

“Remain in Mexico” Plan:

The Trump Administration is reportedly in talks with representatives of the incoming Mexican government to implement a so-called “Remain in Mexico” plan that would return asylum seekers to Mexico while U.S. immigration courts consider their asylum claims. While the details of the plan remain unclear, returning asylum seekers to Mexico could place refugees at risk of being deported to persecution and would violate U.S. law and international treaty obligations.

The reported plan would return to Mexico refugees with credible fears of persecution in Mexico

According to media reports, the plan under negotiation would force asylum seekers arriving from Mexico who pass a credible fear screening with a U.S. asylum officer—the first step in the process for requesting asylum at a port of entry—to return to Mexico to await their asylum hearing in immigration court. The administration appears to be relying on a provision of the Immigration and Nationality Act (INA), Section 235(b)(2)(C), which allows for certain noncitizens who have arrived from a contiguous country, such as Mexico, to be returned there pending immigration court hearings. Under the administration’s plan, asylum seekers would reportedly continue to receive the traditional “credible fear” screening—which assesses an applicant’s fear of return to their home country. **However, the U.S. government would return asylum seekers who pass that interview to Mexico unless they also establish a “reasonable” fear—an even higher level of fear than required for asylum—of persecution in Mexico.** For instance, the United States would return Central American asylum seekers to Mexico even if an asylum officer finds that they have a credible fear of persecution in their home country and in Mexico, but that they have not met the higher “reasonable” fear standard.

The plan violates the Immigration and Nationality Act’s process for arriving asylum seekers

Returning refugees to Mexico would directly contradict Congress’ clear and specific instruction that **asylum seekers remain in the United States while their cases are pending.** Section 208 of the INA makes clear that asylum seekers who arrive at official border posts can apply for asylum. Section 235(b)(1) establishes specific procedures that *require* the government to provide asylum seekers a credible fear interview, and that those who pass should be held in U.S. detention or released on parole—under INA 212(b)(5)—during consideration of their applications. Indeed, asylum seekers are exempt from Section 235(b)(2)(C)’s contiguous territory provision—the provision upon which the administration would apparently rely to promulgate the “Remain in Mexico” plan—under an exception at 235(b)(2)(B)(ii).

The plan would undermine the due process right of asylum seekers to access legal counsel

Non-citizens have the right to be represented by an attorney in U.S. immigration proceedings. **Forcing asylum seekers to remain in Mexico while their claims are adjudicated in the United States would severely impede access to legal counsel and raise significant due process concerns.** Unrepresented asylum seekers face language barriers and a complex asylum law system that underscore the need for legal representation. Indeed, represented asylum seekers are five times more likely to be granted asylum than those who do not have legal counsel.

The plan could also violate US obligations under international law

Congress passed the 1980 Refugee Act to bring domestic law in line with U.S. obligations under the Refugee Convention. **Returning Mexican asylum seekers to Mexico would plainly violate Article 33 of the Refugee Convention which prohibits states from returning refugees “in any manner whatsoever” to territories where they face a threat to their life or freedom.** This prohibition would also be violated by the return of Central American refugees to a country—such as Mexico—where they would face acute risks of being returned to their countries of persecution. As outlined below, Mexican officers often return asylum seekers to their countries of persecution despite prohibitions in Mexican law and the Refugee Convention.

The United States has also adopted the U.N. Convention against Torture (CAT), which prohibits returning a person to any country where that person would face torture. This obligation has also been interpreted to prohibit a country from deporting someone who faces torture to a third country that would subsequently expel the person to the place where he or she faces torture. Returning individuals to Mexico during their immigration who have a fear of torture in Mexico or who Mexico would expel to a country where they face torture would violate U.S. obligations under CAT.

Asylum seekers forced to wait in Mexico could be deported to persecution

Beyond the dangers that some asylum seekers face in Mexico, non-Mexican asylum seekers returned to Mexico may be subject to arrest by Mexican authorities—since most lack immigration status there—and face deportation to the country where they fear persecution. **Mexican authorities have often improperly returned asylum seekers to their countries of persecution.**

A 2018 Amnesty International report found that Mexican migration officials routinely turn back Central American asylum seekers and that 75 percent of migrants and asylum seekers surveyed were not informed of their right to seek asylum by migration officers in detention facilities, even though it is required by Mexican law. The Citizen’s Council of the National Institute of Migration (CCINM) also recently reported that asylum seekers continue to lack adequate access to information regarding the asylum process. Less than one percent of unaccompanied children apprehended in Mexico receive international protection, as detailed by Human Rights Watch.

Despite progress since launching an asylum system, barriers persist, leaving many refugees unprotected from return to persecution. The system for seeking legal protection lacks national reach and capacity. COMAR—“The Mexican Commission for Refugee Aid”—has only four offices around the country, leaving many refugees without access to the system. After halting its processing of asylum applications in 2017, Mexico only reopened its system in 2018 after a successful lawsuit by the Mexican Commission for the Defense and Protection of Human Rights. **Refugee processing in Mexico remains plagued by backlogs and understaffing. Refugees are blocked from protection under an untenable 30-day filing deadline,** denied protection by COMAR officers who claim that refugees targeted by groups with national reach can safely relocate within their countries, and lack an effective appeal process to correct wrongful denials of protection. Finally, declining and disproportionately skewed rates for Central Americans raise concerns that individuals from those countries remain unprotected.