

# REMAIN IN MEXICO

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## HEARING

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED NINETEENTH CONGRESS

FIRST SESSION

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## REMAIN IN MEXICO

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THURSDAY, JANUARY 16, 2025

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Rand Paul, Chair of the Committee, presiding.

Present: Senators Paul [presiding], Johnson, Lankford, Rick Scott, Hawley, Moreno, Ernst, Peters, Hassan, Blumenthal, Kim, Gallego, and Slotkin.

### OPENING STATEMENT OF SENATOR PAUL

Chairman PAUL. The Committee will now come to order.

There has been a significant question raised in the past year or so whether or not the President has enough power to fix the problems at the border, and that is what this hearing will be about, is there enough statutory authority for the President to do things that need to be done at the border.

Over the past four years, we have witnessed an unprecedented erosion of security at our borders. This deterioration was marked by a complete disregard for the laws that were put into place to protect U.S. citizens. Since the start of the Biden-Harris administration, nearly 11 million individuals have been encountered attempting to illegally enter the United States. In his first year in office, President Biden repealed over 80 of President Trump's policies that had effectively secured the Southwest border.

What was once a controlled and secure boundary quickly turned into a revolving door. These open door policies allowed individuals, many with little to no documentation, to show up, state their name, or a name, and waltz right into the country. The Biden-Harris administration claims they check everyone against criminal databases, but they only do so against U.S. and allied nations' records, leaving massive blind spots for criminal from countries that do not share information or have reliable databases. Criminals and terrorist-linked individuals were able to slip into the country undetected, often disappearing without ever appearing at their court dates.

Customs and Border Protection (CBP) apprehended nearly 400 suspected terrorists attempting to illegally enter the ports of entry (POE), another 1,500 at ports of entry. These are just the ones that managed to get caught. Countless others have evaded detection.

During these last few years, the laws that exist to protect this nation were bent, abused, and outright ignored. Parole, which is meant to be used sparingly, became a loophole, and asylum laws were distorted to justify an open border agenda. Tragically, Laken Riley was brutally murdered because the Biden administration paroled her killer. No other family should ever have to endure the pain hers has.

President Biden discarded proven strategies like Remain in Mexico, which was undeniably successful in deterring illegal entries. The results were immediate and disastrous. During the last full month of Trump administration, when Remain in Mexico was in effect, border encounters were under 70,000. After its repeal, the number surged to over 100,000, and continued to rise.

Remember this. Under the Obama Administration their standard for what constituted a crisis was 1,000 attempted crossing in a day. Under the Biden-Harris administration, there had been, on average, over 6,000 encounters daily at the Southwest border, yet they insisted there was no crisis.

Their policies created a pull effect, enticing migrants to pay cartels thousands of dollars for a treacherous journey to the Southwest border. The message over time over the last four years has been if you show up, we will find a way to get you in. Who has benefited from that? The cartels who profit from this human pipeline, and terrorist-linked individuals exploiting the chaos to slip in unnoticed.

All the powers needed to address this crisis, we believe, already exist under current law. The President has the authority to implement Remain in Mexico, and the Department of Homeland Security (DHS) can immediately return migrants to a neighboring foreign country.

The President also holds broad powers to suspend or restrict entry for any group deemed detrimental to our national interest. Section 208 of the Immigration and Nationality Act (INA) says the President and the Secretary of Homeland Security may grant asylum, not shall grant asylum. Section 208 also allows President Trump to make anyone illegally entering the country ineligible for asylum.

Additionally, under Section 212, President Trump can stop the entry of illegal aliens altogether. Finally, Section 235 authorizes him to immediately place illegal immigrants back onto the Mexican side of the border.

The 2024 election was a clear mandate from the American people to reverse President Biden's disastrous open border policies. We must reinstate Remain in Mexico and use the other existing authorities to the full extent. That is why immediately following this hearing we will vote on affirming the President's and the Secretary of Homeland Security's legal authority to secure the Southwest border, including taking immediate steps to remove illegal aliens, reinstate Remain in Mexico, and "catch and release."

The Trump administration demonstrated that when the law is enforced properly, it works. This resolution reaffirms that President Trump, or any President, has broad authority to resolve the ongoing crisis. I urge my colleagues to stand with us, uphold the rule of law, and restore order at our nation's borders.

At this time I will recognize the Ranking Member, Senator Peters.

**OPENING STATEMENT OF SENATOR PETERS<sup>1</sup>**

Senator PETERS. Thank you, Chairman Paul.

As a Member of this Committee, I have long made securing our borders a top priority. I have been pleased to work with Members on both sides of the aisle to advance bipartisan, commonsense legislation that strengthens border security and provides tools and resources to support our border security professionals as they carry out their extremely challenging missions. I look forward to working together to continuing those efforts this Congress.

I recognize that we face significant challenges at our Southern border, and I am committed to working in a bipartisan way to address those challenges.

Today we are discussing the policy known as Remain in Mexico, which was created during the first Trump administration and first implemented in 2019. Under this policy, certain migrants seeking asylum at the U.S.-Mexico border were processed and returned to Mexico to wait for their next immigration court hearing in the United States.

Although billed as means of deterring migrants, the policy's real success was dumping fuel onto the fire of cartel activity in Mexico. This particular policy accelerated dangerous, illegal activity lead by cartels in Mexico even more. It is estimated that these cartels have raked in billions of dollars from this criminal activity through drug trafficking, extortion, human trafficking and smuggling, and ransom kidnappings of asylum seekers.

After the implementation of the Remain in Mexico policy, a report documented more than 1,500 allegations of violent harm caused by cartels including homicide, sexual assault, and kidnapping, in just a couple years.

There are also numerous reports of cartels extorting asylum seekers for thousands of dollars, so they would not be murdered by the cartels while they waited in Mexico for their scheduled immigration hearings, often over the course of several months.

Although today we are discussing a policy and its impact in Mexico, we know that cartels bring their criminal activity across our borders and into our communities in the United States. We should not implement policies that will further enrich cartels and enable their violent criminal enterprises on either side of the border. We should be focused on policies that help frontline DHS personnel get ahead of these dangerous cartels.

I am committed to working in a bipartisan way to find commonsense solutions that strengthen border security, streamline our immigration and asylum processes, and ensure DHS personnel have the tools and resources they need to complete their national security missions.

I appreciate our witnesses here today for sharing their testimony and for contributing to our discussion on securing our borders.

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<sup>1</sup>The prepared statement of Senator Peters appears in the Appendix on page 41.

Chairman PAUL. It is a practice of the Homeland Security and Governmental Affairs Committee (HSGAC) to swear in witnesses. Will each of you please stand and raise your right hand.

Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CUCCINELLI. I do.

Mr. ARTHUR. I do.

Mr. ISACSON. I do.

Chairman PAUL. From 2019 to 2021, Ken Cuccinelli served in the Federal Government first as the Acting Director of United States Citizenship and Immigration Services (USCIS) and then as the Acting Deputy Secretary of the Department of Homeland Security. During his tenure he was a leading spokesman on immigration, homeland security and election security, and was appointed by President Trump to serve as an original member of the Coronavirus Task Force.

In addition to practicing law for over 25 years, Mr. Cuccinelli served in the Virginia Senate from 2002 to 2010, and as Virginia's Attorney General (AG) from 2010 to 2014.

Mr. Cuccinelli, welcome to the Committee. You are now recognized for your opening remarks.

**TESTIMONY OF HON. KENNETH CUCCINELLI,<sup>1</sup> FORMER SENIOR OFFICIAL PERFORMING THE DUTIES OF DEPUTY SECRETARY (2019–2021), U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. CUCCINELLI. Thank you, Mr. Chair and Members of the Committee. Thank you for inviting me to discuss the challenges and opportunities in dealing with illegal immigration as we look forward to the second swearing in of Donald Trump as President of the United States next Monday.

The President of the United States does have vast authority to secure America's borders, to determine who may enter, and under what conditions they may enter. As one example, a President could reestablish the so-called Remain in Mexico program that did so much in the latter part of 2019 to drive down illegal alien efforts to even enter the United States.

I want to emphasize how important it is that the world knows a President is serious about keeping illegal aliens out. When someone somewhere in the world is contemplating spending large portions of their life savings to try and illegally enter the United States, they want to know they have a good chance for success before giving away their money and taking that risky trip.

The real success of programs like the Remain in Mexico program is not just that they screen out fake asylum seekers, but that they help deter illegal aliens from coming in the first place. The goal of true border security is to be so effective at keeping attempted illegal entrants out, that they never try to come in the first place.

In that vein, the fastest improvement that the new administration could make is at the border itself. The swearing in of Donald Trump to the presidency will instantly convert the 20,000 men and

<sup>1</sup>The prepared statement of Mr. Cuccinelli appears in the Appendix on page 42.

women of the Border Patrol from the world's largest group of greeters, back into law Enforcement officers whose goal is to actually defend the border, instead of facilitating the ongoing invasion that the Biden administration has offered up. If they are supplemented immediately by military personnel and assets moved to the border, who actually block illegal entrants instead of uselessly "backing up" the Border Patrol, then America's Southern border could be effectively sealed to illegal alien traffic and most of the accompanying drug traffic between the legal ports of entry in a matter of weeks. It would be a historic accomplishment and it is absolutely attainable. Literally the only thing required is a President with the political will to do it, and I expect that such a President will be sworn in next week.

Let me say that a different way. The assets and authorities needed to completely secure our Southern border between the legal ports of entry already exist, with no additional legislation or funding needed. That does not mean those things would not help, but it is at least possible.

But securing the Southern border is only step one. Every pull factor should be eliminated at both the Federal and State level. I might add that given the fact that this government is so hopelessly bankrupt, a good place to start is to end every dollar of spending for immigrants of any kind, first the illegals, but also even legal immigrants. This Congress might as well begin to adjust to the day when severe cuts are necessary across the board, best to start by cutting spending on non-Americans as soon as possible, given that such cuts are already overdue.

Perhaps the single biggest pull factor is work permits. The administration can ensure that only properly vetted and qualified recipients ever receive work permits by regulation, which is the primary source of implementable authority in this area. Work permits need to be as severely restricted as the law allows, specifically, to only those aliens who have already established their legal authority to be present in the United States, coupled with turning a majority of all Homeland Security Investigations (HSI) agents to workplace enforcement, with charges brought against American businesses using illegal aliens in lieu of American workers, in addition, of course, to identifying and deporting those here illegally.

Reinstating third-country asylum is critical to keeping the inflow of new cases down, while the Trump administration works with Congress to build the capacity needed to finally catch up on the caseload of illegal aliens already present in the United States, a situation that is both dangerous and expensive. This involves expanded deportation capacity, for example, more immigration judges, prosecutors, and logistical support, as President Trump has laid out the largest domestic logistical undertaking of our lifetimes, that being the deportation of the vast majority of illegal aliens present in the United States.

If the incoming administration makes significant progress on its deportation goals, likely only with the cooperation and assistance of Congress, then America will reap the benefits in greater security, lower crime, more job opportunities for poor Americans, higher wages for poor Americans, as we saw in 2019, and more predictable and manageable budgets for State and local governments that are

so severely affected by the invasion of illegal aliens that America has suffered for so many years.

Thank you, Mr. Chair.

Chairman PAUL. Thank you.

We also will welcome Andrew Arthur to our Committee today. Mr. Arthur is the Resident Fellow in Law and Policy at the Center for Immigration Studies. Prior to joining the Center in April 2017, he served as the Staff Director for the National Security Subcommittee at the U.S. House of Representatives Committee on Oversight and Governmental Reform. That is a mouthful.

Mr. Arthur previously served as an Immigration Judge at the York Immigration Court in York, Pennsylvania, where he heard thousands of deportation, removal, and bond cases, and considered applications for asylum and other forms of immigration-related relief. He has testified before Congress on 13 occasions, and has been quoted in numerous publications.

Mr. Arthur, welcome to the Committee. You are now recognized for your opening statement.

**TESTIMONY OF ANDREW R. ARTHUR,<sup>1</sup> RESIDENT FELLOW IN  
LAW AND POLICY, CENTER FOR IMMIGRATION STUDIES**

Mr. ARTHUR. Chairman Paul, Ranking Member Peters, and Members of the Committee, thank you for inviting me here today to discuss the Migrant Protection Protocols (MPP), better known as Remain in Mexico.

MPP was implemented in response to an unprecedented surge in third-country nationals and adults with children and family units entering illegally across the Southwest border. Of the more than 153,000 migrants crossing the border in the first three months of fiscal year (FY) 2019, nearly half, just over 49 percent, were in family units. That is an issue for a number of reasons, the most prominent being that, as a bipartisan panel revealed in April 2019, the children in those family units are traumatized and exposed to unconscionable risks during the illegal journey here. That panel also highlighted, “reports that female parents of minor children had been raped, that many migrants are robbed, and that they and their children are held hostage and extorted for money.”

Things became so bad in March 2019, that then DHS Secretary Kirstjen Nielsen declared a border emergency. She explained the system was in freefall, as her department scrambled to care for families in which migrant children were, “arriving sicker than ever before,” after being, “exploited along the treacherous trek to the United States.”

It was against this backdrop that the Trump administration first implemented Remain in Mexico, using authority in Section 235(b)(2)(C) of the INA, DHS returned migrants back across the border to await expedited asylum hearings at designated port courts. Those whose claims were granted were admitted, while migrants whose claims were denied were quickly removed.

After a phased-in implementation and legal challenges, MPP was up and running by October 2019, when DHS issued its assessment of the program. DHS concluded that MPP was, “an indispensable

<sup>1</sup>The prepared statement of Mr. Arthur appears in the Appendix on page 44.

tool in addressing the ongoing crisis at the Southern border and restoring integrity to the immigration system.”

Border encounters dropped by 64 percent between May and September 2019, and encounters with, “Central American families who were the main driver of the crisis decreased by approximately 80 percent,” according to that assessment.

Remain in Mexico was implemented with the consent and assistance of the government of Mexico. Returnees received access to humanitarian care and assistance, food and housing, work permits, and education in Mexico. Our State Department funded a \$5.5 million project in September 2019, to provide housing in Mexican border cities to approximately 8,000 vulnerable third-country asylum seekers and others, as well as \$11.9 million in cash-based assistance to migrants to move out of shelters while they were in MPP.

The Biden administration suspended and then twice ended MPP, and the impacts of those decisions are being felt throughout U.S. cities and towns to this day.

Congress has given DHS three deterrents it can use to curb illegal migration to this country: (1) barriers and other infrastructure; (2) criminal prosecution for improper entry under Section 275 of the INA; and (3) detention, which is mandated by statute under Section 235(b) of the INA for illegal entrants and other inadmissible aliens.

Under a 2015 district court decision, however, DHS cannot detain children and family units for more than 20 days, and separating families has proven unacceptable. Consequently, adult migrants and smugglers use those children as pawns in an effort to enter and remain here indefinitely. In addition, a recent settlement agreement entered into by the Biden administration bars DHS from prosecuting adults and family units for improper entry, with only limited exceptions, children or a stay-out-of-jail-free card.

And while barriers impede illegal entry, they cannot prevent it. Remain in Mexico, under Section 235(b)(2)(C) of the INA is a potential fourth deterrent because it discourages illegal entrants from gaming our humanitarian protections by making bogus or weak asylum claims, solely to be released to live and work in the United States for years while their claims are being considered. Asylum claims were expedited under MPP and decisions issued more quickly. Those meriting asylums could thus begin their new lives sooner than if they had been released.

Critics have argued MPP returnees were subject to threats and predation while awaiting their hearings. In terminating MPP in October 2021, DHS Secretary Alejandro Mayorkas admitted it was, “possible that such humanitarian challenges could be lessened through the expenditure of significant government resources.”

Respectfully, the migrant crisis over the past four years has already cost taxpayers tens to hundreds of billions of dollars, including at the State and local level, where officials have no say over immigration decisions made in Washington. If this is simply a question of money, my question to you is what price do you put on border security.

Thank you again, and I look forward to your questions.  
Chairman PAUL. Thank you.

We are also pleased to welcome Adam Isacson to our Committee. Mr. Isacson has worked on defense security and peace-building in Latin America since 1994. He now directs the Washington Office on Latin America (WOLA) program on defense there, which monitors security trends in Americas, including U.S. cooperation with security forces. Since 2011, Mr. Isacson has also focused on border security. He has visited the U.S.-Mexico border over 30 times, and has also completed field research along nearly the entire border between Mexico and Guatemala, in countries further south, also along the U.S.-bound migration route.

Before coming to WOLA in 2010, Mr. Isacson worked on Latin America demilitarization at the Center for International Policy.

Mr. Isacson, welcome to the Committee. You are now recognized for your opening statement.

**TESTIMONY OF ADAM ISACSON,<sup>1</sup> DIRECTOR FOR DEFENSE  
OVERSIGHT, THE WASHINGTON OFFICE ON LATIN AMERICA**

Mr. ISACSON. Thank you, Chairman Paul. Thank you, Ranking Member Peters. It is good to meet both of you. Thank you, Members of the Committee. It is great to be here with you today.

Now I did do a lot of field work and data work along the U.S.-Mexico border when Remain in Mexico, MPP, was first implemented. The evidence I saw was clear. Remain in Mexico enriched the cartels. It failed to meaningfully deter migration, and it soured relations with a key ally. Pursuing it again would harm U.S. interests.

Instead, I urge the Committee to focus on fixing our asylum system, which I agree is broken. That system does save tens of thousands of lives every year, but we need it to be both fair and efficient. No one supports the idea of five-year waits for asylum decisions. The backlogs do create a pull factor of their own. But this is an administrative challenge, and the U.S. Government is good at administrative challenges. It is a question of processes, case management, adjudication, all of which are lacking.

People truly did suffer while remaining in Mexico. I personally heard harrowing accounts of torture and abuse. Nearly all that abuse was the work of organized crime groups, the cartels, the cartels' cruelty, their sadism. It was not just a human rights issue, though. The criminals are not barbaric just for its own sake. This is their economic model, and that makes it a national security issue.

Organized crime is trying to extract as much money out of migrants and their loved ones as it can, while those migrants are present on the turf that they control. Cartels fight each other for this business. Remain in Mexico kept migrants on cartels' turf for very long periods of time, months or even years, in Mexican border cities, waiting for their hearings. MPP created a new market—opportunity for cartels.

That is a big difference from CBP One. The app also requires months-long waits to come to a U.S. port of entry, but it makes it easier to wait elsewhere in Mexico, in parts of Mexico that are safer than the Northern border zone, where States are under State

<sup>1</sup>The prepared statement of Mr. Isacson appears in the Appendix on page 78.

Department travel warnings because of cartel crime and kidnapping.

When outsiders are waiting for months in Mexico's border zone, on the other hand, they are sitting ducks for the cartels. First there is extortion. Foreigners have to pay just to exist for a long time in cartel-dominated neighborhoods. If you do not pay, it is not safe to go outside your shelter, even if the United States is helping support it.

Second, if people wanted to just give up on this long wait for MPP, the cartels were there offering coyote services, the chance to cross the border and try to evade border patrol for thousands of dollars.

Third was kidnapping for ransom. Cartels held people in horrific conditions, raping, torturing them as their relatives, frequently in the United States, had to wire thousands of dollars to get them free. The financial scale of that exploitation was staggering.

Let's just consider it. Imagine that each person in MPP, on average, had to pay about \$1,000 in cartel fees. I ran this number by a few folks I have worked with at the border, and they laughed at how low that estimate was. But if it is right, 71,000 people in the MPP program times \$1,000, that is \$71 million that cartels made, in addition to what they were already making as a result of MPP. That is an amount that you could use to pay the base salaries of 1,000 Border Patrol agents.

For all that, Remain in Mexico really did not do that much to reduce or control migration. For more than 10 years now there has been a series of crackdown on asylum seekers. My testimony maps them out in a graphic that looks like this, if you look at the written testimony. These crackdowns follow the same pattern. You get an initial drop in migration, then it lasts a few months, and then there is a rebound. Classic example is Title 42 and all of its expansions. We saw migration increase, even though there was no asylum access at the border.

After it expanded in June 2019, Border Patrol's apprehensions did fall for four months. They fell steeply. Then the migration numbers plateaued, at the same level they were in mid-2018, at the same level they were, on average, for all eight years of Barack Obama's administration, and that is where the number stayed. Then in the first months of 2020, Border Patrol apprehensions started rising slowly, maybe not even slowly. They were on pace to grow by double-digit percentage margins in March 2020, but then Coronavirus Disease 2019 (COVID-19) came, and that all ended that month, 10 days early, so we never really could tell.

Title 42 ended up eclipsing Remain in Mexico. No more hearing dates for anybody. Asylum seekers just got expelled. Remain in Mexico basically became irrelevant for the last 10 months of Donald Trump's administration. We are talking about a few dozen people a month by the end.

MPP also strained relations with Mexico. The Mexican government at first resisted the program, agreeing to it only after very heavy diplomatic pressure. This complicated cooperation on other shared priorities, and there are a lot of shared priorities in our relationship with Mexico, from trade to fentanyl. Mexico is one of the 10 largest countries in the world in population, number 14 economy

in the world. Even if we did not have this 2,000-mile border there would be a whole host of interests that we do not want to spend too much bandwidth on, trying to get them to agree on one program, a program that actually strengthens drug cartels and actually does not have that much of an effect on migration.

Thank you. I really look forward to your questions and discussion, and I appreciate the invitation.

Chairman PAUL. Thank you all for your testimony. I am going to defer my questions for now and recognize Ranking Member Peters.

Senator PETERS. Thank you, Mr. Chair. I want to first ask for unanimous consent (UC) to submit 20-plus statements for the record<sup>1</sup> from a wide range of organizations against the reinstatement of this program, including from the nonpartisan American Immigration Council (AIC), Church World Services (CWS), and the International Refugee Assistance Project (IRAP).

Chairman PAUL. Without objection.

Senator PETERS. Mr. Isacson, can you start with telling us, who actually benefited the most from the Remain in Mexico policy?

Mr. ISACSON. The biggest financial benefit definitely went to the cartels, who suddenly had this large base of people they could extort.

Senator PETERS. So could you walk us through what it looked like when an asylum seeker was returned to Mexico under the Remain in Mexico policy?

Mr. ISACSON. It is pretty vivid, and actually, even if you or I were to walk across the port of entry into a town like Matamoros or Reynosa, you would see cartel spies everywhere. You would see people, a nice man in a suit, just standing there. He is looking to see who is crossing. The guy selling tamales on the bridge, he is looking to see who is crossing.

Now imagine you are somebody who is maybe wearing DHS-issued sweatpants, and maybe a bag that says DHS on it, or shoes with no shoelaces on them. You are immediately seen as somebody who is ripe to be kidnapped. It is widely known that the first half hour after being returned to Mexico, go from MPP, always at the same exit, usually roughly the same time of day, was a very dangerous time for you.

Then you would be in a shelter, sometimes U.S.-funded, sometimes a government-run shelter, sometimes charity-run, and it was pretty clear that you could not leave unless you had made an extortion payment to the cartels.

Senator PETERS. How does this type of activity that you have just described, taking place right across from the border, how does that impact our national security?

Mr. ISACSON. By enriching the cartels and giving them a new income stream, it strongly impacts our national security. We do not want transnational organized crime to be wealthier than close to our border line. In the recent years, even since, as we have had higher numbers of migrants coming, it has become bigger and bigger business for the cartels. Instead of mom-and-pop smugglers, we now have Sinaloa and Jalisco and La Línea, and other major na-

<sup>1</sup>The statements submitted by Senator Peters appears in the Appendix on page 102.

tional cartels in Mexico, running the business and fighting each other for it. That just makes it more dangerous for the United States.

Senator PETERS. Yes, and the money the cartels are raising, they are getting enriched because of this policy, they basically increase their other operations like sending fentanyl across the border, to poison our kids and our people.

Mr. ISACSON. Yes. It costs only about \$60,000 to set up a fentanyl lab. What they are making from that extortion money could be re-invested in that.

Senator PETERS. Actually helps their drug trafficking in the United States.

Mr. ISACSON. It is all fungible.

Senator PETERS. Can the Remain in Mexico policy even be re-implemented without the cooperation of the government of Mexico?

Mr. ISACSON. It involves sending people to Mexico's sovereign territory, so I do not know how you could send people back, without Mexico eventually noticing that you are doing that.

Senator PETERS. That is for sure. We know the cartels have long made money off of the smuggling routes to the United States, but how did cartels exploit the Remain in Mexico policy to threaten them? You have talked a little bit about that, but maybe elaborate more.

Mr. ISACSON. How did they use the policy to threaten people?

Senator PETERS. Yes.

Mr. ISACSON. They knew that people had a date by which they had to get back to the port of entry. They had an appointment. They had to be there. And boy, does that make them motivated to pay more, to have to call more of their relatives and get that ransom money wired, which, of course, is a crime that involves U.S. soil, somebody on U.S. soil having to wire the money. It made them more motivated and raised the prices that they could charge.

Senator PETERS. We have seen changes in migration patterns worldwide recently, and during the initial implementation of Remain in Mexico my understanding is that a significant portion of migrants encountered were from Mexico or Central America.

Mr. ISACSON. Right.

Senator PETERS. Because we live in a different world today, how would today's immigration flows impact Mexico's ability to accommodate a new Remain in Mexico?

Mr. ISACSON. As late as 2020, 90 percent of your migrants were from four countries, Mexico and the so-called Northern Triangle of Central America. Now that is only 52 percent of the total. You have a United Nations of people coming here. Last year, one in nine were not even from this hemisphere. That is because new routes have opened up, like the Darién Gap or Nicaragua, and that does mean you have a lot more nationalities that Mexico might be required to accept. Is Mexico going to take Chinese people? Indians? Bangladeshis? Or even people from Brazil or Haiti, who don't really speak Spanish? That would be a huge issue to have to negotiate with the Mexicans.

Senator PETERS. Mr. Isacson, because we want to address border security as it is absolutely essential we do that, what do you believe the United States can implement, along with our other partners,

to proactively address these worldwide migration trends that have changed dramatically over the last few years?

Mr. ISACSON. Imagine we had an asylum system that could hand out decisions in a matter of months, with full due process and had that capacity. You would have a lot fewer people trying to attempt to enter that system if they knew that the decision would be turned around that way. You are not sitting here five years with a work permit, unable to decide.

Imagine you had a program like CBP One that actually made a lot of these entries and waits in Mexico—it is not a perfect program, but it did make it more orderly. That would free up a lot more Border Patrol agents to be on the line instead of having to do this processing.

Senator PETERS. Great. Thank you.

Chairman PAUL. Senator Johnson.

#### **OPENING STATEMENT OF SENATOR JOHNSON**

Senator JOHNSON. Thank you, Mr. Chair. I think by now most people have seen this chart.<sup>1</sup> It has become a lot more famous from when I started developing this as Chair of this Committee back in 2015, different versions of it. This chart I gave to President Trump in April 2024, that he liked, adopted, started using in the campaign, and only July 13th, turned his head and saved his life. That is obviously the biggest benefit, the most important benefit of this chart.

But prior to that, what I like most about this chart is it showed cause and effect. It showed the effect of different policies, different court decisions, like the reinterpretation of the Flores decision. But in particular it showed how effective the Migrant Protection Program was, Remain in Mexico, and it is obvious. Mr. Isacson and Senator Peters, I cannot believe that you are sitting here telling us that MPP, the Remain in Mexico, did not work. It obviously worked.

This was a crisis for the Trump administration, by the way, crisis caused by deferred action on childhood arrivals (DACA). That is the catalyst that sparked all of these crises since that was implemented in June 2012. When President Trump faced his immigration crisis he did something about it. He used the existing law. It was a lie over the last four years that President Biden did not have the executive authority to secure the border. He had it. He used that exact executive authority to open the border back up and caused this clear and present danger to America.

I think it was actually the Ranking Member that said we are dumping fuel on the fire of the cartels. At this point it is 570 encounters a day. I think the record was over 14,000 in December 2023. When you have those migrants paying 5, 7, 10, \$15,000 to the cartels, I mean, do the math—\$10,000 times, versus \$1,000 for the thousands that were in migrant protection.

We were protecting people by deterring them from trying to come into this country illegally. There is no doubt about it. The cost, we have, I think, the House Subcommittee on this has determined the cost of taking care of this massive flow of illegal immigration. It

<sup>1</sup>The chart referenced by Senator Johnson appears in the Appendix on page 99.

was \$150 billion a year. Again, have you not heard of the taunting trees, the panty trees, the rape trees during this time? The cartels are just basically taunting CBP by putting the undergarments of the young girls that they rape, but they are also getting 5, 7, \$10,000 for the trafficking.

There is absolutely no doubt the Remain in Mexico program worked, that the President has the authority to do so, to implement this, and implement it again. I think it is important to note that one of the keys was the threat of tariffs against Mexico. We needed Mexico's cooperation here. We implemented MPP I think in the summer of 2019, and we still saw numbers rise until President Trump called up the President of Mexico and said, "We need your cooperation. You are going to hit with tariffs," and you see the dramatic result.

Mr. Cuccinelli, can you talk again about what authority exists. Talk about, really, what a lie we have been told over the last four years that President Biden did not have the authority. He obviously did. He used the same authority to open up the border and cause this catastrophe.

Mr. CUCCINELLI. Yes, he absolutely did, and the cartels have never been so flush with cash because of that open borders policy. I would point out, we look at the border from the north, and if you think about Mexico, and the northern part of Mexico, but not just the northern part of Mexico. The Federal Government of Mexico does not control Mexico. One-sixth of the country is controlled by the cartels. One-sixth is contested between the cartels and the government. Mr. Isacson says within 30 minutes of leaving MPP, the same thing happens over and over. That cannot happen if Mexico is actually policing the border, which they are not, and they are not able to.

I would also add that a lot of the violence that occurred both between Mexicans, and directed at illegal migrants in Mexico by the cartels, over the years has been fairly widely reported in Mexico. There are reasons the cartels go after those journalists. But we do not see any of that reporting here, none of it. It is brutal, it is vicious, and it has been fueled by the explosion in traffic in the last four years. The President has the tools to turn that traffic off.

We saw, as you noted on the chart, that you can have an effect on the direction of the traffic, meaning the numbers. I fully expect President Trump will do that. Remain in Mexico is just one tool. There are other tools, as well.

Senator JOHNSON. Thank you, Mr. Chair.

Chairman PAUL. Senator Blumenthal.

#### **OPENING STATEMENT OF SENATOR BLUMENTHAL**

Senator BLUMENTHAL. Thanks, Mr. Chair. I agree there are other tools, and in 2013, we passed, in the U.S. Senate, a comprehensive immigration reform that, in fact, would have implemented those other tools toward securing our border. I continue to support more robust efforts at border security. I think that view is shared by most, if not all, of us here in the U.S. Senate. I am still hopeful that we can do another comprehensive border security and immigration reform that addresses all of the facets of our broken immigration system. I am hoping that President Trump, once he is

sworn in, will pursue that objective and he will find, I think, very favorable responses on both sides of the aisle here in the U.S. Congress.

I am, as a former prosecutor, and Mr. Cuccinelli shares part of my background as a State Attorney General (SAG), focused on how we actually deal with the nuts and bolts of these cartels. I think all three of you have extensive experience in this area. Could the Mexican government, in cooperation with our law enforcement, be doing more to counter these cartels, under the authority, and I agree the President has the authority to do more, and how would those resources be focused? Specifically, how can we secure more cooperation from the government of Mexico?

Let me go down the line and I am going to stop talking so that I give each of you the maximum amount of time.

Mr. CUCCINELLI. Senator, this is an area where Congress could be quite helpful. One of the things that is thrown out all the time is declaring the cartels terrorist organizations, foreign terrorist organizations. If you look at the statutes that address foreign terrorist organizations, they come with very sweeping connections to the rest of the community. That statute was designed with isolated cells of Islamists in mind.

The cartels are integrated into the communities. They take advantage of the communities they live in. They make money off them. We need a different statute. It would be very helpful if Congress formulated a much more surgical approach to dealing with something like the cartels, that use terrorist tactics for organized crime goals, and they are quasi-governments, because they control territory in Mexico that the Mexican government simply will not contest. This government will not. The last administration would not. Granted, that is a significant challenge.

That is an area where this Congress could be quite helpful is in providing more of those tools, specifically to go after the cartels. People think in terms of kinetic action, but they are about money. When you boil it down, they are about money. Any legislation along those lines should include the ability of the Treasury Department to seek out and seize their assets around the world.

Senator BLUMENTHAL. Thank you. Mr. Arthur.

Mr. ARTHUR. Senator, I wholeheartedly agree with Attorney General Cuccinelli. It is important to note the fact we talk about the impacts the cartels have on the United States. It is deleterious. It is horrible with the fentanyl. They have an equally deleterious corrosive effect in Mexico. Mexico has been waging a drug war now since the early 2000's. Mr. Isacson could tell you all about that, 34,37,000 people dead. The problem is that when Mexico cuts off the head of the cartel, it just gets worse because the people that come up underneath are even worse.

We need to work very closely with them. Ken is right. Money is the lifeblood that fuels the cartels. We need to have drug reduction in the United States. I do not think Americans understand. Women get raped in Mexico because they use drugs in the United States. If they knew that, I think that would be a game changer.

But yes, I wholeheartedly agree with Mr. Cuccinelli. We need to have additional authorities, go after them, seize the money, cutoff the head, and help the Mexican government help themselves.

Senator BLUMENTHAL. Mr. Isacson.

Mr. ISACSON. You are going to hear a lot of consensus here. I would add the element of corruption, though, even though it might make the Mexican government uncomfortable to talk about it. An organized crime group is not an insurgency. These are not leftist guerillas. This is not Islamic State of Iraq and Syria (ISIS). If you pound them harder, you have not weakened them. You have not gained control over that territory.

They are harder to fight than an insurgency because they depend on their relationship with corrupt elements in the Mexican government. Mexican security chief, for six years, is now in jail in the United States for having worked with the Sinaloa cartel. We have to know who we are working with, and if you cannot depend on your partner to actually help disarticulate those organized crime groups, you have to take that oxygen away from them.

Mr. CUCCINELLI. Can I offer one more thought, just very short, that it should be a strategic goal of the United States to help the Mexican government get control of 100 percent of Mexico. Just to put it in very strategic national level terms.

Senator BLUMENTHAL. I think these thoughts are really excellent. My time has expired, but I would like to pursue the suggestion that seems to unite all of you, that we need to develop the tools, the law enforcement tools, to treat these cartels as terrorist organizations. Their ideology is simply dollars and cents. It is not about converting the world to another religion or another political system. It is about money for them, and I think they need to be treated as terrorist organizations, even if they are of a different brand.

Thanks, Mr. Chair.

Chairman PAUL. Senator Lankford.

#### **OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. Mr. Chair, thank you. Thanks to all of you for the work that you do on this.

To go back to the dollars and cents of what Senator Blumenthal was talking about, in 2022 I was at the Rio Grande Valley (RGV) and asked some of the Border Patrol folks there how much do the cartels make just trafficking people in this region, just this region, which is that section of the border, how much they make just trafficking people. The response was, "We estimate \$153 million a week that they make trafficking people."

The open border policy that happened in the last four years has facilitated incredible financial gain for the cartels. When they were making \$153 million a week moving people through at the highest numbers they possibly could, that facilitated that.

In addition to that, other criminal organizations around the world saw how much money the cartels were making, and they wanted a piece of the travel agent money, and we started getting ISIS individuals coming in from Tajikistan because they were being facilitated in my criminal organizations coming in, because it was easy to move. This is incredibly important to be able to shut the money down. I do agree with Senator Blumenthal on that, and it is incredibly important that we actually use the authority that is already there to be able to get this done.

Mr. Cuccinelli, thanks again for all the work that you have done on this for so long on this. You were very outspoken on H.R. 2, which is a great bill, very thorough, and you were very forward to say Congress needs to pass this bill. What are the aspects of that that you would say still need to be done?

Mr. CUCCINELLI. Well, the Chair started with the President's authority to close the border, which I agree he has now. But H.R. 2 really starts to get at the longer-term enforcement arc, processing of folks, and keeping them out, closing loopholes. Even if you close the border between the legal ports of entry, people will still come to the ports of entry, and there will be, I will call it, a bit of a negotiation, a bit of a game there about who can get in and who cannot. In the last four years, everybody has gotten in.

You really need to give your Office of Field Operations (OFO) officers in those ports of entry the legal tools to turn people away, anyone away, who cannot demonstrate a then-current basis to be in the country, and H.R. 2 really advanced that.

As you know, Senator, this whole area of law has been tangled up in knots with court rulings.

Senator LANKFORD. Yes, we were talking before about the Flores.

Mr. CUCCINELLI. Right. Flores is a major one.

Senator LANKFORD. That is an issue that has to be settled in law. We have to be able to go and engage in Congress to say what this is going to be, because the court just literally created the 20-day time period.

Mr. CUCCINELLI. It did.

Senator LANKFORD. Now we are stuck with it because Congress has not been able to respond. Mr. Arthur.

Mr. ARTHUR. Senator, if I could add to that, there was a truly bipartisan report that was issued in April 2019 by the CBP Families and Children Care Panel. Leon Fresco, who was Barack Obama's guy at the U.S. Department of Justice (DOJ), was on that panel. They talked about all of these issues. They suggested solutions, including processing and detention centers down at the border. But they also called on Congress to fix Flores. Congress has the ability to fix it. Again, when there is a bipartisan recommendation like that, it is almost incumbent on Congress to at least give it a look, because this is a huge problem. The kids are suffering. I mean, everything that you have heard today is caused by that.

Senator LANKFORD. Yes, it is. I look at things like safe third country as an area, trying to be able to get clarity there, ending the parole abuse, which we do not have a clear definition of humanitarian parole. We have to be able to make that very clear. Dealing with a Title 42-like authority for emergency moments, to say when the cartels hold a bunch of folks and they rush a Border Patrol station or an area, at that point what to be able to do on that. The Trafficking Victims Protection Reauthorization Act (TVPPRA), Flores, all these different areas. These are areas that Congress has to be able to act on and provide clarity, because courts are going to define it in different ways. The rules are even different in Texas than what they are in California or in Arizona, based on different court actions. We have to be able to have some clarity on this, and that is an area where Congress has to be able to act.

Saying all that, the other issue that was brought up before was about what are called special interest aliens. These are folks that are coming in from Tajikistan and other areas, that the Mexicans are not going to take back. These are recalcitrant countries that are not accepting folks back. We have to have some sort of legal response, but we also have the authority of the administration to be able to put State Department pressure on some of these countries, as well. But this is an area that we have to be able to clarify in law on the recalcitrant country.

Any comments from any of you specifically about those individuals? Mr. Arthur.

Mr. ARTHUR. Senator Lankford, when I was the Chief of the National Security Law Division at the U.S. Immigration and Naturalization Service (INS), I worked for Janet Reno. Whenever we picked up a special interest alien at the border, Ms. Reno would call me day and night. We got a lot of calls from the Command Center in the middle of the night.

Today, those individuals are being released into the United States. They are being processed by line Border Patrol agents. This is a completely ridiculous situation. We have heard the Federal Bureau of Investigation (FBI) Director Chris Wray talk about every light is blinking.

I served at the INS before September 11th, we are in a situation right now that is so much worse than what we were looking at then.

Senator LANKFORD. We had 70,000 people that were special interest aliens (SIAs) that came in last year, that we know of at this point from DHS records, and FBI told me, point blank, because Chris Wray sat right there and I asked him, he told us point blank that he is not aware of all the SIAs that are coming in. The DHS was not informing him of those individuals, so we are not tracking those once they are in the country.

Mr. Chair, thank you.

Chairman PAUL. Senator Kim.

#### **OPENING STATEMENT OF SENATOR KIM**

Senator KIM. Thank you, Mr. Chair. Thank you to the three of you for coming on out here. I am Senator Andy Kim from New Jersey.

When I have gone around New Jersey and talked to a wide array of people in terms of some of our objectives, what are we trying to achieve when it comes to the border, when it comes to immigration, a couple of things came up over and over again. No. 1, about making sure that we can provide security for our Nation, keeping our communities safe, our families safe. Two, addressing the migrant backlog, just the amount of pressure that we are feeling in different towns, communities, cities all over the country. Three, about how do we try to have an orderly process. I think everyone was in agreement. We are a sovereign nation. We should have control over our sovereign borders, whether air, land, or sea.

I try to approach this in that kind of lens, and I appreciate your thoughts on other types of categories to kind of think through. Mr. Isacson, I think I would like to start with you. When it comes to the security, I think you made a compelling argument about some

of the challenges faced by the cartels. As Mr. Cuccinelli, Mr. Arthur, and others have also articulated, we continue to face these challenges with cartels now. It was not just unique to that moment where Remain in Mexico was in place.

I guess I wanted to just ask you, in particular, when it came to the Remain in Mexico period, how did that affect our security specifically? I heard a lot about the atrocious behaviors and how it affected those that were waiting. Was there a particular effect on us there, or is it just cumulative? I mean, we are experiencing a lot of those problems right now from cartels. Was there something unique about that moment that Remain in Mexico empowered the cartels to be able to achieve?

Mr. ISACSON. I would say both during the Remain in Mexico period and also since, when you have seen this larger surge of migration in the Biden years. You have seen cartels get wealthier. You have seen them consolidate. You have seen, rather than smugglers just paying a fee for the right to be in a territory, the cartels themselves were taking over that territory, which made them more wealthy.

How does that affect us in the United States? Really, it is more indirect. Having wealthier cartels who can reinvest in more criminal activity that ultimately crosses the border affects us.

We have not seen what you would call spillover violence, or cartels actually carrying out their hits or their kidnappings very much on the U.S. side. The same way they would not do that in a wealthy neighborhood in Mexico City because they want to live there, they do not do anything on the U.S. side. They have their kids going to school here, et cetera. They also do not want to do anything that would trigger a border closure.

You do not always feel it in day-to-day side on the U.S. side, but you do feel it indirectly.

Senator KIM. Yes. I appreciate it. I do not want to linger too much on it because I think you have answered this. I think, again, there is wide agreement across bipartisan about wanting to go after the cartels, making sure we have that security.

Mr. Isacson and Mr. Cuccinelli, you both raised something in your remarks, talking about that orderly process, addressing that migrant backlog, more than one way we can do that. Remain in Mexico tried to get at it from one angle. One thing that kind of seemed to stretch across is that need for some type of orderly process, whether an increase in judges or other aspects of that, that try to shorten that timetable, shorten the window so that we could try to adjudicate this, and that will help bring down the backlog.

I guess I just wanted to ask each of you, is that an area that we can find agreement on? Is that a place where we can drill in on as a Committee, to be able to try to address? Why don't we start with Mr. Isacson and make our way down.

Mr. ISACSON. I hope so. Section 208 of the INA says that if you are on U.S. soil and you fear for your life if you are returned, you do have the right to ask for asylum and get due process. Now, whether you are going to do that harshly or whether you are going to do that gently, right now you have only got 700 judges and 700 asylum officers, more or less, to do that entire backlog. We need more capacity.

Senator KIM. Is everyone in agreement we need more than 700?  
Mr. Arthur.

Mr. ARTHUR. Yes. Having been an immigration judge myself, I ran a very busy docket. My wife did not see me much, and neither did my son.

But the important thing to keep in mind, Senator Kim, when you are talking about this, is how effective detention is. If individuals know that they are going to be detained until they are actually granted asylum, people with bad asylum claims are not going to come. That is good for two reasons. One, because it makes it easier for Border Patrol. Two, people who deserve asylum need to be allowed to restart their lives in the United States. A lot of them have family back home who are in danger, too. As soon as we give the asylum, you can bring your family to the United States.

But when I left the bench in 2015, the median detention time for people, basically the time it took to do their asylum claims, was 36 days. When you contrast that to 846 days or 1,013 days, what it has been in recent years, that is a problem.

One of my facilities that I heard cases from was a family facility in Berks Shelter in Pennsylvania. Nobody wants to detain families. But it was the most humane situation you could imagine. If I say it looked like a college campus, my college campus did not look that well. I went to University of Virginia (UVA).

You could do it in a humanitarian manner, do it quickly, get it done. We need more resources. Seven hundred thirty judges is not enough.

Mr. CUCCINELLI. If I may, just very briefly, we heard talk about the CBP app and how you wait at home to do that. Well really, that is what you should be doing with your application. You should be applying from your home country, and we should be leaving people in their home country or putting them back in their home country pending the outcome of any process, to deter bad actors from coming, but also so that we are in a position to process the people who are playing by the rules and fitting within the boundaries of our laws as opposed to gaming them.

Senator KIM. Thank you. I yield back.

Chairman PAUL. Senator Scott.

#### **OPENING STATEMENT OF SENATOR SCOTT**

Senator Rick SCOTT. Mr. Cuccinelli, can I ask you, and maybe I do not understand the law well enough. Let's say they come from a country that they do not want to accept the individual back, but they get into Mexico, and then they? come to the United States, why shouldn't that be Mexico's problem. Why should we just say, "You are the one that let them into your country." I do not get why it is our problem. It is their problem.

Mr. CUCCINELLI. I agree, Senator.

Senator Rick SCOTT. Raise their tariffs until they do it. They are the ones that opened their border, right, to allow them into the United States.

Mr. CUCCINELLI. Mexico has long had very permissive entry into Mexico, and they are very happy to shuttle people along to our border. I agree with you 100 percent. We talk about MPP and agreement of Mexico, and so forth, but one of the changes in the uni-

verse of illegal immigration to our borders now is how much of the rest of the world, other than this hemisphere, is showing up there.

I think Mexico would start to finally develop some vetting for people coming into Mexico if we dumped everybody back into Mexico. There are people in this room I am sure would not like that, and it would be ugly for a period of time. But if people knew they could not get into the United States, and they would not be allowed to wait around for the 1,013 days for the hearing, that they would not show up for, they will not come in the first place, overwhelmingly, which again, also allows you to properly treat the people playing by the rules, who are also delayed because of all of these backlogs.

Senator Rick SCOTT. So why don't we do it?

Mr. CUCCINELLI. I think it is just a question of political will. We want to be cooperative with Mexico.

Senator Rick SCOTT. When they are not cooperative with us?

Mr. CUCCINELLI. When they are not cooperative with us. When Donald Trump rattles the tariff sword, as he did in 2019, they need us economically more than we need them. I would say one of the mistakes people make is to think of Mexico as an ally. Mexico is not an ally to the United States. It is a neighbor, and we want to get along with our neighbors. But not all neighbors are allies. Mexico operates in many ways that are very inimical to the well-being of the United States and our security and the people who live here.

I think that, frankly, a period of being much tougher, as you described, Senator, will result, after you get through that hump and the difficulty that will arise with Mexico because they will not want to be treated that way, that they will adjust. They will adjust. When Mexico wants to be tough with their immigration laws, they are so much faster than we are, and they are so much tougher than we are. It would shock you to see the comparison.

Senator Rick SCOTT. Do you think the cartels should be designated as terrorist organizations?

Mr. CUCCINELLI. I actually do not support that because with the current foreign terrorist organization designation statute, that sweeps in a massive proportion of the people in northern Mexico who you would not really want to be targeting. Again, as I mentioned earlier, it is because that statute was really drafted to get after cells, not an organized crime entity that has integrate itself into the community, and frankly, is a de facto government in many parts of Mexico.

We do need a new statute to give the President the tools, the Treasury the tools to get after the cartels, both as a matter of kinetic action, and when that is appropriate—you all set the boundaries on that—and to get after their finances, which, frankly, I think you should be unleashed a great deal more on.

Senator Rick SCOTT. Trump has said he is going to do all these Executive Orders (EO) to secure the border day one, right. What does he need besides what he has got the authority to do under the Executive Orders?

Mr. CUCCINELLI. As I mentioned earlier, in response to the Chair's comments, I think it is a lot simpler under current authority to secure the border than it is to deal with the rest of the problem. All of the backlogs we were talking about, that takes congress-

sional support and help. The deportation effort that the President has talked about is going to be complicated, it is logistically challenging, and it will take support from the Congress to really accomplish that.

Senator Rick SCOTT. Is it money or laws?

Mr. CUCCINELLI. Both. We talked about Flores. That is one you are all familiar with. It is an incredible hurdle to running an orderly immigration system, all from one judge in California, 30 years ago. You all can fix those things. TVPRA Senator Lankford mentioned. There are some major holes that were not know at the time, say, TVPRA, Flores created itself, but that really only Congress can fix.

Senator Rick SCOTT. Did you want to add something?

Mr. ARTHUR. Yes, with respect to TVPRA, I have no doubt that it was passed with the best of intentions. I knew many of the people who worked on it. But it has truly had the worst results, Senator Scott. Kids are trafficked today because of TVPRA. President Obama asked Congress, in I believe it was June 2014, to close the loophole. Congress did not act. Washington Post said that it inadvertently provides incentives to non-Mexican children to come to the United States.

When Ken Cuccinelli, Barack Obama, and The Washington Post all agree on something, it is probably time to take action.

Senator Rick SCOTT. Thank you.

Chairman PAUL. Did you want to make a comment?

Mr. ISACSON. Sure. Thank you. I would point out, the Flores agreement prohibits locking up children for more than 20 days, but it prohibits locking them up for more than 20 days in a place that is not a licensed child care facility, like Berks County is, with a very small capacity. We do not do that because it is really expensive.

As far as the TVPRA, we need to find some middle ground. It does create some very perverse incentives. On the other hand, simply dropping unaccompanied children off in Managua or Guatemala City may not be something we want to do willy nilly either. We have to find some other way.

Chairman PAUL. Senator Slotkin.

#### **OPENING STATEMENT OF SENATOR SLOTKIN**

Senator SLOTKIN. Thank you. Thanks for being here today. I am a new Senator. I am a former Central Intelligence Agency (CIA) officer and Pentagon official. I did three tours in Iraq alongside the military, and my specialty is Middle East terrorism and militias. I feel deeply connected to the mission of protecting the homeland.

I think the thing that I struggle with is we are a nation of immigrants with a broken immigration system. It is literally working for no one. It works for no one, not employers, not our economy. I am northern border State, Michigan, so we know what an orderly, organized border looks like, right. We also know what it is like when all our CBP officers and Border Patrol are pulled off of our border to go serve down at the Southern border. They no likely. Like we do not like that. We like our cold climate. We do not like what is going on down there, right. If we had the same situation, that

Texas had, with all these people coming over, Michiganders would lose their minds, right.

In the House I did more border legislation than any Michigander in the House, Democrat or Republican, because I feel passionately about it. The thing I feel also passionately about, though, is that no matter which administration is in, if we only do border security and that is it, and not the immigration part, then we are attacking the symptom and not the overall system. We all know that the majority of those asylum seekers who are trying to come over the borders are economic migrants, like many of our grandparents, our great-grandparents. They want a job. They want to make money. We would all, in their shoes, probably be looking to do the same thing. But our system does not work so they can quickly get in and work at our employers who need them, in places like Mackinac Island or our farms or whatever in Michigan.

I guess my question, yes or no, is just are we all in agreement, Democrat and Republican, that we can attack border security, and I am here for that. But it is not the entire story. We also have to do immigration reform, and that includes action by this body. We are not absolved, in this room, of responsibility for what is going on at the border. Can I just get a yes or no, starting with Mr. Cuccinelli?

Mr. CUCCINELLI. You are not absolved. There is a lot more than the border, a lot more than the border. You all have a lot of work to do.

Senator SLOTKIN. Yes.

Mr. ARTHUR. Senator, our immigration system is out of line with our leading allies, the United Kingdom (UK), Canada, New Zealand, and Australia, when it comes to who we bring in. You are absolutely correct.

Senator SLOTKIN. Great.

Mr. ISACSON. Yes, there has been no important reform to our immigration system since 1990.

Senator SLOTKIN. I just think that, and again, I am coming from the House. I was on the Homeland Committee there for many years. This is the most politicized issue I have ever seen, on both sides of the aisle. We all have a shame on our heads for not doing our work in this body, and I include myself in that. It is hard, but we have to do it. I actually hope that for all the tough stuff that Mr. Trump is saying, that it also comes with "border, and," all the other things. Our employers are the ones who are going to be kind of screaming from the rooftops on that.

I am interested in this idea, as someone who spent my first half of my career going after terrorist groups, on using some of the designations. I understand, and I think agree, that militarizing and allowing hot pursuit, U.S. military, active in Mexico without their permission creates a whole new set of issues. But some of our most powerful financial tools on designating a group as a terrorist group comes from when they have any link in the United States. If ISIS is working and they have someone who is sending them money, or they have some sort of tie to an American citizen, those laws that we implemented after September 11, 2001 (9/11) allow us to go after that American citizen and attack in a way that is different.

Do these cartels, Mr. Cuccinelli, just because you are most recently in, do they have American links that would allow us to be effective if we used that, those statutes?

Mr. CUCCINELLI. They do have extensive American links. They are criminal networks by which they make money. There is two ways they make money, overwhelmingly—drug trafficking and human trafficking. In recent years, human trafficking has probably rivaled the money they were making from drug trafficking.

We talk about the Sinaloa cartel, Jalisco New Generation Cartel (CJNG), they, in turn, work with the MS-13s and the Latin Kings and so forth. There are relationships from Mexico into the gangs, international gangs, that are operating in our communities. When I was the Virginia AG, the most significant violent crime threat in Virginia was MS-13. Now we have seen Tren de Aragua to rival that in speed and violence.

But they do have connections. I would not say they are necessarily connected to American citizens. They are importing their allies through illegal immigration, who are working with the gangs. The exception to that is where there is a financing arrangement where people owe the cartels money after they arrive into the United States, and running those to ground—and frankly, banks in Central America participate in executing those transactions.

Senator SLOTKIN. Yes. I know my time is up. I would just say, I am super interested in that concept. Again, military force is something a little different, and I would be real cagey to be quickly authorizing something like that in Mexico. But on the financial stuff I think it is an area of interest for a lot of us.

Chairman PAUL. Since you are new, we are not going to institute the waterboarding that we often do—

SENATOR MORENO. I would not try that with her. [Laughter.]

Mr. ARTHUR. Mr. Chair, if I could add just one more thing, very briefly. This is a real issue on the Northern border. We think about the Southern border. We have seen Tren de Aragua in Colorado, and there are reports that they are setting up cells in places like Montana, because, of course, people like drugs in the United States. They should, and they do. People like drugs in Canada, too. The last thing we want to see is more organized crime moving through the United States. That is the only point I wanted to add.

Chairman PAUL. I would just like to also interject briefly on this. The question has always been, border security. What about legal, lawful immigration? Can't we do something? I am one who is for more lawful immigration. Not everybody in my party is, but I am one that is for more lawful immigration. But I am pretty much for zero illegal immigration. I do not want millions of people coming in.

But I am more than willing to double the legal amount or increase the legal amount. I have bills, like on the employment-based (EB) visas, there is one through five, to double the numbers and take off country caps. That is not a particularly radical thing, and I have addressed it with people across the aisle. The complaint I always get is, "We don't want to do a little bit. We want to do comprehensive." So the word "comprehensive" has been bandied around for probably decade.

The problem, and the big sticking point between one side and the other is that those of us who are open to more lawful immigration, we are really not open to making 18 million people who came here illegally voters. It changes the country, and it obscures things.

I have not seen this poll done, but if you were actually to poll people here illegally—it is hard to poll people because they do not want to come forward—but poll them; they are here working—would you accept a work permit if it did not involve voting, because you did break the law to get here. We would not make you go back to Mexico. Some would say that. I would not say that, actually. I would say you are a law-abiding person, you want to work here, but you do not get to vote. Your kids are going to get to vote, but you do not get to vote. There would be some sort of process for that. But that would be the in-between.

But most of the time the debate devolves toward one side wants voting, pretty quick voting, and the other side says, we are just not going to do that. That sort of has held up any smaller incremental. I have an H-2A bill. There is H-2B, H-1B. All these things could be made a little better and even expand the numbers on, which some of us are for, but we never get there. I think the impasse, at least in my opinion, is over the aspect of quick voting for people who came in illegally. That is just my opinion.

Next is Senator Moreno.

#### OPENING STATEMENT OF SENATOR MORENO

Senator MORENO. Thank you for being here, and I may say something that has never probably been said ever in the United States of America, which I think there is common ground between Ohio and Michigan on this topic. [Laughter.]

I thank you for your willingness to help on this.

Chairman PAUL. You have gotten over that football game in November, have you?

Senator MORENO. Could we strike that from the record? Is that possible to do that?

When is Michigan playing on Monday? Oh, they are not. All right. [Laughter.]

I just want to point that all. All righty.

Look, for me this is a very personal conversation because I am the one person probably here on the panel, and testifying, that would not literally be here if it was not for a legal immigration system to this country. I was not born here. I was born in Colombia. This country welcomed me and my family.

This issue does not have to be difficult. We have made it very difficult. I can tell you, after campaigning 2,000 miles a week to every corner of the State of Ohio, I hear voters, and I am sure my colleagues do too, say, “Why can’t you fix this? This is not intellectually complicated. It really isn’t.”

I would start with a simple premise that I would ask the three of you to answer. Should we have an immigration system that benefits the United States of America as the No. 1 criteria for any legal immigration? Yes or no.

Mr. CUCCINELLI. That absolutely should be the priority. Immigration for America is for the benefit of America, first and foremost. It is true that the immigrants benefit, but that is a secondary

benefit to the focus of a nation. We have to take care of ourselves first, and we have not done that for decades.

Mr. ARTHUR. U.S. citizenship is probably the most precious status in the world, and we should treat it accordingly, and we should use it to the benefit of all the American people.

Mr. ISACSON. Absolutely, and I have heard some points of agreement in this room today, which actually surprises me.

Senator MORENO. I think that is how we can move forward on this. To Senator Paul's point, I do not think we have to boil the ocean all at once. I think we can agree that, for example, if we are talking about the hyper-specific legal status of asylum that we can remember what it means.

I would ask each of you to define to me what it means to be a refugee seeking asylum. For the people who may not be into this topic every single day, what does that mean, to be a refugee seeking asylum?

Mr. CUCCINELLI. To put it in street terms, it is someone who—it is easy to use countries as an example—Cuba, who is persecuted for their political view by a Communist regime. I actually think if you think of it in terms of persecution by the government, and only the government, then you can start to simplify this. For example, in the Western Hemisphere there is probably not a good reason for any other countries other than Venezuela and Cuba to ever have any asylees, period.

If you cannot be an asylee from any of the other countries, because it is not the 1980s in Central America or Colombia, for example, any longer, than you can streamline rather dramatically the Western Hemisphere piece of that equation.

Senator MORENO. To follow up on that, is there a scenario in which there are actual refugees from Mexico? In other words, would you classify Mexico as even in the realm of possibility of having actual refugees, people being persecuted for their race, nationality, or religion, from Mexico?

Mr. CUCCINELLI. No, and Mexico is, as noted, the 10th largest country in the world, population-wise. It is the belief of the U.S. Government, and it has been for a long time, that if an individual who is a Mexican citizen is being persecuted somewhere in Mexico, they can go elsewhere in Mexico, and that is their solution, which is why the caveat of persecution by the government is so important to qualify as an asylee.

Refugees can be different. They can be people who are displaced by war, for example. We are one of the few countries that uses those two terms somewhat differently, asylee and refugee.

Mr. ARTHUR. So persecution is defined, you are eligible for asylum if you show past persecution of wealth and a fear of future persecution on account of your race, religion, nationality, membership in a particular social group, or political opinion. I took Mr. Isacson's line. But it also important, Mr. Cuccinelli mentioned that that persecution has to be either inflicted by the government or a group that the government cannot or will not control.

When I was a Judge, I heard asylum claims from Ireland, the United Kingdom, Germany, and Australia. Yes, there are definitely safe places in this world, and we probably need to work harder dip-

lOMATICALLY to make those places safer, so that people can return to them.

Mr. ISACSON. There are a lot of asylum claims in the U.S. Immigration Court from Mexican citizens. They do have a relatively low approval rating, or grant rate, but it is not zero. Basically the argument is usually the Mexican government cannot or will not protect them from organized crime or from whoever is discriminating against them.

Senator MORENO. Would it be reasonable not to allow asylum seekers to cross through a non-designated port of entry? Would that be reasonable, something that we can all agree on?

Mr. CUCCINELLI. You mean would it be reasonable to not accept asylum requests from people not coming through a legal port of entry?

Senator MORENO. Correct.

Mr. CUCCINELLI. That would be eminently reasonable. It is unreasonable not to implement that sort of vetting.

Senator MORENO. You would agree, Mr. Isacson?

Mr. ISACSON. That is the current rule in place right now, and it does hurt some vulnerable people. There still has to be a process.

Senator MORENO. OK.

Mr. ARTHUR. The best part about it, Senator Moreno, very briefly, when we talked about the money paid to the cartels, cartels charge a piso to cross their territory and to help you get across the border illegally. If you come through the port you take that money out of the cartels' pocket.

Chairman PAUL. One follow-on to Senator Moreno's question. He mentioned having a definition and having it be governmental, and Mr. Cuccinelli, you responded, you thought maybe just Cuba and Venezuela. Do you think the law permits a President to define asylum that way now and just say Cuba and Venezuela, those ought to be vetted, but nobody else is basically eligible because there is no systemic governmental persecution?

Mr. CUCCINELLI. I do think the authority, the regulatory authority for the implementation of asylum exists to do that. I would note that the State Department has been historically wildly uncooperative in doing anything of that nature.

Chairman PAUL. Senator Ernst.

#### **OPENING STATEMENT OF SENATOR ERNST**

Senator ERNST. Thank you, Mr. Chair, and thank you, gentlemen, for being here today.

I would like to paint a little bit of a picture for everyone. We have already purchased border wall materials, lots of border wall materials. They were basically abandoned by the Biden administration, so they are just sitting in Arizona and other places, unused, and they are collecting dust in the desert.

But here is kind of the kicker for everyone, is that they are not just sitting there. They are actually protected by a fence. If anybody sees the irony in that, I do, and I actually saw it personally. The administration did everything with these materials except actually build a wall. We are talking about \$250 million worth of materials that were purchased. They are paid for. They could have

bolstered our security. But instead we have just left them there to waste.

This is to add insult to injury, every month the U.S. Army Corps of Engineers (USACE) spends \$160,000 to store these materials, 20,822 unused panels. These materials were eventually auctioned off by the Biden administration, and those that purchased the materials paid pennies on the dollar to buy those items. That is a huge loss for taxpayers.

Mr. Cuccinelli, why don't we start with you, please. Can you talk about the role that physical barriers play in securing our border and the message that it is sending to the cartels and other bad or illicit groups when the Federal Government just leaves these materials unused, they are rusting away in the desert, and how we should be thinking about border barriers in the future with the incoming Trump administration.

Mr. CUCCINELLI. Thank you, Senator, for that question. First of all, the intentional abandonment of the border wall materials was part of the open borders policy and narrative. It was a visual part of that narrative. Unfortunately, it was effective in inviting people from all over the world to come across our border. We saw the numbers in the last four years on one of the charts. They exploded, absolutely exploded. Because it is not just our hemisphere so overwhelmingly any longer, we have massively complicated every aspect of dealing with those illegal immigrants.

The border barriers work when the political will is behind those barriers to actually protect immigration law. The barrier itself, however tall you make it, people can get over, and if they get over and know they can stay, you might as well not put it up in the first place.

But I will say that putting those barriers up strategically, intelligently, helps keep your Border Patrol agents safer. It helps them manage the illegal flows in ways that are more predictable, and thus they can respond to them better. You get more efficiency in your law enforcement, and you get more safety. I know that is important to you and everyone on this Committee.

All of those folks are safer when they have the wall, when they have the road behind the wall, when the lights and the technology are in place, that allow detection to take place out at a distance, and allow your Border Patrol agents to respond effectively, efficiently, and not in a harried, last-minute sort of manner. They are safer and more effective.

Senator ERNST. Thank you. Yes, thank you very much. Eons ago I served as a military engineer, and part of the role of military engineers is to physically shape the battlefield and direct the flow of the enemy. I am not saying that everyone coming to the border is an enemy, but you understand the illustration there.

Yes, Mr. Arthur.

Mr. ARTHUR. Senator, if I could, one, I would note the fact that you and 39 of your colleagues sent a letter to the Comptroller General (CG) in March 2021 about this.

Senator ERNST. Yes.

Mr. ARTHUR. I disagree with the Comptroller General's opinion about the Impoundment Act. I think it was an impoundment.

But the more important part of that is when we talk about the border wall, we talk about the border wall system. It is the wall and the roads and the lights, and the fiberoptic cable. When you are out in the middle of the desert, when you are far away from civilization, where much of the border is, Border Patrol agents cannot just pull out their phone and use cells, because there is no cell tower. That fiberoptic cable would have enabled them to actually communicate.

When President Biden shut down the border wall system, he stopped the cable. The lights sit unhooked up. We literally leave our agents in the dark, blind, because we do not have those things. The quicker we can get that up and running, the better, the safer it is going to be for everybody.

Senator ERNST. Yes. Thank you very much. I yield back. Thank you.

Chairman PAUL. Senator Gallego.

#### **OPENING STATEMENT OF SENATOR GALLEGO**

Senator GALLEGO. Thank you, Mr. Chair, and thank you to our witnesses, and thank you for being here.

As we examine the first Trump administration's Remain in Mexico policy, it is important to remember that there is no substitute, in my opinion, for comprehensive immigration reform as part of that overall strategy, and that Congress has the sole authority and responsibility for making that happen. We owe it to our border communities and all Americans to fix the system.

Mr. Isacson, I have a couple of questions for you. In your testimony, you emphasized that the Remain in Mexico policy enriched cartels by giving them a new, large base of migrants to extort and take advantage of, something that I did see in Arizona also. You also mentioned that smugglers looking to profit from illegal border crossings benefited from Remain in Mexico as migrants look to illegal means of entry into the United States.

This organized crime does not stay on the side of the border. We know that for a fact in Arizona. It crosses into our border towns and even further into Tucson, Phoenix, and beyond, and endangers everyone. Any action that will increase cartel activity is a major concern for me, and obviously for U.S. citizens. What actions could the Trump administration have taken to keep cartels from benefiting from Remain in Mexico. I am not saying like he should not have done it. But what I am saying is obviously it happened, but what could have been done to stop the kind of benefit that they ended up receiving from it, in your opinion?

Mr. ISACSON. If the Trump administration were, in fact, moving people still into Mexico for several months at a time, well, first of all, had the capacity to be able to address these cases more quickly. Don't make people wait for several months in Mexico. Have enough judges on hand so that it can be there. Invest way more in shelter and protection, and really check up on whether the Mexican government is really providing that shelter and protection and keeping the cartels at a distance from these people, which they absolutely were not.

Obviously, I do not favor the program as a whole, but there were ways to actually mitigate that.

Senator GALLEGO. Your testimony also discussed the impacts of Remain in Mexico on our bilateral relationship with Mexico. In 2019, President Trump proposed tariffs on Mexican goods until illegal immigration through Mexico was remedied. He also floated the idea of high tariffs on Mexican goods in this next administration. According to your testimony, and just from my experience in Arizona, we are a richer State because of border trade. Mexico was U.S.'s top trading partner in 2023, with \$800 billion in bilateral trade, \$1.5 million per minute. Arizona's ports of entry and border communities are major hubs of transnational trade, and we both benefited from that relationship.

How do you anticipate that the United States trade relationship with Mexico would be impacted by the reimplementaion of Remain in Mexico?

Mr. ISACSON. If Mexico, at all, proved unwilling to implement Remain in Mexico, or it maybe did not like the list of countries that the Trump administration wanted them to receive, et cetera, you would likely see a tariff threat. You would see maybe tariffs implemented. If you had tariffs implemented, if they were high enough it would be the equivalent of an embargo on Mexico, and that \$800 billion would shrink quite a bit, no matter what. At the Mariposa port of entry, right here in Nogales, things would be a lot quieter.

Senator GALLEGO. How would this be different than the effects we saw under the last administration?

Mr. ISACSON. Mexico did agree to the last Remain in Mexico, and ultimately the effects at ports of entry were not great. A lot of the tent courts and the people forced to return were at ports of entry where cargo was not crossing very much. Of course, it took some bandwidth away from CBP, who had to handle all of this, but ultimately it was not a huge effect on trade.

Senator GALLEGO. There was a discussion about some of the asylum seekers. They come from countries where, if we wanted to deport them back, we would not be able to actually deport them back. Part of deterrence is for people to understand you will be deported. You have processes of deportation. Why waste your time, money, why pay a coyote, or whatever it is, for this if there is a high likelihood, chance that you will go before a judge, you are going to be deported, you are going to be rejected.

But what about those countries that we do not have a solution, so those countries that will not accept them back, the Cubas, the Venezuelas? What can this incoming administration do to ensure we have somewhere to send these people who are deemed inadmissible?

Mr. ISACSON. It is tough, because, if somebody is coming from a country that is so badly governed, they very well may have a strong asylum case. These countries are not our friends for a reason, just because their governments are really bad. That is one thing. You have to give them a fair hearing.

Senator GALLEGO. But even if we give them a fair hearing, before a judge—

Mr. ISACSON. They are turned down.

Senator GALLEGO [continuing]. And they say you do not have a good case for asylum, where do we deport them? Because we have to do something, is what I am saying, because that is the biggest

solution. In Arizona, when we see surges, it largely is from these countries where they will not take back their asylum seekers.

Mr. ISACSON. Yes. There is no great answer for that. You could do a lot of diplomacy to have the burden shared through the Americans. Some countries like Colombia are doing a heck of a lot to integrate people, but other countries could be doing more. That is something that was being started with the Los Angeles declaration process in the Biden administration.

But ultimately, yes, there is no place to put somebody from Venezuela right now, and there are 600,000 of them in the past couple of years.

Senator GALLEGO. Thank you, Mr. Chair.

Chairman PAUL. Senator Hassan.

#### **OPENING STATEMENT OF SENATOR HASSAN**

Senator HASSAN. Thanks, Mr. Chair, and thank you and the Ranking Member for this hearing. Congress certainly needs to work on a bipartisan basis to improve our border security, and, in fact, of course, we had a bipartisan border security deal last year that made major improvements to security at the Southern border, including with some important changes to asylum standards. It also included hiring significant additional law enforcement personnel. It had the support of the National Board of Patrol Council (NBPC), and I strongly supported that deal. Unfortunately, as we all know, President-Elect Trump decided to kill that deal for purely political reasons.

I am hopeful that we can move past politics and actually get back to work on the kind of bipartisan deal that I think we are hearing agreement about in this room.

Like Senator Slotkin, I am a Northern border Senator, so I also do not want us to take our eyes off the need for a Northern border strategy. Senator Cramer and I have had bipartisan legislation that this Committee actually passed, and I hope we will revisit that, as well.

Going forward, we need to work together to examine the most effective ways to secure the border and weaken cartels. Part of that is examining the effects of the Remain in Mexico program during President-Elect Trump's first term.

Mr. Isacson, I want to follow up on Senator Gallego's questions a little bit. Your testimony states that the previous Remain in Mexico policy enriched the cartels. I want to repeat that it enriched the drug cartels that are poisoning our country and create enormous violence. They kidnapped and extorted immigrants waiting in border towns for their court dates. Public reporting showed that ransom payments routinely cost \$4,000 to \$7,000 per person, and that a single criminal gang in a single border town could steal \$35,000 a day from people.

Mr. Isacson, your testimony notes that in 2019 and 2020, cartels and criminal gangs extorted at least \$70 million over the two years in this way, in large part fueled by the Remain in Mexico program. If the Remain in Mexico program were reinstated, how would you expect the cartels to attempt to profit from extortion and ransom?

Mr. ISACSON. I think the cartels would continue to extort, perhaps at even higher rates, because they are more powerful now

even than they were then. They would still have those three income streams—the ransoms, the extortions, and the coyote service. Yes, that was a very conservative estimate. The money would be more.

Senator HASSAN. Yes. OK. I also want to just touch on the issue of cooperation with the Mexican government. Law enforcement in the United States works closely with Mexican authorities to interdict drug smuggling, human trafficking, and other crimes committed by the cartels. By the way, Mr. Arthur, I think it was you who said that we need to continue to work to reduce drug demand in this country. That is something I have heard from the Mexican government too.

The other thing that we have worked on in a bipartisan way on this Committee is our southbound weapons and cash to the cartels are a real problem, and Senator Lankford and I have worked together on a bill that would do much more screening southbound to try to stem the flow of cash and weapons to the cartels from this country, which are used as payment for the illicit drugs.

But one of the things that we do with the Mexican government is Mexico allows our Homeland Security Investigation agents to work with Mexican authorities to target drugs and precursor chemicals that are being shipped from China to Mexico. They are then made into fentanyl, and then they are entering the United States. Sometimes they are not made into fentanyl down there, and sometimes they are made up here.

But how, Mr. Isacson, would reinstating the Remain in Mexico program potentially affect cooperation with Mexico on joint efforts to disrupt drug smuggling?

Mr. ISACSON. The question is how we were to go about it. If Mexico was reluctant, the administration decided it was really going to push and bully and publicly humiliate Mexico until they agreed to take these people, Mexico would be much less willing to cooperate on other things like fentanyl.

Senator HASSAN. OK. I was pleased to hear kind of consensus growing around thinking through what targeted legislation would look like to really treat the cartels as the kind of hybrid organizations they are, using some terrorist techniques for organized crime purposes. I think it was really interesting that all three of you seemed to coalesce around some important ideas in that regard.

As one of the States that has been particularly hard hit by the fentanyl epidemic, I would be very interested, and I know my colleagues on both sides of the aisle would be too, on working on how we really go after those cartels. We have comprehensive immigration reform to do, to be sure, but that should not stop us from going after some of the most predatory criminal organizations in the history of mankind. Thank you.

Chairman PAUL. Senator Hawley.

#### **OPENING STATEMENT OF SENATOR HAWLEY**

Senator HAWLEY. Thank you, Mr. Chair. Thanks for calling this hearing. Mr. Isacson, if I could just start with you. In March 2024, you wrote, “The murder of a nursing student in Georgia has a lot of people on the right talking about migrant crime like it’s an actual issue.” That would be Laken Riley you were talking about?

Mr. ISACSON. Laken Riley was an unusual case.

Senator HAWLEY. Yes. Here, let's have a look. Here is Laken Riley.<sup>1</sup>

Mr. ISACSON. Yes.

Senator HAWLEY. Her horrific murder at the hands of this illegal migrant, who was also unlawfully paroled in the United States, her death not an actual issue?

Mr. ISACSON. It is a tragedy.

Senator HAWLEY. But not an actual issue?

Mr. ISACSON. Migrant crime is much less of an issue than U.S. citizen-committed crime.

Senator HAWLEY. Not an actual issue? Those are your actual words. Her death not an actual issue. I just want you to say.

Mr. ISACSON. Of course, it is an issue. It is a tragedy.

Senator HAWLEY. What did you mean by your quote? It is not an actual issue, meaning we should not be paying attention to it? The Senate is wasting its time this week on the Laken Riley Act that would address the circumstances of her murder? What is your advice to us—we just discontinue those proceedings now?

Mr. ISACSON. I think the Laken Riley Act could do a lot of harm. It would allow me to say, oh, this person shoplifted, and that would be enough probable cause to get somebody deported.

Senator HAWLEY. Interesting. Who invited you to this Committee hearing today, Mr. Isacson?

Mr. ISACSON. The minority party.

Senator HAWLEY. Yes. It is interesting. You are here as a spokesman for the minority party. I just want to make sure the record is clear on this. The spokesman for the minority party is advising the Senate that the Laken Riley Act is a bad idea, and we ought to stop it. The spokesman for the minority party is saying that Laken Riley's death and migrant crime is not an actual issue. I can't frankly believe that I am hearing these words.

Mr. ISACSON. I said migrant crime.

Senator HAWLEY. You said it is not an actual issue. I read you the quote.

Mr. ISACSON. Laken Riley's death was not an actual issue.

Senator HAWLEY. You said the murder of a nursing student in Georgia has a lot of people on the right talking about migrant crime and you put it in quotation marks, square quotes, like it is an actual issue.

Mr. ISACSON. Not Laken Riley's death.

Senator HAWLEY. She is dead because of migrant crime, right?

Mr. ISACSON. Migrant crime—

Senator HAWLEY. Let's try something else. Do you know who this young man is?<sup>1</sup>

Mr. ISACSON. I do not.

Senator HAWLEY. Travis Wolfe, 12 years old, from my State murdered by an illegal migrant who was also, like José Ibarra, illegally paroled by the last administration.

Mr. ISACSON. Is your expectation that no, zero, migrants—

<sup>1</sup> The picture of Laken Riley appears in the Appendix on page 100.

<sup>1</sup> The picture of Travis Wolfe appears in the Appendix on page 101.

Senator HAWLEY. Let me tell you what my expectation is, is that those who commit crimes in this country will be appropriately dealt with.

Mr. ISACSON. Absolutely.

Senator HAWLEY. And that we should not be allowing migrants—

Mr. ISACSON. Absolutely.

Senator HAWLEY [continuing]. Who commit crimes into this country, and that, yes, migrant crime, that kills people like Travis Wolfe, whose death was shocking, whose death is inexplicable, indefensible—I actually do think, yes, I think it is—

Mr. ISACSON. How can you be sure that zero—

Senator HAWLEY. Wait a minute. It is my time, Mr. Isacson. I actually think, and I want the record to be clear on this, that migrant crime is a real issue. I think the Laken Riley Act is absolutely necessary. In fact, I propose an amendment to the Laken Riley Act that will cover people like Travis Wolfe. I think that U.S. Immigration and Customs Enforcement (ICE) ought to be detaining, ought to be required to detain, those illegal migrants who commit violent crimes against children, like Travis Wolfe.

Mr. ISACSON. Of course.

Senator HAWLEY. And yes, I happen to think, as a former prosecutor, I happen to think that their violent murders are actual issues. The fact that you would say otherwise, sit here and advise the Senate that the Laken Riley Act is a bad idea, that the whole thing is not an actual issue, made up, I think is outrageous. I think it is absolutely outrageous.

The fact that you were invited here to give this testimony is stunning to me, I have to say.

Absolutely stunning to me.

Mr. Cuccinelli, let me just ask you something else that Mr. Isacson has said is that the Remain in Mexico policy was a program of death.

Is that your experience, having seen it implemented, a program—

Mr. CUCCINELLI. As part of implementing it, my answer would be no, it was quite the opposite. As I said in my statement, that the deterrent effect for illegal aliens to come that was gained by the Migrant Protection Protocols, the Remain in Mexico program, prevented a lot more abuse, child abuse, abuse of women on the journey, and death along the way, than any of the crimes that occurred addressed to the people, where the people in Remain in Mexico were the victims.

So any time we have illegal immigration going on, we have victimization of that population. It would be my view, and I think the dollars play it out, especially as you have seen since 2019, that the idea that the cartels benefited from the Remain in Mexico program is relatively ludicrous compared to the alternative. The alternative we have lived with the last four years has been the greatest enriching of the most evil, vicious people in the Western Hemisphere, in the history of this hemisphere.

Senator HAWLEY. Yes. I wish the Remain in Mexico program had still been in effect when the killer of Travis Wolfe crossed the bor-

der and was paroled illegally into the country. He might still be alive today. If that is not an actual issue, I do not know what is.

Thank you, Mr. Chair.

Chairman PAUL. I think we have had a good discussion on the issue, and I think it is an important issue, and I think we have to have these discussions. Both sides have to be heard, and we have to figure out how to move forward.

The one sort of dispute we have, like in a court of law you have the facts and you hear both sides, and someone says this is a fact, I think there is something here that is in contention, and that is whether or not the Remain in Mexico policy enriched the cartels.

This chart<sup>1</sup> is kind of similar, not as famous as Senator Johnson's chart, but it is similar in the sense that you can see with Remain in Mexico, the encounters come down to about 20,000 or so. Here they are up around 300,000. So you have essentially a tenfold increase.

So if we say, and we understand that cartels make money by getting people across the border, it seems hard to me to argue that when you have 300,000 encounters, that they would not make more money here than they make here. I just find it really hard.

I would like to give each of you a chance to respond to that. Why don't we start with Ken Cuccinelli.

Mr. CUCCINELLI. Mr. Chair, you are right, and the CBP intel assessments, e do not audit the cartels, right. But the intel folks who track what they do, as best we can, believe that they are financing, they money they were making on human trafficking, probably passed drug trafficking in the Biden administration. The chart here serves as a proxy to money they were making from this form of work.

Chairman PAUL. If we wanted to know more for certain, and it is an estimate because it is all done illegally——

Mr. CUCCINELLI. Right.

Chairman PAUL [continuing]. Is there someone who makes an estimate of this, somebody in our intel who is looking at this, that we could bring here?

Mr. CUCCINELLI. The CBP intel shop.

Chairman PAUL. Do you think they make an estimate month by month on what they think they are making? So it is still going to be an estimate, but if we wanted further information on it we could ask the CBP.

Mr. CUCCINELLI. Correct. Yes, sir.

Chairman PAUL. All right. Mr. Arthur.

Mr. ARTHUR. Absolutely, Senator. It is not just the cartels. It is also the smuggling organizations. It is always important to keep the two separate. Smugglers actually do the heavy lifting. The cartels then skim the cream off of the top, to let those individuals cross what they call their territories. Then you have also got the human traffickers that can feed in that environment, as well.

When you are talking about the money that is floated to the pockets of the cartels, right there. But it is not just simply from taking fees or shaking down migrants. When you send large numbers of people across the border you create what Chief Rodney

<sup>1</sup>The chart referenced by Senator Paul appears in the Appendix on page 98.

Scott, the CBP Commissioner Designee, called “controllable corridors.”

So you send a bunch of kids and adults over, Border Patrol rushes over to get them, and then it creates a void in the line that the cartels can use to run the drugs to the United States. Absolutely crucial part of this. They are feasting right now.

Chairman PAUL. So you would agree that the argument that when there are more encounters and more traffic going across it would be proportional to more profits not the reverse.

Mr. ARTHUR. Absolutely.

Chairman PAUL. When you have Remain in Mexico down here, it is a little hard to argue they are making more money when there is a lot less people going across the border, as opposed to here.

Mr. ARTHUR. Absolutely. It is also a lot less human carnage, Senator, and Ken had talked about this. Doctors Without Borders did a report in 2017, in which they estimated that about 68-plus percent of all migrants are physically abused during that illegal journey to the United States. Just under a third of all women are sexually abused. When you cut down the number of people coming, you cut down the number of crimes.

Chairman PAUL. Thank you. Mr. Isacson.

Mr. ISACSON. On that chart I would point out that that low point there was the beginning of COVID, and just before that Remain in Mexico was almost done. Between then and when it was actually terminated you had about 4,000 or 5,000 people put in that program over all of that months. It was hardly in existence.

Chairman PAUL. Say that a little bit louder, please.

Mr. ISACSON. Sure. Remain in Mexico was hardly in existence from the time that COVID began until it was actually terminated, when Joe Biden was inaugurated. Maybe 4,000 or 5,000 people put in the program in that entire space. It was not much of a deterrent at that point. Title 42 had really been what was on people’s minds if they were thinking of crossing the border.

Chairman PAUL. Basically you are making the argument that quite a bit of the dip is COVID. Is that what you are saying?

Mr. ISACSON. Yes. At the bottom there it is COVID and Title 42.

Mr. ARTHUR. Senator, I will note the fact that the pandemic was not declared until March 20, 2020. You can see the bottom of your chart there.

Chairman PAUL. Right.

Mr. ARTHUR. One of the things that opponents of Title 42 would say is that the numbers were inflated because of recidivism. I would gently disagree with Mr. Isacson. I would say that when you look at that right there, you get people stopped under 42, they get turned back, and then they just come around, because there is no deterrent effect. There is no punishment for reentering under Title 42. There is one with MPP.

Chairman PAUL. If the Trump administration is saying they want to correct some of the problems of all the people that have been paroled, and millions of people are here, one of the big complaints is that their hearing will not come up for 1,000 days, or whatever, three or four years. Does the President have the power, if he wished to, to simply say all the hearings are going to be in one month, and designate enough people to hear these? If you basi-

cally came up with a rule and said Cuba is eligible and Venezuela is eligible and nobody else is eligible, and the proceeding will now be that you show up and someone is going to ask you where you are from, and if you can prove you are from Cuba or Venezuela you are going to get a hearing, if you do not your hearing is over and concluded, and there is a much speeding up of the process.

We will start with Mr. Cuccinelli. Do you think that power exists? Would that be something you would recommend?

Mr. CUCCINELLI. It is a good question. It is probably a close question about whether that power exists. It would certainly be litigated, of course, because everything will be litigated. But I believe there is already existing a lot more authority by the President to not consider asylum petitions from various countries. Whether that is by the third country regulation being reinstated—so if you pass through Mexico and you do not apply for asylum there, you do not get to apply for asylum here.

That was extremely effective. But it was lost in the wash, statistically, of COVID. We are looking at one program, but there were other programs. For example, expedited removal was also used more heavily starting in 2019.

It is hard sometimes to disentangle the data. I think the DHS report about the success of MPP is your best conclusive source of information for how that was successful, and the fact that it was very successful in keeping people out and deterring others from coming in.

Chairman PAUL. On the same lines, Mr. Arthur, if the definitional change can be controlled by the President, would this help with the expediting of all these cases, instead of 1,000 days, going back to the 36 days you talked about, if we just make the job easier. I frankly think most of these people, by definition, should be ineligible for the process, and that is what we should do, moving forward.

But even looking backwards, we tell people, “Your detention hearing is next month,” and you are supposed to go back to where you came in illegally. If that is in Texas, you are supposed to go back. It would be a directive for people, at least those who are going to voluntarily do as they are told, to go back. It would also be a law that if they break that law, and you tell them they have to be there in two months, and they are not there, I would think then you have grounds for no hearing. They have broken a law that is the law, and now they would be immediately deported, wherever they are.

But what do you think about the President’s power to have a definitional change and whether or not we could expedite or move their dates up on detention hearings?

Mr. ARTHUR. Sure, absolutely. The first thing it is important to note, and many of you may not be aware of this, the law already says asylum claims are supposed to be heard, from beginning to end, in 180 days. So they have just ignored Congress’ admonition with respect to that.

Chairman PAUL. Say that again, between and two and 180?

Mr. ARTHUR. No, within 180 days.

Chairman PAUL. Within 180.

Mr. ARTHUR. From beginning to end, 180 days.

Chairman PAUL. OK.

Mr. ARTHUR. But the other part of that is, the way that the asylum statute is written it has two parts. One, anybody could apply. Then there is a separate section for who can be granted. The potential argument is, yes, the President can say anybody can apply, but only these people can be granted.

Now it is going to get litigated. It was litigated the last time and never got up to the Supreme Court. The President used his 212(f) powers to prevent people from applying for asylum. Mr. Cuccinelli knows all about that.

But it got to the Ninth Circuit, and it was stopped at the Ninth Circuit. Respectfully toward the judges, it was an awful decision. It was just poorly reasoned. Had it gone to the Supreme Court I think it would have gotten overturned.

Basically, though, that is what the Biden administration is doing right now. Mr. Isacson has referred to that. We are not allowing those individuals to apply for asylum, with exceptions. But they came too late to that conclusion.

Chairman PAUL. Mr. Isacson.

Mr. ISACSON. I mean, sure, you have 1.5 million or more asylum cases pending. That is a matter of appropriations. You have to have the capacity. You have to have people, no matter what you are doing.

Now, banning certain countries, I personally do not think the statute backs that up. 212(f) appears to be usable to block someone from coming to the United States, but once they are here asking for protection, that is a different case. I think this would be litigated to death if you were to try that.

Chairman PAUL. I think the hearing has been useful and very informative. Thank you all for coming. We are going to vote here in just a couple of minutes.

Before we adjourn, if anybody has a pressing question, we will start with Senator Peters. Anything else? Anybody else on this side? Yes, Senator Moreno.

Senator MORENO. Yes, if I could just add. Maybe a recap of what we agree on would be worthwhile. I think there is broad consensus that you should only be able to claim asylum at a legal port of entry and that you should be barred from claiming asylum at a legal port of entry if you have not made that application in Mexico. Would you agree with that, Mr. Cuccinelli?

Mr. CUCCINELLI. Absolutely. In terms of incoming flow, it would do an awful lot to throttle the numbers, most particularly targeting really baseless cases. I should note, since this was an MPP-focused hearing, when you look at the asylum claims that came out of MPP, they were granted at something like a tenth or less of the rate of just the average asylum caseload. Those are decided by the exact same case officers and judges as decide all the other cases.

MPP successfully screened out an awful lot of fraudulent asylum seekers, and the numbers bear that out.

Mr. ARTHUR. Senator, I would note the fact that every country in the Western Hemisphere, except for Cuba, an island, and Guyana, an enclave on the coast, grant some sort of asylum. If you need protection, you can go to any of those countries. People cross through 7, 8, 10, 20 countries to come here. Colombia, your home

country, grants asylum. You can go there. You do not have to come here. You do not have to take the risk, and risk your children.

Mr. ISACSON. Many do. Yes, 20 million people in migration around the whole region, and they are not all coming here.

But your question, I mean, should people be able to just come to a port of entry instead, and that be the only way? Yes. I think we would need a lot more capacity than we have right now at ports of entry, so you do not have people in Mexico, and in Mexico for so many months. You would have to have some exception for the most vulnerable, the people who are the most critically urgent cases—I will die if I stay here.

Senator MORENO. But that is not going to be the situation if they are in Mexico, because we have just discussed the fact that Mexico is a safety country, in which you can go to a different part of Mexico. They have also somehow made it to Mexico, which, in and of itself, is a pretty incredible accomplishment for somebody who in that kind of grave danger. You have traversed nine countries to make it to the Northern border of Mexico.

I think we have broad consensus there.

One last thing, Mr. Chair, if you can indulge me. We can also agree that Congress should not be absolved. I think you said it, Mr. Cuccinelli. What is preventing Congress from just passing laws so that we do not need to have Executive Orders to solve our immigration problem?

Mr. CUCCINELLI. That is a separate question.

Senator MORENO. We are going to have to have a conversation after this.

Mr. CUCCINELLI. Yes.

Senator MORENO. Freshman question.

Mr. CUCCINELLI. I would just note that when I was the Acting Deputy Secretary, many of your colleagues would call me on the annual H-2B, for example. I would get pitched and pitched and pitched, because you all would give the Secretary the authority to raise that number, one year at a time. Every single Senator, I said the same thing—“This is your job. This is not my job. You are supposed to tell us the number.” “I know, but we just cannot manage it.”

Every single Senator, and I talked to maybe a half dozen, all conceded that the process was not working for the Congress to be legislating on those things. You have noted areas of agreement. Looking back 20 years, one of them is literally the physical ports of entry. Mr. Isacson mentioned capacity.

There is also the question of physical capacity at the ports of entry, that I think you can probably achieve by partisan agreement, on updating and upgrading those. You do need to do that, and if you are going to do the southbound, I will call it inspections, you must expand your ports of entry. If you do that southbound type of investigation that Senator Hassan was talking about, you take Mexico’s biggest excuse off the table. That is their biggest national government excuse, and by that I mean for the U.S. Government.

But that is something that needs to happen, and to use things like the non-intrusive technology for doing those searches at the

border can happen a lot faster. But it going to take upgrading those facilities. They are long overdue for it.

Chairman PAUL. Senator Lankford.

Senator LANKFORD. Yes, no, we are wrapping this up, but thanks, you all, for the testimony and the work and the research that you have all done on it. What I did hear as common ground, is Congress needs to re-look at the TVPRA, and say we have got to be able to figure this out. Right now, if a child comes from Mexico, we return them back to their parents in Mexico. If a child comes from Guatemala, even if they have got a parent in Guatemala, we keep them here. And that just makes no sense. And I have heard over and over again from governments in Central America saying to me, point blank, "Give us our children back. Why does the United States keep our children?" We have got to be able to figure that part out, and that should not be hard for us.

And the other one I have heard is the designated terror organization trying to be able to figure out how do we actually get this resolved, that we can put more financial pressure on these cartels on it.

So thanks again for the testimony.

Chairman PAUL. I would like to thank our witnesses for joining us here today, for their testimony and expertise.

The record for this hearing will remain open for 15 days, until 6 p.m. on Thursday, January 23, for the submission of statements and questions for the record.

The hearing is now adjourned. We will meet again in about 2 minutes to begin our markup on voting.

[Whereupon, at 10:57 a.m., the hearing was adjourned.]



# A P P E N D I X

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**Ranking Member Peters Opening Statement as Prepared for Delivery  
Full Committee Hearing:  
Remain in Mexico  
Date: January 16, 2025**

Thank you, Chairman Paul.

As a member of this Committee, I've long made securing our borders a top priority. I've been pleased to work with members on both sides of the aisle to advance bipartisan, commonsense legislation that strengthens border security and provides tools and resources to support our border security professionals as they carry out their challenging missions. I look forward to working together to continuing those efforts this Congress.

I recognize that we face significant challenges at our Southern Border, and I'm committed to working in a bipartisan way to address those challenges.

Today we're discussing the policy known as "Remain in Mexico" which was created during the first Trump Administration and first implemented in 2019. Under this policy, certain migrants seeking asylum at the U.S.-Mexico border were processed and returned to Mexico to wait for their next immigration court hearing in the United States.

Although billed as means of deterring migrants, the policy's real success was dumping fuel onto the fire of cartel activity in Mexico.

This particular policy accelerated dangerous, illegal activity lead by cartels in Mexico even more. It's estimated that these cartels have raked in billions of dollars from this criminal activity through drug trafficking, extortion, human trafficking and smuggling, and ransom kidnappings of asylum seekers.

After the implementation of the Remain in Mexico policy, a report documented more than 1,500 allegations of violent harm caused by cartels including homicide, sexual assault, and kidnapping – in just a couple years.

There are also numerous reports of cartels extorting asylum seekers for thousands of dollars, so they won't be murdered by the cartels while they waited in Mexico for their scheduled immigration hearings often over the course of several months.

Although today we are discussing a policy and its impact in Mexico, we know that cartels bring their criminal activity across our borders and into our communities in the United States.

We should not implement policies that will further enrich cartels and enable their violent criminal enterprises on either side of the border. We should be focused on policies that help frontline DHS personnel get ahead of these dangerous cartels.

I'm committed to working in a bipartisan way to find commonsense solutions that strengthen border security – streamline our immigration and asylum processes and ensure DHS personnel have the tools and resources they need to complete their national security missions.

I appreciate our witnesses for sharing their testimony today and for contributing to our discussion on securing our borders.

Opening Statement of Hon. Kenneth Cuccinelli  
for Senate Committee on Homeland Security for January 16, 2025

Mr. Chairman and Members of the Committee, thank you for inviting me to discuss challenges and opportunities in dealing with illegal immigration as we look forward to the second swearing in of Donald Trump as President of the United States next Monday.

The President of the United States has vast authority to secure America's borders, to determine who may enter our country, and under what conditions they may enter.

As one example, a President could re-establish the so-called Remain in Mexico program that did so much in the latter part of 2019 to drive down illegal alien efforts to even enter the United States. And I want to emphasize how important it is that the world knows a President is serious about keeping illegal aliens out. When someone somewhere in the world is contemplating spending large portions of their life savings to try and illegally enter the United States, they want to know they have a good chance for success before giving away their money and taking that risky trip.

The real success of programs like the Remain in Mexico program is not just that they screen out fake asylum seekers, but that they help deter illegal aliens from coming in the first place. The goal of true border security is to be so effective at keeping attempted illegal entrants out, that they never try to come in the first place.

In that vein, the fastest improvement that the new administration could make is at the border itself. The swearing in of Donald Trump to the Presidency will instantly convert the 20,000 men and women of the Border Patrol from the world's largest group of greeters, back into law enforcement officers whose goal is to actually defend the border, instead of facilitating an ongoing invasion. If they are supplemented immediately by military personnel and assets moved to the border, who actually block illegal entrants instead of uselessly "backing up" the Border Patrol – then America's Southern border could be effectively sealed to illegal alien traffic and most of the accompanying drug traffic between the legal ports of entry in a matter of weeks.

It would be a historic accomplishment and it is absolutely attainable. Literally the only thing required is a President with the political will to do it, and I expect that such a President will be sworn in next week.

Let me say that a different way. The assets and authorities needed to completely secure our Southern border between the legal ports of entry already exist, with no additional legislation or funding needed.

But securing the Southern border is only step one. Every "pull factor" should be eliminated at both the federal and state level. And I might add, that given the fact that this government is so hopelessly bankrupt, a good place to start is to end every dollar of spending for immigrants of

any kind, first the illegals, but also even legal immigrants. This Congress might as well begin to adjust to the day when severe cuts are necessary across the board – best to start by cutting spending on non-Americans as soon as possible (given that such cuts are already overdue).

Perhaps the single biggest pull factor is work permits. The administration can ensure that only properly vetted and qualified recipients ever receive work permits by regulation, which is the primary source of implementable authority in this area. Work permits need to be as severely restricted as the law allows – specifically, to only those aliens who have already established their legal authority to be present in the United States – coupled with turning a majority of all HSI agents to workplace enforcement with charges brought against American businesses using illegal aliens in lieu of American workers, in addition of course to identifying and deporting those here illegally.

Reinstating third-country asylum is critical to keeping the inflow of new cases down, while the Trump administration works with Congress to build the capacity needed to finally catch up on the caseload of illegal aliens already present in the United States – a situation that is both dangerous and expensive. This involves expanded deportation capacity (e.g., more immigration judges, prosecutors and logistical support) as President Trump has laid out the largest domestic logistical undertaking of our lifetimes, that being the deportation of the vast majority of illegal aliens present in the United States.

If the incoming administration makes significant progress on its deportation goals – likely only with the cooperation and assistance of Congress – then America will reap the benefits in greater security, lower crime, more job opportunities for poor Americans, higher wages for poor Americans (as we saw in 2019) and more predictable and manageable budgets for state and local governments that are so severely affected by the invasion of illegal aliens that America has suffered for so many years.

I am happy to answer any questions that you may have.

Testimony of Andrew R. Arthur  
Resident Fellow in Law and Policy  
Center for Immigration Studies

To the Committee on Homeland Security and Governmental Affairs  
United States Senate

For A Hearing Titled:

“Remain in Mexico”

March 7, 2024

9:00 a.m.

Room SD-342, Dirksen Senate Office Building

Washington, D.C. 20515

Chairman Paul, Ranking Member Peters, and members of the committee, thank you for inviting me here today to discuss the Migrant Protection Protocols (MPP), better known as “Remain in Mexico”.

#### Congress’ Plenary Authority Over Immigration

Key to understanding any border policy is identifying where U.S. immigration authority is placed under our nation’s constitutional order.

Article I, sec. 8 of the U.S. Constitution<sup>1</sup> states, in pertinent part: “The Congress shall have Power . . . [t]o establish a uniform Rule of Naturalization [and t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers”.

“Naturalization”<sup>2</sup> is the process by which a foreign national in the United States—defined as an “alien” in section 101(a)(3) of the Immigration and Nationality Act (INA)<sup>3</sup> — becomes a “citizen” (as defined by reference therein and in section 101(a)(22) of the INA<sup>4</sup>).

Inherent in and essential to Congress’ constitutional authority “to establish a uniform Rule of Naturalization”, therefore, is its ability and power to regulate immigration.

As the Congressional Research Service (CRS)<sup>5</sup> has explained: “Long-standing Supreme Court precedent recognizes Congress as having plenary power<sup>6</sup> over immigration, *giving it almost complete authority to decide whether foreign nationals* (aliens, under governing statutes and case law) *may enter or remain in the United States*” (emphasis added). Reference to Supreme Court precedent illustrates the point.

In its 1954 opinion in *Galvan v. Press*<sup>7</sup>, the Court explained:

*Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the*

<sup>1</sup> U.S. CONST. art. 1, § 8. Source: <https://uscode.house.gov/static/constitution.pdf>.

<sup>2</sup> *Citizenship and Naturalization*. U.S. CITIZENSHIP AND IMMIGRATION SERVS. (updated Jul. 5, 2020). Source: [https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization#:~:text=Naturalization%20is%20the%20process%20by,and%20Nationality%20Act%20\(INA\).](https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization#:~:text=Naturalization%20is%20the%20process%20by,and%20Nationality%20Act%20(INA).)

<sup>3</sup> See sec. 101(a)(3) of the INA (2024) (“The term ‘alien’ means any person not a citizen or national of the United States.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

<sup>4</sup> See section 101(a)(22) of the INA (2024) (“The term ‘national of the United States’ means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

<sup>5</sup> *Constitution Annotated, Artl. S8.C18.8.1 Overview of Congress's Immigration Powers*. CONGRESSIONAL RESEARCH SERV. (undated). Source: [https://constitution.congress.gov/browse/essay/artl-S8-C18-8-1/ALDE\\_00001255/](https://constitution.congress.gov/browse/essay/artl-S8-C18-8-1/ALDE_00001255/).

<sup>6</sup> See “*plenary power*”. LEGAL INFORMATION INSTITUTE (undated) (“Complete power over a particular area with no limitations.”). Source: [https://www.law.cornell.edu/wex/plenary\\_power](https://www.law.cornell.edu/wex/plenary_power). See generally, Feere, Jon. *Plenary Power: Should Judges Control U.S. Immigration Policy?* CENTER FOR IMMIGRATION STUDIES (Feb. 25, 2009). Source: <https://cis.org/Report/Plenary-Power-Should-Judges-Control-US-Immigration-Policy>.

<sup>7</sup> *Galvan v. Press*, 347 U.S. 522, 532. (1954). Source: <https://supreme.justia.com/cases/federal/us/347/522/>.

*procedural safeguards of due process. But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government. [Emphasis added.]*

Similarly, the Court noted in its 1972 opinion in *Kleindienst v. Mandel*<sup>8</sup> that, “The Court without exception has sustained Congress’ ‘plenary power to make rules for the admission of aliens and **to exclude those who possess those characteristics which Congress has forbidden**’” (emphasis added).

In other words, when it comes to allowing aliens to enter, remain in, and become citizens of the United States, Congress makes the rules, and the executive branch must carry them out using the tools Congress has given it.

Section 212(a) of the INA<sup>9</sup> lists the various categories of aliens whom Congress has determined the executive should bar from admission to the United States (known collectively as the “grounds of inadmissibility”).

The most fundamental of those grounds, and the one that Congress uses to control the flow of new immigrants into the United States, is section 212(a)(7)(A)(i) of the INA<sup>10</sup>, which bars the admission of any alien “who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document”.

Congress’s Inspection Protocol for “Applicants for Admission” in Section 235 of the INA

To guide the executive in implementing its “policies pertaining to the entry of aliens”, Congress created an inspection protocol in section 235 of the INA<sup>11</sup> for U.S. Customs and Border Protection (CBP) to follow in considering whether to admit alien “applicants for admission”<sup>12</sup>.

That statutory term, “applicant for admission”, applies to both aliens seeking admission at the ports of entry and migrants apprehended crossing the land and coastal borders between those ports<sup>13</sup>-- a fact essential to understanding the control of migration at the Southwest border.

Some historical background puts that process and the points below into focus and explains why Congress meant for the current iteration of the inspection protocol in section 235 of the INA to apply equally to inadmissible aliens at the ports and illegal entrants apprehended between them.

<sup>8</sup> *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Source: <https://supreme.justia.com/cases/federal/us/408/753/>.

<sup>9</sup> Sec. 212 of the INA (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>10</sup> *Id.* at cl. (a)(7)(A)(i).

<sup>11</sup> Sec. 235 of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>12</sup> *See id.* at para. (a)(1) (“An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.”).

<sup>13</sup> *See id.*

Section 302 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA)<sup>14</sup>, the primary source of the current statutory inspection protocol in section 235 of the INA, eliminated prior legal precedents that had treated aliens entering illegally *between the ports* differently from those seeking admission *at the ports*.

Prior to that amendment, officers in the then-Immigration and Naturalization Service (INS)<sup>15</sup> — the precursor to CBP and U.S. Immigration and Customs Enforcement (ICE) in immigration enforcement — were required to apply a factual and legal analysis known as the “entry doctrine”<sup>16</sup> when they encountered aliens at the borders and the ports.

As its name suggests, the focus of the entry doctrine was on whether an alien had physically “entered” the United States<sup>17</sup>, and the circumstances surrounding that entry.

Under that doctrine, aliens who had not made an entry into the United States were placed into exclusion proceedings under then-section 236 of the INA<sup>18</sup> and afforded few constitutional protections.<sup>19</sup> Aliens who deliberately entered the country — even illegally — “free from actual and constructive restraint”<sup>20</sup> were placed into deportation proceedings under then-section 242 of the INA<sup>21</sup>, in which they received greater rights and procedural benefits.

Application of the entry doctrine was straightforward in the case of an alien stopped at a port seeking admission, because ports were treated as the de facto “doorstep” of the United States, and thus while aliens were there, they had not entered and could be excluded.<sup>22</sup>

<sup>14</sup> Tit. III, sec. 302 of the Illegal Immigration Reform and Immigrant Responsibility Act, Div. C of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208 (1996), 110 Stat. 3009–579 to 584. Source: <https://www.congress.gov/104/plaws/publ208/PLAW-104publ208.pdf>.

<sup>15</sup> See *Overview of INS History*. USCIS HISTORY OFFICE AND LIBRARY (undated) (“The Homeland Security Act of 2002 disbanded INS on March 1, 2003. Its constituent parts contributed to 3 new federal agencies serving under the newly [f]ormed Department of Homeland Security (DHS): 1. Customs and Border Protection (CBP), 2. Immigration and Customs Enforcement (ICE), and 3. U.S. Citizenship and Immigration Services (USCIS).”). Source: <https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf>.

<sup>16</sup> Wiegand III, Charles A. *Fundamentals of Immigration Law*. U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (revised Oct. 2011). Source: [https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/Fundamentals\\_of\\_Immigration\\_Law.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/Fundamentals_of_Immigration_Law.pdf).

<sup>17</sup> *Id.* at 1.

<sup>18</sup> See sec. 236 of the INA (1952). Source: <https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf>.

<sup>19</sup> See *generally Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law. . . . But an alien on the threshold of initial entry stands on a different footing: ‘Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”) (citations omitted). Source: <https://supreme.justia.com/cases/federal/us/345/206/>.

<sup>20</sup> *Matter of Pierre*, 14 I&N Dec. 467 (BIA 1973). Source: [https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/Fundamentals\\_of\\_Immigration\\_Law.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/Fundamentals_of_Immigration_Law.pdf).

<sup>21</sup> See sec. 242 of the INA (1952). Source: <https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf>.

<sup>22</sup> See fn. 19 (*Shaughnessy*).

Applying the entry doctrine was challenging, however, in cases involving aliens who had entered illegally.<sup>23</sup> Did the alien “actually and intentionally evade inspection”? Was the alien “free from official restraint”?<sup>24</sup> Application of the entry doctrine was more art than science, requiring a resource-intensive analysis of often disputed facts.

In its IIRIRA amendments to section 235 of the INA, Congress dispensed with this confusion by treating all “arriving aliens” — those at the ports and those apprehended entering illegally between them — as applicants for admission<sup>25</sup>, subject to what the INA post-IIRIRA refers to as “inadmissibility” under section 212 of the INA.

Congress also replaced exclusion and deportation proceedings with a single proceeding at which an alien’s inadmissibility or deportability was determined and eligibility for relief could be assessed, known as “removal proceedings” under section 240 of the INA.<sup>26</sup>

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<sup>23</sup> See *Matter of G-*, 20 I&N Dec. 764 (BIA 1993) (“The grounding of a vessel 100 or more yards off shore with its passengers facing a hazardous journey to land does not of itself constitute an entry into the United States. In the case of the *Golden Venture*, an alien will be found to have been ‘free from official restraint’ if he establishes that he was among the first of the ship’s occupants to reach the shore, that he landed on a deserted beach, or that he managed to flee into a neighboring community. In contrast, an alien who was escorted off the *Golden Venture*, pulled from the water by rescue personnel, or who landed in the cordoned-off area of the beach after it was secured will not be found to have been ‘free from official restraint,’ as his movements were restricted to the immediate vicinity of the beach that was cordoned-off and controlled by the enforcement officers of the various governmental organizations present at the site to prevent the ship’s occupants from absconding. In a case where there is no clear evidence of the facts determinative of the entry issue, the case ultimately must be resolved on where the burden of proof lies. Where there is no evidence that an alien, who arrives at other than the nearest inspection point, deliberately surrenders himself to the authorities for immigration processing, or that, once ashore, he seeks them out, voluntarily awaits their arrival, or otherwise acts consistently with a desire to submit himself for immigration inspection, actual and intentional evasion of inspection at the nearest inspection point may be found.”). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3215.pdf>.

<sup>24</sup> See *id.*

<sup>25</sup> See Sec. 235(a)(1) of the INA (2024) (“Aliens treated as applicants for admission. An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>26</sup> See Sec. 240(a)(1) of the INA (2024) (“Removal proceedings. (a) Proceeding (1) In general. An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>. See also *Cruz-Miguel v. Holder*, 650 F.3d 189, 197 (2d Cir. 2011) (“IIRIRA eliminated the bright-line distinction between exclusion and deportation, merging the two into proceedings for ‘removal’ and replacing the definition of ‘entry’ with that for ‘admission’. . . . After IIRIRA, both aliens arriving at the border and aliens already present in the United States without inspection are deemed ‘applicants for admission,’ . . . who must ‘be inspected by immigration officers’ to determine their admissibility. . . . If, upon such inspection, an alien is not ‘clearly and beyond a doubt’ admissible, he must be placed in removal proceedings.”) (citations omitted). Source: <https://casetext.com/case/cruz-miguel-v-holder>.

A key component of that post-IIRIRA inspection protocol is section 235(a)(3) of the INA<sup>27</sup>, which mandates that all applicants for admission be “inspected by immigration officers” to determine whether they’re inadmissible under any of the grounds in section 212(a) of the INA.

Consequently (and critically), under the inspection protocol in section 235 of the INA, the term “immigration officer” applies equally to both agents in the U.S. Border Patrol (“USBP”, a CBP component) and CBP officers in the agency’s Office of Field Operations (OFO)<sup>28</sup>, the latter of which has authority over the ports of entry.

Therefore, and regardless of whether the “immigration officers” performing inspections are USBP agents or OFO CBP officers, their job is the same — to keep inadmissible aliens from entering the United States.

If, following that inspection in section 235(a)(3) of the INA, an immigration officer determines that an applicant for admission lacks proper entry documents and is inadmissible under section 212(a)(7)(A)(i) of the INA or is seeking admission via misrepresentation or fraud and is therefore inadmissible under section 212(a)(6)(C) of the INA<sup>29</sup>, that officer has a choice.

Section 235(b)(1)(A)(i) of the INA<sup>30</sup> allows the officer to “order the alien removed from the United States without further hearing or review” -- and without CBP first obtaining a removal order from an immigration judge, which is the general rule in cases involving removable aliens<sup>31</sup>-- “unless the alien indicates either an intention to apply for asylum ... or a fear of persecution”. This process is known as “expedited removal”.

If an alien subject to expedited removal requests asylum or claims a fear of harm if returned, the CBP immigration officer must “refer the alien for an interview by an asylum officer” from U.S.

<sup>27</sup> Sec. 235(a)(3) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>28</sup> See *Office of Field Operations, What We Do*. U.S. CUSTOMS AND BORDER SECURITY (undated) (“U.S. Customs and Border Protection Officers are responsible for America’s border security at ports of entry, safeguarding our country and communities from terrorism, illegal activity, narcotics and human trafficking.”). Source: <https://www.cbp.gov/careers/fofo/what-we-do>.

<sup>29</sup> See Sec. 212(a)(6)(C)(i) of the INA (2024) (“Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible”; *id.* at subcl. (ii)(I) (“In general. Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>30</sup> Sec. 235(b)(1)(A)(i) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>31</sup> See section 240(a)(3) of the INA (2024) (“Removal proceedings. . . Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

Citizenship and Immigration Services (USCIS), pursuant to section 235(b)(1)(A)(ii) of the INA<sup>32</sup>, to determine whether that alien has a “credible fear of persecution”.

The term “credible fear of persecution” is defined in section 235(b)(1)(B)(v) of the INA<sup>33</sup> as “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under” section 208 of the INA. Thus, it is a screening standard, to determine whether the alien *may* be eligible for asylum.

Congress is clear, however, in section 235(b)(1)(B)(iii)(V) of the INA<sup>34</sup>, that aliens “*shall be detained* pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed”, and is equally clear in section 235(b)(1)(B)(ii) of the INA<sup>35</sup> that if an asylum officer “determines at the time of the interview that an alien has a credible fear of persecution ... the alien *shall be detained for further consideration of the application for asylum*” (emphasis added).

The detention of aliens subject to expedited removal is critical to the credibility of this process because credible fear is simply intended to screen asylum claims—not resolve them—because asylum is susceptible to fraud<sup>36</sup> and there is not enough time to probe for that fraud during the credible fear interview.

Releasing aliens who receive positive credible fear determinations prior to a decision on their applications for protection incentivizes other would-be inadmissible applicants for admission to make weak or bogus claims to gain entry—a clear abuse of humanitarian relief under U.S. law.

With only extremely limited exceptions<sup>37</sup>, the “consideration of the application for asylum” made by an alien who had been subject to expedited removal under section 235(b)(1) of the INA is performed by an immigration judge in removal proceedings under section 240 of the INA<sup>38</sup>.

<sup>32</sup> Sec. 235(b)(1)(A)(ii) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>33</sup> Sec. 235(b)(1)(B)(v) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>34</sup> Sec. 235(b)(1)(B)(iii)(V) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>35</sup> Sec. 235(b)(1)(B)(ii) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>36</sup> See *DHS v. Thuraissigiam*, 591 U.S. \_\_\_\_ slip. op. at 1 (2020) (“Every year, hundreds of thousands of aliens are apprehended at or near the border attempting to enter this country illegally. Many ask for asylum, claiming that they would be persecuted if returned to their home countries. Some of these claims are valid, and by granting asylum, the United States lives up to its ideals and its treaty obligations. Most asylum claims, however, ultimately fail, and some are fraudulent.”). Source: [https://www.supremecourt.gov/opinions/19pdf/19-161\\_g314.pdf](https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf).

<sup>37</sup> Arthur, Andrew. *Biden Administration to ‘Pause’ Radical Asylum Officer Rule*. CENTER FOR IMMIGRATION STUDIES (Apr. 15, 2023). Source: <https://cis.org/Arthur/Biden-Administration-Pause-Radical-Asylum-Officer-Rule>.

<sup>38</sup> See sec. 240 of the INA (2024) (“Removal proceedings”); see also *id.* at para. (a)(1) (“An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.”); *id.* at para. (c)(4) (“Applications for relief from removal”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

The other choice that the immigration officer during the inspection protocol in section 235 of the INA —again, either an OFO CBP officer at the ports or a USBP agent between them— has in the case of an “applicant for admission” who is inadmissible under sections 212(a)(7)(A)(i) or 212(a)(6)(C) of the INA is to treat that applicant like any other inadmissible alien, and to place the alien directly into section 240 removal proceedings, a procedure Congress provided for in section 235(b)(2)(A) of the INA<sup>39</sup>.

That option is key to my analysis *infra*.

#### Parole

Although section 235(b) of the INA requires DHS to detain inadmissible applicants for admission, Congress has given DHS extremely limited authority in section 212(d)(5)(A) of the INA<sup>40</sup> to “parole” individual aliens into the United States in exceptional or emergent circumstances.

That provision<sup>41</sup> states, in pertinent part, that the DHS secretary:

*[M]ay, in his discretion parole into the United States temporarily under such conditions as he may prescribe **only on a case-by-case basis for urgent humanitarian reasons or significant public benefit** any alien applying for admission to the United States, but **such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the [DHS secretary], have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.** [Emphasis added.]*

The statutory limitations on DHS’s parole authority are apparent from the language highlighted above, but they bear analysis, nonetheless.

First, parole may only be granted “on a case-by-case basis”<sup>42</sup>, and thus may not be issued on a blanket basis to allow the entry of large numbers of aliens *en masse*, or programmatically to parole a class of aliens.

<sup>39</sup> See section 235(b)(2)(A) of the INA (2024) (“in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a” removal proceeding under section 240 of the INA) (emphasis added). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>40</sup> Sec. 212(d)(5)(A)(1) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1182&num=0&edition=prelim>.

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

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

Second, DHS may only release an alien on parole for either “urgent humanitarian reasons” or for “significant public benefit”<sup>43</sup>. Granting parole for any other purpose is thus *ultra vires*<sup>44</sup>, as it exceeds the statutory parole authority.

Third, an alien granted parole is not “admitted” to the United States, and therefore—as a legal matter—remains in the same immigration status the alien held when that parole was granted.

As the Fifth Circuit has explained:

*parole creates something of legal fiction; although a paroled alien is physically allowed to enter the country, the legal status of the alien is the same as if he or she were still being held at the border waiting for his or her application for admission to be granted or denied.*<sup>45</sup>

Consequently, an alien apprehended entering illegally without proper documents (as nearly all are, because if they had proper admission documents, they would not have to enter illegally) or who has been deemed inadmissible at a port of entry under section 212(a)(7)(A)(i) of the INA, and who has been paroled, remains amenable to expedited removal once “the purposes of such parole . . . have been served” and parole is revoked.

Congress provided the executive branch parole authority when it initially enacted the INA in 1952<sup>46</sup>, with the original language in the parole statute reading as follows:

*The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States. [Emphasis added.]*

The secretary of Homeland Security, both *de facto* and *de jure*, succeeded the attorney general as the executive-branch officer given the statutory authority to grant parole under the Homeland Security Act of 2002 (HSA)<sup>47</sup>, even though the current text continues to show that the attorney general holds that authority.

<sup>43</sup> *Id.*

<sup>44</sup> See “*ultra vires*”. LEGAL INFORMATION INSTITUTE (undated) (“Latin, meaning “beyond the powers.” Describes actions taken by government bodies or corporations that exceed the scope of power given to them by laws or corporate charters.”). Source: [https://www.law.cornell.edu/wex/ultra\\_vires](https://www.law.cornell.edu/wex/ultra_vires).

<sup>45</sup> *Duarte v. Mayorkas*, 27 F.4th 1044, 1058 (5th Cir. 2022). Source: <https://casetext.com/case/duarte-v-mayorkas-12>.

<sup>46</sup> Sec. 212(d)(5) of the Immigration and Nationality Act of 1952, Pub. L. 88-414, 66 Stat. 188 (1952). Source: <https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf>.

<sup>47</sup> Homeland Security Act of 2002, Pub. L. 107-206 (2002). Source: <https://www.congress.gov/bill/107th-congress/house-bill/5005/text>; see also *id.* at sec. 471(a) (“Upon completion of all transfers from the

Most importantly, however, the highlighted text in the current parole provision reveals the tighter limits Congress has placed on the DHS secretary in granting parole in the intervening seven decades.

As my colleague, George Fishman, has explained<sup>48</sup>, Congress has more rigidly cabined the parole authority since 1952 because various administrations have abused that power to bypass Congress' plenary power over immigration and exceed the limits it has set on the annual admission of immigrants.

You don't have to trust Mr. Fishman about Congress' intentions, however. The current language of the parole statute was included in IIRIRA<sup>49</sup>, under the title "Limitation on the Use of Parole"<sup>50</sup>.

In addition, in its 2011 opinion in *Cruz-Miguel v. Holder*<sup>51</sup>, the Second Circuit described how Congress in IIRIRA had amended the parole statute and explained why it had constrained the executive's parole power therein:

*IIRIRA struck from [section 212(d)(5)(A) of the INA] the phrase "for emergent reasons or for reasons deemed strictly in the public interest" as grounds for granting parole into the United States and inserted "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." . . . The legislative history indicates that this change was animated by concern that parole under [section 212(d)(5)(A) of the INA] was being used by the executive to circumvent congressionally established immigration policy. [Citations omitted.]*

That raises the question, however, about what Congress intended by its use of the terms "urgent humanitarian reasons" and "significant public benefit" in the parole statute.

Fortunately, the then-INS explained in detail what their predecessor phrases-- "emergent reasons" and "reasons deemed strictly in the public interest" -- meant in promulgating<sup>52</sup> the first parole regulation in 1982:

*The legislative history of the parole provision shows a Congressional intent that parole be used in a restrictive manner. The drafters of the Immigration and Nationality Act of 1952 gave as examples situations where parole was warranted in cases involving the need for immediate medical attention, witnesses, and aliens*

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Immigration and Naturalization Service as provided for by this Act, the Immigration and Naturalization Service of the Department of Justice is abolished.")

<sup>48</sup> Fishman, George. *The Pernicious Perversion of Parole, A 70-year battle between Congress and the president*. CENTER FOR IMMIGRATION STUDIES (Feb. 16, 2022). Source: <https://cis.org/Report/Pernicious-Perversion-Parole>.

<sup>49</sup> Tit. VI, sec. 602 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, div. C of Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208, 110 Stat. 3009-689 (1996). Source: <https://www.congress.gov/104/plaws/publ208/PLAW-104publ208.pdf>.

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

<sup>51</sup> *Cruz-Miguel v. Holder*, 650 F.3d 189, 199 n.15 (2d Cir. 2011). Source: <https://casetext.com/case/cruz-miguel-v-holder>

<sup>52</sup> *Detention and Parole of Inadmissible Aliens; Interim Rule with Request for Comments*, 47 Fed. Reg. 30044 (Jul. 9, 1982). Source: <https://www.govinfo.gov/content/pkg/FR-1982-07-09/pdf/FR-1982-07-09.pdf#page=1>.

*being brought into the United States for prosecution. . . . In 1965, a Congressional committee stated that the parole provisions “were designed to allow the Attorney General to act only in emergent, individual, and isolated situations, such as in the case of an alien who requires immediate medical attention, and not for the immigration of classes or groups outside the limit of the law.”*

Thus, even prior to Congress tightening the executive’s authority to parole aliens into the United States in IIRIRA, the phrase “emergent reasons” was interpreted to apply only to aliens requiring “immediate medical attention”, and “reasons deemed strictly in the public interest” to apply to aliens being brought into the United States to participate in criminal proceedings here.

Plainly, as the Second Circuit explained, the IIRIRA amendments were intended to restrict the use of parole-- not in any way expand it.

I note, however, that the current iteration of the parole regulation, 8 CFR § 212.5<sup>53</sup>, states:

*(b) Parole from custody. The parole of aliens within the following groups who have been or are detained . . . would generally be justified only on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit,” provided the aliens present neither a security risk nor a risk of absconding: . . .*

*(5) Aliens whose continued detention is not in the public interest as determined by those officials identified in paragraph (a) of this section. [Emphasis added.]*

That seemingly broad regulatory catch-all parole authority, however, actually derives from the aforementioned 1982 regulatory amendment, when that provision<sup>54</sup> read as follows:

*The parole of aliens within the following groups would generally come within the category of aliens for whom the granting of the parole exception would be “strictly in the public interest”, provided that the aliens present neither a security risk nor a risk of absconding: . . .*

*(v) Aliens whose continued detention is not in the public interest as determined by the district director. [Emphasis added.]*

As I have explained elsewhere<sup>55</sup> that 1982 regulation was rushed through in a two-week period to comply with a district-court order in *Louis v. Nelson*.<sup>56</sup> Given that, it’s not surprising that

<sup>53</sup> 8 CFR § 212.5 (2024). Source: <https://www.law.cornell.edu/cfr/text/8/212.5>.

<sup>54</sup> See 8 CFR § 212.5(2) (1982) as amended by *Detention and Parole of Inadmissible Aliens; Interim Rule with Request for Comments*, 47 Fed. Reg. 30044 (Jul.9, 1982). Source: <https://www.govinfo.gov/content/pkg/FR-1982-07-09/pdf/FR-1982-07-09.pdf#page=1>.

<sup>55</sup> Arthur, Andrew. *The Slapdash, Court-Ordered 1982 Regulation that Drives Biden’s Parole Policies And why that regulation hasn’t been valid since April 1, 1997*. CENTER FOR IMMIGRATION STUDIES (Dec. 15, 2023). Source: <https://cis.org/Arthur/Slapdash-CourtOrdered-1982-Regulation-Drives-Bidens-Parole-Policies>.

<sup>56</sup> See *Louis v. Nelson*, 544 F. Supp. 973, 1003-04 (S.D. Fla. 1982) (“Plaintiffs have established that the new detention policy, whereby excludable aliens are placed in detention until they establish to INS’ satisfaction a prima facie claim for admission, was not adopted in accordance with the requirements of the Administrative Procedure Act. Because Defendants failed to give interested persons notice and an opportunity to comment on the new

when the predecessor provision to 8 CFR § 212.5(b)(5) was published, it was poorly drafted and failed to track the then-extant limitations on parole in section 212(d)(5)(A) of the INA (1982).

The Clinton administration did not correct that regulatory language following the IIRIRA amendments and it has actually been expanded by the Biden administration.

The only reading of that language that would not render it *ultra vires* would be as a reiteration of the existing bases for granting parole, that is, for emergency medical treatment or appearance at U.S. criminal proceedings, or for some analogous purpose. When expanded beyond that interpretation, or worse, treated as a catch-all release authority, however, it is plainly *ultra vires*.

#### Border Security Prior to the Biden Administration, and President Authorities

When President Biden took office, he inherited what his first USBP chief, Rodney Scott, described in a September 2021 letter to Senate leadership as “arguably the most effective border security in” U.S. history.<sup>57</sup> The new administration, Chief Scott complained, quickly allowed that security to “disintegrate” as “inexperienced political appointees” ignored “common sense border security recommendations from experienced career professionals.”<sup>58</sup>

The security Chief Scott described was the direct result of a series of border-related policies implemented by the Obama and Trump administrations.

#### *Detention*

As noted above, DHS is required by statute<sup>59</sup> to detain inadmissible applicants for admission, with an exception for cross-border returns pending removal proceedings under section 235(b)(2)(C)<sup>60</sup> that I will discuss *infra*.

The Biden administration has contended<sup>61</sup> that various “push factors”—external issues that drive migrants from their homes like “corruption, violence, trafficking, and poverty”—exacerbated by the “COVID-19 pandemic and extreme weather conditions” are to blame for the migrant surge over the past four years.

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detention policy and thereafter to promulgate that policy in the Federal Register 30 days prior to its implementation, the Court finds the rule pursuant to which Plaintiffs are incarcerated to be null and void.”).

Source: <https://law.justia.com/cases/federal/district-courts/FSupp/544/973/1686455/>.

<sup>57</sup> Letter from Rodney S. Scott to Sens. Charles Schumer, Mitch McConnell, Gary Peters, and Rob Portman (Sep. 11, 2021). Source: <https://justthenews.com/sites/default/files/2021-09/Honorable%20Rob%20Portman%20%20US%20Senate%20Security%20Concerns%20-%20Rodney%20Scott.pdf>.

<sup>58</sup> *Id.*

<sup>59</sup> See pp. 7-8, *supra*.

<sup>60</sup> Section 235(b)(2)(C) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>; see also pp. 24-25 *infra*.

<sup>61</sup> *U.S. Strategy for Addressing the Root Causes of Migration in Central America*. NAT’L SECURITY COUNCIL (Jul. 2021), at 1. Source: <https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf>.

In his March 8, 2023, opinion<sup>62</sup> in *Florida v. U.S.*—a state challenge to the administration’s border-release policies—Judge T. Kent Wetherell II of the of the U.S. District Court for the Northern District of Florida concluded, however that while:

*There were undoubtedly geopolitical and other factors that contributed to the surge of aliens at the Southwest Border, but [DHS’s] position that the crisis at the border is not largely of their own making because of their more lenient detention policies is divorced from reality and belied by the evidence. Indeed, the more persuasive evidence establishes that [DHS] effectively incentivized what they call “irregular migration” that has been ongoing since early 2021 by establishing policies and practices that all-but-guaranteed that the vast majority of aliens arriving at the Southwest Border who were not excluded under the Title 42 Order would not be detained and would instead be quickly released into the country where they would be allowed to stay (often for five years or more) while their asylum claims were processed or their removal proceedings ran their course—assuming, of course, that the aliens do not simply abscond before even being placed in removal proceedings, as many thousands have done.*<sup>63</sup>

The Biden border release policies are an outlier because while at times President Biden’s predecessors struggled to comply with the statutory detention mandate, they generally succeeded in doing so.

The Department of Justice (DOJ) submitted the following chart to the Supreme Court in *Biden v. Texas*<sup>64</sup> on June 6, 2022<sup>65</sup>, as an appendix to a letter from the solicitor general to the clerk of the court. DOJ filed that letter to correct factual errors the department had inadvertently included in prior filings:

<sup>62</sup> *Florida v. U.S.*, No. 3:21-cv-1066-TKW-ZCB, Opinion and Order (N.D. Fla. Mar. 8, 2023). Source: [https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0\\_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf).

<sup>63</sup> *Id.* at 21-22.

<sup>64</sup> See *Biden v. Texas*, 142 S.Ct. 2528 (2022). Source: [https://scholar.google.com/scholar\\_case?case=289845634240383977&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarrr](https://scholar.google.com/scholar_case?case=289845634240383977&hl=en&as_sdt=6&as_vis=1&oi=scholarrr).

<sup>65</sup> Letter from Petitioner to Clerk of the Court, *Biden v. Texas* (Jun. 6, 2022) (No. 21-954). Source: [https://www.supremecourt.gov/DocketPDF/21/21-954/227228/20220606154050875\\_Letter%2021-954%20%206-6-2022.pdf](https://www.supremecourt.gov/DocketPDF/21/21-954/227228/20220606154050875_Letter%2021-954%20%206-6-2022.pdf).

• Appendix 1: Encounters by Detention, Fiscal Years 2013-2021 (revised)

Fiscal Year	Total Encounters	Continuous Detention		Booked out prior to final outcome		Never Detained	
2013	448,433	365,717	82%	42,499	9%	40,217	9%
2014	497,292	346,916	70%	83,739	17%	66,637	13%
2015	400,731	266,451	66%	77,868	19%	56,412	14%
2016	492,626	281,108	57%	125,229	25%	86,289	18%
2017	366,581	205,624	56%	86,143	23%	74,814	20%
2018	460,388	247,219	54%	132,317	29%	80,852	18%
2019	851,368	282,514	33%	225,062	26%	343,792	40%
2020	210,623	138,542	66%	27,363	13%	44,718	21%
2021	525,193	52,340	10%	138,208	26%	334,645	64%
2013-2019	3,517,419	1,995,549	57%	772,857	22%	749,013	21%
2013-2021	4,253,235	2,186,431	51%	938,428	22%	1,128,376	27%
Non-MPP Cases	875,331	355,294	41%	183,186	21%	336,851	38%

Notes: Table includes single adults and individuals in family units encountered at the southwest border, excluding noncitizens enrolled in MPP and those expelled under Title 42 authority. Non-MPP cases cover the period between Jan. 25, 2019, and Jan. 20, 2021.

The term “encounter” as used in this chart refers to aliens apprehended by USBP agents at the Southwest border after entering illegally as well as to aliens deemed inadmissible by CBP officers at the Southwest border ports of entry.

Excluded from the encounter figures during the fiscal years above are unaccompanied alien children (UACs) encountered by CBP at the Southwest border, who by law<sup>66</sup> are not subject to DHS detention.

The chart includes statistics on the number of aliens encountered at the Southwest border by fiscal year between FY 2013 (the fourth full year of the Obama administration) and FY 2021 (the first partial year of the Biden administration).

As you can see, prior to FY 2021, DHS detained—in whole or in part—more than half the aliens CBP encountered at the Southwest border, and in fact detained more than half of all aliens encountered at the Southwest border throughout the removal process between FY 2013 and FY 2018, and again in FY 2021.

Three legal impediments prevented both the Obama and the Trump administrations from fully complying with the detention mandates in section 235(b) of the INA.

<sup>66</sup> See 6 U.S.C. § 279(a) (2024) (“Children’s Affairs. There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before [March 1, 2003].”). Source: <https://uscode.house.gov/view.xhtml?path=/prelim@title6/chapter1/subchapter4/partE&edition=prelim>.

Two of those impediments relate to court decisions premised on flawed interpretations of the detention mandates in section 235(b), one by the Board of Immigration Appeals (BIA) and the other by the U.S. Court of Appeals for the Ninth Circuit.

*Rodriguez and Matter of X-K-*

In its 2013 opinion in *Rodriguez v. Robbins*<sup>67</sup> and its progeny<sup>68</sup>, the Ninth Circuit affirmed a district court order finding that aliens subject to mandatory detention following inspection under section 235(b) of the INA were entitled to periodic bond redetermination hearings at which they would be considered for release.

In its February 2018 opinion in *Jennings v. Rodriguez*<sup>69</sup>, however, the Supreme Court reversed the circuit court, holding that sections 235(b)(1) and 235(b)(2) of the INA “mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin”.

Similarly, in its 2005 decision in *Matter of X-K*<sup>70</sup>, the BIA held that aliens who had been subject to expedited removal, passed credible fear, and who were placed into removal proceedings were eligible to seek release on bond from immigration judges, with certain exceptions.

In April 2019, following the Supreme Court’s opinion in *Rodriguez*, then-Attorney General William Barr issued a precedent decision in *Matter of M-S*<sup>71</sup>, reversing the BIA’s erroneous reading of the mandatory detention provisions in section 235(b) in *Matter of X-K*.

It’s unclear—and likely unknowable—how many aliens encountered at the Southwest border between FY 2013 and April 2019 who were booked out prior to final outcomes in their cases benefitted from those erroneous Ninth Circuit and BIA decisions, but many if not most likely were, particularly under the BIA’s precedent in *Matter of X-K*.

“*Flores Fix*”

Unlike the Ninth Circuit’s opinion in *Rodriguez* and the BIA’s decision in *Matter of X-K*, however, the third legal impediment to compliance with the mandatory detention provisions in section 235(b) of the INA remains unresolved—though the executive branch could “fix” it (in the words of a bipartisan panel<sup>72</sup>) through regulation.

<sup>67</sup> *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013). Source: <https://casetext.com/case/rodriguez-v-robbins>.

<sup>68</sup> *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), cert. granted sub nom. *Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016). Source: <https://casetext.com/case/rodriguez-v-robbins-8>.

<sup>69</sup> *Jennings v. Rodriguez*, 583 U.S. \_\_\_\_ (2018). Source: <https://supreme.justia.com/cases/federal/us/583/15-1204/#tab-opinion-3858465>.

<sup>70</sup> *Matter of X-K*, 23 I&N Dec. 731 (BIA 2005). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3510.pdf>.

<sup>71</sup> *Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019). Source: <https://www.justice.gov/eoir/file/1154747/download>.

<sup>72</sup> See fn. 107 *infra*.

That impediment has its genesis in an August 2015 district court order in *Flores v. Lynch*<sup>73</sup>, which directed DHS to release within 20 days of encounter alien children and adults who entered in “family units” (FMUs). A brief background and history behind that decision is in order.

In 1985, organizations sued<sup>74</sup> the former INS on behalf of alien children being detained by the agency. The suit was brought to challenge INS’s procedures regarding the detention, treatment, and release of such children.

That case went through a number of levels of judicial review<sup>75</sup>, including by the Supreme Court (in March 1993)<sup>76</sup> on the question of whether a then-regulation<sup>77</sup> limiting the release of UACs violated the Due Process Clause.

That regulation provided for the release of UACs only to their parents, close relatives, or legal guardians, with limited exceptions. If UACs were not released under this provision, an INS official — the “Juvenile Coordinator” — was required to find “suitable placement . . . in a facility designated for the occupancy of juveniles.”

Justice Scalia, writing for the majority in a challenge to that rule, found that the regulation was not unconstitutional. He noted:

*The parties to the present suit agree that the Service must assure itself that someone will care for those minors pending resolution of their deportation proceedings. That is easily done when the juvenile's parents have also been detained and the family can be released together; it becomes complicated when the juvenile is arrested alone, i.e., unaccompanied by a parent, guardian, or other related adult.*<sup>78</sup>

The matter was remanded to the U.S. District Court for the Central District of California, where, in January 1997, the Clinton DOJ and the *Flores* plaintiffs entered into a stipulated settlement agreement<sup>79</sup> known as “the *Flores* settlement agreement”, or “FSA”.

In its 1993 opinion, the Supreme Court concluded that the entry of 8,500 minors in 1990 — 70 percent of them UACs (the rest logically in FMUs) -- was a “serious” problem.<sup>80</sup>

<sup>73</sup> *Flores v. Lynch*, 212 F. Supp. 3d 907 (C.D. Cal. 2015). Source: <https://cite.case.law/f-supp-3d/212/907/>.

<sup>74</sup> See *Flores by Galvez-Maldonado v. Meese*, 942 F.2d 1352 (9th Cir. 1991). Source: <https://casetext.com/case/flores-by-galvez-maldonado-v-meese-3>.

<sup>75</sup> See *id.*

<sup>76</sup> *Reno v. Flores*, 507 U.S. 292 (1993). Source: <https://supreme.justia.com/cases/federal/us/507/292/>.

<sup>77</sup> See 8 CFR § 242.24 (1996). Source: <https://www.govinfo.gov/content/pkg/CFR-1997-title8-vol1/pdf/CFR-1997-title8-vol1-sec242-24.pdf>.

<sup>78</sup> *Flores*, 507 U.S. at 295.

<sup>79</sup> *Flores v. Reno*, No. No. 85-4544-RJK (C.D. Cal. Jan. 17, 1997) (Stipulated Settlement Agreement). Source: [https://www.aclu.org/sites/default/files/assets/flores\\_settlement\\_final\\_plus\\_extension\\_of\\_settlement011797.pdf](https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf).

<sup>80</sup> *Flores*, 507 U.S. at 295.

By FY 2014, however, CBP was experiencing a much larger surge in UACs and FMUs at the Southwest border. That fiscal year, Border Patrol apprehended more than 68,500 UACs<sup>81</sup> and an additional 68,445 aliens in FMUs<sup>82</sup>— a 77-percent increase in UACs and a 360-percent rise in FMUs from the year before.

The Obama administration responded<sup>83</sup> to that 2014 surge by opening shelters known as “Family Residential Centers” (FRCs) in Karnes City and Dilley, Tex., and Artesia, N.M., to detain FMUs (Artesia was closed shortly thereafter).

As detentions increased, the number of UACs<sup>84</sup> and FMUs<sup>85</sup> apprehended at the Southwest border dropped to just below 40,000, respectively, in FY 2015.

Regardless, those Obama-era FMU detentions prompted the *Flores* plaintiffs to turn to Judge Dolly Gee of the U.S. District Court for the Central District of California, who was overseeing the FSA.

They alleged the FSA applied to both accompanied aliens encountered with adults as well as to UACs, and further argued that the Obama administration had implemented policies under which FMUs would not be released, but instead would be detained in unlicensed facilities. That, they claimed, violated the FSA.

Note that there would have been no way for the Obama administration to hold FMUs in federally licensed facilities because there is no federal licensure scheme for family detention.

On August 21, 2015, Judge Gee issued an order requiring DHS to release aliens in FMUs within 20 days of encounter. The Obama administration appealed that decision to the Ninth Circuit, which issued an order<sup>86</sup> in July 2016, largely affirming the district court but holding that DHS could detain adults in FMUs—but not children.

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<sup>81</sup> *Total Unaccompanied Children (0-17 Years Old) Apprehensions By Month*, U.S. BORDER PATROL (undated). Source: [https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Total%20Monthly%20UC%20Encounters%20by%20Sector%20%28FY%202010%20-%20FY%202020%29%20%28508%29a\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Total%20Monthly%20UC%20Encounters%20by%20Sector%20%28FY%202010%20-%20FY%202020%29%20%28508%29a_0.pdf)

<sup>82</sup> *Total Family Unit Apprehensions By Month*, U.S. BORDER PATROL (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/u.s.border-patrol-total-monthly-family-unit-encounters-by-sector-fy-2013-fy-2020.pdf>.

<sup>83</sup> Arthur, Andrew. *Ninth Circuit Flores Decision Puts Biden in a Fix, The more that come, the more that will come*. CENTER FOR IMMIGRATION STUDIES (Jan. 11, 2021). Source: <https://cis.org/Arthur/Ninth-Circuit-Flores-Decision-Puts-Biden-Fix>.

<sup>84</sup> *Total Unaccompanied Children (0-17 Years Old) Apprehensions By Month*. U.S. BORDER PATROL (undated). Source: [https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Total%20Monthly%20UC%20Encounters%20by%20Sector%20%28FY%202010%20-%20FY%202020%29%20%28508%29a\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Total%20Monthly%20UC%20Encounters%20by%20Sector%20%28FY%202010%20-%20FY%202020%29%20%28508%29a_0.pdf)

<sup>85</sup> *Total Family Unit Apprehensions By Month*. U.S. BORDER PATROL (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/u.s.border-patrol-total-monthly-family-unit-encounters-by-sector-fy-2013-fy-2020.pdf>.

<sup>86</sup> *Flores v. Lynch*, 828 F.3d 898 (2016). Source: [https://scholar.google.com/scholar\\_case?case=12780774456837741811&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=12780774456837741811&hl=en&as_sdt=6&as_vis=1&oi=scholar).

To avoid family separation, however, the Obama administration opted to release both the adults and the children in FMUs. As a likely consequence, by the end of FY 2016<sup>87</sup>, apprehensions of families at the Southwest border swelled again, exceeding 77,000.

Overall Southwest border apprehensions cratered in FY 2017<sup>88</sup>, the first partial fiscal year of the Trump administration, but FMU apprehensions continued apace, with more than 75,000 aliens<sup>89</sup> in family units being apprehended after entering illegally—nearly a quarter of all apprehensions that year.

Smugglers and would-be migrant adults understood that aliens entering illegally with children, even children who weren't their own, were more likely to be released, as the *New York Times* explained in April 2018:

*Some migrants have admitted they brought their children not only to remove them from danger in such places as Central America and Africa, but because they believed it would cause the authorities to release them from custody sooner.*

*Others have admitted to posing falsely with children who are not their own, and Border Patrol officials say that such instances of fraud are increasing.*<sup>90</sup>

That FMU surge continued into FY 2018, as USBP agents at the Southwest border apprehended more than 107,000<sup>91</sup> aliens in family units—27 percent of that year's total of apprehensions.

In response to this burgeoning population of FMU migrants, Attorney General Jeff Sessions in April 2018<sup>92</sup> called for “zero tolerance” with respect to prosecutions of illicit entrants— illegal entry being both a civil offense<sup>93</sup> rendering the offender removable and also a federal crime<sup>94</sup>, punishable as a misdemeanor for a first offense and a felony for subsequent offenses.<sup>95</sup>

<sup>87</sup> *Total Family Unit Apprehensions By Month*. U.S. BORDER PATROL (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/u.s.border-patrol-total-monthly-family-unit-encounters-by-sector-fy-2013-fy-2020.pdf>.

<sup>88</sup> *See Total Encounters By Fiscal Year*. U.S. BORDER PATROL (undated) (303,916 Southwest border apprehensions in FY 2017, down from 408,870 in FY 2016). Source:

<https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/US59B8~1.PDF>.

<sup>89</sup> *Total Family Unit Apprehensions By Month*. U.S. BORDER PATROL (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/u.s.border-patrol-total-monthly-family-unit-encounters-by-sector-fy-2013-fy-2020.pdf>.

<sup>90</sup> Caitlin Dickerson. *Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border*. NEW YORK TIMES (Apr. 20, 2018). Source: <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html>.

<sup>91</sup> *Total Family Unit Apprehensions By Month*. U.S. BORDER PATROL (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/u.s.border-patrol-total-monthly-family-unit-encounters-by-sector-fy-2013-fy-2020.pdf>.

<sup>92</sup> *Memorandum for Federal Prosecutors Along the Southwest Border*. U.S. DEP'T OF JUSTICE (Apr. 6, 2018). Source:

<sup>93</sup> Section 212(a)(6)(A)(i) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>94</sup> Section 275(a) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1325&num=0&edition=prelim>.

<sup>95</sup> *See id.*

That policy applied to all adults, including adults in FMUs, and in practice it meant those adults had to be sent for at least brief periods to U.S. Marshals Service custody, leaving some of their children — under DHS’s interpretation of the law<sup>96</sup> — “unaccompanied”.

By statute<sup>97</sup>, DHS was therefore required to send those children to shelters run by the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS) for placement with “sponsors” in the United States.

Logically, following the brief period that those FMU adults were in U.S. Marshals Service custody for prosecution, they would have been quickly reunited with their children, but according to the HHS<sup>98</sup>, DHS<sup>99</sup>, and DOJ<sup>100</sup> inspectors general, that did not happen, almost solely due to poor planning and incompetence.

The policy spurred a media backlash<sup>101</sup>, and in response, on June 20, 2018, President Trump issued Executive Order (EO) 13841<sup>102</sup>, directing an end to family separations. EO 13841 also ordered Attorney General Sessions to seek to modify the FSA to permit the department to detain FMUs through criminal and immigration proceedings.

Apprehensions of FMUs at the Southwest border rose sharply thereafter, exceeding 473,000 in FY 2019.<sup>103</sup> That fiscal year<sup>104</sup>, nearly 56 percent of all aliens apprehended at the Southwest border after entering illegally were in family units.

<sup>96</sup> *But see* 6 U.S.C. § 279(g)(2) (2024) (“(2) the term “unaccompanied alien child” means a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom— (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”) (emphasis added.). Source: <https://uscode.house.gov/view.xhtml?path=/prelim@title6/chapter1/subchapter4/partE&edition=prelim>.

<sup>97</sup> 6 U.S.C. § 279 (2024). Source:

<https://uscode.house.gov/view.xhtml?path=/prelim@title6/chapter1/subchapter4/partE&edition=prelim>.

<sup>98</sup> *Separated Children Placed in Office of Refugee Resettlement Care*. DEP’T OF HEALTH AND HUMAN SERVS., OFFICE OF INSPECTOR GEN. (Jan. 2019). Source: <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>.

<sup>99</sup> *CBP Separated More Asylum-Seeking Families at Ports of Entry Than Reported and for Reasons Other Than Those Outlined in Public Statements*. DEP’T OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL (May 29, 2020). Source: <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-35-May20.pdf>.

<sup>100</sup> *Review of the Department of Justice’s Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services*. U.S. DEP’T OF JUSTICE, OFFICE OF INSPECTOR GENERAL (revised Jan. 2021). Source: [https://oig.justice.gov/sites/default/files/reports/21-028\\_0.pdf](https://oig.justice.gov/sites/default/files/reports/21-028_0.pdf).

<sup>101</sup> See Domonoske, Camila and Gonzales, Richard. *What We Know: Family Separation And ‘Zero Tolerance’ At The Border*. NPR (Jun. 19, 2018). Source: <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>.

<sup>102</sup> *Executive Order 13841 of June 20, 2018, Affording Congress an Opportunity To Address Family Separation*. EXEC. OFFICE OF THE PRESIDENT (Jun. 20, 2018). Source: <https://www.federalregister.gov/documents/2018/06/25/2018-13696/affording-congress-an-opportunity-to-address-family-separation>.

<sup>103</sup> *Total Family Unit Apprehensions By Month*. U.S. BORDER PATROL (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/u.s.border-patrol-total-monthly-family-unit-encounters-by-sector-fy-2013-fy-2020.pdf>.

<sup>104</sup> *See Total Encounters By Fiscal Year*. U.S. BORDER PATROL (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/US59B8~1.PDF>.

That was the main reason why just 33 percent of the aliens encountered by CBP at the Southwest border in FY 2019 were detained throughout the removal process, and why 40 percent of those migrants were never detained.

Security at the Southwest border degraded to such an extent that then-DHS Secretary Kirstjen Nielsen was forced to declare a “border emergency” in March 2019.<sup>105</sup>

As she explained at the time:

*Today I report to the American people that we face a cascading crisis at our southern border. **The system is in freefall.** DHS is doing everything possible to respond to a growing humanitarian catastrophe while also securing our borders, but we have reached peak capacity and are now forced to pull from other missions to respond to the emergency.*

*Let me be clear: the volume of ‘vulnerable populations’ arriving is without precedent. This makes it far more difficult to care for them and to prioritize individuals legitimately fleeing persecution. In the past, the majority of migration flows were single adults who could move through our immigration system quickly and be returned to their home countries if they had no legal right to stay. **Now we are seeing a flood of families and unaccompanied children, who—because of outdated laws and misguided court decisions—cannot receive efficient adjudication and, in most cases, will never be removed from the United States even if they are here unlawfully. The result is a massive ‘pull factor’ to our country.***

***My gravest concern is for children.** They are arriving sicker than ever before and are exploited along the treacherous trek. Smugglers and traffickers know that our laws make it easier to enter and stay if you show up as a family. **So they are using children as a ‘free ticket’ into America, and have in some cases even used kids multiple times—recycling them—to help more aliens get into the United States.** Our border stations were not designed to hold young people for extended periods, yet this influx has forced thousands of them into facilities that are getting crowded and overwhelmed. **This goes well beyond politics. We must come together to find a way to tackle the crisis and reduce the flows so children are not put at risk.** Any system that encourages a parent to send their child alone on this terrible journey—**where they are exploited, pawned, and recycled—is completely broken.**<sup>106</sup> [Emphasis added.]*

<sup>105</sup> Secretary Kirstjen Nielsen Statement on Border Emergency. U.S. DEP’T OF HOMELAND SECURITY (Mar. 29, 2019). Source: <https://www.dhs.gov/news/2019/03/29/secretary-kirstjen-nielsen-statement-border-emergency>.

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

Secretary Nielsen's concerns were echoed in a report<sup>107</sup> issued a month later by a bipartisan federal panel<sup>108</sup> tasked with examining the surge in family entries in FY 2018 and FY 2019<sup>109</sup>. The panelists found:

***Migrant children are traumatized during their journey to and into the U.S. The journey from Central America through Mexico to remote regions of the U.S. border is a dangerous one for the children involved, as well as for their parent. There are credible reports that female parents of minor children have been raped, that many migrants are robbed, and that they and their child are held hostage and extorted for money.***

....

***Criminal migrant smuggling organizations are preying upon these desperate populations, encouraging their migration to the border despite the dangers, especially in remote places designed to overwhelm existing [U.S. Border Patrol] infrastructure, and extorting migrants along the way, thereby reaping millions of dollars for themselves and the drug cartels who also charge money to cross the border. [Emphasis added.]***

With respect to the kids, the panel report explained: "In too many cases, children are being used as pawns by adult migrants and criminal smuggling organizations solely to gain entry into the United States. . . ."<sup>110</sup>

According to the panel:

***By far, the major "pull factor" [drawing family units to the United States] is the current practice of releasing with a [Notice to Appear— "NTA"—the charging document in removal proceedings] most illegal migrants who bring a child with them. The crisis is further exacerbated by a 2017 federal court order in Flores v. DHS expanding to FMUs a 20-day release requirement contained in a 1997 consent decree, originally applicable only to unaccompanied children (UAC). After being given NTAs, we estimate that 15% or less of FMU will likely be***

<sup>107</sup> See *Final Emergency Interim Report, CBP Families and Children Care Panel*. U.S. DEP'T OF HOMELAND SECURITY, HOMELAND SECURITY ADVISORY COUNCIL (Apr. 16, 2019). Source:

[https://www.dhs.gov/sites/default/files/publications/19\\_0416\\_hsac-emergency-interim-report.pdf](https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf).

<sup>108</sup> See Arthur, Andrew. *2019 Bipartisan Border Plan Would Solve Today's Migrant Crisis*. CENTER FOR IMMIGRATION STUDIES (Mar. 16, 2021) ("Karen Tandy, the chairwoman, was originally appointed to that position by Jeh Johnson, the last DHS secretary under the Obama/Biden administration. Jim Jones, chairman of Monarch Global Strategies, was initially appointed to the panel by the first Obama/Biden DHS Secretary Janet Napolitano. And Leon Fresco was a principal advisor to Sen. Chuck Schumer (D-N.Y.) when Schumer was chairman of the Senate Judiciary Subcommittee on Immigration. After that, he was deputy assistant attorney general for the Office of Immigration Litigation. In that role, he was the Obama/Biden administration's immigration lawyer at the Justice Department."). Source: <https://cis.org/Arthur/2019-Bipartisan-Border-Plan-Would-Solve-Todays-Migrant-Crisis>.

<sup>109</sup> *Final Emergency Interim Report, CBP Families and Children Care Panel*. U.S. DEP'T OF HOMELAND SECURITY, HOMELAND SECURITY ADVISORY COUNCIL (Apr. 16, 2019), at 6. Source:

[https://www.dhs.gov/sites/default/files/publications/19\\_0416\\_hsac-emergency-interim-report.pdf](https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf).

<sup>110</sup> *Id.* at 1.

*granted asylum. The current time to process an asylum claim for anyone who is not detained is over two years, not counting appeals.*<sup>111</sup>

That report called on DHS to:

*Establish and staff 3 to 4 Regional Processing Centers (RPCs) along the border, scalable and with sufficient capacity to shelter all FMUs apprehended at the border and, among other things, provide safe and sanitary shelter, to include medical screening and care, credible fear examinations, vetting for identity and familial relationship, and evaluations for public health and safety, national security and flight risk.*

*Resource and require transport from USBP stations and POEs of all FMUs to an RPC, within 24 hours or less of apprehension.*<sup>112</sup>

The panel elaborated on that RPC proposal later in their report:

*The requirement is that that these RPCs have sufficient bed, quarantine infirmary space to detain all FMUs apprehended at or near the SWB for a minimum of 20 days. All locations are to be sited within approximately 250-300 miles at their furthest from any spot on the SWB. Possible locations include Rio Grande Valley, El Paso, Yuma and immediately available current and excess military bases. Establishment of the first RPC should begin immediately, within 30 days.*<sup>113</sup>

In addition, the panel called on Congress to “enact emergency legislation” that included:

*[A] "Flores Fix" -- Roll back the Flores Decision by exempting children accompanied by a parent or relative, who is acting as the guardian of the child. DHS also should be given discretion to detain a close relative with a non-parent family member when this is in the best interest of the child.*

*Amend[ments to the asylum provision in] Section 208 of the Immigration Nationality Acts (INA) to require that border crossers make asylum claims at POEs. . . .*

*Amend[ments to] the Trafficking Victims Protection Reauthorization Act (TVPRA) to permit repatriation of any child when the custodial parent residing in the country of origin requests reunification and return of the child. Currently, this is not permitted by the statute.*<sup>114</sup>

Congress failed to act, however, and none of these recommendations were ever implemented.

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<sup>111</sup> *Id.* at 2.

<sup>112</sup> *Id.* at 2.

<sup>113</sup> *Id.* at 10.

<sup>114</sup> *Id.* at 2-3.

Finally, the panel also recommended that, pending a congressional *Flores* fix, “DHS should act promptly to limit it by emergency regulation”.<sup>115</sup>

As CRS has noted, “the parties [in *Flores*] stipulated that the agreement would terminate 45 days after the government publishes final regulations implementing the terms of the agreement” in a 2001 amendment to the FSA.<sup>116</sup>

In response, on August 23, 2019, DHS and HHS issued a final rule<sup>117</sup>, captioned “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children”, that promulgated regulations implementing the FSA, as well as other provisions that related to UACs, in the TVPRA<sup>118</sup> and the HSA<sup>119</sup>.

As Acting DHS Secretary Kevin McAleenan explained at a press conference in advance of the issuance of those regulations:

*First and foremost, the new rule permanently establishes standards of care in custody for children and families. These standards are high. In doing so, the rule fulfills one of the central, original purposes of the 1997 Flores court settlement to ensure appropriate care for all children.*

*A national standard of care ensures that care in custody of children and families is not a policy decision, and should not be subject to the ebbs and flows of state and local politics. Instead, all children in the Government’s care will be universally treated with dignity, respect, and special concern, in concert with American values and faithful to the intent of the settlement.*

.....

*Second, the new rule closes the legal loophole that arose from the reinterpretation of Flores—which Congress has refused to do—allowing the federal government to house alien families together in appropriate facilities during fair and expeditious proceedings, as was done by the previous Administration in 2014 and 2015.*

*Prior to the 2015 court ruling that restricted our use of the FRCs, immigration proceedings averaged less than 50 days, granting those with meritorious claims prompt relief and permission to stay in the U.S., while swiftly repatriating those*

<sup>115</sup> *Id.* at 3.

<sup>116</sup> *The “Flores Settlement” and Alien Families Apprehended at the U.S. Border: Frequently Asked Questions*. CONG. RESEARCH SERV. (updated Sept. 17, 2018), at 7 n. 52. Source: <https://sgp.fas.org/crs/homesecc/R45297.pdf>.

<sup>117</sup> *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, 84 Fed. Reg. 44392 (Aug. 23, 2019). Source: <https://www.federalregister.gov/documents/2019/08/23/2019-17927/apprehension-processing-care-and-custody-of-alien-minors-and-unaccompanied-alien-children>.

<sup>118</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110–457 (2008). Source: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>.

<sup>119</sup> Homeland Security Act of 2002, Pub. L. 107–296 (2002). Source: <https://www.congress.gov/107/plaws/publ296/PLAW-107publ296.pdf>.

*meritless claims—who have comprised a substantial majority of the families being processed.*

....

**Third**— *by closing the key loophole in Flores – the new rule will restore integrity to our immigration system and eliminate the major pull factor fueling the current crisis.*

....

**And fourth**, *the new rule will protect children by reducing incentives for adults, including human smugglers, to exploit minors in the dangerous journey to our border, using them to exploit the system and be released into the United States.*<sup>120</sup>

Those regulations were to take effect on October 22, 2019, but three days after the final rule was published, the attorney general of California along with other state attorneys general filed suit<sup>121</sup> to block their implementation.

On September 27, 2019, Judge Gee issued an order<sup>122</sup> blocking the termination of the FSA and enjoining the new regulations, finding they were inconsistent with the *Flores* settlement agreement.

The government appealed that order to the Ninth Circuit, and on December 20, 2020, the circuit court issued an opinion<sup>123</sup> largely affirming the regulations in the final rules issued by HHS and reversing the district court's injunction with respect to them.

The court concluded “the DHS regulations applicable to the care and custody of accompanied minors, by design, depart significantly from the” FSA<sup>124</sup>, and that the FSA “flatly precludes” DHS's preferred option of detaining accompanied minors with their parents or guardians<sup>125</sup>.

<sup>120</sup> *Acting Secretary of Homeland Security Kevin K. McAleenan on the DHS-HHS Federal Rule on Flores Agreement*. U.S. DEP'T OF HOMELAND SECURITY (Aug. 21, 2019). Source: <https://www.dhs.gov/news/2019/08/21/acting-secretary-mcaleenan-dhs-hhs-federal-rule-flores-agreement>.

<sup>121</sup> *See Press Release: Attorney General Becerra Leads Multistate Lawsuit Opposing the Trump Administration's Rule Allowing Prolonged Detention of Children*. CAL. DEP'T OF JUSTICE (Aug. 26, 2019) (“California Attorney General Xavier Becerra and Massachusetts Attorney General Maura Healey today announced that they are leading a coalition of attorneys general in filing a lawsuit opposing the Trump Administration's new rule circumventing the Flores Settlement Agreement, which has governed the treatment of children in immigration custody since 1997. In the complaint before the U.S. District Court for the Central District of California, the coalition argues that the rule eliminates several critical protections guaranteed by the Flores Settlement Agreement. In particular, the prolonged detention risked by the rule would cause irreparable harm to children, their families, and the California communities that accept them upon their release from federal custody.”). Source: <https://oag.ca.gov/news/press-releases/attorney-general-becerra-leads-multistate-lawsuit-opposing-trump-administration>.

<sup>122</sup> *Flores v. Barr*, 407 F. Supp. 3d 909 (C.D. Cal. 2019). Source: <https://casetext.com/case/flores-v-barr-12>.

<sup>123</sup> *Flores v. Rosen*, 984 F.3d 720 (9<sup>th</sup> Cir. 2020). Source:

[https://scholar.google.com/scholar\\_case?case=15013088245236846968&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=15013088245236846968&hl=en&as_sdt=6&as_vis=1&oi=scholar).

<sup>124</sup> *Id.* at 730.

<sup>125</sup> *Id.* at 742.

Given this, with two extremely limited exceptions, the circuit court affirmed Judge Gee's injunction of the DHS regulations in the final rule. By that point, however, it was too late for the outgoing Trump administration to seek Supreme Court review of the Ninth Circuit's opinion, and the incoming Biden administration failed to do so.

Instead, in December 2021, the Biden administration stopped detaining FMUs entirely.<sup>126</sup>

Likely not coincidentally, USBP Southwest border apprehensions of FMUs rose from just fewer than 451,000 in FY 2021 to nearly 483,000 in FY 2022, and then to more than 621,000 in FY 2023.<sup>127</sup> In FY 2024, USBP apprehensions of FMUs neared 542,000 at the U.S.-Mexico line.<sup>128</sup>

The current administration could have addressed that FSA and *Flores* pull factor by issuing regulations along the lines of the August 2019 rule captioned "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children"<sup>129</sup> that addressed the concerns of the district and the circuit court.

It failed to do so, and also failed to seek Supreme Court review of the Ninth Circuit decision blocking those regulations.

*Section 235(b)(2)(C) of the INA and "Remain in Mexico"*

Which brings me to the subject of today's hearing, the Migrant Protection Protocols (MPP)<sup>130</sup>, also known as "Remain in Mexico".

It was the most notable Trump border security policy— and arguably the most effective.

Barred from detaining FMUs for more than 20 days by the 2015 *Flores* order, and otherwise unable to deter alien adults from bringing children with them as they entered illegally, the Trump administration looked to the inherent authority given it in the INA to produce a solution to its then-border emergency.

<sup>126</sup> Kight, Stef W. *Scoop: Biden to stop holding undocumented families in detention centers*. AXIOS (Dec. 15, 2021). Source: <https://www.axios.com/2021/12/16/biden-ends-migrant-family-detention-border-immigration>.

<sup>127</sup> *Immigration Enforcement and Legal Processes Monthly Tables*. U.S. DEP'T OF HOMELAND SECURITY, OFC. OF HOMELAND SECURITY STATS. (updated Oct. 29, 2024). Source: <https://ohss.dhs.gov/topics/immigration/immigration-enforcement/immigration-enforcement-and-legal-processes-monthly>.

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

<sup>129</sup> *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, 84 Fed. Reg. 44392 (Aug. 23, 2019). Source: <https://www.federalregister.gov/documents/2019/08/23/2019-17927/apprehension-processing-care-and-custody-of-alien-minors-and-unaccompanied-alien-children>.

<sup>130</sup> *See Migrant Protection Protocols*. U.S. DEP'T OF HOMELAND SECURITY (Jan. 24, 2019). Source: [https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols#:~:text=The%20Migrant%20Protection%20Protocols%20\(MPP,of%20their%20immigration%20proceedings%2C%20where](https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols#:~:text=The%20Migrant%20Protection%20Protocols%20(MPP,of%20their%20immigration%20proceedings%2C%20where).

Then-DHS Secretary Nielsen first implemented MPP in January 2019<sup>131</sup>, and it allowed DHS to return certain “other than Mexican” (OTM) migrants caught entering illegally or without proper documentation at the Southwest border back to Mexico to await removal hearings.<sup>132</sup>

Remain in Mexico was premised on DHS’s authority in section 235(b)(2)(C) of the INA<sup>133</sup> to return inadmissible applicants for admission who had crossed a land border back pending removal proceedings.

Aliens subject to MPP were paroled in custody into the United States to apply for asylum at port courts<sup>134</sup>, while the Mexican government had agreed to provide them with protection for the duration of their stays in that country.<sup>135</sup>

The program was expanded from a pilot site in San Ysidro, Calif.<sup>136</sup> in late January 2019, to Calexico, Calif.<sup>137</sup>, and El Paso, Tex.<sup>138</sup> in March of that year, and then in July 2019<sup>139</sup> to Laredo and Brownsville (both in Texas) before finally being expanded to the Arizona border town of Nogales<sup>140</sup> in the late fall.

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

<sup>132</sup> Arthur, Andrew. *Why Trump’s Border Security Didn’t Last, Part 3*. CENTER FOR IMMIGRATION STUDIES (Jul. 17, 2023). Source: <https://cis.org/Arthur/Why-Trumps-Border-Security-Didnt-Last-Part-3>.

<sup>133</sup> See section 235(b)(2)(C) of the INA (2024) (“Treatment of aliens arriving from contiguous territory. In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section” 240 of the INA). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>134</sup> Arthur, Andrew. *Tent Courts Aren’t Tents — and Provide Due Process. Inside the Laredo MPP hearing facility, and then the view from the other side*. CENTER FOR IMMIGRATION STUDIES (Feb. 4, 2020). Source: <https://cis.org/Arthur/Tent-Courts-Arent-Tents-and-Provide-Due-Process>.

<sup>135</sup> See *Migrant Protection Protocols*. U.S. DEP’T OF HOMELAND SECURITY (Jan. 24, 2019) (“While aliens await their hearings in Mexico, the Mexican government has made its own determination to provide such individuals the ability to stay in Mexico, under applicable protection based on the type of status given to them.”). Source: [https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols#:~:text=The%20Migrant%20Protection%20Protocols%20\(MPP,of%20their%20immigration%20proceedings%2C%20where](https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols#:~:text=The%20Migrant%20Protection%20Protocols%20(MPP,of%20their%20immigration%20proceedings%2C%20where)

<sup>136</sup> Averbuch, Maya and Sieff, Kevin. *Asylum seeker is sent back to Mexico as Trump administration rolls out new policy*. WASHINGTON POST (Jan. 29, 2019). Source: [https://www.washingtonpost.com/world/the\\_americas/asylum-seekers-are-being-sent-back-to-mexico-as-trump-administration-rolls-out-new-policy/2019/01/29/a0a89e9c-233b-11e9-b5b4-1d18dfb7b084\\_story.html](https://www.washingtonpost.com/world/the_americas/asylum-seekers-are-being-sent-back-to-mexico-as-trump-administration-rolls-out-new-policy/2019/01/29/a0a89e9c-233b-11e9-b5b4-1d18dfb7b084_story.html).

<sup>137</sup> Rose, Joel. *‘Remain In Mexico’ Immigration Policy Expands, But Slowly*. NPR (Mar. 12, 2019). Source: <https://www.npr.org/2019/03/12/702597006/-remain-in-mexico-immigration-policy-expands-but-slowly>.

<sup>138</sup> Montes, Aaron. *El Paso begins Trump policy that sends migrant asylum seekers back to Mexico*. EL PASO TIMES (Mar. 16, 2019). Source: <https://www.elpasotimes.com/story/news/immigration/2019/03/16/trump-immigration-metering-policy-migrant-protection-protocols-implemented-el-paso-juarez/3177682002/>.

<sup>139</sup> Roldan, Riane. *Asylum seekers will appear before judges via teleconferencing in tents as ‘Remain in Mexico’ program expands to Laredo*. TEXAS TRIBUNE (Jul. 9, 2019). Source: <https://www.texastribune.org/2019/07/09/remain-mexico-program-expands-laredo-texas/>.

<sup>140</sup> Prendergast, Curt. *‘Remain in Mexico’ program begins in Nogales*. ARIZONA DAILY STAR (Dec. 17, 2019). Source: [https://tucson.com/news/local/remain-in-mexico-program-begins-in-nogales/article\\_95f757ac-1851-11ea-b29e-47f1d679e3d8.html](https://tucson.com/news/local/remain-in-mexico-program-begins-in-nogales/article_95f757ac-1851-11ea-b29e-47f1d679e3d8.html).

When it was fully implemented, fewer than 68,000 migrants<sup>141</sup> were returned to Mexico to await their removal hearings under MPP. As I have explained elsewhere<sup>142</sup>, however:

*It didn't take many MPP returns to drive the encounter numbers back down. [The DHS Office of Homeland Security Statistics] reports that fewer than 31,250 aliens encountered at the Southwest border were sent back across the border under MPP between June and September 2019 — 84 percent of them aliens in FMUs.*

*In May of that year, CBP encountered about 144,000 aliens at the Southwest border, 65 percent of whom (nearly 88,600) were in FMUs — at the time, monthly records in both categories.*

*As MPP got revved up and news of returns to Mexico spread, that figure dropped to fewer than 52,500 CBP Southwest border encounters in September — some 22,000 of whom (less than 42 percent) were in FMUs.*

*By February 2020, the month before Title 42 was implemented and once MPP was in full swing, CBP Southwest border encounters dropped to fewer than 37,000, and just over 7,100 of those aliens (19.3 percent) were in FMUs.*

In an October 2019 assessment<sup>143</sup> of the program, DHS concluded MPP was “an indispensable tool in addressing the ongoing crisis at the southern border and restoring integrity to the immigration system”, particularly as related to alien families.

Asylum cases were expedited under the program, and MPP removed incentives for aliens to make weak or bogus claims when apprehended.<sup>144</sup>

That's because many if not most of those aliens requesting asylum at the border aren't seeking protection so much as they are coming to live and work here for the time (usually years<sup>145</sup>) that it takes for their claims to be heard. Remain in Mexico denied them the opportunity to do so.

<sup>141</sup> See *Immigration Enforcement and Legal Processes Monthly Tables*. U.S. DEP'T OF HOMELAND SECURITY, OFC. OF HOMELAND SECURITY STATS. (updated Oct. 29, 2024) (58,930 migrants apprehended by USBP and 8,770 aliens deemed inadmissible by OFO subject to MPP between March 2019 and January 2021—67,700 in total). Source: <https://ohss.dhs.gov/topics/immigration/immigration-enforcement/immigration-enforcement-and-legal-processes-monthly>.

<sup>142</sup> Arthur, Andrew. *Congressional Budget Office Estimates 860K 'Got-Aways' in FY 2023, The effects of 'family units' on border security, and the drug and terrorist threats posed by aliens who enter 'without encountering a CBP official'*. CENTER FOR IMMIGRATION STUDIES (Jan. 22, 2024). Source: <https://cis.org/Arthur/Congressional-Budget-Office-Estimates-860K-GotAways-FY-2023>.

<sup>143</sup> *Assessment of the Migrant Protection Protocols (MPP)*. U.S. DEP'T OF HOMELAND SECURITY (October 28, 2019). Source: [https://www.dhs.gov/sites/default/files/publications/assessment\\_of\\_the\\_migrant\\_protection\\_protocols\\_mpp.pdf](https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf).

<sup>144</sup> See *id.*

<sup>145</sup> See *Actions Needed to Track and Report Noncitizens' Hearing Appearances*. GAO-25-106867. GOV'T ACCOUNTABILITY OFC. (Dec. 2024), at 38 (the median completion time for non-detained cases in FY 2022 was 1,036 days, and in FY 2023 it was 846 days). Source: <https://www.gao.gov/assets/gao-25-106867.pdf>.

Or, as DHS then<sup>146</sup> put it:

*MPP returnees who do not qualify for relief or protection are being quickly removed from the United States. Moreover, aliens without meritorious claims—which no longer constitute a free ticket into the United States—are beginning to voluntarily return home.*

Returning those migrants to Mexico also enabled the Trump administration to comply with Congress' detention directives in section 235(b) of the INA<sup>147</sup>.

Moreover, deterring adult migrants from bringing children with them when entering the United States illegally not only advances border security, but it also protects the migrants themselves, as the excerpts from the Homeland Security Advisory Council's CBP Families and Children Care Panel's April 2019 report<sup>148</sup> referenced above reveal.

The Biden administration could have reimplemented this program at any time, and for a brief period reluctantly did so under court order<sup>149</sup>.

I will note, however, that advocates sued to block the Trump iteration of this program in the U.S. District Court for the Northern District of California, and on April 19, 2019, U.S. district court Judge Richard Seeborg issued an order granting a preliminary injunction in that case.<sup>150</sup>

The Trump DOJ filed an emergency motion<sup>151</sup> with the Ninth Circuit to stay that order pending appeal, which a three-judge circuit panel granted on May 7, 2019.<sup>152</sup>

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<sup>146</sup> *Assessment of the Migrant Protection Protocols (MPP)*. U.S. DEP'T OF HOMELAND SECURITY (October 28, 2019), at 3. Source:

[https://www.dhs.gov/sites/default/files/publications/assessment\\_of\\_the\\_migrant\\_protection\\_protocols\\_mpp.pdf](https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf)

<sup>147</sup> See secs. 235(b)(1)(B)(ii), 235(b)(1)(B)(iii)(IV), and 235(b)(2)(A) of the INA (2024). Source:

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>148</sup> See *Final Emergency Interim Report, CBP Families and Children Care Panel*. U.S. DEP'T OF HOMELAND SECURITY, HOMELAND SECURITY ADVISORY COUNCIL (Apr. 16, 2019). Source:

[https://www.dhs.gov/sites/default/files/publications/19\\_0416\\_hsac-emergency-interim-report.pdf](https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf).

<sup>149</sup> See Arthur, Andrew. *SCOTUS Issues Its Judgment in 'Remain in Mexico' Case*. CENTER FOR IMMIGRATION STUDIES (Aug. 3, 2022) ("On December 13, [2021], the Fifth Circuit issued a decision dismissing the Biden administration's appeal of Judge Kacsmaryk's injunction, based largely on Mayorkas' initial termination decision (it largely ignored the second one), which thus teed up the matter for Supreme Court review. Despite the court's order, the Biden administration was slow and reluctant to return illegal migrants back to Mexico. It was only in December that the first 191 migrants were sent back under section 235(b)(2)(C) of the INA, and through the end of June [2022], just 5,733 migrants have been returned pursuant to that provision and the court's order."). Source:

<https://cis.org/Arthur/SCOTUS-issues-its-judgment-remain-mexico-case>.

<sup>150</sup> *Innovation Law Lab v. Nielsen*, 366 F.Supp.3d 1110 (2019). Source:

[https://scholar.google.com/scholar\\_case?case=3275760696436107849&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=3275760696436107849&hl=en&as_sdt=6&as_vis=1&oi=scholar).

<sup>151</sup> *Innovation Law Lab v. Nielsen*, No. 19-15716, Emergency Motion Under Circuit Rule 27-3 for Administrative Stay and Motion for Stay Pending Appeal (9<sup>th</sup> Cir. Apr. 11, 2019). Source:

<https://cdn.ca9.uscourts.gov/datastore/general/2019/04/13/Emergency%20Motion.pdf>.

<sup>152</sup> *Innovation Law Lab v. McAleenan*, 924 F.3d 503 (9<sup>th</sup> Cir. 2019). Source: <https://casetext.com/case/innovation-law-lab-v-mcaleenan>.

A separate three-judge Ninth Circuit panel considering the government's appeal from the district court's decision affirmed<sup>153</sup> the injunction of MPP in late February 2020 but stayed that injunction temporarily for aliens apprehended outside of California and Arizona to allow the government to seek Supreme Court review.

Shortly thereafter, in early March 2020, the Supreme Court stayed that injunction<sup>154</sup> pending the government's filing of, and the Court's ruling on, a petition for certiorari on the injunction.

Thereafter, in June 2021, the now-Biden administration moved to vacate the judgment of the Ninth Circuit as moot, given the fact that it had terminated MPP.<sup>155</sup> On June 21, 2021, the Supreme Court vacated the circuit court judgment, "with instructions to direct the District Court to vacate as moot the April 8, 2019 order granting a preliminary injunction."<sup>156</sup>

Thus, neither the district court order nor the Ninth Circuit's opinion would have been or would be an impediment to reimplementing of a program similar to Remain in Mexico.

I have explained in-depth elsewhere<sup>157</sup> why I conclude that the Ninth circuit's analysis is in error, but briefly, two provisions in the inspection protocol in section 235 of the INA<sup>158</sup> were key to the court's analysis.

First is the expedited provision at section 235(b)(1) of the INA<sup>159</sup>, which as explained *supra* applies solely<sup>160</sup> to two classes of aliens: aliens deemed inadmissible under section 212(a)(6)(C) of the INA<sup>161</sup> because they "by fraud or willfully misrepresenting a material fact, seek[] . . . admission into the United States or other benefit provided under" the INA; and aliens

<sup>153</sup> *Innovation Law Lab v. Wolf*, 951 F. 3d 1073 (9<sup>th</sup> Cir. 2020). Source: [https://scholar.google.com/scholar\\_case?case=12716474571221783570&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=12716474571221783570&hl=en&as_sdt=6&as_vis=1&oi=scholar).

<sup>154</sup> *Wolf v. Innovation Law Lab*, No. 19A960 (Mar. 11, 2020). Source: [https://www.supremecourt.gov/orders/courtorders/031120zr\\_19m2.pdf](https://www.supremecourt.gov/orders/courtorders/031120zr_19m2.pdf).

<sup>155</sup> See *Mayorkas v. Innovation Law Lab*, No. 19-1212, Petitioners Suggestion of Mootness and Motion to Vacate the Judgment of the Court of Appeals (Jun. 1, 2021). Source: [https://www.supremecourt.gov/DocketPDF/19/19-1212/180713/20210601211037408\\_Innovation%20Law%20Lab%20-%20Suggestion%20of%20Mootness%20-%20final.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1212/180713/20210601211037408_Innovation%20Law%20Lab%20-%20Suggestion%20of%20Mootness%20-%20final.pdf).

<sup>156</sup> *Mayorkas v. Innovation Law Lab*, No. 19-1212, Docket (Jun. 21, 2021). Source: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-1212.html>.

<sup>157</sup> Arthur, Andrew. *Ninth Circuit Blocks 'Remain in Mexico' — Sort Of, Misinterpreting the INA and ignoring contrary evidence, while the clock is ticking*. CENTER FOR IMMIGRATION STUDIES (Mar. 2, 2020). Source: <https://cis.org/Arthur/Ninth-Circuit-Blocks-Remain-Mexico-Sort>.

<sup>158</sup> Section 235 of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>159</sup> *Id.* at para. (b)(1).

<sup>160</sup> See *id.* at cl. (A)(1) ("If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible under section [212(a)(6)(C) or 212(a)(7) of the INA], the officer shall order the alien removed from the United States without further hearing or review. . .").

<sup>161</sup> Section 212(a)(6)(C) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

inadmissible under section 212(a)(7) of the INA<sup>162</sup> because they lack proper admission documents.

As noted, section 235(b)(2)(C)<sup>163</sup> of the INA (also known as the “return clause”) is the statutory basis for Remain in Mexico, but that clause only applies to aliens processed under paragraph (2) of 235(b) of the INA, not to aliens subject to expedited removal and processed under paragraph (1) of that provision.

The Ninth Circuit, in essence, determined<sup>164</sup> that MPP does not apply to aliens removable under the grounds of inadmissibility listed in the expedited removal provision because the return clause does not allow the return of aliens to whom expedited removal applies. There are two flaws in this logic.

First, DHS has the discretion to place aliens otherwise be subject to expedited removal directly into removal proceedings under section 240 of the INA, as the BIA held in its 2011 decision in *Matter of E-R-M- and L-R-M*.<sup>165</sup> Those aliens would, therefore, be subject to return under the return clause in section 235(b)(2)(C) of the INA.

In fact, the Biden administration has bypassed expedited removal for the vast majority of aliens who have entered illegally without proper documents, all of whom would be inadmissible under section 212(a)(7) of the INA.

For example, of the just over 1.496 million aliens apprehended by USBP at the Southwest border in FY 2023 who were not expelled under Title 42, fewer than 178,000<sup>166</sup>—less than 12 percent—were subjected to expedited removal.

Second, and more saliently, the circuit court ignored in its analysis section 212(a)(6)(A)(i) of the INA<sup>167</sup>, which states: “An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.”

Simply put, aliens entering illegally are inadmissible under both section 212(a)(6)(A)(i) of the INA (for illegal entry) and section 212(a)(7) of the INA (because they lack proper admission documents). The vast majority of the aliens who were subject to MPP entered illegally, not through fraud or misrepresentation, and therefore were also inadmissible under section 212(a)(6)(A)(i) of the INA.

<sup>162</sup> Section 212(a)(7) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>163</sup> See section 235(b)(2)(C) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>164</sup> See *Innovation Law Lab*, 951 F. 3d at 1083-87.

<sup>165</sup> *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3716.pdf>.

<sup>166</sup> *Custody and Transfer Statistics FY 2023*. U.S. CUSTOMS AND BORDER PROTECTION (modified Dec.19, 2023). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2023>.

<sup>167</sup> Section 212(a)(6)(A)(i) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

DHS can charge illegal entrants under either (or both) of those provisions, but aliens charged under section 212(a)(6)(A)(i) of the INA are not subject to expedited removal under section 235(b)(1)(A)(1) of the INA. That means they plainly fall under section 235(b)(2) of the INA and are therefore subject to the return clause in section 235(b)(2)(C) of the INA.

That opinion notwithstanding, I also note that in an October 29, 2021, memo<sup>168</sup> explaining why the Biden administration had decided to terminate Remain in Mexico, DHS cited the dangers migrants face on the other side of the border as a key reason for ending the program.

That memo immediately continued, however: “It is possible that some of these humanitarian challenges could be lessened through the expenditure of significant government resources currently allocated to other purposes.”<sup>169</sup>

Respectfully, the migrant surge that has been ongoing at the border and throughout the United States has already resulted in “the expenditure of significant government resources”, not only at the federal level (where those costs should be borne), but also at the state<sup>170</sup> and local<sup>171</sup> levels.

In April 2022<sup>172</sup>, I suggested the administration could enter into an agreement with the Mexican government to allow returned migrants to be sent to a place certain on the other side of the border, using Monterrey, Nuevo Leon-- Mexico’s 11<sup>th</sup> largest city—as an example. I explained that the city:

*is relatively safe, safer than my erstwhile hometown of Baltimore, and such migrant destinations as Los Angeles, Houston, and Chicago.*

<sup>168</sup> See *Explanation of the Decision to Terminate the Migrant Protection Protocols*, at 2. U.S. DEP’T OF HOMELAND SECURITY (Oct. 29, 2021) (“Significant evidence indicates that individuals were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited from putting migrants in harms’ way while awaiting their court hearings in Mexico.”). Source: [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-justification-memo-508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf).

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

<sup>170</sup> See Dorgan, Michael. *Illinois pumping \$250M more in taxpayer funds to help illegal migrants in Chicago*. FOX NEWS (Feb. 16, 2024) Source: <https://www.foxnews.com/us/illinois-pumping-250m-taxpayer-funds-help-illegal-migrants-chicago>; Governor Hochul Extends Executive Order Declaring State of Emergency for Asylum Seeker Crisis. OFF. OF THE GOVERNOR OF NEW YORK (Oct. 23, 2023). Source: <https://www.governor.ny.gov/news/governor-hochul-extends-executive-order-declaring-state-emergency-asylum-seeker-crisis-0>.

<sup>171</sup> See Franza, Sabrina. *City of Chicago has spent \$156.2 million on vendors in migrant crisis, data show*. CBS CHICAGO (Jan. 10, 2024). Source: <https://www.cbsnews.com/chicago/news/city-of-chicago-spending-vendors-migrant-crisis/>; Newman, Andy and Rubinstein, Dana. *Chaos, Fury, Mistakes: 600 Days Inside New York’s Migrant Crisis*. NEW YORK TIMES (Dec. 26, 2023) (“But the dimensions of the problem — the \$2.4 billion cost so far, the harsh conditions, the number of migrants stuck in shelters — can also be traced to actions taken, and not taken, by the Adams administration, The New York Times found in dozens of interviews with officials, advocates and migrants. . . City Hall has argued that it was only after the mayor ramped up his rhetoric that the federal government began paying attention and sending aid. But even that was scant — \$156 million for a problem that the mayor said will cost \$12 billion over three years.”). Source: <https://www.nytimes.com/2023/12/26/nyregion/migrant-crisis-mayor-eric-adams.html>.

<sup>172</sup> Arthur, Andrew. *A Modest Proposal for ‘Remain in Mexico’ that Even Biden Would Like, Set up protected housing for illegal migrants awaiting hearings; it could happen in Monterrey*. CENTER FOR IMMIGRATION STUDIES (Apr. 25, 2022). Source: <https://cis.org/Arthur/Modest-Proposal-Remain-Mexico-Even-Biden-Would>.

*And while there is some level of violent crime in parts of the city, providing the necessary security required to address any concerns is simply a matter of money.*

*Taking into account the needs of aliens' lawyers and U.S. government officials, Monterrey benefits from proximity to the U.S. border. It is a three-hour drive to Hidalgo, Texas, in the heart of the Rio Grande Valley (RGV), and two hours and 45 minutes to Laredo, Texas, where DHS under Trump erected a port court. And a roundtrip bus ticket from McAllen, Texas, to Monterrey is \$43.*

*Plus, two airports service the city, one of which — Monterrey International Airport — is the nation's fourth busiest and the busiest in northern Mexico.*

*The governor of Nuevo Leon, Samuel Alejandro Garcia Sepulveda, has already shown a willingness to work with his Texas counterpart, Governor Greg Abbott (R) on cross-border issues. . . and Sepulveda would also definitely welcome the sort of money that would flow to his state if DHS were to erect and run migrant housing there.<sup>173</sup>*

Plainly, there are other options, but if the sole impediment to reimplementing MPP is money, the costs of the current migrant crisis are already incalculable and rising. And note also that, as with Remain in Mexico, the Biden administration currently requires foreign nationals to wait in Mexico pending the port interviews they schedule using the CBP One app.<sup>174</sup>

#### Conclusion

In his 1995 State of the Union Address<sup>175</sup>, then-President Clinton explained:

*All Americans, not only in the states most heavily affected, but in every place in this country, are rightly disturbed by the large numbers of illegal aliens entering our country. The jobs they hold might otherwise be held by citizens or legal immigrants. The public service[s] they use impose burdens on our taxpayers. . . . We are a nation of immigrants. But we are also a nation of laws. It is wrong and ultimately self-defeating for a nation of immigrants to permit the kind of abuse of our immigration laws we have seen in recent years, and we must do more to stop it.*

<sup>173</sup> *Id.*

<sup>174</sup> See *CBP One™ Mobile Application*. U.S. CUSTOMS AND BORDER PROTECTION (modified Sep. 23, 2024) (“The number of noncitizens who can be processed through the CBP One™ app will vary by port based on available resources and existing infrastructure. Appointments are available 21 days in advance. Ports may, as operationally feasible, utilize dedicated lanes for individuals with different types of travel documents, or for those without travel documents. Ports may also have dedicated lanes for those with CBP One™ appointments.”). Source: <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

<sup>175</sup> *Administration of William J. Clinton, 1995/Jan. 24, Address Before a Joint Session of the Congress on the State of the Union*, U.S. GOV'T PRINTING OFF. (Jan. 24, 1995), at 80-81. Source: <https://www.govinfo.gov/content/pkg/PPP-1995-book1/pdf/PPP-1995-book1-doc-pg75.pdf>.

More than 26 years later, during a September 2021, interview<sup>176</sup> with ABC's "Good Morning America", former President Obama explained the dilemma that faces the United States when it comes to securing the border:

*Immigration is tough. It always has been because, on the one hand, I think we are naturally a people that wants to help others. And we see tragedy and hardship and families that are desperately trying to get here so that their kids are safe, and they're in some cases fleeing violence or catastrophe. ... At the same time, we're a nation state. We have borders. The idea that we can just have open borders is something that ... as a practical matter, is unsustainable.*

Those two statements—one by a then-serving president and the other by a retired one-- aptly describe the biggest challenges our federal government faces when dealing with the ongoing surge of illegal immigration at the Southwest border: balancing our humanitarian interests as a people with our critical need to prevent exploitation of those interests and control illegal immigration.

As former Rep. Barbara Jordan (D-Tex.), then chairman of the U.S. Commission on Immigration Reform told Congress in September 1994, however:

*If we cannot control illegal immigration, we cannot sustain our national interest in legal immigration. Those who come here illegally, and those who hire them, will destroy the credibility of our immigration policies and their implementation. In the course of that, I fear, they will destroy our commitment to immigration itself.<sup>177</sup>*

Recent surveys have revealed that the current migrant crisis at the Southwest border, and its impacts on states, cities, and towns across the United States, are having exactly the impact Chairman Jordan warned about and predicted.

Gallup polling in 2024<sup>178</sup> showed that 28 percent of Americans believe that "immigration" is the "most important problem facing the country", up from just 20 percent in January and the leading issue out of 15 surveyed.

Worse, 55 percent of those polled deemed "illegal immigration" to be a "critical threat" to the United States, a new high for an issue that Gallup has surveyed since 2004.<sup>179</sup>

<sup>176</sup> See Zaru, Dayna, Ghebremedhin, Sabina, and Anderson, Jade. *Obama says Haitian migrants' plight is 'heartbreaking,' but Biden knows system is broken.* ABC NEWS (Sep. 28, 2021). Source: <https://abcnews.go.com/Politics/obama-haitian-migrants-plaint-heartbreaking-biden-system-broken/story?id=80267478>.

<sup>177</sup> *Hearing before the Subcomm. on International Law, Immigration and Refugees of the H. Comm. on the Judiciary, 103d Cong. (1994) (testimony of Barbara Jordan, Chair, U.S. Commission on Immigration Reform), at 2.* Source: <https://www.numbersusa.com/testimony-of-barbara-jordan-before-the-house-judiciary-committee-august-3-1994-2/>.

<sup>178</sup> Jones, Jeffrey M. *Immigration Surges to Top of Most Important Problem List.* GALLUP (Feb. 27, 2024). Source: <https://news.gallup.com/poll/611135/immigration-surges-top-important-problem-list.aspx>.

<sup>179</sup> *Id.*

Given the importance of legal immigration to the United States, it is incumbent on Congress and the administration to reverse these trends and restore Americans' faith in and commitment to lawful immigration. That starts with securing the border.

Congress must provide the president the resources he needs to accomplish that task. But the current and incoming presidents, like their immediate predecessors, already have ample statutory authorities in the INA to secure the border. How and whether the president chooses to use those authorities, however, is up to him.

It remains to be seen whether the incoming Trump administration will reimplement Remain in Mexico as part of its border strategy. When it first implemented MPP in 2019, however, it proved to be an effective deterrent to illegal entry, and there is sufficient authority in section 235(b)(2)(C) of the INA<sup>180</sup> for President Trump to utilize that power when he again takes office.

To the degree there are concerns about the safety of migrants who are returned to Mexico under the policy, three points should be noted.

First, migrants sent back across the border to await removal proceedings have already made the choice to enter Mexico once and thus should be deemed to have accepted any risks that such entry and any return may entail.

Second, through diplomacy with and funding to Mexican authorities, the Trump administration and Congress can all-but ensure that migrants returned back across the border to await their removal hearings receive the highest degree of security possible.

Third, release of those migrants into the United States also entails some degree of risk. Crime, extortion, and threats are, regrettably, facts of life on both sides of the U.S.-Mexican border.

Thank you again, and I look forward to your questions.

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<sup>180</sup> See sec. 235(b)(2)(C) of the INA (2024) ("Treatment of aliens arriving from contiguous territory. In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under [section 240 of the INA]"). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.



**Testimony of**  
**Adam Isacson**  
**Director for Defense Oversight**  
**Washington Office on Latin America**

**Before the**  
**U.S. Senate**  
**Committee on Homeland Security and Governmental Affairs**

**Hearing: “Remain in Mexico”**

**Washington, DC**

**January 16, 2025**

When a foreign national arrives at a U.S. land border asking for asylum in the United States, Section 235(b)(2)(C) of the Immigration and Nationality Act holds out the option of sending that person back across the land border to await their case’s adjudication outside the United States.<sup>1</sup> While that law dates back to 1996, no president pursued this option until the administration of Donald Trump, on December 20, 2018, launched a program called “Migrant Protection Protocols” (MPP) or “Remain in Mexico.”<sup>2</sup>

Between January 25, 2019 (the date that the Department of Homeland Security (DHS) issued the program’s policy guidance) and Inauguration Day 2021, **MPP sent back to Mexico more than 71,000 non-Mexican citizens** who claimed fear for their lives or freedom upon return to their countries.<sup>3</sup> Most were returned to Mexico between a June 2019 acceleration of the program and the March 2020 onset of the COVID-19 pandemic. All migrants made to remain in Mexico were given dates, times, and places to return to border crossings for hearings, usually held virtually in tent facilities near ports of entry.

I have carried out human rights fieldwork in Latin America for over 30 years, some of it in active armed conflict zones. Some of the testimonies of torture and abuse that asylum seekers suffered while awaiting their hearings in Mexican border cities are among the most painful that I have heard anywhere. Instead of hearing these horror stories in a distant war zone, I heard them in locations so close to the United States that

my mobile phone carrier didn't even switch over. I need to acknowledge that the Remain in Mexico program caused real suffering for many of these 71,000-plus human beings.

We must also recognize that Remain in Mexico harmed U.S. interests. My testimony will demonstrate that the program **enriched Mexican cartels by providing them with a big windfall**. The program was **an irritant in a complex relationship with Mexico**, draining bandwidth needed for discussion of common priorities ranging from trade to fentanyl to mutual security. Despite those costs, **Remain in Mexico proved to be only a modest deterrent**, one factor in a 2019 decline in Border Patrol apprehensions that merely brought migration down to Obama-era levels for a few months. As with other crackdowns on asylum seekers at the border over the last decade, Remain in Mexico proved to be no substitute for a functional, well-resourced asylum system.

### What was Remain in Mexico?

The program was the first time that Mexico's government agreed to accept returns of third-country nationals into its territory, a step considered unthinkable before. As of March 2020, when the program had returned 64,934 asylum seekers, the nationalities affected were Honduras (36%), Guatemala (24%), Cuba (12.7%), El Salvador (12.5%), Ecuador (7%), Venezuela (4%), Nicaragua (3%), Brazil (0.5%), Peru (0.3%), Colombia (0.2%), and "Other" (0.3%).<sup>4</sup> These were primarily Spanish-speaking individuals, plus Brazilians, Indigenous language speakers, and a handful of people from Africa and Haiti.

Asylum seekers' U.S. hearing dates were usually months from their initial returns to Mexico; their waits stretched further after the pandemic snarled the U.S. immigration court system. Forced to find housing and incomes in a country where most lacked support networks, those subject to MPP relied heavily on charity-run shelters, and a small number of government shelters, in northern Mexican border cities. The likelihood of repeat court appearances, and the possibility of dates changing, caused most to choose to remain near the U.S. border rather than relocating elsewhere in Mexico.

Attending hearings usually meant reporting at border crossings in the pre-dawn hours of the appointed day—4:00 AM was a typical time that Customs and Border Protection (CBP) required them to show up—followed by transport to the venue, which in many cases was a soft-sided facility (a "tent court") near the port of entry. Most proceedings were held virtually, over videoconference with remotely located judges and

interpreters. The tent courts' construction was enabled by a July 2019 transfer of \$155 million away from the Federal Emergency Management Agency disaster relief fund.<sup>5</sup>



*“Tent courts” in Brownsville, Texas, during the court-ordered renewal of Remain in Mexico, 2022.  
(Photo by the author, March 2022)*

Access to counsel was difficult to obtain. Just 8 percent of asylum seekers in “Remain in Mexico” were represented, compared to 84 percent of asylum seekers overall.<sup>6</sup> Pro-bono attorneys found their ability to communicate with clients restricted by “safety concerns, lack of or limited availability of Wi-Fi connections, and restricted access to personal phones,” *BuzzFeed* reported in 2022.<sup>7</sup> In San Diego, immigrants told the Vera Institute of Justice that upon return to Mexico after attending hearings on the U.S. side, their shelter space “is not guaranteed.”

The grave security situation in Mexican border cities (discussed below) deterred attorneys from representing clients in the program. During the program, I spoke to many who were followed and threatened as they sought to meet with clients living in marginal neighborhoods. “I had attorneys sobbing, ‘I can’t cope with my clients being kidnapped’” by Mexican organized crime, a lawyer who represented many MPP asylum seekers told me in an interview prepared for this testimony.

Ultimately, of 45,387 Remain in Mexico asylum cases that reached a decision, only 740 (1.6 percent) resulted in grants of asylum or other relief. Of the more than 15,000 closed cases for which asylum seekers attended all their hearings while remaining in Mexico, that percentage rose to only 4.7 percent, according to the Syracuse University TRAC

Immigration data resource. This is an infinitesimally small grant rate compared to the overall immigration system, which granted relief in 28 percent of cases in 2020, 52 percent in 2022, and 49 percent in 2023, dropping to the mid-30 percent range in 2024.<sup>8</sup>

Nearly 72 percent of those compelled to participate in Remain in Mexico did not attend all their court appearances and were **denied protection *in absentia***.<sup>9</sup> (By contrast, the overwhelming majority of immigrants in the United States attend all their hearings.<sup>10</sup>)

- In some cases, people gave up and returned to their countries of origin.
- Many likely opted to hire a smuggler to enter the United States again, evading Border Patrol.
- Many parents in the program made the gut-wrenching choice of separating their families and sending their children across the border unaccompanied: this happened with at least 352 children who ended up in Office of Refugee Resettlement custody between October 1, 2019 and January 13, 2020.<sup>11</sup>
- Many others missed their court dates because they were in the custody of kidnappers demanding that relatives pay large ransoms (discussed below).
- A significant number misunderstood the process or were unable to be reached to inform them about changes in dates for court appearances.

Asylum seekers were not safe in northern Mexico. Human Rights First, working with shelters and human rights defenders at the border, compiled 1,544 cases of rape, kidnapping, torture, and other crimes against those subject to the program in 2019 and 2020.<sup>12</sup> (This monitoring effort was always partial due to capacity constraints and was further hampered by pandemic border closures.)

Mexican organized crime groups (“cartels”), which exert significant territorial control across Mexico’s northern border zone, were the principal perpetrators. They were often enabled by the collusion or acquiescence of corrupt security and migration officials.

In December 2019, Jill Biden decried the program while paying a visit to a squalid encampment of asylum seekers along the banks of the Rio Grande in Matamoros, across from Brownsville, Texas.<sup>13</sup> Candidate Joe Biden tweeted, “Donald Trump’s ‘Remain in Mexico’ policy is dangerous, inhumane, and goes against everything we stand for as a nation of immigrants. My administration will end it.”<sup>14</sup> The Biden administration suspended Remain in Mexico with an order on January 20, 2021, and formally terminated it on June 1.<sup>15</sup>

## Remain in Mexico enriched organized crime

Placement in Remain in Mexico required that asylum seekers first reach the U.S. border. Because of repeat appointments and frequent changes in appointment dates, the program made it necessary for most asylum seekers to remain near the border, waiting in northern Mexican states and cities.

Unlike many other regions of the country where asylum seekers might have been able to wait, Mexico's border zones suffer from a high concentration of organized crime groups, often called "cartels." These hyper-violent organizations take in billions of dollars per year from a variety of income streams: drug trafficking, extortion, fuel theft, ransom kidnappings, official graft, and—quite lucratively—human trafficking and migrant smuggling.

**Organized crime's prevalence has made Mexico's border region one of the most dangerous areas in the Western Hemisphere.** The State Department has issued travel advisories warning U.S. citizens considering visits to all five of Mexico's northern border states:

- Tamaulipas, across from south Texas, has a level four "Do Not Travel" recommendation, the same severity as Afghanistan or Syria, due to "crime and kidnapping."
- Baja California, Chihuahua, and Sonora, across from California, Arizona, and New Mexico, have level three "Reconsider Travel" warnings for the same reasons.
- Coahuila, across from mid-Texas, has a level two "Exercise Increased Caution" warning due to crime.<sup>46</sup>

Typically, migrants seek to spend as little time as possible in Mexico's northern border region. The longer an outsider or foreigner remains in these regions, especially in the marginal neighborhoods where most asylum seekers must seek shelter, the more vulnerable they are to being preyed on by organized crime.

By requiring non-Mexicans to linger for months or even years in border cities, **Remain in Mexico created a rich new income stream for cartels.** A black market sprang up that did not exist before.

"Cartels see migrants as walking dollar signs," a Mexican migrant shelter operator told me in 2019. Criminals, operating with broad impunity, know that migrants probably have relatives to extort, and that those made to Remain in Mexico were very motivated

to pay extortions or ransoms because they could not miss their court dates. If migrants despaired of the MPP process, migrant smugglers (“*coyotes*”) were waiting to take them across the border for a hefty fee.

“MPP and Title 42 [the pandemic-era expulsions policy that followed] created a bonanza for human traffickers on the Mexican side,” University of Arizona expert Javier Osorio told the *Arizona Republic* in 2022.<sup>42</sup> Migrants “stay in Mexico for weeks and months, which makes them **sitting ducks to be targeted by criminal groups who want to extort them or offer opportunities.**”

Often, kidnapers and extortionists were waiting every day for MPP returnees to arrive at their daily drop-off points near ports of entry, after attending hearings or being added to the program. Asylum seekers would emerge from CBP custody clutching DHS-labeled plastic bags with documents or belongings, often wearing DHS-issued slippers or sweatsuits, with shoes often missing shoelaces (one U.S. advocate, with dark humor, called it the “‘kidnap me’ uniform”). For the many cartel scouts (known as “*halcones*,” or “hawks”) stationed around official border crossings, they were instantly distinguishable as vulnerable, often disoriented foreigners.



Where MPP drop-offs would happen every day in Ciudad Juárez. Kidnappers were often waiting. (Photo by the author, January 2020)

“That first half hour of return to Mexico is the most dangerous point,” Taylor Levy, an attorney who represented many RMX subjects in El Paso, told the *Rio Grande Valley*

*Monitor*.<sup>18</sup> “That first half hour, that first hour, that’s where we see the most kidnappings. We see systematic kidnappings particularly in Tamaulipas, particularly in Nuevo Laredo.”



*An attorney took this 2019 photo of a man’s wrists, which had been bound tightly for days, at a Remain in Mexico “tent court.” He had just paid a ransom and been released by his kidnappers, along with his child, barely in time for his hearing. He arrived on the U.S. side, and sought to defend his case, with fresh wounds and bruises. (Photo shared with permission from an anonymous source.)*

The problem steadily worsened, too, in Ciudad Juárez across from El Paso. “There’s absolutely no meaningful screening for danger in Mexico,” Levy told the *Texas Observer* in 2019. “Instead, we’re handing people on a silver platter to the cartels.”<sup>19</sup>

In Nuevo Laredo in 2022, a shelter director explained to me that cartel-affiliated vehicles constantly patrol downtown, around the Gateway to the Americas Bridge to Laredo, looking for migrants who haven't paid protection fees and kidnapping them.<sup>20</sup> Criminals then hold them, often torturing them, until the migrants' relatives—usually in the United States—transfer ransom payments.

Examples of cartel ransom kidnappings of asylum seekers made to remain in Mexico, documented in both mainstream media and non-governmental human rights reports, are too numerous to lay out here. (Special recognition goes to Human Rights First, whose researchers compiled and documented examples in a harrowing series of reports between 2019 and 2021.<sup>21</sup>)

Though it is impossible to document the entire universe of cases, the frequency with which kidnappings occurred (and continue to occur) in northern Mexican border cities is stunning. In October 2019 alone, Doctors Without Borders reported that **three-quarters of asylum seekers to whom their personnel offered medical attention in Nuevo Laredo reported having been kidnapped for ransom.**<sup>22</sup> Media and NGO reports document numerous examples of asylum seekers missing their MPP hearings because they were in criminal custody.

Cartel kidnappers usually—but certainly not always—respected the government and charity-run shelters where many asylum seekers lived, often with their children, for months as they awaited their appointments. But venturing outside was very risky. In 2019 and early 2020, I spoke to many in shelters who voiced fear of venturing out to get groceries, to do some work to earn money, or to get medical care. Many refused to allow their children to leave shelter premises to attend nearby schools. MPP also [returned](#) some asylum seekers to cities hundreds of miles away from the ports of entry where they would have to report for their hearings, requiring treacherous journeys on highways where migrants frequently disappear at cartel checkpoints.<sup>23</sup>



*The Pan de Vida shelter on the outskirts of Ciudad Juárez is a complex of small group houses scattered around a circular drive where many people made to remain in Mexico stayed for months. Armed cartel members would enter the premises in large trucks and drive around menacingly, making clear the danger for migrants who ventured outside. (Photo by the author, January 2020)*

The amount of money that cartels gained from ransom kidnappings of MPP asylum seekers is impossible to measure but was certainly very large. Media and NGO reports routinely reported **ransom payments well into the thousands of dollars per person**. “They [the criminals] usually demand \$10,000, but my advice is to negotiate if you know that you can,” an attorney who worked with MPP clients told me. “Don’t pay the initial amount right away, or they will ask for more.”

**Kidnappers specifically sought out people with Remain in Mexico hearings because they had a strong motivation to pay more.** “Cartels extorted returned asylum seekers based on the date of their next RMX hearing, effectively imposing a tax on the time the U.S. government forced them to wait in Mexico under the policy,” Human Rights First reported in 2022.<sup>44</sup>

My review of dozens of media and NGO accounts shows \$4,000 to \$7,000 per person to have been a very common range of ransom payments. In most cases, those payments

were wired from relatives in the United States, making these kidnappings federal crimes involving people on U.S. soil. “Migrant kidnappings are an incredibly lucrative business,” *InSight Crime* reported in January 2022.<sup>25</sup> “For example, if a given group kidnaps 10 people a day asking for between \$7,000 and \$10,000, and they average seven successful ransom payments of \$5,000 per person, that’s \$35,000 in profits every day.”

Kidnappings were far from the only income stream that MPP generated for criminals. Extortionists benefited, too, during the Remain in Mexico period. In slums of border cities like Ciudad Juárez, **cartel enforcers demanded that asylum seekers pay for “permission” simply to remain for months in neighborhoods** where charity-run shelters were located. Those who failed to make such payments risked kidnapping, assault, or worse if they ventured outside. Asylum seekers who did not pay assumed an especially great risk if they ventured near the heavily surveilled border crossings.

In preparation for this testimony, I asked several researchers, advocates, and journalists from border cities whether it was reasonable to estimate that the average asylum seeker placed in “Remain in Mexico” paid a cumulative \$1,000 in ransoms and extortion payments over the many months of their wait in Mexico’s border region.

They all viewed that estimate as too conservative, but **let’s assume \$1,000 per person** for this thought experiment. (Perhaps for everyone who paid \$2,000 to organized crime, there was a person who paid \$0.)

Even using that lowball estimate, **\$1,000 in forced organized-crime payments times 71,000 people made to “Remain in Mexico” would mean that the program enabled Mexican cartels to collect an additional \$71 million in 2019 and 2020 alone.** This would mean that Remain in Mexico provided organized crime with a windfall about equal to the annual salaries and benefits of 600 Border Patrol agents.

The potential profitability to criminals may be worse today than five years ago. Migrants are still routinely kidnapped as they try to cross northern Mexico; in fact, kidnappings are more prevalent, and ransoms are higher. Since 2023, we have heard anecdotal reports of systematic kidnappings increasing dramatically in Tamaulipas and emerging in Chihuahua and Baja California, where they had been less frequent.<sup>26</sup> In Ciudad Juárez last year, much violent competition between cartels centered on control of migrant smuggling, at least as much as drug smuggling.

More recently, the CBP One app’s feature enabling asylum seekers to make appointments at ports of entry “made it harder for smugglers,” a professor from a border-area university who studies smuggling trends told me in an interview for this

testimony. Because the app works throughout Mexico, “It dispersed people around the country, so that they had fewer customers” concentrated in Mexico’s northern border region and could not extort people there. “It was getting so that smugglers were obsolete,” with perhaps 10 out of every 300 migrants needing “coyotes” help to evade Border Patrol and the rest seeking to turn themselves in. With CBP One likely to disappear along with a return of Remain in Mexico, which requires asylum seekers to travel all the way to Mexico’s northern border where smugglers can prey on them, “those guys are happy,” the professor said.

### Remain in Mexico was an outsized irritant in a multifaceted relationship with Mexico

The government of Mexico did not enthusiastically assent to having 71,000 unsheltered, unemployed, and vulnerable foreign nationals sent back into its territory. Launching “Remain in Mexico” required the Trump administration to engage in bullying, cajoling, and political horse-trading. The program became a central issue in a bilateral relationship that involves U.S. interests far beyond migration.

The most thorough available account of the negotiations leading up to the December 2018 start of Remain in Mexico comes from Nick Miroff, Kevin Sieff, and Mary Beth Sheridan of the *Washington Post*, reporting that month.<sup>24</sup> “Mexican diplomats characterized the measures Thursday as steps they have acceded to begrudgingly,” they noted.

Trump administration negotiators issued their demands to members of the new administration of Mexican President Andrés Manuel López Obrador in a November 2018 meeting in a Houston hotel, shortly after President Trump threatened to close the U.S.-Mexico border entirely in response to increased migration. The *Post* reported:

**Mexican officials insisted the policy did not amount to an agreement, but was instead being imposed on them by the United States.**

“This was a unilateral measure by the U.S. Our response is according to our law and our commitment to a secure, orderly and legal migration,” said Roberto Velasco, a spokesman for Mexico’s Ministry of Foreign Affairs. “We’ve found some issues where we have a level of mutual understanding . . . and others on which our approaches differ.”

Velasco said the Mexican government was informed at 8 a.m. Thursday of U.S. plans to implement the policy. The government had not received prior notice that such an announcement would be made. **The surprise announcement “didn’t sit well” with the**

**Mexicans**, said a second government official, speaking on the condition of anonymity to discuss diplomatic developments.

The main problem, he said, was the timing. The Mexican government didn't want to signal that "we were 'giving in' to the Trump administration in the first months of the new administration."

The program steadily ramped up, with 14 people returned to Mexico in January 2019, 165 in February, 338 in March, 2,625 in April, and 5,082 in May.<sup>28</sup> This had no deterrent effect: the number of migrants entering U.S. Border Patrol custody climbed steadily during those months, reaching 132,856 in May 2019, the most in any month since April 2005.

On May 30, President Trump escalated further, threatening to impose steep tariffs on Mexican goods if Mexico's government "until the Illegal Immigration problem is remedied."<sup>29</sup> More negotiations followed. Mexico's government resisted a Trump administration demand that it serve as a "safe third country"—which would allow the U.S. government to send third-country nationals into Mexico to seek asylum in Mexico's system—but assented to a big redeployment of security forces to border and migration transit zones and a dramatic expansion of Remain in Mexico.

The number of asylum seekers returned to Mexico ballooned to 5,908 in June 2019, 11,616 in July, 12,407 in August, and 8,793 in September before declining below 4,000 by November.

Donald Trump and his cabinet had to exhaust heavy diplomatic and political reserves to get Mexico to accept MPP returns. This drained goodwill from a largely cordial partnership and diverted bandwidth from a bilateral relationship on which many U.S. interests hinge.

**Bullying Mexico—or being perceived as bullying Mexico—carries a cost.** Mexico is not a distant, minor nation. Not only does it share a 1,950-mile land border, it has the world's 10th-largest population (130 million) and 14th-largest economy (\$1.4 trillion). It was the United States' top trading partner in 2023, with \$800 billion in bilateral trade—\$1.5 million per minute. The United States needs Mexico's cooperation to slow the production and transit of fentanyl, methamphetamine, cocaine, and other drugs that too many U.S. citizens abuse.

Mexico faces democracy, corruption, and human rights challenges that affect U.S. interests because they are direct or indirect causes of migration: CBP has encountered

Mexican citizens at the border nearly 3 million times since 2021. In 2021–2022, 9 percent of encountered Mexican migrants were families or children; by 2024 it was 48 percent, indicating a lot of forced displacement related to Mexico’s governance challenges.

Whatever gain in migrant deterrence the Trump administration obtained by forcing Mexico to go along with MPP (see below) came at a cost to these other interests. “Efforts to implement MPP have played a particularly outsized role in diplomatic engagements with Mexico, diverting attention from more productive efforts to fight transnational criminal and smuggling networks and address the root causes of migration,” wrote DHS Secretary Mayorkas in an October 2021 [memo](#) terminating Remain in Mexico.<sup>32</sup>

There is only so much bullying a Mexican leader will endure before it begins to affect her standing and favorability in the eyes of Mexican voters—and that is a very high price to extract. Demanding concessions like a big new Remain in Mexico program will mean reduced Mexican willingness to cooperate on other priorities. Forcing Mexico’s government to accept more non-Mexican migrants, in a public and humiliating way, certainly does not lead Mexican officials to say, “I want to work with you” on other issues of mutual interest.

As President Claudia Sheinbaum noted in a November 26, 2024 letter to Trump, Mexico’s government already considers that it has done quite a bit to contribute to last year’s sharp drop in Border Patrol apprehensions at the U.S.–Mexico border.<sup>33</sup> (The country has pursued an aggressive strategy of apprehending third-country migrants and busing them to Mexico’s border zone.) “President Trump, it is not with threats or tariffs that the migration phenomenon or drug consumption in the United States will be addressed. It requires cooperation and reciprocal understanding of these great challenges.”

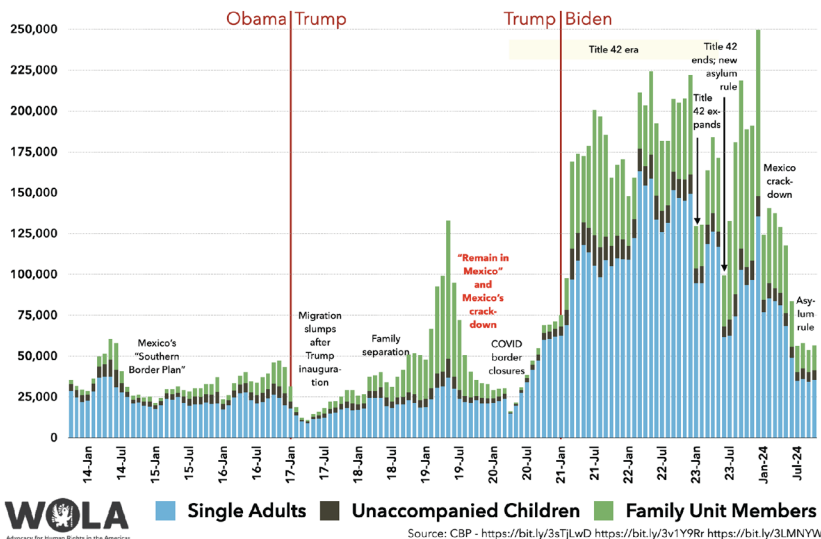
If the new administration makes a demand that threatens to distract and disrupt the pursuit of all other U.S. interests in Mexico, it should be certain that its demand is for something that would pay off handsomely. **“Remain in Mexico,” however, is not a policy that paid off or provided much benefit.** As proved above, the policy strengthened cartels. Worse, it had only minimal effect on migration.

Remain in Mexico’s deterrent effect faded quickly.

It has now been nearly 11 years (Spring of 2014) since the U.S.-Mexico border first experienced a surge of children and families from Central America turning themselves in to U.S. authorities to seek asylum. The chart below shows several occasions during which the Obama, Trump, and Biden administrations sought to crack down on this protection-seeking migration, in the absence of meaningful reform to the U.S. immigration or asylum systems.

At least through 2023, each one of those crackdowns reduced Border Patrol apprehensions of migrants for a period of a few to several months. After those initial drops, each one of those crackdowns was followed by a recovery in migration levels to earlier or higher levels.

**In the Absence of Reform, Asylum Crackdowns’ Effects are Ephemeral**  
 Border Patrol Migrant Apprehensions at the U.S.-Mexico border since October 2013

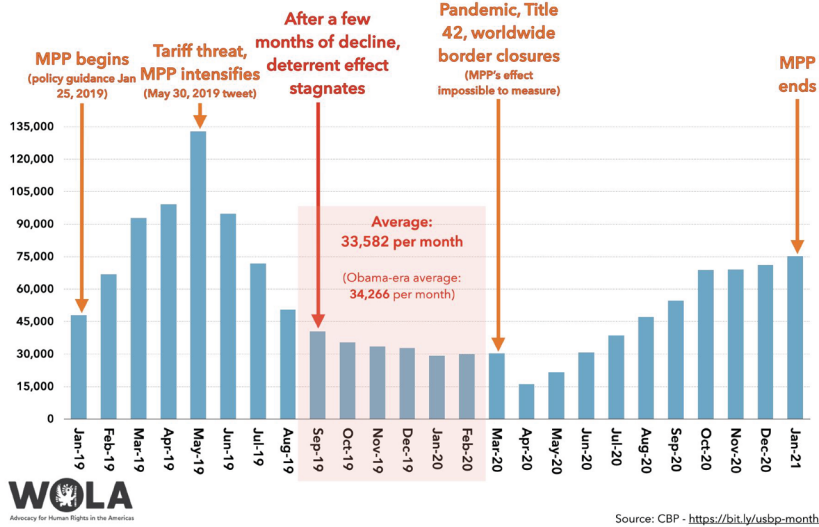


**WOLA** ■ Single Adults ■ Unaccompanied Children ■ Family Unit Members  
Advocacy for Human Rights in the Americas  
 Source: CBP - <https://bit.ly/3stTjLwD> <https://bit.ly/3v1Y9Rr> <https://bit.ly/3LMNYWJ>

“Remain in Mexico” was no exception. After Mexico agreed to a June 2019 expansion in Remain in Mexico returns, Border Patrol apprehensions fell... to levels last measured in mid-2018.<sup>32</sup>

## Was Remain in Mexico Effective?

Border Patrol Migrant Apprehensions at the U.S.-Mexico border, January 2019-January 2021

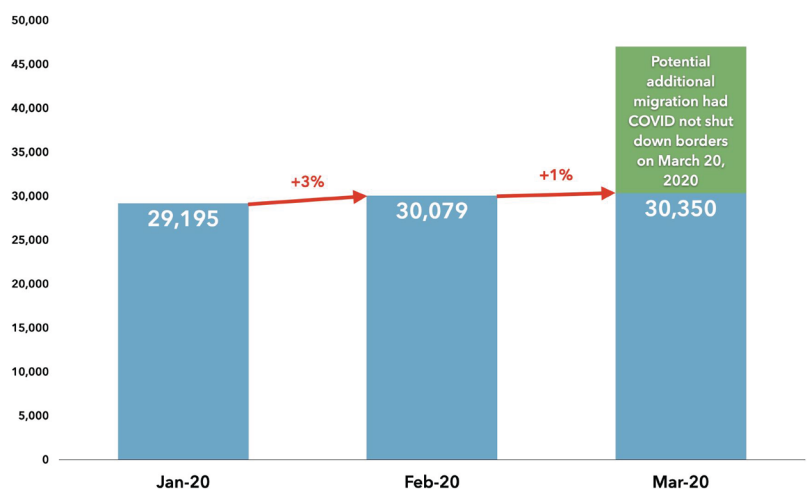


Some of the drop was due not to Remain in Mexico, but to Mexico agreeing to redeploy security and migration forces, intensifying checkpoints, patrols, use of the armed forces, and other efforts to block migrants.

After those four months, **by September or October 2019, migrant encounters plateaued.** There were no further reductions at the U.S.-Mexico border. The September 2019-February 2020 average of migrant apprehensions (33,582) was almost exactly the monthly average over the Obama administration’s eight years (34,266).

Not only did migration reductions stagnate, in early 2020 they showed signs of reversing. February 2020 migrant apprehensions were 3 percent greater than January 2020. March 2020 was 1% greater than February 2020, even though March was *effectively a 3-week-long month* because the COVID pandemic shut the world’s borders 20 days in. **We were on our way to seeing a spring migration increase in 2020 despite Remain in Mexico, but the pandemic erased it.**

## Zooming In: “Remain in Mexico’s” Last Three Months



Source: CBP - <https://bit.ly/usbp-monthly>

We don't know how much longer Remain in Mexico would have deterred migration, because the program got superseded by the Title 42 pandemic expulsions policy, which put the asylum system out of reach for any migrant who could quickly be expelled. As the two-year chart above shows, though, Title 42 barely reduced migration at all: as expulsions carry far fewer consequences than deportations, many migrants chose to attempt repeat crossings, and Border Patrol apprehensions ballooned.

“I have determined that MPP does not adequately or sustainably enhance border management in such a way as to justify the program’s extensive operational burdens and other shortfalls,” Secretary Mayorkas wrote in a June 2021 memo.<sup>33</sup> “Throughout the program, border encounters increased during certain periods and decreased during others.”

When no other pathways to asylum exist, the deterrent effect of Remain in Mexico is even weaker. During several months of the Title 42 period, when a Texas federal judge required the Biden administration to restart the program, many asylum seekers from countries subject to expulsion into Mexico even asked to be placed in MPP because it was one of the only ways into the U.S. asylum system at the time.<sup>34</sup>

Finally, now that a **June 2024 Biden administration rule** bans asylum access for nearly every migrant apprehended between the border's ports of entry, it is not clear who would be the target of a renewed "Remain in Mexico." Would those sent back under MPP be the few hundred people per month whom the Trump administration, post-CBP One, might allow to request asylum at ports of entry, plus the few Border Patrol apprehensions who pass credible fear screenings? If so, it makes little sense to burn diplomatic capital and risk strengthening organized crime for such a tiny program.

### A better way

It makes no sense to pursue a program that enriches cartels and complicates one of the United States's most important relationships, all for minimal, ephemeral reductions in protection-seeking migration. Yet I fear that administrations of both parties will continue to stumble from one unsuccessful crackdown to the next as long as our immigration and asylum systems remain unreformed and overburdened.

As of mid-2024, UNHCR reported, "the Americas hosted 20.3 million forcibly displaced or stateless people."<sup>35</sup> The United States is hosting just a fraction of that population. We are in a moment of historic protection-seeking migration. However, not everyone seeking protection will qualify for it. That challenge demands that the United States have **a far more robust adjudication system than the roughly 700 immigration judges, plus a similar number of asylum officers, that it has now.**<sup>36</sup>

Building that adjudication capacity, along with more professionals dedicated to processing and case management, would make our asylum system operate far more quickly—eliminating the need for still more crackdowns—while keeping it fair and honoring the post-World War II values that inspired the world to make asylum a right in the first place.

Nobody in this debate favors 5-year waits for asylum decisions. The backlog becomes its own draw. However, backlogs are an administrative challenge the U.S. government is more than capable of overcoming. Building the capacity to hand down decisions fast but fairly with full due process requires investment. Still, it would be a fraction of what has been spent on tougher-seeming measures—like Remain in Mexico—that have proved ineffective and counterproductive.

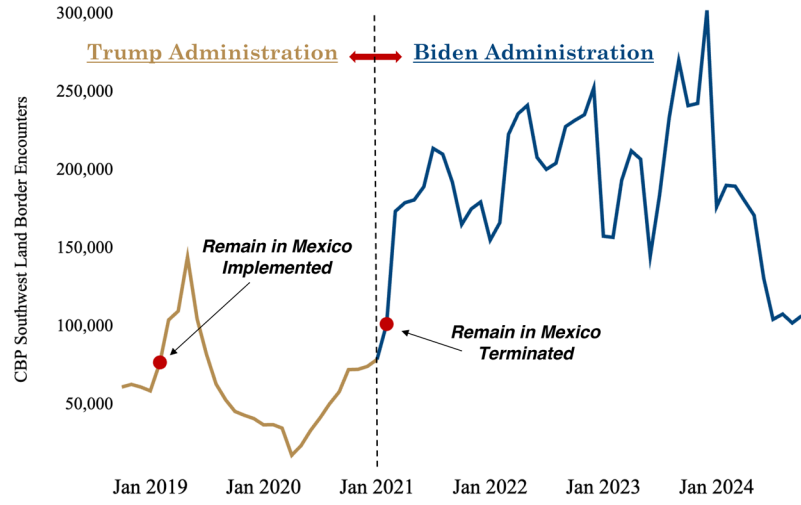
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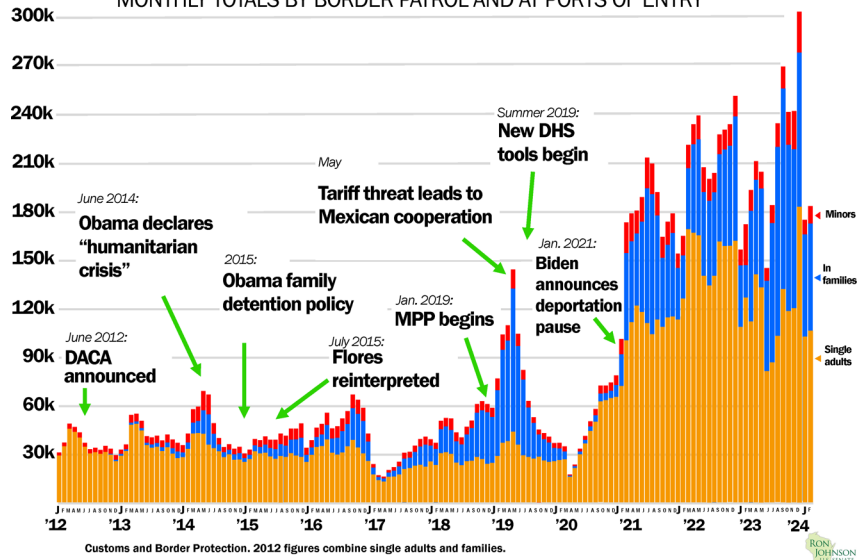
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35. “The Americas,” UNHCR, 2025, <https://reporting.unhcr.org/operational/regions/americas>.
36. Andrea Flores, “A Better Way Forward: Border Security Policy Plan,” *FWD.us*, January 9, 2025, <https://www.fwd.us/news/a-better-way-forward/>.

**Monthly Southwest Border Encounters**



# SW BORDER ENCOUNTERS

MONTHLY TOTALS BY BORDER PATROL AND AT PORTS OF ENTRY









**Statement of the American Civil Liberties Union  
prepared for the “Remain in Mexico” Hearing before  
the Homeland Security and Government Affairs Committee  
January 16, 2025**

The American Civil Liberties Union (“ACLU”) is a nonpartisan public interest organization with 4 million members and supporters, and 53 affiliates nationwide—all dedicated to protecting the principles of freedom and equality set forth in the Constitution. The ACLU has a long history of defending civil liberties, including immigrants’ rights. The ACLU vigorously defends the constitutional right of due process for both citizens and immigrants, and advocates for policies that protect these rights.

The ACLU challenged the Migrant Protection Protocols policy (also known as “Remain in Mexico”) and led the litigation challenging the Title 42 program, both of which left vulnerable asylum seekers stranded in Mexico in life-threatening circumstances and in violation of U.S. and international law. We have participated in other litigation over the years concerning the civil liberties of immigrants and to protect the rights of refugees and people seeking asylum, and we routinely advocate in Congress and state legislatures for policies that promote due process and protections for immigrants.

#### **A. Introduction**

This statement addresses the many reasons this devastating and illegal policy—the Migrant Protection Protocols—should never be resurrected. The Migration Protection Protocols (MPP) policy was one of the most abusive and egregious of President Trump’s attacks on the asylum system, exposing vulnerable people to violence and murder. The policy was a boon to organized crime in Mexico and inflicted horrendous and lasting harm on asylum seekers, including their minor children.

The ACLU represented multiple clients in our challenge to MPP who were subject to horrific violence from cartels while waiting in Mexico for their asylum appointments. These included:

- An asylum seeker from El Salvador who, after being returned to Mexico, was kidnapped by cartel members and repeatedly gang raped in front of her 3-year-old child;
- An asylum seeker from Guatemala who was sent back to Mexico with her young children, aged six and eight, who had already been kidnapped and assaulted when she got to the border and then was subjected to two more attempted kidnappings and an attempted sexual assault when returned to Mexico;
- An asylum seeker from Venezuela who was kidnapped by a cartel after being returned to Mexico, along with his three-year-old son.

The MPP program was a human rights disaster when implemented in 2019, and since then successive bans and border shutdown policies created a well-documented dangerous situation for people seeking asylum at the southern border. Policies that prevent access to asylum and expel people en masse to another country with no individualized consideration of the dangers they face violate our *nonrefoulement* obligations, federal law, and basic decency. They do not offer any sustainable solutions to the real needs of our border, asylum, and immigration systems, as previous experience demonstrates. Rather than revisit this catastrophic policy that fueled cartels' expansion in Mexico and sent asylum seekers to their deaths, our federal government should instead invest in meaningful, forward-looking solutions, including investments in port processing and our asylum and immigration court systems. As previous experience shows, MPP is a pathway to cruelty and chaos, and it should never be resurrected.

#### **B. Migration Protocols Policy under Trump 1.0**

On December 20, 2018, Department of Homeland Security (“DHS”) Secretary Nielsen announced an “unprecedented” change to the existing policy. In what DHS described as an “historic action to confront illegal immigration,” Nielsen announced a new policy, dubbed the “Migrant Protection Protocols” (“MPP”), under which DHS would begin requiring noncitizens who seek admission from Mexico “illegally or without proper documentation” to be “returned to

Mexico for the duration of their immigration proceedings.”<sup>1</sup> According to DHS, the new policy would address the problem of noncitizens who allegedly “game the system” and “disappear into the United States,” and deter migrants from making “false” asylum claims at the border “while ensuring that vulnerable populations receive the protections they need.”<sup>2</sup> On January 25, 2019, a memorandum issued by Nielsen stated that implementation of the forced return policy would be “on a large-scale basis”<sup>3</sup>; the policy proceeded to be applied across ports of entry, requiring individuals and families to wait in Mexico for their asylum hearings in the U.S.

The MPP Guidance gave officers at the border enormous discretion to decide whether to allow someone seeking safety to enter the U.S. for their hearing or to subject them to this policy, even if a person required to wait in Mexico had no resources, shelter or legal status in Mexico and was likely to face kidnapping and other horrendous abuse upon their return. Although the Guidance carved out an exception for individuals who were “more likely than not” to face persecution or torture if returned to Mexico, immigration officials were not required to ask applicants if they faced such a fear, nor even to inform them that they were being sent back to Mexico. Instead, asylum seekers needed to affirmatively state such a fear and meet the demanding “more likely than not standard” required to obtain “withholding of removal” -- without notice that they faced return to Mexico, and without the opportunity to consult with anyone. There was also no guarantee of an interpreter to assist at the interview, which might take place soon after the individual arrived from a traumatic and dangerous journey. Nor was there any meaningful opportunity to appeal a determination that they didn’t meet an exception to the policy and so should not be returned to

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<sup>1</sup> U.S. Department of Homeland Security, Press Release, “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration,” Dec. 20, 2018, <https://www.dhs.gov/archive/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of Homeland Security, Memorandum from Kristjen Nielsen, *Policy Guidance for Implementation of the Migrant Protection Protocols*, Jan. 25, 2019, [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf).

wait in Mexico. Indeed, as documented by the ACLU and other immigrant and human rights organizations, numerous asylum seekers told the immigration officials about the harms they had already experienced in Mexico but were nonetheless returned. And, as evidenced by our own clients' experiences, even when they were subjected to horrendous abuse after their return, including kidnappings, rape, and torture, there was no opportunity to revisit the officers' negative fear determination until they returned to the port of entry for their scheduled removal hearings – hearings that were placed on indefinite hold after the Title 42 policy was adopted, leaving them literally stranded in hiding in Mexico

### **C. MPP Violates U.S. Law, Including Binding Treaty Obligations**

A bedrock principle of U.S. and international law known as *nonrefoulement* prohibits the United States from returning individuals to countries where they are more likely than not to face persecution, torture, or cruel, inhuman, or degrading treatment. This duty is codified in the Immigration and Nationality Act's ("INA") withholding of removal provision, 8 U.S.C. § 1231(b)(3), and ensures compliance with U.S. treaty obligations, including the Refugee Convention and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. International law prohibits the *en masse* expulsion of asylum-seekers to a third country to await asylum processing because, absent individualized review, there is a heightened risk of erroneous removal to places where an individual will be persecuted or tortured, in violation of binding human rights law.<sup>4</sup>

The entire MPP policy was in clear violation of U.S. non-refoulement obligations and federal law, and it left people seeking asylum not only in danger of violence, persecution and extortion in Mexico, as further described below, but also deprived them of their right to seek

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<sup>4</sup> *Innovation Law Lab v. McALEENAN* Amicus Brief: UN High Commissioner on Refugees, No. 19-15716, July 10, 2019, <https://www.aclu.org/cases/innovation-law-lab-v-wolf?document=innovation-law-lab-v-wolf-supreme-court-stay-order#legal-documents>.

asylum. There is no functioning asylum system in Mexico, and Central American asylum seekers who were required to wait in Mexico under MPP faced a substantial risk of being involuntarily repatriated to the countries they had fled. Intergovernmental and human rights organizations documented widespread instances of Mexican officials returning Central American migrants to their home countries despite their fears of persecution or torture, without any meaningful process—an experience that some of the ACLU clients knew first-hand.

In February 2019, the ACLU, with our partners Southern Poverty Law Center and Center for Gender & Refugee Studies challenged the MPP policy in *Innovation Law Lab v. Wolf*, a case on behalf of 11 individual asylum seekers and organizational plaintiffs. Although the district court enjoined the policy, the injunction was stayed by a motions panel pending appeal to the Ninth Circuit. In February 2020, the Ninth Circuit Court of Appeals affirmed the district court’s injunction, finding the policy unequivocally illegal because it was not authorized by the Immigration and Nationality Act and because MPP lacked “sufficient safeguards to comply with DHS’s admitted legal obligation not to return any alien to a territory where his or her ‘life or freedom would be threatened.’”<sup>5</sup> This decision, however, was stayed by the Supreme Court. Thus, despite the district court and Ninth Circuit decisions, MPP remained in effect until the Biden administration suspended new enrollments in MPP on January 21, 2021, and then in June 2021, formally ended the policy. Two states—Texas and Missouri—sued DHS to keep this program alive, but in June 2022, the Supreme Court confirmed that the administration could end this devastating program.

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<sup>5</sup> *Innovation Law Lab v. Wolf*, No. 19-15716 (9th Cir. 2020).

In the two-and-a-half years it was in effect, however, MPP created a human rights disaster at the border, exposing vulnerable asylum seekers to torture, kidnapping, rape, and murder, and fueling organized crime on the Mexico side of the border.

#### **D. The Violent Effects and Legacy of MPP**

The Remain in Mexico/MPP policy put tens of thousands of people in direct harm, living in border camps in Mexico where they were sitting ducks for drug cartels who preyed upon vulnerable asylum seekers waiting in Mexico for months on end to present their claims in the United States. These harms were illustrated in another lawsuit the ACLU and partners brought in April, 2020, *Nora v. Wolf*. The lawsuit was brought on behalf of 26 asylum seekers—12 adults and their 14 minor children—who pursuant to MPP were returned to one of the most dangerous regions of Mexico, Tamaulipas, where they were assaulted, kidnapped, raped and tortured by organized groups that controlled the region.

Among our plaintiffs were:

- An asylum seeker from El Salvador who, after being returned to Mexico, was kidnapped by cartel members and repeatedly gang raped in front of her 3-year-old son. Although she told U.S. immigration officials what happened and pleaded with them to allow her to pursue her asylum claim in the U.S, the officials refused. As a result, she and her son were forced to remain in Mexico in hiding, in fear for their lives.
- An asylum seeker from Honduras, and her daughters, aged 16 and 10, were also kidnapped by cartel members after being sent back to Mexico. The mother and 16-year-old daughter were gang raped over a period of days. Although they attempted to relocate to find safety, their attackers found them and kidnapped and raped them again.
- An asylum seeker from Guatemala was sent back to Mexico despite telling U.S. authorities about how she and her two young children, six and eight, had been kidnapped, starved and threatened with death. After being returned to Mexico she was subjected to two more attempted kidnappings and an attempted sexual assault. She then made the difficult decision to send her children across the border by themselves.

- An asylum seeker from Venezuela and his three-year-old son were kidnapped by the cartel after being returned to Mexico. He was forced to work long hours under threat of death. Cartel members also threatened to sell his son to organ traffickers.
- Yet another of our clients, an asylum seeker from Honduras, was kidnapped and repeatedly gang raped in front of her children, ages five and one, over a period of days. Barely one month later she was kidnapped again and again raped in front of her children.

The experience of our clients was by no means unique. Human Rights First documented 1,544 allegations of extreme abuse, including homicide, rape, and kidnapping, faced by individuals placed in MPP from January 2019 to February 2021,<sup>6</sup> noting that MPP “effectively delivers asylum seekers into the hands of cartels.”<sup>7</sup>

Moreover, the federal government itself has acknowledged the devastating harm that Remain in Mexico inflicted on vulnerable asylum seekers, including children.<sup>8</sup> A 2021 memorandum from the Department of Homeland Security, supporting the decision to end this program, observed that when MPP was in effect: “there were pervasive and widespread reports of MPP enrollees being exposed to extreme violence and insecurity at the hands of transnational criminal organizations that prey on vulnerable migrants as they waited in Mexico for their immigration court hearings in the United States.”<sup>9</sup> Detailing the abysmal and dangerous conditions in the camps that housed families and individuals enrolled in MPP, the memorandum noted, “But

<sup>6</sup> Human Rights First, *Delivered to Danger: Trump Administration sending asylum seekers and migrants to danger*, Feb. 19, 2021, <https://www.humanrightsfirst.org/campaign/remain-mexico>.

<sup>7</sup> Human Rights First, “Any Version of ‘Remain in Mexico’ Policy Would Be Unlawful, Inhumane, and Deadly,” Sept. 9, 2021, <https://humanrightsfirst.org/library/any-version-of-remain-in-mexico-policy-would-be-unlawful-inhumane-and-deadly/>.

<sup>8</sup> Secretary of Homeland Security Alejandro Mayorkas, Memorandum, Termination of Migrant Protection Protocols, Oct. 2021, [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-memo.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-memo.pdf); see also Biden v. Texas, Brief of Solicitor General, Petition for Writ of Certiorari, at 11, [https://www.supremecourt.gov/DocketPDF/21/21-954/206810/20211229162636127\\_Biden%20v.%20Texas%20-%20Cert%20Petition.pdf](https://www.supremecourt.gov/DocketPDF/21/21-954/206810/20211229162636127_Biden%20v.%20Texas%20-%20Cert%20Petition.pdf).

<sup>9</sup> U.S. Department of Homeland Security, *Explanation of the Decision to Terminate the Migrant Protection Protocols*, at 12 (October 29, 2021), [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-justification-memo-508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf).

as bad as conditions often were in the makeshift border camps, migrants gathered there because the threat of violence and kidnapping in surrounding areas outside of the camps could be greater.”<sup>10</sup> Confirming our own clients’ experiences, DHS noted the rampant kidnapping of asylum seekers subject to MPP, referencing evidence from Médecins Sans Frontières (Doctors Without Borders) noting that 75% of its patients who were in Nuevo Laredo in October 2019 due to MPP reported having been kidnapped<sup>11</sup>, as well as evidence from a December 2019 UNHCR Rapid Protection Assessment, finding “children represented about half (48%) of targets for physical violence, and about half (48%) of kidnapping victims.”<sup>12</sup>

Unfortunately, MPP was not the only program that left asylum seekers stranded, en masse, in Mexico and subject to violence. In March 2020, using the COVID-19 pandemic as its justification, the Trump administration invoked Title 42 and closed the southern U.S. border, effectively shutting down the asylum system.<sup>13</sup> Under Title 42’s mass expulsion policy, which the Biden administration kept in place until May 2023, people seeking safety were immediately removed from the United States with no consideration of their claims for protection. Depending on their nationality, they were either simply sent back across the border to Mexico — as happened to thousands of Haitians<sup>14</sup> — or they are sent back to their countries of origin. Human Rights First documented over 13,000 cases of serious and violent attacks against migrants—including rape,

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<sup>10</sup> *Id.* At 13-14.

<sup>11</sup> *Id.* citing Médecins Sans Frontières, *The devastating toll of ‘Remain in Mexico’ asylum policy one year later*, Jan. 29, 2020, <https://www.msf.org/one-year-inhumane-remain-mexico-asylum-seeker-policy>.

<sup>12</sup> *Id.* Citing UNHCR, Rapid Protection Assessment: MPP Returnees at the Northern Border of Mexico 15, Dec. 2019.

<sup>13</sup> 85 Fed. Reg. 17,060, 17,061 (Mar. 26, 2020); 85 Fed. Reg. 56,424 (Sept. 11, 2020) (final rule)

<sup>14</sup> Julia Neusner, Human Rights First, *A Year After Del Rio, Asylum Seekers Expelled Under Title 42 Are Still Suffering*, Sept. 22, 2022, <https://humanrightsfirst.org/library/a-year-after-del-rio-haitian-asylum-seekers-expelled-under-title-42-are-still-suffering/>.

kidnapping, and murder—between January 2021 and June 2022 alone, and those cases continued throughout the time that Title 42 was in effect.<sup>15</sup>

In *Huisha-Huisha v. Mayorkas*, a case brought by the ACLU and partners challenging the exclusion of asylum seekers under Title 42, the Court of Appeals for the D.C. Circuit observed that asylum seekers faced horrible abuses when turned away at the U.S. border. Judge Walker, writing for the Court, noted the uncontested evidence that families were clearly expelled to danger: “the record is replete with stomach-churning evidence of death, torture, and rape.”<sup>16</sup> Indeed, the Court noted that for those required to return across the bridge and back to Mexico, it was as if they were “forced to walk the plank into those places.”

The current emergency border authority<sup>17</sup>, introduced by the Biden administration in June 2024, and the asylum bans that preceded it,<sup>18</sup> have continued to leave asylum seekers vulnerable to kidnapping, sexual assault, extortion, murder and torture. These are disastrous and illegal limitations on the right to seek asylum that benefit drug cartels, for whom vulnerable migrants are an easy and consistent target. Indeed, as a November 2024 report from *ProPublica* documented, drug cartels are now kidnapping migrants in Mexico at an unprecedented scale: “a new phase of mass kidnapping for profit has emerged at the country’s southern border that is different in

<sup>15</sup> Human Rights First, *Human Rights Stain, Public Health Farce*, (2022), <https://humanrightsfirst.org/library/title-42-human-rights-stain-public-health-farce/>.

<sup>16</sup> *Huisha-Huisha v. Mayorkas*, 642 F. Supp. 3d 1 (D.D.C. 2022).

<sup>17</sup> The White House, A Proclamation on Securing the Border, June 4, 2024, <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/06/04/a-proclamation-on-securing-the-border>.

<sup>18</sup> See e.g., Human Rights First, *Trapped, Preyed Upon and Punished: One Year of the Biden Administration Asylum Ban* (May 2024), <https://humanrightsfirst.org/library/trapped-preyed-upon-and-punished/>; *Medecins Sans Frontieres*, “Biden order limiting asylum at southern border will harm people’s health,” June 4, 2024, <https://www.doctorswithoutborders.org/latest/biden-order-limiting-asylum-southern-border-will-harm-peoples-health/>; Human Rights Watch, “Agents Block, Mistreat Mexican Asylum Seekers,” Dec. 4, 2024, <https://www.hrw.org/news/2024/12/05/us-agents-block-mistreat-mexican-asylum-seekers>; National Immigration Project & Together & Free, *FACING AN IMPOSSIBLE CHOICE Experiences of Asylum Seekers in Matamoros and Reynosa Two Months into the Biden Asylum Ban* (2023), [https://nippnl.org/sites/default/files/2023-07/2023\\_Facing-An-Impossible-Choice.pdf](https://nippnl.org/sites/default/files/2023-07/2023_Facing-An-Impossible-Choice.pdf).

character and scale than what has happened in the past, underscoring how effective Mexican cartels are in adapting their strategies to exploit new policies from Washington.”<sup>19</sup>

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The existing asylum bans and border shutdown policies have only fueled this dangerous situation and should be revoked, and any attempt to reinstate Title 42 or MPP and put even more people seeking safety in danger, regardless of their claims and despite this documented pattern of abuse, must be rejected outright. These policies do not offer any solutions to improve border processing or address asylum and immigration court backlogs and are not an effectual way to improve our immigration court system or address real needs at the border. The only thing these illegal and devastating policies offer is danger to vulnerable asylum seekers, including children. We urge lawmakers to invest in real solutions for our border and immigration systems and not to endorse any revival of harmful policies like MPP.

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<sup>19</sup> Emily Green, *ProPublica*, “Held for Ransom in Animal Pens, Migrants Face Mass Kidnappings as U.S. and Mexico Ramp Up,” Nov. 1, 2024, <https://www.propublica.org/article/immigration-mexico-us-migrants-mass-kidnappings-cartels-border>.



## Statement of the American Immigration Council

Submitted to the Senate Committee on Homeland Security and Governmental Affairs  
Hearing on Remain in Mexico  
January 16, 2025

The American Immigration Council (“the Council”) is a non-profit organization that envisions a nation where immigrants are embraced, communities are enriched, and justice prevails for all. We strive to create a society that values immigrants as vital contributors and where everyone is afforded an equal opportunity to thrive socially, economically, and culturally. We do this by shaping immigration policies and practices at the federal, state, and local levels through educating decisionmakers and the public and advancing sensible policy solutions through research and advocacy.

Since the Migrant Protection Protocols program (“Remain in Mexico”) was announced in late 2018, the Council has worked to bring attention to the program’s serious flaws and the ways in which it interfered with due process.<sup>1</sup>

While the program was in effect (officially until January 2021, though with reduced usage after March 2020), we – as well as other analysts – did not find the implementation of “Remain in Mexico” to have a clear effect on border crossings, despite proponents’ continued assertions that it was responsible for deterring unauthorized migration to the United States. What we and others did find, however, were widespread humanitarian abuses under the program, which put large numbers of migrants at acute risk of kidnapping, torture and rape, while failing to provide them with meaningful due process under U.S. immigration law.

**The Remain in Mexico Program Failed to Provide Due Process and Repeatedly Subject Migrants to Serious Risk of Kidnapping, Torture, and Rape.**

Remain in Mexico did not provide due process to migrants. Representation rates for the people subjected to the program – essential for most people with complex asylum cases, as most Remain in Mexico participants had – were exceedingly low. In June 2019, the representation rate was just 1.3 percent.<sup>2</sup> As of December 2021, just 7.5 percent of individuals subject to Remain in

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<sup>1</sup> See, e.g., American Immigration Council, “The ‘Migrant Protection Protocols,’” February 1, 2024, <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.

<sup>2</sup> Camilo Montoya-Galvez, “Leave me in a cell”: The desperate pleas of asylum seekers inside El Paso’s immigration court,” CBS News, Aug. 11, 2019, <https://www.cbsnews.com/news/remain-in-mexico-the-desperate-pleas-of-asylum-seekers-in-el-paso-who-are-subject-to-trumps-policy/>.

Mexico had ever managed to hire a lawyer,<sup>3</sup> a figure which includes many individuals who were initially placed into the program and then later taken out of the program and allowed to enter the United States.

The lack of counsel made it nearly impossible for anyone subjected to Remain in Mexico to successfully win asylum — regardless of the merits of their case. The asylum grant rate under the first iteration of Remain in Mexico was a full order of magnitude lower than general asylum grant rate in immigration court of 12%.<sup>4</sup> By December 2020, of the 42,012 cases that had been completed under Remain in Mexico, only 521 people were granted relief in immigration court, a rate of 1.2 percent.<sup>5</sup> That means a person seeking asylum at the border under Remain in Mexico had one tenth the chance of winning their case of a person seeking asylum from inside the United States.

Many people put through the program were unable to apply for asylum in the first place as they missed court hearings due to the risks they faced as migrants and foreigners in Mexico, who became easy marks for criminal extortion and exploitation.<sup>6</sup> The Council previously submitted testimony to the House Committee on Homeland Security in 2019 about one such case, that of Lucia.<sup>7</sup>

Lucia is a South American woman who sought asylum at a port of entry in California in July 2019 alongside her 9-year-old disabled daughter. Despite rules providing that vulnerable individuals should not be placed into the program, both Lucia and her daughter were placed into the Remain in Mexico program. After DHS officials forced them to return to Tijuana, Lucia was held captive by a cartel gangster who forced her to do housework and sexually assaulted her daughter. Lucia convinced her captor to allow them to attend their first court hearing and was told that if she did not return both her and her daughter would be killed.

After attending court, Lucia begged DHS officials not to send her back to Mexico to await the second hearing, explaining what had happened to her. Nevertheless, Lucia and her daughter

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<sup>3</sup> Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings (through October 2021)” (Syracuse, NY: Syracuse University, accessed December 15, 2021, <https://trac.syr.edu/phptools/immigration/mpp/> (this tool is currently unavailable).

<sup>4</sup> Executive Office for Immigration Review, Asylum Decisions, October 10, 2024, <https://www.justice.gov/eoir/media/1344851/dl?inline>.

<sup>5</sup> Administrative Record, *Texas v. Biden*, No 2:21-cv-00067-Z, ECF No. 6 at AR554, <https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.94.0.pdf>.

<sup>6</sup> See, e.g., Kevin Sieff, “They missed their U.S. court dates because they were kidnapped. Now they’re blocked from applying for asylum,” Washington Post, Apr. 24, 2021, <https://www.washingtonpost.com/world/2021/04/24/mexico-border-migrant-asylum-mpp/>.

<sup>7</sup> American Immigration Council, “Statement of the American Immigration Council, Hearing on Examining the Human Rights and Legal Implications of DHS’s Remain in Mexico Policy,” November 21, 2019, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/statement\\_for\\_the\\_house\\_migrant\\_protection\\_protocols\\_11\\_21\\_19.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/statement_for_the_house_migrant_protection_protocols_11_21_19.pdf).

were again sent back to Mexico. Just blocks from the San Ysidro port of entry, they were kidnapped at knife-point, blindfolded, and driven to an unknown location.

Lucia and her daughter were held for 13 days by their new captors, while the kidnappers worked to extort thousands of dollars in ransom from Lucia's family in the United States. During that time both her and her 9-year-old daughter were beaten, tortured, and raped. After the ransom was paid, the kidnappers drove them to the border wall and ordered them to climb over, threatening that if Lucia did not, they would leave her daughter alone in the desert. Border Patrol eventually found Lucia, who was injured in the process of climbing the wall. They took her into custody and sent her to a detention center in Texas, where she learned that she had been ordered deported for missing her second court hearing while in the hands of her kidnappers and rapists.

Although Lucia was eventually able to successfully file a motion to reopen thanks to the dedicated assistance of pro bono volunteers at the detention center, her case illustrates the ways in which kidnappings likely led to many people losing their opportunity to seek protection.

Lucia's experience of being kidnapped and tortured after being placed into Remain in Mexico was common, as was the practice of extorting family members in the United States for ransom. Such kidnappings were extraordinarily well-documented throughout the time Remain in Mexico was in effect.

For example, This American Life recounted the story of one man who was kidnapped within five hours of being sent back to Mexico by DHS.<sup>8</sup> The New York Times obtained audio recorded by a woman in New Jersey of kidnappers threatening to murder her husband — who had been kidnapped in Reynosa after being placed into Remain in Mexico — in front of their 3-year-old son.<sup>9</sup> Vice News obtained video of two Cuban men placed into Remain in Mexico pleading for their lives; on the recording, kidnappers repeatedly threaten to murder them if their families in the United States won't pay a ransom.<sup>10</sup> These threats were not idle; in 2019 one man from El Salvador who was placed into Remain in Mexico in Tijuana was kidnapped, brutally murdered, and dismembered.<sup>11</sup>

It was also common and well-documented that DHS regularly ignored migrants' pleas with DHS officials not to be returned to Mexico. CBP officers were required to refer any individual expressing a fear of return, yet studies show they failed to refer the *majority* of people expressing

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<sup>8</sup> This American Life, "704: Our Pulitzer-Winning Episode," <https://www.thisamericanlife.org/704/transcript>.

<sup>9</sup> Miriam Jordan, "I'm Kidnapped: A Father's Nightmare on the Border," *New York Times*, December 21, 2019, <https://www.nytimes.com/2019/12/21/us/border-migrants-kidnapping-mexico.html>.

<sup>10</sup> Emily Green, "I Was Kidnapped at the US-Mexico Border," *Vice News*, March 11, 2021, <https://www.vice.com/en/article/i-was-kidnapped-at-the-us-mexico-border/>.

<sup>11</sup> Wendy Fry, "Asylum-seeker killed in Tijuana was dismembered," *San Diego Union-Tribune*, December 19, 2021, <https://www.sandiegouniontribune.com/2019/12/13/asylum-seeker-killed-in-tijuana-was-dismembered/>.

fear to USCIS asylum officers for the mandated screening.<sup>12</sup> Even where people managed to obtain a hearing, nearly all were denied, with one whistleblower at USCIS reporting that asylum officers were pressured to issue blanket denials to all those expressing a fear of return to Mexico.<sup>13</sup>

Throughout every stage of the process, Remain in Mexico denied people due process and placed vulnerable individuals in immediate danger of irreparable harm.

#### The Deterrent Impact of Remain in Mexico on Border Crossings Remains Unclear

Many of those who support the Remain in Mexico program have argued that it led to a drop in irregular crossings between ports of entry. Secretary Mayorkas asserted as much in his October 2021 decision to terminate the program, although he found that any such deterrent effect was significantly outweighed by the flaws of the program.<sup>14</sup> However, the evidence of a deterrent effect is mixed.

A more detailed sector-level analysis of the program's rollout in 2019 shows that there was little correlation between the program beginning in a particular Border Patrol Sector and a drop in border crossings. As shown in Figure 1, in the first few months of Remain in Mexico in early 2019 -- as the program was expanded to the San Diego Sector, El Paso Sector, El Centro Center, and Yuma Sector -- border apprehensions continued to rise in those sectors anyway. By May 2019, thousands of people had already been sent back to Mexico under the program, and yet apprehensions continued to rise.

Apprehensions finally began to drop in the first weeks of June. Crucially, the *expansion* of Remain in Mexico did not occur until July, more than one month *after* apprehensions had begun to fall. In the Rio Grande Valley Sector, which saw the highest level of crossings of any Border Patrol sector in 2019, there was a 13 percent drop in apprehensions from May to June,<sup>15</sup> even though Remain in Mexico did not go into effect there until July 17.

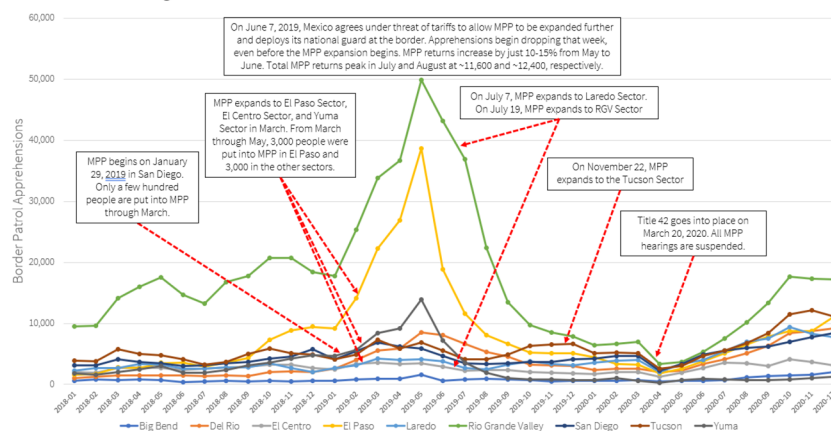
<sup>12</sup> Tom Wong, *Seeking Asylum: Part 2*, U.S. Immigration Policy Center, U.S. Immigration Policy Center, University of California, San Diego, October 29, 2019, <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

<sup>13</sup> Max Rivlin-Nadler, "Asylum-Officer Turns Whistleblower, Says 'Remain In Mexico' Program Rigged," *KPBS*, November 20, 2019, <https://www.kpbs.org/news/border-immigration/2019/11/20/asylum-officer-turns-whistleblower-trumps-remain-m>.

<sup>14</sup> DHS Secretary Mayorkas, Explanation of the Decision to Terminate the Migrant Protection Protocols, October 29, 2021, at 2, [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-justification-memo-508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf) ("[T]he Secretary recognizes that MPP likely contributed to reduced migratory flows. But it did so by imposing substantial and unjustifiable human costs on migrants who were exposed to harm while waiting in Mexico.")

<sup>15</sup> U.S. Border Patrol, "Monthly Apprehensions (FY 2000 - 2020)," August 2021, <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Monthly%20Encounters%20%28FY%202000%20-%20FY%202020%29%20%28508%29.pdf>.

Figure 1: Sector-Level Data Provides No Evidence of MPP's Deterrent Effect



The drop in apprehensions in June 2019 coincided with two things: the Trump administration announcing an expansion to Remain in Mexico, and Mexico itself carrying out an extensive crackdown on migration. This strongly suggests that other factors, including Mexico's crackdown, played a much larger role than Remain in Mexico. This is consistent with a decade of evidence suggesting that Mexican enforcement has a greater role on U.S. border apprehension trends than changes to U.S. immigration policy.

Contemporaneous analysis by DHS officials in July 2019 indicated that the agency initially believed that it was the Mexican crackdown, not the expansion of Remain in Mexico, that led to a drop in border crossings in summer 2019.<sup>16</sup>

Beyond the Mexican crackdown, other policies implemented in 2019 may have impacted border crossings, including the July 2019 "asylum transit ban," the institution of PACR and HARP in September 2019,<sup>17</sup> the announcement and implementation of the so-called "Asylum Cooperative Agreement" with Guatemala, and various other more minor procedural changes instituted during that period.

<sup>16</sup> Nick Miroff, "Border arrests drop as Mexico's migration crackdown appears to cut crossings," *Washington Post*, July 9, 2019, [https://www.washingtonpost.com/immigration/border-arrests-drop-for-first-time-this-year-as-mexico-migration-crackdown-appears-to-cut-crossings/2019/07/09/e5eef60-a254-11e9-bd56-eac6bb02d01d\\_story.html](https://www.washingtonpost.com/immigration/border-arrests-drop-for-first-time-this-year-as-mexico-migration-crackdown-appears-to-cut-crossings/2019/07/09/e5eef60-a254-11e9-bd56-eac6bb02d01d_story.html).

<sup>17</sup> The Prompt Asylum Claims Review and Humanitarian Asylum Review Process (PACR and HARP) were two substantially similar policies under which migrants were given credible fear interviews while detained in Border Patrol custody. These programs were suspended in March 2020 due to COVID and then terminated under an executive order signed by President Biden. In 2023, the Biden administration reinstated a version of this program.

Given the wide variety of different programs being implemented over a short period in 2019, identifying the specific deterrent effect of Remain in Mexico is next to impossible. The Migration Policy Institute, in examining the impact of Remain in Mexico, has come to similar conclusions, noting that “While Remain in Mexico may have contributed to a perception that it would be harder to cross the border, it is not clear that the program was an effective deterrent on its own.”<sup>18</sup>

Finally, one major flaw of the Remain in Mexico program is that it incentivized desperate people stuck in Mexico to make repeated attempts to enter the country unlawfully between ports of entry. In deciding to terminate Remain in Mexico, Secretary Mayorkas noted that 1 in 3 people subject to the program were caught crossing the border again *after* having been sent back to Mexico in the first place.<sup>19</sup> As the Secretary observed, “The high rate of repeat encounters undercuts one of MPP’s key claimed advantages—namely its deterrent effect on would-be border crossers.”<sup>20</sup>

The benefits of Remain in Mexico were questionable; the harms were clear and appalling. If Congress wishes to protect migrants from exploitation by criminals, it should ensure that Remain in Mexico can never be implemented again. If Congress wants to pursue policy that meaningfully manages the border, it should focus on ensuring there are sufficient resources to process all those seeking protection in a way that respects basic principles of due process without subjecting people to a risk of severe violence.

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<sup>18</sup> Muzzaffar Chisti and Jessica Bolter, “Court-Ordered Relaunch of Remain in Mexico Policy Tweaks Predecessor Program, but Faces Similar Challenges,” *Migration Policy Institute*, December 2, 2021, <https://www.migrationpolicy.org/article/court-order-relaunch-remain-in-mexico>.

<sup>19</sup> DHS Secretary Mayorkas, Explanation of the Decision to Terminate the Migrant Protection Protocols, October 29, 2021, at 21, [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-justification-memo-508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf) (“But the data also show that a significant share of individuals enrolled in MPP—33 percent as of June 30, 2021—were subsequently encountered attempting to reenter the country without inspection, rather than continuing to wait in Mexico for the resolution of their removal proceedings”).

<sup>20</sup> *Ibid.* at 22.



**Statement for the Record by the Center for Gender & Refugee Studies (CGRS)  
“Remain in Mexico”  
Senate Committee on Homeland Security & Government Affairs  
January 16, 2025**

For over 25 years, the [Center for Gender & Refugee Studies](#) (CGRS) has defended the human rights of refugees seeking asylum in the United States. We are keenly aware of the deficiencies of the “Remain in Mexico” program, having led the legal challenges to it as part of our strategic litigation efforts to ensure meaningful access to the U.S. asylum system and protect due process.

We appreciate this opportunity to provide a statement for the record to assist the Senate Committee on Homeland Security and Government Affairs in its examination of the Remain in Mexico policy, formally known as the “Migrant Protection Protocols” (MPP).

**Damage Caused by the Remain in Mexico Policy**

The MPP policy was in effect from January 2019 to January 2021, and again from December 2021 to August 2022. It required people seeking asylum to wait in Mexico for months or years, while their cases moved through the U.S. immigration court process. Almost 70,000 people were subjected to MPP and forced to endure perilous conditions in Mexico without access to the basic necessities of life, much less access to counsel who could help them navigate the complicated U.S. asylum process.

Nearly all of them were exposed to grave dangers in Mexico including kidnapping, rape, and murder at the hands of cartels, gang members, and Mexican officials. The dire conditions in Mexico were and continue to be extensively documented by [human rights organizations](#) and [individual experts](#). The same dangers impeded the ability of [U.S.-based organizations](#) and [pro bono attorneys](#) to serve potential clients trapped in Mexico.

Only seven percent of people placed in MPP were able to obtain a lawyer, compared with 60 percent of asylum seekers applying inside the United States. Evidence showed that many people were kidnapped at the time of their hearing and had their cases denied through no fault of their own. Of the more than 42,000 cases that had been completed by December 2020, only a [miniscule number](#)—523—were granted asylum.

In 2021, the Biden administration recognized the severe harms inflicted by Remain in Mexico and began processing certain categories of people who had been enrolled in MPP into the United States; the administration eventually terminated the policy entirely.<sup>1</sup> Citing official data, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas [conceded](#) that the high percentage of completed MPP cases resulting in *in absentia* removal orders raised serious concerns about the program’s implementation, including whether individuals subjected to MPP had an adequate opportunity to seek relief and whether conditions in Mexico led individuals to abandon meritorious claims for protection. In [DHS’s own words](#), MPP:

impos[ed] substantial and unjustifiable human costs on migrants who were exposed to harm while waiting in Mexico.... Significant evidence indicates that individuals were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited from putting migrants in harm’s way while awaiting their court hearings in Mexico.

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<sup>1</sup> DHS’s wind-down of MPP was abruptly halted in August 2021, following the injunction issued by the U.S. District Court for the Northern District of Texas against the Biden administration’s initial termination memo.

CGRS is deeply familiar with the cruelty and illegality of MPP, having challenged many aspects of its first iteration in [Innovation Law Lab v. Mayorkas](#) and [Immigrant Defenders Law Center v. Mayorkas](#). In both cases, we and our co-counsel represent individual plaintiffs who have experienced the horrors of Remain in Mexico firsthand and legal service providers who have struggled to represent them.

In April 2019, the U.S. District Court for the Northern District of California [granted a preliminary injunction](#) in [Innovation Law Lab v. Mayorkas](#), which would have temporarily halted the policy. The Ninth Circuit Court of Appeals initially stayed the injunction—allowing MPP to remain in effect—but [restored it in February 2020](#), ruling unequivocally that MPP violates both U.S. law and treaty obligations. The Trump administration then appealed to the Supreme Court, which put the injunction on hold as it considered the case, leaving the policy in place until the Biden administration formally terminated it in June 2021. Following the termination, the Supreme Court sent the case back to the district court, which vacated the injunction as moot.

In [Immigrant Defenders Law Center v. Mayorkas](#), we [continue to challenge](#) the ongoing harms of MPP on individuals whose cases were terminated or who received final orders of removal in MPP proceedings and remain stranded outside the United States and continue to be deprived of security, stability, and meaningful access to legal representation, making it virtually impossible for them to pursue their claims for protection.

#### **Lessons Learned**

MPP was widely criticized by U.S. legal experts, [DHS employees](#), and international bodies, including the [United Nations High Commissioner for Refugees](#), and the [Inter-American Commission on Human Rights](#). They confirmed that, by returning asylum seekers to dangerous conditions and undermining their ability to mount a successful asylum case, MPP violated the United States' *non-refoulement* obligations under the 1967 Refugee Protocol and the Convention Against Torture—that is, our promise not to return people to persecution or torture. These commitments are reflected in both statutory law and federal regulations.

The MPP policy thus failed to comply with U.S. or international law, or to fulfill even the most minimal moral obligation to people in distress. Instead, it subjected tens of thousands of vulnerable people to grave danger, while making a mockery of due process. At the same time, MPP increased congestion and chaos at the border by processing people through ports of entry and border immigration courts multiple times instead of dispersing them more evenly geographically after the initial border encounter.

#### **Conclusion**

Failed policies from the past like MPP should not be re-instituted in any form, and we would once again challenge any such attempt in court. Resumption of the policy would waste government resources in seeking to defend a policy already found contrary to law. Instead, the United States must invest the resources, including providing access to counsel, that will allow fair and efficient adjudication of asylum claims and enable an orderly process at the border.



**Statement for the Record  
U.S. Senate Committee on Homeland Security and Governmental Affairs  
“Remain in Mexico”  
January 16, 2024**

Chairman Paul, Ranking Member Peters, and honorable members of the Senate Committee on the Judiciary, thank you for the opportunity to provide written testimony for the hearing on the “Remain in Mexico” policy. Children’s Defense Fund is a national nonprofit advocacy organization committed to ensuring every child grows up with dignity, hope, and joy. Established in 1999, Children’s Defense Fund-Texas (CDF-TX) has connected more than one million children and youth to affordable health care, equipped young Texans to pursue education and personal development, and advocated for resources that nurture the next generation of leaders. Our mission is rooted in the belief that every child deserves a safe and supportive pathway to adulthood, guided by the strength of caring families and communities. Today, CDF-TX remains steadfast in advocating for family-centered policies, delivering vital resources, and uplifting the voices of youth, families, and communities across our state.

Based on our extensive expertise working at the intersection of immigration policy and child well-being, CDF-TX strongly opposes reinstatement of the Migrant Protection Protocols (MPP), widely known as the Remain in Mexico policy. This policy, implemented initially under the Trump administration and temporarily reinstated during the Biden administration, caused profound harm to children and families seeking asylum in the United States. Between January 2019 and December 2020 alone, MPP forced at least 70,000 asylum seekers to return to Mexico to await their immigration hearings.<sup>1</sup> If reinstated, the Remain in Mexico policy would deny countless underserved children and their caregivers the legal protections guaranteed under U.S. and international law. Instead, they would face prolonged waiting periods in dangerous locations where they are exposed to extreme risks of kidnapping, torture, and sexual violence.<sup>2</sup>

Asylum is a form of protection that allows a person to remain in the United States when they meet the legal criteria to be recognized as a refugee. Under the Immigration and

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<sup>1</sup> American Immigration Council. “The ‘Migrant Protection Protocols.’” 1 Feb. 2024.

<https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>. Accessed 13 Jan. 2024.

<sup>2</sup> Human Rights First. “New Report Details Asylum Ban’s Role in Violence in Mexico.” 13 Oct. 2023.

<https://humanrightsfirst.org/library/new-report-details-asylum-bans-role-in-violence-in-mexico/>. Accessed 13 Jan. 2025.

Nationality Act, a refugee is defined as a person who cannot or will not return to their home country due to past persecution or a well-founded fear of future persecution.<sup>3</sup> The right to seek asylum is protected under U.S. and international law.<sup>4</sup>

The cornerstone of the 1951 Refugee Convention and its Protocol is the principle of **non-refoulement**, or “no forcing back.” Article 33 of the Convention explicitly prohibits countries from expelling or returning individuals “in any manner whatsoever” to territories where their life or freedom would be at risk due to their race, religion, nationality, membership in a particular social group, or political opinion.<sup>5</sup> In alignment with this principle, U.S. asylum laws and policies have long allowed asylum applicants to remain within the United States while their cases are adjudicated. The Remain in Mexico policy has been a stark and troubling departure from this historical standard and the core principles of asylum law, and it should not be reinstated. By forcing asylum seekers to wait in Mexico, this policy exposes them to extreme risks, including violence, exploitation, and persecution. Organized criminal groups frequently target individuals at migrant shelters in Mexico, where attacks based on race, gender, or nationality—protected characteristics under asylum law<sup>6</sup>—are alarmingly common.

The Remain in Mexico policy also represents a profound erosion of due process in legal proceedings where applicants’ lives are at stake. Many asylum seekers returned to Mexico under MPP faced overwhelming barriers to accessing justice. Most were unable to access legal counsel to represent them,<sup>7</sup> and they were often prevented from attending the immigration hearings where their fate was decided.<sup>8</sup> In contrast, the vast majority of people in the United States with pending immigration cases appear for all their court hearings.<sup>9</sup>

<sup>3</sup>INA § 101(a)(42), 8 USC 1101(a)(42).

[https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/ina101\(a\)\(42\).pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/ina101(a)(42).pdf). Accessed 13 Jan. 2025.

<sup>4</sup>The United States Refugee Act of 1980 (Public Law 96-212). <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>. Accessed 13 Jan. 2025; UN General Assembly, *Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951.

<https://www.refworld.org/legal/agreements/unga/1951/en/39821>. Accessed 13 Jan. 2025; UN General Assembly, *Protocol Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 606, p. 267, 31 January 1967. <https://www.refworld.org/legal/agreements/unga/1967/en/41400>. Accessed 13 Jan. 2025.

<sup>5</sup>UN General Assembly, *Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951. <https://www.refworld.org/legal/agreements/unga/1951/en/39821>. Accessed 13 Jan. 2025.

<sup>6</sup>Human Rights First, “Human Rights Fiasco: The Trump Administration’s Dangerous Asylum Returns Continue.” Dec. 2019, p. 7-9. <https://humanrightsfirst.org/wp-content/uploads/2021/06/HumanRightsFiascoDec19.pdf>. Accessed 13 Jan. 2025.

<sup>7</sup>American Immigration Council. “The ‘Migrant Protection Protocols.’” 1 Feb. 2024. <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>. Accessed 13 Jan. 2024.

<sup>8</sup>Human Rights First. “Fatally Flawed: ‘Remain in Mexico’ Policy Should Never Be Revived.” Sept. 2022, p. 2-3. <https://humanrightsfirst.org/wp-content/uploads/2022/10/FatallyFlawed.pdf>. Accessed 13 Jan. 2025.

<sup>9</sup>American Immigration Council. “Measuring *In Absentia* Removal in Immigration Court.” 28 Jan. 2021. <https://www.americanimmigrationcouncil.org/research/measuring-absentia-removal-immigration-court>. Accessed 13 Jan. 2025.

Yet, under MPP, nearly three-quarters of cases during both the Trump and Biden administrations resulted in removal orders that were issued *in absentia*.<sup>10</sup> This means that countless asylum seekers were denied the opportunity to present their cases simply because the policy imposed insurmountable obstacles to their participation.<sup>11</sup>

Under MPP, many asylum seekers were abducted immediately after DHS returned them to Mexico, or while traveling to and from U.S. ports of entry to attend their immigration hearings.<sup>12</sup> In some cases, asylum seekers returned to Mexico under the policy were brutally murdered.<sup>13</sup> U.S. border officers forced asylum seekers to return to cartel-controlled areas where at least 1,544 cases of “kidnappings, murder, torture, rape and other violent attacks against people returned to Mexico” were publicly reported during the first two years of the policy’s implementation.<sup>14</sup> Given that very few asylum seekers in these situations had the opportunity to report their experiences to lawyers, researchers, or the media, these instances likely represent a small fraction of the total human cost of the Remain in Mexico policy.<sup>15</sup>

Children have frequently been among the victims of the violence inflicted by the Remain in Mexico policy. A 2019 report by Human Rights First documented at least 138 publicly reported cases of the kidnapping or attempted kidnapping of children who were subject to this policy.<sup>16</sup> These are just a few of the harrowing accounts of children seeking refugee protection with their families who faced violence and abuse after being forced back to Mexico by U.S. officials:

- a nine-year-old girl with a disability was kidnapped twice and repeatedly sexually assaulted after she and her mother were returned to Tijuana by the Department of Homeland Security (DHS);<sup>17</sup>
- a two-year-old boy was “kidnapped from a house in Ciudad Juárez while his mother was doing chores in another room” after his family was returned to Mexico;<sup>18</sup>
- the same day they were returned to Nuevo Laredo by DHS, a Honduran boy was abducted with his father, and kidnappers “threatened to take the boy’s kidneys”;<sup>19</sup>

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<sup>10</sup> Human Rights First, *supra* note 8 at p. 3.

<sup>11</sup> *Ibid* at p. 4.

<sup>12</sup> Human Rights First. “Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy.” Oct. 2019, p. 3-4. <https://humanrightsfirst.org/wp-content/uploads/2022/10/hrfordersfromabove.pdf>. Accessed 13 Jan. 2025.

<sup>13</sup> Human Rights First. “Any Version of ‘Remain in Mexico’ Policy Would Be Unlawful, Inhumane, and Deadly.” Sept. 2021, p. 2. <https://humanrightsfirst.org/wp-content/uploads/2022/09/MPPUnlawfulInhumaneandDeadly.pdf>. Accessed 13 Jan. 2025.

<sup>14</sup> Human Rights Watch, *supra* note 8 at p. 6.

<sup>15</sup> Human Rights First, *supra* note 13 at p. 2.

<sup>16</sup> Human Rights First, *supra* note 6 at p. 2.

<sup>17</sup> *Ibid* at p. 5.

<sup>18</sup> *Ibid*.

<sup>19</sup> *Ibid*.

- a three-year-old boy whose family had been sent to Matamoros after seeking asylum was “kidnapped along with his mother, who was raped in front of him”;<sup>20</sup>
- a 12-year-old girl from El Salvador was nearly kidnapped in Monterrey after DHS returned them to Nuevo Laredo and Mexican authorities dumped them in Monterrey. She was chased and grabbed by armed men, but her mother “managed to wrestle her back and escape.”<sup>21</sup>

The ubiquity of these crimes has led some asylum-seeking parents in Mexico to become so afraid for their children’s safety that they send their children to U.S. ports of entry alone so that they can enter as unaccompanied minors and taken to safety.<sup>22</sup> Government data reported by CNN revealed that as of November 26, 2019, 135 children who had been returned to Mexico under MPP after seeking asylum with their families were in the care of the U.S. Department of Health and Human Services.<sup>23</sup>

The current humanitarian crisis on our southern border is part of a larger, global crisis in which unprecedented numbers of people around the world—more than 1 in every 69 people on Earth<sup>24</sup>—have been forced to flee their homes. This includes approximately 47.2 million children who have been displaced by conflict and violence worldwide.<sup>25</sup> This global crisis of displacement and forced migration cannot be solved through restricting access to asylum. It can only be addressed through compassion, acknowledgment of our interdependence as human beings, and commitment to finding solutions that honor our moral and legal responsibilities toward one another.

Reintroducing the Remain in Mexico policy would fail to deter families from seeking asylum in the United States. When faced with threats to their lives, families will continue to do whatever it takes to survive. This policy does nothing to address the root causes of their flight—violence, persecution, and instability—and instead compounds their suffering by forcing them to remain in dangerous conditions in Mexico after applying for asylum. As the Department of Homeland Security stated in its October 2021 *Explanation of the Decision to Terminate the Migrant Protection Protocols*, the Remain in Mexico policy

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<sup>20</sup> Human Rights First, *supra* note 6 at p. 5.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Priscilla Alvarez, “Migrant families have sent roughly 135 children across the US-Mexico border alone, US government says.” CNN. 26 Nov. 2019. <https://www.cnn.com/2019/11/26/politics/unaccompanied-children-remain-in-mexico-migrants/index.html>. Accessed 13 Jan. 2025.

<sup>24</sup> The United Nations High Commissioner for Refugees. “Figures At A Glance.” <https://www.unhcr.org/us/about-unhcr/who-we-are/figures-glance#:~:text=At%20least%20117.3%20million%20people,under%20the%20age%20of%2018>. Accessed 13 Jan. 2025.

<sup>25</sup> UNICEF. “Child Displacement.” Jun 2024. <https://data.unicef.org/topic/child-migration-and-displacement/displacement/>. Accessed 13 Jan. 2025.

imposed “unjustifiable human costs”.<sup>26</sup> and had “inherent problems...that no amount of resources can sufficiently fix.”<sup>27</sup>

Children seeking asylum are not a burden or a threat. They are seeds full of promise, waiting to be nurtured in safe communities where they can grow and flourish. Each of these children carries a unique story, and they form a piece of our collective future. Applying for asylum is a human right. We urge all members of Congress to uphold this right by rejecting the harmful Remain in Mexico policy and instead focusing attention and resources on creating an asylum process that is compassionate, lawful, and fair.

Any questions should be directed to CDF-TX Senior Administrator of Policy and Advocacy, Trudy Taylor Smith, Esq., at [ttaylorsmith@childrensdefense.org](mailto:ttaylorsmith@childrensdefense.org).

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<sup>26</sup> U.S. Department of Homeland Security. “Explanation of the Decision to Terminate the Migrant Protection Protocols.” 29 Oct. 2021 at p. 2. [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-justification-memo-508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf). Accessed 13 January 2024.

<sup>27</sup> *Ibid* at pp. 3, 38.



January 16, 2025

**Church World Service Statement for the Record on Senate Homeland Security and Governmental Affairs Committee Hearing, "Remain in Mexico"**

For nearly 80 years, Church World Service (CWS) has worked toward our vision of a world in which all people have food, voice, and a safe place to call home. CWS is a global humanitarian organization representing nine million people of faith across 14 faith-based organizations and denominations. Through refugee resettlement offices and affiliates, home study and post release services for children, and case management and integration support for newcomers, we equip immigrants and the communities that welcome them with the resources that they need to thrive and flourish. At the border, CWS monitors conditions in government immigration facilities, coordinates with shelter networks in both the U.S. and Mexico, and provides services to newcomers. Church World Service urges the Senate Homeland Security and Governmental Affairs Committee to recognize the human suffering that the "Remain in Mexico" policy inflicted upon people fleeing persecution while it was in effect and to categorically reject all attempts to resurrect elements of the policy.

The "Remain in Mexico" program – officially known by the misnomer "Migrant Protection Protocols" (MPP) – was first implemented by the Trump administration in January 2019. Through December 2020, the policy was used to send nearly 70,000 asylum seekers who arrived at the U.S. Mexico border back to Mexico to await their next immigration court hearing. There were at least [2,500](#) cases of kidnapping, rape, torture, murder and other violent attacks against people waiting for their hearings in Mexico. MPP strengthened cartels, who [targeted and extorted](#) individuals whom U.S. Customs and Border Protection (CBP) officials forced to wait in dangerous northern Mexico towns and cities. Thousands of asylum seekers were left living in [squalid conditions](#) in makeshift encampments without water or electricity. The policy also led to family separations. In some cases, CBP officers would allow some family members into the U.S. for their immigration proceedings while returning others to Mexico, inflicting irreparable harm on families. Hundreds of children whose families were enrolled in the program and sent back to Mexico crossed the border again without their parents to reach safety in the United States. The Biden administration suspended and then terminated MPP, citing its intolerable [human toll](#) and significant logistical issues. However, in response to a federal court order, it restarted the program, sending 7,705 more people to Mexico to wait for their hearings between December 2021 and August 2022. The Supreme Court ruled in June 2022 that the Biden administration had the right to end MPP.

Remain in Mexico undermined due process, dramatically restricted access to counsel, impeded asylum seekers' ability to attend and participate in their court hearings, and violated U.S. and international law. Individuals waiting in Mexico were overwhelmingly unable to obtain counsel. [Only 6%](#) of people subjected to MPP were able to obtain legal counsel and less than 2% of all applicants ultimately received some form of protection in the U.S., far below averages for claims made from within the U.S. during the same period. Many [gave up](#) on their cases rather than continue to risk their lives in dangerous conditions in Mexico and due process challenges in attending court dates. Nearly three quarters of completed MPP cases led to *in absentia* removal orders because the asylum seeker did not attend their hearing. The low rate of hearing attendance was a distinct symptom of the Remain in Mexico policy. In addition to the extreme danger that asylum seekers faced when trying to reach their hearings, they also often faced significant logistical obstacles; for example, sometimes CBP scheduled their court appointments at ports of entry that were far from the ports they had initially arrived at. Under longstanding U.S. asylum law and precedent, individuals pursuing asylum claims are always located on United States soil during the pendency of their case. MPP [violated](#) U.S. and international non-refoulement principles by returning people to persecution and torture in Mexico and subjecting them to return to the countries from which they had fled.

Church World Service urges the Committee to lift up policy proposals that strengthen protections for those fleeing persecution and to invest in [solutions](#) that bolster communities' capacity to welcome asylum seekers, unaccompanied children, and other newcomers – including maintaining and expanding humanitarian processing at ports of entry. Punitive policies such as Remain in Mexico represent a failure to effectively manage challenges at the border and an abject affront to human dignity. There is no lawful, safe, or humane way to implement a policy like Remain in Mexico. Church World Service urges Congress and the administration to take seriously our nation's moral responsibility to uphold our proud legacy of welcome and to work to advance policies that honor the dignity of those seeking safe harbor in the United States.



**FLORENCE  
IMMIGRANT  
& REFUGEE  
RIGHTS PROJECT**

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**Statement for the Record, Florence Immigrant & Refugee Rights  
Project**

**“Remain In Mexico”**

*U.S. Senate Homeland Security Full Committee Hearing*

January 1, 2023

The Florence Project is a 501(c)(3) non-profit organization that provides free legal and social services to the thousands of adults and children detained in immigration custody in Arizona on any given day. The Florence Project was founded in 1989 to provide free legal services to asylum seekers and other migrants in a remote immigration detention center in Florence, Arizona where people had no meaningful access to counsel. We have expanded significantly since that time and now provide free legal and social services to thousands of detained adults and unaccompanied children throughout Arizona. This includes providing services to thousands of people seeking asylum, withholding of removal, and Convention Against Torture protections each year, including hundreds of individuals who are going through the exp/edited removal credible fear or a reasonable fear screening process. As the only 501(c)(3) non-profit organization in Arizona dedicated to providing free legal and social services to people in immigration detention, our vision is to ensure that every person facing removal proceedings has access to counsel, understands their rights under the law, and is treated fairly and humanely.

Additionally, in 2017, the Florence Project partnered with the Kino Border Initiative (“KBI”), a binational organization, to provide legal services to asylum seekers at the U.S.-Mexico border. Through that partnership, the Florence Project’s Border Action Team provides regular group and individual legal orientations and representation to asylum seekers in Heroica Nogales, Sonora, Mexico (hereafter referred to as Nogales, Sonora), just across the border from the Port of Entry into Nogales, Arizona. Our staff at the border have worked hard to respond nimbly to many changes to asylum processing at the border in recent years. Our team has witnessed firsthand the failures of many iterations of policies that restrict asylum access, and this direct experience informs our expertise.

In 2023, the Florence Project provided over 7,000 legal educational packets to adults detained in Arizona. Also, 2,071 detained adults received Florence Project “Know Your Rights” presentations. These services include legal orientation services to detained pro se asylum seekers in Eloy and Florence to empower them to represent themselves in bond and removal proceedings. In 2023, Florence Project attorneys and accredited representatives also represented over 200 adults before the EOIR. Our Border Action Team provided legal orientations to 6,930 people passing through KBI’s humanitarian aid center in Nogales, Mexico, including 119 unaccompanied immigrant children. That same year, our Children’s Program provided over 17,000 unaccompanied immigrant children with legal orientations and represented over 1,000. The Children’s Program also identified and served over 100 children subject to family separation, including 63 children who were separated from their parents. Finally, in 2023, our Social Services Program provided lifesaving social services to nearly 500 people, including 289 unaccompanied children.

**The Florence Project urges the Senate to leave the failed Remain in Mexico policy in the past.**

The Florence Project wishes to take this opportunity to state its unequivocal opposition to the revival of the Remain in Mexico policy, or any similar proposal. The Florence Project, alongside other non-governmental organizations (NGOs) in Arizona, have staunchly opposed this policy since its inception during the first Trump administration. As service providers, we have borne firsthand witness to the unnecessary harm the policy inflicts on vulnerable people fleeing persecution, as well as the toll the policy has taken on Arizona NGOs, on border communities, and on federal agency personnel.

Every conversation about asylum processing should be centered in the understanding that Americans maintain overwhelming support for asylum seekers. According to a poll<sup>1</sup> conducted by the U. S. Immigration Policy Center (USIPC) at the University of California, San Diego, nearly three-quarters of Americans believe that the United States should provide asylum access for people fleeing violence and/or persecution. Instead, the U.S. government continually returns to brutal and inhumane policies that have placed thousands of asylum seekers in harm's way and failed to solve the problems at our border.

In fact, the RMX policy was counterproductive and proved only to spur crossings outside official ports of entry. Without access to safe and orderly asylum processing, people left in danger in Mexico felt they had no choice but to attempt to cross into the United States. Thus, the number of border *encounters* reported to the public does not consider the number of *unique persons*, and as such media reports greatly overstate the number of people who are crossing the border.<sup>2</sup> In fact, in deciding to end the RMX policy, the Department of Homeland Security itself stated that the program was a “drain on resources” and diverted resources from essential “efforts to implement effective, fair, and durable asylum reforms that reduce adjudication delays and tackle the immigration court backlog.”

The Florence Project has over three decades of experience working with migrants in Arizona, and since 2014, we have witnessed several periods of high migration that were countered with deterrence measures. Each time, deterrence-based solutions proved themselves to be not only inhumane but also ineffective. The failure of these methods to accomplish their goals over the last decade reveals that high migration is driven more by humanitarian crises abroad than immigration policies in the United States. The most effective solution to border management is funding for a welcoming infrastructure, robust communication between the government and NGOs, and safe and orderly processing that respects the fundamental right to seek asylum. As highlighted above, RMX caused considerable damage while in place, and history demonstrates that its reimplemention would do the same. NGOs on the border advocate for funding for reception because history has shown us that deterrence is bound to fail.

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<sup>1</sup> USIPC found majority support across the political spectrum, with 87% of Democrats, 74% of Independents, and 57% of Republicans expressing support for asylum.  
<https://welcomewithdignity.org/proposals-to-indefinitely-restrict-asylum-are-out-of-touch-with-73-of-americans-who-support-asylum-new-poll-finds/>

<sup>2</sup> *Ibid.* at 8.

Finally, reviving RMX or similar border policies would increase the number of unaccompanied children and the instances of families separated by U.S. border policies. Under the Biden administration, border policies separated by families by allowing some family members to enter the U.S. while others are expelled.<sup>3</sup> The dangerous circumstances in Mexican border towns and continued denial of any functional asylum process during the existence of Title 42 and RMX existence forced families to make impossible choices over who can access safety. Sadly, during those years, our Florence Project staff frequently received the question, “can I send my child ahead as an unaccompanied child?” from parents fearing for their children’s lives, safety, and well-being while displaced in Nogales, Sonora, Mexico. This phenomenon was well-known throughout the border and even documented by U.S. government officials. Family separation – whether physically forced *de jure* by the hands of U.S. border enforcement agents under the Zero Tolerance Policy or the TVPRA or forced *de facto* by U.S. deterrence policies making family unity within the U.S. a near impossibility – has long-lasting physical, mental, and emotional health impacts on both children and parents.<sup>4</sup>

We rebuke in the strongest possible terms any action that this Committee or others might consider taking to revive Remain in Mexico or further limit access to asylum. Our extensive experience on the ground at the border has shown us time and time again that the resumption of safe and orderly processing will make the border safer and more functional.

**The Florence Project, our clients, and other Arizona partners have demonstrated that another future is possible at the border.**

The cruelty of the RMX policy that leaves asylum seekers stranded in Mexico does not reflect the spirit of welcome in Arizona, where communities and municipal governments have stepped up time and time again to ensure asylum seekers are received in a safe and dignified way. The Florence Project has proudly joined in these efforts and helped to expand and support coordination efforts amongst the various NGOs in Arizona.

The largest NGOs along the Arizona-Sonoran border working with asylum seekers are more connected and coordinated now than ever before. Beginning in early 2021, The Florence Project worked closely with other similarly situated organizations involved in welcoming asylum seekers with dignity along the Arizona-Sonora border to form The Arizona Border Welcoming Taskforce (AZWTF). The AZWTF initially began as a space for local NGOs to engage with various federal, regional, and local stakeholders to address ongoing issues in border processing within Arizona, but overtime has emerged as a space for strategic coordination and collective advocacy amongst larger NGOs providing direct legal, shelter, and social services as well. The AZWTF is comprised of the Florence Project, Kino Border Initiative, Arizona Justice for our Neighbors, Catholic Community Services of Southern Arizona, The Inn of Southern Arizona, ACLU of Arizona, and the

<sup>3</sup> For instance, of 28 individuals interviewed by Physicians for Human Rights in 2021, 11 were forcibly separated from family members by border officials, and eight of those 11 were separated from a spouse or biological child. This means that nearly 40% of just those interviewed for the study had suffered some form of family separation, and nearly 80% of those separated were separated from a spouse or child. <https://phr.org/wp-content/uploads/2021/07/PHR-Report-United-States-Title-42-Asylum-Expulsions-July-2021.pdf> at page 22.

<sup>4</sup> <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-health-implications-of-separation-of-families-at-the-border/>

International Rescue Committee (IRC) – Phoenix. One of the ways in which we use the AZWTF space is to have legal service providers, humanitarian aid organizations, and shelter spaces use our respective expertise to troubleshoot, problem-solve, and network to better serve and holistically accompany asylum seekers and their legal, medical, psychosocial, and basic human needs while they are within Arizona. In addition to engaging with stakeholders on the federal level, members of the AZWTF have various ongoing, regular meetings with local DHS entities, municipal governments, and state elected representatives to address various issues that arise in border processing.

As the primary legal services provider for men, women and children in immigration proceedings in the state of Arizona, we uphold the importance of due process for asylum seekers. The RMX policy stranded asylum seekers in Mexico rather than allowing the individual to carry out their case in person in the locality of the court, an action that undermined their right to access to counsel and created serious challenges for our work as attorneys. Asylum seekers were impeded from attending their court cases in person, with many instances of people being abducted while travelling to attend a court hearing. In a country that upholds the rule of the law and the value of due process, such obstacles to a fair trial should never have been put in place, never mind be considered for revival.

At a local level, Arizonans who live in border communities continually demonstrate that they believe in a humanitarian approach to welcoming asylum seekers. Arizona shelters such as Casa Alitas and the International Rescue Committee rely on volunteers to support a complex and ever-changing humanitarian response to arriving asylum seekers. Arizonans regularly demonstrate their commitment by volunteering to provide water, medical support, covid-testing, food distribution and more for asylum seekers. They often do so in adverse conditions in the desert. Community members have consistently gone above and beyond to provide a dignified welcome for migrants arriving at the border. The federal government should thank the efforts of border community members by asking less of them and providing the funding NGOs need to respond sustainably, rather than resorting to past failed policies that we are certain will fail again.

#### **Remain In Mexico was Cruel and Inhumane and Cannot Be Fixed**

The RMX policy was a shameful mark on our history as a nation, delivering people seeking safety to violent encounters in Mexico including kidnappings, murder, enforced disappearances, and sexual assault, with Mexican agents often complicit in or perpetrating the acts. The human cost of RMX and other border deterrence policies have been well-documented since their original implementation. Asylum seekers have been victims of kidnapping, extortion, and other forms of physical and sexual violence while displaced in Mexico.<sup>5</sup> At least half of the 900 people surveyed by the International Rescue Committee (IRC) in 2022 had directly experienced a safety issue or crime in Mexico, with the three main risks identified as sexual violence (23%), kidnapping (19%) and threats (16%).<sup>6</sup> Our partner Human Rights First documented over 2,500 attacks against

<sup>5</sup> Page 12 <https://phr.org/wp-content/uploads/2021/07/PHR-Report-United-States-Title-42-Asylum-Expulsions-July-2021.pdf>

<sup>6</sup> According to the IRC, “[w]omen and children are among the groups in most danger, with sexual violence being the main risk for both—60% and 35%, respectively. Sexual exploitation, trafficking and

people enrolled in RMX, with many targeted because they were migrants or due to their race, gender, sexual orientation, and other protected characteristics. Multiple asylum seekers returned under the policy were murdered.

Leaving migrants open to violent attacks near our border does not make our border safer nor more functional, in fact it does the opposite. The answer to our persistent shared concern about the border is to make asylum processing safer and more orderly, not to restrict it or leave the people already fleeing for their lives in danger in Mexico. We urge this committee to examine the harmful impacts of the prior implementations of this policy before considering its return.

**The Florence Project Thanks the Subcommittee for Taking Our Statement into Consideration**

The Florence Project thanks the Homeland Security committee for the opportunity to provide this statement for the record and share our expertise from our work on the border. We will always welcome any opportunity to keep border communities and migrants safe, as well as to ensure that all migrants and asylum seekers are treated fairly, humanely, and with respect to their fundamental right to seek safety.

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recruitment by organized crime groups, as well as economic violence, also ranked high in the list.” <https://www.rescue.org/press-release/us-mexico-border-safe-housing-food-and-legal-orientation-among-priority-needs>



Welcome the stranger.  
Protect the refugee.

**HIAS Policy Statement to the  
Senate Committee on Homeland Security & Governmental Affairs  
January 16, 2025 Hearing on “Remain in Mexico”**

**HIAS strongly urges the Committee to reject any proposal to reinstate MPP. MPP is unlawful under the Immigration and Nationality Act (INA), violates our international legal obligations, and fails to protect asylum-seekers along the U.S.-Mexico border.** During the first Trump administration, HIAS was witness to the lack of due process and irreparable harm that vulnerable migrants experienced under MPP. Rather than advancing this deleterious policy, the U.S. must invest in humane and common-sense solutions to reaffirm its long-standing commitment to the rule of law and humanitarian protection for refugees.

The Jewish community founded [HIAS](#) (originally the Hebrew Immigrant Aid Society) to support Jews fleeing persecution in Eastern Europe. The traditions, texts and history of the Jewish people guide HIAS’ mission and our faith-based work to provide critical services for refugees across the world. In 2019, [HIAS Mexico](#) began to directly support and represent hundreds of individuals expelled to Mexico from the United States under the first iteration of MPP. Our experience on the ground along the border provides a unique, first-hand perspective of the dangerous precedent that MPP represents for U.S. immigration and asylum policy.

**MPP is unlawful under the Immigration and Nationality Act (INA).** Courts have held that the U.S. does not have the statutory authority under the INA to return an individual to another country (“foreign continuous territory”) except for very limited circumstances. This ruling is consistent with the long-held DHS policy and practice of releasing or detaining asylum-seekers *within* the United States, regardless of their manner of entry into the country.

**MPP violates the principle of “non-refoulement” in international law.** The United States is a signatory member state to the [1951 Refugee Convention](#) which prohibits “non-refoulement,” the return of an individual to a country where their life or freedom would be threatened. These international legal obligations were codified in the [Refugee Act of 1980](#). MPP contravenes the principle of non-refoulement by providing insufficient safeguards to screen for fear and protect asylum-seekers from harm in Mexico.

**MPP expels individuals back to harm and inhumane living conditions in Mexico.** Upon expulsion, asylum-seekers in MPP experienced [frequent and targeted violence](#) from organized crime and human smugglers. HIAS Mexico was directly involved in assisting victims of crime who were unable to seek protection from corrupt law enforcement in Mexico. Individuals in MPP could not access basic social services and lacked secure housing, adequate medical attention, and sufficient food. The government of Mexico severely [lacks the necessary infrastructure](#) to provide sufficient protection and support to asylum-seekers.

MPP is not the solution to our country’s concerns with asylum, border security, and unauthorized immigration. Our outdated immigration laws have repeatedly failed to properly address the twenty-first century problem of mass global displacement. To meet the challenge, the United States should redirect its resources towards policies that work. To achieve this goal, HIAS recommends enhancing CBP processing capacity at ports of entry, increasing the number of Immigration Judges and asylum officers, creating additional lawful pathways for refugees abroad, and investing in accessible legal representation and social services for asylum-seekers in the United States. Unlike MPP, these are lawful, permanent solutions that align with and advance our country’s values and interests.

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**Statement for the Record of**

**Human Rights First**

**On**

**Senate Committee on Homeland Security & Governmental Affairs**

**“Remain in Mexico”**

**January 16, 2025**

Human Rights First thanks the Senate Committee on Homeland Security, for holding a hearing on “Remain in Mexico.”

Since 1978, Human Rights First has worked to protect and promote fundamental human rights. We have long advocated for U.S. compliance with international refugee and human rights law in addition to providing pro bono legal representation—in partnership with the nation’s leading law firms—to asylum seekers in U.S. asylum and immigration court proceedings. Since 2019, Human Rights First has issued a series of human rights reports ([March 2019](#), [August 2019](#), [October 2019](#), [December 2019](#), [May 2020](#), [December 2020](#), [August 2021](#), [January 2022](#), and [September 2022](#)) and factsheets ([January 2020](#), [April 2021](#), [September 2021](#), [December 2021](#), [January 2025](#)) documenting the harms inflicted by the Remain in Mexico (RMX) policy and its court-ordered reimplementation. Human Rights First has also joined a series of amicus briefs in cases challenging the Remain in Mexico policy (October 2020, January 2021, August 18, 2021, August 23, 2021, and September 2021.) In addition, Human Rights First’s attorneys have represented asylum seekers subjected to the RMX policy, including the first—and one of the very few—refugees who received asylum through the inherently flawed RMX.

Designed and carried out by the Trump administration and temporarily resurrected under the Biden administration due to a court order, RMX drastically restricted access to counsel, impeded the ability of asylum seekers to attend and participate in their court hearings, wasted government resources, subjected asylum seekers to violent attacks, and violated U.S. and international law. It was a counterproductive, failed policy and should never be reimplemented. As outlined below, Congress has a critical role to play in ensuring that the executive branch and the Department of Homeland Security uphold and comply with the refugee laws that Congress enacted, as well as the Refugee Convention and its Protocol, and reject a return to the failed policies from the first Trump administration that trampled on those laws and legal treaty commitments. Congress must hold the Trump administration accountable to its refugee protection obligations.

#### **Remain in Mexico Endangers Migrants and Asylum Seekers**

Returning migrants and asylum seekers to Mexico to await their U.S. immigration court hearings is dangerous and inhumane. In the first iteration of the policy under the Trump administration, RMX resulted in massive human rights violations against migrants and asylum seekers forcibly returned to Mexico. Human Rights First tracked at least 1,544 publicly reported cases of kidnappings, murder, torture, rape, and other violent attacks against people returned to Mexico under the Trump administration. They include a Honduran woman and her seven-year-old daughter who were abducted from inside the Mexican migration office in Nuevo Laredo immediately after DHS returned them to Mexico following an RMX immigration court hearing and a Salvadoran asylum seeker who was killed in Tijuana in November 2019 after having been returned under RMX. In May 2021, a 19-year-old Cuban asylum seeker who had been returned under RMX by the Trump administration was shot and killed in Ciudad Juárez. The U.S. Department of Homeland Security (DHS) concluded in its October 2021 memorandum

terminating RMX that “significant evidence indicates that individuals were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited from putting migrants in harms’ way while awaiting their court hearings in Mexico.”

Even under the Biden administration, asylum seekers returned to Mexico under RMX were forced to endure escalating dangers. For example, in January 2022, a Venezuelan asylum seeker told Human Rights First he was beaten and robbed in Ciudad Juárez as he was returning to his shelter after obtaining a COVID-19 test to be able to attend his RMX hearing. Other RMX enrollees were robbed in shelters in Mexico after DHS returned them. Mexican authorities, including police and immigration officers, perpetrate and refuse to investigate violent attacks against asylum seekers and migrants, including through collusion with powerful cartels that use their control over Mexican territory to kidnap, torture, and extort returned/expelled asylum seekers who are targeted due to their status as migrants as well as their race, gender, sexual orientation, and ties to family in the United States. These targeted attacks are not limited to the U.S.-Mexico border region. Cartels and other organized criminal groups subject migrants and asylum seekers to kidnappings, extortion, and other violence throughout the country, including in central and southern Mexico.

The incoming Trump administration has projected a return to RMX despite escalating dangers in regions alongside the southwest US border. In fact, The U.S. Department of State advises American citizens to avoid travel to the very border regions of Mexico where asylum seekers were returned under RMX. As of September 2024, the Mexican border state of Tamaulipas remained at a designated Level Four “Do Not Travel” threat level as “[o]rganized crime activity — including gun battles, murder, armed robbery, carjacking, kidnapping, forced disappearances, extortion, and sexual assault — is common along the northern border” and “[h]eavily armed members of criminal groups often patrol areas of the state and operate with impunity, particularly along the border region from Reynosa to Nuevo Laredo.” In addition, the State Department advisory reports that in Baja California “[t]ransnational criminal organizations compete in the border area to establish narco-trafficking and human smuggling routes,” warns of “[b]attles for territory between criminal groups” in Chihuahua state which borders New Mexico and Texas, and acknowledges that to Arizona’s south “Sonora is a key location used by the international drug trade and human trafficking networks.”

#### **Remain in Mexico Blocks Refugees from Asylum Protection and Cannot Provide Fair Access to the U.S. Asylum System**

RMX denied asylum seekers due process and drastically restricted their access to counsel, legal information, and the ability of asylum seekers to attend and participate in their own immigration hearings. Just to reach U.S. immigration courts, asylum seekers were forced to risk kidnapping and violence. Many were abducted while traveling through border regions to attend hearings or directly outside ports of entry before or after their hearings. As a result of the policy’s inherent flaws, *in absentia* removal orders were issued in at least 44 percent of RMX cases. Immigration judges ordered asylum seekers in RMX deported when they missed court hearings even after being informed that the asylum seekers were kidnapped in Mexico. As a result of these dangers, refugees with protection needs gave up on their cases rather than risk their lives

to attend court, and some even returned to their home countries—where they risked further persecution—because of the harms they had suffered while trapped in Mexico.

Many U.S. attorneys and humanitarian groups were unable to travel to dangerous Mexican border regions to represent asylum seekers stranded under RMX because of the risks to their safety. Their fears were justified. As Human Rights First explained in a November 2021 factsheet, U.S. based attorneys were threatened with kidnapping and violence in connection with their representation of people in RMX. Given the many security, logistical, due process and ethical impediments to legal representation that are inherent to RMX, the vast majority of RMX returnees were not able to find lawyers, according to immigration court data analyzed by the Syracuse University Transactional Records Access Clearinghouse (TRAC). 97 percent of individuals in RMX whose cases had been decided by December 2020 did not have an attorney. By contrast, in non-RMX proceedings, only nine percent of non-detained asylum seekers whose cases concluded in fiscal year 2018 did not have legal representation at any point during their proceedings. The impact of these barriers to due process are clear. Of the nearly 70,000 people placed in RMX under the Trump administration, only 523 people—less than one percent—were granted relief while subject to RMX.

#### **No Version of Remain in Mexico Can Fix the Policy's Fundamental Flaws**

The inherently flawed RMX policy cannot be made safe or its flaws overcome, as its reimplemention by the Biden administration made clear. Indeed, the UNHCR representative to the United States stated, in response to the reimplemention of RMX, that “the announced adjustments to the policy are not sufficient to address [UNHCR’s] fundamental concerns” about the safety and due process rights of asylum seekers subjected to RMX. Additionally, Secretary Alejandro Mayorkas concluded, “that there are inherent problems with [RMX]—including the vulnerability of migrants to criminal networks, and the challenges associated with accessing counsel and courts across an international border—that resources cannot sufficiently fix...”

Soon after its reinstatement in December 2021, the asylum officers' union described the RMX policy as “irredeemably flawed” and stated that its restart “makes our members complicit in violations of U.S. federal law and binding international treaty obligations of non-refoulement that they have sworn to uphold.” The Round Table of Former Immigration Judges wrote, “there has been no greater affront to due process, fairness, and transparency than the MPP, or “Remain in Mexico” policy. Instituted under the Trump Administration, it appears to have been motivated by nothing other than cruelty.”

#### *Return to Danger, Risk of Refoulement*

In a January 2022 report, “A Shameful Record,” Human Rights First documented cases of people returned by CBP to Ciudad Juárez after the RMX reimplemention despite already suffering severe harm in Mexico. For example, a Nicaraguan asylum seeker, who had been recently kidnapped near the border in Mexico and tortured by electrocution and beatings for three weeks, was sent back to Mexico by CBP in December 2021. Nearly all the 16 RMX returnees Human Rights First interviewed in Ciudad Juárez in December 2021 reported having

suffered violence, kidnappings, and/or extortion in Mexico – including at the hands of Mexican police or other MX government officers. Likewise, the Border Project, which provided legal consultations to individuals being returned to Ciudad Juárez in December 2021, reported that more than 70 percent of the 87 individuals that their attorneys spoke to had been persecuted by Mexican police and other government officials. As the Border Project noted in a communication to Human Rights First, this level of violence by Mexican officials “raises serious concerns about the Biden administration’s assurances that the Government of Mexico will assist in protecting the migrants returned” under RMX.

Asylum seekers returned to Mexico are at grave risk of chain refoulement, i.e., illegal return, to countries where they would face persecution or torture. The Mexican government has deported asylum seekers whom the Biden administration had expelled or blocked from seeking U.S. protection under Title 42—including some who presented documentation showing they had legal status in Mexico. Though the Biden administration offered to bus people returned to the dangerous MX border city Matamoros under RMX to Monterrey, a city in Mexico’s interior, they remained at risk of violent crime or chain refoulement. For example, a Venezuelan asylum seeker told Human Rights First that Mexican police twice extorted him in Monterrey before he was placed in RMX and returned to Mexico in December 2021. This Venezuelan asylum seeker also reported that Mexican immigration authorities in Monterrey had threatened and forced him and other asylum seekers onto a bus to the south of Mexico, where Mexican immigration officers detained him, even though he had documentation showing he was legally present in Mexico. The asylum seeker was released in southern Mexico with instructions to leave Mexico within 10 days or face deportation to Venezuela.

#### *Flawed Fear Screenings*

During the reimplementation of RMX, the Biden administration chose to use a heightened fear screening standard, instead of the credible fear standard set by Congress for the expedited removal process, for RMX non-refoulement interviews (NRI) purportedly addressing asylum seekers’ fear of return to Mexico. The “reasonable possibility” standard applied in these preliminary telephonic screenings is equivalent to what asylum seekers must show to establish eligibility for asylum after a full immigration court hearing. These interviews were conducted while individuals were being held—often for days—in freezing CBP holding cells and generally without counsel present. Only 20 (three percent) of 595 people subject to the policy who claimed fear of return to Mexico in December 2021 and January 2022 had an attorney present for their NRI screening. Unsurprisingly, few individuals were found to meet the screening standard. According to DHS data, 88 percent of migrants and asylum seekers placed in RMX in December 2021 and January 2022 expressed fear of return to Mexico, but only 14 percent of those screened were found to face “a reasonable possibility” of harm in Mexico, despite DHS’s own recognition that people in RMX are targeted for kidnappings and other violent crimes. The extraordinarily low percentage of individuals receiving positive RMX fear determinations under the Biden administration was nearly identical to when these screenings were conducted under an even more heightened standard by the Trump administration (13 percent of individuals subjected to RMX between January and October 2019 received positive fear determinations).

Information from the Border Project and Human Rights First interviews with individuals returned to Mexico under the policy indicate that CBP officers interfered with meaningful access to counsel for these RMX fear screenings including by pressuring individuals to waive their opportunity to speak with an attorney, failing to inform individuals of their opportunity to access counsel prior to a non-refoulement interview screening (NRI screening), and blocking individuals from hiring or consulting private legal counsel. Many individuals returned to Mexico in December 2021 described the non-refoulement interview as confusing and chaotic. They told Human Rights First that they did not understand the purpose of the interview and were unsure who they had spoken with on the phone during the interview. For instance, a Nicaraguan asylum seeker said that he had a conversation by telephone while in CBP custody but did not know whether he had spoken with a government official or had received a consultation with a legal services provider. Indeed, none of the 18 people Human Rights First interviewed in December 2021 after they were returned to Ciudad Juárez under RMX were certain whether they had spoken with a lawyer prior to being returned to Mexico, even though free legal consultations were purportedly available to anyone in RMX at the time.

#### *Failed Health Screenings and Family Separation*

DHS also returned individuals with serious medical conditions and LGBTQ persons to Mexico, despite DHS guidance exempting from RMX “those with a known mental or physical health issue” and “those at increased risk of harm in Mexico due to their sexual orientation or gender identity.” People with health issues wrongly returned by CBP to Mexico under RMX included a man with cancer. In December 2021 Human Rights First found that CBP officers were failing to ask health screening questions and falsely recording on the “Initial Health Interview Questionnaire” that migrants and asylum seekers placed in RMX reported that they do not have any serious medical conditions. None of the 18 individuals in RMX who Human Rights First interviewed in Ciudad Juárez in December 2021 had been asked the required 11 health screening questions on the form. Some were not asked any health-related questions, while others said that CBP officers inquired only generally about health issues. None of the RMX enrollees Human Rights First interviewed were asked any questions about their gender identity or sexual orientation.

In addition, CBP separated families by returning some family members through RMX to danger in Mexico. In December 2021, the Border Project identified approximately 10 RMX returnees who had been separated from a spouse or adult children. One man who was returned to Mexico under RMX told the Border Project that he had been separated from his wife, who was six-months pregnant and suffering from epilepsy and asthma.

#### *Due Process Barriers, Lack of Representation*

Under the Biden administration’s reimplementation of RMX, the inherent lack of due process denial was never addressed. Like the first iteration of RMX, a very small number of individuals in RMX managed to secure legal counsel. For example, only six percent (five of 82) of asylum seekers had legal counsel when they appeared at the El Paso immigration court for the first two days of RMX hearings in early January 2022, according to a court observer with Refugees

International. During the first six months of the RMX reimplementation, only five percent of people sent to Mexico were represented by lawyers, according to government data analyzed by TRAC. By comparison, 93 percent of asylum seekers had legal counsel in non-RMX asylum proceedings in Fiscal Year 2022 through the end of February. Many asylum seekers returned to Mexico under RMX reported that attorneys on the U.S. government-provided list of legal service providers did not take RMX cases (often due to security concerns) or did not have capacity to assist them. RMX court observers in El Paso and San Diego report that the first RMX hearings were confusing and chaotic. Observers in both courts heard RMX enrollees tell judges that they tried but were unable to find legal counsel.

#### **Remain in Mexico Is Illegal and Cannot Be Made Lawful**

Returning asylum seekers to wait in danger in Mexico under any version of the Remain in Mexico program will violate U.S. immigration law and international treaty commitments. As extensive research by Human Rights First and other human rights groups have documented, the RMX policy (in addition to other policies that force migrants to wait in danger in Mexico, like the Title 42 expulsion policy) returns people to highly dangerous regions of Mexico where they have subsequently faced, or are likely to face, horrific danger, including murder, rape, torture, kidnapping, human trafficking, and other violence. These returns violate the U.S. government's non-refoulement obligations under Article 33 of the 1951 Convention relating to the Status of Refugees (binding on the United States through its accession to the 1967 Protocol relating to the Status of Refugees), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and customary international law, which prohibit returning people to countries where they would be at risk of persecution, torture, or other serious harm.

#### ***Action Needed by Congress***

Congress has a critical role to play in upholding U.S. refugee law and treaties, urging all possible steps to end the Remain in Mexico policy and its expansion which violate refugee law, effectively block refugees from U.S. asylum and endanger their lives. Congress should:

- Continue to conduct oversight and strongly urge the incoming Trump administration to comply with U.S. and international refugee law, reject a return to the Remain in Mexico policy, and fully restore access to asylum at the southern border and to take all necessary administrative and judicial steps needed to do so.
- If the inherently flawed and unfixable Remain in Mexico is reimplemented, conduct oversight and advance recommendations to U.S. agencies to ensure that:
  - DHS (through information it receives from asylum seekers through USCIS, CBP and/or ICE interviews and communications) and the U.S. State Department track all reported incidents of kidnappings and other violence against individuals after they are returned to Mexico via RMX;
  - DHS and CBP allow, provide and facilitate unimpeded access to in-person legal consultations and legal representation to people in its custody, including in connection with any screenings about fear of return to Mexico, eliminate any

limits on time permitted to consult with legal counsel prior to these crucial screenings, and prohibit the conduct of any fear screenings interviews without the presence of legal counsel when an asylum seeker requests such representation; and

- DHS and CBP allow and provide fear screenings at POEs upon request by asylum seekers or their counsel, and take steps to ensure that CBP appropriately screens, identifies, and exempts individuals who should be exempt from placement in RMX;
- Conduct official visits to Mexican border towns where asylum seekers have been returned, CBP facilities and Border Patrol stations on the southern U.S. border, immigration detention centers, immigration courts, and humanitarian organizations in the border region assisting asylum seekers and migrants.



**Immigrant Defenders Law Center’s Statement for the Record on the Senate Homeland Security and Governmental Affairs Committee Hearing, “Remain in Mexico”**

**January 16, 2025**

Immigrant Defenders Law Center (ImmDef) is the largest provider of removal defense legal services in Southern California. We use a model of universal representation because we believe no immigrant should stand alone against an unjust immigration system. We have offices in Los Angeles, Santa Ana, Riverside, and San Diego.

Our programs include the Cross Border Initiative (CBI) based in San Diego, California, through which we provide services to persons in need of asylum. Through the CBI, we have provided free legal consultations and representation, legal education, and holistic social services to detained and non-detained immigrants in the San Diego region and at the U.S.-Mexico border.

During the first iteration of the so-called Migrant Protection Protocols (also known as “Remain in Mexico”) under the Trump administration, ImmDef provided know your rights presentations to hundreds of individuals and families forced to reside in Tijuana or Mexicali, Mexico. ImmDef represented over 78 individuals in their asylum cases before the San Diego Immigration Court either on a limited or full-scope basis. Representing individuals in their U.S. immigration court hearings while they were forced to reside in dangerous border towns and cities in Mexico posed many significant challenges. When Remain in Mexico resumed under the Biden administration, we represented individuals in their non-refoulement interviews with the goal of excluding vulnerable individuals from the program due to their LGBTQ+ status, health issues, or past persecution in Mexico.

Several of the individuals we represented in Remain in Mexico under both administrations were victims of crimes, including [extortion](#) by Mexican authorities, [rape](#), or [kidnapping by the cartels](#). These harms were well [documented by media](#) and [human rights groups](#).

Aside from the significant harms—in some cases even [death](#)—that this restrictive policy exposed asylum seekers to, [families were often separated](#). Furthermore, parents fearing for the safety of their loved ones in Mexico felt forced to send their [children](#) to the United States alone.

While exposed to danger and enduring family separation, individuals in the program were also forced to navigate the complex U.S. immigration system by themselves. The vast majority of individuals placed in the Remain in Mexico program had [no access to counsel](#).

ImmDef urges the Committee to support asylum border policies that protect rather than endanger vulnerable individuals and families seeking asylum in the United States. Forcing vulnerable people to wait for their hearings in dangerous Mexican border cities and towns only further enriches the cartels who make money from kidnapping asylum seekers and [shirks our obligation under both U.S. and international law](#) to protect individuals fleeing persecution.



International Refugee  
Assistance Project

International Refugee Assistance Project (IRAP) Statement to the  
Senate Committee on Homeland Security & Governmental Affairs on “Remain in Mexico” on  
January 16, 2025

### **I. About the International Refugee Assistance Project**

IRAP provides comprehensive legal services to refugees and displaced persons. Since IRAP’s establishment, it has provided legal assistance to thousands of displaced persons seeking legal pathways from conflict zones to safe countries. IRAP provides pro bono legal representation, legal advice, and expert referrals to refugees all over the world.

IRAP’s goal is to ensure that available services and legal protections reach those who are most in need. Our clients include LGBTI individuals, religious minorities subject to targeted violence, survivors of sexual and gender-based violence, children with medical emergencies for which local treatment is not available, and interpreters and others being targeted by the Islamic State, militias, and the Taliban in retaliation for their work with the United States and NATO. Our clients also include individuals who are seeking asylum in the United States and individuals in the United States who are seeking family reunification with members of their family still outside of the country.

IRAP partners with Derechos Humanos Integrales en Acción, A.C. (DHIA), a Mexican non-governmental organization, among other key organizations to provide services to migrants in Ciudad Juárez and elsewhere across Mexico who are seeking legal information and representation; IRAP has also worked with other organizations in providing CFI preparation to individuals enrolled in the Family Expedited Removal Management (FERM) program.

### **II. Opposition to Re-Implementation of Migrant Protection Protocols**

In January 2019, former Secretary of Homeland Security Kirstjen M. Nielsen [described](#) the Migrant Protection Protocols (MPP), also known as “Remain in Mexico” (RMX), as a “methodical commonsense approach . . . to address the crisis at our Southern border.” Nothing could be less accurate.

Under MPP, noncitizens who were seeking protection in the United States from the southern border were placed into Immigration and Nationality Act (INA) Section 240

**One Battery Park Plaza, 33rd Floor, New York, NY 10004**  
[refugeerights.org](http://refugeerights.org) | [twitter.com/IRAP](https://twitter.com/IRAP) | [facebook.com/RefugeeAssist](https://facebook.com/RefugeeAssist)

## IRAP

International Refugee  
Assistance Project

removal proceedings and returned to border towns in Mexico for the pendency of their immigration proceedings, with narrow exceptions.

MPP forced individuals to live in dangerous and unstable conditions in Mexico while awaiting a decision on their asylum claims. Most noncitizens returned to Mexico under MPP did not have the economic means to secure stable housing, which resulted in many individuals seeking refuge in overcrowded shelters and informal tent camps, often in cartel-controlled territory. Cartels targeted noncitizens waiting in Mexico with kidnappings, extortion, rape, and other violent attacks, due to their vulnerability and potential U.S. contacts that could be extorted for ransom.<sup>1</sup> As of December 2020, human rights observers documented at least 1,314 public reports of violent attacks against individuals returned to Mexico under MPP.<sup>2</sup>

During the implementation of MPP, IRAP provided legal assistance to individuals seeking non-refoulement interviews as well as assistance to individuals applying for asylum while enrolled in MPP and assistance with motions to reopen to individuals ordered removed, especially in absentia, while enrolled in the program and unable to cross into the United States for their hearings due to various factors outside their control, including suffering kidnappings and other violence in Mexico while enrolled in the program.

Through these efforts, IRAP observed directly the egregious harm to asylum seekers and violations of basic legal protections. IRAP urges the Senate Committee on Homeland Security & Governmental Affairs, Congress as a whole, and the incoming administration to invest in a fair, functional immigration court system in the United States so that immigrants can have their claims adjudicated fully and fairly without being subject to unreasonable delays or extreme violence in Mexico.

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<sup>1</sup> See, e.g., Physicians for Human Rights, *Forced into Danger: Human Rights Violations Resulting from the U.S. Migrant Protection Protocols* (Jan. 19, 2021), <https://phr.org/our-work/resources/forced-into-danger/>.

<sup>2</sup> Human Rights First, Publicly reported cases of violent attacks on individuals returned to Mexico under the “Migrant Protection Protocols”, as compiled by Human Rights First (Dec. 15, 2020), <https://humanrightsfirst.org/wp-content/uploads/2020/12/PubliclyReportedMPPAttacks12.15.2020FINAL.pdf>.



**Statement for the Record by Kids in Need of Defense (KIND)  
"Remain in Mexico"  
Senate Homeland Security & Government Affairs Committee  
January 16, 2025**

Kids in Need of Defense (KIND) is the leading U.S.-based organization dedicated to the protection of unaccompanied children through pragmatic, efficient solutions. In 2008, KIND was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie and has since provided legal representation to more than 16,000 children in U.S. immigration proceedings, provided legal rights education to more than 75,000 children in the United States, and formed pro bono partnerships with over 800 corporations, law firms, law schools, and bar associations to provide children with pro bono representation. KIND's social services program facilitates the coordinated provision to unaccompanied children of counseling, educational support, medical care, and other services. KIND also helps children who are returning to their countries of origin to do so safely and to reintegrate into their home communities. KIND's programs in Mexico and Central America work to address the root causes of forced migration and help protect the safety and well-being of migrant children at every phase of their migration journey. Through its European Initiative, KIND and partners in Belgium, France, Greece, Ireland and the United Kingdom work to ensure access to high quality pro bono legal assistance for unaccompanied children in Europe.

Through our 17 years of experience working with thousands of unaccompanied children, KIND has seen firsthand the unique challenges confronting children in search of protection and understands the critical importance of policies and legal safeguards in the U.S. immigration system to ensure their safety and well-being. Many unaccompanied children have fled grave threats to their lives and safety in their countries of origin, including severe violence, abuse, and human trafficking.

Recognizing the particular vulnerability of unaccompanied children in the immigration system, a bipartisan Congress enacted, through the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), legal and procedural protections to ensure that unaccompanied children are treated fairly and humanely, that they are able to present their legal cases, and that no child is returned to harm. These safeguards, together with critical standards provided by the *Flores* Settlement Agreement and developed over decades, reflect our nation's commitment to treating unaccompanied children as children first and foremost. They remain of paramount and lifesaving importance today.

From KIND's experience in the United States, in Mexico, and at the U.S.-Mexico border, we know that Remain in Mexico, also known as the Migrant Protection Protocols (MPP), previously put children in grave danger. KIND staff worked with hundreds of children who were impacted by Remain in Mexico, witnessing firsthand how the policy exposed them to severe risk of trafficking and violence. We urge Members of Congress to reject any proposal to reinstitute this policy or its equivalent. Should Remain in Mexico nonetheless be reestablished, it is vital that the policy once again exempt unaccompanied children.

***Remain in Mexico Placed Migrant Children in Danger***

Under Remain in Mexico, certain asylum seekers were forced to wait in Mexico while they pursued asylum claims in the United States. In practice, this meant that individuals apprehended at or near the U.S. border were returned to Mexico after undergoing CBP processing to initiate U.S. immigration court proceedings. In the

first year alone of the Remain in Mexico policy, nearly 57,000 asylum seekers, including more than 16,000 children, were sent to Mexico to await proceedings in their U.S. asylum cases.<sup>1</sup>

While waiting weeks if not months in Mexican border cities for their U.S. asylum hearings, children and their families endured harm at the hands of cartels, traffickers, and other criminal groups. Kidnappings, extortion, and violence were commonplace and well documented by media and NGOs, including KIND.<sup>2</sup> One example involved a four-year boy and his mother who pursuant to MPP were returned to Mexico, despite previously being kidnapped there. After their return, they were once again kidnapped, during which the boy witnessed a group of men rape his mother, resulting in her hospitalization.<sup>3</sup>

Amid widespread abductions and violence targeting parents and other individuals returned under Remain in Mexico, the policy also led directly and indirectly to traumatic family separations. For example, some children KIND encountered reported that after they and their families were returned to Mexico under MPP, a parent or caretaker disappeared.<sup>4</sup> Several parents never returned after going out for a day's work. In one case, a child's mother disappeared on her way to report some men who had kidnapped her a few months earlier. Such children were left alone in dangerous conditions in Mexico, with no one to care for them and fearful for their safety. These stories illustrate why it is imperative for Members of Congress to oppose any proposal to reinstitute Remain in Mexico.

***Unaccompanied Children Must Never Be Subject to Remain in Mexico or Equivalent Proposals***

In recognition of the unique vulnerabilities of unaccompanied children and associated bipartisan legal framework, unaccompanied children were explicitly exempted from Remain in Mexico from its inception. Should the policy be reinstated despite its record of harmfulness, it is critical that this exemption remain.

The exemption is consistent with and necessary under the TVPRA, which accords unaccompanied children distinct anti-trafficking safeguards and enshrines these children's right to access U.S. territory in pursuit of humanitarian protection.<sup>5</sup> Among other requirements, the TVPRA mandates that unaccompanied children be screened to determine whether they are victims or at risk of trafficking. Unaccompanied children from Mexico and Canada who are found to meet these or other screening criteria, as well as unaccompanied children from non-contiguous countries, must be swiftly transferred into the custody of the Office of Refugee Resettlement (ORR) and placed into immigration court proceedings. ORR is responsible for reunifying these children with vetted, suitable sponsors – typically close family members – so that children may reside in safety in the United States under the care of loved ones while their legal proceedings unfold. Any reinstatement of Remain in Mexico

<sup>1</sup> CBS News, "House Democrats demand docs for probe into Trump's 'Remain in Mexico' policy," by Camilo Montoya-Galvez (Jan. 14, 2020), <https://www.cbsnews.com/news/remain-in-mexico-house-democrats-demand-docs-in-probe-of-trumpimmigration-policy/>; Reuters, "Exclusive: U.S. migrant policy sends thousands of children, including babies, back to Mexico," by Kristina Cooke, Mica Rosenberg and Reade Levinson (Oct. 11, 2019), <https://www.reuters.com/article/us-usa-immigrationbabies-exclusive/exclusive-u-s-migrant-policy-sends-thousands-of-children-including-babies-back-to-mexico-idUSKBN1WQ1H1>.

<sup>2</sup> Publicly reported cases of violent attacks on individuals returned to Mexico under the "Migrant Protection Protocols," Human Rights First, <https://humanrightsfirst.org/wp-content/uploads/2021/05/PubliclyReportedMPPAttacks2.19.2021.pdf>; Kids in Need of Defense (KIND), Forced Apart: How the "Remain in Mexico" Policy Places Children in Danger and Separates Families, (February 24, 2020), <https://supportkind.org/wp-content/uploads/2020/02/MPP-KIND-2.24updated-003.pdf>.

<sup>3</sup> Brief for Young Center for Immigrant Children's Rights, Kids in Need of Defense, et al. as Amici Curiae Supporting Respondents, Wolf v. Innovation Law Lab, No. 19-1212 (S. Ct. 2021), [https://www.supremecourt.gov/DocketPDF/19/19-1212/167044/20210122180800456\\_19-1212%20Amici%20Curiae.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1212/167044/20210122180800456_19-1212%20Amici%20Curiae.pdf)

<sup>4</sup> Kids in Need of Defense (KIND), Forced Apart: How the "Remain in Mexico" Policy Places Children in Danger and Separates Families (February 24, 2020), <https://supportkind.org/wp-content/uploads/2020/02/MPP-KIND-2.24updated-003.pdf>.

<sup>5</sup> 8 U.S.C. § 1232

or comparable proposal that omits an exemption for unaccompanied children would violate these TVPRA standards.

The subjection of unaccompanied children to Remain in Mexico would also prove a recipe for widespread child trafficking. The Department of State (DOS) recently observed that unaccompanied children in Mexico comprise one of the “groups considered most at risk of trafficking” in the nation,<sup>6</sup> underlining why any policy promoting the U.S. government’s summary return of unaccompanied children who transited through Mexico back to Mexico would place those children at immediate risk of being trafficked and serving as a reminder of a key impetus for TVPRA passage in the first place. DOS further commented that “migrants and asylum-seekers in or transiting Mexico are vulnerable to sex trafficking and forced labor, including by large and small organized criminal groups. Traffickers frequently target the most vulnerable migrants...”<sup>7</sup> As these observations indicate, human traffickers and other bad actors would all too often prey upon unaccompanied children denied access to protection in the United States and forced to wait at length in Mexico.

The application of Remain in Mexico to unaccompanied children would likewise raise profound due process and operational concerns. It is wholly unreasonable, for example, to expect a five-year-old child on their own to comprehend a Notice to Appear for an immigration court hearing in the United States, then to manage the logistics necessary to transit through Mexico weeks or months later to arrive at the designated U.S. port of entry at the prescribed day and time for the noticed hearing. It would prove all but impossible for many of these children to access the legal representation in Mexico essential to a fair legal process. Indeed, only approximately 7.5 percent of asylum seekers previously under MPP had attorneys.<sup>7</sup> Remain in Mexico would further deprive unaccompanied children of the opportunity for reunification with loving parents and other safe sponsors in the United States while their immigration court proceedings unfolded, intensifying the trauma these children often endure – trauma that in many cases impedes children’s ability to present information to adjudicators that is germane to their protection claims.

Even as KIND urges Members of Congress to reject any proposals to reinstitute Remain in Mexico – and underscores the vital importance of exempting unaccompanied children from any such measure – we encourage congressional support for a host of pragmatic actions that at once advance the safety of migrant children, strengthen border security, and promote efficient, orderly U.S. border operations. These include, to name only a few, the expansion of in-country and regional mechanisms that provide migrant children with protection avenues closer to their communities of origin and help prevent dangerous journeys to the U.S. southern border that strain border resources; the deployment of licensed child welfare professionals at Customs and Border Protection facilities who will enable CBP agents and officers to better focus on vital law enforcement duties while strengthening care and screening of child trafficking victims and other vulnerable migrant children in CBP custody; and safe return and reintegration services for unaccompanied children who are returning to their countries of origin and that help prevent the need for those children to re-migrate to the United States. KIND looks forward to engaging with Congress to advance these and other practical measures.

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<sup>6</sup> U.S. Department of State, 2024 Trafficking in Persons Report: Mexico (accessed January 15, 2025), <https://www.state.gov/reports/2024-trafficking-in-persons-report/mexico/>.

<sup>7</sup> American Immigration Council, The “Migrant Protection Protocols”: an Explanation of the Remain in Mexico Program (February 1, 2024), <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.

**Joint Statement for the Record of Immigration Equality, Oasis Legal Services, the Council  
for Global Equality, the Los Angeles LGBT Center, and the National LGBTQ Task Force  
Action Fund**

**U.S. Senate Homeland Security Committee Hearing on “Remain in Mexico”**

**January 16, 2024**

**I. About the Organizations**

*Immigration Equality*

Immigration Equality is a national organization that has worked for 30 years to secure safe haven and equality for immigrants facing persecution based on their sexual orientation, gender identity, or HIV status. To this end, Immigration Equality provides free legal services and advocacy through its in-house attorneys and nationwide network of pro bono partners who represent approximately 700 LGBTQ/H<sup>1</sup> individuals annually, mostly in affirmative and defensive proceedings for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). Immigration Equality generally maintains a 99% success rate for asylum claims brought by participants in its program. This is due to the underlying strength of LGBTQ asylum claims as well as the important role counsel plays navigating a complex immigration system. In addition, Immigration Equality helps thousands of LGBTQ/H asylum seekers every year through the provision of free legal advice, self-help guides and other materials, and via its online inquiry system and telephone hotline. Immigration Equality has provided training on the adjudication of LGBTQ/H asylum cases to asylum officers within the Department of Homeland Security and to Immigration Judges.

*Oasis Legal Services*

Oasis Legal Services is a leading nonprofit legal service provider to the LGBTQ+ immigrant community living on the West Coast, serving over 700 LGBTQ+ immigrants each year and representing over 1,800 LGBTQ+ asylum seekers since its founding in 2017 with a 99% success rate. Given California’s proximity to Mexico and Central America, over 90 percent of Oasis’s clients are Latine. All of Oasis’s clients have endured horrific violence in their countries of origin because of their sexual orientation, gender identity, gender expression, and/or because they are living with HIV. In addition to direct legal services, Oasis also provides case management and wrap-around services to meet the needs of its clients holistically and provides training, sample documentation and briefs, and direct mentorship to lawyers locally and nationally who represent LGBTQ+ asylum seekers. Through movement lawyering and advocacy, Oasis seeks to empower LGBTQ+ immigrants and spotlight their unique needs and resilience.

*The Council for Global Equality*

The Council for Global Equality is a Washington, D.C.-based coalition of 35 human rights and LGBTQI+ organizations that promotes LGBTQI+ inclusion in U.S. foreign policy. Together, Council members seek to ensure that those who represent the United States—including those in Congress, in the White House, in U.S. embassies, and in U.S. corporations—use the diplomatic, political, and economic

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<sup>1</sup> We use “LGBTQ,” “LGBTI,” “LGBTQ+,” “LGBT,” and “queer and trans” as umbrella terms for people with diverse sexual orientations or gender identities, including people who identify as gay, lesbian, bisexual, transgender, queer, intersex, asexual, non-binary, and gender non-conforming. We refer collectively to LGBTQ people and people living with HIV as “LGBTQ/H.”

leverage available to them to oppose human rights abuses that are too often directed at individuals because of their sexual orientation, gender identity/expression, or sex characteristics. The Council also seeks to increase support for foreign LGBTQI+ organizations as vital contributors to free and vibrant civil societies abroad. The Council's highest priorities include ensuring that U.S. immigration, refugee, and asylum mechanisms are broadly robust, welcoming, and humane, and in particular, are fully LGBTQI+-inclusive and accessible.

#### *Los Angeles LGBT Center*

Since 1969, the Los Angeles LGBT Center ("Center") has cared for, championed, and celebrated LGBT individuals and families in Los Angeles and beyond. We are an unstoppable force in the fight against bigotry and the struggle to build a better world; a world in which LGBT people are healthy, equal and complete members of society. Supported by a team of staff and volunteer attorneys, law students, paralegals, and interns, we are the country's largest community-based provider of LGBT legal services. We serve many of the legal needs of LGBT people, with a special focus on survivors of violence, undocumented immigrants, the transgender community, and youth. Our Immigration Law Project provides legal consultations, preparation of documents, court representation, and holistic support to protect members of the LGBTQ community fleeing persecution and torture in their countries of origin. Our Legal Clinic also assists clients in applying for permanent residency, naturalization, family and marriage petitions, and other administrative relief. All our services, which are available to everyone, are free or low-cost.

#### *The National LGBTQ Task Force Action Fund*

The National LGBTQ Task Force Action Fund is at the forefront of advancing the rights of all LGBTQ individuals and communities in America. Our mission is to conduct grassroots organizing and lobbying on legislation and ballot initiatives to achieve justice for LGBTQ people. The National LGBTQ Task Force Action Fund builds political power, takes action, and creates change to achieve freedom and justice for lesbian, gay, bisexual, transgender, and queer people and their families. As a progressive social justice organization, the Task Force Action Fund works toward a society that values and respects the diversity of human expression and identity and achieves equity for all.

## **II. Overview**

In January 2019, the Department of Homeland Security issued the Migrant Protection Protocols, also known as "Remain in Mexico." The policy required asylum seekers, including LGBTQ people fleeing persecution, to wait in Mexico until their hearing date, subjecting them to life-threatening [conditions](#), including sexual and physical assault, torture, kidnapping, death threats, and murder.

In addition to the illegal, immoral, and unjustifiable human cost of the program, Remain in Mexico was counterproductive. It sowed chaos at the border and diverted valuable government resources from border processing systems that actually work. It also resulted in the erroneous denial of meritorious claims because applicants could not meaningfully access counsel or attend or participate in their court hearings. It also made it virtually impossible for many U.S. based attorneys to provide services to impacted asylum seekers during their proceedings.

Remain in Mexico was a disaster for queer and trans refugees, because for LGBTQ people, asylum is a critical lifeline. LGBTQ/H people are persecuted around the globe for being who they are. Fortunately, LGBTQ/H-based asylum claims fit squarely within our domestic asylum framework. Indeed, LGBTQ asylum seekers in Immigration Equality and Oasis' representation programs have exceptionally strong claims and win their cases approximately ninety-nine percent of the time. But policies like Remain in Mexico trap traumatized queer and trans asylum seekers in Mexico, even as they seek safe haven, subjecting them to further anti-LGBTQ violence and persecution. The Mexico country conditions and experiences of Immigration Equality and Oasis clients described below illustrate the widespread and brutal nature of such violence. Any U.S. policy that forces LGBTQ/H asylum seekers to wait in Mexico for weeks or months is policy that will have horribly abusive and sometimes mortal consequences for those individuals. The Remain in Mexico policy should never be implemented again.

### **III. LGBTQ/H Asylum Seekers Face Brutal Violence and Mistreatment in Mexico**

The U.S. government, as well as other governmental and non-governmental organizations, have long recognized the dangerous conditions that LGBTQ/H people, and in particular asylum seekers, face in Mexico.<sup>2</sup> Homophobia and transphobia are prevalent across the country, including in major urban areas such as Mexico City and Guadalajara.<sup>3</sup> LGBTQ/H people are 9 times more likely to suffer violence in Mexico than non-LGBTQ/H people<sup>4</sup> and Mexico ranks second globally behind Brazil for the number of hate crimes reported against members of the LGBTQ/H community.<sup>5</sup>

In the first two weeks of 2024 alone, three transgender woman were murdered in Mexico, including Samantha Gomez Fonseca, a human rights activist and politician.<sup>6</sup> In 2022, 87 LGBTQ people, 48 of whom were transgender, were murdered in violence motivated by the victim's sexual orientation or gender identity, according to civil society groups.<sup>7</sup> More than 647 LGBTQ people were murdered in Mexico between the years 2014 and 2021 and the predominant feature of such

<sup>2</sup> The Advocates for Human Rights, *Mexico's Compliance with the International Covenant of Economic, Social and Cultural Rights: List of Issues on Equality and Non-discrimination, and Gender-Based Violence against Women (A Submission to the U.N. Committee on Economic, Social, and Cultural Rights)* 8 January 2024, available at: [https://www.theadvocatesforhumanrights.org/Res/Mexico\\_CESCR\\_LOI\\_AHR\\_FV.pdf](https://www.theadvocatesforhumanrights.org/Res/Mexico_CESCR_LOI_AHR_FV.pdf); Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *Mexico Country Reports On Human Rights Practices For 2023* (April 22, 2024); Human Rights Watch, *US: LGBT Asylum Seekers in Danger at the Border* 31 May 2022, available at: <https://www.hrw.org/news/2022/05/31/us-lgbt-asylum-seekers-danger-border>.

<sup>3</sup> Agenesis Presentes, *Criminalization of LGBT people increases in the State of Mexico – Arbitrary arrests, extortion, harassment and harassment are some of the crimes that police officers commit against the LGBT population*, 13 February 2023, available at <https://agenciapresentes.org/2023/02/13/aumenta-la-criminalizacion-a-personas-lgbt-en-el-estado-de-mexico/>.

<sup>4</sup> La Jornada, *LGBT community, nine times more exposed to violence*, 8 December 2019, available at: <https://www.jornada.com.mx/2019/12/08/politica/013n2pol>.

<sup>5</sup> London School of Economics Phelan United States Centre, *LGBTQ+ people in Mexico face significant threats of violence, even as formal rights are extended*, 22 November 2024, available at: <https://blogs.lse.ac.uk/usappblog/2024/11/22/lgbtq-people-in-mexico-face-significant-threats-of-violence-even-as-formal-rights-are-extended/#:~:text=Violence%20facing%20LGBTQ%2B%20people%20in%20Mexico&text=The%20organization%20Transrespect%20documented%20701,for%20violence%20against%20trans%20people>.

<sup>6</sup> CBS News, *Politician among at least 3 transgender people killed in Mexico already this month as wave of slayings spur protests*, 16 January, 2024, available at: <https://www.cbsnews.com/news/transgender-politician-samantha-gomez-fonseca-killed-mexico-wave-of-murders-protests-lgbtq/>.

<sup>7</sup> Id.

homicides was the “cruelty with which they are committed.”<sup>8</sup> Many of the victims of these homophobic and transphobic murders suffered sexual violence before or after being killed, and the bodies of many of the victims were left with signs of torture.<sup>9</sup>

The U.N. Human Rights Council has noted the continuing and worsening trend of violence and discrimination against LGBTQ persons in Mexico, including murder, disappearances, physical and psychological abuse, threats, and extortion.<sup>10</sup> Mexican media reports also illustrate how commonplace the violence is against the population and how it is carried out with relative impunity.<sup>11</sup> These reports include: transgender women being shot and murdered in the street<sup>12</sup> in full view of passersby, the bodies of transgender women<sup>13</sup> and gay men<sup>14</sup> being dumped in public places with signs of torture and sexual abuse, and significant numbers of LGBTQ people murdered in their own homes.<sup>15</sup> A lesbian couple, working as journalists, was murdered by armed men in their vehicle.<sup>16</sup> In another case, a trans woman was found murdered with her body handcuffed, blindfolded, and marked with other signs of brutal gang violence.<sup>17</sup>

Northern border states in Mexico are especially brutal. In Chihuahua, a lesbian couple was found dismembered and their bodies scattered in plastic bags along the highway.<sup>18</sup> A day later, two more women were found discarded in plastic bags, part of a pattern of extreme violence against LGBTQ+ women.<sup>19</sup> The state of Veracruz, as well as Baja California, have reported similar crimes.<sup>20</sup>

In addition to murder, LGBTQ people in Mexico experience high levels of other types of violence and severe mistreatment, including beatings, torture, rape and sexual assault, kidnapping,

<sup>8</sup> Letra S, *Violent Deaths of LGBTI People in Mexico*, May 2022, available at: <https://sinviolencia.lgbt/muertes-violentas-de-personas-lgbt-en-mexico-2021/>.

<sup>9</sup> Id.

<sup>10</sup> U.N. Human Rights Council, Summary of stakeholders submissions on Mexico [Universal Periodic Review]: Report of the Office of the United Nations High Commissioner for Human Rights, 14 November 2023, available at: <https://documents.un.org/api/symbol/access?j=G2323468&t=pdf>.

<sup>11</sup> See Oasis Legal Services’ Country Conditions Index for Mexico and cited articles: [https://drive.google.com/drive/folders/1iYRXO1zRoMiw7KUYqd1wBiAeh9pPeOE?usp=drive\\_link](https://drive.google.com/drive/folders/1iYRXO1zRoMiw7KUYqd1wBiAeh9pPeOE?usp=drive_link)

<sup>12</sup> El Universal, *Impunity in hate crimes in the country*, 2 February 2018, available at:

<http://www.eluniversal.com.mx/nacion/sociedad/impunidad-en-crimenes-de-odio-en-el-pais>.

<sup>13</sup> Desastre MX, *They torture and murder a trans woman in Colima*, 18 June 2018, available:

<http://desastre.mx/mexico/torturan-y-asesinan-a-mujer-trans-en-colima/>.

<sup>14</sup> Aristegui Noticias, *They kill a university student; “hate crime”*: UACM, 24 February 2018, available at:

<https://aristeginoticias.com/2402/mexico/asesinan-a-universitario-crimen-de-odio-uacm/>.

<sup>15</sup> San Diego Lesbian, Gay, Bisexual, Transgender News, *Openly gay teacher in Mexico found murdered in home*,

San Diego Lesbian, Gay, Bisexual, Transgender News, 5 February 2019, available at:

<https://sdlgbtnews.com/news/2019/02/05/openly-gay-teacher-mexico-found-murdered-home/>; Cultural Survival, *Zapotec Advocate for Muxe and LGBTQ Rights Murdered in Mexico*, 1 March 2019, available at:

<https://www.culturalsurvival.org/news/zapotec-advocate-muxe-and-lgbtq-rights-murdered-mexico>.

<sup>16</sup> Sin Violencia LGBTI, *Being LGBTI+ in the most violent region of the world: the situation of homicides of lesbian, gay bisexual and trans persons in Latin America and the Caribbean in 2022*, August 2023, available at:

<https://sinviolencia.lgbt/informe-2022-ser-lgbti-en-la-region-mas-violenta-del-mundo/>

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> New York Post, *Investigate gay couple’s brutal murder in Mexico as a hate crime, advocates say*, 20 January 2022, available at: <https://nypost.com/2022/01/20/gay-couples-murder-in-mexico-should-get-hate-crime-probe-advocates/>.

<sup>20</sup> Sin Violencia LGBTI, *supra*.

extortion, and death threats.<sup>21</sup> Lesbian women are subjected to “corrective” rape and other forms of sexual abuse and gay men are physically abused and beaten because of their perceived sexual orientation.<sup>22</sup> According a 2022 report by the Mexican National Commission for Human Rights, six of every ten people in the LGBTQ+ community has suffered some type of discrimination, and more than half report having suffered expressions of hate, physical aggressions and assault.<sup>23</sup>

The Mexican police not only fail to protect people or meaningfully investigate crimes committed against the LGBTQ/H community<sup>24</sup> but are frequently the perpetrators of the violence.<sup>25</sup> As noted by the U.S. government in recent Mexico Country Reports, “The government [does] not always investigate and punish those complicit in abuses against LGBTQI+ persons, especially outside Mexico City.”<sup>26</sup> The country reports also note that “civil society groups claimed police routinely subjected LGBTQI+ persons to mistreatment while in custody.”<sup>27</sup> Human rights groups report that the increasing widespread violence targeting lesbian, gay, bisexual, transgender, and intersex persons throughout Mexico is compounded by criminal gang activities, as well as the lack of an independent and impartial system for combatting impunity, fighting corruption, and carrying out independent and impartial criminal investigations.<sup>28</sup>

#### **IV. The Experiences of Oasis, Immigration Equality, and the Los Angeles LGBT Center Clients Further Illustrate the Dangers Faced by LGBTQ/H Asylum Seekers as They Wait in Mexico**

Collectively, Oasis Legal Services and Immigration Equality have represented hundreds of Mexican asylum seekers who were granted asylum in the United States due to the severe persecution they feared or suffered on account of their gender identity, sexual orientation, and/or HIV positive status. Namely, Oasis has represented 431 clients from Mexico in the past 7 years who have been granted asylum by USCIS or EOIR with a 100% rate of success. Immigration Equality has represented over 140 LGBTQ/H Mexican asylum seekers over the past decade and has also maintained a near 100% success rate for adjudicated cases.

In addition, both organizations have collectively represented hundreds more asylum seekers who travelled through Mexico, or were trapped in Mexico under Remain in Mexico, Title 42, or another policy as they awaited entry into the United States in order to pursue their asylum claims.

Below are some of their stories:

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<sup>21</sup> U.N. Human Rights Council, *supra*.

<sup>22</sup> Sin Violencia LGBTI, *supra*.

<sup>23</sup> London School of Economics Phelan United States Centre, *supra*.

<sup>24</sup> Plumas Atómicas, *Mexico and the growing hate crimes against LGBTQ+ community*, 17 May 2019, available at: <https://plumasatomicas.com/lgbt/crimenes-de-odio-por-homofobia-contra-comunidad-lgbt-en-mexico/>

<sup>25</sup> Posta, *Lesbian couple report aggression in Zuzua*, 11 March 2018, available at: <http://www.posta.com.mx/nuevo-leon/denuncian-agresion-parcja-lesbica-en-zuzua>

<sup>26</sup> Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, Mexico Country Reports On Human Rights Practices For 2023 (April 22, 2024); Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, Mexico Country Reports On Human Rights Practices For 2022 (March 20, 2023).

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

<sup>28</sup> The Advocates for Human Rights, *Mexico’s Compliance with the Convention Against Torture Suggested List of Issues Prior to Reporting*, 24 January 2022, available at: <https://www.theadvocatesforhumanrights.org/Rcs/Mexico%20CAT%20LOIPR%20FINAL.pdf>

- Immigration Equality client Jerome is a gay man from Uganda, where same sex relationships are criminalized and LGBTQ people face high levels of violence and persecution. When Jerome was 19, he and his boyfriend were discovered being intimate. They were dragged outside of their house naked and publicly beaten, including by authorities who subsequently arrested and imprisoned the couple. Jerome spent months in prison where he was tortured for being gay before being permanently separated from his boyfriend who he believes was murdered. After his release, he was forced to undergo invasive surgery on his groin, purportedly to “fix” his sexuality. Deeply traumatized, Jarome eventually fled Uganda. He travelled through several unsafe, homophobic countries, eventually flying to Mexico in the hopes of finally reaching safety in the United States. Upon arrival in Mexico, he was immediately arrested and imprisoned. He was eventually released, but was rearrested when he was not able to enter the United States. While in Mexico, he was mistreated because of his sexual orientation and his race. Having no other choice, he eventually crossed into the U.S. without inspection. His asylum case is pending.
- Stephany, an Oasis client, fled Honduras with her partner because of the constant attacks and threats they received from gang members who controlled their community. The gang members insulted them for being lesbians and threatened to kill them if they did not leave. Stephany and her partner fled to Mexico after the police in Honduras said they could not protect them. In Mexico, they had difficulty finding a place to live because multiple landlords said they would not rent an apartment to a lesbian couple. Stephany and her partner continued to receive threats from the gang members in Honduras who said they knew Stephany and her partner were in Mexico, and they were going to send someone to kill them because they had gone to the police. After moving to Guadalajara for their safety, Stephany and her partner were stalked by a man who said he had been sent from Honduras to keep an eye on them. The police in Mexico would not help them because they said the alleged perpetrator was not Mexican. On the streets of Guadalajara Stephany and her partner were insulted and called names for being a lesbian couple. They fled to the United States for their safety and applied for asylum.
- Immigration Equality client, Carlos, is a gay, HIV-positive man from Nicaragua. After fleeing persecution for his political opinion and LGBTQ/H identity, Carlos was forced to wait in Mexico because he was not allowed to enter the U.S. to pursue his asylum claim under Title 42. In order to make ends meet, Carlos began working in a bar. The owners of the bar confiscated his identity documents and held him captive. Police officers who frequented the bar were permitted to regularly sexually assault Carlos. He eventually escaped and crossed the border without inspection in fear of his life. He turned himself into authorities in the U.S. and is currently pursuing his asylum claim.
- Mia is an Immigration Equality client from Jamaica. Mia arrived at the southern border after an arduous journey. At the border, Mia was given a number and forced to wait in Mexico for over three months to request asylum. In Mexico, Mia was homeless. She faced discrimination because of her race, transgender identity, and because she couldn't speak Spanish. Because of this she was not able to secure work. She had no money, so was living on the street with a friend. But after they were robbed and attacked, they moved to a shelter in the hopes it would be safer. At the shelter, her friend was stabbed

in the groin and she was targeted for abuse because of her race and transgender identity, so they moved back onto the streets. Mia eventually made it to the U.S. where her asylum claim is pending.

- The Immigration Law Project at the Los Angeles LGBT Center currently represents a queer youth from Honduras. Katie escaped anti-LGBT violence and gang violence in their home country based on their imputed identity and sexual orientation. They traveled to Mexico for safety. While in Mexico, they were sexually assaulted for being an LGBTQ person. The police did not respond to or investigate the crime. Their asylum case will be heard on the merits before the Los Angeles Immigration Court in February of 2025.
- In February 2024, USCIS granted asylum to Marcelo,<sup>29</sup> an Oasis client from Mexico, who was insulted and physically abused by his family members for being gay. He was sexually abused and raped multiple times as a child and young adult. In his community the local police officers, including the police commander, insulted and threatened him for being gay. Marcelo reported this abuse to the local public ministry in charge of the police but nothing was done and the abuse continued. Eventually, Marcelo was forced to flee to the United States.
- In January 2024, USCIS granted asylum to Arturo, an Oasis client from Guadalajara, Mexico. Arturo was severely beaten as a child by his father for being effeminate and showing an interest in feminine clothes and activities. Arturo was raped as a child and his rapist insulted him using homophobic slurs. He was terrorized in school by his classmates who pulled out his hair and sliced his leg open with a broken bottle. He fled Mexico after an older friend who was transgender was tortured and murdered.
- In December 2023, Emanuel, an Oasis client from Monterrey, Mexico was granted asylum by USCIS. As a gay man living in Mexico, Emanuel was physically and sexually assaulted numerous times. After a group of men spewing homophobic insults attacked Emanuel and his partner, they tried to seek help from the police. Instead of providing protection, the police insulted Emanuel and his partner, calling them faggots, made them get inside their police car, drove them to an unfamiliar part of town, and pushed them out of the moving car telling them that this is what people like them deserve.
- In November 2023, Ignacio, an Oasis client from Hidalgo, Mexico was granted asylum by USCIS. Ignacio survived multiple rapes and beatings in Mexico for being gay. He was abused by his partner in Mexico over the course of many years and sought help from the police in Acapulco and Mexico City. The police, instead of doing anything to protect him or arresting his abusive partner, told Ignacio that gay men don't know how to protect themselves so it was better that Ignacio be with a woman.
- In July 2023, Alexandra, an Immigration Equality client, was granted asylum by EOIR. Alexandra is a transgender woman from Mexico. In Mexico, she was kidnapped and held captive for several months by gang members because of her gender identity after

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<sup>29</sup> All client names have been replaced by initials or pseudonyms and certain minor details of accounts may have been modified in order to preserve confidentiality. Details of each case are on file with the representing organization.

she was spotted wearing women's clothing at a fundraiser she was organizing for children with leukemia. During captivity, she was tortured and repeatedly raped by multiple men. They stripped her naked and hung her from the ceiling while they tormented her, beating her with wooden paddles, slicing her with a knife, shaving off her long hair, and cutting her earlobes with metal scissors to remove her earrings. She was able to escape, but was grazed by two bullets as she ran. Although she feared retaliation, she eventually reported the kidnapping and rape to the police. Instead of helping her, they mocked and made fun of her. Hours after she made the report, her house was ransacked. She believes that the police told gang members that she had reported them and that they came looking for her. She fled to the United States and asked for asylum. Her injuries were so severe from the rapes that she had to undergo multiple rectal surgeries in an effort to repair the damage.

- Mirna, an Oasis client, is a lesbian woman from Mexico whose lifelong dream was to be a police officer. After joining the force, she was raped by her commanding officer in the police station where she worked as he told her that he was going to rape the lesbian out of her. When she reported the attack to her town's police commissioner, nothing was done; the commanding officer continued to be Mira's supervising officer and taunted her daily about the rape. Mirna's fellow officers beat her on several occasions while calling her lesbian slurs. Mirna fled from Mexico after her ex-partner's family attacked her with a knife because they blamed her for turning their daughter into a lesbian and almost cut off one of her fingers. Because of the attack, Mirna is unlikely to ever regain use of that finger.
- Kendra, another Oasis client, is a transgender woman from Mexico who was granted asylum in the United States. She owned a small hair salon in Mexico City but had to close it after receiving threats from a gang who said that as a transgender woman, Kendra was not allowed to live or work in the neighborhood. The threats continued and Kimberly fled to another state to hide after trying to make a police report which resulted in the police laughing at and insulting her. The gang found Kendra in her hometown after learning from the police that Kendra had reported them and where she was living. Gang members beat Kendra unconscious at a gas station while onlookers watched and she was hospitalized with a broken eye socket and jaw. The police never made any attempt to investigate the beating or make any arrests.
- Miguel, an Oasis client from Mexico suffered violence both in his home state of Oaxaca and while living in Tijuana. While attending university, Miguel was cornered after class by 5 classmates who pushed him to the ground, yelled gay slurs at him, and said they didn't understand why he was allowed to be there because faggots should not be able to go to college. One of the classmates hit him in the head with a piece of rebar. Miguel moved to Tijuana and found a job as a waiter. After work one evening, a customer who had insulted him earlier for being gay, followed him home and raped him at gun point.

**V. Conclusion**

Not only are Remain in Mexico, and other similar policies, illegal, but they are an affront to fundamental American values. The United States has long championed the human rights and dignity of refugees and asylum seekers. We should continue to embrace this leadership role and should not play political games with the lives of the most vulnerable. We urge the Committee to reject resurrecting failed and brutally cruel programs like Remain in Mexico. Instead, we encourage the Committee to embrace sensible and humane immigration [policies](#) that actually work. We all benefit when we have an orderly, fair, and efficient system that respects the human rights of all, including the brave and resilient LGBTQ/H asylum seekers we serve.

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**LSSNCA's Statement for the Record on Senate Homeland Security and Governmental Affairs Committee Hearing, "Remain in Mexico"**

January 16, 2025

In January 2019, the Trump administration implemented a policy requiring people seeking asylum in the United States to wait for their immigration hearings in dangerous conditions in Northern Mexico rather than within the United States. The policy, known as the Migrant Protection Protocols (MPP), or 'Remain in Mexico,' was a stark departure from longstanding U.S. asylum procedures and protections. After a lengthy legal battle, which included a court order reimplementation of the policy under the Biden administration, the 'Remain in Mexico' policy officially ended in August of 2022.

During the time the policy was in effect, over [77,000 people seeking asylum](#), including [thousands of children](#), were issued notices to appear in immigration court and turned back to Mexico. In northern Mexico, families and individuals faced dangerous and unsafe conditions, including violence, exploitation, and inadequate essential services like healthcare, education, and housing. [Human Rights First documented over 2,500 attacks on people enrolled in MPP](#), many of whom were targeted because of their race, gender, or sexual orientation.

We must never forget that statistics are not just numbers; they are the stories and struggles of families, loved ones, and neighbors. One such story is of Patricia, a Guatemalan asylum seeker whom Lutheran Social Services of the National Capital Area (LSSNCA) was able to support.

***Patricia's Story:***

*Patricia, along with her husband and 1-year-old daughter, journeyed to the United States to seek asylum in 2019. Upon her arrival at the United States border, the family was forced to wait in Mexico under MPP. While in Mexico, the family was kidnapped by Mexican gangs and held for ransom for 13 days with about 70 other hostages. Patricia and her husband could only call their family to request ransom money, which they ultimately paid. However, their journey didn't end there.*

*The family's asylum hearing was scheduled while they were kidnapped. Despite notifying U.S. immigration officials of their situation, Patricia and her*

*family were issued deportation orders for missing their court date. Upon returning to Guatemala, the family continued to experience the same persecution: extortion, threats, and a lack of police protection due to corruption. In 2021, Patricia and her family made the difficult decision to try to seek safety in the United States again. Their fear of staying in Guatemala outweighed the risks they faced coming to the United States.*

*LSSNCA provided Patricia and her family with legal assistance to navigate the U.S. asylum system. LSSNCA also provided mental health services to help them recover from the trauma of their kidnapping and connected them to a supportive community, allowing them to rebuild their lives so they can thrive and heal.*

The 'Remain in Mexico' policy subjected hundreds of thousands of people, like Patricia's family, to dangerous and unsafe conditions that severely affected their physical and mental well-being. Additionally, the policy was plagued with due process violations. It also violated U.S. legal obligations not to return people to places where their "life or freedom would be threatened" (Innovation Law Lab v. Wolf, 9th U.S. Circuit Court of Appeals, No. 20-35853, 2020).

LSSNCA remains committed to upholding our nation's legacy as a beacon of hope for people seeking safety through policies and programs that respect the dignity of people seeking refuge and adhere to refolement laws. We oppose policies that restrict asylum access, including the "Remain in Mexico" policy, which endangers people's lives and has lasting, negative effects on their well-being.

## REFUGEE CONGRESS

### Refugee Congress Statement on the Senate Committee on Homeland Security & Governmental Affairs on its January 16, 2025 Hearing: [“Remain in Mexico”](#)

[Refugee Congress](#) is a national, nonpartisan organization built and led by refugees, asylum seekers and asylees, and other people who have been forcibly displaced, and advocates for the protection, well-being, and dignity of all who have been displaced and seek safety, including those at our southern border. Refugee Congress urges the Committee to reject any proposal to reinstate the Trump administration’s “Remain in Mexico (RMX)” policy - a policy that has proven to be unlawful, ineffective, and dangerous for our most vulnerable neighbors - and to instead affirm the need to invest in local communities’ capacity and resources to welcome newcomers, and to support compassionate and humane immigration and reception pathways and systems that do not turn away - or - punish seeking safety.

The Committee and Congress must **uphold our moral and legal obligations**, per U.S. and international laws, **and pursue humane, sustainable, and effective solutions to challenges at the border**. Refugee Congress has opposed this policy and anti-asylum measures [across administrations](#), and on [multiple occasions](#). Initiated by the Trump administration in 2019, and temporarily reinstated under the Biden administration, the RMX policy (or also called “Migrant Protection Protocols” (MPP)) forced tens of thousands of asylum seekers to wait in dangerous conditions in Mexico while their asylum claims were processed in the United States – placing them in [direct danger](#) of violence, extortion, and kidnappings. The policy drastically restricted access to counsel, impeded the ability of asylum seekers to attend and participate in their court hearings, [wasted government resources](#), subjected asylum seekers to violent attacks, and violated U.S. and international law and principles of non-refoulement by returning people to the persecution and torture in Mexico and subjecting them to onward illegal return to their countries of persecution.

It was a counterproductive, failed policy and should never be reimplemented.

The Committee should **commit to protecting our most vulnerable neighbors rather than putting at risk individuals and families seeking safety in direct paths of danger**. People who were turned away under the RMX policy were not only deprived of their right to legal counsel, but were also [targeted, kidnapped, and tortured](#) by [cartels](#) who profited on the opportunity to exploit those turned back at the U.S. border. Over [2,500 attacks](#) were documented against people enrolled in RMX, with many targeted because they were migrants or due to their race, gender, sexual orientation, and other protected characteristics. Reimplementing the policy would inflict even greater crimes, as targeting of asylum seekers and migrants in Mexico only [continues to escalate](#). The Department of Homeland Security [concluded](#) in 2021, RMX imposed “unjustifiable human costs” and had “inherent problems...that no amount of resources can sufficiently fix.”

Ultimately, the Committee should **honor and uphold the values reflected by majority of Americans who [support access to asylum](#)** at the U.S. southern border. There is wide [bipartisan support](#) for welcoming policies for people seeking safety in the United States. The Committee must turn to policies that strengthen asylum protections and invest in the capacity to humanely welcome and process asylum seekers, unaccompanied children, and immigrants that recognizes their inherent dignity. The solution must not be to turn people away and send them back to life-threatening situations in their home countries. We must reject policies like Remain in Mexico and instead identify and implement solutions that protect people, families, and children. We must invest resources that strengthen our communities' capacity to welcome. We must be the example and leading the solution to a growing humanitarian crisis. Refugee Congress, whose membership is fully resettled refugees, asylees, and people who were forced to leave their homes due to war, persecution, and violence, is committed to welcoming refugees, asylum seekers, and all who come to the U.S. seeking safety, and we call on our elected leaders to do the same.



Refugee Council USA (RCUSA) Statement to the  
Senate Committee on Homeland Security & Governmental Affairs on its January 16, 2025 [Hearing](#):  
"Remain in Mexico"

As a 25-year old coalition of 42 U.S.-based refugee and humanitarian organizations, supporting and protecting the rights of forcibly displaced people, Refugee Council USA ([RCUSA](#)) urges the Committee to **categorically reject any proposal that would resurrect the Trump administration's "Remain in Mexico" (RMX) policy** – and to instead affirm the need to invest in our local communities' capacity to welcome newcomers and to stand for a compassionate and humane immigration and reception system that welcomes, not detains or turns away, asylum seekers, refugees, and our newest neighbors.

RCUSA urges the Committee to **act on conscience and uphold our moral and legal obligations by categorically rejecting any proposal that seeks to resurrect (even elements of) the Trump-era RMX policy**. RCUSA [has repeatedly opposed anti-asylum measures](#) across [administrations](#). The Trump administration's RMX policy (or so-called "Migrant Protection Protocols" (MPP)) forced tens of thousands of asylum seekers to wait in dangerous conditions in Mexico while their asylum claims were processed in the United States – placing them in direct [danger](#) of violence, extortion, and kidnappings. This policy was a [drastic divergence](#) from longstanding U.S. asylum law and precedent, under which asylum claims are always adjudicated with the individual physically in the territory of the United States for while their case is pending. The RMX policy drastically restricted access to counsel, impeded the ability of asylum seekers to attend and participate in their court hearings, wasted government resources, subjected asylum seekers to violent attacks, and violated U.S. and international law. The RMX policy [violated U.S. and international obligations](#) and [principles of non-refoulement](#) by [returning](#) people to the persecution and torture in Mexico and subjecting them to onward illegal return to their countries of persecution, it was a counterproductive, failed policy and should never be reimplemented.

The RMX policy inflicted significant, [devastating harm](#) to individuals and families fleeing violence and persecution. Many individuals who were subject to the RMX policy [were abducted](#) while traveling through border communities and regions to attend hearings - or directly outside ports of entry before or after their hearings. Harm [included](#) attacks and kidnappings of migrants who suffered acid burns, fractures, beatings, sexual assault and gang rape in the presence of their children, and other brutal attacks. They were [overwhelmingly deprived](#) of their right to legal counsel or [gave up](#) on their cases rather than risk their lives, resulting in nearly [three quarters](#) of completed RMX cases ending in *in absentia* removal orders because the asylum seeker did not attend the hearing; this result is despite the fact that the [vast majority](#) of people in the United States attend their immigration hearings. The RMX policy served only to [boost cartels](#) that [targeted, kidnapped, and tortured](#) many asylum seekers, whom U.S. Customs and Border Protection (CBP) officials had forced back to cartel-controlled areas, and demanded ransom payments to free them, often "taxing" people based on the amount of time the U.S. government was forcing them to remain in Mexico. As the Department of Homeland Security [concluded](#) in 2021, RMX imposed "unjustifiable human costs" and had "inherent problems...that no amount of resources can sufficiently fix."

RCUSA's member organization Human Rights First documented over [2,500 attacks](#) against people enrolled in RMX, with many targeted because they were migrants or due to their race, gender, sexual orientation, and other protected characteristics. For some, this policy was a [death sentence](#), such as the murder of a Cuban asylum seeker who was fatally shot in Ciudad Juárez and a Salvadoran asylum seeker who was killed in Tijuana. Other attacks against people in RMX included the abduction of a [seven-year-old Honduran girl](#) with her mother from inside the Mexican migration office immediately after DHS returned them to Nuevo Laredo following an RMX immigration court hearing; the kidnapping and repeated sexual assault of a disabled [nine-year-old girl](#) after DHS sent the child and her asylum-seeking mother to Tijuana under RMX; and the kidnapping a [three year-old-boy](#), along with his mother who was raped in front of him, when DHS sent the family to Matamoros under RMX.

RCUSA urges the Committee to lift up policy proposals that **strengthen asylum protections and invest in the capacity to humanely welcome and process asylum seekers, unaccompanied children, and immigrants that recognizes their inherent dignity**. The solution cannot be to turn people away and send them back to harm in their home countries. Government resources should invest in community wholeness, implementing effective, fair, and durable protections for individuals and families seeking protection from harm. Punitive policies like RMX are not the answer; Congress and the administration should respond to humanitarian needs at the border by buttressing the U.S. asylum and resettlement programs and complementary pathways for people to find protection from persecution and violence. RCUSA welcomes refugees, asylum seekers, and all newcomers. At no other time has our moral responsibility to uphold these principles been greater.

*RCUSA is a diverse coalition advocating for just and humane laws and policies, and the promotion of dialogue and communication among government, civil society, and those who need protection and welcome. Individual RCUSA members do not all address all refugee-related issues, nor do all individual members approach common refugee-related issues identically.*

# Refugees International

## Statement for the Record Senate Homeland Security and Government Affairs Committee *Hearing on Remain in Mexico, January 16, 2025*

Refugees International is an independent nongovernmental organization that advocates for lifesaving assistance and protection for forcibly displaced people worldwide, including asylum seekers at the United States border.

Refugees International conducted fifteen research trips to the U.S.-Mexico border to monitor the previous implementation of the Remain in Mexico program (the Migrant Protection Protocols, or MPP). Our team spoke to dozens of asylum seekers in the program, visited insufficient and dangerous shelters and makeshift encampments lacking services on the Mexican side of the border where they were waiting, and attended master calendar and individual asylum hearings at each of the courts handling the Remain in Mexico docket. Refugees International documented the way the program made it impossible to get a fair hearing, and in practice returned asylum seekers – including [women](#)<sup>1</sup> and children – to precarity, danger, and grave harm (in [reports](#),<sup>2</sup> [statements](#),<sup>3</sup> [articles](#),<sup>4</sup> and [testimony](#)<sup>5</sup>). Refugees International also wrote an [amicus brief](#)<sup>6</sup> about why Remain in Mexico violated U.S. refugee law.

A restart of this program would be a disastrous decision that will drive insecurity at the border, waste U.S. resources, undermine the U.S. asylum system, empower traffickers, strain diplomatic relations, and further a humanitarian crisis on our border.

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<sup>1</sup> Yael Schacher and Savi Arvey, “Women in the Remain in Mexico Program,” *Ms. Magazine*, July 1, 2022.

<sup>2</sup> Yael Schacher, “MPP as a Microcosm: What’s Wrong with Asylum at the Border and How to Fix It,” February 11, 2022.

<sup>3</sup> Yael Schacher, “Examining the Human Rights and Legal Implications of DHS’ Remain in Mexico Policy,” November 19, 2019.

<sup>4</sup> Yael Schacher, “Remain in Mexico: A Year of Deliberate Endangerment and Evasion,” January 29, 2020.

<sup>5</sup> Yael Schacher, “Remain in Mexico Policy is Undermining Asylum and Endangering Asylum Seekers,” August 22, 2019.

<sup>6</sup> [BRIEF OF AMICUS CURIAE REFUGEES INTERNATIONAL, Immigration Law Center et. al. v. Chad Wolf et. al. \(Dec 2020\)](#)

### An Arbitrary and Wasteful Program

Administration of the Remain in Mexico program was not only cruel, but arbitrary and wasteful of DHS resources. It never applied to the vast majority of people arriving at the border, members of the same family with the same asylum claim were separated (with some placed in MPP and others pursuing their cases in the United States), and required constant coordination with the Mexican government on returns. This meant DHS sometimes flew asylum seekers laterally to other sectors to return them to Mexico or detained them for weeks until Mexico agreed to their return. Each person's Remain in Mexico case required anywhere from one to five immigration court hearings to resolve. Proceedings were prolonged or cut short because of the difficulties arising from respondents being homeless in Mexico— so unable to get notice of hearings, access counsel, gather evidence and translate documents, or travel safely to ports for court hearings. More yet were delayed and complicated by overwhelmed dockets in El Paso and San Diego immigration court and mechanical problems in expensive hightech port tent courts in Laredo and Brownsville. Each time that asylum seekers in MPP entered the United States for a court hearing, they could assert a fear of return to Mexico and be given a "non-refoulement interview" with an asylum officer. Many people who expressed fear were never referred for a non-refoulement interview, thousands of people in the program had repeated interviews, and still many of the interviews proved ineffective – since those returned to Mexico after the interviews were frequently kidnapped and ransomed, robbed, extorted, raped, or subject to other violence. Immigration judges and asylum officers handling MPP cases were diverted from handling asylum cases already in the backlog.

### Endangering People Seeking Safety and Driving Insecurity

If Remain in Mexico were reinstated, the result would likely be increased insecurity at the border and more unauthorized crossings. At least a third of the people placed in the original program ended up crossing the border unauthorized rather than wait in Mexico, including at least [700 children](#) sent over the border alone by their parents.<sup>7</sup> It also included a Guatemalan asylum seeker Refugees International interviewed after he was returned to Mexico. Soon after that interview, he was attacked on the streets of Ciudad Juarez. The advent of the COVID-19 pandemic made it even more difficult for him to find food and shelter while he waited for his hearing, which was then indefinitely postponed. Desperate, he hired a smuggler to take him across the border through the desert and died en route.

Currently, there are hundreds of thousands of asylum seekers waiting in Mexico for CBP One appointments, including many in the south, where there has been a dramatic increase in

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<sup>7</sup> Camilo Mantoya Galvez, "700 children crossed the U.S. border alone after being required to wait in Mexico with their families," CBS News, Jan 15, 2021.

[kidnapping](#), extortion, and violent attacks by criminal organizations.<sup>8</sup> Should the CBP One application be canceled and Remain in Mexico restarted, increasing numbers of asylum seekers will move northward and be made to wait in dangerous Mexican border cities, empowering criminal organizations, cartels, and traffickers near the border. Negotiations between the United States and Mexico over the program would, just as it did previously, divert significant U.S. resources and diplomacy, to the continued detriment of negotiations on trade and security collaboration.

#### **A Better Way Ahead**

Rather than promote reimplementing a failed policy that was harmful, wasteful, and dangerous, the committee should hold hearings on how Congress can increase capacity at ports of entry to process asylum seekers in an orderly way, authorize and fund a fair and efficient asylum adjudication process, and pass legislation that would [coordinate reception and support interior communities](#) receiving asylum seekers and [allow asylum seekers to work](#) to fill workforce needs.<sup>9</sup>

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<sup>8</sup> Emily Green, “Held for Ransom in Animal Pens, Migrants Face Mass Kidnappings as U.S. and Mexico Ramp Up Enforcement,” ProPublica, November 1, 2024.

<sup>9</sup> H.R. 1325 Asylum Seeker Work Authorization Act; S. 4861, Destination Reception Assistance Act



**Statement for the Record**

**By the Center for Immigration Law and Policy at the UCLA School of Law and  
the Center for Human Rights and Constitutional Law**

**Submitted to the Senate Homeland Security Committee  
Hearing on Remain in Mexico**

**January 16, 2025**

The Center for Immigration Law and Policy at UCLA School of Law (CILP) and the Center for Human Rights and Constitutional Law (CHRCL) jointly submit this statement concerning the Migrant Protection Protocols (“MPP”) or “Remain in Mexico” program. Attorneys at CILP and CHRCL represent a class of individuals who were subject to MPP under the previous Trump Administration in the ongoing litigation *Doe v. Mayorkas*, 3:19-cv-02119 (S.D. Cal.).

CILP and CHRCL echo the serious concerns raised about past and any future implementation of MPP or other similar return programs. Indeed, CILP and CHRCL call the Committee’s attention to testimony, reports, and other evidence of the cruelty and harm that the program has inflicted on vulnerable people seeking protection in the United States. However, CILP and CHRCL focus this statement on one unlawful feature of MPP in particular: the denial of access to counsel under the program.

The right to counsel is a fundamental principle of fairness and due process. Consistent with this principle, noncitizens in immigration proceedings generally have a right to access retained counsel under federal laws and the Constitution. *See, e.g.*, 8 U.S.C. 1229a(b)(4)(A); 5 U.S.C. 555(b); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565–66 (9th Cir. 1990). Past iterations of MPP led directly to routine unlawful denials of access to counsel for people seeking asylum and their families.

Under the first implementation of MPP, the Department of Homeland Security explicitly denied access to retained counsel for individuals undergoing life-or-death *nonrefoulement* interviews concerning their fear of being returned to Mexico. This resulted in erroneous return decisions, compounding the harm to which vulnerable individuals were subjected. It also led to federal court litigation in which a federal judge found that the Department of Homeland Security’s denial of access to counsel under these circumstances likely violated federal law and caused class members irreparable harm, and that enjoining the government’s actions was in the public interest. *See Doe v. Wolf*, 432 F.Supp.3d 1200 (S.D. Cal. Jan. 14, 2020). The Department of Homeland Security appealed the case to the Ninth Circuit Court of Appeals, but the preliminary injunction was eventually vacated as moot after the Biden Administration attempted to terminate MPP in 2021. *Doe v. Mayorkas*, 854 Fed.Appx. 115 (9th Cir. 2021).



This is not the only case that exposed and challenged the denial of due process inherent in MPP and required the federal government to expend extensive resources in litigation. *See Immigrant Def. L. Ctr. v. Mayorkas*, 2:20-cv-09893 (C.D. Cal.) (challenging violations under MPP of the rights to apply for asylum and access counsel, and other violations of the First and Fifth Amendments); *Immigrant Def. L. Ctr. v. DHS*, 2:21-cv-00395 (C.D. Cal.) (challenging violations under MPP of the rights of unaccompanied children under the Trafficking Victims Protection Reauthorization Act and the Fifth Amendment).

Any attempts to reimplement MPP or implement similar policies will likely also result in the unlawful denial of access to counsel, flagrant disregard of foundational *nonrefoulement* principles, and other due process violations. CILP and CHRCL urge this Committee to see MPP for what it is—a landmine of cruelty that abandons our moral and legal obligations—and instead explore humane solutions that protect the right to seek asylum, respect individuals' fundamental and statutory rights, and avoid unnecessary litigation risks for the federal government.



**President and CEO**  
Eskinder Negash

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January 15, 2025

Rand Paul  
Chairman  
U.S. Senate Committee on  
Homeland Security and  
Governmental Affairs

Gary Peters  
Ranking Member  
U.S. Senate Committee on  
Homeland Security and  
Governmental Affairs

Re: U.S. Senate Committee on Homeland Security and  
Governmental Affairs [Hearing on Remain in Mexico](#): Statement for  
the Record

Dear Chairman Paul and Ranking Member Peters,

The U.S. Committee for Refugees and Immigrants (USCRI), established in 1911, is a nongovernmental, not-for-profit international organization dedicated to addressing the needs and rights of refugees, immigrants, vulnerable children and families, asylum seekers and asylees, returnees, survivors of human trafficking, and other displaced populations. USCRI urges the Committee to reject any proposal that would restart the Migrant Protection Protocols (MPP) policy, also known as Remain in Mexico.

Remain in Mexico is a stain on the U.S. immigration system and a repudiation of our country's commitment to providing safety to individuals fleeing persecution. Previous iterations of the policy were used to send [over 77,000](#) migrants back to makeshift camps in Mexico [where they faced](#) murder, torture, rape, extortion, and other violent attacks.

"Remain in Mexico caused deep harm to tens of thousands of asylum seekers," said Eskinder Negash, USCRI President and CEO. "Returning to [Remain in Mexico](#) not only violates international and domestic obligations, but exposes countless children, families, and individuals fleeing persecution to dangerous conditions."

The United States is bound by long-standing international and domestic law to provide meaningful access to the asylum system. Instead of [externalizing](#) its humanitarian responsibility to Mexico, the United States should uphold its commitments to human rights and domestic immigration laws.

Albany, New York • Atlanta, Georgia • Austin, Texas • Cleveland, Ohio • Colchester, Vermont • Dallas, Texas • Detroit, Michigan  
Denver, Colorado • Des Moines, Iowa • Erie, Pennsylvania • Nashville, Tennessee • Raleigh, North Carolina • Richmond, Virginia  
"Rinconcito del Sol," Florida • San Diego, California • St. Louis, Missouri • Twin Falls, Idaho • Washington, DC  
Aguascalientes, Mexico • Nairobi, Kenya • San Pedro Sula, Honduras • San Salvador, El Salvador • Tijuana, Mexico



USCRI calls on Congress to ensure the safety and dignity of individuals seeking safety at our borders.

*USCRI, founded in 1911, is a non-governmental, not-for-profit international organization committed to working on behalf of refugees and immigrants and their transition to a dignified life.*

For press inquiries, please contact: [media@refugees.org](mailto:media@refugees.org)

Sincerely

A handwritten signature in black ink, reading 'Eskinder Negash', is written over a light gray background graphic consisting of several thick, wavy, parallel lines.

Eskinder Negash  
President and CEO



**Statement for the Record of the Welcome With Dignity Campaign On Senate Committee on  
Homeland Security & Governmental Affairs**

**“Remain in Mexico”**

**January 16, 2025**

The #WelcomeWithDignity (WWD) Campaign brings together 125 member organizations across the United States, including the southwest border, to promote the fair and compassionate treatment of people seeking safety in the United States. As the first and only nationwide campaign dedicated to asylum rights, we believe that preserving access to asylum and countering attacks on those who seek safety is both a moral imperative and a vital line of defense in our collective efforts to protect immigrant communities.

Many WWD Campaign members provided legal assistance or representation, humanitarian assistance, or other support to people subjected to the Migrant Protection Protocols, also known as the Remain in Mexico (RMX) policy during the Trump and Biden administrations. We saw firsthand the human suffering caused and the dysfunction of this inherently flawed policy. Based on our asylum law and humanitarian services expertise, it is clear to us that there is no lawful, safe, or humane way to implement RMX.

As a result of the RMX policy, tens of thousands of individuals and families stranded in danger were [targeted](#) for extortion, kidnapping, torture, rape, and grave harm including in some instances by Mexican government officials and organized crime networks. Women, children, LGBTQ individuals, Indigenous Peoples, and Black migrants were particularly at-risk among the vulnerable populations subjected to the policy.

Remain in Mexico was engineered to deprive people seeking safety of their rights. In an attempt to deter people from seeking protection in the United States, the U.S. government trapped them in horrific conditions in some of the most [dangerous](#) cities in Mexico, where migrants face targeted attacks. Seeking safety is a human right and an act of courage. Policies like Remain in Mexico that turn people seeking refuge back to danger and death will be a lasting stain on our country's history.

The WWD Campaign calls on Members of Congress to reject this failed policy that inflicted chaos in our border communities and immigration system and subjected people seeking safety in the United States to harm. We urge elected leaders to pursue smart and humane [solutions](#) so families and individuals can seek asylum and access protection in a safe and timely manner.

Signed,  
#WelcomeWithDignity  
African Communities Together (ACT)  
Al Otro Lado



American Friends Service Committee  
 Amnesty International USA  
 Angry Tias and Abuelas  
 Center for Gender & Refugee Studies (CGRS)  
 Central American Resource Center of Northern California - CARECEN  
 Church World Service  
 FEA Foundation Ministries  
 Florence Immigrant & Refugee Rights Project  
 Haitian Bridge Alliance  
 Hope Border Institute  
 Human Rights First  
 Immigrant Children Advocates' Relief Effort (ICARE)  
 Immigrant Defenders Law Center (ImmDef)  
 Immigration Law & Justice Network  
 Institute for Women in Migration (IMUMI)  
 International Mayan League  
 International Refugee Assistance Project  
 Jesuit Refugee Service USA  
 Las Americas Immigrant Advocacy Center  
 Lawyers for Good Government  
 National Immigrant Justice Center  
 National Immigration Law Center  
 National Immigration Project  
 NETWORK Lobby for Catholic Social Justice  
 Presente.org  
 Quixote Center  
 Refugee Congress  
 Refugees International  
 Tahirih Justice Center  
 Team Brownsville  
 Texas Civil Rights Project  
 The Advocates for Human Rights  
 The Center for Victims of Torture  
 The Sidewalk School  
 T'ruah: The Rabbinic Call for Human Rights  
 United We Dream  
 United We Dream Network  
 Witness at the Border  
 Young Center for Immigrant Children's Rights

