



Statement of the Women's Refugee Commission

Submitted to the U.S. Senate Homeland Security and Governmental Affairs
Subcommittee on Government Operations and Border Management
Hearing, "After Apprehension: Tracing DHS Responsibilities After Title 42"

September 6, 2023

The Women's Refugee Commission ("WRC") submits this statement to the Senate Homeland Security Subcommittee on Government Operations and Border Management for the September 6, 2023 hearing, "After Apprehension: Tracing DHS Responsibilities After Title 42."

WRC is a non-profit organization that advocates for the rights of women, children, and families fleeing violence and persecution. The Migrant Rights and Justice ("MRJ") Program focuses on the right to seek asylum in the United States and strives to ensure that migrants and refugees, including women and children, are provided with humane reception in transit to and in the United States, given meaningful access to legal protection, and are protected from exposure to gender discrimination or gender-based violence.

Since 1996, MRJ staff have made numerous visits to the southwest border region, including along Mexico's northern border, as well as to immigration detention centers for adult women and families and to shelters housing unaccompanied children throughout the country. WRC has interviewed hundreds of detained women, families, and children seeking asylum in the United States, as well as other critical and relevant stakeholders, including service providers and government officials.¹ Based on the information that we collect on these visits and our analysis

¹ Reports of our findings include: Women's Refugee Commission, *Decreasing ORR's Dependence on Congregate Care: Four Recommendations for Progress* (2023); Women's Refugee Commission, *New Asylum Ban Leaves Migrants Stranded: Recommendations to Increase Access to Protection at the US-Mexico Border* (2023); Women's Refugee Commission, *Creating Accessible Regional Pathways for Migrant Women and Families: Lessons from the Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans* (2023); Women's Refugee Commission, National Immigrant Justice Center, and Young Center for Immigrant Children's Rights, *ICE's New Young Adult Case Management Program: Why It Falls Short of Case Management Best Practices and Puts Youth at Risk* (2023); Women's Refugee Commission, Border Servant Corps, International Rescue Committee, Jewish Family Service of San Diego, Mission: Border Hope, Refugees International, and Save the Children, *Sustainable, Orderly, and Safe Reception at the US-Mexico Border: Recommendations for the Shelter and Services Program* (2023); Women's Refugee Commission, *Inequity at the US-Mexico Border: Ukrainians Seeking Safety and Implications for US Asylum Processing* (2023); Women's Refugee Commission and Instituto para las Mujeres en la Migración A.C., *Stuck in Uncertainty and Exposed to Violence: The Impact of U.S. and Mexican Migration Policies on Women Seeking Protection in 2021* (2022); Women's Refugee Commission, *Prison For Survivors: The Detention of Women Seeking Asylum in the United States*

of the laws and policies relating to these issues, we advocate for improvements and make recommendations for changes to U.S. policy and practice. Below we highlight three critical issues facing people seeking asylum and provide recommendations.

The Biden administration’s new rule blocks access to asylum and forces vulnerable people to wait in danger in Mexico

This hearing comes several months after the Biden administration began implementing its new rule, “Circumvention of Lawful Pathways,” at the US-Mexico border and in courtrooms across the country.² Since the lifting of Title 42³ and with this rule now in effect, WRC has found that people are illegally blocked from being able to seek asylum—other than for narrow exceptions—despite their guaranteed right under US law to do so regardless of place of entry. A federal court has already found the rule unlawful, but it remains in effect while the Biden administration appeals.⁴ A class action lawsuit is challenging Customs and Border Protection’s (“CBP”) practice of turning away individuals seeking protection at US ports of entry at the southern border without CBP One appointments.⁵ Due to these routine turnbacks, CBP One appointments have essentially become the exclusive way to seek asylum at the US-Mexico border, despite the rule’s supposed exceptions for unaccompanied children and others.

Since the lifting of Title 42 on May 11, 2023, migrants continue to face challenges to entering the US and seeking safety. Many vulnerable people wait weeks or months in Mexico to secure a CBP One appointment, at risk of violent attacks and living in squalid and dangerous conditions.⁶ During a recent visit to northern Mexico, WRC spoke with dozens of people seeking asylum and

(2017); Women’s Refugee Commission, Lutheran Immigration and Refugee Service, and Kids in Need of Defense, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* (2017); Women’s Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values, Again: A Report on the Renewed Practice of Family Immigration Detention* (2014); Women’s Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona* (2010); Women’s Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* (2010); Women’s Refugee Commission, *Innocents in Jail: INS Moves Refugee Women From Krome to Turner Guilford Knight Correctional Center* (2001); Women’s Refugee Commission, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center* (2000); and Women’s Refugee Commission, *Liberty Denied: Women Seeking Asylum Imprisoned in the U.S.* (1997).

² Circumvention of Legal Pathways, 88 Fed. Reg. 31,314 (May 11, 2023) (codified at 8 C.F.R. pt. 208, 10003, and 1208).

³ For over three years, the Title 42 Order was used to deprive individuals of the chance to seek asylum in the United States and summarily expelled them back to Mexico or to the country they had fled from—contrary to US and international refugee law. The Order, which had been dubiously justified as a COVID-19 mitigation measure, came to an end with the expiration of the national COVID-19 public health emergency on May 11, 2023.

⁴ *East Bay Sanctuary Covenant v. Biden* - Summary Judgment Order (July 25, 2023), <https://www.aclu.org/documents/east-bay-sanctuary-covenant-v-biden-summary-judgment-order>.

⁵ *Al Otro Lado and Haitian Bridge Alliance v. Mayorkas* Class Action Complaint (July 27, 2023), <https://cgrs.uclawsf.edu/legal-document/complaint-2>.

⁶ Human Rights First, *Refugee Protection Travesty: Biden Asylum Ban Endangers and Punishes At-Risk Asylum Seekers* (July 2023), <https://humanrightsfirst.org/library/refugee-protection-travesty/>; Women’s Refugee Commission, *New Asylum Ban Leaves Migrants Stranded: Recommendations to Increase Access to Protection at the US-Mexico Border* (August 2023), <https://www.womensrefugeecommission.org/research-resources/new-asylum-ban-leaves-migrants-stranded-recommendations-to-increase-access-to-protection-at-the-us-mexico-border/>.

humanitarian service providers who confirmed that kidnappings, extortion, and sexual violence against women is common.

Fear screenings in CBP facilities fail to comply with due process obligations

Since April, the Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”) have required some individuals to undergo credible fear interviews while in custody in CBP facilities at the border. The rushed process has caused credible fear positive rates to drop dramatically.⁷ Few people have time to consult with counsel, and USCIS has failed to notify attorneys of their clients’ scheduled fear interviews.⁸ Legal consultation and representation providers found that individuals asked for or accepted deportation due to medical neglect in custody.⁹ There have also been several individuals enrolled in the program whose primary language was not Spanish and should not have been enrolled in the first place. This program harms people’s ability to meaningfully access legal counsel and pursue an asylum claim. Indeed, more than 65 Members of Congress have called for DHS and DOJ to halt fear screenings in CBP facilities.¹⁰

Humanitarian service providers need federal support

During times of low and high arrivals, nonprofit organizations and local governments have received newly arrived migrants and provided shelter and respite. Rather than rely on costly and inhumane Immigration and Customs Enforcement (“ICE”) immigration detention, which Women’s Refugee Commission has documented for years is harmful, traumatizing, and impedes due process, communities every day coordinate release of individuals and families from CBP custody to their care.¹¹ At shelters and respite sites, individuals and families provide food, clothing, medical aid, legal information, and transportation support. Without this critical assistance, CBP facilities would experience overcrowding and migrants would be stranded

⁷ Hamed Aleaziz, “U.S. is rejecting asylum seekers at much higher rates under new Biden policy,” *Los Angeles Times* (June 20, 2023), <https://www.latimes.com/politics/story/2023-06-20/biden-asylum-seekers-turned-down-rates>.

⁸ “Obstructed Legal Access,” *National Immigrant Justice Center* (June 20, 2023), <https://immigrantjustice.org/staff/blog/obstructed-legal-access-june-2023-update>.

⁹ “Government Obstruction Forces NIJC to Discontinue Legal Consultations for People Facing Asylum Screenings in CBP Detention,” *National Immigrant Justice Center* (August 1, 2023), <https://immigrantjustice.org/press-releases/government-obstruction-forces-nijc-discontinue-legal-consultations-people-facing>.

¹⁰ “Padilla, Menendez, Barragán, Espaillat Call on Biden Administration to Immediately Halt Credible Fear Interviews at CBP Facilities Given Due Process Concerns” (August 1, 2023), <https://www.padilla.senate.gov/newsroom/press-releases/padilla-menendez-barragan-espaillat-call-on-biden-administration-to-immediately-halt-credible-fear-interviews-at-cbp-facilities-given-due-process-concerns/>;

¹¹ Department of Homeland Security, “U.S. Immigration and Customs Enforcement Budget Overview Fiscal Year 2022 Congressional Justification,”

https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf; Tom Dreisbach, “Government’s own experts found ‘barbaric’ and ‘negligent’ conditions in ICE detention,” *NPR* (August 16, 2023), <https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions>; Women’s Refugee Commission, *Prisons for Survivors: The Detention of Women Seeking Asylum in the U.S.* (October 1, 2017), <https://www.womensrefugeecommission.org/research-resources/prison-for-survivors-women-in-us-detention-oct2017/>.

without their basic humanitarian needs met.¹² In fiscal year 2023, Congress provided CBP \$800 million for the Shelter and Services Program (“SSP”) to help ensure the efficient, humane, and sustainable reception of newly arrived migrants. Although the initial disbursement lacked transparency and failed to support some service providers, WRC is hopeful that SSP, if funded by Congress again, will improve and better meet the needs of shelter networks to provide critical services.¹³

Beyond meeting initial basic humanitarian needs, service providers and local governments are trying to provide migrants longer-term assistance, including transitional housing away from shelter, immigration case support, and community integration. Congress is behind in supporting this assistance and ensuring that community-based case management and longer-term support can be provided while people seeking asylum wait for much-needed work authorization.¹⁴

Recommendations

- Members of Congress should conduct regular oversight over the agencies responsible for implementing the “Circumvention of Lawful Pathways” rule and encourage the Biden administration to rescind it, and investigate border management policies and practices that block people seeking protection in the United States or force them to wait in Mexico.
- Members of Congress should call on DHS and DOJ to halt credible fear interviews at CBP facilities.
- Members of Congress should robustly fund the Shelter and Services Program to support local nonprofit, governmental social service organizations, and states/localities in providing humanitarian support to migrants arriving at the border, and conduct oversight to ensure that the funding is being transparently and appropriately administered.
- Instead of ICE immigration detention or electronic surveillance programs, Members of Congress should robustly fund longer-term services outside of ICE for people seeking asylum to help meet their humanitarian needs, assist them in successfully navigating the immigration process, and support them in accessing services and finding stability in their new communities.

¹² “Sustainable, Orderly, and Safe Reception at the US-Mexico Border: Recommendations for the Shelter and Services Program,” *Women’s Refugee Commission, Border Servant Corps, International Rescue Committee, Jewish Family Service of San Diego, Mission: Border Hope, Refugees International, and Save the Children* (April 19, 2023), <https://www.womensrefugeecommission.org/research-resources/sustainable-orderly-and-safe-reception-at-the-us-mexico-border-recommendations-for-the-shelter-and-services-program/>.

¹³ “WRC Joins 70+ Organizations Expressing Concern Over Disregard for Key Shelter Needs in Initial Distribution of Shelter and Services Program Funding,” (July 12, 2023), <https://www.womensrefugeecommission.org/research-resources/wrc-joins-70-organizations-expressing-concern-over-disregard-for-key-shelter-needs-in-initial-distribution-of-shelter-and-services-program-funding/>.

¹⁴ “Congresswoman Pingree Renews Push to Speed Up Asylum Seeker Work Authorization Process,” (March 1, 2023), <https://pingree.house.gov/news/documentsingle.aspx?DocumentID=4501>.