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**Testimony Submitted for the Record to the House Committee on Homeland Security Hearing on: “Examining the Human Rights and Legal Implications of DHS’ ‘Remain in Mexico’ Policy”**

**November 19, 2019**

**Submitted by Todd Schneberk, MD, MS, MA, as a Physicians for Human Rights (PHR) Medical Expert, Co-Director of the USC Keck Human Rights Collaborative and Assistant Program Director of the LAC+USC Emergency Medicine Residency Program.**

Thank you for the opportunity to speak here today. My name is Todd Schneberk and I am an emergency physician who works in a large public county hospital taking care of underserved populations in Los Angeles, California. In addition to my clinical work, I conduct research and teach in a residency-training program as assistant professor of emergency medicine at LA County USC Medical Center. For the last four years, I also have been working on the other side of the U.S.-Mexico border, in Tijuana, in free mobile clinics for indigent patients, including many people who have been deported from the United States. Many of these deportees are young people and veterans.

Today I speak as a medical expert for Physicians for Human Rights (PHR). For more than 30 years, PHR has provided forensic evaluations for asylum seekers in the United States. Based on the Istanbul Protocol<sup>1</sup> – the international standard for documenting alleged torture and other cruel, inhuman, and degrading treatment – these forensic evaluations assess the degree to which physical and psychological findings corroborate allegations of abuse, and play a key role in the adjudication of asylum claims in the United States.

In the last three years, I have provided dozens of forensic medical affidavits for asylum seekers and I have trained several other physicians and residents in Los Angeles to perform these evaluations and produce affidavits. However, my work has changed dramatically this past year, ever since the Trump administration rolled out the Migrant Protection Protocols, also known as MPP or the “Remain in Mexico Policy.” With thousands of people now waiting in Mexico for a chance to seek asylum in the United States, my colleagues and I face an increasing demand to carry out these forensic evaluations on the other side of the border, and we have been doing so in Tijuana.

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<sup>1</sup> The Istanbul Protocol is the international standard to assess, investigate, and document alleged instances of torture and other cruel, inhuman, and degrading treatment. “Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment,” OHCHR, 2004. <https://phr.org/issues/torture/international-torture/istanbul-protocol.html>.

The Department of Homeland Security (DHS) has stated that the MPP was created so “vulnerable populations receive the protections they need.”<sup>2</sup> However, the MPP clearly puts asylum seekers at risk and violates the principle of *non-refoulement*, which simply states that countries, including the United States, cannot return asylum seekers to a place where they could be subjected to great risk, irreparable harm, or persecution.<sup>3</sup> The requirements of *non-refoulement* should not be new to the United States, given that it is included in U.S. domestic law,<sup>4</sup> as well as the Convention against Torture,<sup>5</sup> which the United States has signed and ratified.

As a medical expert, I regularly witness the dire impacts of the MPP. I am here today to share my assessment that the MPP – which daily puts migrant women, children, and men directly in harm’s way -- should be halted and defunded immediately. I have seen how the MPP puts the mental and physical health of asylum seekers at grave risk, allowing harm to be inflicted upon a population that has already experienced severe levels of trauma. Many of the people we see have escaped extreme violence in their countries of origin. Instead of finding the safety they so desperately seek, they are forced back into under-resourced border towns like Tijuana, where they are exposed to further violence and exploitation. Each day that asylum seekers are forced to wait in these precarious settings compounds the massive trauma that forced them to flee their homes to seek safe haven within our borders. This situation can quite literally be a threat to their lives.

## **Physical and Psychological Health of Asylum Seekers**

First, I would like to share my medical assessment of the state in which thousands of asylum seekers arrive at our ports of entry. In February this year, I was part of a PHR team of researchers and medical experts who documented the cases of asylum seekers in Tijuana. These findings later formed the basis of a PHR report named “If I went back, I would not survive.”<sup>6</sup>

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<sup>2</sup> “Migrant Protection Protocols,” DHS, news release, January 24, 2019, accessed July 15, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>3</sup> *The Principle of Non-Refoulement under International Human Rights Law*, OHCHR, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

<sup>4</sup> Title 8 – Aliens and Nationality, U.S. Code (2011), §1158. Asylum. Page 109.

<sup>5</sup> David Weissbrodt and Isabel Hortreiter, “The Principle of Non-Refoulement: Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties,” *Scholarship Repository: University of Minnesota Law School*, 1999, [https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty\\_articles](https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty_articles).

<sup>6</sup> “If I went back, I would not survive.” Asylum Seekers Fleeing Violence in Mexico and Central America, Physicians for Human Rights, October 2019, [https://phr.org/our-work/resources/asylum-seekers-fleeing-violence-in-mexico-and-central-america/#\\_ftnref61](https://phr.org/our-work/resources/asylum-seekers-fleeing-violence-in-mexico-and-central-america/#_ftnref61).

At migrant shelters and other safe havens, we interviewed and medically evaluated dozens of asylum seekers who shared harrowing stories of the extreme brutality they had experienced in their home countries – and whose physical and psychological scars bore out their narratives. These individuals and families were fleeing various forms of extortion, rape, torture, and killings. Not surprisingly, the majority screened positive for post-traumatic stress disorder (PTSD). Additionally, many screened positive for depression and also experienced significant fear and hypervigilance. Many were afraid they had been followed to the border by the very gangs they had fled, and some had been attacked even as they waited in Tijuana for their chance to cross to safety into the United States. Returning traumatized asylum seekers who are already in a particularly vulnerable situation to a place where they risk further violence directly violates the United States' commitment, under international and domestic law, to uphold human rights.

While I'm sure that these accounts are not new to you, I would like to share some of the physical and psychological signs and symptoms that PHR's medical team documented among asylum seekers at the U.S. border. (All names I refer to throughout this testimony have been changed for security reasons.)

Javier,\* a 36-year-old man who was extorted and beaten by a gang in El Salvador, reported symptoms of PTSD, severe depression, and anxiety. His inability to sleep led to physical exhaustion and lack of focus. He also felt constantly on guard and watchful. He told PHR, "Having seen so much violence, sometimes I start shaking ... a kind of fear," he said. "My body begins shaking and I go cold."

Jimena\* is a 21-year-old mother of two from Honduras who was raped because her husband refused to join a gang. She told us how armed men entered her home and threw her face-down on the kitchen floor. As she fought back, one of the men held her down while the other man raped her. She described to PHR her physical state afterwards: "I had bruises on my shoulders where they held me down. I had pain in the abdomen for three days and in my stomach throughout the pregnancy; it hurt to sit down." Throughout PHR's medical evaluation, Jimena demonstrated signs of severe depression and hypervigilance. Having to wait in Tijuana only compounded her fear and anxiety.

Perhaps the most distressing cases PHR documented concerned young children. In Tijuana, we interviewed Antonio,\* an eight-year-old Honduran boy who was attacked by two men with a machete after his parents ran afoul of the local paramilitaries. Before the ordeal, Antonio's favorite school subject was writing, and he enjoyed playing ball with his friends. Since the attack and his family's flight to the border he has become sad and cries often. His parents told PHR that he holds his breath when he is afraid and often must hold his mother's hand to be at ease. Since he arrived in Tijuana, Antonio also defecates in his bed and suffers from nightmares where he yells in his sleep, "Mom, hurry! Hurry! The guy is going to kill us!" Antonio himself reported symptoms of PTSD and anxiety disorder as well as somatization, whereby psychological distress manifests as physical ailments and attention problems.

As most asylum seekers stuck in Tijuana, Antonio did not have access to mental health care. His parents also did not have access to adequate medication or therapy for his attention deficit hyperactivity disorder, which likely exacerbated his condition. When reflecting on what the future held for her son, Antonio's mother said, "I still don't see it [ending].... I want my children to be OK in a safe place ... but we have not found that [safety] yet. Our hope is that they will give us asylum, so my kids will be safe on the other side."

### **The Impact of the Migrant Protection Protocols (MPP)**

Asylum seekers who arrive at U.S. ports of entry – including many bearing serious psychological and physical consequences of the trauma they have suffered – are now met at our border with the Migrant Protection Protocols – a brutal response to their appeal in good faith to await the processing of their asylum claim within the safety of the United States. Since the completion of PHR's investigations, I have participated in multiple forensic evaluations of MPP returnees through a network of both Mexican and U.S. physicians and attorneys who serve this population. As my colleagues today will speak to other aspects of the implementation of the MPP, I would like to provide a series of short snapshots of some of the cases for which I have provided my medical expertise. I want it to be crystal clear who the people are that are being returned to Mexico under the MPP.

Gerald is a gay schoolteacher from Ghana, which still has a law that criminalizes adult consensual same-sex conduct. When local community members discovered that he was gay, they tied a noose around his neck and dragged him by it behind a car. His larynx was crushed so badly that he had nearly lost his voice completely. He now speaks in a hoarse, barely audible whisper, in stark contrast to the booming voice he reported using to teach his 4<sup>th</sup>-graders at school. Gerald still bears ligature marks on his neck. Despite his strong claim for asylum, he has been unable to find legal counsel in Tijuana and struggles to make a viable life there while he waits.

Alec is a Honduran evangelical pastor who organized youth groups and a Christian anti-gang movement that opposed the recruitment of youth. One day, gang members assaulted him multiple times and ultimately shot him in the leg. They told Alec to stop trying to influence young men to join the church instead of the gangs. Gang members then raped his wife, with the ultimatum that this would keep happening unless he left the area. Alec fled after his wife was raped a second time. In addition to his physical scars, Alec was profoundly psychologically wounded, screening positive for depression and PTSD. Although he was initially granted asylum in immigration court, this decision was immediately appealed.

Martin is a young man from Honduras who was beaten for refusing to join a gang. At a young age, he was diagnosed with epilepsy, and had seizures repeatedly until he was finally placed on a combination of medications. He fled to the border but was unable to find the right medicine for his seizures when he was in Tijuana. Martin then suffered several seizures that caused significant head and facial trauma and also made him unable to keep a job there. Although a local charity helped him find medications, these

were confiscated by U.S. border officials every time he crossed into the United States to attend his hearings, despite medical letters attesting to the importance of these medications. Each time he was returned to Mexico under MPP, he was sent back across the border without his medications, which posed a risk to his health.

Lydia is a woman from Honduras who is seeking asylum with her toddler, Jaime, and hoping to be reunited with her sister and niece who reside in the United States. She is fleeing domestic abuse, kidnapping, child abuse, and rape at the hands of gang members. Upon reaching Tijuana, she was alerted through her family connections that the gang had sent members to Tijuana to kill her. Lydia and her son remain indoors for fear of being seen. They have had difficulty finding any legal counsel; Jaime does not have access to routine pediatric care, and Lydia has had no access to mental health assistance to address the trauma of the sexual violence she suffered.

## **Concluding Remarks**

These four cases represent a small fraction of the roughly 50,000 asylum seekers<sup>7</sup> have been returned to Mexico under MPP. Another 26,000 wait, due to metering practices that limit the number of people allowed to cross every day, to pursue their legal right to seek safety in the United States for themselves and their family members. This is a total of 76,000 people affected by these two policies alone.

While I continue to return to Tijuana to provide MPP returnees with needed medical and psychological evaluations, I also continue to provide care to traumatized people every day in the emergency room in Los Angeles. Like any ER doctor, the first thing I do is try to make a patient feel safe. I control their environment as much as possible so that we can comfortably discuss and address their needs and fears. For the thousands who wait in Tijuana, however, this standard of safety is not being met; nor is access to basic medical and mental health needs. These needs include things like prenatal, obstetric, and routine pediatric care, such as vaccines and nutritional screening, but also expands to mental health services which are so desperately needed by this population.

This is especially true as our evaluations of the mental health of asylum seekers show that U.S. policies have stranded thousands of women, men, and children in places like Tijuana and made them vulnerable to violence, theft, and extortion by cartels, gangs, and police authorities. Clearly, current U.S. policies that restrict asylum seekers' right to enter the United States is inflicting further trauma on them every day they must wait. The stress and constant vigilance required to survive in an under-resourced border town like Tijuana is a massive strain on already traumatized people. It harms their livelihood and wellbeing and is literally a threat to their lives.

## **Recommendations**

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<sup>7</sup> "Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy," Human Rights First, October 2019, <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

All asylum seekers we interviewed sought protection due to targeted violence and intimidation from gangs and other non-state actors as well as violence by and/or denied protection by state authorities. While they represent a small sample of the thousands of asylum seekers currently waiting their turn to seek protection in the United States, their cases indicate that they have strong grounds to seek asylum and that their claims should be heard in a prompt and fair manner.

While the Obama administration implemented troubling policies regarding detention and deportation, since 2016, the Trump administration has undermined the integrity of the U.S. asylum system, introducing a series of restrictive policies that defy both international and U.S. law and egregiously obstruct the right to seek asylum. These policies – including the Migrant Protection Protocols – have placed people who are already in vulnerable situations – asylum seekers fleeing violence and trauma in their home countries – at further risk. Physicians for Human Rights’ findings point to the urgent need to protect the right of individuals to seek asylum in accordance with federal and international laws by implementing the following recommendations.

Congress should:

- Direct the Department of Homeland Security to immediately abolish and defund the MPP and “metering,” as has already been proposed in Representative Veronica Escobar’s Asylum Seeker Protection Act (H.R. 2662).
- Defund any policies that may negatively impact the right to seek asylum, such as pilot programs intended to authorize law enforcement officials other than trained U.S. Citizenship and Immigration Services (USCIS) asylum officers to conduct initial screenings known as “credible fear interviews” (CFIs).
- Propose and pass new legislation to affirm the full range of rights guaranteed to asylum seekers to counteract any executive or departmental policies or directives that effectively restrict individuals’ access to asylum protection.
- Provide adequate funding to ensure USCIS has sufficient resources to appropriately conduct CFIs.
- Publicly support the work of individuals and organizations defending the rights of asylum seekers on the U.S. and Mexican sides of the border and monitor any threats to their ability to carry out this work.
- Pursue policies that seek to create a safe, stable environment for asylum seekers to fulfill their right to pursue their asylum claims within the protection of the United States, and that meaningfully guard against the re-traumatization of this vulnerable population.