



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

NATIONAL
IMMIGRANT
JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM



October 7, 2019

Sent Via Email to:

U.S. House Judiciary Committee
U.S. Senate Judiciary Committee
U.S. House Committee on Homeland Security
U.S. Senate Committee on Homeland Security and Government Affairs
U.S. House Committee on Oversight and Reform
U.S. House Committee on Appropriations
U.S. Senate Committee on Appropriations
U.S. House Foreign Affairs Committee
U.S. Senate Committee on Foreign Relations

Re: Congress Should Conduct Significant Oversight of Remain in Mexico and Use of Tent Courts by DHS and DOJ

Dear Member of Congress:

The undersigned organizations respectfully call on Congress to address the grave human rights and due process violations resulting from the U.S. Department of Homeland Security's (DHS) and the U.S. Department of Justice's (DOJ) use of new tent facilities to adjudicate immigration hearings via video teleconference (VTC) for asylum seekers under the so-called Migration Protection Protocols (MPP), a policy known as "Remain in Mexico." We urge the termination of Remain in Mexico and significant Congressional oversight of the program, particularly this new and deeply concerning expansion.

On January 24, 2019, DHS announced the [Remain in Mexico policy](#), which bars women, men, and children seeking asylum at the U.S. southern border from entering the U.S., forcing them instead to wait in Mexico pending adjudication of their asylum cases or other claims for relief, in [stark violation of](#) domestic and international law. An estimated [50,000](#) migrants have been sent back to Mexico under the Remain in Mexico program. Asylum seekers waiting in Mexico face [extreme levels of violence](#) while they wait for their hearings. Nongovernmental organizations (NGOs) have [expressed grave concerns](#) over the implementation of this program. In June, the American Immigration Lawyers Association (AILA) sent a letter to DHS Secretary Kevin McAleenan expressing concerns that Remain in Mexico [inherently violates due process](#) and denies individuals [meaningful access](#) to asylum protection. In August, Human Rights First [issued a report](#) detailing public reports of violent attacks against asylum seekers returned to Mexico under this program.

Remain in Mexico cannot be administered in a way that complies with U.S. and international law and its implementation must be halted. Yet instead of addressing these problems, DHS and DOJ expanded the application of Remain in Mexico to include people seeking protection at the ports of Laredo and Brownsville, Texas. DHS built temporary tent facilities in both locations that are now functioning as virtual immigration courtrooms for Remain in Mexico cases, with judges appearing remotely from brick-and-mortar courtrooms across Texas (and possibly soon [across the country](#)). From the start, these tent facilities have been shrouded in secrecy. [Without notice to the legal community](#), DHS and DOJ

opened these facilities in September.

The location of the new tent courts in Laredo and Brownsville compels asylum seekers to wait in two of the most dangerous cities in the world: Nuevo Laredo and Matamoros. Both cities have been designated by the U.S. State Department with a level four “[Do Not Travel](#)” warning due to the high levels of crime and kidnapping. Asylum seekers waiting in Nuevo Laredo and Matamoros have experienced [threats, kidnapping, extortion](#) and attempts on their lives and the lives of their children.

Deeply troubling is DHS’s failure to provide information to the public about the basic operations and procedures at the tent courts. In September, attorney observers from AILA, the National Immigrant Justice Center, Amnesty International, and the Women’s Refugee Commission attempted to observe tent court proceedings in Laredo. AILA and Amnesty International additionally attempted to observe tent court proceedings in Brownsville. Unlike in other immigration courts, attorney observers were not permitted to access the tent court facilities to observe hearings.¹ At both locations, ICE officers denied attorney observers access to the facilities as attorney observers on varying grounds—sometimes indicating that the denial of access was due to ICE and other times indicating that CBP was responsible for denying access to the facilities, and on one occasion even telling attorney observers that restrictions on public access was by order of the President of the United States. Additionally, DHS has limited [press access](#) for hearing observation at the tent court facilities. This is an unacceptable denial of access.

CBP has [stated publicly](#) that these hearing facilities are within CBP’s secure port of entry property, and therefore, access to these temporary immigration hearing facilities will be “assessed on a case-by-case basis,” even though in reality, as of the date of this letter and after several requests, attorney observers have still not been permitted to enter tent court facilities to view the facility or the hearings occurring within it, in violation of [DOJ regulations](#) which require immigration hearings to generally be open to the public.

DHS has suggested that because attorney observers can attend court proceedings remotely (from the brick-and-mortar courtrooms where judges sit), they are not being denied an opportunity to observe these proceedings. However, remote access is not an adequate substitute for in-person access. Observers in courtrooms hundreds of miles away are not able to assess how the proceedings are operating from the vantage point of the individual respondent, who is the most gravely impacted by these proceedings. Furthermore, many proceedings are now taking place several hundred miles from the tent courts themselves, including Brownsville proceedings being conducted in El Paso, which is 800 miles and one time zone away, and Laredo proceedings being conducted from the San Antonio court, which is nearly 200 miles away.

DHS officials [asserted](#) that only attorneys of record who had previously filed an appearance for a specific client would be allowed into the facilities. However, the dangers in many of the cities along the border in northern Mexico make it nearly impossible for immigration attorneys to represent these asylum seekers. In Laredo, for example, attorneys cannot even travel across the border to meet with their clients because of credible threats of violence. In Matamoros, attorneys are forced to run legal aid clinics outdoors, in an open-air tent camp where migrants subject to Remain in Mexico are stranded.

¹ An NIJC attorney formally appearing on behalf of asylum seekers before the Laredo Court was permitted to enter in order to represent her clients, but was not permitted to observe the hearings of *pro se* respondents.

At the Laredo and Brownsville tent facilities, DHS restricts the time and manner of contact allowed between attorneys and their clients. One attorney described how even though attorneys are told by tent court personnel that they have between the hours of 7 a.m. and 8 a.m. before court to meet with their clients, in reality, they are regularly given only a half hour, and are otherwise prohibited from talking with their clients and only sometimes given the opportunity to speak with their clients after court is over. Attorneys are also required to leave laptops and cell phones in lockers near the attorney waiting room, while DHS attorneys have access to cell phones and laptops during court. These practices constitute due process violations and compromise the legitimacy of these proceedings.

The immigration courts are not an independent judicial branch but a component of the DOJ, [an inherent flaw](#) in the structure of the immigration courts. Immigration judges are already vulnerable to [attacks on their judicial independence](#) but in these tent courts, DHS exercises near-total control over access to the facilities and is in charge of procedural and operational decisions being made inside the tent court facilities. For example, immigration judges appear to be deferring completely to DHS as to whether and when attorneys can speak with their clients. For example, one immigration judge stated in response to a request from an attorney to be allowed extra time to meet with his client after an initial hearing: “I’ve been advised that I’m not really permitted to make these kinds of decisions.” Another immigration judge stated, in response to a similar request: “The operational protocol of this facility is not within this court’s jurisdiction.” Immigration judges have indicated they will consider motions to waive the appearances of asylum seekers who are prevented from attending court by conditions in Mexico or other circumstances beyond their control, but DHS will *only* allow attorneys into the tent facility if their clients are confirmed to have presented themselves at the bridge that morning. This means attorneys would be precluded from arguing for the waiver of client appearance because they would be denied entry to the court by DHS.

The tent courts present even more serious barriers to due process for pro se asylum seekers. In order to arrive at the Laredo and Brownsville CBP port of entry by 4:30 a.m., [as required by DHS](#), asylum seekers, including those with children, must travel through dangerous pre-dawn conditions in Nuevo Laredo and Matamoros. Multiple individuals in court in September 2019 described being kidnapped or almost kidnapped as they made the journey via bus to the ports of entry. Individuals who did not appear in court were generally removed in their absence, despite the high risks of kidnappings and violent crimes against migrants in Tamaulipas.

Furthermore, there is no opportunity for organizations to provide legal orientations for asylum seekers and other migrants despite repeated requests by NGOs to offer such presentations and despite the fact that [fewer than 1%](#) of migrants subject to Remain in Mexico currently have legal representation. Pro se asylum seekers thus have no access to guidance about completing their asylum forms and presenting their claims, are unable to gather evidence, lack the capacity to translate documents into English, and are not equipped to meaningfully present their applications for asylum via video teleconferencing from the tent courts. These challenges are compounded by the fact that asylum seekers subject to MPP are often sleep deprived, malnourished, and suffering from trauma when they appear before the court.

DHS must immediately terminate the Remain in Mexico program. While the program remains operational, DHS and DOJ must:

- Grant attorney observers, NGO representatives, and the press access to tent facilities and hearing rooms to observe hearings pursuant to 8 C.F.R. §1003.27;
- Permit attorneys to attend court on behalf of their clients at the tent facilities even if the clients have not successfully presented themselves at the port of entry prior to the hearing;
- Grant nonprofit service providers access to tent courts and hearing rooms to provide legal orientations to unrepresented migrants;
- Identify the names of the immigration judges that have been assigned to hear Remain in Mexico cases via video teleconference for the tent court facilities and include the dates on which they will hear these cases;
- Permit attorneys to use electronic devices for business purposes within the tent facilities and hearing rooms;
- Permit attorneys to appear at their clients' *non-refoulement* interviews and submit evidence and arguments in support of those claims; and
- Ensure attorneys of record can meet with their clients in private meeting rooms within the tent facilities as requested by the attorney during business hours.

We call on Congress to prohibit any DHS or DOJ funding from being used for implementation of the harmful Remain in Mexico program, including a prohibition on any spending for new tent court facilities, in the Fiscal Year 2020 spending bill.

While the program remains operational, we respectfully urge Congress to engage in the following oversight activities:

- Visit the tent courts at Laredo and Brownsville and observe proceedings within those facilities;
- Visit Mexican cities (including Nuevo Laredo, Matamoros, Ciudad Juarez, Mexicali, and Tijuana) to meet with returnees subjected to the policy and understand the human impact of Remain in Mexico on asylum-seekers;
- Conduct oversight hearings to expose and document the ways in which the tent courts and the Remain in Mexico policy are violating the right of asylum and of due process and resulting in individuals being wrongly denied legal protection;
- Request information about this unprecedented and secretive program, including:
 - Any information about Remain in Mexico's proposed expansion, including rumored expansion of tent courts to Eagle Pass and other locations along the southwest border;
 - Any agreements between the U.S. and Mexico regarding Remain in Mexico (most of which haven't been made public);
 - Any DOJ, EOIR, CPB, ICE, or other agency implementing guidance on implementation of MPP (none of which has been made public);
 - Any information about the scope/procedures of *non-refoulement* interviews, including information about pressure asylum officers are receiving to deny fear of return in Mexico (*refoulement*) claims;
 - Harms returnees have faced in Mexico, and Mexico/U.S. response (or lack thereof) to these harms – including any information regarding detention or deportation of asylum-seekers from Mexico to countries of origin; and
 - People whose vulnerabilities should exempt them from Remain in Mexico who have nevertheless been subject to the policy (including, but not limited to, people with serious medical conditions, pregnant people, LGBTI-identifying individuals, and

Mexican nationals).

Thank you for your consideration of this request. If you have any questions, please do not hesitate to contact Leidy Perez-Davis at lperez-davis@aila.org or Heidi Altman at haltman@heartlandalliance.org.

Sincerely,

American Immigration Lawyers Association

Amnesty International USA

The National Immigrant Justice Center

Women's Refugee Commission