

Asylum Under the Biden Administration: Policy Update

This policy update, originally developed in June 2021, was updated in August 2021.

The Biden administration has 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. The following summarizes the Biden administration's efforts thus far to dismantle—or maintain—immigration policies and standards amid a changing US-Mexico border situation.

"Remain in Mexico" has formally ended, but thousands subjected to the unlawful Trump-era policy remain stranded in Mexico

On June 1, 2021, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas formally rescinded the cruel and unlawful "Migrant Protections Protocols" (MPP) policy known as "Remain in Mexico." This Trump-era policy forced tens of thousands of people to languish in dangerous border cities in Mexico awaiting their legally afforded right to seek protection. Since beginning a wind-down of the policy in February 2021, the Biden administration has brought nearly 13,000 individuals to safety. Together with partners in the [Welcome With Dignity](#) (WWD) campaign, the Women's Refugee Commission (WRC) applauds the formal end of MPP but continues to urgently call on the administration to allow all individuals who were subject to the policy to pursue their claims in the United States.

More than 40 families separated under Trump are reunited; Task Force continues scouring internal records to ensure all affected families have been identified

Since late February 2021, a DHS task force led by Michelle Brané has been making strides toward identifying and reunifying families that were unjustly and cruelly separated at the US-Mexico border by the previous administration. As of August 2, 2021, more than 40 families have been reunited after being apart for years. Families receive humanitarian parole to re-enter the United States and reunite, allowing them to temporarily remain in the country with the opportunity to apply for work authorization. On June 9, 2021, the Interagency Task Force on the Reunification of Families (the Task Force) released its [first progress report](#), which showed a commitment to identify all affected separated families and to develop a process so that those families can reunite in the United States. Despite this initial progress, much more remains to be done, including increased transparency in the development of the reunification process and additional protections for those reunified. Since government records are incomplete, the Task Force is trying to determine the reunification status of approximately 2,000 affected families. WRC urges the Task Force to redress the harm caused through provision of permanent immigration status and access to medical and mental health services, among other remedies.

Trump Attorney General decisions that gutted access to asylum for survivors are reversed

On June 16, 2021, Attorney General Merrick Garland [vacated multiple Trump-era decisions](#) that decimated the ability of survivors of domestic and gang violence and those persecuted due to their family ties to seek asylum in the United States. Under these previous rulings, countless people were

left unprotected and were unfairly deported to the grave violence from which they fled. In July 2021, Attorney General Garland also entirely vacated two other harmful decisions that made [asylum protections less accessible](#) and made [managing court dockets](#) inefficient for immigration judges. WRC celebrates these decisions, which will save lives and help the US meet its obligations under the Refugee Convention and its own domestic laws.

With the US-Mexico border closed to most people seeking asylum, pressure mounts to end illegal and inhumane use of a CDC public health order

While the rest of the world explicitly exempted people seeking asylum from border closures, the US has summarily expelled people seeking safety into Mexico or onto [flights back to the home country they fled from](#) for more than a year. Although the Biden administration has allowed unaccompanied children and announced plans to allow [up to 250 vulnerable individuals a day into the US](#), these exemptions fail to meet US obligations under law, which guarantees the right to seek asylum anywhere along or within US borders. Instead, [people have been denied any meaningful chance](#) to seek protection more than 500,000 times since President Biden took office. For decades, [research has shown](#) that attempts to deter migration are ineffective and that [the causes driving people to flee their homes](#) do not hinge on US policy. As of August 2, 2021, the ACLU, Texas Civil Rights Project, RAICES, Center for Gender & Refugee Studies, Oxfam, ACLU of Texas, and ACLU of the District of Columbia are [resuming their lawsuit](#) to end this policy after negotiations with the Biden administration “reached an impasse.”

[Epidemiologists and public health experts](#) have continued to state that there is no legitimate public health rationale to abandon thousands of people in squalid, insecure camps in northern Mexico and [provided recommendations for safe processing](#) amidst the pandemic. Regardless, [while testifying in front of Congress last month, Secretary Mayorkas](#) continued to claim that the Biden administration “will not restrict travel one day more than the public health imperative requires.” In a rare statement, the United Nations High Commissioner for Refugees (UNHCR) [recently called for the US to swiftly end Title 42](#) restrictions and “restore access to asylum for the people whose lives depend on it, in line with international legal and human rights obligations.” Months ago, [more than 60 members of Congress](#) called on Secretary Mayorkas to end this practice. While waiting in Mexico, vulnerable migrants and asylum seekers [face pervasive kidnappings and assaults](#), as documented by Doctors Without Borders and other organizations. WRC is deeply disappointed by the CDC’s [indefinite extension of the Title 42 expulsion policy](#) that fails to consider these harms and the US’ ability to welcome while observing relevant public health guidance.

Some of the children arriving at the southern border today have already been forced to leave the United States after attempting to seek protection with their loved ones. Because the border is closed to all adults, families are expelled back into Mexico, where they face high rates of violence and kidnappings and lack access to basic needs. Due to these harrowing conditions, some parents make the tragic decision to wait in Mexico while allowing their children to cross into safety alone. [More than 2,100 children have returned to cross the southern border](#) into the US without their family. Now unaccompanied, children are unified with vetted sponsors, frequently relatives, or remain in government custody if no sponsor is available while they go through immigration proceedings alone. Family separations like these are heartbreaking and only [add to the trauma children have already experienced](#) in their home country and in their travel to the US. No US immigration policies should be in place that fail to [prioritize the best interests of the child](#).

Unaccompanied children at the US-Mexico border are welcomed, but face inadequate conditions, long stays in emergency shelter facilities

The Biden administration continues to [exempt some unaccompanied children from expulsion¹](#) and allow them into the United States. While [the number of unaccompanied children and families arriving at the US-Mexico border significantly increased in July 2021](#), children continue to spend fewer hours in Customs and Border Protection (CBP) custody than in the early months of the administration before being transferred to the Office of Refugee Resettlement (ORR). As of early August 2021, the [average time children spent in CBP custody was around 60 hours](#); by law, unaccompanied children must be transferred out of CBP custody within 72 hours.

The [number of unaccompanied children remaining in ORR shelters](#) has also declined, from a high of 22,557 on April 29 to 14,013 as of July 29, 2021. Additionally, according to available official statistics, the amount of time unaccompanied children spend in ORR care before they are placed with relatives or sponsors has declined dramatically. The [average length of stay in May 2021 was 35 days](#), which is two to three times lower than in previous years.

While progress has been made, members of Congress, asylum advocates, and child welfare experts are [raising concerns about new temporary emergency facilities holding unaccompanied children](#). Traditionally, when permanent, licensed facilities operated by ORR reach capacity, emergency facilities have been temporarily used to care for unaccompanied children while they wait to be reunited with their sponsor. These facilities, referred to as “influx care facilities,” are required by ORR’s own policies to have minimum services, including case management, counseling, and access to legal services. However, the significant increase in unaccompanied children arriving at the US-Mexico border, coupled with required COVID-19 spacing protocols that reduced capacity in permanent facilities, spurred the development of new emergency “decompression” facilities, officially referred to as “emergency intake sites” (EIS).

The Federal Emergency Management Administration (FEMA) helped ORR to quickly set up 14 EIS across several cities to hold children. At military bases, convention centers, and other large structures, these unlicensed, temporary facilities allow children to be quickly transferred out of inappropriate CBP custody, but [several EIS facilities suffer from poor conditions and a lack of case management personnel](#) to vet and safely reunify children with sponsors. Today, four EIS are still operating along with one influx care facility, including the Fort Bliss EIS, where [several whistleblowers](#) have [raised complaints](#) about inexperienced staff, inadequate vetting of child-facing staff, unsanitary and inadequate conditions, and reports of sexual harassment of children that were met with resistance from on-site leadership. Following these gross mismanagement and abuse disclosures, the Department of Health and Human Services’ inspector general [announced a review into the case management practices](#) at the facility.

Advocates are calling for ORR to immediately increase licensed, permanent bed capacity in small-scale, community-based settings and to continue safely streamlining the sponsor vetting process so that these EISs can be ramped down and closed, and children can be safely and quickly released.

¹ For years now, WRC and other organizations have documented serious concerns that children from contiguous countries—and particularly children from Mexico—are not properly screened by US border officials and are quickly returned to danger. See Amnesty International, *Pushed into Harm’s Way: Forced Returns of Unaccompanied Migrant Children to Danger by the USA and Mexico*, June 11, 2021, AMR 51/4200/2021, <https://www.amnesty.org/en/documents/amr51/4200/2021/en/>.

Two detention facilities will close, but the number of immigrants in detention is increasing

Alongside many immigration advocates, [WRC welcomed](#) Secretary Mayorkas's announcement that Immigration and Customs Enforcement (ICE) will end its contracts with two immigration detention centers, the Irwin County Detention Center in Ocilla, Georgia, and the Bristol County Detention Center in North Dartmouth, Massachusetts. Immigrants locked away in these facilities endured inadequate food, [poor treatment](#), and medical abuse, including allegations of [unnecessary and nonconsensual gynecological procedures](#) at [Irwin](#). Despite the administration's recent announcement and acknowledgment of human rights violations, [individuals were still being transferred](#) to Irwin County Detention Center in June of 2021. In one news article, a man who is currently detained at the facility stated that "[nothing is changing](#)" at Irwin.

The combination of the COVID-19 pandemic and the Trump administration's draconian denial of access to asylum meant that the Biden administration began its term with some of the lowest detention levels in years. Yet despite the opportunity to begin to phase out the use of detention, and despite committing to preserving the dignity of people seeking asylum and immigrant families, the number of people held in detention has increased by 50 percent since January. As of July 30, 2021, [25,848 people are locked away in ICE detention facilities](#), including more than 1,091 people who have tested positive for COVID-19. Relying on incarceration for immigration is expensive and inhumane. Unfortunately, the Biden administration continues to press for the mass detention of immigrants—the president's budget request for Fiscal Year 2022 requests enough funding to [detain 30,000 people each day](#), as well as funding for the short-term detention of 2,500 family members, despite Congress previously proposing that DHS [phase out family detention](#) by the end of 2020.

Another "rocket docket" system and rapid removals will only further endanger families

In May 2021, DHS and the Department of Justice announced a dedicated docket process, returning to fast-paced immigration court processes for families seeking safety at the US-Mexico border. Both the Trump and Obama administrations used so-called "rocket dockets," which rushed families through the immigration court system without a fair chance to seek protection. Dedicated dockets will enroll up to 80,000 people in electronic surveillance programs, including ankle monitors, while going through this process. An accelerated timeline reduces families' chances to find legal representation and increases the likelihood that they are unjustly denied protection. Speed and efficiency should not be prioritized over due process and justice.

On July 28, 2021, DHS announced it would begin using a rapid deportation process [called "expedited removal"](#) for certain families arriving at the US-Mexico border, despite [advocates and experts urging Secretary Mayorkas](#) to reject its use months earlier. Implementing this policy ignores years of evidence that border officials routinely fail to accurately screen families for a fear of returning to their home country, inevitably leading to immediate harm without recourse. Families and individuals must have a full and fair chance to access asylum under the law.

The new Migration Strategy outlines a comprehensive regional plan but should not substitute access to protection at the US-Mexico border

On July 29, 2021, the Biden administration released the [Collaborative Migration Management Strategy \(Migration Strategy\)](#), which aims to improve cooperative efforts to humanely manage migration in North and Central America. WRC welcomes this administration's whole-of-government approach to expand access to pathways for protection in the region and collaborate with other

governments and partners to provide humanitarian assistance. As the Migration Strategy and the [administration's larger blueprint to improve immigration](#) is implemented, WRC will monitor its results to ensure that processing people seeking safety "in-country" or "in-region" does not replace individuals' ability to seek asylum in the United States.

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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