

Upholding And Upgrading Asylum: Recommendations for the Biden Administration

Nearly three years into his administration, the President should pursue effective and humane strategies that adhere to refugee law to better manage migration. To meet its refugee protection and migration management objectives, the administration should honor the commitment the president made during his [campaign](#) to restore asylum — a life-saving protection that many Americans deeply [value](#).

The administration should strengthen its important regional refugee resettlement and parole initiatives; increase humanitarian aid to address refugee protection gaps that push people north; maximize access to U.S. ports of entry; upgrade asylum adjudications; and improve coordination, resources, and swift access to work permits.

Policies that ban, block, or punish people seeking asylum [inflict disorder](#) and [massive human rights abuses](#). In the months that the administration's temporary asylum has been in use, it has [inflicted terrible human suffering](#) and proven [counterproductive](#) to both refugee protection and migration management objectives. While a federal court [ruled](#) in July 2023 that the asylum ban is unlawful, the policy remains in place on appeal. The administration must end the [temporary asylum ban](#) and other policies that endanger, punish, or deny paths to citizenship to people who qualify for asylum under our laws.

Irregular crossings at the southwest border are [driven](#) by factors that include deteriorating conditions and protection deficiencies in other refugee-hosting countries; rampant misinformation; escalating kidnappings, torture, and assaults targeting migrants and asylum seekers who wait in Mexico; and the abysmal conditions and lack of safe shelter facing those who wait there. Also [spurring](#) crossings is the lack of proper access to U.S. ports of entry in the wake of the asylum ban — including wait times for appointments, inequities and numerical limits on appointments, and the lack of sufficient access to ports of entry for at-risk people without appointments.

The Biden administration must counter racist narratives and reject dehumanizing and divisive rhetoric. Over the last few years, public discourse relating to asylum has been plagued by orchestrated, politically driven, anti-immigrant rhetoric that portrays migrants and people seeking asylum as threats and invaders. This invasion rhetoric is rooted in, and fans, anti-democratic extremist conspiracy narratives embraced by far-right white supremacists, including by the perpetrators of mass killings in El Paso, Texas, and the Tree of Life Synagogue in Pittsburgh.

The administration must also stop promoting policies that inflict punishment on people seeking protection. [Touting](#) the use of a "[stick](#)" against people seeking refuge will never appease the perpetrators of xenophobic, racist rhetoric; it bolsters their dangerous narratives while adding to dysfunction and creating more suffering, as well as damaging respect around the world for refugee law.

While our recommendations aim to help the Biden administration strengthen the asylum system, Congressional support is critical to a functioning, rights-respecting system. Legislative efforts to deprive humane and effective policies of necessary funding, or to shut down government operations, are sure to spur disorder.

Our recommendations for the Biden administration:

- Strengthen and quickly ramp up its important **regional refugee resettlement and parole initiatives**, lifting barriers and numerical restrictions that impair access to parole.
- Strengthen support for regional refugee hosting, asylum capacity, and regularization efforts in other countries in the Americas, urge regional governments to provide permanent status and protection from violence, and help **address the urgent safety, shelter, and dire humanitarian needs** facing at-risk people in Mexico as they wait to seek asylum at U.S. ports of entry.
- **Uphold and comply with refugee law at U.S. borders** without discrimination including:
 - Ensure prompt entry at ports of entry for people seeking asylum, both those with and without appointments, and allocate sufficient staff to processing at more ports of entry. Blocking access to ports of entry, such as through the asylum ban, CBP One, metering, or other policies, spurs irregular crossings.
 - **Rescind and end the unlawful, inhumane asylum ban** and stop defending it in court.
 - Provide trained refugee and child protection officers and humanitarian oversight.
 - **End credible fear interviews in CBP custody** and other use of expedited removal where conditions are deficient, representation is impeded, and the asylum ban is used to improperly alter the credible fear standard.
- Better structure, coordinate, and **resource humane refugee reception**.
 - Provide sufficient case support and funding at the border, in U.S. cities, and in interior communities.
 - **Enhance communication, planning, and coordination** with the network of faith-based, refugee aid, legal and non-profit humanitarian groups and shelters at the border and across the country that are essential to effective reception and case support;

- Create a [White House Task Force](#) led by senior official to improve coordination with federal agencies, humanitarian organizations, and U.S. communities; and
- Create an [agency focused on humanitarian and refugee reception](#).
- **Increase Shelter and Services (SSP) funding** to disburse funds as needed (rather than on a reimbursement model), [lift limitations](#) on using funds for transportation and shelter, work with Congress to increase funding to border and interior cities, and [support](#) the [ASPIRE Act](#) which would provide an additional \$10 billion for EFSP and SSP funding urgently needed by border and interior communities.
- **Coordinate transportation** from U.S. border cities to assist border and interior governments, non-profits, and people seeking asylum.
- Ensure prompt **work authorization for asylum seekers**.
 - Work with Congress to ensure adequate funding to address work permit backlogs, including for asylum applicants and renewals;
 - Ensure efficient and timely processing for all work permits;
 - Permanently extend validity periods through rulemaking; issue appropriate TPS re/designations and extensions; and
 - Support [legislation](#) to end six-month delays in initial eligibility for work authorization for asylum applicants.
- **Employ effective and fiscally prudent [case and legal support strategies](#)**, avoid [inhumane, unnecessary, and wasteful](#) detention that violates human rights, and do not resurrect the failed policy of sending families with children to detention facilities.
- **Upgrade asylum adjudication processes** so that they are prompt, accurate, and fair, and fix system-wide inefficiencies:
 - Resolve More Asylum-Eligible Cases at the USCIS Asylum Office level, so they are not unnecessarily and inefficiently added to already backlogged immigration courts. Provide additional officer and supervisor training and a “feedback loop” between the USCIS Asylum Office and the immigration courts as suggested by the USCIS Ombudsman.
 - **Improve and restart the use of the new asylum processing rule** by fixing unworkable counterproductive timelines so the process leads to increased efficiency, rather than rushed, mistaken decisions that add to court backlogs. This [includes](#):

- Ensuring that AMIs are scheduled at least 90 days after credible fear determinations;
 - Interview rescheduling and evidentiary filing extensions are provided within first year of entry and under good cause/exceptional circumstance standards in line with U.S. law;
 - Immigration court hearings are governed by regular removal proceeding timelines;
 - Initial referrals are not limited to cases in expedited removal; and
 - Unjust limits on reconsideration of credible fear denials are removed.
- **Avoid use of expedited removal** which diverts adjudicators' time and is riddled with due process and refugee protection flaws that multiply with the asylum ban.
 - **Improve adjudication efficiency** by leveraging USCIS Asylum Division research and analysis: updated country conditions analyses applicable to persecuted religious, ethnic or other groups; focused interview guidance for specific caseloads as the USCIS Ombudsman [recommended](#); "pattern and practice" or similar analysis where a persecuted religious, ethnic or other group in a particular country would generally have well-founded fears of persecution (confirming that additional requirements must be met); and replicating relevant technological or other efficiencies in swifter refugee corps adjudications.
 - **Strengthen Immigration Court effectiveness and efficiency.**
 - Employ pre-hearing conferences to narrow trial issues and stipulations on uncontested issues to reduce the number and length of hearings;
 - Use administrative closures and termination where cases can be resolved by USCIS, but only with consent of the individual or counsel; and
 - Avoid [counterproductive](#) "rocket docket," "[dedicated dockets](#)," or other rushed dockets that exacerbate backlogs and [undermine](#) accurate decision-making, efficiency, [access to counsel](#), and [due process](#).
 - Work with Congress to **fund sufficient capacity for merits asylum adjudication** to address asylum office and immigration court backlogs as well as the timely adjudication of new cases. This capacity includes immigration court staff, interpreters, immigration judges, and asylum officers to conduct full asylum adjudications, as well as funding for legal representation.
 - Reject counterproductive requirements and barriers in the asylum system. Over the years, legislative changes have rendered asylum adjudications unduly complex and time-consuming; the administration should eliminate, alleviate, and reject wasteful, unnecessary, and unjust hurdles to asylum.

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- **Rescind [Trump administration policies](#)** that punish and block refugees from protection and deny them a path to citizenship. The administration should also initiate rulemaking to safeguard protection of persecuted social groups and ensure compliance with international refugee law.
 - **Speak out against orchestrated anti-immigrant rhetoric** and efforts that portray people seeking asylum as invaders or threats, counter false, [counterproductive](#) rhetoric asserting that “the border is open,” firmly reject all proposals and policies that inflict punishment or cruelty. Punishing people seeking asylum is not a solution and will not “stem” migration.

These recommendations [follow multiple prior sets of recommendations](#) to the administration.

Strengthen regional protection, resettlement, and migration pathways

Some politicians and pundits routinely discuss refugee and migration issues in ways that fail to acknowledge the factors pushing people to flee their countries in search of refuge, or that **the vast majority of the world’s refugees are hosted by countries other than the United States**. In reality, the human rights situations in many countries in the Americas — including those associated with arrivals at the U.S. border — have deteriorated in recent years, pushing people to flee in search of protection, safety and stability. For example:

- In Cuba, where freedom of expression, association and other basic human rights are sharply restricted, repression has [increased](#) over the last few years, as security forces responded [violently](#) to the country’s largest protest in over 20 years in July 2021 against economic difficulties and lack of fundamental freedoms with an extended wave of brutal repression. A new criminal code further [criminalized dissent](#) in 2022, as protests continued into 2023 and repression and economic situation continued to deteriorate.
- In Haiti, violence and political instability [escalated](#) after the 2021 assassination of the president, and in late 2022 the [UN High Commissioner for Human Rights](#), [UN High Commissioner for Refugees](#) and the [UN Humanitarian Coordinator](#) for Haiti all warned that people should not be returned to the country due to the dire and dangerous conditions there. In 2023, violence, sexual assaults and kidnappings sharply escalated, exacerbated by political deadlock and impunity for human rights abuses, while food insecurity grew, as Human Rights Watch [reported](#) in August.
- In Nicaragua, persecution continued to [escalate](#) against civil society, journalists, activists, church leaders, nuns, and ordinary people who live in fear and cannot safely engage in public assembly or religious worship. This persecution [intensified](#) with a [crackdown](#) against civil society in connection with November 2022 elections, which January 2023 UNHCR guidance [concluded](#) “may be characterized as a massive violation of human rights.” In February 2023, the Nicaraguan government expelled 222 political prisoners to the United States, arrested political opponents in May, and continued to persecute Catholic priests and leaders, as [reported](#) in July 2023.

- In Venezuela, the human rights situation has grown significantly worse in recent years due to harsh crackdowns on political opposition, the ruling party's reliance on widely condemned elections to control all branches of the government, horrific use of torture, and a severe humanitarian crisis, which has been exacerbated by delays in establishing a UN-administered aid fund for Venezuela according to Human Rights Watch in August 2023.
- Human rights violations have continued or escalated in other countries as well, including in Guatemala where the rule of law deteriorated, concerns of authoritarianism rose, and the persecution of journalists, Indigenous and human rights activists, as well as judicial officials combatting impunity for human rights violations has escalated. In Colombia, UNHCR reports that rising levels of violence are having a devastating impact on women and children, indigenous peoples, Afro-Colombian populations, community leaders, and human rights defenders. In Ecuador, a presidential candidate was assassinated and political protestors, journalists and human rights defenders face repression, as well as in Honduras, El Salvador, and other countries, as Human Rights Watch documented in its annual report.

Many people fleeing these and other places have fled to other countries in the Americas. In fact, 6.5 million of the of the 7.7 million people who have fled Venezuela in search of safety and stability, are hosted in Colombia, Ecuador, Peru and other countries in Latin America and the Caribbean. Costa Rica is hosting over 250,000 Nicaraguans and others, and experienced a five-fold increase in total asylum claims in the first six months of 2022, as compared to the year before. Mexico hosts about 500,000 refugees and asylum seekers, though many face grave threats to their safety there. The United States is more than capable of humanely processing at its borders the portion of people seeking refuge here from repression, persecution, and violence in places like Cuba, Guatemala, Haiti, Honduras, Nicaragua, and Venezuela.

While not all are eligible for asylum, statistics confirm that the majority of people who seek asylum are actually found eligible for it after an asylum adjudication. Many face unjust barriers to asylum that may impede their ability to secure that protection despite their eligibility. Others may genuinely be at risk of harm but may ultimately be denied asylum due to legal technicalities and requirements. At the same time, many people seeking to cross into the United States at its borders are not seeking asylum and are not claiming to seek asylum. Instead, some are seeking to work to support their families and ensure their survival, at a time when U.S. businesses are in search of workers.

Recommendations

Building on steps it has taken over the last few years, the Biden administration should make it a top priority to encourage the protection of human rights in countries where serious rights violations are pushing people to flee, strengthen refugee hosting capacities across the Americas and the Caribbean, ramp up the pace and scale of regional resettlement, and strengthen access to parole and other safe routes to the United States, while upholding asylum, refugee law and human rights. In particular, the Biden administration should:

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- **Encourage protection of rights in home countries:** Given the repression, human rights abuses, violence, severe economic deprivations, climate displacement and other factors pushing people to leave their countries, the U.S. government must redouble, and consistently prioritize, steps that support and encourage the protection of human rights in countries in the Americas from which people are fleeing. This effort, which is beyond the scope of these recommendations, will require advocacy, diplomacy, attention, and targeted aid that is sustained and continued over the years, and should always be informed by steady communication with civil society and human rights advocates in the relevant countries. While the Biden administration, early on, outlined [steps](#) to address some factors spurring people to flee from El Salvador, Guatemala, and Honduras, and announced additional [actions](#) in connection with the [Los Angeles Declaration on Migration and Protection](#) last year, regional human rights challenges are ever-evolving — including in countries where rights abuses are inflicted by authoritarian or authoritarian-leaning governments. If people's rights are protected in their home countries, the number of people fleeing to seek asylum will plummet.
 - **Increase support for hosting capacity of other countries in Latin America and the Caribbean:** The Biden administration and Congress must work together to boost U.S. support to strengthen regional refugee hosting and asylum capacities. This support is urgently needed due to persistent rights abuses that continue to push people to flee and the escalating impacts of deficiencies and gaps in regional asylum and refugee reception systems that are pushing some people north in search of effective protection. These gaps include: the lack of lasting (as opposed to only temporary) protection; lack of sufficient support for regularization efforts; lack of access to work and food; under-resourced, backlogged and delayed asylum systems, such as in [Mexico](#) and [Cost Rica](#); lack of protection from violence; rising xenophobia; and/or escalations in political and/or other instability. Sustained and enhanced support is [crucial](#) as refugee and displacement crises become prolonged, and many refugees face discrimination, xenophobia, and inadequate protection of their rights in countries where they have been staying initially. In August 2023, UNHCR [warned](#) that funding deficiencies persist despite escalating humanitarian needs in the Americas that have strained "already overstretched reception capacities, shelter networks and host communities." While the Biden administration has taken some important steps to support asylum and refugee hosting capacities in Mexico and other countries, many of those [needs](#) have [increased](#), so the administration should continue to work with Congress to strengthen and escalate humanitarian aid and diplomatic efforts. The United States and other countries should bolster support for UNHCR efforts to strengthen refugee reception, asylum capacities, and local humanitarian, legal and other NGOs that assist asylum seekers in these countries.

This boosted support should also urgently include aid and diplomatic efforts to improve the woefully deficient shelter and refugee reception capacities in northern Mexico where people are left waiting to seek U.S. asylum without sufficient safe shelter and essential services - despite the dire conditions and grave threats to their safety. The United States must, in its bilateral

engagements with Mexico and other countries, prioritize the protection of the human rights and the physical safety of refugees, migrants and asylum seekers — a crucial step given the widespread and systemic lack of state protection for these populations in a number of countries in the region.

- **Quickly ramp up regional refugee resettlement plans:** In a welcome move, the Biden administration [announced](#) in late September 2023 that it aims to resettle 35,000 to 50,000 refugees from Latin Americas and the Caribbean, as part of its broader goal of resettling 125,000 refugees in fiscal year 2024. Despite these commitments, globally, less than 1 percent of the world's refugees have access to resettlement. Over the next year, the Biden administration should do all it can to come close to meeting its global and regional resettlement goals and ensure its increased resettlement in the Americas does not reduce resettlement of other refugee populations globally. The Biden administration, the Department of Homeland Security (DHS) and the State Department should maximize swift regional resettlement processing, building on recent transformative steps to improve resettlement pace and timeliness in other parts of the world. Substantial numbers and swift speeds are essential to credibly demonstrating that resettlement can be a meaningful route to protection (for the limited number of refugees provided access who can safely wait for the process). Significant speed and scale will likewise be key to the effectiveness of new U.S. regional Safe Mobility Offices (SMOs) and recently announced plans to work with Mexico to facilitate resettlement and parole of some third country refugees who are in Mexico. The administration should continue to support the development of the Welcome Crops, which enables private citizens to sponsor refugees.
- **Strengthen and improve equitable access to parole pathways:** The Biden administration has launched a number of [initiatives](#) that provide regular parole pathways to the United States for some people from Cuba, Haiti, Nicaragua, Venezuela, as well as new family [parole](#) (FRP) processes for some people from Colombia, El Salvador, Guatemala, and Honduras. Safe and regular pathways to the United States are critical to providing people seeking to migrate to the United States with a route that does not require dangerous travel and vulnerability to smugglers and cartels. While these programs provide a regular route to the United States for some migrants, the programs' availability is limited in terms of numbers and nationalities, and not accessible to many of the most vulnerable people fleeing these countries given the requirements for passports, sponsors, and the financial resources to pay for tickets. The Biden administration should review, eliminate, or adjust these requirements to make parole more accessible to people without financial resources, U.S. family or state issued passports, requirements that exclude many of the most at risk refugees. Such initiatives should also be scaled up for additional nationalities and for more people. On January 24, 2023, state leaders aligned with the former Trump administration filed a [lawsuit](#) to stop the Biden administration's creation of parole initiatives for people from Cuba, Haiti, Nicaragua, and Venezuela, seeking in effect to deprive the Biden administration of the ability to use parole to provide meaningful alternatives to irregular migration for some people. Most

critically, the Biden administration must end its use of parole to attempt to deny people seeking refuge the right to seek asylum — an approach that [threatens](#) human rights and refugee law globally. Lastly, parole is no substitute for an effective and robust refugee resettlement system.

More broadly, the United States must champion asylum and refugee law globally, not undermine it. By upholding asylum, the Biden administration will encourage other countries — including those that host the vast majority of the world’s refugees — to continue to welcome and host large numbers. By contrast, if other countries follow the U.S. example and impose restrictions on asylum and asylum seekers, refugees will be pushed to leave those countries and instead search for asylum elsewhere — including in the United States. Late in 2022, the government of Costa Rica [imposed](#) new [restrictions](#) on asylum which, along with long asylum wait times there, appeared to push some refugees to seek asylum elsewhere.

Not only are state actions that undermine asylum counterproductive from a global refugee protection perspective, but policies that turn people seeking refuge away actually aid the agenda of states that are seeking to erode democratic norms and human rights law. As Freedom House [explained last year](#) in connection with the Biden administration’s use of the Title 42 policy to turn asylum seekers away:

As the spread of global authoritarianism diminishes access to political rights and civil liberties around the world, it puts more people in the crosshairs of repression. Democracies that raise indiscriminate obstacles to the process of making asylum claims are excluding people who have been persecuted for exercising or espousing democratic values like freedom of expression, religious freedom, and the rule of law. And by denying people fleeing repression a safe haven from which to continue their advocacy or simply live a life free from systematic human rights violations, democratic governments are aiding the global erosion of democratic norms. As long as democracies work to divert asylum seekers to more dangerous third countries, dissidents, activists, and members of targeted ethnic or religious groups will remain extremely vulnerable to transnational repression.

Uphold refugee and asylum law

In the lead up to the end of the Title 42 policy in May 2023, the Biden administration announced a litany of steps it planned to take as that failed policy ended. Far from being an effective migration management tool, the Title 42 policy had [actually caused disorder](#), spurred repeat crossings of migrants, inflated border apprehension statistics, and pushed people seeking asylum to cross irregularly outside ports of entry. The steps announced included the use of existing immigration law, which is already replete with unduly harsh consequences, as well as plans to ramp up refugee resettlement from the Americas, parole initiatives, and the number of CBP One appointments made available at ports of entry.

At the same time though, the Biden administration decided to promulgate a new bar to asylum. In its operation, this bar (the “[asylum ban](#)”) denies asylum or the chance to apply for asylum to people who traveled through another country and seek asylum at U.S. ports of entry without an appointment or cross the border to safety outside a port of entry, with extremely limited exceptions. The asylum ban denies

asylum even to people who are eligible for asylum under U.S. law, did not know of the ban's existence or would not actually be safe in transit countries. The administration unfortunately chose to use its positive parole and CBP One initiatives to attempt to justify denials of access to asylum under the bar — a move that sparked condemnation from international authorities as it undermines refugee law globally and sets a counterproductive example for other countries.

The administration's proposal to impose this bar on asylum generated [strong opposition](#) from faith groups and leaders, major unions, Black-led and civil rights organizations, former immigration judges, the asylum officers' union, Holocaust survivors and their family members, the UN Refugee Agency, LGBTQ+ organizations and 82 Members of Congress from the president's political party. In the months it has been in use, the asylum ban has — as Human Rights First and other researchers have [detailed](#) — already caused massive human suffering by leaving many waiting in danger, denying others asylum hearings even though they may be eligible, and rendering others at risk of denials of asylum and a path to citizenship at their hearings down the road. At the same time, the ban has proven to be [counterproductive](#) to both refugee protection and migration management.

The Biden administration has combined its asylum ban with other harsh policies including: expedited removal (where the asylum ban is used to circumvent the statutory credible fear standard to deny more people the right to seek asylum), holding credible fear interviews in CBP custody (where access to counsel is highly limited and conditions often woefully deficient), and the use of curfews and ankle monitors (while families are subjected to the asylum ban through the "FERM" family expedited removal program).

Recommendations

The Biden administration must uphold U.S. refugee law along the southwest border, restore prompt access to asylum at all and certainly more U.S. ports of entry including for people who do not have CBP One appointments, and end its "temporary" asylum ban which endangers people seeking refuge and tramples on refugee law. The Biden administration should:

- **Rescind and end the [asylum ban](#) and stop defending it in the courts.** The Biden administration should bring this "temporary" bar to asylum, which has been [found unlawful](#) by a federal court, to an immediate end. The ban inflicts [human suffering](#), asylum denials, deprivations of a path to citizenship and impediments to integration. It adds to adjudicatory inefficiencies, diverts the time of asylum adjudicators by imposing additional lines of inquiry and wastes time that could be devoted to instead conducting full asylum adjudications. The Biden administration and U.S. agencies should not continue to defend and attempt to justify this policy in the courts given the damage it causes to both U.S. and international refugee law; and the administration must firmly reject any attempts to codify into law policies that bar or similar policies. It is a political liability that is [counterproductive](#) from both a refugee protection and migration management perspective.
- **Stop conduct of credible fear interviews in CBP custody and other flawed expedited removal policies.** Credible fear interviews should not be conducted in CBP custody where conditions are

notoriously deficient and legal representation is severely impeded. The asylum ban unlawfully alters the credible fear standard and artificially increase denials, like the Trump bans. The use of expedited removal should generally be avoided given its diversion of limited governmental resources, as well as its due process and refugee protection deficiencies — concerns that are only multiplied when the policy is combined with the unlawful asylum ban, detention, inadequate timelines, lack of access to counsel, and/or other harsh policies.

- **Ensure swift access for people seeking asylum at all or more ports of entry, including for people without appointments, maximizing asylum capacities at ports of entry.** People who do not have or cannot get CBP One appointments are often among the most vulnerable and at-risk asylum seekers, but they are blocked from ports of entry, de-prioritized, or left waiting in danger or at risk for too long. Despite some improvements, CBP One remains inequitable and difficult for many to use due to its lack of availability in many asylum seekers' languages and/or lack of smart phones, internet or data access and/or tech skills — impediments to equal access that have been documented by multiple organizations. While DHS has increased appointment numbers (currently to about 1450 daily across the entire border), the still limited number of appointments and inequitable access to appointments is leaving many people waiting for months in places where they and their children are often not safe. By leaving people in danger, these access deficiencies and limitations are pushing people to cross the border to safety irregularly. In addition to maximizing the numbers of people who can seek asylum at ports of entry, DHS and CBP should maximize access to asylum at **more** ports of entry. Many ports of entry are essentially closed or nearly closed to people seeking asylum, with only highly limited non-appointment access and no CBP One appointments available at these ports. Policies that block or limit access to ports of entry, actually push people to cross outside of ports of entry. In contrast, ensuring access to ports of entry reduces irregular crossings. Indeed, crossings by Haitian nationals — who were prevented from seeking asylum at ports of entry — plummeted after some access was restored.
- **Ensure people seeking asylum are not turned away, left to wait or subjected to metering including to:** instruct CBP to not meter, limit, turn away, "de-prioritize," or leave people "waiting" weeks or months to seek asylum — whether done via use of CBP One, limit lines, the asylum ban or other policies; urge Mexican authorities to assure that Mexican officers allow, and do not turn away or prevent, people seeking asylum from approaching U.S. ports of entry, and to stop turning away people attempting to seek asylum who do not have an appointment. Policies and practices that turn away, block, limit or "meter" asylum at ports of entry are counterproductive as such policies have pushed people to attempt to cross the border between ports of entry;
- **Continue to use legal authority to parole asylum seekers** encountered at or after crossing the border to shelter with family or community members while their cases are adjudicated;

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- **Transit people quickly from Customs and Border Protection (CBP) custody to — and in coordination with — shelters or reception locations** operated by non-profit, non-governmental humanitarian agencies with refugee reception expertise, where immediate needs can be addressed.
 - **Safeguard asylum seekers from impermissible penalties through criminal prosecutions, imprisonment or other punishment due to their entry.**

Better organize humanitarian and refugee protection reception

Around the world, the United States funds and supports UNHCR, governmental, and non-governmental humanitarian efforts that help other countries welcome and host refugees. Here in the United States, however, no single U.S. humanitarian or refugee protection agency is charged with long-term and regular planning, coordination, refugee identification, referrals, transportation, welcome, and reception. This structural gap impacts not only people seeking asylum and U.S. agencies, but also border communities, cities across the country that receive people from the border, and faith-based and other humanitarian organizations that assist refugee and migrant populations.

Refugee arrival functions and initial identification of potential asylum seekers are left largely to CBP, an agency that lacks refugee protection expertise or a humanitarian mission. The adjudication of refugee claims (i.e., asylum), as well as preliminary screenings such as credible fear interviews, are handled by U.S. Citizenship and Immigration Services (USCIS) — another component of DHS — as well as by the immigration courts, which are part of the Executive Office for Immigration Review (EOIR) within the Department of Justice. CBP often sends asylum seekers to Immigration and Customs Enforcement (ICE) detention (yet another DHS component agency), where they are then often held unnecessarily and inhumanely in jails that make it even more difficult for them to pursue refugee protection. The role of the Office of Refugee Resettlement (ORR), which sits within the Department of Health and Human Services — has largely been limited to support refugees resettled from abroad, and with respect to people seeking protection at U.S. borders, in assisting unaccompanied children.

Unlike U.S. funding globally, often provided by the State Department or other U.S. agencies to or through UNHCR and other entities, U.S. funding to the shelter, faith-based, and humanitarian organizations attempting to address refugee and migrant needs upon arrival at the U.S. border has largely been ad hoc, limited, and tied mostly to situations that can be labeled an “emergency,” allowing Federal Emergency Management Agency (FEMA) engagement and reimbursement. But humanitarian arrivals and engagement should not be limited to — or left to wait for — an emergency situation to evolve.

Across administrations, DHS has proven — again and again — to be unable to plan for, humanely receive, process, identify, and refer, in accordance with U.S. refugee and asylum law, the cases of people seeking protection. The agency lacks key functions and capacities to quickly identify and respond to refugee and humanitarian situations. Instead, responses to humanitarian needs at the border have been plagued by severe crowding, horrific conditions, and failures to identify and refer asylum seekers, including the

abhorrent treatment of Haitians families and individuals seeking safety near Del Rio, Texas in 2021. The approach to managing arrivals of asylum seekers as an “emergency” through piecemeal reimbursement of costs for NGOs providing welcome, rather than a sustained proactive planning and funding model, has hampered the ability of NGOs – as well as U.S. communities - to address immediate humanitarian needs and provide transitional support to asylum seekers as they begin to rebuild their lives in the United States.

When DHS was created, concerns were [raised](#) that the separation of governmental functions across multiple agencies and the lack of structures to ensure refugee protection would threaten adherence to U.S. refugee law and treaties. While DHS is now effectively the agency entrusted with U.S. refugee protection decisions, its mission lacks any mention of ensuring that the United States lives up to its legal and humanitarian obligations to refugees seeking asylum — obligations contained in U.S. law and international treaties. Similarly, neither CBP’s [mission statement nor priorities](#) makes any mention of refugees or upholding U.S. asylum law. The Border Patrol union moreover has purposefully [pushed](#) a narrative that falsely paints asylum as a “scam” and the “vast majority” of asylum applications as “fraudulent.”

Recommendations

The Biden administration and Congress should work together to better structure, coordinate and resource humanitarian and refugee reception, provide sufficient case support and funding at the border, in U.S. cities, and in interior communities, and ultimately transform agency structures and functions to establish a humanitarian and refugee protection agency.

- **Create a Refugee and Humanitarian Protection Agency:** The Biden administration should work with Congress to create a new Refugee and Humanitarian Protection Agency, or reconfigure, elevate, and strengthen an existing agency, to manage U.S. asylum, arrivals of people seeking refugee protection arrivals and other humanitarian matters — a recommendation outlined in Human Rights First’s 2021 [blueprint](#). In addition to consolidating many activities, and improving coordination between agencies, such an entity could help communicate and coordinate with, and spearhead efforts to assure proactive (rather than mostly “emergency”) funding for needs of humanitarian organizations, shelters, and local communities and cities at the border and across that receive and host people seeking asylum. Such an agency, preferably independent of DHS given its lack of a protection mission, should be led by an official of cabinet rank. The agency should have the ability to quickly dispatch trained humanitarian officers to assess and respond to arrivals of people seeking asylum and/or migrant trends and situations; relevant rule-making authority relating to U.S. asylum and refugee law and adjudications; house Asylum Office adjudicators; have oversight of case support and case management for asylum seekers; have authority to initiate policy and intervene on issues relating to custody or detention of humanitarian populations; as well as other responsibilities. Additionally, the administration and Congress should take steps to reshape agency missions and responsibilities to make doubly clear to the leaders and staff of the agencies that interact with children, adults, and families seeking asylum that they

must uphold U.S. refugee law and treaties — and will be held accountable for refusing or failing to perform these legal responsibilities.

- **Establish a White House Humanitarian Protection Task Force and designate a senior coordinator:** More immediately, the Biden administration should establish and convene a White House Humanitarian Protection Task Force comprised not only of relevant U.S. government agencies, but also U.N. agencies and U.S. civil society organizations with refugee protection and management expertise, shelter and related humanitarian capacities. The Task Force requires high-level White House leadership and should be managed by a new position of White House senior coordinator and senior advisor to the President for refugee and humanitarian protection — an office that must be well-staffed to help ensure effective cooperation between U.S. agencies as they implement actions and responses across multiple agencies, as well as with state and local governments, and with non-profit non-governmental organizations that provide humanitarian, legal and other critical services to asylum seeker arrivals.
- **Leverage faith-based, shelter, and refugee aid organizations:** To enhance arrival and reception efforts, the administration and DHS should redouble efforts to leverage and coordinate with the network of humanitarian organizations, including faith-based groups, legal nonprofits, and refugee assistance agencies with offices across the country. Many have substantial experience assisting new arrivals and long track records of working with CBP and other U.S. agencies. Some provide refugee assistance and management around the world. The Biden administration should continue to request Congressional appropriations to support this public-private initiative and must communicate and plan in advance with these groups so that agencies and shelters can prepare and recruit staff and volunteers when needed. The administration and Congress should also heed the [recommendations](#) of border, destination and national humanitarian groups on steps to coordinate, strengthen transportation, facilitate housing and work authorization, and more sustainably support reception capacities.
- **Pursue and improve increased SSP funding:** The Biden administration should develop and pursue increased funding for the Shelter and Support program (SSP), administered by FEMA, to disburse funds as needed (rather than on a reimbursement model), remove limitations on the use of funds for transportation and shelter costs and safeguard the program's humanitarian funding structure, as [detailed](#) in recommendations issued by the National Immigrant Justice Center. Congress in turn should increase SSP funding, while [continuing](#) to express concern that the funds are routed through CBP given its track record of misusing humanitarian funds and provide rigorous oversight to ensure problems with the distribution and coordination of funds are immediately addressed. The Biden administration should work with Congress to increase funding to border and interior cities receiving migrants and asylum seekers, including by [supporting](#) the [ASPIRE Act](#), a bill that would provide an additional \$10 billion for EFSP and SSP funding, helping to lay the foundation for the robust coordination that border and interior communities need.

- **Provide oversight by humanitarian officers:** In the immediate term, and while longer term structural adjustments are advanced, the Biden administration should ensure that identification and referral of asylum seekers is overseen by trained humanitarian officers expert in refugee law, not left only to CBP officers, followed by swift transit to noncustodial humanitarian locations. These officers could, for instance, be trained USCIS asylum officers or based in ORR. Access for UNHCR and other refugee law, child welfare and humanitarian experts is also imperative.

Invest in humanitarian and community reception

The Biden administration and Congress should encourage and support **public-private asylum reception and orientation initiatives that include community and faith-based organizations, legal non-profits, shelters, and refugee assistance agencies with offices across the country that have deep expertise managing refugee situations** along the southwest border and around the world, as well as collaboration with border and destination communities. Asylum seekers should no longer be sent to immigration jails where they suffer punitive conditions and lack of access to counsel, but instead referred to humanitarian reception and orientation. With proper support, these non-profits can help orient asylum seekers, address urgent needs, and assist in onward travel to destination locations. This reception should include:

- True humanitarian reception – that is noncustodial and operated by humanitarian organizations with refugee protection expertise, as outlined above, not by CBP or ICE – and not detention masquerading as reception;
- Non-mandatory reception stays that will often be limited to hours or one-night stays as many asylum seekers have U.S. family or communities they can quickly transit onwards to join or if not, can be hosted in communities with critical – and strengthened – support and coordination with faith groups, NGOs and destination communities;
- Regular access for visits by members of Congress, attorneys, UNHCR, humanitarian and child welfare experts and human rights monitors.

The Biden administration should take additional steps, and work with Congress to ensure, **prompt provision of work authorization for asylum seekers** – a key concern to both asylum seekers themselves and the communities hosting asylum seekers. New York City leaders, for example, urged the administration to issue work permits to asylum seekers more quickly, in addition to providing increased federal aid in destination communities. Key reforms include steps to:

- Improve access to work authorization for people seeking asylum by speeding up processing of work authorization applications, immediately act to permanently expand the automatic extension of work authorization for immigrants with **pending work permit renewal applications** by issuing an **interim final rule**, and ultimately support statutory reforms to reduce the 180 day waiting period for work authorization.

- Move ahead with necessary and warranted redesignations and designations of TPS which will enable migrants and people seeking asylum from these countries to apply for work authorization and benefit U.S. communities. This should include redesignations for Nicaraguans, Salvadorans, Hondurans, Nepalese, and others.
- Provide quick access to work authorization for parolees on arrival, as was done for Afghans and Ukrainians.

The Biden administration should also boost efforts to encourage and facilitate the development of initiatives that help orient, welcome and support asylum seekers in U.S. cities. Despite some counterproductive political rhetoric from Mayor Adams in New York, many destination communities are welcoming people seeking asylum and people have stepped forward to sponsor, support, volunteer to assist and hire many.

Build a more fair, timely, and humane adjudication process

The Trump administration decimated the U.S. asylum system through policies that weaponized adjudications against asylum seekers. Those policies exacerbated existing backlogs and delays that had grown over the years due failures to adequately staff adjudications while “enforcement” agency staffing skyrocketed and the pursuit of “expedited” processing. Those backlogs and delays grew further as interviews and hearings were postponed during the pandemic, and large numbers of new cases were referred into the immigration courts for removal hearings. From FY 2013 to FY 2022, the immigration court backlog increased by 403%, reaching nearly 2 million cases at the end of the second quarter of FY 2023, as the Congressional Research Service reported in July. About 40 percent of immigration court cases are estimated to be asylum cases, according to recent government data.

While backlogs in the under-resourced immigration courts grew, U.S. asylum adjudications also became increasingly complex and time consuming as round after round of onerous legal requirements and barriers to asylum were added to U.S. asylum law. At the same time, many asylum officers and immigration judges were diverted away from conducting actual adjudications due to the escalation of expedited removal and other fast-track processes, which in turn further exacerbated backlogs and delays across the system. Moreover, thousands and thousands of cases that were eligible for asylum were not resolved at the asylum office, but instead referred to the immigration courts, undermining the efficiency of the entire adjudication system.

Under the Biden administration, EOIR increased immigration judge hirings and reported that it reduced hiring times by 50 percent, though the attrition rate for immigration judges doubled due to higher numbers of retirements and separations. In FY 2023, U.S. immigration courts rendered decisions in more than 145,000 asylum cases — more than in any fiscal year in the last 28 years and likely a historic high. In some instances though asylum cases have been dismissed over the objection of the applicants or their counsel. The immigration courts should not substitute speed for fairness and accuracy. Such an approach

would add to appellate dockets, lead to additional immigration court hearings in remanded and reopened cases, and further delay decisions for refugees and their families.

As of August 2023, there were [993,651](#) asylum cases pending before the USCIS Asylum Office. In Fiscal Year 2023 through August 2023, Venezuelan, Cuban, Colombian, Nicaraguan, and Haitian asylum seekers (the five largest nationalities in that order) made up 62 percent of new asylum applications to USCIS. In FY 2023, USCIS received dedicated funding from Congress to help address backlogged asylum and other cases. However, as in the [past](#), the diversion of Asylum Office personnel to credible fear interviews due to decisions to use expedited removal has [limited](#) USCIS's ability to address backlogs and provide timely adjudications. More recently, the Biden administration's decision to ramp up expedited removal with the end of Title 42 in May 2023 has diverted asylum officers away from promptly interviewing new and backlogged affirmative asylum cases, as well as from conducting Asylum Merits Interviews (AMIs) under the Biden administration's new asylum processing rule. DHS paused its use of the new rule's asylum interviews as it instead deployed officers to expedited removal credible fear interviews.

Human Rights First has repeatedly detailed recommendations for fair, timely, and orderly asylum processing, including in a [blueprint](#), a [report](#) on Asylum Office backlogs, a [paper](#) on improving fairness in USCIS and immigration court adjudications, in [measures](#) for processing cases during the pandemic, and a set of January 2023 [recommendations](#).

The Biden administration should promote efficiency across the asylum adjudication system

To address system-wide inefficiencies that impact multiple agencies, the Biden administration should: overhaul the asylum system so that more cases that are eligible for asylum are resolved at the asylum office level rather than unnecessarily punted to the immigration courts; improve and restart use of its new APR asylum process for border cases; remove inefficiencies and reject efforts to impose even more counterproductive requirements and barriers to asylum via legislation or otherwise; and work with Congress to remedy continuing resource gaps across the system.

By resolving more cases through initial 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. Non-adversarial interviews are [less traumatizing](#) for asylum seekers and more efficient for the system. The Biden administration and U.S. agencies should take steps to:

- **Resolve more asylum-eligible cases at the USCIS Asylum Office level** to avoid unnecessary and inefficient referrals to the already backlogged immigration courts when cases should have been resolved at the Asylum Office. As the USCIS Ombudsman confirmed in a June 2022 report, "[most](#) asylum cases referred from USCIS are ultimately granted by an immigration judge." Some steps to remedy this inefficiency include: additional training for asylum officers and supervisors, including on types of cases that tend to be unnecessarily not granted at the Asylum Division and instead referred to immigration courts, and on the Asylum Division's role in the overall system; creating a "feedback loop" between the Asylum Office and the immigration courts as suggested by the

USCIS Ombudsman; and identification of any other factors contributing to unnecessary referrals, including at particular offices that refer unduly high numbers of cases that are ultimately granted asylum.

- **Strengthen and Restart Use of the Asylum Processing Rule** which provides initial decision-making authority to the Asylum Office in cases originating from the southwest border. The administration should fix the approach taken in the interim final asylum processing rule by removing unrealistic and counterproductive deadlines. As government data and Human Rights First analysis have confirmed, the very short timelines currently imposed by the process limit access to counsel and prevents asylum seekers from preparing their cases, leading to inaccurate decisions that cause unnecessary referrals to immigration court and other inefficiencies. Swift action should be taken to improve the rule in its final form, as detailed in Human Rights First's recommendations including to provide for:
 - AMIs scheduled at least 90 days after credible fear determinations;
 - Interview rescheduling and evidentiary filing extensions within the first year of entry and under the "good cause" and "exceptional circumstances" standards in line with U.S. law and existing USCIS policy;
 - Immigration court hearings under the APR are governed by existing timelines for regular removal proceedings;
 - Initial referrals are not limited to cases placed in expedited removal; and
 - Removal of unjust limits on ability to request reconsideration of credible fear denials.
- **Reduce Unnecessary Inefficiencies and Reject Efforts to Impose More Unjust Requirements:** The Biden administration should reject any legislative or other proposals that inject more barriers into the asylum system, and work to make asylum adjudications more effective and just by eliminating and alleviating unfair, counterproductive barriers. Over the last twenty-five years, round after round of legislative changes have imposed a barrage of additional barriers and requirements that have rendered asylum adjudications (and legal representation) increasingly complex and time-consuming. For example, refugees seeking asylum, their attorneys and asylum adjudicators have been forced to address through legal and factual research, analysis and submissions a barrage of new technicalities and impediments implemented since 1998, including the one-year asylum filing deadline, expedited removal, the legally convoluted "Terrorism Related Inadmissibility Grounds (TRIG)" bars (that mislabel victims of armed groups as threats), and evidentiary requirements of the REAL ID Act. In recent years, both the Trump and Biden administrations imposed additional unlawful bars on asylum in connection with asylum seekers' transit routes and entries. This array of additional requirements has massively added to case complexity and adjudication times, turning what should be efficient assessments of eligibility for refugee status and legal bars to that protection into a gauntlet of onerous and often

insurmountable requirements, technicalities and barriers that consume the time of adjudicators and can lead to unjust denials of asylum.

- **Overhaul USCIS asylum adjudications to provide more timely, efficient, and fair decisions** including:
 - **Improve Adjudication Efficiency by Leveraging Research, Analysis and Technology** including through:
 - updated country conditions analyses applicable to persecuted religious, ethnic, and other groups from other countries to facilitate quicker adjudications;
 - focused interview guidance for specific caseloads as the Ombudsman [recommended](#);
 - "pattern and practice of persecution" and/or other analysis recognizing that members of various persecuted groups in particular countries generally have well-founded fears of persecution and/or meet the "refugee" definition (explaining that, as always, applicants must also meet other requirements and not be barred);
 - identifying and addressing factors that lead to excessive interview lengths and inefficient questioning; and
 - replication of any technological or other relevant efficiencies used in USCIS refugee corps officer adjudications.
 - **[Address](#) the backlog of asylum applications, ramp up Asylum Office hiring, and address retention issues:**
 - **The Biden administration should work with Congress to ensure appropriate funding** to USCIS to hire additional staff to provide more timely interviews and decisions for asylum applicants, address and decide cases stuck in the Asylum Office backlog, as well as resource USCIS staffing to [address long delays](#) in pending work permit applications and renewal applications for asylum seekers.
 - **The USCIS Asylum Division must tackle its difficulties retaining staff** as loss of officers contributes to inefficiencies by sapping resources to hire and train more new staff, contributing to lack of supervisory officers with significant adjudicatory experience, and wasting time at interviews due to the natural tendency of less experienced officers to devote significant time to asking questions that are not legally or factually relevant. Steps to address retention include improved officer and

supervisory training, measures to address secondary trauma, and salary commensurate to the nature of these complex, inherently traumatic interviews as opposed to more routine adjudications.

- **The Asylum Division should also end the detailing of officers** detailed from elsewhere in USCIS to conduct credible fear or other interviews.
- **The Asylum Division should secure qualified and competent interpreters certified** for Article III courts to minimize mistaken, inefficient referrals to immigration court removal proceedings, permitting asylum seekers to also bring their own interpreters, and should make the necessary regulatory change to provide interpreters for asylum interviews unless applicants can provide their own, and allow interpreters, when any necessary pre-interview clearances have been obtained, to join by video; and
- **Implement improvements to caseload management** including to prioritize applications pending the longest in addition to new cases, initiate a uniform process for asylum seekers stuck in the backlog who wish to request to expedited their interviews, create an application process for “cancellation of removal” so such cases are not initiated via the Asylum Office, facilitate resolution of cases that have alternate forms of relief such as Cuban cases that can be resolved via adjustment of status – and avoid use of expedited removal, which diverts asylum officers and immigration courts from actual eligibility adjudications.

- **Upgrade Immigration Courts**

The Biden administration should take additional [steps](#) to improve the fairness and timeliness of hearings in the immigration courts, including in asylum cases – an estimated 40 per cent of the court docket. While Trump administration policies rigged hearings against asylum seekers and confirmed the need for an [independent immigration court](#), that critical reform requires Congressional action that is not likely in the near term. There is much however that the Biden administration and U.S. agencies can and should do to strengthen the immigration courts now, including:

- **Take steps identified above to resolve more cases at the asylum office level, including to remedy the punting of asylum-eligible cases to the immigration courts and to strengthen and restart the Asylum Processing rule**, which should—with the urgent fixes identified above—lead to a reduction in the level of cases that will need to be referred to and resolved in the immigration courts.
- **Capitalize on the [use](#) of pre-hearing conferences to reduce hearing time and increase immigration court capacity**, including by narrowing issues for trial and entering into

stipulations on uncontested issues to reduce the number of hearings conducted and the length of hearings, not delaying previously scheduled merits hearings, and assigning the same ICE attorney to both the conference and final hearing or otherwise ensuring that ICE honors conference agreements and stipulations. Attorneys with ICE OPLA should be instructed to ensure swift recognition of refugee cases that are eligible for asylum without wasting limited immigration court resources, review asylum applications and supporting submissions in advance and focus on contesting particular issues or cases where they determine that there are actually questions regarding eligibility for asylum.

- **Reduce the court docket and improve hearing efficiencies through administrative closures, initial adjudication by the USCIS Asylum Division and termination of cases—** but only with consent of the individual or counsel—that can be resolved via pending USCIS petition, grants of Temporary Protected Status, or through referral to the Asylum Division. In seeking to shift cases from the immigration courts to the Asylum Division, neither the immigration judge nor ICE should pursue dismissals where the asylum seeker or counsel object, for instance due to concerns that further wait time will delay family reunification or case resolution.
- **Work with Congress to support appropriations for increased immigration court staff,** immigration judges, and interpreters so that the courts can address both incoming and backlogged cases. The Congressional Research Service estimates that "it would take 300 or more additional IJs to begin to reduce the backlog," and that "an additional 700 IJs would be needed to fully clear the backlog by FY2032."
- **Champion and support funded legal representation and legal orientations** to improve access to due process and increase accuracy in decisions, including by working with Congress to support appropriations for legal representation for all asylum seekers and immigrants in the immigration system
- **Eliminate counterproductive "rocket dockets" created by the asylum processing interim final rule, end "dedicated dockets" that undermine accurate decision-making and due process, and limit access to counsel,** and avoid creation of new rushed dockets as they have repeatedly proven counterproductive and leave many asylum seekers waiting years longer for their asylum hearings. Instead, the immigration courts should **create a process for asylum seekers to schedule and advance backlogged cases**, as many are separated from family or facing other humanitarian concerns due to years-long waits for adjudication. EOIR should create an electronic scheduling system to allow asylum seekers and their counsel to schedule merits hearings in available slots on immigration court judges' dockets.

- **Implement Training, Guidelines, Structures and Regulations to Assure Access for People with Disabilities** to the immigration courts as required by federal law and outlined in Human Rights First's detailed [recommendations](#).
- **Promote efficiency through strengthened Immigration Court training and leveraging of updated factual and legal analysis** including trainings on evolving country conditions, legal issues, and trauma-informed questioning; leveraging USCIS asylum office analysis (as recommended above) as well as UNHCR protection consideration analyses. ICE attorneys should receive both updated country condition and refugee law training, as well as training on their role in assisting in the efficient identification and resolution of eligible refugee cases, in addition to contesting in cases where they identify ineligibility.

End Trump policies that evade refugee law and endanger lives

It has been over two 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.” The Biden administration and U.S. agencies took some important steps towards ending some of the most notorious Trump administration policies as outlined above, but many of President Biden’s [commitments](#) have not yet been fulfilled — in some cases due to the slow pace of agency action to fulfill the executive order’s direction or the resurrection of Trump-era approaches of barring, punishing, and turning away some people seeking refuge even if they are eligible for asylum under U.S. law. The Biden administration should move ahead without delay to firmly end policies that bar, punish or turn away asylum seekers to danger in violation of U.S. asylum law and refugee treaties, including its own asylum ban and metering practices. As previously detailed in Human Rights First’s 2021 [blueprint](#) and [recommendations](#), as well as its January 2022 [recommendations](#), September 2022 Executive Order [progress report](#), and January 2023 [recommendations](#), these steps include rescinding:

- The “[death to asylum rule](#)” that attempted to illegally rewrite virtually every aspect of asylum law;
- The [regulation](#) adopted by the Trump administration in December 2020 imposing asylum bans labeling asylum seekers as threats to the security of the United States based on specious public health grounds, which has been [debunked](#) and opposed by public health experts – and which, alarmingly, the Biden administration has failed to rescind but instead only delayed its effective date, most recently [scheduling](#) the rule to take effect in January 2025;
- Ensuring that regulations creating the Trump administration's asylum [entry](#) and [transit](#) bans are not inadvertently resurrected when the Biden administration’s temporary asylum ban rule is (as urged in these recommendations) ended, rescinded or vacated. (The Trump era transit ban, as detailed in Human Rights First’s 2020 [report](#), caused the U.S. to deny refugees asylum even though they were eligible for it, separated families, and left others in limbo without a path to stability, legal residence or citizenship);

- An interim final rule implementing “[unsafe third-country agreements](#)” to return refugees to danger; and
- [Other](#) rules, court orders, and policies that block refugees from protection.

New regulatory language should 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 not denied U.S. asylum protection when otherwise eligible;
- The definition of a “particular social group” is clarified to make clear that such groups are made up of individuals who share an immutable or fundamental characteristic, past experience, or voluntary association that cannot be changed, or are perceived as a group by society, and that a particular social group can be cognizable regardless of the number of members who belong to it; and
- Serious due process, unworkable deadlines, and access to counsel concerns with the new [asylum processing rule](#) are addressed through publication of a final rule, as recommended earlier in this paper.

The administration should also work with Congress to adopt a [Refugee Protection Act](#) to bring U.S. law better in line with international refugee protections, further confirm that Trump-era policies violated existing law, and provide redress to refugees wrongfully denied U.S. asylum protections.

Provide case support, not more detention

The Biden administration [pledged](#) to [not send families](#) with children to detention facilities, to end prolonged detention, reinvest in case management programs, and [eliminate](#) for-profit detention facilities.

Early in 2023, some [reports](#) indicated that the Biden administration was planning to resurrect the [harmful](#) policy of sending families with children to immigration detention facilities. [Members of Congress](#), the [American Academy of Pediatrics](#) and other health experts, [faith-based groups](#), [human rights and legal non-profits](#) that work with refugees and migrants all objected to the potential restarting of this policy, pointing out the harms that detention inflicts on children. In response, the Biden administration confirmed that it was not planning to resurrect that policy disaster.

When President Biden took office, detention levels had fallen due in part to the recognition that detaining people in congregate settings is counterproductive from a public health perspective. Instead of taking this opportunity to reduce the use of detention, the Biden administration has ramped up its use of rights-violating immigration detention. As of late September 2023, the number of asylum seekers and immigrants in immigration detention is approximately 140 percent higher compared to [when](#) President Biden took office, with over [35,000](#) people in ICE jails, a majority of which are recent arrivals in the United States and many likely people seeking asylum. While the administration has paroled many migrants and asylum seekers, it also continues to jail large numbers of recently arrived asylum seekers who could be released under parole authority. September 2021 DHS [guidance](#) designated recent arrivals as an

enforcement priority for apprehension and deportation, a step that has continued the practice of detaining large numbers of people seeking asylum.

Despite [campaign pledges](#) to end for-profit immigration detention, DHS has taken steps to [increase](#) detention capacity, including by entering into a [contract](#) to detain immigrants in a private prison in Moshannon Valley, which is run by the private prison company GEO. This prison was emptied out following the Biden administration's [Executive Order](#) instructing the Department of Justice not to renew contracts with private criminal facilities and swiftly repurposed into an immigration jail and is now the biggest immigration jail in the Northeast.

Human rights organizations and the media continue to document human rights abuses that plague immigration detention. For example:

- An [August 2023 report by NPR](#) exposed previously confidential reports by the Department of Homeland Security's Office for Civil Rights and Civil Liberties which had examined two dozen ICE facilities across 16 states and described the "negligent" medical care, "unsafe and filthy" conditions, racist abuse of individuals incarcerated in the jails, and other problems that in some instances contributed to the deaths of individuals incarcerated.
- An October 2022 [report](#) by Freedom for Immigrants documented widespread anti-Black violence and abuse in ICE jails and found that Black immigrants were more likely to suffer abuse in detention compared to non-Black immigrants.
- An April 2022 Human Rights First [report](#) documented the administration's widespread detention of asylum seekers for prolonged periods, refusal to release them to pursue their cases while living in U.S. communities, and horrendous conditions in ICE jails including medical neglect, physical, verbal, and sexual abuse, and deprivation of adequate food, water, and other basic necessities.

As of late October 2023, twelve immigrants [have died](#) in these dangerous jails under the Biden administration, including a [Nicaraguan asylum seeker who died](#) in October 2022 and a [Venezuelan asylum seeker diagnosed](#) with AIDS who died of complications from AIDS and COVID-19 after spending five months incarcerated. In August 2022, a [Brazilian asylum seeker](#) died by suicide while incarcerated in the Torrance County Detention Facility, an ICE jail that the DHS Office of Inspector General (OIG) [warned](#) six months prior posed serious safety risks and had deplorable living conditions and urged the immediate removal of all detained individuals from the facility. In September 2022, the DHS OIG again [urged](#) ICE to immediately stop detaining people at Torrance. Shortly after another migrant [attempted suicide](#) while jailed in Torrance in late-November 2022, ICE [announced](#) that it would continue to operate the facility and [continues](#) to detain many asylum seekers and migrants in these life-threatening conditions.

Recommendations

The Biden administration should not resurrect the failed and [harmful](#) policy of sending families with children to detention facilities. The administration should end the use of [inhumane, unnecessary, and](#)

wasteful migration jails and, instead, shift to effective and fiscally prudent case and legal support strategies. Congressional funding for universal legal orientation presentations and representation should include families and single adults placed into case management and not increase funding for harmful immigration jails. A model—based on reception rather than punishment of people seeking refugee protection—is more effective, fiscally prudent, and humane. Moreover, ICE should comply with its 2009 parole directive for asylum seekers, swiftly release asylum seekers after any initial detention, and close the Torrance Detention Center and others with track record of egregious abuse and negligent conditions. The Biden administration, DHS and DOJ must end discriminatory detention and bond policies and practices.