

Upholding President Biden’s Asylum Commitments

Progress Checklist: One Year After February 2021 Executive Order

One year ago, on February 2, 2021, President Biden issued an [Executive Order](#) directing steps to manage migration in North and Central America and to “restore and strengthen our own asylum system,” which the order noted “has been badly damaged by [Trump administration] policies enacted over the last 4 years that contravened our values and caused needless human suffering.” But one year later, many of the commitments made by President Biden have not yet been fulfilled – and the United States [continues to flout](#) both the Refugee Convention and the refugee laws enacted by Congress.

The Biden administration took steps towards ending some Trump policies, such as beginning to wind-down the Remain in Mexico policy and withdrawing rulings that sought to deny asylum to survivors of gender-based persecution. But critical steps to end other Trump policies that block refugees from asylum remain, as Human Rights First explained in its recent [assessment](#) of the Biden administration’s first year in office. Shockingly, the Biden administration is still not upholding asylum law at U.S. ports of entry and elsewhere along the border, despite the President’s direction to promptly reinstate asylum processing. Instead, the Biden administration has defended, embraced, and implemented – for a full year now – the Trump administration’s [illegal and inhumane](#) policy of misusing public health authority under Title 42 of U.S. law to turn people seeking asylum away to places where they suffer kidnappings, torture, and other brutal violence. The Biden administration has also restarted the similarly horrific Remain in Mexico policy following a court order, choosing to expand its application to additional nationalities. Of grave concern, the administration has not yet taken key steps to firmly end the Trump entry, transit, and third-country asylum bans, despite the Executive Order’s directions for review.

Human Rights First continues to urge the Biden administration to restore compliance with U.S. asylum law. These urgent steps should, as detailed in Human Rights First’s January 22 [recommendations](#), include to: immediately comply with refugee law at the border and restart asylum at ports of entry; end the use and defense of President Trump’s Title 42 travesty; take all steps permissible to end the restarted and expanded Remain in Mexico policy; and firmly end President Trump’s entry, transit, and unsafe third-country bans, as well as other policies that deny refugees asylum and separate their families.

Outlined below are President Biden’s directives on asylum included in the February 2021 [Executive Order](#) and the steps taken – and not yet taken – to fulfill his promises:

President’s Commitments in President Biden’s February 2, 2021 Executive Order	Some Progress, but Mostly Lack of Progress
<p>Develop procedures for processing asylum claims at land border: “The Secretary of Homeland Security and the Director of the Centers for Disease Control and Prevention (CDC), in coordination with the Secretary of State, shall promptly begin consultation and planning with international and non-governmental organizations to develop policies and procedures for the safe and orderly processing of asylum claims at United States land borders, consistent with public health and safety and capacity constraints.”</p>	<p>Lack of progress in processing asylum claims at land borders: While U.S. agencies issued a proposed rule changing asylum processing, the proposal raised significant concerns of due process deficiencies and potential refoulement of refugees to danger. Public health experts and NGOs have repeatedly shared recommendations on processing consistent with public health, but their recommendations have not been implemented. Instead, the Biden administration is not upholding asylum law and uses Trump Title 42 policy.</p>

<p>Reinstate reception and processing of arriving asylum seekers: “The Secretary of Homeland Security, in consultation with the Attorney General, the Secretary of Health and Human Services (HHS), and the Director of CDC, shall promptly begin taking steps to reinstate the safe and orderly reception and processing of arriving asylum seekers, consistent with public health and safety and capacity constraints.”</p>	<p>Failure to reinstate reception and processing of arriving asylum seekers: The Biden administration has not yet restarted asylum processing at U.S. ports of entry (and has certainly not done so promptly), continuing to maintain policies and practices that largely prevent people from seeking asylum at these ports of entry despite refugee law. Only a small fraction of asylum seekers are allowed to approach the port to seek asylum, but these cases are processed under humanitarian parole, rather than under, and in compliance with, U.S. refugee law and the Refugee Convention.</p> <p>Many asylum seekers continue to be blocked at ports of entry and expelled under the Title 42 policy - leading to at least 8,700 reports of kidnappings, torture and attacks against asylum seekers expelled to Mexico under this policy since President Biden took office.</p>
<p>Review, potentially end, or modify Title 42 policy: “The Secretary of HHS and the Director of CDC, in consultation with the Secretary of Homeland Security, shall promptly review and determine whether termination, rescission, or modification of the following actions is necessary and appropriate: “Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists,” 85 Fed. Reg. 65,806 (October 13, 2020); and “Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes,” 85 Fed. Reg. 56,424 (September 11, 2020) (codified at 42 C.F.R. 71.40).”</p>	<p>Continued use and defense of Title 42 stains Biden record; action urgently needed to end policy: The Biden administration has continued to embrace, wield, and defend the Trump administration policy of misusing public health authority to evade refugee law, even though the top State Department legal expert concluded the policy is illegal and inhumane - and leading epidemiologists, former CDC and other public health experts concluded the policy lacks a public health basis and should be rescinded. The U.N. High Commissioner for Refugees 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 globally by this continued subversion of refugee law.</p> <p>Since President Biden took office one year ago, Human Rights First has tracked over 8,700 reports of kidnappings, brutal assaults, and other attacks suffered by asylum seekers and migrants blocked or expelled to Mexico due to this policy.</p>
<p>Review and determine whether to terminate/modify Remain in Mexico: “[R]eview and determine whether to terminate or modify the program known as the Migrant Protection Protocols (MPP), including by considering whether to rescind the Memorandum of the Secretary of Homeland Security titled “Policy Guidance for Implementation of the Migrant Protection Protocols” (January 25, 2019), and any implementing guidance. In coordination with the</p>	<p>Steps towards, but failure to yet end - and decision to expand - Remain in Mexico: The Biden administration officially terminated the Remain in Mexico program and processed into safety over 12,000 people subjected to it to await their court proceedings in the United States, an important steps towards implementing President Biden’s promises, though further steps were (and continue to be) necessary to bring to safety all individuals subjected to this horrific policy.</p>

<p>Secretary of State, the Attorney General, and the Director of CDC, the Secretary of Homeland Security shall promptly consider a phased strategy for the safe and orderly entry into the United States, consistent with public health and safety and capacity constraints, of those individuals who have been subjected to MPP for further processing of their asylum claims.”</p>	<p>However, after a court ruling in litigation brought by Trump allies, the Biden administration restarted the Remain in Mexico policy, leading to the return of asylum seekers from Cuba, Nicaragua, Venezuela and other countries to danger in Mexico. In addition, the Biden administration chose to expand the Remain in Mexico policy so that it could be used against Haitian and other asylum seekers.</p>
<p>Rescind, end, review other Trump policies: “Rescind the interim final rule titled “Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims,” 83 Fed. Reg. 55,934 (November 9, 2018), and the final rule titled “Asylum Eligibility and Procedural Modifications,” 85 Fed. Reg. 82,260 (December 17, 2020).”</p>	<p>Critical, overdue action needed to fulfill commitments on Trump asylum bans and policies: The administration has not yet rescinded regulations authorizing the asylum entry ban and third-country transit ban, which violate Articles 31, 33 and 34 of the Refugee Convention. While the Fall 2021 Unified Regulatory Agenda again confirmed that U.S. agencies will take action to modify or rescind these rules, these illegal and dangerous bans – which endanger refugee lives, separate their families and undermine integration – remain on the books at this time.</p> <p>Entry Ban: The February 2021 executive order rescinded the proclamation barring asylum seekers crossing the southern border and directed the Attorney General and Secretary of Homeland Security to “promptly review and determine whether to rescind” the underlying asylum entry ban. While the entry ban is currently vacated and enjoined, the regulation authorizing it is still in effect. The Spring 2021 Unified Regulatory Agenda indicated that the administration would take action on this rule in November 2021, but to date it has not been rescinded.</p> <p>Transit Ban: As Human Rights First has detailed, the transit ban led the United States to deny refugees asylum, return people to persecution and torture, and separate refugee families. The Spring 2021 Unified Regulatory Agenda indicated that the administration would take action on this rule in November 2021, but to date it has not been rescinded.</p> <p>Other Asylum Bans: While not addressed in the Executive Order, the administration should also rescind the “death to asylum” rule, public health ban regulations, and Trump administration work authorization deprivations.</p>
<p>Asylum Cooperative Agreements (ACAs) to send asylum seekers to unsafe countries: “Promptly review and determine whether to rescind the interim final rule titled “Implementing</p>	<p>Important initial progress, but lack of critical follow up to firmly end unsafe schemes: The Biden administration terminated the Asylum Cooperative Agreements with Guatemala, El Salvador and</p>

<p>Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,” 84 Fed. Reg. 63,994 (November 19, 2019), as well as any agency memoranda or guidance issued in reliance on that rule.”</p>	<p>Honduras, which the Trump administration used to summarily deport nearly one thousand asylum seekers to Guatemala without access to U.S. protections. However, further steps are needed to rescind the regulation authorizing these agreements and to bring to safety asylum seekers sent to danger under this policy.</p>
<p>Direction to cease PACR/HARP programs: “Secretary of Homeland Security shall promptly cease implementing the “Prompt Asylum Case Review” program and the “Humanitarian Asylum Review Program” and consider rescinding any orders, rules, regulations, guidelines or policies implementing those programs.”</p>	<p>Steps taken to end PACR/HARP programs, which forced asylum seekers to undergo credible fear screenings while held in Customs and Border Protection (CBP) often in deplorable conditions and almost entirely cut off from access to legal counsel resulting in deportations of asylum seekers to the countries where they fled persecution. However, the Biden administration continues to use expedited removal and is conducting flawed “non-refoulement” screenings under CBP custody for individuals returned to Mexico under Remain in Mexico resulting in many erroneous decisions.</p>
<p>Review and determine whether to modify expedited removal: “The Secretary of Homeland Security, with support from the United States Digital Service within the Office of Management and Budget, shall promptly begin a review of procedures for individuals placed in expedited removal proceedings at the United States border. Within 120 days of the date of this order, the Secretary of Homeland Security shall submit a report to the President with the results of this review and recommendations for creating a more efficient and orderly process that facilitates timely adjudications and adherence to standards of fairness and due process.”</p>	<p>Commitment unfulfilled: No public information has been released to indicate a report was submitted to the President.</p> <p>A proposed rule on asylum processing issued by the administration raised concerns that a new asylum adjudication process would rely on the flawed expedited removal process to screen asylum seekers and create additional inefficiencies and continued diversion of asylum officers from conducting full asylum interviews.</p>
<p>Review and determine whether to modify/revoke the geographic expansion of expedited removal: “[S]hall promptly review and consider whether to modify, revoke, or rescind the designation titled “Designating Aliens for Expedited Removal,” 84 Fed. Reg. 35,409 (July 23, 2019), regarding the geographic scope of expedited removal pursuant to INA section 235(b)(1), 8 U.S.C. 1225(b)(1), consistent with applicable law.”</p>	<p>Suspended but not yet revoked: The Biden administration reportedly suspended expansion of expedited removal to the interior during the review of expedited removal ordered under the Executive Order.</p>
<p>Provide protection consistent with international standards: “[W]ithin 180 days of the date of this order, conduct a comprehensive examination of current rules, regulations, precedential decisions, and internal guidelines governing the adjudication of asylum claims and</p>	<p>Some progress, but critical steps not yet taken to protect refugees consistent with international standards: Attorney General Garland vacated flawed and illegal rulings of former Attorneys General, including the ruling of Jeff Sessions in Matter of A-B-, an important step to restore protections for refugees,</p>

<p>determinations of refugee status to evaluate whether the United States provides protection for those fleeing domestic or gang violence in a manner consistent with international standards.”</p>	<p>including those persecuted by deadly gangs and perpetrators of gender-based violence. The Department of Justice has indicated in a memorandum that it would issue regulations that address key asylum provisions that were eviscerated in these illegal rulings but to date, no rule has been issued to ensure the U.S. protects people fleeing domestic and gang persecution in a manner consistent with international standards.</p>
<p>Issue regulations codifying definition of particular social group for asylum cases: “[W]ithin 270 days of the date of this order, promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a ‘particular social group.’”</p>	<p>Commitment unfulfilled: No rule yet issued to ensure people fleeing persecution because they are targeted as a result of membership in a group receive protection consistent with international standards.</p>