

# Asylum Denied: Remain in Mexico 2.0

WRC Tijuana/San Diego Trip  
November 29 - December 4, 2021

## Introduction

On December 2, 2021, the Biden administration announced that it would soon [begin returning individuals to Mexico](#) to wait while their immigration cases proceeded in the United States. This revived and expanded version of the Remain in Mexico (“RMX”) policy followed an agreement with the Mexican government. The policy, formally known as the Migrant Protection Protocols, began in January 2019 under the Trump administration, and [returned more than 70,000 individuals](#)—including families and children—to Mexico. Despite its formal name, this policy has nothing to do with the protection of migrants. RMX was—and is—an unlawful and cruel policy designed to systematically deny individuals access to protection. In March 2020, then-candidate Joe Biden promised to end RMX, calling the policy “dangerous, inhumane, and...against everything we stand for.”

The Women’s Refugee Commission (WRC) and partners closely [monitored the implementation of RMX](#) under the previous administration, documenting the policy’s harms, including [family separations, kidnapping, extortion, and assault, serious due process issues](#), and deteriorating security conditions in border cities to which people were returned. Ahead of the planned reimplementaion of the policy by the Biden administration, WRC staff traveled to San Diego, California, and Tijuana, Mexico, from November 29 – December 4, 2021, to speak with government officials, legal and humanitarian service providers, United Nations agency staff, and directly impacted individuals about the situation at the border and the potential impact of the restart of RMX.<sup>1</sup> This report outlines key findings from our trip and analyzes the likely impact of the restart of this policy by the Biden administration.

## Why is the Biden administration restarting Remain in Mexico?

President Biden ordered the US Department of Homeland Security (DHS) to [suspend returns under RMX](#) on his first day in office and issued a [memo terminating the policy](#) in June 2021. From February to August 2021, the Biden administration allowed just over [13,000 people](#) previously subjected to RMX to proceed with their asylum cases from safety within the United States. In August 2021, the Biden administration reportedly began [considering “reviving”](#) what it implied would be a gentler version of RMX, which was [widely condemned as impossible](#) by WRC and other advocates. Later that month, a Texas judge [ordered the administration to restore RMX](#) “in good faith.” The administration appealed that order and issued a new [memo terminating RMX](#) in October 2021.<sup>2</sup>

In the October [termination memo](#), DHS Secretary Alejandro Mayorkas concluded that RMX “imposed unjustifiable human costs” and that “there are inherent problems with the program that no amount of resources can sufficiently fix.” The Biden administration has [committed to end RMX](#) eventually, but said that it planned to comply with the court’s order to restart RMX. **Given this commitment, the Biden administration’s decision to expand RMX to new populations, including individuals from**

- 1 Between November 29 and December 4, 2021, WRC met with a range of stakeholders in San Diego and Tijuana. In addition, WRC staff visited two migrant shelters in Tijuana and obtained consent from all individuals interviewed during the visits. These individuals came from Mexico, Honduras, El Salvador, Guatemala, Cameroon, and other countries.
- 2 The new memo will go into effect when there is a final judicial decision on the injunction ordering the reimplementaion of RMX.

**Western Hemisphere countries, despite being under [no legal obligation](#) to do so, is outrageous.**

The administration's December 2 announcement regarding the reinstatement and expansion of RMX has been met with broad condemnation.<sup>3</sup>

On December 8, 2021, the administration restarted RMX in El Paso, Texas, [returning two men to Ciudad Juarez](#), Mexico, with hearing notices for immigration court in January 2022. RMX is expected to be expanded in the near future to [six additional](#) US cities at the southern border: San Diego, CA; Calexico, CA; Nogales, AZ; Eagle Pass, TX; Laredo, TX; and Brownsville, TX. Individuals placed into RMX will be asked to return to immigration court via ports of entry in San Diego, Laredo, Brownsville, and El Paso.

## What's different about this version of Remain in Mexico?

The new iteration of RMX differs from the version initiated under the Trump administration in key ways.

- **Expansion of the policy to individuals from all Western Hemisphere countries<sup>4</sup>— including people from Haiti.** Under the Trump administration, RMX was originally [applicable only to Spanish speakers](#). Despite this, DHS routinely returned individuals from Central and South America who spoke Indigenous languages to Mexico, and later began [returning Brazilians under the program](#). The Biden administration's decision to expand RMX,<sup>5</sup> and especially its decision to include Haitians, is alarming. Haitian migrants and asylum-seeking individuals face pervasive, targeted [anti-Black racism and discrimination](#) in Mexico and are at particular risk for harm upon return to Mexico.
- **Continuation of Trump-era Title 42 expulsions and near-total inability to seek asylum at the border.** RMX is being restarted at a time when the Biden administration continues using the COVID-19 pandemic as a basis for summarily rejecting nearly all people seeking asylum at the border. The administration continues to expel individuals pursuant to a xenophobic and unlawful order issued in March 2020 by the Centers for Disease Control and Prevention (CDC) under Title 42 of the US Code. Title 42 expulsions have [no basis in public health](#), but are used instead to illegally return people to their home country or back across the border into Mexico without any hearings or opportunities to seek protection. As a result, it has been nearly impossible to seek asylum anywhere along the border. On December 3, 2021, just one day after announcing the planned restart of RMX, officials from the CDC announced an additional 60-day extension of the August [order extending Title 42](#).

Currently there is no way for the vast majority of people to approach a US port of entry and seek asylum. Under the previous iteration of RMX, individuals were either enrolled into the program

<sup>3</sup> The union representing US Citizenship and Immigration Services (USCIS) asylum officers condemned the reimplementation of RMX, saying it makes officers "[complicit in violations of U.S. federal law](#)" and binding international treaty obligations of non-refoulement that they have sworn to uphold. Several Members of Congress, including Representatives [Veronica Escobar](#), [Linda Sánchez](#), and [Chuy Garcia](#), as well as Senator [Alex Padilla](#), condemned the restart of RMX. New Jersey Senator Bob Menendez issued a statement [expressing concern](#) that the administration is "overseeing an expansion of this inhumane policy and implementing the court's order before critical safeguards are in place," and pressed the administration to swiftly revoke this inhumane policy.

<sup>4</sup> All Western Hemisphere countries except Mexico. Mexican individuals are not included in RMX.

<sup>5</sup> There is some confusion about whether Indigenous language speakers will be exempted from RMX. While DHS policy guidance does not explicitly exempt Indigenous language speakers, the Mexican Foreign Ministry released a [statement](#) on November 26, 2021 highlighting that the vulnerability criteria for exemptions from RMX should include "monolingual Indigenous speakers." WRC has serious concerns over inclusion of Indigenous language speakers in RMX, as they face heightened discrimination and increased barriers to access services in Mexico as well as in the US asylum and immigration processes more generally.

after presenting themselves at a port of entry to request asylum or after crossing into the US between ports of entry. Prior to the start of Title 42 expulsions by the Trump administration, most of these individuals would have likely been [unlawfully turned back](#) or metered<sup>6</sup> by the US government prior to being placed into RMX. Under President Biden's revived and expanded RMX, the vast majority of people have been left without a path to request asylum at ports of entry and will be placed into RMX after crossing irregularly.<sup>7</sup>

While in Tijuana, WRC staff spoke with several women<sup>8</sup> who—together with their families—reported that they had been illegally turned away by US Customs and Border Protection (CBP) officers after approaching the port of entry to request protection. For example:

- » A woman from southern Mexico who fled her home after the disappearance and murder of her husband by cartels shared that she approached the port of entry with her 15-year-old son to ask for asylum and was turned away by CBP officials who said there was “no asylum here.”
- » A mother and her two sons who, after pleading desperately for protection from an abuser in Mexico, shared that they were shoved back by CBP across the international boundary between Mexico and the United States and told that the border was closed for asylum.
- **In the newest iteration of RMX, the US and Mexican governments have again promised to exclude “vulnerable individuals”<sup>9</sup> from the policy and to ensure expanded access to housing, safety, and services for individuals in Mexico under RMX.** Both governments promised—and [failed](#)—to implement many of these services and procedures during the last iteration of RMX, and WRC is concerned that it is unlikely they will do so this time.

## General observations from our visit to Tijuana, Mexico

### Reimplementation of RMX will exacerbate the current lack of capacity to receive and support migrants and asylum-seeking individuals in Mexico.

Local legal and humanitarian service providers and authorities expressed concern over the reinstatement of RMX, which they said will cause Tijuana's already strained resources to “collapse.” On December 3, the city's mayor publicly commented that RMX will exacerbate poor conditions for migrants, [stating](#) “[W]e are not prepared.... I don't think any city or state along the border is prepared.” The Mexican government confirmed that the [Biden administration promised to provide extensive funding](#) to international organizations that will increase support shelters and services for migrants in Mexico. However, the shelter operators we interviewed had yet to receive information about potential resources.

<sup>6</sup> In 2016, the Obama administration first implemented an unlawful practice known as “metering,” or an artificial daily limit on asylum applications, when Haitians—largely displaced by the devastating 2010 earthquake—began arriving in Tijuana, Mexico, seeking to request asylum in the United States at the port of entry. In 2018, the Trump administration expanded metering into an extensive, border-wide practice. CBP violates domestic and international law by failing to inspect people seeking asylum at ports of entry and immediately turning them back to Mexico. According to a September 2021 federal ruling, metering violates [due process under the US Constitution](#) and “punishes” individuals who attempt to enter through ports of entry.

<sup>7</sup> Often, migration between ports of entry is erroneously referred to as “irregular” or “illegal”—however, US law and international treaties clearly state that [people can seek asylum regardless of how they entered the country](#). In fact, an individual can be anywhere within the US and exercise the right to apply for asylum. Put simply, the way individuals arrive has no bearing on their legal right to request asylum.

<sup>8</sup> People quoted in this report are not identified in order to protect them.

<sup>9</sup> The policy guidance issued on December 2, 2021, exempts certain individuals from the policy, including people of advanced age, those with physical/mental health conditions, or those at increased risk of harm due to their gender identity or sexual orientation. See below for further discussion on vulnerability exemptions and oversight mechanisms.



Mural at the Proyecto Salesiano Tijuana.  
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- Shelters in Tijuana and across the border are at capacity:** Local service providers and organizations reported all of the city's shelters are at or exceeding capacity. To access most shelters, individuals must first test and quarantine in the city's *Hotel Filtro*, managed by the International Organization for Migration. In addition, hundreds of people continue to live in the squalid makeshift Chaparral tent encampment, where there are no formal services and individuals are exposed to heightened insecurity. According to a [recent survey](#) by local government officials, 40 percent of the 769 individuals living at the encampment are minors. Several local stakeholders reported that the majority of individuals in shelters and the encampment are Mexicans who have been displaced by violence from the states of Guerrero and Michoacan. The situation in Tijuana resembles other Mexican border cities where, according to reports WRC has received, shelter capacity has also become strained.<sup>10</sup>
- Many families and adults seeking protection struggle to access basic social services in Tijuana:** The lack of permanent legal status in Mexico, common both for those seeking to apply for asylum in the United States and for those wishing to stay in Mexico, has prohibited many individuals from getting a job, securing stable housing, or accessing medical care. We interviewed several women with severe medical conditions who were unable to find treatment. The risks to pregnant people are particularly high; one pregnant woman we spoke to reported being denied care by local hospitals. Parents, too, reported specific struggles; many told us that they were unable to enroll their children in school or find child care, which made it impossible to work. Other parents reported an inability to access necessary mental health care and psychosocial support for their children, including instances where a child who had engaged in previous self-harm was feeling suicidal and instances where children had experienced significant trauma.
- Migrants, including women and children, are in danger in Tijuana:** The municipality of Tijuana continues to have the [highest number of homicides](#) in Mexico, with [1,806 homicides](#) recorded so far in 2021. According to Mexico's Public Security Secretary, Tijuana has the [highest homicide rate for women](#). Several months ago, [shootouts between police and cartels](#) took place on the

<sup>10</sup> WRC has received reports from other northern Mexican border cities where RMX will be reimplemented which are also facing [strained shelter capacity](#). Additionally, the encampment in Reynosa currently houses [roughly 2,500 individuals](#).

doorstep of one of the city's migrant shelters. Many families we spoke to were afraid to leave the shelter due to the insecurity. Local stakeholders also reported an increase in fraudulent schemes by bad actors posing as nonprofit or international organizations to charge migrants for an opportunity to request asylum in the US. Local stakeholders expressed concern that misinformation will only increase with the reinstatement of RMX.

WRC staff also spoke with several Mexican women and families whose persecutors either knew they were in Tijuana or had followed them to the city. One woman told us that neither she nor anyone else in her family of five had left the shelter once since their arrival for fear of being tracked down by the cartels they had fled from in southern Mexico.

- **COVID-19 vaccination rates among migrants and individuals seeking protection are already high in Tijuana:** In summer 2021, the governor of Baja California, Mexico, declared the state “a sanctuary for migrants” and committed to vaccinating everyone. Over the next few months, local health authorities [set up temporary vaccination clinics](#) at the Chaparral encampment and in a number of shelters across Tijuana to administer vaccines to thousands of migrants and individuals seeking protection. During our visit, local officials reported that vaccines remain easily accessible to migrants and asylum-seeking individuals and that vaccination rates in the city's shelters are high. Yet, even though the Biden administration [lifted travel restrictions](#) at land borders for vaccinated travelers on November 8, 2021, CBP continues to turn away asylum-seeking individuals with proof of vaccination at the San Ysidro port of entry.

#### **Additional concerns ahead of the expansion of RMX to Tijuana and other locations:**

- **Lack of coordination with local service providers on the ground prior to implementation:** Despite playing a vital role, shelters and other local service providers in Tijuana and other Mexican border cities had not been provided with logistical details or additional resources prior to the restart of RMX. The lack of coordination and unresolved logistical issues impede the ability of local groups to effectively respond and support individuals returned through RMX.
- **Failure to exempt vulnerable individuals, including pregnant people, from RMX:** DHS [policy guidance on RMX](#), issued on December 2, 2021, exempts certain individuals from the policy, including people of advanced age, those with physical/mental health conditions, or those at increased risk of harm due to their gender identity or sexual orientation. It does not mention an exemption for pregnant people<sup>11</sup> or tender age children, which refers to children under the age of 13. WRC spoke to a number of pregnant people and parents of young children who had experienced extreme hardship and instability in Tijuana, and we are particularly concerned about the government's failure to exempt these populations from the new iteration of the policy.
- **Lack of oversight and redress mechanisms:** The DHS guidance does not detail the creation of any new oversight or redress mechanisms to ensure that CBP does not return exempt vulnerable individuals to Mexico, and the Biden administration has been [criticized for returning individuals](#) to Mexico before having these critical mechanisms in place. Without such mechanisms and advanced training of CBP officials, WRC is concerned that CBP officials will again fail to comply with policy guidance. A DHS Civil Rights and Civil Liberties (CRCL) [report from 2019](#) revealed that CBP officers violated the DHS principles for RMX and sent individuals with medical issues back to Mexico.
- **Lack of due process and meaningful legal representation in RMX:** Access to legal support for individuals returned under RMX will be nearly impossible due to lack of capacity, resources, and other factors, making it extremely difficult for people to have a fair opportunity to present their

<sup>11</sup> This contradicts [a statement](#) from Mexico's Foreign Ministry, which asserted that “pregnant people” should be included in the vulnerability criteria for RMX. WRC does not believe that pregnant people should be subjected to RMX.



“Defend Asylum” sign outside health clinic. © WRC/Ursela Ojeda

case in court. The prior implementation of RMX put attorneys who crossed into Mexico to meet with their clients [in danger](#), and many shelters in Mexico are not equipped to provide confidential meeting spaces. Virtual legal representation—including via videoconferencing on televisions or tablets—creates significant barriers for attorneys to effectively communicate with and represent their clients. Additionally, CBP port of entry officials in San Diego told WRC staff that it was not possible to provide space within the port for attorneys to meet with clients who were placed into RMX.<sup>12</sup>

- **Family separations through RMX:** The recent policy guidance issued by DHS for the new iteration of RMX states clearly that families “will not be separated” for RMX enrollment, but uses a definition of family that includes only parents and legal guardians with minor children. This means there is no guidance to explicitly keep together other types of family members, such as spouses, siblings, cousins, or others. RMX, especially when coupled with other current anti-asylum policies, will unquestionably lead to family separation, because one family member could be returned to Mexico under RMX while another is put on a plane and expelled to their home country under Title 42. Under the previous iteration of RMX, WRC [documented several instances of family separation](#). Moreover, many families reached the [painful decision to send children onward alone](#) in the hopes that they would be processed if they sought asylum alone.
- **RMX will deepen the cycle of chaos, confusion, and danger on the Mexican side of the border:** Local partners we spoke with expressed concern that the reimplementing of RMX would lead to increased misinformation and fraud by bad actors, which has been rampant amid the rapid shifts in policy over the past year. Many women we spoke with expressed a sense of utter desperation and despair at being forced to wait in Tijuana without any hope that they would have the opportunity to seek asylum in the US.

<sup>12</sup> WRC was denied an opportunity to tour the facilities at San Ysidro during this visit and was not able to make an independent assessment of potentially available space. We also did not have an opportunity to tour local Border Patrol facilities to see if the US government had created confidential spaces for non-refoulement interviews and attorney-client consultations.

## Conclusion

The Biden administration's reinstatement of RMX, and its decision to again extend the use of Title 42 to expel people seeking protection unquestionably endanger the lives of people seeking asylum and migrants and violate US domestic and international laws. WRC already observed and documented human rights and due process violations under the last iteration of RMX, including the separation of families and the return of vulnerable individuals into extreme danger. The new iteration of RMX will do the same, while exacerbating the case backlogs and overall workloads of border officials and US ports of entry.

### *Recommendations to the US government:*

- WRC urges the Biden administration to reverse the expansion and stop further implementation of RMX.
- The Biden administration should immediately allow those who have been subjected to either the previous or current iteration of the RMX to return to the United States for the remainder of their immigration proceedings.
- The Biden administration should immediately end expulsions under Title 42 and ensure that individuals can access asylum at the US southern border, including at ports of entry.
- WRC urges DHS to adopt a more expansive definition of family to ensure family unity in any ongoing implementation of RMX.

### *Recommendations to the Mexican government:*

- WRC urges the Mexican government to cease cooperation with the Biden administration's policies that endanger people seeking asylum and migrants or limit access to protection at the U.S. border. The Mexican government should refuse to allow people seeking asylum in the US and migrants to be returned to its territory under RMX or any similar policy.
- The Mexican government should ensure that any individuals subjected to RMX have continuous legal status in Mexico, including the ability to work and enroll their children in school.
- The Mexican government should implement a clear process to report safety concerns within Mexico to the appropriate authorities.

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