

The Biden Administration at One Year: Urgent Recommendations for Upholding U.S. Refugee Law, Restoring Asylum, and Saving Lives

One year after President Biden took office, his administration has taken steps to end some Trump administration policies that blocked refugees from asylum but has failed to take critical steps to end others. The Biden administration has continued to embrace, wield, and defend the Trump administration policy of evading refugee law by citing [specious](#) public health concerns, blocked and expelled thousands toward danger, and failed to [comply](#) with asylum law at the southern border.

Some welcome steps have included President Biden's direction in his February 2021 [executive order](#) to review Trump administration policies, a Department of Justice (DOJ) [memoranda](#) to end "zero tolerance" family separations, the [memoranda](#) terminating the Remain in Mexico policy, a partial wind-down of that policy that brought nearly [13,000](#) people into safety in the United States, and the vacating of several Trump administration Attorney General [rulings](#) that [denied](#) refugees asylum. However, many other commitments made by President Biden have not been fulfilled yet, including his [executive order's](#) direction to resume reception and processing of asylum seekers. Although President Biden [promised](#) to restore asylum and end the Trump administration "Remain in Mexico" policy, the Biden administration recently [restarted](#) that program in the wake of a lawsuit brought by Trump allies.

The Biden administration's choice to use the similarly horrific "Title 42" policy to evade refugee law has stained President Biden's record and endangers—every day that it and similar Trump policies remain in place—the lives of people seeking this country's protection. Through its use and embrace of this policy the Biden administration is flouting and subverting U.S. refugee law and international treaties, as a former top State Department [legal expert](#) and senior [diplomat](#) both confirmed. Since President Biden took office one year ago, Human Rights First has tracked over [8,700](#) reports of kidnappings, brutal assaults, and other attacks suffered by asylum seekers and migrants blocked or expelled due to this policy. The U.N. High Commissioner for Refugees (UNHCR) and other international authorities have [repeatedly](#) and [publicly called](#) on the Biden administration to end the policy and stop violating refugee and human rights law—rare public rebukes that reflect the deep damage inflicted globally by this continued subversion of refugee law. Despite highly dangerous [conditions](#) in Haiti, the Biden administration has used Title 42 to expel [14,000](#) adults and children directly to Haiti since September 2021, purposefully denying them asylum hearings or even the fear inquiry required in expedited removal.

The administration's choices have triggered condemnations from [international authorities](#) and [agencies, civil rights](#) and [human rights leaders](#), public health [experts](#), refugee protection [agencies](#), and [members](#) of [Congress](#). Far from helping President Biden politically, this embrace of Trump policy has perpetuated disorder, [inflated border](#) apprehension numbers, bolstered [racist tropes](#) that paint immigrants as disease threats, undermined the credibility of professed commitments to human rights, played into the hands of Trump allies seeking to entrench his policies, and painted the administration as willing to sacrifice American ideals to appease perpetrators of xenophobic and racist rhetoric.

The Biden administration must immediately change course, renew its commitment to [uphold human rights](#), reject Trump-era policies, and [shift](#) to a genuine humanitarian response, led by humanitarian agencies, that upholds refugee laws and effectively manages and resources refugee reception. The recommendations below [follow multiple sets](#) of [blueprints](#) and [recommendations previously issued](#) and outline critical steps including:

- End the use of Title 42 and take all steps legally permissible to terminate Remain in Mexico (RMX);
- Rescind the asylum [entry](#) and [transit](#) bans and other Trump policies that punish or block refugees from protection;

- Restore compliance with refugee law *immediately* – including restarting asylum at ports of entry;
- Employ effective and humane reception and case support rather than rights-violating detention; and
- Improve asylum processes so that they are fair and timely.

In addition, as detailed in [other recommendations](#), Biden administration efforts to address migration in the Americas must center human rights and encourage countries to [ensure access](#) to asylum.

Fully End Trump Policies That Turn People Away to Danger and Evade Refugee Law

The Biden administration must firmly end all policies that punish or turn away asylum seekers to danger in violation of U.S. asylum law and refugee treaties, including:

- [Misuse of Title 42 public health](#) authority to expel or block from ports of entry people seeking refuge;
- “Metering” policies that a court [ruled](#) likely unlawful and require additional [action](#) to prohibit; and
- The [Remain in Mexico](#) policy, including the resurrected version of it.

In addition, the Biden administration should end other Trump-era policies that deny and block refugees from asylum and separate their families, as detailed in Human Rights First’s 2021 [blueprint](#) and April 2021 [recommendations](#), including:

- Regulations creating the asylum [entry](#) and [transit](#) bans, which deny asylum to refugees and must be rescinded;
- Trump-administration [regulations depriving](#) asylum seekers of [work authorization](#) that must be fully rescinded to ensure refugee families can survive as they await asylum adjudication;
- Asylum [bans](#) adopted by the Trump administration in December 2020 based on specious public health grounds, which have been [debunked](#) by public health experts;
- “[Death to asylum rule](#)” that attempted to illegally rewrite virtually every aspect of asylum law;
- Interim final rule implementing “[asylum cooperative agreements](#)” to return refugees to danger; and
- [Other](#) rules, court orders, and policies that block refugees from protection. New regulatory language should restore protections for refugees who face persecution and make clear that a “particular social group” is one whose members 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.

The Biden administration must direct U.S. agencies—including the Department of Homeland Security (DHS) and Customs and Border Protection (CBP)—to uphold U.S. treaties and refugee laws passed by Congress.

Uphold Refugee Law and Restart Asylum, Including at Ports of Entry

The Biden administration must stop evading and immediately uphold U.S. refugee law. U.S. agency compliance with refugee law and required asylum processing cannot continue to be refused, including due to claims by administration officials that they “need time” to make changes or build capacity. Agencies—and administration officials—must comply with asylum law now and simultaneously work to upgrade processing.

At ports of entry and Border Patrol locations, DHS should:

- Swiftly process people seeking refugee protection employing (while COVID-19 is still prevalent) evidence-based public health [measures](#), as epidemiologists and other public health [experts](#) have [repeatedly recommended](#), including:

- Direct use of measures such as social distancing, masks, processing in outdoor areas and other locations repurposed to maximize distancing and ventilation, and
- Reduce processing times, allocate sufficient officers, employ testing, health screening, and transport safeguards;
- Use legal authority to [parole](#) asylum seekers to shelter with family or community members while their cases are adjudicated; and
- [Transit](#) people quickly from CBP custody to shelters or reception locations operated by non-profit non-governmental humanitarian agencies with refugee reception expertise, where immediate needs can be addressed.

U.S. agencies must ramp up support for COVID-19 testing, which should, as experts advise, be conducted by medical professionals independent of CBP or Immigration and Customs Enforcement (ICE). Vaccines should be [available](#) on a [non-discriminatory](#) basis after asylum seekers arrive, but lack of vaccination is not permissible grounds for denying access to asylum, as health [experts](#) have confirmed. The measures outlined above are steps that DHS can immediately implement, and should have implemented long ago, rather than illegally expelling asylum seekers.

Invest in True Humanitarian and Community Reception

The Biden administration and Congress should support a **public-private asylum reception and orientation initiative that includes community and faith-based organizations, legal non-profits, shelters, and refugee assistance agencies with offices across the country that already have deep expertise managing refugee situations** around the world and along the southern border. These agencies can help orient asylum seekers, address urgent needs, assist in onward travel to destination locations and, if properly supported, facilitate access to motel rooms or similar accommodations for any individuals determined to need public health isolation or quarantine. The agencies should be provided resources to conduct such services and to employ or continue to employ public health measures. Such 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;
- Reception visits must be non-mandatory, very brief, and limited to hours or one night stay in most cases as many asylum seekers have U.S. family they can quickly transit onwards to join;
- Adult asylum seekers, who are now sent to jails and detention facilities across the country where they suffer punitive conditions and lack of access to counsel, should be referred to humanitarian reception and orientation, not ICE detention; and
- Reception locations should provide regular access to members of Congress, attorneys, UNHCR, NGOs, and human rights monitors.

Asylum adjudications should be conducted after asylum seekers arrive in family homes or other community locations, and never during reception at the border, which would be a recipe for disaster. The due process deficient [expedited removal](#) should not be used against asylum seekers. If expedited removal is utilized, under no circumstances should credible fear or other screenings be conducted in CBP custody. The Trump administration [PACR/HARP](#) and RMX “screenings” illustrate the serious due process violations inherent in such a process. Instead, credible fear interviews [should also occur after arrival in community locations](#), alleviating pressure on the overburdened Asylum Office. This would allow asylum seekers time to recover from their journey and secure counsel for these important interviews. In-person legal representation must always be unimpeded and supported.

End Structural Mismanagement of Humanitarian Populations at the Border

When DHS was created, concerns were [raised](#) that the protection of people seeking U.S. refugee protection would be subverted given the separation of governmental functions across multiple agencies and the lack of structures to ensure protection. [Again](#) and [again](#), across administrations, CBP—neither a humanitarian nor refugee protection agency, and lacking the corresponding expertise—has proven unable and/or unwilling to plan for, humanely receive, process, identify, and refer, in accordance with U.S. refugee and asylum law, the cases of people seeking protection. Instead, responses to humanitarian needs at the border have been plagued by severe crowding, horrific conditions, [failures to identify and refer](#), delays in processing and release, and [egregious mistreatment](#).

The Biden administration should [ensure](#) that the identification and referral of asylum seekers is overseen by trained humanitarian officers, [rather than CBP](#), followed by swift transit to noncustodial humanitarian locations, as outlined above. These officers could for instance be based in the Office of Refugee Resettlement, or at least trained USCIS asylum officers. The administration should also work with Congress to create a Refugee and Humanitarian Protection Agency, or reconfigure, elevate, and strengthen an existing agency, to plan for and manage U.S. refugee protection, asylum, and humanitarian protection matters relating to the border—a recommendation outlined in Human Rights First's 2021 [blueprint](#).

Fair, Timely, and Less-Traumatizing Process

The Trump administration [decimated](#) the U.S. asylum system through policies that [rigged](#) adjudications against asylum seekers and [exacerbated backlogs](#) and [delays](#) that had grown over the years (due to logjams caused by [failures](#) to adequately staff adjudications while “enforcement” agency staffing skyrocketed and the [pursuit](#) of “expedited” [processing](#)). These backlogs and delays grew further as [interviews](#) and [hearings](#) were postponed due to the pandemic. Human Rights First has repeatedly detailed recommendations for fair, timely, and orderly asylum processing, including in [blueprints](#), a [report](#) on asylum office backlogs, a [paper](#) on improving fairness in immigration courts, and in [measures](#) for processing cases during the pandemic. While U.S. agencies issued a [proposed rule](#) on asylum processing, its changes [fall short](#) and instead reflect the flawed and failed paradigm of curtailing [due process safeguards](#). The Biden administration should instead immediately:

■ **Overhaul U.S. Citizenship and Immigration Services (USCIS) Asylum Adjudications to Provide More Timely, Efficient, and Fair Decisions**

- **Resolve more cases at the asylum office level**, so they are not unnecessarily referred to already backlogged immigration courts;
- **Provide initial decision-making authority to the asylum office** in cases originating along the border and at ports of entry—a change that [should not](#) be accompanied by cutting access to immigration court removal hearings or embedded in [fundamentally flawed](#) expedited removal, a process that should not be used for asylum seekers;
- **[Address](#) the backlog of asylum applications, ramp up asylum office hiring, and provide qualified and competent interpreters** (preferably certified for Article III courts) to minimize mistaken referrals, permitting an asylum seeker to also bring their own interpreter as well; and
- **Prioritize applications pending the longest in addition to new cases**, initiate a process for asylum seekers stuck in the backlog to request prompt interviews, and create an application process for “cancellation of removal” so such cases are not initiated via the asylum office.

By resolving more cases through 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. The government [should](#)

[not](#) convert asylum office interviews into “hearings,” as recently [proposed](#) in a change that would cut access to immigration court hearings. Non-adversarial interviews are [less traumatizing](#) for asylum seekers and more efficient for the system. Access to due process should be safeguarded. Following recent appropriations, the Biden administration should move to swiftly hire asylum officers to address the backlog and take steps to ensure retention of officers in Refugee, Asylum, and International Operations.

■ Upgrade Immigration Courts

The Biden administration should take immediate [steps](#) to improve the fairness and timeliness of hearings in the immigration courts. Trump administration policies rigged hearings against asylum seekers, [exacerbated](#) backlogs, and confirmed the need for an [independent immigration court](#). While it should work with Congress to make the courts independent, the Biden administration should also: implement [safeguards](#) against politicized hiring and interference, continue to [terminate policies](#) and rescind [rulings](#) that pressure judges to rush cases; champion and support legal representation and orientations; **ensure use of pre-hearing conferences and stipulations, which would help reduce hearing time and increase immigration court capacity**; prevent [counterproductive](#) rocket dockets and end “[dedicated dockets](#)” that [undermine](#) accurate decision-making and [due process and limit access to counsel](#); [reduce](#) the court docket and improve hearing efficiencies through administrative closures, initial adjudication by the USCIS asylum office (in the manner recommended above), employing [case review](#) to remove non-priority cases from the docket, and terminating cases that can be resolved via pending USCIS petition, grants of Temporary Protected Status or through referral to the asylum office. Congress should support appropriations for legal representation for immigrants and increased interpreters, court staff, and immigration judges so that the courts can address both incoming and backlogged cases.

Case Support, Not More Detention

Despite [promises](#) to end prolonged detention, reinvest in case management programs, and eliminate for-profit detention facilities, the Biden administration sharply [increased](#) detention of asylum seekers during the ongoing pandemic after designating them as priorities for detention and deportation in February 2021 [interim guidance](#). September 2021 [guidance](#) designates recent arrivals, likely including many asylum seekers, as an enforcement priority for apprehension and deportation and has fueled the continued widespread detention of asylum seekers. The administration has also taken steps to [increase](#) detention capacity, including to [convert and expand](#) the Berks County detention center, which has a [long documented history](#) of abuse and neglect of immigrants, to detain adult women after ending family detention there and pursue [contracts](#) to detain immigrants in private prisons emptied out by its own [Executive Order](#) instructing DOJ not to renew contracts with private criminal facilities.

The Biden administration should instead shift to effective and fiscally prudent [case and legal support strategies](#) and end the use of [inhumane, unnecessary, and wasteful](#) migration jails. Asylum seekers should [not be penalized](#) with criminal prosecutions and detention relating to their entry. Congressional funding for universal legal orientation presentations and representation should include families and single adults placed into case management. A model—based on reception rather than punishment of people seeking refugee protection—is more effective, fiscally prudent, and humane. As outlined above, responsibility for overseeing the cases of people seeking refugee protection should also be shifted to a humanitarian agency with a refugee protection expertise and mission, rather than one focused on detention and deportation.