

July 30, 2019

His Excellency Mr. Antonio Manuel de Carvalho Ferreira Vitorino, Director General  
International Organization for Migration  
17 Route des Morillons  
P.O. Box 17  
CH-1211 Geneva 19  
Switzerland

Your Excellency:

We, the undersigned 30 organizations, write to express our profound concern regarding the assisted voluntary return program operated by the International Organization for Migration (IOM) for individuals subject to the United States' "Migrant Protection Protocols" (MPP, informally known as the "Remain in Mexico" program).

According to a July 2 Associated Press report, approximately 70 individuals subject to MPP in Ciudad Juarez, Mexico were entered into IOM's "assisted voluntary return" (AVR) program and sent back on buses to their home countries with the assistance of the Mexican government.<sup>1</sup> These early reports suggest the program will expand to Mexicali and Tijuana, Mexico, two other cities where MPP is currently in effect. Though little information about the program is publicly available, it appears the program could be an extension of IOM's AVR program in Mexico, which receives funding from the U.S. State Department's Bureau for Population, Refugees, and Migration.<sup>2</sup>

As organizations advocating for the rights of refugees and asylum-seekers, we are deeply concerned about how this program will curtail MPP returnees' right to seek asylum, as these returnees have pending immigration court cases in the U.S. We are particularly perturbed that IOM is coordinating the "voluntary" return of individuals who have been forcibly sent back to Mexico by the U.S. government, where they are made to wait in dangerous places as they fight for their right to seek protection in the United States, where they may decide to return to their home countries out of desperation, not choice and where they may not fully understand the consequences of failing to appear whenever summoned by a U.S. immigration court.

As a threshold matter, the MPP program itself is unlawful and must be halted: the program violates U.S. law and international treaty obligations by returning asylum seekers to potentially lethal dangers in Mexico and puts them at risk of *refoulement* by Mexican authorities to countries where they fear persecution.<sup>3</sup> Until the program is stopped, IOM is responsible for protecting MPP returnees and ensuring they are not wrongly returned to their countries of origin, even if that return is ostensibly "voluntary." IOM's responsibility in this regard flows directly from its mission to uphold the human

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<sup>1</sup> Peter Orsi, "Mexico buses home dozens of asylum seekers returned by U.S.," ASSOCIATED PRESS, July 2, 2019, <https://www.apnews.com/e9389db6636743928562972637d863c7>.

<sup>2</sup> See "IOM Regional Programs of Protection and Assistance to Vulnerable Migrants," available at <https://www.iom.int/regional-programs-protection-and-assistance-vulnerable-migrants> (noting that programs such as IOM's AVR initiative in Mesoamerica are funded by the U.S. Department of State Bureau for Population, Refugees, and Migration).

<sup>3</sup> See *Innovation Law Lab v. Nielsen* (N.D.Cal. 3:19-cv-00807-RS), available at <https://www.aclu.org/legal-document/innovation-law-lab-v-nielsen-complaint>.

dignity and well-being of migrants, and to ensure “effective respect for the human rights of migrants in accordance with international law.”<sup>4</sup>

Below are some of our key concerns:

- **IOM’s AVR program operates in a coercive environment and thus creates an impermissible risk of *refoulement*.**

First, IOM’s AVR program creates an impermissible risk of *refoulement* because MPP returnees have never had the chance to fairly present their asylum claims before U.S. courts and are forced to remain in precarious conditions in Mexico.

Most people subjected to MPP are likely asylum-seekers who fear return to their home countries. People returned under the program are refugees and migrants fleeing insecurity, instability, and repression in their home countries, and who are coming to the United States in search of safety.

Instead of providing them that safety, the U.S. government is returning them to perilous conditions in border towns in Mexico under MPP, where they may have to wait months or even years before these claims are resolved. In Mexico, meanwhile, migrants and asylum-seekers are subject to grave dangers. MPP returnees have described the horror of kidnappings, extortion attempts by police, and sexual assaults, and are exposed to particular risks of harm because they are routinely without shelter, identity documentation, and the work permissions they need to survive.<sup>5</sup> Returnees are even being sent to places the State Department considers too dangerous for U.S. citizens to travel.<sup>6</sup>

Given how dire conditions are for MPP returnees in Mexico, people who fear serious harm in their home countries might still opt for the AVR program as the lesser of two evils. As we discuss below, there is no public information about what screenings, if any, MPP returnees receive for fear of harm in their home countries before they are entered in the program. While IOM has publicly stated that the first returnees under the program “were not asylum-seekers” and “only entered the United States to seek work,” it is difficult to see how IOM officials and Mexican authorities could possibly have ascertained that given that your agency managed to process and effectuate the return of nearly 70 people in a matter of just two days.<sup>7</sup> Indeed, past research has shown that Mexico’s migration authorities routinely violate the non-*refoulement* principle by returning people to territories where they are at risk of persecution, while at the same time alleging many of these returns are “voluntary.”<sup>8</sup>

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<sup>4</sup> IOM’s Mission, and Strategic Focus No. 2, available at <https://www.iom.int/mission>.

<sup>5</sup> See, e.g., HUMAN RIGHTS WATCH, WE CAN’T HELP YOU HERE: U.S. RETURNS OF ASYLUM-SEEKERS TO MEXICO (July 2019), available at <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

<sup>6</sup> See U.S. Department of State, “Mexico Travel Advisory,” available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (last accessed July 18, 2019) (noting “do not travel” warning for Tamaulipas because of risks of crime and kidnapping).

<sup>7</sup> “Scale of Mexico’s migrant influx ‘completely unexpected: Interview with IOM’s Christopher Gascon” DEUTSCHE WELLE, July 8, 2019, available at <https://www.dw.com/en/scale-of-mexicos-migrant-influx-completely-unexpected/a-49517591-0>.

<sup>8</sup> AMNESTY INTERNATIONAL, OVERLOOKED AND UNDERPROTECTED: MEXICO’S DEADLY REFOULEMENT OF CENTRAL AMERICANS SEEKING ASYLUM (January 2018), available at <https://www.amnesty.org/en/documents/amr41/7602/2018/en/>.

A study of IOM voluntary return programs criticized them as not truly voluntary, noting that “repatriation cannot be termed ‘voluntary’ where the alternative is utter destitution, with denial of accommodation, basic support and the opportunity to work,” nor where the prospect of refugee recognition is remote because the system deprives asylum-seekers a meaningful opportunity to be heard.<sup>9</sup> This is exactly the situation at hand here. A choice that pits grave harms in Mexico against grave harms in returnees’ countries of origin is no choice at all.

- **IOM’s AVR program appears to lack basic procedural safeguards to protect asylum-seekers’ rights.**

Second, there are serious concerns about the apparent lack of procedural safeguards protecting the rights of MPP returnees entered in the voluntary return program.

First, there is no indication that either IOM or Mexican authorities are coordinating with the U.S. Departments of Homeland Security or Justice, or informing U.S. authorities when an MPP returnee is returned by IOM. Nor do returnees entered into the AVR program appear to be receiving any meaningful rights advisals about how opting for the program will affect their U.S. court cases. Yet repatriation via AVR could carry grave consequences for their rights in the United States: individuals in removal proceedings who fail to appear for their U.S. court hearings are routinely ordered removed “in absentia,” which can bar them from returning to the United States and curtail their ability to apply for asylum in the future.

Similarly, it is unclear from the limited public information about the program whether MPP returnees will be permitted to return to Mexico for their U.S. court proceedings. In an interview about the program, IOM Mexico chief Christopher Gascon was quoted as claiming simultaneously that returnees’ U.S. court proceedings would not be closed and that the returnees were being repatriated.<sup>10</sup> Such a level of uncertainty is unacceptable considering that returnees’ lives are literally at stake in these cases.

Finally, it is unclear how, if at all, IOM is making provisions to safeguard the wellbeing of repatriating MPP returnees both during and after the journey, including to what extent IOM is coordinating with authorities in returnees’ countries of origin.<sup>11</sup> Returnees are reportedly being sent back via bus, on trips that routinely take a day and a half or longer, which can be taxing, particularly for families with children.<sup>12</sup> Their repatriation can expose them to particular risks in their countries of origin, especially if they have been inadequately screened for fear of return.

Given these significant concerns, we urge you to immediately halt supporting, coordinating, facilitating, or implementing any practices that inadequately safeguard against *refoulement*. If the AVR program continues, IOM should guarantee access to an attorney for legal consultation to every individual considering the program and should coordinate with the U.S. government to ensure that their cases are terminated, and they are not at risk of an “in absentia” order. Furthermore, given the scant information available about the program, the grave risks to asylum it presents, and the paramount need for transparency and accountability in this process, we respectfully request that you

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<sup>9</sup> Frances Webber, “How ‘Voluntary’ Are Voluntary Returns?,” Sage Journal of Race & Class (2011), available at <https://pdfs.semanticscholar.org/c329/49c2b669178ac490042f0ebbc3cae2b8e12d.pdf>.

<sup>10</sup> See *supra* note 7.

<sup>11</sup> See *supra* note 1.

<sup>12</sup> *Id.*

immediately make public any policy documents or memoranda concerning the AVR program or any other IOM operations as they relate to MPP returnees.

Sincerely,

Al Otro Lado  
Caribbean Migrants Observatory (OBMICA)  
Catholic Legal Immigration Network, Inc.  
Center for Constitutional Rights  
Center for Gender and Refugee Studies  
Center for Victims of Torture  
Center Global (a program of the DC Center for the LGBT Community)  
Centre Guide Migration de la Confédération Générale des Travailleurs de Mauritanie  
Coalition on Human Needs  
DC-MD Justice for Our Neighbors  
Families Belong Together  
Global Migration Policy Associates  
Grupo de Mujeres de la Argentina - Foro de VIH Mujeres y Familia  
HIAS  
Human Rights First  
Human Rights Initiative of North Texas  
Institute for Women in Migration (IMUMI)  
International Refugee Assistance Project  
Kids in Need of Defense (KIND)  
Kino Border Initiative  
Latin America Working Group  
National Association of Social Workers  
National Immigration Law Center  
National Network for Immigrant and Refugee Rights  
Network Lobby for Catholic Social Justice  
Northern Illinois Justice for Our Neighbors  
Priority Africa Network  
RAICES (Refugee and Immigrant Center of Education and Legal Services)  
Washington Office on Latin America  
Women's Refugee Commission

cc: Filippo Grandi, United Nations High Commissioner for Refugees  
Michelle Bachelet, United Nations High Commissioner for Human Rights  
Henrietta Fore, United Nations Children's Fund Executive Director  
Louise Arbour, Special Representative of the Secretary-General for International Migration