

The Latest: Changes to the Asylum System Under the Biden Administration

This policy fact sheet will be updated as needed. It was last updated July 5, 2022.

The Biden administration committed to not only undoing the harms of the previous administration but also [improving the US immigration system](#), which has long endured systemic issues that prevent immigrants from exercising their rights and being treated with dignity.

This fact sheet reviews the latest developments in the following issue areas:

- The harms of Title 42 continue to mount, with more action needed as its termination is blocked in court.
- The Supreme Court affirms the Biden administration's ability to terminate the Migrant Protection Protocols, known as Remain in Mexico; 5,000 migrants are enrolled in Remain in Mexico—and only 5 percent have legal support.
- The United States and governments from the region sign the Los Angeles Declaration on Migration and Protection and commit to increased region-wide coordination and migration pathways in the Americas.
- The House of Representatives supports a 25 percent cut in immigration detention and "Alternatives to Detention" rise.
- 260 children who were forcibly taken from their parents under the Trump administration are reunited.

The harms of Title 42 continue to mount, with more action needed as its termination is blocked in court

On April 1, 2022, the Biden administration [announced](#) that the Centers for Disease Control and Prevention (CDC) will terminate Title 42 on May 23. The Women's Refugee Commission (WRC) [commended](#) the decision to finally lift this unlawful policy that turned thousands of people seeking protection back to danger. The announcement came after countless [people seeking asylum](#), thousands of [public health experts](#), hundreds of [Members of Congress](#), and numerous [immigration, faith-based, civil, and human rights organizations](#) advocated for the removal of Title 42 and restoration of the US asylum system.

On May 20, 2022, a Louisiana judge prevented the Biden administration from lifting Title 42 as planned, siding with Republican attorneys general from two dozen states. Because of this injunction, Title 42 continues to be used to summarily expel most individuals arriving at the US-Mexico border from Mexico, Guatemala, Honduras, El Salvador, Haiti, and other countries without the opportunity to seek asylum. In particular, the Biden administration has expelled [more than 26,000 people](#) to Haiti, including children and infants, despite the well-known risks of persecution and harm many face there. In May 2022, despite only making up 6 percent of migrants arriving at the US southern border, Haitians made up 60 percent of expulsion flights. Since President Biden took office, [at least 10,318 kidnappings, torture, rape, and other violent attacks](#) have occurred against people denied protection in the United States due to Title 42. Vulnerable populations, including [LGBTQIA+, Indigenous, and disabled individuals](#), are at particular risk for abuse and life-threatening harm when expelled to Mexico or to their home countries. At the same time, in

May 2022, a [Washington, D.C., Circuit Court of Appeals ruling](#) went into effect prohibiting the Department of Homeland Security (DHS) from expelling families seeking protection to places where they will be persecuted or tortured. Despite this, the Biden administration has implemented only limited and problematic measures to [ensure compliance with the ruling](#), continuing to create obstacles to ensure meaningful screening for those who should be able to access asylum and undermining US asylum and refugee protection obligations.

Seeking asylum at ports of entry continues to be an inaccessible pathway for most individuals. Deaths are on the rise on land and at sea. Migrants desperate for safety attempt to cross the border between ports of entry or travel by sea, and tragedies such as the [deaths of 53 migrants](#) left abandoned in a tractor-trailer in San Antonio or the [175 or more Haitians dead or missing at sea](#) make clear the consequences of anti-asylum policies.

Still, some members of Congress are supporting legislation like the Public Health and Border Security Act, which would continue to [deny people their right to seek safety](#) in the United States. In late June 2022, [two amendments](#) passed in House of Representatives appropriations bills that would [codify and extend Title 42](#). WRC and many civil society organizations have [strongly opposed](#) such efforts, warning that codifying such a policy [contravenes decades of refugee law](#) and commitments the United States made following World War II.

Title 42 has created extreme danger for migrants, violated US refugee law, and increased [profits of human smugglers](#). **WRC continues to call on the Biden administration to restore and rebuild a just, orderly, and humane asylum system for everyone, including at US ports of entry; support and work closely with local organizations that welcome migrants; and employ community-based support services and ensure access to counsel for anyone who may need assistance navigating the immigration process.**

The Supreme Court affirms the Biden administration's ability to terminate the Migrant Protection Protocols, known as Remain in Mexico; 5,000 migrants have been returned to Mexico under the second iteration of the policy—and only 5 percent have legal support

On June 30, 2022, the US Supreme Court affirmed that the DHS Secretary has the authority to terminate the Remain in Mexico policy. **WRC welcomes this victory and encourages the Biden administration to [cease returns of any individuals](#) to Mexico and expeditiously take all possible action to ensure that those who are still waiting in Mexico or were harmed through this policy have a meaningful way to pursue their asylum claims from the safety of the United States, in coordination with shelters, international organizations, and nongovernmental organizations working to receive people at the border.**

Per its June 2022 report, DHS has returned [more than 4,300 non-citizens](#), including 1,197 women, to Mexico in this iteration of the policy between December 6, 2021 and May 31, 2022. So far, the majority of individuals enrolled in Remain in Mexico have been from Nicaragua (59 percent), Cuba (15 percent), and Colombia (9 percent). A recent report revealed the [kidnapping of several individuals](#) returned to Mexico through the latest iteration of the policy. [Vulnerable individuals](#) have been returned to Mexico under the policy, in violation of [recent DHS exemption guidance](#). While waiting in Mexico, many people seeking asylum [face insecure conditions](#) and lack telephone or internet access as guaranteed under the [program's parameters](#), making it difficult for them to prepare for their court hearings. Of those enrolled who had fear screenings, 98 percent were unable to have an attorney or legal consultant present. Of those who have re-entered the US for an immigration court hearing, 94 percent also did not have an attorney or legal consultant present.

The United States and governments from the region sign the Los Angeles Declaration on Migration and Protection and commit to increased region-wide coordination and migration pathways in the Americas

On June 13, 2022, government leaders from the United States and 20 other countries in the region signed the [Los Angeles Declaration on Migration and Protection](#), which includes a commitment to the rights of migrants, refugees, and asylum seekers, access to international protection, and an emphasis on family reunification. **WRC encourages frequent consultation with service providers, migrants' rights organizations, and impacted communities to meaningfully implement the Declaration's rights-respecting provisions of this new region-wide approach. However, WRC remains concerned about the Declaration's inclusion of harmful deterrence strategies such as visa regimes, which can lead individuals to take more remote and dangerous routes to access safety and request asylum.**

The House of Representatives supports a 25 percent cut in immigration detention and "Alternatives to Detention" rise

Consistent with the Biden administration's budget request, the House of Representatives Appropriations Committee approved a [Homeland Security bill](#) that would cut capacity at immigration detention facilities by 25 percent. The proposed reduction of 9,000 beds is a significant shift away from the reliance on incarceration for those in immigration proceedings and is the most significant proposed reduction in detention capacity in years. However, WRC is concerned with the increased funds for ICE's alternatives to detention (ATD), as these are largely grounded in electronic surveillance rather than evidence-based community support programs, and whose exponential growth has not reduced unnecessary custody. As of July 4, 2022, ICE ATD programs monitor a record-breaking [284,813 families and single individuals](#) who average 358 days in the program.

ATD should instead center on case management services implemented by experienced nonprofit community-based immigration and refugee organizations that have strong ties to and trust with local communities. While a flawed program in key ways, the [Family Case Management pilot program](#) (FCMP), terminated in 2017, had a 99 percent compliance rate with both ICE check-ins and immigration court hearings at a fraction of the cost of detention. The new Office for Civil Rights and Civil Liberties (CRCL) Case Management Pilot Program (CMPP) may be a promising new model, if implemented meaningfully and supported to succeed. **WRC emphasizes the need for evidence-based community-based programs that replace ICE's enforcement lens with trauma-informed support services and access to legal counsel.**

260 children who were forcibly taken from their parents under the Trump administration are reunited

Since February 2021, a [Presidential Task Force](#) has worked to identify and reunite parents and children who were unjustly separated by the Trump administration. As of May 17, 2022, the Task Force has [directly reunited 260 families](#). Additionally, through the work of a number of nonprofit organizations—including WRC—directed to find, contact, and expedite reunification per the Ms. L v. ICE class action lawsuit, 2,762 children have been reunited with their separated parent or parents.

However, as of June 2022, the judicial order has expired that gave these children and families comprehensive services—psychosocial support, educational support, medical services, and employment and child-care assistance and services. A small, one-year authorization remains for [behavioral health services](#) via the federal Substance Abuse and Mental Health Services

Administration (SAMHSA). While the Biden administration has already taken important steps to right these wrongs, families need services to heal from the great harms of having their children forcibly taken away. Further, justice requires restitution.

WRC strongly advocates for Congress to authorize supportive services that can help families heal from the trauma of family separation. WRC also encourages the Family Separation Task Force and the Biden administration to make the reunification process as readily accessible and transparent as possible. Finally, WRC urges the Department of Justice and the Biden administration to reengage in reparative justice discussions and to provide restitution and a formal apology for the families whose rights were violated by the brutal and indefensible government policy of family separation.

After four years of intentional cruelty against immigrants under the Trump administration, the Biden administration has the unique opportunity to restore and improve our immigration system. A humane approach that affords children, families, and adults their right to seek protection at our borders aligns with our country's legal obligations and ethical values. WRC recommends that the Biden administration welcome people seeking asylum through community-based case services and allow individuals to safely present their case in the United States outside of detention.

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