
Biden Administration Asylum Ban: Widely Opposed Misstep Violates Law and Fuels Wrongful Deportation of Refugees

On May 16, 2023, the Biden administration published a [final rule](#) (“asylum ban”) that would, with limited exceptions, bar nearly all asylum seekers who traveled through another country on their way to the U.S. southern border, unless they (1) applied for asylum in one of those countries and received a denial, or (2) managed to secure one of the highly limited appointments to enter at an official port of entry (via a glitchy, inequitable smartphone app known as CBP One). This asylum ban, like prior Trump administration bans, unlawfully makes refugees ineligible for asylum based on how they enter the United States and whether they applied for protection in a country they traveled through on their way to seek safety. It also forces many to make an impossible choice of whether to remain in danger for months or longer while they try to access the lottery-based system of CBP One or seek safety in the United States and risk being banned under the rule and deported to harm. U.S. agencies have referred to the ban as a [“temporary measure”](#) that is subject to review. The Biden administration should immediately end this ban, which endangers refugees every day that it is left in place.

This asylum ban will **return refugees to persecution, torture, and death in their home countries and other countries where their lives are at risk**, in violation of non-refoulement, the non-derogable cornerstone of international refugee protection. It will leave other refugees in limbo in the United States without permanent status or a pathway to citizenship. The ban also weaponizes the expedited removal process to subject asylum seekers to sham fear screenings and deport them without an opportunity to apply for asylum. The rule applies to asylum seekers who enter the United States during the next two years, but asylum seekers may still be denied asylum under the ban many years later if they entered during this time frame.

The Biden administration's asylum ban violates U.S. law and international treaty obligations. It is a new iteration of [similar bans](#) promulgated by the Trump administration that were [repeatedly struck down by](#) federal courts because they violated central features of U.S. refugee law. Organizations [have challenged](#) the Biden asylum ban in federal court for also violating U.S. refugee law.

In issuing the final rule, the Biden administration disregarded tens of thousands of public comments in response to its proposed rule that condemned the rule and urged the administration not to issue it. Of the 51,000 comments received in response to the proposed rule after a mere 30-day comment period, the [vast majority](#) of comments opposed the ban, including comments from the U.N. Refugee Agency (UNHCR), the union representing asylum officers who would be forced to implement the illegal ban, former immigration judges, 82 members of Congress from the President’s own party, Black-led, Indigenous, civil rights, and LGBTQ+ organizations, Catholic Bishops, rabbis, and Holocaust survivors. [Anti-immigrant hate groups](#), in contrast, welcomed the proposed ban.

Despite the widespread opposition, the administration finalized the illegal asylum ban and *expanded* the ban to cover even more asylum seekers who enter the United States. Whereas the proposed rule applied to those who enter at the southwest land border, the final rule expands the ban to apply to those who enter at coastal borders at or near the U.S.-Mexico border. Like the proposed rule, the final rule primarily targets Black, Brown, and Indigenous asylum seekers who flee to the southern border in search of safety. Other changes to the final ban, which include limited exceptions for some asylum seekers based on age and family, do not alter the rule's illegality or the reality that countless refugees who qualify for asylum under law enacted by Congress — adults, families, and children fleeing persecution — will be denied the opportunity to even apply for asylum, deported to danger, or left in limbo in the United States.

The administration issued this ban in direct violation of President Biden's promises. Then presidential candidate Biden condemned Trump asylum bans, [promised](#) to end restrictions on asylum for those who transit through other countries to reach safety, and [pledged](#) that he would not "deny[] asylum to people fleeing persecution and violence." Upon taking office, President Biden issued an [Executive Order](#) to "restore and strengthen our own asylum system, which has been badly damaged by policies enacted over the last 4 years that contravened our values and caused needless human suffering." The decision to promulgate the asylum ban is an abysmal abdication of leadership and a legal, moral, and political mistake.

The administration has [attempted](#) to attribute the decline in crossings at the border after the end of the Title 42 policy on May 11 to its asylum ban. The reality, however, is that it confirms that Title 42 was dysfunctional and counterproductive as a border policy. Among hundreds of asylum seekers whom Human Rights First has spoken with at the border, none understood the implications of the asylum ban. Asylum seekers are continuing to try to seek asylum at ports of entry through the CBP One app but many face insurmountable barriers to use CBP One, as documented in a May 2023 [report](#) by Haitian Bridge Alliance, Human Rights First, and other organizations in a delegation of human, civil, and immigrants' rights leaders as well as a June 2023 [report](#) by the Florence Immigrant & Refugee Rights Project, Human Rights First, and Kino Border Initiative. Moreover, forcing refugees to wait indefinitely in danger and banning them from asylum in violation of U.S. and international law cannot be touted as a success.

As [Human Rights First](#) and [other](#) organizations have repeatedly recommended, instead of imposing policies that ban, block or punish people seeking asylum, the Biden administration should maximize access to asylum at ports of entry, redouble steps to strengthen capacities to receive and protect refugees in other countries, expand legal pathways to the United States without making such pathways contingent on denial of asylum access, and ramp up and work with Congress to fund reception capacities, legal representation, and sufficient asylum adjudication capacities to address asylum backlogs and ensure fair and timely adjudication of asylum cases.

Overview of Asylum Ban

The asylum ban makes people ineligible for asylum based on factors that directly contravene U.S. refugee law and are irrelevant to the persecution they suffered or the danger they face in their home countries and any countries they traveled through.

The ban applies to people who **enter the United States without valid entry documents at or near the U.S.-Mexico border (including the southwest land border and coastal borders) between May 11, 2023¹ and May 11, 2025**, unless they meet one of three conditions or qualify for a narrow exception. The two primary conditions are based on manner of entry into the United States and whether the person traveled through a transit country and was denied protection there, fusing features of the Trump administration's entry and transit asylum bans.

The ban does not apply to 1) people who are unaccompanied children at the time they enter the United States and 2) people who came to the United States directly from their home country without traveling through another country (i.e. Mexican nationals or stateless people whose last habitual residence was Mexico). The ban also does not cover people who arrive in the United States by plane or elsewhere, such as the U.S.-Canada border. It is a blatant attempt to target people seeking asylum protection at the southern border, who are primarily people of color and do not have the resources or ability to travel to the United States by plane.

- The ban applies if an asylum seeker and their family with whom they are traveling:
 - Entered between ports of entry; or entered at a port of entry without a CBP One appointment (unless, if they entered at a port of entry, they can prove a narrow exception for inability to make a CBP One appointment due to a serious and ongoing obstacle);
 - Entered without a previously approved authorization to travel (such as through the parole programs for Cubans, Haitians, Nicaraguans, Ukrainians, and Venezuelans); *and*
 - Did not apply for and receive a final denial of protection in a country they traveled through on the way to the United States (not including a determination that an application for protection was "abandoned")
- If the ban applies, the asylum seeker can only **overcome the ban and be considered for asylum** if they can prove that they or a member of their family who they are traveling with faced an "exceptionally compelling" circumstance, such as at the time of entry into the United States:
 - Faced an acute medical emergency;
 - Faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or
 - Was a "victim of a severe form of trafficking in persons," as defined by U.S. regulations

¹ The ban only applies to people who entered after the termination of the Title 42 policy at 11:59p.m. on May 11, 2023.

Through these new regulatory provisions, the rule creates a ban on asylum for covered refugees who cannot secure a CBP One appointment and did not apply for and receive a denial of protection in a transit country or receive parole approval from outside the country. As with the Trump entry ban, this requirement will ban from asylum virtually all non-Mexican people seeking safety at the border who enter without inspection or at a port without an appointment. This is because few, if any, asylum seekers who request asylum in the United States will realistically first seek protection in unsafe countries they transited through and only a tiny fraction can get parole through an approved program, which are currently limited to select countries and have strict requirements including a sponsor in the United States, a valid passport, and resources to buy a plane ticket.

This ban illegally punishes many of the most vulnerable refugees, including people without the resources or ability to access a government mobile app that is only available in certain languages and requires daily access to a reliable Wi-Fi or data connection, as well as Black, Indigenous, LGBTQ+ asylum seekers, women, children, and people with disabilities who face particularly grave dangers in transit countries that lack meaningful protection for refugees.

The narrow exceptions to the ban will not protect many refugees and will often be impossible to prove. For instance, many asylum seekers in Mexico suffer horrific violence at the hands of Mexican government agents and cartels, with many targeted precisely because they are migrants or seeking asylum in the United States. **Human Rights First has tracked over [13,000](#) reports of murders, kidnappings, rapes, and other violent attacks against migrants blocked in or expelled to Mexico due to Title 42 since President Biden took office.** Amid this unremitting violence, asylum seekers in Mexican border regions so often face a serious risk to their safety that it is absurd to require an asylum seeker to establish an “imminent and extreme” threat to life or safety, and it is unclear how they could even prove to an adjudicator that they would have been kidnapped, raped, murdered, or otherwise harmed had they remained in danger for longer.

Asylum seekers could be banned from asylum based on this rule at various stages, ranging from just days after their arrival to years after they have settled into the United States.

The rule applies in asylum office adjudications and immigration court proceedings²

- The ban will apply in asylum adjudications before the U.S. Citizenship and Immigration Services (USCIS) asylum office and immigration court, which may take place years after the asylum seeker has entered the United States. **An asylum seeker may be denied asylum based on the ban at any point, in one, five, ten, or more years,** if they entered through the U.S. southwest land border or adjacent coastal borders between May 11, 2023 and May 11, 2025.

² In immigration court proceedings, there is an additional exception to the ban *in certain instances* where an asylum seeker establishes eligibility for withholding of removal or protection under the Convention Against Torture, would be eligible for asylum if not for the ban, and has a spouse or child (as defined by U.S. immigration law). If this exception is met, the asylum seeker may be granted asylum.

- Applicants denied asylum due to the ban may be ordered deported if they cannot establish eligibility for lesser forms of protection, such as withholding of removal and protection under the Convention against Torture (CAT), which are more difficult to secure because applicants must show a higher likelihood of harm than is required for asylum eligibility. If they are granted these other forms of protection, they will be left in indefinite limbo in the United States, without permanent status or a path to citizenship. People left with withholding of removal or CAT protection often face long delays in obtaining work authorization, barriers to accessing health care and other support, difficulty obtaining an identification card, threats of deportation, and the uncertainty of remaining in limbo without a path to permanent legal status. People granted asylum, on the other hand, receive permanent status, a pathway to citizenship, and automatic work authorization.

The rule applies in credible fear interviews

- This preliminary fear screening interview may take place **in as little as 24 hours after an asylum seeker reaches the United States, often before they can talk to an attorney, and while they are detained, without access to their phones or documents.**
- During this interview, asylum seekers will be required to show that they meet a required condition or can prove an exception (requiring them to prove a range of additional issues completely separate from their asylum claim such as the harm and danger they suffered in Mexico, their attempts to use CBP One, or medical needs at the time of entry). If they cannot do so, **the ban then requires them to meet a higher screening standard** — higher than the credible fear standard set by Congress — to avoid immediate deportation. Those unable to meet the higher standard may be deported within days of entering the United States without ever having a full hearing on their asylum claim.

Deportations take place to home countries or unsafe third countries

- The administration is planning to deport large numbers of non-Mexicans to Mexico under the asylum ban despite not having formalized a safe third country agreement with Mexico. Currently, Mexico is [accepting returns](#) of Cubans, Haitians, Nicaraguans, and Venezuelans.
- As a result, the administration is [reportedly](#) forcing some Cubans, Haitians, Nicaraguans, and Venezuelans to **prove fear of return to Mexico to avoid deportation** during credible fear interviews where many have no access to counsel. This is extremely confusing for asylum seekers undergoing this stressful process and drastically complicates adjudications. In credible fear interviews, those covered by the ban who are subject to deportation to Mexico may be required to **meet a higher screening standard — higher than that set by Congress — with respect to Mexico.** This will result in deportation to Mexico of people who are not Mexican citizens *and* have a credible fear of persecution in Mexico – as well as those who have a credible fear of persecution in their home countries where Mexico may unlawfully return and refool them.

Asylum seekers must be processed at ports of entry whether or not they have an appointment, but the ban forces asylum seekers to make impossible decisions about whether to seek safety

- While the ban illegally denies asylum to many refugees who do not have a CBP One appointment, it does not authorize (and cannot authorize) the U.S. government to turn away asylum seekers at ports of entry without appointments. The U.S. government is legally required to process all people seeking protection at ports of entry. If an asylum seeker claims fear of return to their home country, the government must at a minimum schedule them for a credible fear interview. Nonetheless, since the ban went into effect, the government has illegally turned away asylum seekers without appointments at ports of entry or subjected them to extremely long wait times.
- **Asylum seekers facing immediate dangers while waiting to schedule an appointment — including those who have been raped, kidnapped, or tortured — must make an impossible choice** of whether to request protection without an appointment (risking being barred from asylum under the ban and deported to life-threatening harm) or wait indefinitely in situations of life-threatening danger until they can schedule an appointment through the CBP One appointment system, which resembles a lottery.

Overview of Changes from Proposed Rule to Final Rule

The final rule **left core features of the proposed rule intact**, banning asylum for refugees on the same bases — manner of entry and whether the person was denied protection in a transit country. None of the changes mitigate the ban's illegality or inhumanity. The final rule even *expands* the scope of the ban to cover more asylum seekers entering the United States. Clarifications in the final rule and changes to the rule's scope and exceptions include:

- The final rule formally rescinds regulatory provisions of the Trump administration's asylum bans, which the proposed rule purported to do but did not change the regulatory language. While it is crucial to rescind these illegal prior bans, the rule *itself* is a new iteration of Trump asylum bans.
- The final rule expands the scope of the ban to include people entering the United States at coastal borders at or near the U.S.-Mexico border (in addition to people entering at the southwest land border). More people will be banned from asylum as a result of this change.
- The final rule expands an exception to the ban for certain asylum seekers in immigration court proceedings who have a spouse or child, including cases where the spouse and child remain abroad, to allow people who are otherwise eligible for asylum to receive it and extend asylum status to their immediate family but *only* if they can overcome the higher standard to establish

eligibility for withholding of removal or protection under CAT and would have been granted asylum if not for the ban.³

- The final rule creates a new exception providing that accompanied minors (children who are under 18 at the time of entry and come with a parent or legal guardian) who submit an asylum application as a principal applicant *after* May 11, 2025 will not be banned from asylum under the regulation. Despite this provision, the ban will result in the deportation of many children with their family members, as well as family separation from parents, siblings, and other family members barred by the ban and to whom they cannot extend asylum status.
- The final rule also adds some clarifications:
 - It adds language to make clear that the asylum ban will apply to any asylum application regardless of when it is filed, as long as the person entered between May 11, 2023 and May 11, 2025;
 - It clarifies that the requirement to receive a “final decision” denying protection in a transit country does not include a determination that the asylum seeker has abandoned their claim.
 - It further clarifies that unaccompanied children are categorically exempt from the ban.

Asylum Ban Violates U.S. Law and Treaty Obligations

The asylum ban contravenes core legal requirements of the 1951 Refugee Convention and its Protocol, customary international law, and longstanding U.S. law.

Violations of international treaty obligations

The United States played a lead role in drafting the Refugee Convention, which requires states to abide by core principles to ensure the protection of refugees. **These legal principles include non-discrimination, prohibition against returning (refouling) refugees to persecution and torture, prohibition against imposing improper penalties on people seeking refugee protection based on manner of entry, and facilitation of integration and naturalization of refugees.**

The asylum ban violates all of these key provisions of the Refugee Convention. It unlawfully bars refugees from accessing the U.S. asylum system based on arbitrary factors that do not relate to a person’s status as a refugee, will lead to deportations to persecution and torture for many refugees denied asylum solely due to the ban, imposes a penalty on refugees based on how they enter the United States and whether or not they could secure an appointment at a port of entry through the CBP One system — which resembles a lottery — and blocks the integration and naturalization of refugees denied asylum and left with other inadequate forms of U.S. protection (like withholding of removal). It also denies access to asylum on a discriminatory basis, in [violation](#) of the Refugee Convention. The rule [disproportionately](#) harms Black, Brown, and Indigenous asylum seekers, many of whom are unable to obtain a U.S. visa and do not have

³ In the proposed rule, the exception only applied to asylum applicants in immigration court proceedings who had an “accompanying” spouse or child, excluding applicants whose spouse or children remain abroad, for instance.

the resources or ability to arrive in the United States by plane. Additionally, it builds in nationality-based discrimination by punishing people who do not use parole initiatives or other designated pathways at the same time that the administration has only made its new parole initiatives accessible to people from five countries.

In its [comment](#) on the proposed rule, UNHCR warned that the ban runs afoul of central principles of international refugee law binding on the United States, will lead to the refoulement of large numbers of asylum-seekers of different nationalities, ethnic backgrounds or religions, and would place refugees “at risk of persecution and/or death.” After the administration published its final rule, UNHCR and the International Organization for Migration issued a [joint statement](#) condemning the rule, reiterating that it is “incompatible with principles of international refugee law.”

Violations of U.S. law

The ban violates U.S. refugee law enacted by Congress to bring the United States into [compliance](#) with international treaty obligations, including the Refugee Convention.

The first provision of the refugee statute, 8 U.S.C. 1158(a)(1), explicitly provides that anyone who is physically present in the United States or who arrives in the United States, whether or not at a designated port of entry, and regardless of status, may apply for asylum. This provision confirms that it is illegal to deny an individual the right to apply for asylum based on how a person entered the United States, and therefore [illegal](#) to create a bar to asylum eligibility based on manner of entry. The ban directly contravenes this foundational provision by denying asylum based on how a person entered the United States.

Under 8 U.S.C. §1158, it is also illegal to deny asylum based on an individual’s travel through a third country, unless the country has a “safe third country” return agreement with the United States or an individual was “firmly resettled” there. A transit country may only be designated as a safe third country if there is a formal agreement with a country where refugees are both safe from persecution and have access to fair asylum procedures. The ban illegally denies asylum based on travel through unsafe countries that the government has not determined meet the requirements to be designated as safe third countries, do not have formal return agreements with the United States, and through which many asylum seekers flee on their way to safety without being “firmly resettled” there. The administration’s use of the ban to deport non-Mexican refugees to Mexico — as well as to deny asylum based on transit through Mexico — is a blatant attempt to [circumvent](#) the safe third country provision by forcing people into an [unsafe transit country](#) without an opportunity to seek asylum in the United States.

Every regulation promulgated by the Trump administration that attempted to deny asylum based on manner of entry into the United States or transit through another country [was struck down by federal courts](#) as unlawful. Courts repeatedly held that the Trump bans violated the above provisions of U.S. law. The White House’s own legal counsel [warned](#) the Biden administration in 2021 that a regulation barring asylum for people who enter between ports of entry and did not seek refuge in other countries could be

struck down as illegal for the same reasons that the Trump administration's bans were vacated and enjoined.

The ban also violates U.S. law that sets forth requirements for screening asylum seekers in expedited removal. Under 8 U.S.C. §1225, asylum seekers placed in expedited removal who establish a credible fear of persecution must be referred for full asylum adjudications. Credible fear of persecution is defined as a "significant possibility" that the asylum seeker could establish eligibility for asylum in a full hearing. Congress made clear that this standard was [intended](#) to be a "low screening standard for admission into the usual full asylum process." Like the Trump asylum bans, the Biden ban attempts to unlawfully circumvent the credible fear screening standard. It subjects asylum seekers to a bar to asylum during the credible fear process and forces them to meet a more stringent screening standard — rather than the "significant possibility" standard. The screening process that the ban puts in place is completely incompatible with the statutory credible fear standard.

Asylum officers and immigration judges with vast experience adjudicating asylum cases warned the administration that the ban violates U.S. and international law. In response to the proposed rule, the union representing over 14,000 USCIS employees including asylum officers who adjudicate asylum cases [concluded](#) that "the measures that the Proposed Rule seeks to implement are inconsistent with the asylum law enacted by Congress, the treaties the United States has ratified, and our country's moral fabric and longstanding tradition of providing safe haven to the persecuted," "would force [asylum officer union] members to take actions that would violate their oath to faithfully discharge their duty to carry out the immigration laws adopted by Congress," and "could make them complicit in violations of U.S. and international law." The Round Table of Former Immigration Judges, composed of over 50 former Immigration Judges and Board of Immigration Appeals members, also [explained](#) that the proposed rule conflicted with international law and Congressional intent, would toss aside statutorily mandated protections, and would invariably result in wrongful removals.

Members of [Congress warned that](#) "this rule violates our legal obligations to protect refugees fleeing persecution and usurps Congressional authority by adding unlawful bars to asylum eligibility" and "runs afoul of this nation's founding principles and violates the U.S.'s obligations to asylum seekers under domestic and international law."

Nonetheless, the administration finalized the rule despite overwhelming evidence of its illegality.

Agencies Disregard Tens of Thousands of Comments Opposing Ban's Inhumanity and Illegality

The Biden administration provided a truncated 30-day comment period for the sweeping proposed asylum ban, in [violation](#) of the Administrative Procedure Act. Nonetheless, over 51,000 individuals and organizations filed comments, with the [vast majority](#) opposing the asylum ban. Had the agencies provided a more reasonable timeframe for public comments, many more comments would likely have been filed in opposition with additional analysis of the illegality and harms of the ban.

A diverse [array](#) of administration allies, nonpartisan groups, legal experts, and civil society groups condemned the proposed rule and overwhelmingly urged the administration to withdraw it. In addition to refugee and immigrant rights advocates, a wide range of faith-based, human rights, civil rights and other civil society organizations, as well as Members of Congress, UNHCR, and the asylum officers' union, stressed that the rule would violate U.S. law, international law and treaties binding on the United States, inflict grave harms on people seeking refugee protection, cause disorder and dysfunction, and discourage other countries from hosting refugees.

- Black-led groups [warned that the asylum ban](#) would disproportionately deny Black asylum seekers a meaningful opportunity to apply for protection, violate human rights law prohibiting racial discrimination, exacerbate systemic racism against Black asylum seekers in the immigration system, and force Black asylum seekers to apply for protection in countries where they face widespread racism and violence.
- The International Mayan League [detailed](#) the harmful impacts that the ban would have on Indigenous people, warning that the ban would further marginalize Indigenous persons and especially endanger Indigenous girls, women, and LGBTQ+ people who are at heightened risk for sex and human trafficking.
- [LGBTQ+ organizations](#) representing millions opposed the proposed asylum ban, writing that it would deny protection to LGBTQ+ people and people living with HIV, place LGBTQ+ migrants at active risk of facing the same dangers that they are trying to flee from, and is inconsistent with the Biden administration's demonstrated commitment to LGBTQ+ people around the globe.
- [Medical and public health experts](#) warned of the harmful, devastating impact of the ban on the physical and mental health of people seeking safety.
- Holocaust survivors and their family members filed comments opposing the asylum ban. Relatives of people murdered in the Holocaust after being denied entry to the United States also submitted comments, including the [child of Holocaust survivors](#) who **"had relatives on the doomed St. Louis who were denied safe haven and were sent back to their deaths."** The comment warned that the asylum ban **"would be a repeat of that situation."**

Within less than two months of receiving tens of thousands of comments in opposition to the ban, the Biden administration finalized the rule — largely leaving it the same — in blatant disregard of the concerns raised by the comments. In response to evidence of widespread attacks against asylum seekers and migrants in Mexico, the administration acknowledged that people forced to wait indefinitely for a CBP One appointment may face "dangerous" conditions. But the administration immediately dismissed this concern about the lives and safety of vulnerable migrants by relying on dehumanizing language about an "influx" of migrants. The word "surge" appeared 72 times in the final rule — almost always to describe asylum seekers and migrants — as the administration repeatedly disregarded warnings about the horrific harms that the rule would inflict on people seeking safety and relied instead on language used in fear-mongering and anti-immigrant rhetoric.

The administration also failed to respond to warnings that targeting people seeking safety at the southern border would have a disproportionate impact on Black, Brown, and Indigenous asylum seekers, merely claiming that “the rule does not classify noncitizens based on race, ethnicity, nationality, or any other protected trait.” This claim disregards the reality that the vast majority of people who will be banned under the rule are people of color from Africa, the Caribbean, and Latin America, as well as the fact that the rule *explicitly* provides for nationality-based discrimination by punishing people who don’t use parole initiatives that are only available to a limited number of people of certain nationalities.

The administration’s wordsmithing and attempts to distinguish this asylum ban from Trump’s bans are Kafkaesque, with the administration using misleading terminology like “presumption of ineligibility” to mask the fact that this rule, like Trump’s, is a ban on asylum for all who cannot satisfy one of three conditions or prove an extremely narrow exception. The Round Table of Former Immigration Judges submitted a [comment](#) on the proposed rule explaining that the proposed rule creates an “outright bar to asylum” and that to refer to it as a rebuttable presumption is misleading and inaccurate. As the Round Table explained, presumptions are logically drawn from established facts, but “there is nothing about the fact of arriving at the border without having procured an appointment that would give rise to a logical presumption that one is either not a refugee, or is undeserving of or no longer in need of protection.”

Ban Inflicts Disproportionate Harm on Black, Indigenous, LGBTQ+ Asylum Seekers, Women, Children, and People with Disabilities

The asylum ban inflicts disproportionate harm on Black, Brown, and Indigenous asylum seekers. The ban targets people seeking safety at the southern border and adjacent coastal borders, the overwhelming majority of whom are people of color. Fleeing political persecution, religious-based attacks, gender-based violence, and other persecution, many asylum seekers from El Salvador, Cameroon, Cuba, Guatemala, Haiti, Honduras, Nicaragua, Venezuela, and other countries who undertake difficult and dangerous journeys to the U.S.-Mexico border often have no other option to reach safety.

The Trump administration’s asylum transit ban similarly targeted people of color at the southern border. During the period that the Trump transit ban was implemented, immigration court asylum denial rates [skyrocketed](#) for many Black, Brown, and Indigenous asylum seekers requesting safety at the southern border. For instance, asylum grant rates [declined](#) by 45 percent for Cameroonian asylum applicants, 32.4 percent for Cubans, 29.9 percent for Venezuelans, 17 percent for Eritreans, 12.9 percent for Hondurans, 12 percent for Congolese (DRC), and 7.7 percent for Guatemalans from December 2019 to March 2020, compared to the year before the asylum transit ban began to affect refugee claims, according to data analyzed by Syracuse University’s Transactional Records Access Clearinghouse.

Forcing refugees to seek asylum in transit countries that have no formal agreement with the United States and where refugees would not be safe from persecution or have access to meaningful procedures particularly endangers Black, Indigenous, and LGBTQ+ asylum seekers, as well as women, children, and people with disabilities. Many refugees suffer racially motivated violence, anti-LGBTQI+ attacks, gender-

based violence, and other harms while traveling through common transit countries such as Mexico, Guatemala, and other countries.

In Mexico, Black asylum seekers and migrants [face](#) pervasive anti-Black violence, harassment, and discrimination, including widespread abuse by Mexican authorities. The Haitian Bridge Alliance organized at least a dozen [funerals](#) since December 2021 for Haitian [migrants](#) who died or were killed in Mexico while stranded due to Title 42, including for a 34-year-old Haitian asylum seeker who was murdered last year. The recent [kidnapping](#) of four Black U.S. residents — and murder of two of them — in Matamoros has underscored the violence and targeted attacks that Black migrants have long faced by cartels in Mexico.

Indigenous people, LGBTQI+ individuals, women, children, and people with disabilities also face a high risk of violence in Mexico. The 2022 Department of State report on Mexico [documented](#) frequent violence and discrimination against Indigenous women, who are among the most vulnerable groups in society according to the National Human Rights Commission. LGBTQI+ persons [face](#) widespread violence and mistreatment, including by Mexican police. Transgender women in particular face an enormous risk of harm; in 2021, 55 transgender women were [killed](#) in Mexico. Violence against women and girls — including rape, sexual assault, and femicide — is [pervasive](#) in Mexico, with high rates of impunity. Migrant women face a particularly [high risk](#) of sexual assault. Children, Indigenous persons, LGBTQI+ individuals, persons with disabilities, and asylum seekers and migrants are [highly vulnerable](#) to forced labor in Mexico. Disappearances of people in Mexico — including many migrants — is rampant, with disappearances reaching a record high of [100,000](#) in 2022 amid government failures to investigate disappearances.

In Mexico, asylum seekers are often [denied](#) fair access to asylum procedures, deported without an opportunity to apply for asylum, threatened, extorted, and tortured by Mexican authorities. In March 2023, 40 migrants [died](#) in a fire at a detention center in Juarez, including many Indigenous migrants from Guatemala. Despite the horrific dangers asylum seekers face, many will be deported to Mexico under the ban due to the United States's agreement with Mexico to deport non-Mexican nationals there.

In other common transit countries, such as [El Salvador](#), [Honduras](#), and [Guatemala](#), many transiting through these countries also face extreme dangers including gender-based violence, anti-LGBTQI+ attacks, race-based violence, and other persecution. These countries do not have functional asylum systems that can protect large numbers of refugees. In Honduras, which has a "[nascent](#)" asylum system according to the U.S. Department of State, migrants and asylum seekers with pending cases are [vulnerable](#) to abuse and sexual exploitation, particularly women, children, and LGBTQ+ individuals. In Guatemala, the U.S. Department of State [noted](#) that "identification and referral mechanisms for potential asylum seekers are inadequate" and that there are "gaps and shortcomings in the asylum system," which is marred by "major delays." The system is not equipped to process large numbers of cases: in 2020, [486](#) asylum cases were filed, and only 29 had been adjudicated by October 2021. The [asylum system](#) in El Salvador has "major regulatory and operational gaps," asylum seekers are required to file an asylum claim within five days of entering the country, and the "criteria for case decisions are unclear."

Administration's Use of the Ban to Rapidly Deport Asylum Seekers in Expedited Removal is a Sham Process for Deporting Refugees Eligible for U.S. Asylum

The administration is using the asylum ban to weaponize the expedited removal process. Like the Trump asylum transit ban, it converts credible fear screenings — which were [intended](#) by Congress to ensure that people seeking refugee protection had an opportunity to apply for asylum — into a sham process for summarily deporting people regardless of their eligibility for asylum.

Under U.S. [law](#), people placed in expedited removal who express an intent to seek asylum or fear of return to their country must be referred for a credible fear interview. During the interview, if an asylum officer determines that the asylum seeker has a credible fear of persecution (i.e. a “significant possibility” the individual would be eligible for asylum after a full hearing), the asylum seeker must be afforded an opportunity to apply for asylum and a full hearing on their application.

It has been clear for decades that expedited removal is a [fundamentally flawed](#) process that carries [devastating consequences](#). Refugees [wrongly deported](#) through expedited removal have been persecuted, tortured, and murdered after being returned by the United States to the country they had fled. Systemic due process violations and erroneous decisions [abound](#) in these preliminary fear screenings. Confusing, cursory, or hostile fear interviews, lack of access to legal representation, failure to provide interpretation in the correct language, and horrific conditions of confinement deprive asylum seekers of a meaningful opportunity to share their stories. UNHCR has [warned](#) that “the credible fear prescreening within expedited removal has, since its inception, diverged from international standards for accelerated procedures.”

The Biden administration has legal authority to avoid placing asylum seekers in expedited removal and instead refer them for full asylum hearings. Nonetheless, the administration has decided to further weaponize the process to carry out the mass deportation of refugees without hearings. Through the asylum ban, the administration has essentially eliminated the minimum statutory safeguard of the “significant possibility” standard. Asylum seekers must now show in credible fear interviews that they are not subject to the asylum ban or qualify for an exception — which will be extremely difficult to establish on the phone, while detained without access to counsel — and if they cannot overcome this impossible hurdle, they will be required to meet a higher screening standard to avoid deportation. This is a blatant attempt to circumvent the screening standard created by Congress.

Simultaneously, the administration has begun to conduct these sham fear screenings in Customs and Border Protection (CBP) custody within days of asylum seekers' arrival in the United States, further exacerbating this due process fiasco. [Conditions](#) in CBP custody are [abusive](#), [dehumanizing](#), and sometimes life-threatening, with widespread reports of medical neglect, inedible food and water, lack of access to showers and other basic hygiene, and inability to sleep because of overcrowding, lack of adequate bedding, cold conditions, and lights that are kept on at night. In May 2023, an [eight-year-old child](#) died in CBP custody after being jailed for over a week, during which her mother's repeated pleas to take the girl to the hospital went ignored.

It is also virtually impossible for asylum seekers to [access legal counsel](#) in these facilities. Since the administration began to conduct fear screenings in CBP custody, legal service providers have been barred from physically entering the facilities, have encountered nearly [insurmountable obstacles](#) in representing asylum seekers undergoing this process, and have been prevented from obtaining documents and records from the government to provide assistance to their clients. The government cut the waiting period to schedule credible fear interviews down to [24 hours](#) within arrival in the United States, making it even more difficult for asylum seekers to even *speak* to an attorney before the interview, let alone secure representation.

Conducting screenings in CBP custody resurrects yet another policy of the Trump administration, which conducted credible fear interviews in CBP custody through the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) programs. Many asylum seekers who underwent PACR were subjected to the Trump transit ban and rapidly [deported](#) without an asylum hearing despite eligibility for asylum under U.S. law.

In addition to unlawfully heightening the credible fear standard, the asylum ban also makes procedural changes to the credible fear process. These changes eliminate other critical safeguards that protect asylum seekers from erroneous deportation. These include:

- Prohibiting asylum seekers who erroneously receive a negative credible fear determination based on the ban from asking the asylum office to reconsider its mistaken decision. The ability to request reconsideration from the asylum office is a longstanding protection that has existed for decades, which the administration severely restricted last year in a separate rule and has now eliminated entirely for those subject to the ban.
- Requiring asylum seekers to affirmatively request immigration court review of negative credible fear determinations based on the ban. Asylum seekers are legally entitled to immigration court review of negative credible fear determinations. Previously, an asylum seeker who did not indicate whether they wanted immigration court review would automatically receive it, which was particularly crucial where an asylum seeker could not communicate with the government official or understand the paperwork, which is provided in English. This change makes it even more difficult for asylum seekers to exercise their due process right to review to ensure fair and accurate outcomes in life-or-death situations.

Horrors Inflicted by Trump Transit Ban Will be Replicated

The Biden asylum ban will inflict many of the same harms on refugees as the Trump asylum transit ban. For nearly a year, the Trump ban fueled unlawful returns of refugees to harm and left other refugees in permanent limbo without a path to citizenship, as documented in a Human Rights First [report](#).

Under the Trump ban, which also made refugees ineligible for asylum if they had not been denied protection in a transit country, the U.S. government denied asylum to refugees including persecuted prodemocracy advocates, torture survivors, and people targeted due to their sexual or gender identities. Some were denied all relief and ordered deported to the countries from which they had fled

persecution and torture. Others were determined by immigration judges to be refugees under U.S. law but denied asylum and left only with the inadequate protection of withholding of removal due to the asylum ban — forced to live with a permanent deportation order and deprived of a path to citizenship. The Biden ban will have the same consequences: it will similarly deny asylum to refugees fleeing persecution regardless of their asylum claims, based on irrelevant factors including their transit through other countries.

Asylum seekers who were denied all relief and ordered deported due to the Trump ban [include](#):

- a Venezuelan opposition journalist and her one-year-old child;
- a Cuban asylum seeker who was beaten and subjected to forced labor due to his political activity;
- a Nicaraguan student activist who had been shot at during a protest against the government, had his home vandalized, and was pursued by the police;
- a gay Honduran asylum seeker who was threatened and assaulted for his sexual orientation;
- and a gay Nicaraguan asylum seeker living with HIV who experienced severe abuse and death threats on account of his sexual orientation, HIV status, and political opinion.

Many asylum seekers were summarily ordered deported through expedited removal without an asylum hearing due to the Trump ban, [including](#):

- Indigenous asylum seekers fleeing gender-based and other persecution in Guatemala;
- and a Congolese woman who had been beaten by police in her country when she sought information about her husband, who had been jailed and tortured due to his political activity.

Many others were recognized as refugees but denied asylum and deprived of a path to citizenship, as they were left only with the limited and deficient protection of withholding of removal, [including](#):

- a Cameroonian man tortured by the military;
- an LGBTQ woman from Honduras who was beaten, repeatedly raped, and kidnapped by gangs because of her sexual orientation;
- a Cuban political activist detained, beaten, and threatened with death for supporting a Cuban opposition movement founded by female relatives of jailed dissidents;
- and a Venezuelan opposition supporter kidnapped and tortured by progovernment forces.

Conclusion

The administration should immediately rescind the asylum ban. Instead of implementing illegal bars that deny asylum to refugees and inflict human rights abuses and disorder, it should comply with U.S. refugee law and international law, maximize access to asylum at ports of entry, ensure fair and timely adjudication of asylum cases, and follow other [recommendations](#) to humanely welcome and process asylum seekers.