

## Introduction

As people around the world flee for their lives in unprecedented numbers, countries are taking increasingly restrictive and punitive approaches to border management and asylum seekers. At the US-Mexico border and others, lives are lost every day. Migration management is a critical function of the US government, but enforcement is only one element of effective management. Effective management includes supporting US communities that are welcoming newcomers and striving to minimize needless suffering and harm.

This brief proposes several solutions related to processing of people requesting asylum at the US-Mexico border. The Women's Refugee Commission (WRC) will publish three additional solutions briefs covering community reception, regional processing and leadership, and caring for children. These recommendations range from small improvements with widespread impact to systemic policy changes requiring greater resources and coordination.

Several existing laws and administrative policies and practices prevent meaningful access to asylum at the US-Mexico border for people fleeing persecution. WRC has extensively documented their impact and the harm they cause particularly to women, children, and families. We continue to advocate for long **overdue** changes to these laws, policies, and practices to keep women, children, and families safe.

At the same time, these recommendations will help the Biden administration manage the border in a fair, orderly manner while supporting US communities and upholding our obligations to protect people fleeing persecution. They are steps the administration can take right now to immediately improve migration management while providing needed support to people seeking asylum and the communities in the US that are welcoming them. In all cases but one, they require no congressional action or additional funding.

## Our Top Recommendations for Processing at the Border

- 1. The Customs and Border Protection (CBP) Office of Field Operations (OFO) must follow existing guidance to process people requesting asylum at ports of entry who do not have CBP One appointments.**
  - » The Emergency Response Division of OFO's Operations Directorate should conduct individualized assessments of each Field Office's capacity and create plans to increase asylum processing capacity.
  - » During any prolonged waiting periods, DHS should ensure that adequate water, food, and sanitation are provided to keep people comfortable and prevent medical emergencies.
  - » The Biden administration should rescind the Circumvention of Lawful Pathways (CLP) rule and withdraw the Securing the Border interim final rule.
- 2. Make CBP One available in more languages.**
- 3. DHS should increase CBP One appointments to 2,650 per day over the next six months.**
  - » DHS should make CBP One appointments available at smaller ports of entry.
  - » DHS should routinely publish the average wait for a CBP One appointment in many languages on its website and through its social media accounts.
- 4. Hire child welfare professionals to care for children while they are in CBP custody.**

5. **Dedicate OFO officers to asylum and other humanitarian protections processing.**
6. **Ensure CBP upholds its National Standards on Transport, Escort, Detention, and Search (TEDS) for CBP custody, including after encountering migrants in the field and prior to their transport to a facility.**
7. **Expand co-location of US Citizenship and Immigration Services (USCIS) at migrant shelters and respite sites to expedite work authorizations.**
8. **Streamline USCIS asylum processing and end the Expedited Credible Fear Program in Border Patrol custody.**
  - » DHS should ensure that people seeking asylum have enough time to secure counsel and prepare their case.
9. **Release immigrants from ICE detention who are assessed by the US government at the “no threat level” and invest in the Case Management Pilot Program.**
  - » ICE should develop a plan to begin to scale down its detention operations.
  - » The administration should end the **Family Expedited Removal Management** (FERM) program.
10. **Enforce the federal government’s jurisdiction over immigration law and protect humanitarian workers.**
11. **Rescind rules of the previous administration that limited access to asylum and finalize rules that improve the asylum system.**

## The Details Behind Our Recommendations

1. **The Customs and Border Protection (CBP) Office of Field Operations (OFO) must follow existing guidance to process people requesting asylum at ports of entry who do not have CBP One appointments.**

US law guarantees that anyone seeking asylum can do so, regardless of their manner of entry. In fact, CBP Office of Field Operations (OFO) guidance is clear that a noncitizen cannot be turned back or prevented from entering at a port of entry due to lack of documentation. This guidance includes: 1) a November 2021 **CBP Memorandum** noting that officials at ports of entry cannot instruct individuals to return at a later time, travel to a different port of entry, or return to Mexico without being processed; 2) the 2022 declaratory judgment in **Al Otro Lado v. Mayorkas**; and 3) a May 11, 2023 **memorandum and muster** titled “Post-Title 42 Port Operations” that said that noncitizens can no longer be prevented entry or expelled under Title 42. Despite this guidance, people seeking asylum at ports of entry have continued to experience **turnbacks** or been forced to wait for weeks or months on informal **waitlists** at our southern border.

Since May 11, 2023, the **Circumvention of Lawful Pathways (CLP) rule** has dramatically narrowed access to asylum at the US-Mexico border. Then, on June 5, 2024, a new proclamation and interim final rule called Securing the Border (STB) went into effect suspending access to asylum for anyone who enters the United States without a CBP One appointment. The only exceptions to these restrictions are: 1) unaccompanied children; 2) those who are authorized to travel; 3) those who manage to get a CBP One appointment to enter at a port of entry; or 4) survivors of a severe form of trafficking or who warrant entry for a significant law enforcement, officer and public safety, urgent humanitarian, or public health reason. The STB proclamation

and rule suspend access to asylum based on an arbitrary numerical number of encounters, halts CBP officers' screening for fear of return, and increases the screening standard for people subject to either the STB or CLP rules. Together, these changes make it nearly impossible for people to seek and be granted asylum.

Sometimes, people approach a port of entry when their lives are at immediate risk—when giving birth, dying from lack of medical treatment, or in the moment of escaping kidnappers. Along some sections of the border, emergency cases are prioritized and an informal procedure, with strong communication between local DHS and humanitarian aid workers, routinely facilitates migrants' ability to enter the United States. These partnerships are encouraged to prevent loss of life and should be facilitated across the southwest border so that, in the absence of a reliable way to enter at all ports of entry, lives are saved and migrants at risk do not disproportionately enter in certain sectors and strain resources there.

In other sections of the border, local informal **metering waitlists** have emerged to manage the entry of individuals without CBP One appointments, based on their date of arrival. Informal control of lists in northern Mexico raises serious corruption concerns in addition to security risks to migrants and shelters. These informal processes can make wait times longer for Black migrants or others who face discrimination.

The CLP rule makes clear that individuals have the right to seek asylum at a port of entry. Yet in practice, an estimated **fewer than 100 individuals** a day are able to do so across the southwest border, representing a fraction of those who seek asylum. One reason for this low number of entries is that Mexican authorities control access to the international bridges at different ports of entry. **Mexican authorities and CBP** routinely turn people without CBP One appointments away. Every day, across different parts of the border, people wait as close as they can to the port in the hope that they will be allowed to enter that day. It remains to be seen if anyone besides those with CBP One appointments will be able to seek asylum at ports of entry with the STB proclamation and rule in effect.

**In addition to upholding existing guidance, the Emergency Response Division of OFO's Operations Directorate should conduct individualized assessments of each Field Office's capacity, including those that do not currently accept any CBP One appointments, and create plans to increase asylum processing capacity.** It is well understood that ports of entry have different infrastructure and staffing, so each should be evaluated accordingly. **During any prolonged waiting periods, DHS should ensure that adequate water, food, and sanitation is provided to keep people comfortable and prevent medical emergencies.**

**WRC urges the Biden administration to rescind the CLP rule and withdraw the STB interim final rule. While it remains in place, the administration should at minimum exclude individuals who request asylum at ports of entry without a CBP One appointment from the rule's restrictions.** Most people doing so are unaware of the CLP rule's consequences—sometimes many months or years later—for their application, and thus this restriction fails to act as a deterrent. Entering at ports of entry is a much safer way to seek safety and should be maximized, not penalized.

## **2. Make CBP One available in more languages.**

**CBP One** is now the primary manner in which people may seek asylum at a port of entry. DHS has published numerous useful CBP One resources, including application updates, reference guides, traveler user guides, video walkthroughs, and frequently asked questions. DHS' Quick Reference Guides are available in English, Spanish, Haitian Creole, Russian, Portuguese, French, Arabic, Dari, Pashto, Punjabi, Simplified Chinese, and Traditional Chinese. While these guides are helpful, it is challenging for migrants to use the CBP One to schedule an appointment to enter at a port of entry without assistance unless they can

read English, Spanish, or Haitian Creole—the only three languages in which the app itself is available.

Migrants would be more aware of CBP One and be better able to use it without assistance if the app were offered in their language. **DHS should prioritize making CBP One available in the primary languages of migrants who have been apprehended between ports in the last six months.** This would likely reduce the number of people who cross irregularly, as it did for **Haitians** once CBP One was made available in Haitian Creole.

### **3. Increase daily CBP One appointments to 2,650 over the next six months.**

Since June 2023, daily available **CBP One appointments** have remained at 1,450. CBP One has led to a reduction in irregular crossings of certain nationalities, such as Haitians. Still, the limited number of available appointments does not come close to meeting the demand—particularly now that access to asylum is barred entirely for anyone without a CBP One appointment. **Increasing daily appointments to at least 2,650 over the next six months (a modest increase of 200 per month over six months) can help incentivize people to enter the United States in a safer and more orderly manner and reduce the amount of time migrants must wait in Mexico.** The administration should continue to plan for increased appointment availability beyond this modest increase.

**In addition to increasing appointments at the eight ports of entry already processing CBP One appointments, DHS should make CBP One appointments available at smaller ports of entry. When encounters are at lower or manageable levels in certain sectors, Border Patrol facilities and Border Patrol Processing Coordinators should help OFO process CBP One appointments.**

**To further incentivize use of CBP One and to prevent the spread of misinformation, DHS should routinely publish the average wait for a CBP One appointment in many languages on its website and through its social media accounts. DHS should also regularly publicize CBP One’s use as a scheduling tool and dispel rumors about its purpose and border operations as quickly as possible.**

### **4. Hire child welfare professionals to care for children while they are in CBP custody.**

Since Congress appropriated funding for state-licensed child welfare professionals in fiscal years 2022 through 2024, the DHS Office of Health Security (OHS) has made meaningful progress toward implementing the **Child Well-Being Program** (CWP). In February 2023, OHS issued a Request for Information for the program and publicly announced that it intends to request proposals from contractors in spring 2024. The administration should support the CWP and request that Congress provide further funding to ensure that every southwest border CBP sector is staffed by child welfare professionals who can help ensure the safety and well-being of migrant children in its custody.

**In addition to the tasks and required qualifications outlined in the Request for Information, child welfare professionals should be responsible for other functions they are best qualified to perform, including consulting on potential family separations due to concerns over child welfare; prevention of sexual abuse; and conducting complex Trafficking Victims Protection Reauthorization Act (TVPRA) protection screenings of unaccompanied children in custody.** Possessing the appropriate licensure and expertise, child welfare professionals will be able to help CBP act in the best interests of the child and improve the well-being of children in its custody.

Ultimately, these professionals will enable CBP officers to focus on its inspection, law enforcement, and other duties. Border Patrol agents routinely shared with WRC during visits to holding facilities that they

did not receive training to act as caretakers of children and were not qualified to do so. Local CBP officials have expressed enthusiasm for the CWP to relieve agents and officers from responsibility for providing and coordinating care for children in custody.

#### **5. Dedicate OFO officers to asylum and other humanitarian protections processing.**

In our numerous discussions with OFO over the past several years, officials have told us that CBP officers do not have sufficient time to dedicate to processing individuals, and in particular families, for humanitarian protection. **Given CBP's national security, trade, and travel priorities, OFO should dedicate officers to asylum processing.** A committed workforce could develop expertise, efficiencies, and cultural competencies relevant to the populations commonly seeking asylum. Further, building asylum processing capacity would help encourage migrants to enter at ports of entry rather than crossing irregularly through dangerous terrain by minimizing extended wait times and turnbacks.

#### **6. Ensure CBP upholds its National Standards on Transport, Escort, Detention, and Search (TEDS) for any CBP custody, including after encountering migrants in the field and prior to their transport to a facility.**

In recent years, Border Patrol has begun encountering more families, unaccompanied children, and at-risk populations seeking asylum at the southwest border. Several Border Patrol sectors use staging areas in remote parts of the southwest border to hold noncitizens prior to their transport for formal processing. Starting in 2023, **Flores Settlement counsel, nongovernmental organizations, and media reports** have documented the growing practice of Border Patrol agents detaining migrants in dangerous, open-air conditions without adequate food, water, sanitation, shelter, and medical care required under the law. **WRC witnessed** how conditions in these sites violate CBP's **TEDS** and threaten lives. Protections for children under the *Flores* Settlement agreement, which require that children are held in safe and sanitary conditions and are processed within 72 hours, are routinely violated.

**DHS must ensure that TEDS is upheld once Border Patrol encounters a migrant in the field, including in the period prior to their transport to a facility.** Migrants should be expeditiously processed and not forced to wait at collection sites, remote locations, or outside for extended periods of time, especially during severe weather or when there are medical emergencies.

#### **7. Expand co-location of USCIS at migrant shelters and respite sites to expedite work authorizations.**

Rapid work authorization is an economic investment in the communities where people seeking asylum will work throughout the processing of their cases. In 2023, US Citizenship and Immigration Services (USCIS) began targeted efforts to **facilitate quicker work authorization applications**. At some ports of entry, migrant shelters, and pop-up clinics, USCIS personnel complete initial processing of fee waivers and biometrics and in some cases support the filing and approval of applications. These private-public partnerships allow people seeking asylum to achieve independence more quickly and reduce reliance on local support services.

**In addition to growing these efforts, the administration should support common-sense reforms like H.R. 1325 the **Asylum Seeker Work Authorization Act** and S.2175 the **ASPIRE Act**, which would make individuals eligible to receive a work permit 30 days after applying for asylum and extend its validity period. The administration should also encourage Congress to provide more resources to have USCIS staff consistently on site at ports of entry, migrant shelters, and pop-up clinics at the border and in**

**interior cities and formalize these efforts being piloted.** Helping people seeking asylum work and reach stability on a quicker timeline will reduce need for emergency shelters and other ad hoc infrastructure in cities across the country.

#### **8. Streamline USCIS asylum processing and end the Expedited Credible Fear Program in Border Patrol custody.**

For years, immigration advocates have recommended that more asylum cases be adjudicated within USCIS rather than in immigration court. This would mean that more people who clearly demonstrate they are eligible for asylum would be granted status quickly, benefiting them and saving time and resources by avoiding referrals to immigration court in clear-cut cases.

The Biden administration agreed and sought to make this change through the Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers interim final rule—known as the **asylum processing rule**—but the short deadlines imposed by the rule limited asylum seekers' ability to secure legal representation and retraumatized many who were forced to testify so soon after traveling to the United States and experiencing immigration detention. People were also required to have undergone the **expedited removal** process to be referred for these Asylum Merit Interviews before USCIS. Since April 2023, DHS has **paused** its use of this process and put in place the **Expedited Credible Fear Program** in CBP custody and the CLP rule that severely restricts access to asylum.

**DHS should improve the asylum processing rule by ensuring that people seeking asylum have enough time to secure counsel and prepare their case. The process should also not be limited to individuals who have undergone expedited removal. DHS should then fully implement the rule.**

**DHS should halt the Expedited Credible Fear Program in CBP custody.** This program leads to **worse conditions**, overcrowding, and **retraumatization**, and denies people due process. Until the program is halted, at minimum CBP should only place the number of individuals suited to the nearby legal service providers' capacity and to the facility's capacity to accommodate legal consult requests. Attorneys or Department of Justice-accredited representatives should be permitted to enter Border Patrol facilities and must be able to provide consultations by video if in-person consultation is not possible. Border Patrol should continue to refrain from placing families or anyone who does not speak Spanish as their primary language into the program and ensure that noncitizens can call both family members and legal support. To facilitate legal consultations, CBP liaisons should organize scheduled calls between clients and attorneys and allow attorneys to return missed calls. Liaisons should also guarantee that people who are detained have pens, paper, and their I-867<sup>1</sup> in phone booths, and that they receive a written copy of their negative determination and a written notice of the date and time of their Immigration Judge review.

These steps will not fully mitigate the trauma and serious rights concerns of a rushed asylum screening interview in custody, but they should be implemented immediately while the administration works to expand protection pathways and access to asylum.

#### **9. Release immigrants from ICE detention who are assessed by the US government at the "no threat" level and invest in the Case Management Pilot Program.**

Recognizing the extensive evidence of the harms of **family detention**, the Biden administration rightly ended the practice of **detaining families** in Immigration and Customs Enforcement (ICE) family detention

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<sup>1</sup> In the expedited removal process, this form documents an individual's sworn statement and records the individual's responses to questions about their fear of returning to their country.

facilities in December 2021. The administration also **closed two facilities** with widely documented egregious conditions, though **many others remain open**. And while the administration in FY2024 reduced the request for detention bed funding, today it detains more people than the number of spaces for which it has funding. The **Further Consolidated Appropriations Act** passed in March 2024 funds detention at its highest levels since the previous administration.

Immigration detention—**as WRC and others have documented time and again**—is harmful, traumatizing, and all but precludes successfully completing the immigration process. The system of 100+ jails costs US taxpayers billions of dollars each year. And yet, the majority of people—more than 80 percent—in the ICE detention system are classified by the US government itself as posing no threat.<sup>2</sup> And although most people also do not have a criminal conviction, criminal convictions themselves should never automatically serve as a proxy for a security threat. **ICE should develop a plan to begin to scale down its detention operations, and the administration should appropriately increase funding requests outside of ICE to programs like the Case Management Pilot Program (CMPP) that provides appropriate case management support to people navigating their cases from the community. Similarly, the administration should end its Family Expedited Removal Management (FERM) program, which rushes families through the asylum process while electronically surveilled, in favor of increased operations of the CMPP.**

#### **10. Enforce the federal government’s jurisdiction over immigration law and protect humanitarian workers.**

The administration’s challenge to **Texas’ SB 4 law** that would allow state authorities to imprison or deport into Mexico individuals who irregularly cross into Texas rightfully asserts that Texas cannot operate its own immigration system. **The administration should continue to assert the federal government’s exclusive authority to enforce immigration law, including by intervening to the fullest extent with Operation Lone Star, in which thousands of Texas state troopers and National Guard members continue to ramp up dangerous deterrence measures and block federal immigration enforcement from its responsibilities.** Like the lawsuit that ordered Texas to **remove its floating buoys** that block individuals from crossing the Rio Grande, other lawsuits targeting Operation Lone Star’s unconstitutional practices would better enable federal officials to enforce immigration law and conduct life-saving rescue missions.

**The administration should support nongovernmental and community organizations that provide hospitality and refuge to migrants and people seeking asylum. State and federal lawmakers** increasingly accuse service providers of human smuggling or make other inflammatory claims, which result in heightened **harassment** and threats to shelters, staff, and migrants. Efforts to **criminalize** and intimidate service providers and the people they serve should be robustly defended against. The coordination, cooperation, and services civil society offer directly support the orderly border management DHS endeavors toward every day. Without nongovernmental organizations’ assistance, DHS would release migrants to the streets and would have more challenges complying with their immigration proceedings and becoming self-sufficient.

#### **11. Rescind rules of the previous administration that limited access to asylum and propose or finalize rules that improve the asylum system.**

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<sup>2</sup> ICE Detention statistics are available at <https://www.ice.gov/detain/detention-management>. The numbers in this brief were based on data downloaded in March 2024.

The Biden administration rescinded harmful regulations of the previous administration, including a rule that limited access to asylum for gang and domestic violence **survivors** and a rule that widely expanded the categories of noncitizens that can be designated for **expedited removal**. **However, there are still several rules that the administration should fully rescind or finalize related to asylum, as outlined in this [letter](#) to the Departments of Justice and Homeland Security from more than 80 organizations.**

Hundreds of **human rights** and immigration organizations and dozens of members of **Congress** opposed the Circumvention of Lawful Pathways (CLP) rule and urged it be rescinded, outlining how it violates refugee laws and harms people seeking protection. At minimum, while it remains in effect and **litigation** continues, people—regardless of nationality, race, religion, or other demographics—must be able to enter and seek asylum at a port of entry regardless of whether they have a CBP One appointment. DHS should prioritize developing a robust public information campaign in the most popular languages of individuals encountered that explains the CLP and STB rules so that they can make the most informed decisions about how to seek protection in the United States. Currently, there are still families and people seeking asylum who are unaware of these rules and how they will impact their ability to be granted asylum due to their crossing irregularly into the US. There are also many individuals whose primary languages are not available in CBP One, so they are unaware of or cannot use this pathway to enter through a port of entry.

## Conclusion

These recommendations will enable the administration to manage our southern border fairly, support US communities welcoming new arrivals, and fulfill our commitments to protecting people fleeing persecution. The US should take the lead in implementing practical policies that maximize our capacity to respond to the global rise in forced migration.

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### Women's Refugee Commission

The Women's Refugee Commission (WRC) improves the lives and protects the rights of women, children, youth, and other people who are often overlooked, undervalued, and underserved in humanitarian responses to crises and displacement. We work in partnership with displaced communities to research their needs, identify solutions, and advocate for gender-transformative and sustained improvement in humanitarian, development, and displacement policy and 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](http://womensrefugeecommission.org).

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