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Asylum Updates

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Over the past year, the immigration legal field has seen a multitude of changes ranging from devastating legal precedent cases to administrative changes that have altered the landscape and the way we represent asylum seekers. Overt hostility and an increasingly adversarial government position have compounded what was already a difficult process for those fleeing persecution. The current administration has made it more difficult for noncitizens seeking necessary protection from persecution in their home countries to apply for asylum in the United States by narrowing the scope of those who qualify for asylum, physically barricading those asylum-seekers in Mexico while their proceedings occur, and by significantly changing the credible fear process. This paper will address and expand on each of these changes.

1. Migrant Protection Protocols

On December 20, 2018 the Department of Homeland Security Secretary Kirstjen M. Nielsen announced the Migrant Protections Protocols (MPP). The Protocols apply to noncitizens arriving in the United States on land or apprehended on the border who are not clearly admissible and are placed in section 240 proceedings.¹ Customs and Border Patrol (CBP) guiding principles enumerated a list of noncitizens who are not subject to MPP. These include:

- Unaccompanied alien children;
- Citizens or nationals of Mexico;
- Aliens processed for expedited removal;
- Aliens in special circumstances (Legal Permanent Residents seeking admission, noncitizens with advance parole or in parole status, noncitizens with known physical/mental health issues, noncitizens with criminal/history of violence, noncitizens the government of Mexico or US deem of interest);
- Any noncitizen who is more likely than not to face persecution or torture in Mexico, or;
- Other noncitizens at the discretion of the Port Director.²

The DHS describes the MPP as,

U.S. Government action whereby certain foreign individuals entering or seeking admission to the U.S. from Mexico – illegally or without proper documentation – may be returned to Mexico and wait outside of the U.S. for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay.³

The implementation began at the San Ysidro port of entry (POE) on January 28, 2019. The intention is that MPP will be implemented across the southern border.

¹ <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

² <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>

³ <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

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