



Statement for the Record

U.S. House, Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations

“Examining the Court-Ordered Reimplementation of the Remain in Mexico Policy”

March 2, 2022

Human Rights First thanks the House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations for holding a hearing on “Examining the Court-Ordered Reimplementation of the Remain in Mexico Policy.”

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 many of 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](#), and [January 2022](#).) and factsheets ([January 2020](#), [April 2021](#), and [December 2021](#)) documenting the harms inflicted by the Remain in Mexico (RMX) policy and its reimplementation - as well as the similar Title 42 policy, which also evades the refugee laws enacted by Congress and endangers refugees seeking asylum. 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.

The Biden administration has rightly [concluded](#) that significant due process issues are “endemic to the [RMX] program’s design” and that it should be ended. However, the administration’s stated position is at odds with its decision to [expand](#) the Remain in Mexico policy to include additional nationalities and its decision to evade refugee law by using the similarly dangerous Trump administration Title 42 policy to block and expel people seeking protection at the border. Use of these policies to circumvent international refugee protection obligations and U.S. refugee law is [counterproductive](#) and sets a dangerous example for other countries and future administrations. The United States should lead by example, upholding the right to asylum at its own borders as it looks to other countries to do the same – including as people flee from Ukraine in search of protection.

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 end Trump era policies that trample on those laws

and legal treaty commitments. Congress must hold the Biden 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. Under the Trump administration, RMX resulted in massive human rights violations against migrants and asylum seekers forcibly returned to Mexico. During the two years that the Trump administration implemented RMX, 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. 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, a Salvadoran asylum seeker who was [killed](#) in Tijuana in November 2019 after having been returned under RMX, and a 19-year-old Cuban asylum seeker who was [shot and killed](#) in Ciudad Juárez in May 2021. 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.”

The Biden administration also continues to use the Trump-era [Title 42](#) policy to block and expel migrants and asylum seekers to danger in Mexico and the countries they fled under the pretext of protecting public health-- a policy that the State Department's top legal expert determined was [illegal](#) and has been repeatedly condemned as specious by leading [public health experts](#). The U.S. Department of State advises American citizens to avoid travel to the very border regions of Mexico where asylum seekers are returned under Remain in Mexico and Title 42. As of February 2022, 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.”

Since President Biden took office, Human Rights First has tracked at least [8,705](#) additional reports of kidnapping, rape, human trafficking, torture, and other violent attacks against migrants expelled to or blocked in Mexico due to the Title 42 policy. Migrants and asylum seekers the Biden administration is returning to Mexico under RMX are forced to endure escalating dangers in Mexico. 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 have been 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 with 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.

Remain in Mexico Blocks Refugees from Asylum Protection and Cannot Provide Fair Access to the U.S. Asylum System

Under the Trump administration, RMX [denied](#) asylum seekers due process and drastically [restricted](#) 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 have 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 have [given up](#) on their cases rather than [risk their lives](#) to attend court, and some have even [returned](#) to their home countries at risk of further persecution because of the harms they had suffered while trapped in Mexico.

Many U.S. attorneys and humanitarian groups have been unable to travel to dangerous Mexican border regions to represent asylum seekers stranded under RMX because of the risks to their safety. Their fears are justified. As Human Rights First explained in a November 2021 [factsheet](#), U.S. based attorneys have been [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](#)). As of December 2020, [97 percent](#) of individuals in RMX whose cases had been decided 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. Of the nearly 70,000 people placed in RMX under the Trump administration, only [523](#) people—less than one percent—were granted relief while in RMX.

The Biden Administration's Reimplementation of RMX Has Not Addressed the Policy's Fundamental, Unfixable Flaws

The inherently flawed RMX policy cannot be made safe, as its reimplementation by the Biden administration has already made clear. Customs and Border Protection (CBP) officers continue to return migrants and asylum seekers to grave danger in Mexico, including individuals who were previously harmed or threatened there, including by Mexican government officials. More than 90 percent of the more than [673 people](#) placed by CBP in RMX since December 2021 are from Nicaragua (59 percent), Venezuela (23 percent), and Cuba (10 percent) - countries from which many are fleeing repressive regimes and deepening political and humanitarian crises. Very few have been able to find attorneys to represent them in immigration court to assist them in preparing their applications for asylum. The [changes](#) to RMX procedures implemented by the Biden administration cannot fix its fundamental flaws. Indeed, the UNHCR representative to the United States stated, in response to the reimplementation 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.

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

CBP officers continue to return migrants and asylum seekers to grave danger in Mexico, including individuals who were previously harmed there, where they are at risk of onward refoulement by Mexican officials.

In a January 2022 report, "[A Shameful Record](#)," Human Rights First documented cases of people returned by CBP to Ciudad Juárez under RMX after 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 of 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 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 Border Project 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 by the Biden administration 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 is offering to [bus](#) people returned to the dangerous border city Matamoros under RMX to Monterrey, a city in Mexico's interior, they remain 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

RMX fear of return to Mexico screenings remain fundamentally flawed at every stage. The Biden administration has chosen to use a heightened screening standard, instead of the credible fear standard set by Congress for the expedited removal process, for RMX *non-refoulement* interviews (NRI). 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 are conducted while individuals are being held - often for days - in freezing CBP holding cells and generally without counsel present—only [20 \(three percent\)](#) of 595 people in RMX who claimed fear of return to Mexico in December 2021 and January 2022 had an attorney present for their NRI. Unsurprisingly, few individuals have been found to have a fear of return to Mexico under RMX. 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 is 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 were found to have a fear of return to Mexico).

Information from the Border Project and Human Rights First interviews with individuals returned to Mexico under RMX indicate that CBP officers [interfere](#) with meaningful access to counsel for RMX fear screenings including by pressuring individuals in RMX to waive their opportunity to speak with an attorney, failing to inform individuals in RMX of their opportunity to access counsel prior to a *non-refoulement* interview, and blocking individuals in RMX 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 detained in CBP custody but did not know whether he had spoken with a government official or had received a consultation with a legal office. 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 available to anyone in RMX at the time.

Failure to Screen for Vulnerabilities

DHS has also returned to Mexico individuals with serious medical conditions and LGBTQ persons, 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 include 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 have 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 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.

Separating Families

CBP continues to separate families, 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. A Venezuelan asylum seeker told Human Rights First that he had been separated from his adult brother and uncle 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. A

Venezuelan asylum seeker told Human Rights First that he had been separated from his adult brother and uncle. DHS has also used the illegal Title 42 expulsion policy to [separate](#) countless families.

Throwing Out Belongings

In addition, CBP is returning individuals without their belongings. Multiple individuals reported to Human Rights First that CBP officers discarded their personal possessions and that they were returned to Ciudad Juárez in December 2021 under RMX without their clothing, shoes, coats, or medication among other personal items – in violation of CBP’s [detention standards](#). This cruel and unnecessary practice exacerbates the challenges RMX enrollees face when left to wait for months in unfamiliar Mexican cities with few resources to support themselves.

Due Process Barriers, Lack of Representation

The Biden administration’s reimplementing of RMX has not addressed its inherent due process denial. Like the first iteration of RMX, a very small number of individuals in RMX have managed to secure legal counsel. For example, only [6 percent](#) (5 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. By comparison, [93 percent](#) of asylum seekers had legal counsel in non-RMX asylum proceedings in Fiscal Year 2022 so far. Many asylum seekers returned to Mexico under RMX have reported that attorneys on the U.S. government-provided list of legal service providers are not taking RMX cases (often due to security concerns) or do 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.

Since the Biden administration’s reimplementing of RMX, immigration court judges have already [issued](#) *in-absentia* removal orders for some individuals who were not able to attend RMX hearings in January 2022. Judges rescheduled hearings for others who were unable to attend, but it is unclear how their new hearing dates will be communicated, as people in RMX often lack stable housing cannot always receive mail. Despite the Biden administration’s claim that its version of RMX would be more transparent, DHS has limited access to RMX proceedings, improperly [threatening](#) an attorney monitoring RMX hearings in January 2022 with legal action for publicizing her observations (then later retracting the threat).

Remain in Mexico Is Illegal and Cannot Be Made Lawful

By returning asylum seekers to wait in danger in Mexico under the Remain in Mexico program, the U.S. government is violating U.S. immigration law and international treaty commitments to avoid *refoulement*. As extensive research by Human Rights First and other [human rights groups](#) have documented, the U.S. government’s RMX policy (in addition to the Title 42 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.

Continuing Illegal Expulsions Under the Deadly Title 42 Policy

At the same time the Biden administration is using RMX to return people seeking U.S. humanitarian protection to Mexico, it continues to embrace and defend, rather than end, the Trump administration's [Title 42](#) policy, which misuses public health authority to violate U.S. *non-refoulement* obligations, block asylum at U.S. ports of entry, and expel people seeking refuge to danger in Mexico and the countries they fled. The suffering of families, adults, and children subjected to this policy continues to mount, with at least [8,705](#) kidnappings and other attacks on people blocked or expelled to Mexico under Title 42 since President Biden took office. Since September 2021, the Biden administration used this policy to illegally expel more than [18,000](#) Haitians to life-threatening insecurity in Haiti. The U.S. Department of State's top legal expert, former Yale Law School Dean Harold Koh, resigned from the Department in October 2021 after [concluding](#) that the Biden administration's continued use of Title 42 to expel people seeking protection is "illegal and inhumane."

Epidemiologists and public health experts have continued to condemn the misuse of Title 42, [explaining](#) in September 2021 that the Centers for Disease Control and Prevention (CDC) order "does not provide adequate public health justifications for expelling asylum-seeking families at the border" and that "expulsions magnify the risks of COVID-19 transmission." In a September 2021 letter to Biden administration officials and the CDC Director, public health experts again expressed [concern](#) that the CDC has "endorsed and extended the implementation of the scientifically baseless and politically motivated Title 42 order." The United Nations High Commissioner for Refugees has [urged](#) the United States to "swiftly lift the public health-related asylum restrictions that remain in effect at the border and to restore access to asylum for the people whose lives depend on it, in line with international legal and human rights obligations."

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, and urgently pressing for an end to the similar Title 42 policy and others Trump era policies that evade refugee law, effectively block refugees from U.S. asylum and endanger their lives. Congress should:

- Continue to conduct oversight and strongly urge the Biden administration to comply with U.S. and international refugee law, definitively end the Remain in Mexico policy, stop misusing Title 42 to evade refugee law, and fully restore asylum processes at the southern border – including at ports of entry, and to take all necessary administrative and judicial steps needed to do so. Congress should also request updates on action the administration has taken to end other Trump-era policies including the asylum [entry](#) and [transit](#) bans, the "[Death to Asylum](#)" rule, and the interim final rule implementing [Asylum Cooperative Agreements](#) (ACAs).
- Update and reintroduce the [Refugee Protection Act](#), to ensure U.S. asylum laws uphold U.S. commitments under Article 33 of the 1951 Convention relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights.
- While the inherently flawed and unfixable Remain in Mexico and/or Title 42 policies continue to be implemented, 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

- or Title 42, and harms suffered by persons expelled to other countries – including Haiti - under Title 42 without being provided with access to the safeguards of U.S. refugee law;
- 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 RMX NRI interviews, eliminate the limit on time permitted to consult with legal counsel, and prohibit the conduct of any fear interviews without the presence of in-person legal counsel when an asylum seeker requests such representation; and
 - DHS and CBP allow and provide NRI interviews 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 Remain in Mexico under DHS' internal implementation guidelines.
- Conduct official visits to Mexican, Guatemalan, and Honduran border towns where asylum seekers have been returned/expelled, 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. Examine potential structural improvements to anticipate, plan for and manage humanitarian protection and uphold compliance with U.S. refugee law and treaties, such as a new or reconfigured and elevated U.S. agency with a humanitarian and refugee protection mission, expertise, and capacities.