

The US Must Rebuild the Asylum System, Not Destroy It Further

Congress and the Biden administration need to defend the rights of children and families seeking protection at our borders

Over the past few months, arrivals of children and families seeking protection at the US southern border have once again increased, resulting in misguided calls for aggressive, ineffective deterrence tactics that both Congress and the Biden administration must reject. Children and adults escaping violence face a system that has long been stacked against them and that was decimated under the last administration.

WRC calls on Congress to urgently consider legalization and protection for millions of members of US communities, while also staunchly defending the rights of children, families, and adults who are legally seeking protection at our borders. **No immigration law or policy should ever trade the lives of one group of vulnerable individuals for another.** WRC also urges the Biden administration to continue to undo the harmful policies of the previous four years, and to establish the United States as a global leader in protecting those seeking safety.

Recommendations for Congress

Congress should enact proposals that strengthen protections for those arriving at our border, such as the [Refugee Protection Act](#), the [Dignity for Detained Immigrants Act](#), and the [Protection of Kids in Detention Act](#).

Current legislative proposals include provisions that would dismantle the US legal framework to protect children and families seeking safety and must be vehemently opposed. Among other things, they would:

- **[Rush people seeking asylum through a screening process while in Customs and Border Protection \(CBP\) custody, only to deport the vast majority of those seeking protection, regardless of their eligibility, to harm.](#)** For example, the Trump administration's Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) policies rushed those seeking asylum through their credible fear interview without access to legal counsel while they remained in inappropriate CBP facilities for extended periods. Individuals subject to these policies were [three times more likely to receive a negative fear determination](#). Efforts to provide access to legal orientation in fast-tracked processes are inadequate and do not cure the [harms of rushed adjudications](#) if people seeking asylum are still screened in inhumane conditions days after their arrival. **Asylum proceedings should occur only after those seeking asylum are released from CBP custody.**
- **[Rush the cases of people seeking asylum who recently arrived, denying access to due process.](#)** "Rocket dockets" or "last in, first out" models that force those who arrive most recently to immediately rush through the immigration process prevent people seeking asylum from securing legal counsel and gathering necessary evidence for their asylum application. **The US should instead promote humane solutions**, such as hiring additional US Citizenship and Immigration Service (USCIS) asylum officers to carry out full affirmative asylum screenings to ease the caseload in immigration courts.
- **[Restrict access to asylum for unaccompanied children.](#)** Current law [ensures that many unaccompanied children have a fair chance to tell their story](#), including by providing adequate time to find legal assistance and permitting those children seeking asylum the ability to present their case first to an asylum officer, as opposed to adversarial proceedings before an immigration judge. These protection mechanisms must be upheld, not replaced or weakened. **Furthermore, Congress should reject any proposals that would [unnecessarily delay children's release from government custody](#) and result in unacceptably long stays to the detriment of children's well-being and their ability to seek protection.**
- **[Deport unaccompanied children without adequate screening for protection concerns into the hands of dangerous traffickers.](#)** US law [recognizes that children arriving at the border in need of safety should receive additional safeguards](#)

to ensure that the US does not return them to harm. Gutting those protections to “deter” children from seeking safety in the US would be misguided and ineffective, and would put children in danger of abuse, exploitation, and trafficking. **No proposal should redefine and/or limit the protections granted to children, or leave children to receive only at best a cursory screening at the border.**

- **Make it harder to successfully pass an initial asylum screening.** Many people seeking asylum are placed into an expedited removal process that first requires a credible fear interview to determine whether they may present their case to a judge. Congress intentionally enacted a low threshold for these screenings given the risks a person seeking asylum faces if deported. Raising the credible fear standard would increase the likelihood of individuals being deported back to a country where they face grave danger.
- **Send those seeking protection to incorrectly designated “safe” third countries where they face human rights abuses.** The Trump administration’s agreements with Guatemala, Honduras, and El Salvador returned people seeking asylum to countries that lacked resources to process asylum claims and where they are at risk of violence, according to the US State Department’s own travel advisories. **Safe third country agreements should not be made with the very countries from which people are fleeing.**
- **Force refugees to apply for US protection from their home countries, where they remain at risk.** There is an urgent need to increase in-country refugee processing and establish refugee centers so that individuals can apply for protection close to home. However, many people may need to flee their homes immediately to escape danger or persecution. Blocking individuals from seeking protection at the border and forcing them to apply in their home country puts them at grave risk. Access to protection for individuals arriving at the border must be upheld.
- **Expand or prolong detention for those seeking asylum.** The immigration detention system strips those in it of their dignity and rights. It is motivated by profit and politics, not public safety. Detention makes it almost impossible to find a lawyer and win an immigration case. Those going through the immigration process should instead be able to pursue their cases in the community, with ensured access to legal counsel, medical and mental health care, and other social services.

Recommendations for the Biden Administration

The Biden administration committed to a humane approach toward children, families, and adults seeking protection at our borders, and began to immediately walk back some of the prior administration’s harmful policies that dismantled the US asylum system. However, much remains to be done to restore humanity to our asylum system, including a need to:

- **Restore access to asylum, including at ports of entry, while adhering to common-sense public health measures for the safe processing of children, families, and adults at the border.** Driven by political rather than public health concerns, the previous administration pressured the Centers for Disease Control and Prevention (CDC) to invoke the purported authority under Title 42 to unlawfully and summarily expel families and individuals at the US border without a chance for them to seek protection. The Biden administration continues to expel people seeking asylum on flights to their home countries where they face persecution and to perilous and inhumane conditions in Mexican border cities. The high level of danger in Mexico has forced many parents to make the heartbreaking decision to send their children across the border alone to safety. **The Biden administration should immediately end these unlawful expulsions and continue to take steps to rescind the numerous rules, policies, and bans created by the previous administration to restrict access to the US asylum system.**
- **Allow people seeking asylum to wait in safety for their immigration hearings.** Through the Trump administration’s Migrant Protection Protocols (MPP), more than 70,000 individuals and family members seeking US protection were forced to stay in Mexico, where they experienced human rights violations at the hands of organized crime and corrupt officials. They also faced immense challenges in accessing basic shelter, food, medical care, and the legal help needed to navigate the US asylum process. The MPP program also separated families. The Biden administration already began rolling back MPP and has processed several thousand people seeking asylum to continue their cases in safety in the US. **It should now extend this processing to additional populations in MPP who were unjustly denied protection.** In addition, any future proposals to return those seeking protection to wait for their hearings in Mexico must be adamantly opposed. Finally, the Biden administration should prioritize the entry of the thousands of individuals who were unlawfully turned back or “metered” under previous administrations and forced to wait in danger in Mexico rather than being allowed to apply for protection in the US. The Biden administration must commit to transparency in processing capacity at ports of entry and refrain from any practices that artificially limit access to asylum at the border.

- **Invest in a welcoming reception model at the border that ensures orderly, humane, and efficient processing, moving away from the current punitive enforcement and detention framework.** The network of community-based shelters and respite centers along the border have set the foundation for providing humane reception to people seeking asylum, including legal orientation, medical support, and overnight accommodations. The Biden administration should provide funding to shelters to continue operations and increase capacity. It should also create appropriate large-scale post-release reception centers at the border run by local nongovernmental and nonprofit entities where families and adults can receive legal orientations and other services, reducing time in CBP custody.
- **Guarantee that all individuals requesting protection at the border receive a full asylum interview with USCIS officers in their destination communities.** People seeking asylum need ample time and supportive conditions to prepare for the intensive application process. They should have the opportunity to affirmatively apply for asylum after arriving at the border and access a full screening once they have settled in their destination communities and received necessary medical and psychological services. The affirmative process also ensures due process by affording those seeking asylum who are denied in the initial interview a full hearing with an immigration judge.
- **Replace inappropriate electronic surveillance with supportive community-based case services.** Individuals and families released in problematic Immigration and Custom Enforcement (ICE) alternatives to detention programs are often given little or no information about their next steps and struggle to find basic services and legal counsel. Ankle monitors traumatize and restrict their wearers from moving or working freely. Those who are released should instead be offered programs that connect them with trusted community-based organizations that ensure access to counsel and support the immigration process as well as long-term stability.

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