

## BACKGROUND

### Introduction

Since Russia invaded Ukraine on February 24, 2022, [more than 15 million people have been displaced](#). The world watched as millions of Ukrainians fled and crossed into Poland, Hungary, and other neighboring European countries for safety. Simultaneously, in the weeks following the invasion, thousands of others sought protection in the United States via the US-Mexico border.

In early March, after weeks of seeing significant numbers of Ukrainians arriving at the southern border, the US Department of Homeland Security (DHS) issued a [notice](#) authorizing border officials to, on a case-by-case basis, exempt Ukrainian nationals who presented at land ports of entry from Title 42, an order issued by the Trump administration that had been used to summarily expel people to Mexico or the countries they arrived from without the ability to request asylum since March 2020. While Ukrainians gained entry in light of this exemption, Mexicans, Guatemalans, Hondurans, Salvadorans, Haitians, and others continued to be denied their right to seek asylum at ports of entry under Title 42. To date, the order has been used to expel individuals [more than two and a half million times](#). This unique exception to Title 42 allowed 20,994 Ukrainians to cross via ports of entry safely into the United States from Mexico in April 2022. An estimated [95 percent](#) of these Ukrainians who were able to be processed at ports of entry via a Title 42 exemption received humanitarian parole, which allows them to stay and apply for a work permit in the United States for a limited amount of time.<sup>1</sup>

This brief period in which thousands of Ukrainians were quickly welcomed by local government officials, nonprofits, and volunteers; processed by immigration officials within days; and settled into communities across the United States is a rare story. Its success relied on an increase in humanitarian infrastructure and support; an increased number of Customs and Border Protection (CBP) Office of Field Operations (OFO) officers to process people at ports of entry; a coordinated response; and bolstered resources. At the same time, thousands of others—mainly Black, brown, and Indigenous people fleeing persecution—were turned away at the border, either forced to wait in dangerous conditions in northern Mexico cities or expelled directly back to the countries they fled due to Title 42. Today, pending a Supreme Court ruling, Title 42 remains in place.<sup>2</sup>

- 1 When Title 42 is not in place, people who approach a port of entry or are encountered between ports by Border Patrol are processed and may be detained at or near the US-Mexico border; receive Notices to Appear, which instruct an individual in removal proceedings to appear before an immigration judge at a later date; or receive temporary parole.
- 2 After nearly three years of Title 42, on November 15, 2022, US District Judge Emmet Sullivan issued a [decision](#) vacating and setting aside Title 42, declaring the policy to be in violation of the Administrative Procedure Act, and permanently prohibiting the government from applying it to families. After the judge granted a five-week stay in the case to give the government additional time to prepare for the policy's end, the Biden administration appealed the decision and moved the D.C. Circuit to hold the case until the Fifth Circuit's decision in *Louisiana v. CDC* regarding the government's appeal of the preliminary injunction enjoining the implementation of CDC's order, which enjoined the Title 42 policy and their forthcoming rulemaking efforts to replace the vacated rule. However, on December 27, 2022, the [Supreme Court](#) granted stay pending certiorari on the question of whether 19 states may intervene in the case. This stay precludes implementation of Judge Sullivan's order setting aside and vacating the Title 42 policy. Until the Supreme Court issues a ruling on whether these states can intervene in this case, Title 42 remains in place.

This backgrounder includes sections on the following:

1. Ukrainians' arrival at the US-Mexico border and their brief exemption from Title 42 in spring 2022
2. The response by volunteers, humanitarian service providers, and local government
3. The contradiction of Ukrainians being quickly welcomed while nearly all others were refused entry to the United States
4. The development of parole programs at the expense of access to asylum
5. Lessons learned from the initial processing of Ukrainians at the San Ysidro Port of Entry

This backgrounder reviews how Ukrainians were initially received in Tijuana, Mexico, and processed at the San Ysidro Port of Entry in San Diego, California in spring 2022. It highlights the government and nongovernmental personnel and resources that supported arriving Ukrainians and reviews the new parole programs implemented in lieu of regular asylum processing. This initial processing of Ukrainians exemplifies the urgency for US immigration authorities to fully restore access to asylum at ports of entry and how it is possible to carry out this processing in an orderly, coordinated manner. The Biden administration and DHS should prioritize using its existing capacity and developing additional infrastructure to process people seeking protection, as it did for Ukrainians when they first arrived at the US southern border.

This backgrounder also compares the humanitarian parole program afforded to Ukrainians to the new humanitarian parole programs offered to Cubans, Haitians, Nicaraguans, and Haitians, illustrating why parole should not and cannot be used to replace the ability to seek asylum in the United States.

## Topline recommendations

1. **The Biden administration should ensure that people fleeing violence and persecution—regardless of nationality or other demographics—can access functioning asylum and refugee resettlement systems.** Parole programs must not act as a substitute for access to asylum at the US-Mexico border, and supplementary parole programs should not have requirements, such as passports or US sponsorship, that make them inaccessible to most displaced individuals.
2. **DHS should prioritize building its internal capacity to process asylum seekers,** including by fully utilizing its current processing capacity and sustainably ramping up its ability to process people seeking protection at ports of entry. Assigning dedicated agents to processing individuals seeking asylum as well as deploying processing coordinators to ports of entry would help make the process more efficient.
3. **DHS and the Department of State should work with Mexican immigration authorities to ensure that people can safely approach the border and are not prevented from accessing ports of entry.**
4. **The US government must provide public, migrant-facing information in various languages about requesting asylum at ports of entry** to prevent misinformation and the extortion of migrants and individuals seeking protection.
5. **The US government should prioritize sustainable, proactive, and long-term investment in nonprofit organizations engaged in reception of asylum seekers at the US-Mexico border** and maintain ongoing government and civil society coordination to facilitate a fair asylum process and onward travel for people seeking protection.

## Ukrainians arrive at the US-Mexico border

As of December 6, 2022, [more than 7.8 million refugees](#) from Ukraine are living across Europe, with [at least 12 million total refugees](#) fleeing Ukraine since Russia's invasion began. Although far fewer Ukrainians arrived in the United States in comparison to Europe, it took only five months for the Biden administration to fulfill its promise to [admit 100,000 Ukrainians](#). In April 2022 alone, nearly 21,000 Ukrainians sought and were granted entry into the United States at the US-Mexico border.

Many of these Ukrainians—60 percent of whom were women and one-third of whom were children—made [long, unconventional journeys](#) to arrive at the border. From early February until late April, Ukrainians obtained a tourist visa to enter Cancun or Mexico City and then flew to [Tijuana](#), where they were placed on a volunteer-organized registration list and stayed at a shelter until it was their turn to be transported to the San Ysidro Port of Entry. A much smaller fraction approached the US at ports of entry in Texas.<sup>3</sup>

On March 11, 2022, a DHS memo authorized immigration authorities at the US-Mexico border to [exempt Ukrainians from Title 42](#), a [policy](#) that has been used for more than two years to deny individuals and families the opportunity to apply for asylum in the United States. While two-thirds of others were denied entry into the United States in April, [95 percent](#) of Ukrainians were granted humanitarian parole, allowing them to enter and temporarily remain in the country. At one point, an additional 24 US [Customs and Border protection officers](#) were specifically responsible for processing Ukrainians 24 hours a day at the San Ysidro Port of Entry PedWest crossing.

## Humanitarian services and local government respond

Ukrainians' ability to enter the United States via this exemption at ports of entry was a new development, resulting in a new surge of humanitarian assistance and coordination. At first, some Ukrainians camped out near the port of entry, while others stayed in nearby hotels, all hoping to seek asylum in the United States. [Volunteers](#) were informally tracking arrivals and placing them on a handwritten waitlist.

Then, for several weeks in April 2022, the city government of Tijuana, Mexican immigration authorities, nonprofits from both sides of the border, and volunteers primarily from the interior of the United States collaborated and coordinated the reception of thousands of Ukrainians. Most Ukrainians flying into Tijuana were assisted by volunteers who transported them to the Benito Juárez sports complex, owned by the municipal government of Tijuana, which was turned into a temporary shelter. The facility previously operated as a shelter for Central Americans in 2018 when a [large caravan](#) of people seeking asylum arrived in Tijuana. Mayor of Tijuana Montserrat Caballero sought to avoid people congregating near the port of entry, as had occurred with the [migrant encampment](#) that formed in February 2021 and remained in place until February 6, 2022.

The new shelter could house up to 300 migrants inside the basketball gym and dozens more outside on a basketball court. Volunteers placed Ukrainians on an [informal registration list](#) on a mobile app previously used to track church attendance and provided basic necessities while they waited to cross into the United States. Inside [Benito Juárez](#), Ukrainians had security, mats to sleep on, WiFi, meals, and donated clothes and toys. Many volunteers from Slavic churches in the United States who spoke Ukrainian and Russian took time off work to fly down to the border and help support arriving refugees.

---

<sup>3</sup> 1,337 Ukrainians sought entry at ports of entry in Laredo, Houston, and El Paso, Texas. Even smaller numbers of Ukrainians sought entry at northern ports of entry. See <https://trac.syr.edu/immigration/reports/683/#f1>.

Ukrainians typically remained in Tijuana for an estimated 24 to 72 hours. The volunteers operating the shelter had a direct line of communication with the CBP Office of Field Operations, which facilitated coordination for when groups of Ukrainians should approach the port of entry.

After being processed by CBP and granted temporary parole, Ukrainians were met by volunteers with vans. Some were [transported](#) to a southern California church. Others immediately booked travel and went onward to their destination within the US. A few individuals and families who lacked a point of contact or destination were provided respite and support at a San Diego shelter. Soon, the vast majority were on their way to communities across the United States.

Parole allows these Ukrainians to temporarily live and work in the United States legally. Most Ukrainians processed in April 2022 were granted parole for 364 days. Some Ukrainians will choose to apply for asylum, which, if granted, would allow them to become permanent residents and remain in the United States.

## Welcoming Ukrainians while indefinitely abandoning nearly all others

Since March 2020, the entry that 20,000 Ukrainians were granted at the US southern border has been inaccessible to many individuals seeking refuge—most of whom are Black, brown, and Indigenous. The Trump administration weaponized the COVID-19 pandemic and introduced Title 42, an archaic public health statute, to deny most families and individuals the ability to seek safety in the United States. Title 42 violates people's right to apply for asylum and has been used [more than two and a half million times](#) to rapidly expel migrants to Mexico or to the country they fled.<sup>4</sup> The Biden administration continued the illegal and inhumane use of Title 42 for more than a year before announcing [plans to end the policy](#). Although a US judge vacated the Title 42 policy in *Huisha-Huisha v. Mayorkas* in November 2022, a [Supreme Court decision](#) in December indefinitely continues Title 42 until a later ruling.

In April 2022, about [two-thirds of all non-Ukrainians](#) seeking asylum were unable to enter the United States because of Title 42. For Haitians and other vulnerable nationalities waiting in Mexico, DHS did not widely grant humanitarian parole. Advocates and immigration attorneys working at the US-Mexico border witnessed Ukrainian families cross to safety, while other mainly nonwhite families facing life-or-death situations were [denied entry](#). Honduran families who just arrived in Tijuana could sit nearby, but were not offered the [pastries, juice, and coffee](#) provided to Ukrainians. For months and even years, [countless Haitians](#) have been stuck in Tijuana, unable to approach the very port of entry more than 20,000 Ukrainians successfully entered and were processed through in just one month.

## The development of parole programs at the expense of access to asylum

By April 25, 2022, CBP no longer allowed Ukrainians entry at the US-Mexico border, declaring it would ["apply Title 42 equally"](#) to all nationalities.<sup>4</sup> The Biden administration created a new sponsorship program called Uniting for Ukraine (U4U), which is now the only pathway for Ukrainians to apply for and be granted parole. This parole program has no numerical limit, and Ukrainians can apply from anywhere. By mid-October, an [estimated 106,000 Ukrainians were granted parole](#) and arrived in the United States. Notably, individuals paroled into the United States through U4U can [immediately work](#) without the United States Citizenship and Immigration Services (USCIS) approving their employment authorization application. U4U

---

<sup>4</sup> CBP encounters represent events not individuals, and many individuals have been expelled multiple times under Title 42.

allows Ukrainians and their families to [remain in the US](#) for up to two years, with a sponsor in the US who can provide financial support throughout their stay.

The Biden administration has relied on humanitarian parole to address the protection needs of other populations, including the recently announced [Processes for Cubans, Haitians, Nicaraguans, and Venezuelans](#) (Processes for CHNV). Alarming, the Biden administration paired these new parole programs with an asylum ban, via Title 42, for Cubans, Haitians, Nicaraguans, and Venezuelans trying to seek protection at the US-Mexico border. Previously, primarily due to the lack of diplomatic relations with the three nations to expel individuals there, Cubans, Nicaraguans, and Venezuelans were not subject to Title 42 expulsions. Because the Haitian government accepts expulsions and deportations from the US, more than [26,000 Haitians](#) have been expelled via Title 42 since March 2020. Now, with the announcement of these parole programs, modeled on the [Process for Venezuelans](#) that began in October 2022, the Mexican government will accept the expulsions of up to 30,000 individuals from Haiti, Cuba, Nicaragua, and Venezuela per month back to Mexico under Title 42. The [Biden administration](#) also stated that it will increase its use of [expedited removal for other nationals](#) who cannot be subjected to Title 42, which experts have long documented is rife with due process issues and may lead to erroneous denials of protection that return people to persecution and torture.

The Processes for Cubans, Haitians, Nicaraguans, and Venezuelans are also more restricted than Uniting for Ukraine (see Table 1 on page 6). Nationals from Cuba, Haiti, and Nicaragua are ineligible for the programs if they travel into Panama or Mexico after January 9, 2023, and nationals from Venezuela are ineligible if they traveled into these two countries after October 19, 2022. They also cannot have dual nationality, permanent resident status, or refugee status in another country. Additionally, the Processes for CHNV requires use of CBP One, a mobile app where individuals must submit biographic information and a photo of themselves. Even several requirements that remain the same for the Processes for CHNV and U4U—including a valid passport, a US-based supporter, and the means to purchase a plane ticket to the US—will prevent many of the most vulnerable individuals from accessing the processes.

Parole is also a temporary solution, given that it is time limited and can be discontinued at any point, as demonstrated by the Biden administration [discontinuing its use of humanitarian parole for Afghans](#), who are no longer able to enter the United States under this form of relief. Humanitarian parole was also [largely ineffective for many Afghans](#) who were unable to access it given its difficult requirements, including a \$575 fee and the prioritization of applications from those already outside of Afghanistan.

The United States has relied on short-term, Band-Aid solutions after crises emerge and has limited access to asylum when the number of individuals from certain countries rises at the US southern border. Any program requiring US sponsorship or a passport is not comparable to asylum and must not act as a substitute for access to asylum. While supplementary legal migration pathways like humanitarian parole should be expanded, they should never replace access to asylum at the border. The most vulnerable individuals may be forced to flee their home suddenly and often cannot wait to apply for alternative protection pathways, which require them to wait outside of the United States and often have stringent documentation requirements. Instead, the Biden administration should ensure that people fleeing violence and persecution, regardless of nationality or other demographics, can access functioning asylum and refugee resettlement systems.

**Table 1: Comparison of asylum process for Ukrainians and for Venezuelans**

	<b>Uniting for Ukraine (U4U)</b>	<b>Processes for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV)</b>
<b>Impact of Program</b>	Effective pathway to the US for 100k+ Ukrainians (since mid-Oct. 2022)	Pathway for some CHNV nationals, but significant limitation to access protection in the US for the most vulnerable nationals
<b>Admissions Limit</b>	No limit	Allows for parole for up to 30k/month, alongside expulsions of up to 30k/month to Mexico
<b>Identification Requirements</b>	Passport required	Passport required (and many lack one); cannot be a dual national or permanent resident of, or hold refugee status in, another country
<b>Travel Exclusions</b>	None	After 10/19/22 for V nationals and 1/9/23 for CHN nationals, excludes: <ul style="list-style-type: none"> <li>» People who irregularly crossed into Panama or Mexico</li> <li>» People who were previously expelled (with exceptions)</li> </ul>
<b>Entry Eligibility</b>	Must have financial supporter in the US and arrange travel at their own expense	Must have financial supporter in the US and arrange travel at their own expense
<b>New Consequences at US-Mexico Border</b>	No longer exempt from Title 42 and can be expelled to Mexico	Title 42 expulsions to Mexico; potential expedited removal to Mexico after Title 42 ends

## Lessons learned from initial processing of Ukrainians at the San Ysidro Port of Entry

There are significant lessons learned from the approximately month-long process that allowed Ukrainians entry at the US-Mexico border following the Russian invasion of Ukraine. The processing of Ukrainians in April 2022 demonstrates that it is possible to process people seeking asylum at ports of entry in an orderly, coordinated manner. Such processing can help [prevent dangerous crossings](#) between ports and allow border officials to focus on drug, trade, and travel inspection instead.

**The surge of CBP agents and officers to the port of entry is critical to meet increased operational demands.** Additional CBP officers helped complete administrative, care, and processing duties, and expanded capacity. Because Ukrainians were able to continue onward toward their final destination, CBP saved food, shelter, and transportation resources by not detaining them. Additionally, Office of Refugee Resettlement (ORR) officers were sent to the port of entry to help conduct protection screenings for children on the spot, enabling OFO officers to process families more quickly.

Nonprofit organizations, faith groups, and local governments worked together to assist Ukrainians in Mexico and in the United States. These organizations and officials help meet the short-term shelter,



food, medical, and other basic needs of migrants. Continued and increased investments in humanitarian reception will help ensure that people can seek protection in a dignified and orderly manner. **Sustainable, proactive, and long-term investment in nonprofit organizations engaged in reception at the US-Mexico border and ongoing government and civil society coordination is critical to meeting urgent humanitarian and protection needs and facilitating a fair asylum process and onward travel for people seeking protection.** However, it is important to note that people seeking safety should not have to remain in Mexican shelters, where they could be subjected to danger, and while it is necessary to invest in nonprofits to provide needed respite, they should not act as gatekeepers to asylum access.

These practices are reflected in Secretary Mayorkas's April 2022 ["DHS Plan for Southwest Border Security and Preparedness"](#) memo, which was developed in anticipation of Title 42 ending and updated in [December 2022](#). Increasing personnel, transportation, medical support, and other resources can help ensure that civilian processing and regular trade and travel operations can occur simultaneously. Further, Secretary Mayorkas describes "bolstering the capacity of" nongovernmental organizations through close communication, coordination, and financial assistance. The Southwest Border Coordination Center, a whole-of-government response organized to meet an increase in border encounters, and CBP regularly meet with relevant partners to determine the needs of local communities and resolve challenges.

**DHS should fully utilize its current processing capacity and implement measures to permanently prioritize and sustainably ramp up its ability to process people seeking protection.** Assigning dedicated agents to processing individuals seeking asylum as well as deploying processing coordinators to ports of entry would help make the process more efficient. DHS and the Department of State should work with Mexican immigration authorities to ensure that people can safely approach the border and are not prevented from accessing ports of entry. In addition, the US government must provide public, migrant-facing information in various languages about requesting asylum at ports of entry to prevent misinformation and the extortion of migrants and individuals seeking protection. Finally, according to [CBP's own guidance](#), CBP cannot require that individuals submit advanced information to be processed at ports of entry.

The initial speedy processing of Ukrainians demonstrated that when there is political will and necessary investment in resources and coordination, the US asylum system can function and succeed at ports of entry. Moving forward, these structures and processes must not be limited to a single nationality, while others—who are predominantly Black, brown, and Indigenous—wait for months and even years to exercise their right to seek asylum.

**A well-managed, humane border requires open and accessible ports of entry for people seeking asylum.** Regardless of other available migration pathways, access to asylum should not be traded, substituted, or eliminated for any subset of people. It is a right for people to reach US soil, request asylum, and go through its legal process—no matter their nationality or manner of entry.

## Acknowledgments

This backgrounder was written by Kimiko Hirota of the Women's Refugee Commission (WRC). It was reviewed by Savitri Arvey and Gayatri Patel of WRC. It was edited by Joanna Kuebler and Diana Quick of WRC and designed by Diana Quick. The graphics were created by Ezgi Eyigor of WRC. We thank UNHCR and Jewish Family Service of San Diego for their insights. WRC is grateful to the generous individual and institutional funders of MRJ's program.

For additional information, please contact Kimiko Hirota, policy advisor, WRC, at [KimikoH@wrcommission.org](mailto:KimikoH@wrcommission.org).

## 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](https://www.womensrefugeecommission.org).

© 2023 Women's Refugee Commission, Inc.

January 2023