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February 28, 2022

UN Special Rapporteur on the Human Rights of Migrants  
Palais des Nations  
1211 Geneva 10 SWITZERLAND  
Via email: OHCHR-migrant@un.org

**RE: Submission for Report of the Special Rapporteur on the human rights of migrants: Human rights violations at international borders: trends, prevention and accountability**

Dear Special Rapporteur González Morales:

The following is submitted on behalf of the below signatories, which include human and migrant rights organizations and coalitions, and representatives from law school clinical programs focused specifically on the rights of asylum seekers and other migrants. We thank the Special Rapporteur for your attention to “pushback” policies and practices (A/HRC/47/30), and we welcome the opportunity to contribute to your upcoming report on human rights violations at

international borders. The following submission addresses two significant border enforcement policies at the U.S./Mexico border: the Remain in Mexico Program, officially and inaptly named the Migrant Protection Protocols (“MPP”) and the Title 42 expulsion policy. Both policies violate the United States’ non-refoulement obligations, induce family separation, and place migrants and asylum seekers directly in harm’s way. We also highlight the ways in which the policies fail to fully account for the particular vulnerabilities of women, children, Black migrants and those from indigenous communities and those of Afro descent, and LGBTI persons subjected to these policies, despite putative allowances for the protection of vulnerable populations written into both.

This submission builds on available public evidence and prior submissions to regional mechanisms (primarily provided through hyperlinks to the cited documents) to address how the ongoing enforcement of these two legally contested immigration policies is contributing to an ongoing humanitarian crisis along the U.S./Mexico border and further south from May 2021 to February 2022. While not addressed specifically in this report, we also call attention to laws and practices related to “expedited removal” and mandatory detention applied to migrants and asylum seekers arriving at or encountered at or near the U.S. border without legal documentation for entry; these practices have long contributed to refoulement, denial of the right to seek asylum, violations of the right to life and security, family separation, prolonged and arbitrary detention, and violations of the right to non-discrimination. These policies serve as the precursor for MPP and persist as a barrier to the full enjoyment of the rights of even those migrants and asylum seekers admitted despite MPP and Title 42.

## **I. Background and Context: United States Border Policies Seek to Control and Prevent Migrants and Asylum Seekers from Entry to the U.S.**

Beginning in 2017, the United States government rapidly implemented a series of border enforcement and interior immigration enforcement measures intended to limit, deter and punish thousands of individuals and families seeking refuge in the U.S.<sup>1</sup> In late January 2019, the U.S. Department of Homeland Security (DHS) began implementation of MPP and eventually expanded the program along the entire southern border with Mexico. The program forced thousands of migrants and asylum seekers to remain in Mexico while their immigration proceedings were pending in the United States.<sup>2</sup>

The following year, at the onset of the COVID-19 pandemic in March 2020, the U.S. further abdicated its legal obligation to guarantee an individual’s right to seek asylum upon arrival at the southern border by weaponizing a public health law<sup>3</sup> under Title 42 of the U.S. Code. Under the pretext of safeguarding public health during COVID-19, the U.S. began targeting asylum seekers arriving at the U.S./Mexico land borders for immediate expulsion without any screening for protection needs or other immigration process. The Title 42 policy has paved the way for nearly two million expulsions of individuals, including unaccompanied minors and asylum seekers who

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<sup>1</sup> See, e.g., Amnesty Int’l, *Facing Walls: USA and Mexico Violations of the Rights of Asylum-seekers* (June 2017), <https://www.amnesty.org/download/Documents/AMR0164262017ENGLISH.pdf>.

<sup>2</sup> U.S. Dep’t of Homeland Sec., *Migrant Protection Protocols* (Jan. 24, 2019) <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>3</sup> 42 U.S. Code § 265.

experienced or are at grave risk of suffering from torture, sexual assault, kidnapping, or death in the countries to which they are rendered.<sup>4</sup>

MPP and Title 42 have operated in conjunction with other border practices and policies—“metering” and the “third-country rule”—that disproportionately impact non-white asylum seekers apprehended at the southern border and effectively prevent access to the U.S. asylum process.<sup>5</sup> U.S. Customs and Border Patrol used “metering” to limit the number of individuals allowed to present themselves at U.S. ports of entry. Asylum seekers were required to add their names to a waitlist and wait outside the United States, often for weeks or months, before they were permitted to present themselves at ports of entry to initiate the asylum process. More than 15,000 people processed through “metering” and on the waitlist for admission to the United States were subsequently subjected to MPP. Customs and Border Protection (CBP) officers were instructed to no longer ask migrants whether they feared forcible return to Mexico. Any migrant who affirmatively expressed fear was funneled to interviews where officers were “pressure[d] to deny people and send them back to Mexico,” resulting in a sham process where as few as 1% of migrants were allowed to remain in the United States. This effectively shuttered the United States to asylum seekers.<sup>6</sup> The introduction of the Title 42 border closure and expulsions left those awaiting their opportunity to request asylum at the border in even further uncertainty, with most asylum seekers facing immediate expulsion and without direction or guidance as to whether the U.S. would exempt particular individuals from Title 42.

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<sup>4</sup> Women’s Refugee Comm’n, *Letter to President Biden and Vice President Harris on Expulsion Flights of Venezuelans to Colombia* (Feb. 2, 2022), <https://www.womensrefugeecommission.org/wp-content/uploads/2022/02/LetterTitle42ExpulsionsVenezuelansColombia.pdf>; Priscilla Alvarez, *US Begins Quietly Flying Venezuelan Migrants to Colombia Under Controversial Border Policy*, CNN (Jan. 31, 2022), <https://www.cnn.com/2022/01/31/politics/border-venezuela-colombia/index.html>; Camilo Montoya-Galvez, *U.S. Reports Record Number of Migrant Apprehensions Along Mexican Border*, CBS News (Oct. 22, 2021), <https://www.cbsnews.com/news/immigration-border-migrant-apprehensions/>; Physicians for Human Rights, *Title 42 Border Expulsions: How Biden and the CDC’s Misuse of Public Health Authority Expels Asylum Seekers to Danger* (May 20, 2021), <https://phr.org/our-work/resources/title-42-border-expulsions-how-biden-and-the-cdcs-misuse-of-public-health-authority-expels-asylum-seekers-to-danger/>; Human Rights Watch, *Q&A: US Title 42 Policy to Expel Migrants at the Border* (April 8, 2021), <https://www.hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border#>.

<sup>5</sup> See Azadeh Erfani, “Biden Admin Leaves Behind BIPOC Migrants and Asylum Seekers as Government Reopens Borders to Non-essential Travel,” Nat’l Imm. Just. Ctr. (Nov. 16, 2021), <https://immigrantjustice.org/staff/blog/biden-admin-leaves-behind-bipoc-migrants-and-asylum-seekers-government-reopens-borders>. See also Human Rights Watch, *Texas Targeting Migrants: Justice Department Should Move Against Abusive, Discriminatory ‘Operation Lone Star’* (Nov. 22, 2021), <https://www.hrw.org/news/2021/11/22/us-texas-targeting-migrants> (reporting on the xenophobic narrative pushed forth by Texas Governor Greg Abbott to justify the inhumane and unlawful treatment of asylum seekers apprehended by Texas law enforcement officials); Eileen Sullivan & Zolan Kanno-Youngs, “Images of Border Patrol’s Treatment of Haitian Migrants Prompt Outrage,” N.Y. Times (Sep. 21, 2021), <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrolphotos.html> (capturing U.S. CBP agents on horseback using whips against unarmed Haitian asylum seekers to force them back to Mexico).

<sup>6</sup> American Immigration Council, *The Migrant Protection Protocols* (Jan. 7, 2022), <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols#:~:text=Under%20MPP%2C%20CBP%20officers%20did,be%20taken%20out%20of%20MPP.>

The implementation of the “third-country rule” as part of the overall border externalization policies added an asylum bar for those who enter or attempt to enter the U.S. across the southern border and who did not apply for asylum in Mexico or another third country through which they traveled. Additionally, the “Asylum Cooperative Agreements” entered into between the United States and Guatemala, El Salvador, and Honduras under President Trump, could forcibly transfer asylum seekers from the southern border—without an individual assessment of the harm they are likely to experience—to any of those three countries.<sup>7</sup> While a U.S. federal court invalidated the “third-country rule”<sup>8</sup> and President Biden terminated the “Asylum Cooperative Agreements” in February 2021,<sup>9</sup> there have been no efforts to address the harm caused by the policies to thousands of migrants denied the opportunity to seek asylum, when the policies were in effect.<sup>10</sup>

Despite the overwhelming evidence of irreparable harm and extreme violence that migrants and asylum seekers experience as a result of MPP and Title 42, the Biden Administration persists in reinforcing the practice of direct and chain refoulement, further endangering and traumatizing thousands of migrants including families and unaccompanied minors who have been denied their right to protection from persecution by the United States.

## **II. Lack of Accountability for Gross Human Rights Violations Due to Continued Enforcement of the Migrant Protections Protocols**

When President Biden took office in January 2021, his Administration announced the suspension of new enrollees into the MPP program, and on February 19, 2021, the United States began processing into the country certain individuals subjected to MPP who had been trapped for months or years in Mexico with active cases in the U.S. immigration courts.<sup>11</sup> On June 23, 2021,

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<sup>7</sup> Senate Foreign Relations Democratic Committee, *Cruelty, Coercion, and Legal Contortions: The Trump Administration’s Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador* (Jan. 18, 2021); U.S. Federal Register, A Rule by USCIS and EOIR, Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act (Nov. 19, 2019), <https://www.federalregister.gov/documents/2019/11/19/2019-25137/implementing-bilateral-and-multilateral-asylum-cooperative-agreements-under-the-immigration-and>.  
<https://www.foreign.senate.gov/imo/media/doc/Cruelty,%20Coercion,%20and%20Legal%20Contortions%20-%20SFRC%20Democratic%20Staff%20Report.pdf>;

<sup>8</sup> *Capital Area Immigrants’ Rights Coalition*, 19-2117, [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2019cv2117-72](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2019cv2117-72).

<sup>9</sup> U.S. Dep’t of State, *Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras*, Press Release (Feb. 6, 2021), <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/>.

<sup>10</sup> Human Rights Watch, *Groups Urge Biden Administration to Address Harm Caused by the Asylum Cooperative Agreement Program*, (July 9, 2021) <https://www.hrw.org/news/2021/07/09/groups-urge-biden-administration-address-harm-caused-asylum-cooperative-agreement>.

<sup>11</sup> See U.S. Dep’t of Homeland Security, “DHS Announces Process to Address Individuals in Mexico with Active MPP Cases,” Press Release (Feb. 11, 2021), <https://www.dhs.gov/news/2021/02/11/dhs-announces-process-address-individuals-mexico-active-mpp-cases>; The White House, Press Release, “The MPP Program and Border Security, Joint Statement by Assistant to the President and National Security Advisor Jake Sullivan and Assistant to the President and Homeland Security Advisor Dr. Elizabeth Sherwood-Randall,” (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/the-mpp-program-and-border-security-joint-statement-by-assistant-to-the-president-and-national-security-advisor-jake-sullivan-and->

DHS announced that the United States would begin processing individuals in MPP who had their case terminated or were ordered removed in absentia.<sup>12</sup> Approximately 13,000 eligible individuals were processed into the United States from February 2021 and August 2021, until the U.S. government suspended the processing of thousands in response to ongoing federal court challenges to the legality of MPP's termination.

On June 1, 2021, DHS Secretary Alejandro N. Mayorkas announced the official termination of the MPP program.<sup>13</sup> In his announcement, he acknowledged that “conditions faced by some MPP enrollees in Mexico, including the lack of stable access to housing, income, and safety, resulted in the abandonment of potentially meritorious protection claims.”<sup>14</sup> He also acknowledged the outsized impact MPP has had on bilateral relations between the U.S. and Mexico, and the need for the United States and Mexico to focus energies on “collaboratively addressing the root causes of migration from Central America; improving regional migration management; enhancing protection and asylum systems throughout North and Central America; and expanding cooperative efforts to combat smuggling and trafficking networks, and more.”<sup>15</sup>

However, the Biden Administration's efforts to terminate MPP were halted on August 13, 2021, when a Trump-appointed federal District Court Judge in Texas issued an injunction reinstating MPP. On August 24, 2021, the U.S. Supreme Court declined to issue a stay of the injunction, requiring the government to reinstate MPP,<sup>16</sup> following which the Biden Administration not only reinstated MPP, but expanded its scope. On December 2, 2021, the U.S. reached an agreement with Mexico to renew MPP,<sup>17</sup> despite serious and valid concerns raised by the Mexican government in the course of the negotiations.<sup>18</sup> The rapid and concerted effort to reach an agreement with Mexico occurred despite the fact that the district court did not impose a deadline as to when the Biden Administration was to reinstate MPP, only ordering it to act in “good faith.”<sup>19</sup> The Biden Administration also expanded MPP to include nationals from all countries within the Western Hemisphere. While it formerly covered only Spanish-speaking

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[assistant-to-the-president-and-homeland-security-advisor-and-deputy-na/](#). It was estimated that there were approximately 25,000 individuals eligible for processing.

<sup>12</sup> U.S. Dep't of Homeland Sec., “DHS Announces Expanded Criteria for MPP-Enrolled Individuals Who Are Eligible for Processing into the United States,” Press Release (June 23, 2021), <https://www.dhs.gov/news/2021/06/23/dhs-announces-expanded-criteria-mpp-enrolled-individuals-who-are-eligible-processing>.

<sup>13</sup> U.S. Dep't of Homeland Sec., Termination of Migrant Protection Protocols Program, (June 1, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_0601\\_termination\\_of\\_mpp\\_program.pdf](https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf).

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> U.S. v. Texas, 594 U.S. \_\_\_ (Aug. 24, 2021), Order on Petition for Certiorari, [https://www.supremecourt.gov/orders/courtorders/082421zr\\_2d9g.pdf](https://www.supremecourt.gov/orders/courtorders/082421zr_2d9g.pdf).

<sup>17</sup> U.S. Department of Homeland Security, “Court-Ordered Reimplementation of MPP Policy Guidance” (Dec. 2, 2021), <https://www.dhs.gov/publication/court-ordered-reimplementation-mpp-policy-guidance>.

<sup>18</sup> Información sobre diálogos en materia migratoria con el Gobierno de los Estados Unidos Comunicado No. 545, <https://www.gob.mx/sre/prensa/informacion-sobre-dialogos-en-materia-migratoria-con-el-gobierno-de-los-estados-unidos?state=published>.

<sup>19</sup> Amnesty International, *#WELCOMEWITHDIGNITY Denounces Biden Administration's Expansion of MPP, Calls for this Unlawful and Cruel Policy to be Ended Once and for All* (Dec. 2, 2021), <https://www.amnestyusa.org/press-releases/welcomewithdignity-denounces-biden-administrations-expansion-of-mpp-calls-for-this-unlawful-and-cruel-policy-to-be-ended-once-and-for-all/>.



nations and Brazilians, the renewed MPP program includes countries like Haiti and Jamaica, increasing the number of vulnerable populations forced to stay in Mexico, and subjects those with a significant language barrier to heightened risk. Further, evidence has shown how Black migrants are targeted at higher rates and are subjected to violent attacks by Mexican officials and cartels including kidnappings, assaults, sexual violence, and enforced disappearances.<sup>20</sup>

From the initiation of MPP to present, more than 71,000 asylum seekers<sup>21</sup> have been forced to wait out their claims in Mexico. Many have suffered extreme violence and other grave harms.<sup>22</sup> Between January 2021 and August 2021, there were over 6,000 reports of murder, rape, torture, kidnapping, or other violent assaults committed against asylum seekers and migrants expelled or blocked from seeking asylum in the United States.<sup>23</sup>

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<sup>20</sup> See American Civil Liberties Union, *Q&A: What You Need to Know About MPP, The Trump-Era Migrant Policy Re-Initiated by Biden* (Dec. 13, 2021), <https://www.aclu-nm.org/en/news/qa-what-you-need-know-about-mpp-trump-era-migrant-policy-re-initiated-biden>. See also Nicole Narea, *Biden's Bewildering Decision to Expand a Trump-era Immigration Policy*, Vox (Dec. 4, 2021), <https://www.vox.com/policy-and-politics/2021/12/4/22815657/biden-remain-in-mexico-mpp-border-migrant> (highlighting the racial discriminatory effects of the new MPP and criticizing the decision to expand the number of migrants now forced to remain in Mexico); Jose Miguel Vivanco, *Mexican Soldiers and Immigration Agents Violently Detain Asylum Seekers*, Human Rights Watch (Sept. 8, 2021), <https://www.hrw.org/news/2021/09/08/mexican-soldiers-and-immigration-agents-violently-detain-asylum-seekers> (reporting violent attacks committed by Mexican authorities against asylum seekers and journalists); Stephanie Brewer, "Mexico Must Cease Violence Against Migrants and Offer Solutions to Avert Asylum Crisis at its Southern Border," WOLA (Sept. 9, 2021) <https://www.wola.org/analysis/mexico-southern-border-september-2021/> (detailing "rights-violating practices" committed by Mexican authorities against asylum seekers); Human Rights Watch, *Mexico: Abuses Against Asylum Seekers at US Border* (Mar. 5, 2021) <https://www.hrw.org/news/2021/03/05/mexico-abuses-against-asylum-seekers-us-border> (noting that Mexican officials regularly target migrants to kidnap or extort them).

<sup>21</sup> Transactional Records Access Clearinghouse (TRAC), *Immigration Project Dataset* (as of Nov. 2021), <https://trac.syr.edu/phptools/immigration/mpp/>.

<sup>22</sup> Human Rights Watch, *New Hypocrisy in US Immigration Policy: Administration Ends One Abusive Program, Keeps Title 42 Expulsions in Place* (Nov. 3, 2021 6:00 AM EDT), <https://www.hrw.org/news/2021/11/03/new-hypocrisy-us-immigration-policy> (reporting that as a result of MPP, asylum seekers have been "targeted for kidnapping, extortion, rape, and other violence, and have lacked access to food, water, and shelter[]").

<sup>23</sup> See Human Rights First, *Human Rights Travesty: Biden Administration Embrace of Trump Asylum Expulsion Policy Endangers Lives, Wreaks Havoc* (August 24, 2021), <https://www.humanrightsfirst.org/resource/human-rights-travesty-biden-administration-embrace-trump-asylum-expulsion-policy-endangers>. See also Human Rights First, *Human Rights First Tracker of Reported Attacks During the Biden Administration Against Asylum Seekers and Migrants Who Are Stranded in and/or Expelled to Mexico* (June 17, 2021), <https://www.humanrightsfirst.org/sites/default/files/AttacksonAsylumSeekersStrandedinMexicoDuringBidenAdministration.6.17.21.pdf> (finding more than 1,500 violent attacks committed against individuals in MPP from January through June 2021); Human Rights First, *Forced Returns to Mexico: At Least 1,544 Publicly Reported Cases of Murder, Rape, Torture, Kidnapping & Other Violent Assaults* (as of February 16, 2021), <https://www.humanrightsfirst.org/campaign/remain-mexico>. See also publicly reported cases of severe violence committed against asylum seekers in MPP from the initiation of the program in January 2019 through February 16, 2021, available at: <https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks2.19.2021.pdf>.

In December 2021, under the renewed MPP, 273<sup>24</sup> individuals were enrolled in MPP. Most of the people returned to Mexico from El Paso, Texas under the reinstated MPP, had no access to an attorney and feared staying in Mexico because they knew they would face the same type of persecution that they initially sought refuge from, in Mexico.<sup>25</sup> Of those screened for fear of returning to Mexico (as opposed to fear of return to their home country), USCIS only disenrolled 28 out of 242 asylum seekers from MPP, allowing them to seek protection from within the United States.<sup>26</sup> Alongside the return to enrollments in MPP in January 2022, the United States continues to expel migrants without any opportunity at all to assert an asylum claim at even higher rates under Title 42.<sup>27</sup>

### **III. President Biden’s Continued Use of Temporary Pandemic-Related Public Health Measures to Expel Migrants and Asylum Seekers under Title 42**

While President Biden’s administration publicly denounced MPP in June 2021 for its cruel and violent impact on migrants and asylum seekers—prior to reimplementing and expanding the program in December 2021—the administration’s recognition<sup>28</sup> of the inhumanity of former President Trump’s emergency order led to no change in policy; to the contrary, there has been a proliferation of migrant expulsions at the southern border through the use of Title 42.<sup>29</sup> The Biden Administration continues to defend the Title 42 policy in federal court, despite the absence of any legitimate public health rationale for the measure.<sup>30</sup>

The Title 42 expulsion policy does not provide migrants with an opportunity to contest the expulsion decision on persecution or humanitarian grounds nor does it require CBP officials to

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<sup>24</sup> U.S. Dep’t of Homeland Security Office of Immigration Status, Migrant Protection Protocols Cohort Report (February 2022), [https://www.dhs.gov/sites/default/files/2022-02/22\\_0215\\_plcy\\_mpp\\_cohort\\_report\\_feb2022.pdf](https://www.dhs.gov/sites/default/files/2022-02/22_0215_plcy_mpp_cohort_report_feb2022.pdf).

<sup>25</sup> Kate Morrissey, *U.S. Failure to Follow Remain in Mexico Rules Show Program Hasn’t Changed as Promised*, San Diego Union-Tribune (Jan. 8, 2022), <https://www.sandiegouniontribune.com/news/immigration/story/2022-01-08/remain-in-mexico-returns-to-tijuana> (documenting the experiences of Colombian asylum seekers who fled from arbitrary killings, detention and torture, and returned to Mexico under MPP in December 2021: “We’re really afraid to be in Mexico. There’s no difference between Mexico and Colombia.”).

<sup>26</sup> U.S. Dep’t of Homeland Security Office of Immigration Status, Migrant Protection Protocols (MPP) Report on December Cohort (January 2022), [https://www.dhs.gov/sites/default/files/2022-01/migrant\\_protection\\_protocols\\_mpp\\_report\\_on\\_december\\_cohort.pdf](https://www.dhs.gov/sites/default/files/2022-01/migrant_protection_protocols_mpp_report_on_december_cohort.pdf).

<sup>27</sup> Compare [400 MPP enrollments](#) to nearly [80,000 Title 42 expulsions](#) in January 2022.

<sup>28</sup> *Mayorkas: Title 42 'is not an immigration policy that we in this administration would embrace'*, Interview with Yahoo News (Oct. 12, 2021) (“U.S. Secretary of Homeland Security Alejandro Mayorkas told Yahoo News Chief Investigative Correspondent Michael Isikoff that “it’s a heartbreaking thing to see” asylum seekers continuing to be turned away from the U.S.-Mexico border under the Trump-era Title 42 authority”).

<sup>29</sup> Yael Shacher, *MPP as a Microcosm: What’s Wrong with Asylum at the Border and How to Fix It*, *Refugees International* (Feb. 11, 2022), <https://www.refugeesinternational.org/reports/2022/2/10/mpp-as-a-microcosm-whats-wrong-with-asylum-at-the-border-and-how-to-fix-it>.

<sup>30</sup> Camilo Montoya-Galvez, *Biden Administration Defends Trump-era Migrant Expulsions, Citing “Serious” COVID-19 Risk*, CBS News (Jan. 19, 2022 2:58 PM), <https://www.cbsnews.com/news/immigration-title-42-biden-trump-migrant-expulsions/>.

screen asylum seekers for risk of torture.<sup>31</sup> While unaccompanied minors are exempted under Title 42 expulsions, the policy perpetuates family separation by forcing families to make the difficult choice of sending their children alone to cross the U.S. border or risking death by remaining in Mexico under precarious conditions.<sup>32,33</sup>

Demonstrating the extent to which Title 42 expulsions have ended access to asylum at the U.S. border, by April 2020, one month after implementing Title 42, the United States experienced a 30-fold decrease in asylum processing. Since President Biden took office in January 2021, expulsions under Title 42 at the southern border have reached record highs.<sup>34</sup> Almost 80,000 asylum seekers were expelled under Title 42 in January 2022 alone.

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<sup>31</sup> Yael Shacher, *MPP as a Microcosm: What's Wrong with Asylum at the Border and How to Fix It*, Refugees International (Feb. 11, 2022), <https://www.refugeesinternational.org/reports/2022/2/10/mpp-as-a-microcosm-whats-wrong-with-asylum-at-the-border-and-how-to-fix-it>; Adolfo Flores, *Immigrants Desperate for Medical Aid Aren't Being Let in on Humanitarian Grounds*, BuzzFeed News (Jan. 21, 2022), <https://www.buzzfeednews.com/article/adolfoflores/immigrants-humanitarian-parole>; American Immigration Council, *The Migrant Protection Protocols* (Jan. 7, 2022), [https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols#:~:text=Under%20MPP%2C%20CBP%20officers%20did,be%20taken%20out%20of%20MPP](https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols#:~:text=Under%20MPP%2C%20CBP%20officers%20did,be%20taken%20out%20of%20MPP;); Rene Kladzyk, *Vulnerable migrants will no longer be exempt from rapid expulsion at the border*, El Paso Matters (Sept. 7, 2021) <https://elpasomatters.org/2021/09/07/vulnerable-migrants-will-no-longer-be-exempt-from-rapid-expulsion-at-the-border/>.

<sup>32</sup> Nicole Sganga & Camilo Montoya-Galvez, *Over 2,100 children crossed border alone after being expelled with families to Mexico*, CBS News (May 7, 2021), <https://www.cbsnews.com/news/migrant-children-left-families-asylum-border/>; Physicians for Human Rights, *U.S. Border Expulsion Policy Results in Family Separations, PTSD, Human Rights Violations*, Press Release (July 28, 2021), <https://phr.org/news/u-s-border-expulsion-policy-results-in-family-separations-ptsd-human-rights-violations-phr-report/> (attaching full report).

<sup>33</sup> The Biden Administration piloted a program in the spring and summer of 2021 permitting NGOs to pre-register unaccompanied minors seeking asylum for entry to the United States. However, the southern ports of entry were closed to asylum seeker—effectively stranding thousands of unaccompanied minors in Mexico. See Yael Shacher, *MPP as a Microcosm: What's Wrong with Asylum at the Border and How to Fix It*, Refugees International (Feb. 11, 2022), at 3-4, <https://www.refugeesinternational.org/reports/2022/2/10/mpp-as-a-microcosm-whats-wrong-with-asylum-at-the-border-and-how-to-fix-it>; Women's Refugee Comm'n, *Restoring Access to Asylum: Safely Reopening Ports of Entry at the US-Mexico Border* (Oct. 19, 2021), at 2-3, <https://www.womensrefugeecommission.org/wp-content/uploads/2021/10/Restoring-Access-Asylum-Safely-Reopening-Ports-of-Entry-US-Mexico-Border.pdf>.

<sup>34</sup> Azadeh Erfani and Nefertari Elshiekh, *The Biden Administration Is Continuing Trump's Unlawful 'Expulsions' Of Asylum Seekers In The Name Of Public Health*, Nat'l Imm. Just. Ctr. (March 12, 2021), <https://immigrantjustice.org/staff/blog/biden-administration-continuing-trumps-unlawful-expulsions-asylum-seekers-name-public> (noting that expulsions under Biden's administration have been steadily increasing since January 2021, breaking the record with over 70, 000 expulsions).



Over the objection of public health experts<sup>35</sup> and the United Nations High Commissioner for Refugees,<sup>36</sup> and legal experts,<sup>37</sup> and in opposition to a preliminary federal district court decision<sup>38</sup> finding that Title 42 likely violates U.S. refugee law, President Biden has institutionalized this inhumane<sup>39</sup> and racist policy by exponentially increasing the expulsion rates of asylum seekers and migrants.<sup>40</sup> The U.S. carried out over one million expulsions at the southwest border in fiscal year 2021 pursuant to Title 42; and between October 2021 and January 2022, the government added over 300,000 expulsions migrants, including families under Title 42.<sup>41</sup>

#### IV. Impact of MPP and Title 42 Expulsions on Particularly Vulnerable Populations

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<sup>35</sup> See Letter to CDC Director Walensky, HHS Secretary Becerra, and DHS Secretary Mayorkas on the August 2021 Title 42 Order (Sept. 1, 2021), <https://www.publichealth.columbia.edu/node/76271>. See also Physicians for Human Rights, *1,300+ Medical Professionals from 49 U.S. States and Territories Call on CDC to End “Junk Science” Border Expulsion Policy*, Press Release (Oct. 28, 2021), <https://phr.org/our-work/resources/u-s-medical-professionals-demand-cdc-end-title-42/>; Epidemiologists and Public Health Experts Reiterate Urgent Call to End Title 42 (Jan. 14, 2022), <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/epidemiologists-and-public-health-experts-reiterate-urgent-call-end-title-42>.

<sup>36</sup> UNHCR, UN High Commissioner for Refugees Filippo Grandi on the Need to End US COVID-19 Asylum Restrictions, Press Release (May 20, 2021), <https://www.unhcr.org/news/press/2021/5/60a687764/statement-attributable-un-high-commissioner-refugees-filippo-grandi-need.html>.

<sup>37</sup> American Bar Association, Resolution 609 (Feb. 2022), [https://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2022/house-of-delegates-resolutions/609/](https://www.americanbar.org/news/reporter_resources/midyear-meeting-2022/house-of-delegates-resolutions/609/).

<sup>38</sup> *Huisha-Huisha v. Mayorkas*, 1:21-cv-100 (D.D.C.), [https://www.acludc.org/sites/default/files/field\\_documents/huisha\\_ddc\\_decision\\_granting\\_class\\_cert\\_injunction\\_9.16.21.pdf](https://www.acludc.org/sites/default/files/field_documents/huisha_ddc_decision_granting_class_cert_injunction_9.16.21.pdf).

<sup>39</sup> Alex Thompson & Alexander Ward, *Top State Adviser Leaves Post, Rips Biden’s Use of Trump-era Title 42*, Politico (Oct. 4, 2021 2:23 PM), <https://www.politico.com/news/2021/10/04/top-state-adviser-leaves-post-title-42-515029> (reporting on Harold Koh’s, a senior State Department official, decision to leave his role in the Biden administration over the illegal and inhuman enforcement of Title 42).

<sup>40</sup> See Camilo Montoya-Galvez, *Biden Administration Defends Trump-era Migrant Expulsions, Citing “Serious” COVID-19 Risk*, CBS News (Jan. 19, 2022 2:58 PM), <https://www.cbsnews.com/news/immigration-title-42-biden-trump-migrant-expulsions/> (reporting “[d]uring President Biden’s first seven months in office, U.S. border officials carried out 704,000 expulsions, 92,000 of which led to parents and children traveling as families being turned back...[while t]he Trump administration carried out 400,000 expulsions.”); Int’l Rescue Comm., *Protection Denied: Humanitarian Consequences at the U.S. Southern Border One Year Into the Biden Administration*, Report (2022) at 7, <https://www.rescue.org/sites/default/files/document/6476/fy22usmxborderbidenreport.pdf> (“Expulsions more than doubled in the first 10 months of the Biden administration in comparison to the 10-month period of expulsions under the Trump administration.”). See also U.S. Customs and Border Protection, Title 42 Expulsions by FY 2021, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>41</sup> U.S. Customs and Border Protection, Title 42 Expulsions by FY 2021, <https://www.expellcbp.gov/newsroom/stats/southwest-land-border-encounters>. It is important to note that the United States is no longer simply pushing people back into Mexico under Title 42, as had been the initial practice, but is now carrying out deportation flights to Haiti, Brazil, Guatemala, Honduras, El Salvador, and has recently started expelling Venezuelans to Colombia. See, Letter to the Biden Administration (Feb. 2, 2022), <https://cgrs.uchastings.edu/sites/default/files/LetterTitle42ExpulsionsVenezuelansColombia.pdf>

The expansion of MPP to all of the Western Hemisphere, combined with continued enforcement of Title 42, has had a devastating impact on particularly vulnerable populations including Black migrants,<sup>42</sup> members of indigenous communities, women, and LGBTQI+ individuals.<sup>43</sup> The disparate and discriminatory treatment of Haitian migrants, in particular, has been met with resounding outcry, yet it persists. In September 2021, the Biden Administration surrounded an encampment of Haitian and other asylum seekers at Del Rio, Texas, blockading food, water, and medical and legal assistance.<sup>44</sup> Subsequently, during a mass expulsion enforcement action, border officers were captured on film grabbing and pushing at Black asylum seekers from charging horses and wielding reins like whips.<sup>45</sup> Since September 2021, more than 17,000 Haitians have been expelled without a required refoulement assessment, denied even the opportunity to enter MPP.<sup>46</sup> In February 2022, U.S. Congress members decried the “disparate and often inhumane treatment of Black migrants by the immigration enforcement system,” and urged a halt to Haiti expulsions.<sup>47</sup> Nonetheless, the U.S. continues to expel Haitians who were

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<sup>42</sup> Aaron Morrison et al., *Haitians See History of Racist Policies in Migrant Treatment*, AP News (Sept. 24, 2021) <https://apnews.com/article/immigration-race-and-ethnicity-mexico-haiti-asylum-seekers-a81ac1148118db38824d2d8f62139b87> (discussing the disparate racial impact U.S. immigration policies have on Haitian and other Black migrants); Natalie Alcoba, *African Migrants ‘forgotten’ on Dangerous Treks to US: Report*, Al Jazeera (Oct. 7, 2021) <https://www.aljazeera.com/news/2021/10/7/african-migrants-forgotten-on-dangerous-treks-to-us-report> (noting that racist treatment and human rights abuses against Black asylum seekers from Africa and the Caribbean occur with impunity in Mexico); Human Rights Watch, *“How Can You Throw Us Back?”*

*Asylum Seekers Abused in the US and Deported to Harm in Cameroon*, (Feb. 10, 2022)

<https://www.hrw.org/report/2022/02/10/how-can-you-throw-us-back/asylum-seekers-abused-us-and-deported-harm-cameroon> (reporting on the discriminatory treatment Cameroonians experience in U.S. immigration detentions before deported to Cameroon where they are exposed to “serious human rights violations including rape, torture and other physical abuse, arbitrary arrest and detention, inhuman and degrading treatment in detention, extortion, and threats.”).

<sup>43</sup> Albinson Linares & Noticias Telemundo, *‘We are invisible’: Discrimination and Risks Multiply for Indigenous LGBTQ in Mexico*, NBC News (June 30, 2021), <https://www.nbcnews.com/news/latino/-are-invisible-discrimination-risks-abound-indigenous-lgbtq-mexico-rcna982> (reporting on compounding layers of discrimination and violence women and LGBTQ communities face in Mexico); Katherine Fobear, *Addressing Central and South American LGBTQ Asylum Seekers*, Geo. J. Int’l L. (Nov. 16, 2021), <https://gija.georgetown.edu/2021/11/16/addressing-central-and-south-american-lgbtq-asylum-seekers/> (discussing unprecedented levels of persecution asylum seekers from Central and South America face in Mexico due to sexual orientation and gender identity, and are often subjected to violent assaults including rape, extortion and kidnapping).

<sup>44</sup> James Dobbins et al., *Thousands of Migrants Huddle in Squalid Conditions Under Texas Bridge*, N.Y. Times (Sept. 16, 2021) <https://www.nytimes.com/2021/09/16/us/texas-migrants-del-rio.html>.

<sup>45</sup> Eileen Sullivan & Zolan Kanno-Youngs, *Images of Border Patrol’s Treatment of Haitian Migrants Prompt Outrage*, N.Y. Times (Oct. 19, 2021), <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.

<sup>46</sup> Adam Isacson, *A Tragic Milestone: 20,000th Migrant Deported to Haiti Since Biden Inauguration*, WOLA (Feb. 17, 2022), <https://www.wola.org/analysis/a-tragic-milestone-20000th-migrant-deported-to-haiti-since-biden-inauguration/>.

<sup>47</sup> Eileen Sullivan, *Congressional Democrats Ask Biden to Review Treatment of Black Migrants*, N.Y. Times, (Feb. 16, 2022), <https://www.nytimes.com/2022/02/16/us/politics/biden-immigration-haiti.html> (citing Letter to President Joseph R. Biden). See also, Chu, Pressley, Velazquez, *Democrats Demand Answers from CDC on Use of Title 42 Expulsions for Asylum Seekers* (Feb. 14, 2022), <https://chu.house.gov/media-center/press-releases/chu-pressley-vel-zquez-democrats-demand-answers-cdc-use-title-42> (letter signed by 36 House Democrats).

denied their right to seek asylum and forcibly rendered to perilous living conditions due to unprecedented levels of violence in Haiti.<sup>48</sup>

## V. Conclusion

Appeals to the Inter-American Commission on Human Rights requesting precautionary measures against the United States and Mexico for individuals subject to the Title 42 expulsion policy and MPP have been unsuccessful.<sup>49</sup> While the Biden Administration litigates the legality of Title 42 and its termination of MPP in U.S. federal courts, there is no accountability for the irreparable harm asylum seekers experience on a daily basis when expelled to Mexico or alternative countries where they face persecution and harm.

We reiterate our gratitude for your attention to pushback policies and other border enforcement measures that directly contravene States' human rights obligations vis-a-vis migrants and their family members. We urge the Rapporteur to specifically condemn the United States' continued endorsement of cruel, inhumane, and unlawful border practices—all of which violate the principle of nonrefoulement and deny some of the world's most vulnerable populations their right to seek asylum and security.

Respectfully submitted,

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<sup>48</sup> See, e.g., U.S. Dep't of State Travel Advisory as of August 23, 2021, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html> (posting a Level 4 “Do Not Travel” warning for Haiti due to widespread kidnappings, violent attacks and assaults against civilians, and the lack of law enforcement to respond effectively to the widespread civil and political unrest); U.S. Dep't of State, 2020 Country Reports on Human Rights Practices: Haiti (March 30, 2021) <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/haiti/> (emphasizing widespread human rights violations in Haiti including “reports of unlawful and arbitrary killings by gangs allegedly supported and protected by unnamed officials; excessive use of force by police; . . . physical attacks on journalists; [and] . . . lack of investigation of and accountability for violence against women.”). See also Amnesty Int'l, Stop US Deportations and Abuse Against Haitians on the Move: An Urgent Step Towards Creating Just Policies For Haitians, AMR 36/5101/2021 (Dec. 15, 2021) <https://www.amnesty.org/en/wp-content/uploads/2021/12/AMR3651012021ENGLISH.pdf>; Nicole Narea, *Biden's Immigration Policies Have Left Haitians Stranded in Mexico*, Vox News (Jan. 20, 2022) <https://www.vox.com/policy-and-politics/22881819/biden-haiti-immigration-mexico-asylum>.

<sup>49</sup> See accompanying Request for Precautionary Measures against the U.S. for Title 42 Expulsions (Oct. 7, 2021); Request for Precautionary Measures Against Mexico for the Migrant Protection Protocol “MPP” Program (June 16, 2020)]

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*\*This submission does not purport to represent the institutional views, if any, of New York University.*

Al Otro Lado

Border Butterflies Coalition (binational project that seeks to accompany and provide legal support for LGBTQ migrants in the US and Mexico anchored by Transgender Law Center, Familia: Trans Queer Liberation Movement, National Immigrant Justice Center, Arcoiris and other US and Mexican organizations)

Center for Gender & Refugee Studies  
UC Hastings College of the Law

Center for Justice and International Law (CEJIL)

Florence Immigrant and Refugee Rights Project

Oxfam America

Robert F. Kennedy Human Rights