

## **Explainer: Newly Announced Border and Regional Migration Policies**

April 28, 2023

The Department of Homeland Security (DHS) and the Department of State (DOS) have [announced](#) a sweeping set of new or repurposed migration policies set to go into effect on May 11, when the Title 42 mass expulsions policy ends. The announcement describes some new, limited opportunities for migrants to seek permission to enter the United States from abroad, while further restricting asylum access at the U.S. border. With this announcement, the Biden administration has missed a critical opportunity to begin to make good on its promise to pursue a humane immigration policy, instead choosing to further undermine the U.S. asylum system.

The policies announced include: (1) confirmation that the administration is finalizing an asylum ban; (2) plans to further expand punitive policies such as increased detention, surveillance, and criminal prosecutions for those arriving at the U.S. border seeking a better life; (3) new bars to parole for Haitians and Cubans intercepted at sea; (4) the creation of a new family reunification parole program restricted to certain nationalities; (5) new “regional processing centers;” and (6) more refugee admissions.

This explainer outlines the major components of the announcements, many of which raise more questions than answers.

### **1. DHS barrels forward on proposed asylum ban.**

In February, the Biden administration proposed a rule that recycled prior Trump anti-asylum policies and will, in practice, limit asylum access at the southern border to those who are able to get an appointment to present at a port of entry through a notoriously glitchy phone app known as “CBP One.” The proposed rule violates international obligations and U.S. domestic law, which guarantees that people arriving at the border are able to seek asylum, regardless of how they entered. NIJC called for the Biden administration to [withdraw](#) this proposed rule and comply with U.S. and international law—as did [over 50,000 human rights and faith-based advocates and organizations](#), prominent [U.S. Senators](#), the Congressional Asian, Pacific American Caucus, Congressional Black Caucus, Congressional Hispanic Caucus, and the Congressional Progressive Caucus.

Rather than heed these warnings and comply with the law, the Biden administration confirmed it will make this asylum ban part of its legacy of continuing cruel and inhumane policies, effective as of the date that Title 42 is lifted.

### **2. DHS continues a punitive approach to border management, emphasizing its plans to impose “consequences” against asylum seekers and migrants, including rapid deportations without a day in court, bars to reentry, increased detention, and criminal prosecutions.**

Policies that are designed to “deter” people from seeking to enter the U.S. have for decades shown to be [cruel, deadly, and ineffective](#). People seeking safety for themselves and their loved ones should be met with a compassionate welcome and efficient processing, not punishing “consequences” for their flight. And yet, the Biden administration’s new policy announcements emphasize the imposition of “[consequences](#)” for those who attempt to cross the border between ports or without pre-arranged authorization. The announcement includes:

- “Dramatically” scaling up summary removals through [Expedited Removal](#), a program already plagued by due process deficiencies that will now be exacerbated as DHS forces arriving asylum seekers through [lightning fast asylum screenings \(and any attendant immigration judge review\) without meaningful access to counsel while jailed](#) in Border Patrol or Immigration and Customs Enforcement (ICE) facilities;
- Increasing DHS’ detention capacity and surveillance through GPS monitoring (effectively “[digital prisons](#)”) and home confinement or curfews, including for families;
- Increasing criminal prosecutions for the act of migration, which are rooted in [racism](#) and [discriminatory](#) in practice, layering a second punishment on those already facing civil penalties including deportation for allegations of reentering the U.S. without permission.

Deterrence-based policies are premised on the false notion that punitive and restrictive border measures prevent migrants from attempting to enter the United States. However, the U.S. government has never made a valid evidence-based case that criminal prosecutions or other “consequence” measures actually work as a deterrent. Criminal prosecutions for immigration offenses were the bedrock of the Trump administration’s family separation policy, but [failed to reduce](#) border apprehension numbers. Expedited removal has been [used for years in a punitive manner](#), despite its failure to curb migration of people fleeing violence and insecurity.

Instead of using punitive measures, the U.S. government has full discretion to process people in a humane manner. DHS should be shifting resources towards processing at ports of entry and funding non-profits providing respite and shelter services, away from wasteful enforcement measures.

### **3. The Biden administration turns its back on Cubans and Haitians seeking safety by sea.**

The Biden administration has continued a disturbing trend of penalizing people based on their mode of travel to the U.S., including targeting people who take to the sea. In 2021, DHS Secretary Mayorkas issued a [stark warning](#) to Cuban and Haitian refugees seeking protection at sea: regardless of the dangers they face, none would be processed for asylum in the United States. Last fall, [nearly 300 organizations](#) called out the Biden administration for its plans to send Haitians to the infamous Guantanamo Bay Migrant Operations Center. Now, the Biden administration has announced that [Cubans](#) and [Haitians](#) intercepted at sea are barred from seeking permission to enter the United States through the [already limited parole programs available](#) to Cuban and Haitian migrants.

Facing alarming levels of violence and oppression, Haitians and Cubans have increasingly turned to the sea in desperation, as the U.S. continues to restrict access at land borders through its mass expulsion and removal programs. International law prohibits the U.S. from sending

asylum seekers back to harm, regardless of their mode of entry. It is inhumane and abusive to deny this right to people from Haiti and Cuba.

**4. New family reunification parole program offers some relief but entrenches the use of narrow, nationality-based pathways.**

DOS and DHS announced the issuance of new parole programs that will allow certain people from El Salvador, Guatemala, Honduras, and Colombia to enter the United States on parole (temporary permission) as long as they have eligible family members in the United States with already-approved family petitions. The agencies also announced plans to “moderniz[e]” existing family reunification parole processes for Cuba and Haiti. Harsh U.S. laws and policies mean it remains incredibly difficult for many families to reunite after migration-related separations, often resulting in years or decades where parents, spouses, and children are stranded across seas. We therefore welcome this announcement, while expressing concern that the adoption of narrow nationality-based pathways will yield benefit to some families, while leaving out so many others simply because of their nationality or race. In addition, we note that pathways that provide parole are not a replacement for the asylum system that the administration seems keen to undermine because parole is a temporary status that provides no lasting path to stability.

**5. New Regional Processing Centers provide appointment-based access; many questions about these Centers remain unanswered.**

DOS and DHS also announced the creation of new “Regional Processing Centers” in countries including Colombia and Guatemala, where individuals will have the opportunity to be screened for eligibility for “lawful pathways” to the United States, Canada, and Spain. The administration’s announcement suggests that access to these centers, like access to asylum at the southern border, will be contingent on the individual’s ability to obtain an appointment on a mobile app. Many questions remain as to how many people will benefit from this regional processing, what technological access and barriers they may encounter, what regional agreements the U.S., Canada, and Spain have reached with host countries, and what actual pathways will be available to applicants.

**6. The Biden administration reiterates a “goal” to double refugee admissions.**

Like a prior January [announcement](#), the Biden administration promises again to increase refugee processing in the Western hemisphere — here vowing to double refugee admissions. Such goals are laudable and we encourage the administration to act with urgency to achieve dramatically increased refugee resettlement numbers after the program was decimated during the Trump administration. However, pairing these announcements with restrictions on asylum access (whether by sea, land, or air) indelibly taints this welcome news.

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The end of Title 42 provides the United States with the opportunity to re-think its approach to immigration and asylum processing, which grows more punishing with each day. NIJC once again urges the administration to abandon this approach and instead adopt [workable solutions](#) for a compassionate, humane approach to border migration policy.