



**November 18, 2019**

**Rep. Bennie G. Thompson**  
**Chair**  
**House Homeland Security Committee**

**Rep. Mike Rogers**  
**Ranking Member**  
**House Homeland Security Committee**

**Rep. Kathleen Rice**  
**Chair**  
**Border Security, Facilitation & Operations Subcommittee**

**Rep. Clay Higgings**  
**Ranking Member**

**Re: LAWG Statement for Nov. 19<sup>th</sup> House Homeland Security Border Security, Facilitation & Operations Subcommittee Hearing, “Examining the Human Rights and Legal Implications of DHS’ Remain in Mexico Policy”**

The Latin America Working Group (LAWG) hereby submits this statement for the record. LAWG advocates for just U.S. policies towards Latin America and the Caribbean. One of LAWG’s priority areas is to call for protections for migrants and refugees from Mexico and Central America and to ensure fair access to asylum at the U.S.-Mexico border and in the Latin American region. LAWG welcomes this oversight effort by the House Homeland Security Committee on the human rights and legal implications of the Department of Homeland Security (DHS)’s Remain in Mexico policy.

Through our ongoing research on the human rights situation across Mexico, close collaboration and monitoring with civil society organizations along the U.S.-Mexico border and at Mexico’s southern border, and through a November 2019 trip to the San Diego border region, LAWG has confirmed that the Remain in Mexico policy is returning asylum seekers, including pregnant women, unaccompanied children, and members of the LGBTQ+ population, to situations of extreme danger and exposing them to human rights violations. With over 55,000 asylum seekers returned to Mexico to date at six ports of entry along the border to wait throughout the duration of their U.S. asylum proceedings, we remain extremely concerned about the rapid implementation of this policy. We are also concerned about the establishment of secretive “tent courts” in Laredo and Brownsville, Texas to which the public has had no access and which present serious due process violations to asylum-seekers. We urge the Committee to expand its oversight efforts on this policy, including by conducting monitoring visits to the ports of entry and courtrooms where the policy is being implemented, and requesting information from DHS on the policy’s implementation and funding. Moreover, we urge the Committee to ask DHS to end the implementation of this policy immediately.

The Remain in Mexico policy is compounded by a series of other policies that the Trump Administration has undertaken to shut the door to asylum seekers at the U.S.-Mexico border, including the illegal practice of metering, a recently enacted “Interim Final Rule” that bans all individuals who have traveled through another country first to reach the United States from receiving asylum with extremely limited exceptions, and the “Asylum Cooperation Agreements,” or safe third country agreements, signed between the United States and Guatemala, Honduras, and El Salvador which may forcibly return asylum seekers who have no previous connection to any of these countries or who may not even have transited through them to seek protections there. We urge the Committee to also conduct oversight on these policies and their implementing guidance as it relates to the implementation of the Remain in Mexico policy.

**There is sufficient evidence, including from the U.S. State Department and other sources, to demonstrate that asylum seekers are being returned to danger by being forced to wait in Mexico.**

Tijuana has seen a dramatic increase in the level of homicides for the last five years, reaching record levels in 2018, making it one of the deadliest cities in the world.<sup>i</sup> Total homicides in Ciudad Juarez for 2019 have already exceeded the total for 2018.<sup>ii</sup> Mexico's northern border states, such as Tamaulipas, Coahuila, Nuevo Leon, and Chihuahua, also continue to rank among the states with the highest number of registered disappearances in the country.<sup>iii</sup> The U.S. State Department currently has travel warnings on all six of Mexico's northern border states, urging citizens not to travel to Tamaulipas, to reconsider travel to Coahuila, Chihuahua, Nuevo Leon, and Sonora, and to exercise increased caution in travel to Baja California, all due to high levels of violent crime.<sup>iv</sup> These states now encompass all six ports of entry where the policy is being implemented.

The violence perpetuated in these cities comes not only from organized crime but also from systemic corruption and abuses within Mexican law and migration enforcement agencies which at times work in collusion with criminal groups. Over thirty disappearances were attributed to the Mexican Navy, for example, in Nuevo Laredo, Tamaulipas in 2018.<sup>v</sup> In addition, the 2017 U.S. State Department human rights country report on Mexico highlighted collusion between the state government of Coahuila and organized crime in carrying out disappearances.<sup>vi</sup> While the information above demonstrates a broader situation of violence, corruption, and impunity along some of Mexico's northern border states and cities, asylum seekers and migrants, in particular, have long faced human rights violations and crimes in their transit through Mexico. Civil society organizations and migrant shelters have documented multiple cases of torture, murder, disappearances, kidnappings, robbery, extortion, and sexual and gender-based violence that migrants and asylum seekers suffer at the hands of criminal groups in Mexico. The perpetrators of this persecution often act in collusion with Mexican migration and law enforcement. Multiple reports issued by U.S. and Mexican organizations and migrants shelters in Mexico illustrate that, while many crimes against migrants occur in the southern part of Mexico, migrants are victims of abuse throughout the country, including in northern border states.<sup>vii</sup> The Inter-American Commission on Human Rights (IACHR) has previously noted crimes against migrants in its reports and NGOs have noted the specific risks migrants face in each of Mexico's border states in documents submitted to the IACHR.<sup>viii</sup> As the MPP would force asylum seekers to wait in Mexico for prolonged periods of time, it is likely that more migrants would be exposed to such risks and violence, or would turn to smugglers to cross the border between ports of entry and in more precarious conditions.

**Waiting in Mexico for months under this policy has particularly negative implications for the rights of families, women, children and members of the LGBTQ+ population.** In some cases, these situations have led to death for asylum seekers who have taken more dangerous border crossings after having grown frustrated by the wait and desperate by the lack of access to services while in Mexico. Such is the tragic case of the Salvadoran man Oscar and his daughter, Valeria, who were subject to the policy and who drowned crossing the Rio Grande.<sup>ix</sup>

LGBTQ asylum seekers may have a specifically hard time gaining access to the already extremely limited housing, employment, health services available to asylum seekers in Mexico due to ongoing xenophobia and discrimination specifically aimed at this population. There are already a limited number of civil society shelters available to asylum seekers on the Mexican side of the border and many may not have specific spaces in which LGBTQ+ asylum seekers can feel comfortable in. LGBTQ+ asylum seekers may not want to frequent shelters set up by local authorities for fear of discrimination by law enforcement officials, organized crime, or other migrants.

On a recent trip to San Diego, LAWG heard of a few cases of babies being born to women from Central America during the duration of their wait in Tijuana under this policy. As the Mexican constitution states that individuals born in Mexican territory are Mexicans, these children are Mexicans and should not be returned to Mexico under the Remain in Mexico policy. Yet it did not appear that either the U.S. or Mexican governments were taking any action to ensure that the children were not subjected to the policy, effectively leaving the children in a situation of near statelessness. There is no comprehensive information on the total number of children born to asylum seekers in the duration of their wait in Mexico under this policy. This is another concerning impact that the policy is having on families and pregnant women, by forcing them to wait for extended periods of time and thus exposing them to carry out their pregnancy and subsequent childbirth in conditions of serious risks along Mexico's northern border.

**The policy has had secondary effects of returning asylum seekers as far south as Mexico's southern border due to the Mexican government's inability or unwillingness to protect asylum seekers in Mexico.** Through its close collaboration with civil society organizations across Mexico, LAWG has come across at least three cases of families who were returned to Mexico under the policy and were bussed by the Mexican government to Mexico's southern border.<sup>x</sup> In one case, an entire Honduran family of two adults and three children from Honduras were returned by Mexico's migration enforcement agency, INM, to the city of Tapachula along Mexico's southern border from the U.S.-Mexico border. As the family was left to wait in Nuevo Laredo, Mexico under Remain in Mexico in August and had no network to turn to there for protection, they felt like they had no choice but to take a bus offered to them by the INM. They initially thought the bus was going to Mexico City but later realized it went to the city of Tapachula. There they were told the paperwork initially granted to them by INM along Mexico's northern border was invalid and they were held in a detention center. They were left with no way to return to their court hearing in early November 2019 in the U.S. and lacked information on how to pursue their case from Tapachula. They also feared being returned to Honduras by Mexican migration enforcement agents. While the Mexican government claims that these returns of asylum seekers under MPP are voluntary,<sup>xi</sup> this example demonstrates that often families lack information about their rights, and the overall process under Remain in Mexico and face a false choice between waiting in danger along Mexico's northern border or moving elsewhere in Mexico where they might also have no protections. Thus, through the Remain in Mexico policy the U.S. government is sending asylum seekers to face harm across Mexico and placing them in situations whereby the Mexican government could return them to their home country, in violation of *non-refoulement* under international refugee law.

Finally, **the Remain in Mexico policy continues to present asylum seekers with serious due process violations, preventing asylum seekers from having their fair day in court and access to legal counsel.** According to the latest TRAC statistics through the end of Sept. 2019, 98 percent of asylum seekers under MPP lack access to legal counsel.<sup>xii</sup> The establishment of the tent courts in Laredo and Brownsville, Texas as of Sept. 2019 with judges videoconferencing into courtrooms to hear asylum cases present a serious due process violation for asylum seekers. Thus far the public has not had access to any of these hearings and asylum seekers must present themselves at 4:30am at the ports of entry to attend their court hearings in the tent courts, which exposes them to serious risks along this part of the border.

When LAWG observed the Remain in Mexico court hearings in San Diego in early Nov. 2019 we noted similar trends. Almost the entire immigration court was dedicated to holding only Remain in Mexico hearings given the high volume of cases in this sector of the border. Only about 10 percent of individuals presenting cases had a lawyer accompanying them. Many individuals referred to having been informed

that they had to pay up to \$8,000 for a lawyer. Even if some individuals had managed to prepare their asylum application with the support of NGOs on the Mexican side of the border, they still lacked general information on the whole process, their applications were often not complete, and they were not accompanied by a lawyer in court. Often they only managed to begin their asylum applications and find support from some organizations months after their arrival and after several initial hearing dates. Individuals in the court hearings observed were never asked if they feared returning to Mexico. The general process observed in the court itself seemed like it was meant to dissuade asylum seekers from continuing the process. Similar to what occurs in many ports of entry where Remain in Mexico is being implemented, individuals have to present themselves at 4:30am at the port of entry for a 9am court hearing sessions and at 9am for a 1pm session. Upon arrival to the courts, it takes hours for the judges to hear all of the MPP cases so that asylum seekers are returned together to the port of entry at least three hours later, all just to come back in months. Most of the cases observed received hearing dates to return in early 2020 after having begun the process between July and September 2019.

Even in such a short period, many serious issues with due process violations were observed because of the Remain in Mexico policy. Congressional oversight is urgently needed moving forward.

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<sup>i</sup> Kate Linthicum, “Meth and murder: A new kind of drug has made Tijuana one of the deadliest cities on Earth”, January 30, 2019

<https://www.latimes.com/world/mexico-americas/la-fg-mexico-tijuana-drug-violence-20190130-htlmstory.html>

<sup>ii</sup> <https://ficosec.org/homicidios-dolosos-2019/>

<sup>iii</sup> Lily Folkerts, Annie Gallivan, Latin America Working Group, Trouble for Turn Backs: Risks for Migrants in Mexico’s Northern Border States, 2018, <https://www.lawg.org/trouble-for-turn-backs-risks-for-migrants-in-mexicosnorthern-border-states/>

<sup>iv</sup> U.S. Department of State, Mexico International Travel Information, November 15, 2018, <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-InformationPages/Mexico.html>

<sup>v</sup> Office of the UN High Commissioner for Human Rights, Zeid urges Mexico to act to end wave of disappearance in Nuevo Laredo, May 30, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23157&LangID=E>

<sup>vi</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2017, 2017, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>vii</sup> Red Migrante Sonora (RMS), Y la impunidad continúa. Segundo informe de la Red Migrante Sonora, June 2017, <https://www.kinoborderinitiative.org/wp-content/uploads/2017/12/Informe-RMS.pdf>, and

José Knippen, Clay Boggs, and Maureen Meyer, An Uncertain Path, November 2015, [https://www.wola.org/sites/default/files/An%20Uncertain%20Path\\_Nov2015.pdf](https://www.wola.org/sites/default/files/An%20Uncertain%20Path_Nov2015.pdf)

<sup>viii</sup> Daniella Burgi-Palomino, Latin America Working Group (LAWG), Maureen Meyer, Washington Office on Latin America (WOLA), Joanna Williams, Kino Border Initiative, Situation of Impunity and Violence in Mexico’s Northern Border Region, March 2017, <https://www.wola.org/wp-content/uploads/2017/04/Situation-of-Impunity-and-Violence-in-Mexicos-northern-border-LAWG-WOLA-KBI.pdf> and Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS), The Human Rights Situation in Mexico, December 31, 2015, <http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf>

<sup>ix</sup> “The father and daughter who drowned at the border were desperate for a better life, family says” <https://wapo.st/2qO3ehb>

<sup>x</sup> Documentation or notification of cases provided to LAWG by staff from the Center for Human Rights Fray Matias de Cordova and the Jesuit Network for Migrants in Mexico between Sept. 2019 and Nov. 2019.

<sup>xi</sup> LA Times, Oct. 2019, Buses to Nowhere: Mexico Transports Migrants with U.S. Court Dates far South, <https://www.latimes.com/world-nation/story/2019-10-15/buses-to-nowhere-mexico-transport-migrants-with-u-s-court-dates-to-its-far-south>

<sup>xii</sup> Details on MPP (Remain in Mexico) Deportation Proceedings, TRAC Immigration, <https://bit.ly/2OmU5V9>