
UPHOLDING PRESIDENT BIDEN'S ASYLUM COMMITMENTS

18-Month Progress Checklist Since February 2021 Executive Order

It has been more than one-and-a-half years since President Biden issued his February 2, 2021 [Executive Order](#), directing steps to manage migration in North and Central America and to “restore and strengthen our own asylum system,” which was “badly damaged by [Trump administration] policies enacted over the last 4 years that contravened our values and caused needless human suffering.” Over eighteen months later, many of President Biden’s commitments have not yet been fulfilled—in some cases due to lawsuits filed by allies of the prior administration and in other cases due to the slow pace of agency action to fulfil the executive order’s direction. As a result, the United States [continues to flout](#) both the Refugee Convention and the refugee laws enacted by Congress.

The Biden administration and U.S. agencies have taken steps towards ending some of the most notorious Trump administration policies, including the initial termination and subsequent re-termination of Remain in Mexico, the (belated) issuance of a Centers for Disease Control and Prevention (CDC) order to end the Title 42 policy, vacating Attorney General rulings that sought to deny asylum to refugee survivors of gender-based persecution, and rescinding work authorization deprivations and the expansion of expedited removal to the interior. But critical steps to bring to safety those subjected to Remain in Mexico, to uphold asylum law at U.S. ports of entry and elsewhere along the border, and to fully end Trump policies, including Title 42, that block refugees from asylum remain. Of grave concern, the administration has not yet taken key steps to firmly end the Trump-era entry, transit, and third-country asylum bans, despite the Executive Order’s directions for review and prompt action. Overall, the agencies directed to act in the Executive Order have not met announced timelines for regulatory action and rule publications have been repeatedly delayed.

Human Rights First continues to urge the Biden administration to restore compliance with U.S. asylum law and fulfil President Biden’s directives in the Executive Order. These urgent steps should include:

- comply with refugee law at the border, including to restore asylum processing at U.S. ports of entry;
- take all permissible steps to end the use of President Trump’s Title 42 travesty, including issuing formal rulemaking to terminate the Title 42 order and complying with a federal court order requiring fear screenings of asylum-seeking families that should also be extended to adults;
- quickly winddown the Remain in Mexico policy and ensure that all individuals subjected to this human rights and due process horror are transited to safety in the United States and provided a fair opportunity for their asylum claims to be decided;
- firmly end President Trump’s [entry](#), [transit](#), [unsafe third-country](#) and [public health](#) ban regulations, and the “[death to asylum](#)” rule; and
- issue long-overdue asylum regulations to ensure that survivors of gender- and gang-based violence as well as other refugees fleeing persecution due to their membership in a particular social group are granted U.S. asylum protection and address, through publication of a final rule, serious due process and access to counsel concerns with the new [asylum processing rule](#).

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:

Commitments in President Biden’s February 2, 2021 Executive Order	Update on Progress (or Lack Thereof)
<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: U.S. agencies issued an interim final rule changing asylum processing in March 2022. The new rule contained several improvements following comments on the notice of proposed rulemaking, however it still raised significant concerns of due process deficiencies and potential <i>refoulement</i> of refugees to danger.</p> <p>While a district court order in a lawsuit brought by Trump-aligned state attorneys general blocked the administration from ending the Title 42 policy in May 2022, the administration has not taken sufficient steps nor made full use of its authority to exempt asylum seekers from the policy and restore asylum processing at ports of entry consistent with the court’s ruling.</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 taken sufficient steps to restart asylum processing at U.S. ports of entry (and has certainly not done so promptly). Only a fraction of asylum seekers are being allowed to approach ports to seek asylum and can generally only do so with the assistance of an attorney or legal services provider to request humanitarian exceptions to Title 42.</p> <p>Many asylum seekers continue to be blocked at ports of entry and expelled under the Title 42 policy - leading to at least 10,000 reports of kidnappings, torture and attacks against asylum seekers expelled to Mexico under this policy since January 2021.</p> <p>Urgent steps are also needed to ensure and coordinate the safe and humane reception of individuals who are permitted to enter the United States for their asylum process.</p>
<p>Review, potentially end, or modify Title 42 policy: “The Secretary of HHS and the Director of CDC, in</p>	<p>Overdue but welcome attempt to terminate Title 42, continued failures to uphold refugee protections: In April</p>

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).”

2022, the CDC finally [announced](#) that the Trump-era policy that misused public health authority to block and expel people seeking asylum despite U.S. and international refugee law would end on May 23. [UNHCR](#) and other [international authorities](#) repeatedly [called](#) for an end to the policy which violates refugee law and treaties, as did [public health experts](#). A federal district court, in a lawsuit initiated by state officials allied with the prior administration, has temporarily [blocked](#) termination of the policy.

However, the Biden administration has not fully exercised its pre-existing authority to grant humanitarian exceptions to asylum seekers subjected to Title 42. It has also [failed](#) to provide fear screenings to families subject to expulsion, as required by the DC Circuit Court [ruling](#) prohibiting DHS from using Title 42 to expel asylum-seeking families “to places where they will be persecuted or tortured.” Given the DC Circuit’s legal reasoning, DHS should also take steps to ensure that adults are not expelled to places where they will be persecuted or tortured. While Title 42 is not being applied to asylum seekers of multiple nationalities (due to diplomatic, logistical, and other factors), it is now operating as a discriminatory asylum ban to prevent people in search of refuge from El Salvador, Guatemala and Honduras, as well as Mexico, from seeking asylum in the United States.

In September 2022, [Reuters](#) reported that the administration was considering expanding the use of Title 42 to return more Cubans, Nicaraguans, and Venezuelans to Mexico, a counterproductive step that should not be taken as it would endanger refugee lives.

Further delays in rescinding public health ban rule: While not explicitly listed in the Executive Order, DHS and DOJ should also rescind the [public health ban regulations](#), issued in December 2020 in the last days of the Trump administration. It would bar asylum seekers from refugee protection based on specious public health claims. Action to rescind the rule has been [repeatedly paused](#) despite calls from public health experts, [human rights groups](#), [UNICEF](#) urging its [immediate rescission](#).

<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 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>Important actions taken to end the Remain in Mexico policy, though crucial steps remain: The Biden administration officially terminated the Remain in Mexico program in June 2021 and initially processed into safety over 12,000 people subjected to it to await their court proceedings in the United States, important steps towards implementing President Biden’s promises. After a court ruling in litigation brought by Trump allies, the Secretary of Homeland Security issued another, even more comprehensive memoranda in October 2021 detailing his reasoning to re-terminate the endemically flawed policy. In December 2021, the court-ordered reimplementation of Remain in Mexico began, leading DHS to return over 7,000 asylum seekers from Cuba, Nicaragua, Venezuela and other countries to danger in Mexico.</p> <p>Following the Supreme Court’s decision upholding the legality of the Biden administration’s termination of Remain in Mexico, the administration has now halted new enrollments and begun bringing to safety individuals subjected to this horrific policy. Crucial steps remain. People subjected to the policy during both the Trump and Biden administrations should be eligible to enter the United States while they await adjudication of their cases. The administration must ensure that all asylum seekers subjected to the policy are provided a fair opportunity to present their cases.</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: DHS and DOJ have 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 Spring 2022 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</p>

	<p>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. An amicus brief by UNHCR condemned the rule as violating U.S. obligations under the Refugee Convention and Protocol. The Spring 2021 Unified Regulatory Agenda indicated that the administration would take action on this rule in November 2021, but to date—nearly ten months later—it has still not been rescinded. The Spring 2022 Unified Regulatory Agenda indicates the rule will not be finalized until February 2023.</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. 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 – nearly ten months later – the agencies have not yet taken action to rescind the rule.</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 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>Important initial progress, but lack of prompt and critical follow up to firmly end unsafe schemes: In February 2021, the Secretary of State terminated the Asylum Cooperative Agreements with Guatemala, El Salvador and Honduras, which the Trump administration used to summarily send nearly one thousand people to Guatemala without potential access to U.S. asylum assessments, even if they feared return to persecution in their home countries. However, further steps are needed by DHS and DOJ 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 pause the use of PACR/HARP, but lack of prompt to rescind these dangerous programs. These programs 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 the</p>

	<p>underlying, fundamentally flawed, expedited removal process and conducted MPP “non-refoulement” screenings in CBP custody, despite its deficiencies, 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>U.S. agencies issued an interim final rule changing asylum processing in March 2022. The new rule however raised significant concerns of due process deficiencies and potential <i>refoulement</i> of refugees to danger, in part, because the rule relies on the flawed expedited removal process to screen asylum seekers. In doing so, it also creates 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>Commitment fulfilled: In March 2022, the Biden administration rescinded the expansion of expedited removal to the interior.</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 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>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, 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>While not specifically listed in the Executive Order, the</p>

	<p>administration should, consistent with international law, also rescind the “death to asylum” rule.</p> <p>USCIS has now updated work authorization application forms to reflect the injunctions on Trump administration work authorization deprivations, and, in a welcome move, on September 21, 2022 the administration issued a final regulation to officially rescind these rules.</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: Over 540 days since the issuance of the Executive Order, no rule has been issued to ensure people fleeing persecution because they are targeted as a result of membership in a group receive protection consistent with international standards. The Spring 2021 Unified Regulatory Agenda indicated that the administration would take action on a rule addressing particular social group asylum claims in November 2021. The Spring 2022 Unified Regulatory Agenda indicated that action on the rule would be taken in August 2022. But to date the agencies have not yet acted.</p>