

Sarah: Trump’s Migrant “Protection” Protocols are back, though human rights defenders refuse to refer to the policy by its original Orwellian name because MPP 1.0? It never protected anyone at all.

They prefer terminology that says exactly what the policy does: force the world’s most vulnerable people – those fleeing violence, crippling poverty, war, climate disaster – to Remain in Mexico while a hamstrung and back-logged US asylum system considers their need for protection.

Biden maintains that his Remain in Mexico program, or MPP 2.0, will be a gentler, “lite” version of his predecessor’s policy.

But can Inhumane be less Inhumane? *[00:00:49]*

That is the question I brought to a webinar panel with experts, all of whom are able to see how it could be otherwise: How we could have safe borders but sane borders too; how we could welcome with dignity, rather than deter with cruelty; how we could uphold our national values, while making good on our international commitments to defend the human rights of those in need of protection.

My guests are...

- Charlene D’Cruz of lawyers for Good Government
- Aaron Reichlin-Melnick of the American Immigration Council, and

- Yael Schacher of Refugees International

They joined me to unpack the Remain in Mexico program, its impact on human lives, and the convoluted litigation President Biden claims is forcing him to stand it back up again, even as his administration appears to be expanding it.

Our conversation was so topical, so rich in history and context, I couldn't help but turn it into the grand finale of Witness Radio's inaugural season.

I hope you learn as much as I did and that it sends you into 2022 with a bit of hope and just enough outrage.

RADIO WAVE

Sarah: At the end of World War II, there were seven border walls or fences in the world. By the time the Berlin wall fell in 1989, there were 15. When Trump was campaigning to build a wall on the border with Mexico, there were at least 77 walls or fences around the world, many erected after September 11, 2001. There are more than that today.

But these are just physical walls. There are also many bureaucratic and now technological walls that in many ways are more effective at dividing people and nations.

Walls exist to stop human migration, even as corporations are incentivized with lower taxes, zero regulations, and cheap labor to cross borders every day. Today, as the global south dries up and is beset by wars and earthquakes and devastating rains, much of

it caused by corporate migration, more people are on the move than ever before. But rather than focus on the rights of these humans who are on the move, more and more walls are erected to stop them.

Today we will be discussing the bureaucratic walls raised alongside the actual border wall built by successive US governments since the 1990s, with the stated purpose of keeping us secure, but with the actual purpose of keeping people on the other side.

My guests and I are going to start off by setting the context. The first question will go to Aaron, Policy Counsel at the American Immigration Council in D.C. Aaron works primarily on immigration court issues and at the intersection of immigration law and policy. Prior to this post, he represented immigrants placed in removal – that is deportation – proceedings for the Legal Aid Society in New York. Aaron will be bringing a national policy lens to the discussion today, from his vantage point in D.C.

So, Aaron, I'd like you to start us off by defining MPP from the point of view of policy and politics and explain, if you will, when and how it was rolled out under Trump, and why.

Aaron: Hi, Sarah, and thank you very much for having me.

The so-called Remain in Mexico program, also formerly known as the Migrant “Protection” Protocols, was a Trump administration program begun in January of 2019. But the roots of the program actually date back a little bit earlier.

In 1996, Congress passed a law that created something known as the contiguous territory provision of immigration law. This is what I've called a hidden weapon – a law that was put on the books decades ago but had effectively never been used. The law said that the government can send some individuals to wait in a contiguous country, so that would be Mexico or Canada, if they are arriving from that country.

This law basically sat dormant for nearly 25 years. But it started receiving a lot more attention once President Trump took office because Stephen Miller and the Trump people who joined the White House to work on immigration were obsessed with reducing the number of asylum seekers coming to the border.

Within weeks after taking office, President Trump's immigration people began working on what would later become known as the zero-tolerance policy, or family separation. Families have been a particularly difficult thing for the government to handle because of the Flores Settlement Agreement, which severely restricted the government's ability to lock children in jails with their parents.

This is, what I would say, a good thing: the Flores Settlement came around to protect children. But to the Stephen Millers of the world, the only way to stop families from coming to the United States was to act more harshly to them.

And so, over the course of 2017 and 2018, the administration got really focused on zero tolerance as an idea. There was an El Paso pilot project in which nearly 1000 parents were separated from their children. And then eventually, in spring of 2018, family

separation began in full swing, and over 3000 parents were separated from their children sometimes in really brutal and horrific ways.

The outcry against family separation was international. It was one of the worst things the United States government has ever been seen doing. And the images and audio of children weeping and calling for their parents sparked a revolution against Trump's attack on asylum seekers at the border.

And so, within months, the Trump administration had to reverse it. And then that left them with actually not much in a way of a policy to act more harshly against asylum seekers.

The number of people coming to the border started rising even after family separation, pretty steadily over the course of 2018. By the fall and winter, President Trump was calling this a national emergency, demanding that Congress fund his border wall, and in fact, in December of 2018, he shut down the federal government, refusing to sign a budget bill over his insistence that the border wall be funded further.

But at the same time, in December 2018, they announced Remain in Mexico.

They pitched this as essentially a way to deter fraudulent asylum claims while supposedly respecting the due process rights of migrants sent back to Mexico. They made elaborate claims that Mexico would provide work permits and safety and good living conditions for those sent back to Mexico; that all cases would be heard within six months; and that the federal government would

effectively create this fair and efficient system for rapidly adjudicating legitimate asylum claims while deterring fraudulent asylum claims.

Sarah: But these promises were never kept. Cases were not heard within six months. Mexico did not provide work permits or safe living conditions. What money did flow to Mexico went to raising an armed human wall on the Mexico-Guatemala border to stop folks on the run from traveling further northward. And an estimated 70,000 people, a good $\frac{1}{3}$ of them children, were left huddled up on the other side of the US border, living in squalor in cartel-controlled border towns – places the US State Department alerted its own citizenry were as dangerous as war torn Syria and Iraq. Homelessness reigned as limited shelter capacity overflowed. A tent meant for weekend camping became the best solution for many, despite lack of food, clean water, and the threat of extreme weather. And then came the increases in violent organized crime. Asylum seekers trapped in Mexico became easy prey for local gangs, who made easy money by kidnapping them and extorting ransom from their loved ones in the USA. The cost to be smuggled into the US sky-rocketed as coyote networks responded to the market niche now created by both the president's physical wall as well as this bureaucratic one.

Aaron: This began in January 2019, and it was allowed to go forward while it continued being fought in courts. After that initial court battle was over, they started expanding it.

It began in San Diego, in California. Then it rapidly expanded across the rest of California, then to El Paso, and then, we hit that moment where the so-called

“border crisis” occurred: where Jakelin Caal Maquin died in Border Patrol custody, Carlos Hernandez also passed away, the 16-year-old of the flu. And attention was being paid again to the horrible way that families of children were being treated.

And so, the Trump administration really started to panic. In June of 2019, at the threat of imposing 25% tariffs on all Mexican goods, Mexico balked and said, you can expand this program as much as you want.

They began plans to expand Remain in Mexico to South Texas and in July, they started sending thousands of people back to the Mexican state of Tamaulipas, one of the more dangerous places in the world for migrants given the cartels control of the region.

Over the course of the six months between June 2019 and the end of the year, the Trump administration instituted a blizzard of new policies designed to deter and harm asylum seekers, to get rid of their rights, and to put them through as stripped down as Kafkaesque a policy that they could without being blatantly obvious that they were trying to deny people their rights.

Programs like the so-called Asylum “Cooperative” Agreements, the “Prompt” Asylum Claim Review Process, “Humanitarian” Asylum Review process, all of these, like MPP, operated in Orwellian terminology to create in Washington, DC, an impression that this administration cared about human rights, while on the

border, making it virtually impossible for anyone to either have a fair day in court or get to court in the first place.

So as these new policies came out, the number of people actually put into MPP started going down as the number of people coming to the border was also going down. And whether there was actually any connection is a hotly debated topic. I would argue that there is no clear evidence that MPP had any deterrent effect. The Trump administration said otherwise, and unfortunately, so has the Biden administration.

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Sarah: I want to give the mic to Charlene after this quick introduction.

Charlene has been fighting for the rights of asylum seekers since the Dirty Wars era of the late 1980s when she founded the Florence Immigration and Refugee Rights Project in Arizona, which still exists, still going strong. She has focused her legal career on immigration and disability rights. One of her superpowers is in developing large scale emergency legal response programs, which she brought to bear under Trump's MPP as director of Project Corazon, the Border Rights Program of Lawyers for Good Government. Charlene was the first full-time immigration attorney on the ground in the Brownsville-Matamoros Port of Entry when MPP 1.0 was erected in the summer of 2019. Today, she brings us the benefit of her broad borderlands viewpoint going back 32 years, as well as her personal and historical vantage points, watching US immigration policy and its impacts on the lives of real people as they unfold.

Charlene, I was going to ask you to take us to the border.

Charlene: Thank you, Sarah. Before I was an attorney, I was just a friend of the court, representing asylum seekers in the depths of the desert of Florence, Arizona, which is when the Florence Project started. I myself am an immigrant. I grew up in India and came to the United States when I was about 18.

I just want to start off with one word: Race. We cannot ever talk about immigration law, whether historically, current, or in any other era without saying the word Race.

Immigration law has been fashioned around racial inequities, racism, and the fact that the white supreme powers have always controlled immigration. Go back to the Chinese “Exclusion” Act, go back to the Bracero program, go back to even though the IM act of 1990, when I was on the ground, helped with family unity. But it also brought out a lot of negative laws that affected people in 1990. IRA was 1996. Let's not forget what was the atmosphere of 1996? It was the era of Newt Gingrich and the Contract for America – also race-based. That was one of the most brazen laws and Congress then made everything about race, whether we talk about local domestic US policy, or immigration, or even our interaction with our neighbors and other trading partners.

And then let's not forget NAFTA. What did NAFTA do? The white countries of the US and Canada, huddled together to make money while they completely trounced Mexico, the Mexican farmer. And then we wonder why people came up.

A milpa of corn in Mexico used to yield enough corn to feed a family and, plus, sell in the market. A milpa could not stand up to the innovation and technology of the US and Canada. And plus the subsidies that the US and Canadian governments kept for themselves while denying Mexico.

We have the cartels that grew out of that. Let's not forget what the U.S. government did in the 80s by vilifying Salvadoran young people, throwing them in jail and throwing away the key, and then deporting them. That created the Maras: Mara Salvatrucha, Mara 18. That is what happened.

Every single administration has done this. NAFTA: Clinton. The Secure Fence Act: George W. Bush. Metering: Obama. And then Trump. As much as I dislike Trump, and as much as he is racist, every other president has coddled racism in immigration policy.

When I came down in the 80s, I used to travel all around the borders in a 1966 GMC truck with no hydraulics. I was 22 and quite crazy. And the border looked different. At that point, they were fighting drugs. When it came to Matamoros, 2019, they were fighting people. They were fighting humanity.

I traveled across Guatemala in 2018, looking for parents. I went to small villages in Alta Verapaz, in Huehuetenango, looking for people whose children were taken away. I met a young mother, she was barely 18, whose four month old was taken away. We don't know where the child is. Race.

Aaron points out about the deaths of the Maya indigenous children. Why are we not asking, why are Guatemalan indigenous children the names and the numbers that are dying mostly?

And when you put that all in perspective and you imagine a camp, with little domed tents scattered and strewn around the plaza in Matamoros. You can't help but ask yourself, why them?

One of the most racist laws, it's not even a law. MPP's not a law. It was a ridiculous policy. It has no bearing on the law. It has no place in the law. It is at odds with the law. That's why we have problems right now. We cannot fit it in.

You look at the faces of the people, MPP was meant for Spanish-speaking countries because Trump believed that Mexicans were rapists. And of course, the broad brush – everybody's a Mexican – happened. We can't forget that.

Cubans for the first time weren't allowed in. They used to be allowed in – wet foot, dry foot. They weren't allowed in.

And I say this facetiously, but also with a lot of anger: Black people have been consistently marginalized not only in our country, but through immigration law. If you look at visas, if you look at everything, African countries suffer.

Haitians. Everybody has seen the pictures and the videos of the most horrendous and gross treatment of Haitians. Race cannot be avoided. Those are the people who are sitting on the other side of the border.

Sarah: I think it's absolutely important what you're saying, because the new MMP 2.0 now includes Haitians.

So, we'll pick it up with Yael who is a historian of immigration and U.S. immigration law and holds the role of senior U.S. advocate at Refugees International. There, Yael focuses on advocating for access to asylum, access to refugee resettlement, to temporary protected status, and humanitarian visas. She's currently completing her first book project based on her doctoral dissertation. It's called "Exceptions to Exclusion: A History of Asylum in the United States, 1875 to Present." She's also embarking on a new research project on the U.S. Immigration Court.

This is a wonderful confluence of speakers. She'll be helping us to pull the lens back, which Charlene started to place the resurgence of MMP in both historic time, as well as from the global geopolitical perspective.

So my question to you, Yael, is how both MMP 1.0 and 2.0 are a reflection of what's happening elsewhere in the world. In other words, is MMP unique to the U.S.? Or does it have a connection to what's happening on the Poland-Belarus border or in the EU-funded detention centers in northern Africa that are described in the horrific New Yorker piece. Please take it away.

Yael: Thanks so much for having me. What an honor to be here with you guys.

I think I'll just start with the concept of sort of "norm erosion" that we're seeing worldwide, especially the norm of non-refoulement,

the idea that you can't send somebody back to harm or persecution, or the right to seek asylum at the border, to come to the border, no matter whether you have documents and ask for asylum.

Asylum seeking has sort of been reframed worldwide as “irregular migration” to such an extent that it always is characterized as something that needs to be stopped. That deterrence framework that Aaron was talking about.

People have gotten so focused, also, on the perils of the journey that they actually downplay the perils people are fleeing in their countries of origin, why people actually embark on that journey to begin with.

It's gotten to be a reversal of, like, the Cold War framework that the US used to hold up that you mentioned at the beginning, Sarah. Used to be that the United States and the West, more generally, defined itself in opposition to countries that didn't let their nationals leave, like the Soviet Union. Now what we do in the West, especially in the global north, is, we do a lot of trying to get origin countries to stop their nationals from leaving and transit countries to stop people from moving.

To point out, kind of, what Charlene was saying about NAFTA, we want goods to flow over borders, but we do not want people flowing over borders.

This is an element of externalization that we see worldwide – a pushing away of the obligation to protect people who come to seek asylum.

Sometimes countries say refugees need to apply closer to home. We have heard this from the Biden administration. And if you apply closer to your home country, we will resettle you from there, through refugee resettlement, we will pick you out and we will bring you to the United States, for example.

But so few people actually get resettled from third countries and the US resettles, historically and today, almost nobody from the Western Hemisphere to Charlene's point about who we're actually resettling and why.

And resettlement is reserved for the most vulnerable of the most vulnerable in a way that has gotten very far from actually the refugee definition in the UN convention – somebody who flees persecution based on race, religion, nationality, political opinion or membership in a particular social group, let alone people fleeing climate change or violence in their home countries. That is not the standard we're using to resettle people. It's really just reserved for the most vulnerable of the most vulnerable. And even those people have hit a vetting wall, so that it takes a tremendous amount of time to resettle people from other countries.

We're not even using our resettlement system for Afghans right now, to show you how far we've moved from an idea of using the Refugee Convention and the refugee norm.

Then there's the effort to treat third countries or transit countries as “safe” when they aren't in fact safe, and to say that asylum seekers need to instead apply for asylum there.

The Trump administration did this, as Aaron alluded to, starting in, like, mid-2019 when it made a deal with Guatemala, basically saying Hondurans and Salvadorans and others – but they mostly applied it to Honduras and Salvadorans – who arrive at our border, we're going to send you to Guatemala to seek asylum there.

There's a lot of talk in Europe, especially about solidarity, but what it usually means is solidarity in support of preventing asylum seekers from reaching Europe. Not a real sense of, Oh, let's all protect more people and share that responsibility.

And it's about paying other countries, or paying the Libyan Coast Guard, to stop migration or to host refugees like the European deal with Turkey, which basically was a place where all the Syrians were meant to stay rather than come to Europe.

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There's a lot of talk, also, about special border procedures whereby asylum seekers who come to the border are treated differently. We have this in the United States. It was born in 1996 as well in IIRIRA, where we created this thing called expedited removal, where we treated asylum seekers who come to the border differently than we treat asylum seekers who are already in the United States.

England has just passed a law, a border bill to the House of Commons that makes asylum, basically asylum seeking illegal in England, and also impossible. It establishes a way to return those who arrive after passing through supposedly safe countries, safe countries who may actually return them to their own home countries, so kind of a chain refoulement process. Or send those who arrive illegally offshore for processing, which is another form of externalization: Let's send them to another island where we can process them. This is happening with Rohingya. This has been happening in Australia, which learned from us through our use of Guantanamo for Haitians in the 1990s, when we decided, you know what? We're going to just process you there and not going to let you access the territory. And those are all forms of externalization.

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The last thing I'd say is in the Americas, there is sort of this collaborative migration management strategy that the Biden administration has rolled out. You know, it could be a way for a lot of countries in the hemisphere to work together to protect asylum seekers. But I would not say that's its main focus. It's a migration management strategy.

There's been a lot of collaboration, as Aaron pointed out, pressure on Mexico to do our enforcement for us to keep migrants from coming and asylum seekers from coming up from the Guatemalan border towards the US-Mexico border in the North.

There's also a lot of talk internationally about shared responsibility for refugees. But the notion of responsibility is quite thin, such

that, as Charlene pointed out, rich countries essentially pay their way out of doing what they need to do and don't recognize the way their own policies, like our policies in Central America in the 1980s, actually foster displacement and kicked off the crises that we still see today.

A last trend that we're seeing, and I actually relate to "norm erosion, is doing a run-around around the Refugee Convention and the UN High Commissioner for Refugees, which is sort of like the guardian of the Refugee Convention.

The UN High Commissioner for Refugees actually opposes many of the externalization measures that I've mentioned and have come out publicly against it as it has come out publicly against the Remain in Mexico program, very vocally. So to sort of get around this opposition, we're turning to other international organizations like the International Organization for Migration, which again is a migration management agency more focused on management and not on protection, and is willing to be a facilitator of returns, a facilitator of externalization.

So what we're seeing is a multi-pronged approach, institutionalizing externalization all over the world.

Sarah: OK, so now MPP is coming back, and Biden says he abhors it. And notes all the ways in which it violates human rights. And yet he seems to be extending the program. Is that right?

Aaron: That is correct. Originally, it had been applied only to nationals of Spanish-speaking countries, but unfortunately, the Biden administration has chosen to expand MPP to all nationals of Western hemisphere countries. What this means is that in the past, when MPP was only used for so-called Spanish-speaking countries, you know, countries with Spanish-speaking nationals, which as Charlene pointed out, included many indigenous Guatemalans who didn't necessarily even speak Spanish, the Biden administration has expanded it to all Western hemisphere countries, which includes Haiti. And we think that is a very specific inclusion that the administration wants to target Haitian asylum seekers in the same way that it did in the mass expulsions from Del Rio that sort of shocked, I think, many people with the way those were carried out.

And again, you have to look at what Charlene said, it was completely correct. You have to look at race as an issue there. Haitian asylum seekers have often been the target for new and expanded anti-asylum programs, and this is looking like, once again, the Biden administration has joined the Obama administration and the Trump administration in targeting Haitian asylum seekers.

Sarah: Well, even the Carter administration...

Aaron: And then before that, I was gonna say yes, and not just the Obama administration. Pretty much every single presidential administration for the past 40 years has targeted Haitian asylum seekers in some ways.

Sarah: Yeah, we have cages because Carter did not want the Haitians.

Aaron: Yes. And I will note immigration detention, ICE detention was built specifically, re-created in the 1980s, specifically to target Haitians.

Sarah: Yes, from Carter to Reagan through Clinton – it knows no political partisanship. This mess we're in.

Speaking of the mess we're in, let's go back to Charlene. She's been acting to blow the system up.

We have MPP challenged in the courts under the Trump administration, but the suits were ultimately not successful, as Aaron said, and eventually the 9th Circuit and the Supreme Court overruled the pushback. So from January 2019, when MPP 1.0 began until it was finally halted by Biden, approximately 70,000 people were pushed back into Mexico. More than 32,000 were ordered removed, i.e. deported. Nearly 9,000 have their cases terminated. In the end, out of those 70,000, if I've got my stats right, just 723 people were granted asylum or some other kind of relief.

Charlene, can you give us without giving up any state secrets, can you explain to us how you've managed throughout it all to get about 50 people across a week? Is that right?

Charlene: I decided I was going to blow this thing apart and bust the door out, and I have been filing lots of humanitarian paroles.

Part of my plan is to get as many people across before MPP 2.0 starts. I'm running out of time. But I'm going to try.

Now, when MPP 1.0 was going on, I'd come down to the border in September, and one of the first people I met was a family, a Salvadoran family, with a young woman, she was like 27, is deaf and mute. And they separated that young woman and she had a five-year-old child with her in a separate cage from her mother. She'd never been away from her mother. She was not educated in ASL. Essentially, nothing was told to her. She was given the MPP paperwork and sent across the border.

So I marched up on the bridge and I said, you can't do this. Here is your policy that says that someone who has a disability is not amenable.

And of course, you know, they were like, well, you know, not our fault, it's somebody else's fault. I said, then let her in, and they wouldn't. And it took a threat of lawsuit to get that family in.

But I kept on. I would spend hours on the bridge trying to get a blind person in or, you know, children with disabilities, people who had horrible medical conditions.

In that backdrop, I have a background in disability law and also I'm a special ed teacher. So my eyes, when I walked around the camp in Matamoros, I was constantly looking for anybody who's vulnerable. And I pretty much, you know, settled into that role.

In January 2020, I got a blind woman across. And it caused such an uproar that there were specific, I think, marching orders not to

listen to me on the border. They started photographing me. I think I was on the bridge with Tom Cartwright. We were being videotaped. We were not being listened to and we had four children in dire need, disabled children, very sick children. And that was the end of the time that I could get people across. The last person was a really ridiculous case.

And then came COVID.

Aaron: And then came COVID.

Charlene: And nothing moved.

Aaron: And all of these court hearings that migrants are supposed to be getting within six months, and often they had blown past that deadline as a routine basis, all of that got put aside.

All MPP court hearings were suspended immediately when the pandemic hit. In March of 2020 the border was shut, and Title 42 went into place. Title 42: a pandemic-related policy of expelling people without even giving them a court hearing because at least under MPP, you were supposed to get a court hearing. Under Title 42 you wouldn't even get that.

As the sort of horror stories about Remain in Mexico kept being told, as the squalid refugee camps at the border made themselves into the news, Jill Biden went down during the campaign. She saw the camps, how horrible they were. And Joe Biden himself in the one immigration question that came up during the presidential debates – only one – the only time he

spontaneously raised immigration was to talk about Remain in Mexico and say how horrible it was to send people across the border into Mexico and force them to seek asylum from there.

So, we were very pleased to see on January 21st, when Joe Biden took office that one of the very first things he did on his first day in office was suspend all new enrollments at MPP. And then over the course of the next few months, the Biden administration let in nearly 13,000 people that had still been stuck in Mexico, waiting for court hearings that had been indefinitely suspended.

Unfortunately, Texas and Louisiana sued...

Sarah: Aaron, how is it that a lower court in Texas was able to stop the proclaimed wishes of the most powerful man in the world to bring this policy back that, as Charlene suggested, stands well outside the law, both international and national. How does that happen?

Aaron: Well, long story short through a law known as the Administrative Procedure Act, which is the same law that was used during the Trumpin' era to stop the Trump administration from ending the DACA program, Deferred Action for Childhood Arrivals, which provided some protections for people who are brought here to the United States as youth.

The Federal Court ruled that the Biden administration had gone through the wrong process for ending MPP, citing very specifically to the case in which the Supreme Court decided that the Trump administration had gone through the wrong process for ending the DACA program.

For a wide variety of reasons, I think that decision was incorrect, but it rested on the same legal framework: When governments take specific actions, they have to follow specific procedures, and if they do not follow those procedures, a court can step in and require them to reverse course.

That was sort of the primary basis by which the court overturned the Biden administration's actions.

Charlene: I just want to say one thing about the Biden administration and MPP. The Biden administration felt fine about rolling it back on January 21st because the Biden administration knew that Title 42 would keep folks out. We cannot talk about MPP 2.0 without talking about T42. That was a really nice way for him to placate his side and then keep Title 42 to placate the other side. Based on an archaic public health law.

When you look at the history of Title 42, and it's been used, is they didn't want to process anything – not people – in congregate settings where there would be a flow of germs and stuff. They took that and they made Title 42 for asylum-seekers, where they said, we can't do asylum because we have to process all of them in congregate settings, which is bullshit. It's ridiculous.

And so the Biden administration has felt just fine on its stance in MPP because of Title 42.

The moment Biden came in and when I did not hear MPP is going away in his first little, you know, eight o'clock announcement, I

decided that enough was enough. I filed, I think, 25 humanitarian paroles that night, and by the end of that week, I think I filed 40.

What I've been doing is, I've been testing the government. I think that policy is great, you know, to talk about from D.C. But policy has to also be made on the ground. And that's what I do. I've no attention span to sit in DC. So what I've been doing is busting the door open with every single case.

So with Title 42, there was the parole pipeline that occurred from about May to end of August. Literally the day after that parole pipeline closed down, I had a woman, a Haitian woman, who literally was dying, and they denied me because they said, well, you know, everybody dies. And so I ended up throwing a huge tantrum all the way to the White House.

So then I adopted the new policy that everybody was going to find out in the government from the port up to DC and including the CRCL, which is a civil rights group, about my cases. It had a huge effect because they started taking note because I was not going away. And every time there was a denial, I would do something more or go on on my tantrums. And I got everybody in.

But only two in September and only two in October.

And then I got a call from some Reynosa and it was this man who was again dying. And nobody is working in Reynosa. And so I called CBP and I said: You should have known that this person should not have been expelled. But yet you expelled him. So now I'm asking you to exempt him from Title 42. And that's when I

started getting it. And then, floodgates. I've been filing them left, right, and center.

I just got in with Kate Sugarman, with Doctors for Camp Closures. We have so many sick people. And I called up Kate and I said, can you do me a letter? And she's like, how many?

And so it's just snowballed and we've been really getting a lot of people through. But I fully expect that I will be stopped and then I will pivot. And that is what we have to do on the border, because policy does not come from D.C. These are fiefdoms.

And I believe that the reason that we're getting our butts kicked is because I don't believe that attorneys are seeing it that way.

So if we start to think about how to build policy from the ground up and really go in on a guerilla close-to-the-ground movement, I think that that's one way to blow it [UP]. I'm not saying it's the only way. Yes. You guys sit with the people out in DC and do their thing. That's not my thing. But you know, I just think that we are looking even as advocates, we're looking at it very narrowly.

Aaron: I think at this point, I have to note, we do have to think of Title 42 and MP as working together. Especially because we have learned that the Biden administration will be applying Title 42 to people first and then people who can't be subject to Title 42 will be put into MPP.

And I think that if we return to Haitian entrance, this is a good way to say how arbitrary this all is. We know, thanks to Tom Cartwright and others, who do really great work, that you can fit, I think, 123

people on a plane to Haiti, and so the first 123 people, Haitians, encountered in a day or in a week will be put on the plane, and person 124 is going to be put into MPP.

Sarah: Wow.

Aaron: So when we look at how arbitrary this all is, we see that decisions of life and death can sometimes come down to, you know, whether you are the first person in line or the last person in line. And that's really not how a functioning system of humanitarian protection should work.

Sarah: Right, right. So speaking of a functioning system of humanitarian protection. Yael, do you want to give us a last word, maybe on where we could go to be more humane, to be less racist, to do the right thing by our international and national conventions? Do you have hope and, if so, frame it for us?

Yael: Sure, I'll try. I would say one of the problems has always been as Charlene said that policies are made in Washington and then, depending on the Port of Entry, depending on the Border Patrol officer that you get, policy is also being on the ground, sometimes in arbitrary ways as Aaron pointed out.

I would say that there is a continuity of MPP with the past. The 1980 Refugee Act was sort of remarkable in the sense that it basically said: create a uniform process whereby people who show up at the border or are in the United States, regardless of their legal status, create a uniform procedure whereby they can apply for asylum and get a chance to have their claims heard.

We've been pushing back against that idea ever since then, as we've heard throughout this panel. First, on the high seas, in the 90s, we started turning people around. We have, with the Cubans at least, this idea that if you – wet foot, dry foot – if you hit dry land, if you hit the territory, you would get that chance to seek asylum, at least some people. And again, I cannot emphasize how much I agree with all that has been said about the way it's manifested in racially disparate ways for different populations.

But I would say that, because of the sort of bipartisan antagonism. Both administrations, Republicans and Democrats, presidents, having had a role in creating policies that lead to externalization and push back on asylum, I actually I'm a little hopeful for maybe legislative change.

I mean, this provision, as Aaron started out with at the beginning, this contiguous territory provision that we have in the immigration law, it was like a sweeping monster that the Trump administration has awoken. But Congress can put limits on its use in a way that might restrain future administrations.

Again, getting things through Congress is hard. But we did see quite a bit of pushback against MPP when it started again under.

And I do have to say President Biden, is reserving the authority to use this provision.

Biden is not saying we don't have a right to return people this way. It's saying we don't want you. We don't like you. We don't like the program, but we certainly have the authority under the statute to

do it. So I do think statutory change is something we should all push for.

And I do think we can do things with international organizations. I am heartened by the UNHCR's opposition. The International Organization for Migration used to not be a UN agency. Now it is. We can push back. We can say the U.N. has to uphold international law. You cannot participate in this kind of externalization.

So there are other ways: using Congress, pushing back on the administration in ways that Charlene is doing, like on the ground cases. But I think fundamentally the statute, like we've been saying, is a bit of a problem and working towards legislative reform is a good idea as well.

Sarah: Right, so worldwide, both with regard to immigration, migration, and climate change, it feels like really what we need is a whole-scale paradigmatic shift in how we view “the other”. Without viewing “the other” with humanity, with the continuation of the racism that put these policies into place in the first place, it's hard to get change, even at the legislative level.

So how do we create a change in awareness and consciousness toward “the other”?

Aaron: I've always thought uplifting stories of migrants themselves is so incredibly important because – I even hate the term migrant, I use it, it's awful. They're people, their people, their families, their mothers, fathers, sons, daughters, brothers, sisters,

aunts and uncles trying to make a better life. And we often reduce them to numbers, God knows I do that myself, often because you sometimes have to do it to look at things in a broader context. But at the end of the day, you just have to keep reminding people, what would you do if you were in their, you know, footsteps, if you had to deal with a famine? if you had to deal with your child's life being threatened? What would you do? And make people think about it really hard?

Charlene: Until you me, everyone who is privileged, when white people understand their privilege, and white people see what privilege is doing to us, and I'm talking about friendly fire on our side too, that I have to deal with every day, every single day, and I have so many years in the field.

Until and unless that is done, we're spinning our wheels, it's lip service.

My parents were the subject of the colonial rule of the British in India. My ancestors were killed during the Portuguese Inquisition. Race and until we understand and really head it on. We're not going to make many changes.

But I think there's a positivity in there because all of us can take that step in our everyday lives to do that, as Aaron said. Let's listen to the story, but we've got to do something about it and we got to change our own notions.

Thank you for having me. I really appreciate it.

Sarah: Yeah, you too. It's been great talking to you all. Yael, do you want to have a last word on how to change hearts and minds?

Yael: All I can say is that when I was in the Ivory Tower and I didn't get out and talk to people, I didn't have as much perspective as I have now, having been to the border many times, visited detention centers, visited immigration courts. People need to... Don't just take a joyride on the Rio Grande with a gun. Like, that's not the helpful way of visiting the border. But actually talking to some people about their experiences because there are stereotypes about them that are not true. Like, you won't actually learn their stories until you actually, like, talk to somebody for a little while and listen to what they've experienced.

I got to say I had read all about detention, I read many books, but until I actually visited a family detention center – once you visit, it's hard to be quiet and not join something like Welcome With Dignity or not get involved with this issue.

If a member of Congress visits just one of these places and isn't outraged, it's a surprising thing. We all need to get a little outraged.

Sarah: Yeah. So education, and get to the border or go to a detention center or volunteer or join welcome with dignity. All of these things, listen to Witness Radio. I think we are a nation of creative brainstormers and we can come up with a better solution and we can come up with it yesterday.

Thank you so much for all that you're doing, for all your work and for joining me. I'm really, really honored.

Aaron: Thank you for having us.