



ROUND TABLE
of Former Immigration Judges

December 6 , 2021

The Round Table of Former Immigration Judges is a group of 51 former Immigration Judges and Members of the Board of Immigration Appeals who are committed to the principles of due process, fairness, and transparency in our Immigration Court system.

There has been no greater affront to due process, fairness, and transparency than the MPP, or “Remain in Mexico” policy. Instituted under the Trump Administration, it appears to have been motivated by nothing other than cruelty.

Tragically, to comply with a most misguided court order, the Biden Administration, which promised us better, is today not only resuming the program with most of its cruelty intact, but expanding its scope to now apply to nationals of all Western Hemisphere countries.

In 1997, the BIA issued a precedent decision, *Matter of S-M-J-*, that remains binding on Immigration Judges and ICE prosecutors. In that decision, the BIA recognized our government’s “obligation to uphold international refugee law, including the United States’ obligation to extend refuge where such refuge is warranted. That is, immigration enforcement obligations do not consist only of initiating and conducting prompt proceedings that lead to removals at any cost. Rather, as has been said, the government wins when justice is done.”¹

One of the cases cited by the BIA was *Freeport-McMoRan Oil & Gas Co. v. FERC*,² a decision which concluded: “We find it astonishing that an attorney for a federal administrative agency could so unblushingly deny that a government lawyer has obligations that might sometimes trump the desire to pound an opponent into submission.”

The MPP policy constitutes the pounding into submission of those who, if found to qualify for asylum, we are obliged by international law to admit, protect, and afford numerous fundamental rights. The “pounding” in this instance is literal, with reports of those lawfully pursuing their right to seek asylum in the U.S. being subject to kidnappings, extortion, sexual abuse, and other

¹ *Matter of S-M-J-*, 21 I&N Dec. 722, 728 (BIA 1997).

² 962 F.2d 45, 48 (D.C. Cir. 1992).

threats and physical attacks.³ This is the antithesis of fairness, in which the parties are not afforded equal access to justice.

Concerning due process, a statement issued by the union representing USCIS Asylum Officers, whose members interview asylum applicants subjected to the program, noted that MPP denies those impacted of meaningful access to counsel, and further impedes their ability to gather evidence and access necessary resources to prepare their cases.⁴ As former judges who regularly decided asylum claims, we can vouch for the importance of representation and access to evidence, including the opinions of country condition experts, in successfully obtaining asylum. Yet according to a report issued during the Trump Administration, only four percent of those forced to remain in Mexico under MPP were able to obtain representation.⁵ As of course, DHS attorneys are not similarly impeded, the policy thus fails to afford the parties a level playing field.

As to transparency, one former Immigration Judge from our group who attempted to observe MPP hearings under the prior administration was prevented from doing so despite having the consent of the asylum seeker to be present. A letter from our group to the EOIR Director and the Chief Immigration Judge expressing our concern went unanswered.

Like many others who understand the importance that a fair and independent court system plays in a free and democratic society, we had hoped to have seen the last of this cruel policy. And like so many others, we are beyond disappointed to learn that we were wrong. On this day in which MPP is being restarted, we join so many others both within and outside of government in demanding better.

We urge the Biden Administration to end its unwarranted expansion of MPP; to instead do everything in its power to permanently end the program; and to insure that in the interim, any court-ordered restart of MPP first accord with our international treaty obligations towards refugees, and with the requirements of due process and fairness on which our legal system is premised.

Contact Jeffrey S. Chase, jeffchase99@gmail.com

³ See the compilation of of publicly reported cases of violent attacks on those returned to Mexico under MPP by Human Rights First, available at <https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks2.19.2021.pdf>.

⁴ American Federation of Government Employees, National Citizenship and Immigration Services Council 119, “Union Representing USCIS Asylum Officers Condemns Re-Implementation of the Migrant Protection Protocols” (Dec. 2, 2021).

⁵ Syracuse University, TRAC Immigration, “Contrasting Experiences: MPP vs. Non-MPP Immigration Court Cases,” available at <https://trac.syr.edu/immigration/reports/587/>.