



**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.¹ 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.²

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

¹ American Immigration Council. “The ‘Migrant Protection Protocols.’” 1 Feb. 2024. <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>. Accessed 13 Jan. 2024.

² 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.³ The right to seek asylum is protected under U.S. and international law.⁴

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.”⁵ 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 law⁶—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,⁷ and they were often prevented from attending the immigration hearings where their fate was decided.⁸ In contrast, the vast majority of people in the United States with pending immigration cases appear for all their court hearings.⁹

³INA § 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.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ American Immigration Council. “The ‘Migrant Protection Protocols.’” 1 Feb. 2024. <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>. Accessed 13 Jan. 2024.

⁸ 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.

⁹ 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*.¹⁰ This means that countless asylum seekers were denied the opportunity to present their cases simply because the policy imposed insurmountable obstacles to their participation.¹¹

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.¹² In some cases, asylum seekers returned to Mexico under the policy were brutally murdered.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶ 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);¹⁷
- 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;¹⁸
- 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”;¹⁹

¹⁰ Human Rights First, *supra* note 8 at p. 3.

¹¹ *Ibid* at p. 4.

¹² 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.

¹³ 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.

¹⁴ Human Rights Watch, *supra* note 8 at p. 6.

¹⁵ Human Rights First, *supra* note 13 at p. 2.

¹⁶ Human Rights First, *supra* note 6 at p. 2.

¹⁷ *Ibid* at p. 5.

¹⁸ *Ibid*.

¹⁹ *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”;²⁰
- 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.”²¹

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.²² 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.²³

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 Earth²⁴—have been forced to flee their homes. This includes approximately 47.2 million children who have been displaced by conflict and violence worldwide.²⁵ 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

²⁰ Human Rights First, *supra* note 6 at p. 5.

²¹ *Ibid.*

²² *Ibid.*

²³ 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.

²⁴ 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%2017.3%20million%20people,under%20the%20age%20of%2018>. Accessed 13 Jan. 2025.

²⁵ UNICEF. “Child Displacement.” Jun 2024. <https://data.unicef.org/topic/child-migration-and-displacement/displacement/>. Accessed 13 Jan. 2025.

imposed “unjustifiable human costs”²⁶ and had “inherent problems...that no amount of resources can sufficiently fix.”²⁷

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.

²⁶ U.S. Department of Homeland Security. “Explanation of the Decision to Terminate the Migrant Protection Protocols.” 29 Oc. 2021 at p. 2. https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf. Accessed 13 January 2024.

²⁷ *Ibid* at pp. 3, 38.