

Walking the Talk:

2021 Blueprints for a Human Rights-Centered
U.S. Foreign Policy

Chapter 3: Upholding Refugee Protection and Asylum at Home

Acknowledgments

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Human Rights First challenges the United States of America to live up to its ideals. We believe American leadership is essential in the struggle for human dignity and the rule of law, and so we focus our advocacy on the U.S. government and other key actors able to leverage U.S. influence. When the U.S. government falters in its commitment to promote and protect human rights, we step in to demand reform, accountability, and justice.

When confronting American domestic, foreign, and national security policies that undermine respect for universal rights, the staff of Human Rights First focus not on making a point, but on making a difference. For over 40 years we've built bipartisan coalitions and partnered with frontline activists, lawyers, military leaders, and technologists to tackle issues that demand American leadership.

Human Rights First is led by President and Chief Executive Officer Mike Breen and Chief Operating Officer Nicole Elkon.

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Upholding Refugee Protection and Asylum at Home

Introduction

The United States was once a global leader in shielding refugees fleeing persecution. The nation led efforts to draft the Refugee Convention in the wake of World War II and, with bipartisan support, enshrined its commitments into law when it enacted the Refugee Act. For decades, Republican and Democratic administrations recognized the moral and strategic importance of a strong commitment to providing refuge to the persecuted. But the Trump administration has trampled on these commitments to the detriment of both refugees and U.S. national interests.

Through a barrage of policies denying refugees safety in the United States, the Trump administration has decimated both the U.S. asylum and resettlement systems. The administration has banned refugees from Muslim-majority countries, reduced resettlement to all-time lows, forced asylum seekers to “wait” in no-

toriously violent parts of Mexico, taken children from their parents, sent asylum seekers to unsafe countries, refused to release asylum seekers from detention, and used the pandemic to illegally expel asylum seekers and unaccompanied children to highly dangerous places. Over and over, the administration has banned refugees from asylum and used these bans to evade legally-mandated

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protections and separate refugees from their families. Instead of effectively managing cases, the administration has implemented punitive policies that have spurred chaos, bottlenecks, kidnappings, attacks, and horrific detention conditions.

Administration officials have also rigged the adjudication system against refugees. They have elevated immigration judges with high asylum denial rates, directed Border Patrol officers to conduct interviews in place of asylum officers, and rendered many refugees ineligible for asylum through Attorney General rulings and regulations that seek to rewrite the law. Predictably, the rates at which U.S. adjudicators grant asylum have [plummeted](#), leaving many refugees unprotected.¹

Not only have thousands had their lives devastated, but the global humanitarian and human rights systems, essential to safeguarding stability world-wide, are threatened by America’s blatant violations of its refugee and human rights treaty obligations—illegalities that have sparked condemnations from the U.N. [Refugee Agency](#) (UNHCR), [human rights officials](#), and a [Canadian Court](#), which found U.S. mistreatment of asylum seekers inconsistent with the Refugee Convention and the norms of free and democratic societies.² Such policies set a poor example for other countries, including the small number of developing nations that actually [host the vast majority](#) of the world’s refugees.³ Moreover, as one legal scholar has [warned](#), the Trump administration’s dismissal of U.S. international legal obligations threatens to render a host of treaties meaningless, “take a wrecking ball to U.S. international legal relationships,” and “deal a death blow” to the United States’ “capacity to engage in international diplomacy for decades to come.”⁴

1 Human Rights First, *Fact Sheet: Grant Rates Plummet as Trump Administration Dismantles U.S. Asylum System, Blocks and Deport Refugees* (Jun. 2020) available at <https://www.humanrightsfirst.org/sites/default/files/AdministrationDismantlingUSAsylumSystem.pdf>.

2 See Office of the U.N. High Commissioner for Refugees, *UNHCR deeply concerned about new U.S. asylum restrictions* (Jul. 15, 2019) available at <https://www.unhcr.org/en-us/news/press/2019/7/5d2cdf114/unhcr-deeply-concerned-new-asylum-restrictions.html>; Brief of the Office of the U.N. High Commissioner for Refugees as Amicus Curiae in Support of Plaintiffs and Affirmance, *O.A. v. Trump*, No. 19-5272 (D.C. Cir. filed Aug. 13, 2020) available at <https://www.refworld.org/type/AMICUS,UNHCR,USA,5f3f90ea4,0.html> [hereinafter *UNHCR Amicus Brief in O.A. v. Trump*]; see also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, U.N. Doc. A/HRC/28/68 (Mar. 5, 2015) available at <https://www.refworld.org/pdfid/550824454.pdf>; Office of the U.N. High Commissioner for Human Rights, *Arbitrary detention: UN expert group urges the USA to abolish the mandatory detention of migrants* (Oct. 24, 2016) available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20749&LangID=E>; Catherine Kim, *UN human rights chief is “deeply shocked” by US treatment of migrants*, Vox (Jul. 9, 2019) available at <https://www.vox.com/policy-and-politics/2019/7/9/20687495/us-migrant-detention-michelle-bachelet-un-high-commissioner-human-rights>; Canadian Council for Refugees v. Canada (Immigration, Refugees and Citizenship), 2020 F.C. 770 (Can.) available at <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/482757/index.do>.

3 According to the U.N. Refugee Agency, developing countries are host to 85 percent of the world’s refugees. See Office of the U.N. High Commissioner for Refugees, *Refugee Population Statistics Database* (2019) available at <https://www.unhcr.org/refugee-statistics/>.

4 Oona Hathaway, *The Trump Administration’s Indefensible Legal Defense of Its Asylum Ban*, Just Security (May 15, 2020) available at <https://www.justsecurity.org/70192/the-trump-administrations-indefensible-legal-defense-of-its-asylum-ban/>.

The United States must change course before the damage becomes irreversible. The next presidential administration must make clear—through actions as well as words—that restoring U.S. leadership in protecting the persecuted is a top priority. Leading by example, the next administration must uphold U.S. refugee laws and treaties at home, while encouraging other countries to uphold their own asylum obligations.

To do so, an administration taking office in 2021 should transform America's approach to people seeking refugee protection, shifting the paradigm from one driven by detention and attempts to deter and turn away refugees seeking U.S. asylum to a genuine humanitarian response, led by humanitarian agencies, that upholds refugee laws and effectively and fairly manages asylum cases.

The next administration should implement orderly, fair, and timely processes for asylum claims, immediately end illegal policies executed by the current administration, and employ effective and humane case management strategies, rejecting costly mass detention that violates human rights treaties. It should restore its global leadership on resettlement by rescinding discriminatory bans and policies, ramping up the numbers provided refuge, and working to make the program even stronger. And in the wake of the novel coronavirus pandemic, it should end efforts to exploit COVID-19 as a pretext to violate laws protecting asylum seekers. As public health experts have stressed, the United States can and must “both safeguard public health and uphold laws requiring the protection of asylum seekers and unaccompanied children.”⁵

Finally, in tandem with the steps outlined in this paper, a next administration must make the human rights of people in Central America and Mexico a primary foreign policy priority, so that families, adults, and children are not forced to seek protection in other countries. In its first week, the administration should announce a major initiative to uphold human rights in the region, seeking input from rights defenders in these countries and leveraging U.S. diplomacy, development, and humanitarian aid to support systems that combat corruption, mitigate climate displacement, and help people secure protection in home

countries. At the same time, the U.S. should direct its diplomacy and aid to expand the capacity of Mexico, Belize, Costa Rica, Panama, Colombia, and other countries to host, safeguard, and provide asylum to refugees.

5 Letter from Leaders of Public Health Schools, Medical Schools, Hospitals, and other U.S. Institutions to Alex Azar, Secretary, Department of Health and Human Services, and Robert R. Redfield, Director, Centers for Disease Control and Prevention (May 18, 2020) available at https://www.publichealth.columbia.edu/sites/default/files/public_health_experts_letter_05.18.2020.pdf [hereinafter May 2020 Letter from Public Health Experts].

Along with launching these regional initiatives, the next administration should also, during its first week, convene a White House Humanitarian Protection Task Force and issue an executive order or directives on its first day instructing U.S. agencies to take steps to restore U.S. asylum and refugee protection leadership—and law—at home. Key steps for a next administration include:

- **Ending policies that endanger refugees, create chaos, and violate law and treaties, including:**
 - Remain in Mexico; asylum entry, transit, and public health bans; deals with unsafe countries; “metering” reductions at border ports-of-entry; and fast-track deportation programs blocking legal counsel;
 - Rules, rulings, and policies to deny refugees asylum, including Attorney General rulings targeting family groups, women subjected to violence, and victims of armed groups; and
 - Mass detention, family separation, and criminal prosecution for improper entries.
- **Managing asylum arrivals in orderly, effective, and humane ways that uphold U.S. law, including by:**
 - Launching a humanitarian response via a White House task force, coordinated by a White House senior coordinator or advisor for refugee and humanitarian protection and staffed by humanitarian agencies and ultimately a new or reconfigured and elevated U.S. agency with a humanitarian protection mission, expertise, and capacities;
 - Providing timely, humane, safe, and orderly processing at U.S. ports-of-entry; transferring asylum seekers to orientation/reception sites and shelters within several hours, not days; and employing health safeguards; and
 - Referring asylum seekers into case management with legal representation to humanely, successfully, and cost-effectively manage cases while they shelter with family in communities.
- **Upgrading adjudication systems to provide timely, fair, and accurate refugee decisions, including by:**
 - Ramping up asylum officer hiring to conduct more asylum interviews, enabling more asylum cases to be accurately resolved at the USCIS asylum division, and reducing referrals to courts;
 - Swiftly remedying politicized hiring, conducting fair and increased hiring and reducing backlog while working to make courts independent; and
 - Rescinding policies, rules, and rulings that rig the system against refugees and improperly deny them protection.
- **Strengthening and rebuilding the U.S. resettlement system, including by:**
 - Rescinding discriminatory bans, increasing the presidential determination to 100,000 for fiscal year 2021 and 125,000 for fiscal year 2022, fixing delays, strengthening outcomes and support; and
 - Improving resettlement of U.S.-affiliated Iraqis, and Afghans via Special Immigrant Visas (SIVs), creating a priority path for Syrian refugees who assisted the U.S., launching initiatives for Central American and Venezuelan refugees, and preparing for Hong Kong refugee resettlement.

Recommendations

✓ End policies that endanger refugees, create chaos, and violate law

The next administration must immediately end current administration policies that brazenly violate laws passed by Congress by expelling and blocking people seeking U.S. protection. These policies have harmed families, adults, and children seeking refuge, all the while generating chaos, confusion, and unnecessary costs. Human Rights First has [tracked](#) over 1,100 reports of kidnappings, sexual assaults, and other attacks on adults and children turned away under the Remain in Mexico policy.⁶ The actual number of attacks is certainly higher, as most victims have not been interviewed by human rights researchers or journalists. In addition, the Trump administration has used the pandemic as a pretext to expel [asylum seekers](#) and [unaccompanied children](#) to dangerous places where their lives are at risk.⁷

[T]he Trump administration has used the pandemic as a pretext to expel asylum seekers and unaccompanied children to dangerous places where their lives are at risk.

On its first day, a future administration should issue an order or directives revoking presidential orders and proclamations relating to asylum, and instructing DHS and DOJ to take steps to: uphold U.S. refugee law and treaties at the border; immediately end Remain in Mexico, “asylum cooperation agreement”

transfers to unsafe countries, expulsions relying on the [debunked](#) and [dangerous](#) CDC order,⁸ and removals under secretive programs that block legal counsel; swiftly transition to U.S. safety asylum seekers stranded under Remain in Mexico; ramp-up hiring for asylum interviews and hearings; rescind Trump administration rules and rulings blocking refugees from asylum including the asylum entry and transit bans and other rules; and settle lawsuits in which the government is defending illegal asylum policies. Priority policies to end include:

- **The specious public health bans.** The next administration should immediately direct the Centers for Disease Control (CDC), Department of Health and Human Services (HHS), and DHS to rescind policies—including the much-criticized March 20 CDC [order](#), the related [rule](#), the May 19 [order](#) extending the ban indefinitely, and any agency [guidance](#)⁹—used to expel thousands of asylum seekers and unaccompanied children to places where their lives are at risk, as detailed in a May 2020 Human Rights First [report](#) and media reports confirming expulsions of [children](#) and [asylum seekers](#), including Nicaraguan [political dissidents](#).¹⁰ Similarly, a next administration should rescind the sweeping July 9, 2020 [proposed rule](#) that would label refugees as national security threats, ban them from asylum and other protection, and summarily deport many without asylum hearings on sham “public health” grounds such as passing through a country where COVID-19—or a potentially vast array of other treatable [communicable diseases](#), should DHS and DOJ declare them security threats—are prevalent or simply

6 Human Rights First, *Delivered to Danger: Trump Administration sending asylum seekers and migrants to danger* (last updated May 13, 2020) available at <https://www.human-rightsfirst.org/campaign/remain-mexico>.

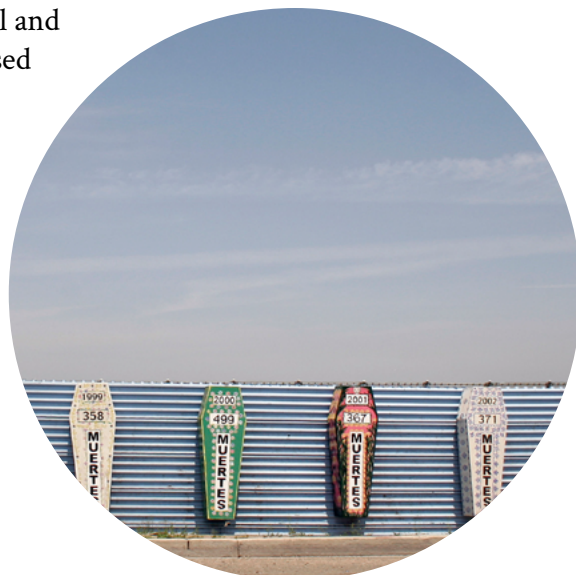
7 See Kevin Sieff, *She fled detention and torture in Nicaragua for asylum in the United States. The government put her on a plane back home.*, Washington Post (Aug. 28, 2020) available at https://www.washingtonpost.com/world/the_americas/nicaragua-asylum-us-border/2020/08/27/9aaba414-e561-11ea-970a-64c73a1c2392_story.html; Catherine E. Shoichet, *Geneva Sands, The US detained hundreds of migrant children in hotels as the pandemic flared*, CNN (Sep. 3, 2020) available at <https://www.cnn.com/2020/09/03/us/migrant-children-detained-hotels/index.html>; Human Rights First, *Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger* (May 13, 2020) available at <https://www.humanrightsfirst.org/resource/pandemic-pretext-trump-administration-exploits-covid-19-expels-asylum-seekers-and-children>.

8 See May 2020 Letter from Public Health Experts, *supra* note 5; see also Sieff, *supra* note 7.

9 Order Suspending Introduction of Persons From a Country Where a Communicable Disease Exists, 85 Fed. Reg. 16567 (Mar. 20, 2020) (to be codified at 42 C.F.R. § 71) available at https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf; Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 16559 (Mar. 24, 2020) (to be codified at 42 C.F.R. § 71) available at <https://www.federalregister.gov/documents/2020/03/24/2020-06238/control-of-communicable-diseases-for-foreign-quarantine-suspension-of-introduction-of-persons-into>; Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 31503 (May 26, 2020) available at https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf?ftag=MSF0951a18; Dara Lind, *Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately – Ignoring Asylum Law*, ProPublica (Apr. 2, 2020) available at <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>.

10 For Human Rights First’s report, see *Pandemic as Pretext*, *supra* note 7; for relevant media reports, see Sieff, *supra* note 7; National Immigrant Justice Center, *A Timeline Of The Trump Administration’s Efforts To End Asylum* (last updated Aug. 2020) available at <https://immigrantjustice.org/issues/asylum-seekers-refugees>.

exhibiting a cough or other potential symptoms.¹¹ Medical and public health experts have [concluded](#) that both the proposed rule, and the orders and expulsions, are “xenophobia masquerading as a public health measure.”¹² Public health experts have also [explained](#) that the U.S. has the ability to both safeguard public health and safeguard the lives of men, women, and children seeking asylum at the U.S. border and have recommended [measures](#), outlined below, to protect law enforcement officials, those exercising their legal right to request protection in the United States, and public health.¹³ Legal experts have concluded that the CDC order does not override U.S. laws and treaties protecting refugees and unaccompanied children.¹⁴ UNHCR legal [guidance](#) on the pandemic confirms states may not impose measures that preclude refugees from admission or deny them an effective opportunity to seek asylum, and that “(d)enial of access to territory without safeguards to protect against refoulement cannot be justified on the grounds of any health risk.”¹⁵



- The dangerous Remain in Mexico policy (disingenuously titled “Migrant Protection Protocols” [MPP]).** The next administration should immediately end the [illegal and chaotic](#) MPP, revoking former DHS Secretary Kirstjen Nielsen’s June 25, 2019 [memorandum](#) on day 1, and instead adjudicate cases from safety in the United States, consistent with U.S. refugee law.¹⁶ Pending MPP cases should be swiftly transitioned from danger in Mexico, swiftly processed into the country using the public health [measures](#) detailed by experts, and paroled to family in the United States while their cases are adjudicated.¹⁷ Not only is CBP able to process cases in a few hours, but MPP cases have previously undergone CBP processing. Moreover, the [vast majority](#) of MPP asylum seekers have U.S. family or other destination homes where they can shelter.¹⁸ The MPP wind-down can be conducted in an orderly manner, communicating with attorneys, shelters, medical and humanitarian organizations that assist asylum seekers, and slating cases for swift transfer based, for instance, on the month they were referred into MPP.

In addition to allocating sufficient U.S. government staff to transition these cases in within weeks, DHS and humanitarian agencies will need to set up an orderly process so that asylum seekers facing urgent risks can have their cases transferred to safety in the United States prior to their scheduled date.

11 Security Bars and Processing, 85 Fed. Reg. 41201 (Jul. 9, 2020) (to be codified at 8 C.F.R. §§ 208, 1208) available at <https://www.federalregister.gov/documents/2020/07/09/2020-14758/security-bars-and-processing>; 42 C.F.R. § 34.2(b)(2) available at <https://www.law.cornell.edu/cfr/text/42/34.2>; see Human Rights First, *New Asylum Ban, Recycled Pretext: Proposed Rule Would Illegally, Unjustly Bar Many Asylum Seekers on Public Health Grounds* (Jul. 2020) available at https://www.humanrightsfirst.org/sites/default/files/PublicHealthAsylumBanFactsheet_FINAL.pdf.

12 Letter from Leaders of Public Health Schools, Medical Schools, Hospitals, and other U.S. Institutions to Chad F. Wolf, Acting Secretary, U.S. Department of Homeland Security, and William Barr, Attorney General, U.S. Department of Justice (Aug. 6, 2020) available at https://www.publichealth.columbia.edu/sites/default/files/public_health_experts_letter_05.18.2020.pdf [hereinafter *August 2020 Letter from Public Health Experts*].

13 *May 2020 Letter from Public Health Experts*, *supra* note 5; Human Rights First et al., *Public Health Measures to Safely Manage Asylum Seekers and Children at the Border* (May 2020) available at <https://www.humanrightsfirst.org/sites/default/files/PublicHealthMeasuresattheBorder.05.18.2020.pdf> [hereinafter *Public Health Measures*].

14 Lucas Guttentag, *Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors*, *Just Security* (Apr. 13, 2020) available at <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>; Hathaway *supra* note 4.

15 U.N. High Commissioner for Refugees, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, ¶ 6 (Mar. 16, 2020) available at <https://www.refworld.org/docid/5e7132834.html>.

16 Human Rights First, *A Sordid Scheme: The Trump Administration’s Illegal Return of Asylum Seekers to Mexico* (Feb. 13, 2019) available at <https://www.humanrightsfirst.org/resource/sordid-scheme-trump-administration-s-illegal-return-asylum-seekers-mexico>; Memorandum from Kirstjen M. Nielson, Secretary, U.S. Department of Homeland Security, to L. Francis Cissna, Director, U.S. Citizenship and Immigration Services et al. on Policy Guidance for Implementation of the Migrant Protection Protocols (Jan. 25, 2019) available at https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf.

17 *Public Health Measures*, *supra* note 13. These cases are already in immigration court proceedings and ICE and EOIR can facilitate venue transfers to immigration courts in destination locations. These cases could potentially be adjudicated more promptly by the USCIS asylum division if, after transfer into the U.S., MPP removal proceedings are terminated and cases referred to USCIS for asylum adjudications.

18 Amnesty International et al., *Responding to the COVID-19 Crisis While Protecting Asylum Seekers* (last updated Mar. 25, 2020) available at <https://www.humanrightsfirst.org/sites/default/files/GroupStatementUpdated.pdf>; Tom K. Wong, US Immigration Policy Center, *Seeking Asylum: Part 2*, at 13 (Oct. 29, 2019) available at <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

Going forward, U.S. agencies must comply with U.S. refugee law and allow people to seek asylum from safety in the United States. As UNHCR has [explained](#), when a state is presented with an asylum request at its border, it must provide admission at least on a temporary basis while the asylum claim is examined “as the right to seek asylum and the non-refoulement principle would otherwise be rendered meaningless.”¹⁹ UNHCR’s [amicus brief](#) in the case challenging MPP confirms the policy does not comply with the Refugee Convention and Protocol.²⁰ Given the illegality, dangers, and due process deficiencies that plague MPP, U.S. Immigration and Customs Enforcement (ICE) should be directed to request that immigration courts vacate all MPP in *absentia* orders and join in requests to vacate MPP removal orders that denied protection.

- **Asylum entry and transit bans and denials.** The next administration should rescind the November 2018 [presidential proclamation](#) and [interim](#)

The next administration should rescind the November 2018 presidential proclamation and interim final rule that sought to bar from asylum people who cross into the United States between ports of entry without inspection.

[final rule](#) that sought to bar from asylum people who cross into the United States between ports of entry without inspection.²¹ Judge Moss of the D.C. federal district court [directed](#) the rule be vacated, finding it inconsistent with U.S. refugee law in *O.A. v. Trump*, a case brought by Human Rights First and other organizations on behalf of

a nationwide class of asylum seekers.²² In February 2020, the Court of Appeals for the Ninth Circuit [concluded](#), in *East Bay Sanctuary Covenant v. Trump*,²³ that the rule unlawfully conflicts with the text and purpose of U.S. refugee law and is inconsistent with the Refugee Convention, affirming a district court injunction that had been in effect for over a year (after both the Ninth Circuit, in an [opinion](#) authored by Judge Jay Bybee, and the [Supreme Court](#) refused to stay the district court injunction).²⁴ A next administration should also rescind other Trump administration rule changes that attempt to get around these court rulings by denying [asylum](#) (proposed in June 2020) or [work authorization](#) (effective August 2020) to penalize asylum seekers who enter between ports of entry.²⁵ The asylum entry ban and other policies punishing refugees for improper entry violate U.S. law and Refugee Convention prohibitions against penalizing asylum seekers for improper entry or presence, as UNHCR confirmed in its [amicus brief](#) addressing the ban.²⁶

The next administration should also rescind rules that ban refugees from asylum, or direct or urge asylum denials, due to transit through other countries, including the [July 2019 interim final rule](#) ([vacated](#) and [enjoined](#) as of August 2020) and the [June 2020 proposed rule](#) that seeks to codify variations on that transit ban.²⁷ While the July 2019 ban was in effect, the United States barred from asylum

19 Office of the U.N. High Commissioner for Refugees, *Access to asylum further at stake in Hungary* (Jun. 29, 2020) available at <https://www.unhcr.org/en-us/news/press/2020/6/5efa0f914/access-asylum-further-stake-hungary-unhcr.html>.

20 U.N. High Commissioner for Refugees’ Amicus Curiae Brief in Support of Appellees’ Answering Brief, *Innovation Law Lab v. Kevin M. McAleenan*, 924 F.3d 503 (9th Cir. 2019) available at <https://www.aclu.org/legal-document/innovation-law-lab-v-mcaleenan-amicus-brief-un-high-commissioner-refugees>.

21 U.S. President Donald Trump, *Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States* (Nov. 9, 2018) available at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-addressing-mass-migration-southern-border-united-states/>; Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 Fed. Reg. 55934 (Nov. 9, 2018) (to be codified at 8 C.F.R. §§ 208, 1003, 1208) available at <https://www.federalregister.gov/documents/2018/11/09/2018-24594/aliens-subject-to-a-bar-on-entry-under-certain-presidential-proclamations-procedures-for-protection>.

22 *O.A. v. Trump*, No. 18-02718, (D.D.C. Aug. 2, 2019) available at <https://www.cnn.com/2019/08/02/politics/read-ruling-trump-asylum-ban/index.html>.

23 *East Bay Sanctuary Covenant v. Trump*, No. 18-17274 (9th Cir. 2020) available at http://cdn.ca9.uscourts.gov/datastore/general/2020/02/28/18-17436_opinion.pdf.

24 Peter Margulies, *The Ninth Circuit’s Asylum Ban Ruling Is a Message to Trump*, *Lawfare* (Dec. 10, 2018) available at <https://www.lawfareblog.com/ninth-circuits-asylum-ban-ruling-message-trump>; Peter Margulies, *Asylum Ban Litigation: Supreme Court Declines to Stay Injunction*, *Lawfare* (Dec. 21, 2018) available at <https://www.lawfareblog.com/asylum-ban-litigation-supreme-court-declines-stay-injunction>.

25 Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36264 (Jun. 15, 2020) (to be codified at 8 C.F.R. §§ 208, 235, 1003, 1208, 1235) available at <https://www.federalregister.gov/documents/2020/06/15/2020-12575/procedures-for-asylum-and-withholding-of-removal-credible-fear-and-reasonable-fear-review>; Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38532 (Jun. 26, 2020) (to be codified at 8 C.F.R. §§ 208, 274) available at <https://www.federalregister.gov/documents/2020/06/26/2020-13544/asylum-application-interview-and-employment-authorization-for-applicants>.

26 Brief of the Office of the United Nations High Commissioner for Refugees before the United States Court of Appeals for the District of Columbia Circuit, *O.A. v. Trump*, No. 19-5272 (Aug. 13, 2020) available at <https://www.refworld.org/docid/5f3f90ea4.html>.

27 These variations would, for instance, require a denial of asylum due to transit, or transit of over 14 days. Asylum Eligibility and Procedural Modifications, 84 Fed. Reg.

refugees from Cuba, El Salvador, Eritrea, Guatemala, Honduras, Nicaragua, Venezuela, and other countries, as detailed by Human Rights First in its July 2020 [report](#) *Asylum Denied, Families Divided*.²⁸ Some were deported to countries where they fear persecution. Others were separated from their families, as such bans prevent refugees from bringing their children and spouse to safety as derivative asylees even when U.S. judges determine they qualify as refugees whose removal must be withheld.



Refugees who are denied asylum but qualify for “withholding of removal” are left in a limbo that blocks them from legal permanent residence, citizenship and integration. The transit ban violates U.S. law: refugees who travel through other countries are barred from asylum only if they are “firmly resettled” in a transit country, or if the United States has a formal agreement with a country where refugees are both safe from persecution and provided access to full and fair asylum procedures.²⁹ On June 30, 2020, in a case brought by Human Rights First and other counsel, a court in Washington D.C. [vacated](#) the transit ban, finding it was issued in violation of the Administrative Procedure Act (APA).³⁰ On July 6, 2020, in a separate lawsuit, the Ninth Circuit [found](#) the ban violates U.S. asylum law because the rule “does virtually nothing to ensure that a third country is a ‘safe option,’” and was arbitrary and capricious under the APA.³¹ The court upheld a preliminary injunction issued by a district court that concluded the ban “is likely invalid because it is inconsistent with the existing asylum laws.”³² UNHCR confirmed the transit ban is [not consistent](#) with U.S. legal obligations.³³ If any transit rule is in effect or becomes final, a new interim final rule reverting to the prior rule can be quickly issued. DHS leaders should direct ICE attorneys to join

case re-openings for those whose cases were denied based on the transit ban and stipulate to asylum grants for persons already determined by immigration courts to be refugees who met the withholding of removal standard.³⁴

- **The “deals” that send asylum seekers to unsafe countries.** The next administration should immediately stop all transfers under, and terminate, Trump administration agreements with [El Salvador](#), [Guatemala](#), and [Honduras](#), as well as the [related rules](#) through which the United States

33829 (Jul. 16, 2019) (to be codified at 8 C.F.R. §§ 208, 1003, 1208) available at <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>, *vacated* in Capital Area Immigrants’ Rights Coalition v. Trump, No. 19-2115 (D. D.C. 2020) available at <https://www.humanrightsfirst.org/sites/default/files/CAIR%20Coalition%20Opinion%20%281%29.pdf>, *enjoined* by East Bay Sanctuary Covenant v. Barr, No. 19-16487 (9th Cir. 2020) available at <https://www.aclu.org/legal-document/order-east-bay-v-barr>; Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, *supra* note 25. For Human Rights First’s commentary on these developments, see Human Rights First, *Comment on Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review* (Jul. 15, 2020) available at <https://www.humanrightsfirst.org/resource/comment-procedures-asylum-and-withholding-removal-credible-fear-and-reasonable-fear-review>.

28 Human Rights First, *Asylum Denied, Families Divided: Trump Administration’s Illegal Third-Country Transit Ban* (Jul. 2020) available at <https://www.humanrightsfirst.org/sites/default/files/AsylumDeniedFamiliesDivided.pdf>.

29 8 U.S.C. § 1158(a)(2)(A), 1158(b)(2)(A)(vi) available at <https://www.law.cornell.edu/uscode/text/8/1158>.

30 Capital Area Immigrants’ Rights Coalition v. Trump, No. 19-2115 (D. D.C. 2020) available at <https://www.humanrightsfirst.org/sites/default/files/CAIR%20Coalition%20Opinion%20%281%29.pdf>.

31 East Bay Sanctuary Covenant v. Barr, No. 19-16487 (9th Cir. 2020) available at <https://www.aclu.org/legal-document/order-east-bay-v-barr>.

32 That injunction had previously been stayed by the U.S. Supreme Court in September 2019 pending appeal. East Bay Sanctuary Covenant v. Barr, No. 19-04073 (N.D. Cal. Jul. 24, 2019) (order granting preliminary injunction) available at <https://assets.documentcloud.org/documents/6213167/7-24-19-East-Bay-Sanctuary-Asylum-TRO.pdf>; Barr v. East Bay Sanctuary Covenant, No. 19A230 (S. Ct. Sep. 11, 2019) (order granting application for stay) available at https://www.supremecourt.gov/opinions/18pdf/19a230_k53l.pdf.

33 UNHCR deeply concerned about new U.S. asylum restrictions, *supra* note 2; see also UNHCR Amicus Brief in *O.A. v. Trump*, *supra* note 2 (stating that “[t]here is no obligation under international law for a person to seek asylum at the first effective country,” and that “asylum should not be refused solely on the ground that it could have been sought from another State.”).

34 See Asylum Eligibility and Procedural Modifications, *supra* note 27.

has sent people seeking U.S. asylum to some of the most dangerous countries in the world—places from which people have been fleeing.³⁵ Perversely labeled “Asylum Cooperative Agreements,” these agreements violate U.S. refugee [law](#) and [treaty](#) commitments.³⁶ In fact, all [three](#) countries fall far [short](#) of the U.S. law requirements that would permit U.S. officials to treat them as a “safe third country” to which asylum seekers could be sent.³⁷ The UNHCR has [expressed](#) “[serious concerns](#)” about the deals.³⁸ A Human Rights Watch/Refugees International [report](#) concluded the Guatemala deal does not meet U.S. law criteria for a Safe Third Country Agreement.³⁹ Given this illegality, expedited removal orders issued based on this transfer arrangement should be vacated. These transfer schemes prompted a lawsuit filed in federal court in Washington D.C.⁴⁰ The United States should also not attempt to designate Mexico a “safe third country” as it does [not meet the applicable legal standards](#) given deficiencies in its asylum system and the dangers refugees face there.⁴¹ Instead, a next administration should leverage aid and diplomacy to strengthen asylum and safety for refugees in Mexico and across the region, and rights protections in Central America so people are not forced to flee.

- **Fast-track secretive deportation programs that block access to legal counsel.** The next administration should end fast-track deportation programs launched by the current administration that block asylum seekers from legal representation and rig protection screening interviews against them. Dubbed the Prompt Asylum Claim Review (PACR) and, when applied to families from Mexico, the Humanitarian Asylum Review Process (HARP), these programs prevent asylum seekers from meeting with legal counsel prior to credible fear screening interviews and prevent lawyers from attending interviews. Instead, asylum seekers undergo these screenings while held, often for five to seven days, in the notorious “hieleras” (CBP facilities known as “iceboxes” due to cold temperatures and inhumane conditions), blocked from in-person legal consultations and limited to a [very brief potential phone](#) call to a family member or lawyer.⁴² Given the deprivation of counsel and inhumane conditions used, DHS should vacate resulting expedited removal orders and instruct that they not be reinstated.

In addition, a next administration should not revive the slow-downs and reductions in asylum processing at ports of entry—which CBP dubbed “[metering](#),” but which actually acted as a monthly cap on processing asylum seekers.⁴³ This policy not only generated disorder by causing bottlenecks, back-ups, and dangerous waits in Mexico, but it also encouraged crossings between ports of entry, as CBP officers and the DHS OIG confirmed.⁴⁴ The next administration should direct CBP to rescind the April

35 Human Rights First, Press Release: *El Salvador Agreement a Fatal Deal for Asylum Seekers* (Sep. 20, 2019) available at <https://www.humanrightsfirst.org/press-release/el-salvador-agreement-fatal-deal-asylum-seekers>; Human Rights First, *Fact Sheet: Is Guatemala Safe for Refugees and Asylum Seekers?* (Jul. 1, 2019) available at <https://www.humanrightsfirst.org/resource/guatemala-safe-refugees-and-asylum-seekers>; Human Rights First, *Fact Sheet: Is Honduras Safe for Refugees and Asylum Seekers?* (May 1, 2020) available at <https://www.humanrightsfirst.org/resource/honduras-safe-refugees-and-asylum-seekers>; Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, 84 Fed. Reg. 63994 (Nov. 19, 2019) (to be codified at 8 C.F.R. §§ 208, 1003, 1208, 1240) available at <https://www.federalregister.gov/documents/2019/11/19/2019-25137/implementing-bilateral-and-multilateral-asylum-cooperative-agreements-under-the-immigration-and>; Security Bars and Processing, *supra* note 11.

36 *See Guatemala Fact Sheet*, *supra* note 35; *see also* Office of the U.N. High Commissioner for Refugees, *Statement on new U.S. asylum policy* (Nov. 19, 2019) available at <https://www.unhcr.org/en-us/news/press/2019/11/5dd426824/statement-on-new-us-asylum-policy.html>.

37 *See Honduras Fact Sheet*, *supra* note 35; *see also* Ramon Taylor, *US-Guatemala Asylum Deal Advances Without UN Refugee Agency*, VOA (Jul. 12, 2019) available at <https://www.voanews.com/usa/immigration/us-guatemala-asylum-deal-advances-without-un-refugee-agency>.

38 Kevin Sieff, *The U.S. is putting asylum seekers on planes to Guatemala—often without telling them where they’re going*, Washington Post (Jan. 14, 2020) available at https://www.washingtonpost.com/world/the-americas/the-us-is-putting-asylum-seekers-on-planes-to-guatemala--often-without-telling-them-where-theyre-going/2020/01/13/0f89a93a-3576-11ea-a1ff-c48c1d59a4a1_story.html; UNHCR *Statement on U.S. asylum policy*, *supra* note 36.

39 Human Rights Watch, *Deportation with a Layover: Failure of Protection under the US-Guatemala Asylum Cooperative Agreement* (May 19, 2019) available at <https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative>.

40 The lawsuit, *U.T. v. Barr*, was filed by The American Civil Liberties Union, National Immigrant Justice Center, Center for Gender & Refugee Studies, and Human Rights First. Complaint for Declaratory and Injunctive Relief, *U.T. v. Barr*, No. 20-00116 (D.D.C. Jan. 15, 2020) available at <https://www.aclu.org/legal-document/complaint-ut-v-barr>.

41 Human Rights First, *Fact Sheet: Is Mexico Safe for Refugees and Asylum Seekers?* (Nov. 1, 2018) available at <https://www.humanrightsfirst.org/resource/mexico-safe-refugees-and-asylum-seekers>.

42 American Immigration Council, *Fact Sheet: Policies Affecting Asylum Seekers at the Border* (Jan. 29, 2020) available at <https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border>; First Amended Complaint for Declaratory and Injunctive Relief, *Las Americas Immigrant Advocacy Center v. Wolf*, No. 20-03640 (D. D.C. Dec. 5, 2019) available at https://www.aclutx.org/sites/default/files/pacr_harp_complaint.pdf.

43 Human Rights First, *With Asylum Effectively Blocked at Southern Border, Those Seeking Safety Face Escalating Violence, Punishing Conditions* (May 13, 2020) available at <https://www.humanrightsfirst.org/press-release/asylum-effectively-blocked-southern-border-those-seeking-safety-face-escalating>.

44 *See* Human Rights First, *Barred at the Border: Wait “Lists” Leave Asylum Seekers in Peril at Texas Ports of Entry* (Apr. 2019) available at https://www.humanrightsfirst.org/sites/default/files/BARRED_AT_THE_BORDER.pdf; U.S. Department of Homeland Security, Office of Inspector General, *OIG-18-81, DHS Support Components Do Not Have Sufficient Processes and Procedures to Address Misconduct* (Sep. 26, 2018) available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-81-Sep18.pdf>;



2018 [memorandum](#) purporting to authorize this practice as well as any related guidance.⁴⁵ Instead, as outlined below, the next administration should ensure timely, orderly, and appropriately staffed processing that upholds U.S. refugee law.

Moreover, as explained in the third section of this paper, the next administration should overturn, withdraw, or vacate other policies, rules, and Attorney General rulings that rig the system against refugees and render refugees ineligible for asylum. These include rule changes proposed in June 2020, the ruling in *Matter of A-B* targeting women seeking protection from violence, and efforts to replace adjudicators that rule in favor of asylum seekers with those who rule against them.

✓ **Manage arrivals in orderly, humane ways that uphold refugee law**

Both the overarching paradigm and the structure of America's response to people seeking protection has been wildly off kilter. Both must change. The United States should transform its approach to people seeking refuge through a genuine humanitarian response and structure—led by humanitarian agencies with humanitarian expertise and capacities—that upholds U.S. refugee laws. Instead of counterproductive and dysfunctional policies that generate chaos and punish people seeking refuge, a next administration should implement fair and effective initiatives to manage asylum arrivals. These strategies include case management programs and legal representation initiatives—measures that lead to very high immigration court appearance rates, fiscal savings, and compliance with U.S. laws and treaties.⁴⁶ Nativist, racist rhetoric that tries to paint asylum seekers as threats, invaders, or a “security” problem will be overcome by strong leadership that affirms America's moral commitment to once again shine as a beacon that welcomes the persecuted.

David J. Bier, CATO Institute, *Obama Tripled Migrant Processing at Legal Ports—Trump Halved It* (Feb. 8, 2019) available at <https://www.cato.org/blog/obama-tripled-migrant-processing-legal-ports-trump-halved-it>. The policy is being challenged in court. First Amended Complaint for Declaratory and Injunctive Relief, *Al Otro Lado, Inc. v. McAleenan*, No. 17-02366 (S.D. Cal. Oct. 12, 2018) available at <https://ccrjustice.org/sites/default/files/attach/2018/10/AmendedComplaint.pdf>.

45 Memorandum from Todd C. Owen, Executive Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection on Metering Guidance (Apr. 27, 2018) available at <https://www.docketbird.com/court-documents/Al-Otro-Lado-Inc-et-al-v-McAleenan-et-al/Exhibit-1-Memorandum-from-Todd-C-Owen-Apr-27-2018-jah/casd-3:2017-cv-02366-00283-001>.

46 See John D. Montgomery, NERA Economic Consulting, *Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings* (May 28, 2014) available at https://www.nera.com/content/dam/nera/publications/archive2/NERA_Immigration_Report_5.28.2014.pdf; see also Ingrid V. Eagly, Steven Shafer, *Measuring In Absentia Removal in Immigration Court*, 168 U. Penn. L. Rev. 817 (2020) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3633267; see also U.S. Department of Homeland Security, Office of Inspector General, *OIG-18-22, U.S. Immigration and Customs Enforcement's Award of the Family Case Management Program Contract (Redacted)* (Nov. 30, 2017) available at <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf>; see also Jane C. Timm, *This Obama-era pilot program kept asylum-seeking migrant families together. Trump canceled it*, NBC (Jun. 24, 2018) available at <https://www.nbcnews.com/storyline/immigration-border-crisis/obama-era-pilot-program-kept-asylum-seeking-migrant-families-together-n885896>; see also Eleanor Acer, *Studies: Mass Detention of Migrant Families is Unnecessary, Inefficient, Just Security* (Jul. 5, 2018) available at <https://www.justsecurity.org/58897/studies-show-mass-detention-family-migrants-unnecessary-inefficient/>.

The refusal to employ case management and other legal strategies for asylum seekers in removal proceedings—and the insistence on mass detention—has led to lengthy, costly, arbitrary, and dysfunctional detentions. The mass detention policy has sparked hunger strikes, protests by jailed asylum seekers, and a massive spread of coronavirus in facilities and jails in the wake of ICE’s refusal to release significant numbers of legally eligible asylum seekers and immigrants—despite [warnings](#) from public health experts and former immigration officials.⁴⁷ To shift from a punitive response to a humanitarian management and refugee protection structure, the next administration should:

- **Reshape the U.S. response to lead a humanitarian management initiative.** In its first week, the next administration should establish and convene a White House Humanitarian Protection Task

Force comprised of relevant U.S. government agencies and including U.N. agencies and U.S. civil society organizations with refugee protection and management expertise and capacities. The Task Force requires high-level White House leadership, and should be managed by a White House Coordinator or Senior Advisor to the President for Refugee and Humanitarian Protection—an office that must be well-staffed to help ensure effective cooperation between U.S. agencies as they implement the reforms identified in this paper. The Task Force will need to meet at least weekly for some time. DHS, CBP,

[T]he next administration should work with Congress to create a new Refugee and Humanitarian Protection Agency, or reconfigure, elevate, and strengthen an existing agency, to manage U.S. refugee protection, asylum, and humanitarian protection matters.

and ICE, which have treated refugees seeking asylum as “border enforcement” or “national security” problems to be deterred, turned away, penalized and denied protection, have failed to uphold U.S. refugee laws and human rights treaties, and proven ill-equipped to lead the U.S. response to people seeking protection.

To enhance this effort, the next administration should galvanize and leverage a network of humanitarian organizations, including faith-based groups, the American Red Cross, legal nonprofits, and refugee assistance agencies with offices across the country. A number of faith-based groups and shelters, as well as refugee organizations, have experience providing assistance to new arrivals and long track records of working with CBP and/or other U.S. government agencies. Some provide refugee assistance and management around the world. The next administration should request Congressional appropriations to support this public-private initiative.

As it examines issues relating to DHS mission, structure and functions, the next administration should work with Congress to create a new Refugee and Humanitarian Protection Agency, or reconfigure, elevate, and strengthen an existing agency, to manage U.S. refugee protection, asylum, and humanitarian protection matters. Such an agency, preferably independent of DHS, should be led by an official of cabinet rank. The agency should have relevant rule-making authority relating to U.S. asylum and refugee law and adjudications; house asylum office adjudicators; have oversight of the management of the cases of asylum seekers; and the have authority to intercede in any attempt to deprive an asylum seeker of liberty via administrative detention. Additionally, the administration should take steps to reshape agency missions and responsibilities so that the leaders and staff of all agencies that play a role in interacting with children, adults, and families seeking refuge understand that they are clearly charged with upholding U.S. refugee law and treaties—and will be held accountable for refusing or failing to perform these legal responsibilities.

- **Safeguard the health of asylum seekers, U.S. staff, and the public.** In the midst of COVID-19,

⁴⁷ Human Rights First, Public Health Experts, Medical Doctors, Prison Experts, and Former ICE Officials Urge Releases from Immigration Detention Facilities to Control the Spread of COVID-19 (Apr. 2020) available at <https://www.humanrightsfirst.org/sites/default/files/ExpertsUrgeReleaseICEDetaineesCOVID19.pdf>.

leading public health experts have [stressed](#) that the United States has the ability to use proven measures to safeguard public health and the lives of men, women, and children seeking protection at the U.S. southern border.⁴⁸ Indeed, UNHCR has [reported](#) that over 20 European countries explicitly exempted asylum seekers from entry bans and border closures, and the European Union included an exemption within its travel restrictions for persons seeking protection.⁴⁹ In addition to ending the Trump administration’s specious disease-linked bans on asylum (i.e., the [March 20 CDC order](#), its May 2020 indefinite [extension](#), the [related rule](#), and the [July 9 proposed rule](#)⁵⁰), a next administration should immediately direct use of measures—recommended by [leading public health experts](#) for people crossing the border—that protect law enforcement officials, those exercising their legal right to request protection in America, and the public health of our nation.⁵¹

These evidence-based [measures include](#): “[d]uring border processing, facilitate social distancing through demarcations and the use of outdoor and other areas; require wearing of masks or similar cloth coverings over the face and nose for both officers and persons crossing into the United States; use plexiglass barriers and/or face shields for officers during interviews and identity-checks; provide hand-sanitizer and other handwashing for both officers and other persons; and provide requisite distance, as well as masks and other measures, in transport.”⁵² CBP officers have [reported](#) that the vast majority of ports of entry are able to maintain proper social distancing during processing.⁵³ In addition, health [screenings](#) can be conducted, including temperature checks and testing as it becomes more available.⁵⁴ As leading health experts recommend, “rather than detaining asylum seekers in congregate settings, allow asylum seekers to wait for their court hearings with their families or other contacts in the United States through parole, case management and other alternatives to detention.”⁵⁵



Moreover, should individuals crossing the southern border be required to self-quarantine as a precaution for 14 days like other international travelers, asylum seekers can do so at the homes of family or at other destination locations.⁵⁶ An asylum seeker who is ill should be referred to isolate at a family home or other accommodations as outlined in these [public health recommendations](#) (unless referred to immediate medical care), and not denied the right to seek asylum.⁵⁷ Ironically, DHS has been using COVID-19 [tests](#) and [non-congregate](#) accommodations to remove and expel people in ways that violate U.S. refugee and anti-trafficking laws, rather than using public health measures to uphold U.S. refugee laws and treaties.⁵⁸

48 See May 2020 Letter from Public Health Experts, *supra* note 5.

49 Office of the U.N. High Commissioner for Refugees, Regional Bureau for Europe, *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic* (Apr. 2020) available at <https://www.unhcr.org/cy/wp-content/uploads/sites/41/2020/04/Practical-Recommendations-and-Good-Practice-to-Address-Protection-Concerns-in-the-COVID-19-Context-April-2020.pdf>.

50 Order Suspending Introduction of Persons From a Country Where a Communicable Disease Exists, *supra* note 9; Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, *supra* note 9; Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, *supra* note 9; Security Bars and Processing, *supra* note 11.

51 May 2020 Letter from Public Health Experts, *supra* note 5; *Public Health Measures*, *supra* note 13.

52 *Id.*

53 U.S. Department of Homeland Security, Office of Inspector General, OIG-20-69, *Early Experiences with COVID-19 at CBP Border Patrol Stations and OFO Ports of Entry* (Sep. 4, 2020) available at <https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-69-Sep20.pdf>.

54 *Public Health Measures*, *supra* note 13.

55 May 2020 Letter from Public Health Experts, *supra* note 5.

56 *Id.*; *Public Health Measures*, *supra* note 13.

57 *Public Health Measures*, *supra* note 13.

58 Lomi Kriel, Dara Lind, ICE is making sure migrant kids don’t have COVID-19, then expelling them to “prevent the spread” of COVID-19, *Texas Tribune* (Aug. 10, 2020) available

- **Provide timely, humane, and orderly asylum processing at U.S. border posts.** The next administration's Secretary of Homeland Security and CBP Commissioner, working with humanitarian agency leads, should make it a top priority to conduct timely, humane, and orderly asylum processing at U.S. ports of entry and to immediately restore compliance with U.S. anti-trafficking and refugee law. CBP has the capacity to process asylum cases in a timely manner at both ports of entry and border patrol posts, and a next administration should immediately direct DHS and CBP to allocate sufficient staff to these responsibilities.⁵⁹ In fact, a December 2019 CATO Institute [analysis](#) concluded that the agency had staff capacity to process at least twice as many asylum seekers as it had processed in 2019, noting that in October 2016, CBP had processed twice as many asylum seekers as the monthly "metering" cap imposed under the Trump administration.⁶⁰ Initial border processing can be conducted within two to four hours so CBP can promptly transfer asylum seekers from CBP custody within several hours to the reception/orientation sites described below.⁶¹ A next administration should authorize deployment of monitors from the DHS office of Civil Rights and Civil Liberties, and access for independent legal monitors and outside observers such as UNHCR.

Once an individual is identified as an asylum seeker or unaccompanied child, their processing should be shifted to specifically trained humanitarian response officers. These officers should ultimately be

employed by an agency with a humanitarian mission, or at least by USCIS with expanded asylum authorities. Unaccompanied children must be screened and transferred to ORR custody as [required](#) by U.S. law.⁶² In addition to CBP officers and humanitarian response officers, border facilities should be staffed with case workers, health care staff, social workers, and child welfare specialists with the HHS Office of Refugee Resettlement. UNHCR should have open access to these facilities. Attorneys should no longer be blocked from these facilities and should be allowed to accompany asylum seekers

An incoming administration's DHS and CBP leaders must make clear to front-line officers that people seeking or indicating fear of harm cannot be expelled, turned away, or summarily removed under U.S. laws without assessments of their eligibility for asylum or other protection, conducted by asylum officers and immigration judges.

during initial border processing interviews. A next administration should direct the new leadership of DHS and CBP to upgrade and build out ports of entry and Border Patrol facilities so they have sufficient space and structure to briefly host families, adults, and children for the few hours needed to conduct initial processing in a humane manner with sufficient space, normal temperatures, appropriate conditions, and social distancing, when needed.

With specialized staff trained to deal with humanitarian needs and processing, CBP officers can better focus on timely and safe front-line processing and security checks. An incoming administration's DHS and CBP leaders must make clear to front-line officers that people seeking or indicating fear of harm cannot be expelled, turned away, or summarily removed under U.S. laws without assessments of their eligibility for asylum or other protection, conducted by asylum officers and immigration judges. The use of flawed expedited removal should be ended and not used against asylum seekers (and the 2019 [rule](#) expanding its reach rescinded⁶³), allowing more merits adjudications as asylum seekers are referred to

at <https://www.texastribune.org/2020/08/10/coronavirus-texas-ice-migrant-children-deport/>; Nicole Narea, *DHS is holding migrant children in secret hotel locations and rapidly expelling them*, Vox (Aug. 21, 2020) available at <https://www.vox.com/2020/8/21/21377957/migrant-children-unaccompanied-hotels-dhs-expulsion>.

59 David J. Bier, CATO Institute, *Legal Immigration Will Resolve America's Real Border Problems*, Policy Analysis No. 879 (Aug. 20, 2019) available at <https://www.cato.org/publications/policy-analysis/legal-immigration-will-resolve-americas-real-border-problems>.

60 *Id.*

61 Human Rights First, *Fact Sheet: CDC Relied on False Assertions in Issuing COVID-19 Order Being Used to Illegally Override U.S. Asylum Laws* (Jun. 2020) available at <https://www.humanrightsfirst.org/sites/default/files/CDCReliedonFalseAssertioninIssuingOrderUsedtoIllegallyOverrideAsylumLaw.pdf>.

62 See 8 U.S.C. § 1232(b) & (c) available at <https://www.law.cornell.edu/uscode/text/8/1232>.

63 Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (Jul. 23, 2019) available at <https://www.federalregister.gov/documents/2019/07/23/2019-15710/designating-aliens-for-expedited-removal>.

file and have asylum applications assessed on the merits as outlined below.

- **Launch legal and case management programs to effectively manage cases.** Instead of costly, wasteful, and inhumane mass detention, a next administration must shift to effective and fiscally prudent case management and legal support strategies that comply with and uphold U.S. laws and human rights treaties. Adults and families with children seeking refuge should not be held in detention after their brief initial border custody. Instead, they should be swiftly referred to a reception/orientation site run by a local shelter, refugee assistance provider, or other humanitarian organization where they can be placed into an appearance management program and referred to legal representation. U.S. humanitarian processing and/or case management officers can meet with asylum seekers in a designated area at these sites to the extent necessary to conduct follow-up case processing, such as to confirm accurate information on destination locations or referrals to the appropriate destination immigration court. At these sites, asylum seekers should be provided necessary information about their immigration appearance obligations through highly effective Legal Orientation Programs or similar legal information presentations; referred for medical services and trauma support (locally if urgent, or in their destination locations); registered into a community-based case management program with offices in the destination location where they will be staying while their asylum and removal proceedings are pending; and referred for legal representation in these destination locations. These orientation activities and referrals should be completed within a few days.

Multiple studies have confirmed that case management and other alternatives to detention are highly effective at [supporting appearance](#) and compliance with immigration hearings and appointments.⁶⁴ A family case management program piloted by DHS from January 2016 to June 2017 [demonstrated](#) high

64 See OIG-18-22, *supra* note 46; see also Timm, *supra* note 46; see also U.N. High Commissioner for Refugees, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, PPLA/2011/01.Rev.1 (Apr. 2011) available at <https://www.unhcr.org/4dc949c49.pdf>; see also International Detention Coalition, *There are alternatives: A handbook for preventing unnecessary immigration detention (revised edition)* (2015) available at <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>.

levels of success, including a 99 percent appearance rate for hearings.⁶⁵ These programs support asylum seekers and migrants to attend required immigration court hearings and immigration appointments; assist them to find legal representation; and refer them to medical, trauma-related, or other resources in order to proactively address challenges that could otherwise derail asylum seekers from appearing for immigration appointments. Case management is also more fiscally prudent than detention. For example, the DHS case management program cost about \$36 a day per family while family detention costs almost \$320 a day per person.⁶⁶ Community-based nonprofits and faith-based organizations with strong community ties are best placed to operate such programs given their deep ties to local legal, medical, and other critical support services.



The next administration should launch a major legal orientation and representation initiative to ensure due process, accurate decision-making and high appearance rates.⁶⁷ This initiative should be integrated with the case management program outlined above, which can assist asylum seekers in securing legal representation. Asylum seekers represented by counsel overwhelmingly appear for their immigration court hearings, as statistical studies have repeatedly confirmed.⁶⁸ Indeed, legal representation leads to 97 percent appearance rates for immigration hearings.⁶⁹ Legal representation is also a more fiscally prudent expenditure than detention, and when provided at initial adjudications will help ensure eligible refugees receive protection at the earliest stages of the process, making the adjudication process more efficient.⁷⁰

A next administration should act swiftly to jump start this major legal representation initiative, encouraging continued support from state and local governments, private donors, and pro bono lawyers while working with Congress to provide strong federal support to supplement these limited resources, in order to ensure all asylum seekers and immigrants, including those in removal proceedings, are provided legal representation and legal orientations. Congressional funding for universal legal orientation presentations and representation should, in addition to children and detainees, include families and others placed into case management

- **End arbitrary, unjust, and costly ICE mass incarceration.** The next administration should rescind current administration executive orders, policies, and guidelines⁷¹ directing or encouraging that asylum

65 Aria Bendix, *ICE Shuts Down Program for Asylum Seekers*, Atlantic (Jun. 9, 2017) available at <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/>.

66 *Id.*

67 Legal orientation programs explain appearance obligations, the legal system, and how to secure counsel, and enhance the efficiency of the immigration courts. See Nina Siulc et al., Vera Institute of Justice, *Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report, Phase II* (May 2008) available at https://storage.googleapis.com/vera-web-assets/downloads/Publications/legal-orientation-program-evaluation-and-performance-and-outcome-measurement-report-phase-ii/legacy_downloads/LOP_evaluation_updated_5-20-08.pdf; see also U.S. Department of Justice, Executive Office for Immigration Review, *Cost Savings Analysis—The EOIR Legal Orientation Program* (last updated Apr. 4, 2012) available at https://www.justice.gov/sites/default/files/eoir/legacy/2013/03/14/LOP_Cost_Savings_Analysis_4-04-12.pdf.

68 Ingrid Eagly, Steven Shafer, Jana Whalley, *Detaining Families: A Study of Asylum Adjudication in Family Detention*, 106(3) Cal. L. Rev. 785 (2018) available at http://www.californialawreview.org/wp-content/uploads/2018/06/4-Eagly_Shafer_Whalley.pdf; see Eagly, Shafer, *supra* note 46; see also OIG-18-22, *supra* note 46.

69 See Eagly, Shafer, Whalley, *supra* note 68.

70 New York City Bar, *City Bar Welcomes NERA Report Finding Appointed Immigration Counsel Would Pay for Itself* (May 30, 2014) available at <https://www.nycbar.org/media-listing/media/detail/city-bar-welcomes-nera-report-finding-appointed-immigration-counsel-would-pay-for-itself>.

71 U.S. President Donald Trump, Executive Order: Border Security and Immigration Enforcement Improvements (Jan. 25, 2017) available at <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>; Memorandum from Matthew T. Albence, Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, Implementing the President's Border Security and Interior Immigration Enforcement Policies (Feb. 21, 2017) available at <https://www.docketbird.com/court-documents/Damus-et-al-v-Nielsen-et-al/Exhibit-4-Albence-Memo-Feb-2017/dcd-1:2018-cv-00578-00104-008>; U.S. President Donald Trump, Executive Order: Affording Congress an Opportunity to Address Family Separation (Jun. 20, 2018)

seekers and immigrants be held in detention and not released, and shift instead to case management and other effective, humane strategies. Costly mass detention and non-release policies waste resources and violate America's [refugee](#) and [human rights treaty](#) obligations due to unnecessary, disproportionate, and otherwise [arbitrary detention](#) and lack of prompt court review.⁷² In fact, a DHS advisory committee [recommended](#) the use of community-based case management programs, rather than detention.⁷³ Medical studies confirm detention harms [asylum seeker](#) health, while harms escalate as detention time lengthens.⁷⁴ The American Academy of Pediatrics has repeatedly confirmed detention [harms children](#).⁷⁵

The next administration should rescind current administration executive orders, policies, and guidelines directing or encouraging that asylum seekers and immigrants be held in detention and not released, and shift instead to case management and other effective, humane strategies.

bonds to asylum seekers;⁷⁶ revise regulatory language to provide prompt access to custody hearings (with affordable or no bond when warranted) for “arriving” asylum seekers and migrants; and codify asylum parole into regulations as ICE ignores parole directives. As outlined above, adults and children seeking refuge should not be sent to ICE detention facilities after initial border custody but should, if determined to need appearance support, be placed into community-based case management programs.

- **End criminal prosecutions for improper entry and family separation.** The next administration should revoke President Trump's [January 2017 order](#) designating prosecution of immigration offenses a “high priority”⁷⁷ as well as subsequent memoranda and agency directives,⁷⁸ and abstain from referring parents with children, asylum seekers and migrants for criminal prosecutions for improper entry/re-entry, instead using the administrative immigration removal and asylum processes designed for such cases. A next administration should work with Congress to repeal and revise laws so these matters

Case management should replace—not supplement—detention. The next administration should end family and other unnecessary and inhumane migration detention that violates U.S. human rights legal commitments, and shift to a presumption of liberty. It should immediately vacate the Attorney General's decision preventing immigration judges from issuing

available at <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>; Ending “Catch and Release” at the Border of the United States and Directing Other Enhancements to Immigration Enforcement, 83 Fed. Reg. 16179 (Apr. 13, 2018) available at <https://www.federalregister.gov/documents/2018/04/13/2018-07962/ending-catch-and-release-at-the-border-of-the-united-states-and-directing-other-enhancements-to>; U.S. Department of Homeland Security, Acting Secretary McAleenan Announces End to Widespread Catch and Release (Sep. 23, 2019) available at <https://www.dhs.gov/news/2019/09/23/acting-secretary-mcaleenan-announces-end-widespread-catch-and-release>; U.S. Immigration and Customs Enforcement, Directive: Identification and Monitoring of Pregnant Detainees (last updated Mar. 29, 2018) available at <https://www.ice.gov/directive-identification-and-monitoring-pregnant-detainees>; Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44392 (Aug. 23, 2019) (to be codified at 8 C.F.R. §§ 212, 236, 410) available at <https://www.federalregister.gov/documents/2019/08/23/2019-17927/apprehension-processing-care-and-custody-of-alien-minors-and-unaccompanied-alien-children>.

72 U.N. High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012) available at <https://www.refworld.org/docid/503489533b8.html>; OHCHR, *Arbitrary Detention*, *supra* note 2; Méndez, *supra* note 2; U.N. Human Rights Committee, *General Comment No. 35 on Article 9 (Liberty and security of person)*, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en.

73 U.S. Department of Homeland Security, *Report of the DHS Advisory Committee on Family Residential Centers* (Sep. 30, 2016) available at <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>.

74 Craig Haney, *Conditions of Confinement for Detained Asylum Seekers Subject to Expedited Removal* (Feb. 2005) available at https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/conditionConfin.pdf.

75 Julie M. Linton, Marsha Griffin, Alan J. Shapiro, American Academy of Pediatrics, Council on Community Pediatrics, *Detention of Immigrant Children*, 139(4) *Pediatrics* (2017) available at <https://pediatrics.aappublications.org/content/139/5/e20170483>.

76 See Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019) available at <https://www.justice.gov/eoir/file/1154747/download>; see also Padilla v. ICE, No. 19-35565 (9th Cir. 2020) available at <https://www.aclu.org/legal-document/appeals-court-opinion-padilla-v-ice> (upholding portion of district court injunction of Matter M-S- that found that the class of asylum seekers is constitutionally entitled to bond hearings).

77 U.S. President Donald Trump, Executive Order: Border Security and Immigration Enforcement Improvements (Jan. 2017) available at <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>. The executive order triggered a sharp increase in prosecutions, leading more asylum seekers and initial entrants to be targeted for prosecution, as Human Rights First reported. Human Rights First, *Punishing Refugees and Migrants: The Trump Administration's Misuse of Criminal Prosecutions* (Jan. 2018) available at <https://www.humanrightsfirst.org/sites/default/files/2018-Report-Punishing-Refugees-Migrants.pdf>.

78 Memorandum from the U.S. Attorney General to All Federal Prosecutions on Renewed Commitment to Criminal Immigration Enforcement (Apr. 11, 2017) available at <https://www.justice.gov/opa/press-release/file/956841/download>; Ending “Catch and Release” at the Border of the United States and Directing Other Enhancements to Immigration Enforcement, 83 Fed. Reg. 16179 (Apr. 13, 2018) available at <https://www.federalregister.gov/documents/2018/04/13/2018-07962/ending-catch-and-release-at-the-border-of-the-united-states-and-directing-other-enhancements-to>; U.S. Department of Justice, *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry* (Apr. 6, 2018) available at <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>; U.S. President Donald Trump, Executive Order, *Affording Congress an Opportunity to Address Family Separation* (Jun. 20, 2018) available at <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>.

are handled through civil laws, and asylum seekers are not subjected to such prosecutions.⁷⁹ After the administration announced its infamous “[zero tolerance](#)” policy, criminal prosecutions of asylum seekers and migrants escalated sharply and over [5,400](#) children were ultimately taken from parents subjected to these prosecutions.⁸⁰ Such prosecutions [thwart due process](#), divert prosecutorial resources, and violate the Refugee Convention, which [prohibits](#) the United States from penalizing asylum seekers for illegal entry or presence in most cases, as the DHS OIG [warned](#) in 2015.⁸¹ Human Rights First [researchers observed](#) countless prosecutions of asylum seekers that violated the Refugee Convention.⁸² Seventy former U.S. Attorneys issued a letter objecting to the zero tolerance prosecutions and family separations, [explaining](#) that “[i]t is a simple matter of fact that the time a Department [of Justice] attorney spends prosecuting misdemeanor illegal entry cases, may be time he or she does not spend investigating more significant crimes like a terrorist plot, a child human trafficking organization, an international drug cartel or a corrupt public official.”⁸³

✓ Upgrade asylum adjudication systems to provide timely and fair decisions

The Trump administration has weaponized USCIS, its asylum division, and the DOJ immigration courts to deny refugees asylum. Since January 2017, administration officials have taken countless steps to push adjudicators to rule against refugees seeking asylum. These include repeatedly [encouraging](#) asylum officers and immigration judges to deny asylum by [falsely](#) painting asylum cases as meritless;⁸⁴ replacing asylum officers with [Border Patrol](#) officers to decrease credible fear pass rates (a policy preliminarily [enjoined](#) by a federal judge in August 2020);⁸⁵ elevating immigration judges who [deny asylum](#) at high rates;⁸⁶ and using the Attorney General’s “[certification](#)” [power](#) to issue precedential decisions attempting to unilaterally rewrite U.S. law to render many refugees ineligible for asylum.⁸⁷ It should be no surprise, in light of these actions, that the rate at which asylum officers and immigration judges grant asylum has [plummeted under](#) the Trump administration.⁸⁸ Moreover, administration policies and mismanagement have [exacerbated](#) backlogs at the [asylum office](#) and [immigration courts](#), leaving many waiting years longer for asylum decisions and undermining the integrity of the adjudication system.⁸⁹



79 See Eleanor Acer, *Criminal Prosecutions and Illegal Entry: A Deeper Dive*, *Just Security* (Jul. 18, 2019) available at <https://www.justsecurity.org/64963/criminal-prosecutions-and-illegal-entry-a-deeper-dive/>; see also Punishing Refugees and Migrants, *supra* note 77; National Immigrant Justice Center, *A Legacy of Injustice: The U.S. Criminalization of Migration* (Jul. 23, 2020) available at <https://immigrantjustice.org/research-items/report-legacy-injustice-us-criminalization-migration>.

80 Human Rights First, *Zero-Tolerance Criminal Prosecutions: Punishing Asylum Seekers and Separating Families* (Jul. 18, 2018) available at https://www.humanrightsfirst.org/sites/default/files/Zero_Tolerance_Border_Report.pdf; More than 5,400 children split at border, according to new count, *NBC News* (Oct. 25, 2019) available at <https://www.nbcnews.com/news/us-news/more-5-400-children-split-border-according-new-count-n1071791>.

81 *Punishing Refugees and Migrants*, *supra* note 77; *Criminal Prosecutions and Illegal Entry*, *supra* note 79; Department of Homeland Security, Office of Inspector General, OIG-15-95, *Streamline: Measuring Its Effect on Illegal Border Crossing* (May 15, 2015) available at https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf.

82 *Punishing Refugees and Migrants*, *supra* note 77; *Zero-Tolerance Criminal Prosecutions*, *supra* note 80.

83 *Bipartisan Group of Former United States Attorneys Call on Sessions to End Family Separation*, *Medium* (Jun. 18, 2018) available at <https://medium.com/@formerusattorneys/bipartisan-group-of-former-united-states-attorneys-call-on-sessions-to-end-child-detention-e129ae0df0cf>.

84 Jeff Sessions, U.S. Attorney General, Remarks to the Executive office for Immigration Review (Oct. 12, 2017) available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>; Eleanor Acer, Human Rights First, *Sessions Presses Bogus Asylum Narrative at the Immigration Courts* (Oct. 12, 2017) available at <https://www.humanrightsfirst.org/blog/sessions-presses-bogus-asylum-narrative-immigration-courts>.

85 Human Rights First, *Fact Sheet: Allowing CBP to Conduct Credible Fear Interviews Undermines Safeguards to Protect Refugees*, (Apr. 2019) available at https://www.humanrightsfirst.org/sites/default/files/CBP_Credible_Fear.pdf; Anne Bloomberg, *Federal judge blocks Customs and Border Patrol from screening asylum seekers*, *Jurist* (Sep. 2, 2020) available at <https://www.jurist.org/news/2020/09/federal-judge-blocks-customs-and-border-patrol-from-screening-asylum-seekers/>.

86 American Immigration Lawyers Association, AILA Doc. No. 20042931, *AILA and the American Immigration Council Obtain EOIR Hiring Plan via FOIA Litigation* (May 5, 2020) available at <https://www.aila.org/EOIRHiringPlan>.

87 Innovation Law Lab, Southern Poverty Law Center (SPLC), *The Attorney General’s Judges: How the U.S. Immigration Courts Became a Deportation Tool* (Jun. 2019) available at https://www.splcenter.org/sites/default/files/com_policyreport_the_attorney_generals_judges_final.pdf.

88 TRAC Immigration, *Record Number of Asylum Cases in FY 2019* (Jan. 8, 2020) available at <https://trac.syr.edu/immigration/reports/588/>; *Grant Rates Plummet*, *supra* note 1; see TRAC Immigration, *Asylum Decisions and Denials Jump in 2018* (Nov. 29, 2018) available at <https://trac.syr.edu/immigration/reports/539/>; see also TRAC Immigration, *Asylum Decisions by Custody, Representation, Nationality, Location, Month and Year, Outcome and more* (through Aug. 2020) available at <https://trac.syr.edu/phptools/immigration/asylum/>; see also TRAC Immigration, *Details on MPP (Remain. In Mexico)* (through Aug. 2020) available at <https://trac.syr.edu/phptools/immigration/mpp/>.

89 Fernanda Echavarri, “A Fucking Disaster That is Designed to Fail”: How Trump Wrecked America’s Immigration Courts, *Mother Jones* (Feb. 6, 2020) available at <https://www.motherjones.com/politics/2020/02/trump-immigration-court-backlog-migrant-protection-protocols/>; U.S. Department of Homeland Security, *Citizenship and*

While working with Congress to secure systemic reforms and make the immigration court system independent, the next administration should quickly reverse policies that rig adjudications against refugees, ensure swift increases in staffing for asylum interviews and hearings, and otherwise take steps toward providing timely, fair, and effective asylum decisions that grant protection to refugees promptly. Key steps include:

- **Immediately vacating and reversing administration rulings and policies that rig asylum decisions.** The next administration should quickly, within the first two weeks, vacate Attorney General rulings that prevent refugees from receiving asylum in the United States. Most critically, a next administration's Attorney General or properly-appointed Acting Attorney General should immediately vacate the decision issued by former Attorney General Jeff Sessions in *Matter of A-B-*, which aims to deny refuge to women subjected to violent attacks in cases where national authorities refuse or fail to protect them, and victims of armed groups in countries that refuse and fail to protect.⁹⁰ The Attorney General should declare *Matter of A-B-* to be without precedential force and reinstate the precedent of

Matter of A-R-C-G-.⁹¹ U.S. agencies should issue a new proposed rule that makes clear that a "particular social group" is, without any additional requirements, a group whose members: share a characteristic that is immutable or fundamental to identity, conscience, or the exercise of human rights; share a past experience or voluntary association that due to its historical nature cannot be changed; or are perceived as group by society. The next Attorney General should also vacate Attorney General Bill Barr's ruling

[T]he next administration should quickly reverse policies that rig adjudications against refugees, ensure swift increases in staffing for asylum interviews and hearings, and otherwise take steps toward providing timely, fair and effective asylum decisions that grant protection to refugees promptly.

in *Matter of L-E-A-*, in which he attempted to block from asylum members of persecuted family groups, and Sessions' ruling in *Matter of E-F-H-L-*, which opened the door for immigration judges to deny asylum without full evidentiary hearings.⁹² As noted above, the next administration should withdraw the June 15, 2020 [proposed rule](#) that would render many refugees [ineligible for asylum](#)—including refugees who suffered gender-based persecution or refugees from Hong Kong or other places if they transit other countries on their way to the United States, if their persecutors detained them for only brief periods, or if their persecutors were not able to carry out their threats before the asylum seeker fled to the United States.⁹³ (As it moves forward, the next administration should work with Congress to safeguard asylum by passing the [Refugee Protection Act](#).)⁹⁴ In addition, the next administration should rescind the August 26, 2020 [proposed rule](#) that would rig the appellate process against asylum seekers and immigrants and make it more difficult for them to retain legal counsel and to file appeals.⁹⁵

Immigration Services Ombudsman, Annual Report 2020 (Jun. 30, 2020) available at https://www.dhs.gov/sites/default/files/publications/20_0630_cisomb-2020-annual-report-to-congress.pdf; Marissa Esthimer, Migration Policy Institute (MPI), *Crisis in the Courts: Is the Backlogged U.S. Immigration Court System at Its Breaking Point?* (Oct. 3, 2019) available at <https://www.migrationpolicy.org/article/backlogged-us-immigration-courts-breaking-point>; TRAC Immigration, *Backlog of Pending Cases in Immigration Courts* (last updated Aug. 2020) available at https://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php; TRAC Immigration, *Immigration Court Backlog Tool* (through Aug. 2020) available at https://trac.syr.edu/phptools/immigration/court_backlog/; Human Rights First, *Tilted Justice: Backlogs Grow While Fairness Shrinks in U.S. Immigration Courts* (Oct. 2017) available at <https://www.humanrightsfirst.org/sites/default/files/hrf-tilted-justice-final%5B1%5D.pdf>.

90 *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) available at <https://www.justice.gov/eoir/page/file/1070866/download>.

91 *Matter of A-R-C-G-*, 26 I&N Dec. 388 (B.I.A. 2014) available at <https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/26/3811.pdf>. This is not a complete list of all Attorney General rulings that should be vacated. For instance, the next administration should also vacate decisions that violate the U.N. Convention Against Torture (UNCAT) by putting torture survivors in danger of refoulement. See *Matter of J-R-G-P-*, 27 I&N Dec. 482 (B.I.A. 2018) available at <https://www.justice.gov/eoir/page/file/1106661/download>; see also *Matter of R-A-F-*, 27 I&N Dec. 778 (A.G. 2020) available at <https://www.justice.gov/eoir/page/file/1252416/download>; see also *Matter of O-F-A-S-*, 28 I&N Dec. 35 (A.G. 2020) available at <https://www.justice.gov/eoir/page/file/1294101/download>. The next administration should also rescind all rules and proposed rules that violate the UNCAT, including those proposed on June 15, 2020, see *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, *supra* note 27, and on July 9, 2020, see *Security Bars and Processing*, *supra* note 11.

92 *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) available at <https://www.justice.gov/file/1187856/download>; *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018) available at <https://www.justice.gov/eoir/page/file/1040936/download>.

93 *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, *supra* note 27; *Comment on Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, *supra* note 27.

94 Refugee Protection Act of 2019, S. 2936, 116th Cong. available at <https://www.congress.gov/bills/116th-congress/senate-bill/2936?s=1&r=3>.

95 Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 52491 (Aug. 26, 2020) (to be codified at 8 C.F.R. §§ 1003, 1240) available at <https://www.govinfo.gov/content/pkg/FR-2020-08-26/pdf/2020-18676.pdf>.

The next administration should end other Trump administration policies that rig the system to deny refugees asylum. DHS and USCIS leaders should direct that trained USCIS asylum officers—not Border Patrol or other immigration enforcement officers—conduct protection screening interviews.⁹⁶ The next administration should also rescind training and guidance that attempted to improperly heighten the statutory credible fear standard to prevent refugees from applying for asylum;⁹⁷ and rescind the Trump administration policy of conducting assessments relating to potential bars to asylum, which involve complex legal and factual determinations, during preliminary screening interviews where asylum seekers do not generally have legal counsel, and instead revert to the long-standing prior practice of conducting these assessments during asylum hearings.⁹⁸ New leaders at DHS, USCIS, and EOIR should direct the revision of all guidance and training materials that have been influenced by flawed Trump administration rulings, directives and policies so that all guidance and training materials—including those relating to credible fear and reasonable fear assessments, asylum eligibility, and interviews, and the conduct of hearings—is consistent with U.S. law and U.S. legal obligations under refugee and human rights treaties.

The next administration's Attorney General should take swift steps to address unfair and politicized immigration judge hiring and BIA appointments. The next Attorney General should direct a review of the agency's decisions to hire new BIA members with some of the highest asylum denial rates in the nation.⁹⁹ In addition, a next administration should reverse rules that deprive asylum seekers of legal work authorization for even longer and impose fees on their asylum applications and initial work applications.¹⁰⁰



⁹⁶ *Allowing CBP to Conduct Credible Fear Interviews Undermines Safeguards to Protect Refugees*, *supra* note 85.

⁹⁷ Memorandum from John Lafferty, Chief, Asylum Division, U.S. Citizenship and Immigration Services to All Asylum Office Personnel on Release of Updated Asylum Division Officer Training Course (ADOTC) Lesson Plans, Credible Fear of Persecution and Torture Determinations, and Reasonable Fear of Persecution and Torture Determinations (Feb. 13, 2017) available at https://drive.google.com/file/d/0B_6gbFPjVDoxY0FCczROOFZ4SVk/edit; American Immigration Lawyers Association, AILA Doc. No. 19050602, *USCIS Updates Officer Training on Credible Fear of Persecution and Torture Determinations* (Apr. 30, 2019) available at <https://www.aila.org/infonet/uscis-updates-officer-training-credible-fear>; CLINIC, *Credible Fear Lessons Plan Comparison Chart* (last updated Oct. 4, 2019) available at <https://cliniclegal.org/resources/asylum-and-refugee-law/credible-fear-lesson-plans-comparison-chart>; Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, *supra* note 27; *Grace v. Barr*, No. 19-05013 (D.C. Cir. 2020) available at [https://www.cadc.uscourts.gov/internet/opinions.nsf/E3495F5ED3B288FA852585A80052C7FF/\\$-file/19-5013-1852194.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/E3495F5ED3B288FA852585A80052C7FF/$-file/19-5013-1852194.pdf).

⁹⁸ Asylum Eligibility and Procedural Modifications, *supra* note 27; Security Bars and Processing, *supra* note 11; Procedures for Asylum and Bars to Asylum Eligibility, 85 Fed. Reg. 69640 (Dec. 19, 2019) (to be codified at 8 C.F.R. §§ 208, 1208) available at <https://www.federalregister.gov/documents/2019/12/19/2019-27055/procedures-for-asylum-and-bars-to-asylum-eligibility>; see former 8 C.F.R. 208.30(e)(5); AILA Doc. No. 19050602, *supra* note 97.

⁹⁹ AILA Doc. No. 20042931, *supra* note 86.

¹⁰⁰ Asylum Application, Interview, and Employment Authorization for Applicants, *supra* note 25; U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46788 (Aug. 3, 2020) (to be codified at 8 C.F.R. 103 et seq.) available at <https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16389.pdf>.

- **Overhauling USCIS asylum adjudications to provide more timely and fair asylum decisions.**

The next administration should take steps to enable the USCIS asylum division to play a strong role in promptly recognizing refugee cases, reducing backlogs, and minimizing the number of cases unnecessarily referred into the immigration court system. The next administration should also quickly ramp up asylum officer hiring to conduct asylum interviews and remedy backlogs, while preparing to further increase asylum officers if and as needed to promptly conduct full asylum interviews as circumstances evolve, for instance in response to upticks in refugees seeking asylum from Central America and/or Venezuela, or the arrival of refugees fleeing Hong Kong.

The next president should direct that DHS and USCIS leaders enhance the ability of the USCIS asylum division to better contribute to the prompt resolution of asylum applications and minimize the number of cases—of individuals ultimately determined to be refugees who meet asylum eligibility requirements—unnecessarily referred into the immigration court removal system. Agency leaders should affirm that one of the primary purposes of the asylum division is to recognize refugee cases promptly without requiring time of other agencies (EOIR, ICE) when not needed. Officers should of course refer cases barred from or ineligible for asylum. But officers and officials should not view it as imperative to refer a large percentage of cases into removal proceedings. To the extent decision-making quotas contribute to the referral of asylum-eligible cases into removal proceedings, USCIS should review and revise those quotas. It will ultimately save government funds if more asylum-eligible cases are accurately resolved at an early stage by asylum officers.



In addition, a next administration should provide initial decision-making authority to the asylum office in asylum cases, including those originating at ports of entry and along the border. This approach will allow more cases to be granted efficiently at the USCIS asylum office, provided asylum seekers are afforded sufficient time to secure legal counsel, gather evidence, and prepare their cases—steps that will help assure legally accurate decisions.¹⁰¹ Such an approach would reduce the number of cases (of individuals eligible for asylum) referred for immigration court removal proceedings, while also preserving the right of (the much-reduced number of) asylum seekers ultimately referred into removal proceedings to asylum hearings in immigration court.

Given long backlogs and delays, USCIS should create a formal process for asylum seekers to request prompt interviews due to pressing humanitarian challenges, such as family stranded in danger. A next administration should also create an application process for “cancellation of removal” relief, such as through a separate USCIS application and adjudication unit, so that applicants for this humanitarian relief can be provided the necessary referral so their eligibility can be assessed, and do not add to asylum backlogs through asylum filings made to secure such referrals. This reform could be implemented under existing statutory authority, as the Migration Policy Institute has [explained](#).¹⁰²

¹⁰¹ In cases where asylum seekers are put into removal proceedings, such proceedings can be terminated and referred initially for asylum office interviews, so lesser numbers will ultimately require removal hearings. As noted above, the use of expedited removal should be rolled back and ended. The Migration Policy Institute has recommended asylum officers be afforded the ability to conduct full asylum interviews for asylum seekers who have passed credible fear interviews, Doris Meissner, Faye Hipsman, T. Alexander Aleinikoff, Migration Policy Institute (MPI), *The U.S. Asylum System in a Crisis: Charting a Way Forward* (Sep. 2018) available at <https://www.migrationpolicy.org/research/us-asylum-system-crisis-charting-way-forward>.

¹⁰² *Id.*

While the practice of deploying some asylum officers to conduct refugee resettlement interviews, and vice versa, is a constructive management tool that can strengthen rather than weaken each system, DHS and USCIS leaders should ensure sufficient numbers of both asylum division and refugee corps officers to conduct interviews timely in both systems.

- **Overhauling, transforming, and updating the immigration courts.** Trump administration policies have rigged immigration court hearings against asylum seekers and exacerbated the court's counterproductive delays and backlogs.¹⁰³ The manipulation of the immigration courts by administration officials has made it abundantly clear that the system itself is fatally flawed, lacking in judicial independence, and highly vulnerable to politicization. While working with Congress to enact legislation to transform the immigration courts into independent courts,¹⁰⁴ the next administration should quickly launch the administrative reforms outlined below, including:

- **Implementing safeguards against politicized hiring and interference** at the immigration courts.¹⁰⁵ These measures should include placing career professionals without political interests in control of, and staffing, the hiring process; requiring significant prior immigration law experience of various backgrounds for new hires; selecting immigration judges through fair and objective hiring and elevating judges based on experience and performance; reviewing the process and reassessing the validity of appeals Board appointments of immigration judges with high asylum denial rates and/or an established history of abusive behavior on the bench; ensuring professional



¹⁰³ Julia Preston, Andrew R. Calderón, Marshall Project, *Trump Tried to Deport People Faster. Immigration Courts Slowed Down Instead*. (Jul. 16, 2019) available at <https://www.themarshallproject.org/2019/07/16/trump-tried-to-deport-people-faster-immigration-courts-slowed-down-instead>.

¹⁰⁴ A recent TRAC analysis of immigration court data confirmed that the Trump administration's elimination of administrative closures greatly exacerbated the backlog. *Backlog of Pending Cases in Immigration Courts*, *supra* note 89; *Immigration Court Backlog Tool*, *supra* note 89. In addition to safeguarding due process, this reform would also eliminate an Attorney General's ability to issue his or her own decisions to essentially re-write asylum law and overturn court decisions. The American Bar Association, Federal Bar Association, National Association of Immigration Judges, and other organizations have recommended that Congress separate the courts from DOJ to ensure impartiality and shield against political manipulation. The ABA detailed its recommendation for Article I courts in a 2019 report. American Bar Association (ABA), *Commission on Immigration, Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Vol. 1 (Mar. 2019) available at https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_1.pdf.

¹⁰⁵ Human Rights First, *Immigration Court Hiring Politicization*, available at <https://www.humanrightsfirst.org/sites/default/files/DOJ-FOIA-Immigration-Judges.pdf>; *The Attorney General's Judges*, *supra* note 87.

diversity on the bench and addressing the excessive hiring of judges previously affiliated with ICE (the prosecuting agency) or other prosecutorial entities;¹⁰⁶ reviewing the selection process for chief immigration judge and EOIR director to remedy, and safeguard against, politicized hiring; appointing new, highly experienced Board members and/or tapping retired Board members or Board attorneys to serve as temporary Board members; abolishing the court “office of policy” created under the Trump administration, and powers given to the Director, so courts are controlled by statute, regulation, and higher court case law, rather than politically influenced quotas, policy office outputs, and trainings.

- **Terminating current administration policies that pressure judges to deny asylum cases**—including case quotas, rushed rocket-dockets, and [Board processing deadlines](#).¹⁰⁷ Asylum adjudications must allow sufficient time to secure pro bono legal representation and gather evidence for hearings while providing timely resolution of cases (both asylum grants and removals of those fairly determined to be ineligible for relief).
- **Reducing all-time high immigration court backlogs**, including by: (1) keeping thousands of cases out of the backlogged courts by reversing former Attorney General Sessions’ directive to add administratively closed cases back on to the court’s docket, withdrawing his ruling in [Matter of Castro-Tum](#),¹⁰⁸ (2) working with ICE to terminate cases where USCIS action could resolve the cases due to pending USCIS petitions—such as cases for Special Immigrant Juveniles, U-visa applicants, and I-130 petitions for people married to U.S. citizens or legal permanent residents (USCIS can put such cases back in to immigration court removal proceedings if USCIS should deny the petition); (3) working with DHS to terminate cases involving people granted TPS protection, if they so request, to facilitate their adjustment before USCIS (through recognition, by the DHS Office of General Counsel, that a grant of TPS constitutes inspection and admission, an issue on which the federal courts are currently divided);¹⁰⁹ (4) working with DHS to identify additional cases that should be administratively closed or terminated, including through restored prosecutorial discretion; and (5) requesting funding from Congress to increase immigration court interpreters and support staff, BIA legal and administrative staff, and, with reforms to eliminate politicized hiring, immigration judges and Board members fairly and objectively selected.
- **Support stronger complementary humanitarian protection mechanisms.** A next administration should work with Congress to provide complementary humanitarian protections for people who face serious harms not covered by U.S. refugee law and strengthen Temporary Protected Status (TPS). A complementary protection status could, for instance, protect people facing cruel, inhuman, or degrading treatment or punishment.¹¹⁰ Protections from return would in some cases be warranted for people in need of international [protection](#) due to [climate displacement](#).¹¹¹ Temporary Protected Status should be strengthened to include rather than separate families, provide a route to more stable permanent legal residence, and assure designation determinations are based on objective assessments of conditions in countries rather than politicized considerations.¹¹²

106 Tanvi Misra, *DOJ hiring changes may help Trump’s plan to curb immigration*, Roll Call (May 4, 2020) available at <https://www.rollcall.com/2020/05/04/doj-hiring-changes-may-help-trumps-plan-to-curb-immigration/>.

107 Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, *supra* note 95.

108 *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) available at <https://www.justice.gov/eoir/page/file/1064086/download>.

109 *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013); *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017); *Medina v. Beers*, 65 F.Supp. 3d 419 (E.D. Pa. 2014); *Bonilla v. Johnson*, 149 F.Supp.3d 1135 (D. Minn. 2016); cf. *Serrano v. United States Attorney General*, 655 F.3d 1260 (11th Cir. 2011); *Sanchez v. Sec’y United States Dept. of Homeland Sec.*, No. 19-1311, 2020 U.S. App. LEXIS 22845 (3d Cir. 2020); *Matter of H-G-G*, 27 I&N Dec. 617 (BIA 2019); see American Immigration Council, AILA, *Practice Advisory: Adjustment Eligibility of TPS Holders After Return With Advance Parole, Even When Initial Entry Without Inspection* (Dec. 13, 2019) available at https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/adjustment_eligibility_of_temporary_protected_status_holders_after_return_with_advance_parole_even_when_initial_entry_without_inspection.pdf.

110 Bill Frelick, *What’s Wrong with Temporary Protected Status and How to Fix It: Exploring a Complementary Protection Regime*, 8(1) J. on Migration & Hum. Sec. 42 (2020) available at <https://journals.sagepub.com/doi/pdf/10.1177/2331502419901266>.

111 Bill Frelick, Human Rights Watch, *It’s Time to Change the Definition of Refugee* (Jan. 28, 2020) available at <https://www.hrw.org/news/2020/01/28/it-time-change-definition-refugee>; Kayly Ober, Refugees International (RI), *Climate, Migration, and Displacement—What Are the Implications for Human Rights Law?* (May 7, 2020) available at <https://www.refugeesinternational.org/reports/2020/5/7/climate-migration-and-displacement-what-are-the-implications-for-human-rights-law>.

112 Frelick, *supra* note 110; Donald Kerwin, Center for Migration Studies (CMS), *The Besieged US Refugee Protection System: Why Temporary Protected Status Matters* (Dec. 20,

✓ Rebuild and strengthen U.S. leadership on refugee resettlement

Just as it has decimated asylum to block refugees from the United States, so too has the Trump administration dismantled U.S. refugee resettlement. The administration issued discriminatory bans blocking refugees from African and Muslim-majority countries, drastically cut annual resettlement goals to all-time lows, and failed to meet its own meager goals. The United States has resettled only about 9,000 refugees this fiscal

year, far below its exceedingly low annual goal of 18,000 refugees—a goal that amounts to an 80 percent decline from the U.S. historic average of 95,000 refugees. These moves have left refugees stranded in dangerous situations, hampered UNHCR’s ability to address crises globally, undermined U.S. national [interests](#), and sent the wrong signal to front-line countries hosting the vast majority of the world’s refugees.¹¹³

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Resettlement is often a critical component of effective strategies to address refugee challenges globally—along with increased humanitarian assistance, development investment, upholding the right of refugees to access protection across borders and to work, and addressing the root causes of human rights abuses and conflicts that force refugees to flee. Former U.S. national security officials and military leaders have [repeatedly explained](#) that resettling refugees advances U.S. national security interests and supports the stability of front-line refugee hosting states, including U.S. allies and partners.¹¹⁴ Simply put, a next administration should restore U.S. resettlement leadership, including by:

- **Taking immediate steps to rebuild resettlement leadership and capacity.** During its first week, the next administration should rescind the discriminatory Muslim, African, and refugee bans;¹¹⁵ issue an executive order to increase the fiscal year 2021 admissions goal to 100,000, while restoring regional allocations based on need and notifying Congress; and direct DOS/PRM and DHS to work with UNHCR to restore its referrals of vulnerable refugees, ramp up capacity to conduct pre-screening, processing, and refugee corps interviews, and take other steps necessary to build U.S. capacity to increase resettlement to 125,000 for fiscal year 2022. The administration should also, during its first month, request Congressional funding for this rebuilding.
- **Strengthening U.S. resettlement.** A next administration should build capacity to conduct more timely, and in urgent cases, expedited resettlement; reduce delays in security check and other processing;¹¹⁶ improve integration and support, including by scaling-up the match grant program, employment, case management and other support, maintaining 18-month assistance period, and

2017) available at <https://cmsny.org/publications/besieged-us-refugee-protection-system-temporary-protected-status-matters/>.

113 Human Rights First, *U.S. Leadership Forsaken: Six Months of the Trump Refugee Banks* (Jul. 2017) available at <https://www.humanrightsfirst.org/sites/default/files/HRF-US-Leadership-Forsaken-FINAL.pdf>.

114 *Id.*; National Security Leaders Statement of Principles on America’s Commitment to Refugees (Jun. 23, 2016) available at <https://www.humanrightsfirst.org/sites/default/files/STATEMENT-ON-AMERICAS-COMMITMENT-TO-REFUGEES.pdf>.

115 U.S. President Donald Trump, Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats (Sep. 24, 2017) available at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/>; U.S. President Donald Trump, Presidential Proclamation 9822, Addressing Mass Migration Through the Southern Border of the United States (Nov. 8, 2018) available at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-addressing-mass-migration-southern-border-united-states-2/>; U.S. President Donald Trump, Presidential Proclamation 9842, Addressing Mass Migration Through the Southern Border of the United States (Feb. 7, 2019) available at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-addressing-mass-migration-southern-border-united-states-2/>; U.S. President Donald Trump, Presidential Proclamation 9983, Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry (Jan. 31, 2020) available at <https://www.aila.org/infonet/presidential-proclamation-improving-vetting>; U.S. President Donald Trump, Executive Order 13,769, Protecting the Nation from Foreign Terrorist Entry into the United States (Jan. 27, 2017) available at <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/>; U.S. President Donald Trump, Executive Order 13,780, Protecting The Nation From Foreign Terrorist Entry Into The United States (Mar. 6, 2017) available at <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/>; U.S. President Donald Trump, Executive Order 13,815, Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities (Oct. 24, 2017) available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-resuming-united-states-refugee-admissions-program-enhanced-vetting-capabilities/>. The administration should also rescind Executive Order 13,888, Enhancing State and Local Involvement in Refugee Resettlement, 84 Fed. Reg. 52355 (Oct. 1, 2019) available at <https://www.federalregister.gov/documents/2019/10/01/2019-21505/enhancing-state-and-local-involvement-in-refugee-resettlement>.

116 The new White House Coordinator or Senior Advisor for Refugee and Humanitarian affairs must have high-level security clearance to oversee improvements to and coordination of security check processes.



conducting a study to identify steps to improve outcomes for refugees; expand community support, encourage co-sponsorship initiatives, and explore potential private sponsorship over and above the annual presidential determination.

- **Protecting U.S.-affiliated Iraqis and SIVs.** A next administration should promptly improve the pace of initiatives to bring to safety Iraqis and Afghans at risk due to their work with the U.S. military or other U.S. entities, including by: scaling up Iraqi resettlement and fixing processing delays, remedying backlogs and implementing reforms to SIV processing as recommended in a report issued by IRAP,¹¹⁷ encouraging Congress to authorize 4,000 Afghan visas annually until backlog and projected needs are met; and designating refugees who assisted the U.S. in Syria for P-2 priority resettlement.

● **Launching resettlement in the Americas.** The next administration should lead a regional strategy to bring some Central American and Venezuelan refugees to safety through safe and orderly routes, while working with UNHCR and other resettlement countries. To succeed, the U.S. must resettle significant numbers in a timely manner, forge a multi-year commitment, and recognize Central American refugee claims, including those persecuted by deadly gangs or domestic violence perpetrators, with an acceptance rate commensurate to the gravity of the protection needs. This strategy should not undermine development of asylum in the region and must safeguard asylum for those who seek protection at the U.S. border. Key steps by DOS and DHS should include:

- Creating a P-1 priority initiative for Honduran, Guatemalan, and Salvadoran refugees who have fled their home countries, and for Venezuelan refugees. Resettlement processing centers should be located in Mexico and other countries to which refugees have fled. The initiative should resettle vulnerable cases, including unaccompanied children, women at risk, LGBTQI+ persons, and refugees facing acute danger or risk in the country where they are located. The next administration should improve the pace of resettlement and strengthen support for UNHCR efforts to protect waiting refugees.
 - Resettling refugees with U.S. family by creating P-2 priority resettlement for nationals of Honduras, Guatemala, and El Salvador, as well as Venezuela, with approved I-130 relative petitions.
 - Launching an enhanced initiative, building on a restored CAM program, to bring children in danger in Northern Triangle countries to U.S. safety through an orderly program that provides permanent residency protection, ensuring emergency transit or transfers for children in danger during processing.
 - Identifying extremely urgent protection cases inside Northern Triangle countries but, given the acute dangers, expanding support for emergency transfer of people in danger. Without strong emergency evacuation capacity, this “in-country” effort must remain limited.
- **Preparing for resettlement of refugees from Hong Kong.** The next administration must prepare to launch a substantial resettlement initiative for Hong Kong refugees, in addition to the annual Presidential Determination goal. In so doing, the next administration should rescind the [June 2020 rule](#) and other policies that deny refugees—including those who suffer brief arrests—U.S. refugee protection.¹¹⁸

¹¹⁷ International Refugee Assistance Project (IRAP), *Recommendations on the Reform of the Special Immigrant Visa Program for U.S. Wartime Partners* (Jun. 2020) available at https://refugeerights.org/wp-content/uploads/2020/06/IRAP_SIV_Report_2020.pdf.

¹¹⁸ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, *supra* note 25.

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