



**Policy Brief**  
**Remain in Mexico Is Alive and Well:**  
**Current Disenrollment Process Harms Vulnerable Asylum Seekers**

**September 20, 2022**

**Contact: Laura Lynch ([lynch@nilc.org](mailto:lynch@nilc.org)) or Amy Grenier ([agrenier@aila.org](mailto:agrenier@aila.org))**

This policy brief shares what information has been made publicly available about the Remain in Mexico (RMX)<sup>1</sup> disenrollment process and elevates operational issues of concern. These issues have yet to be addressed by government agencies, resulting in avoidable due process violations.

**I. Government guidance currently requires most individuals enrolled in RMX to wait until the date of their immigration court hearing to disenroll.**

After the U.S. District Court Judge Matthew Kacsmaryk formally [lifted the injunction](#) on August 8th, pursuant to the Supreme Court [ruling](#), the RMX [termination memorandum](#) immediately went into effect. Subsequently, the Biden administration [stopped new enrollments](#) into the RMX program. However, the administration will [only disenroll people](#) that are in RMX in the following scenarios:

1. The date of their immigration court hearing (which may be weeks or even months away).
2. For individuals with a particular vulnerability or significantly changed circumstances, an application to disenroll via the online portal (<https://engage.dhs.gov/mpp>) is available. Approval is subject to DHS's discretion.

The government's RMX disenrollment process raises significant due process concerns and has led to confusion on the ground. One immigration judge [denied](#) a "request to continue their case in a different Texas court because it wasn't clear whether migrants released from the program would be allowed to enter the U.S." One ICE attorney [reportedly stated](#) to an immigration attorney that their "client was going to be deported now that MPP was over" even though the case was ongoing.

**II. Unrepresented individuals in RMX are being forced to proceed with individual merits hearings, resulting in unjust removal orders.**

Despite the termination of RMX in early August, the flawed RMX immigration court hearings continue to this day, including inside the Trump-era [tent courts](#). Migrants in RMX experience extreme difficulty in preparing a complete asylum application while in Mexico. Attorneys observe stark disparities in an asylum seeker's ability to disenroll from RMX *prior* to their individual merits hearing. Represented asylum seekers have a higher chance of disenrollment, whereas *pro se* individuals navigate a trial on the merits before having an opportunity to disenroll from RMX, which may happen after they were ordered removed. For *pro se* asylum seekers, who make up the vast majority of individuals navigating RMX to this day, disenrollment from RMX comes too late, if at all.

---

<sup>1</sup> Also known as Migrant Protection Protocols (MPP).

- **Represented asylum seekers:** Attorneys on the ground share that migrants with legal representation are generally able to successfully obtain continuances from immigration judges during these RMX court hearings. Following these hearings, DHS is disenrolling these individuals from RMX and moving forward with their hearings at their final destination in the United States on the non-detained docket.
- **Pro se asylum seekers:** Attorneys on the ground share that many *pro se* migrants in RMX are forced to go forward with their RMX individual merits hearings despite requested continuances from the immigration judge, including where the purpose of the continuance request was for the *pro se* individual to find an attorney.
  - Many *pro se* individuals in this situation have been ordered removed during recent RMX hearings at the El Paso Immigration Court, Laredo Tent Court, and the Brownsville Tent Court. Following these hearings, several individuals have been sent to ICE detention. Notably, attorneys practicing in the San Diego Immigration Court share that their clients have successfully received continuances rather than being forced to proceed with RMX merits hearings, but this is only because those clients are represented by counsel.
  - NILC and AILA recently learned that a *pro se* individual forced to go forward with their RMX merits hearing was ordered removed by an immigration judge on August 16<sup>th</sup>, detained in ICE custody for weeks, and then removed to Colombia on September 8<sup>th</sup>, prior to the appeal deadline of September 15<sup>th</sup>.

Access to counsel is a due process right available to migrants in immigration court, and obtaining legal representation can be key to an asylum seeker's success.<sup>2</sup> If represented by counsel, migrants are [five times more likely](#) to obtain legal relief compared to those who are unrepresented. Access to legal counsel has long plagued RMX in large part due to the difficulties of obtaining U.S. legal counsel from Mexico.<sup>3</sup> According to [TRAC data](#), “[i]mmigrants who were allowed to wait in the U.S. were over seven times more likely to find an attorney to represent them than those diverted to the [RMX] program.” The current guidance requiring individuals to remain in Mexico until the date of their immigration court hearing does little to resolve the issue of access to counsel that is inherent to both the first and second incarnations of RMX.

### **III. Migrants in the RMX program are still required to remain in Mexico despite the termination memorandum being in effect.**

The Biden administration's decision to not actively disenroll individuals in the RMX until their court date effectively requires them to remain in Mexico. Attorneys on the ground share that some people in RMX do not have their next RMX hearing scheduled until October or even mid-November 2022. Not only does this continue to compound access to counsel issues, it means that migrants are languishing in unsafe conditions in Mexico. In the weeks after the injunction was lifted, TIME [reported](#) that an attorney's teenage client was sexually assaulted while waiting in Mexico for their next scheduled RMX hearing. In its September 2022 [report](#), “Fatally Flawed, ‘Remain in Mexico’ Policy Should Never Be Revived,”

<sup>2</sup> See *Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990) (finding that immigrants have a due process right to obtain counsel of their choice at their own expense).

<sup>3</sup> Miriam Jordan, “In Court Without a Lawyer: The Consequences of Trump’s ‘Remain in Mexico’ Plan,” *New York Times*, Aug. 3, 2019, <https://www.nytimes.com/2019/08/03/us/migrants-court-remain-in-mexico.html> (stating “for those waiting in Mexico, the border can pose an insurmountable barrier. Even if a migrant can afford to pay, finding a lawyer willing to take the case of a client living in Mexico is a challenge.”); Human Rights First, “Remain in Mexico Restart Threatens Safety of Attorneys and Humanitarian Workers,” Nov. 2021, <https://www.humanrightsfirst.org/sites/default/files/MPPDangersLawyersFactsheet.pdf>; Jack Herrera, “Lawyers struggle to remotely represent asylum-seekers in ‘Remain in Mexico’ program,” *TheWorld*, March 2, 2020;

Human Rights First (HRF) underscored the dangers migrants face in Mexico while they wait for their RMX hearings. HRF conducted nearly 2,700 interviews between January and August 2022, with “[f]orty-one percent of the interviewed asylum seekers and migrants (1,109 people)” enrolled in RMX reporting “attacks in Mexico, including kidnapping, rape, torture, and other violent assaults,” among other incidents of “staggering violence” by cartels and corrupt Mexican government officials and deplorable conditions (including violence and abuse) in shelters.

#### **IV. Asks of the Biden administration to ensure due process concerns are met.**

The Biden administration must create a dedicated RMX interagency taskforce to address these due process concerns and immediately take the following steps:

- Disenroll individuals before their hearing. This could be done by expediting the RMX disenrollment process at the CBP ports of entry and halt all ongoing RMX hearings. We urge DHS to amend its policy to allow migrants to (1) disenroll from RMX at CBP POEs and (2) ensure that these (mostly *pro se*) individuals can immediately file change of venue and change of address forms with EOIR to resume their court hearings in their final destinations in the U.S.
- After disenrolling people from RMX, allow people to continue with their immigration court cases at their final destination in the United States.
- EOIR should take immediate steps to *sua sponte* reopen every RMX case where an individual was ordered removed following August 8th and allow them to enter the United States for the duration of their hearing (*See* 8 C.F.R. § 1003.23(b)(1)).<sup>4</sup>
- Dismantle Trump-era tent “courts” located in Brownsville and Laredo, Texas that are run by DHS contractors and have resulted in due process violations.

The administration’s decision to not disenroll all asylum seekers from RMX is only one of numerous aspects of RMX that continues to inflict harm on vulnerable people exercising their right to seek asylum in the United States.

In addition to taking the immediate steps outlined above, President Biden will need to take [additional steps](#) to fully realize his [campaign promise](#) of ending RMX. This includes reopening cases of people already ordered removed under both iterations of RMX and allowing everyone subjected to RMX to enter the United States for the duration of their legal proceedings.

---

<sup>4</sup> There is precedent for addressing errors in RMX cases. For example, in July 2020, NGOs were made aware of immigration judges wrongfully denying Motions to Change Venue in RMX cases. After this issue was brought to EOIR’s attention, EOIR overturned its denials *sua sponte*.

V. **Outstanding questions about the second iteration of RMX disenrollment process.**

While DHS does post some information about the second iteration of RMX on its [website](#), there are several outstanding questions about the second iteration of the RMX disenrollment process that remain. The following data would be helpful to answer these outstanding questions.

- **RMX Enrollments**
  - How many individuals were enrolled into the second iteration of RMX?
  - How many individuals enrolled into the second iteration have been ordered removed?
  - Approximately how many individuals who were returned to Mexico under the second iteration of RMX are still waiting there with active immigration court cases? Please provide a monthly breakdown.
- **Disenrollments**
  - How many individuals were disenrolled from the second iteration of RMX *prior* to August 8th, 2022?
  - How many individuals were disenrolled from the second iteration of RMX *after* August 8th, 2022?
- **Notification of MPP Termination**
  - What steps were taken by the U.S. government to notify individuals waiting in Mexico of the termination of the RMX policy?
- **Immigration Court Statistics**
  - Regarding continuances and removal orders, please provide a breakdown of the statistics by each court (San Diego, El Paso, Laredo tent court, and Brownsville tent court):
    - *Continuances:*
      - The total number of continuances requested in RMX cases after August 8, 2022.
      - The number of continuances that attorneys requested on behalf of their clients in RMX cases after August 8, 2022. Please identify whether these requests were granted or denied.
      - The number of continuances that *pro se* individuals in RMX requested after August 8, 2022. Please identify whether these requests were granted or denied.
    - *Removal orders:*
      - What is the total number of individuals in the second iteration of RMX that have been ordered removed? Please identify how many of these individuals were represented by counsel.
      - How many individuals in the second iteration of RMX were ordered removed after August 8, 2022?
        - Please identify how many of these individuals were represented by counsel.
        - Of those removed, how many were removed *in absentia*.
- **DHS-related removal questions:**
  - How many individuals in the second iteration of RMX were removed from the U.S. after August 8, 2022?
- **RMX Appeals:**
  - What is the process for individuals to disenroll from RMX if they are waiting in Mexico and have appeals pending?
  - Since August 8th, how many people have been permitted to enter the U.S. while their RMX appeals are pending?