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LOCKED IN LIMBO: THE URGENT NEED TO FULLY DISMANTLE “REMAIN IN MEXICO” AND RAPIDLY PROCESS VULNERABLE PEOPLE INTO THE UNITED STATES

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“Please, I’m desperate. I don’t know how much more we can take. I don’t want my son to spend another birthday here.”

– A father from Honduras, speaking about his three-year-old son who was kidnapped and tortured in Mexico. His son spent two birthdays trapped at the U.S.-Mexico border under the “Remain in Mexico” policy.

There is a humanitarian crisis at the border created by Trump-era policies decimating the U.S. asylum system that President Biden now urgently needs to address.¹ One particularly harmful policy is “Remain in Mexico,” formally named the “Migrant Protection Protocols” (“MPP”), which forces asylum seekers to remain in dangerous and inhumane conditions in Mexico while pursuing their asylum claims in U.S. immigration court.

This report draws on research about MPP conducted by University of Washington researchers from the Adelante Pro Bono Project and the University of Washington School of Law. We find that vulnerable asylum seekers continue to live in danger and suffer severe ongoing harm from their placement in MPP, and that the Biden Administration’s recent efforts to terminate MPP, while welcome, are insufficient to provide relief on the scale and at the pace necessary for particularly vulnerable people in MPP with ongoing urgent health and safety concerns. Further, the few avenues that are currently available for vulnerable people needing prioritized relief are being utilized in a way that seemingly excludes, and fails to provide priority relief to, people victimized and traumatized by gender-based and sexual violence suffered in MPP. The situation in MPP is urgent, and the U.S. government can—and must—do more to address this issue.

The Biden Administration should make use of every available tool, including the expanded use of humanitarian parole, to release vulnerable people from MPP more rapidly and to wind down and terminate MPP as quickly as possible.²

The Conditions of MPP are Dire, People are Desperate, and the Situation Demands Urgent Action Beyond what is Currently Contemplated

Since the inception of MPP, the U.S. government has sent over 68,000 people, predominantly from Guatemala, El Salvador, and Honduras,³ to Mexico to await processing of their asylum claims. Of these, approximately 25,000 remain pending. This system undermines the right to seek asylum, enshrined in both U.S. and international law. But it also exposes asylum seekers to ongoing severe, and lethal violence: migrants in MPP are frequently targeted for kidnapping and assault at the hands of cartels operating near the border.⁴ As of February 19, 2021, there were over 1,544 “publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against asylum seekers and migrants” subject to MPP. One study found that one in four asylum seekers returned to Tijuana and Mexicali had been threatened with violence while in MPP. Criminal actors target migrants for violence and Mexican law enforcement officials often do not intercede to protect migrants.⁵ In some cases, Mexican officials are themselves the persecutors.⁶

Since July 2020, students and faculty at the University of Washington School of Law have been working with vulnerable families stranded in MPP who live under the auspices of a migrant shelter (the “Shelter”) in Tamaulipas, Mexico.⁷ These families are among the lucky ones, inasmuch as they have secured temporary housing in a shelter run by a nonprofit organization, while thousands more endure worse conditions in overcrowded, and now freezing, squatter settlements that have sprung up near the border as a result of MPP.⁸ Even so, the Shelter residents’ stories reveal the extent to which U.S. policies directly expose an already traumatized population—survivors of trafficking, persecution, and torture—to compounding abuse under circumstances that were, and are, entirely preventable.

One child, Nico,⁹ was placed in MPP with his father when he was two years old. Nico and his father came to the United States seeking asylum, but were quickly returned to Mexico under MPP, where they, like many in MPP, were homeless. Migrant shelters were over-capacity, and there were no tents available at the makeshift migrant tent encampment near the border. Nico and his father were forced to sleep on the streets for months, where Nico developed severe asthma from sustained exposure to wind, dust, and severe temperature fluctuations. An early asthma attack nearly killed him. When Nico and his father tried to relocate to a different city in Mexico in search of shelter, they were kidnapped, held at gunpoint, and tortured until family members in the U.S. could pay a ransom for their release. After their story was reported by a major international news outlet, they were tracked down and nearly killed by their kidnapers for speaking to the press. Nico and his father narrowly escaped. Now, Nico is four years old and suffers from severe separation anxiety and post-traumatic stress disorder (“PTSD”). He is afraid to go to sleep because he has nightmares every single night. Every night, Nico wakes up screaming and crying for his father.

Nico and his father are among the extremely lucky ones: their application for humanitarian parole, originally filed in September 2020, was one of the first to be approved by the Department of Homeland Security (“DHS”) following DHS’s February 11, 2021, announcement that the agency would begin allowing people subject to MPP into the United States (the “DHS MPP Release Statement”). However, despite the urgent need to process vulnerable people out of MPP, and despite the immediate availability of humanitarian parole, the granting of humanitarian parole remains an exceptionally rare exercise of discretion by DHS, even to those with particular vulnerabilities and who have been subjected to severe persecution and torture while in MPP. We argue that the Biden Administration should make expanded use of humanitarian parole in consideration and acknowledgment of the urgency of the situation in MPP, and that DHS should exercise its discretion to the fullest extent possible to process people out of MPP.

The U.S. Government Violated Its Own Guidelines by Placing and Holding Vulnerable Migrants in MPP

MPP, as originally conceptualized, included safeguards intended to prevent groups of particularly vulnerable people from being returned to Mexico. The [safeguards](#) exempted a number of categories of people, including, but not limited to: unaccompanied children; people more likely than not to face persecution or torture in Mexico; and individuals with “[k]nown physical/mental health issues.”¹⁰

However, these safeguards existed in theory only. DHS officials regularly returned noncitizens to Mexico under MPP in [violation of the agency’s own guidance](#), and many of these individuals suffered persecution in Mexico as a result.¹¹ One [report](#) found that DHS “returned hundreds of vulnerable asylum seekers...including children with cancer, autism, Cerebral Palsy, and brain seizures, adults with limited mental capacity, seizure disorders, and at least two deaf, nonverbal individuals, many pregnant women, and LGBTQ persons.”

Many such individuals remain trapped in MPP. The families at the Shelter alone include:

- a child with epilepsy who has suffered multiple epileptic attacks daily while in MPP;
- a child with painful lesions and unexplained bleeding from his nipples;
- a child with cardiac arrhythmia and frequent fainting spells;
- a woman with Complex PTSD, debilitating migraines, and potentially life-threatening pelvic organ injury as a result of sexual assaults suffered in MPP;
- a woman who is diabetic, who is experiencing vision loss and who risks death if she cannot get access to insulin and the necessary medications; and
- multiple children suffering from severe PTSD, separation anxiety, and toxic stress as a direct result of persecution, violence, and trauma experienced in MPP.

The Biden Administration Must Act Faster to Process Vulnerable People Out of MPP and Into the United States

The Biden Administration has already agreed to process people currently in MPP out of Mexico and into the United States. But a critical question remains: how quickly will vulnerable children and families be processed out of the dangers of MPP? Throughout his presidential campaign, Joe Biden [pledged](#) to reverse Trump-era immigration policies and practices and “[r]eassert America’s commitment to asylum-seekers and refugees.” During a Presidential debate, then-candidate Biden [denounced](#) MPP for making asylum-seekers sit in “squalor on the other side of the river.” Biden [pledged](#) to immediately end MPP and other policies that effectively deny protection and due process to asylum seekers in violation of U.S. law and treaty obligations. Since taking office, the Biden Administration has [suspended new enrollments in MPP](#) and [directed](#) the Secretary of Homeland Security to “review and determine whether to terminate or modify” MPP. On February 11, 2021, DHS announced a formal program releasing people from MPP starting February 19, 2021, wherein people would be processed through an [online registration system](#), managed by the United Nations High Commissioner on Refugees (“UNHCR”) in Mexico. UNHCR would have some ability to prioritize vulnerable people for expedited processing, but as of the date of this report, UNHCR had not announced any details as to who would qualify as “vulnerable” and how that process would work.

The creation of this online registration system is a welcome and much-needed step toward fulfilling Biden’s promises, but to date, the system has fallen short. The online system was originally touted as one that could process up to 300 people a day across the various ports of entry; however, in a [recent interview](#), Secretary of Homeland Security Alejandro Mayorkas cautioned, “This will take time to build.... It’s going to take a bit of time to scale up to that quantity of processing.” Since the system was supposed to go live on February 19, it has been plagued by technological difficulties that have frustrated migrants and advocates, and that have resulted in very few people being able to successfully complete the registration process. The UNHCR system will undoubtedly take additional time to get up and running smoothly, and, as indicated by Secretary Mayorkas, the physical processing of people will undoubtedly take even more time. Time, unfortunately, is something that vulnerable populations in MPP do not have. We urge the Biden Administration to take immediate steps—using tools already available to it—to set up expanded and parallel processes to bring vulnerable MPP populations more rapidly into the United States.

Every Day Counts – Delays Will Likely Lead to Further Violence and Exploitation of Migrants

Violence targeting migrants continues along the U.S.–Mexico border. Just last month [nineteen burned bodies](#) of migrants were found in two cars in Tamaulipas, Mexico. They had been [shot and killed](#) before being set on fire and left behind. Although bodies are still being identified, it is believed that [most were Guatemalan migrants](#) travelling north to the United States. [Thirteen Guatemalan youth](#) were among those massacred. Twelve Mexican police officers have been arrested on suspicions of participating in the massacre.

The Biden Administration’s campaign promises, limited early actions, and slow release of imprecise information have allowed traffickers to launch a [misinformation campaign](#), preying on the desperation of those living in MPP. Coyotes, for example, have assured migrants that they will be admitted into the United States at any port of entry, seizing upon the vacuum of credible information and promise of change under Biden’s presidency to exploit desperate migrants. What’s more, thousands of migrants remain in these dangerous border states, and their presence makes these places more dangerous by providing ready targets for criminal predation by gangs, cartels, and corrupt government officials. President Biden’s commendable start toward reversing Trump’s cruel and inhumane policies and restoring humanitarian concern to our immigration system is still not enough, and the relief needs to happen faster.

Every day, migrants in MPP live at risk of violence, exploitation, kidnapping, worsening health conditions, and death. Humanitarian resources that once were accessible to migrants in Mexico are generally no longer available because of the pandemic; MPP immigration proceedings have come to a halt due to pandemic-related court closures; and the Title 42 Order has made entry into the United States all but impossible.¹² Over the winter, freezing conditions and desperation led to increases in attempted and often [dangerous](#) irregular border crossings, which in turn led to increased cartel violence and an uptick in migrant [smuggling](#) and human trafficking.¹³ A system that fails to process people out of MPP on the scale and at the pace required will engender an increased desperation to be released from MPP which, in turn, may lead to the increased exploitation of migrants. The urgency to leave MPP may be felt particularly acutely by people whose health and lives—and whose children’s health and lives—are at risk in MPP.

The Biden Administration Can and Should Leverage Humanitarian Parole to Rapidly Release Vulnerable People from MPP

The changes the Biden Administration has made to date fall short of ending the harm to asylum seekers in life-or-death situations along the Southern border. The [online UNHCR-Mexico portal](#) that has been set up to register and process people out of MPP has not worked consistently since its launch—it has repeatedly crashed, resulting in panic, anxiety, and frustration among migrants. The initial ineffectiveness of the online portal speaks even further to the need to leverage existing systems, which can be used as a parallel track to quickly process more people out of MPP and into the United States. One such system is that of humanitarian parole.

The MPP guidance and existing general DHS guidance provide that agencies within the DHS, including Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS), have authority to grant humanitarian parole to people in MPP on a discretionary basis. The origin of this authority lies in Section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(5), which provides that the Secretary of Homeland Security has the authority to grant parole in his discretion “for urgent humanitarian reasons” or “significant public benefit.”¹⁴

The humanitarian and public benefit justification of releasing people from MPP is clear given the extensive body of documentation of the persecution, torture, and other harm that migrants in MPP have been—and continue to be—subjected to. Further, many people have physical and mental health vulnerabilities requiring medical attention and care that may also form the basis for a grant of parole. Others may be particularly vulnerable to violence and exploitation due to their age, sexual orientation, gender, language, ethnicity, race, or nationality, all of which may form the basis for a grant of humanitarian parole.

The exercise of DHS’s discretionary parole powers with respect to people in MPP is not new, and there has been a recent uptick in cases where DHS has chosen to exercise such discretion to release people from MPP. We recommend that this discretion be exercised on a much larger scale to process people out of MPP, and that it be expanded to include people suffering the effects of severe trauma inflicted upon them in MPP.¹⁵ Given the Biden Administration’s proposal to process and release people in MPP into the United States, the use of humanitarian parole should not be controversial. The broader use of humanitarian parole does not confer a benefit that DHS has not already agreed to provide; instead, it merely accelerates the timeline for those who urgently need relief. With each day that passes, people at the Shelter and migrants in similar situations risk further harm, illness, and death. Without delay, the Biden Administration should expand its use of humanitarian parole to process people into the United States.

CBP Should Grant Humanitarian Parole to People Suffering Ongoing Trauma from Violence Inflicted in MPP

On the same day that Nico's humanitarian parole was granted, the humanitarian parole request for Sylvia and her two young children (ages 6 and 1) was denied.¹⁶ Sylvia's claim was predicated on ongoing trauma and health risks stemming from multiple sexual assaults she and her children suffered in MPP, as compared to Nico's, which was predicated on ongoing health risks and vulnerabilities presented by his severe asthma. We argue that this distinction is inappropriate and will have a particularly detrimental effect on people who have suffered gender-based and sexual violence while in MPP, and we urge DHS and CBP to reconsider its treatment of trauma in evaluating humanitarian parole applications.

Sylvia and her children have been targeted for kidnapping three times, beginning from the moment they were returned to Mexico under MPP. The first time they were kidnapped, the kidnappers repeatedly and violently gang raped Sylvia and forced her then-five-year-old daughter, Ana, to watch. Sylvia was raped for days. When Ana would cry from the terror and pain of watching her mother being brutalized and violated, all Sylvia could do was promise Ana that one day, they would be far, far away, in a safe place where they would forget any of this ever happened.

Sylvia sought help from U.S. immigration officials after the kidnapping and pleaded with them not to send her and her children back to Mexico under MPP. The immigration officials denied her request, deciding that she was not likely to experience persecution or torture in the future, and forced her to return to Mexico. This assessment proved to be wrong. Just weeks later, the same men found Sylvia at the shelter where she was hiding, kidnapped her and her children at gunpoint, and raped her again. They threatened to rape Ana in her place if Sylvia even so much as hesitated. These men told her that they would keep raping her, and migrant women like her, as a warning that migrants were not welcome in Mexico.

Sylvia now suffers from Complex PTSD and serious physical injuries as a result of the sexual assaults. According to a medical evaluation performed on her by an internal medicine physician, Sylvia has "significant vaginal bleeding following violent sexual traumas" and "near constant lower abdominal pain which she rates as very severe," which are "evidence of severe pelvic organ injury and may be life-threatening." Ana is severely traumatized and has regressed in her childhood development. She does not speak. She does not eat unless Sylvia places food in her mouth. And she is showing signs of toxic stress, cognitive impairment, and brain damage as a result of the severe trauma she suffered in MPP.

Despite the extreme and targeted gender-based violence they experienced in MPP and the lasting physical and mental health consequences and trauma they have suffered as a result, Sylvia and her children were denied humanitarian parole the same day that Nico's request was granted.

Humanitarian parole may be granted or denied in the sole discretion of CBP officials, and here, that discretion was inappropriately withheld. The denial of Sylvia’s humanitarian parole application betrays a devaluation of, and lack of concern for, gender-based violence, sexual assault and the mental, emotional, and physical trauma that follows. Subordinating trauma and psychological concerns—which often (and in Sylvia’s case, do) present harm and risks to physical health as well—will disproportionately delay the release of women and victims of sexual violence from MPP. Many times, trauma (and physical symptoms secondary to trauma) are the most significant harms and lasting consequences to survivors of sexual assault. The Biden Administration should direct CBP to recognize this trauma as a valid basis for granting humanitarian parole and to more broadly exercise its discretion to extend humanitarian relief to those, like Sylvia, who continue to suffer from it.

Without humanitarian parole, Sylvia and her children are left to wait in MPP until their “turn” comes up on the online system, which will likely take months. Every additional day that Sylvia and her children spend in the persistently traumatizing environment of MPP is a day that their health will continue to deteriorate, and according to the doctors who evaluated them, this delay will likely foreshorten their lives. For Sylvia and her children, every day in MPP matters.

Conclusion

The Biden Administration has the authority to release vulnerable people from the legal limbo that is MPP, to allow them to pursue their asylum claims safely and fairly from within the United States. The current steps that the Administration has taken are not enough. The Administration should rapidly expand its use of humanitarian parole to admit people into the United States. There remain a large number of particularly vulnerable people in MPP, including those with mental or physical health issues, families with small children, LGBTQ individuals, indigenous and non-Spanish speaking individuals, and families separated by virtue of MPP. The immediate and prompt release of people from MPP is necessary to restore humanity, dignity, and due process to our immigration and asylum system.

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¹ Some examples include, but are not limited to, Zero Tolerance and Family Separation. In the summer of 2018, the Department of Justice and Department of Homeland Security adopted a “Zero Tolerance” policy targeting parents and their children who entered the U.S. without inspection, resulting in the forced separation of thousands of families at the southern border. Michael D. Shear et al., *‘We Need to Take Away Children,’ No Matter How Young, Justice Dept. Officials Said*, NEW YORK TIMES, Oct. 6, 2020, <https://www.nytimes.com/2020/10/06/us/politics/family-separation-border-immigration-jeff-sessions-rod-rosenstein.html>. President Biden is creating a task force to address ongoing issues related to Family Separation. Another policy that has virtually eliminated the possibility of seeking asylum at the southern border, and that remains in effect, is the Centers for Disease Control (“CDC”) Order (the “Title 42 Order”) suspending the entry of certain persons during the COVID-19 pandemic. Since the Title 42 Order was originally issued in March 2020, over 200,000 asylum seekers have been summarily expelled into Mexico without being afforded an opportunity to seek asylum, to which they are generally entitled under U.S. law. See U.S. DEPT. OF HEALTH AND HUMAN SERVICES & CENTERS FOR DISEASE CONTROL AND PREVENTION, *Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists*, <https://www.cdc.gov/coronavirus/downloads/10.13.2020-CDC-Order-Prohibiting-Introduction-of-Persons-FINAL-ALL-CLEAR-encrypted.pdf>; U.S. CUSTOMS AND BORDER PROTECTION, *FY 2020 Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, Nov. 20, 2020 <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2020>. One of our clients (not otherwise discussed in this report) was expelled into Mexico pursuant to Title 42, and was then kidnapped and held for a month, during which time she was repeatedly brutalized, beaten, and raped.

² MPP has been, and continues to be, the subject of federal litigation at all levels of the federal courts, including before the U.S. Supreme Court. Federal courts that have evaluated MPP to date have found MPP to be likely unlawful on its face and unlawful as applied to individuals and groups. See, e.g., *Wolf v. Innovation Law Lab*, Docket No. 19-1212, cert granted (2020); *Innovation Law Lab v. Wolf*, 951 F.3d 1073 (9th Cir. 2020), cert granted, 2020 WL 6121563 (Oct. 19, 2020); *Nora v. Wolf*, Case No. 20-cv-0993 (ABJ) (D.D.C.); *Doe v. Wolf*, Case No. 19-cv-2119-DMS (AGS) (S.D. Cal.); *Turcios v. Wolf*, Case No. 1:20-cv-00093 (S.D. Tex.); *Bollat Vasquez v. Wolf*, 460 F. Supp. 3d (D. Mass. 2020).

³ Most of the rest are from Cuba, Ecuador, and Venezuela. Stephanie Leutert & Savitri Arvey, Strauss Center for International Security and Law, University of Texas at Austin, *Migrant Protection Protocols Update: December 2020*, at 3 (Dec. 3, 2020), <https://www.strausscenter.org/publications/migrant-protection-protocols-update-december-2020/>.

⁴ Human Rights Watch, *US: Investigate ‘Remain in Mexico’ Program*, June 2, 2020, <https://www.hrw.org/news/2020/06/02/us-investigate-remain-mexico-program> (“Asylum seekers gave Human Rights Watch consistent accounts of being kidnapped from bus terminals, taxis, and even outside or within Mexican immigration offices near US ports of entry. They said that kidnapers made knowing reference to the fact that they were ‘migrants,’ ‘refugees,’ or ‘foreigners’ and referred to them by their country of origin or asked where they were from.”).

⁵ HUMAN RIGHTS WATCH, *“Like I’m Drowning” Children and Families Sent to Harm by the US ‘Remain in Mexico’ Program*, at 62, 65, Jan. 2021, https://www.hrw.org/sites/default/files/media_2021/01/mexico0121_web.pdf.

⁶ See, e.g., *id.* at 2 (Mexican immigration officials extorted migrants). See also *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1184 (9th Cir. 2020) (“The available country conditions evidence demonstrates that violent crime traceable to drug cartels remains high despite the Mexican government’s efforts to quell it... Furthermore, notwithstanding the superior efforts of the Mexican government at a national level, corruption at state and local levels ‘continues to be a problem.’ Many police officers are ‘involved in kidnapping, extortion or providing protection for, or acting directly on behalf of, organized crime and drug traffickers,’ which leads to the ‘continued reluctance of many victims to file complaints.’” (quoting *Madrigal v. Holder*, 716 F.3d 499 (9th Cir. 2013) in granting petitioner relief under CAT).

⁷ The name and identifying details of the Shelter and its residents are being withheld due to privacy and security concerns. Additional information is on file with the authors.

⁸ The harsh conditions of MPP can become deadly overnight with extreme weather conditions. A chilling winter storm has swept through the camps in mid-February, causing massive power outages and freezing water sources. With rumors that MPP crossings will open, migrants hesitate to leave the camps and lose their spot in line. Instead, they are forced to bear the low temperatures and risk frostbite and hypothermia. Dianne Solis, *Freezing Weather Hits Matamoros Migrant Camp Where Asylum-Seekers Are Days Away From U.S. Entry*, THE DALLAS MORNING NEWS, Feb. 15, 2021, <https://www.dallasnews.com/news/immigration/2021/02/15/freezing-weather-hits-matamoros-migrant-camp-where-asylum-seekers-are-days-away-from-us-entry/?fbclid=IwAR3yD5bPKhUYQ6iZ0Ytlv-cThdjw097VsAyl5oku9p5UwHj-xLcd7mFe-Q>.

⁹ All names included in this report are pseudonyms, used to protect the privacy of the individuals concerned.

¹⁰ CUSTOMS AND BORDER PROTECTION, *MPP Guiding Principles*, Jan. 28, 2019, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

¹¹ On December 7, 2020, the outgoing Trump Administration issued guidance through DHS that purported to offer “additional improvements to [MPP].” U.S. DEPT. OF HOMELAND SECURITY, *Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols*, Dec. 7, 2020, https://www.dhs.gov/sites/default/files/publications/supplemental_policy_guidance.pdf; CUSTOMS AND BORDER PROTECTION, *Supplemental Migration Protection Protocols Guidance*, Dec. 7, 2020, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Dec/Supplemental-Migrant-Protection-Protocols-Guidance-MPP-Amenability.pdf>. This supplemental guidance essentially guts the health exemption to MPP, but vulnerable migrants were being placed into MPP in contravention of then-existing MPP guidance and long before the December 2020 supplemental guidance was issued.

¹² The legality of the Title 42 Order has been called into question by recent federal litigation. The U.S. District Court for the District of Columbia recently found that expulsions pursuant to Title 42 likely exceeded the CDC’s authority, and although the matter before the District Court dealt solely with unaccompanied children, the court’s reasoning strongly suggests that expulsions pursuant to Title 42 are invalid, writ large. *P.J.E.S. v. Wolf*, Civ. Action No. 20-2245 (EGS), Mem. Op. 25-41 (D.D.C. Nov. 18, 2020) (granting provisional class certification generally consisting of unaccompanied children who are or would be subject to the Title 42 Order and granting class wide preliminary injunction enjoining “expulsion from the United States under Title 42”).

¹³ See, e.g., Laura Gottesdiener and Sarah Kinoshian, *Migrant Smugglers See Boost from U.S. Pandemic Border Policy*, REUTERS, Nov. 12, 2020, <https://www.reuters.com/article/usa-immigration-smuggling/insight-migrant-smugglers-see-boost-from-us-pandemic-border-policy-idUSL4N2HJ3QZ>. There have also been witness reports of increased cartel activity resulting in the murders of migrants in MPP attempting to enter the United States between ports of entry because the ports of entry are closed.

¹⁴ 8 U.S.C. § 1185(d)(5) provides that parole may be granted “only on a case-by-case basis.” We are not suggesting bypassing a case-by-case determination; instead, we are suggesting categorical eligibility for parole because an individual is currently subject to MPP (and, as a necessary consequence of that, has or will have a future court date in the United States). The evaluation and confirmation of such status may form the basis of the “case-by-case” determination required by statute, while still allowing the Biden Administration and DHS to quickly approve and process people for parole.

¹⁵ We note that a number of family separations during MPP that have not yet been addressed, and that the ongoing trauma from family separation is also something that CBP should consider as a valid basis for granting humanitarian parole requests.

¹⁶ They are living in hiding due to the extreme persecution they suffered in MPP and are receiving support services from the Shelter.