
May 3, 2023

Honorable Ministers of the Supreme Court of Justice of the Nation of Mexico:

Human Rights First submits this letter with regard to the *amparo* case number 606/2022 of Fundación para la Justicia y el Estado Democrático de Derecho, A.C. in its challenge to the Migrant Protection Protocols, also known as the “Remain in Mexico” policy.

Human Rights First is a non-governmental, U.S.-based organization established in 1978 that works to ensure U.S. compliance with its human rights obligations. Human Rights First operates one of the largest U.S. programs for pro bono legal representation of refugees, working in partnership with volunteer lawyers at leading law firms to provide legal representation without charge to indigent asylum applicants, including individuals subjected to the Remain in Mexico policy. Human Rights First conducts research, issues reports, and provides recommendations to the U.S. government regarding compliance with its obligations under international law. Human Rights First has repeatedly submitted and joined amicus briefs to the U.S. Supreme Court and the lower federal courts opposed to the Remain in Mexico policy.¹

Working closely with other organizations, Human Rights First has monitored and reported on the Remain in Mexico policy since its inception in January 2019, conducting in-depth research and issuing over ten reports between 2019 and 2022.² Human Rights First’s research confirms that the Remain in Mexico policy violates U.S. law and international treaty obligations, denies refugee protection to people fleeing persecution and torture, and has resulted in widespread human rights violations against asylum-seekers physically present in Mexico while awaiting their U.S. immigration court proceedings.

During the two years that the Trump administration implemented Remain in Mexico, Human Rights First tracked at least 1,544 publicly reported cases of kidnappings, murder, torture, rape and other violent attacks against people returned to Mexico. These attacks are surely just the tip of the iceberg,³ as few people were able to speak with journalists, human rights monitors, or attorneys.

¹ Amicus brief of 61 immigration advocacy and legal service organizations, *Biden v. Texas*, No. 21-954 (U.S. Mar. 22, 2022), available at https://www.humanrightsfirst.org/sites/default/files/Biden_v_Texas_Amicus.pdf; Amicus brief of non-profit organizations and former immigration judges, *Biden v. Texas*, No. 21A21 (U.S. Aug. 23, 2021), available at https://www.humanrightsfirst.org/sites/default/files/20210823085748543_Biden%20v%20TX%20NGO%20Amici%20Motion%20and%20Brief%20Final%20to%20File%202021.08.23.pdf; Amicus brief of non-profit organizations and former immigration judges, *Texas v. Biden*, No. 21-10806, (5th Cir. Aug 17, 2021) , available at https://www.humanrightsfirst.org/sites/default/files/TX%20NGO%20Amicus%20Brief_2021.08.17.pdf; Amicus brief of nongovernmental organizations and law school clinics, *Pekoske v. Innovation Law Lab*, No. 19-1212 (U.S. Jan. 22, 2021), available at <https://www.humanrightsfirst.org/sites/default/files/MPP%20Amicus%20Brief.pdf>; Amicus brief of immigrant rights organizations, *M-D-C-V v. Barr*, No. 20-72071 (9th Cir. Oct. 26, 2020), available at https://www.humanrightsfirst.org/sites/default/files/M-D-C-V-Amicus-Brief_Redacted.pdf.

² See enclosures.

³ During the first two years of the Biden administration, Human Rights First tracked at least 13,480 reports of murder, torture, kidnapping, rape, and other violent attacks on asylum seekers and migrants blocked in or expelled to Mexico under Title 42. See, e.g., Human Rights First, “Title 42: Human Rights Stain, Public Health Farce,” (December 2022), available at <https://humanrightsfirst.org/library/title-42-human-rights-stain-public-health-farce/>.

In June 2021, the Biden administration fulfilled its election pledge and terminated the Remain in Mexico policy.⁴ The U.S. states of Texas and Missouri challenged the termination. A federal district court in the Northern District of Texas enjoined the termination and ordered the Department of Homeland Security to “enforce and implement” the Remain in Mexico policy “in *good faith*.”⁵ In October 2021, the Department of Homeland Security subsequently re-terminated the Remain in Mexico policy and issued a memorandum concluding that “significant evidence indicates that individuals were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited from putting migrants in harms’ way while awaiting their court hearings in Mexico.”⁶

However, with the district court order still in place, the U.S. government explained that it was obligated to re-implement Remain in Mexico, which it did beginning in December 2021 after negotiations with the Government of Mexico. The Department of Homeland Security pledged to “reimplement [] [Remain in Mexico] in a way that enhances protection for individuals enrolled in the program.”⁷ The U.S. government, for example, said it would arrange housing options in migrant shelters in Mexico and “secure transportation to and from ports of entry” and shelters for Remain in Mexico 2.0 returnees. Despite these asserted additional steps, people sent to Mexico under Remain in Mexico 2.0 continued to be kidnapped, tortured, sexually assaulted, beaten, and subjected to other violent attacks, including in designated shelters and transport. Powerful cartels that exercise control throughout the border region and corrupt officials in Mexico, whether acting complicitly or independently, continued to target migrants and asylum seekers returned to Mexico under Remain in Mexico for attack.

From early December 2021, when the court-ordered reimplementation of Remain in Mexico began, through the end of July 2022, the Department of Homeland Security returned more than 7,000 additional individuals to danger in Mexico under Remain in Mexico 2.0 to the Mexican cities of Tijuana, Ciudad Juárez, Nuevo Laredo, and Matamoros. Human Rights First reviewed notes from interviews of nearly 2,700 migrants and asylum-seekers placed in Remain in Mexico 2.0 that were conducted by volunteers from private law firms and non-profit agencies between January and August 2022.⁸ These interviews represent nearly one quarter of the total number of people who were enrolled in Remain in Mexico during its court-ordered reimplementation under the Biden administration. Analysis of these interview notes confirms that migrants and asylum seekers in Mexico continue to face widespread, targeted, and life-threatening violence in Mexico.

Of those interviewed, 41 percent (1,109 people) reported violent attacks in Mexico, including kidnapping, rape, assault, and other violence. These attacks—by cartels as well as corrupt Mexican officials—occurred as the individuals traveled to the border and/or after being returned by the

⁴ U.S. Department of Homeland Security, “Termination of the Migrant Protection Protocols Program,” 1 June 2021, https://www.dhs.gov/sites/default/files/2022-02/21_0601_termination_of_mpp_program.pdf.

⁵ *Texas v. Biden*, 21-CV-067-Z (N.D. Texas, Aug. 13, 2021), No. 94, Memorandum Opinion and Order, available at https://ago.mo.gov/docs/default-source/press-releases/mpp.pdf?sfvrsn=f2722fb5_2.

⁶ U.S. Department of Homeland Security, “Termination of the Migrant Protection Protocols,” 29 October 2021, https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-memo.pdf; Department of Homeland Security, “Explanation of the Decision to Terminate the Migrant Protection Protocols,” 29 October 2021, https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf.

⁷ U.S. Department of Homeland Security, “Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols,” 2 December 2021, https://www.dhs.gov/sites/default/files/2022-01/21_1202_plcy_mpp-policy-guidance_508.pdf.

⁸ See, e.g., Human Rights First, “Fatally Flawed: Remain in Mexico Policy Should Never be Revived” (September 2022), available at <https://humanrightsfirst.org/library/fatally-flawed-remain-in-mexico-policy-should-never-be-revived/>.

Department of Homeland Security to Mexico under Remain in Mexico 2.0. Of these 1,109 reported violent attacks on individuals enrolled in Remain in Mexico 2.0, 36 percent (399 reports) involved Mexican police, immigration agents, National Guard officers, and other government officials who carried out or colluded in the attack. Kidnappings made up 36 percent (401 reports) of the 1,109 violent attacks on individuals enrolled in Remain in Mexico 2.0. In addition, more than 60 individuals reported highly invasive strip searches, groping, and other inappropriate conduct by Mexican officials during stops by police and migration officials. In addition, 47 percent (1,263 individuals) reported that Mexican police, immigration agents, National Guard officers, or other Mexican government officials had robbed or extorted them.

Asylum seekers subjected to Remain in Mexico have been targeted for kidnapping and other violent attacks immediately after they were returned to Mexico via U.S. ports of entry,⁹ in and just outside of Instituto Nacional de Migración (INM) installations,¹⁰ as they traveled to and from ports of entry for U.S. immigration court hearings,¹¹ and at migrant shelters.¹² Other asylum seekers reported being forced to pay extortion in proportion to the amount of time they had to wait in Mexico until their next hearing.¹³

The following examples are illustrative of the 36 percent of asylum-seekers and migrants interviewed by volunteers of private law firms and non-profit agencies between January and August 2022 who reported violent attacks carried out by or with the complicity of Mexican police, immigration agents, National Guard officers, and other government officials:¹⁴

- In April 2022, Mexican police sexually assaulted and tortured an LGBTQ Cuban man after the Department of Homeland Security had returned him to Mexico under Remain in Mexico 2.0. The man reported in an interview with a pro bono lawyer reviewed by Human Rights First that the officer forced him to perform a sexual act on the officer, then gave him an electric shock while threatening him not to tell anyone. In a separate incident, Mexican police officers held a gun to the Cuban man's back, threatening to blackmail him, photographed his identification documents, and destroyed his cell phone.

⁹ See, e.g., Human Rights First, "Órdenes de arriba: graves abusos de derechos humanos bajo la política del gobierno de Trump de retorno a México" (oct. 2019), pp.7-8; "Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process," (aug. 2019), p.5; "Una desgracia humanitaria: Estados Unidos sigue bloqueando y expulsando ilegalmente a refugiados al peligro" (dec. 2020), p.19.

¹⁰ See, e.g., Human Rights First, "Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process," (aug. 2019), p.4; "Órdenes de arriba: graves abusos de derechos humanos bajo la política del gobierno de Trump de retorno a México" (oct. 2019), pp.5-6; "Fiasco en la protección de los derechos humanos: continúan retornos peligrosos de solicitantes de asilo por el Gobierno del presidente Trump" (dec. 2019), p.13-15, 24.

¹¹ See, e.g., Human Rights First, "Fiasco en la protección de los derechos humanos: continúan retornos peligrosos de solicitantes de asilo por el Gobierno del presidente Trump" (dec. 2019), pp.8-9; "La pandemia como pretexto: La administración de Trump aprovecha la pandemia de COVID-19 para expulsar a refugiados y menores exponiéndolos al peligro" (mayo 2020), pp.10-11.

¹² See, e.g., Human Rights First, "Fiasco en la protección de los derechos humanos: continúan retornos peligrosos de solicitantes de asilo por el Gobierno del presidente Trump" (dec. 2019), pp.9-11; "Órdenes de arriba: graves abusos de derechos humanos bajo la política del gobierno de Trump de retorno a México" (oct. 2019), p.7.

¹³ See, e.g., Human Rights First, "La pandemia como pretexto: La administración de Trump aprovecha la pandemia de COVID-19 para expulsar a refugiados y menores exponiéndolos al peligro" (mayo 2020), p.12; "Fiasco en la protección de los derechos humanos: continúan retornos peligrosos de solicitantes de asilo por el Gobierno del presidente Trump" (dec. 2019), p.23; "Órdenes de arriba: graves abusos de derechos humanos bajo la política del gobierno de Trump de retorno a México" (oct. 2019), p.5.

¹⁴ See, e.g., Human Rights First, "Fatally Flawed: Remain in Mexico Policy Should Never be Revived" (September 2022), pp. 9-14, available at <https://humanrightsfirst.org/library/fatally-flawed-remain-in-mexico-policy-should-never-be-revived/>.

- A Mexican police officer raped a bisexual Nicaraguan woman and forced her to perform oral sex. The officer had pulled her from a bus, brought her to a ranch, and forced her to undress. After raping the woman, the officer hit her in the face, stole her passport and abandoned her, naked, on the side of the road, according to a June 2022 interview with pro bono legal staff.
- Mexican police and immigration officials sexually abused and repeatedly extorted a gay Cuban man and his spouse. He told a legal staff member in May 2022 that police turned the couple over to the *Cártel de Jalisco Nueva Generación* (Jalisco New Generation Cartel), which held them captive and extorted their families for ransom.
- In February 2022, Mexican police detained and brutalized a Nicaraguan man whom the Department of Homeland Security returned to Mexico under *Remain in Mexico 2.0* after he did not pass a non-refoulement interview. An officer falsely claimed the Mexican migration documents (*forma migratoria múltiple* or FMM) provided to the man on return to Mexico were fraudulent, called Nicaraguans “a plague,” handcuffed him, and forced him into a police car. As he was exiting the car, an officer slammed the door on his fingers, causing them to bleed. The officer also hit the man in the face with his elbow, dislocating his nose. Notes from an interview with the man reviewed by Human Rights First state that the officers threatened that he would “face the consequences,” if he reported the incident.
- A Cuban woman was kidnapped by Mexican police who stripped her and forced her to repeatedly perform oral sex on multiple police officers over the course of three days. She told pro bono legal interviewers in June 2022 that she managed to escape with two other women who helped to untie her.
- Mexican immigration officials and police officers beat and threatened a Venezuelan man after he was returned by the Department of Homeland Security to Mexico through *Remain in Mexico 2.0*. He reported in an April 2022 interview with pro bono legal staff that the officials said they would “find him and do something worse,” if he attempted to report the incident to Mexican authorities.
- A Nicaraguan man was raped by Mexican police officers and witnessed as the officers raped two Nicaraguan women and cut off two fingers of one of the women whose family could not pay the ransom they demanded. The man reported to a pro bono legal staffer in July 2022 that the three were held captive for five days until his family paid a \$4,000 ransom.
- Mexican police officers beat a Venezuelan man at the migrant shelter where he was taken after the Department of Homeland Security returned him to Mexico under *Remain in Mexico 2.0*. He reported the incident in a February 2022 interview to a pro bono legal office.
- A Cuban woman was anally raped by a Mexican police officer. In a July 2022 interview with pro bono legal staff, she reported that the officers who stopped and assaulted her had forcibly removed a religious pendant she was wearing and, referring to the police, said that they were “God.”
- Two Mexican police officers abducted an LGBTQ Venezuelan woman, forced her to perform oral sex, and physically assaulted her. One of the officers stated that he would “change” the woman, who identifies as bisexual, from being gay, according to notes from a June 2022 interview with pro bono legal screeners. The officers had offered her a ride but instead drove her to a park where they assaulted her.

- A Nicaraguan woman was repeatedly raped after Mexican police officers took her to a warehouse where she was kept as a hostage for two weeks. The woman told pro bono legal staff in July 2022 that hundreds of other migrants were held captive in the same facility.
- Mexican police officers beat a gay Nicaraguan man and robbed him before turning him over, blindfolded and bound, to a cartel that held him captive. In a June 2022 interview with pro bono legal staff, the man reported that the kidnappers repeatedly beat him, denied him food for three days, forced him to have sex with women, and harassed him for being gay.
- Mexican police officers robbed and sexually assaulted a Colombian woman, forcing her to perform oral sex on them. She told pro bono legal staff in July 2022 that the officers had pulled over the taxi in which the woman was riding and pulled her out of it. After assaulting her, they threatened to kidnap and sell her to human traffickers her, if she reported them.

Additionally, Black and Indigenous migrants and asylum seekers continue to be targeted for kidnappings and brutal assaults in Mexico because of their race and/or Indigenous identity. Examples of attacks during the period of reimplementations of Remain in Mexico include an Afro-Colombian man stabbed in front of his brother; an Afro-Indigenous Nicaraguan woman kidnapped and robbed by Mexican officials; an Afro-Cuban woman sexually assaulted and robbed by Mexican police; and an Indigenous man of the Puruhá people from Ecuador who was assaulted and robbed in front of Mexican police who did not intervene to assist him.¹⁵

In June 2022, the U.S. Supreme Court found that the U.S. government had authority under U.S. law to rescind the Remain in Mexico policy and remanded the case for further proceedings consistent with that opinion.¹⁶ The district court subsequently vacated the injunction blocking the termination of Remain in Mexico. The Department of Homeland Security announced its intention to wind down the policy and to process individuals with pending cases into the United States. In August 2022, the states of Texas and Missouri filed an amended complaint in the Northern District of Texas challenging the memoranda re-terminating the Remain in Mexico policy. In December 2022, the federal district court in the Northern District of Texas enjoined the termination of the program and litigation is ongoing.¹⁷

The Remain in Mexico policy effectively paints a target on the backs of asylum-seekers and migrants returned to Mexico resulting in a devastating toll of violent attacks on them. This policy cannot be carried out humanely, safely, or legally.

Respectfully,

Licha Nyiendo

Licha Nyiendo
Chief Legal Officer
Human Rights First

¹⁵ See, e.g., Human Rights First, “Fatally Flawed: Remain in Mexico Policy Should Never be Revived” (September 2022), pp. 14-15.

¹⁶ *Biden v. Texas*, No. 21-954 (U.S. 30 June 2022), available at https://www.supremecourt.gov/opinions/21pdf/21-954_7148.pdf.

¹⁷ See *Texas v. Biden*, No. 21-cv-00067 (N.D. Texas), available at <https://www.courtlistener.com/docket/59815977/state-of-texas-v-joseph-r-biden/>.

Enclosures:

“Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process,” (Aug. 2019), <https://humanrightsfirst.org/wp-content/uploads/2022/10/Delivered-to-Danger-August-2019-.pdf>

“Órdenes de arriba: graves abusos de derechos humanos bajo la política del gobierno de Trump de retorno a México” (oct. 2019) https://humanrightsfirst.org/wp-content/uploads/2022/10/Ordenes-de-Arriba_0.pdf

“Fiasco en la protección de los derechos humanos: continúan retornos peligrosos de solicitantes de asilo por el Gobierno del presidente Trump” (dic. 2019) <https://humanrightsfirst.org/wp-content/uploads/2022/10/Fiasco-de-derechos-humanos-dec-2019-FINAL-1.pdf>

“La pandemia como pretexto: La administración de Trump aprovecha la pandemia de COVID-19 para expulsar a refugiados y menores exponiéndolos al peligro” (mayo 2020), <https://humanrightsfirst.org/wp-content/uploads/2022/10/PandemiaComoPretexto-1.pdf>

“Una desgracia humanitaria: Estados Unidos sigue bloqueando y expulsando ilegalmente a refugiados al peligro” (dic. 2020), <https://humanrightsfirst.org/wp-content/uploads/2022/09/UnaDesgraciaHumanitaria.pdf>

"Inhumane Again: Remain in Mexico Rollout Confirms Endemic Flaws of Unfixable Policy" (Dec. 2021), <https://humanrightsfirst.org/wp-content/uploads/2021/12/Inhumane-Again-Remain-in-Mexico-Rollout-Confirms-Endemic-Flaws-of-Unfixable-Policy-1.pdf>

A Shameful Record: Biden Administration’s Use of Trump Policies Endangers People Seeking Asylum (Jan. 2022), <https://humanrightsfirst.org/wp-content/uploads/2022/09/ShamefulRecord.pdf>

“Fatally Flawed: Remain in Mexico Policy Should Never be Revived” (Sept. 2022), <https://humanrightsfirst.org/wp-content/uploads/2022/10/FallasFatales.pdf>