

**Statement of the National Immigrant Justice Center (NIJC)
U.S. House Homeland Security Committee Hearing
“Examining the Human Rights and Legal Implications of DHS’ ‘Remain in Mexico’ Policy”
November 19, 2019**

The United States has a moral and legal obligation to administer asylum laws properly. Over the course of the last three years, the administration has gone to extreme measures to violate the rights of asylum seekers; to not only turn away those in need, but to vilify and mistreat them in inhumane ways.¹ The perversely named “Migrant Protection Protocols” (MPP), also known as the “Remain in Mexico” policy, is the latest iteration of these efforts to dismantle the U.S. asylum system.² Rather than protect, this program does the opposite – it sends asylum-seeking families back to Mexico to await their proceedings where they have no support, no place to live, and are regularly extorted, kidnapped, threatened, and attacked by cartels and other criminal groups. The Mexican government is unable to control violence against migrants and is sometimes complicit or even involved in the harm.³ A recent survey of more than 600 asylum seekers subject to MPP found that nine out of 10 respondents expressed fear of being returned to Mexico.⁴ Since the program was implemented in January 2019, it has impacted an estimated 50,000 asylum seekers.⁵ The well-documented risk of violence to individuals forced to remain in Mexico, coupled with the geographic and technological challenges of securing counsel while outside the United States, has resulted in a mere one percent of Remain in Mexico asylum seekers finding attorneys to represent them before the immigration court.⁶

NIJC’s Observations and Experiences with the Remain in Mexico Policy in Laredo, Texas:
In Laredo, Texas, NIJC has represented asylum seekers and observed Remain in Mexico hearings since the launch of that “court” in September 2019. The Laredo tent facility is a series of tents and shipping-container sized trailers erected on the northern bank of the Rio Grande, surrounded by barbed wire and guarded by agents with guns.⁷ Traumatized, desperate, beleaguered asylum seekers are required to line up at the bridge in Nuevo Laredo, Mexico, at 4:30 a.m. in order to be let into the United States for their hearings. Most sleep on the bridge the

¹ HUMAN RIGHTS WATCH, “*We Can’t Help You Here*” – *US Returns of Asylum Seekers to Mexico*, July 02, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

² U.S. DEPARTMENT OF HOMELAND SECURITY, *Migrant Protection Protocols*, Jan. 24, 2019, <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

³ “*We Can’t Help You Here*” – *US Returns of Asylum Seekers to Mexico*, *supra* note 1.

⁴ Tom Wong and Vanessa Cecena, *Seeking Asylum: Part 2*, Oct. 29, 2019, US IMMIGRATION POLICY CENTER <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

⁵ Juan Aguilar, *Trump’s Controversial “Remain in Mexico” Immigration Policy Expands Along Texas’ Southern Border*, TEXAS TRIBUNE, Oct. 28, 2018, <https://www.texastribune.org/2019/10/28/trump-remain-mexico-immigration-policy-expands-texas-mexico-border/>.

⁶ TRAC IMMIGRATION, *Access to Attorneys Difficult for Those Requires to Remain in Mexico*, July 29, 2019, <https://trac.syr.edu/immigration/reports/568/>.

⁷ Cedar Attansao, *Tent Courts Set to Open on Border for US Asylum Seekers*, SAN DIEGO UNION-TRIBUNE, Sept. 10, 2019, <https://www.sandiegouniontribune.com/news/nation-world/sns-bc-us--immigration-tent-courts-20190911-story.html>.

night before their hearings, because travelling through Nuevo Laredo in the middle of the night and early morning is too dangerous. After they are escorted from the bridge into the tent facility, the asylum seekers wait in a freezing cold room for hours until their hearings begin around 8:30 a.m.

Once called to speak in court, asylum seekers attempt to explain why they cannot return to their home countries to judges and government prosecutors who appear by video teleconference from a courtroom hundreds of miles away. In the room where the initial hearings are held, there are typically around 25 or more men, women, and children waiting to see the judge, nearly all of whom do not have lawyers. They sit on the opposite side of the courtroom from any attorneys who are present and *the attorneys are not allowed to talk to them*. Their belts and shoelaces have been taken from them. Their eyes are bloodshot from exhaustion and, to a person, they look confused and afraid. Their children – and there are many children – sleep in their arms. When the asylum seekers express their fear of returning to Mexico or ask questions about being forced to remain in Mexico, the judges frequently get agitated and hurry along the proceedings or shrug in defeat, reporting they have no power to order people out of the Remain in Mexico process.

Below are six examples of what NIJC attorneys have witnessed in the Laredo tent facilities and through speaking with asylum seekers who are subject to the Remain in Mexico policy in Nuevo Laredo:

- NIJC met an asylum seeker who travelled with a family member by bus from another part of Mexico to Nuevo Laredo for their hearings under the Remain in Mexico policy. As one family member disembarked, he was forced into a vehicle by waiting cartels and kidnapped. The other family member managed to escape and, despite this terrifying experience, waited at the bridge to attend her hearing in Laredo, Texas, the next day. At the hearing, the remaining family member described the attack and kidnapping to the judge to explain why her family member was unable to attend his hearing. Despite her eyewitness testimony about the kidnapping, the U.S. government attorney argued strenuously that the missing family member be ordered deported for failing to appear.
- NIJC attorneys participated in the representation of a Cuban political dissident who slept on the bridge the night before his asylum trial. He reported that though the sheltered area where he slept was overseen by Mexican border officials, Mexican cartel members came into the space at will and kidnapped people from the shelter.
- Following this Cuban man's asylum hearing, the immigration judge indicated he was inclined to grant protection. Despite the strength of the claim, the government lawyer indicated she would reserve appeal, which meant the judge was required to adjourn the proceeding in order to write a lengthy decision to be issued by mail. The judge declined to set the asylum seeker for another hearing, which should have meant that he could not be returned to Mexico while waiting for the decision because only individuals who are scheduled for future hearings are to be accepted back into Mexico. To side-step this procedural obstacle, the Department of Homeland Security issued a hearing notice with a fake hearing date, which resulted in the asylum seeker being returned to Mexico.

- NIJC attorneys participated in the representation of a large Central American family. While more than a dozen members of the family were allowed entry into the United States to seek asylum after passing credible fear interviews, four family members who arrived later were subjected to the Remain in Mexico policy and returned to Nuevo Laredo. Because all of the family members present asylum claims that arise from the same nucleus of facts and rely on the same evidence, their attorneys requested that Immigration and Customs Enforcement (ICE) agree to consolidate the proceedings of all family members and parole the four family members in Mexico into the United States. ICE refused, thus requiring that separate judges on separate dates hear the nearly identical cases. Moreover, while subject to Remain in Mexico, the four family members in Mexico were threatened by cartels and evicted from the hotel in Nuevo Laredo where they had been staying.
- NIJC attorneys observed the sham nonrefoulement process in Laredo. Asylum seekers subject to the Remain in Mexico policy may request exemption from the program if they establish they face harm in Mexico on account of a protected characteristic. A gay, HIV-positive Central American man requested a nonrefoulement interview after he was persecuted in Mexico and denied access to the lifesaving medications he needs. His attorneys provided him with country conditions documents and a written legal argument in support of his claim. The officer who administered the nonrefoulement interview by telephone refused to review his evidence, spoke with him for approximately 20 minutes, and summarily returned him to Mexico without an explanation for the denial.
- While tent facility hearings are supposed to be no different from hearings in brick-and-mortar immigration courts across the country, authority and control over the hearing process differs dramatically. ICE officials – not immigration judges – control access and operations. When attorneys request access to cell phones or to hearing spaces large enough to accommodate legal teams, ICE officials determine the outcome of the requests. ICE officials decide whether attorneys may meet with their clients after court and for how long. ICE officials decide whether attorneys may bring interpreters to meet with their clients and assist with communication during court hearings. The reality that ICE officials, who are opposing counsel in immigration court, determine when and how attorneys for asylum seekers conduct representation is deeply troubling.

Asylum is a critical safeguard against tyranny and persecution that the United States has extended to those in need throughout American history. Offering asylum protection is also something we owe to ourselves as Americans; to remain tethered to the foundations of our country as a place of religious and political freedom and a place where those who have been persecuted because they possess a characteristic they cannot change can be safe. The concerted efforts by our government to close off access to asylum were conceived in cruelty and implemented for superficial political gain. We must do better.

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