

Congress of the United States
Washington, DC 20515

October 17, 2019

The Honorable Joseph V. Cuffari
Inspector General
Office of Inspector General/MAIL STOP 0305
Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528-0305

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Inspectors General Cuffari and Horowitz;

We write to request an immediate investigation into the U.S. Department of Homeland Security's (DHS) and the U.S. Department of Justice's (DOJ) new use of tent facilities to adjudicate immigration hearings via video teleconference (VTC) for asylum seekers subject to the Migrant Protection Protocols (MPP), a policy commonly known as "Remain in Mexico."

In September 2019, DHS and DOJ opened temporary tent facilities that function as virtual immigration courtrooms for MPP cases. During the hearings, asylum seekers are held in tents at the ports of entry while judges appear remotely via VTC from traditional brick-and-mortar courtrooms elsewhere around the country. DHS chose to open these courts without meaningful notice to the public or legal community and provided little to no information to Congress about the basic operations and procedures at the tent courts.

Thus far, DHS and DOJ have prevented organizations from providing legal orientations for asylum seekers in the tent courts. Fewer than 2% of migrants subject to MPP currently have attorneys. Without legal guidance or even basic information about the legal process, it is nearly impossible for these asylum seekers to complete forms, gather evidence, and translate documents into English. As a result, many are not equipped to meaningfully present their asylum claim at all, much less via VTC from the tent courts. Additionally, organizations have repeatedly raised due process concerns about the use of VTC, which may not allow judges to adequately assess nonverbal cues and can impact their assessment of an individual's demeanor and credibility. Given the lack of access to counsel and the limitations of VTC, we are concerned these tent courts do not provide full and fair consideration of their asylum claims, as required by law.

Unlike in other immigration courts, attorney observers have not been permitted to access the Laredo and Brownsville tent court facilities to observe hearings. This is a violation of federal regulations which state "All hearings, other than exclusion hearings, shall be open to the public..."¹ The agency has argued that there is public access to the courts because observers can attend proceedings at the brick-and-mortar courtrooms where the judge is located. However, it is nearly impossible for observers in courtrooms to fully grasp the experience of the asylum seeker in the tent. It is completely impossible for them to witness issues that may occur prior to the VTC being turned on or after it is turned off. Further, DOJ has told congressional staff these hearings will not always be held at Texas immigration courts, so observers do not know which court around the country will have a hearing on any given day. We are concerned that the administration has intentionally built these tent courts at Customs and Border Protection (CBP) ports of entry to justify limited public access to these facilities, and that this lack of transparency may allow DHS to hide abuse and due process violations that may occur in the tents.

¹ 8 C.F.R. § 1003.27.

It is our understanding that U.S. Citizenship and Immigration Services (USCIS) asylum officers are conducting *non-refoulement* interviews over the phone at these tent courts, and attorneys are not permitted to listen or be present for their clients' phone interview. These interviews are a basic human rights protection to ensure no one is returned to a country where they would face inhumane treatment, persecution, and other harm. Yet, thousands of children, pregnant women, and individuals with special needs have been returned to dangerous Mexican border towns where crime is rampant and migrants are often targeted². Available information shows that DHS has forced over 50,000 asylum-seekers subject to MPP to return to Mexico, even if they may have suffered harm in Mexico or belong to a vulnerable population.³ DHS is also restricting attorneys from meeting with their clients after the *non-refoulement* interview and is not sharing the results of the interview with attorneys. We are concerned that DHS is returning asylum seekers to harm in Mexico and keeping clients' attorneys in the dark about the processes, procedures, and results of these critical interviews.

DHS is systematically issuing defective and incomplete notices to appear (NTAs) to individuals subject to MPP, raising serious procedural and due process concerns. There have been numerous reports of DHS issuing NTAs containing incorrect court locations for hearings and the wrong addresses for migrants, with at least one NTA stating "Facebook" as the individual's address.⁴ Additionally, many NTAs are incomplete and fail to specify whether the respondent is being charged as an "arriving alien," an "alien present in the United States who has not been admitted or paroled," or an alien "admitted to the United States" who is removable. These charges on the NTA are vital to the proceedings because they impact the legal recourses available to the migrant. Despite knowledge of these defective NTAs, DHS continues to move for respondents to be removed *in absentia* for failure to appear. Immigration judges have also stated that DOJ has issued guidance instructing judges to order no-shows removed *in absentia*.⁵ We are concerned that there is a concerted effort by DHS and DOJ to weaken the procedural due process protections for migrants in MPP.

Further, the administration's potential mismanagement of funds to achieve their goal of erecting tent courts along the border is deeply troubling. In order to fund multiple tent courts along the border, and to continue operations at the facilities in Brownsville and Laredo, the Trump Administration took \$155 million from funds appropriated for disaster relief.⁶ The administration also opted to spend \$25 million to erect the tent court at CBP's Laredo port of entry, even though the city of Laredo offered to lease the Department of Homeland Security an air-conditioned, 21,000 square-foot office building for 18 months for just \$1.⁷ We are concerned that decision to erect the Laredo tent court at the port of entry property is a waste of taxpayer funds when considering the alternative money-saving offer presented by the city of Laredo, and that the administration continues to misuse funds to achieve their goal of erecting multiple tent courts at the border.

Given these serious concerns, we request that you investigate the following:

- Possible abuses and violations of substantive and procedural due process that have occurred in the tent courts, including the issuances of defective NTAs.

² Joel Rose, 'Vulnerable' Migrants Should Be Exempt from 'Remain in Mexico,' But Many Are Not, NPR (July 17, 2019), <https://www.npr.org/2019/07/17/742271139/vulnerable-migrants-should-be-exempt-from-remain-in-mexico-but-many-are-not>.

³ Kristina Cooke, Mica Rosenberg, and Reade Levinson, *Exclusive: U.S. Migrant Policy Sends Thousands of Children, Including Babies, Back to Mexico*, Reuters (Oct. 11, 2019) <https://www.reuters.com/article/us-usa-immigration-babies-exclusive/exclusive-us-migrant-policy-sends-thousands-of-children-including-babies-back-to-mexico-idUSKBN1WQ1H1>.

⁴ Adolfo Flores, *Border Patrol Agents Are Writing 'Facebook' As a Street Address for Asylum-Seekers Forced to Wait in Mexico*, BuzzFeed (Sept. 27, 2019), <https://www.buzzfeednews.com/article/adolfoflores/asylum-notice-border-appear-facebook-mexico>.

⁵ Gaby Del Valle, *Trump's Remain in Mexico Policy is Causing Asylum-Seekers to Miss Court Dates – and Get Deported*, Vice News (Sept. 24, 2019), https://www.vice.com/en_us/article/gyzdp9/trumps-remain-in-mexico-policy-is-causing-asylum-seekers-to-miss-court-dates-and-get-deported.

⁶ Julian Ainsley and Frank Thorp V, *Trump Admin Pulling Millions From FEMA Disaster Relief to Send to Southern Border*, NBC News (Aug. 27, 2019), <https://www.nbcnews.com/politics/immigration/trump-admin-pulling-millions-fema-disaster-relief-send-southern-border-n1046691>.

⁷ Gaby Del Valle, *Texas City Offered a Building for \$1 So Migrants Wouldn't Have to Go to Court in a Tent. The Government Said No*, Vice News (Aug. 7, 2019) https://www.vice.com/en_us/article/pa7yen/texas-city-offered-a-building-for-dollar1-so-migrants-wouldnt-have-to-go-to-court-in-a-tent-the-government-said-no.

- Whether conditions in the tent courts can adequately facilitate the full and fair consideration of asylum seekers claims, as required by law.
- Possible violations of existing policy, regulation, or law that have occurred in the tent courts.
- If DHS *non-refoulement* phone interviews are preventing the return of vulnerable populations to danger, as required by U.S. and international law.
- Whether the decision to erect tent courts at ports of entry is a proper use of taxpayer funds, and specifically whether the decision to erect the Laredo tent court at the port of entry is a proper use of taxpayer funds, given the less expensive space made available by the city of Laredo.

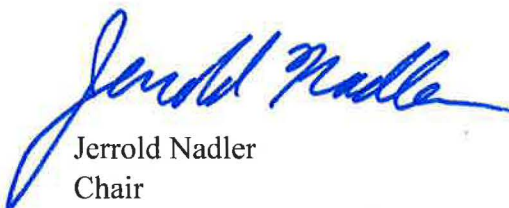
As outlined above, the opening and operations of these secretive tent courts are extremely problematic. Both your investigation and oversight hearings into these secretive tent courts are vital. DHS can and must do better.

Thank you for your prompt attention to this matter. We look forward to your timely response and notification that an investigation has been opened.

Sincerely,



Joaquin Castro
Chair
Congressional Hispanic Caucus



Jerrold Nadler
Chair
House Committee on the Judiciary



Bennie G. Thompson
Chair
House Committee on Homeland Security



Jamie Raskin
Chair
House Subcommittee on Civil Rights and Civil Liberties



Zoe Lofgren
Chair
House Judiciary Immigration and Citizenship Subcommittee



Kathleen Rice
Chair
House Subcommittee on Border Security, Facilitation, & Operations