



## Statement of the American Immigration Council

Submitted to the Senate Committee on Homeland Security and Governmental Affairs  
Hearing on Remain in Mexico  
January 16, 2025

The American Immigration Council (“the Council”) is a non-profit organization that envisions a nation where immigrants are embraced, communities are enriched, and justice prevails for all. We strive to create a society that values immigrants as vital contributors and where everyone is afforded an equal opportunity to thrive socially, economically, and culturally. We do this by shaping immigration policies and practices at the federal, state, and local levels through educating decisionmakers and the public and advancing sensible policy solutions through research and advocacy.

Since the Migrant Protection Protocols program (“Remain in Mexico”) was announced in late 2018, the Council has worked to bring attention to the program’s serious flaws and the ways in which it interfered with due process.<sup>1</sup>

While the program was in effect (officially until January 2021, though with reduced usage after March 2020), we – as well as other analysts – did not find the implementation of “Remain in Mexico” to have a clear effect on border crossings, despite proponents’ continued assertions that it was responsible for deterring unauthorized migration to the United States. What we and others did find, however, were widespread humanitarian abuses under the program, which put large numbers of migrants at acute risk of kidnapping, torture and rape, while failing to provide them with meaningful due process under U.S. immigration law.

### **The Remain in Mexico Program Failed to Provide Due Process and Repeatedly Subject Migrants to Serious Risk of Kidnapping, Torture, and Rape.**

Remain in Mexico did not provide due process to migrants. Representation rates for the people subjected to the program – essential for most people with complex asylum cases, as most Remain in Mexico participants had – were exceedingly low. In June 2019, the representation rate was just 1.3 percent.<sup>2</sup> As of December 2021, just 7.5 percent of individuals subject to Remain in

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<sup>1</sup> See, e.g., American Immigration Council, “The ‘Migrant Protection Protocols,’” February 1, 2024, <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.

<sup>2</sup> Camilo Montoya-Galvez, “‘Leave me in a cell’: The desperate pleas of asylum seekers inside El Paso’s immigration court,” CBS News, Aug. 11, 2019, <https://www.cbsnews.com/news/remain-in-mexico-the-desperate-pleas-of-asylum-seekers-in-el-paso-who-are-subject-to-trumps-policy/>.

Mexico had ever managed to hire a lawyer,<sup>3</sup> a figure which includes many individuals who were initially placed into the program and then later taken out of the program and allowed to enter the United States.

The lack of counsel made it nearly impossible for anyone subjected to Remain in Mexico to successfully win asylum — regardless of the merits of their case. The asylum grant rate under the first iteration of Remain in Mexico was a full order of magnitude lower than general asylum grant rate in immigration court of 12%.<sup>4</sup> By December 2020, of the 42,012 cases that had been completed under Remain in Mexico, only 521 people were granted relief in immigration court, a rate of 1.2 percent.<sup>5</sup> That means a person seeking asylum at the border under Remain in Mexico had one tenth the chance of winning their case of a person seeking asylum from inside the United States.

Many people put through the program were unable to apply for asylum in the first place as they missed court hearings due to the risks they faced as migrants and foreigners in Mexico, who became easy marks for criminal extortion and exploitation.<sup>6</sup> The Council previously submitted testimony to the House Committee on Homeland Security in 2019 about one such case, that of Lucia.<sup>7</sup>

Lucia is a South American woman who sought asylum at a port of entry in California in July 2019 alongside her 9-year-old disabled daughter. Despite rules providing that vulnerable individuals should not be placed into the program, both Lucia and her daughter were placed into the Remain in Mexico program. After DHS officials forced them to return to Tijuana, Lucia was held captive by a cartel gangster who forced her to do housework and sexually assaulted her daughter. Lucia convinced her captor to allow them to attend their first court hearing and was told that if she did not return both her and her daughter would be killed.

After attending court, Lucia begged DHS officials not to send her back to Mexico to await the second hearing, explaining what had happened to her. Nevertheless, Lucia and her daughter

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<sup>3</sup> Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings (through October 2021)” (Syracuse, NY: Syracuse University, accessed December 15, 2021, <https://trac.syr.edu/phptools/immigration/mpp/> (this tool is currently unavailable).

<sup>4</sup> Executive Office for Immigration Review, Asylum Decisions, October 10, 2024, <https://www.justice.gov/eoir/media/1344851/dl?inline>.

<sup>5</sup> Administrative Record, *Texas v. Biden*, No 2:21-cv-00067-Z, ECF No. 6 at AR554, <https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.94.0.pdf>.

<sup>6</sup> See, e.g., Kevin Sieff, “They missed their U.S. court dates because they were kidnapped. Now they’re blocked from applying for asylum.” Washington Post, Apr. 24, 2021, <https://www.washingtonpost.com/world/2021/04/24/mexico-border-migrant-asylum-mpp/>.

<sup>7</sup> American Immigration Council, “Statement of the American Immigration Council, Hearing on Examining the Human Rights and Legal Implications of DHS’s Remain in Mexico Policy,” November 21, 2019, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/statement\\_for\\_the\\_house\\_migrant\\_protection\\_protocols\\_11\\_21\\_19.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/statement_for_the_house_migrant_protection_protocols_11_21_19.pdf).

were again sent back to Mexico. Just blocks from the San Ysidro port of entry, they were kidnapped at knife-point, blindfolded, and driven to an unknown location.

Lucia and her daughter were held for 13 days by their new captors, while the kidnapers worked to extort thousands of dollars in ransom from Lucia's family in the United States. During that time both her and her 9-year-old daughter were beaten, tortured, and raped. After the ransom was paid, the kidnapers drove them to the border wall and ordered them to climb over, threatening that if Lucia did not, they would leave her daughter alone in the desert. Border Patrol eventually found Lucia, who was injured in the process of climbing the wall. They took her into custody and sent her to a detention center in Texas, where she learned that she had been ordered deported for missing her second court hearing while in the hands of her kidnapers and rapists.

Although Lucia was eventually able to successfully file a motion to reopen thanks to the dedicated assistance of pro bono volunteers at the detention center, her case illustrates the ways in which kidnappings likely led to many people losing their opportunity to seek protection.

Lucia's experience of being kidnapped and tortured after being placed into Remain in Mexico was common, as was the practice of extorting family members in the United States for ransom. Such kidnappings were extraordinarily well-documented throughout the time Remain in Mexico was in effect.

For example, This American Life recounted the story of one man who was kidnapped within five hours of being sent back to Mexico by DHS.<sup>8</sup> The New York Times obtained audio recorded by a woman in New Jersey of kidnapers threatening to murder her husband — who had been kidnapped in Reynosa after being placed into Remain in Mexico — in front of their 3-year-old son.<sup>9</sup> Vice News obtained video of two Cuban men placed into Remain in Mexico pleading for their lives; on the recording, kidnapers repeatedly threaten to murder them if their families in the United States won't pay a ransom.<sup>10</sup> These threats were not idle; in 2019 one man from El Salvador who was placed into Remain in Mexico in Tijuana was kidnapped, brutally murdered, and dismembered.<sup>11</sup>

It was also common and well-documented that DHS regularly ignored migrants' pleas with DHS officials not to be returned to Mexico. CBP officers were required to refer any individual expressing a fear of return, yet studies show they failed to refer the *majority* of people expressing

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<sup>8</sup> This American Life, "704: Our Pulitzer-Winning Episode," <https://www.thisamericanlife.org/704/transcript>.

<sup>9</sup> Miriam Jordan, "'I'm Kidnapped': A Father's Nightmare on the Border," *New York Times*, December 21, 2019, <https://www.nytimes.com/2019/12/21/us/border-migrants-kidnapping-mexico.html>.

<sup>10</sup> Emily Green, "I Was Kidnapped at the US-Mexico Border," *Vice News*, March 11, 2021, <https://www.vice.com/en/article/i-was-kidnapped-at-the-us-mexico-border/>.

<sup>11</sup> Wendy Fry, "Asylum-seeker killed in Tijuana was dismembered," *San Diego Union-Tribune*, December 19, 2021, <https://www.sandiegouniontribune.com/2019/12/13/asylum-seeker-killed-in-tijuana-was-dismembered/>.

fear to USCIS asylum officers for the mandated screening.<sup>12</sup> Even where people managed to obtain a hearing, nearly all were denied, with one whistleblower at USCIS reporting that asylum officers were pressured to issue blanket denials to all those expressing a fear of return to Mexico.<sup>13</sup>

Throughout every stage of the process, Remain in Mexico denied people due process and placed vulnerable individuals in immediate danger of irreparable harm.

### The Deterrent Impact of Remain in Mexico on Border Crossings Remains Unclear

Many of those who support the Remain in Mexico program have argued that it led to a drop in irregular crossings between ports of entry. Secretary Mayorkas asserted as much in his October 2021 decision to terminate the program, although he found that any such deterrent effect was significantly outweighed by the flaws of the program.<sup>14</sup> However, the evidence of a deterrent effect is mixed.

A more detailed sector-level analysis of the program's rollout in 2019 shows that there was little correlation between the program beginning in a particular Border Patrol Sector and a drop in border crossings. As shown in Figure 1, in the first few months of Remain in Mexico in early 2019 -- as the program was expanded to the San Diego Sector, El Paso Sector, El Centro Center, and Yuma Sector -- border apprehensions continued to rise in those sectors anyway. By May 2019, thousands of people had already been sent back to Mexico under the program, and yet apprehensions continued to rise.

Apprehensions finally began to drop in the first weeks of June. Crucially, the *expansion* of Remain in Mexico did not occur until July, more than one month *after* apprehensions had begun to fall. In the Rio Grande Valley Sector, which saw the highest level of crossings of any Border Patrol sector in 2019, there was a 13 percent drop in apprehensions from May to June,<sup>15</sup> even though Remain in Mexico did not go into effect there until July 17.

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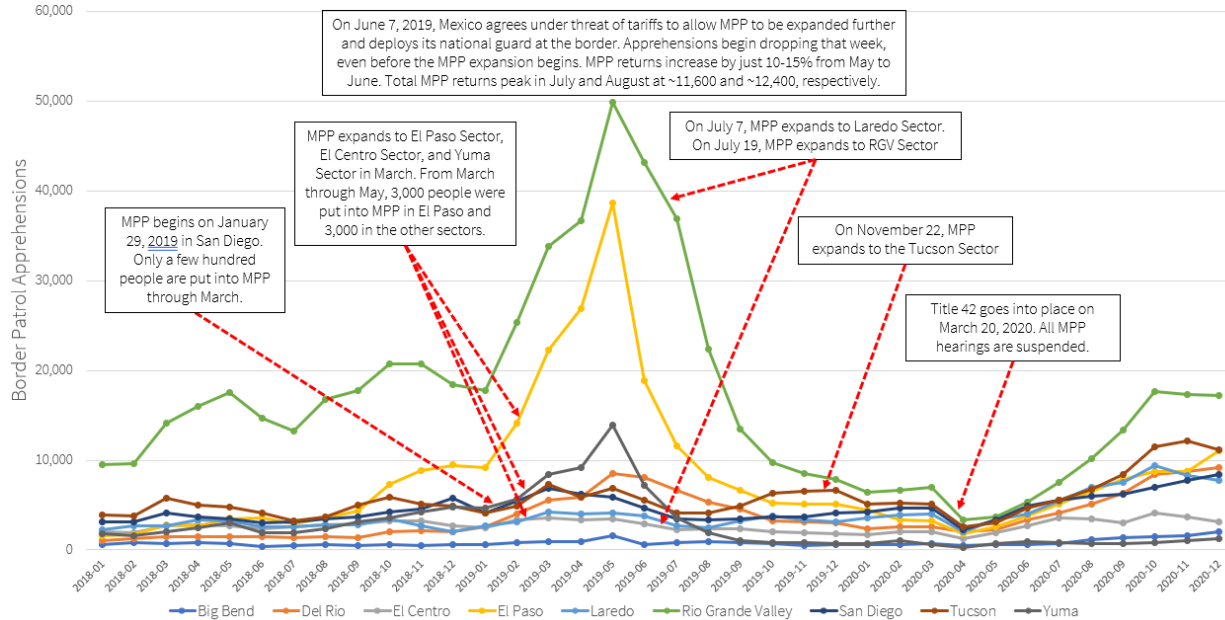
<sup>12</sup> Tom Wong, *Seeking Asylum: Part 2*, U.S. Immigration Policy Center, U.S. Immigration Policy Center, University of California, San Diego, October 29, 2019, <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

<sup>13</sup> Max Rivlin-Nadler, "Asylum-Officer Turns Whistleblower, Says 'Remain In Mexico' Program Rigged," *KPBS*, November 20, 2019, <https://www.kpbs.org/news/border-immigration/2019/11/20/asylum-officer-turns-whistleblower-trumps-remain-m>.

<sup>14</sup> DHS Secretary Mayorkas, Explanation of the Decision to Terminate the Migrant Protection Protocols, October 29, 2021, at 2, [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-justification-memo-508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf) ("[T]he Secretary recognizes that MPP likely contributed to reduced migratory flows. But it did so by imposing substantial and unjustifiable human costs on migrants who were exposed to harm while waiting in Mexico.").

<sup>15</sup> U.S. Border Patrol, "Monthly Apprehensions (FY 2000 – 2020)," August 2021, <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Monthly%20Encounters%20%28FY%202000%20-%20FY%202020%29%20%28508%29.pdf>.

Figure 1: Sector-Level Data Provides No Evidence of MPP's Deterrent Effect



The drop in apprehensions in June 2019 coincided with two things: the Trump administration announcing an expansion to Remain in Mexico, and Mexico itself carrying out an extensive crackdown on migration. This strongly suggests that other factors, including Mexico’s crackdown, played a much larger role than Remain in Mexico. This is consistent with a decade of evidence suggesting that Mexican enforcement has a greater role on U.S. border apprehension trends than changes to U.S. immigration policy.

Contemporaneous analysis by DHS officials in July 2019 indicated that the agency initially believed that it was the Mexican crackdown, not the expansion of Remain in Mexico, that led to a drop in border crossings in summer 2019.<sup>16</sup>

Beyond the Mexican crackdown, other policies implemented in 2019 may have impacted border crossings, including the July 2019 “asylum transit ban,” the institution of PACR and HARP in September 2019,<sup>17</sup> the announcement and implementation of the so-called “Asylum Cooperative Agreement” with Guatemala, and various other more minor procedural changes instituted during that period.

<sup>16</sup> Nick Miross, “Border arrests drop as Mexico’s migration crackdown appears to cut crossings,” *Washington Post*, July 9, 2019, [https://www.washingtonpost.com/immigration/border-arrests-drop-for-first-time-this-year-as-mexico-migration-crackdown-appears-to-cut-crossings/2019/07/09/e5eecf60-a254-11e9-bd56-eac6bb02d01d\\_story.html](https://www.washingtonpost.com/immigration/border-arrests-drop-for-first-time-this-year-as-mexico-migration-crackdown-appears-to-cut-crossings/2019/07/09/e5eecf60-a254-11e9-bd56-eac6bb02d01d_story.html).

<sup>17</sup> The Prompt Asylum Claims Review and Humanitarian Asylum Review Process (PACR and HARP) were two substantially similar policies under which migrants were given credible fear interviews while detained in Border Patrol custody. These programs were suspended in March 2020 due to COVID and then terminated under an executive order signed by President Biden. In 2023, the Biden administration reinstated a version of this program.

Given the wide variety of different programs being implemented over a short period in 2019, identifying the specific deterrent effect of Remain in Mexico is next to impossible. The Migration Policy Institute, in examining the impact of Remain in Mexico, has come to similar conclusions, noting that “While Remain in Mexico may have contributed to a perception that it would be harder to cross the border, it is not clear that the program was an effective deterrent on its own.”<sup>18</sup>

Finally, one major flaw of the Remain in Mexico program is that it incentivized desperate people stuck in Mexico to make repeated attempts to enter the country unlawfully between ports of entry. In deciding to terminate Remain in Mexico, Secretary Mayorkas noted that 1 in 3 people subject to the program were caught crossing the border again *after* having been sent back to Mexico in the first place.<sup>19</sup> As the Secretary observed, “The high rate of repeat encounters undercuts one of MPP’s key claimed advantages—namely its deterrent effect on would-be border crossers.”<sup>20</sup>

The benefits of Remain in Mexico were questionable; the harms were clear and appalling. If Congress wishes to protect migrants from exploitation by criminals, it should ensure that Remain in Mexico can never be implemented again. If Congress wants to pursue policy that meaningfully manages the border, it should focus on ensuring there are sufficient resources to process all those seeking protection in a way that respects basic principles of due process without subjecting people to a risk of severe violence.

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<sup>18</sup> Muzzaffar Chisti and Jessica Bolter, “Court-Ordered Relaunch of Remain in Mexico Policy Tweaks Predecessor Program, but Faces Similar Challenges,” *Migration Policy Institute*, December 2, 2021, <https://www.migrationpolicy.org/article/court-order-relaunch-remain-in-mexico>.

<sup>19</sup> DHS Secretary Mayorkas, Explanation of the Decision to Terminate the Migrant Protection Protocols, October 29, 2021, at 21, [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-justification-memo-508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-justification-memo-508.pdf) (“But the data also show that a significant share of individuals enrolled in MPP—33 percent as of June 30, 2021—were subsequently encountered attempting to reenter the country without inspection, rather than continuing to wait in Mexico for the resolution of their removal proceedings”).

<sup>20</sup> *Ibid.* at 22.