

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

*This policy fact sheet will be updated as needed. It was last updated February 18, 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. For a more comprehensive review of the Biden administration's first-year efforts to fulfill its promises and recommendations from WRC, see our [report](#) from January 2022.

This fact sheet reviews the latest developments in the following issue areas: expulsion flights, including of Venezuelans to Colombia; lawmakers urging the end of Title 42; regional engagement; Haitian migrants suing the Biden administration; Remain in Mexico's expansion; COVID-19's spread in detention and expansion of alternatives to detention; and more families separated under the Trump administration reunified.

## **New third-country expulsion flights of Venezuelans to Colombia begin, mass removal flights to Central America and Haiti continue, and 100+ lawmakers urge the Biden administration to end Title 42**

In January 2022, the Department of Homeland Security (DHS) [confirmed](#) it will begin routinely [expelling Venezuelan migrants](#) to Colombia who "previously resided" there. Like others, these expulsions occur through the use of Title 42, a xenophobic Trump-era policy that summarily blocks and expels individuals from the US-Mexico border without any opportunity to access protection screenings as required by law. More than 100 nongovernmental organizations wrote to the Biden administration recommending the reversal of this new practice to return individuals to a third country and to end all [expulsions under Title 42](#).

In February 2022, more than 100 members of Congress also called on the Biden administration to end Title 42 expulsions and the [mass expulsions](#) of Haitians. Additionally, more than 30 lawmakers sent a letter to the Centers for Disease Control and Prevention (CDC) Director Rochelle Walensky calling for the policy's [repeal](#) and demanding the agency justify its use of what they deem a cruel, xenophobic, and unlawful policy. Epidemiologists and experts have continued to state that there is [no legitimate public health rationale](#) for these expulsions and have provided recommendations for [safe processing](#) during the pandemic. Further, 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.

DHS has also continued [expulsion flights](#) that send individuals back to their countries of origin, including Haiti, Honduras, Guatemala, Brazil, and El Salvador. All of these removals fail to screen for protection, often sending people back to the very violence they fled.

DHS increased rapid [expulsions of Haitians](#) in January 2022 with 36 removal flights. Between mid-September 2021 and February 2022, the United States expelled more than 16,900 people—45 percent of whom are [women and children](#)—to Haiti on 158 flights, a more than 300 percent

increase in return flights from 2020. In September, 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.” 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.

Since President Biden took office, there have been 8,705 reports of [violent attacks against migrants](#) who have been forced back to Mexico under this expulsion policy. **WRC calls for the immediate restoration of access to asylum, including at ports of entry, for all seeking protection.**

### **The administration engages in regional negotiations that risk blocking long-term access to asylum at the US-Mexico border and largely focus on enforcement**

The Biden administration is [reportedly](#) “considering a potential regional compact spanning countries in Central and South America.” WRC is concerned that one of the compact’s primary goals is to “stem migration,” which would prevent individuals from arriving at the US southern border. These deterrence-based approaches have historically been ineffective, harmful to migrants and people seeking asylum, and violate rights guaranteed under domestic and international law. Any regional compact or bilateral/multilateral agreements should uphold international law and respect for human rights and include the consultation of international organizations and civil society actors. **Regional agreements should focus on responsibility-sharing oriented solutions that complement—but do not supplant or limit—access to protection at borders, including the US-Mexico border.**

Under [pressure from the Biden administration](#), the Mexican government has increasingly stepped up enforcement and restrictions for migrants, including people seeking asylum. Following new visa requirements for [Brazilians](#) and [Ecuadorians](#) in 2021, in January 2022, Mexico implemented new visa requirements for Venezuelans, at the request of the United States, in an effort to [curb migration](#) through the country. Earlier this month, [Costa Rica also announced new visa requirements for Venezuelans](#). Tragically, more Venezuelans than ever before are already attempting the dangerous journey through the [Darien Gap as other routes to seek safety are blocked](#). **WRC encourages the Biden administration to promote safe and orderly migration, rather than restrict access to protection.**

### **Haitian migrants file lawsuit against US government regarding reported verbal and physical abuse by Border Patrol**

In December 2021, Haitian migrants represented by Justice Action Center, Haitian Bridge Alliance, and Innovation Law Lab filed a [complaint](#) accusing the US government of violating their rights, depriving them of their basic human needs, physically and verbally abusing them, and unlawfully expelling them through the Title 42 policy. In September, 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](#), but the DHS [inspector general declined to investigate](#) the incident. The mistreatment of Haitian migrants by CBP follows 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.**

## Remain in Mexico is reimplemented and expanded; advocates urge Biden administration to take swift action to end policy once and for all

Per its February 2022 report, DHS has returned [673 people seeking asylum](#) to wait in Mexico while awaiting US immigration court hearings. A US District Court ordered the Biden administration to restart the Remain in Mexico (RMX) program, formally known as Migrant Protection Protocols, in August, and it has since been reinstated in San Diego, Brownsville, and El Paso, and is expected to begin in Laredo. The expansion of the program is despite DHS Secretary Mayorkas's finding in the new termination memo that the [human costs of the program are "intolerable."](#) Today, non-Mexican individuals from any country in the Western Hemisphere could be potentially subject to RMX, including Haitians who often face discrimination, anti-Black racism, exploitation, and abuse in Mexico. So far, the majority of individuals returned have been from Nicaragua, Venezuela, Cuba, Colombia, and Ecuador. Of those enrolled who had fear screenings, more than 85 percent were [unable to have an attorney or legal consultant](#) present—and of those who did have an attorney or legal consultant, the majority were only virtually "present." The new termination memo will not take effect until the current injunction is lifted.

On February 18, the Supreme Court agreed to hear the Biden administration's appeal of a lower court's ruling that prevented it from rescinding RMX. 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. **WRC strongly urges the Biden administration to reverse the expansion of RMX, process into the US individuals previously or newly subjected to the policy, and work to keep its [promise to end RMX](#) once and for all.**

## COVID-19 in detention increases by nearly 500 percent while Biden administration considers harsh new "alternatives" to detention for immigrants

The combination of the COVID-19 pandemic and the Trump administration's 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 phase out the use of detention and a commitment to end for-profit detention, the number of people held in detention has increased by 50 percent since January 2021. As of February 14, 2022, [20,094 people are locked away in ICE detention](#), including 1,632 people who have tested positive for COVID-19—a near 500 percent increase since December 2021. In January 2022, physicians contracted by DHS raised serious concerns about the [lack of safety protocols](#) and vaccine protections offered in long-term detention facilities. Early in the pandemic, WRC, Freedom for Immigrants, and Physicians for Human Rights recommended [safe release procedures and practices](#).

The Biden administration continues to press for the mass detention of immigrants, having last year requested enough funding to [detain 30,000 people a day](#). Simultaneously, the Biden administration's newly proposed [home confinement](#) and curfew pilot demonstrates its continued reliance on [for-profit, private prison companies](#).

WRC advocates for a case management model proven to support individuals navigating the complexities of their immigration case. For example, the [Family Case Management pilot program \(FCMP\)](#) had a 99 percent compliance rate with both ICE check-ins and immigration court hearings at a fraction of the cost of detention. **WRC emphasizes the need for proven community-based programs that replace ICE's enforcement lens with trauma-informed support services and access to legal counsel.**

## 130 children separated from parents under Trump are reunited; Biden administration supports permanent legal status for families but walks away from redress

Since late February 2021, a [DHS task force](#) chaired by DHS Secretary Alejandro Mayorkas and led by Michelle Brané has been identifying and reunifying families that were unjustly and cruelly separated at the US-Mexico border by the Trump administration. A year later, the Task Force has [reunited 130 children with their parents](#) after being apart for years, and nearly 400 more reunifications are in progress. Through the *Ms. L v. ICE* class action lawsuit, 928 children's parents out of 1,198 have been located. **WRC encourages 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.**

In February 2022, President Biden and Secretary Mayorkas publicly indicated their [support for permanent legal status](#) for families that were separated. However, previously, in December 2021, the Department of Justice (DOJ) withdrew from settlement negotiations in the class action lawsuits filed on behalf of families who were separated under the Trump administration's zero tolerance policy. **WRC condemns this decision, which is a [shameful betrayal](#) of the government's responsibility to redress the harms caused to thousands of families and continues to support a [pathway to legal status](#) for affected families.**

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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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