

Living in Limbo

**How legal representation affects asylum
adjudication for those under the Migrant
Protection Protocols.**

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**A Senior Honors Thesis Submitted to the Department of Political
Science at the University of California, San Diego**

March 30, 2020

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Acknowledgments

First and foremost, I would like to thank my advisor, Professor Tom K. Wong. I would like to express my deepest gratitude to you for guiding me through the arduous process of writing this thesis. Without your help, I would not have been able to formulate my argument, collect and analyze data, and finish this project. Thank you for the guidance, support, and patience you have offered me throughout the past six months.

I would also like to thank Professor Daniel Butler, Professor Kaare Strøm, and graduate student Michael Seese for their instruction over the past two quarters. Their advice and understanding while teaching the Honors Thesis Seminar was invaluable.

I also extend my gratitude to all the people who took the time to provide me with feedback and helped me develop my thesis- Professor Wong, Val, and Anna. Thank you for gifting me your time and for helping to proofread and edit my drafts. I truly could not have completed this thesis without you.

Finally, I would like to thank my family for all the support they have offered me throughout this project. Thank you for always believing in me even when I lost faith.

Introduction

The Department of Homeland Security (DHS) announced its most significant change to U.S. asylum policy yet, the Migrant Protection Protocols (MPP) on December 20, 2018. Per the Department of Homeland Security, "*MPP is a 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.*"¹ DHS began implementing MPP at the San Ysidro port of entry on January 24, 2019, and as of January 2020, the policy has been implemented across the country's entire southern border.² The policy, which is also referred to as "Remain in Mexico," applied originally to asylum seekers from the Spanish speaking countries of Guatemala, Honduras, and El Salvador but has since expanded to include all asylum-seeking families who request asylum from the U.S.-Mexico border.

The Trump administration's "Remain in Mexico" policy has ushered a new era of U.S. immigration policy that has redefined the systems of international refugee protection and the right to seek asylum that was established over 50 years ago in the Refugee Act (1980). The Refugee Act, which provided the first statutory basis for asylum in the United States, innovated human rights norms by converting the approach to refugee resettlement to a more permanent and standardized system for identifying, vetting, and resettling refugees.³ The act, consistent with Article 1 of the United Nations Convention Relating to the Status of Refugees (1951), adopted the

¹ Department of Homeland Security, Migrant Protection Protocols.

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

² American Immigration Council, "Policies Affecting Asylum Seekers at the Border"

<https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border>

³ USCIS, Refugee Timeline, <https://www.uscis.gov/history-and-genealogy/our-history/refugee-timeline>

convention's definition of refugee and prohibited the removal of a person to any country where "the person's life or freedom would be threatened in that country because of the person's race, religion, nationality, membership in a particular social group, or political opinion."⁴

MPP policy relies on a rarely used provision in immigration law, which allows the U.S. to return persons who enter from a "contiguous territory" to be returned to that contiguous territory until their claim for legal status is decided.⁵ Previous to this administration, this provision had not been used against those seeking asylum in the U.S. Under MPP, asylum seekers arriving at the border are processed by Customs and Border Protection (CBP) officials and given a "Notice to Appear" (NTA) for their court hearing and are thus returned to Mexico for the duration of their asylum proceedings. The decision to place someone into MPP is "a matter to be decided on upon the discretion determined by DHS officials on a case-by-case basis."⁶

As of now, there is no settled upon bi-country agreement between Mexico and the United States, which has resulted in high levels of uncertainty for those who fall under the limitations of the "Remain in Mexico" policy. Several questions have been raised about whether the president has the authority to apply MPP to asylum seekers arriving at the southern border and whether those asylum seekers will be returned to a place where their lives and freedom are threatened. Similarly, question have been raised as to whether those asylum seekers affected by MPP can exercise their right to apply for humanitarian relief in the U.S.⁷ In many cases, individuals seeking asylum are

⁴ The United Nations High Commissioner for Refugees. "The 1951 Refugee Convention" <https://www.unhcr.org/en-us/1951-refugee-convention.html>

⁵ Dara Lind "'Remain in Mexico': Trump's Quietly Expanding Crackdown on Asylum Seekers, Explained." <https://www.vox.com/2019/3/5/18244995/migrant-protection-protocols-border-asylum-trump-mexico>

⁶ Krista Kshatriya and S. Deborah Kang. 2019. Walls to Protection: The Grim Reality of Trump's "Remain in Mexico" Policy. U.S. Immigration Policy Center (USIPC) at UC San Diego. <https://usipc.ucsd.edu/publications/usipc-walls-to-protection-final.pdf>

⁷ Ibid. Kshatriya et. all (pg. 6)

processed at one border port of entry and, due to capacity issues, are sent to a different port of entry for removal.⁸ Recently, a broad coalition of public figures, scholars, philanthropic foundations, and courts have begun to push for an end to Donald Trump's stringent immigration policies. However, despite the national debate surrounding these new immigration policies, the discussion focuses little on the amount of MPP asylum seekers who currently have attorneys and the efficacy of the representation they receive.

Studies focusing on MPP have been primarily centered around the treatment faced in immigration detention and the safety concerns surrounding sending asylum seekers to await their trials in Mexico. In "Seeking Asylum: Part 2", the U.S. Immigration and Policy Center (USIPC) at UCSD 56.5% of their respondents who had been threatened with physical violence reported that those threats turned into actual experiences of physical violence, including being beaten, robbed, and extorted.⁹ Similarly, USIPC found that approximately six out of every ten asylum seekers that they interviewed at the U.S.-Mexico border were placed into MPP without further investigation into the fears that they expressed about being returned to Mexico despite the screening process set up by the Illegal Immigration Reform and Immigrant Responsibility Act (IRIRA).¹⁰ The American Immigration Lawyers Association (ALIA) also highlight the Dilley Pro Bono Project, in their letter to the administration, which found that 90.3% of the MPP asylum seekers surveyed did not feel

⁸ Ibid. Kshatriya et. all (pg. 9)

⁹ Tom K. Wong, 2019. *Seeking Asylum: Part 2*. La Jolla, CA: U.S. Immigration Policy Center (USIPC) at UC San Diego. Available

<https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>

¹⁰ Ibid.

safe in Mexico, and 46% of the surveyed respondents cited having experienced some type of harm while in Mexico.¹¹

As the academic literature on the effects of MPP is only beginning to develop, this paper seeks to address whether the lack of access to attorneys is negatively affecting MPP asylum seekers and their success in receiving a bar to relief. I have created a data set aggregating the current proceeding for asylum seekers affected by MPP policy, separating them by nationality, legal representation, and proceeding outcomes. I did this by using immigration data collected by Syracuse University; this data includes Freedom of Information Act (FOIA) information on immigration court backlogs, representation within immigration court by state and county, as well as details on MPP deportation proceedings- including hearing locations, attendance, legal representation, nationality, month and year of NTA, case outcome, and current status. I will begin with a brief overview of the "Remain in Mexico" policy and its radicalization of the asylum process, following with an overview of the significance that legal representation has on immigration court cases. I will then go over the hypotheses forwarded by this analysis, and explain the data and methodology behind the analysis.

¹¹ American Immigration Lawyers Association “AILA Sends Letter to DHS Acting Secretary Detailing MPP's Barriers to Counsel.”, www.aila.org/infonet/aila-sends-letter-to-dhs-acting-secretary-mpp

What is MPP?

Background on MPP

The Migrant Protection Protocols (MPP) are a U.S. Government action where foreign individuals entering or seeking admission to the U.S. through Mexico may be returned to Mexico and wait outside of the U.S. for the duration of their immigration proceedings. According to the Department of Homeland Security, MPP applies to migrants arriving in the U.S. on land from Mexico who are not believed to be "clearly admissible" and are subsequently placed in removal proceedings under the Immigration and Nationality Act, Section 240.¹² MPP also applies to asylum seekers who have claimed fear of returning to Mexico at some point during apprehension, processing, or such proceedings, but who have been assessed to "not be more than likely" to face persecution or torture in Mexico.¹³ Exceptions to these rules include Mexican citizens, vulnerable groups such as unaccompanied children and individuals with known physical or mental health issues, and individuals in expedited removal proceedings- with all other possible exceptions being reviewed on a case-by-case basis. However, in their study of asylum-seeking individuals who have been returned to Mexico under the Migrant Protection Protocols (MPP), USIPC reported that DHS had placed individuals into MPP who should have fit these exemptions.¹⁴

Under MPP, asylum seekers are given a "Notice to Appear" for their immigration court hearing and are returned to Mexico until their hearing date.¹⁵ These individuals are only allowed

¹² Department of Homeland Security, Migrant Protection Protocols.
<https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

¹³ Ibid.

¹⁴ Tom K. Wong, 2019. *Seeking Asylum: Part 2*. La Jolla, CA: U.S. Immigration Policy Center (USIPC) at UC San Diego. Available

<https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>

¹⁵ Ibid.

to return to the U.S. to attend their immigration court hearings. Individuals in removal proceedings can use the counsel of their choosing with acting immigration enforcement officials claiming to provide asylum seekers with a list of legal services providers in the area. However, individuals and families who are forced to remain in Mexico have reported little to no access to legal services in the United States.¹⁶

The Credible Fear Process & How MPP has changed U.S. Asylum Policy

Following the development of the Department of Homeland Security (DHS) after 9/11, the United States Citizenship and Immigration Services (USCIS) became the agency to oversee refugee and asylum affairs. Since its development, USCIS has set up an Asylum Division to focus on three main tasks: 1. Administering asylum applications by individuals who are not in removal proceedings by filing Form I-589 with USCIS; 2. Determining whether individuals subject to expedited removal who indicated an intention to apply for asylum or a fear of return to their home country have a "credible fear" of persecution or torture; 3. Evaluate whether an individual ordered removed by an immigration judge and who expresses a fear of return to the country to which he or she has been ordered removed has a "reasonable fear" of persecution or torture.¹⁷ Individuals who have been found to have a "credible fear" of persecution or torture in the expedited removal process are placed in formal removal proceedings and may apply for asylum or withholding of removal as a defense before an immigration judge.¹⁸ Individuals found to have a "reasonable fear" of persecution or torture are referred to an immigration judge for withholding-only proceedings in

¹⁶ Human Rights First, "Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process" (pg. 11-16)

<https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf>

¹⁷ Brief of Amicus Curiae. Appeal from the United States Court for the Northern District of California. Hon. Richard Seeborg, Case NO. 3:19-CV-00807-RS

¹⁸ INA § 208; see also 8 C.F.R. § 208.24.

which they may seek withholding of removal under INA section 241(b)(3) or withholding or deferral of removal by filing Form I-589.¹⁹

In order to achieve the ultimate goal of MPP, the Trump Administration has begun mislabeling the screening process set up by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) as a "loophole" that is being used by asylum seekers to come into the United States.²⁰ According to many humanitarian organizations, including Human Rights First, the rhetoric being used to legitimize changes to U.S. immigration laws would "block families, individuals, and children who have fled persecution from applying for asylum in the United States" (1). The IIRIRA, passed by Congress in 1996, created an *expedited removal process* in which immigration officers can order the deportation of individuals charged with inadmissibility under the Immigration and Nationality Act (INA).²¹ One of the main components of the expedited removal process was the *credible fear screening* process, which was meant to ensure that immigration officers did not deport asylum seekers who sought asylum in "good faith" and that they had an opportunity to apply for asylum and have their case assessed by an immigration judge.²² However, as research by the U.S. Immigration Policy Center (USIPC) shows, asylum seekers who have expressed fears of being returned to Mexico have not always been given secondary interviews by asylum officers.²³ Similarly, Human Rights First found that in many

¹⁹ C.F.R. §§ 238.1, 241.8, 208.31.

²⁰ Human Rights First. "Credible Fear: A Screening Mechanism in Expedited Removal." Issue Brief February 2018

https://www.humanrightsfirst.org/sites/default/files/Credible_Fear_Feb_2018.pdf

²¹ Hillel R Smith. *Expedited Removal of Aliens: Legal Framework*. Congressional Research Service, 8 Oct. 2019, <https://fas.org/sgp/crs/homsec/R45314.pdf>

²² Ibid. Smith (pg. 16)

²³ Tom K. Wong, 2019. *Seeking Asylum: Part 2*. La Jolla, CA: U.S. Immigration Policy Center (USIPC) at UC San Diego. Available

<https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>

cases, the Notice to Appear contained many inconsistencies, including the absence of required information regarding grounds for inadmissibility or removability or of facts that failed to support listed grounds for inadmissibility.²⁴

As mentioned before, the *credible fear process* was created to prevent those who may qualify for asylum from being wrongfully removed. When a person is subjected to expedited removal, this indicates an intention to apply for asylum and express a fear of persecution or torture—the result is that the immigration officer must refer him or her for a "credible fear interview" by a trained asylum officer within U.S. Citizenship and Immigration Services (USCIS).²⁵ The asylum officer must then determine whether a "significant possibility" exists, "taking into account the credibility of the statements made by the person in support of the persons claim and such other facts as are known to the officer."²⁶ Two possible results occur: (1) a positive outcome, where the person seeking asylum will be referred to regular removal proceedings and processed under section 240 of the INA and can present an asylum claim to an immigration judge; (2) a negative outcome, where the asylum seeker is found not to meet the credible fear screening standard, and he or she can be deported under expedited removal without being allowed to apply for asylum and present their case before an immigration judge.²⁷

In their report of Trump's "Remain in Mexico" policy, the U.S. Immigration and Policy Center (USIPC) found that MPP procedures differ in three significant ways from the expedited

²⁴ Krista Kshatriya and S. Deborah Kang. 2019. Walls to Protection: The Grim Reality of Trump's "Remain in Mexico" Policy. U.S. Immigration Policy Center (USIPC) at UC San Diego. <https://usipc.ucsd.edu/publications/usipc-walls-to-protection-final.pdf>

²⁵ Human Rights First. "Credible Fear: A Screening Mechanism in Expedited Removal." Issue Brief February 2018

https://www.humanrightsfirst.org/sites/default/files/Credible_Fear_Feb_2018.pdf

²⁶ Ibid.

²⁷ Ibid.

removal procedures DHS officials apply to asylum seekers at the border.²⁸ First, MPP places the burden on asylum seekers to express a fear of return to Mexico. This differs from expedited removal proceedings, which sets the burden on DHS officers to ask whether applicants fear to return to their home country. Second, under MPP, applicants must meet heightened standards of demonstrating reasonable fear of persecution, defined as "more likely than not" that the individual will be persecuted or tortured if returned to Mexico.²⁹ In expedited removal proceedings, an individual need only to demonstrate a credible fear of persecution if returned to their home country. Under MPP, asylum seekers must express even greater fears of harm in Mexico than in their home country in order to stay in the U.S. and pursue their asylum claims. Lastly, and arguably most consequential, is that the Department of Homeland Security does not allow attorneys to be present when individuals are being screened for fear of persecution in Mexico.³⁰

Legal Critiques on MPP

Two main critiques currently stand against MPP; the first is that the president does not have the authority under the Immigration and Nationality Act (INA) to return asylum seekers to Mexico. Numerous amicus curiae briefs have been filed within the court in support of prohibiting DHS from following through with MPP pending the ruling of its legality. These amicus briefs were written by human rights organizations such as Human Rights First and other public officials such as Local 1924- the labor union of federal asylum officers who implement the reasonable fear

²⁸ Krista Kshatriya and S. Deborah Kang. 2019. Walls to Protection: The Grim Reality of Trump's "Remain in Mexico" Policy. U.S. Immigration Policy Center (USIPC) at UC San Diego. <https://usipc.ucsd.edu/publications/usipc-walls-to-protection-final.pdf>

²⁹ Ibid. Kshatriya et al. (pg. 4)

³⁰ American Immigration Lawyers Association. Policy Brief: "Remain in Mexico" Plan Restricts Due Process, Puts Asylum Seekers Lives at Risk. Feb. 2019. <https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-remain-in-mexico-plan-chaos>

screenings under MPP.³¹ In their brief, Local 1924 urged the court to uphold preliminary injunction on MPP because MPP was "fundamentally contrary to the moral fabric of our Nation and our international, domestic legal obligations."³² The group also asserted that MPP does not provide adequate safeguards against returning those who face persecution in Mexico because those who are placed in MPP are not asked if they fear harm if sent to Mexico to await their trials. Similarly, Local 1924 argues that those who do express harm are subjected to unreasonably heightened standards of "more likely than not," which is traditionally reserved for full-scale removal proceedings administered by an immigration judge, not summary removal processes where asylum officers have applied lower standards.³³

The second legal issue that arises because of the "Remain in Mexico" policy is that returning asylum seekers to Mexico puts their physical safety and well-being at risk. Instead of allowing asylum seekers to remain in the United States while their asylum claims are decided- as required by the U.S. Refugee Act (1980)- through MPP, the Trump administration leaves asylum seekers and migrants extremely vulnerable to rape, kidnapping, torture, and other violent assaults.³⁴ In their December 2019 report, Human Rights First cites vulnerable asylum seekers and migrants to include pregnant women, children, and people with disabilities.³⁵ These individuals are at risk of being kidnapped, raped, and assaulted in "shelters, taxis, and buses, on the streets, on

³¹ Brief of Amicus Curiae Human Rights First in Support of Plaintiffs-Appellees, Innovation Law Lab, et al. v. McAleenan, No. 19-15716 (9th Cir. April 12, 2019), <https://assets.documentcloud.org/documents/6172520/Local-1924-Amicus-Brief.pdf>

³² Ibid (24).

³³ Ibid (18)

³⁴ Human Rights First. "Human Rights Fiasco: The Trump Administration's Dangerous Asylum Returns Continue" <https://www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf>

³⁵ Ibid. (4)

their way to U.S. immigration court, and even while seeking help from police and migration officers in Mexico.”³⁶

Impacts of MPP on Asylum Seekers

Numerous organizations have highlighted concerns surrounding the conditions faced in Mexico and the safety concerns surrounding sending asylum seekers to await their trials in Mexico. In their "Seeking Asylum: Part 2" report, USIPC found that the length of time asylum seekers spent waiting in Mexico is statistically significantly related to being threatened with physical violence and related to experiencing homelessness. USIPC also found that 56.5% of their respondents who had been threatened with physical violence reported that those threats turned into actual experiences of physical violence, including being beaten, robbed, and extorted.³⁷ Additionally, USIPC found that 34.5% of their respondents had experienced homelessness in Mexico while waiting for their immigration court date.³⁸ MPP also raised concerns over the exposure of children in seeking asylum to serious risks of assault, mistreatment, and trauma while waiting for their cases to be heard. In their report, USIPC found that approximately 31.9% of their respondents were seeking asylum with children under the age of 18 and had experienced homelessness while in Mexico.³⁹ USIPC was also able to find that trends in experiencing homelessness largely mirrored trends in being discriminated against while waiting in Mexico.⁴⁰

³⁶ Ibid (4)

³⁷ Tom K. Wong, 2019. *Seeking Asylum: Part 2*. La Jolla, CA: U.S. Immigration Policy Center (USIPC) at UC San Diego. Available <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>

³⁸ Ibid. (5)

³⁹ Ibid. (5)

⁴⁰ Ibid. (5)

Misinformation and fake news about asylum seekers arriving at cities between the U.S.-Mexico border have not aided in Mexican national's acceptance of asylum seekers.⁴¹ In Tijuana, a city along the U.S.-Mexico border, comments by the city's mayor alleging that migrants forced to wait for their trials in Mexico were "bad for the city," increased the negative sentiments towards migrants expressed by the city's residents.⁴² In November 2018, a few hundred Tijuanaenses gathered to protest groups migrating from Central American countries to the U.S. through the San Ysidro port of entry.⁴³ In "Seeking Asylum: Part 2", which includes respondents from Tijuana, USIPC found that approximately 1 out of every 3 respondents reported being discriminated against in Mexico while awaiting their immigration court date.⁴⁴ These issues, which have been proven to take place at statistically alarming rates, point to the massive red flags that arise as a result of the "Remain in Mexico" Policy.

Besides these issues, immigration attorneys have expressed concerns that MPP denies asylum seekers access to counsel and effectively violates their due process rights. Access to counsel is extremely important in an asylum seeker's ability to receive bar to relief. Studies have shown that asylum seekers with attorneys fare far better than those without legal counsel and are

⁴¹ Jessica Cobian. "How Misinformation Fueled Anti-Immigrant Sentiment in the Tijuana Border Region." Center for American Progress, 7 Feb. 2019, www.americanprogress.org/issues/immigration/news/2019/02/07/465943/misinformation-fueled-anti-immigrant-sentiment-tijuana-border-region/

⁴² James Fredrick. "Shouting 'Mexico First,' Hundreds In Tijuana March Against Migrant Caravan." *NPR*, NPR, 19 Nov. 2018, www.npr.org/2018/11/19/669193788/shouting-mexico-first-hundreds-in-tijuana-march-against-migrant-caravan

⁴³ *Ibid.*

⁴⁴ Tom K. Wong, 2019. *Seeking Asylum: Part 2*. La Jolla, CA: U.S. Immigration Policy Center (USIPC) at UC San Diego. Available <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>

four times more likely to be granted asylum.⁴⁵ Though everyone under MPP has the right to an attorney, for asylum seekers forced to remain in Mexico, getting legal representation has been nearly impossible.⁴⁶ Additionally, as reported by Human Rights First, for the few who do manage to find a lawyer, MPP policy makes ongoing access to attorneys extremely limited.⁴⁷

⁴⁵ AILA - AILA Sends Letter to DHS Acting Secretary Detailing MPP's Barriers to Counsel." *American Immigration Lawyers Association*, www.aila.org/infonet/aila-sends-letter-to-dhs-acting-secretary-mpp

⁴⁶ Human Rights First, "We Can't Help You Here: US Returns of Asylum Seekers to Mexico" <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>

⁴⁷ Ibid.

Legal Representation & Decision Making in Court

Importance of Legal Representation in Immigration Court

The implementation of MPP immigration proceedings has revealed a number of troubling issues. These issues include the flooding of immigration court dockets near the southern border, tent immigration courts, defective notices of immigration court hearings, the termination of proceedings, or issuance of in absentia removal orders when MPP asylum seekers do not attend court hearings and the active denial of access to counsel.⁴⁸ However, despite this information being relatively well known, the discussion surrounding MPP has focused little on the amount of MPP asylum seekers who currently have attorneys and the significance of the representation that they receive.

Existing literature shows that there is importance in the presence of legal counsel within immigration court. In 2015, Eagly et al. conducted the first national study of access to counsel in U.S. immigration courts. Drawing on data from over 1.2 million deportation cases, they found that 37% of all immigrants, and only 14% of detained immigrants, secured legal representation.⁴⁹ In their study, Eagly et al. (2015) found that migrants and asylum seekers who had proper legal representation were two times more likely to succeed in immigration court.⁵⁰ This study confirmed the assumption that surrounds the immigration court system- that attorney's involvement in immigration cases correlates with a successful defense in court. Eagly et al. also found that

⁴⁸ Krista Kshatriya and S. Deborah Kang. 2019. Walls to Protection: The Grim Reality of Trump's "Remain in Mexico" Policy. U.S. Immigration Policy Center (USIPC) at UC San Diego. <https://usipc.ucsd.edu/publications/usipc-walls-to-protection-final.pdf>

⁴⁹ Ingrid V. Eagly & Steven Shafer A National Study of Access to Counsel in Immigration Court, 164 U. PA. L. REV. 1 (2015). www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.

⁵⁰ Ibid.

detained immigrants with counsel were 11 times more likely to seek relief- such as asylum- than those who lack proper legal representation.⁵¹ For now, respondents who cannot afford attorneys continue to rely on pro-bono representation- which even then is very slim. In their report, Eagly et al. noted that the availability of pro-bono representation was insufficient to meet the needs of the population. They found that only 2% of immigrants facing removal secured such representation.⁵²

Many people in deportation proceedings have valid claims to remain in the United States; however, individuals in these types of proceedings have a hard time arguing their cases effectively when they lack the representation of an immigration attorney. Legal representation allows people in deportation proceedings to make the right decisions about how to exercise and access the rights afforded to them under immigration law.⁵³ Advocates in favor of access to counsel argue that representation before the court of law is a matter of fundamental fairness.⁵⁴ The proven impacts of representation on immigration cases have demonstrated the necessity of attorneys in navigating the complexities of immigration court.

With the current policy regarding family separation, as enacted by the Trump administration, studies have also focused on documenting the experience of unaccompanied minors in immigration court. Jennifer Huynh (2019) highlighted the concerns surrounding how unaccompanied immigrant children (U.I.C.) experience legal removal process' and how these children represent themselves in court.⁵⁵ Huynh found that many obstacles prevent unaccompanied

⁵¹ Ibid.

⁵² Ibid.

⁵³ Karen Berberich and Nina Siulc. "Why Does Representation Matter? The Impact of Legal Representation in Immigration Court." (2018)
<https://www.vera.org/downloads/publications/why-does-representation-matter.pdf>

⁵⁴ Ibid.

⁵⁵ Jennifer Huynh. "La Charla: documenting the experience of unaccompanied minors in immigration court." *Journal of Ethnic and Migration Studies* (2019): 1-15

immigrant children in the United States from receiving fair legal counsel.⁵⁶ Under the current immigration court system, these children are forced to appear in court and articulate their claims before a judge and a DHS lawyer in a language that is not their own and may have to wait months before they can do so.⁵⁷ The options for ensuring the safety of U.I.C.'s in immigration court proceedings are often cited as being open and unresolved.⁵⁸

When studying asylum adjudication in family detention, Eagly et al. (2018) uncovered evidence that supports the idea that immigration courts play a critical role in limiting the over-detention of migrant families by immigration authorities at the border.⁵⁹ During the period studied, Eagly et al. found that immigration judges reversed half of the negative credible fear decisions of asylum officers.⁶⁰ Despite this, families in detention continue to face language barriers in accessing the courts and have routinely gone to court without legal representation. Eagly et al. cite only half of the family members who remained detained as having found counsel with fewer than 2% of the cases studied having English speakers.⁶¹

Proponents of access to counsel in immigration court, such as Matthew Mulqueen (2019), argue that the Fifth Amendment's guarantee of substantive due process provides a basis for the appointment of counsel during removal proceedings.⁶² Some circuit courts have stated that due process may require the appointment of counsel on a "case-by-case basis for individuals who are

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ingrid Eagly, Steven Shafer, and Jana Whalley. "Detaining families: a study of asylum adjudication in family detention." *Calif. L. Rev.* 106 (2018): 785

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Matthew Mulqueen. "Access to Counsel in Immigration Proceedings: Appointment of counsel for indigent and minor respondents." *American Bar Association*, Feb. 2019, https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2019/february-2019/access-counsel-immigration-proceedings/

incapable of representing themselves due to age, ignorance, or mental capacity."⁶³ Despite this, the Supreme Court has not weighed in on whether due process requires the appointment of a government-funded counsel for a respondent in immigration proceedings. Congress has also not acted to provide a legislative solution to the problem; therefore, debates over whether to provide counsel to respondents in immigration proceedings, remains in question.

Immigration Court Judges & Making Decisions

Although judges are meant to be impartial decision-makers in the pursuit of justice, the truth is that the interpretation and application of the law by an immigration judge plays a significant role in the outcome of an asylum seeker's case. Judges have a high degree of discretion in deciding case outcomes since they face no explicit or formally recommended quotas when it comes to granting asylum.⁶⁴ When analyzing judges based on the cases and outcomes they have decided, studies suggest that judges are vulnerable to systematic deviations from the ideals of judicial impartiality.⁶⁵ Rachlinski et al. (2017) found that the demographic characteristics of judges and litigants affected judges' decisions.⁶⁶ Judges also relied heavily on intuitive reasoning when deciding cases, making them vulnerable to the use of mental shortcuts that often lead to mistakes.⁶⁷ Furthermore, judges sometimes relied on facts outside the record in order to come to a decision.⁶⁸

⁶³ Ibid.

⁶⁴ Daniel L. Chen, Tobias J. Moskowitz, and Kelly Shue. "Decision making under the gambler's fallacy: Evidence from asylum judges, loan officers, and baseball umpires." *The Quarterly Journal of Economics* 131, no. 3 (2016): 1181-1242. <https://www.nber.org/papers/w22026.pdf>

⁶⁵ Jeffrey J. Rachlinski and Andrew J. Wistrich. "Judging the judiciary by the numbers: Empirical research on judges." *Annual Review of Law and Social Science* 13 (2017): 203-229 <https://www.annualreviews.org/doi/pdf/10.1146/annurev-lawsocsci-110615-085032>

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

Existing literature on decision making in immigration court also shows that there are significant variations in asylum adjudication rates based on extralegal issues that may influence a judge's decision in court. In her analysis of disparities in asylum adjudication, Ramji-Nogales (2007) found significant variations in asylum adjudication rates when cross-analyzing different geographic regions, varying nationalities in specific geographic areas, and across judges within the same courthouses.⁶⁹ Her research shows that the chance of winning asylum was strongly affected by the quality of an applicant's legal representation, the random assignment of a case to a particular immigration judge, the gender of the immigration judge, and the immigration judge's work experience prior to their appointment.⁷⁰ Marouf (2011) also found that the specific conditions such as: immigration judges' lack of independence, limited opportunity for deliberate thinking, low motivation, and the low risk of judicial review all allow implicit bias to drive decision-making in immigration court.⁷¹

Additionally, immigration judges were found to be vulnerable to systematic deviations from the ideal of judicial impartiality when studying the socio-legal construction of immigrant criminality.⁷² Ryo (2019) found that for the legal case outcome itself, representation was critical to effectively demonstrate to a judge that the detained immigrant was an appropriate candidate for release.⁷³ When represented, the odds of a person being granted bond, and therefore being eligible

⁶⁹ Jaya Ramji-Nogales. "Refugee Roulette: Disparities in Asylum Adjudication" 60, November 1, 2007.

<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub>

⁷⁰ Ibid.

⁷¹ Fatma E. Marouf "Implicit bias and immigration courts." *New Eng. L. Rev.* 45 (2010): 417.

<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1809&context=facpub>

⁷² Emily Ryo. "Predicting Danger in Immigration Courts" *Law & Society Inquiry*. Volume 44, Issue 1, 227–256, February 2019

⁷³ Ibid.

to be released from custody, were about three times higher than before.⁷⁴ Ryo also found that Central Americans were more likely to be deemed as "dangerous" (in terms of posed danger to the community) by an immigration judge than non-Central Americans.⁷⁵ This study solidified the idea that decision-making is often unrelated to the merits of the cases when considered by immigration judges.

Furthermore, when analyzing the sequencing of decision-making matters, Chen et al. (2016) found that in high-stakes field settings, such as asylum court decisions, there is a high possibility for negatively auto-correlated decisions.⁷⁶ This proves to be a monumental finding in terms of asylum adjudication since decisions of this caliber tend to result in errors, and many immigration cases are matters of life or death. The asylum data they covered included many judges who tend to grant or deny asylum to almost all applicants from certain nationalities.⁷⁷ Despite this, the baseline test was to explore whether judges were less likely to grant asylum after granting asylum in the previous case.⁷⁸ In their report, Chen et al. found that immigration judges were 0.5 percentage points less likely to grant asylum to the applicant if the previous decision was an approval rather than a denial.⁷⁹ In a similar study on temperature and decisions in immigration court, Heyes et al. (2019) found that a 10°F degree increase in case-day temperature reduces decisions favorable to the applicant by 6.55%.⁸⁰ These studies demonstrate that decisions made by

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Daniel L. Chen, Tobias J. Moskowitz, and Kelly Shue. "Decision making under the gambler's fallacy: Evidence from asylum judges, loan officers, and baseball umpires." *The Quarterly Journal of Economics* 131, no. 3 (2016): 1181-1242. <https://www.nber.org/papers/w22026.pdf>

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Anthony Heyes and Soodeh Saberian. "Temperature and decisions: evidence from 207,000 court cases." *American Economic Journal: Applied Economics* 11, no. 2 (2019): 238-65. <https://pubs.aeaweb.org/doi/pdfplus/10.1257/app.20170223>

immigration judges may be systematically affected by irrelevant, transient factors that have the potential of both welfare loss and durable impacts on the immigration system.

Hypothesis & Research Design

I test the hypothesis that lack of legal representation negatively affects case outcomes for asylum seekers in the “Remain in Mexico” Policy. To do so, I analyze the grant rate for asylum seekers in the “Remain in Mexico” Policy who have legal representation compared to those who do not have legal representation. The data for asylum grant rates comes from immigration data collected by TRAC Immigration at Syracuse University. Their data includes information on MPP deportation proceedings- including hearing locations, attendance, legal representation, nationality, month and year of NTA, case outcome, and current status. The data are for the years 2019 through 2020; this represents 56,014 MPP proceedings in immigration court dockets. If legal representation positively affects case outcomes, we would expect to see higher rates of approval in the data for those with legal representation compared to those who do not have legal representation. Conversely, if legal representation negatively affects case outcomes, we would expect to see lower approval rates in the data for those with legal representation compared to those without legal representation.

Within immigration court proceedings, the Executive Office for Immigration Review (EOIR) distinguishes immigration court outcomes in seven different ways. The first is "Pending Review," which refers to cases still in the process of being reviewed by immigration judges. As of now, 31,774 MPP cases are pending review; this makes up 56.7% of the current MPP cases within immigration court dockets. The second type of outcome is "Removal Order," which refers to the grounds for deportability of an individual.⁸¹ This is the administrative process involving the removal of a person who is not a U.S. citizen from the U.S. Currently, 15,440 MPP cases within

⁸¹ 8 U.S. Code (U.S.C.) § 1229a. “Removal proceedings”
<https://www.law.cornell.edu/uscode/text/8/1229a>

immigration court have ended with removal orders, making up 27.6% of all MPP cases. The third type of outcome is "Terminate Proceedings." Proceedings on an asylum application are considered terminated when the time to appeal the judgment expires, meaning that the court has issued the case be closed.⁸² 8,099 MPP cases have been terminated, making up 14% of all MPP cases. The fourth outcome is "Voluntary Departure," this is an order generally given by an immigration judge to leave the country within a given period of time.⁸³ If the person complies, then there may be no legal bar imposed as there is with removal for returning to the U.S. However, if the person does not leave before the date assigned, the order turns into an order of removal.⁸⁴ Eight, or 0.01%, of MPP cases have ended with official voluntary departure outcomes. The fifth outcome is "Prosecutorial Discretion." This type of outcome is up to the discretion of an agency or officer to decide what charges to bring against an individual and how to pursue each case.⁸⁵ For example, a law-enforcement officer who declines to pursue a case against a person has exercised prosecutorial discretion.⁸⁶ Within MPP cases in immigration court, only one, or 0.002% of cases, have ended with prosecutorial discretion. The sixth type of outcome is "Other Closure." This outcome includes any other cases that have been administratively closed by an immigration judge. Currently, 565 cases have ended with this outcome, reflecting 1% of all MPP cases. The seventh outcome is "Grant Relief." This outcome refers to the asylum grants which were accepted by immigration

⁸² 37 C.F.R. § 1.197. "Termination of proceedings."

<https://www.law.cornell.edu/cfr/text/37/1.197#:~:text=If%20an%20appeal%20to%20the,to%20appeal%20the%20judgment%20expires.>

⁸³ TRAC Immigration Glossary. "Voluntary Departure"

<https://trac.syr.edu/immigration/glossary/>

⁸⁴ Ibid.

⁸⁵ American Immigration Council. "Prosecutorial Discretion: A Statistical Analysis"

<https://www.americanimmigrationcouncil.org/research/prosecutorial-discretion-statistical-analysis#:~:text=Prosecutorial%20discretion%20is%20the%20authority,has%20favorably%20exercised%20prosecutorial%20discretion.>

⁸⁶ Ibid.

judges and have allowed an individual to legally enter the U.S. For cases under MPP, only 117 have ended with an individual's admittance into the U.S., making up only 0.2% of all MPP cases.

For the purposes of this analysis, the primary focus will be on asylum adjudication rates. This is defined as the percentage of MPP cases that result in an asylum grant in comparison to all MPP cases that are approved or denied. Asylum grants represent the number of MPP cases where immigration court proceedings ended with an EOIR classification outcome of "grant relief." Denials represent the number of MPP cases where immigration court proceedings ended with an EOIR classification of "removal order." The asylum adjudication rate is thus the number of asylum grants divided by the number of asylum grants plus the number of removal orders. The asylum adjudication rate for all MPP cases is 0.75%. However, the adjudication rate varies country by country, with percentages ranging from 0% to 23%. 0% was calculated as there was no case from multiple countries that obtained an outcome of "grant relief."

The EOIR also distinguishes between whether an asylum seeker is represented in immigration court or not. For my analysis on legal representation and asylum adjudication rates in MPP court cases, I will compare the percentages of asylum grants between the EOIR classifications of "represented" and "not represented." The classifications of "represented" would refer to MPP cases that have been decided by an immigration judge with the presence of an attorney for the asylum-seeking party. "Not represented" would refer to cases that have been decided by an immigration judge without the presence of an attorney for the asylum-seeking party. There were only 2,390 MPP cases within immigration court proceedings that were being reviewed with the presence of legal counsel. The remaining 53,624 cases were reviewed without the presence of legal counsel. Only 4% of MPP asylum cases are being represented by immigration attorneys in immigration court. The remaining 96% of MPP asylum cases were decided upon

without the presence of legal counsel. Existing literature has shown that the presence of legal counsel correlates with higher rates of asylum grants within immigration court. However, data has not been updated to indicate whether legal representation affects asylum grants in MPP immigration proceedings.

Findings & their Implications

Findings

The data above shows that legal representation matters for asylum grant rates for asylum seekers in MPP. More specifically, as Table 1 below shows, the percent grant rate for those with legal representation is 25.9%. However, the percent grant rate for those without legal representation is only 0.2%. This difference of 25.7% is statistically significant (< 0.001).

Table 1: Percent Grant Relief

Percent Grant Relief (Represented)	Percent Grant Relief (Not Represented)	Difference	P-value
25.9%	0.2%	-25.7%	< 0.001

I also analyze the data by country to evaluate any difference by the asylum seeker's country of origin. Table 2 below shows all countries with more than ten asylum cases with removal orders plus grants of relief. The table is sorted by the asylum adjudication rate with the highest percentage at the top and the lowest percentage at the bottom.

Table 2: Asylum Adjudication by Country

Country	Asylum Adjudication Rate	Total (Removal Orders + Grants of Relief)
Venezuela	23.08%	195
Mexico	7.69%	13
Cuba	5.44%	901
Nicaragua	2.95%	305
El Salvador	0.19%	2,687

Guatemala	0.12%	4,147
Honduras	0.05%	6,480
Ecuador	0%	744
Peru	0%	32
Colombia	0%	24
Dominican Republic	0%	16
All Countries	0.75%	15,557

As Table 2 shows, there is a significant variation in asylum adjudication rates by country of origin. Venezuela has the highest asylum adjudication rate at 21.3%. In other words, out of the 195 Venezuelan MPP cases with outcomes of “removal order” and “grant relief,” only 45 received an outcome of “granted relief.” Mexico comes in second at 7.69%; however, there have only been a total of 13 cases with an outcome of either “removal order” or “grant relief.” Cuba rounds out the top three at 5.44%.

Table 2 is also instructive because it shows that several countries, Ecuador, Peru, Colombia, and Dominican Republic have a 0% asylum adjudication rate. In other words, out of the combined 816 asylum cases with an outcome of “removal order” or “grant relief” for Ecuadorians, Peruvians, Colombians, and those from the Dominican Republic, zero have been granted relief.

Table 2 is also instructive because it shows that Northern Triangle countries- Honduras, El Salvador, and Guatemala- have grant rates of less than 1%. This is important because these countries represent the lion’s share of MPP cases. This poses the question of whether or not asylum seekers from Northern Triangle countries are being treated differently in immigration court.

Table 3A below examines whether or not Northern Triangle countries are more or less likely to be granted relief compared to Non-Northern Triangle countries. Tables 3A-3D will demonstrate the asylum adjudication grant rates for cases with legal representation and for cases without legal representation.

Table 3A: Northern Triangle Countries compared to Non-Northern Triangle Countries

	Northern Triangle Countries	All Other Non-Northern Triangle Countries	Difference	P-value
% Represented Grant Relief	5.42%	52.70%	-47.28%	< .001
% Not Represented Grant Relief	0.02%	1.24%	-1.22%	< .001

Table 3A shows that the percent grant relief for Northern Triangle MPP cases with legal representation is 5.42%. The percent represented grant relief rate for all other Non-Northern Triangle countries is 52.70%. I find that the difference of 47.28% is statistically significant (< 0.001). Table 3A also shows that the percent grant relief rate for Northern Triangle MPP cases without legal representation is 0.02%. This differs from the percent of grant relief of not represented Non-Northern Triangle countries by 1.22%, which is also statistically significant (< 0.001). This table is instructive because it shows that asylum seekers from Northern Triangle countries are less likely to be granted relief compared to asylum seekers from Non-Northern Triangle countries when represented and when not represented.

Table 3B-3D below further examine whether specific Northern Triangle Countries are less likely to be granted relief when compared to all other Non-Northern Triangle countries in MPP immigration proceedings.

Table 3B: Honduras compared to Non-Northern Triangle Countries

	Honduras	All Other Non-Northern Triangle Countries	Difference	P-value
% Represented Grant Relief	6%	52.70%	-46.7%	< .001
% Not Represented Grant Relief	0%	1.24%	-1.24%	< .001

Table 3B shows that the percent grant relief for represented Hondurans, one of the three Northern Triangle countries, is 6%. However, the percent represented grant relief rate for all other Non-Northern Triangle countries is 52.70%. I find that the difference of 46.7% is statistically significant (< 0.001). This table is important because it shows that Hondurans are less likely to be granted relief compared to Non-Northern Triangle nationals even when represented.

Table 3B is also instructive because it shows that Hondurans are less likely to be granted relief when not represented compared to Non-Northern Triangle nationals. Table 3B shows the 0% grant relief rate for Honduran MPP cases without legal representation. This differs from the percent of grant relief of non-represented Non-Northern Triangle countries by 1.24%. When analyzed the outcome proves to be statistically significant (< 0.001).

Table 3C: El Salvador compared Non-Northern Triangle Countries

	El Salvador	All Other Non-Northern Triangle Countries	Difference	P-value
% Represented Grant Relief	7.9%	52.70%	-44.8%	< .001
% Not Represented Grant Relief	0%	1.24%	-1.24%	< .001

Table 3C shows that the percent grant relief for represented Salvadorians is 7.9%. This differs by 44.8% from the percent represented grant relief rate for all other Non-Northern Triangle countries. When analyzed, this difference produces a statistically significant outcome (< 0.001). Table 3C also shows the 0% grant relief rate for Salvadorian MPP cases without legal representation. This differs from the percent of grant relief of non-represented Non-Northern Triangle countries by 1.24%, which is also statistically significant (< 0.001).

This table is important because it reaffirms that members of Northern Triangle countries, such as El Salvador, are less likely to be granted relief when compared to members of Non-Northern Triangle countries whether they are represented or not.

Table 3D: Guatemala compared to Non-Northern Triangle Countries

	Guatemala	All Other Non-Northern Triangle Countries	Difference	P-value
% Represented Grant Relief	2.6%	52.70%	-50.1%	$< .001$
% Not Represented Grant Relief	0.1%	1.24%	-1.14%	$< .001$

Lastly, Table 3D shows that the percent grant relief for represented Guatemalans is 2.6%. The percent represented grant relief rate for all other Non-Northern Triangle countries is 52.70%. When analyzed, the difference of 50.1% is statistically significant (< 0.001). Again, this table is significant in its implications because it shows that Guatemalans- like Hondurans and Salvadorians- are less likely to be granted relief when compared to Non-Northern Triangle nationals, represented or not.

Implications of Findings

How does legal representation affect asylum adjudication in MPP immigration proceedings? Existing literature shows that there is importance in the presence of legal counsel within immigration court. In this analysis, I demonstrate that there is also a statistical relationship between legal representation and asylum adjudication in MPP immigration proceedings. The data shows that legal representation positively affects case outcomes as we see higher rates of approval in the data for asylum seekers with legal representation compared to those who do not have legal representation. This outcome was particularly true for members of Non-Northern Triangle countries affected by MPP. This finding is critical because it reaffirms that legal representation is significant to asylum seeker's success in being admitted into the U.S.⁸⁷ This study also provides new insight on the importance of an asylum seeker's country of origin when evaluating their immigration court case.

The data shows that asylum seekers from Northern Triangle countries- Honduras, El Salvador, and Guatemala- are less likely to be granted admittance in the U.S. when compared to applicants from Non-Northern Triangle countries. Both when represented and not, the data show that asylum seekers from the three Northern Triangle countries fare far worse in immigration court than asylum seekers from Non-Northern Triangle countries. These findings reaffirm those of Keith and Holmes (2009), who found that asylum applicants that resembled "economic migrants,"

⁸⁷ Ingrid V. Eagly & Steven Shafer "A National Study of Access to Counsel in Immigration Court" 164 U. PA. L. REV. 1 (2015). www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.

stereotypically considered to be migrants arriving from Central America, Latin America or the Caribbean, faced harsher asylum grant rates.⁸⁸

The impact of the variations in asylum adjudication based on country of origin cannot be overstated since a judge's decision to send an applicant back to their home country could be the difference between that individual's life or death. Existing literature already shows that immigration judges make assumptions about the socioeconomic conditions of an asylum seeker's country of origin.⁸⁹ This study raises the question as to whether or not decisions made by immigration judges in MPP proceedings are affected by extralegal factors, such as country of origin and whether this relationship may be particularly significant for MPP asylum seekers. The data shows that there is a statistical relationship between asylum adjudication and country of origin, regardless of legal representation, leaving room for further research on the matter.

The data also show that MPP has had an impact on access to counsel. Instead of allowing asylum seekers to remain in the United States while their asylum claims are decided, through MPP, the Trump administration forces individuals seeking asylum to wait for their immigration court date in Mexico.⁹⁰ Harsh conditions experienced in Mexico make legal services difficult to access and impede communication and interactions between asylum seekers and their attorneys. The data show that out of 56,014 MPP cases, only 2,390 MPP cases within immigration court proceedings were reviewed with the presence of legal counsel. This represented only 4% of MPP asylum cases.

⁸⁸ Linda Keith and Jennifer Holmes. A Rare Examination of Typically Unobservable Factors in US Asylum Decisions. *Journal of Refugee Studies*. 2009. https://pdfs.semanticscholar.org/24a3/6ee7387a7a3cc83a4f6b3df36e34152ba3b5.pdf?_ga=2.243910725.1305953133.1585542282-2021307239.1585542282

⁸⁹ March Rosenblum and Idean Salehyan, "Norms and Interests in US Asylum Enforcement" 2009. <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.457.9044&rep=rep1&type=pdf>

⁹⁰ Human Rights First. "Human Rights Fiasco: The Trump Administration's Dangerous Asylum Returns Continue" <https://www.humanrightsfirst.org/sites/default/files/HumanRightsFiascoDec19.pdf>

As mentioned above, the statistical relationship between legal representation and asylum adjudication in MPP immigration proceedings demonstrates that an inability to access council maybe a big reason as to why asylum adjudication rates in MPP are so low. This information should be further tested to determine whether there is a statistically significant relationship between asylum adjudication in MPP immigration proceedings compared to asylum adjudication in all other immigration proceedings when represented.

Conclusion

The United States has many provisions in place meant to protect asylum applicants. However, the political climate and goals of any one administration can ultimately have a more significant impact on the decision over how to treat asylum seekers than what the law truly protects. Research has shown that there is substantial room for human bias to impact an asylum seeker's case negatively.⁹¹ Before Trump's "Remain in Mexico" policy, migrants who waited in line at the border or those who were apprehended between ports of entry would have been held at a U.S. Customs and Border Protection processing facility until border agents determined whether they should be released, transferred to immigration detention, or deported.⁹² However, under MPP, most asylum seekers seeking admittance between the U.S.-Mexico border are being sent back to Mexico and only being allowed to enter the U.S. to attend their immigration court hearings.

To understand the impact, MPP has had on access to counsel, it is crucial to understand the conditions that affect asylum seekers that are sent to Mexico and how those conditions make it more difficult for them to access the few legal resources that may be available to them.⁹³ Those affected by MPP have been waiting in Mexican border cities, where only some are lucky to find housing in shelters, hotels, or rooms for rent.⁹⁴ Waiting in Mexico for immigration court dates has

⁹¹ Jaya Ramji-Nogales. "Refugee Roulette: Disparities in Asylum Adjudication" 60, November 1, 2007.

<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub>

⁹² Nicole Narea. (2020, March 11). The Supreme Court just allowed Trump to continue sending migrants back to Mexico. <https://www.vox.com/2020/2/28/20907053/remain-in-mexico-mpp-supreme-court-opinion>

⁹³ American Immigration Lawyers Association. "AILA - AILA Sends Letter to DHS Acting Secretary Detailing MPP's Barriers to Counsel" June 3, 2019. www.aila.org/infonet/aila-sends-letter-to-dhs-acting-secretary-mpp

⁹⁴ Nicole Narea. (2020, March 11). The Supreme Court just allowed Trump to continue sending migrants back to Mexico. <https://www.vox.com/2020/2/28/20907053/remain-in-mexico-mpp-supreme-court-opinion>

also proved to statistically subject asylum seekers to dangers such as physical violence.⁹⁵ These harsh conditions in Mexico make legal services difficult to access and impedes communication between asylum seekers and their attorneys. MPP has also caused the flooding of immigration court dockets near the southern border, the creation of tent immigration courts, and the issuance of defective notices of immigration court hearings, which all negatively affect an asylum seeker's ability to navigate the asylum process.⁹⁶

This study was aimed at advancing the information surrounding the importance that legal representation has on asylum adjudication rates for MPP asylum seekers. The data show there is a positive and statistically significant relationship between legal representation and a successful asylum adjudication in MPP cases. The data also show there is a statistically significant relationship between percent grant relief by country of origin regardless of representation in immigration court. This relationship, despite being statistically significant, should be further investigated to aid in the existing analysis of decision making by immigration judges in immigration court.

Despite the strains that MPP places on asylum seekers access to counsel, efforts are being made by non-profit organizations and lawyers to offer pro-bono legal representation to individuals affected by the administration's "Remain in Mexico" policy.⁹⁷ Addressing the barriers to obtaining legal counsel created by MPP is important because having an attorney is strongly associated with

⁹⁵ Krista Kshatriya and S. Deborah Kang. 2019. Walls to Protection: The Grim Reality of Trump's "Remain in Mexico" Policy. U.S. Immigration Policy Center (USIPC) at UC San Diego. <https://usipc.ucsd.edu/publications/usipc-walls-to-protection-final.pdf>

⁹⁶ Krista Kshatriya and S. Deborah Kang. 2019. Walls to Protection: The Grim Reality of Trump's "Remain in Mexico" Policy. U.S. Immigration Policy Center (USIPC) at UC San Diego. <https://usipc.ucsd.edu/publications/usipc-walls-to-protection-final.pdf>

⁹⁷ Jack Herrera. "Lawyers Struggle to Remotely Represent Asylum-Seekers in 'Remain in Mexico' Program." Public Radio International, 2 March 2020, www.pri.org/stories/2020-03-02/lawyers-struggle-remotely-represent-asylum-seekers-remain-mexico-program

positive outcomes in immigration court. Marouf (2011) also suggests some ways in which that immigration reform can also help reduce the implicit bias faced by asylum seekers in court.⁹⁸ These strategies range from simple measures such as: allowing more time for thoughtful deliberation by immigration judges, conducting regular evaluations of asylum adjudication, and increasing the number and resources offered to judges in immigration court.⁹⁹ Such reforms have the power to impact how implicit attitudes influence immigration adjudication and can offer a solution to this problem.

Through MPP, the Trump administration has furthered the challenges all migrants face, especially those from Northern Triangle countries where the lion's share of MPP cases arise. The data show that there is a disadvantage faced by asylum seekers from Northern Triangle countries as they have a statistically significant lower chance of receiving admittance into the U.S. when compared to all other asylum seekers affected by MPP.

In its current administration, the United States has shown little support for migrants forced to leave their home countries. Despite information on legal representation in court being well known and statistically significant, this study has demonstrated that asylum seekers from Northern Triangle countries remain at a disadvantage in court regardless of representation in immigration court. I hope my research can contribute to the importance of understanding the severity of the gaps in immigration representation and the complexities between representation, asylum adjudication, and immigration court. Despite the seemingly innovative guidelines outlined by the United States judicial system, many of these guidelines have lost their nuance and have fallen in

⁹⁸ Fatma E. Marouf "Implicit bias and immigration courts." *New Eng. L. Rev.* 45 (2010): 417. <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1809&context=facpub>

⁹⁹ *Ibid.*

line as suggestions rather than concrete legal standards. I hope that my research has shed light on the significance that legal representation has on adjudication rates for asylum seekers that fall under the limitations of MPP and that this research may place the due process concerns surrounding asylum seeker's access to counsel in MPP immigration proceedings under scrutiny.

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