



## Policy Brief: DHS and DOJ Are Opening Secretive Port Courts Along the Southern Border

September 6, 2019

Contact: Leidy Perez-Davis ([LPerez-Davis@aila.org](mailto:LPerez-Davis@aila.org)) or Laura Lynch ([Llynch@aila.org](mailto:Llynch@aila.org))

On January 24, 2019, the [Department of Homeland Security \(DHS\) announced](#) the [Migration Protection Protocols](#) (MPP), a policy also known as “Remain in Mexico,” which requires individuals seeking asylum at our southern border to remain in Mexico while their U.S. removal proceedings are pending. AILA immediately [expressed grave concerns](#) that the MPP program effectively denies asylum seekers their right to [be represented by counsel](#) and curtails their ability to receive a fair and meaningful review of their claims. Additionally, the [well-documented](#) violence and instability that migrants face in Mexico exposes returned asylum seekers to severe risk of further trauma and even death while they wait for their hearings. AILA has [called for the termination of MPP](#) and requested that asylum seekers be processed in the U.S.

Instead of ending MPP, DHS and DOJ [expanded](#) the program in July to include Laredo and Brownsville, Texas. The New York Times [reported](#) that DHS built massive temporary tent facilities in both locations that will soon function as virtual immigration courtrooms for MPP cases. The location of these new tent courts [forces asylum seekers to wait for their proceedings](#) in extreme danger in Nuevo Laredo and Matamoros, which have both been designated by the U.S. State Department with a level four “[Do Not Travel](#)” warning due to crime and kidnapping.

To date, DHS and DOJ have not provided additional information to attorneys or other stakeholders about the operational logistics related to the new tent courts, despite their imminent launch. This policy brief shares the little information that has been made publicly available by media reports and elevates the outstanding operational issues of concern that have yet to be addressed by the agency.

### What Do We Know?

- **How many individuals are currently in the MPP program?** As of August 28<sup>th</sup>, [37,578 asylum seekers](#) have been subjected to the MPP program.
- **When will the new tent courts in Laredo and Brownsville open?** The Wall Street Journal [reported](#) that MPP hearings will start in the new tent locations in mid-September. However, attorneys have reported that the Laredo port court will begin hearing cases on September 12<sup>th</sup> and the Brownsville port court will begin hearing cases on September 16<sup>th</sup>.
- **What is the capacity of the tent courts in Laredo and Brownsville?** [Media reports](#) revealed that the administration anticipates conducting approximately 420 virtual hearings a day in Laredo and 720 virtual hearings a day in Brownsville. DOJ recently [informed](#) the National Association of Immigration Judges (NAIJ) that immigration judges adjudicating MPP cases are expected to “hear 80 to 100 MPP cases in a single session that lasts a few hours.” This rushed, assembly-line justice is unacceptable for decisions that can be the difference between life and death.
- **How will these hearings be conducted?** DOJ is prioritizing the adjudication of MPP cases and plans on [detailing](#) at least 150 immigration judges away from their home dockets to adjudicate

MPP cases. It is expected that many of the detailed immigration judges will adjudicate cases via video teleconferencing (VTC). For years, [legal organizations have raised due process concerns](#) about the use of VTC and a recent [EOIR-commissioned report](#) explained that VTC technology does not provide for the ability to transmit nonverbal cues, which can impact an immigration judges' assessment of an individual's demeanor and credibility.

- **Will other immigration courts be affected?** AILA members and [media reports](#) have stated that both the San Diego and El Paso immigration courts will postpone all September and October non-UAC dockets so that the judges assigned these cases can focus exclusively on the port court dockets in Laredo and Brownsville. The immigration courts are already facing an unprecedented backlog of [over 930,000 pending cases](#) and [according to an unnamed DOJ official](#), the reprioritization of cases “will wreak havoc on court dockets across the country.”

## What Don't We Know?

To date, little information has been confirmed by DOJ or DHS. The lack of transparency will create chaos at these two port courts for attorneys and migrants alike with unanswered questions preventing the possibility of a fair day in court and restricting access to counsel. For example, the following information has not been made public:

- ★ How will migrants have access to their attorneys during port court proceedings?
  - How will attorneys access the facility?
  - Will attorneys be able to be in the same room as their clients during the hearings?
  - Will attorneys have access to their clients prior to the scheduled hearings?
  - Will attorneys have private rooms to meet with their clients?
  - Will witnesses or family members be permitted to appear in these facilities? If not, where will they appear? Will they be required to travel to the immigration judge's location?
  - Where will attorneys submit documents on behalf of their clients that are required for them to apply for asylum (e.g., I-589, E-28's, supporting evidence, etc.)?
  - Will attorneys be allowed to enter these facilities during business hours?
- ★ Which immigration court will have operational jurisdiction over these cases?
- ★ Will EOIR provide on the ground personnel at these facilities? If so, please identify which positions.
- ★ Will there be in-person interpreters? If not, how will access to interpreters be guaranteed?
- ★ Will immigration judges be providing advisals to MPP respondents or will EOIR be substituting the [new video advisals](#)?
- ★ Will the facilities be open to the public, unless there are privacy concerns expressed by the clients?
- ★ What are the expected business hours or hearing hours for the cases heard at these facilities?
- ★ How many cases will be postponed due to DOJ's prioritization of adjudicating MPP cases?

## Additional Resources

- [AILA's Featured Issue Page: Border Processing and Asylum](#)
- [AILA Policy Brief on Remain in Mexico](#) – February 1, 2019
- [AILA Asylum Committee Letter Detailing MPP Lack of Access to Counsel](#) – June 3, 2019
- [AILA Policy Brief: Border Solutions Brief](#) – June 13, 2019