

CHAOS, CONFUSION, AND DANGER: THE REMAIN IN MEXICO PROGRAM IN EL PASO

WRC EL PASO TRIP (April 23–26, 2019)

Beginning on January 29, 2019, the Trump administration began forcing Central American asylum seekers to wait in Mexico while their immigration cases are processed. This unlawful policy, which has been disingenuously named the Migration Protection Protocols (referred to herein as the Remain in Mexico program), is just the latest in a series of increasingly cruel policies meant to deter vulnerable families and children from seeking asylum at the southern border. The program began at the San Ysidro port of entry in San Diego and later expanded to the Calexico, California, and El Paso, Texas, ports of entry, as well as the San Diego and El Centro Border Patrol Sectors (between ports of entry). As of April 26, 2019, Department of Homeland Security (DHS) officials had reportedly subjected more than 1,600 migrants to this program,¹ although Mexico reported on April 24 that it was 1,928 cases² and as of May 15, 2019, that number had reportedly increased to over 5,000.³ The Southern Poverty Law Center and the ACLU sued to block implementation of Remain in Mexico (RIM) and that litigation is currently pending.⁴

RIM Hearing Observations

WRC observed RIM hearings at the El Paso Immigration Court on April 24 and 25, 2019. All but one of the people scheduled for court were part of a family and more than half of those scheduled were children. In total, 16 families were present in court, including 21 children, many of whom were under the age of five. On the second day of hearings, four people, including a family of three, were not present for their hearings. Despite being unable to respond definitively about the location of the missing people, the government moved for the judge to order them removed in absentia. All but one of the families present in court those two days expressed a fear of returning to Mexico, and the court asked DHS to ensure each person received non-refoulement interviews before being returned to Juárez, Mexico.

WRC remains extremely concerned that RIM is being applied to vulnerable populations, such as young children, families, and persons with documented health issues. As a part of RIM, Customs and Border Protection (CBP) is once again separating families in even more dangerous and devastating circumstances than in the past.



"El Paso Immigration Court"
Photo credit is WRC/Ursela Ojeda

- 1 Hamed Aleaziz, "NEW: DHS officials say more than 1,600 asylum seekers have been returned to Mexico as they await for their case to be processed in the US. That's a few hundred," Twitter, April 26, 2019, <https://twitter.com/Haleaziz/status/1121852822390067200>.
- 2 Adolfo Flores, "Since Jan. 29, when the Trump admin implemented MPP/'Remain in Mexico,' to April 22 some 1,928 Central Americans have been forced to go back to Mexico while their asylum cases are adjudicated," Twitter, April 24, 2019, <https://twitter.com/aflores/status/1121081785067032576>.
- 3 Camilo Montoya-Galvez and Angel Canales, "More Than 5,000 Asylum Seekers Have Been Returned under 'Remain in Mexico' Policy," *CBS News*, May 13, 2019, <https://www.cbsnews.com/news/remain-in-mexico-more-than-5000-asylum-seekers-have-been-returned-under-trump-policy/>.
- 4 Innovation Law Lab et al v. Nielsen et al, 3:19-cv-00807 (N.D. Cal.), https://www.splcenter.org/sites/default/files/2019.02.14.0001_compl_for_decl_and_inj_relief.pdf.



Security Issues with Returns to Juárez, Mexico

Mexican border cities are becoming increasingly dangerous and the RIM program is subjecting vulnerable migrants to those dangers, increasing their vulnerability.

- CBP is returning migrants to Mexico under RIM without their passports, birth certificates, or other identity documents. This dangerous practice puts migrants at risk of exploitation and abuse. Additionally, contrary to the Mexican government's claims that it would provide those in RIM with humanitarian visas to allow them to live and work in Mexico, many persons subject to RIM in the El Paso area hold only temporary tourist visas for Mexico, which do not permit the recipient to work.⁵ Some families at the court hearings WRC observed at the end of April 2019 had been issued visas that would expire within 20 days of their return to Mexico. Their next hearings were scheduled for a month in the future, meaning that unless they obtained an extension of those visas (a process over which the US government has no control), these migrants would run out of status to be present in Mexico before their next hearing in the US. For migrants whose identity documents are in CBP custody, requesting extensions of their Mexican visas will be exceptionally difficult, if not impossible.

Lack of status makes it impossible for those in the RIM program to access vital social services for which they may be eligible in Mexico, including registering their children for school, obtaining a work permit, and finding housing. It also substantially increases the risk of exploitation, arrest, and deportation from Mexico, where undocumented migrants face discrimination and abuse.⁶

To the extent that individuals had documents containing evidence supporting their case (as those placed in RIM, as WRC understands it, are asylum seekers) along with identity documents, lack of documentation will make it difficult for the individuals in RIM and/or their counsel, should they have any, to develop their defense.

Furthermore, just being in Mexico without identification documents puts migrants at risk of arrest and homelessness—by inhibiting access to housing or shelters—and may prevent their ability to access protection elsewhere.

Other serious security concerns include the following:

- **Shelters in Ciudad Juárez, Mexico, are at capacity.** Local advocates and the migrants placed in RIM confirmed that migrant shelters in Ciudad Juárez are at capacity or exceeding capacity. The families we observed in court proceedings on April 24 and 25, 2019, told the court that they were informed by shelter personnel that they would not have a place at the shelter when they were returned following their hearing, given the number of migrants arriving and waiting for shelter. Some parents were crying and trembling, saying they had no money to afford a hotel or other accommodations and wondering out loud where they would go if returned to Ciudad Juárez. They surmised that they would have to live on the streets. This is particularly concerning given the levels of violence and exploitation migrants in these border cities and towns face.

5 "Visitor Visa for Mexico," Secretaría de Relaciones Exteriores, accessed May 16, 2019, <https://embamex.sre.gob.mx/australia/index.php/visitovisa>.

6 See, for example, *Uprooted in Central America and Mexico*, (UNICEF, August 2018), https://www.unicef.org/publications/files/UNICEF_Child_Alert_2018_Central_America_and_Mexico.pdf.

- **Visibility of migrants subjected to RIM.** Several of the families subjected to RIM also vocalized their concerns of being perceived as outsiders and feeling that they were being watched in Ciudad Juárez. As mentioned elsewhere, all but one of the families we observed in their hearings requested a non-refoulement interview, based on their fears of returning to Mexico and the insecurity that they experienced or perceived.⁷
- **Ciudad Juárez is dangerous.** On April 1–15, 2019, an average of 5.7 people were killed in Ciudad Juárez every day, totaling 86 homicide victims. The estimated total number of homicides for the year through April 15 is 402, with the year-to-date daily average at 3.8 homicides per day, up from the 3.4 average daily death rate in 2018. Thus far in 2019, at least five femicides have been recorded.⁸
- **Violent crimes have increased in Ciudad Juárez, as well as in Tijuana and Acapulco.** In addition to homicides and femicides, such crimes as armed robbery, kidnappings/abductions, and extortion have also increased.⁹ A father of two daughters, ages two and five years old, relayed to the court some of his concerns about being sent back to Mexico. He said he bought a snack for his children and when he went to throw away some trash, he “saw the body of a dead man” lying on the ground next to the trash bins.¹⁰

It is worth noting that families seeking protection in the US often have a contact in the US, whether a relative or friend, whom they plan to reach out to for support. In contrast, several of the migrant families in court told the judge that in Mexico they had no support system and nowhere to go.

Family Separation

WRC has received and confirmed numerous reports of family separation through RIM. This is especially concerning given the danger involved to those returned to Mexico, the difficulty in communicating or reunifying after such a separation, and the additional potential risk of trafficking this practice creates. The separation of families in this manner is a violation of due process and presents both logistical and safety issues. Children who are separated from an adult or parent who is then sent back to Mexico where they face additional dangers are indefinitely separated with no means of contacting the parent or adult.

WRC has identified several scenarios of family separation in the RIM program, including:

- Adult legal guardians sent back to wait while their children are placed with the Office of Refugee Resettlement (ORR);

7 See, for example, Robert Moore, “‘I’m in Danger’: Migrant Parents Face Violence in Mexico Under New Trump Policy,” *Texas Monthly*, April 25, 2019, <https://www.texasmonthly.com/politics/im-in-danger-migrant-parents-face-violence-in-mexico-under-new-trump-policy/>.

8 Miguel Vargas, “Asesinaron a 10 Durante el Lunes” (in Spanish), *El Diario de Juárez*, April 16, 2019, <https://diario.mx/juarez/asesinaron-a-10-durante-el-lunes-20190416-1503309/>.

9 José Raúl Linares, “En 50 Municipios se Concentra el Infierno de la Violencia: Tijuana, Ciudad Juárez, Acapulco...” (in Spanish), *Proceso*, April 29, 2019, <https://www.proceso.com.mx/581666/en-50-municipios-se-concentra-el-infierno-de-la-violencia-tijuana-ciudad-juarez-acapulco>.

10 As also recorded by Julián Aguilar, “Migrants on Border Face Confusion and Fear under ‘Remain in Mexico’ Policy,” *The Texas Tribune*, April 26, 2019, <https://www.texastribune.org/2019/04/26/migrants-border-face-confusion-and-fear-under-remain-mexico-policy/>.

- Families ripped apart when parents are split from each other and their children, one parent being processed into the US with all or some of their children while the other is sent to Mexico with some or none of their children;
- Adults accused of not being a legitimate parent placed in RIM while the child is sent to ORR; and
- Children being separated from common-law guardians or other family members, such as aunts, siblings, or grandparents.

These cases do not allow parents or guardians to defend their relationships or provide additional evidence, and they make it virtually impossible for ORR to contact the adult for information pertinent to the child's safety, welfare, or immigration case. As with prior cases of separation found to be unconstitutional, the government is not documenting these cases, is failing to provide ORR with critical information, and has no ability to track or reunify the families it is separating. This practice is traumatizing and endangering children.

Due Process Issues

Despite valiant efforts made by local advocates and organizations such as Las Americas Immigrant Advocacy Center to assist families with their cases and serve as friend of the court in proceedings, the RIM program is little more than a travesty of justice and due process. WRC observed numerous due process issues with the way the program was implemented in El Paso, including the following:

- **Impediments to legal representation.** It is nearly impossible for migrants in the program to find an attorney who is able to represent them in their proceedings. Local attorneys and advocates have reported that communication is extremely difficult with asylum seekers in Ciudad Juárez because of restrictive phone policies at the shelters, making communication with clients extremely challenging. Migrants who come to court were also told that they could not return to the shelters after the hearings, making it virtually impossible for attorneys to even locate their clients in Mexico. Attorneys are also apprehensive about potential issues arising from practicing US law in Mexico. Families who do have representation still face substantial difficulties in preparing for hearings as their pre-hearing prep time in the US is limited, in some cases just 30–60 minutes before the hearing itself. The attorneys who were present at the court informed the judge that their assistance with these RIM cases would be difficult and unsustainable.
- **Unclear and insufficient processes and procedures.** In court, no one—not the immigration judge or DHS attorneys and certainly not the migrants themselves—knew all of the program's rules and policies. When asked by the immigration judge, DHS attorneys in court could not identify a process for requesting parole, refusing to even specify which component of DHS (CBP, ICE, US Citizenship and Immigration Services (USCIS)) might be the appropriate one to submit a request to. Nor could DHS specify how a person subject to RIM might be able to challenge their inclusion in the program beyond having a non-refoulement interview with USCIS. This is despite existing implementing guidance indicating that people with known physical or mental health issues should not be subject to the program.¹¹ On the second day of RIM hearings, WRC observed the case of a four-year-old Honduran child with Guillain-Barre syndrome who was nonverbal and could not walk on her own. Despite her obvious health issues, this child was nevertheless unconscionably placed into RIM with her mother and older sister.

11 *MPP Guiding Principles for Migrant Protection Protocols (US Customs and Border Protection, January 28, 2019)*, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.



- **Non-refoulement interviews.** The standard that must be met to avoid being forced to return to Mexico is inappropriate, incredibly high, and difficult to meet. Extreme danger and risk to life and limb are not always enough. Migrants, including families with small children and pregnant women, who are likely to face substantial danger in Mexico, will be returned under the program if they cannot prove that that harm is related to a protected ground for asylum and cannot show a nexus between their harm and that protected ground. Advocates expressed concern to WRC that the standard does not adequately capture the danger of Mexico for returned migrants, noting that even kidnapping without an explicit connection to protected ground is not necessarily considered enough to keep someone from having to return to Mexico under this procedure.
- **Ad hoc procedures for requesting non-refoulement interviews.** On the second day of proceedings that WRC observed, DHS could not definitively tell local attorneys how to submit a notice of appearance for participation in their clients' non-refoulement interviews. This process does not appear to be published or outlined in any public-facing document, meaning migrants and attorneys would not necessarily know how to request it.
- **Issues with notice and service of legal documents.** Several families present in court had not been given copies of their Notices to Appear (NTA) by CBP when they were sent back to Mexico, and multiple families had shown up for court despite receiving paperwork from DHS that contained an incorrect court date.¹² DHS is issuing NTAs to families placed in RIM with placeholder contact information that is exactly the same for each family, regardless of where they are staying in Mexico. This means there is no reliable way for DHS or the immigration court to let families know if their cases had to be rescheduled.

Logistical Issues

The RIM program is exacerbating the current situation at our border by creating additional hurdles, paperwork, and workloads for border officials that lead to even longer processing times, overcrowding, and risks to migrants.

- **Documents.** As mentioned above, WRC received reports that CBP retains possession of the identity documents of some migrants placed into RIM. This places individuals and families in RIM in an even more precarious situation upon their return to Mexico. In addition, it creates profoundly problematic logistical issues for migrants in Mexico, including a man who wanted to withdraw his request for entry to the US and return home but was unable to do so because US agents had taken and refused to return his identification documents.¹³
- **Difficulties getting to the port of entry.** Migrants placed in RIM must arrive several hours in advance of their proceedings. For those migrants, delays at ports of entry could prove disastrous to them making it to court in time. Based on reports from families and their attorneys, families who are to appear for the 10 am hearing must arrive at the port of entry by 6 am; those who are to appear for the 1 pm hearing are to show up at the port by 9 am. WRC was told by a few advocates that arriving by 6 am presents significant challenges for families. These families would

12 It is unclear whether the family and individual who missed court on the second day received the same inaccurate information.

13 See, for example, Bob Moore, "One update from the saga of Elmer, the Salvadoran man who just wants to go home to be with his sick son. U.S. border agents refused to return his Salvadoran national ID," Twitter, May 10, 2019, <https://twitter.com/BobMooreNews/status/1127008539845832704>.



have to leave the shelter as early as 4:30 am to make their way to the port of entry. Because many shelters will not open that early, for safety or other reasons, families in those shelters have to find hotel accommodations for the night before their hearings or sleep on the streets.

- **Fear of return to Mexico.** Those individuals and families in RIM who express a fear of return to Mexico are given a non-refoulement interview conducted by USCIS telephonically prior to being returned to Mexico. After these individuals expressed their fear to the El Paso immigration judge, Nathan Herbert, he explained that DHS has “taken note of their fear” and will “refer them for a non-refoulement interview.” One family in court on April 25, 2019, said upon hearing this that a Border Patrol (BP) agent told her that the question of whether she stays in the US or is returned to Mexico is up to the judge. This anecdote raises concerns as to whether CBP is referring individuals and families in RIM for interviews with USCIS, per its own policy, in all cases where such fear claims are made.
- **Inadequate and inhumane conditions in CBP custody.** Further, WRC understands that, following referrals for non-refoulement interviews made during the first immigration court hearing, those subjected to RIM are transported back to CBP custody. According to anecdotal reports, it appears individuals and families wait there for a day or more while the interview with USCIS is scheduled and conducted. While in El Paso, WRC observed an outdoor holding area with “tents” that CBP is using at the Port of Entry in El Paso (visible from the pedestrian lanes of the Paso del Norte International Bridge). These tents are not enclosed, there is no heating or cooling system, and we observed no mats, blankets, water coolers, or other items that would normally be present for a holding area.



“Temporary CBP tent facility outside the El Paso Border Patrol station”
Photo credit is WRC/Ursela Ojeda

General Observations

- The El Paso community and NGOs continue to step up and care for migrant families released by ICE, including a new Annunciation House shelter that opened when WRC was in El Paso. WRC commends the efforts of shelters and legal service providers who are working tirelessly to support arriving families.
- WRC continues to hear reports of families spending a long time (many for five days or more) in CBP custody and of families and children leaving CBP custody with significant untreated medical issues. WRC was aware of reports that CBP planned to open a new tent facility to house families near the border, but BP did not respond to our request for a tour of this facility.¹⁴ We were able to observe from public roads what we believe are new tents that BP/CBP has set up for additional holding capacity and that we believe were to be put in operation starting the week of April 29, 2019.
- RIM is layered on top of metering, that is, the practice of turning back asylum seekers to force them to wait to present themselves at a port of entry to ask for asylum, which also continues to happen in El Paso. Those arriving at the port of entry who wish to present themselves are asked

14 Julián Aguilar, “Temporary Immigration Detention Facilities to Open in El Paso, Rio Grande Valley,” *The Texas Tribune*, April 18, 2019, <https://www.texastribune.org/2019/04/18/texas-host-new-tent-city-migrant-families/>.



to sign up on a waiting list. When it is their turn to present, CBP may decide to place migrants into RIM and send them back to Juárez. As of our visit, WRC understands that the wait list is in the thousands of persons. Previously, the list was managed by one of the shelters in Ciudad Juárez; recently, however, a Chihuahua state entity has taken over the list (the Chihuahua State Commission on Population and Migrant Services/Consejo Estatal de Población y Atención a Migrantes del Estado de Chihuahua (COESPO)). Although we were unable to meet with the officials who are in charge of the list on this trip, the advocates reported that the process was better now and that previous concerns, which include corruption, had not been made as of the writing of this report.

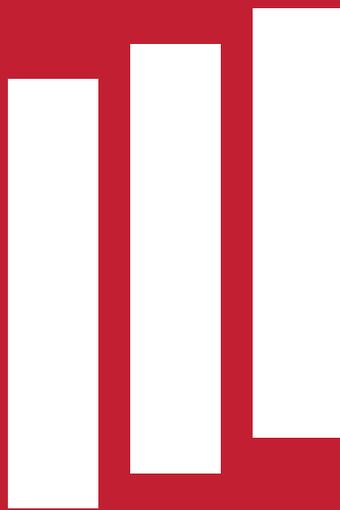
Conclusion

The RIM program is endangering the lives of migrants. The WRC observed or documented due process violations, the separation of families, and the return of vulnerable individuals into extreme danger. The policy is a violation of human rights law and due process. RIM is exacerbating backlogs and workloads of border official and ports of entry and causing chaos and suffering along the border.

Recommendations

WRC urges the Trump administration to stop the expansion and further implementation of the RIM program and allow those that have been subjected to it to return to the United States for the remainder of their immigration proceedings. DHS should also ensure that ports of entry are adequately staffed to minimize wait times and quickly and efficiently process asylum claims as they arise.

WRC urges Mexico to cease cooperation with US actions that endanger migrants, limit access to protection at the border, and refuse to allow migrants to be returned to its territory under the RIM program. Mexico should work to ensure that those subject to RIM have continuous legal status in Mexico, including the ability to work and enroll their children in school, and a clear process to report safety concerns within Mexico to the appropriate authorities.



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Women's Refugee Commission | 15 West 37th Street | New York, NY 10018
212.551.3115 | info@wrcommission.org | womensrefugeecommission.org