

Congress of the United States
Washington, DC 20515

November 25, 2019

The Honorable Chad Wolf
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20520

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Acting Secretary Wolf and Attorney General Barr:

We are writing to request information on the management of the tent court complexes in Laredo, Texas and Brownsville, Texas operating as immigration courts and adjudicating immigration hearings via video teleconferencing (VTC). Between December 2018 and January 2019, the United States' Department of Homeland Security (DHS) began implementation of the Remain in Mexico program (also known as the Migrant Protection Protocols) despite broad disapproval. In September 2019, DHS opened two port court facilities in Laredo and Brownsville, Texas to function as virtual immigration courtrooms and hear the cases of migrants placed in the Remain in Mexico program.

The operations and procedures of the two tent facilities have been shrouded in secrecy since their creation and there has been little oversight over their operations. Thus far, DHS has not allowed nongovernmental organizations or the public access inside these facilities and have prevented organizations from providing legal orientation for asylum seekers. These tent court facilities have been tasked with discerning the fate of thousands of asylum seekers seeking protection at our southern border, yet the hearings are obscured from the public and access is completely controlled by DHS.

The secretive nature of the tent facilities is aggravated by the fact that DHS continues to expand its deeply concerning Remain in Mexico program. Migrants subject to the Remain in Mexico program have been separated from their families, have been forced to remain in a country that has been unwilling or unable to provide them shelter or protection and are obstructed from adequately participating in the legal process pursuant to their rights. These risks are only compounded for particularly vulnerable people like women, unaccompanied children, and families.

As the tent courts start to ramp up the processing of migrants in the Remain in Mexico, we request prompt answers to the following questions:

1. Little information has been provided to Congress and the public regarding the implementation of these tent courts. Most information we have received has been from news articles and journalists who have gathered information from migrants and attorneys.
 - a. When did immigration judges start conducting court hearings via video teleconferencing at these tent facilities?

- b. How many judges will be conducting immigration proceedings for each tent facility?
 - c. What is the approximate number of cases that a judge will hear a day at each location?
 - d. Does DOJ plan to increase the number of judges hearing cases? What immigration judges will be detailed to hear these cases? Will the judges be from immigration courts only in Texas? Or does DOJ plan on detailing judges from across the country?
 - e. Why were judges from the San Antonio, El Paso, and Harlingen immigration courts chosen to hear cases from the tent courts?
 - f. How is the Executive Office for Immigration Review (EOIR) assigning judges to hear Remain in Mexico cases from the tent courts? Please provide a schedule for which judges will be presiding over VTC from the tent courts, and at which court houses, through the end of 2019.
2. DHS has stated that “The GOM [Government of Mexico] further confirmed that [migrants] ‘will be entitled to equal treatment with no discrimination whatsoever and due respect will be paid to their human rights,’ and that ‘[t]hey will also have the opportunity to apply for a work permit for paid employment, which will allow them to meet their basic needs.’” However, despite this claim by the Government of Mexico, this has not been the case. Instead, people subject to Remain in Mexico have not received work permits, are struggling to afford food and shelter, and have been unable to ensure their safety in the face of violence and kidnapping.
 - a. What actions is DHS taking to protect migrants in the Remain in Mexico program since the Government of Mexico has shown it does not have the capacity to care for these people?
 - b. Although DHS has stated that “the USG [United States Government] recognizes it is the Mexican federal, state, and local governments’ prerogative how best to provide for the health and safety of migrants in Mexican territory,” is that still the best manner to proceed, seeing as how the Mexican government has failed to provide for the health and safety of migrants in their territory?
3. According to DOJ regulations¹ “removal hearings shall be open to the public.” These tent facilities have thus far been closed to the public. The decision to exclude the tent courts from public viewing eliminates transparency and efficacy in our judicial system.
 - a. Why are the tent courts not open to the public and the media, like other immigration courts?
 - b. Will lawyers, reporters, and other members of the public continue to be restricted from observing the hearings in any and all forms (this includes requiring them to apply for access days in advance)?
 - c. Will there be additional press tours of the court proceedings for all tent court facilities?
 - d. Without public and media access to tent courts, how can progress be measured as the program expands?

¹ 8 CFR § 1240.10

4. We are concerned to hear that migrants are not informed of changes to their cases or of upcoming court dates because CBP officers have written the phrase “known address” on migrants’ paperwork rather than a legally required address:
 - a. Does DHS intend to facilitate returning migrants to the tent court facility for their hearings with a judge? If so, please how?
 - b. Does DHS try to contact migrants with scheduled hearings prior to their hearing? If so, how?
 - c. Does DHS communicate with migrants who do not have access to adequate communication channels and/or housing?
 - d. Does DHS use a migrant’s native language when reaching out to migrants about their upcoming hearing?
 - e. How much prior notice is given to migrants before their upcoming hearings? Do the scheduled hearing dates consider how long it will take migrants to travel back to the US from different parts of Mexico?
 - f. Is DHS in communication with Mexico’s migration enforcement officers, or shelters along the border, to ensure safe and quick transportation to and from the US for hearings? If so, please provide details of how Mexico provides shelter and transportation.
 - g. Are government officials who are interacting with migrants in the Remain in Mexico program making sure they provide migrants with adequate resources and information regarding housing and transportation in Mexico?
 - h. Does DHS stay in contact with migrants while they are in Mexico in order to ensure updated contact information, especially since many migrants move from shelter to shelter?
 - i. What steps is EOIR taking to ensure that it has the most updated information for the migrants’ location? Please detail how you keep up with migrant’s location when they do not have a steady address in Mexico?
 - j. How are CBP officers ensuring that they are issuing Notice to Appears with proper addresses of the migrants?
 - k. How many hours in advance of a hearing are migrants told to report to the international bridges? Do these times consider travel time for migrants or the migrant’s safety, including their travel through dangerous areas to get to the bridges?
5. The U.S. government has a legal obligation to ensure that the immigration process provides every migrant with the opportunity to argue their case. However, the Remain in Mexico program has curtailed due process for the sake of efficiency.
 - a. Why did DHS decide to forgo the offered lease of an air-conditioned, 21,000 square foot office building offered by the city of Laredo in Texas for only \$1? How is a \$25 million facility, made of tents, a better operational choice rather than an actual building where judges can see the migrants in person?
 - b. What is the completion time that DHS anticipates for migrants in the Remain in Mexico program?

- c. While EOIR has made available a list of free or low-cost legal service providers for migrants in the Remain in Mexico program, the migrants have not been able to communicate with the lawyers on the list while in Mexico. Not having access to counsel limits the due process rights of asylum seekers. Has DHS made any plans on its own, or in conjunction with Mexico, to ensure that migrants returned to Mexico are given access to legal services?
- d. Does DHS facilitate communication between migrants and nonprofit, legal groups that can provide legal orientations and legal assistance for those waiting in Mexico?
- e. Are interpreters provided for all migrants during the immigration proceedings, especially those who speak less common indigenous or rare languages? Please provide a list of languages for which interpreters are provided during a hearing.
- f. What is DHS doing to help ensure that migrants understand the nature of their immigration and their rights proceedings, especially since the proceedings are conducted using VTC units?
- g. Since lawyers have not been permitted to give legal orientations, who is informing migrants seeking asylum of their rights?
- h. What efforts is DHS making to ensure that migrants have access to representation in their hearings?
- i. How is DHS assuring that lawyers understand the procedures relevant for the Remain in Mexico program?
- j. What guidance has DOJ given immigration judges on how they are supposed to handle the tent court hearings?
- k. Has DOJ told immigration judges to order individuals who do not appear for court removed in absentia?
- l. Have judges been instructed to require that all those in Remain in Mexico submit asylum applications, in English, within thirty days of their first hearing, regardless of whether they have an attorney?
- m. Have judges been instructed to have those in Remain in Mexico admit to the charges against them at their first hearing, regardless of whether they are represented by an attorney?
- n. Is DHS ensuring that attorneys have enough time to meet with their clients before and after their hearing at the port courts? If so, please explain how.
- o. Why is the VTC set up at these tent facilities such that attorneys with their clients in the port courts cannot see the entire courtroom where the judge is, but especially that they cannot see the government attorney or their interactions with the judge?

6. This is a wholly unprecedented program for our nation. It is critical for new programs to go through a stringent process where researchers, media, lawyers, Congress, the administration, and the public can all see the merits and the downfalls of any new proposed program. However, DHS has continuously implemented programs without any oversight. Does DHS have plans to add any oversight measures in this program? Please provide details on the plans for oversight measures.

We reiterate that we remain strongly opposed to the Remain in Mexico program and its' expansion. Not only has this program left over 50,000 asylum seekers in dangerous living conditions in Mexico, but the mismanagement of funds for this program has forced a diversion of funding and resources toward its execution and expansion. With this program, and with many other border

policies implemented in the last two years, the Department of Homeland Security has shown a lack of responsibility and its willingness to implement and expand immoral immigration policies.

Instead of creating policies that protect our nation, this administration has put millions of people at risk in order to expand disastrous immigration policies. Individuals forced to stay in Mexico are enduring dangerous living conditions for lengthy periods of time. Asylum seekers in Mexico face ongoing threats of murder, sexual assault, kidnapping, and other harm. Programs such as Remain in Mexico have resulted in additional Congressional appropriations as we seek to clean up DHS's lack of good judgement, forcing our nation to spend money and resources that would otherwise be available for valuable programs across our nation.

We respectfully request a prompt response to our above concerns. Thank you for your attention to this matter.

Sincerely,


Member of Congress
Joaquin Castro

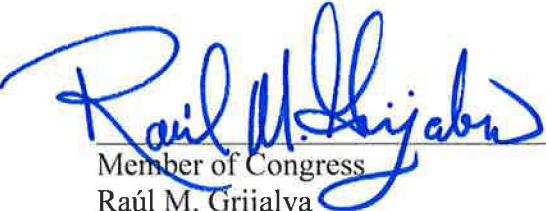

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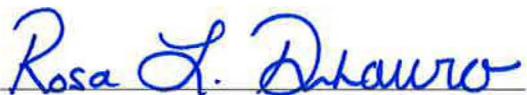
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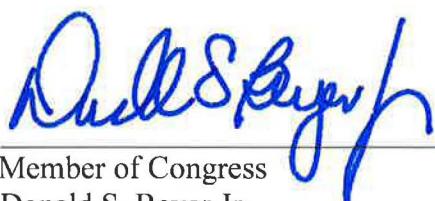
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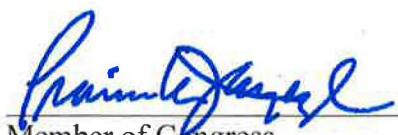
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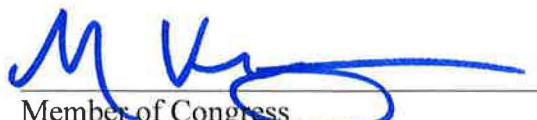
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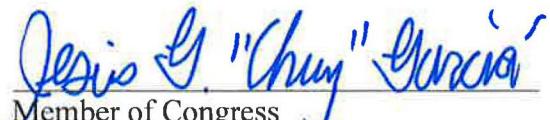
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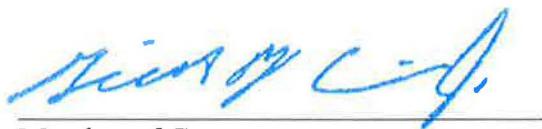
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