



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

November 12, 2019

Dear Member of Congress,

As a national association of more than 15,000 attorneys and law professors who practice and teach immigration law, the American Immigration Lawyers Association (AILA) is deeply concerned with recent policy changes on our southern border.

This week, several AILA leaders – including AILA President Marketa Lindt and AILA Executive Director Ben Johnson – are traveling to Brownsville, Texas to observe the effects of one such policy, [“Remain in Mexico.”](#) Also known as the [Migrant Protection Protocols](#), Remain in Mexico requires individuals seeking asylum at our southern border to wait on the Mexican side of the border while their U.S. removal proceedings are pending. In September 2019, [DHS opened tent facilities](#) in Laredo and Brownsville, Texas that function as virtual immigration courtrooms for a portion of these cases.

Despite early and repeated requests for these AILA representatives to access the tent, AILA has not received permission from DHS to tour the facilities or observe hearings from inside the tents. In fact, even though DHS has publicly stated that it would permit public access to the tent courts, we are not aware of any attorney observers or NGOs that have been allowed to tour the facilities and observe hearings from inside the tents since they have opened in September.

This denial of access is unjustifiable. We cannot afford to allow these tent court facilities, which process some of the most vulnerable asylum-seekers, to continue operating in secret. We urge Congress to require DHS to allow public access to the tent courts and to visit the tent courts at Laredo and Brownsville in order to observe the tent court proceedings firsthand.

Background on Remain in Mexico and Tent Courts

On January 24, 2019, the [Department of Homeland Security](#) (DHS) announced the Remain in Mexico policy. AILA immediately [expressed grave concerns](#) that the policy effectively denies asylum seekers their right to [be represented by counsel](#) and curtails their ability to receive a fair and meaningful review of their claims. Additionally, the [well-documented violence](#) and instability that migrants face in Mexico exposes returned asylum seekers to severe risk of further trauma while they wait for their hearings. AILA has [urged the administration to terminate Remain in Mexico](#) and requested that it process asylum seekers in the U.S.

In September 2019, [DHS opened massive tent facilities](#) in Laredo and Brownsville, Texas that serve as virtual immigration courtrooms for some Remain in Mexico cases. During the hearings, asylum seekers are held in tents at the ports of entry while judges appear remotely via video teleconference from traditional brick-and-mortar courtrooms elsewhere. DHS chose to open these courts without meaningful notice to the public or the legal community and provided almost no information about even basic operations and procedures at the tent courts once they were operational. The location of these tent courts forces asylum seekers to [wait for their proceedings](#) in extreme danger in Nuevo Laredo and Matamoros, which have both been designated by the U.S. State Department with a level four [“Do Not Travel” warning](#) due to crime and kidnapping.

Denial of Access to Tent Courts

DHS has stated that it will allow public access to the tent courts, subject to some restrictions such as requiring requests for access to be submitted five days in advance. In September 2019, for example, then-Acting Department of Homeland Security Secretary Kevin McAleenan [tweeted](#) that the public and media would have access to the facility. However, as detailed in an October 7, 2019 [letter](#) sent by AILA and several other organizations, DHS has consistently denied access to attorney observes and non-governmental organizations (NGOs). During the week of September 16, representatives from AILA, the National Immigrant Justice Center, Women’s Refugee Commission, and Amnesty International attempted to observe proceedings inside the facilities and were denied entrance by ICE officers and/or contractors. Some officers indicated that the denial of access was due to orders from ICE headquarters, and others indicated that CBP was responsible. Following the September visit, AILA [sent a letter](#) to DHS, ICE, CBP, DOJ, and EOIR requesting information about the tent courts and access to the tent court, to which DHS has not responded.

Prior to AILA representatives traveling to Brownsville this week, AILA once again contacted CBP and ICE to request access to the tent facilities. ICE indicated that CBP controlled all access to the tent courts, and that they did not have a contact at CBP that could help AILA request access. Despite several phone calls and emails to CBP over a fourteen-day period leading up to the delegation’s trip, AILA only received a reply from CBP the day before AILA representatives were scheduled to visit the tent facilities. CBP denied access to AILA and stated that the “facility is not available for in-person public access at this time.”

Observing Remain in Mexico hearings from the court locations where the judges are sitting is not an adequate substitute for being allowed to access the tent facilities holding the migrants. Observation from a courtroom that is hundreds of miles away from the actual location of the proceedings will not provide meaningful comprehension of how proceedings are operating from the migrant’s point of view. Furthermore, remote observers will not be able to bear witness to any rights violations that may occur when the video teleconference system is malfunctioning or shut off.

Due Process Concerns with Tent Courts

Access to tent courts is critical because the facilities impose significant roadblocks to accessing counsel, due process, and transparency. The Remain in Mexico policy itself makes it extremely difficult to find and consult with an attorney, as detailed in a [letter](#) AILA sent to the DHS Acting Secretary in June 2019. In addition, migrants subject to Remain in Mexico at the tent courts have even greater hurdles to accessing legal counsel. For example, in the few cases where a migrant is able to find representation, AILA has found that some attorneys of record have not been able to meet with their clients for more than [30 minutes](#) on the day of the hearing, despite the fact that clients are required to show up at the ports of entry hours prior to the hearing.

Notices to Appear (NTAs) issued by DHS in Remain in Mexico cases have contained inaccurate information, including incorrect hearing locations and inaccurate addresses for migrants. [One NTA](#) even listed “Facebook” as the respondent’s address. Despite these serious problems, DHS still pushes for immigration judges to order individuals subject to Remain in Mexico removed *in absentia*. Immigration judges have also said that DOJ has [instructed](#) them to order those who do not appear at their hearing to be removed *in absentia*.

AILA is also aware that [people](#) who have been granted asylum have nonetheless been sent back to Mexico by CBP with documents that falsely indicate that they have an upcoming court hearing. The

Mexican government has been clear that they will not accept people whose cases have been decided and who do not have a future hearing date. It is unclear how or when these asylees will return to the U.S.

Congress Must Ensure Access to Tent Courts

Given the deeply troubling nature of the Remain in Mexico policy and its implementation, as well as the potential life-or-death consequences for the migrants, these tent courts cannot be allowed to continue operating in secret. We urge you to require DHS to allow public access to the tent courts and to visit the tent courts at Laredo and Brownsville in order to observe the tent court proceedings.

Sincerely,

Greg Chen
Director of Government Relations

Kate Voigt
Associate Director of Government Relations