Walking the Talk:
2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy

Chapter 3: Upholding Refugee Protection and Asylum at Home
Acknowledgments


Walking the Talk: 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy was authored by Human Rights First’s staff and consultants. Senior Vice President for Policy Rob Berschinski served as lead author and editor-in-chief, assisted by Tolan Foreign Policy Legal Fellow Reece Pelley and intern Anna Van Niekerk.

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Human Rights First challenges the United States of America to live up to its ideals. We believe American leadership is essential in the struggle for human dignity and the rule of law, and so we focus our advocacy on the U.S. government and other key actors able to leverage U.S. influence. When the U.S. government falters in its commitment to promote and protect human rights, we step in to demand reform, accountability, and justice.

When confronting American domestic, foreign, and national security policies that undermine respect for universal rights, the staff of Human Rights First focus not on making a point, but on making a difference. For over 40 years we’ve built bipartisan coalitions and partnered with frontline activists, lawyers, military leaders, and technologists to tackle issues that demand American leadership.

Human Rights First is led by President and Chief Executive Officer Mike Breen and Chief Operating Officer Nicole Elkon.

We thank the many foundations and individual donors who provide invaluable support for the organization’s research and advocacy.

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Upholding Refugee Protection and Asylum at Home
Introduction

The United States was once a global leader in shielding refugees fleeing persecution. The nation led efforts to draft the Refugee Convention in the wake of World War II and, with bipartisan support, enshrined its commitments into law when it enacted the Refugee Act. For decades, Republican and Democratic administrations recognized the moral and strategic importance of a strong commitment to providing refuge to the persecuted. But the Trump administration has trampled on these commitments to the detriment of both refugees and U.S. national interests.

Through a barrage of policies denying refugees safety in the United States, the Trump administration has decimated both the U.S. asylum and resettlement systems. The administration has banned refugees from Muslim-majority countries, reduced resettlement to all-time lows, forced asylum seekers to “wait” in notoriously violent parts of Mexico, taken children from their parents, sent asylum seekers to unsafe countries, refused to release asylum seekers from detention, and used the pandemic to illegally expel asylum seekers and unaccompanied children to highly dangerous places. Over and over, the administration has banned refugees from asylum and used these bans to evade legally-mandated protections and separate refugees from their families. Instead of effectively managing the administration has implemented punitive policies that have spurred chaos, bottlenecks, kidnappings, attacks, and horrific detention conditions.

Administration officials have also riggled the adjudication system against refugees. They have elevated immigration judges with high asylum denial rates, directed Border Patrol officers to conduct interviews in place of asylum officers, and rendered many refugees ineligible for asylum through Attorney General rulings and regulations that seek to rewrite the law. Predictably, the rates at which U.S. adjudicators grant asylum have plummeted, leaving many refugees unprotected.1

Not only have thousands had their lives devastated, but the global humanitarian and human rights systems, essential to safeguarding stability world-wide, are threatened by America’s blatant violations of its refugee and human rights treaty obligations—illegalties that have sparked condemnations from the U.N. Refugee Agency (UNHCR), human rights officials, and a Canadian Court, which found U.S. mistreatment of asylum seekers inconsistent with the Refugee Convention and the norms of free and democratic societies.2 Such policies set a poor example for other countries, including the small number of developing nations that actually host the vast majority of the world’s refugees.3 Moreover, as one legal scholar has warned, the Trump administration’s dismissal of U.S. international legal obligations threatens to render a host of treaties meaningless, “take a wrecking ball to U.S. international legal relationships,” and “deal a death blow” to the United States “capacity to engage in international diplomacy for decades to come.”4

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The United States must change course before the damage becomes irreversible. The next presidential administration must make clear—through actions as well as words—that restoring U.S. leadership in protecting the persecuted is a top priority. Leading by example, the next administration must uphold U.S. refugee laws and treaties at home, while encouraging other countries to uphold their own asylum obligations.

To do so, an administration taking office in 2021 should transform America’s approach to people seeking refugee protection, shifting the paradigm from one driven by detention and attempts to deter and turn away refugees seeking U.S. asylum to a genuine humanitarian response, led by humanitarian agencies, that upholds refugee laws and effectively and fairly manages asylum cases. The next administration should implement orderly, fair, and timely processes for asylum claims, immediately end illegal policies executed by the current administration, and employ effective and humane case management strategies, rejecting costly mass detention that violates human rights treaties. It should restore its global leadership on resettlement by rescinding discriminatory bans and policies, ramping up the numbers provided refuge, and working to make the program even stronger. And in the wake of the novel coronavirus pandemic, it should end efforts to exploit COVID-19 as a pretext to violate laws protecting asylum seekers. As public health experts have stressed, the United States can and must “both safeguard public health and uphold laws requiring the protection of asylum seekers and unaccompanied children.”

Finally, in tandem with the steps outlined in this paper, a next administration must make the human rights of people in Central America and Mexico a primary foreign policy priority, so that families, adults, and children are not forced to seek protection in other countries. In its first week, the administration should announce a major initiative to uphold human rights in the region, seeking input from rights defenders in these countries and leveraging U.S. diplomacy, development, and humanitarian aid to support systems that combat corruption, mitigate climate displacement, and help people secure protection in home countries. At the same time, the U.S. should direct its diplomacy and aid to expand the capacity of Mexico, Belize, Costa Rica, Panama, Colombia, and other countries to host, safeguard, and provide asylum to refugees.

Along with launching these regional initiatives, the next administration should also, during its first week, convene a White House Humanitarian Protection Task Force and issue an executive order or directives on its first day instructing U.S. agencies to take steps to restore U.S. asylum and refugee protection leadership—and law—at home. Key steps for a next administration include:

- **Ending policies that endanger refugees, create chaos, and violate law and treaties, including:**
  - Remain in Mexico; asylum entry, transit, and public health bans; deals with unsafe countries; “metering” reductions at border ports-of-entry; and fast-track deportation programs blocking legal counsel;
  - Rules, rulings, and policies to deny refugees asylum, including Attorney General rulings targeting family groups, women subjected to violence, and victims of armed groups; and
  - Mass detention, family separation, and criminal prosecution for improper entries.

- **Managing asylum arrivals in orderly, effective, and humane ways that uphold U.S. law, including by:**
  - Launching a humanitarian response via a White House task force, coordinated by a White House senior coordinator or advisor for refugee and humanitarian protection and staffed by humanitarian agencies and ultimately a new or reconfigured and elevated U.S. agency with a humanitarian protection mission, expertise, and capacities;
  - Providing timely, humane, safe, and orderly processing at U.S. ports-of-entry; transferring asylum seekers to orientation/reception sites and shelters within several hours, not days; and employing health safeguards; and
  - Referring asylum seekers into case management with legal representation to humanely, successfully, and cost-effectively manage cases while they shelter with family in communities.

- **Upgrading adjudication systems to provide timely, fair, and accurate refugee decisions, including by:**
  - Ramping up asylum officer hiring to conduct more asylum interviews, enabling more asylum cases to be accurately resolved at the USCIS asylum division, and reducing referrals to courts;
  - Swiftly remedying politicized hiring, conducting fair and increased hiring and reducing backlog while working to make courts independent; and
  - Rescinding policies, rules, and rulings that rig the system against refugees and improperly deny them protection.

- **Strengthening and rebuilding the U.S. resettlement system, including by:**
  - Rescinding discriminatory bans, increasing the presidential determination to 100,000 for fiscal year 2021 and 125,000 for fiscal year 2022, fixing delays, strengthening outcomes and support; and
  - Improving resettlement of U.S.-affiliated Iraqis, and Afghans via Special Immigrant Visas (SIVs), creating a priority path for Syrian refugees who assisted the U.S., launching initiatives for Central American and Venezuelan refugees, and preparing for Hong Kong refugee resettlement.
The Trump administration has used the pandemic as a pretext to expel asylum seekers and unaccompanied children to dangerous places where their lives are at risk. On its first day, a future administration should issue an order or directives revoking presidential orders and proclamations relating to asylum, and instructing DHS and DOJ to take steps to: uphold U.S. refugee law and treaties at the border; immediately end Remain in Mexico, “asylum cooperation agreement” transfers to unsafe countries, expulsions relying on the debunked and dangerous CDC order, and removals under secretive programs that block legal counsel; swiftly transition to U.S. safety asylum seekers stranded under Remain in Mexico; ramp-up hiring for asylum interviews and hearings; rescind Trump administration rules and rulings blocking refugees from asylum including the asylum entry and transit bans and other rules; and settle lawsuits in which the government is defending illegal asylum policies. Priority policies to end include:

- **The specious public health bans.** The next administration should immediately direct the Centers for Disease Control (CDC), Department of Health and Human Services (HHS), and DHS to rescind policies—including the much-criticized March 20 CDC order, the related rule, the May 19 order extending the ban indefinitely, and any agency guidance—used to expel thousands of asylum seekers and unaccompanied children to places where their lives are at risk, as detailed in a May 2020 Human Rights First report and media reports confirming expulsions of children and asylum seekers, including Nicaraguan political dissidents. Similarly, a next administration should rescind the sweeping July 9, 2020 proposed rule that would label refugees as national security threats, ban them from asylum and other protection, and summarily deport many without asylum hearings on sham “public health” grounds such as passing through a country where COVID-19—or a potentially vast array of other treatable communicable diseases, should DHS and DOJ declare them security threats—are prevalent or simply

8 See May 2020 Letter from Public Health Experts, supra note 5; see also Sieff, supra note 7.
10 For Human Rights First’s report, see Pandemic as Pretext, supra note 7; for relevant media reports, see Sieff, supra note 7; National Immigrant Justice Center, A Timeline Of The Trump Administration’s Efforts To End Asylum (last updated Aug. 2020) available at https://immigrantjustice.org/issues/asylum-seekers-refugees.
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exhibiting a cough or other potential symptoms.\textsuperscript{11} Medical and public health experts have concluded that both the proposed rule, and the orders and expulsions, are “xenophobia masquerading as a public health measure.”\textsuperscript{12} Public health experts have also explained that the U.S. has the ability to both safeguard public health and safeguard the lives of men, women, and children seeking asylum at the U.S. border and have recommended measures, outlined below, to protect law enforcement officials, those exercising their legal right to request protection in the United States, and public health.\textsuperscript{13} Legal experts have concluded that the CDC order does not override U.S. laws and treaties protecting refugees and unaccompanied children.\textsuperscript{14} UNHCR legal guidance on the pandemic confirms states may not impose measures that preclude refugees from admission or deny them an effective opportunity to seek asylum, and that “(d)enial of access to territory without safeguards to protect against refoulement cannot be justified on the grounds of any health risk.”\textsuperscript{15}

- The dangerous Remain in Mexico policy (disingenuously titled “Migrant Protection Protocols” [MPP]). The next administration should immediately end the illegal and chaotic MPP, revoking former DHS Secretary Kirstjen Nielsen’s June 25, 2019 memorandum on day 1, and instead adjudicate cases from safety in the United States, consistent with U.S. refugee law.\textsuperscript{16} Pending MPP cases should be swiftly transitioned from danger in Mexico, swiftly processed into the country using the public health measures detailed by experts, and paroled to family in the United States while their cases are adjudicated.\textsuperscript{17} Not only is CBP able to process cases in a few hours, but MPP cases have previously undergone CBP processing. Moreover, the vast majority of MPP asylum seekers have U.S. family or other destination homes where they can shelter.\textsuperscript{18} The MPP wind-down can be conducted in an orderly manner, communicating with attorneys, shelters, medical and humanitarian organizations that assist asylum seekers, and slating cases for swift transfer based, for instance, on the month they were referred into MPP.

In addition to allocating sufficient U.S. government staff to transition these cases in within weeks, DHS and humanitarian agencies will need to set up an orderly process so that asylum seekers facing urgent risks can have their cases transferred to safety in the United States prior to their scheduled date.


\textsuperscript{15} U.N. High Commissioner for Refugees, Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response, ¶ 6 (Mar. 16, 2020) available at https://www.refworld.org/docid/5e7132834.html.


\textsuperscript{17} Public Health Measures, supra note 13. These cases are already in immigration court proceedings and ICE and EOIR can facilitate venue transfers to immigration courts in destination locations. These cases could potentially be adjudicated more promptly by the USCIS asylum division if, after transfer into the U.S., MPP removal proceedings are terminated and cases referred to USCIS for asylum adjudications.

Going forward, U.S. agencies must comply with U.S. refugee law and allow people to seek asylum from safety in the United States. As UNHCR has explained, when a state is presented with an asylum request at its border, it must provide admission at least on a temporary basis while the asylum claim is examined “as the right to seek asylum and the non-refoulement principle would otherwise be rendered meaningless.” UNHCR’s amicus brief in the case challenging MPP confirms the policy does not comply with the Refugee Convention and Protocol. Given the illegality, dangers, and due process deficiencies that plague MPP, U.S. Immigration and Customs Enforcement (ICE) should be directed to request that immigration courts vacate all MPP in absentia orders and join in requests to vacate MPP removal orders that denied protection.

- **Asylum entry and transit bans and denials.** The next administration should rescind the November 2018 presidential proclamation and interim final rule that sought to bar from asylum people who cross into the United States between ports of entry without inspection. The next administration should also rescind other Trump administration rule changes that attempt to get around asylum denials, due to transit through other countries, including the July 2019 interim final rule (vacated and enjoined as of August 2020) and the June 2020 proposed rule that seeks to codify variations on that transit ban. While the July 2019 ban was in effect, the United States barred from asylum a nationwide class of asylum seekers. In February 2020, the Court of Appeals for the Ninth Circuit concluded, in East Bay Sanctuary Covenant v. Trump, that the rule unlawfully conflicts with the text and purpose of U.S. refugee law and is inconsistent with the Refugee Convention, affirming a district court injunction that had been in effect for over a year (after both the Ninth Circuit, in an opinion authored by Judge Jay Bybee, and the Supreme Court refused to stay the district court injunction). A next administration should also rescind other Trump administration rule changes that attempt to get around these court rulings by denying asylum (proposed in June 2020) or work authorization (effective August 2020) to penalize asylum seekers who enter between ports of entry. The asylum entry ban and other policies punishing refugees for improper entry violate U.S. law and Refugee Convention prohibitions against penalizing asylum seekers for improper entry or presence, as UNHCR confirmed in its amicus brief addressing the ban.

The next administration should also rescind rules that ban refugees from asylum, or direct or urge asylum denials, due to transit through other countries, including the July 2019 interim final rule (vacated and enjoined as of August 2020) and the June 2020 proposed rule that seeks to codify variations on that transit ban. While the July 2019 ban was in effect, the United States barred from asylum a nationwide class of asylum seekers. In February 2020, the Court of Appeals for the Ninth Circuit concluded, in East Bay Sanctuary Covenant v. Trump, that the rule unlawfully conflicts with the text and purpose of U.S. refugee law and is inconsistent with the Refugee Convention, affirming a district court injunction that had been in effect for over a year (after both the Ninth Circuit, in an opinion authored by Judge Jay Bybee, and the Supreme Court refused to stay the district court injunction). A next administration should also rescind other Trump administration rule changes that attempt to get around these court rulings by denying asylum (proposed in June 2020) or work authorization (effective August 2020) to penalize asylum seekers who enter between ports of entry. The asylum entry ban and other policies punishing refugees for improper entry violate U.S. law and Refugee Convention prohibitions against penalizing asylum seekers for improper entry or presence, as UNHCR confirmed in its amicus brief addressing the ban.

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27 These variations would, for instance, require a denial of asylum due to transit, or transit of over 14 days. Asylum Eligibility and Procedural Modifications, 84 Fed. Reg.
Refugees from Cuba, El Salvador, Eritrea, Guatemala, Honduras, Nicaragua, Venezuela, and other countries, as detailed by Human Rights First in its July 2020 report Asylum Denied, Families Divided. Some were deported to countries where they fear persecution. Others were separated from their families, as such bans prevent refugees from bringing their children and spouse to safety as derivative asylees even when U.S. judges determine they qualify as refugees whose removal must be withheld.

Refugees who are denied asylum but qualify for “withholding of removal” are left in a limbo that blocks them from legal permanent residence, citizenship, and integration. The transit ban violates U.S. law: refugees who travel through other countries are barred from asylum only if they are “firmly resettled” in a transit country, or if the United States has a formal agreement with a country where refugees are both safe from persecution and provided access to full and fair asylum procedures. On June 30, 2020, in a case brought by Human Rights First and other counsel, a court in Washington D.C. vacated the transit ban, finding it was issued in violation of the Administrative Procedure Act (APA). On July 6, 2020, in a separate lawsuit, the Ninth Circuit found the ban violates U.S. asylum law because the rule “does virtually nothing to ensure that a third country is a ‘safe option,’” and was arbitrary and capricious under the APA. The court upheld a preliminary injunction issued by a district court that concluded the ban “is likely invalid because it is inconsistent with the existing asylum laws.”

UNHCR confirmed the transit ban is not consistent with U.S. legal obligations. If any transit rule is in effect or becomes final, a new interim final rule reverting to the prior rule can be quickly issued. DHS leaders should direct ICE attorneys to join re-openings for those whose cases were denied based on the transit ban and stipulate to asylum grants for persons already determined by immigration courts to be refugees who met the withholding of removal standard.

The “deals” that send asylum seekers to unsafe countries. The next administration should immediately stop all transfers under, and terminate, Trump administration agreements with El Salvador, Guatemala, and Honduras, as well as the related rules through which the United States
has sent people seeking U.S. asylum to some of the most dangerous countries in the world—places from which people have been fleeing. Perversely labeled “Asylum Cooperative Agreements,” these agreements violate U.S. refugee law and treaty commitments. In fact, all three countries fall far short of the U.S. law requirements that would permit U.S. officials to treat them as a “safe third country” to which asylum seekers could be sent. The UNHCR has expressed “serious concerns” about the deals. A Human Rights Watch/Refugees International report concluded the Guatemala deal does not meet U.S. law criteria for a Safe Third Country Agreement. Given this illegality, expedited removal orders issued based on this transfer arrangement should be vacated. These transfer schemes prompted a lawsuit filed in federal court in Washington D.C. The United States should also not attempt to designate Mexico a “safe third country” as it does not meet the applicable legal standards given deficiencies in its asylum system and the dangers refugees face there. Instead, a next administration should leverage aid and diplomacy to strengthen asylum and safety for refugees in Mexico and across the region, and rights protections in Central America so people are not forced to flee.

- Fast-track secretive deportation programs that block access to legal counsel. The next administration should end fast-track deportation programs launched by the current administration that block asylum seekers from legal representation and rig protection screening interviews against them. Dubbed the Prompt Asylum Claim Review (PACR) and, when applied to families from Mexico, the Humanitarian Asylum Review Process (HARP), these programs prevent asylum seekers from meeting with legal counsel prior to credible fear screening interviews and prevent lawyers from attending interviews. Instead, asylum seekers undergo these screenings while held, often for five to seven days, in the notorious “hieleras” (CBP facilities known as “iceboxes” due to cold temperatures and inhumane conditions), blocked from in-person legal consultations and limited to a very brief potential phone call to a family member or lawyer. Given the deprivation of counsel and inhumane conditions used, DHS should vacate resulting expedited removal orders and instruct that they not be reinstated.

In addition, a next administration should not revive the slow-downs and reductions in asylum processing at ports of entry—which CBP dubbed metering, but which actually acted as a monthly cap on processing asylum seekers. This policy not only generated disorder by causing bottlenecks, back-ups, and dangerous waits in Mexico, but it also encouraged crossings between ports of entry, as CBP officers and the DHS OIG confirmed. The next administration should direct CBP to rescind the April

2018 memorandum purporting to authorize this practice as well as any related guidance. Instead, as outlined below, the next administration should ensure timely, orderly, and appropriately staffed processing that upholds U.S. refugee law.

Moreover, as explained in the third section of this paper, the next administration should overturn, withdraw, or vacate other policies, rules, and Attorney General rulings that rig the system against refugees and render refugees ineligible for asylum. These include rule changes proposed in June 2020, the ruling in Matter of A-B- targeting women seeking protection from violence, and efforts to replace adjudicators that rule in favor of asylum seekers with those who rule against them.

✓ **Manage arrivals in orderly, humane ways that uphold refugee law**

Both the overarching paradigm and the structure of America’s response to people seeking protection has been wildly off kilter. Both must change. The United States should transform its approach to people seeking refuge through a genuine humanitarian response and structure—led by humanitarian agencies with humanitarian expertise and capacities—that upholds U.S. refugee laws. Instead of counterproductive and dysfunctional policies that generate chaos and punish people seeking refuge, a next administration should implement fair and effective initiatives to manage asylum arrivals. These strategies include case management programs and legal representation initiatives—measures that lead to very high immigration court appearance rates, fiscal savings, and compliance with U.S. laws and treaties. Nativist, racist rhetoric that tries to paint asylum seekers as threats, invaders, or a “security” problem will be overcome by strong leadership that affirms America’s moral commitment to once again shine as a beacon that welcomes the persecuted.


The refusal to employ case management and other legal strategies for asylum seekers in removal proceedings—and the insistence on mass detention—has led to lengthy, costly, arbitrary, and dysfunctional detentions. The mass detention policy has sparked hunger strikes, protests by jailed asylum seekers, and a massive spread of coronavirus in facilities and jails in the wake of ICE’s refusal to release significant numbers of legally eligible asylum seekers and immigrants—despite warnings from public health experts and former immigration officials.47 To shift from a punitive response to a humanitarian management and refugee protection structure, the next administration should:

- **Reshape the U.S. response to lead a humanitarian management initiative.** In its first week, the next administration should establish and convene a White House Humanitarian Protection Task Force comprised of relevant U.S. government agencies and including U.N. agencies and U.S. civil society organizations with refugee protection and management expertise and capacities. The Task Force requires high-level White House leadership, and should be managed by a White House Coordinator or 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 the reforms identified in this paper. The Task Force will need to meet at least weekly for some time. DHS, CBP, and ICE, which have treated refugees seeking asylum as “border enforcement” or “national security” problems to be deterred, turned away, penalized and denied protection, have failed to uphold U.S. refugee laws and human rights treaties, and proven ill-equipped to lead the U.S. response to people seeking protection.

To enhance this effort, the next administration should galvanize and leverage a network of humanitarian organizations, including faith-based groups, the American Red Cross, legal nonprofits, and refugee assistance agencies with offices across the country. A number of faith-based groups and shelters, as well as refugee organizations, have experience providing assistance to new arrivals and long track records of working with CBP and/or other U.S. government agencies. Some provide refugee assistance and management around the world. The next administration should request Congressional appropriations to support this public-private initiative.

As it examines issues relating to DHS mission, structure and functions, the next 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. refugee protection, asylum, and humanitarian protection matters. Such an agency, preferably independent of DHS, should be led by an official of cabinet rank. The agency should have relevant rule-making authority relating to U.S. asylum and refugee law and adjudications; house asylum office adjudicators; have oversight of the management of the cases of asylum seekers; and the have authority to intercede in any attempt to deprive an asylum seeker of liberty via administrative detention. Additionally, the administration should take steps to reshape agency missions and responsibilities so that the leaders and staff of all agencies that play a role in interacting with children, adults, and families seeking refuge understand that they are clearly charged with upholding U.S. refugee law and treaties—and will be held accountable for refusing or failing to perform these legal responsibilities.

- **Safeguard the health of asylum seekers, U.S. staff, and the public.** In the midst of COVID-19,
leading public health experts have stressed that the United States has the ability to use proven measures to safeguard public health and the lives of men, women, and children seeking protection at the U.S. southern border. Indeed, UNHCR has reported that over 20 European countries explicitly exempted asylum seekers from entry bans and border closures, and the European Union included an exemption within its travel restrictions for persons seeking protection. In addition to ending the Trump administration’s specious disease-linked bans on asylum (i.e., the March 20 CDC order, its May 2020 indefinite extension, the related rule, and the July 9 proposed rule), a next administration should immediately direct use of measures—recommended by leading public health experts for people crossing the border—that protect law enforcement officials, those exercising their legal right to request protection in America, and the public health of our nation.

These evidence-based measures include: “[d]uring border processing, facilitate social distancing through demarcations and the use of outdoor and other areas; require wearing of masks or similar cloth coverings over the face and nose for both officers and persons crossing into the United States; use plexiglass barriers and/or face shields for officers during interviews and identity-checks; provide hand-sanitizer and other handwashing for both officers and other persons; and provide requisite distance, as well as masks and other measures, in transport.” CBP officers have reported that the vast majority of ports of entry are able to maintain proper social distancing during processing. In addition, health screenings can be conducted, including temperature checks and testing as it becomes more available. As leading health experts recommend, “rather than detaining asylum seekers in congregate settings, allow asylum seekers to wait for their court hearings with their families or other contacts in the United States through parole, case management and other alternatives to detention.”

Moreover, should individuals crossing the southern border be required to self-quarantine as a precaution for 14 days like other international travelers, asylum seekers can do so at the homes of family or at other destination locations. An asylum seeker who is ill should be referred to isolate at a family home or other accommodations as outlined in these public health recommendations (unless referred to immediate medical care), and not denied the right to seek asylum. Ironically, DHS has been using COVID-19 tests and non-congregate accommodations to remove and expel people in ways that violate U.S. refugee and anti-trafficking laws, rather than using public health measures to uphold U.S. refugee laws and treaties.
Provide timely, humane, and orderly asylum processing at U.S. border posts. The next administration’s Secretary of Homeland Security and CBP Commissioner, working with humanitarian agency leads, should make it a top priority to conduct timely, humane, and orderly asylum processing at U.S. ports of entry and to immediately restore compliance with U.S. anti-trafficking and refugee law. CBP has the capacity to process asylum cases in a timely manner at both ports of entry and border patrol posts, and a next administration should immediately direct DHS and CBP to allocate sufficient staff to these responsibilities.\(^{59}\) In fact, a December 2019 CATO Institute analysis concluded that the agency had staff capacity to process at least twice as many asylum seekers as it had processed in 2019, noting that in October 2016, CBP had processed twice as many asylum seekers as the monthly “metering” cap imposed under the Trump administration.\(^{60}\) Initial border processing can be conducted within two to four hours so CBP can promptly transfer asylum seekers from CBP custody within several hours to the reception/orientation sites described below.\(^{61}\) A next administration should authorize deployment of monitors from the DHS office of Civil Rights and Civil Liberties, and access for independent legal monitors and outside observers such as UNHCR.

Once an individual is identified as an asylum seeker or unaccompanied child, their processing should be shifted to specifically trained humanitarian response officers. These officers should ultimately be employed by an agency with a humanitarian mission, or at least by USCIS with expanded asylum authorities. Unaccompanied children must be screened and transferred to ORR custody as required by U.S. law.\(^{62}\) In addition to CBP officers and humanitarian response officers, border facilities should be staffed with case workers, health care staff, social workers, and child welfare specialists with the HHS Office of Refugee Resettlement. UNHCR should have open access to these facilities. Attorneys should no longer be blocked from these facilities and should be allowed to accompany asylum seekers during initial border processing interviews. A next administration should direct the new leadership of DHS and CBP to upgrade and build out ports of entry and Border Patrol facilities so they have sufficient space and structure to briefly host families, adults, and children for the few hours needed to conduct initial processing in a humane manner with sufficient space, normal temperatures, appropriate conditions, and social distancing, when needed.

With specialized staff trained to deal with humanitarian needs and processing, CBP officers can better focus on timely and safe front-line processing and security checks. An incoming administration’s DHS and CBP leaders must make clear to front-line officers that people seeking or indicating fear of harm cannot be expelled, turned away, or summarily removed under U.S. laws without assessments of their eligibility for asylum or other protection, conducted by asylum officers and immigration judges.

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60 Id.


Launch legal and case management programs to effectively manage cases. Instead of costly, wasteful, and inhumane mass detention, a next administration must shift to effective and fiscally prudent case management and legal support strategies that comply with and uphold U.S. laws and human rights treaties. Adults and families with children seeking refuge should not be held in detention after their brief initial border custody. Instead, they should be swiftly referred to a reception/orientation site run by a local shelter, refugee assistance provider, or other humanitarian organization where they can be placed into an appearance management program and referred to legal representation. U.S. humanitarian processing and/or case management officers can meet with asylum seekers in a designated area at these sites to the extent necessary to conduct follow-up case processing, such as to confirm accurate information on destination locations or referrals to the appropriate destination immigration court. At these sites, asylum seekers should be provided necessary information about their immigration appearance obligations through highly effective Legal Orientation Programs or similar legal information presentations; referred for medical services and trauma support (locally if urgent, or in their destination locations); registered into a community-based case management program with offices in the destination location where they will be staying while their asylum and removal proceedings are pending; and referred for legal representation in these destination locations. These orientation activities and referrals should be completed within a few days.

Multiple studies have confirmed that case management and other alternatives to detention are highly effective at supporting appearance and compliance with immigration hearings and appointments. A family case management program piloted by DHS from January 2016 to June 2017 demonstrated high

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levels of success, including a 99 percent appearance rate for hearings. These programs support asylum seekers and migrants to attend required immigration court hearings and immigration appointments; assist them to find legal representation; and refer them to medical, trauma-related, or other resources in order to proactively address challenges that could otherwise derail asylum seekers from appearing for immigration appointments. Case management is also more fiscally prudent than detention. For example, the DHS case management program cost about $36 a day per family while family detention costs almost $320 a day per person. Community-based nonprofits and faith-based organizations with strong community ties are best placed to operate such programs given their deep ties to local legal, medical, and other critical support services.

The next administration should launch a major legal orientation and representation initiative to ensure due process, accurate decision-making and high appearance rates. This initiative should be integrated with the case management program outlined above, which can assist asylum seekers in securing legal representation. Asylum seekers represented by counsel overwhelmingly appear for their immigration court hearings, as statistical studies have repeatedly confirmed. Legal representation leads to 97 percent appearance rates for immigration hearings. Legal representation is also a more fiscally prudent expenditure than detention, and when provided at initial adjudications will help ensure eligible refugees receive protection at the earliest stages of the process, making the adjudication process more efficient.

A next administration should act swiftly to jump start this major legal representation initiative, encouraging continued support from state and local governments, private donors, and pro bono lawyers while working with Congress to provide strong federal support to supplement these limited resources, in order to ensure all asylum seekers and immigrants, including those in removal proceedings, are provided legal representation and legal orientations. Congressional funding for universal legal orientation presentations and representation should, in addition to children and detainees, include families and others placed into case management.

- End arbitrary, unjust, and costly ICE mass incarceration. The next administration should rescind current administration executive orders, policies, and guidelines directing or encouraging that asylum

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66 Id.
69 See Eagly, Shafer, Whalley, supra note 68.
The next administration should rescind current administration executive orders, policies, and guidelines directing or encouraging that asylum seekers and immigrants be held in detention and not released, and shift instead to case management and other effective, humane strategies.

Costly mass detention and non-release policies waste resources and violate America’s refugee and human rights obligations due to unnecessary, disproportionate, and otherwise arbitrary detention and lack of prompt court review. In fact, a DHS advisory committee recommended the use of community-based case management programs, rather than detention. Medical studies confirm detention harms asylum seeker health, while harms escalate as detention time lengths. The American Academy of Pediatrics has repeatedly confirmed detention harms children.

Case management should replace—not supplement—detention. The next administration should end family and other unnecessary and inhumane migration detention that violates U.S. human rights legal commitments, and shift to a presumption of liberty. It should immediately vacate the Attorney General’s decision preventing immigration judges from issuing bonds to asylum seekers; revise regulatory language to provide prompt access to custody hearings (with affordable or no bond when warranted) for “arriving” asylum seekers and migrants; and codify asylum parole into regulations as ICE ignores parole directives. As outlined above, adults and children seeking refuge should not be sent to ICE detention facilities after initial border custody but should, if determined to need appearance support, be placed into community-based case management programs.

- **End criminal prosecutions for improper entry and family separation.** The next administration should revoke President Trump’s January 2017 order designating prosecution of immigration offenses a “high priority” as well as subsequent memoranda and agency directives, and abstain from referring parents with children, asylum seekers and migrants for criminal prosecutions for improper entry/re-entry, instead using the administrative immigration removal and asylum processes designed for such cases. A next administration should work with Congress to repeal and revise laws so these matters
are handled through civil laws, and asylum seekers are not subjected to such prosecutions. After the administration announced its infamous “zero tolerance” policy, criminal prosecutions of asylum seekers and migrants escalated sharply and over 5,400 children were ultimately taken from parents subjected to these prosecutions. Such prosecutions thwart due process, divert prosecutorial resources, and violate the Refugee Convention, which prohibits the United States from penalizing asylum seekers for illegal entry or presence in most cases, as the DHS OIG warned in 2015. Human Rights First researchers observed countless prosecutions of asylum seekers that violated the Refugee Convention. Seventy former U.S. Attorneys issued a letter objecting to the zero tolerance prosecutions and family separations, explaining that “[i]t is a simple matter of fact that the time a Department [of Justice] attorney spends prosecuting misdemeanor illegal entry cases, may be time he or she does not spend investigating more significant crimes like a terrorist plot, a child human trafficking organization, an international drug cartel or a corrupt public official.”

✓ Upgrade asylum adjudication systems to provide timely and fair decisions

The Trump administration has weaponized USCIS, its asylum division, and the DOJ immigration courts to deny refugees asylum. Since January 2017, administration officials have taken countless steps to push adjudicators to rule against refugees seeking asylum. These include repeatedly encouraging asylum officers and immigration judges to deny asylum by falsely painting asylum cases as meritless, replacing asylum officers with Border Patrol officers to decrease credible fear pass rates (a policy preliminarily enjoined by a federal judge in August 2020), elevating immigration judges who deny asylum at high rates, and using the Attorney General’s “certification” power to issue precedential decisions attempting to unilaterally rewrite U.S. law to render many refugees ineligible for asylum. It should be no surprise, in light of these actions, that the rate at which asylum officers and immigration judges grant asylum has plummeted under the Trump administration. Moreover, administration policies and mismanagement have exacerbated backlogs at the asylum office and immigration courts, leaving many waiting years longer for asylum decisions and undermining the integrity of the adjudication system.


82 Punishing Refugees and Migrants, supra note 77; Zero-Tolerance Criminal Prosecutions, supra note 80.

83 Bipartisan Group of Former United States Attorneys Call on Sessions to End Family Separation, Medium (Jun. 18, 2018) available at https://medium.com/@formerusattorneys/bipartisan-group-of-former-united-states-attorneys-call-on-sessions-to-end-child-detention-e129ae0d8f0c.


88 TRAC Immigration, Record Number of Asylum Cases in FY 2019 (Jan. 8, 2020) available at https://trac.syr.edu/immigration/reports/5881; Grant Rates Plummet, supra note 1; see TRAC Immigration, Asylum Decisions and Denials Jump in 2018 (Nov. 29, 2018) available at https://trac.syr.edu/immigration/reports/5392.


90 In re Immigration, 722 F.3d 142 (2d Cir. 2013), remanded by 739 F.3d 11 (2d Cir. 2013); 723 F.3d 123 (2d Cir. 2013).


92 TRAC Immigration, Asylum Decisions by Custody, Representation, Nationality, Location, Month and Year, Outcome and more (through Aug. 2020) available at https://trac.syr.edu/immigration/reports/5881.

93 TRAC Immigration, Details on MPP (Remain in Mexico) (through Aug. 2020) available at https://trac.syr.edu/phptools/immigration/mmp/.
While working with Congress to secure systemic reforms and make the immigration court system independent, the next administration should quickly reverse policies that rig adjudications against refugees, ensure swift increases in staffing for asylum interviews and hearings, and otherwise take steps toward providing timely, fair, and effective asylum decisions that grant protection to refugees promptly. Key steps include:

- **Immediately vacating and reversing administration rulings and policies that rig asylum decisions.** The next administration should quickly, within the first two weeks, vacate Attorney General rulings that prevent refugees from receiving asylum in the United States. Most critically, a next administration’s Attorney General or properly-appointed Acting Attorney General should immediately vacate the decision issued by former Attorney General Jeff Sessions in *Matter of A-B-*, which aims to deny refuge to women subjected to violent attacks in cases where national authorities refuse or fail to protect them, and victims of armed groups in countries that refuse and fail to protect.90 The Attorney General should declare *Matter of A-B-* to be without precedential force and reinstate the precedent of *Matter of A-R-C-G-*.

90 U.S. agencies should issue a new proposed rule that makes clear that a “particular social group” is, without any additional requirements, a group whose members: share a characteristic that is immutable or fundamental to identity, conscience, or the exercise of human rights; share a past experience or voluntary association that due to its historical nature cannot be changed; or are perceived as group by society. The next Attorney General should also vacate Attorney General Bill Barr’s ruling in *Matter of L-E-A-*, in which he attempted to block from asylum members of persecuted family groups, and Sessions’ ruling in *Matter of E-F-H-L-*, which opened the door for immigration judges to deny asylum without full evidentiary hearings.92 As noted above, the next administration should withdraw the June 15, 2020 proposed rule that would render many refugees ineligible for asylum—including refugees who suffered gender-based persecution or refugees from Hong Kong or other places if they transit other countries on their way to the United States, if their persecutors detained them for only brief periods, or if their persecutors were not able to carry out their threats before the asylum seeker fled to the United States.93 (As it moves forward, the next administration should work with Congress to safeguard asylum by passing the Refugee Protection Act.)94 In addition, the next administration should rescind the August 26, 2020 proposed rule that would rig the appellate process against asylum seekers and immigrants and make it more difficult for them to retain legal counsel and to file appeals.95

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93 Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, supra note 27; Comment on Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, supra note 27.
The next administration should end other Trump administration policies that rig the system to deny refugees asylum. DHS and USCIS leaders should direct that trained USCIS asylum officers—not Border Patrol or other immigration enforcement officers—conduct protection screening interviews. The next administration should also rescind training and guidance that attempted to improperly heighten the statutory credible fear standard to prevent refugees from applying for asylum, and rescind the Trump administration policy of conducting assessments relating to potential bars to asylum, which involve complex legal and factual determinations, during preliminary screening interviews where asylum seekers do not generally have legal counsel, and instead revert to the long-standing prior practice of conducting these assessments during asylum hearings. New leaders at DHS, USCIS, and EOIR should direct the revision of all guidance and training materials that have been influenced by flawed Trump administration rulings, directives and policies so that all guidance and training materials—including those relating to credible fear and reasonable fear assessments, asylum eligibility, and interviews, and the conduct of hearings—is consistent with U.S. law and U.S. legal obligations under refugee and human rights treaties.

The next administration’s Attorney General should take swift steps to address unfair and politicized immigration judge hiring and BIA appointments. The next Attorney General should direct a review of the agency’s decisions to hire new BIA members with some of the highest asylum denial rates in the nation. In addition, a next administration should reverse rules that deprive asylum seekers of legal work authorization for even longer and impose fees on their asylum applications and initial work applications.

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96 Allowing CBP to Conduct Credible Fear Interviews Undermines Safeguards to Protect Refugees, supra note 85.
98 Asylum Eligibility and Procedural Modifications, supra note 27; Security Bars and Processing, supra note 11; Procedures for Asylum and Bars to Asylum Eligibility, 85 Fed. Reg. 69640 (Dec. 19, 2019) (to be codified at 8 C.F.R. §§ 208, 1208); CLINIC, Procedures for Asylum and Bars to Asylum Eligibility, supra note 27; AILA Doc. No. 19050602, supra note 97.
99 AILA Doc. No. 20042931, supra note 86.
Overhauling USCIS asylum adjudications to provide more timely and fair asylum decisions.

The next administration should take steps to enable the USCIS asylum division to play a strong role in promptly recognizing refugee cases, reducing backlogs, and minimizing the number of cases unnecessarily referred into the immigration court system. The next administration should also quickly ramp up asylum officer hiring to conduct asylum interviews and remedy backlogs, while preparing to further increase asylum officers if and as needed to promptly conduct full asylum interviews as circumstances evolve, for instance in response to upticks in refugees seeking asylum from Central America and/or Venezuela, or the arrival of refugees fleeing Hong Kong.

The next president should direct that DHS and USCIS leaders enhance the ability of the USCIS asylum division to better contribute to the prompt resolution of asylum applications and minimize the number of cases—of individuals ultimately determined to be refugees who meet asylum eligibility requirements—unnecessarily referred into the immigration court removal system. Agency leaders should affirm that one of the primary purposes of the asylum division is to recognize refugee cases promptly without requiring time of other agencies (EOIR, ICE) when not needed. Officers should of course refer cases barred from or ineligible for asylum. But officers and officials should not view it as imperative to refer a large percentage of cases into removal proceedings.

To the extent decision-making quotas contribute to the referral of asylum-eligible cases into removal proceedings, USCIS should review and revise those quotas. It will ultimately save government funds if more asylum-eligible cases are accurately resolved at an early stage by asylum officers.

In addition, a next administration should provide initial decision-making authority to the asylum office in asylum cases, including those originating at ports of entry and along the border. This approach will allow more cases to be granted efficiently at the USCIS asylum office, provided asylum seekers are afforded sufficient time to secure legal counsel, gather evidence, and prepare their cases—steps that will help assure legally accurate decisions.101 Such an approach would reduce the number of cases (of individuals eligible for asylum) referred for immigration court removal proceedings, while also preserving the right of (the much-reduced number of) asylum seekers ultimately referred into removal proceedings to asylum hearings in immigration court.

Given long backlogs and delays, USCIS should create a formal process for asylum seekers to request prompt interviews due to pressing humanitarian challenges, such as family stranded in danger. A next administration should also create an application process for “cancellation of removal” relief, such as through a separate USCIS application and adjudication unit, so that applicants for this humanitarian relief can be provided the necessary referral so their eligibility can be assessed, and do not add to asylum backlogs through asylum filings made to secure such referrals. This reform could be implemented under existing statutory authority, as the Migration Policy Institute has explained.102

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101 In cases where asylum seekers are put into removal proceedings, such proceedings can be terminated and referred initially for asylum office interviews, so lesser numbers will ultimately require removal hearings. As noted above, the use of expedited removal should be rolled back and ended. The Migration Policy Institute has recommended asylum officers be afforded the ability to conduct full asylum interviews for asylum seekers who have passed credible fear interviews, Doris Meissner, Faye Hipsman, T. Alexander Aleinikoff, Migration Policy Institute (MPI), The U.S. Asylum System in a Crisis Charting a Way Forward (Sep. 2018) available at https://www.migrationpolicy.org/research/us-asylum-system-crisis-charting-way-forward.

102 Id.
While the practice of deploying some asylum officers to conduct refugee resettlement interviews, and vice versa, is a constructive management tool that can strengthen rather than weaken each system, DHS and USCIS leaders should ensure sufficient numbers of both asylum division and refugee corps officers to conduct interviews timely in both systems.

- **Overhauling, transforming, and updating the immigration courts.** Trump administration policies have rigged immigration court hearings against asylum seekers and exacerbated the court’s counterproductive delays and backlogs. The manipulation of the immigration courts by administration officials has made it abundantly clear that the system itself is fatally flawed, lacking in judicial independence, and highly vulnerable to politicization. While working with Congress to enact legislation to transform the immigration courts into independent courts, the next administration should quickly launch the administrative reforms outlined below, including:

  - **Implementing safeguards against politicized hiring and interference at the immigration courts.** These measures should include placing career professionals without political interests in control of, and staffing, the hiring process; requiring significant prior immigration law experience of various backgrounds for new hires; selecting immigration judges through fair and objective hiring and elevating judges based on experience and performance; reviewing the process and reassessing the validity of appeals Board appointments of immigration judges with high asylum denial rates and/or an established history of abusive behavior on the bench; ensuring professional independence; and safeguarding due process.

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104 A recent TRAC analysis of immigration court data confirmed that the Trump administration’s elimination of administrative closures greatly exacerbated the backlog. Backlog of Pending Cases in Immigration Courts, supra note 89; Immigration Court Backlog Tool, supra note 89. In addition to safeguarding due process, this reform would also eliminate an Attorney General’s ability to issue his or her own decisions to essentially re-write asylum law and overturn court decisions. The American Bar Association, Federal Bar Association, National Association of Immigration Judges, and other organizations have recommended that Congress separate the courts from DOJ to ensure impartiality and shield against political manipulation. The ABA detailed its recommendation for Article I courts in a 2019 report. American Bar Association (ABA), Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases,* Vol. 1 (Mar. 2019) available at https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_1.pdf.

diversity on the bench and addressing the excessive hiring of judges previously affiliated with ICE (the prosecuting agency) or other prosecutorial entities; reviewing the selection process for chief immigration judge and EOIR director to remedy, and safeguard against, politicized hiring; appointing new, highly experienced Board members and/or tapping retired Board members or Board attorneys to serve as temporary Board members; abolishing the court “office of policy” created under the Trump administration, and powers given to the Director, so courts are controlled by statute, regulation, and higher court case law, rather than politically influenced quotas, policy office outputs, and trainings.

- Terminating current administration policies that pressure judges to deny asylum cases—including case quotas, rushed rocket-dockets, and Board processing deadlines. Asylum adjudications must allow sufficient time to secure pro bono legal representation and gather evidence for hearings while providing timely resolution of cases (both asylum grants and removals of those fairly determined to be ineligible for relief).

- Reducing all-time high immigration court backlogs, including by: (1) keeping thousands of cases out of the backlogged courts by reversing former Attorney General Sessions’ directive to add administratively closed cases back on to the court’s docket, withdrawing his ruling in Matter of Castro-Tum; (2) working with ICE to terminate cases where USCIS action could resolve the cases due to pending USCIS petitions—such as cases for Special Immigrant Juveniles, U-visa applicants, and I-130 petitions for people married to U.S. citizens or legal permanent residents (USCIS can put such cases back in to immigration court removal proceedings if USCIS should deny the petition); (3) working with DHS to terminate cases involving people granted TPS protection, if they so request, to facilitate their adjustment before USCIS (through recognition, by the DHS Office of General Counsel, that a grant of TPS constitutes inspection and admission, an issue on which the federal courts are currently divided); (4) working with DHS to identify additional cases that should be administratively closed or terminated, including through restored prosecutorial discretion; and (5) requesting funding from Congress to increase immigration court interpreters and support staff, BIA legal and administrative staff, and, with reforms to eliminate politicized hiring, immigration judges and Board members fairly and objectively selected.

Support stronger complementary humanitarian protection mechanisms. A next administration should work with Congress to provide complementary humanitarian protections for people who face serious harms not covered by U.S. refugee law and strengthen Temporary Protected Status (TPS). A complementary protection status could, for instance, protect people facing cruel, inhuman, or degrading treatment or punishment. Protections from return would in some cases be warranted for people in need of international protection due to climate displacement. Temporary Protected Status should be strengthened to include rather than separate families, provide a route to more stable permanent legal residence, and assure designation determinations are based on objective assessments of conditions in countries rather than politicized considerations.
Rebuild and strengthen U.S. leadership on refugee resettlement

Just as it has decimated asylum to block refugees from the United States, so too has the Trump administration dismantled U.S. refugee resettlement. The administration issued discriminatory bans blocking refugees from African and Muslim-majority countries, drastically cut annual resettlement goals to all-time lows, and failed to meet its own meager goals. The United States has resettled only about 9,000 refugees this fiscal year, far below its exceedingly low annual goal of 18,000 refugees—a goal that amounts to an 80 percent decline from the U.S. historic average of 95,000 refugees. These moves have left refugees stranded in dangerous situations, hampered UNHCR’s ability to address crises globally, undermined U.S. national interests, and sent the wrong signal to front-line countries hosting the vast majority of the world’s refugees.\(^\text{113}\)

The United States has resettled only about 9,000 refugees this fiscal year, far below its exceedingly low annual goal of 18,000 refugees—a goal that amounts to an 80 percent decline from the U.S. historic average of 95,000 refugees.

Resettlement is often a critical component of effective strategies to address refugee challenges globally—along with increased humanitarian assistance, development investment, upholding the right of refugees to access protection across borders and to work, and addressing the root causes of human rights abuses and conflicts that force refugees to flee. Former U.S. national security officials and military leaders have repeatedly explained that resettling refugees advances U.S. national security interests and supports the stability of front-line refugee hosting states, including U.S. allies and partners.\(^\text{114}\) Simply put, a next administration should restore U.S. resettlement leadership, including by:

- **Taking immediate steps to rebuild resettlement leadership and capacity.** During its first week, the next administration should rescind the discriminatory Muslim, African, and refugee bans;\(^\text{115}\) issue an executive order to increase the fiscal year 2021 admissions goal to 100,000, while restoring regional allocations based on need and notifying Congress; and direct DOS/PRM and DHS to work with UNHCR to restore its referrals of vulnerable refugees, ramp up capacity to conduct pre-screening, processing, and refugee corps interviews, and take other steps necessary to build U.S. capacity to increase resettlement to 125,000 for fiscal year 2022. The administration should also, during its first month, request Congressional funding for this rebuilding.

- **Strengthening U.S. resettlement.** A next administration should build capacity to conduct more timely, and in urgent cases, expedited resettlement; reduce delays in security check and other processing;\(^\text{116}\) improve integration and support, including by scaling-up the match grant program, employment, case management and other support, maintaining 18-month assistance period, and

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\(^{116}\) The new White House Coordinator or Senior Advisor for Refugee and Humanitarian affairs must have high-level security clearance to oversee improvements to and coordination of security check processes.
conducting a study to identify steps to improve outcomes for refugees; expand community support, encourage co-sponsorship initiatives, and explore potential private sponsorship over and above the annual presidential determination.

- **Protecting U.S.-affiliated Iraqis and SIVs.** A next administration should promptly improve the pace of initiatives to bring to safety Iraqis and Afghans at risk due to their work with the U.S. military or other U.S. entities, including by: scaling up Iraqi resettlement and fixing processing delays, remedying backlogs and implementing reforms to SIV processing as recommended in a report issued by IRAP,117 encouraging Congress to authorize 4,000 Afghan visas annually until backlog and projected needs are met; and designating refugees who assisted the U.S. in Syria for P-2 priority resettlement.

- **Launching resettlement in the Americas.** The next administration should lead a regional strategy to bring some Central American and Venezuelan refugees to safety through safe and orderly routes, while working with UNHCR and other resettlement countries. To succeed, the U.S. must resettle significant numbers in a timely manner, forge a multi-year commitment, and recognize Central American refugee claims, including those persecuted by deadly gangs or domestic violence perpetrators, with an acceptance rate commensurate to the gravity of the protection needs. This strategy should not undermine development of asylum in the region and must safeguard asylum for those who seek protection at the U.S. border. Key steps by DOS and DHS should include:
  
  o Creating a P-1 priority initiative for Honduran, Guatemalan, and Salvadoran refugees who have fled their home countries, and for Venezuelan refugees. Resettlement processing centers should be located in Mexico and other countries to which refugees have fled. The initiative should resettle vulnerable cases, including unaccompanied children, women at risk, LGBTQI+ persons, and refugees facing acute danger or risk in the country where they are located. The next administration should improve the pace of resettlement and strengthen support for UNHCR efforts to protect waiting refugees.

  o Resettling refugees with U.S. family by creating P-2 priority resettlement for nationals of Honduras, Guatemala, and El Salvador, as well as Venezuela, with approved I-130 relative petitions.

  o Launching an enhanced initiative, building on a restored CAM program, to bring children in danger in Northern Triangle countries to U.S. safety through an orderly program that provides permanent residency protection, ensuring emergency transit or transfers for children in danger during processing.

  o Identifying extremely urgent protection cases inside Northern Triangle countries but, given the acute dangers, expanding support for emergency transfer of people in danger. Without strong emergency evacuation capacity, this “in-country” effort must remain limited.

- **Preparing for resettlement of refugees from Hong Kong.** The next administration must prepare to launch a substantial resettlement initiative for Hong Kong refugees, in addition to the annual Presidential Determination goal. In so doing, the next administration should rescind the June 2020 rule and other policies that deny refugees—including those who suffer brief arrests—U.S. refugee protection.118

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118 Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, supra note 25.
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