

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

*This policy fact sheet will be updated as needed. It was last updated November 19, 2021. New information is marked with **.*

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. The following summarizes how the Biden administration has dismantled or maintained immigration policies and standards amid a changing US-Mexico border situation.

“Remain in Mexico” is ordered to be revived by the Supreme Court; advocates urge Biden administration to take swift action to end policy

On June 1, 2021, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas formally terminated the cruel and unlawful “Migrant Protection 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 brought just over 13,000 individuals previously subjected to MPP into the US to continue their immigration cases in safety.

On August 24, 2021, the [Supreme Court](#) refused to [stay a US District Court decision](#), which vacated the June termination memo and ordered the Biden administration to reimplement MPP. As of November 15, the United States is still engaged in “high-level diplomatic discussions” with Mexico over resuming MPP, but no agreement has been reached. When the policy was last in place, more than 1,544 publicly reported cases of [murder, rape, torture, kidnapping, and other violent attacks](#) occurred against migrants forced back to Mexico. The Women’s Refugee Commission (WRC) and more than 100 other organizations are requesting that the Biden administration take all necessary [legal steps to re-terminate MPP](#), consistent with the District Court’s order, to ensure that people seeking asylum can exercise their right to do so safely. In September, more than [two dozen members of Congress also urged the Biden administration to terminate the policy](#).

******Two weeks after dozens of immigration advocates located at the US-Mexico border walked out of a meeting with the Biden administration in protest, Secretary Mayorkas issued a new memo to terminate the policy and filed a motion to the 5th Circuit Court of Appeals asking to vacate the injunction. The Biden administration is moving forward with plans to restart MPP in November, despite Secretary Mayorkas determining that the human costs of the program are “intolerable.” The termination memo will not take effect until the current injunction is lifted.

As the Biden administration itself has recognized, MPP or any similar program that returns people seeking protection to Mexico to await adjudication of their cases would be inherently dangerous and fundamentally incompatible with due process. **WRC strongly urges the Biden administration to keep its promise to end MPP and continue processing people who were formerly subjected to this policy.**

58 children separated from parents under Trump are reunited; Secretary Mayorkas meets with group of parents

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 Trump administration. As of November 3, 2021, 58 children have been reunited with their parents 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 develop a process so that those families can reunite in the United States. On August 26, 2021, [the Task Force's second progress report](#) was published online and describes additional progress to improve its data, increase efficiencies in processing parole requests from separated family members, and develop an easily accessible, public web portal for families to register with the Task Force. It also detailed ongoing efforts to identify ways for the government to offer services to families to prevent homelessness and facilitate the transition to life in the US, as well as its work with Congress on legislation that, if enacted, would provide a durable immigration status for separated families following their reunification in the US.

On August 20, 2021, several parents who were separated from their children met virtually with Secretary Mayorkas and Task Force Director Michelle Brané, requesting support and legal pathways to remain in the United States. After families shared their experiences, Secretary Mayorkas apologized for the government's actions and committed to supporting them and ensuring that family separations never occur again.

On September 13, 2021, the Biden administration launched [Together.gov](#) and [Juntos.gov](#) where families—or their counsel or other preparers— can register with the government, kickstarting the process to reunify in the United States and access resources. The latest interim progress report documents its launch of the online portal and beginning of contracting processes to [ensure critical reunification and behavioral health services](#) for families. A November 3, 2021 joint status report filed by both the Justice Department and ACLU, the parties to the [Ms. L v. ICE class action lawsuit](#), reported progress of the Steering Committee (of which WRC is a member) in locating an additional 33 children's parents of the expanded class since the last status report. This brings the total found by the Steering Committee to 928 children's parents out of 1,198 in the expanded class. The Steering Committee continues its years-long outreach to try to locate the remaining parents of 270 children who have yet to be found, despite multiple efforts and outreach to date. **WRC is encouraged by the launch of the registry website and urges the Task Force to continue its efforts to make the reunification process as readily accessible and transparent as possible, in addition to continuing to push for pathways to permanent immigration status and access to medical and comprehensive mental health services for affected families.**

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 ports of entry at the US-Mexico border closed to most people seeking asylum, pressure mounts to end illegal and inhumane use of a CDC public health order to expel migrants and people seeking protection

Despite legal guidance from the UN Refugee Agency (UNHCR) that doing so was unlawful, the United States has summarily expelled people seeking safety to 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 some vulnerable families and individuals into the US, these exemptions [fail to meet US obligations](#) under law, which guarantee the right to seek asylum anywhere along or within US borders. Instead, [people have been summarily expelled](#) and often repeatedly [denied any meaningful chance to seek protection](#) more than 885,000 times since President Biden took office, including 125,000 expulsions of parents and children. In the same time period, there have been 7,647 [reports of violent attacks against migrants](#) who have been forced back to Mexico under this expulsion policy. 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.

On September 16, 2021, a [federal court blocked the government from expelling families](#) from the United States under Title 42, but that injunction was later stayed pending the appeal. The Biden administration immediately filed a notice to appeal the decision, choosing to double down on a policy found unlawful instead of restoring access to asylum. In response, WRC and more than 70 other immigration advocacy organizations wrote a letter urging the Biden administration to [stop turning away thousands of families at the US-Mexico border](#) and finally uphold US refugee law. In addition to many other [elected officials](#), Majority Leader Chuck Schumer also urged the Biden administration to end the Title 42 policy, calling it a [“hateful, xenophobic Trump policy”](#) in a Senate floor speech.

Epidemiologists and public health experts have continued to state that there is [no legitimate public health rationale for expulsions](#) and have provided recommendations for [safe processing during the pandemic](#). Regardless, while testifying in front of Congress, Secretary Mayorkas continued to claim that the Biden administration [“will not restrict travel](#) one day more than the public health imperative requires.” In rare statements, [UNHCR](#) has repeatedly called for the US to swiftly end Title 42 restrictions, which continue “to deny most people arriving at the southwest US land border any [opportunity to request asylum](#).” In November 2021, the CDC’s former deputy director confirmed to Congress that [Title 42 “wasn’t based on a public health assessment at the time”](#) of its implementation. US ports of entry are now open to vaccinated travelers for non-essential purposes, such as tourism, yet people seeking protection are still denied access. WRC is deeply disappointed by the [CDC’s indefinite extension of Title 42](#) expulsions, which are contrary to refugee law and fail to consider the US’ ability to welcome while observing relevant public health guidance.

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 expulsion](#)¹ 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

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, www.amnesty.org/en/documents/amr51/4200/2021/en.

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 11,672 as of November 15, 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 at the end of August 2021 was 33 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, three 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](#). On November 19, the [Pomona Fairplex EIS will officially close](#).

WRC recommends that ORR immediately increase licensed, permanent bed capacity in small-scale, community-based settings and continue safely streamlining the sponsor vetting process so that these EIS can be ramped down and closed, and children can be safely and quickly released.

Two detention facilities 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](#). On September 3, 2021, the [remaining immigrants detained at Irwin were relocated](#) to other detention facilities in Georgia. However, [ICE recently signed new contracts for two facilities in Pennsylvania](#), including one that converts a family detention center into a facility for women.

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 70 percent since January. As of November 7, 2021, [23,924 people are locked away in ICE detention facilities](#), including 461 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.

**As of August 31, 2021, approximately [6,000 families](#) had been placed in the new dedicated docket program. Half of these hearings are scheduled for mid-November 2021 and 10 percent are not scheduled until February 2022. Although this program aims to improve efficiency, a small number of immigration judges have been assigned to these cases, including six judges who now have more than 1,000 cases added to their workload. It is unclear how immigration judges will manage this additional workload and whether the court is able to reliably track these cases.

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 the 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.

Border Patrol brutality against Haitian asylum seekers draws ire from advocates, Congress, and the general public

In late September 2021, images and videos of US Border Patrol agents on horseback forcibly dispersing Haitian migrants while using racist language and swinging lariats at them in Del Rio, Texas, sparked outrage from advocates, elected officials, and the general public. The outcry led to the DHS

Office of Professional Responsibility [launching an investigation](#), and the involved agents were placed on temporary leave. DHS is also temporarily [suspending the use of horse patrol](#) in Del Rio, while claiming they were used to identify individuals in “medical distress.” WRC called these aggressive actions and rapid [removals back to Haiti](#) reprehensible, particularly in light of ongoing political violence and a recent devastating earthquake that ensures the country [cannot accept thousands of repatriated Haitians](#). The mistreatment of Haitian migrants by CBP follows on the longstanding and well-founded reports of inadequate conditions and [CBP mistreatment and abuse](#) of vulnerable migrants and individuals seeking asylum. These incidents highlight the urgent need for the Biden administration to prioritize transformational change at the agency, including robust training, oversight, and accountability mechanisms. The Biden administration must work with migrants and civil society leaders not only to ensure accountability for the actions and events in Del Rio but also to prevent them from happening again.

As mass deportation flights to Haiti, southern Mexico, and Guatemala continue, US Special Envoy for Haiti resigns and Department of State adviser leaves administration, condemning Title 42

On September 18, 2021, DHS announced plans to accelerate [removal flights to Haiti](#) and other countries in the hemisphere. Between then and November 5, the United States expelled more than 8,000 people—44 percent of whom are women and children—to Haiti on 80 flights. Simultaneously, [expulsion flights to southern Mexico](#), mostly of Central Americans, have been occurring virtually every weekday since early August; the Mexican government buses forcibly returned people across the border to Guatemala without access to protections or legal representation. Since September, DHS has also conducted more than two dozen expulsion flights to Guatemala. The United States is also reportedly negotiating with Chile and Brazil to send Haitians to these countries if they had transited through them, without indicating what visa status or protection they would receive.

In a rare action, Ambassador Daniel Foote, Special Envoy for Haiti, resigned, stating that he “will not be associated with the United States inhumane, counterproductive decision to [deport thousands of Haitian refugees](#) and illegal immigrants to Haiti.” Senior Department of State legal adviser and renowned human rights law scholar Harold Koh also resigned, writing to the administration that [“lawful, more humane alternatives plainly exist”](#) than return flights to countries of origin and particularly to Haiti.

More than 50 Democratic lawmakers similarly urged the Biden administration to halt removal flights to Haiti and provide [humanitarian parole for Haitians](#) arriving at the US-Mexico border. On October 25, 2021, United Nations human rights experts condemned the [“ongoing systematic mass deportation of Haitian migrants and refugees,”](#) and cautioned that these actions may violate international law.

WRC supports these requests and calls for the immediate [restoration of access to asylum](#), including at ports of entry, for all seeking protection.

****New immigration enforcement and removal priorities deem people seeking protection a “threat to border security”**

Effective November 29, 2021, the Department of Homeland Security will begin implementing [new immigration enforcement and removal priorities](#) that fail to acknowledge people arriving at the border seeking asylum have the legal right to request protection in the United States. The new priorities include broad categories such as “public safety” and “border security,” which give immigration officers and agents significant power and discretion to apply and conduct enforcement.

These priorities do not exempt those seeking asylum at the US-Mexico border and will harm communities despite extensive evidence of routine [discrimination and abuse against Black and brown migrants](#). Treating those seeking safety as priorities for arrest and deportation defies refugee law that guarantees that they must not be punished for doing so. In November, more than 100 immigration organizations called for further [guidance that narrows priority enforcement categories](#) and includes robust accountability measures and review of officer discretion.

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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