

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

This policy fact sheet will be updated as needed. It was last updated August 22, 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 United States Congress passes the Inflation Reduction Act without anti-immigrant additions, while Title 42 continues to block asylum access and put migrants in danger.
- The Biden administration ends Remain in Mexico.
- The Supreme Court denies the Department of Justice's request to restore immigration enforcement priorities, keeping the Trump administration's targeting of all immigrants in place for now.
- 400 children who were forcibly taken from their parents under the Trump administration are reunited.

The United States Congress passes the Inflation Reduction Act without anti-immigrant additions, while Title 42 continues to block asylum access and put migrants in danger

In early August 2022, the United States Congress passed the [Inflation Reduction Act](#), a \$750 billion health care, tax, and climate package, without the inclusion of any anti-immigrant amendments. The Senate voted down two attempts to codify Title 42, an unlawful policy that summarily expels individuals arriving at the U.S.-Mexico border from Mexico, Guatemala, Honduras, El Salvador, Haiti, and other countries without the opportunity to apply for asylum. In advance of this vote, the Women's Refugee Commission joined nearly 300 organizations in a letter to the Senate [urging lawmakers to reject efforts](#) to undermine the U.S. asylum system or increase harmful immigration enforcement. WRC applauds the Senate for passing this package without the addition of anti-immigrant amendments, following the strong moral leadership of Senators Alex Padilla and Bob Menendez, as well as the Congressional Hispanic and Asian Pacific American Caucuses. The clean package was signed into law by President Biden on August 16, 2022.

Today, Title 42 remains in effect due to an [injunction preventing](#) the Biden administration from lifting the policy. In July 2022, Customs and Border Protection (CBP) [expelled people nearly 78,000 times](#) from the United States without an opportunity to seek protection. Overall, since President Biden took office, at least 10,318 publicly reported [kidnappings, torture, rape, and other violent attacks](#) have occurred against people denied the opportunity to request protection in the United States due to Title 42. A new Cato Institute study found that 41 percent of the [more than 30,000 children aged 3 and under](#) whom CBP expelled through May 2022 were pushed back into northern Mexican cities after midnight. Vulnerable populations, including [Black, LGBTQIA+, Indigenous, and disabled individuals](#), are also at particular risk for abuse and life-threatening harm when expelled to Mexico or to their home countries.

Since May 2022, a [D.C. Circuit Court of Appeals ruling](#) prohibits 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 U.S. asylum and refugee protection obligations. Notably, CBP [expelled fewer than 100 Haitians](#) in June and July after previously disproportionately doing so [using Title 42](#). Instead, the vast majority of Haitians were processed through Title 42 humanitarian exemptions at ports of entry and were allowed to seek asylum, limiting the need for more dangerous crossings between ports. While we recognize the administration's efforts to increase exemptions to Title 42 and allow more individuals to seek asylum in the United States, such exemptions are no replacement for a fair, orderly process to apply for protection.

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—in the past nine months, authorities have [recovered 609 bodies](#), according to internal CBP data obtained by the Washington Examiner. 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 at least [175 Haitians dead or missing at sea](#) make clear the consequences of anti-asylum policies. CBP Commissioner Chris Magnus recently told CBS News that his goal is to scale up asylum processing at [ports of entry](#).

Title 42 has created extreme danger for migrants, violated US refugee law, and increased profits of [human smugglers](#). **WRC continues to call on Congress to [oppose efforts to undermine refugee law](#) and urges 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 Biden administration ends Remain in Mexico

On August 8, 2022, the Department of Homeland Security announced that it is [ending Remain in Mexico](#), following the U.S. District Court's decision preceded by the U.S. Supreme Court's June 30th decision affirming that the DHS Secretary can terminate the policy. DHS will no longer enroll individuals into Remain in Mexico, and those who are enrolled in the second version of this policy and waiting in Mexico will be disenrolled when they return for their next scheduled court date. All individuals disenrolled will continue their removal proceedings in the United States. **WRC [welcomes this victory](#) and encourages the Biden administration to [expeditiously take all possible action](#) to ensure that all those who are still waiting in Mexico or were harmed through either iteration of this policy have a meaningful opportunity to pursue their asylum claims in the United States, in coordination with shelters, international organizations, and nongovernmental organizations working to receive people at the border. This should include a clearly communicated process to [prevent confusion and chaos at the border](#).**

Per its August 2022 data, DHS [returned 7,112 non-US-citizens to Mexico](#) in this iteration of the policy, including 2,190 women, between December 6, 2021 and August 2, 2022. Of the completed 254 asylum cases, only [63 cases were granted relief](#). While waiting in Mexico, many people seeking asylum [face insecure conditions](#). A recent report revealed the [kidnapping of several individuals](#) returned to Mexico.

The Supreme Court denies the Department of Justice’s request to restore immigration enforcement priorities, keeping the Trump administration’s targeting of all immigrants in place for now

On July 21, 2022, the Supreme Court declined to stay a lower court injunction that blocked DHS’s immigration enforcement priorities. As a result, DHS Secretary Mayorkas’ September 2021 memo outlining three categories to [prioritize for enforcement](#)—those deemed to be threats to national security, public safety, and border security—is not in effect. The memo was part of the Biden administration’s efforts to narrow immigration enforcement priorities and consider individualized mitigating factors, such as community ties, US-born children, or vulnerabilities. ICE agents would then be directed to consider these factors before apprehending noncitizens in the interior. This decision undermines the precedent Congress has long established to [empower the federal government](#) to set such priorities and keeps in place the previous administration’s extremely broad guidelines for enforcement. The Supreme Court will hear the merits of the case in December. Without clear guidance in place, DHS officers still have broad discretion to make enforcement decisions and can still grant prosecutorial discretion, but they lack key guidance on how to use such discretion.

400 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. So far, this Task Force has [reunited 400 children](#) with their parents, while [168 families remain uncontacted](#). 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 Biden Administration to make the [reunification process as readily accessible and transparent](#) as possible. Finally, WRC urges the Department of Justice and 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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