



Statement for the Record of

Human Rights First

On

House Judiciary Committee

“Biden’s Border Crisis - Part One”

February 1, 2023

## **I. About Human Rights First**

Human Rights First is an independent, non-profit organization that for more than four decades has pressed the United States to take a leading role in promoting and defending human rights. Established in 1978, Human Rights First's mission is to ensure that the United States is a global leader on human rights. The organization works in the United States and abroad to promote respect for human rights and the rule of law. The organization's work includes advocacy and action to uphold the right to seek asylum and to counter the antidemocratic extremist movement that represents an existential threat to our democracy. The organization also partners with many of the nation's leading law firms to provide pro bono legal representation to refugees seeking asylum, and over the years has helped thousands of refugees receive asylum in this country.

## **II. Overview**

Human Rights First is alarmed at the scale and dangers presented by orchestrated rhetoric that paints migrants and people seeking asylum at the U.S. border as a threat or "invasion." Human Rights First's experts on extremism and anti-semitism have repeatedly warned that this rhetoric leads directly to increased violence. As outlined below, lawmakers must refuse to provide a platform for this rhetoric. Rather, they must call out this racist fear-mongering and counter disinformation with reliable and accurate data regarding the right to asylum, the U.S. immigration system, and current conditions at the border.

We cannot allow bigoted narratives and disinformation to dominate critical conversations about immigration policy and our nation's asylum laws. 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.

Instead, the United States should lead by example, uphold refugee law at home, and take the other steps outlined at the end of this statement.

## **III. Anti-Immigrant Narratives Pose Violent Threat**

Bigoted and dangerous rhetoric targeting immigrants has become commonplace among a growing number of elected officials who see fear-mongering as a political strategy. Portraying asylum seekers as [violent "invaders"](#) or pawns in a malevolent and orchestrated takeover, these narratives represent merely the most recent adaptations of white supremacist conspiracy theories. This racist rhetoric [can encourage violence](#), and it is a threat to our communities. Congressional hearings should not be a mechanism to further mainstream this ideology.

The mainstreaming of this racist rhetoric is most obvious in terms of the Great Replacement conspiracy theory. The conspiracy theory centers around the idea that there is a cabal of malevolent elites – often depicted as Jewish people – whose secret goal is to disempower or eliminate white people by “replacing” them through non-white immigration and/or intermarriage with people who will be amenable to the malicious demands of the powerful cabal. The most common mainstream version of this conspiracy theory is currently the [“voter replacement” conspiracy](#), suggesting that immigrants are pawns in a political scheme to replace native-born American voters. Similarly, nativist extremists have a long history of describing peaceful migrants and asylum seekers as [“invaders,”](#) nefariously ascribing to them a collective and violent intent.

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](#). This propaganda is especially likely to depict people of color, playing on [harmful racist stereotypes](#).

Despite the lack of accuracy in anti-immigrant narratives, [their growing popularity poses](#) a dangerous threat to Black, Brown, immigrant, Jewish, and other targeted communities. 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.

To prevent this hearing from serving as a vehicle to further popularize racist and violent rhetoric, lawmakers must effectively challenge the disinformation, bigoted stereotypes, and conspiracy theories on which these narratives rely. That is, lawmakers 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.

### **III. The Right to Asylum is Legal, Politically Popular, and Morally Right**

The right to seek asylum is a fundamental human right enshrined in the [Universal Declaration of Human Rights](#). The [Refugee Convention and Protocol](#) prohibit the return of people to persecution. [U.S. law](#) specifically provides ways for people in search of refuge to seek asylum at U.S. ports of entry and after entering the United States. Despite the U.S. government’s legal obligations to refugees, people seeking refuge in the United States have – for years now due to inhumane, illegal and counterproductive policies – been prevented from seeking asylum at U.S. ports of entry due to use of the Title 42 policy and similar predecessor policies, and often expelled under Title 42 if they try to seek asylum after crossing the border into the United States.

Despite the tone and rhetoric prior to and surrounding this hearing, let us be clear: 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.<sup>1</sup> Furthermore, lawmakers of both parties also believe the right to asylum should be protected. Indeed, recent anti-immigrant legislation was undercut by [bipartisan opposition](#) because Republicans and Democrats have expressed a desire to uphold the right to asylum.<sup>2</sup>

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 largest protest in over 20 years in July 2021 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, over the last year, 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 — a situation that UNHCR stated “may be characterized as a massive violation of human rights” in January 2023 [guidance](#).
- In Venezuela, in recent years, the human rights situation has grown [significantly worse](#) due to harsh crackdowns on political opposition, the ruling party's reliance on widely

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<sup>1</sup> 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 February 2022 [poll](#) by the National Immigration Law Center Immigrant Justice Fund found that a majority of voters across the political spectrum supported asylum and wanted the Biden administration to end the Title 42 policy.

<sup>2</sup> In response to concerns raised about his bill, the “Border Safety and Security Act of 2023” (H.R. 29), Representative Chip Roy [insisted](#), “No one's trying to ban asylum.” GOP Members of Congress have [expressed serious concerns](#) about hard-line legislation like H.R. 29, indicating the broader popularity of the right to asylum. *See e.g.*, Rep. Tony Gonzales (“Trying to ban legitimate asylum claims—one, it's not Christian, and two, to me, it's very anti-American. So a lot is at stake.”); Rep. Maria Elvira Salazar (“Are we stupid? Come on. This country was based on good minds. Look at Albert Einstein, we gave him a piece of paper to come in. . . . We are letting the Albert Einstein of this modern time slip away.”).

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 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](#).

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, persecution, and violence.

#### **IV. Inhumane, Counterproductive Policies Banning Asylum Remain in Place**

Two years since President Biden took office, his administration has taken some important initial steps toward ending Trump administration policies that 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 and the Secretary of Homeland Security's [termination](#) and [re-termination](#) of the notorious Remain in Mexico (RMX) policy.

Despite these steps forward, some of the most inhumane and dysfunctional Trump administration policies have continued in force or remain on the books due in part to lawsuits filed by state politicians aligned with the prior administration and the slow pace of agency regulatory action. Yet, the Biden administration has also taken steps backward, recently expanding and proposing use of Trump policies in the face of border arrivals and orchestrated, politically driven anti-immigrant rhetoric.

In October 2022, the Biden administration [expanded](#) its use of the Trump-initiated Title 42 policy to turn away Venezuelans and used its creation of a new parole initiative for Venezuelans to try to justify this denial of access to asylum — a move that promptly triggered [condemnation](#) by the U.N. Refugee Agency (UNHCR), the International Organization for Migration (IOM), and UNICEF. On January 5, 2023, the Biden administration [announced](#) a new parole initiative for nationals of Cuba, Haiti, Nicaragua and Venezuela but — again — improperly accompanied this positive initiative with the expansion of use of Title 42 to expel nationals of all four countries without allowing them to seek asylum. In other words: some Venezuelans, Haitians,

Nicaraguans, and Cubans (those who can submit an online application, which presents language, technological, and other barriers to access; have a U.S.-based sponsor who meets income requirements; and can afford a plane ticket to the United States) can apply for temporary parole into the United States; those who do not have been, and will be, immediately expelled under Title 42 if they attempt to enter the United States to seek refuge.

Simultaneously, the Biden administration announced alarming plans to propose an asylum ban — an approach [repeatedly initiated by](#) the Trump administration and [repeatedly found unlawful by](#) the [courts](#). During the year that the Trump administration’s transit ban was in effect, it [resulted](#) in the denial of asylum to refugees with well-founded fears of persecution, the separation of families, and deprivation of a path to citizenship for refugees left only with withholding of removal due to the transit ban. Moving ahead with this misguided approach would breach President Biden’s [campaign promise](#) to end restrictions on asylum seekers traveling through other countries, and [endanger](#) many Black, Brown, Indigenous, LGBTQ+ and other asylum seekers. It would also advance 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 has [praised](#) the Biden administration’s plans to impose an asylum ban as a “good first step.”

Earlier this month, Human Rights First joined a diverse<sup>3</sup> coalition of nearly 300 organizations in a [letter](#) to the Biden administration, urging it to abandon its plan to issue the asylum ban. And just last week, nearly 80 Members of Congress echoed that call, in a bicameral [letter](#) to President Biden. Faith-based organizations have also [called](#) on the Biden administration to uphold asylum and abandon plans to propose an asylum ban.

In addition, a recent Reuters [report](#) indicates that the Biden administration is also planning to fast-track asylum screenings in Customs and Border Protection (CBP) custody at the border, undercutting any meaningful opportunity for an asylum seeker to explain their case. The report indicates that credible fear interviews would be conducted through [expedited removal](#) in CBP custody — 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 a due process, humanitarian and [refugee protection fiasco](#). Notably, President Biden directed the Department of Homeland Security (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 will drastically exacerbate the deficiencies

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<sup>3</sup> 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.

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

The Title 42 policy is still in place due to [litigation](#) in Louisiana by state leaders aligned with the prior administration to force the continuation of this policy through the courts. In April 2022, the CDC [directed](#) that the policy be terminated. Public health experts have [repeatedly stressed](#) that the policy harms, rather than helps, public health and bolsters racist tropes that paint migrants and refugees as disease threats. [Analysis](#) of CBP data and [statements](#) by border officials themselves have confirmed that the policy actually [spurs](#) repeat entries, [inflates](#) border statistics and [pushes](#) people seeking asylum to attempt to cross the border as it is used to turn them away from ports of entry. A D.C. District Court [ruling](#) that vacated the Title 42 policy for violating U.S. law is currently [stayed](#) by the Supreme Court while it considers the request of the Trump-aligned state attorneys general who initiated the Louisiana litigation to intervene in the separate D.C. District Court case. On January 30, 2023, the Biden administration [indicated](#) that it plans to end the public health emergency related to COVID-19 on May 11, 2023, which would automatically terminate the Title 42 policy.

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.

#### **V. Trump-era Policies Inflicted Chaos At the Border — Continuing those Policies is Not a “Solution”**

The policies initiated under the Trump administration inflict chaos, dysfunction and massive human suffering. It’s past time to ensure a firm and final end to these ineffective and inhumane policies. The last thing that Congress or the Biden administration should do is to attempt to prolong, codify, or resurrect policies that inflict disorder, family separation and massive human rights abuses on people seeking refuge.

Such 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. As noted above, these dysfunctional policies have spurred repeat entries, separated families, pushed people seeking asylum to cross outside ports of entry, and inflated border statistics. The Biden administration recently [touted](#) the pairing of parole initiatives with an expansion of its Title 42 policy as a success given the recent decline in arrivals at the border. However, the denial of asylum, grave human rights abuses, and disorder and chaos inflicted by Title 42 are the opposite of a success. The provision of pathways and the restoration of access to asylum are the decisive and durable [drivers](#) in discouraging irregular crossings. A more humane and effective approach would be to strengthen parole and other safe pathways, which provide alternative routes to the United States, without the imposition or use of deeply damaging, counterproductive policies like Title 42 and asylum bans.

The real problem is that the United States is flouting its own asylum laws and the Refugee Convention by systematically closing its doors and turning people away to danger.

## VII. Examples of Human Suffering Inflicted by Anti-Asylum Policies

Policies that ban, block or turn away refugees seeking asylum have caused massive human suffering. 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 two years since President Biden took office. A 34-year-old Haitian asylum seeker, [Jocelyn Anselme](#), was murdered in Tijuana in May 2022 while blocked from seeking asylum under Title 42.

In its latest [report](#), issued in December 2022, Human Rights First found that the continuation and October 2022 expansion of the Title 42 policy has 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. Fiscal Year 2022 was the [deadliest](#) year for border crossings since the U.S. government began record keeping on border crossing deaths in 1998.

Some examples from Human Rights First's research of the harm caused by anti-asylum policies – including Title 42, the asylum transit ban, and the conduct of credible fear interviews in CBP custody – are below.

- Asylum seekers expelled or blocked from seeking U.S. protection due to the Title 42 policy include a [Guatemalan lesbian transgender woman](#) who was raped by Mexican police officers in Piedras Negras in October 2022, soon after CBP officers turned her away from protection 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.
- 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.

## VIII. Recommendations for Upholding Refugee Law

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

- **Uphold refugee law at U.S. borders** without discrimination, including to restart and maximize (rather than restrict or “meter”) asylum at ports of entry, take all steps possible to end the Title 42 policy, 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. Restoring 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.
- **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, 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 effective, 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.
- **Rescind — and do not resurrect — Trump policies**, including the asylum [entry](#) and [transit](#) bans, and other fatally flawed policies of the last administration that punish or block refugees from protection, abandoning the harmful asylum ban plan.
- **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 firmly reject attempts to exploit Congressional hearings as opportunities to platform bigoted, 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 updated [recommendations paper](#), and outlined them in a [brief summary](#), both issued in January 2023.