

‘Remain in Mexico’ is back under Biden, with little resemblance to the Trump version

EL PASO — The immigration courts on the seventh floor of a downtown federal building here were jampacked in the summer of 2019 when the Trump administration ramped up its “Remain in Mexico” program. On an average day, more than 100 asylum seekers were being sent back across the border to Ciudad Juárez, including families with children.

President Biden halted the returns when he took office, but in September a U.S. District Court ordered his administration to reinstate the program, formally known as the Migrant Protection Protocols. After months of negotiations with Mexico, the Biden administration relaunched MPP in early December, starting in El Paso.

Immigration advocates were furious, blaming Biden for not pushing back harder. But two months after its restart, the new version of MPP bears little resemblance to President Donald Trump’s. The Biden administration has re-implemented the program with a narrow scope and none of the zeal demonstrated by Trump officials.

Border arrests are even higher now than in 2019, but El Paso’s immigration courts remain light on MPP cases. On a recent afternoon, two MPP enrollees, both adult men from Nicaragua, appeared before immigration judge Nathan L. Herbert. The next day, there were three.

“Do you have a fear of return to Nicaragua?” Herbert asked the men, who had been waiting in Ciudad Juárez for their court appointment after being arrested by U.S. border agents six weeks earlier near Del Rio, Tex. The men answered yes.

Herbert set their asylum hearings for early March and asked the men whether they feared a return to Mexico. They said yes. A U.S. asylum officer would have to evaluate their claims before they could be returned to Ciudad Juárez.

Trump sent nearly 70,000 asylum seekers back to Mexico under MPP, using the

program as a deterrent for the record numbers of Central American families who were crossing the border and hoping to be released into the United States while awaiting court hearings. Kidnappings, robberies and other attacks on returned asylum seekers in Mexico were rampant, and thousands of MPP enrollees languished in a grubby Rio Grande tent camp that became a symbol of MPP's dysfunction.

The biggest difference under Biden has been the scale of returns. His administration was ordered to restore MPP "in good faith," but the court did not set quotas. So far the Department of Homeland Security has sent back about 410 MPP enrollees, according to the latest U.N. figures, equivalent to about seven asylum seekers per day border wide, compared with 300 to 400 returned daily in summer 2019.

The U.N. figures show the number of returns declined from about 270 in December to about 140 in January.

Texas Attorney General Ken Paxton (R), whose lawsuit forced Biden to restart MPP, called the low numbers "outrageous."

"I secured a win in district court that compels Biden to re-implement Remain-in-Mexico," Paxton wrote in a tweet. "Biden MUST use MPP to send illegals back to Mexico. He's violating the Court's order, and I won't let it stand."

Paxton's office did not respond to calls seeking clarification regarding what additional legal recourse, if any, he is considering.

Biden officials say the numbers will increase over the coming months. But they have limited the program almost exclusively to adult men, while exempting those considered vulnerable on the basis of mental and physical health issues, advanced age, or sexual orientation or gender identity.

Biden has used MPP almost exclusively for young men from Nicaragua, Venezuela and Cuba. Those nations have strained relations with the United States — the U.S. government doesn't even recognize Venezuela's Nicolás Maduro as the country's legitimate president — making deportations difficult.

Biden officials say they are selecting migrants from those nations for MPP because Mexico will not accept their returns under the emergency public health

authority known as Title 42, which has been used during the coronavirus pandemic and remains the U.S. government's primary border management tool. It allows U.S. authorities to skirt standard immigration proceedings and rapidly "expel" migrants, including asylum seekers, to their home countries or to Mexico, in order to avoid the spread of infections inside detention centers.

Fewer returns, but for some, a welcome shot at U.S. asylum

Mexico has set limits on the return of migrants by U.S. authorities, insisting MPP returns should occur only if there is sufficient shelter space, and quarantine capacity for those who test positive for the coronavirus. U.S. officials said they are working with Mexico to boost its capacity to take more MPP enrollees.

"We are subject to Mexico's requirements in terms of the restrictions they place on individuals subject to returns, and we just got hit with the omicron variant, which has had a substantial impact on our ability to return people," said a senior Department of Homeland Security official who described operational details of the program on the condition of anonymity, citing ongoing litigation.

The DHS official also attributed the low MPP numbers to limited U.S. capacity and the additional safeguards added under Biden. U.S. officials now ask MPP candidates whether they fear a return to Mexico, which officials did not do under Trump. About 85 to 90 percent of MPP enrollees say they do fear harm in Mexico; 10 to 15 percent are found to face a "reasonable possibility" of harm, the official said.

The Biden administration has drafted a new memo seeking to terminate MPP. But officials say they will abide by the court order while the injunction remains in place, and they plan to expand the program over the coming months if strains on shelter capacity and staffing from the virus ease. On Friday, the 5th Circuit Court of Appeals certified its denial of the Biden administration's challenge to the lower court order reinstating MPP. The court had rejected the government's arguments in a sharply worded 117-page opinion in December.

MPP will expand next to Laredo, Tex., and has already been re-implemented in San Diego and Brownsville, Tex., as well as El Paso.

GOP critics say the Biden administration is flouting the court and squandering a proven enforcement tool that discourages spurious asylum claims, pointing to MPP's role in breaking the momentum of the 2019 border surge.

Sen. James Lankford (R-Okla.) told reporters Wednesday he visited the temporary court facilities the Biden administration has set up for MPP hearings in Brownsville and found them “empty.”

“The federal taxpayers are paying millions of dollars for a decorative item so the Biden administration can tell the courts we’re implementing MPP but not actually doing it,” Lankford said.

One twist of Biden’s MPP restart is that it has opened a quicker path to U.S. asylum for some migrants at a time when most other avenues remain closed off by the Title 42 pandemic expulsions.

The Venezuelans, Nicaraguans and Cubans who have been the vast majority of MPP enrollees under Biden tend to have stronger claims for asylum or some form of humanitarian protection, because the United States denounces their governments as repressive and authoritarian.

“MPP gave me a chance,” said Boris, a Nicaraguan asylum seeker who spoke on the condition that his last name be withheld because he still fears possible deportation.

Boris, 29, crossed the border between Ciudad Juárez and El Paso in early December and was among the first group of migrants to be placed in MPP under Biden. Boris said he faces persecution in his home country for protesting against the government of President Daniel Ortega, who was sworn in for a fourth term last year in an election the Biden administration denounced as “a sham.”

Boris returned from Mexico to the El Paso immigration court in early January, describing his fear of persecution through the help of an interpreter. He also told the court that he suffered from a chronic lung condition that would endanger his life if he was returned to Mexican shelters.

The judge exempted him from MPP, and he was released to a church-operated shelter with dozens of others he said had contracted the coronavirus. Five days later, he joined his cousins at their Austin-area apartment, and awaits another court date next week.

“They handed me my papers and sent me off,” Boris said. “I don’t know why or how. Now I’m here, safe and happy to be here, hoping I won’t be deported.”

Sent back to Ciudad Juárez

Under Trump, asylum seekers sent to Mexico were often confused and adrift, unsure how to find legal help or return for their U.S. court appointments. They were visible on the streets of Mexican border cities and were easy targets for criminal gangs.

Marysol Castro, an attorney with El Paso's Diocesan Migrant and Refugee Services who provides legal aid to asylum seekers in MPP, said the program's return under Biden was a "relief" to some, "because otherwise if you go to the border you're getting expelled" under Title 42.

Castro said new enrollees in MPP have court dates with fast-tracked hearings, unlike asylum seekers who were placed into the program under Trump and are still stuck in Mexico "with no hope."

Mexican authorities say they received assurances from the Biden administration that migrants placed in MPP would have improved access to legal counsel. But despite the vastly lower numbers, there is still far more demand for pro bono legal services than nonprofit groups and charities can provide, Castro said.

More than two-thirds of MPP returns under Biden have been sent to Ciudad Juárez, where they are provided secure transportation through a State Department contract with the U.N. International Organization for Migration. The Mexican government houses them in a shelter set up in a converted warehouse in an industrial area of the city.

"The shelters are more restrictive," said Victor Hugo Lopez, a Mexican official who helps oversee the program. "The migrants can request permits to go outside, but we try to keep them safe by keeping them inside."

Dana Graber Ladek, the IOM chief of mission in Mexico, said her organization continues to oppose MPP on principle, even as it's working with both governments to ameliorate conditions for those sent back.

"It still has a tremendous amount of negative impacts," she said. "It's not how asylum is supposed to work."

Hernández reported from San Antonio.

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