

Seeking Asylum in the First Year of the Biden Administration: Cruelty and Chaos Persist

Asylum seekers, advocates, and allies had high hopes when President Biden took office one year ago, relying on his [promises](#) to end Trump's disastrous asylum policies and restore humanity to the U.S. immigration system. The Center for Gender & Refugees Studies (CGRS) laid out a roadmap for doing so in our [Asylum Priorities for the Next Presidential Term](#).

But in reviewing the past year, the picture for asylum seekers is far bleaker than we had imagined. Although the administration has taken some positive steps, it has failed time and again to make a break from the past. On issue after issue, the Biden team is clinging to Trump's positions and practices. The following three policies illustrate the disappointments of the past year, and underscore how much more work must be done to rebuild, much less improve, our asylum system.

Escalation of Mass Title 42 Expulsions

One year into President Biden's term, the unacceptable reality is that the U.S.-Mexico border remains closed to nearly all people seeking asylum. To its shame, the Biden team continues to expel people seeking asylum under the pretext of public health, using an obscure legal provision called "Title 42" in place of our established asylum law and in defiance of common-sense public health measures. The Biden administration has embraced Title 42 over objections by more than [60 members of Congress](#), [public health experts](#) (including [former CDC officials](#)), the [UN Refugee Agency](#) (UNHCR), and [top advisors](#) from within the administration.

From its inception, policymakers and public health experts have recognized Title 42 expulsions as a shameful tactic designed to punish people seeking asylum, not safeguard the health of the general public. Since November 2021, tourists, shoppers, and other visitors have been permitted to cross the U.S. border freely. Yet even asylum seekers who approach the border with proof of vaccination or a negative COVID-19 test continue to be forced back to Mexico, where violent attacks against people seeking asylum have [escalated](#), or returned to the very countries they have fled.

The administration has exempted unaccompanied children from Title 42. This however has fueled family separations by forcing desperate families to make the agonizing decision to send their children across the border alone or remain together in dangerous conditions in northern Mexico. CGRS continues to [challenge](#) the legality of the Title 42 policy as applied to asylum-seeking families in *Huisha-Huisha v. Mayorkas*.

Failure to End Remain in Mexico

The Biden administration's failed attempts to end yet another Trump border policy – the "Remain in Mexico" program – reveal not only the depth of resistance by anti-immigrant forces to progress, but also key administration officials' feeble commitment to rebuilding our asylum system.

Upon taking office, the Biden administration did the right thing and stopped forcing new asylum seekers into Remain in Mexico. It then began a phased process of allowing asylum seekers already in the program with pending immigration cases into the United States while awaiting their next court dates. However, after the administration issued a memorandum in June formally terminating the program, the states of Texas and Missouri successfully obtained a district court order, upheld on appeal, requiring the administration to make

good faith efforts to resume it. As CGRS [argued](#) as *amicus*, the court's decision was fundamentally wrong on the law and the facts.

While the administration eventually addressed the court's concerns by issuing a second memo terminating Remain in Mexico, the court order requiring the administration to resume the program remains in effect. To the shock and disbelief of advocates, when the administration complied with the court's order to restart Remain in Mexico, it actually went beyond the court's ruling and expanded the program's application to nationalities that were not subject to it even under Trump. During the Trump administration, CGRS brought multiple lawsuits challenging the legality of Remain in Mexico and won. We continue to monitor the program's implementation under Biden and call for its permanent end.

An Improved Landscape for Survivors of Domestic Violence

As a candidate, President Biden specifically pledged to reverse the previous administration's devastating ruling in the case known as *Matter of A-B-*, which all but eliminated asylum for people fleeing domestic violence and gang brutality. In June 2021 Attorney General Merrick Garland [granted](#) CGRS's request to vacate *Matter of A-B-*, wiping it off the books and removing what was a near insurmountable barrier for domestic violence survivors. This was a victory for a broad coalition of asylum seekers, [asylees](#), advocates, elected officials, and – of course – [Ms. A.B. herself](#). We continue to intervene in pending appellate cases, and monitor case outcomes, to ensure the fair application of the law.

Importantly, the administration is well aware that U.S. interpretation of asylum law even before *Matter of A-B-* was out of step with international law, and is taking steps to remedy the issue. In February 2021 the administration issued an [executive order](#) mandating the Departments of Homeland Security and Justice to re-align this area of U.S. asylum law with international standards by issuing regulations to clarify "particular social group" and other legal issues that have been muddied by anti-asylum forces for years. We have set forth [our recommendations](#) and look forward to commenting on the proposed regulations, which the administration was due to issue by the end of October 2021. However the regulations have now been delayed nearly three months, and we are concerned that [internal resistance](#) to asylum policies that comport with international standards may be stalling their release.

We are also [calling](#) on Congress to pass legislation to establish an independent immigration court and to ensure the unbiased adjudication of asylum claims.

Demanding Better in 2022

The Biden administration's unconscionable level of mismanagement at the border has had a disparate impact on Black migrants. Images of border agents on horseback brutalizing Haitian families sparked national outcry in September 2021. Yet deadly deportations persist. In less than one year the administration has [expelled](#) more than 18,500 people to Haiti, a country reeling from a presidential assassination and widespread political violence, in addition to a major tropical storm that struck just two days after a devastating 7.2 magnitude earthquake.

We expected better from this administration and will continue to press for positive change in 2022. It is long past time for the Biden administration to honor its promises and embrace policies grounded in humanity, fairness, and rule of law, rather than political fears and racism.