TO:

Hon. Joseph R. Biden, Jr. President of the United States

July 20, 2022

Hon. Kamala D. Harris Vice President of the United States

CC:

Hon. Merrick B. Garland Attorney General

Hon. Alejandro Mayorkas Secretary of the Department of Homeland Security

Hon. Antony Blinken Secretary of the Department of State

Re: Immediate Actions that the Biden Administration Should Take to Prevent Further Harm under Remain in Mexico Following the Supreme Court Decision

Dear President Biden and Vice President Harris:

In light of the Supreme Court's ruling in <u>Biden v. Texas</u>, which concluded that the Biden administration acted within its authority to end the Remain in Mexico policy, otherwise known as the Migrant Protection Protocols (MPP), the undersigned immigrant and refugee rights organizations and service providers urge the administration to take immediate action to wind down the policy and redress the harm suffered by those subjected to it. Given the Supreme Court ruling that the Texas district court erred in enjoining the termination of Remain in Mexico, that order should not have any effect. However, additional people continue to be returned to potential harm in Mexico under the policy.

As Homeland Security Secretary Mayorkas rightly concluded in his extensive memorandum reterminating MPP, the policy imposed "substantial and unjustifiable human costs on the individuals who were exposed to harm while waiting in Mexico" and "there are inherent problems with the program that no amount of resources can sufficiently fix." We applauded this correct analysis and your administration's principled commitment to end this rights-violating policy launched by the prior administration. Indeed, because MPP termination and the treatment of individuals previously subjected to MPP have always been on separate tracks, we do not believe the administration was legally obligated in August 2021 to stop its phased wind-down and processing program. Regardless of what happened then, there is now no impediment to activating an expeditious and organized process under which people subjected to MPP have a meaningful opportunity to pursue asylum within the United States, as elaborated below. Individual cases are outside the scope of the Administrative Procedure Act (APA) claims that will eventually be decided by the district court.

To prevent further human costs and harms of MPP, we urge your administration to immediately uphold its commitment to ending this inhumane policy by taking additional steps, including:

- Request that the Supreme Court expeditiously transmit the certified judgment of the decision to the U.S. Court of Appeals for the Fifth Circuit;
- Immediately cease the return of any individuals to Mexico under the policy;
- Act swiftly to coordinate with shelters, international organizations, and local nongovernmental
  organizations to create an expeditious and organized process by which people subjected to both
  iterations of MPP have a meaningful opportunity to pursue their asylum claims from the safety of
  the United States:
- Facilitate the transportation of individuals placed into MPP who remain in Mexico and other countries in the region to the U.S. to pursue their immigration proceedings;
- Provide individuals previously returned to Mexico under MPP who currently are located in the
  U.S. the opportunity to have meaningful access to the U.S. asylum system and due process,
  including Indigenous language interpretation, without being forced to return to danger in Mexico;
  and
- Dismantle Trump-era tent "courts" located in Brownsville and Laredo that are run by DHS contractors and have resulted in <u>due process violations</u>.

Despite your administration's attempt to implement safeguards, severe human rights violations and fundamental due process problems continue in the latest iteration of Remain in Mexico, confirming your administration's conclusion that the policy is inherently flawed. Asylum seekers returned to Mexico under the policy have been kidnapped. Vulnerable individuals have been subjected to the policy in violation of Department of Homeland Security guidance. Legal representation for asylum seekers returned to Mexico remains virtually non-existent, with only 5 percent of the more than 5,000 people placed in the reimplemented MPP assisted by counsel—a dramatically lower rate than for asylum seekers not subjected to MPP and allowed to enter the United States while their immigration court proceedings are pending. The true human cost of MPP will likely never be known, given the severe barriers the policy creates for people seeking refuge in the United States.

As the DHS re-termination memo notes, MPP also "<u>undercuts</u> the Administration's ability to implement critically needed and foundational changes to the immigration system." The policy has created significant strains on local resources and community-based organizations and presents operational challenges for immigration officials on both sides of the border. This includes pulling CBP officials from other critical duties, such as processing requests at ports of entry to seek asylum in the United States, and diverting U.S. asylum officers tasked with MPP screenings from their primary duty of adjudicating asylum applications.

As recent <u>tragedies</u> at the border make painfully clear, it is urgent that this administration take every available step to fully restore access to asylum at the U.S.-Mexico border, including at ports of entry. Policies blocking asylum at the border have had a devastating toll on those seeking safety, including <u>Black, Indigenous</u>, and <u>LGBTQI</u> persons.

Anything less than a swift and principled end to Remain in Mexico will undermine the administration's credibility; set a terrible example for other countries, including those that host the vast majority of the world's refugees; reward and embolden efforts to stop lawful administration actions; and bolster the unfounded narratives peddled by those seeking to portray people seeking protection as threats to the

United States. As we did when your administration ended the first iteration of MPP, we stand ready to support you in bringing this policy to an end once and for all. We urge you to do so expeditiously.

## Sincerely,

Afghan-American Foundation

African Communities Together

Al Otro Lado

Aldea - The People's Justice Center

Alianza Americas

American Civil Liberties Union

American Friends Service Committee

American Immigration Council

American Immigration Lawyers Association

Americans for Immigrant Justice

Amnesty International USA

Angry Tias and Abuelas of the RGV

Asylum Seeker Advocacy Project (ASAP)

**Bethany Christian Services** 

**Border Kindness** 

Border Network for Human Rights

**Border Organizing Project** 

**Bridges Faith Initiative** 

California Collaborative for Immigrant Justice

Casa del Migrante - Tijuana

Catholic Legal Immigration Network

Center for Gender & Refugee Studies

Center for Law and Social Policy (CLASP)

Church World Service

Coalition for Humane Immigrant Rights (CHIRLA)

Coalition on Human Needs

Community Asylum Seekers Project

Community Change Action

**Detention Watch Network** 

Diocesan Migrant & Refugee Services, Inc.

Disciples Immigration Legal Counsel

Disciples Refugee & Immigration Ministries

**Doctors for Camp Closure** 

El Instituto para las Mujeres en la Migración (IMUMI)

**ECDC** 

Espacio Migrante

Fellowship Southwest

First Focus on Children

Florence Immigrant & Refugee Rights Project

Fordham Law School Feerick Center for Social Justice

Freedom for Immigrants (FFI)

Freedom Network USA

Government Accountability Project

Haitian Bridge Alliance

HIAS

Hispanic Federation

Home is Here NOLA

Hope Border Institute

**Human Rights First** 

Immigrant Defenders Law Center

Immigrant Legal Advocacy Project

Immigrant Legal Resource Center

**Immigration Equality** 

Immigration Hub

Innovation Law Lab

International Mayan League

International Refugee Assistance Project (IRAP)

International Rescue Committee

Jesuit Refugee Service/USA

Jewish Family Service of San Diego

Justice Action Center

Justice for Migrant Women

Justice in Motion

Kino Border Initiative

La Raza Community Resource Center

Las Americas Immigrant Advocacy Center

Latin America Working Gorup

Lutheran Immigration and Refugee Service

Make the Road New York

Migrant Center for Human Rights

**MomsRising** 

National Center for Youth Law

National Council of Jewish Women

National Education Association

National Immigrant Justice Center

National Immigration Law Center

National Immigration Project (NIPNLG)

New York Immigration Coalition

New York Justice for Our Neighbors, Inc.

Oasis Legal Services

Oxfam America

Physicians for Human Rights

Project Lifeline

Public Counsel

Quixote Center

**RAICES** 

Rainbow Bridge Asylum Seekers

Refugee Congress

Refugee Health Alliance

Refugees International

Rian Immigrant Center

San Diego Immigrant Rights Consortium

Save the Children

**SIREN** 

Sisters of the Presentation

South Asian Americans Leading Together (SAALT)

Southern Poverty Law Center

T'ruah: The Rabbinic Call for Human Rights

**Tahirih Justice Center** 

Taylor Levy Law

The Advocates for Human Rights

The Black Alliance for Just Immigration (BAJI)

The Leadership Conference on Civil and Human Rights

The Sidewalk School

The Young Center for Immigrant Children's Rights

U.S. Committee for Refugees and Immigrants (USCRI)

Union for Reform Judaism

United Church of Christ Justice and Local Church Ministries

**United Stateless** 

Vera Institute of Justice

Washington Office on Latin America (WOLA)

Westchester Jewish Coalition for Immigration-WJCI

Wind of the Spirit Immigrant Resource Center

Witness at the Border

Women's Refugee Commission