

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

*This policy fact sheet will be updated as needed. It was last updated December 27, 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 reimplemented and expanded; advocates urge Biden administration to take swift action to end policy once and for all**

On June 1, 2021, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas formally terminated the cruel and unlawful "Migrant Protection Protocols" policy known as "Remain in Mexico" (RMX). 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. Between February and August 2021, the Biden administration brought just over 13,000 individuals previously subjected to RMX 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 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. The Women's Refugee Commission (WRC) and more than 100 other organizations urged the Biden administration to immediately take all necessary [legal steps to re-terminate RMX](#) and ensure that people seeking asylum can exercise their right to do so safely.

In October 2021, 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, which was denied. In December, the Biden administration [restarted and expanded RMX](#), returning the first individuals to Mexico through El Paso, Texas. This restart and expansion is happening despite Secretary Mayorkas determining 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; this includes Haitians who often face discrimination, anti-Black racism, exploitation, and abuse in Mexico. The termination memo will not take effect until the current injunction is lifted.

As the Biden administration itself has recognized, RMX 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 reverse the expansion of RMX, process into the US individuals previously or newly subjected to the policy, and keep its promise to end RMX once and for all.**

## **\*\* 100 children separated from parents under Trump are reunited; US government walks away from redress for families**

Since late February 2021, a [DHS task force](#) chaired by DHS Secretary Alejandro Mayorkas and 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. [One hundred children have been reunited with their parents](#) after being apart for years, and 350 more reunifications are in progress according to the Task Force. Through the *Ms. L v. ICE* class action lawsuit, 928 children's parents out of 1,198 have been located.

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. The Interagency Task Force on the Reunification of Families (the Task Force) has released [four progress reports](#) and launched [Together.gov](#) and [Juntos.gov](#) where families—or their counsel or other preparers—can register with the government, kick-starting the process to reunify in the United States and access resources. DHS also published a [bilingual video encouraging registration](#) in December. **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 August 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.

In December 2021, the Department of Justice 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.](#)**

## **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 Centers for Disease Control and Prevention (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, for more than a year, summarily expelled people seeking safety to Mexico or onto [flights back to the home country they fled from](#). 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. 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 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. The extended expulsions with Title 42 come at the heels of the restart of Remain in Mexico, which expanded to subject all citizens of Western Hemispheres such as Haitians who have faced racial discrimination and violence in Mexico. **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.**

### **A record number of unaccompanied children at the US-Mexico border are welcomed, but some emergency facilities suffer from inadequate services**

The Biden administration continues to [exempt some unaccompanied children from expulsion](#)<sup>1</sup> 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](#) and the amount of time they spend in custody have also declined; 12,779 unaccompanied children were in custody as of December 10, 2021, and the [average length of stay in 2021 was 30 days](#). ORR continues to grapple with logistical and capacity challenges as numbers of unaccompanied children arriving at the border increase.

However, Members of Congress, asylum advocates, and child welfare experts have [raised concerns about new temporary emergency facilities holding unaccompanied children](#). The significant increase in unaccompanied children arriving at the US-Mexico border in 2021, 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). These facilities are not the same as “influx care facilities” that require minimum services typically used when traditional ORR licensed facilities reach capacities.

With the assistance of the Federal Emergency Management Administration (FEMA), ORR set up unlicensed military bases, convention centers, and other large structures. [Several EIS facilities suffered from poor conditions and a lack of case management personnel](#) to vet and safely reunify children with sponsors. Today, [three emergency sites are in operation](#), and the Department of Health and Human Services is preparing two sites to serve as emergency housing in the future. At Fort Bliss, 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. The HHS’s Inspector General has commenced a [review into the case management practices at the facility](#).

**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.**

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<sup>1</sup> 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](http://www.amnesty.org/en/documents/amr51/4200/2021/en).

## 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](#). 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 committing to preserving the dignity of people seeking asylum and immigrant families, immigrants are relocated to new detention facilities which has resulted in the number of people held in detention increasing by 70 percent since January 2021. As of December 10, 2021, [21,811 people are locked away in ICE detention facilities](#), including 280 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](#).

**In response to an ICE request for information about a [National Case Management Program](#), WRC emphasized the need for community-based programs, separate from ICE and DHS altogether, that provide trauma-informed case management support that prioritizes individual dignity and safety.**

## 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 (known as "rocket dockets") for families seeking safety at the US-Mexico border. 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 administration's dialogues with regional partners should focus on solutions that complement—but do not replace—access to protection at the US-Mexico border**

WRC is concerned by reports that the US administration has proposed a [third safe country agreement](#) in negotiations with Mexico. Any such agreement with a country in the region or a network of agreements with various countries that require individuals to first seek asylum elsewhere before applying for protection in the United States threatens the right of individuals to seek protection where they feel most safe.

## 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](#), which is ongoing, but the [DHS inspector general declined to investigate the incident](#). 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.**

## Mass deportation flights to Haiti, southern Mexico, and Guatemala continue and new flights to Honduras began

In late November or early December 2021, DHS began expulsion flights to Honduras, according to tracking by Witness at the Border. In addition, DHS has continued [removal flights to Haiti and other countries in the hemisphere](#). Between mid-September and December, the United States expelled more than 10,000 people—44 percent of whom are women and children—to Haiti on 95 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 100 expulsion flights to Guatemala and has more recently begun direct expulsion flights to Honduras through the Title 42 policy.

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.

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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.

For more information, contact Kimiko Hirota, policy associate for the Migrant Rights and Justice program, at [kimikoh@wrcommission.org](mailto:kimikoh@wrcommission.org).

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