



**U.S. House of Representatives
Committee on Homeland Security**

**“Open Borders, Closed Case:
Secretary Mayorkas’ Dereliction of Duty on the Border Crisis.”**

June 14, 2023

**Testimony of Eleanor Acer
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Chairman Green, Ranking Member Thompson, and distinguished Members of the Committee, thank you for the opportunity to testify before you today. My name is Eleanor Acer, and I serve as Human Rights First's Senior Director for Refugee Protection. I have over twenty-five years of experience monitoring and advocating for adherence to human rights and refugee law under both Democratic and Republican administrations. Human Rights First is an independent, non-profit organization that, for more than four decades, has pressed the United States to take a lead role in promoting, defending and upholding human rights. It has partnered with human rights defenders in Cuba, El Salvador, Hong Kong, Russia, Saudi Arabia, Ukraine and elsewhere around the world and, here at home, with attorneys, veterans and many others.

Working with volunteer lawyers at many of the nation's leading law firms, we have provided pro bono legal representation to refugees seeking asylum, helping thousands to receive protection in this country. These have included pro-democracy advocates and victims of religious persecution from China, journalists forced to flee Guatemala, Ethiopia, Honduras, Iran, and Nigeria, LGBTQ+ people seeking protection from persecution, victims of political repression from Venezuela, Syria, Egypt and Nicaragua, and Indigenous and other families targeted due to their opposition to brutal armed groups with transnational reach in Honduras, El Salvador, and Guatemala.

Over the last few years, our human rights researchers have traveled repeatedly to Mexican border cities to speak with people seeking asylum who have been turned away or left stranded in danger by the Remain in Mexico and Title 42 policies, and we have tracked horrific accounts of human suffering inflicted by these policies. I personally witnessed the first days of implementation of the Remain in Mexico policy from Tijuana under the Trump administration, and the final days of the Title 42 policy from Matamoros and Reynosa last month. My testimony will focus on a few key areas:

- First, our laws and treaties rightly allow people fleeing persecution to seek asylum—and this right to seek asylum is both morally just and politically popular.
- Second, not only did failed Trump administration policies like Remain in Mexico and Title 42 evade and violate refugee law, but they spurred chaos and inflicted massive human suffering.
- Third, the Biden administration should swiftly end its ban on asylum, which endangers the lives of refugees seeking asylum and is inconsistent with the law.
- Fourth, orchestrated rhetoric painting migrants and asylum seekers as threats or “invaders” fuels white supremacist conspiracy theories and violence targeting Black, Brown, immigrant, Jewish and other people. Lawmakers must refuse to provide a platform for this rhetoric and must swiftly call out racist fearmongering and counter disinformation with reliable and accurate data.
- Finally, Congress and the Biden administration should work together to implement and support effective strategies including strengthened regional refugee resettlement and parole; provide the necessary resources to address adjudication and processing challenges; and properly staff safe, effective and fair asylum adjudications. Parole and release from detention are legally authorized and mass detention would neither be humane nor fiscally responsible.

I. Upholding Asylum is Morally Right and Politically Popular Across Party Lines

The right to seek asylum is a fundamental human right enshrined in the Universal Declaration of Human Rights. In the wake of World War II, the United States helped lead efforts to draft the Refugee Convention, which along with its Protocol, prohibits the return of people to persecution. United States law specifically provides for people in search of refuge to seek asylum at ports of entry and after entering the United States.

The majority of American voters, across party lines, believe that the United States should provide asylum to people fleeing persecution or violence in their home countries.¹ Many Americans are the children, grandchildren, and great-grandchildren of people who fled political, religious and other persecution. Moreover, lawmakers of both parties also believe the right to asylum should be protected.

Proponents of unjust anti-asylum policies often refuse to acknowledge the factors pushing people to leave their countries in search of refuge, or the fact that the vast majority of the world's refugees are hosted by countries other than the United States. In reality, the human rights situations in many countries in the Americas have deteriorated in recent years, pushing people to flee in search of protection, safety and stability. For example:

- In Cuba, where freedom of expression, association and other basic human rights are sharply restricted, repression has [increased](#) over the last few years, as security forces responded [violently](#) with an extended wave of brutal repression to the country's historic protests against economic difficulties and lack of fundamental freedoms.
- In Haiti, violence and political instability [escalated](#) after the 2021 assassination of the president, and in late 2022 the [UN High Commissioner for Human Rights](#), [UN High Commissioner for Refugees](#) and the [UN Humanitarian Coordinator](#) for Haiti all warned that people should not be returned to the country due to the dire and dangerous conditions there.
- In Nicaragua, political persecution continued to [escalate](#) against civil society, journalists, activists, church leaders, nuns, and ordinary people—who live in fear and cannot safely engage in public assembly or religious worship—and further [intensified](#) during the year with a [crackdown](#) against civil society in connection with November 2022 elections. In January 2023 [guidance](#), the U.N. Refugee Agency (UNHCR) stated this crackdown “may be characterized as a massive violation of human rights.”
- In Venezuela, the human rights situation has grown [significantly worse](#) in recent years due to harsh crackdowns on political opposition, the ruling party's reliance on widely condemned elections to control all branches of the government, horrific use of [torture](#), and a severe humanitarian crisis.
- Human rights violations have continued or escalated in other countries as well, including in Guatemala where the rule of law has [deteriorated](#), concerns of [authoritarianism](#) are rising, and [persecution](#) has [escalated](#) against [journalists, Indigenous and human rights](#) activists, and

¹ In a November 2022 [poll](#) conducted by the U.S. Immigration Policy Center, 87% of Democrats, 74% of Independents and 57% Republicans expressed support for asylum. Another May [2022 poll](#) found that a majority of voters across the political spectrum supported asylum and wanted the Biden administration to end the Title 42 policy. Voters “by a margin of 58% to 32% [said] that they would prefer a candidate who favors allowing people to legally request asylum at the southern border over a candidate who opposes doing so.”

judicial officials combating impunity for human rights violations, as well as in Honduras, El Salvador, and other countries, as Human Rights Watch documented in its recent annual [report](#).

The reality is that many people fleeing these and other places have fled to other countries in the Americas. In fact, of the 7.1 million people who have fled Venezuela in search of safety and stability, about [6 million](#) are hosted in Colombia, Ecuador, Peru and other countries in Latin America and the Caribbean. Costa Rica is hosting about [200,000](#) or more Nicaraguans, and experienced a [five-fold increase](#) in total asylum claims in the first six months of 2022, as compared to the year before. Mexico [hosts](#) about 500,000 refugees and asylum seekers, though many face grave [threats](#) to their safety there.

The United States is more than capable of humanely receiving and fairly processing the asylum claims of the portion of people seeking refuge here from repression, violence and persecution.

II. Failed Trump Administration Policies Inflicted Chaos and Human Rights Abuses

The Title 42 and Remain in Mexico policies were failed policies implemented by the Trump administration that violated and evaded immigration law, inflicted disorder and dysfunction at the border, and led to massive human rights abuses. These dysfunctional policies also spurred repeat entries, led to family separations, [pushed](#) people seeking asylum to cross outside ports of entry, and [inflated](#) border statistics.

A. Remain in Mexico or “Migrant Protection Protocols” (MPP)

The Remain in Mexico policy—often referred to as “MPP”—was a blatant evasion of U.S. refugee law and asylum processes. Initiated by the Trump administration through a flimsy four-page memorandum, the policy turned away people seeking asylum and other migrants awaiting immigration court hearings to “wait” in danger, in Mexico, for their U.S. hearings. The Remain in Mexico policy—and others like it that force asylum seekers to wait outside the United States for their cases to be heard—simply cannot be implemented lawfully, safely, fairly, or humanely.

Human Rights First [tracked](#) at least 1,544 publicly reported cases of kidnappings, murder, torture, rape and other violent attacks against people returned to Mexico under MPP during the Trump administration. For example, after the Department of Homeland Security (DHS) returned them to Nuevo Laredo under MPP, a Guatemalan family with two young children, five Cuban asylum seekers, and four Venezuelan women and a girl were among those kidnapped and held captive in multiple separate [incidents](#). Others were subjected to horrific sexual violence, including a [9-year-old disabled girl](#) and her mother, who were kidnapped near the Tijuana port of entry and repeatedly raped. Another [asylum seeker](#) was kidnapped and raped in front of her three-year old son after DHS sent them to Matamoros. In yet another [case](#), DHS forced a Nicaraguan mother and her nine-month-old baby to wait in Mexico under MPP; they were kidnapped by cartels, who punched the mother in the neck and forced her to call family members and beg for ransom money. A seven-year-old Honduran girl and her mother were abducted after DHS [returned](#) them to Nuevo Laredo under MPP. She told her mother “Mommy, I don’t want to die” after overhearing the kidnappers threatening to murder other migrants.

During the court-ordered reimplemention of MPP in 2022 (due to litigation brought against the Biden administration by Trump-aligned state attorneys general attempting to force the continuation of MPP), asylum seekers continued to report horrific kidnappings, rapes, and other violent attacks after

DHS returned them to Mexico (under what was known as MPP 2.0). As Human Rights First detailed in a [September 2022 report](#), these included: a Nicaraguan woman kidnapped and sexually assaulted; a Venezuelan asylum seeker beaten and shot at; a teenage girl sexually assaulted; and two Nicaraguans kidnapped by a cartel and forced to watch as cartel members put a gun in another man's mouth and threatened to kill him.

MPP hearings also remained a due process farce under MPP 2.0. Only [five percent](#) of the people returned to Mexico under MPP 2.0 managed to find attorneys to represent them. Just to attend their U.S. immigration court appointments, asylum seekers were forced to risk kidnapping and violence. Many were abducted while traveling through border regions to attend hearings or directly outside U.S. ports of entry before or after hearings. Cartels extorted returned asylum seekers based on the date of their next MPP hearing, effectively imposing a tax on the time the U.S. government forced them to wait in Mexico under the policy. For asylum seekers subjected to this process, the dangers, impediments to legal counsel, and abhorrent conditions forced many to give up on their requests for U.S. asylum protection.

MPP also wasted government resources. DHS's own analysis concluded that the personnel required for MPP diverted resources from other immigration priorities. DHS Secretary Mayorkas [concluded](#) that "there are inherent problems with the program that no amount of resources can sufficiently fix, and that other problems "cannot be addressed without detracting from key Administration priorities and more enduring solutions." In June 2022, the U.S. Supreme Court [confirmed](#) that the DHS Secretary had the authority to end the policy.

B. [Title 42](#)

Beginning in March 2020, the Trump administration [exploited Title 42](#), a public health authority, to block and expel people at the U.S. southwest border without due process, adherence to refugee law and treaties, or immigration law consequences. Federal courts have vacated and enjoined the Title 42 policy, including in a November 2022 D.C. district court ruling that [vacated](#) the policy for violating U.S. law. A March 2022 [ruling](#) by the U.S. Court of Appeals for the D.C. Circuit prohibited DHS from using Title 42 to return asylum-seeking families "to places where they will be persecuted or tortured."

Asylum seekers and migrants returned to Mexico under Title 42 endured kidnappings, rape, and other attacks. Under the Trump administration, these [included](#) a pregnant Honduran asylum seeker who had been repeatedly raped in Mexico and was expelled under Title 42 while experiencing contractions, a Guatemalan asylum seeker, who had been kidnapped for a month in Mexico and was beaten by a U.S. Customs and Border Protection (CBP) agent with a baton while being expelled to Nogales, Mexico, and a Honduran woman who was [turned away](#) from a shelter in Reynosa, Mexico, along with her three-year-old toddler and five-day-old baby after being expelled. The Trump administration also used Title 42 to deny Nicaraguan political activists opposed to President Daniel Ortega the ability to seek asylum and instead expelled them directly back to Nicaragua, as the Washington Post [reported](#).

Human Rights First has tracked over [13,480](#) kidnappings, torture, and other attacks against asylum seekers and migrants impacted by the Title 42 policy during the first two years of President Biden's administration. These included: a 34-year-old Haitian asylum seeker, [Jocelyn Anselme](#), who was murdered in Tijuana in May 2022 while blocked from seeking asylum under Title 42; a [Nicaraguan woman](#) kidnapped with her four-year-old child and raped, who remained stranded in danger in Mexico; a [lesbian asylum seeker](#) from El Salvador raped after being expelled to Mexico under Title

42; [a 13-year-old girl](#) who was nearly abducted at gunpoint in Juárez after her family fled political persecution in Venezuela but was expelled under Title 42; and a [transgender Honduran asylum seeker](#) who was kidnapped and raped after DHS repeatedly expelled her to Mexico.

In a December 2022 [report](#), Human Rights First found that the court-forced continuation of the Title 42 policy (pursuant to a [lawsuit](#) brought by Trump aligned attorneys general) and the Biden administration’s October 2022 expansion of the Title 42 policy to expel Venezuelans: inflicted terrible human rights abuses, including for Black, Brown, Indigenous, and LGBTQ+ persons, women, and children; subjected asylum seekers to refoulement to persecution and torture in the countries they fled; endangered faith-based, humanitarian, and legal aid workers assisting asylum seekers impacted by the policy; and pushed asylum seekers to attempt dangerous crossings to reach safety.

[Proponents](#) of the [forced continuation](#) of the Title 42 “public health” policy inaccurately and absurdly painted it as a tool needed for “controlling” migration at the southwest border. Far from being an effective border management tool, the Title 42 policy was a [failed attempt](#) at a border policy. The policy actually [prevented](#) U.S. agencies from enforcing immigration law, [spurred](#) increased crossings between ports of entry, [inflated](#) border apprehension statistics, exacerbated cartel violence and insecurity at the border, facilitated discriminatory asylum policies that target Black, Brown and Indigenous asylum seekers, and subverted both U.S. and international law.

In a June 2021 [report](#), the Government Accountability Office (GAO), for example, confirmed that Title 42 expulsions led to “some individuals trying to cross the border multiple times per day” and that the repeat crossing rate rose to 34 percent during the first quarter of FY 2021, meaning that one in three people encountered at the border at that time had been previously expelled or deported. With respect to people seeking refugee protection, Title 42 and similar policies pushed asylum seekers—including Cubans, Haitians and Venezuelans—who previously mostly approached official border posts to seek asylum, to instead attempt to cross into the United States between ports of entry.²

Counterproductive policies such as Title 42 and Remain in Mexico have also benefited the criminal cartels that control extensive territories. As Human Right First detailed in a February 2022 [report](#), cartels have adapted to turnback policies by targeting the very asylum seekers turned away by CBP—kidnapping them, purporting to charge them for the right to remain in Mexico, torturing them and demanding ransom payments from their U.S family members. Some of these organizations have worked to [actively prevent](#) asylum seekers from approaching ports of entry, as the restoration of port of entry processing for asylum seekers threatens the cartels’ control and extortion efforts.

Ending Title 42 does not mean that the U.S. border is “open.” It means that U.S. immigration and refugee law can no longer be evaded by the specious invocation of “public health” authority.

The last thing that Congress or the Biden administration should do is to attempt to force, prolong, codify, or resurrect policies that violate U.S. law and obligations under international refugee law and inflict disorder, family separation and massive human rights abuses on people seeking refuge. Such

² For instance, as Human Rights First explained in a June 2022 [report](#), government data confirms that in FY 2017, 99 percent of Cubans and Haitians encountered at the southern border had arrived through a port of entry. But after years of “metering” restrictions and Title 42 expulsions, in [FY 2022](#) through May 2022, just 0.2 percent of Cubans and 14 percent of Haitians arriving at the southern border were able to present themselves at a port of entry. The percentage of Haitians arriving through ports of entry rose in April and May 2022, as some ports of entry processed limited numbers of Haitian asylum seekers through Title 42 exceptions. More limited [data](#) also shows that the percentage of Venezuelan asylum seekers presenting themselves at ports of entry followed a similar trend, plummeting from 56 percent in FY 2020 to just 0.2 percent in FY 2022 through May 2022.

policies are not actual “solutions,” but tools to deny access to this country to Black, Brown, Indigenous, LGBTQ+ and other people seeking asylum from persecution.

III. Inhumane, Counterproductive Asylum Policies Remain in Place under the Biden Administration

Two and a half years since President Biden took office, his administration has taken some important initial steps toward ending Trump administration policies that created chaos, subvert refugee law and endanger the lives of people seeking asylum. These steps include President Biden’s February 2021 [executive order](#) directing review of Trump administration policies, the Secretary of Homeland Security’s [termination](#) and [re-termination](#) of the notorious Remain in Mexico (RMX) policy, and the termination of the Title 42 policy in May 2023. The Biden administration has also taken steps to expand refugee resettlement from the Americas and provide some regular pathways to the United States through parole.

The Biden administration wielded the Title 42 policy for over two years—in part due to [lawsuits](#) filed by state politicians aligned with the prior administration—and [expanded it](#) multiple times to expel additional nationalities to danger. Despite finally ending this inhumane and dysfunctional policy, the Biden administration has recently taken steps backward, implementing other Trump-era policies in the face of border arrivals and orchestrated, politically driven anti-immigrant rhetoric. Other inhumane Trump administration [policies](#) remain on the books due to the slow pace of agency regulatory action.

In May 2023, the Biden administration DHS and DOJ issued a regulation promulgating an [asylum ban](#)—an approach [repeatedly initiated by](#) the Trump administration and [repeatedly found unlawful by](#) the [courts](#).

- During the period that the Trump administration’s transit ban was in effect, asylum seekers who were denied protection and ordered deported due to the ban [included](#) a Venezuelan opposition journalist and her one-year-old child; a Cuban asylum seeker who was beaten and subjected to forced labor due to his political activity; a gay Honduran asylum seeker who was threatened and assaulted for his sexual orientation; and a Congolese woman who had been beaten by police in her country when she sought information about her husband who had been jailed and tortured due to his political activity.
- Asylum seekers who underwent credible fear interviews in CBP custody under the Trump administration—many of whom were also subjected to the asylum transit ban—were denied a meaningful opportunity to present their asylum claim and many were ordered deported, [including](#) a 16-year-old girl who fled trafficking and sexual exploitation, an Indigenous Guatemalan woman who was sexually assaulted because of her ethnicity, and a Central American woman fleeing domestic violence by an abuser who killed one of her children.

The Biden administration’s asylum ban unlawfully makes refugees ineligible for asylum based on how they enter the United States and whether they applied for protection in a country they traveled through on their way to seek safety. It will return refugees to persecution, torture, and death in their home countries and other countries where their lives are at risk and leave other refugees in limbo in the United States without permanent status or a pathway to citizenship. During the year that the Trump

administration's similar transit ban was in effect, it [resulted](#) in the denial of asylum to refugees with well-founded fears of persecution and deprivation of a path to citizenship for refugees left only with withholding of removal due to the transit ban. The Biden administration's misguided approach breaches President Biden's [campaign promise](#) to end restrictions on asylum seekers traveling through other countries and [endangers](#) many Black, Brown, Indigenous, LGBTQ+ and other asylum seekers. It also advances the [agenda](#) of anti-immigrant groups, including the Federation for American Immigration Reform, which was [designated](#) a hate group by the Southern Poverty Law Center and [praised](#) the Biden administration's plans to impose an asylum ban as a "good first step."

In January 2023, Human Rights First joined a diverse³ coalition of nearly 300 organizations in a [letter](#) to the Biden administration, urging it to abandon its plan to issue the asylum ban. Nearly 80 Members of Congress echoed that call, in a bicameral [letter](#) to President Biden. Faith-based organizations also [called](#) on the Biden administration to uphold asylum and abandon plans to propose an asylum ban. Nonetheless, in February 2023 the Biden administration published its proposed asylum ban, which met widespread opposition. Of the 51,000 comments received in response to the proposed rule after a mere 30-day comment period, the [vast majority](#) of comments opposed the ban, including comments from UNHCR, the union representing asylum officers who would be forced to implement the illegal ban, former immigration judges, 82 members of Congress from the President's own party, Black-led, civil rights, and LGBTQ+ organizations, Catholic Bishops, rabbis, and Holocaust survivors and their family members. Despite the widespread opposition, the administration finalized the illegal ban in May 2023 and began wielding it against asylum seekers.

In addition, the Biden administration has been conducting fast-track asylum screenings through expedited removal in CBP custody at the border, undercutting any meaningful opportunity for an asylum seeker to explain their case, and applying the asylum ban in these screenings to rapidly deport asylum seekers without a hearing regardless of their risk of persecution. On June 5, 2023, 112 organizations [wrote](#) to the Biden administration warning that this practice has already produced systemic due process barriers, effectively denies asylum seekers any meaningful chance to consult with counsel, and rushes them through a sham process to quickly deport them. The National Immigrant Justice Center also issued a [report](#) finding that the government is actively obstructing access to counsel and that the program "appears designed to rush people through to deportation without legal advice or representation." The conduct of credible fear interviews in CBP custody is similar to a Trump-era policy known as the "Prompt Asylum Case Review" program and "Humanitarian Asylum Review Program," or [PACR/HARP](#).

PACR/HARP was also a due process, humanitarian and [refugee protection fiasco](#). Notably, President Biden directed DHS to terminate PACR/HARP in his February 2021 [executive order](#). Asylum seekers detained in CBP custody [have frequently reported](#) being provided insufficient or inedible food and water; lack of access to showers and other basic hygiene; and inability to sleep because of lack of adequate bedding and cold conditions. Conducting credible fear interviews in CBP custody drastically

³ The diverse coalition of prominent labor, LGBTQ, faith, and civil rights signatories include: ACLU, Amnesty International, CHIRLA, Community Change Action, FIRM Action, HIAS, Haitian Bridge Alliance, Immigration Equality, Immigration Hub, Indivisible, International Mayan League, MoveOn, IRAP, IRC, NILC, National Immigrant Justice Center, PFLAG National, Refugee Council USA, The Leadership Conference on Civil and Human Rights, UndocuBlack Network, UnidosUS, and the Welcome with Dignity campaign.

exacerbates the deficiencies of the expedited removal process, which continues to [result](#) in the deportation of refugees to persecution and torture.

Over the last month or so, Human Rights First and other researchers have spoken with hundreds of asylum seekers stranded in the highly dangerous Mexican border cities of Matamoros, Reynosa, Nogales, and—this week—Ciudad Juárez. Findings include:

- The Biden administration’s new asylum ban is stranding many people seeking asylum to wait in places where they are targets of brutal violence and kidnappings and left in horrendous conditions without access to basic services. Haitian and other Black people seeking asylum are targets of anti-Black discrimination and violence;
- Human Rights First has spoken to hundreds of people waiting in Mexico, and they overwhelmingly had no knowledge of the Biden administration’s asylum ban;
- People seeking asylum continue to struggle to secure one of the limited CBP One appointments while they wait in danger – including an LGBTQI+ asylum seeker who was nearly kidnapped in Sonora, and two Haitian couples and a baby who escaped a potential kidnapping near the Nogales port of entry in late May;
- People seeking asylum who do not have appointments have been turned away from ports of entry by CBP officers and/or by Mexican authorities, and in other cases left to “wait” in a line that barely budes – some left waiting in their country of feared persecution.

Human Rights First [issued reports](#) in recent weeks in collaboration with some of the other organizations that are monitoring the implementation of the Biden administration’s asylum ban including the Haitian Bridge Alliance and organizations participating in a delegation the Haitian Bridge Alliance led, the Florence Immigrant & Refugee Rights Project and the Kino Border Initiative.

There is a more humane, effective and legal way forward, as Human Rights First has explained in its most recent set of [recommendations](#), which are outlined below.

IV. Anti-Immigrant Narratives Endanger Communities and Drive Harmful Policies

Anti-immigrant fear-mongering that paints migrants and people seeking asylum as threats and “invaders” fuels white supremacist conspiracy theories and violence targeting Black, Brown, immigrant, Jewish and other people, as Human Rights First’s experts on extremism and antisemitism have detailed in a recent [fact sheet](#). By portraying immigrants as an existential threat to native-born Americans, [this type of rhetoric makes violence more likely](#), as we have seen in recent years. [Eleven people in Pittsburgh](#) and [23 people in El Paso](#) were murdered by white supremacists animated by fears of supposed immigrant “invaders.” As these horrifying attacks demonstrate, we cannot divorce this “invasion” rhetoric from its violent and racist origins.

These narratives often rely on a vitriolic combination of disinformation and bigoted stereotypes. For example, immigrants are often portrayed as criminal or violent, even when extensive research shows [native-born Americans are much more likely to commit crimes than are immigrants](#). In recent years, immigrants have been increasingly blamed for the devastating growth of fentanyl usage across the country, despite the reality that [fentanyl is most likely to enter the United States through legal points of entry by U.S. citizens](#).

In recent months, some [members](#) of Congress [have](#) continued to promote this [harmful rhetoric](#), including in advance of the lifting of Title 42. To prevent Congressional hearings from serving as vehicles to further popularize extremist rhetoric, lawmakers must effectively challenge the disinformation, bigoted stereotypes, and conspiracy theories on which these narratives rely. For example, 115 Members of Congress co-sponsored [H. Res. 413](#), which condemns the white supremacist “great replacement” conspiracy theory and the terrorist attack targeting the Black community it inspired in Buffalo, New York. Representative Raskin, Ranking Member of the Committee on Oversight and Accountability, publicly [called on his fellow Committee members](#) to denounce white supremacy. Lawmakers, especially those in positions of leadership, can and must proactively and repeatedly counter such statements on the public record, ensure the voices of targeted communities have representation, and support efforts to protect the rights of migrants and asylum seekers.

V. The Use of Parole and Release from Detention are Authorized by Law

DHS has the legal authority to parole people into the country “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” The parole authority is spelled out in 8 U.S.C. 1182(d)(5)(A) of U.S. law. The use of parole for eligible people does not mean that the U.S. border is “open.” U.S. immigration authorities have used parole authority for decades to parole people into the United States – including people from the Soviet Union and Vietnam (1988), Cubans through the Cuban Family Reunification Parole Program (CFRP) (2007), and Ukrainians through Uniting for Ukraine (2022).

The Biden administration has also created [programs](#) to allow certain individuals from Cuba, Haiti, Nicaragua, and Venezuela to apply for parole if they meet requirements including having a sponsor in the United States. The existence of regular pathways can enable some people to travel safely and without resorting to irregular travel. The Biden administration should strengthen its use of parole including to improve access to it for highly vulnerable persons who are not eligible under current initiatives.

The use of parole however is not, and is no substitute for, asylum or refugee resettlement. People facing grave threats cannot wait to apply for parole, and many cannot afford or are not eligible to apply for these parole initiatives due to their requirements. Parole authority or other regular pathways to the United States should never be used as an attempt to justify the denial of access to asylum.

Moreover, it is not illegal to release people from immigration detention. U.S. law provides for ways to release people from immigration detention and custody. For instance, CBP has the discretion to put people it encounters into removal proceedings, with or without sending them to detention, or to use expedited removal. People seeking asylum who are initially referred into expedited removal can for instance be released from immigration detention on parole under U.S. law – as both Democratic and Republican administrations have repeatedly confirmed through their actions and official guidance.

Human rights reports have documented the [abuses](#) suffered by people held in immigration detention, as well as the [waste](#) of government resources inherent in the massive use of immigration detention. Detention costs on average [\\$144.42 per bed, per day](#). Studies have [repeatedly confirmed](#) that asylum seekers and migrants overwhelmingly appear for hearings after release from DHS custody, rendering

the use of costly and harmful immigration detention unnecessary to ensure future appearance. It is both fiscally irresponsible and incredibly inhumane to endeavor to send all people awaiting asylum or other immigration court adjudications to detention centers. Detained asylum seekers and migrants are also [cut off](#) from legal representation; only 37.6 percent of detained individuals with pending cases have been able to secure legal representation while 63.8 percent of all people released from detention who have pending cases are represented, according to [data](#) analyzed by Syracuse University’s Transactional Records Access Clearinghouse (TRAC). Legal representation is [critical](#) to [ensuring](#) that individuals understand our byzantine immigration laws and court proceedings (described by one immigration judge as “[death penalty cases heard in traffic court settings](#)”), and thus demonstrate they meet the criteria to receive asylum or other relief that they are eligible for under U.S. law.

VI. Recommendations for Upholding Refugee Law

Instead of seeking to prolong, use or resurrect inhumane and counterproductive policies that were part of the Trump administration’s agenda, the Biden administration and Congress should work together to:

- Uphold refugee law at U.S. borders without discrimination, including to maximize (rather than restrict or “meter”) asylum at ports of entry, and ensure people seeking asylum have prompt access to ports of entry—not limited to CBP One, but also assured to people approaching ports of entry to seek asylum. Maximizing asylum at ports of entry after years of blockage is essential not only to uphold refugee law, but also to end the counterproductive consequences of Trump policies that, by restricting and blocking access to asylum at ports of entry, have long pushed populations that previously sought asylum at ports of entry to instead attempt to cross the border.
- Immediately rescind the Biden administration’s asylum ban, which punishes refugees and bars them from asylum, stop subjecting asylum seekers to expedited removal including through dangerously fast-tracked screenings in CBP custody where asylum seekers do not have meaningful access to counsel, and rescind remaining fatally flawed policies of the Trump administration that ban refugees from asylum.
- Enhance support for human rights and refugee hosting capacity in other countries in the Americas, including through efforts to support development of strong asylum systems, reception capacities, access to employment, and protection of rights and safety of refugees and migrants in Mexico and other countries in the Americas.
- Ramp up, speed up, support and strengthen regional refugee resettlement, improve parole and other safe migration pathways in the Americas, but never use the existence of such pathways to deny access to asylum.
- Implement a humanitarian, rather than a punitive and attempted deterrence-based, approach to refugee protection through effective, sustainable, humane [refugee reception](#) structures, coordination, [funding mechanisms](#), and case support to address the lack of dedicated humanitarian and refugee protection structures that has long hampered the U.S. response to people seeking refuge at its own borders.

- Upgrade asylum adjudication processes so they are accurate, fair, properly staffed, and prompt, including: improve the [new asylum rule process](#) so it leads to efficiency rather than rushed and counterproductive inaccurate adjudications, fund sufficient asylum adjudication capacities to address asylum backlogs and ensure timely adjudication of new cases, and support and champion funding for legal representation.
- Stand firm against anti-immigrant rhetoric and efforts, and unequivocally reject attempts to exploit Congressional hearings as opportunities to platform dangerous anti-immigrant conspiracy theories. Reject and oppose anti-asylum Congressional proposals, including efforts to force continuation or enactment into law of the Trump administration's cruel, racist, and counterproductive policies. Draconian policies will not appease perpetrators of xenophobic, racist rhetoric, but will inflict massive human suffering, create more dysfunction, and subvert refugee law globally.

Human Rights First has detailed these steps in its comprehensive [recommendations](#) paper issued in January 2023. These strategies lay out a more humane and effective approach.

Let's be clear: we are not, by any stretch of the imagination, an "open borders" nation. Any such assertion is patently false. For example, CBP conducts security checks of people seeking entry at ports of entry or otherwise encountered, and puts people into removal proceedings, expedited removal, and/or refers them to ICE for check-ins. Too often they send people seeking refugee protection to immigration jails. Human Rights First has issued countless reports documenting past and present [asylum bans](#) and the horrifying [impact of Title 42](#). Unfortunately, our government has repeatedly focused on harsh, rights-violating policies that attempt to deter and punish people seeking to migrate or request asylum at the border, only exacerbating bottlenecks and dangerous conditions along the Southwest border and in detention.

Instead of prolonging, codifying, using, or resurrecting unjust, inhumane, and dysfunctional policies aimed at decimating asylum that were initiated under the Trump administration, the Biden administration and Members of Congress should uphold U.S. refugee law, the human right to seek asylum, and U.S. commitments under international refugee law. This includes abandoning efforts to ban or deny asylum to refugees who are otherwise eligible for asylum under U.S. law.

The crisis we are facing is a *global humanitarian crisis*; people are fleeing their home countries due to a rise in political instability, authoritarianism, human rights abuses, climate change, and more. The United States is not meeting the moment, nor is it leading by example; other nations, including those with far less capacity than ours, are welcoming and hosting the overwhelming majority of the world's refugees. We can and must do better to uphold refugee law at home.