

Halfway Into Term, Biden Administration Has Yet to Fulfill Its Promises to Asylum Seekers

By the time President Biden approached the halfway mark on his first term, the Women's Refugee Commission (WRC) expected that access to asylum at the US-Mexico border would be fully restored; community-based case management, rather than detention, would be available to asylum seekers; and hundreds more families would be reunited in the US, with access to medical and mental health services. While we are pleased that the United States and countries from around the region signed the [Los Angeles Declaration on Migration and Protection](#) at the Summit of the Americas in June 2022, we are dismayed that new policies and practices run counter to the commitment to respect the rights of migrants, refugees, and people seeking asylum. In his first two years in office, President Biden has failed to live up to the [promises](#) he made as a candidate to undo the cruelty of the previous administration's immigration policies and reestablish the US as a global humanitarian leader.

We urge President Biden to staunchly defend migrant rights. If he does not, the harms and cruelty of the Trump administration will be normalized for years to come.

WRC's top priorities for the Biden administration to protect people seeking safety in 2023

Establish safe, accessible, and fair access to asylum

"There are laws to get here legally. That includes another legal way for someone to come to America by seeking asylum because they're fleeing persecution, like a lot of our ancestors did as well. And for many people, that's what's happening at our southwest border now." – [President Biden](#), January 2023

In August 2022, WRC [celebrated](#) the Biden administration finally ending the second iteration of the Remain in Mexico (RMX) policy. RMX was established under the Trump administration and forced thousands of people to wait in Mexico during their asylum process, leaving them stranded in [dangerous conditions](#) and at risk of [serious harm](#). We welcomed the Department of Homeland Security bringing individuals subjected to the policy into the United States, where they can safely continue their asylum cases from safety.

Still, in 2022, many people fleeing for their lives still could not approach the US and request asylum, despite this being their right. Title 42, a public health order used to return people to Mexico or to the country they fled without being able to seek protection, remains indefinitely in place until a [Supreme Court](#) ruling later in 2023. Despite attempting to [end Title 42](#), the Biden administration recently expanded its use of the policy by entering into an agreement with Mexico that the country will accept the [expulsions](#) from the US of up to 30,000 people from Cuba, Haiti, Nicaragua, and Venezuela per month. This is despite the fact that since President Biden took office, human rights experts have tracked more than [13,480 reports of murder, kidnapping, rape, and other assaults](#) on people stuck in or expelled to Mexico.

The Biden administration also created new parole programs, including [Uniting for Ukraine](#) and the [Processes for Cubans, Haitians, Nicaraguans, and Venezuelans](#). The latter program allows up to 30,000 people per month from these countries with valid passports, the means to fly to the US, and a US-based supporter to apply and come to the US for up to two years. With these programs in place, people from these countries will be expelled back to Mexico if they try to seek protection at the US-Mexico border. While supplementary migration pathways should be created and expanded, they should not replace access to asylum at the border. The most vulnerable individuals often cannot wait in their home country for processing, nor do they always own the required documents or have a sponsor in the US.

We urge the Biden administration to establish a humane and well-managed border by ensuring that people can exercise their right to seek asylum, regardless of their nationality or manner of entry.

Reunited families require services, justice requires restitution, and family separation must never be US policy again

The Biden administration's Family Reunification Task Force has [reunited 546 children with their parents](#) who were separated under the Trump administration. Of [5,569 children who were separated](#), at least [570 still await reunification](#) more than four years after the separations occurred. While presidential candidate Biden committed to both ending "cruel and senseless" family separation policies and reuniting those who remain separated, his administration is slow-walking one lawsuit and denying all others. In 2022, the Department of Justice slow-walked settlement talks for reparative justice for the class of separated families and is currently arguing in federal court that families are not entitled to redress and that their cases should be dropped. Such actions betray the president's commitments and our moral obligations as a country.

WRC strongly supports long-term stability in the United States for affected families, and we emphasize that family reunifications are processes, not events. Taking children from their parents by force [creates lasting traumas](#) that manifest via mental-health disorders, damaged or broken attachments to caregivers, maladaptive survival behaviors, reduced emotional regulation, increased risk-taking, and many other negative behaviors over the medium and long term. [Reunified families require ongoing access](#) to psychological and behavioral health, education support, medical, employment, childcare services and assistance, housing and nutrition support.

We urge the Biden Administration (1) to provide ongoing services to reunited families, (2) to offer a formal apology on behalf of the United States, (3) to offer financial restitution as a measure of the genuineness of remorse, and (4) to take concrete steps to ensure that family separations can never happen again.

Move away from immigration detention and surveillance and invest in community-based services and humanitarian reception

Despite [widespread evidence](#) of the [harmful](#) and [abusive](#) nature of immigration detention, the Biden administration continued to double down on its use during 2022. In spite of an encouraging request to significantly cut the custody operations budget of Immigration and Customs Enforcement (ICE) in the [FY2023 Presidential Budget Request](#), ICE [detained more than 30,000 people](#) at a time near the end of 2022. And although the COVID-19 pandemic had forced ICE to reduce the number of people it detained, 2022 saw the agency detaining increasing numbers of people while [restricting visitation](#) with lawyers and their families on the basis of COVID risk. Troublingly, Congress disregarded the president's budget request, and ICE will be on track to subject even more people to the well-documented deprivations and rights violations of detention in 2023 thanks to appropriations sufficient for a daily detained population of [34,000 people](#).

ICE also oversaw an unprecedented and exponential increase in the number of people it subjects to electronic or physical surveillance and monitoring, reaching [more than 300,000 people](#) by the end of 2022. Nearly [100,000](#) of those placed under surveillance were families with children seeking asylum. Although ICE categorizes its [Intensive Supervision Appearance Program](#) (ISAP) as an alternative to detention program, WRC has [demonstrated](#) that such surveillance programs are alternative **forms of**, rather than **alternatives to**, detention. These alternative **forms of** detention restrict people's freedom and [harm their well-being](#) while also [extending the reach](#) and cost of ICE's custody operations by subjecting to surveillance alternatives to detention the very people ICE decides not to detain. [True alternatives to detention](#) reduce the number of people detained in the first place by offering structure and support that allow people who would otherwise be detained to remain in the community while going through legal proceedings.

[Ample evidence](#) from around the [world](#) shows that the most effective and humane alternatives to detention are social and legal support delivered through community-based case management services delivered by nonprofit organizations. WRC applauds the Biden administration's significant step in this direction in 2022 through the initiation of the [Case Management Pilot Program](#), housed in DHS's Office for Civil Rights and Civil Liberties.

We urge the Biden administration to expand and scale up efforts such as the Case Management Pilot Program in 2023, moving away from surveillance-based monitoring "ATDs" (a.k.a. alternative forms of detention) to evidence-based case management programming operated by community-based nonprofit service providers. It is more critical than ever to reorient the US immigration system away from enforcement and punishment and toward the humanitarian reception of people seeking asylum.

Consolidate first steps into real gains for children in government custody

2022 was a mixed year for addressing the rights and needs of children in US government custody, including but not limited to those of unaccompanied children. [More than 125,000 unaccompanied children](#) entered US government custody in fiscal year 2022, just above the figures for fiscal year 2021, which exceeded the [prior all-time high of around 69,000](#). For children arriving with their parents at the US-Mexico border, fiscal year 2022 saw tremendous increases in families from [Brazil, Colombia, and Cuba](#), with historically consistent numbers of families arriving from El Salvador, Guatemala, Honduras, and Mexico.

For unaccompanied children, this mixed year is epitomized by the Office of Refugee Resettlement's (ORR) extremely welcome expansion of post-release services (PRS) to all unaccompanied children who reunify in the United States. PRS provide basic supports and community services referrals to sponsors, children, and families. Previously, only around 25 percent of unaccompanied children had access to such services. Yet as of January 5, 2023, the waitlist for such services had 23,000 cases – meaning that the policy expansion was a positive first step but that the implementation steps remain to be determined.

In 2022 we saw both positive and negative changes. ORR made the decision to ramp down its [use of unlicensed facilities](#), but not to close them; there was real movement within ORR toward overdue cultural and procedural changes in its staffing and organizational structure, but without apparent improvements to [urgently needed revamps](#) in its contracting; DHS made positive movement on [congressionally mandated child welfare professionals](#) but, in the end, made no hires; and ICE issued a new and improved [parental interest directive](#) that takes substantive steps to better protect the rights of detained parents and legal guardians of minor children (and, for the first time, incapacitated adults).

WRC urges ORR to consolidate its first steps into real gains for unaccompanied children, including a robust PRS network that gets children and families services quickly. WRC further urges DHS to fulfill Congress's directive to hire child welfare professionals and fully and consistently implement the ICE Detained Parents Directive.

President Biden: Align actions with words

In 2023, the Biden administration must align its actions with its words. In his January 5, 2023 [remarks](#), President Biden asserted the right to seek asylum in the US, and the Department of Homeland Security continues to state its [goal](#) to build safe, orderly, and humane ways to migrate. Rather than expanding immigration detention and implementing asylum bans, WRC urges the Biden administration to expand safe migration pathways, establish an accessible and dignified asylum system, and prioritize the well-being of all people seeking safety in the US.

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Women's Refugee Commission

The Women's Refugee Commission (WRC) improves the lives and protects the rights of women, children, and youth who have been displaced by conflict and crisis. We research their needs, identify solutions, and advocate for programs and policies to strengthen their resilience and drive change in humanitarian practice. Since our founding in 1989, we have been a leading expert on the needs of refugee women, children, and youth and the policies that can protect and empower them. womensrefugeecommission.org.

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