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June 3, 2019

The Honorable Kevin McAleenan
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20520

Dear Acting Secretary McAleenan:

On December 20, 2018 your department announced the Migrant Protection Protocols (MPP), which prevents asylum seekers from entering along the southern border, forcing them to remain in Mexico for an indeterminate period of time pending their asylum request. Since then, few concrete details have emerged about how your agency is implementing this policy with reports outlining that anywhere between 3000-5000 individuals being returned. One particularly concerning facet is the exception for individuals to not remain in Mexico requires them to prove it is more likely than not that they will face persecution or torture in Mexico on account of a statutorily-protected ground. This creates an impossibly high standard for asylum seekers and jeopardizes their due process rights and basic safety, undermining the U.S. treaty obligation of *non-refoulement*.

We are concerned the continued implementation of this protocol or actions similar to it will create additional safety and health concerns for vulnerable populations, especially the LGBT community. Eighty-eight percent of LGBTI asylum-seekers and refugees from the Northern Triangle interviewed by the U.N. High Commissioner for Refugees were victims of sexual and gender-based violence in their countries of origin, and two-thirds reported suffering sexual and gender-based violence in Mexico.¹ Forcing them to remain in Mexico or creating additional hardships in their asylum process only makes them more susceptible to the same violence that forced them from their home countries in the first place.

Under this policy, asylum seekers must express a fear to Customs and Border Protection (CBP) personnel of remaining in Mexico and facing persecution. Next, they must also prove to an asylum officer—without access to counsel, consultation, or a rest period² — that it is more likely than not that they will face persecution or torture based on a statutorily-protected ground. This

¹ <https://www.amnestyusa.org/reports/no-safe-place-lgbti-salvadorans-guatemalans-and-hondurans-seeking-asylum-in-mexico/>

² [2] Ted Hesson, "Asylum seekers could be denied a 'rest period' before being sent to Mexico," Politico, February 6, 2019.

requirement is higher than the burden of establishing a credible fear, reasonable fear, or well-founded fear of persecution and would be difficult to meet within hours of entering the country--even for individuals represented by skilled attorneys. This policy makes it clear that your agency is willing to tolerate the risks associated with returning asylum seekers to Mexico despite their ability to meet the well-founded fear standard under current asylum law.

While the policy states asylum seekers can use counsel, it effectively bars access to counsel during the fear screenings while in CBP custody. The likelihood of finding an immigration attorney licensed to practice law in the U.S. in Mexico is slim, and legal services at low or no cost in Mexico are rare. Asylum seekers are five times more likely to win their cases if they are represented by counsel, and this policy change adds an additional barrier to their asylum claims. For many asylum seekers this is the opposite of protection, it is a death sentence.


There are several major gaps in information regarding how this policy is being directed towards LGBT individuals. We are gravely concerned that any continuation of this policy or those like it go against our current asylum laws. For those reasons, we request a prompt response to the following questions.


1. How was this standard developed and did DHS's General Counsel approve it?
2. How many asylum seekers that identify as lesbian, gay, bisexual or transgender have been returned to Mexico under this policy?
3. What is the process that your agency followed for assessing whether someone meets the standard of persecution in Mexico?
4. What measures are in place to ensure someone vulnerable to persecution on a protected ground in Mexico is not forced to remain there?
5. Are legal orientation services provided to asylum seekers in Mexico?
6. Do you believe that it is safe for LGBT asylum seekers to remain in Mexico while they wait for their asylum cases to proceed?
7. Please provide us with a copy of the list of legal service providers you provided immigrants awaiting their hearings in Mexico.


We appreciate your prompt attention to this matter and look forward to a response.

Sincerely,


Raúl M. Grijalva
Member of Congress


Alma S. Adams
Member of Congress


Nanette Diaz Barragán
Member of Congress


Anthony G. Brown
Member of Congress



Julia Brownley
Member of Congress



Tony Cárdenas
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Yvette D. Clarke
Member of Congress



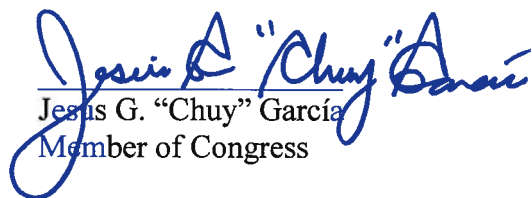
Susan Davis
Member of Congress



Lloyd Doggett
Member of Congress



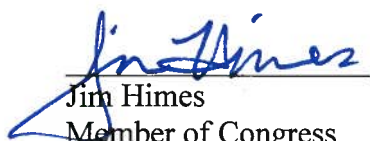
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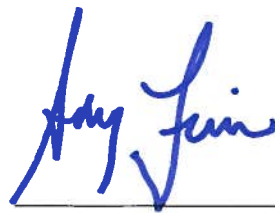
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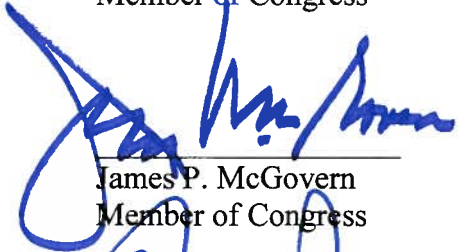
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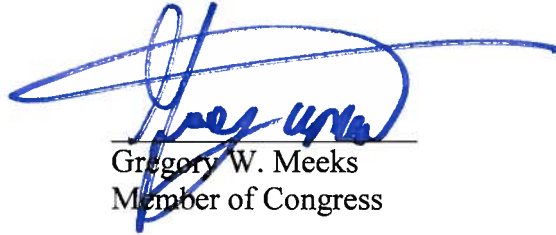
Alan Lowenthal
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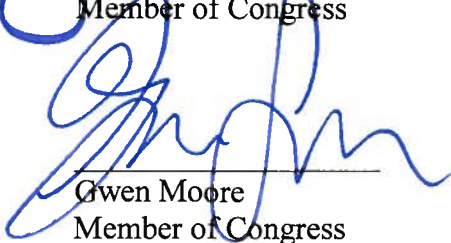
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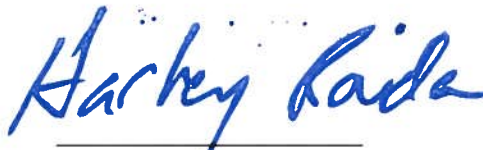
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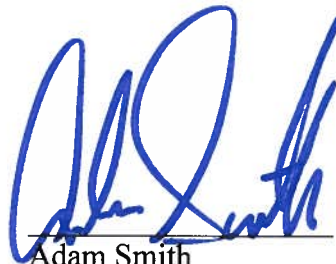
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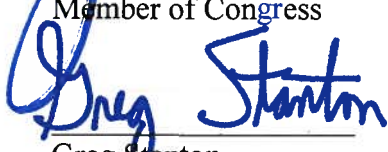
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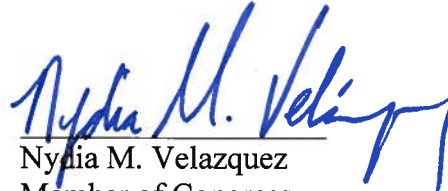
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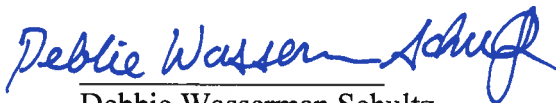
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