

Courts and Congress Misled About Trump Administration Policy Forcing Asylum Seekers to “Remain in Mexico”

Since January 2019, the Trump Administration has forced more than four thousand Central Americans trying to request asylum at the southern border to return to Mexico. These men, women, and children are stranded in danger—with asylum seekers kidnapped, raped, and robbed—without a place to live, support, or legal representation as they wait for immigration court hearings in the United States that will decide their asylum claims.

On May 7, the U.S. Court of Appeals for the Ninth Circuit allowed this policy, disingenuously dubbed the “Migrant Protection Protocols” but better known as “Remain in Mexico,” to continue, pending resolution of a lawsuit brought by asylum seekers and legal service organizations. The court noted that asylum seekers “fear substantial injury upon return to Mexico,” but found the risk mitigated by a “commitment” the administration claims to have received from the Mexican government to give returned asylum seekers temporary humanitarian visas and work permits. Acting Secretary of Homeland Security Kevin McAleenan also testified to Congress that returned asylum seekers have ready access to legal counsel in Mexico.

These assurances are false, but Trump Administration officials advance them anyway to defend “Remain in Mexico.”

Returned asylum seekers have been kidnapped, raped, robbed, and threatened in Mexico.

Asylum seekers forced back to Mexico face grave harms. In Ciudad Juarez, two asylum seekers who were returned from El Paso after attempting to seek asylum with their children were reportedly kidnapped at gunpoint by three men in April outside the church shelter where they were staying. They were held for three hours and beaten. The kidnappers broke the fingers of one of the asylum seekers. In May, a researcher with Human Rights Watch reported that an asylum seeker returned to Ciudad Juarez was kidnapped and raped. Other returned asylum seekers have reportedly been robbed at migrant shelters and targeted for kidnapping, extortion and threats because of their nationality. In March, Mexico’s Citizens’ Council for Public Safety and Criminal Justice named Tijuana as the most violent city in the world based on its skyrocketing per capita homicide rate.

The “Remain in Mexico” policy severely restricts access to legal counsel.

The Trump Administration claimed in federal court that “nothing in the [Remain in Mexico policy] prevents [returned asylum seekers] from accessing legal counsel,” and acting Secretary McAleenan told Congress that “US attorneys and non-governmental organizations that have bi-national presence and collaboration” serve the areas where asylum seekers are returned, that Mexico guarantees access to counsel, and that asylum seekers can meet with attorneys before their hearings.

In reality, the Remain in Mexico policy severely impedes access to counsel for returned asylum seekers, making it largely unavailable to most. Asylum seekers cannot search for or meet in person with an attorney in the United States, and legal counsel available in U.S. border cities to take on asylum cases is extremely limited. As a result, few returned asylum seekers manage to secure representation. As immigration court observers in San Diego and

El Paso note, on some days not a single returned asylum seeker has been represented by counsel. Amnesty International reported that in hearings it observed for 57 asylum seekers returned to Mexico under the policy, only one had an attorney.

Opportunities to consult with U.S. attorneys in Mexico are also limited. Non-profit legal services organizations serving asylum seekers overwhelmingly do not have offices or practice law in both the United States and Mexico. One of the few that does, *Al Otro Lado*, is being targeted by both the Mexican and U.S. governments, with its attorneys denied entry to Mexico and other lawyers placed on a U.S. Customs and Border Protection watchlist and subjected to additional screening when they attempt to cross the U.S.–Mexico border. U.S. attorneys at other non-profit organizations have expressed concerns about whether Mexican law and regulations permit them to meet with and advise clients in Mexico.

Under the “Remain in Mexico” policy, returned asylum seekers are supposed to be provided time to meet with an attorney in the United States prior to court. But asylum seekers cannot realistically prepare their cases at the immigration court on the day of their hearings. Conferring with an attorney for a few minutes or even hours prior to a hearing is not sufficient to receive adequate legal advice, prepare an asylum application, complete an affidavit, review crucial evidence or prepare to testify. At the El Paso immigration court, volunteer attorneys have reportedly been permitted just 45 minutes to meet with large groups of asylum seekers—insufficient time to provide legal orientations, let alone assess or counsel asylum seekers on their cases.

Mexico does not guarantee humanitarian visas, work permits, shelter or other support.

The Trump Administration claimed in its court filings that asylum seekers “subject to [Remain in Mexico] will receive Mexican humanitarian visas,” which would allow them to temporarily stay and work in Mexico while waiting for their immigration hearings in the United States.

As Human Rights First documented in February, Mexican immigration authorities were providing asylum seekers returned to Tijuana temporary visitor visas that did not include permission to work. Human rights observers in Texas have since reported that returned asylum seekers in Juarez are also not receiving humanitarian visas or work permits. The uncertainty around their legal status puts returned asylum seekers at risk of arrest and deportation—particularly given Mexico’s record of deporting Central American refugees in violation of domestic and international law.

The Mexican government has not guaranteed safe shelter or other support to returned asylum seekers, leaving many homeless, in danger, and without enough to eat. Some find accommodation in church shelters, while others have reportedly slept in a vacant fire station or on the streets. Because of capacity constraints in Tijuana and Ciudad Juarez, many shelters limit the number of days asylum seekers can remain or refuse to reaccept them when they leave to attend court hearings in the United States.