

Recommendations for the Biden Administration: Upholding U.S. Refugee Law and Restoring Asylum

The Trump administration trampled on U.S. refugee laws and treaties, [illegally turning away](#) people seeking humanitarian protection and spurring disorder and chaos along the U.S.-Mexico border. While the Biden administration [promised](#) to restore asylum and started winding-down the notorious “Remain in Mexico” policy, it is now taking steps to [restart](#) that program in the wake of rulings in a lawsuit brought by Trump allies. The Biden administration has moreover chosen to continue another Trump administration policy, referred to as “Title 42,” that had essentially superseded Remain in Mexico to turn away asylum seekers without even the pretense of a potential asylum hearing. Using the Title 42 policy – labeled a “[Stephen Miller special](#)” by a former Trump administration official – U.S. officials [misuse](#) public health authority to [evade](#) U.S. refugee law by refusing to process asylum seekers at ports of entry and expelling them back to danger in Mexico or their countries of persecution.

The Biden administration’s decision to adopt this Trump policy flouts U.S. refugee law and treaties, as a State Department senior [legal expert](#) and senior [diplomat](#) recently confirmed. Human Rights First has tracked over [7,647](#) reports of kidnappings, brutal assaults, and other attacks suffered by asylum seekers and migrants blocked or expelled due to the policy since President Biden took office in January 2021. The UN High Commissioner for Refugees (UNHCR) and other international authorities have [repeatedly](#) and [publicly called](#) on the Biden administration to end the policy and stop violating refugee and human rights law – rare public rebukes that reflect the deep damage inflicted by the administration’s subversion of refugee law. Despite highly dangerous [conditions](#) in Haiti, the Biden administration has used Title 42 to expel nearly [8,000](#) adults and children directly to Haiti since September 2021, purposefully denying them asylum hearings or even the fear inquiry required in expedited removal.

The administration’s choices have triggered condemnations from [international authorities](#), civil rights [leaders](#), public health [experts](#), human rights and civil rights [organizations](#), refugee protection [agencies](#) and [members](#) of [Congress](#). Far from helping the Biden administration politically, the embrace of Trump Title 42 policy has perpetuated disorder and illegality, bolstered racist tropes, and undermined administration credibility.

The Biden administration must change course, renew its commitment to [uphold human rights](#), reject Stephen Miller’s policies and [shift](#) to a genuine humanitarian response, led by humanitarian agencies, that upholds refugee laws and effectively manages and resources refugee reception. The recommendations outlined below [follow multiple sets](#) of [blueprints](#) and [recommendations previously issued](#). The administration must end use of Title 42 and other Trump policies, take all steps legally permissible to terminate Remain in Mexico, restore compliance with refugee law immediately, improve asylum processes so they are timely and fair, and employ effective and humane case support rather than rights-violating detention. In addition, Biden administration efforts to address migration in the Americas must, as [other recommendations](#) outline, center human rights and encourage countries to [ensure access](#) to asylum.

Uphold Refugee Law & Restart Asylum, Including at Ports of Entry. The Biden administration must stop evading and immediately uphold U.S. refugee law. At ports of entry and Border Patrol locations, the Department of Homeland Security (DHS) should swiftly process people seeking refugee protection employing public health [measures](#) outlined below, use legal authority to [parole](#) them to shelter with family or community members while their cases are adjudicated, and [swiftly transit](#) them from Customs and

Border Protection (CBP) custody to shelters or reception locations operated by non-profit non-governmental humanitarian agencies with refugee reception expertise, where immediate needs – including assistance with onward travel to family homes – can be addressed. All CBP facilities and all reception locations should provide regular access to members of Congress, attorneys, UNHCR, NGOs, and rights monitors. U.S. agency compliance with refugee law and required asylum processing cannot continue to be refused, including due to administration assertions it “needs time” to improve processes. Agencies must comply with asylum law now and simultaneously work to upgrade processing.

Employ Evidence-Based Public Health Measures. The Biden administration must end misuse of Title 42 public health authority to turn away people seeking protection, as epidemiologists and other public health [experts](#) have [repeatedly recommended](#). Instead, as experts have [recommended](#), the administration should direct use of measures such as social distancing, masks, outdoor areas and locations repurposed to maximize distancing and ventilation, reduced processing times, allocation of sufficient officers, testing, health screening, transport safeguards, and use of legal parole authority rather than congregate detention – steps DHS should have implemented long ago, rather than illegally expelling asylum seekers. U.S. agencies must ramp up support for testing, which should, as experts advise, be conducted by medical professionals independent of CBP or Immigration and Customs Enforcement (ICE). Vaccines should be [available](#) on a [non-discriminatory](#) basis after asylum seekers arrive, but lack of vaccination is not permissible grounds for denying access to asylum and/or expulsion, as health [experts](#) have confirmed.

Fully End Trump Policies That Turn People Away to Danger and Evade Refugee Law. The Biden administration must firmly end policies that turn away asylum seekers to danger in violation of U.S. asylum law and refugee treaties, including: [misuse of Title 42 public health](#) authority to expel or block from ports of entry people seeking refuge; “metering” policies that a court [ruled](#) likely unlawful; and the [Remain in Mexico](#) policy or any resurrected version of it. In addition, the Biden administration should end other Trump-era policies, as detailed in Human Rights First’s [blueprint](#) and April 2021 [recommendations](#), including the [entry](#) and [transit](#) bans, [deprivations](#) of work authorization, asylum [bans](#) based on specious public health grounds, the “[death to asylum rule](#)” that attempted to illegally rewrite virtually every aspect of asylum law, the interim final rule implementing “[asylum cooperative agreements](#)” to return refugees to danger, and [other](#) rules, court orders and policies that block refugees from protection. The Biden administration must direct U.S. agencies to uphold refugee laws passed by Congress and U.S. treaties.

Invest in Community Reception. The Biden administration and Congress should support a public-private asylum reception and orientation initiative that includes faith-based organizations, legal non-profits, shelters, and refugee assistance agencies with offices across the country that have deep expertise managing refugee situations around the world and along the southern border. These agencies can help orient asylum seekers, address urgent needs, assist in onward travel to family destination locations and, if properly supported, facilitate access to motel rooms or similar accommodations for any individuals determined to need public health isolation or quarantine. The agencies should be provided resources to conduct such services and to employ or continue to employ public measures.

End Structural Mismanagement of Humanitarian Populations at the Border. When DHS was created, concerns were [raised](#) that the protection of people seeking U.S. refugee protection would be subverted given the separation of governmental functions across multiple agencies and the lack of structures to ensure protection. [Again](#) and [again](#), across administrations, CBP – neither a humanitarian nor refugee protection agency, and lacking the corresponding expertise – has proven unable and/or unwilling to plan for, humanely receive, process, identify and refer, in accordance with U.S. refugee and asylum law, the cases of people seeking protection. Instead, responses to humanitarian needs at the

border have been plagued by severe crowding, horrific conditions, [failures to identify and refer](#), delays in processing and release, and [egregious mistreatment](#). The Biden administration should [ensure](#) that the identification and referral of asylum seekers is overseen by trained humanitarian officers, [rather than CBP](#), followed by swift transit to humanitarian locations as outlined above. These officers could for instance be based in ORR, or at least trained USCIS asylum officers, and the processing or interviewing of asylum seekers should not take place in flawed, inhumane CBP facilities, but in locations managed by humanitarian organizations. The administration should also work with Congress to create a Refugee and Humanitarian Protection Agency, or reconfigure, elevate, and strengthen an existing agency, to plan for and manage U.S. refugee protection, asylum, and humanitarian protection matters relating to the border – a recommendation outlined in this Human Rights First [blueprint](#).

Fair, Timely, and non-Traumatizing Process. The Trump administration [decimated](#) the U.S. asylum system through policies that [rigged](#) adjudications against asylum seekers and [exacerbated backlogs](#) and [delays](#) that had grown over the years (due to logjams caused by [failures](#) to adequately staff adjudications while “enforcement” agency staffing skyrocketed, and the [pursuit](#) of “expedited” [processing](#)). These backlogs and delays grew as [interviews](#) and [hearings](#) were postponed due to the pandemic. Human Rights First has repeatedly detailed recommendations for fair, timely and orderly asylum processing, including in [blueprints](#), a [report](#) on asylum office backlogs, a [paper](#) on improving fairness in immigration courts, and in [measures](#) for processing cases during the pandemic. Over nine months after taking office, the Biden administration has however still failed or refused to uphold U.S. asylum law and restore asylum processing, including at ports of entry. While U.S. agencies issued a [proposed rule](#) on asylum processing, its changes [fall short](#) and reflect the flawed paradigm of curtailing [due process](#) safeguards.

- **Overhaul U.S. Citizenship and Immigration Services (USCIS) Asylum Adjudications to Provide More Timely, Efficient, and Fair Decisions.** The U.S. asylum system should be improved to: (1) resolve more cases at the asylum office level, so they are not unnecessarily referred to already backlogged immigration courts, (2) provide initial decision-making authority to the asylum office in cases originating along the border and at ports of entry - a change that [should not](#) be accompanied by cutting access to immigration court removal hearings or embedded in [fundamentally flawed](#) expedited removal, a process that should not be used; (3) [address](#) the backlog of asylum applications, ramp up asylum office hiring and provide qualified and competent interpreters (preferably certified for Article III courts) to minimize mistaken referrals, permitting an asylum seeker to also bring their own interpreter as well, and (4) prioritize applications pending the longest in addition to new cases, initiate a process for asylum seekers stuck in the backlog to request prompt interviews, and create an application process for “cancellation of removal” so such cases are not initiated via the asylum office. By resolving more cases through asylum office interviews, the government will save resources and reduce the number of people referred to removal proceedings, while preserving the right of asylum seekers to full removal hearings in immigration court if they are not granted by the asylum office. The government [should not](#) convert asylum office interviews into “hearings,” as recently [proposed](#) in a change that would cut access to immigration court hearings; non-adversarial interviews are [less traumatizing](#) for asylum seekers and more efficient for the system, and access to due process should be safeguarded. Following recent appropriations, the Biden administration should move to swiftly hire asylum officers to address the asylum backlog and take steps to ensure retention of officers in the Refugee, Asylum, and International Operations.
- **Upgrade Immigration Courts.** The Biden administration should take immediate [steps](#) to improve the fairness and timeliness of hearings in the immigration courts. Trump administration policies rigged hearings against asylum seekers, [exacerbated](#) backlogs and confirmed the need for an

[independent immigration court](#). While it should work with Congress to make the courts independent, the Biden administration should also implement [safeguards](#) against politicized hiring and interference, continue to [terminate policies](#) and rescind [rulings](#) that pressure judges to rush cases; champion and support legal representation and orientations; ensure [use](#) of pre-hearing conferences and stipulations, which would help reduce hearing time and increase immigration court capacity; prevent [counterproductive](#) rocket dockets and end “[dedicated dockets](#)” that [undermine](#) accurate decision-making and [due process](#); [reduce](#) the court docket and improve hearing efficiencies through administrative closures, initial adjudication by the USCIS asylum office (in the manner recommended above), employing [case review](#) to remove non-priority cases from the docket, and terminating cases that can be resolved via pending USCIS petition, grants of Temporary Protected Status or through referral to the asylum office. Congress should support appropriations for legal representation for immigrants and increased interpreters, court staff and immigration judges so that the courts can address both incoming and backlogged cases.

Case Support, Not More Detention. Despite [promises](#) to end prolonged detention, reinvest in case management programs, and eliminate for-profit detention facilities, the Biden administration has sharply [increased](#) detention of asylum seekers after designating them as priorities for detention and deportation in February 2021 [interim guidance](#). It has taken steps to [increase](#) capacity in detention facilities, including to [convert and expand](#) the Berks County Detention Center to jail adult women after ending family detention there and pursue [contracts](#) to house immigrants in private prisons emptied out by its own Executive Order instructing the Department of Justice not to renew contracts with private criminal facilities. New September 2021 [guidance](#) appears to designate recent arrivals including asylum seekers as an enforcement priority for apprehension and deportation. The Biden administration should instead shift to effective and fiscally prudent [case and legal support strategies](#) and end the use of inhumane, unnecessary, and wasteful migration jails. Congressional funding for universal legal orientation presentations and representation should include families and adults placed into case management. A model – based on reception rather than punishment of people seeking refugee protection – is more effective, fiscally prudent and humane. As outlined above, responsibility for overseeing the cases of people seeking refugee protection should also be shifted to a humanitarian agency with a refugee protection expertise and mission, rather than one focused on detention and deportation.