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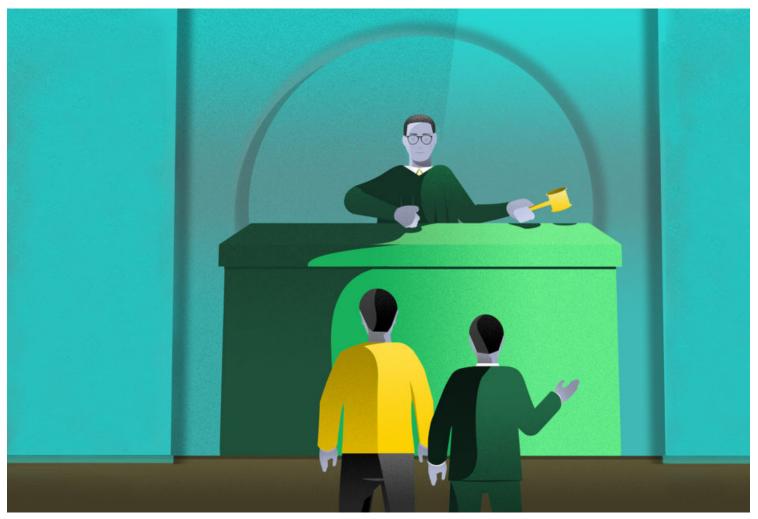
IMMIGRATION

Arrested Immigrants Are Being 'R to Mexico

Classifying immigrants as "arriving aliens" allows the government to deny them a char



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- f Immigration Judge Lee O'Connor of the San Diego immigration court did not minc when terminating the deportation case of a Salvadoran asylum-seeker placed into the Department of Homeland Security's "Remain in Mexico" program.
- "DHS has acted without good faith in subjecting respondent[s] who were encountered the United States to the program," O'Connor wrote in September. "DHS cannot negle follow the law and then subject respondents to a procedure which it could not have p it had followed the law."

But outside of O'Connor's courtroom and a few others in Southern California, that ar be exactly what's happening. The DHS is placing immigrants who were not arrested a border—some of whom have spent considerable time inside the United States—into i in Mexico program. That's even though the law DHS says authorizes the program req the immigrant be "arriving on land."



Immigration and Customs Enforcement referred questions about misclassifying imm its parent agency, DHS, which did not respond to requests for comment. But O'Conno decision and lawyers for immigrants say the government is manufacturing the facts r to define people arrested in the interior U.S. as "arriving." Once the government arrest it sends them to Mexico to await hearings in the United States. When they cross the b those hearings, the argument goes, they become "arriving aliens."

"It's a circular argument that the government is making," says San Diego immigration attorney Bashir Ghazialam. "What led them to go to the border and become 'arriving that they were illegally returned to Mexico."

"Remain in Mexico," officially known as the "Migrant Protection Protocols" or MPP, v announced in late 2018 as a program for asylum-seekers at the border. The program's implementation memo says it relies on Section 235(b)(2)(C) of the Immigration and Nationality Act, which allows the attorney general to return an applicant for admissic is arriving on land (whether or not at a designated port of arrival) from a foreign terri contiguous to the United States."

But "arriving alien" has a legal definition, attorneys say, and people arrested within t for not having papers don't generally meet it. Rather, they are typically "aliens prese without admission." The distinction matters; "arriving aliens" have access to fewer for relief in immigration law than "aliens present without admission." Most crucially, "an aliens" are not eligible for a hearing on bond—that is, they have no right to ask a juda decide whether they should be permitted to pay for their freedom.

* * *

The government has been taking advantage of this crucial difference between "ar aliens" and "aliens present without admission." Attorney Patty Ojeda of the America: Association's Immigrant Justice Project of San Diego says DHS typically argues that t immigrants are not entitled to a bond hearing. She's been able to convince judges that "arriving alien" designation was improper for the six clients she's had in this situatio overall, very few people in MPP are granted bond.

Results have been mixed for attorney Leah Chavarria of the Jewish Family Service of Diego, which also handles MPP cases. Chavarria says most judges she's seen will have bond hearing—but many ultimately agree with the government, denying bond becau don't have jurisdiction to grant it to an "arriving alien."

And that's just in San Diego. University of Texas Law professor Denise Gilman, who r immigrants directly as the head of her school's immigration law clinic, says Texas juc been "completely fine with it." That's despite the fact that the government often files charging document saying immigrants are both "arriving aliens" and "aliens present admission," which—as O'Connor's ruling points out—are mutually exclusive categori other cases, the government reissues documents and changes the designation to "arr alien" once the immigrant comes to the first hearing.

Even if a judge dismisses these deportations, there's a big catch: It won't necessarily government can simply refile the cases, which allows it to send the immigrants to Me again. It can also appeal, which permits it to imprison the immigrant until the appeal decided—a process that typically takes several years.

Ghazialam has clients in both situations. He's hoping to include some of them in a lafiled by another San Diego immigration lawyer December 12, which they plan to conv class action. In *CPG et al. v. Archambeault*, a Guatemalan woman and her minor child were misclassified and put into MPP argue that they are in unlawful detention that vi their statutory and due process rights. An immigration judge terminated their case, b government nonetheless took them into custody pending an appeal.

"They can be stuck out in Mexico, and be subjected to all kinds of threats and everyth their appeal is still pending," says Ghazialam, referring to the unchecked violence in Mexico that has led to kidnappings and murders of immigrants awaiting their hearing is how the government succeeds in keeping people out of the country."

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