

*A COMPARATIVE ANALYSIS OF TEMPORARY PROTECTED STATUS IN  
COLOMBIA AND MEXICO*

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## INTRODUCTION

A comparison of the responses in Colombia and Mexico to the respective refugee crises they are confronted with highlights the importance of temporary protection regimes in mitigating the challenges that refugees face when they are present in a country irregularly. Colombia and Mexico are both faced with massive influxes of refugees that their asylum systems are unprepared to effectively manage. Colombia's recently announced visa providing temporary protected status specifically to Venezuelans present irregularly in Colombia shows promise of helping Venezuelan refugees overcome some of the challenges of migration through rapid regularization. Although Mexico has promised to provide temporary protection to asylum seekers under the Migrant Protection Protocols and there are programs in place on paper, in practice, these programs have proved to be largely ineffective. Colombia's temporary protective model could provide an example to Mexico of a more effective and efficient regularization program that may help alleviate the vulnerable situation that migrants at the Mexico-US border face.

I. COLOMBIA'S RESPONSE TO THE VENEZUELAN  
REFUGEE CRISIS

The Venezuelan refugee crisis is the second largest in the world, with estimates that over 6 million migrants are externally displaced from the country.<sup>1</sup> The scale of the situation in Venezuela has seriously tested the capacities of host governments and the international aid community.<sup>2</sup> Colombia specifically has hosted more refugees and migrants from Venezuela

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<sup>1</sup> *UN High Commissioner for Refugees Praises Latin America for Its Commitment to the Inclusion of all Those in Need of Protection*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (June 23, 2021),

<https://www.unhcr.org/en-us/news/press/2021/6/60d2f8454.html>; INTER-AGENCY COORDINATION PLATFORM FOR REFUGEES AND MIGRANTS FROM VENEZUELA (R4V), REGIONAL REFUGEE AND MIGRANT RESPONSE PLAN: JANUARY - DECEMBER 2022, 14 (2021), <https://www.r4v.info/en/document/rmrp-2022> [hereinafter RMRP 2022].

<sup>2</sup> See RMRP 2022, *supra* note 1, at 14.

than any other country in the region.<sup>3</sup> By the end of 2022, an estimated 2.45 million refugees and migrants from Venezuela will be residing in Colombia.<sup>4</sup> Facing such an unprecedented influx of migrants, refugee agencies in Colombia are overburdened and unequipped to deal with the realities of migration. Due to the urgency of the situation that Venezuelan migrants face and the delays in accessing asylum, many Venezuelans who meet the criteria for refugee status are opting out of this type of international protection for alternative legal forms of stay.<sup>5</sup> Colombia's Estatuto Temporal de Protección para Venezolanos (ETPV) program addresses the pitfalls of the Colombian refugee determination system by granting temporary status through a simple process that provides speedy access to work authorization, education, and social services.<sup>6</sup>

A lack of regular status impairs Venezuelan's ability to access essential services in Colombia and creates greater difficulties in meeting basic needs.<sup>7</sup> Studies indicate that refugees' and migrants' top three priority needs in Colombia are food, shelter, and employment.<sup>8</sup> Other issues that Venezuelans continue to face include lack of access to medical care, and education, along with insecurity, threats, and fear.<sup>9</sup> According to the Joint Needs Assessment conducted in June 2021, 77% of Venezuelan migrant and refugee households surveyed lacked access to healthcare, 26% of children were not attending school, 24% faced food insecurity, 25% consumed poor quality water, 36% lived in overcrowded conditions, and 31% were at risk of eviction.<sup>10</sup> The vulnerable situation that Venezuelan migrants are in is aggravated by widespread irregularity and a lack of documentation, as this impedes their ability to access necessary services and meaningful employment opportunities.<sup>11</sup> In fact, the number of refugees and migrants in irregular situations drastically increased throughout 2020 and 2021.<sup>12</sup> Challenges

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<sup>3</sup> *Id.* at 109.

<sup>4</sup> *Id.* at 106.

<sup>5</sup> *See Venezuela Situation*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (Aug. 2023), <https://www.unhcr.org/en-us/venezuela-emergency.html>.

<sup>6</sup> *See id.*

<sup>7</sup> INTER-AGENCY COORDINATION PLATFORM FOR REFUGEES AND MIGRANTS FROM VENEZUELA (R4V), GRUPO INTERAGENCIAL SOBRE FLUJOS MIGRATORIOS MIXTOS COLUMBIA: EVALUACIÓN CONJUNTA DE NECESIDADES JUNIO 2021 RONDA 5, 10 (June, 2021), [https://reliefweb.int/sites/reliefweb.int/files/resources/0821\\_ESPA%25C3%2591OL\\_5ROND\\_A\\_Informe\\_JNA\\_.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/0821_ESPA%25C3%2591OL_5ROND_A_Informe_JNA_.pdf) [hereinafter GIFMM].

<sup>8</sup> RMRP 2022, *supra* note 1, at 112.

<sup>9</sup> *Emergency Plan for Refugees and Migrants from Venezuela Launched*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (Dec. 14, 2018), <https://www.unhcr.org/news/press/2018/12/5c136d834/emergency-plan-refugees-migrants-venezuela-launched.html>; GIFMM, *supra* note 7, at 6.

<sup>10</sup> GIFMM, *supra* note 7, at 28-38.

<sup>11</sup> RMRP 2022, *supra* note 1, at 109.

<sup>12</sup> *Id.* at 18.

related to irregularity will only increase in 2022, making regularization and inclusion of migrants key priorities as a larger amount of people are anticipated to have increased needs post-pandemic.<sup>13</sup>

Regular migration status allows refugees to access formal employment as well as take advantage of a country's social services programs. UNHCR emphasizes that regularization and integration are instrumental parts of the response to a refugee crisis of this scale.<sup>14</sup> UN High Commissioner for Refugees Filippo Grandi explains, "Inclusion is one of the most practical and concrete forms of protection. It helps children to get an education, people to receive the medical treatment they need, prevents exploitation and abuse and supports people to acquire the dignity of self-sustaining work."<sup>15</sup> Despite the importance of regularization, a large number of displaced Venezuelans faced substantial barriers to regularizing their stay, leaving them without access to basic rights and particularly vulnerable to exploitation, trafficking, violence, discrimination, and xenophobia in the informal labor market.<sup>16</sup> Colombia's asylum system has particularly been stretched beyond its capacity, causing delays and impeding refugee's ability to access to basic services such as health, education, shelter and protection.<sup>17</sup>

Colombia has an expansive definition of refugee that includes those who have well-founded reasons to believe that they are in danger of being subjected to torture, cruel punishment, or other inhumane treatment if they are returned to their country of nationality or residence.<sup>18</sup> One way to receive refugee status, especially if already present in a host country, is to apply for asylum. Surveys however indicate that many Venezuelans have not successfully accessed the asylum system in Colombia, despite indications that most would be in danger if they were to return to Venezuela and would most likely qualify.<sup>19</sup>

On its face, the asylum process in Colombia appears quite simple. Applications for asylum can be submitted upon arrival at the borders, ports or airports.<sup>20</sup> If already in the country, applications must be submitted within

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<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.* at 29.

<sup>15</sup> *UN High Commissioner for Refugees Praises Latin America for Its Commitment to the Inclusion of all Those in Need of Protection*, *supra* note 1.

<sup>16</sup> Venezuela situation, *supra* note 5.

<sup>17</sup> See *Emergency Plan for Refugees and Migrants from Venezuela Launched*, *supra* note 9. Andrew Selee & Jessica Bolter, *Colombia's open-door policy: An innovative approach to displacement?*, 60 *International Migration* 113, 117 (2022).

<sup>18</sup> *Solicitando la condición de refugiado*, UNITED NATIONS HIGH COMM'R FOR REFUGEES: AYUDA COLOMBIA, <https://help.unhcr.org/colombia/solicitando-la-condicion-de-refugiado/> (last visited May 1, 2022).

<sup>19</sup> GIFMM, *supra* note 7, at 10.

<sup>20</sup> *Solicitando de la condición de refugiado*, UNITED NATIONS HIGH COMM'R FOR REFUGEES: AYUDA COLOMBIA,

sixty days of arrival.<sup>21</sup> While the case is being considered, the government issues the applicant a Salvoconducto de Permanencia (SC-2) which permits the applicant to reside legally in the country for the duration of the proceedings.<sup>22</sup> It also provides the applicant with access to public health care as well as free public primary and secondary education.<sup>23</sup>

However, there are many gaps in Colombian's asylum application process that make it not ideal for most Venezuelan migrants. Most significantly, the SC-2 does not provide work authorization.<sup>24</sup> Without work authorization, migrants are forced to resort to working in the informal market, which presents a number of issues. Limited access to formal employment results in an inability to meet basic needs and can lead some households to resort to negative coping methods, which can also lead to increased protection risks.<sup>25</sup> This issue is compounded by the current significant delays in processing applications. Since there is no definite time frame for when the application will be responded to, the large amount of applications is causing the process to take a couple of years.<sup>26</sup> In addition, the asylum process can be quite unforgiving. Failing to appear to the interview is considered a withdrawal from the process.<sup>27</sup> Furthermore, the SC-2 does not permit the applicant to leave the country, which would also be considered a withdrawal of the application.<sup>28</sup> The readiness to disqualify applicants for leaving the country or for failing to appear disregards the reality of the situation of many Venezuelan migrants, many of whom remain in transit. These issues work to disincentivize people from seeking asylum and to instead remain in irregular status.

To address the large number of Venezuelans residing in Colombia irregularly, in February of 2021 Colombian President Ivan Duque announced a temporary protected status program for Venezuelans that will greatly help to aid and encourage regularization.<sup>29</sup> This program, the Estatuto Temporal de Protección para Venezolanos (ETPV), is a regularization program that permits Venezuelans to reside in Colombia for up to ten years, at which point they

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<https://web.archive.org/web/20221206004755/https://help.unhcr.org/colombia/solicitando-la-condicion-de-refugiado/solicitud-de-la-condicion-de-refugiado/> (last visited April 21, 2024).

<sup>21</sup> *See id.*

<sup>22</sup> *Id.*

<sup>23</sup> *See Solicitantes de asilo*, UNITED NATIONS HIGH COMM'R FOR REFUGEES: AYUDA COLOMBIA, <https://help.unhcr.org/colombia/derechos-y-obligaciones/solicitantes-de-asilo/> (last visited May 1, 2022).

<sup>24</sup> *Id.*

<sup>25</sup> *See RMRP 2022*, *supra* note 1, at 118.

<sup>26</sup> *Solicitud de la condición de refugiado*, *supra* note 20.

<sup>27</sup> *Id.*

<sup>28</sup> *Solicitantes de asilo*, *supra* note 23.

<sup>29</sup> *UN High Commissioner for Refugees Praises Latin America for Its Commitment to the Inclusion of all Those in Need of Protection*, *supra* note 1.

will have accrued enough residency time to apply for a resident visa.<sup>30</sup> The ETPV fills existing gaps in Colombia's immigration system based on the reality of Venezuelan migration and the capacities of Colombia's response.<sup>31</sup> A large scale temporary protected status program like ETPV looks to address the core of many of the issues that migrants face by providing a simple pathway to regularization and its benefits, including work authorization and access to social services. Offering temporary protected status is a helpful short-term strategy that secures immediate physical safety for refugees and provides a pathway to more durable protections.<sup>32</sup> It is especially suited to help countries, such as Colombia, that lack effective asylum protections to confront mass influxes of refugees by providing a means to ensure protection instead of overhauling refugee determination procedures already in place.<sup>33</sup> ETPV accomplishes these goals.

To register, the ETPV has a simple online pre-registration process, the Registro Único de Migrantes Venezolanos (RUMV).<sup>34</sup> All that is needed is a photo of a valid identity document, even if it is expired.<sup>35</sup> Any Venezuelan already with regular status or a pending asylum application automatically qualifies.<sup>36</sup> If in irregular status, one must also show that they were present in Colombia before the cutoff date, January 31, 2021 and that they are currently present in Colombia.<sup>37</sup> If entering after January 31, 2021, one can qualify only if they enter through an official post of immigration control.<sup>38</sup> After registration, in person biometric meetings are assigned.<sup>39</sup> Once the biometric registration is processed, the process is complete and the documents are

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<sup>30</sup> GIFMM, *supra* note 7, at 10.

<sup>31</sup> *Estatuto Temporal de Protección Para Migrantes Venezolanos (infographic)*, INSTITUTO COLOMBIANA DE BIENESTAR FAMILIAR, [https://www.icbf.gov.co/sites/default/files/resumen\\_estatuto\\_temporal\\_proteccion\\_etpv.pdf](https://www.icbf.gov.co/sites/default/files/resumen_estatuto_temporal_proteccion_etpv.pdf) (last visited Feb. 22, 2024).

<sup>32</sup> Joan Fitzpatrick, *Temporary Protection of Refugees: Elements of a Formalized Regime*, 94 AM. J. INT'L L., 279-80 (2000).

<sup>33</sup> *See id.* at 282.

<sup>34</sup> *Estatuto Temporal de Protección para Migrantes Venezolanos*, UNITED NATIONS HIGH COMM'R FOR REFUGEES: AYUDA COLOMBIA, <https://help.unhcr.org/colombia/otros-derechos/estatuto-temporal-de-proteccion-para-migrantes-venezolanos/> (last visited May 1, 2022).

<sup>35</sup> INTER-AGENCY COORDINATION PLATFORM FOR REFUGEES AND MIGRANTS FROM VENEZUELA [R4V] & GRUPO INTERAGENCIAL SOBRE FLUJOS MIGRATORIOS MIXTOS COLOMBIA, PREGUNTAS Y RESPUESTAS: ESTATUTO TEMPORAL DE PROTECCIÓN PARA VENEZOLANOS (ETPV) 11 (2021).

<sup>36</sup> *Estatuto Temporal de Protección Para Migrantes Venezolanos (infographic)*, *supra* note 31.

<sup>37</sup> *Estatuto Temporal de Protección para Migrantes Venezolanos*, *supra* note 34.

<sup>38</sup> *Id.* at 10.

<sup>39</sup> *Id.*

given.<sup>40</sup> There are also deadlines in place. If in the country before January 31<sup>st</sup>, migrants have until May 28<sup>th</sup>, 2022 to register.<sup>41</sup> If crossing the border after January 31<sup>st</sup>, 2021, registration must be completed by November 24, 2023.<sup>42</sup>

Although promising, ETPV still shows room for improvement. Results of a survey taken during the first three weeks of June 2021 indicated that still only 40% of the 8,428 people surveyed indicated that they had completed the ETPV's virtual pre-registration process.<sup>43</sup> The main barriers to completion were technical problems with the webpage or a lack of access to the internet.<sup>44</sup> Those surveyed also pointed to a lack of information about the measure, particularly in rural areas where rates of registration were lower than in urban areas.<sup>45</sup> Having a completely virtual registration process is the safest option in the context of the pandemic, but ignores the fact that migrants lack stability and resources, and may not have access to internet. Another barrier was problems with attendance at the in-person biometrics meeting, some migrants even complaining that the system erroneously assigned their meeting to a different city than their city of residence.<sup>46</sup> Migrants often lack stability and may move to a new city for a host of reasons, such as in search of employment opportunities or to escape discrimination.<sup>47</sup> Another issue is that the January 31<sup>st</sup> cutoff date leaves questions about what happens to anyone who enters irregularly after this date. Although the cutoff's purpose is to discourage irregular entries, many Venezuelan migrants may remain unaware of the existence of this program and therefore may fail to meet the requirement of entering the country regularly after January 31<sup>st</sup>. Furthermore, the deadlines to apply ignores the possibility that this crisis could very likely continue past 2023.

On top of the difficulties in information sharing with migrants, there have been other communication challenges due to misinformation, fraud, and xenophobia.<sup>48</sup> Communication with communities is important in order to inform the population on their rights and services, opportunities for legal representation, regularization pathways, the refugee status determination process, and protection risks along the route of transit.<sup>49</sup> Two-way communication strategies would allow for community participation so that

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<sup>40</sup> *Id.* at 11.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> GIFMM, *supra* note 7, at 11.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at n. 11.

<sup>47</sup> *See* RMRP 2022, *supra* note 1, at 118-19.

<sup>48</sup> RMRP 2022, *supra* note 1, at 113.

<sup>49</sup> *Id.*

community members, migrants, and refugees can advocate for their rights and interests as well as ask questions or provide feedback on the response.<sup>50</sup> This strategy will not only facilitate greater inclusion, but also allow for issues with the program to be raised and confronted. ETPV is still in its early stages of implementation, which will always reveal unanticipated challenges. Time will tell if these potential issues will be worked out with experience and collaboration with the community.

Despite these challenges, ETPV is still a viable option for speedy regularization. In less than a year, more than 1.74 million Venezuelan migrants in Colombia completed the pre-registration process, and more than one million completed the next step, biometric registration.<sup>51</sup> By expanding access to documentation and regular status, Colombia's ETPV program will greatly improve the livelihoods of Venezuelans living in Colombia. ETPV provides work authorization for any legal occupation in the country.<sup>52</sup> In addition, it affords an opportunity for the validation of professional qualifications and degrees.<sup>53</sup> It also ensures access to public services such as healthcare, education, as well as social security.<sup>54</sup> It permits liberty of movement throughout Colombia and the ability to leave the country for a maximum of 180 days.<sup>55</sup>

ETPV promotes necessary socio-economic integration and minimizes protection risks for Venezuelans in Colombia. Access to social services will address the urgent needs of Venezuelan migrants. With work authorization, Venezuelans can become formally employed and eventually self-sufficient. Registration in the program is particularly important because it allows for identification and thus increased attention to vulnerable populations.<sup>56</sup> Not knowing who is within a country's territory not only poses a risk to security, but also impedes the development of public policy that allows migrants to integrant and assimilate.<sup>57</sup> ETPV facilitates the inclusion of Venezuelans into Colombia, providing meaningful protection to those who receive it.

ETPV therefore helps to alleviate many of the challenges that irregular migrants endure. It is the most effective solution to the difficulties that Colombia has encountered in responding to the Venezuelan refugee crisis.

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<sup>50</sup> *Id.*

<sup>51</sup> Nicol Lesmes Guerrero & Ana Maria Rojas, *The Role of Community Leaders in the Regularization Process of Venezuelan Migrants in Colombia*, INNOVATORS FOR POVERTY ACTION COLOM. 2 (2022).

<sup>52</sup> *Estatuto Temporal de Protección Para Migrantes Venezolanos (infographic)*, *supra* note 31; *Estatuto Temporal de Protección para Migrantes Venezolanos*, *supra* note 34.

<sup>53</sup> *Estatuto Temporal de Protección para Migrantes Venezolanos*, *supra* note 34.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Estatuto Temporal de Protección para Migrantes Venezolanos (infographic)*, *supra* note 31.



Considering Colombia's capacities and the massive influx of migrants within their borders, ETPV is an attainable way to promote and achieve regularization for Venezuelan migrants.

## II. MEXICO'S RESPONSE TO THE CENTRAL AMERICAN REFUGEE CRISIS

Mexico, like Colombia, is facing a large influx of refugees, a crisis that has exerted increased pressure on the country's protection and asylum systems.<sup>58</sup> Forced displacement and migration out of Central America has dramatically increased in recent years. In 2022, there were an estimated 600,000 asylum seekers and refugees from El Salvador, Guatemala, and Honduras.<sup>59</sup> That year, Mexico hosted 498,226 of these asylum seekers, refugees, and people in need of international protection.<sup>60</sup> There are multiple causes of displacement, which are complex and interrelated. They include widespread violence, gender-based violence, persecution by criminal organizations and gangs, fragile institutions, lack of opportunities, inequalities, and the impact of climate change and resulting natural disasters, all compounded by the socioeconomic consequences of the COVID-19 pandemic.<sup>61</sup>

Also, like Colombia, Mexico's immigration system is not prepared or equipped to manage a refugee crisis of this size. In recent years, the country has suddenly shifted from being predominantly a transit nation to a country of destination for asylum seekers and refugees.<sup>62</sup> Now, Mexico has become the 3<sup>rd</sup> largest recipient country of asylum claims in the world, with more than 130,000 new asylum applications in 2021.<sup>63</sup> This constitutes a spike of over 3,000% in the number of people seeking asylum in Mexico between 2014 and 2019.<sup>64</sup>

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<sup>58</sup> United Nations High Commissioner for Refugees (UNHCR), *What is the MIRPS*, 1, <https://www.acnur.org/5f11bb644.pdf> (last visited Feb. 05, 2024).

<sup>59</sup> Exec. Comm. Of the High Comm'r's Programme, Update on UNHCR's operations in the Americas, 2 (Mar. 1, 2022).

<sup>60</sup> *Situation Central America & Mexico*, OPERATIONAL DATA PORTAL, [https://data2.unhcr.org/en/situations/cam#\\_ga=2.225238170.141023121.1645984405-1439756388.1642004980](https://data2.unhcr.org/en/situations/cam#_ga=2.225238170.141023121.1645984405-1439756388.1642004980) (last visited May 1, 2022).

<sup>61</sup> Exec. Comm. Of the High Comm'r's Programme, Update on UNHCR's operations in the Americas, 2 (Mar 1, 2022); COMPREHENSIVE REG'L PROT. AND SOL'S FRAMEWORK (MIRPS), ANNUAL REPORT OF THE COMPREHENSIVE REGIONAL PROTECTION AND SOLUTIONS FRAMEWORK: MIRPS 2021, 10 (2021).

<sup>62</sup> See *UNHCR Warns of Unprecedented Displacement in Central America and Mexico*, UNITED NATIONS NEWS (Sept. 2, 2021), <https://news.un.org/en/story/2021/09/1099052>.

<sup>63</sup> Executive Committee of the High Commissioner's Programme, *supra* note 61, at 10.

<sup>64</sup> Lisa Schlein, *UNHCR to Help Mexico Deal with Rising Tide of Asylum Claims*, VOICE OF AMERICA (Apr. 15, 2021, 8:50 AM), [https://www.voanews.com/a/americas\\_unhcr-help-mexico-deal-rising-tide-asylum-claims/6204606.html](https://www.voanews.com/a/americas_unhcr-help-mexico-deal-rising-tide-asylum-claims/6204606.html).

Contributing to the increased pressure on Mexico to host migrants are the new border restrictions, specifically those on the US-Mexico border. In January of 2019 the Migrant Protection Protocols (MPP), better known as “Remain in Mexico,” went into effect.<sup>65</sup> This policy required asylum seekers who arrived at the US southern border to wait in Mexico for the duration of their asylum proceedings in the United States.<sup>66</sup> Migrants were returned from the United States to dangerous areas in Northern Mexico, where they were exposed to a multitude of protection risks.<sup>67</sup> Remain in Mexico has been criticized by human rights activists for exposing vulnerable migrants to exploitation, extortion, and sexual assault from criminal gangs operating in Mexico, as well as for increasing humanitarian needs.<sup>68</sup> The UNHCR itself has called for an end to these border restrictions.<sup>69</sup> Despite the criticism, MPP has not ended. In fact, the COVID-19 pandemic has made the situation even worse.<sup>70</sup> MPP hearings were suspended indefinitely in March of 2020.<sup>71</sup> Migrants under MPP during this time experienced even more significant delays, waiting for a year or more without a hearing.<sup>72</sup> When the pandemic began, the US government also announced the emergency public health order known as Title 42, claiming it was an effort to slow the spread of COVID-19 across the border.<sup>73</sup> However, what Title 42 really does is authorize Customs and Border Patrol in the United States to rapidly expel migrants without providing them an opportunity to apply for asylum.<sup>74</sup> As of March 2021, nearly 400,000 people were turned away at the border under Title 42, which has been repeatedly extended.<sup>75</sup>

Mexico’s capacity and ability to support an influx of migration of such size is being overstretched and already limited services are increasingly

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<sup>65</sup> UNITED NATIONS HIGH COMM’R FOR REFUGEES, 2019 HIGHLIGHTS UNHCR MEXICO, 8, <https://www.acnur.org/es-mx/600712924.pdf>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Schlein, *supra* note 64; UNITED NATIONS HIGH COMM’R FOR REFUGEES, *supra* note 65, at 9.

<sup>69</sup> *News Comment by UN High Commissioner for Refugees Filippo Grandi on Conditions and Expulsions at US Border*, UNITED NATIONS NEWS (Sept. 21, 2021), <https://www.unhcr.org/news/press/2021/9/614a27324/news-comment-un-high-commissioner-refugees-filippo-grandi-conditions-expulsions.html>.

<sup>70</sup> HEBREW IMMIGRANT AID SOCIETY, ROADMAP TO RECOVERY: A PATH FORWARD AFTER THE REMAIN IN MEXICO PROGRAM 20 (2021), [https://www.hias.org/sites/default/files/hias\\_mpp\\_report\\_final.pdf](https://www.hias.org/sites/default/files/hias_mpp_report_final.pdf).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Uriel J. García, *Here’s What you Need to Know About Title 42, the Pandemic-era Policy That Quickly Sends Migrants to Mexico*, THE TEXAS TRIBUNE (Apr. 29, 2022), <https://www.texastribune.org/2022/04/29/immigration-title-42-biden/>.

<sup>74</sup> Hebrew Immigrant Aid Society, *supra* note 70, at 21.

<sup>75</sup> *Id.*

strained.<sup>76</sup> UNHCR is scaling up programs in Mexico to help the country to strengthen its asylum procedures so as to tackle the growing number of asylum applications, shrink the huge backlog by expanding case processing capacity, and assist asylum seekers while their claims are being processed.<sup>77</sup> Despite these efforts, the UN High Commissioner for Refugees, Filippo Grandi, called for a new system to be put in place to better alleviate this displacement crisis.<sup>78</sup> A temporary protection program similar to ETPV could be the answer. Mexico should look to EPTV in Colombia as a model of a successful temporary protection status program that would better address the vulnerabilities and humanitarian issues that migrants under MPP are facing.

The Mexican agency responsible for receiving and processing refugee status applications is the Mexican Commission for Refugee Assistance (COMAR).<sup>79</sup> Mexico has adopted an expansive definition of refugee which incorporates the UN definition of refugee, but also broadly includes anyone who has fled their country of origin because their life, security, or liberties have been threatened by widespread violence, foreign aggression, internal conflicts, massive breach of human rights, or other circumstances that have severely disrupted the public order.<sup>80</sup> Under this expansive definition, most of those who have been forcibly displaced from Central America appear to qualify for asylum or at least complementary protection. However, there are barriers that significantly impede migrants' ability to seek asylum in Mexico.

The drastic increase in asylum claims has crippled an already unprepared asylum system in Mexico.<sup>81</sup> COMAR is overwhelmed and underfunded. Even with support from UNHCR, COMAR's capacity to process the increasing number of applications is extremely limited.<sup>82</sup> In 2021, there was a record-breaking amount of refugee applications.<sup>83</sup> However, the budget for 2021

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<sup>76</sup> *Displacement in Central America*, United Nations High Comm'r for Refugees, <https://www.unhcr.org/en-us/displacement-in-central-america.html>.

<sup>77</sup> Schlein, *supra* note 64.

<sup>78</sup> *UNHCR Warns of Unprecedented Displacement in Central America and Mexico*, *supra* note 62.

<sup>79</sup> *Who Is Considered a Refugee?*, United Nations High Comm'r for Refugees: Ayuda Mexico, <https://help.unhcr.org/mexico/en/quien-es-una-persona-refugiada/> (last visited May 1, 2022).

<sup>80</sup> *Id.*

<sup>81</sup> W. Luigi Achilli & Virginia Negro, *Work Toward Integration: Labour Inclusion of Migrants in Mexico*, 26 MIGRATION POLICY CENTRE POLICY BRIEFS 1, 5 (2019), [https://cadmus.eui.eu/bitstream/handle/1814/65504/PB\\_2019\\_26\\_MPC.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/65504/PB_2019_26_MPC.pdf?sequence=1&isAllowed=y).

<sup>82</sup> Policy Research Project on Mexico's Migratory Policy, *Migrant Protection Protocols: Implementation and Consequences for Asylum Seekers in Mexico* 13 (2020), [https://www.strausscenter.org/wp-content/uploads/PRP-218\\_-Migrant-Protection-Protocols.pdf](https://www.strausscenter.org/wp-content/uploads/PRP-218_-Migrant-Protection-Protocols.pdf).

<sup>83</sup> *UNHCR Warns of Unprecedented Displacement in Central America and Mexico*, *supra* note 62.

actually decreased by 14.3%, despite this increase in applications.<sup>84</sup> COMAR's severe lack of funding and capacity has created delays and resulting issues with access to asylum.<sup>85</sup>

An asylum seeker in Mexico must apply at a COMAR office within 30 business days after arriving in Mexico.<sup>86</sup> Once the application is submitted, COMAR will issue an official document called a "Constancia", which certifies that the person has started the asylum process and protects the asylum seeker from deportation.<sup>87</sup> Although the Constancia is not legal status, it is required in order to access a humanitarian visa, which provides the asylum seeker with work authorization and access to health and education services.<sup>88</sup> Next, there is both an assistance and eligibility interview. The assistance interview's purpose is to identify the needs of the applicant in order to facilitate access to different services.<sup>89</sup> The eligibility interview is where the applicant proves they are eligible because of circumstances or events in their home country.<sup>90</sup> COMAR will then study the case and make a determination.<sup>91</sup> Before the pandemic, it would take up to 55 business days to give the result, and in some cases that deadline would be extended an additional 45 business days.<sup>92</sup> However, due to COVID, as of March 24, 2020 and until further notice, these terms have been suspended, meaning that there is no timeline for when the determination must be made.<sup>93</sup> During this time, the applicant must remain in the state where the application was submitted.<sup>94</sup> To prove that you are still in the state, the applicant must go to the office every week to sign the register.<sup>95</sup> If the applicant leaves the state without authorization, their case may be dropped.<sup>96</sup>

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<sup>84</sup> Rachel Schmidtke, *A New Way Forward: Strengthening the Protection Landscape in Mexico*, Refugees Int'l (Nov. 12, 2020), <https://www.refugeesinternational.org/reports/2020/11/9/a-new-way-forward-strengthening-the-protection-landscape-in-mexico>.

<sup>85</sup> Guadalupe Chavez & Alexander Voisine, *The Implementation of Mexico's Refugee, Complementary Protection and Political Asylum Law*, E-Int'l Relations (July 5, 2021), <https://www.e-ir.info/2021/07/05/the-implementation-of-mexicos-refugee-complementary-protection-and-political-asylum-law/>.

<sup>86</sup> *How to Apply for Refugee Status in Mexico*, United Nations High Comm'r for Refugees: Help Mexico, <https://help.unhcr.org/mexico/en/como-solicitar-la-condicion-de-refugiado-en-mexico/> (last visited May 1, 2022).

<sup>87</sup> *Id.*; Schmidtke, *supra* note 84.

<sup>88</sup> Schmidtke, *supra* note 84.

<sup>89</sup> *How to Apply for Refugee Status in Mexico*, *supra* note 86.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

Limited effective access to the asylum procedure has acted as a disincentive to filing asylum claims.<sup>97</sup> The lengthy process was identified as a serious barrier.<sup>98</sup> An overstretched agency and the lack of migratory alternatives has resulted in significant delays, causing so much frustration that many migrants instead choose to cut their losses and remain in irregular status.<sup>99</sup> Application determination wait times are now reaching close to two years.<sup>100</sup> Many who do apply will subsequently abandon their claims after growing tired of waiting.<sup>101</sup> The backlog is especially problematic given the barriers that asylum seekers face in accessing work and services while they await a determination.<sup>102</sup> COMAR is taking months to issue just the *Constancia*, which leaves asylum seekers without protection against deportation and prevents them from applying for the humanitarian visa so that they can access formal employment and other necessary services.<sup>103</sup> Even once the *Constancia* is issued, asylum seekers face barriers accessing the services they are entitled to because of a severe lack of funding and limited capacity of the various government institutions that provide these types of services.<sup>104</sup> Furthermore, because applicants are required to sign in at the same COMAR office every week in person to prove their presence, economic opportunities can be severely limited.<sup>105</sup> Asylum seekers may be forced to stay in areas where they are unable to find meaningful employment to meet their basic needs or where they face higher protection risks.<sup>106</sup> Some refugees reported having to take time off of work to wait in the long lines at COMAR to sign in, which limited their ability to be hired or keep a job.<sup>107</sup> Seeking asylum in Mexico is therefore not a practical option to many vulnerable migrants.

The mixed nature of migration gives rise to a need to develop not only the Mexican asylum system, but also alternative safe migratory solutions for other migrants entering Mexico irregularly and not seeking international

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<sup>97</sup> United Nations High Commissioner for Refugees (UNHCR), 2019 Highlights UNHCR Mexico, at 8, <https://www.acnur.org/es-mx/600712924.pdf>.

<sup>98</sup> *Id.* at 22.

<sup>99</sup> United Nations High Commissioner for Refugees (UNHCR), Mexico Operation Newsletter (September 2021).

<sup>100</sup> Chavez & Voisine, *supra* note 85.

<sup>101</sup> Rachel Schmidtke, A New Way Forward: Strengthening the Protection Landscape in Mexico, REFUGEES INTERNATIONAL, November 12, 2020, <https://www.refugeesinternational.org/reports/2020/11/9/a-new-way-forward-strengthening-the-protection-landscape-in-mexico>.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> 2019 Highlights UNHCR Mexico, *supra* note 65, at 17.

<sup>105</sup> Chavez & Voisine, *supra* note 85.

<sup>106</sup> Schmidtke, *supra* note 84.

<sup>107</sup> Chavez & Voisine, *supra* note 85.

protection from Mexico, but from the United States.<sup>108</sup> As discussed in the previous section, regularization is an essential part of an effective refugee crisis response because it provides protection as well as allows for socio-economic inclusion. Furthermore, temporary protected status can serve as a path to regularization in response to humanitarian crises and complex or mixed population movements, like the situation in Mexico, particularly where existing responses are not adequate.<sup>109</sup> Despite this need, legal alternatives such as temporary protected status for migrants in Mexico are limited, and the programs that do exist are confusing, inadequate, and poorly implemented.

When MPP was announced, the Mexican government promised to protect returned asylum seekers within the country.<sup>110</sup> MPP has been upheld based in part on the fact that Mexico said they would grant humanitarian status and work authorization to returned asylum seekers.<sup>111</sup> The Mexican Migratory Law of 2011 also guarantees migrants the right to healthcare, education, and work as well as protection from discrimination, crime, and persecution, regardless of their migration status.<sup>112</sup> However, in practice, it has proved difficult for migrants to actually access these rights.<sup>113</sup> When MPP was first implemented, Mexico had no work authorization program in place for migrants seeking asylum in the US and returned to Mexico.<sup>114</sup> Migrants instead found themselves stuck in the most dangerous areas of Mexico with minimal assistance.<sup>115</sup> These conditions further traumatized asylum seekers who were already fleeing for their lives.<sup>116</sup> Later in 2019, Mexican officials announced they would start issuing temporary work permits to migrants stuck at the border to alleviate the burdens on asylum seekers who are returned to Mexico under MPP.<sup>117</sup> Now, migrants theoretically have access to work, education, healthcare and other services. However, the issuance of work permits at the border has not been straightforward nor uniform.

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<sup>108</sup> UNITED NATIONS HIGH COMM’R FOR REFUGEES, *supra* note 65, at 12.

<sup>109</sup> United Nations High Commissioner for Refugees (UNHCR), Guidelines on Temporary Protection or Stay Arrangements, 1 (Feb., 2014), <https://www.refworld.org/docid/52fba2404.html>.

<sup>110</sup> Roadmap to Recovery: A Path Forward after the Remain in Mexico Program, *supra* note 70, at 12.

<sup>111</sup> Clara Long & Ariana Sawyer, “*We Can’t Help You Here*”: *US Returns of Asylum Seekers to Mexico*, Human Rights Watch (July 2, 2019), <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico#>.

<sup>112</sup> Policy Research Project on Mexico’s Migratory Policy, *supra* note 82, at 9, 26.

<sup>113</sup> *Id.* at 26.

<sup>114</sup> Long & Sawyer, *supra* note 111.

<sup>115</sup> Hebrew Immigrant Aid Society, *supra* note 70, at 12.

<sup>116</sup> *Id.*

<sup>117</sup> Julian Resendiz, *Mexico to Issue Work Permits for Migrants*, Border Rep. (June 26, 2019, 11:58 PM), <https://www.borderreport.com/news/mexico-to-issue-work-permits-for-migrants/>.

When an asylum seeker is sent back to Mexico under MPP, they are given various documents by the Instituto Nacional de Migración (INM). The INM is the agency in charge of regulating the entry, stay, and exit of foreign and Mexican citizens in Mexico.<sup>118</sup> The first of these documents is the Forma Migratoria Múltiple (FMM).<sup>119</sup> With this document, the migrant obtains temporary legal status in Mexico during their immigration proceedings in the United States.<sup>120</sup> A person who has an FMM for humanitarian reasons allegedly should also have access to work authorization.<sup>121</sup> The FMM is only valid for up to six months, but can be renewed “in some cases.”<sup>122</sup> Migrants are also given a Clave Única de Registro de Población (CURP), which is the equivalent to a social security number and allows for access to public services in Mexico.<sup>123</sup>

Research shows that the implementation of these immigration policies has created a large population of migrants under MPP who lack the necessary documents.<sup>124</sup> One source indicated that asylum seekers are frequently unable to even get the FMM, sometimes as a result of office closures due to the pandemic.<sup>125</sup> Many sources indicate that the FMM, even if the box for humanitarian reasons is checked off, does not provide for work authorization.<sup>126</sup> In addition, a migrant must receive a CURP in order to have access to employment, healthcare, and education.<sup>127</sup> The CURP is not always automatically provided with the issuance of a FMM.<sup>128</sup> Sometimes, a CURP has to specifically be requested by the migrant.<sup>129</sup> Due to this, many asylum seekers in MPP were not provided with CURPs and do not know how to

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<sup>118</sup> Schmidtke, *supra* note 84.

<sup>119</sup> ACNUR, La Agencia de la ONU para los Refugiados, *Si eres una persona bajo MPP, conoce tus documentos*, YouTube (Sept. 18, 2020), <https://www.youtube.com/watch?v=uKbsqVipTbY>.

<sup>120</sup> *Id.*; Policy Research Project on Mexico’s Migratory Policy, *supra* note 82, at 20.

<sup>121</sup> ACNUR, La Agencia de la ONU para los Refugiados, *supra* note 119.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*; How to Apply for Refugee Status in Mexico, *supra* note 86.

<sup>124</sup> TANIA GARCÍA BARANJAS ET AL., REFUGEES INT’L, “IT’S VERY HARD TO HAVE RIGHTS”: THE IMPACT OF COVID-19 ON REFUGEE AND MIGRANT COMMUNITIES IN TIJUANA 15 (2021), <https://reliefweb.int/sites/reliefweb.int/files/resources/Tijuana%2BReport%2B-%2BDecember%2B2021%2B-%2BFINAL.pdf>.

<sup>125</sup> HEBREW IMMIGRANT AID SOCIETY, *supra* note 70, at 14.

<sup>126</sup> POLICY RESEARCH PROJECT ON MEXICO’S MIGRATORY POLICY, *supra* note 82, at 30; Recommendations from Mexican Civil Society Organizations to the Biden-Harris Administration, Restitution and Support for Asylum Seekers Subjected to MPP, <https://asylumaccess.org/wp-content/uploads/2020/12/Recommendations-from-Mexican-CSOs-to-Biden-Harris-Administration.pdf>.

<sup>127</sup> POLICY RESEARCH PROJECT ON MEXICO’S MIGRATORY POLICY, *supra* note 82, at 30.

<sup>128</sup> *Id.*

<sup>129</sup> ACNUR, La Agencia de la ONU para los Refugiados, *supra* note 119.

access one.<sup>130</sup> This gap in operations is demonstrated by the fact that from January 19 through February 6, 2020, INM issued 3,438 CURPs in Tijuana, yet Customs and Border Patrol in the United States returned around 7,400 asylum seekers to Tijuana in that same period.<sup>131</sup> Therefore, more than half of these returned migrants have no access to work authorization or services.

Even if one is able to navigate the system to obtain the FMM and a CURP, once the FMM expires after only six months, it can be nearly impossible to get it renewed. Mexican migration authorities have created hurdles to renew the FMM.<sup>132</sup> The pandemic has only exacerbated this situation. FMMs are usually renewed once an asylum seeker can present updated US documents that indicate when their next MPP hearing is.<sup>133</sup> The pandemic has created significant delays in MPP hearings, causing permits for nearly all asylum seekers to expire before their hearing is held.<sup>134</sup> Although the INM amended this policy to allow renewal of any expired FMM under MPP, asylum seekers continue to report denials.<sup>135</sup> Others have reported INM officers demanding bribes in exchange for renewals.<sup>136</sup> Migrants who were unable to renew their FMM's revealed that they were unable to obtain employment or were fired from their jobs as a result.<sup>137</sup> Not only this, but migrants without a valid FMM are also at an increased risk of deportation because their legal status has expired.<sup>138</sup>

Lack of migratory documentation prevents many asylum seekers under MPP from obtaining formal employment.<sup>139</sup> Studies show that few asylum seekers in MPP have been able to get jobs.<sup>140</sup> Many have been forced into exploitative informal labor arrangements that leave them vulnerable to harassment, discrimination, and wage-theft.<sup>141</sup> For example, if a migrant can find an employer who will hire them without work authorization, they are

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<sup>130</sup> Stephanie Leutert, Back and Forth, *THE WILSON QUARTERLY*, (Winter 2021), <https://www.wilsonquarterly.com/quarterly/back-to-the-future/back-and-forth>.

<sup>131</sup> *Id.*

<sup>132</sup> REBECCA GENDELMAN ET AL., *HUMAN RIGHTS FIRST, HUMANITARIAN DISGRACE: U.S. CONTINUES TO ILLEGALLY BLOCK, EXPEL REFUGEES TO DANGER* 26 (2020), <https://humanrightsfirst.org/wp-content/uploads/2022/09/HumanitarianDisgrace.pdf>.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> UNITED NATIONS HIGH COMM'R FOR REFUGEES, *supra* note 65, at 22.

<sup>140</sup> HEBREW IMMIGRANT AID SOCIETY, *supra* note 70, at 14.

<sup>141</sup> GENDELMAN ET AL., *supra* note 132, at 20-21; HEBREW IMMIGRANT AID SOCIETY, *supra* note 70, at 14-15.



often paid under minimum wage for not having papers.<sup>142</sup> This wage is not enough to meet basic needs.<sup>143</sup>

Even if an asylum seeker is able to navigate this situation and receive work authorization, most are still forced into informal employment. Many businesses do not recognize the FMM and do not trust it. Some businesses won't accept these visas without a background check.<sup>144</sup> Many Central American migrants with a CURP were still denied jobs because they lacked permanent residence.<sup>145</sup> Interviews with migrants indicate that private companies are prioritizing hiring Mexican nationals or legal permanent residents, especially post pandemic business closures.<sup>146</sup>

Returned asylum seekers have immediate and long terms needs for food, water, shelter, and other necessities.<sup>147</sup> However, they have been left with no legal means to earn the income required to meet these needs.<sup>148</sup> Instead, thousands of asylum seekers are living in unsanitary conditions along the border and experiencing difficulty fulfilling basic necessities, such as obtaining water, food, and shelter.<sup>149</sup> Asylum seekers under MPP are also at increased risk of crime and violence as they wait in Mexican border cities.<sup>150</sup> Criminal groups often target asylum seekers on the border because they have no local ties to the communities and because the groups believe these migrants have friends or family in the US who can pay their ransom.<sup>151</sup> Asylum seekers' precarious living situations in shelters, tent encampments or on the streets, make them highly visible and at risk for crimes like robbery and sexual assault.<sup>152</sup> There are significant gaps in access to dignified and safe housing options, and those options depend in turn on the asylum seekers access to money.<sup>153</sup> Inability to access meaningful employment exacerbates the vulnerable and dangerous situation that these migrants are in.

Although all migrants have a right to education in Mexico, most children returned under MPP do not attend school.<sup>154</sup> Migrant children have a right to

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<sup>142</sup> *Migrants Remain Stranded in Puebla*, WORLD NATION NEWS (Oct. 4, 2022), <https://worldnationnews.com/migrants-remain-stranded-in-puebla/>.

<sup>143</sup> *Id.*

<sup>144</sup> Policy Research Project on Mexico's Migratory Policy, *supra* note 82, at 31.

<sup>145</sup> Baranjas, Mayes, C   ez, & Pazzini, *supra* note 124, at 21.

<sup>146</sup> *Id.*

<sup>147</sup> Long & Sawyer, *supra* note 111.

<sup>148</sup> *Id.*

<sup>149</sup> Policy Research Project on Mexico's Migratory Policy, *supra* note 82, at 36.

<sup>150</sup> *Id.* at 32

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 33-34.

<sup>153</sup> United Nations High Comm'r for Refugees, *supra* note 65, at 31; Policy Research Project on Mexico's Migratory Policy, *supra* note 82, at 26.

<sup>154</sup> Baranjas et al., *supra* note 124, at 31.

be registered in schools at any time of the year even if they lack documents or academic records, but school officials are not upholding this right and many children experience trouble registering.<sup>155</sup> Migrants also may be unaware they are entitled to this right.<sup>156</sup> Mexican authorities fail to make this information available, nor do they help children enroll in school despite the fact that this is required by Mexican law.<sup>157</sup> In certain particularly dangerous areas along the border, some choose to give up the opportunity to go to school for safety reasons.<sup>158</sup> A lack of support from schools for migrant children and families was also identified.<sup>159</sup> Children are thus suffering developmental and educational setbacks, as well as an increased vulnerability to trafficking by not attending school.<sup>160</sup>

On paper, asylum seekers in MPP have access to public health insurance, which covers basic services.<sup>161</sup> However, many of these asylum seekers require more than basic medical help.<sup>162</sup> Additionally, there appears to be a growing tendency to deny medical services to migrants because of their lack of proper documentation.<sup>163</sup> The Mexican healthcare system is overwhelmed due to the coronavirus pandemic, leading many hospitals to discriminate against asylum seekers, who report being turned away from hospitals because of their migration status.<sup>164</sup>

Thus, stranded migrants find themselves in a precarious situation where they do not have work documents and are unable to access health services or education.<sup>165</sup> Many reside in shelters or makeshift encampments, which exposes them to protection risks.<sup>166</sup> The system of providing solely an FMM and inconsistently a CURP to asylum seekers at the border is insufficient considering the issues with implementation and the dire need that these migrants are in. Although there is another alternative for temporary protection in Mexico, this visa is also fraught with problems.

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<sup>155</sup> Mexico Operation Newsletter, *supra* note 99, at 1; Baranjas et al., *supra* note 124, at 27; Anna Joseph et al., The Inst. for Women in Migration, AC, Mexican *Tarjetas de Visitante por Razones Humanitarias* and Firm Resettlement: A Practice Advisory for Advocates 10 (2019), <https://imumi.org/attachments/2019/Mexican%20Tarjetas%20de%20Visitante%20por%20Razones%20Humanitarias%20and%20Firm%20Resettlement%20-%20A%20Practice%20Advisory%20for%20Advocates.pdf>.

<sup>156</sup> BARANJAS ET AL., *supra* note 124, at 27.

<sup>157</sup> *Id.*

<sup>158</sup> POLICY RESEARCH PROJECT ON MEXICO'S MIGRATORY POLICY, *supra* note 82, at 31.

<sup>159</sup> BARANJAS ET AL., *supra* note 124, at 27.

<sup>160</sup> HEBREW IMMIGRANT AID SOCIETY, *supra* note 70, at 15-16.

<sup>161</sup> *Id.* at 15.

<sup>162</sup> *Id.*

<sup>163</sup> BARANJAS ET AL., *supra* note 124, at 27.

<sup>164</sup> HEBREW IMMIGRANT AID SOCIETY, *supra* note 70, at 15.

<sup>165</sup> *Migrants Remain Stranded in Puebla*, *supra* note 142.

<sup>166</sup> Mexico Operation Newsletter, *supra* note 99, at 1; UNITED NATIONS HIGH COMM'R FOR REFUGEES, *supra* note 65, at 8.

The Tarjeta de Visitante por Razones Humanitarias (TVRH), is a form of temporary legal status in Mexico given for humanitarian reasons, also called the “humanitarian visa”.<sup>167</sup> Recipients are issued a card with the word “visitante”, which translates to “visitor”, written across the top.<sup>168</sup> The status is valid for 180 days up to one year.<sup>169</sup> Migrants may renew, but only if they can prove that the rationale under which they received the status still exists.<sup>170</sup> It does not provide a path to temporary or permanent residence.<sup>171</sup> It does however provide work authorization.<sup>172</sup> Recipients are also given a CURP, which allows for access to public services.<sup>173</sup>

At the end of 2018, the Mexican government began granting the TVRH through an expedited process in response to the Migrant Caravans arriving in Mexico at that time.<sup>174</sup> The Migrant Caravans were a phenomenon where several hundred Central Americans fleeing persecution would join together to travel through Mexico to seek asylum in the United States.<sup>175</sup> The cards were granted to these Central Americans who entered Mexico bound for the United States.<sup>176</sup> The program was paused after a couple of months in the beginning of 2019 because its success overwhelmed the INM after more than 15,000 Central Americans applied.<sup>177</sup> The program was then reimplemented just a couple of months later due to the arrival of new caravans.<sup>178</sup>

Even though thousands of migrants have been provided with the TVRH through an expedited process, this is not the norm.<sup>179</sup> According to the law, the TVRH is only granted after an extensive application and interview process, and only to certain groups who qualify.<sup>180</sup> These groups include victims or witnesses to a crime in Mexico, unaccompanied minors, individuals who have applied for asylum or complementary protection in Mexico, applicants for a determination of a statelessness, or those can prove a degree of vulnerability that makes deportation or return impossible or difficult.<sup>181</sup> There is also a discretionary category, which the Secretary of the Interior may use to grant TVRHs when there is a humanitarian cause or when it is in the

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<sup>167</sup> Joseph et al., *The Inst. for Women in Migration, AC*, *supra* note 155, at 3.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 7.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> Chavez & Voisine, *supra* note 85.

<sup>173</sup> Achilli & Negro, *supra* note 81, at 2.

<sup>174</sup> Joseph et al., *supra* note 155, at 3.

<sup>175</sup> Baranjas et al., *supra* note 124, at 13.

<sup>176</sup> Achilli & Negro, *supra* note 81, at 2.

<sup>177</sup> Chavez & Voisine, *supra* note 85.

<sup>178</sup> Achilli & Negro, *supra* note 81, at 3.

<sup>179</sup> Joseph et al., *supra* note 155, at 5.

<sup>180</sup> *Id.* at 5-6.

<sup>181</sup> *Id.*

public interest to regularize the migrant's status.<sup>182</sup> There is no statutory definition of what constitutes a public interest, but the regulations and guidelines provide that it may arise when the migrant's admission is required to assist in the case of an emergency or disaster in Mexico.<sup>183</sup> Some examples of a humanitarian cause are when there is a risk to the health or life of a person that requires them to stay in Mexico, the need to remain in Mexico to assist a family member who has a grave health condition, the degree of vulnerability of that person makes it difficult for them to be deported, the person is in danger due to violence or natural disaster, among other more specific reasons.<sup>184</sup>

Many migrants under MPP do not fit within these groups or would be at the mercy of the Secretary of the Interior's discretion. Even those who do fit within a group would likely have to go through an extensive application process that requires a high level of proof. Even though migrants are often victims of crimes and could be eligible to apply for a TVRH on that basis, many migrants are unlikely to report crime due to fear of impunity or putting themselves at additional risk.<sup>185</sup> Asylum seekers under MPP are generally unwilling to seek help from the Mexican police.<sup>186</sup> There are reports of harassment and extortion by the Mexican police, and the perpetrators of violence are often the Mexican police themselves.<sup>187</sup> Filing a police report can be time consuming and costs money, while police subsequently do little to respond and investigate.<sup>188</sup> Additionally, many reported that registration for the TVRH in general was time consuming, inefficient, and complicated.<sup>189</sup> Furthermore, individuals who enter Mexico even for a reason that fits within these categories are still less likely to receive a humanitarian visa than if they were to enter in a large group.<sup>190</sup> For example, even though individual asylum seekers who have been given a Constancia are entitled to TVRH, the total amount humanitarian visas granted between 2015 and 2020 only represents 55% of the total of asylum requests submitted during the same period.<sup>191</sup> This

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<sup>182</sup> *Id.* at 6.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> ARIANA SCHRIER ET AL., COLUMBIA SCHOOL OF INTERNATIONAL AND PUBLIC AFFAIRS, MAPPING DYNAMICS OF HUMANITARIAN ASSISTANCE IN A CHANGING ENVIRONMENT 14 (2021) <https://www.sipa.columbia.edu/sites/default/files/migrated/downloads/MSF-SIPA%2520Final%2520Report.pdf>.

<sup>186</sup> HEBREW IMMIGRANT AID SOCIETY, *supra* note 70, at 14.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Achilli & Negro, *supra* note 81, at 4.

<sup>190</sup> Schmidtke, *supra* note 84.

<sup>191</sup> *Id.*

disparity suggests that even those who clearly fit within categories defined by law face barriers in accessing this visa.<sup>192</sup>

Even though the estimated time to deliver a TVRH is 20 days, it may take even more than 90 days due to increased demands and delays, leaving migrants without legal status and thus extremely vulnerable during this time, without access to work, services, and at risk of deportation.<sup>193</sup> For those who were provided TVRH cards through the expedited process during the Migrant Caravans, INM has refused to renew them, despite no change in country conditions.<sup>194</sup> After a year, Central American migrants who arrived in the caravans faced barriers in renewing their status, and became irregular and vulnerable.<sup>195</sup>

For those who are lucky enough to receive a TVRH, challenges still remain. Many employers are unaware of this type of documentation and reluctant to hire migrants with a TVRH.<sup>196</sup> Since the card does not explicitly state that the holder has work authorization, but instead states that the card holder is a “visitor,” TVRH holders have trouble convincing potential employers that they are in fact legally authorized to work.<sup>197</sup> Other legal statuses in Mexico, including temporary resident cards, do state that the holder has legal permission to work, causing confusion for employers.<sup>198</sup> Because of this, many employers do not believe TVRH holders have official work authorization and explicitly reject TVRH holders on the grounds that their document reads, “visitor.”<sup>199</sup> TVRH holders also face challenges in receiving a CURP with their visa. Although all migrants with TVRHs are entitled to receive a CURP upon issuance of the TVRH, in practice, a significant number of migrants do not receive a CURP when they receive their TVRHs and having trouble accessing it later.<sup>200</sup> As mentioned earlier, not having a CURP prevents a migrant from accessing social services, such as healthcare, in Mexico.

In sum, TVRH holders often find themselves unable to work, access services, or enroll their children in school, rendering it ineffective.<sup>201</sup> Even if the TVRH reliably provided the benefits its promised, it is not implemented in a clear, efficient, or accessible way. It leaves out many migrants under MPP

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<sup>192</sup> *Id.*

<sup>193</sup> Migrants Remain Stranded in Puebla, *supra* note 142.

<sup>194</sup> BARANJAS ET AL., *supra* note 124, at 16.

<sup>195</sup> JOSEPH ET AL., *supra* note 155, at 10.

<sup>196</sup> Achilli & Negro, *supra* note 81, at 4.

<sup>197</sup> JOSEPH ET AL., THE INST. FOR WOMEN IN MIGRATION, AC, *supra* note 155, at 8-9.

<sup>198</sup> *Id.*

<sup>199</sup> Achilli & Negro, *supra* note 81, at 4.

<sup>200</sup> JOSEPH ET AL., *supra* note 155, at 9.

<sup>201</sup> *Id.* at 10.

who cannot meet the strict requirements to qualify. Thus, the TVRH does not appear to be a viable alternative for migrants under MPP.

The options that Mexico currently has in place for asylum seekers under MPP are not sufficient nor do they adequately consider the realities of the migration situation. The CURP is not uniformly given to all migrants with an FMM, prohibiting those migrants from obtaining work authorization and accessing necessary services. Even those who do have a CURP, this system has not been effective due to issues with renewal and a lack of communication with the community about the benefits of this status. Furthermore, migrants in MPP face barriers in receiving the TVRH due to the criteria required to qualify and apply. For those who do successfully receive a TVRH, issues with renewal, receiving a CURP, and convincing employers that it provides for work authorization, work to render the visa practically useless. These challenges create a situation where most migrants under MPP lack any meaningful option for temporary protection. Considering how important regularization is in any refugee crisis, there is a dire need for these gaps in regularization to be filled by a more effective method of conferring temporary protected status.

#### CONCLUSION

Colombia's ETPV program presents an example of a temporary protection status that approaches the realities of the specific refugee crisis by having one visa that is quick to obtain and that does not require the migrant to meet many requirements to qualify. The ETPV clearly provides for work authorization and access to social services. Colombia has also engaged in large scale communication efforts to facilitate integration and recognition of this visa and the benefits it confers. As seen in Colombia, an efficient, effective, and comprehensive temporary protection system presents solutions for unprepared countries to deal with unprecedented influxes of refugees, at least to provide immediate protection and address pressing humanitarian issues in the short term.

A program such as ETPV in Mexico would help to alleviate challenges that Central American refugees face. Mexico should look to ETPV as a model that provides guidance for a program that would present asylum seekers under MPP with one straightforward visa option, specifically tailored to the needs of migrants under MPP, and implemented efficiently through a simplified process that allows uniform access to all. In conjunction, there must be clear communication with both migrants and the greater community to convey what this visa is and what holders are entitled to. An effective visa such as this would minimize the humanitarian need and the dangers that asylum seekers are currently facing while they are trapped without meaningful assistance along the US-Mexico border.