

Recycling Trump's Asylum Bans & Expanding Title 42: How Biden's new border policies threaten to undermine asylum rights for generations to come

On January 5, the Biden administration [announced](#) a suite of policies that will severely restrict access to asylum and harm refugees seeking to enter the United States at the southern border. This FAQ addresses each new policy and its implications on the right to seek asylum, protected under domestic and international law.

The policies included in the January 5 announcement are:

- [Instituting a narrow parole program](#) for people from Cuba, Haiti, and Nicaragua;
- [Expanding Title 42](#) to expel asylum seekers from Cuba, Haiti, and Nicaragua, modeling the Venezuela program, to Mexico when they are apprehended at the U.S.-Mexico border;
- [Announcing the future issuance of a new asylum ban](#) in the form of a rule that bars people from asylum if they enter without inspection or do not seek protection in countries of transit;
- [Expanding rapid deportations](#) of migrants without any immigration court hearing; and
- [Increasing the use of CBP One](#), a mobile application that collects biometrics data from migrants before arriving to the U.S.-Mexico border.

Limited parole programs for Cubans, Haitians, and Nicaraguans in exchange for more expulsions

The administration struck a deal with Mexico to receive expelled Cubans, Haitians and Nicaraguans, while initiating a parole program for those three nations mirroring the Venezuela program.

1. Why is it problematic for parole programs to be tied to border expulsions? The first policy announced on January 5 is two-fold, including a new pathway for Cubans, Haitians, and Nicaraguans with U.S.-based sponsors to enter the United States on parole. But the policy also includes an expansion of the Title 42 expulsions policy (discussed further below) to those same countries, meaning that Cubans, Haitians, and Nicaraguans attempting to seek asylum at the U.S.-Mexico border will now — for the first time — be turned away without a basic screening for asylum or other protections. While new pathways are always welcome in the context of the

restrictive U.S. immigration system, they should never be paired with enforcement measures that cut off asylum access at the border. Moreover, parole is not the same as asylum and will leave those who use this program in legal limbo upon arrival in the United States.

2. How do the new parole programs work? Parole programs provide the opportunity for people who meet certain criteria to enter the United States with permission to remain for a limited period of time, and to apply for work authorization. (Notably, processing adjudication backlogs have long made accessing employment authorization based on parole tenuous, if not illusory.) In October 2022, the Biden administration announced a narrow parole program for Venezuelans who were able to connect with a sponsor in the United States and had the financial capacity to secure a passport and fly to the United States. NIJC and other advocates expressed concern that the Venezuelan parole program [excludes more than it protects](#). On January 5, the Biden administration announced that this same parole program would be expanded to [Cubans](#), [Haitians](#), and [Nicaraguans](#). The program is capped at a total of 30,000 parole grants per month, divided among all three nationalities along with [Venezuelans](#).

3. What are the limitations of the new parole programs? Most people seeking to apply for these programs will have to remain in the dangerous conditions they seek to flee, while seeking a passport from the government that may be persecuting them and arranging air travel and sponsorship in the United States. Practically, that means only a privileged few will benefit from this program, despite dire circumstances giving rise to asylum claims in all four nations. The numbers reflect that already. According to the government of Mexico, only [11,460](#) Venezuelans have been able to enter under the Venezuelan program since October 2022. Comparatively, [nearly 34,000](#) Venezuelans were processed or expelled at the border in September 2022 alone, before the implementation of this program. The new 30,000 monthly cap, now shared among four nationalities, and the commitment to allow 20,000 refugees from the region, cannot be a substitute for the overwhelming need for asylum access for people facing a severe displacement crisis.



Remember: Under U.S. and international law, people fleeing persecution are not required to have a sponsor or connection in the United States to seek protection here. They also do not need a passport, or a plane ticket. Any person arriving at a U.S. border is entitled to seek asylum protection under the plain text of U.S. federal law. This protection is critical because people fleeing for their lives are often unable to access pathways that require identification documents and a safe haven to wait for processing.

Pairing parole pathways with an unprecedented expansion of Title 42

The limited parole programs discussed above are paired with an expansion of the highly punitive Title 42 expulsion program, initiated by the Trump administration.

4. How do these parole programs relate to Title 42? The Biden administration has paired the new parole programs with an expansion of its Title 42 enforcement authority to expel asylum seekers of the same nationalities when they seek safety at the U.S.-Mexico border. The administration suggests this is a trade-off to make the asylum process more orderly but, in fact, parole will allow few asylum seekers to enter the United States while Title 42 will punish the vast majority of people seeking protection.

Title 42 is a Trump policy that weaponized the COVID-19 pandemic to authorize Customs and Border Protection (CBP) officials to expel arriving migrants from the border without so much as a screening for asylum. President Biden continued that policy until announcing that it was moot in April 2022. Litigation ensued from nativist and anti-immigrant state governments to prolong Title 42. By November 2022, a federal court ruled Title 42 unlawful. However, state governments successfully [swayed the Supreme Court](#) to keep Title 42 in place while the Court considers their interest in keeping this arcane public health ban on asylum in place.

5. Was this Title 42 announcement required by law? No. The [Supreme Court's recent order](#) prohibits the Biden administration from ending Title 42 entirely. However, there is nothing in the Supreme Court's order that requires, or even references, its expanded use.

6. How does the administration lean on other governments to implement this expansion of Title 42 expulsions? Key to the administration's new policies are collaborations with the Mexican and Panamanian governments to receive, track and control the movement of migrants traveling north to the United States. Governments of Panama or Mexico can inform CBP that they encountered asylum seekers from these four nationalities, cuing up their expulsion by the time they reach the United States border.



Remember: Title 42 is a racist and deadly policy that externalizes U.S. obligations towards asylum seekers to other nations in violation of domestic and international law. While it is important to provide safe passage for migrants in other countries through refugee resettlement and pathways to lawful status, such efforts must not replace the U.S. obligation to process asylum seekers at our borders.

Asylum ban that bars most people arriving at the U.S.-Mexico border from accessing protection

The January 5 announcement says that the administration will be proposing a regulation that will bar people from asylum if they entered the United States without authorization and/or if they did not seek asylum protections in their countries of transit.

7. What is this rule's impact on access to asylum? These rules revive a centerpiece of the Trump administration's efforts to close the U.S.-Mexico border to asylum. The Trump rule was found unlawful by a federal circuit court because of its blatant undermining of federal asylum law. There is no meaningful access to asylum processes for migrants crossing through Central America and Mexico to reach safety in the United States. Deficiencies and abuses in Mexico's asylum system are [well documented](#); the system is so backlogged that the vast majority of applications are not processed. It is for these reasons that Stephen Miller developed the "transit ban," knowing it would in practice bar nearly all Black, Brown, and Indigenous asylum seekers arriving at the southern border from seeking asylum.

While this ban was in effect during the Trump administration, it [led](#) to many unwarranted asylum denials, as well as prolonged detention, family separations and permanent limbo for refugees barred from asylum and granted only the inadequate protection of withholding of removal. For example, children cannot win protection along with their parents under this scheme and, instead, must prepare and present independent claims. Under this rule, infants and toddlers would have to win on their own applications or face deportation. Refugees from Cameroon, Cuba, Honduras, Nicaragua, Venezuela, and other countries were blocked from accessing the U.S. asylum system and deported due to this policy.

8. Were these bans first developed by the Trump administration? Yes. The rule has not been issued yet, but its framing is reminiscent of two Trump asylum bans, related to where people cross the border and whether they seek asylum in other countries en route to the United States. [Two courts](#) ruled Trump's first transit ban unlawful, citing a "long line of cases" holding that failure to apply for asylum in a transit country "has no bearing on the validity of a [person's] claim for asylum in the United States."

9. Is there any legitimate, lawful basis for limiting asylum access based on where or how people cross the border? No. U.S. law guarantees access to asylum to people arriving at the border regardless of manner or location of entry. However, like the Trump administration, Biden plans to restrict the right to asylum to people who manage to make it through already overwhelmed ports of entry. As noted by the federal court of appeals that [enjoined the Trump version of this rule](#), the [1951 Refugee Convention](#) (which the U.S. incorporated into domestic law) prohibits penalizing asylum seekers for their manner of entry.



Remember: International asylum law was developed as a direct response to genocide and persecution during World War II. By design, this law requires access to the asylum process for anyone who arrives at the border and requests protection, regardless of how many countries they crossed or where they arrived. The United States incorporated these principles into domestic law through the Refugee Act of 1980.

New “consequences” for individuals who attempt to enter unlawfully, including expanded use of expedited removal

Expedited removal is a form of border processing that allows the U.S. government to quickly deport arriving migrants if they do not immediately express fear of return or if they fail their first asylum screening.

10. How does expedited removal impact asylum seekers? With due process deficiencies baked in, expedited removal has returned asylum seekers to harm for decades. Expedited removal places tremendous power in the hands of CBP officials to rapidly deport people with little to no access to asylum screenings or attorneys. People placed in expedited removal are not provided a right to counsel, are generally jailed in CBP or Immigration and Customs Enforcement (ICE) detention, and rarely see the inside of a courtroom. The expedited removal process relies on CBP officers to serve as gatekeepers to the asylum process, even though CBP has long been documented to [fail to properly record expressions of fear](#) and refer people for fear screenings.

11. How does the Biden administration plan to increase the use of expedited removal? In Federal Register notices announcing the parole programs, the Biden administration has already teed up expanded use of expedited removal to push back [Cubans](#), [Haitians](#), [Nicaraguans](#), and [Venezuelans](#) to Mexico if and when Title 42 ends. The details of this expansion are not yet clear. Though the administration frames this as a “stick” to the “carrot” offered with the limited parole programs, expanding expedited removal will harm asylum seekers who have no other means but to seek protection at the U.S. border.

12. What can we learn from past Biden policies regarding the increased use of expedited removal? This is not the first Biden administration policy that favors speed over fairness for asylum processing. In May 2022, the Biden administration published an [interim final rule](#) that restructured asylum processing within the expedited removal framework. That rule raised serious due process [concerns](#), including denying asylum seekers the time they need to prepare their cases and retain counsel. [Emerging data](#) on the implementation of that rule shows abysmal representation rates and very low asylum grant rates due to the [rushed](#) character of this processing.



Remember: Asylum seekers need time and support to present their claims after fleeing trauma and violence. U.S. asylum law is dizzyingly complex, with the burden on the asylum seeker to present primary evidence and legal arguments in support of their claim. Expedited removal sacrifices both in favor of a punitive rapid deportation system. It is nearly impossible to secure an attorney or present vital evidence during these rushed proceedings. Efforts to speed up processing effectively punish asylum seekers for seeking help.

Expanded use of CBP One mobile app to schedule appointments to present for inspection and request asylum

CBP One is a mobile application first launched in October 2020 to collect biometrics data from certain migrants prior to their arrival to the U.S. border.

13. What are the risks associated with this expanded use of the CBP One app? The Biden administration issued a proposed rule in September 2021 to expand data collection through the app to anyone arriving at a port of entry after the Title 42 order is rescinded. [NIJC submitted a comment](#) in response to the proposal, urging the administration to address concerns that increased reliance on CBP One could result in some groups of migrants still subject to prolonged waits in dangerous conditions in Mexico, while subjecting thousands of families, including children, to unnecessary additional facial recognition technology. Now the administration proposes to tether the use of CBP One to all asylum processing, signaling that asylum seekers may need to register for an appointment through the app prior to arriving at the border to seek protection.

14. What about asylum seekers who can't access the CBP One app? The Biden administration fails to account for gaps in technology, language access, and economic disparity between groups of non-citizens attempting to use the app while fleeing harm. The reliance on CBP One also promotes the false notion that an appointment is required to seek asylum. The imposition of processing requirements on asylum seekers prior to arriving at the U.S. border, even if technically not mandatory, raises questions regarding the equitable application of domestic asylum law and protections for those arriving at the border.



Remember: No one needs an appointment to seek asylum under U.S. and international law. While technology can be helpful, it should never be used to create tiered processing that favors those able to use an app or await their appointment, while others wait in danger.