

Solutions for a Humane Border Policy

The U.S. government and governments around the world are grappling with an increase in the number of people [forcibly displaced](#) from their homes by political and social oppression. Despite campaign commitments to restore humanity to immigration policy, the Biden administration has largely continued Trump-era policies at the southern border. These policies blatantly undermine domestic and international asylum law; result in [countless deaths](#); and *create* rather than mitigate chaos as people blocked from protection have little choice but to resort to multiple and more dangerous border crossing attempts.

What *should* the Biden administration be doing to address the humanitarian need at the border? There are other ways to address the situation at the border, leading with empathy and courage in compliance with the Refugee Act of 1980.

The administration can and should: 1) [develop and support robust communication and planning between federal, state and local governments, and civil society](#), so that those arriving migrants in need of additional support can be matched with a destination with capacity to provide services; 2) [fully fund and support civil society](#), including social and legal service providers; 3) [create non-custodial, humanitarian reception centers at the border](#), instead of jailing migrants and asylum seekers; and 4) [overhaul the federal immigration budget by moving funds away from detention and enforcement and toward asylum processing and humanitarian needs](#).

While taking these steps the administration *must* 5) [abide by its obligation to ensure asylum access to those arriving at the United States' borders and ports](#). The Refugee Convention, which Congress incorporated into U.S. law, was borne out of the horrors of World War II and the Nazi Genocide. It reminds us of a history we must not repeat, when the United States was [among those countries](#) that turned European Jewish refugees away, back to their deaths. Policies developed during the Trump administration, including the Title 42 mass expulsions policy and asylum bans that deny protection on the basis of a person's manner of entry, stand in blatant violation of this obligation.

Processing large – even unprecedented – numbers of asylum seekers is possible. In the aftermath of the Russian invasion of Ukraine, there was an outpouring of support and political will to welcome Ukrainians forced to flee. In only a [five month period](#) following the invasion, the United States processed and received more than 100,000 Ukrainians. The Department of Homeland Security (DHS) has tremendous authority and resources at its fingertips; with political will and a reprioritization of funding, the United States absolutely has the means to become a leader in the response to the global refugee crisis and to provide dignity and respect to those arriving at the border in search of safe haven.

1. Support robust communication and planning between the federal government, state and local governments, and non-governmental organizations (NGOs).

Over the past year, anti-immigrant governors have engaged in political theater by providing arriving migrants with busing to cities including New York; Washington, D.C.; Chicago; and Philadelphia. The results have not been what the anti-immigrant forces behind them might have hoped – local governments and civil society [quickly mobilized](#) to welcome the arriving newcomers with dignity, shelter, and support. Despite this tremendous mobilization, however, the busing stunt has revealed a lack of systemic avenues for communication and coordination between the federal government, localities and NGOs, as well as a [stunning lack of support](#) from the federal government for local governments receiving large numbers of newly arrived migrants.

The administration’s newest [border plan](#) notes that, “DHS is also expanding outreach efforts with local jurisdictions to provide coordination of resources and technical assistance support and the Administration has been facilitating coordination between state and local officials and other federal agencies. Additionally, the Administration will continue to mobilize faith-based and non-profit organizations supporting migrants...as they await the outcome of their immigration proceedings.”

We encourage the administration to prioritize this commitment with urgency. When migrants arrive at the southern border, many already have a destination in mind where they have loved ones to support them, while others have no one and are in need of emergency shelter. Efficiently and smartly supporting migrants in designating their destination and obtaining transportation onward should be paramount. First, asylum seekers should be processed and released in a safe location at or near where they enter the United States, not moved elsewhere as is often the case today. For those with a final destination in mind, the federal government should support migrants in securing transportation to that destination. For people in need of temporary shelter, DHS must build the systems and capacity to quickly communicate with local governments and NGOs throughout the country to match arriving migrants with destinations that have shelter and social services capacity.

2. Fully fund and meaningfully support civil society organizations providing respite, shelter, social and legal services to arriving migrants.

NGOs along the southern border and throughout the United States are the heart of the United States' reception system for arriving asylum seekers, but for too long they have made do with little funding and little support from the federal government.

The [federal spending bill](#) enacted in December 2022 includes \$800 million for a new Shelter and Services grant program, to be administered by the Federal Emergency Management Agency (FEMA) and distributed as grants to state and local governments and NGOs providing support to newly arriving migrants. This new program is intended to replace the existing humanitarian grant program run through FEMA's Emergency Food and Shelter Program (EFSP-H), which has allocated far smaller sums since 2019.

The White House and DHS should immediately focus attention on developing the Shelter and Support Program as a centerpiece of the United States' approach to border reception. This newly created program offers an opportunity to remedy some of the limitations NGOs face in utilizing EFSP-H funds by, for example, disbursing funds as needed instead of on a reimbursement model and removing limitations on the use of funds for transportation and shelter costs. Because the funds are designed as a transfer from Customs and Border Protection (CBP) to FEMA, the administration must zealously protect the new program's integrity as a *humanitarian* funding structure, firewalled from CBP's enforcement mission.

These funds, if distributed fairly and in close consultation with civil society, can spur dramatic capacity growth in NGOs that already have the trust of immigrant communities and deep expertise in providing respite and welcoming services.

3. Explore options for non-custodial, humanitarian reception centers at the border, in consultation with civil society.

Today, people arriving at the southern border are processed through CBP facilities that are infamously punishing and inhumane. DHS officers unabashedly [refer to CBP holding cells](#) as the "dog pound" or kennel." Using jail-like facilities to shelter arriving families and individuals seeking safety or a better life in the United States criminalizes the very act of migration and [puts lives at risk](#).

A completely new approach to border processing infrastructure is needed. [Recent legislative proposals](#), however, miss the mark by envisioning new facilities developed within the existing criminalizing framework, often maintaining CBP as the controlling authority for what would

essentially be bigger, slightly less life-threatening jails. The Biden administration must develop new models for processing centers that are guided by humanitarian principles.

Many [European nations](#) have implemented different types of reception centers, and important lessons can be learned from these efforts. Reception centers should never be operated or controlled by an enforcement agency such as CBP, nor should freedom of movement be restricted for those undergoing processing. The centers should also be time-limited for the purpose of processing, with the goal of people moving on toward their final destinations within a few days and receiving individualized referrals for continuing services as needed. These principles are critical to ensuring that arriving migrants are willing and able to trust that the services provided by government agencies and NGOs within the center are toward a goal of fair case adjudication and integration, not enforcement.

Also toward that end, the Biden administration must engage early and often with civil society organizations to ensure that facilities are designed with easy access to legal, housing, and social services; and that relevant government agencies such as FEMA and U.S. Citizenship and Immigration Services (USCIS) are onsite to support registration and processing.

4. Overhaul how [immigration policy is budgeted](#) by moving funds away from detention and enforcement and toward asylum processing and humanitarian needs.

DHS's establishment over 20 years ago solidified the false perception of immigration as a security issue, and [DHS's budget](#) continues to reflect that perception. A few numbers illustrate the disparate focus on enforcement over processing: For Fiscal Year 2023, Congress provided \$2.8 billion for Immigration and Customs Enforcement's detention system; but only \$800 million to support local governments and NGOs providing humanitarian services and reception for arriving migrants. The bill funded CBP's border security operations at \$6.4 billion, but only provided \$3.5 billion for domestic field operations that are responsible for processing including asylum screenings at ports.

Biden administration officials frequently state that Congress insufficiently funds them to manage the border adequately. Yet the White House's budget requests continue to exponentially prioritize funding for detention and enforcement over processing and humanitarian support. The Biden administration has the opportunity to remedy this in coming months, when the White House presents its budget for Fiscal Year 2024 to Congress.

Phasing out or severely limiting immigration detention – a [harmful](#) and [unnecessary](#) system – would free up billions of dollars for humanitarian reception and processing. Imagine if NGOs providing shelter, respite, and legal and social services to arriving migrants were allocated \$3 billion in grant funding instead of \$800 million; people in need of services would be far better

supported and therefore better able to thrive in their new lives in the United States. Similarly, moving even a portion of the billions spent on militarizing the border toward ensuring that border officers are trained and equipped to fairly and efficiently process arriving asylum seekers would relieve much of the strain the system is currently experiencing while also upholding the government's international obligations.

5. Respect and maintain, at all times, the fundamental right of migrants to seek asylum at the border, regardless of manner of entry or transit.

The right to access asylum upon arrival at a U.S. border is foundational to international and domestic refugee law. [Section 1158 of Title 8 of the U.S. Code](#) states that, "Any [person] who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...), irrespective of such [person]'s status, may apply for asylum in accordance with this section..."

This law is the result of [bipartisan U.S. lawmaking](#) that codified the right to non-discriminatory access to asylum at U.S. borders through the 1980 Refugee Act, bringing the United States into compliance with the international Refugee Convention, to which it is party (through its 1967 Protocol).

Today, the American public [overwhelmingly supports](#) asylum access, even as the U.S. government has lost sight of its obligation. In recent decades the United States has chosen to criminally prosecute migrants for their manner of entry and, along with other affluent countries, experimented with [policies](#) that facilitate pushing back asylum seekers and externalizing border controls. During the four years of the Trump administration, Stephen Miller designed and implemented a web of policies that decimated access to asylum at the border. The Biden administration is now making the incalculable error of continuing to erode this principle rather than seizing the opportunity to transform U.S. border policy in accordance with human rights norms.

Title 42 expulsions, asylum bans, immigration prosecutions and other policies that infringe on the basic right to asylum are [systematically violent](#) in their application, with [harms disparately](#) impacting Black, Brown and Indigenous immigrants. These policies combined to make last year the [deadliest year](#) on record for people trying to find safety in the United States, with more than 850 migrant deaths at the border. The United Nations High Commissioner for Refugees (UNHCR) has [condemned these policies](#) as "not in line with international standards."

The Biden administration must prioritize humane border solutions that are rooted in fairness, compassion and respect for international refugee protections.