



## Frequently Asked Questions: “Remain in Mexico” Policy

Credit: Mohammed Salem Reitures

### **What is the “Remain in Mexico” policy?**

After publicly announcing on [December 20, 2018](#)<sup>1</sup> that it was working on such a policy, the U.S. government, through the Department of Homeland Security (DHS), issued its new Migrant Protection Protocols (MPP), or the “Remain in Mexico” policy via memorandum on [January 25th](#).<sup>2</sup> The new policy and its guidance outline procedures under which the U.S. government will return certain asylum-seekers to Mexico to wait through the duration of their cases pending in the U.S. immigration court system.

### **What happens to people under this policy?**

The Remain in Mexico policy requires certain asylum seekers arriving by land at the U.S./Mexico border (both at and between official ports of entry (POEs)) who pass a credible fear screening with a U.S. asylum officer (a first step in the process for requesting asylum) to return to Mexico to await their asylum hearing in U.S. immigration court.

### **Why is the Remain in Mexico policy harmful? What are the concerns with this policy?**

Making vulnerable people wait to access asylum protection and due process in Mexico is concerning for a number of reasons. First, this policy leaves many vulnerable asylum seekers to wait in dangerous and unsafe circumstances, including those in which their lives may be at risk, they may not be able to access health services and humanitarian aid, and they may face deportation.

Second, making asylum seekers wait in Mexico to access protection is deeply concerning from a due process and access to justice perspective. This policy impacts those people who have shown that they have a credible fear of persecution; nonetheless, the policy will make them wait in Mexico without access to family, legal, or social support. Undoubtedly, this will make it more difficult for those subject to the policy to successfully assert their asylum claims and will also risk retraumatizing them in the unsafe conditions in which they are forced to wait.

### **Who does the policy affect?**

The Remain in Mexico plan will affect single adult males, single adult females, and family units.

## **Who is not subject to the Remain in Mexico policy?**

- Those who arrived at the U.S./Mexico border and were placed into removal proceedings prior to the policy's implementation (i.e., it is not retroactive);
- Unaccompanied children;
- Mexican citizens or nationals;
- Individuals who are processed for expedited removal;
- Any person who is determined by DHS to be more likely than not to face persecution or torture if returned to Mexico;
- Individuals with known mental or medical health issues;
- Individuals of interest to the U.S. or Mexican government or those with a criminal history or history of violence; and
- Lawful permanent residents returning to the U.S. or individuals with advanced parole.

## **Under what authority is the U.S. government claiming it has the power to execute the Remain in Mexico policy?**

DHS claims authority through [Section 235 of the Immigration and Nationality Act \(INA\)](#),<sup>3</sup> which addresses the inspection of individuals seeking to be admitted to the U.S., including those not clearly entitled to admission such as asylum seekers. Specifically, Section 235(b)(2)(C) provides that the U.S. can return an individual arriving (whether at or between an official POE) to a contiguous country through the duration of his or her pending removal proceeding under [Section 240 of INA](#).<sup>4</sup>

## **Does the U.S. government have the authority to implement the Remain in Mexico policy under Section 235 of the INA?**

It is unlikely, no. While the DHS memorandum cites authority under Section 235(b)(2)(C) of the INA, returning refugees to Mexico under this policy would directly contradict Congress's specific instruction that asylum seekers remain in the United States while their cases are pending. Section 235(b)(1) of the INA establishes specific procedures that require the U.S. government to provide asylum seekers a credible fear interview and that those who pass that credible fear review should be held in U.S. detention or released on parole during their applications.

## **Have any legal challenges to this policy been brought?**

Yes. The American Civil Liberties Union, Southern Poverty Law Center, and several other groups and asylum seekers have filed a lawsuit, [Innovation Law Lab v. Nielsen](#), challenging the Remain in Mexico policy in a federal court in San Francisco.<sup>5</sup> The lawsuit requests that the policy be vacated and halted; it alleges violations of the INA, Administrative Procedures Act, and international law. On April 8, 2019, the court granted a preliminary injunction, or temporary pause, which would have prevented DHS from expanding the policy through the duration of the lawsuit. However, the U.S. government appealed the injunction, and on May 6, 2019, an emergency stay was [granted](#) in its favor, keeping the policy in place.<sup>6</sup>

## **Has implementation of the Remain in Mexico policy officially started?**

On January 29th, DHS began implementing the Remain in Mexico policy at the San Ysidro port of entry. Since then the policy has been [expanded](#) to the Calexico port of entry as well as the entry in El Paso.<sup>7</sup> [Reports](#) indicate that approximately 1,600 asylum-seeking individuals have been returned to Mexico to wait for adjudication of their cases.<sup>8</sup>

## **What is the current status of the Remain in Mexico Policy?**

Early in 2021, the Biden Administration began to roll back MPP. In February, the U.S. began to process eligible individuals enrolled under the program and stopped enrolling individuals in MPP.<sup>9</sup> On June 1, 2021, DHS Secretary Mayorkas [terminated](#) MPP via memorandum.<sup>10</sup> However, on August 13, 2021, a federal district court ordered that the program be reinstated after the states of Texas and Missouri challenged its termination. The 5th Circuit denied the Biden Administration's request for a delay, prompting a request for a stay to the U.S. Supreme Court.<sup>11</sup> On August 24, 2021, the Supreme Court denied the government's request.<sup>12</sup> At this time, it remains unclear how the program will be implemented.

## **Why is the Catholic Church concerned with this policy?**

Catholic Social Teaching recognizes the right of people to migrate, especially in the face of violence, persecution, and inability to provide for a dignified life for one's family. Forced migrants are a particularly vulnerable population; the Church is thus concerned with the well-being of asylum seekers

and their ability to access protection.

As direct service providers on the ground working along the U.S./Mexico border, Catholic entities see firsthand the vulnerability of asylum seekers and their families as they arrive along the border. Providers worry about the ability of these asylum seekers to access safety and refuge in Mexico while they wait for their immigration cases to be heard. They further recognize that the Remain in Mexico policy will severely limit asylum seekers' access to legal representation and, in turn, their ability to secure protection.

Rather than turn away the vulnerable, we must answer the call to act with compassion towards those in need and to work together to find humane solutions that honor the rule of law and respect the dignity of human life.

## What can you do to help asylum seekers?

- **Pray.** Find a [prayer](#) for immigrant families<sup>13</sup>
- **Volunteer or Donate.** Consider volunteering or donating to [Catholic Charities Diocese of San Diego](#),<sup>14</sup> [Annunciation House in El Paso](#),<sup>15</sup> [Catholic Charities of the Rio Grande Valley](#),<sup>16</sup> or donate to [Catholic Charities of Southern Arizona](#).<sup>17</sup>

## Endnotes

1 *Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration*, Dep't of Homeland Security (Dec. 20, 2018), <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

2 *Policy Guidance for Implementation of the Migrant Protection Protocols*, Dep't of Homeland Security (Jan. 25, 2019), available at, [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf).

3 8 U.S.C. §1225(b)(2)(c).

4 8 U.S.C. §1229a.

5 *Innovation Law Labs et al., v. Nielsen*, Case No. 3:19cv0080, Dkt. No. 1 (N.D. Cal. Feb.14, 2019), [https://www.aclu.org/sites/default/files/field\\_document/2019.02.14.0001\\_compl.\\_for\\_decl.\\_and\\_inj.\\_relief.pdf](https://www.aclu.org/sites/default/files/field_document/2019.02.14.0001_compl._for_decl._and_inj._relief.pdf).

6 *Innovation Law Labs et al., v. McAleenan*, Case No. 19-15716 Dkt. No. 22-1, at 16 (9th Cir. 2019), [https://www.aclu.org/sites/default/files/field\\_document/order\\_-\\_ninth\\_circuit\\_stay\\_ruling.pdf](https://www.aclu.org/sites/default/files/field_document/order_-_ninth_circuit_stay_ruling.pdf).

7 *Federal judge blocks Trump administration program forcing asylum seekers to remain in Mexico while awaiting court hearing*, The Washington Post (Apr. 9, 2019), available at, [https://www.washingtonpost.com/immigration/federal-judge-blocks-trump-administration-program-forcing-asylum-seekers-to-remain-in-mexico-while-awaiting-court-hearings/2019/04/08/68e96048-5a42-11e9-a00e-050dc7b82693\\_story.html?utm\\_term=.7008bd2debc8](https://www.washingtonpost.com/immigration/federal-judge-blocks-trump-administration-program-forcing-asylum-seekers-to-remain-in-mexico-while-awaiting-court-hearings/2019/04/08/68e96048-5a42-11e9-a00e-050dc7b82693_story.html?utm_term=.7008bd2debc8).

8 *U.S. sending asylum seekers to Mexico while awaiting court ruling, in some cases ignoring own protocols*, The Washington Post (May 2, 2019), available at, [https://www.washingtonpost.com/immigration/us-sending-asylum-seekers-to-mexico-while-awaiting-court-ruling-in-some-cases-ignoring-own-protocols/2019/05/02/0d819aea-6c58-11e9-8f44-e8d8bb1df986\\_story.html?utm\\_term=.0b7228390082](https://www.washingtonpost.com/immigration/us-sending-asylum-seekers-to-mexico-while-awaiting-court-ruling-in-some-cases-ignoring-own-protocols/2019/05/02/0d819aea-6c58-11e9-8f44-e8d8bb1df986_story.html?utm_term=.0b7228390082).

9 "The MPP Program and Border Security Joint Statement by Assistant to the President and National Security Advisor Jake Sullivan and Assistant to the President and Homeland Security Advisor Dr. Elizabeth Sherwood-Randall," (Feb. 16, 2021), available at, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/the-mpp-program-and-border-security-joint-statement-by-assistant-to-the-president-and-national-security-advisor-jake-sullivan-and-assistant-to-the-president-and-homeland-security-advisor-and-deputy-na/>.

10 *Termination of the Migrant Protection Protocols Program*, Dep't of Homeland Security (June 1, 2021), available at, [https://www.dhs.gov/sites/default/files/publications/21\\_0601\\_termination\\_of\\_mpp\\_program.pdf](https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf).

11 Lawrence Hurley and Ted Hesson, *Supreme Court Requires Biden to Revive Trump's 'Remain in Mexico' Immigration Policy*, Reuters (Aug. 25, 2021), <https://www.reuters.com/world/us/us-supreme-court-requires-biden-revive-trump-era-remain-mexico-immigration-2021-08-24/>.

12 *Id.*

13 *A Prayer for Migrant Families*, Justice for Immigrants, <https://justiceforimmigrants.org/wp-content/uploads/2018/11/Prayer-for-Migrant-Families.pdf>.

14 *Volunteer*, Catholic Charities Diocese of San Diego, <https://www.ccdsd.org/volunteer> (last visited on May 31, 2019).

15 *Volunteer*, Annunciation House, <https://annunciationhouse.org/volunteer/> (last visited on May 31, 2019).

16 *Volunteer*, Catholic Charities of the Rio Grande Valley, <http://www.catholiccharitiesrgv.org/volunteer.aspx> (last visited on May 31, 2019).

17 *Volunteer*, Catholic Community Services of Southern Arizona, Inc., <https://www.ccs-soaz.org/volunteer> (last visited on May 31, 2019).

