

[Intro Music]

Kirk McDaniel: Welcome to Sidebar, a podcast from Courthouse News. I'm Kirk McDaniel, Sidebar's producer and a reporter in Austin, Texas. In this episode, San Diego-based reporter Bianca Bruno examines the human, ecological and political toll of the current and former administration's approaches to the border debate. Later in the episode, Bianca will look at how the border wall affects the animals that call the region home. But first, the conversation surrounding the U.S.-Mexico border is a highly political subject, especially in states that border our friends to the South. While physical barriers and infrastructure have entered into our collective imagery of today's border, nothing has a more tangible impact than policy. One such policy enacted by the Trump administration forced thousands of migrants, some seeking asylum, to wait in Mexico for their day in U.S. court. Despite the Biden administration's attempt to end that policy, it remains in effect to this day, further complicating the president's goal of enacting lasting change to the immigration system and address the growing masses that arrive at the border in search of refuge. Here's Bianca with the story.

["Yankee Doodle" Plays]

Kamala Harris: We did it, we did it, Joe. You're going to be the next president of the United States.

Bianca Bruno: They did it. Joe Biden and Kamala Harris were elected president and vice president in 2020 after campaigning on a platform promising to undo much of what former President Donald Trump implemented during his administration. One of their biggest campaign promises, immigration reform. More specifically, they promised to reinstate the asylum process that had been all but eliminated under two policies enacted by Trump: Migrant Protection Protocols, also called Remain in Mexico, and Title 42. Fast forward more than a year after Biden was inaugurated, and what is his administration doing to reform immigration and the asylum process?

KH: I want to be clear to folks in this region who are thinking about making that dangerous trek to the United States-Mexico border. Do not come. Do not come. The United States will continue to enforce our laws and secure our border.

Ev Meade: The short answer is that they're both still there. And these were both hallmarks of the Trump immigration policy. There's something that I think in the light of history we will look at as very similar to the proposal of building a giant border wall from the Pacific Ocean to the Gulf of Mexico. But I think what's interesting about these policies still being in place is that, you know, they were kind of campaign promises that the Biden administration was getting rid of them. My name is Ev Meade and I'm the director of Proceso Pacífico, which is a peace building organization. And we work mostly in Mexico, and I've worked on U.S.-Mexico border issues for the last 25 years or so.

BB: Implemented in January 2019, the Remain in Mexico program forced asylum-seeking migrants to wait on the Mexico side of the U.S.-Mexico border when adjudicating their asylum claims. Over the course of the initial phase of the program, about 70,000 migrants were turned away from ports of entry. Then the pandemic happened and Title 42, a provision in the health code prohibiting the entry of people who present a threat of spreading a communicable disease, was invoked by the Trump administration. It completely shut down the asylum process in March 2020.

EM: The idea that we would change the entry policy to the United States at land ports of entry, but also in airports and everywhere else, I think we can give them a little bit of a pass on that. Even the Trump administration in the sense that at the very beginning that this was spreading quickly. It was coming from outside the United States, and it wasn't totally unreasonable to think that some kind of immigration lockdown would be part of the broader lockdown. As soon as you get a couple of months into the pandemic, however, that became a really questionable proposition, and it became a questionable proposition for a couple of reasons. Number one, the case counts in the United States were higher than they were in most of Mexico. So, if anything, the risk was, you know, people from the United States going to Mexico. Number two was exactly that. Mexico didn't close the border, and the U.S. didn't prevent Americans who traveled to Mexico from returning. The public health thing ended up just being an excuse. And that's where you look at sort of the third level of it, which is an excuse for what? Well, it's an excuse for what the Trump administration had publicly announced was the point of their immigration policy. It was to stop immigration to the United States by deterrence, period. And that's immigration, all immigration, legal immigration, unauthorized immigration, openly illegal immigration, refugees, migrants, everybody.

BB: Title 42's impact on immigration has resulted in an unprecedented number of apprehensions at the border. This fiscal year, it's projected nearly two million apprehensions will happen. Last year, 1.7 million apprehensions marked the highest number in history. But those numbers don't tell the whole story.

EM: That's true. It's technically true. But it's also only true because number one, 360,000 or so of those folks are the same folks who've been nabbed more than once. And two, the only reason they've been nabbed more than once is because, thanks to Title 42, lots of people are being apprehended on the border and they're very quickly kicked back to Mexico, regardless of where they're from. And so, they keep trying and they keep being counted a second time, a third time, a fourth time. And in fact, it makes the border look a lot more out of control than it really is.

BB: And those turned away from seeking asylum under Title 42 are subject to an even more disjointed policy than those waiting in Mexico under Remain in Mexico.

Cody Copeland: These folks are turned away from the U.S. without any chance of being able to apply for asylum. And really, this one, this one can be much worse for people because you don't know what's going to happen to you when you're sent back with Title 42. People can be sent back to Mexico. They can be deported back to their home country. They can be deported in what is being called a chain refoulement. Refoulement is the term for sending someone back to a situation that it is known that they are going to be in danger. Or, in probably one of the most bizarre possibilities, is they could be sent to just some other country randomly under the pretense that this region needs to take responsibility for this problem as well.

[Music Break]

BB: That's Cody Copeland, the Courthouse News Mexico correspondent. He recently traveled to the U.S.-Mexico border to speak to migrants being returned under what's being dubbed MPP 2.0, or the second iteration of Remain in Mexico. That's because, unlike his continued enforcement of Title 42, Biden has fought to get rid of the MPP program. Or at least he has on paper.

Jen Psaki: The Secretary of Homeland Security put out a memorandum conveying we want to end this program, but we also believe in following the law. And that's exactly what we're doing as there was a ruling that required us moving forward with implementation.

CC: The Biden administration has been able to say that it's forced to reimplement Migrant Protection Protocols, but it has also defended its use of Title 42. It's been postulated that maybe it's to try and not appear too lax on immigration so as not to irk conservatives. But in doing so, the administration has irked those on the left who had hoped he would get rid of these inhumane programs, as he said he would on the campaign trail. And we're actually seeing a split in his administration as officials who had been pushing for reform are actually preparing to leave.

BB: After nixing the Remain in Mexico program, Biden was sued by Texas and Missouri, who claimed that by getting rid of the program, they'd incurred costs related to housing, schooling and providing medical care to asylum seekers. It's a legal strategy we've seen before.

EM: This set of challenges arose when the Biden administration tried to suspend the MPP program, and they did it perhaps a bit lazily. They said, well, we think it's bad. It's been challenged in the courts. We sort of campaigned against it. So, you know, we're going to use the power of the executive branch and some administrative tools, and we're going to stop doing it. Like the Obama administration before them, they didn't cross all their T's and dot all their I's. They didn't come up with a very good explanation for it, much less give a full legal analysis of it. And they were sued, and they were sued most prominently by a group of states who claim very similar to the claims made against DACA by against the Obama administration. That's going to impose some undue costs on them to have these folks coming into the United States while their cases are being adjudicated.

BB: The states were successful. In December, the Biden administration implemented the second version of Remain in Mexico, starting first in El Paso, Texas, before reintroducing the program in San Diego, California. So far, less than 300 people waiting for their asylum cases to be adjudicated have been returned to Mexico. But that figure is expected to increase by this summer.

CC: Although the numbers are low right now for MPP, they're on par with what we saw in the first few months of the first MPP under the Trump administration. And so, when that started in January 2019, even by March, the numbers weren't outrageous, but by July they were turning away over 10,000 people a month. The U.S. Embassy from Mexico City told shelter organizers in Tijuana that they wouldn't turn back more than 30 migrants a day, which there's nothing, there's nothing in place to actually hold the U.S. government to that at all. But by extrapolating that number to the seven cities to which it's ultimately going to be rolled out along the border, experts said we could see as many as 6,500 migrants turned back each month and put in their MPP.

[Music Break]

BB: If more people than ever are being turned away from being welcomed into the United States, why do they keep coming?

EM: People come to the United States in large numbers for two reasons, and this has been true for the last hundred years. They come because of war and they come because of big macroeconomic conditions. And you know, you can add things like, you know, changing climate and some of the effects

to that to those macroeconomic conditions. But that's really it, they don't come because of immigration policy.

CC: Although there are specifics in each person or each family's story, the origin of the violence that pushes them out might be different. The one overarching thing that all of these people have in common is that getting to the United States and asking for asylum, as dangerous as that is, is the safest option they have. I spoke with a mother of five daughters from Honduras who said that once her daughters reach the age of 11, 12, 13, the gang members there in Honduras wanted to take them and rape them. And when she didn't let that happen, they said, well, you have this many days to get out of here or we're going to, you know, burn your house down and take them by force.

[Audio of mother speaking in Spanish]

English Translation: I left because they wanted to rape my daughters, the youngest ones that I have with me here. And if you don't give them what they want, they threaten you and say you have a certain amount of time to leave.

BB: And those who do make it to the U.S. find that they're returned to Mexico, where they face conditions slightly less, if not just as dangerous as the violence that they fled.

[Audio of mother speaking in Spanish]

English Translation: I don't want to stay in Mexico because I've experienced lots of harassment here. The reason I'm playing these conditions is because of my daughters. Life is already what it is for an adult like me. But my kids are still very young. I've got one who's 13, another who's about to be 15, one who is 16 and another who is 11. But if I knew that my children were going to have to live through the same kind of violence we saw in Honduras, we would have just stayed there.

[Music Break]

BB: While violence and poverty are driving factors for those seeking refuge in the United States, the people seeking safety and new opportunities changes year by year.

EM: We look at the data on 2021 compared to 2020 compared to 2019 and 2018. What you find is that in each of those years, there was a sort of a different main driver and there are very different populations coming. This year, something really, really different is happening on the border right now and we should probably be talking about that rather than just sort of having the same debate about no wall versus a wall or harsh policy versus humane policy. What's happening is really for the first time since we've been collecting data on the border, this other category, meaning people who are neither Mexican nor Central American, is the biggest category of apprehensions, like 180,000 people.

CC: A huge block of these migrants, those from Haiti who originate from Haiti aren't even considered refugees since they're not fleeing directly from Haiti right now, but rather countries like Chile and Brazil. You know, despite the fact that Haiti is not a safe place to live, they aren't considered refugees.

BB: No matter what countries migrants are coming from or the circumstances they are fleeing, they're facing the same roadblock: waiting in Mexico.

CC: Companies like the corporation FEMSA, which runs the largest store chain of convenience stores here in the country, Oxxo, has recently dedicated itself to hiring immigrants from Haiti. And so really, you're kind of seeing this trend of migrants who are realizing that it's just extremely difficult to get asylum in the United States. Many of them are now staying and working in Mexico in border cities. I spoke with several shelter directors in several towns along the border who said that yes, they had migrants from MPP, but many of these people had year, year and a half, two year wait times. And so, they are now living in these cities like Matamoros, Reynosa and renting places and working most likely in the informal economy, which I saw a report the other day that jobs in the informal economy shot up at the end of last year.

BB: Even though President Biden promised to get rid of Trump's signature asylum blocking policies, a year after he took office, they're still the status quo. And promises he made to keep those subjected to MPP 2.0 will be put to the test in the next few months.

CC: And we could see migrants waiting years again, even though the Biden administration promised to limit wait times to six months or less. However, the first hearings from people put in MPP 2.0 in December were set for April and May, so around five or six months out. And so, if there's any delay, which we can expect delays, then they'll blow right past that six month promise.

BB: A silver lining? More asylum seekers are being represented by attorneys in immigration court.

EM: And that's a big deal because that translates into outcomes. And so, we do see that the denial rate for people who apply for asylum has gone down. Not dramatically, but it's down. It's true that more people who are applying and actually getting their day in court are represented by counsel and are winning their cases.

BB: Meade said Trump's harsh immigration policies had a ripple effect. It galvanized a community of attorneys to help represent migrants in court.

EM: There's a community of dedicated immigrant advocates have been recruiting pro-bono attorneys to do cases, people like Casa Cornelia here in San Diego or the National Immigrant Justice Center. But then the Trump administration and the really harsh kind of anti-immigrant tone and policies also brought a lot of new people to that movement. And groups like Al Otro Lado, who've been who are U.S.-based immigration attorneys, practice in U.S. courts, but their office and the work that they do is actually in Mexico, that are based in Tijuana. They really galvanized a whole lot of support and brought a whole lot more lawyers to the cause.

BB: Even though more migrants are represented during asylum hearings, when it comes to U.S. immigration policy, it doesn't seem to matter what party the president belongs to. We can expect more of the same.

CC: I think the Biden administration is kind of like trying to take advantage of the fact that it was technically Trump who put these policies into place and saying like, well, it's not us. We're we just have to do it, like that has gotten really bad thanks to Trump. But U.S. policy, economic, military and immigration has just been taking advantage of these people for decades now. Unless we actually follow U.S. law that says people have the right to apply for asylum, it's not going to get any better.

[Music Break]

KM: While we humans debate immigration policy, the vast ecosystem that lives along the Rio Grande goes on living as long as we allow it. If you remember, one of Trump's key campaign promises was to build a wall along the southern border to keep migrants from crossing into the U.S. As you'll hear from Bianca, efforts to build a border wall didn't begin or end with Trump. And it hasn't stopped affecting the conservationists that live and work in the region. While we were working on this story, the National Butterfly Center in Mission, Texas announced it would be closing its doors for the foreseeable future to protect staff from right wing harassment.

[Running Water Sounds]

Marianna Treviño-Wright: The river is our lifeblood. It not only provides for the crops. Here they grow 365 days a year, but it provides for the wildlife and the plants, and that includes the insects. Here at the southernmost point of the United States, the climate is very hot. We are practically an irrigated desert. So, the Rio Grande River keeps everyone and everything alive. My name is Marianna Treviño-Wright. I am executive director of the National Butterfly Center in Mission, Texas. We are a 100-acre botanical garden, the pilot project of the North American Butterfly Association and we have planted more than 300 native plant species that are host and nectar sources for native butterflies. So, you can come to the National Butterfly Center and see more butterflies than you will see anywhere else on the North American landscape.

BB: A picturesque nature preserve along one of the longest rivers in North America, the National Butterfly Center hosts benign-sounding events including the Butterfly Festival and Butterfly Bonanza. But it has found itself in the middle of a fight between the federal government and supporters of former President Donald Trump over one of the most contentious issues of modern American politics: the border wall. The unlikely foe of the federal government and anti-immigration activists has even gotten the attention of Hollywood. It was featured in an episode of political satire show "Full Frontal with Samantha Bee."

Clip from "Full Frontal with Samantha Bee:" A good ol' fashioned Texas shit show! Where Trump's diverting billions of dollars from the military to build a 30-foot wall, crushin' critters and grabbin' private property along the way. Yeehaw!

MW: When you talk about why we find ourselves at ground zero for this border wall fight and still in the crossroads of it, part of it has to do with the agenda that was laid well before Trump. And that is this ridiculous border wall plan.

BB: The plan started literally at ground zero. In response to the 9/11 terrorist attack on the World Trade Center, Congress enacted the Real ID Act of 2005.

Cameron Langford: It was an amendment to a law with a long name called the Illegal Immigration Reform and Immigration Responsibility Act. And the Real ID part comes from its main purpose of setting new standards for state driver's licenses and IDs. But it also gave the Department of Homeland Security secretary authority at his sole discretion to waive federal laws as needed to speed up construction of border wall. Before it passed, the feds could only wave two federal environmental laws for border wall

projects, but the Trump administration used it to weigh nearly 50 federal laws, including the Clean Air Act, the Clean Water Act and laws meant to protect Native American tribes' burial sites.

BB: That's Cameron Langford, a Houston-based reporter at Courthouse News. He's covered several lawsuits related to border wall construction in Texas, including two legal challenges brought by the National Butterfly Center. Those lawsuits challenged violations of the center's property rights and environmental laws.

[Chainsaw Sounds]

MW: Our first fight was against the federal government when we found government contractors on our property July 20, 2017, cutting down our trees and mowing down our brush. They explained to us that they had been sent by the federal government to clear our land for border wall. But this was nine months before any congressional vote authorizing border wall before any appropriation funding border wall. We had received no legal notice, there was no right of entry.

BB: That's because the government had invoked the Real ID Act. It's been utilized by every president since George W. Bush to speed up construction of border barriers at the U.S.-Mexico border and waive any laws that might get in the way. And while Trump used the act most liberally, his Democratic presidential predecessor and successor have also used it.

MW: It was funded and designed under President Bush. Obama continued to build it, finish out Bush's walls and then we get Trump elected, and he wants to build more wall, and now we have Biden continuing to build and advance border wall for the Rio Grande Valley, where we are located. The Biden administration or CBP under the Biden administration just last week announced 86 new miles of border wall. This means the entire Rio Grande Valley will be walled off from our only fresh water source for about six million people. Walled off from Falcon Dam all the way to the Gulf of Mexico. So, it doesn't matter who's president, it doesn't matter if it's the red team or the blue team.

BB: But what about Biden's campaign promise not to build any more walls?

Joe Biden: There will not be another foot of wall constructed in my administration.

Reporter: What about the land confiscations?

JB: End, stop, done, over, not going to do it. Withdraw the lawsuits. We're out. We're not going to confiscate the land.

BB: And his executive order the first day in office suspending all construction at the border in order to audit Trump's projects.

CL: The Biden administration says it's meant to shore up the Rio Grande Valley in Texas, the flood barrier system there and protect low lying areas of Hidalgo County, it's a border county in Texas, from catastrophic flooding. Department of Homeland Security spokespeople say it's supposed to be finished next spring and won't involve any expanding of the border wall. And instead of 15-foot barriers atop levee walls like the Trump administration built, this one's supposed to be six feet tall and only serve as a

guardrail for the safety of border patrol agents. But some area residents say Biden's DHS is trying to build shorter walls and pretend they're something different.

BB: The Biden administration claims the levee project will close breaches in the Rio Grande, which could flood due to the Trump administration's project, where it had tore down flood barrier infrastructure to make way for a border wall. Wright said it's just another example of a loophole exploited by the federal government to continue building walls at the border.

MW: Those of us who have been advocating against walls and trying to make sure that language in legislative bills and other things guarded against the exploitation of loopholes and such. We did not want there to be an opportunity to close gaps without gaps being defined because, for example, in 2018, when the 25 new miles of border wall were funded with \$450 million in that omnibus appropriation, that's the one that funded border wall through the National Butterfly Center. That 25-mile area was a gap. You know, so there are, you know, 800-foot gaps and there are 800-mile gaps. It's just a matter of how those definitions get used and exploited.

BB: And the projects don't only involve building walls or levees or filling gaps or breaches. They involve clearing areas on both sides of the border barrier to create what are known as enforcement zones.

MW: We call it the dead zone because nothing is allowed to live there. Under the original border wall plan under President Bush, that enforcement zone, which is devoid of vegetation and covered in material that allows there to be all weather road traffic, and that area is maintained devoid of vegetation with herbicide, with poison, that in our case they're spraying on the ground at the water table into our public water supply. It also includes the all-night bright stadium lighting, and that enforcement zone went from being on average 40 feet wide to now being over 150 feet wide, so it's basically quadrupled. We've got an enormous loss of habitat. When you do that 150-foot minimum width, and multiply that mile after mile after mile, you wind up with hundreds of thousands, if not millions, of acres of lost habitat for a border wall that is built in most places, more than a mile, one to two miles inside the United States.

[Birds Whistling]

BB: The levee project at the Rio Grande River not only threatens the National Butterflies Center's wildlife refuge, but it threatens an endangered cat that lives in the desert of the southwest.

Documentary Clip: From the mountains in the Sonoran Desert to the foothills of the Argentinean Andes and all the jungles in between lives a predator perfectly adapted to this wide range of habitats. This lone wanderer prowls the jungles at night, picking up prey with every passing kilometer. This is the prince of the jungle, the ocelot.

CL: So, ocelots are an endangered wildcat. They look like small leopards, basically. And conservationists say a lot of Texans are surprised to find that, you know, that Texas does have a native population of these cats in the state.

BB: Protecting ocelots is at direct odds with Biden's levee wall project, and it also interferes with the federal government's own plan to protect the species in Texas, where less than 50 cats are left. The

inconsistency prompted the conservation nonprofit Center for Biological Diversity to threaten to sue Homeland Security over its waiver of environmental laws.

CL: And the center, they claimed in their letter that the Department of Homeland Security had violated the Endangered Species Act and the National Environmental Policy Act by not consulting with U.S. Fish and Wildlife Service to make sure the project doesn't jeopardize the ocelot. And lack of consulting seems strange because U.S. Fish and Wildlife Service has been working on an ocelot recovery plan for years where it's acquiring land to create a five-mile corridor connecting South Texas ranch land with the wildlife protection zone in northern Mexico, where there are lots of ocelots. And the goal is to increase the genetic diversity of the Texas population because they have problems from inbreeding. So, they could, you know, travel to this other area in northern Mexico and interact with the ocelots there and it would improve their genetics.

Brian Segee: In that section in South Texas, there has been a decades-long effort because like so many areas in this country, but perhaps even more concentrated, that area of South Texas has lost 95 percent of its native habitat, thorn scrub natural habitat. My name is Brian Segee, I work for Center for Biological Diversity and I'm the legal director of our endangered species program. Through the past decades, Fish and Wildlife Service has painstakingly and at great expense been acquiring isolated tracts of land along the lower, I believe it's around 200 miles of the river. This is just running roughshod over those efforts that are going into these various refuge tracts and building a border wall. And those populations depend on gene flow. They, the populations, need to be able to interact with each other. They don't recognize boundaries. And so, a border wall can very much result in the end of these species existing in the United States.

BB: The federal government undermining its own conservation efforts isn't new, but the response from federal employees working on conservation has changed since Bush was the first to invoke the environmental law waivers.

BS: One thing we did see during the wall construction during the Bush administration that I don't think was as prevalent during the Trump administration, is that Fish and Wildlife Service employees really pushed back. Some of the refuge managers, Fish and Wildlife Service, as I mentioned Lower Rio Grande National Wildlife Refuge in Texas. They manage other wildlife refuges along the border in other states, including Cabeza Prieta, San Bernardino in Arizona, and some of those refuge managers really, really pushed back during the Bush administration. And they paid for it professionally. They got transferred or it wasn't easy for them, and it was a courageous stand. And, and it did pay dividends. They were able to stop construction in some of those areas during the Bush administration. Not so much during the Trump administration. If it comes to a shoving match between Department of Homeland Security and CPB and the Fish and Wildlife Service, especially with a presidential administration, that's made, you know, the big, beautiful border wall its top priority, Fish and Wildlife Services is gonna probably lose that fight.

BB: Protecting sensitive species along the U.S.-Mexico border hinges on the enforcement of environmental laws that are already on the books, and Congress knows this. Yet previous attempts to revoke the waiver authority were unsuccessful.

CL: With Trump's getting out of office, the border wall's not so much in the public eye, I would say. So, I don't think there's any movement on this. The last time they addressed it, House Democrats opposed the bill in 2019 to repeal the waiver authority, but it died without being put up for a vote.

BB: But Segee said the tide may change as Congress looks to restore balance among the branches of the U.S. government, more than 20 years after 9/11.

BS: Congress has been rethinking some of its authorities, some of what it did in the wake of 9/11 because it's 20 years later, certain war powers authority and because there was this broader basically abdication of legislative power to the executive branch in the wake of 9/11 and Congress in certain contexts has been trying to reclaim that authority. Congress could fix this so easily, and fortunately, there is a bill that's been introduced this session, this Congress H.R. 4848. Representative Grijalva and past Congresses have, starting in the Bush administration, tried similar legislative efforts. Those haven't gained much traction thus far. But we're hoping to make a push this year again because they're the ones who created the problem and they're the ones who can, who can make it go away.

BB: In 2020 after Biden was elected, Arizona Congressman Raúl Grijalva told me in an interview he'd work with Congress to rescind the Real ID waivers for projects at the border. And when Homeland Security announced in December it was resuming border barrier projects, Grijalva again called on Biden to remove barriers and mitigate damages caused by the Trump administration, a call that has gone unanswered for more than a decade.

Raúl Grijalva: Because of the waivers of all the laws, including sacred sites, burials sites, cultural resources, water protection – because all those laws are waived – Department of Homeland Security, through their contractor considers to proceed with no understanding of the consequence and of the damage that they're doing. It's a damage that is about the identity of the region, about the identity of the awesome people and more importantly, ripping apart some values that are very important that you cannot replace.

KM: The southern border is a region rich in both Mexican and American culture, brimming with scenic landscapes that can, much like policy, both inspire and terrify. A special thanks to Cody Copeland and Cameron Langford. You can find more of their reporting at [courthousenews.com](https://www.courthousenews.com). Make sure to follow us on Twitter @SidebarCNS and @CourthouseNews, where you will get up to date on the legal, political and environmental news that matters to you. Please tune in for our next episode on March 1, where we will be looking into the right to be forgotten online. See you next time!

[Outro Music]