
Capping Asylum: Illegal, Dangerous, and Counterproductive

Among other changes to asylum law being considered by Congress, [reports](#) indicate Senators are discussing numerical limitations on asylum claims. Imposing a cap on the number of people seeking or granted asylum would violate international refugee law, inflict disorder, create backlogs and delays, and set a terrible example for other countries around the world that host many more refugees than the United States. It may also be used to keep families separated, stranded in danger in Mexico, and deprive impacted refugees of legal status and a path to citizenship.

A cap on asylum would violate international refugee law and treaties.

The Refugee Convention and Protocol prohibits the United States from returning refugees to persecution or torture—a non-derogable principle known as *non-refoulement*. Congress created the U.S. asylum system to incorporate these commitments into U.S. law, providing a process for assessing whether individual applicants qualify as “refugees” and should be granted asylum. Imposing a cap on the number of applications for asylum or the number of asylum applications the United States approves would put asylum seekers at risk of return to persecution and torture and be entirely inconsistent with U.S. legal obligations under the Refugee Convention and Protocol. Leaving refugees with access to only withholding of removal as a form of relief endangers those with well-founded fears of persecution and fails to meet non-refoulement commitments, violating international law, as [UNHCR has explained](#).

Caps on asylum in the United States would set a terrible example for other countries, triggering efforts to set asylum caps in front-line and major refugee hosting-countries, and contributing to an increased number of individuals seeking asylum at the U.S.-Mexico border.

The reality is that other countries [host the vast majority](#) of the world’s refugees, often in large numbers. Central and South American countries are [expanding and strengthening](#) their asylum and humanitarian protection systems with the United States’ help. Colombia [hosts millions](#) of Venezuelans and [has extended](#) temporary protection to them. Costa Rica [has provided](#) similar protections to Venezuelans, Nicaraguans, and Cubans. If the United States were to impose caps on asylum, other countries around the world would likely follow suit—dramatically reducing options for individuals fleeing persecution, preventing people from escaping persecution, and most likely resulting in more individuals seeking asylum at the U.S.-Mexico border.

An asylum cap might leave asylum seekers stranded in danger in Mexico—a failed approach that causes disorder and human suffering.

To the extent that any cap would leave asylum seekers waiting in Mexico, policies that leave people stranded in Mexico—like the Remain in Mexico and Title 42 policies—proved entirely counterproductive from a migration management perspective and left asylum seekers to suffer from kidnappings, torture, and other attacks while in Mexico, as Human Rights First documented in a series of [detailed reports](#). These types of policies cannot be fixed and are doomed to fail. The Biden administration itself [concluded](#) that the Remain in Mexico policy “imposed unjustifiable human costs, pulled resources and personnel away from other priority efforts, and did not address the root causes of irregular migration.” Further, since the asylum ban policy took effect six months ago, Human Rights First has [tracked over 1,300 reports](#) of torture, kidnapping, rape, extortion, and other violent attacks on asylum seekers and migrants stranded in Mexico waiting to seek U.S. protection, including those struggling to secure CBP One appointments.

Caps create backlogs and delays.

Imposing a cap on asylum applications or grants of asylum would create more, not less, of an administrative burden. The United States previously capped grants of asylum for individuals fleeing persecution related to enforcement of China’s one-child policy, setting a limitation of 1,000 per fiscal year. This cap was counterproductive and wasteful, as well as unjust. The cap created more of an administrative burden, as individuals with conditional grants of asylum [waited for](#) grants of asylum under the cap to become available. Congress lifted the cap nine years later. As the American Immigration Lawyers Association [explained](#), caps will “complicate and slow down the asylum review process . . . undermin[ing] USCIS and immigration court efficiency in deciding cases and increase[ing] extensive backlogs plaguing both agencies.”

While not an asylum cap, the limits on CBP One appointments—which are provided to a limited number of migrants and asylum seekers (and available in only limited languages) under a lottery-like process—have, like other limits or informal processing caps, [spurred](#) crossings between ports of entry. A similar, formal cap on asylum applications—whether on its own or tied to some form of Title 42-like expulsion authority—would prove counterproductive and add to [disorder](#). Indeed, the use of Title 42 expulsions—which was accompanied by very limited “exemption” appointment numbers at ports of entry—[drove up irregular crossings and repeat crossings](#). A cap on applications for or grants of asylum could lead to ballooning wait lists, increased numbers of asylum seekers waiting along the Mexican side of the southern border, and adjudications–within–adjudications related to implementing the cap.

Caps would impose prolonged family separation and deprive refugees of a path to citizenship.

If refugees who qualify for asylum are denied asylum or left waiting for grants of asylum for years, the cap will inflict prolonged family separation, as refugees can only petition to bring their spouses and children to safety in the United States after they are granted asylum. Refugees denied access to asylum and granted withholding of removal would be unable to petition to bring their spouses and children. Such family separations will devastate refugee families, and may in turn spur irregular entries in an attempt to reunite with family. Such a cap would also delay integration and access to a path to citizenship or deny access to such a path as a matter of law.

Mission Statement

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