

Executive Summary

# “STAY IN THE LION’S

*Stay in the lion’s den”: Risks and human rights violations against persons subject to the Remain in Mexico Program*

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# EXECUTIVE SUMMARY

On January 29, 2019, the Government of the United States of America (USA) implemented the policy known as Migration Protection Protocols (MPP), in Mexico known as the Remain in Mexico Program. This policy requires asylum seekers in the USA to wait in Mexico while their migration procedures are resolved..

As of November 2020, over 68 thousand people subject to this Program have been returned from the USA to cities on the northern Mexican border, where they face multiple situations of social risk. These situations are exacerbated by the COVID-19 pandemic declared by the World Health Organization (WHO) in March 2020.

The permanent state of vulnerability -which constitutes a humanitarian crisis- of the persons subject to this Program contributes to violations of their human rights, and the persons belonging to socially vulnerable groups are particularly at risk.

By accepting the implementation of the Remain in Mexico Program, the Mexican Government became complicit in the cruel policies rolled out by the Donald Trump administration. This is the case since the Program also includes persons in particularly vulnerable situations, such as pregnant women, persons with serious medical conditions, indigenous individuals who do not speak Spanish, and others whose integrity and life are not protected while they wait in high-risk areas in Mexico and in the context of the COVID-19 pandemic.

The Remain in Mexico Program is manifestly contrary to the Mexican Constitution, to the domestic law and to international law, since it endangers the integrity, life and health of migrants and asylum seekers.

## ***The Remain in Mexico Program, militarization, and lack of State protection***

The Mexican Government has stated that it accepted to host the persons subject to the Remain in Mexico Program as a humanitarian response and it committed to granting residency permits, work opportunities, access to health care and education to these persons.

Nevertheless, almost two years after those promises were made, the persons subject to the Remain in Mexico Program are in a worrying situation of social risk. The lack of the minimum conditions for survival promotes direct and indirect returns.

The severity and the lack of protection have been magnified due to the COVID-19 pandemic. The Governments of the USA and Mexico have failed to take measures to mitigate or prevent the risk of infection of this population, whose hearings on their asylum applications in the USA have been indefinitely postponed.

The context of extreme risk at the Mexican border faced by the persons subject to the Remain in Mexico Program, due to the lack of State protection, makes them more vulnerable to serious crimes such as murder, kidnapping and forced disappearance.

Furthermore, the Mexican Federal Government has assigned migration control functions to the National Guard -mostly made up of military personnel- above those functions that -by law- only belong to the National Migration Institute. It has also militarized the Mexican borders, and elements of the National Guard have used disproportionate force to prevent migrants from entering Mexico at the southern border.

The military deployment has increased as a result of the execution of the DN-III-E plan as a COVID-19 containment strategy. This plan provides for the mobilization of over 250 thousand elements of the Mexican Army, Navy, Military and Air Force.

This militarized context has resulted in repressive measures, risks of infection, death, and an important limitation of the human rights of migrants. It has also lead to a greater lack of protection for migrants and asylum seekers -especially for those who belong to vulnerable groups, such as children, teenagers, women, indigenous peoples and people of African descent- in the face of the actions of the military elements.

### ***“Stay in the lion’s den”: Risks and human rights violations against persons subject to the Remain in Mexico Program***

The fatality of the northern Mexican border is widely acknowledged by the U.S. Government, which recommends that its citizens avoid these “high risk” areas. Nevertheless, asylum seekers in the USA and persons subject to the Remain in Mexico Program are sent to cities on the northern Mexican border, where they are at risk of kidnapping, sexual abuse, torture, extortion and other crimes against migrants committed by the macro-criminality.

Hundreds of persons subject to the Remain in Mexico Program have been the victims of various crimes and forms of violence, including in places where they should feel safe, such as the offices of the Mexican National Migration Institute.

Mexico has failed to provide the minimum conditions for the security of the persons that it has committed to receive from the USA and the majority of which are in Mexican states that historically have high levels of violence, impunity, corruption and control by organized criminal groups.

The lack of conditions for a decent life, such as employment, housing, health care and education, means that many persons subject to the Remain in Mexico Program survive in Mexico far below the multidimensional poverty line, which constitutes a significant obstacle for them to enjoy their human rights.

Surviving in conditions of multidimensional poverty puts this group of asylum seekers at risk, since they are exposed to becoming victims of various types of exploitation by state, business, and criminal actors.

Moreover, there are no public social and sanitary diagnostics that reveal the actions conducted by the Mexican State to prevent, mitigate, and respond to COVID-19 cases among the persons subject to the Remain in Mexico Program. This is problematic considering that the vulnerability of this population does not exclusively lie in their contexts of social and legal risk, but also in possible medical complications that could be the result of, or exacerbated by, the long wait in Mexico.

## FINDINGS

The U.S.-Mexico Joint Declaration and the Migration Agreement, as well as the Remain in Mexico Program, are manifestly contrary to the Mexican Constitution, to the domestic law and to international law, and they endanger the integrity and life of migrants and asylum seekers. Furthermore, they violate the U.S. legal framework and the international non-refoulement obligation that bans the return of any person to a country where their life or integrity are at risk, or where they may suffer persecution.

The Migration Agreement and the Remain in Mexico Program violate the Mexican legal framework since i) the Migration Agreement was signed on June 7, 2019, by a public servant of the Ministry of Foreign Affairs whose functions and responsibilities did not authorize him to sign an international treaty; ii) it is the exclusive prerogative of the Mexican Senate to approve the international treaties and diplomatic conventions signed by the executive branch; iii) the Migration Agreement was drafted without the participation of the Ministry of the Interior, the authority responsible for migration issues.

The responsible Mexican authorities executed the obligations entered into with the USA to the detriment of asylum seekers in the USA, who have been returned as a result of the implementation of the Remain in Mexico Program, as well as of migrants who wanted to enter Mexico and who potentially planned to seek asylum.

The Remain in Mexico Program creates extreme risks of return to countries where the persons -especially those who belong to socially vulnerable groups- can be the victims of persecution, torture, kidnapping, threats, extortion, forced disappearances, executions, and other crimes, both in Mexico and in their countries of origin.



The acts and omissions of the Mexican government contribute to that the persons subject to the Remain in Mexico Program remain in a dangerous context, due to the macro-criminality, corruption, impunity and, currently, the COVID-19 pandemic.

The policy of militarization, which results from the implementation of the responsibilities assumed by Mexico through the Migration Agreement, leads to a systematic prosecution and disproportionate use of force against migrants and persons in need of international protection.

The Remain in Mexico Program includes persons in particularly vulnerable situations, whose integrity, life, and health are not protected while they wait in Mexico in the context of the COVID-19 pandemic. In addition, the Program result in the separation of families, which gives rise to serious risks for the personal integrity and the right to an identity.

The suspension of the hearings before the U.S. migration courts due to the COVID-19 pandemic has extended indefinitely the multiplicity of risk situations in Mexico. Both the USA and Mexico have failed to take the minimum measures to prevent and mitigate the social risks and the infection of COVID-19, thereby jeopardizing the life, integrity, health and other human rights of the migrants and asylum seekers.

# KEY RECOMMENDATIONS

## Recommendations to the Mexican State:

1. Develop a migration policy that is independent of the USA and respectful of the constitutional mandates. The Mexican Government should design a migration management system that is independent of U.S. decisions, based on the international protection standards for human rights, migrants, and refugees.
2. The Migration Agreement between Mexico and the USA should be abolished. Mexico should cease to apply the Remain in Mexico Program, both due to its illegality and because it creates conditions that endanger the life and dignity of migrants and asylum seekers and that are magnified by the COVID-19 pandemic.
3. The Mexican Government should take urgent actions to protect the persons subject to the Remain in Mexico Program in light of the risk posed by law enforcement agencies that violate human rights and organized crime, taking into account that the vulnerable groups in terms of age, ethnicity, race and gender are the most affected.
4. The Mexican Government should respond adequately and sufficiently to avoid COVID-19 infections in the migrant population, in strict compliance with international humanitarian law, its principles, and the international human rights law. Among many other actions, this response should include promoting access to health care facilities and the necessary medication, producing prevention and attention protocols, ensuring an adequate epidemiological surveillance, distributing relevant information in various languages regarding the prevention and timely care for the illness, as well as other actions that support the work of the civil society organizations that serve the migrant population.
5. Mexico should increase the investment to consolidate an integral reception system, temporary protection, and integration of asylum seekers.
6. Both the Federal Government and the state governments along the northern border should address the situation of the improvised camps and the migration detention centers, especially in the context of the COVID-19 pandemic. The pattern of impunity in the case of registered and reported human rights violations in these spaces must end.
7. The Mexican legislative branch has failed to ensure accountability from the executive as regards the Migration Agreement and the Remain in Mexico Program. In this respect, we urge the responsible authorities to ensure full accountability, taking into account the views expressed by the ombudsperson institutions and civil society organizations.

8. The role of the judicial branch, through the resolution of constitutional lawsuits (juicios de amparo), is fundamental to analyze the violations committed as a result of the Migration Agreement. The judicial branch can put a halt to the human rights violations committed based on this Agreement and the Remain in Mexico Program.

9. The mitigation of the terrible consequences of the Migration Agreement requires the Mexican Government to promote the formulation of regional strategies. Global strategies might even be necessary, considering that numerous nationalities from outside the American continent are now present among the migration profiles.

10. Guarantee the inclusion of civil society in the context of the support that the agencies and organizations of the United Nations and the Inter-American

## **Regional recommendations**

1. The countries of the region should design migratory policies with a human rights perspective from a regional and global perspective, respecting the principles of international law.

2. The Mexican State and the USA have human rights obligations towards the migrant population and the persons subject to the Remain in Mexico Program, especially in terms of health care, personal freedom, personal integrity, and the right to seek and obtain asylum. In this context -and while the Program remains- the States must adopt measures designed to respect the rights of the persons subject to the Remain in Mexico Program, taking into account the appeals made by the United Nations High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, the International Organization for Migration, and the World Health Organization.

3. The dismantling of the Remain in Mexico Program by the Government of President-elect Joe Biden should be carried out in coordination with the Mexican government, civil society organizations, migrant shelters, and other actors. This is necessary to ensure that the best possible conditions exist on both sides of the border to care for this population in a timely and dignified manner that respects their human rights.

4. Taking into account that the newly elected U.S. government has committed to restoring the right to seek asylum in the USA, there are obstacles in law and in practice to access the U.S. asylum system, as well as in the legal possibilities to be recognized as a refugee in the USA. In this context, the number of asylum applications in Mexico presented by persons returned from the USA could increase significantly.

Total number of persons subject to the Remain in Mexico Program: **68,430 persons**

Number of persons subject to the Remain in Mexico Program who, according to the monitoring by Human Rights First (HRF), have been the victims of kidnapping, rape, extortion, torture and murder:

**1,114 persons** until May 13, 2020.

**256 children** have been the victims of kidnapping and attempted kidnapping.

Number of MPP persons without legal representation: **63,359**

With legal representation: **5,071**

**Persons subject to MPP procedures since the COVID-19 pandemic declaration:**

April 2020 - October 2020

**3,540**

**Most of the hearings of MPP persons are in:**

The MPP Court of El Paso **21,522**

MPP Brownsville Gateway International Bridge **15,958**

MPP Laredo, Texas - Port of Entry **13,238**

**Fuentes:**

Syracuse University TRAC Immigration Data Tools.

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