

No. 19-15716

IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

INNOVATION LAW LAB, *et al.*,

Plaintiffs-Appellees,

v.

CHAD WOLF, Acting Secretary of Homeland Security, *et al.*

Defendants-Appellants.

*On Appeal from the United States District Court
for the Northern District of California
No. 3:19-cv-00807-RS*

**APPELLEES' RESPONSE TO APPELLANTS' EMERGENCY
MOTION UNDER CIRCUIT RULE 27-3 FOR IMMEDIATE STAY
PENDING PETITION FOR WRIT OF CERTIORARI**

Katrina Eiland
Cody Wofsy
Julie Veroff
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770

Judy Rabinovitz
Michael Tan
Omar Jadwat
Lee Gelernt
Anand Balakrishnan
Daniel Galindo
Celso Javier Perez
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS' RIGHTS
PROJECT 125 Broad St., 18th Floor
New York, NY 10004
Telephone: (212) 549-2618

Attorneys for Plaintiffs-Appellees

(Additional Counsel on Next Page)

Melissa Crow
SOUTHERN POVERTY LAW
CENTER
1101 17th Street NW, Suite 705
Washington, D.C. 20009
T: (202) 355-4471
F: (404) 221-5857

Gracie Willis
SOUTHERN POVERTY LAW
CENTER
150 East Ponce de Leon Avenue, Suite
340
Decatur, GA 30030
T: (404) 221-6700
F: (404) 221-5857

Sean Riordan
AMERICAN CIVIL LIBERTIES
UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
T: (415) 621-2493
F: (415) 255-8437

Blaine Bookey
Karen Musalo
Kathryn Jastram
Sayoni Maitra
Anne Peterson
CENTER FOR GENDER AND
REFUGEE STUDIES
200 McAllister St.
San Francisco, CA 94102
T: (415) 565-4877
F: (415) 581-8824

Steven Watt
ACLU FOUNDATION HUMAN
RIGHTS PROGRAM
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 519-7870
F: (212) 549-2654

The Court should deny the government’s request for a stay pending its petition for certiorari and lift the stay entered on February 29, 2020. The government has not made the extraordinary showing of immediate irreparable harm required for relief. *See* Circuit Rule 27-3. But the harm of staying the preliminary injunction is clear. It would allow the government to return thousands of additional asylum seekers to Mexico pursuant to a policy—the Migrant Protection Protocols (“MPP”)—that this Court has held likely violates both the immigration laws and the United States’ duty under domestic and international law not to return migrants to persecution or torture. *See* Slip Op. 53.

The government’s primary claim is that the injunction will result in a “rush [to] the southern border” to “seek immediate entry” by the approximately 25,000 people who are currently in Mexico pursuant to MPP. Dkt. 92-1 at 2-3. But the preliminary injunction the Court affirmed does not require the immediate re-entry of all individuals currently in Mexico pursuant to MPP.

The district court’s plain language provides that:

Within 2 days of the effective date of this order, defendants shall permit *the named individual plaintiffs* to enter the United States. At defendants’ option, any named plaintiff appearing at the border for admission pursuant to this order may be detained or paroled, pending adjudication of his or her admission application.

ER27 (emphasis added).¹

¹ The district court stated that the effective date of its order was April 12, 2019. ER27. A motions panel of this Court entered an administrative stay pending

The district court further explained that:

[w]hile the injunction precludes the “*return*” under the MPP of any additional aliens . . . nothing in the order determines if any individuals, other than those appearing as plaintiffs in this action, should be offered the opportunity to *re-enter* the United States

ER26 n.14 (emphasis added).

Thus, the injunction prohibits the government only from *returning* asylum seekers to Mexico—for example, when asylum seekers first arrive in the United States, or, for those individuals already in MPP, when they have been allowed into the United States for their hearings in immigration court. Apart from the named plaintiffs, the injunction does not provide any right to “re-enter.” As such, the injunction contemplates an orderly unwinding of MPP—and not the “rush on the border” that the government fears. To the extent there is any confusion on this point, this Court can of course reiterate and underline the limited scope of the injunction in disposing of the stay motion.

For the same reason, the government is wrong when it asserts that the preliminary injunction will overwhelm the immigration detention system. *See* Dkt. 92-1 at 3-4. As explained above, nothing in the injunction requires or facilitates the mass entry of people who have been returned to Mexico. And in any event, the government retains discretion to manage detention levels, including by releasing

resolution of the government’s stay request on April 12, 2019, Dkt. 6, and a stay of the injunction pending resolution of the appeal on May 7, 2019. Dkt. 22-1.

individuals under monitoring and other conditions pursuant to its parole authority. *See* 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212.5(b); *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018).

The government further claims that only an immediate stay will protect against “uncontrolled flows” of migrants who will be “incentivize[d]” to travel through Mexico to the border. Dkt. 92-1 at 4. The government made the same arguments in its appeal of the preliminary injunction, which this Court rejected. *See* Br. of Appellants at 51-52 (Dkt. 26-1). The government continues to be wrong. As former U.S. government officials explained in their amicus brief, “the rate of asylum seekers coming to the United States . . . is unlikely to be affected by the MPP.” Br. of Former U.S. Government Officials at 12 (Dkt. 43). Rather, the extreme violence—including high homicide rates and rampant extortion by gangs—and poor conditions in asylum seekers’ home countries “outweigh[] any disincentive created by harsher enforcement policies” like MPP. *Id.* Indeed, the consensus among migration experts is that border enforcement *by Mexico—not* MPP or other initiatives by the U.S. government—is responsible for the recent reduction in migration to the U.S. *See* Declaration of Jeremy Slack ¶¶ 7, 10 (explaining that the decline in migration “is almost entirely the result of efforts by the Mexican government to police their southern border and interdict foreign nationals traveling through Mexico”); *see also* Declaration of Ambassador Arturo

Sarukhan (Mexico’s Ambassador to the United States from 2007-2013) (hereafter “Sarukhan Decl.”) ¶ 11 (“Numbers of Central American migrants seeking to reach the U.S. border have dropped significantly over the last months in great measure due to the Mexican government’s efforts to deter transmigration and to offer visas and working permits to third country migrants reaching Mexican soil . . . This drop is the result of Mexico’s effort and not of MPP itself.”). And the U.S. government itself has reduced its reliance on MPP in favor of other measures.²

The government further asserts that the injunction undermines bilateral relations between the U.S. and Mexico and ongoing U.S.-Mexico negotiations regarding the southern border. Dkt. 92-1 at 4-5. The government previously made the same arguments to this Court, and this Court rejected them. *See* Br. for Appellants at 50-51 (arguing that the injunction harms “ongoing diplomatic engagement” with Mexico) (Dkt. 26-1). Moreover, MPP was hardly the result of a negotiation. *See* Br. for Former U.S. Government Officials at 27 (Dkt. 43) (quoting Mexican Foreign Ministry’s repeated characterization of MPP as a “unilateral measure”). And there is no evidence that the injunction would harm diplomatic

² *See* Arelis R. Hernández & Kevin Sieff, *Trump’s ‘Remain in Mexico’ program dwindles as more immigrants are flown to Guatemala or are quickly deported*, Wash Post., Feb. 27, 2020, available at https://www.washingtonpost.com/immigration/remain-in-mexico-deportation-asylum-guatemala/2020/02/20/9c29f53e-4eb7-11ea-9b5c-eac5b16dafaa_story.html (reporting that Mexico received 2,000 asylum seekers through MPP in January 2020, in contrast to 12,000 asylum seekers in August 2019).

relations. *See id.* at 29. Indeed, as explained by Ambassador Arturo Sarukhan, Mexico's former Ambassador to the United States, *MPP* has damaged U.S.-Mexico bilateral relations by, among other things, predicating trade policies between the two countries on Mexico's cooperation with *MPP* and other U.S. immigration policies, and starkly departing from prior collaborative efforts between the two countries that were premised on the mutual obligation to protect people from danger. If anything, the injunction against *MPP* offers the possibility of *improving* diplomatic relations. *See* Sarukhan Decl. ¶¶ 4, 5, 7-9.

In any event, the potential impact of diplomatic negotiations cannot insulate a policy from an injunction if the policy itself is unlawful. The public interest is served when the government complies with the law. Slip Op. 49-50; *see also, e.g., Ariz. Dream Act. Coalition v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014).

The government also argues that “the injunction creates a substantial risk of immediate chaos on the border.” Dkt. 92-1 at 1. But, it is *MPP* itself that has created a humanitarian crisis on Mexico's northern border, increasing the burden on local Mexican cities and triggering an increase in nativism and xenophobia. *See* Sarukhan Decl. ¶ 6 (noting that cities and states that faced security concerns prior to *MPP* “are now strained to provide even basic care and safety to migrants”). If anything, enjoining *MPP* may lessen the burden on these border cities, by

preventing additional migrants from being returned there.³

A stay is also unwarranted because of what is at stake: our country's obligation under both domestic and international law not to return asylum seekers to persecution or torture. As this Court has recognized, MPP violates our treaty-based *nonrefoulement* obligations, codified at 8 U.S.C. § 1231(b)(3)(A), by providing patently inadequate procedures to determine who would face persecution or torture if returned to Mexico. *See* Slip Op. 34-48. Immigration officers do not even *ask* asylum seekers if they fear return to Mexico. Instead, asylum seekers must express their fears affirmatively, without any notice, in order to be even referred for a fear screening. *Id.* at 37-38.

As the record evidence establishes, these wholly deficient procedures have resulted in the routine return of asylum seekers to persecution and torture in Mexico. *See id.* at 41-47 (quoting plaintiff declarations). Indeed, of the five judges of this Court who have reviewed MPP, all but one has expressed serious doubt about the legality of MPP's fear procedures. *See id.* at 34-48; *id.* at 57 (Fernandez, J., dissenting) (noting “the dearth of support for the government’s unique rule that an alien processed under the MPP must spontaneously proclaim his fear of persecution or torture in Mexico”); *Innovation Law Lab v. McAleenan*, 924 F.3d

³ The government's argument that the injunction will undermine legitimate commerce, Dkt. 92-1 at 5, is wholly speculative, especially in light of the recently ratified U.S.-Mexico-Canada Trade Agreement. *See Sarukhan Decl.* ¶ 10.

503, 511 (9th Cir. 2019) (Watford, J., concurring) (concluding that the MPP’s fear procedures are arbitrary and capricious because officers do not even ask asylum seekers if they fear return to Mexico, and that MPP is thus “virtually guaranteed to result in some number of applicants being returned to Mexico in violation of the United States’ *non-refoulement* obligations”). The government does not even attempt to defend its fear screening in its stay request, much less explain why it has a valid interest in continuing to return asylum seekers to Mexico pursuant to such deficient procedures.

Nor does the balance of hardships favor the extraordinary relief the government seeks. The government completely disregards the irreparable harm that MPP has caused the Plaintiffs in this case. As this Court found, “[u]ncontested evidence in the record establishes that non-Mexicans returned to Mexico under the MPP risk substantial harm, even death, while they await adjudication of their applications for asylum.” Slip Op. 49. So too have the Plaintiff Organizations suffered irreparable harm and will continue to do so if a stay is entered. The Plaintiff Organizations have diverted significant resources to restructuring their programs, which impairs their ability to carry out their core objectives of providing life-saving representation to asylum seekers. *See* Br. for Appellees at 46 (Dkt. 34) (citing SER13-14, 24, 36, 95, 203-04, 213). *See also East Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1255 (9th Cir. 2018) (holding that being “forced to divert

substantial resources to [a policy's] implementation” may constitute irreparable harm and tip the balance of hardships); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018-19, 1029 (9th Cir. 2013) (same).

Finally, the government wrongly claims that “the status quo for many months now is one in which MPP is operative.” Dkt. 92-1 at 5. The fact that the government was able to operate a policy that this Court has held is likely unlawful, that radically departed from the government’s historical practice, and that endangers the lives of asylum seekers does not somehow render MPP the status quo. Moreover, for the past 10 months the government has been operating the policy under a stay pending appeal that it asked this Court to issue. The government should not now be able to use its own conduct under that stay as a reason for the Court to reverse the on-the-ground effect of its having lost the appeal. Preliminary injunctions are meant to “preserve the relative positions of the parties,” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981), *prior to* the unlawful conduct at issue, and “prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits.” *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974). The preliminary injunction in this case falls squarely within those traditional limits.

CONCLUSION

For the foregoing reasons, the government's request for a stay pending its petition for certiorari should be denied and the stay entered on February 29 should be lifted.

Dated: March 2, 2020

Respectfully submitted,

Katrina Eiland
Cody Wofsy
Julie Veroff
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-0774
F: (415) 395-0950
keiland@aclu.org
cwofsy@aclu.org
jveroff@aclu.org

Melissa Crow
SOUTHERN POVERTY LAW
CENTER
1666 Connecticut Avenue NW, Suite
100
Washington, D.C. 20009
T: (202) 355-4471
F: (404) 221-5857
melissa.crow@splcenter.org

Gracie Willis
SOUTHERN POVERTY LAW
CENTER
150 East Ponce de Leon Avenue, Suite
340

By: /s/ Judy Rabinovitz

Judy Rabinovitz
Michael Tan
Omar Jadwat
Lee Gelernt
Anand Balakrishnan
Daniel Galindo
Celso Javier Perez
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2618
F: (212) 549-2654
jrabinovitz@aclu.org
ojadwat@aclu.org
lgelernt@aclu.org
abalakrishnan@aclu.org
dgalindo@aclu.org
cperez@aclu.org

Sean Riordan
AMERICAN CIVIL LIBERTIES
UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
T: (415) 621-2493

Decatur, GA 30030
T: (404) 221-6700
F: (404) 221-5857
Gracie.willis@splcenter.org

Attorneys for Plaintiffs-Appellees

F: (415) 255-8437
sriordan@aclunc.org

Blaine Bookey
Karen Musalo
Kathryn Jastram
Sayoni Maitra
Anne Peterson
CENTER FOR GENDER AND
REFUGEE STUDIES
200 McAllister St.
San Francisco, CA 94102
T: (415) 565-4877
F: (415) 581-8824
bookeyb@uchastings.edu
musalok@uchastings.edu
jastramk@uchastings.edu
maitras@uchastings.edu

Steven Watt
ACLU FOUNDATION HUMAN
RIGHTS PROGRAM
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 519-7870
F: (212) 549-2654
swatt@aclu.org

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2020, I electronically filed the foregoing with the Clerk for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the appellate CM/ECF system. There are no unregistered participants.

/s/ Judy Rabinovitz

Judy Rabinovitz

Dated: March 2, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 1,985 words. This brief complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

/s/ Judy Rabinovitz

Judy Rabinovitz

Dated: March 2, 2020

DECLARATION OF JEREMY SLACK, Ph.D.

I, Jeremy Slack, pursuant to 28 U.S.C. § 1746, declare that the following is true and correct:

1. I submit this declaration based on my personal knowledge and extensive empirical research to discuss the factors contributing to the recent decrease in the number of migrants seeking to cross the U.S.-Mexico border.

Background and Qualifications

2. I am an Assistant Professor of Human Geography at the University of Texas at El Paso with more than fifteen years of research experience in Mexico and along the U.S.-Mexico border. Human geography explores the interaction between human beings and their environments. My areas of expertise and publication focus on drug violence, drug trafficking, undocumented migration, corruption, and U.S.-Mexico border enforcement. In particular I have written about different enforcement procedures such as Operation Streamline (trials for illegal entry and illegal reentry), detention, and other factors related to the deterrence of migration.¹

3. I received my B.A. from the University of Arizona in 2005 in Spanish and International Studies. I received an M.A in Latin American Studies in 2008 at the University of Arizona. I received my Ph.D. from the School of Geography and Development, also at the University of Arizona in 2015.

4. I have testified in court over 75 times as an expert regarding drug smuggling, drug violence, and corruption along the border and throughout Mexico in both criminal cases and in immigration court.

¹ See, e.g., Slack, Jeremy, Daniel E. Martinez, Scott Whiteford, and Emily Peiffer. The Ford Foundation (Ed.). (2013). *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security*. Tucson, Arizona: The University of Arizona; Slack, Jeremy, Daniel E. Martinez, Scott Whiteford, and Emily Peiffer. (2015). In

5. I have published approximately 19 peer-reviewed journal articles and numerous essays, book chapters, and scholarly reports. I have written two books about the impacts of drug violence on migrants. The first book, *The Shadow of the Wall*, was released in April 2018 by the University of Arizona Press.² The second book, *Deported to Death: How Drug Violence is Changing Migration in Mexico*, was released in July 2019 by the University of California Press. It explores the ways organized crime has targeted migrants through kidnapping, extortion, and coerced recruitment.³ It contains years of research about the dangers facing asylum seekers stuck on the Mexican side of the border.

6. I have received over \$1,000,000 in research grants from foundations, universities and federal agencies to support my research activities. This includes funding from the Department of Homeland Security, the National Science Foundation, the Ford Foundation, the Open Society Foundation, and the Social Science Research Council among others. I have conducted research along the U.S.-Mexico border since 2003 and have travelled and worked extensively throughout Mexico, living and working in migrant shelters in some of the areas of the country hardest hit by drug cartel violence.

Expert Opinion

7. The Migrant Protection Protocols (“MPP”) have created chaos at the border and escalated an already difficult situation. However, MPP has not had a significant impact on migration to the United States. Instead, there is widespread agreement among immigration

² Slack, Jeremy, Daniel E. Martínez, and Scott Whiteford (Eds.). (2018). *The Shadow of the Wall: Violence and Migration on the U.S.-Mexico Border*. Tuscon, Arizona: University of Arizona Press.

³ Slack, Jeremy. (2019). *Deported to Death: How Drug Violence is Changing Migration in Mexico*. California Series on Public Anthropology (Vol. 45). Berkeley, California: University of California Press. <https://www.ucpress.edu/ebook/9780520969711/deported-to-death>.

scholars that the decline in migration along the U.S.-Mexico border in FY 2020 is almost entirely the result of efforts by the Mexican government to police their southern border and interdict foreign nationals traveling through Mexico.⁴ The strongest factor contributing to a drop in the number of individuals presenting themselves at U.S. ports of entry for asylum is the use of Mexico's national guard to actively prevent people from crossing into Mexico and travelling to the U.S.-Mexico border in the first place.

History of Mexican Enforcement against Central American Asylum Seekers

8. In recent years, Mexico has taken significant steps to prevent asylum seekers from arriving at the U.S.-Mexico border. The clearest evidence was in 2014. After the first influx of families and unaccompanied minors seeking asylum from various Central American countries, the Mexican government deployed its military, police forces, and immigration agents along the traditional migrant routes. This resulted in increased violence, crime, and corruption, and a sharp drop in the number of people seeking asylum in the United States. Thus, while U.S. Customs and Border Protection ("CBP") reported 252,600 apprehensions of non-Mexicans in FY 2014, it reported only 145,316 such apprehensions in FY 2015.⁵ This was due almost entirely to Mexican enforcement practices.

9. After the Obama administration pressured the Mexican government to increase enforcement, Mexican authorities created the "Southern Border Program" to deploy police and

⁴ Aguilera, Jasmine. (Jan. 10, 2020). Mexico Is Doing the U.S.'s 'Dirty Work,' Say Researchers as Border Apprehensions Decline for 7th Month in a Row. *Time Magazine*. <https://time.com/5762334/mexico-border-apprehensions-decline/>.

⁵ U.S. Customs and Border Protection. (FY2007-2019). *U.S. Border Patrol Nationwide Apprehensions by Citizenship and Section*. https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Nationwide%20Apprehensions%20by%20Citizenship%20and%20Sector%20%28FY2007%20-%20FY%202019%29_1.pdf.

military to apprehend and stop individuals from crossing through Mexico.⁶ Apprehensions in Mexico went from 97,245 in FY 2013 to 174,159 in FY 2014. Mexico has largely been able to control the number of people able to cross through Mexico—although by doing so, it has also increased crime, violence and corruption.⁷ People resort to more dangerous routes where they are preyed upon, and smuggling networks grow as the crossing is more difficult and therefore the payments increase.⁸

10. The reduction of asylum claims in the U.S. in FY 2020 follows the same pattern, and scholars widely agree that the creation of Mexico's national guard and its deployment along Mexico's southern border is almost entirely responsible for this trend.⁹ In 2019, Mexico reported apprehending and removing 123,239 individuals.¹⁰ This is double the approximately 60,000 individuals placed in MPP. This figure does not include the large groups known as caravans turned away at Mexico's southern border. Mexican immigration officers have repeatedly used gas and other means to prevent individuals from entering Mexico.¹¹ The total number of individuals expelled or prevented from migrating through Mexico to the United States is difficult to know, but there is no doubt that the number impacted by MPP pales in comparison.

⁶ Isaacson, Adam, Maureen Mayer, Hannah Smith. Washington Office on Latin America. (2017). *Mexico's Southern Border: Security, Central American Migration and U.S. Policy*. https://www.wola.org/wp-content/uploads/2017/06/WOLA_Mexicos-Southern-Border-2017-1.pdf.

⁷ Vogt, Wendy A. (2018). *Lives in Transit: Violence and Intimacy on the Migrant Journey*. California Series in Public Anthropology (Vol. 42). Berkeley, California: University of California Press.

⁸ Slack, Jeremy. (2019). *Deported to Death: How Drug Violence is Changing Migration in Mexico*. California Series on Public Anthropology (Vol. 45). Berkeley, California: University of California Press.

⁹ See Aguilera, Jasmine. (Jan. 10, 2020). Mexico Is Doing the U.S.'s 'Dirty Work,' Say Researchers as Border Apprehensions Decline for 7th Month in a Row. *Time Magazine*. <https://time.com/5762334/mexico-border-apprehensions-decline/>; see also Washington Office on Latin America. (2020). *6 Points about the U.S. Mexico Migration Agreement and the Latest Border Apprehension Numbers*. <https://www.wola.org/analysis/migration-agreement-mexico-border-migrant-arrests/>.

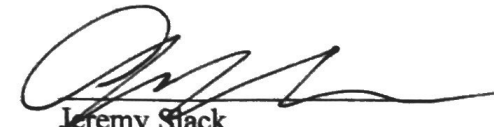
¹⁰ Government of Mexico. Unidad de Política Migratoria. (2019). *Boletín Mensual de Estadísticas Migratorias*. <http://www.politicamigratoria.gob.mx/es/PoliticaMigratoria/CuadrosBOLETIN?Anual=2019&Secc=3>.

¹¹ Staff. (Jan. 24, 2020). Guardia Nacional reprueba amenazas a migrantes con gas y niega su uso. *Politico MX*. Accessed Feb. 29, 2020. <https://politico.mx/minuta-politica/minuta-politica-gobierno-federal/guardia-nacional-niega-que-elemento-utilizara-gas-vs-un-migrante/>.

11. MPP is also not an effective deterrent. In my experience working along the border, I have found that most migrants do not know about MPP until they or someone they know is placed in it. This means that it is nearly impossible that the existence of MPP is causing people not to leave their home countries. And for those who do learn about MPP before seeking asylum in the U.S., there is always the possibility that they will not be subjected to it. This has led to a perspective well-articulated by almost every migrant to whom I have spoken. They know people who have failed to cross into the United States, been deported, detained or put in MPP, as well as people who have been released with a notice to appear and who eventually win asylum. The volatility of the situation migrants face on the ground leads people to continue to hope that they will be among the lucky ones.

12. Scholars also have long studied the connections between religious faith and migration.¹² Asylum seekers are resolute that their faith in God will prevent them from being placed in MPP. This reality not only reduces the deterrent effect of MPP, but also hardens migrants' resolve in facing hardships presented at the border. For those fleeing violence at home, their faith is one of the most important things that allows them to persevere despite these hardships and the stories they hear about the risks at the border. It is important to acknowledge that people do not make pure cost benefit calculations based on programs like MPP when engaging in migration.

¹² Durand, Jorge, and Douglas S. Massey. (1995). *Miracles on the Border: Retablos of Mexican Migrants to the United States*. Tuscon, Arizona: University of Arizona Press; Hagan, Jacqueline. (2008). *Migration Miracle: Faith, Hope, and Meaning on the Undocumented Journey*. Cambridge, Massachusetts: Harvard University Press.



Jeremy Slack
Dated: March 2, 2020


DECLARATION OF AMBASSADOR ARTURO SARUKHAN

I, Arturo Sarukhan, make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

1. I served as Mexico's ambassador to the United States from 2007 to 2013—the longest serving Mexican ambassador to the United States in modern history. In this role I led a team of 250 diplomats, plus an additional staff of 1,500 in Mexico's 50 consulates across the U.S. During my tenure I became the dean of the Group of Latin American Ambassadors (GRULA) to the United States. Prior to my appointment as ambassador to the U.S. I served in the Mexican Foreign Service for 22 years, receiving the rank of career ambassador in 2006.
2. I am aware that on February 28, 2020, the Court issued an opinion affirming the district court's preliminary injunction against the Migrant Protection Protocols (MPP). I am also aware of the U.S. government's emergency request for an immediate stay of that decision.
3. I have reviewed the submissions in support of the U.S. government's request for a stay, including the declaration of U.S. Ambassador Christopher Landau. I fundamentally disagree with the arguments presented therein.
4. I reject the notion that this Court's determination that MPP is likely unlawful will harm our two nations' relationship. Rather, it is MPP itself—and the way the current administration is conducting policy towards Mexico—that is particularly detrimental to the bilateral relationship between the United States and Mexico.
5. The government of Mexico has consistently stated that MPP is a policy unilaterally imposed by the U.S. government. To the extent Mexico agreed to the policy, it was upon threat of heavy and unprecedented tariffs. Over my three decades in foreign service, the relationship between the United States and Mexico has been marked by a diplomatic norm of thematic silos and de-linkage of the myriad issues of our agenda, as a means to avoid contaminating it as a whole as a result of disagreements—when these occur—in specific bilateral, regional and multilateral issues. For more than two decades, negotiations, for example, over immigration were dealt with separately from negotiations over trade, and economic threats were not used to leverage and influence migration policies. The U.S. government's use of MPP as a tool of diplomatic ambush, pressure, and leverage has today done far more damage to the bilateral relationship than a stoppage of MPP would.
6. Furthermore, MPP places responsibility and burdens on Mexico, and has a devastating impact on the local Mexican cities at the border. These cities—and the state governments, as well as civil society there as a whole—faced relevant security and governance concerns before MPP, and are now strained to provide even basic care or safety to migrants. MPP has even triggered unfortunate and rising nativism and xenophobia in



those states and municipalities in response to the burden and challenge of having to support returned and deported third-country migrants and refugees there.

7. MPP stands in stark contrast to the collaboration and the keystone paradigm of shared responsibility that has marked joint immigration related initiatives between our two countries in the past, and the relationship as a whole. In this respect, MPP is a far cry from the type of bilateral efforts to curb migration referenced by the U.S. government in the documentation and arguments presented, which have historically aimed to account for the mutual obligation each country has to protect people fleeing danger. Those bilateral efforts are likely to continue in the absence of MPP. If anything, an end to MPP would improve cooperation between our countries. More importantly, the U.S. government cannot enforce its way out of an immigration crisis. Therefore, the concerns that an absence of MPP would stymie efforts to curb migration ring untrue.
8. As a unilateral policy, MPP has had a significant impact in terms of public opinion in Mexico, constraining both the political and diplomatic bandwidth and public opinion support there that is constantly needed to confront the myriad and constant challenges and take advantage of the opportunities we face in such a uniquely important bilateral relationship.
9. Moreover, MPP and the immigration policies—both domestic and bilateral—that underpin it, have triggered a collapse in favorable perceptions of the U.S. in Mexico in the past two years. The United States' legal and moral standing in Mexico may not survive the Administration's immigration policies, and this, for two nations so uniquely important for each other's security, prosperity and wellbeing, is a significant step backwards in the fostering and building of mutual trust and sense of common destiny that has taken more than two decades to build between our two nations and peoples.
10. Enjoining MPP is also unlikely to undermine legitimate commerce, unless of course the Administration persists in thematic linkage and once again threatens punitive tariffs tied to controlling transmigration of Central American migrants, as it did in March of 2019. With a now revamped and ratified US-Mexico-Canada Trade Agreement (USMCA), the \$1.5 billion dollars of daily trade between both nations built on joint supply and production chains in North America should continue to drive economic growth and prosperity between both nations. 
11. Enjoining MPP is also unlikely to lead to a large spike in migration. Mexico clearly understands that it needs to enhance its operational control of its border with Guatemala. Numbers of Central American migrants seeking to reach the US border have dropped significantly over the last months in great measure due to the Mexican government's efforts to deter transmigration and to offer visas and working permits to third country migrants reaching Mexican soil. The number of migrants intercepted at the US southern border has dropped from a hundred and forty thousand in May 2019, to thirty-six thousand in February of 2020. This drop is the result of Mexico's efforts and not of MPP itself.

12. In sum, it is my opinion that this Court should not allow hollow claims of damage to Mexico-United States bilateral relationships to impact its considerations in this matter. On the contrary, MPP is much more damaging to the relationship with Mexico in the medium and long terms.

I, Arturo Sarukhan, swear under the penalties of perjury that the foregoing declaration is true and correct to the best of my knowledge and belief.



Ambassador Arturo Sarukhan

March 2, 2020

Date

Washington, D.C.

Location