are compromised, the United States is in breach of both the 1951 UN Refugee Convention and the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although the quantitative data collected from the HRF *Publicly reported cases of violent attacks on individuals returned to Mexico under the 'Migrant Protection Protocols'* database is an incomplete record of all cases of violence against MPP participants, the high levels of violent crimes such as murder, kidnappings, rape, etc prove that the areas of Mexico in which participants are required to reside in are just as precarious as the conditions they are escaping in their countries of origin. The United States government is fully aware of the risky conditions of these areas; they are too dangerous for their own nationals to freely travel to based on the State Department travel advisories, however they are somehow perfectly safe for populations of vulnerable refugees seeking asylum.

Once again, the testimonial data provides further corroboration for the trends illustrated from the quantitative data. The two cases of violence discussed truly portray the dangers presented to asylum seekers who are situated on the Mexican side of the border, unable to cross. It is implied from the media sources that both victims were targeted specifically for their status as migrants, making them not simply victims of brutalized

violence, but also victims of refoulement. Their trauma is shared by thousands of other MPP participants who fear for their lives daily in Mexico, unsure of when or if they will be able to seek refuge in the United States. The evidence points towards an undeniable infraction on the United States' contractual obligation to protect their asylum seekers from refoulement.

In examining this legislation under the PTD lens, it is clear that the United States has successfully increased the costs linked to the asylum application process by forcing asylum seekers to undergo the asylum process in Mexico, a notably more dangerous environment for vulnerable asylum seekers. Although the DHS claims that this protocol deters non-meritorious cases of asylum from being processed, they are actually making it far more dangerous for anyone to apply for asylum, even meritorious cases that are deserving of asylum status. The act of refoulement is a direct correlation to the PTD strategy as asylum seekers are deterred from situating themselves and their families in areas that mirror similar threats to those they are escaping in their countries of origin, making seeking safety for themselves in the United States an impossible dream.

Implications of the Results

The results of this research point towards a clear violation of the human rights of the migrants placed under the Migration Protection Protocols and further illustrate the shortcomings of a Prevention through Deterrence inspired solution for processing asylum seekers along the southern border. Just how the PTD strategy for reducing illegal immigration is proven to solely raise the human costs of migration instead of decreasing the motivation to migrate, the MPP does not diminish the motivation, nor the dire necessity, to seek asylum. The data shows that this legislation directly raises the human costs of seeking asylum in the United States.

It should be reiterated that applying for asylum is legally protected under international law; every person has the right to apply for asylum. The United States has a responsibility to provide safety to asylum seekers until their application is processed. Under the MPP, not only is the process for applying for asylum increasingly impossible without access to legal representation, the livelihood of migrants are inherently compromised.

Moving Forward Under a New Administration

The results of the recent 2020 election were crucial in determining the future trajectory of the Migrant Protection Protocols. The two candidates for office each held completely opposite agendas in regards to immigration as a whole, and more specifically the MPP. In the final presidential debate in October, then Presidential candidate Joe Biden clearly stated his disdain for the MPP policy stating explicitly “This is the first president in the history of the United States of America that says anybody seeking asylum has to do it in another country. That’s never happened before in America,” (“Donald Trump & Joe Biden,” 2020). Additionally, Joe Biden’s campaign platform promised to bring an end to the MPP and “restore our asylum laws so that they do what they should be designed to do—protect people fleeing persecution and who cannot return home safely” (*The Biden Plan*, 2020). Biden’s 2020 presidential victory generates a sense of hope towards restoring the United States’ asylum process in the United States and righting the wrongs established under the Trump administration.

Immediately following his inauguration on his first day in office, President Biden signed an executive order vowing to direct the DHS in reviewing the MPP and determining whether to rescind or terminate the program (*Executive Order on Creating*, 2021). Following this executive order, the DHS released a statement stating that they would no longer be

adding future asylum seekers to this program (*DHS Announced Process to Address*, 2021). Although the measures being taken to reverse the MPP, the White House has explicitly stated that “the situation at the border will not transform overnight” (*FACT SHEET: President Biden*, 2021) and the process of resettling asylum seekers across the border in the United States will be a slow moving process. However, the DHS in partnership with the CDC has officially begun transporting MPP participants into the United States as of February 19 when they admitted 25 people through the San Ysidro Port of Entry after testing negative for COVID-19 (*DHS Statement on First Step*, 2021).

Human rights advocates are urging the new administration to act swiftly on the complete dismantlement of the MPP and reinstatement of all asylum applications in the United States. HRF, the same organization compiling the reports of violent attacks against MPP participants in the database used by this study, released a statement stating that “Every day the Trump administration’s dangerous, illegal MPP policy remains in place, the U.S. government is putting the lives of people seeking safety in the United States at risk” and urging the new administration to ramp up case management in order to bring a swift end to the MPP forever (*After Two Years*, 2021).

The fact of the matter is that despite the measures of the current administration to terminate the MPP completely, the refugees currently situated in Mexico are still facing the same dangers present before President Biden’s inauguration. The United States is one step closer, however the MPP created a bottleneck of asylum seekers waiting at the border for entry into the United States, leaving a marathon of progress yet to be made. Additionally, the International Organization for Migration’s (IOM) regional office in the Western Hemisphere reports that the current situation in the Northern Triangle under the pandemic could increase

the expulsion of migrants, despite recommendations of health officials stating “Mobility restrictions increase the risk of people being trapped in violent environments, making it difficult to seek support in other territories and countries. Regardless, many people seek and will continue to seek irregular migration options, despite the dangers of the pandemic, in order to leave the high-violence, low-income contexts in which they live” (“Extortion Is Causing the Expulsion” n.d.) Despite restricted mobility preventing people from fleeing the Northern Triangle, the precarious conditions in this region still remain intact during the pandemic and it is clear that the United States will continue to receive large numbers of refugees stemming from this region, especially upon further lifting of the pandemic restrictions.

Not only is the Biden administration faced with an obligation to terminate the MPP and restore the integrity of the United States asylum system, they are also tasked with the responsibility of addressing the root causes of migration in the Northern Triangle. The administration has publicly announced through a White House briefing their commitment to addressing the instability, violence, and economic insecurity that is driving migrants from their homes in the Northern Triangle (*FACT SHEET: President Biden*, 2021), however only time will tell whether or not the Biden administration will be able to effectively address the issues plaguing the Northern Triangle.

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