

The Honorable Jerrold Nadler
Chair, House Committee on the Judiciary

The Honorable Bennie G. Thompson
Chair, House Committee on Homeland Security

The Honorable Jamie Raskin
Chair, House Subcommittee on Civil Rights and Civil Liberties

The Honorable Zoe Lofgren
Chair, House Judiciary Immigration & Citizenship Subcommittee

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

United States House of Representatives
Washington, DC 20515

November 18, 2019

Re: Request for Action to End “Remain in Mexico” Program

Dear Members of Congress:

We are immigration, human rights, and civil rights organizations and academics, and we write to request that you take action to end the Trump Administration’s “Remain in Mexico” program, formally referred to by the Administration as the “Migrant Protection Protocols” (“MPP”). The Remain in Mexico policy places asylum-seekers in great danger, violates U.S. law, due process, and international legal obligations, and operates with surgical precision to ensure that Latin American asylum-seekers will almost never be granted humanitarian relief and protection from the violence they are fleeing. We urge you to take action to oversee, investigate, and introduce measures to defund and end this unprecedented policy; we understand that oversight hearings will be conducted tomorrow.

The Department of Homeland Security (“DHS”) announced Remain in Mexico in December of 2018 and implementation began in January of 2019.¹ As of October 28, 2019, there are six cities along the U.S.–Mexico border where Remain in Mexico is in effect—San Ysidro, Calexico, El Paso, Eagle Pass, Laredo, and Brownsville.² Remain in Mexico violates and evades U.S. asylum law and betrays the core values of asylum policy—to provide safety and due process to people seeking U.S. refugee protection.

¹ Policy Guidance for Implementation of the Migrant Protection Protocols, Kirstjen Nielson, Secretary, Dept. of Homeland Sec., at 1 (Jan. 29, 2019) [Hereinafter “Policy Guidance”] (on file with author). *See also* Letter from Members of Congress to DHS Office of Inspector General, seeking investigation into the “Remain in Mexico” program, Oc. 17, 2019, https://cdn.vox-cdn.com/uploads/chorus_asset/file/19297475/MPP_letter_to_IG.pdf.

² HUMAN RIGHTS FIRST, ORDERS FROM ABOVE: MASSIVE HUMAN RIGHTS ABUSES UNDER TRUMP ADMINISTRATION RETURN TO MEXICO POLICY 3, 12 (2019), <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

For decades prior to implementation of the Remain in Mexico policy, asylum-seekers who arrived at the Southern U.S. border pursued their asylum claims from within the United States. Typically asylum-seekers were paroled into the U.S., placed into an alternatives-to-detention program, or detained within the U.S. while their case proceeded before the immigration courts (assuming they passed a Credible Fear Interview, for those individuals subject to expedited removal).³ Under Remain in Mexico, asylum-seekers are “made to wait in Mexico until an immigration judge resolves their asylum claims.”⁴ This “wait” can take many months.⁵ Despite the overwhelming and ever-present dangers targeting migrants in Northern Mexico, fewer than 1,000 of the over 55,000 migrants placed in the Remain in Mexico program have been allowed to stay in the United States while pursuing their cases.⁶ USCIS asylum officers attest that the fear-screening standard and procedures currently in place “virtually guarante[e] a violation” of international treaty obligations.⁷

Migrants forced to remain in Mexico face violence and kidnappings as well as threats to life, health, and well-being. One study found that between 21% and 24% of migrants in the Remain in Mexico program report receiving threats of violence while in Mexico, and of those, over 50% report that the threats turned into actual violence, including beatings, robbery, and extortion.⁸ Journalistic accounts indicate that the actual rate of systematic violence faced by asylum-seekers is higher, especially in Northern Mexican cities along the Texas border where kidnappings are common.⁹ As the Administration is well aware, drug and criminal cartels operate with impunity in Northern Mexican cities including Matamoros and Nuevo Laredo, and they have systematically targeted migrants.¹⁰ In addition, because cities in Northern Mexico long ago ran out of shelter space, thousands of migrants live in encampments on the streets, without regular access to food, potable water, or sanitation facilities.¹¹ Despite the best efforts of faith-based and civic organizations, thousands of migrants are homeless and destitute,¹² lacking access to necessary

³ *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 506 (9th Cir. 2019) (per curiam) (staying the preliminary injunction; that injunction is once again before the Ninth Circuit and oral argument took place on Oct. 1, 2019).

⁴ *Id.*

⁵ See HUMAN RIGHTS FIRST, *supra* note 2 at 4, 6 (recounting months-long wait times).

⁶ See Dep’t of Homeland Sec., *Assessment of the Migrant Protection Protocols (MPP) 5* (Oct. 28, 2019), https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf (“As of October 15, 2019, USCIS completed over 7,400 screenings to assess a fear of return to Mexico. . . . Of those, approximately 13% have received positive determinations.”).

⁷ Brief of Amicus Curiae Local 1924 at 18, *Innovation Law Lab v. McAleenan*, No. 19-15716 (9th Cir. Jun. 26, 2019) (representing the interests of union-members, including numerous USCIS employees).

⁸ TOM K. WONG, U.S. IMMIGRATION POLICY CTR., *SEEKING ASYLUM: PART 2*, at 9 (2019), <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

⁹ *Id.*

¹⁰ Mexico Travel Advisory, U.S. DEP’T OF STATE (Apr. 9, 2019), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html> (“Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common [in Tamaulipas state.]”); HUMAN RIGHTS FIRST, *supra* note 2, at 4 (2019), <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

¹¹ HUMAN RIGHTS WATCH, “WE CAN’T HELP YOU HERE”: U.S. RETURNS OF ASYLUM SEEKERS TO MEXICO 18–20 (2019).

¹² Despite earlier promises to the contrary, the Mexican government has failed to provide migrants with humanitarian visas or work authorization, leaving them “stranded for prolonged periods . . . with no way to support themselves.” *Id.* at 2, 6.

health care.¹³ The longer an asylum-seeker must “wait” in Mexico, the higher their risk of violence, homelessness, and discrimination.¹⁴

Further, Remain in Mexico has been used as a tool in the Administration’s separation of more than 1,000 children from their families, even after a federal court and the President ended family separation as a policy in June 2018. In multiple cases, children arrived at the U.S.–Mexico border with a parent but were separated, rendered unaccompanied by DHS officials, and transferred to ORR facilities across the country, while their parents were subjected to Remain in Mexico.¹⁵ It is nearly impossible to advocate for these children or secure their reunification when the location of their parents and family members is unknown or unstable due to conditions in Mexico.¹⁶

In addition, the Remain in Mexico program subjects asylum-seekers to numerous due process violations,¹⁷ making it almost impossible for them to pursue their asylum cases. As a result, many will be unfairly denied asylum and returned to situations of extreme danger in their home countries.

First, despite knowing the dangers to migrants in Northern Mexico, DHS officials at ports of entry fail to ask asylum-seekers whether they will face danger if they are made to wait in Mexico, in violation of binding principles of non-refoulement.¹⁸

Second, DHS fails to provide safe and assured transportation to and from removal proceedings for those who are made to wait in Mexico. Rather, DHS requires migrants to navigate through border areas controlled by deadly cartels seeking to kidnap and extort them, in order to make it to a port of entry—often at 4:00 AM, only to wait in line for several hours, often with

¹³ U.S. ‘Remain in Mexico’ Policy Endangers Lives of Asylum Seekers in Tamaulipas State, MEDECINS SANS FRONTIERES/DOCTORS WITHOUT BORDERS (Sept. 5, 2019), <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/us-remain-mexico-policy-endangers-lives-asylum-seekers-tamaulipas>.

¹⁴ WONG, *supra* note 8, at 9–10.

¹⁵ See Letter from Women’s Refugee Comm’n to Cameron Quinn, Office of Civil Rights & Civil Liberties, and Joseph Cuffari, Inspector Gen., Dep’t of Homeland Sec. (Aug. 16, 2019), <https://www.womensrefugeecommission.org/images/zdocs/Separation-of-families-via-the---Migrant-Protection-Protocols---WRC-complaint-to-DHS.pdf>.

¹⁶ See *US: Family Separation Harming Children, Families*, HUMAN RIGHTS WATCH (July 11, 2019), <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families> (explaining that children’s family in Mexico may not have access to cell phones or other forms of communication).

¹⁷ See U.S. CONST. amend V; 8 U.S.C. § 1101(a)(42) (defining “refugee”). Remain in Mexico also violates principles of international human rights law. See International Covenant on Civil and Political Rights, Art. 6, 7, 13, 14, Dec. 9, 1966, 999 U.N.T.S. 171 (ratified June 8, 1992) (establishing a right to life, to freedom from torture, and to due process, particularly for migrants); Convention Relating to the Status of Refugees, Art. 31, Apr. 22, 1954, 189 U.N.T.S. 150 (delineating international obligation to accept refugees who unlawfully entered the country of refuge); Inter-American Commission on Human Rights (IACHR), American Declaration of the Rights and Duties of Man, Art. I, XI, XVI, XVIII, XXVII, 2 May 1948, <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm> (declaring rights to life, liberty, personal safety, health and wellbeing, fair trial, and the right to asylum).

¹⁸ WONG, *supra* note 8, at 8.

minor children in tow, for court hearings that begin at 8:00 AM or later.¹⁹ As a result, cartels in Northern Mexico have kidnapped migrants in MPP on their way to and from the port of entry.

Third, DHS provides no exceptions for asylum-seekers who are unable to make it to the port of entry on time because of cartel threats, kidnapping, or assault.²⁰ DHS seeks *in absentia* removal orders for all Remain in Mexico migrants who fail to appear for their court hearings, without exception.

Fourth, the Remain in Mexico program impedes access to counsel by placing asylum-seekers in Mexico, at great distance from the vast majority of immigration attorneys. People with cases in immigration court have the right to counsel at their own expense.²¹ However, approximately 98% of the 47,313 asylum-seekers in the Remain in Mexico program were unrepresented as of September 2019.²² Outside of Remain in Mexico, about 63% of immigrants in removal proceedings are unrepresented.²³ Because Remain in Mexico asylum-seekers are barred from entering the U.S. except for brief appearances at immigration court hearings, they are unable to meet with U.S.-based immigration attorneys, making it virtually impossible to obtain counsel. Asylum success rates drastically increase for migrants who secure counsel. For those migrants who are miraculously able to secure counsel, attorneys are drastically limited in the representation they can provide—given the complex legal standards and the trauma experienced by asylum-seekers, meaningful representation requires many hours of client interviews and preparation, and this work simply cannot take place when lawyer and client are separated by an international border.²⁴

U.S.-based immigration attorneys hesitate to take cases if they cannot meet face-to-face with their clients to discuss sensitive facts in their asylum cases. These attorneys hesitate to travel to notoriously dangerous areas of Mexico, including Matamoros or Nuevo Laredo, because the U.S. State Department designates the Mexican state of Tamaulipas, where these cities are located,

¹⁹ Molly Hennessy-Fiske, *Tent Courts Open as Latest Hurdle for Migrants Seeking Asylum in the U.S.*, LA TIMES (Sept. 16, 2019), <https://www.latimes.com/world-nation/story/2019-09-16/secretive-tent-courts-latest-hurdle-for-asylum-seekers>.

²⁰ See *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process*, HUMAN RIGHTS FIRST 16 (2019), <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf> (“[A]ylum seeker[s] . . . missed their initial immigration court hearing in early July because they had been kidnapped and were being held for ransom in Ciudad Juárez at the time. A judge at El Paso immigration court ordered them removed in absentia.”).

²¹ See 8 C.F.R. § 1240.10(a) (“Advise the respondent of his or her right to representation, at no expense to the government, by counsel of his or her own choice authorized to practice in the proceedings and require the respondent to state then and there whether he or she desires representation.”).

²² *Details on MPP (Remain in Mexico) Deportation Proceedings*, TRAC IMMIGRATION (Sep. 2019), <https://trac.syr.edu/phptools/immigration/mpp/> (follow these steps: check “Measure” as “Current Status”; check “Graph Time Scale” as “by Month and Year”; select “Hearing Location” on leftmost dropdown menu; select “Represented” on center dropdown menu; check “Represented” on rightmost dropdown menu) (last visited Nov. 3, 2019).

²³ INGRID EAGLY & STEVEN SHAFER, *ACCESS TO COUNSEL IN IMMIGRATION COURT 2* (2016). Migrants with representation are four times more likely to be released from detention, and eleven times more likely to seek asylum than those without counsel. *Id.* Migrants with representation are much more likely to obtain the relief they seek. *Id.* at 3.

²⁴ See HUMAN RIGHTS WATCH, *supra* note 11, at 35 (“[T]here are limited opportunities for the communication required to prepare asylum seekers’ cases, according to attorneys and shelter operators.”).

a Level 4 “Do Not Travel” zone due to “crime and kidnapping.”²⁵ Attorneys are understandably unwilling to risk their lives to take on Remain in Mexico clients.²⁶ Additionally, cartels and criminal organizations who target asylum-seekers are acutely aware of any U.S. contacts migrants have. Having counsel in the United States actually increases the risk of danger for a migrant since it adds visibility through in-person meetings or phone contact.

Fifth, the immigration court hearings themselves, conducted by Executive Office of Immigration Review (“EOIR”) judges, subject Remain in Mexico migrants to further violations of procedural due process. Many of the hearings are conducted by video, often with the asylum seeker sitting in a portable trailer in a hastily-constructed temporary tent compound. Court observers have noted that lapses in video connectivity prohibit judges located remotely from conducting effective hearings for asylum-seekers in the Remain in Mexico program. Inaccuracies in translation further compound the errors. In addition, EOIR judges do not provide consistent information about the process to asylum-seekers (e.g., how to turn in the application for asylum, and the consequences of missing a court date) and do not ask every asylum-seeker if they are afraid to return to Mexico. Sometimes DHS provides asylum-seekers with a Notice to Appear (the charging document) indicating the wrong date or location of the hearing. DHS only provides court documents (such as the Notice to Appear and the asylum application) in English, and asylum seekers must submit all applications and evidence in English, although they are trapped in Mexico without U.S. attorneys to assist them.

The Remain in Mexico policy violates fundamental due process principles.²⁷ We implore the United States Congress to respond accordingly. We ask that you take the necessary steps to defund and end this policy that undermines domestic and international legal protections for asylum-seekers.

Sincerely,

Organizations

Alabama Coalition for
Immigrant Justice

Advocate Visitors with
Immigrants in Detention in
the Chihuahuan Desert

Al Otro Lado

Alianza Americas

American Civil Liberties
Union

American Gateways

American Immigration
Lawyers Association

Americans for Immigrant
Justice

Arab American Family
Services

Asian Americans
Advancing Justice |
Chicago

ASISTA Immigration
Assistance

²⁵ Mexico Travel Advisory, U.S. DEP’T OF STATE (Apr. 9, 2019), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

²⁶ See HUMAN RIGHTS WATCH, *supra* note 11, at 34 (describing the danger to attorneys who cross the border to represent migrants).

²⁷ See *supra* note 17 and accompanying text.

Asylum Seeker Advocacy Project (ASAP)	Cien Amigos	Freedom for Immigrants
Bay Area Sex Worker Advocacy Network (BAYSWAN)	Club Taji Ciudad Hidalgo	Government Accountability Project
Bellevue Program for Survivors of Torture	Coalición de Derechos Humanos	Grassroots Leadership
Beyond Legal Aid	Coalition for Humane Immigrant Rights - CHIRLA	Guatemala Solidarity Boston
Border Crit Institute	Colectivo Mujeres Transnacionales	Hispanic Liaison / El Vínculo Hispano
Boston University School of Law, Immigrants' Rights and Human Trafficking Program	Columbia Law School Immigrants' Rights Clinic	Houston Immigration Legal Services Collaborative
Brighton Park Neighborhood Council	Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces	Tahirih Justice Center, Houston Office
Capital Area Immigrants' Rights Coalition	Cornell Law School's Asylum and Convention Against Torture Appellate Clinic	Human Rights Coalition
Catholic Migration Services	DC-MD Justice For Our Neighbors	Human Rights Initiative of North Texas
Center for Gender & Refugee Studies	Ecuandureo Unido	Illinois Coalition for Immigrant and Refugee Rights
Center for Justice and International Law (CEJIL)	End Streamline Coalition	Immigrant Families Together
Centro Legal de La Raza	Equal Justice Center	Immigrant Legal Advocacy Project
Children's Defense Fund - National Office	Familias Unidas en Acción	Immigrant Legal Resource Center
Children's Defense Fund - Texas	Families Belong Together México	Indivisible Sacramento
Christian Community Development Association	Families Belong Together	IRCSGV
Christian Reformed Church Office of Social Justice	Federación de Clubes Michoacanos en Illinois	Jefferson County Immigrant Rights Advocates (JCIRA)
	Federación de Clubes Unidos Zacatecanos en Illinois	Jesus Nebot International

Kids in Need of Defense	National Network for Immigrant and Refugee Rights	Sisters of St. Francis of Philadelphia
La 72, Hogar - Refugio para Personas Migrantes	National Partnership for New Americans (NPNA)	Sisters of St. Joseph of Orange
Lake County Immigrant Advocacy	NETWORK Lobby	South Texas Human Rights Center
Latin America Working Group (LAWG)	New Mexico Immigrant Law Center	Southern Poverty Law Center
Legal Aid Justice Center	Northern Manhattan Coalition for Immigrant Rights (NMCIR)	Southwest Suburban Immigrant Project
Living Hope Wheelchair Association	Pangea Legal Services	Still Waters Anti-Trafficking Program
Lowcountry Immigration Coalition	PASO - West Suburban Action Project	Student Action with Farmworkers
Lutheran Immigration and Refugee Service	Priests of the Sacred Heart, USA Province	The Alliance
Mano a Mano Family Resource Center	Project IRENE	The Chelsea Collaborative
Migrant Center for Human Rights	Project On Government Oversight	The Rhizome Center for Migrants
National Advocacy Center of the Sisters of the Good Shepherd	Quixote Center	T'ruah: The Rabbinic Call for Human Rights
National Center for Youth Law	Refugee and Immigrant Center for Education and Legal Services (RAICES)	Texas Center for Community Services
National Immigrant Justice Center	Refugee Solidarity Network	U.S. Committee for Refugees and Immigrants (USCRI)
National Immigration Project of the National Lawyers Guild	Refugees International	UNC School of Law Clinical Programs
National Korean American Service and Education Consortium, Illinois Coalition for Immigrant and Refugee Rights	Religious of the Sacred Heart of Mary, Western American Province	Unitarian Universalist Association
	Safe Passage Project	Unitarian Universalist Service Committee
	School Sisters of Notre Dame - Central Pacific Province	University of Maryland Carey Immigration Clinic

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