

Statement for the Record by the Center for Gender & Refugee Studies (CGRS)

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

House Homeland Security Subcommittee on Border Security, Facilitation, & Operations

March 2, 2022

The Center for Gender & Refugee Studies (CGRS) defends the human rights of refugees seeking asylum in the United States. We undertake strategic litigation to advance sound asylum laws and protect due process rights. Our current docket includes federal lawsuits challenging anti-asylum border policies, including Remain in Mexico, and high-impact appellate cases that present opportunities to restore paths to protection. Additionally, we provide free expert consultation, comprehensive litigation resources, and cutting-edge training nationwide to attorneys and advocates working with asylum seekers. We also advocate for the fair and dignified treatment of asylum seekers and promote policies that honor our country’s legal obligations to refugees.

We are grateful that the House Homeland Security Subcommittee on Border Security, Facilitation, & Operations is examining the court-ordered reimplementation of the Remain in Mexico policy, formally known by its Orwellian name, the “Migrant Protection Protocols” (MPP). We appreciate this opportunity to provide a statement for the record.

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 et al. v. Mayorkas*. In both cases we represent individual plaintiffs who have experienced the horrors of Remain in Mexico firsthand and legal service providers who have struggled to represent them. CGRS has supported the Biden administration’s efforts to end the policy by submitting *amicus* briefs in *Texas v. Biden* before the [Fifth Circuit Court of Appeals](#) and the [Supreme Court](#).

Congress must recognize that Remain in Mexico violates U.S. and international law

When the Trump administration launched MPP in 2019, it completely upended longstanding practices towards people seeking asylum at the U.S. southern border. It was an unprecedented policy change that made it impossible for most asylum seekers arriving at the border to safely pursue their protection claims in the United States. MPP was widely criticized by U.S. legal experts, Department of Homeland Security (DHS) [employees](#), and

international bodies, including the [UN Refugee Agency \(UNHCR\)](#) and the [Inter-American Commission on Human Rights](#). They explained 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 have been reflected in both statutory law and federal regulations.

The courts agreed. As counsel in *Innovation Law Lab v. Mayorkas*, CGRS successfully challenged the legality of the first version of MPP. In April 2019 the District Court for the Northern District of California granted a [preliminary injunction](#), 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. and international law. 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. The case remains pending.

Reimplementation of MPP is based on the lower courts' misunderstanding of the facts and the law

The Biden administration's decision to terminate MPP was based on a sound analysis of the law and recognition of the untenable conditions created by the policy. DHS Secretary Alejandro Mayorkas' second memorandum terminating MPP [cited](#) copious evidence that the policy's humanitarian and due process defects were “endemic to the program's design” and beyond reform. In contrast, the legal positions adopted by the U.S. District Court for the Northern District of Texas, and upheld by the Fifth Circuit Court of Appeals, grossly distorted the law and the facts. If the Supreme Court allows the Fifth Circuit's decision to stand, it will send a dangerous message that a single court ruling can arbitrarily override laws enacted by Congress.

CGRS joined partners in submitting an *amicus* brief on behalf of non-profit organizations and former immigration judges in *Biden v. Texas*, supporting the administration's decision to terminate Remain in Mexico. Our *amicus* brief highlights fatal flaws in the lower court decisions, which fault Secretary Mayorkas for failing to consider MPP's “benefits”— namely, its purported success in deterring migration and fraudulent asylum claims. The evidence in the case reveals the opposite to be true. No matter what cruel policy the Trump administration devised – from family separation, to MPP, to Title 42 – violence and insecurity in their home countries have continued to force people to seek refuge in the United States. MPP merely denied asylum seekers safe access to the U.S. immigration court system, trapping desperate families and adults in precarious conditions that exposed them to further violence and depriving them of a meaningful opportunity to present their asylum claims.

Far from bringing greater integrity to the asylum process, the program's procedural deficiencies, compounded by the inherent dangers in northern Mexico, made it impossible for most asylum seekers to access legal representation and prevented many from even making it to immigration court. Under the Trump administration, only seven percent of people placed in Remain in Mexico were able to obtain a lawyer, compared with 60 percent of asylum seekers applying inside the United States. As the sobering evidence in the *Texas* case shows, many placed in MPP were kidnapped at the time of their hearings and denied protection through no fault of their own. Of the nearly 70,000 asylum seekers enrolled in Trump's MPP, just [523](#) were granted asylum.

Remain in Mexico continues to cause incalculable violence and suffering

The Remain in Mexico policy has caused enormous harm to people seeking asylum. People returned to Mexico under MPP are frequently kidnapped and assaulted by cartels and other organized crime groups that regard asylum seekers as prime targets. Extortion of people subject to MPP is so routine, experts have [likened](#) the policy to "a stimulus package for cartels." Human rights investigators have documented numerous cases of pregnant women, children, LGBTQ+ people, and people with disabilities suffering horrific abuses after being returned to Mexico under MPP.

While the Biden administration pledged to make humanitarian improvements to the program, MPP 2.0 has been plagued with the same problems as the original policy. Conditions in Mexico remain incredibly dire for people seeking asylum. Since President Biden took office, Human Rights First has documented at least [8,705 public reports](#) of violent attacks – including rape, kidnapping, and murder – against people blocked from requesting protection at the U.S. border and/or expelled to Mexico under the Title 42 policy.

Unsurprisingly, in MPP 2.0's first two months of implementation, 88 percent of asylum seekers placed in the program have expressed fear of return to Mexico. Border officials have [rejected](#) 75 percent of these fear claims, despite copious evidence of the harm that befalls asylum seekers forced back over the border. Human rights investigators report that the Biden administration is returning even people who have already experienced severe violence in Mexico.

The *Texas* case does not preclude the Biden administration from providing redress to those subjected to MPP 1.0

Even while the *Texas v. Biden* case proceeds, CGRS and our partners continue to litigate a separate case, *Immigrant Defenders Law Center et al. v. Mayorkas*, which challenges ongoing harms suffered by asylum seekers who remain stranded outside the United States due to the effects of the policy's first incarnation under Trump. Individual plaintiffs in the case recently filed a motion for class certification, requesting that they be allowed to represent a

class of similarly situated individuals who had their cases terminated or received final removal orders after being deprived of meaningful access to the U.S. asylum process under MPP 1.0. Our lawsuit alleges that the Biden administration unnecessarily and unlawfully suspended the wind-down process that had previously enabled many such individuals to re-enter the United States to pursue their asylum claims.

The following quotes and excerpts from our plaintiffs' declarations offer a glimpse of the horrific circumstances facing asylum seekers returned to Mexico. Their experiences represent just the tip of the iceberg that is the profound trauma inflicted by Remain in Mexico under both the Trump and Biden administrations.

- “My daughter and I lived in horrible conditions in the migrant camp in Matamoros, and I was kidnapped and raped while we waited in Mexico for my immigration court hearings,” our plaintiff Dania Doe stated in her declaration. “I thought we were going to die ... I begged [U.S. officials] not to return us to Mexico, but they did not listen ... I was never able to find an attorney to represent me in my immigration case, and the immigration judge denied my asylum claim.”
- “Nobody explained why they were returning us to Mexico or what would happen,” our plaintiff Sofia Doe stated in her declaration. “I missed my third immigration hearing because I was experiencing complications with a high-risk pregnancy and had just been released from the hospital. As a result, my family and I received in absentia removal orders. In addition, my husband was assaulted while he was working in Mexico, and he has now been missing since early December ... I feel alone, afraid, and trapped in Mexico.”
- “I would never wish this experience on anyone,” our plaintiff Francisco Doe said in a recent [statement](#). “It has been so difficult since the first day, when they just left us here to survive by ourselves. People don't know about the suffering we've experienced here. I just want to be safe and reunited with my family in the U.S.”
- “MPP was such a lie because I never had any opportunity to present my case,” our plaintiff Gabriela Doe said in a recent [statement](#). “I am so frustrated and scared, and I am so afraid that something will happen to me here in Mexico. This has been so difficult for me, especially since I am just trying to protect my young daughter and have nevertheless seen her suffer because of MPP. This has been the terror of our lives, and I just want our lives to continue and to free my daughter of this agony. We are in agony every day, being in limbo and not knowing what we can do.”

Conclusion

Federal law, as well as our treaty commitments, require the United States to ensure that noncitizens are not returned to countries where they face persecution or torture. Congress must ensure through oversight and appropriations that the inhumane and unlawful

Remain in Mexico policy is ended, once and for all. Congress should also ensure that the Biden administration does everything in its power to mitigate the harms of MPP 1.0 by providing redress to people subjected to the original version of the policy and ensuring that they have a meaningful opportunity to present their claims for protection.