



TEXAS A&M UNIVERSITY

School of Law

**“TAMU Law Answers” Webinar Series:**  
**LEGAL ISSUES IN THE AGE OF THE CORONAVIRUS**

**IMMIGRATION PRACTICE AND POLICY DURING THE PANDEMIC**  
**Webinar Series**

**"Human Rights at the Border During COVID-19"**

**Presented July 31, 2020**

**Panelists:**

- Florence Chamberlin, Managing Attorney for the Mexico Initiative, KIND
- Charlene D'Cruz, Lawyers for Good Government, Project Corazon: Matamoros Legal Assistance Program
- Lucas Guttentag, Professor of Practice at Stanford Law School and Martin R. Flug Lecturer in Law and Senior Research Scholar in Law at Yale Law School
- Fatma Marouf (moderator), Professor and Director of the Immigrant Rights Clinic, Texas A&M University School of Law

*While the panelists are all attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.*

TRANSCRIPT for <https://youtu.be/OWWKMZ8sIx0> :

- Welcome to TAMU Law's webinar series on legal issues in the age of coronavirus. Today's webinar focuses on human rights at the border during COVID-19. And this is part of our series on immigration practice and policy during the pandemic. You can find more information at [TAMULawAnswers.info](https://tamulawanswers.info).

A quick disclaimer-- while all the panelists are attorneys, they will be discussing the law generally, and nothing in this webinar should be construed as legal advice. So if you have individual legal questions, please consult an attorney about your own circumstances.

We have three outstanding speakers today. I will introduce them very briefly. Florence Chamberlin works with KIND, Kids In Need of Defense, as the managing attorney for the Mexico Initiative. And she was previously the managing attorney for KIND's family separation response team.

Charlene D'Cruz is an attorney with Lawyers for Good Government, where she directs Project Corazon, the Matamoros Legal Assistance Program. And Lucas Guttentag is the founder and former director of the ACLU Immigrants Rights Project, which he led from 1985 to 2011. He served as senior counselor to the Secretary of Homeland Security under the Obama administration and currently teaches at both Stanford and Yale Law Schools.

So I'm going to turn it over to Charlene to get us started. And we'll save some time for Q&A at the end. So please feel free to email or send in your questions through the Q&A button. Thank you.

- Thank you, Fatma. Welcome to the webinar. My name is Charlene D'Cruz. I am, as Fatma said, the director of the Lawyers for Good Government project in Matamoros. The Project Corazon was started-- well, the nuts and bolts of it was started in October, when I came down and I realized that there was such a high need for a presence, a continual presence, in Matamoros because of the number of folks who are sent over under the MPP program, which is the Migrant Protection Protocol, also known in my circles as the Migrant Persecution Protocol.

Again, MPP is not a law. It is a policy of a very draconian government to curb and restrict asylum law, as we've known it for decades. Project Corazon started in October. And at that time, MPP was in its full throes. The MPP policy was first started on the Tijuana border in late January of 2019. It slowly made its way over to Matamoros. And as of July 16, MPP was implemented in Brownsville-Matamoros. It was also the same day that Trump's policy on banning asylum based on the transit ban was also instituted. So it was a double whammy.

Essentially, people have been coming to the border in Matamoros. And they were being metered. And some of them had been there for months waiting on this list. And then one day, boom, they couldn't go across. And as of July 16, about 125 people a day were being processed through the MPP program, taken in, put into *hieleras* or the ice boxes, for two to three days and then spat right out into Matamoros with notices to appear in a future date for a hearing. We maintain that MPP is illegal. And there are many lawsuits that are challenging the actual protocol.

What had happened in Matamoros was when people were being metered, they wanted to stay as close to the border as possible. And so people were just staying literally on the street by the bridge. And there were many humanitarian organizations that came out of just groups of people going to cross, bringing food, helping these folks. Team Brownsville and Angry Tias and Abuelas were some of the first people to come across the border and help these folks.

When MPP was instituted, suddenly nobody was going across. Nobody was getting across at all. There was a backup of people, thousands of people. And that's when the camp was set up. And it was basically dome tents that were right on the bridge, right on the street right there.

When I got to Matamoros in September, there were about 3,000 people in the camp. And by October, almost 16,000 people were sent over under the MPP program. The conditions in the camp were horrendous. There was no running water. These folks were just camping out. There was I think maybe a total of five porta potties for 3,000 people. And so the health and welfare and safety were really abysmal.

The risks to the folks of the cartels kidnapping them was so high that people literally huddled together so they wouldn't get kidnapped. And yet, they got kidnapped. At night, people would come through and just literally ransack tents. And that's still happening.

Basically, so here are these conditions. And in light of all of this, I started the law office in Matamoros. And I would see hundreds of people a day. Of course, we didn't have as many lawyers to help with this situation and get the asylum applications done. So I started a remote program where I would hook up asylum seekers with U.S. attorneys. And they would directly talk and then fill out the application form that they could take over to court.

Basically, the MPP program said that there were certain exceptions, that certain people were just not amenable to MPP. And there was a list that was brought out by the San Diego field office. And one of those was disabilities and medical exemptions. And yet, I found deaf people there. I have walked across a blind woman. I've walked across a lot of folks with medical exemptions. And that's pretty much what has been going on.

The conditions in the camp then got worse. And so they move people up on the levee, which is the levee where the Rio Grande passes through. And so they got them out of the plaza, because they were an "eyesore." That's what the Mexicans wanted, them to be just gone. So they now moved them up to the levee about January and still in tents. But the mud and the other issues were just horrendous. Every time it rained it was a disaster.

Global Response Management is a medical nonprofit that came into camp about the time I did in October. And they've done a huge service providing medical services. But now, we're sitting on the levee and guess what? Hurricane Hanna hits last weekend. And most of the folks have had to be evacuated because the river levels have surged to such a high level that they cannot live there, because they'll drown, because they're in tents. So right now, as of yesterday, and in fact today, they're moving people out of that whole encampment, which means I'm scrambling to find out where all these folks have been moved.

With COVID-19 hitting in March, not only were these folks sitting ducks and not knowing what to do, their hearings got postponed. So as of now, all of the hearings have been indefinitely postponed. There were three different postponements over the last four months. But the last one has been indefinite.

And so the conditions right now are really bad given the hurricane. Folks have had to helter skelter based on COVID. There's a lot of misinformation coming out of where the courts are going to be held. Even lawyers can figure out what's happening. There's a lot of folks who desperately cross the river who are being shunted back. Title 42, which Lucas is going to talk about, was an old public health law that has been instituted during COVID-19, has now affected not only the cases, but people.

A field hospital was set up about a month ago with 11 beds. And I think-- I can't remember how many ventilators. So far COVID did not hit the camp till about three weeks ago when the first case was detected and 11 other suspected cases. So they were immediately quarantined. But with Hurricane Hanna, they all had to leave.

So that's really the situation right now on the ground and the genesis or quick review of what happened with MPP and as it goes on. MPP started declining in December when they started using more draconian methods to get rid of folks, which is the PACR program, the HARP program, and, of course, the Third Country Agreement Program, which is the ACA. And we saw a siphoning of cases into these very draconian programs where they were given 10 days to find a lawyer to defend their asylum case, not even a full CFI. None of the decisions were reviewable by the judge. And then they were put on planes and deported to their home countries. Plane-fuls of folks were sent to Guatemala under the ACA program.

And so we've seen a drop in MPP and now no MPP at all because of COVID. But we still have about 800 to 1,000 people still waiting on courts. And the court dates are indefinitely extended.

So I'm going to pass on to Lucas to talk about COVID. I'm really happy to answer any questions at the end. Thank you.

- Great. Thank you very much. And thank you for having me participate in this. Welcome to everybody. Thank you, Fatma.

I want to talk about the current policies regarding to the COVID expulsions that are going on at the border. This is a new policy that started on March 20. There was a regulation issued. And then at the same time, a CDC order, the Centers for Disease Control order, was issued. And what the two together authorized-- and I'll go through them in a little bit of detail-- what the two together authorize is for the border patrol to summarily expel anyone who's coming across the land border without documents and based on the purported justification that processing people in so-called congregate settings is too dangerous because of the COVID pandemic. And so therefore, there's no processing at all except to expel people immediately back to their country from which they transited or to their home country.

This is not a process for testing individuals. There's no determination that anyone's ill, that anyone's infectious, that anyone poses a danger. It's a summary expulsion that applies to anyone who's crossing the land borders without authorization.

For those of you who want to look into this in more detail I wrote a longer post about it that I think might be available through the webinar. And you're welcome to read that on Just Security. But let me just explain how this happened and why this is a radical departure from whatever happened in the past.

This is the first time that the public health laws have been used for immigration expulsions. We've always had grounds in the immigration statute for denying entry to someone who has a dangerous contagious disease. That's under the Immigration Act.

But what's being done here is using the Public Health Act to enforce expulsions without any of the protections or procedures that otherwise apply under the immigration laws. And specifically, what's being avoided or circumvented are the protections under the Refugee Act that entitle a person to be screened for an asylum claim or withholding claim and for children, unaccompanied children, to be protected by the TVPRA so that they get proper screening and are sent to the appropriate facilities if they can't be safely returned.

So what happened here and let me just take a step back is the Public Health Act of 1944, which is still the governing act, allows for the surgeon general to-- and I'm going to just quote from a part of the statute here-- gives the surgeon general "the power to prohibit in whole or in part the introduction of persons and property from countries" where there is a public health-- a communicable disease that poses a serious danger to the introduction of such disease into the United States. So it bars the introduction of persons, it's not citizen specific. It's not non-citizen specific. It applies across the board.

And it's always been understood to authorize the quarantine of individuals who are coming into the United States-- the quarantine of persons and goods-- and to punish the transporters, or sanction, I should say, the transporters if they're bringing goods or persons into the United States who are subject to quarantine. It's not an expulsion statute. It's never been understood as an immigration statute. It's a quarantine public safety health statute, so that if someone poses a danger-- citizen or non-citizen-- they can be subject to quarantine, which is to say they can be held or they have to self-isolate or self-quarantine until we're sure that they don't pose a danger. If they're subject to expulsion, they can be processed under the immigration statute, which then triggers, as we know, both procedures and protections.

On March 20, the regulation, excuse me, the statute was reinterpreted to say that the barring introduction authorizes expulsion of individuals. So that was step one. And then step two is the Centers for Disease Control issued an order. And that order says that the expulsion power under this reinterpreted statute will apply only to people who arrive without documents, which is to say that many people continue to arrive across the southern border. And there's many exceptions to prohibition on entry-- persons who are legal residents, commercial traffic, educational travel, tourist travel by plane if it's not coming across the southern border, anyone else designated as essential travelers. They're all allowed to come.

The only persons that this rule and practice now affects are those who are arriving without documents. It's what I call a medically gerrymandered definition, specifically to target undocumented persons. So why is that?

That's because under the immigration statute and under the Refugee Act if a person arrives with or without documents and if they're subject to expulsion, they're entitled to a credible fear determination whether they have a claim for asylum that they should be allowed to pursue. A claim for asylum, a claim for withholding, a claim for CAT, all of those have to be processed. And however inadequate the credible fear process is-- and it has many, many flaws-- nonetheless there is some process has to be afforded.

With the expulsions of what we now call the Title 42, because that's the title of the Public Health Act, the Title 42 expulsions provide that the border patrol can immediately expel individuals without any process whatsoever, without any of the screening that otherwise applies. They can be either returned to Mexico. Or they can be summarily returned to their home country.

What's happened as a matter of practice is that the entire southern border now is essentially being enforced under the CDC authority, rather than under the immigration statute. We have the latest numbers are since March, some 70,000 people, including roughly-- let's see, sorry, I thought I had the number for kids as well. I have to look for the number of kids-- there are roughly 70,000

people have been expelled under the Title 42, Public Health Authority, and only roughly 5,000 people have been removed under the immigration statutes.

So we've seen a complete change from using the immigration statute to using this public health authority. And why is that? Well, for one, because there's a number of injunctions in place that require processing under the immigration statute and under the credible fear process for persons who are arriving without documents. And this is a way to circumvent those obligations.

There's a small carveout-- I shouldn't really call it a carveout-- there's a small proviso in a border patrol memo that says that a person might be able to assert a claim under CAT, the Convention Against Torture, but only if-- and I'm reading from the border patrol memo-- only if the person makes an affirmative, spontaneous, and reasonably believable claim that they fear being tortured in the country that they're being sent back to. In other words, they're not questioned. There's not questions that the person's asked. They have to spontaneously say it. And then the border patrol decides whether or not that's reasonably believable.

We don't know what the actual numbers are. The best we know and the best I've been able to learn is it's out of the 70,000 number, 85 have been received that so-called CAT screening. And a total of 4 have passed. So it's really not a meaningful test at all. It's a way, I think, of framing the program to sound as if it's in compliance with obligations, our requirements under CAT, but to, in fact, negate them.

There's been one legal challenge to this-- and I'm happy to answer more questions about all of this-- there's been one legal challenge to this that's gone to a decision in district court in DC, in Washington DC. A district court issued a preliminary ruling that the program was illegal on behalf of one individual young child, on the grounds, first, that the statute-- the CDC Title 42-- did not appear-- and this was a preliminary ruling-- did not appear to authorize the expulsion of persons, that it was unlikely that the government was correct on that claim of authority. And, secondly, that the statute did not authorize overriding the obligations under the Refugee Act and under the Convention Against Torture.

So both because the statute standing on its own, the public health statute, did not authorize expulsion, it authorized quarantine and prohibition of introduction of goods or people, but not expulsion. And secondly, that even if it did, a person still had to be allowed to pursue those claims for protection under the asylum and other statutes.

That was issued, as I said, on behalf of a single child-- and also under the protections under the TVPRA. That was issued on behalf of a single child. What's happened since then is that the government in every other case where a child's been identified or litigation has been brought or threatened has then agreed to put the person into normal Title 8 proceedings. And that's what happened with this particular child as well. So it's effectively a way for the government to avoid trying to defend this statute, because when individual children are called to their attention, they're put into Title 8 proceedings. But since it's very difficult to find these children, most go unrepresented. Most cannot have advocacy and representation on their behalf. So the program continues even while the government seeks to avoid defending it.

So let me stop there and then answer questions after we finish this. Thank you very much.



- Thank you. That was really accurate and exactly what we're living right now at the border with kids facing the Title 42 expulsions.

My name's Florence Chamberlin. And I'm the managing attorney at KIND. And I transitioned from KIND's family separation team just in February to El Paso Juarez. We weren't able to open our offices in Juarez due to the COVID crisis. But from El Paso, I've been working closely with colleagues, such as Charlene and other folks along the border to monitor and identify and find out how the pandemic is affecting children at the border. A lot of our work and the casework we were planning to do has really shifted to addressing the demands of what we've been seeing with Title 42 expulsions in the past few weeks.

I wanted to give you a little bit of an overview about KIND's work, just so you have an understanding. KIND is a national organization. We were founded in 2008. And we provide legal services. We partner with major law firms, corporations, and law schools to provide pro bono attorneys to represent unaccompanied children that are referred to us. We do policy and advocacy work, to work with Capitol Hill, federal agencies, and other policymakers to ensure that unaccompanied children receive fair and appropriate treatment while in the U.S. immigration system.

We have an international program, where we conduct international research and educate the public on the root causes of child migration and promote regional standards and joint action for the protection of children on the move. We offer reintegration and reunification services for children who are facing removal back to their home countries, primarily in Guatemala and areas of Honduras. We have social services coordinators that provide holistic support to migrant children to address their traumas as they adjust to a new country, new language, and new homes. And we commenced a project in Mexico just recently, not just in response to family separation, but based on some of the longtime work we've been doing in country and observations that KIND has been wanting to work with in Mexico.

In order to understand the impact of Title 42 on unaccompanied children I think it's important for you to understand what is an unaccompanied child under the law. To the Homeland Security Act, an unaccompanied child is a child who has no lawful immigration status, who is under the age of 18, and has no parent or legal guardian in the U.S. that's available to provide care and physical custody for that child.

Most of the children that we represent are from these countries-- El Salvador, Honduras, Guatemala. They're fleeing gang violence, forced recruitment, severe abuse, and domestic violence, abandonment, neglect, and/or they're being trafficked. They usually journey by foot, plane, car, train. And they're usually coming often with smugglers or they're victims of trafficking or they somehow make their own way.

The TVPRA, the Trafficking Victims Protection Reauthorization Act, is the body of law that really provides the protection for unaccompanied children. In 2008, the TVPRA was signed into law. It's a bipartisan provision. And it was reauthorized in 2008 to include provisions for unaccompanied children who are vulnerable to trafficking en route to or while in the United States. The TVPRA shows Congress's intent that children have legal representation throughout their immigration proceedings. It directs the government to provide access to counsel for every

unaccompanied child and requires ORR to ensure to the greatest extent practicable that all unaccompanied children in its care have counsel to represent them.

And also under the TVPRA, and this is I think relevant to the provision that Lucas mentioned, that the carveout in the Title 42, which says there's this exception for persons who affirmatively assert that they would be subject to torture upon return to their home country. Under the TVPRA, an asylum officer when reviewing a child's claim is supposed to look at it from the eyes of a child and consider their age and other vulnerabilities of that child. Under Title 42, when there are expulsions taking place, that provision becomes even more critical because it is very difficult for a child fleeing persecution and seeking protection to affirmatively assert a fear of or a need for protection under CAT, under the Convention Against Torture.

The Flores settlement is another body of law that governs the minimum standards of children in government custody. And it lays out the procedures that must be followed in processing a child's claim for legal protection. And it is intended to prevent just rapid deportations for children from any non-contiguous country.

The processing that's supposed to take place under normal processing for a child at the border is that a child would cross in the first-- this is a complicated diagram. But you can see that the child crosses the border. They're apprehended or a child may be present at the border and seek protection. ICE would identify that child and designate the child as an unaccompanied child. And they would issue the charging document that commences the Notice to Appear and initiates the proceedings that would allow them to have the regular procedures before an immigration judge. The child is supposed to be transferred to the Office of Refugee Resettlement, which is ORR custody.

In ORR, the child is to receive a legal screening. A case manager will locate and screen a potential sponsor, so that the child could be reunified. The child would either remain in ORR custody, or they will be reunified with their sponsor. And usually, they will continue in the removal proceedings before the immigration court. If they don't receive relief that they're seeking before the immigration court, they will either seek voluntary departure or be deported, or they apply for relief and the case continues as such with the grant of relief.

As Lucas mentioned, since March 21, 2020, we've seen the prohibition of all non-essential travel across the border. But really what's supposed to happen is-- we've seen that children are being expelled. The numbers here, you can see that they've dropped dramatically. The number of unaccompanied children apprehended at the U.S. border and actually transferred into ORR custody has dropped considerably. As of June-- I think the capacity is now at 7% in the ORR facilities. In January, there were 1,900 admissions. And now, as of June, there were just 61. The Office of Refugee Resettlement received only 61 children from border officials in June, compared to 39 in May, and more than 1,800 in March.

We have seen that when children are being presented at the border, there's no screening to determine whether or not the child is accompanied or unaccompanied. They changed the way that they are identifying children calling them unaccompanied juveniles, so that they can really distinguish them from how unaccompanied children are supposed to be identified under TVPRA. We have seen that children are being illegally blocked from entry at the border. And we have



seen summary expulsions without screening for any of the protections. We have observed children being returned at various points along the border, where on the Mexico side, there should be a screening and a process where the Mexican authorities would receive the children, so they would be assured that there would be protection if they are expelled. And we've seen that that is not happening as it should. And they're being expelled to areas where there aren't facilities ready and available to screen them.

As many of you have probably heard in the media, we have also seen that children-- and as Lucas referenced-- children are being held in hotels. And we're having a very difficult time identifying them. It's kind of like whack-a-mole. You get notice that there is a child that is detained. And you try to identify them. And when we have been able to identify them, we have had success in some cases for the children to be processed under Title 8 and taken out of Title 42. But there have been quite a few cases of children who are not-- who we can't get to in time and they're being expelled before we can actually advocate for them to be placed into Title 8 processing.

In the countries of origin, when children are expelled, there is limited to no COVID testing, mandatory quarantines when the kids are returned. And it's been very difficult to access the children when they've been returned to their home countries. It's been very difficult-- and it's exacerbated already and compounded already problems that have existed in the other countries. Food shortages, hygiene shortages continue to be a problem.

At the northern border where I am, we have seen increases in -- it's a little bit different than where Charlene is where there's the tents, there are shelters. But the exacerbation of COVID on the existing shelters, the government and civil society shelters, it's really been extremely difficult. And the government and civil society shelters, because of quarantining, parents can't go out and work, for example, there's food limitations. Exacerbated pressures and we have seen an increase in gender-based violence just because people are inside longer, same as we've seen in the United States in some instances. But it's just there's fewer resources. And on top of that, you add that many of the folks that are at the border are in MPP proceedings. So their cases have been prolonged, but they have the added pressure of COVID.

So currently, I would say the greatest challenge right now is identifying the children that have been expelled under Title 42. But we're continuing to do that work and work with various organizations to try and identify when we're able to encounter children who are in that situation.

- Great. Thank you so much. So we're going to open it up to Q&A at this point. I think we've had a couple of questions come in. And I'll also start asking the panelists some of the other questions we've received.

We had one question about numbers. How many children out of 70,000-- I think, Lucas, that was after your talk. Is that something you mentioned?

- Yes, I mentioned that there's been approximately 70,000 Title 42 expulsions. The border patrol, CBP I should say, publishes statistics on a monthly basis. I'm looking at the latest report now. We won't know the July numbers until sometime in August. So those are the rough totals based on what CBP publishes. There's no independent auditing of those.

And as far as I'm aware there's no breakdown by CBP of how many of the 70,000 are children. So we don't know exactly how many children. The best estimates I've seen from various reports is that approximately 4,000 children have been expelled under Title 42. But I don't know the accuracy of that. And I don't know if it comports with what the experience has been on the ground. There's no separate recording of those numbers.

We can send the link, the CBP link, for the people who are interested and want to track those numbers. If I can figure out how to do it, I'll try to put it into the Q&A.

- OK, great. There was a request also, Florence, for you to share the screen about how to help. So we can also post that. Maybe that's an easier way then to share it here.

So for people who aren't lawyers, what is the best way for them to help in this situation? What other strategies, besides litigation or direct representation, is available?

- For Lawyers for Good Government, we utilize folks who speak Spanish. We need translators to translate documents, because we're really trying to shore up the files for each individual asylum seeker, because we have such a low approval rate here in the tent court in Brownsville, and we can't get enough lawyers here. So if any lawyers want to come to the border when the court hearings start, please contact me.

But if you're not a lawyer and you would like to help with translation of documents, possibly some interpretation, and maybe even some of this filing, helping with the filing, please contact me, and I can see how to plug you in. As far as the citizenship, call everybody, call every senator, call every rep. This is ridiculous what's going on. And we really need to make some noise about how illegal all of this is.

- OK. And what about paralegals? We had a question also come in about that. What role can they play in supporting lawyers or representatives?

- Again, in Lawyers for Good Government, I could depending on if they are bilingual-- you know, I just try to interview everybody separately and see where I can hook them up. And so they can contact me at [charlene@lawyersforgoodgovernment.org](mailto:charlene@lawyersforgoodgovernment.org). And I can write that down somewhere where everybody can see it.

- Florence, you mentioned children being detained in hotels with no oversight. Can you speak a little bit more about what's happening there?

- Yeah, there is oversight. But the question is, is it appropriate oversight? So children are supposed to be held in the least restrictive settings and in settings that are appropriate for children. So holding children temporarily in a hotel setting can be terrifying for a kid, for several days at a time right-- and without communication. Oftentimes, we are trying to identify where a child is located, and we do not know where their child is located. So it's very difficult to communicate with them. The communication with the parent will be very limited. And so that is something that you know has been particularly troubling with these rapid expulsions and returns.

And it is still really chaotic and unclear in a lot of ways. But what are the qualifications of the persons who are monitoring the children? If they're in ORR facilities, there are people who are trained to be monitors of children. There's activities, recreational activities. I mean, it's not a fabulous setting. But it's meant to be child appropriate. And there's access to medical care and recreational activities, which are really important, particularly with kids of all ages. So holding them in hotels under circumstances that really are still unclear is extremely problematic and troubling to us at this time.

- We have a couple of questions-- I think, Lucas, you said you would answer them live. One just generally, what is the MPP? So we sort of jumped in the middle of that. Do you want to explain a little bit about what it is?

- Yeah. And I think Charlene answered. I think we tried to answer it online. Migrant Protection Protocol is the name of the memorandum that started the program, which most people I think which refer to as the "Return to Mexico" or Charlene had yet another term for it. It's essentially a memorandum. It's not a rule. It's a policy that was adopted by DHS that authorizes returning individuals who are in proceedings, immigration proceedings, back to Mexico to await their next court hearing. I think the latest number is something like 60,000. Is that right still that roughly 60,000 people have been subjected to that? Which forces them to go wait-- wait-- in Mexico for their hearings.

But, of course, then returning for the hearing is very difficult. Getting notice of the hearings is very difficult. The hearings have been suspended because of COVID. Now, there's a lot more about it. But technically, Migrant Protection Protocol is the policy by which instead of allowing a person, as has always been the case, to be in the United States, whether or not they might be subject to detention, but they're in the United States, they have access to lawyers or are supposed to have access to lawyers and be subject to processing in the United States, are forced to return to Mexico to await their next court hearing. And I know both Charlene and Florence have had a lot more experience with it on the ground than I have.

- Just to maybe get a little more practical information about it, how do people actually find out about their hearings? How do they come in to attend their hearings? I don't know, if Charlene or Florence, if you want to--

- Sure. Basically, in the Brownsville-Matamoros area, but also in El Paso, when they were first put into MPP-- this is pre-COVID-- they would be issued a Notice To Appear, and they would be given a date. And they would be sent across the border. And then they would have to show up on the bridge at either 4 o'clock in the morning or 1 o'clock in the afternoon depending on when their hearings were. They would have to present the paper that they were given the first time they were around. Then they would go through a 3-hour processing in a tent court. And these are just circus tents that have been set up right on the border in Brownsville.

So once they go through that process, then they have a video conference with judges that initially started only with judges in Harlingen, Texas. But then they included judges from the Dallas Fort Worth Video Conferencing Center. Basically, they video conference with the judge. They go through the first hearing. And then they're given a second hearing. Then they're spat right back

out, usually a whole day they spend in the tent. They're given very little food and water throughout the entire-- including children.

When it first started, there was literally one porta potty for about the whole calendar, which could have been between 40 and 50. We have three hearing rooms, or three hearing tents. And so about 40 to 80 people-- actually 40 to 50 people at every hearing. So they would process 150 cases a day and then spit them back out.

Post-COVID, they would make an announcement that for a month it was suspended, the hearing. So people would have to go up on the bridge, get their hearing-- and, of course, this is CBP giving out the Department of EOIR, which is the Executive Office of Immigration Review. That's the court's hearing. So basically there was all sorts of what we call legal chicanery going on where one party is handing out a hearing notice for the judges, which is supposed to be a neutral sort of setting. They would have to go back and then come back a month later. And they had to show up on the same day of the next month. And this happened for three months.

And then recently, two, three weeks ago, they said, well, until we have declining levels of COVID both in Tamaulipas, Matamoros, which is the Mexican state, and in Texas, and we can prove that it's flattened and going down, only then-- and only then-- we will consider re-instituting the hearings. And so right now, all we do is we get online, and every day I check. Have they moved? Today, I got another notice that one of the cases had been moved to April of 2021. And there are two types of hearing. One is called a mass [? accommodate ?] hearing, where you just go in and you sort of do what's called pleadings in front of the judge. And then there's a final hearing. We have about 600 master hearings that have been set all the way into the spring of 2021.

- Exasperating that is the danger of conditions living at the border, right? So it's danger in the place where you're where you're staying with your families. So you move somewhere else a little bit further away. But you're expected to travel back to the place of where your court is being held. There were circumstances where it was deemed so-- the solution was it's so dangerous here in this city, we're going to bus people very far away to the other side of the border, but they were still being expected to appear at their court hearings.

So imagine getting a hearing date for a traffic court in-- I don't know, you're in California and you're told you better show up in Louisiana or you will be put in jail. But for these folks, it's a matter-- it's really a critical part of-- due process is proper notice. And there are so many errors with these hearing notices. It is of great concern, because people are being-- will end up I suspect with deportation orders, unintentional. And it's going to be very hard for them to try and reopen their cases and try to challenge that and have the right to just really seek asylum, seek protection.

And as far as children are concerned, Title 42 should be obliterated for vulnerable persons seeking asylum and particularly for the vulnerable of the most vulnerable, which are children. And so in so when you add in all these other administrative things-- because remember, the MPP is people fleeing and trying to just present their case. So they haven't even gotten to the root of their case and what happened to them and the horror they suffered in their country, yet they're dealing with other horrible, exacerbated situations on a day-to-day basis just by being in this situation and the stress.

And so when you think of families with kids, I think under COVID, a lot of people of us are stuck at home with our kids and we feel the pressure of being locked up. But imagine really it's a life or death situation, and you're trying to keep it together. So I think that's really a lot of what we're seeing on a day-to-day basis at the border.

- I just want to mention one more thing is during COVID, what has happened, because there's been less movement of people through Mexico, the cartels and the *polleros*, the coyotes, the people who smuggle people, have gotten so desperate that kidnappings have skyrocketed-- I have so many clients who have been kidnapped recently-- because their source of income is gone. Where there was a steady stream of people coming through, there was a high number of people kidnapped. But now there's less people. So I've seen an uptick in the amount of kidnappings that are occurring at least on this side of the border.

- What about the children who have already been expelled? Is there a way to help them? How do we identify them? I mean, I know you mentioned it's hard to identify-- I think, Florence, you were saying to even identify the children who are being subjected to Title 42--

- What we're doing is if we identify-- I mean, if it's brought to our attention usually by partner organizations that a child has been expelled and they're back in home country, we ask that those cases be flagged for us so that we can-- we have our reintegration and reunification program. And because we know that those children have safety or protection concerns, we can flag them for other international organizations in home country. So that hopefully those children will be able to be screened and considered for protection, even though they're back home. So as far as partner organizations, I would ask that if they hear of cases that are like that to please let us know.

- OK. I have yet another question-- Lucas, I think you were going to answer this one. This is about the CDC again and how to protest its role in this process. The person posing the question noted that this can undermine the CDC's credibility.

- Yeah, I think that's a very good point. I want to also connect it to the question on what the practice is in other countries, whether other countries are using COVID. It's a big problem. It's not limited to the United States by any means. But I think it's important to note that the UN High Commissioner for Refugees, UNHCR, has issued a very strong statement that COVID cannot be the basis for denying or undermining refugee protections and refugee claims.

And I haven't done a complete survey. And I don't really know what all the practices are in various countries. But for the most part, so far as I'm aware, the countries in Europe, while they are using COVID to limit travel and to prohibit entry, they are not using it to bar refugees and to override refugee protections. So it may be that other countries are. But you know in some respects the United States is uniquely violating its obligations, or at least uniquely with respect to other developed countries. Again, I'm not certain of exactly what all the practices are.

But I think it's right that to have the CDC play this role is counterproductive to its mission, and it makes it less credible for having done this. We don't know, and we don't have any insight, into what the internal political process was between the White House, Health and Human Services, of which CDC is a part, CDC and so on. One can imagine given how things happen in this

administration, what kind of pressure may have been exerted on CDC to participate in this. We don't know. But we would all be better served if CDC stuck to and aggressively practiced its public health mission and didn't get involved in immigration enforcement in a way that's inconsistent with the law and that undermines its role, its very important role, in the public health.

- I would also say that folks can-- I mean this is where advocacy and contacting your representatives and letting them know that they can say something about the use of the CDC in this way, so making those calls I think is critical. Reaching out to your representatives and letting them know that you oppose use of funding this way, I think that that is important.

We have heard from pediatricians, from other experts, medical experts, who have been able to say you could screen people in a way that's safe, that doesn't create exposure. I can note that in February at the height-- well, yeah, I'll keep it at that. But I could say there are safeguards that can be ensured to allow for safe screening and protections of at least at a minimum of children.

- Yeah. I would underscore that many public health experts have criticized the CDC ruling. I'm not aware of any that have supported it. And there's been a number of letters signed and posted by a large collection of public health experts, epidemiologists and others. I think the Global Health Initiative at Columbia has a collection of those letters and policy statements and so on. So this is not a policy that has the support of the public health community at all.

- In terms of access to counsel, is there any way to estimate how many of these children have counsel and then how many of the adults have counsel in the MPP process? What would you guess just based on your direct experiences?

- In Brownsville, we have less than a percent of the adults who are represented pro bono. There are some private lawyers who are representing folks. But we have not been successful in getting lawyers down to the tent court. And now with COVID, it's going to be even more difficult, which is why I've set up most of my programs remotely to help *pro se*, which is people going in on their own into court, to set up all of their files, and to get as much of their record and their file on the record through remote. And people can help, even non-lawyers can help doing that.

- You mentioned these medical exceptions that you can request. What's the process for asking for them?

- There's no process. There's no process for anything. MPP is completely erratic, completely capricious, and is illegal frankly. It was designed to keep people out. It was designed to eviscerate due process on the border. We are a constitution-free zone here. And so we are just stabbing in the dark. And that's what I'm doing is trying to reinsert due process by trying to get each individual case shored up.

As far as the medical exceptions, what I was doing is I would just go on the bridge. And I would stand there for days on end, hours and hours, insisting that a certain person-- like I had a child with severe seizures and [ ?INAUDIBLE? ]. We have seen lots of folks with medical exceptions. We've had deaf people, blind people. And I just from October till COVID, I would just go days on end just stand there and not budge till they would take them and parole them. Oftentimes they



would take them, spit it back out. I would go back. That's the process I've used. And that's the only process.

The other option is if you're afraid to be in Mexico, there's something called a non-refoulement interview, or NRI. And you can request one of those when we are in court. And they take you into this other chamber where you are put on a phone with an asylum officer from USCIS, which is part of the Department of Homeland Security that deals with asylum. And you talk to this officer. And after about an hour, maybe two hours-- sometimes they're 15 minutes, sometimes 4 hours-- they deny you anyways. And I'd say 90% of all these NRI interviews have been denied, even though folks have had kidnapping and they have said everything-- and nothing. I have trans clients who suffered horribly in Matamoros-- kidnappings, beatings-- nothing. We can't get them through. They can't get through.

So the process that they claim they have set up they violate it all the time. They set up their own exceptions. They refuse. So it's really a crapshoot. And that's what we are trying to get is an answer to the process by filing all these class action lawsuits.

- Do you know the current status of the litigation challenging the legality of the MPP? Does any of the panelists want to weigh in on that?

- I can't remember exactly all of them. There's literally 10 of them. They're in various stages of just the federal district court litigation. I don't know, Lucas, maybe you know more.

- Yeah, I mean, in addition to that, the 9th Circuit has held that the MPP program is in violation of the immigration statute. That it's an impermissible use of the statute to apply to individuals who enter without authorization, without documents. The problem is-- and that's a lengthy opinion by the 9th Circuit-- the problem is that that ruling has been stayed. So it's suspended. So it's not actually in effect and it's not prohibiting the program. But as a matter of legal precedent, it does hold that the program's impermissible.

That case is headed to, if not already in, the Supreme Court. So it's very likely if the program remains in place that there'll be further litigation on it. And then there's other challenges as well. That's *Innovation Law Lab v.*-- I think it was originally *McAleenan*. I guess it's probably *Wolf* now.

- *Wolf* now.

- And *Nora v. Wolf* is access to counsel and also-- well, no, the *Nora v. Wolf* case, which was filed in the DC Circuit a few months ago talks about the conditions in place like the Matamoros, which is so dangerous, that it's such a violation of human rights. And therefore MPP-- I mean, they're bootstrapping it to the legality of MPP.

- We have a question about the role of the media. Are the media being allowed, for example, to see these tent courts or into the camps? And what role can they play? Is media pressure working to help change the situation there?

- Initially, they were not allowed in September. But then they allowed them as long as they only bought a pencil and a couple pieces of paper and that was it. And but they were being allowed. They had to jump through all these hoops.

As far as going into the camp, a lot of media has been in the camp in Matamoros. There's a lot written about it. But the tent court-- and you can also go to Harlingen, at least from Matamoros, and observe the hearings, because remember, it's video conferencing. So you can observe the judge actually being on the case while the judge is being videoconferenced down into Brownsville. So that was an easier way for the reporters to get in. I mean, they're allowed into tent court, but it's pretty stringent.

- I wanted to put a plug out there, if there are lawyers or law students or individuals who are willing to do pro bono work, there are tremend-- I mean, we're focused on unaccompanied children. But really the heart of this-- there's so much work that needs to be done and a need for lawyers along the border. And it's being done by just some power houses. But the need is so great. And I think there's opportunities for remote support. There's some great organizations like HIAS as well that needs the support of individuals who are willing to help with some of the MPP cases when the courts start up again. So there is there's plenty of work to do.

- I want to thank all of our speakers for sharing their experiences and careful examination of the legal situation here on the ground. Our next webinar in this series is on August 4. And it's actually on the changing role of technology in immigration court, including the use of remote adjudication. And we have Judge Hugo Martinez speaking, who does that MPP hearings from the Fort Worth Adjudication Center on that panel among others. So if you're interested in learning more about that, please do join us then.

And again, you can have more information about our series on [TAMULawAnswers.info](https://TAMULawAnswers.info). So thank you all for joining us today.

- Thank you.

- Thank you.

- Thank you, all.

- Thank you.

While the panelists are all attorneys, they will be discussing the law generally, and nothing in the webinar should be considered as legal advice. Attendees should consult their own legal advisor to address their own unique circumstances.