



How to Talk About the End of Title 42 and the Biden Administration's Replacement Policies

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"They think we only want papers, but they should listen to our stories. Each of us has a story and our past is scary and ugly. By giving asylum, they are giving safety.

—Woman seeking asylum in Justice Action Center and ImmDef poll

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OUT OF DATE

TOPLINE MESSAGE¹

The freedom to move has always been a part of the human experience. People experiencing violence and oppression deserve the opportunity (and have the right) to apply for asylum in the U.S. and have their cases heard while remaining safe.

The Biden administration is replacing the Title 42 expulsion policy with an asylum ban and other failed policies. By instituting an asylum ban, President Biden is saying people only deserve protection if they are rich enough to buy a direct plane ticket to the United States or lucky enough to get an appointment on a glitchy and complex smartphone app. Instead of turning away people seeking protection, the United States should have a fair, humane, and orderly system that reflects our values.

Volunteers across the United States are already helping people seeking asylum and welcoming them with dignity. We need an asylum system that does the same.

¹ These messages tested highly in public opinion research from Justice Action Center and ImmDef. See this [one-pager](#) from JAC/BSP Research.

We can do this, if we meet the humanitarian challenge with humane policies, rather than repression and rejection.

POLICY ANALYSIS

The administration ended the Trump-era Title 42 mass expulsions policy on May 11, but despite [tremendous opposition from around the country](#), they replaced it with yet another confusing and complicated ban. These policies are illegal and are inflicting massive human suffering. Human rights monitors have tracked [over 13,000 reports](#) of torture, kidnappings, and brutal attacks against people stranded or expelled by the Biden administration.

Instead of implementing workable [solutions](#) toward its [campaign commitment](#) to a humane, orderly immigration policy that upholds refugee law and respects asylum rights, the Biden administration is doubling down on the politics of exclusion.

- The new ban asks other countries to step up and offer asylum before the U.S. does – abdicating our moral leadership
- The ban ignores the fact that these other countries are not safe places to live for many Black and Indigenous people, LGBTQ+ individuals, and others who are fleeing violence and persecution
- The narrow “exceptions” to the asylum ban are completely arbitrary and elusive - they have nothing to do with the serious risks people face

Instead of a functioning and fair asylum process, the administration has designed a complicated scheme that even lawyers and reporters are having difficulty understanding.

Clearly, the point is not to protect human life. It’s to force people to run the gauntlet, and if most people are left stranded in danger, that’s just fine.

For the few people who will be allowed to enter and continue the asylum process, the dehumanization continues. The government wants to track them with ankle monitors, subject them to curfews, and continue to [treat them](#) like objects rather than people.

This is a fundamental values problem. Instead of seeing this as a humanitarian issue and addressing it through reasonable, legal policies, the Biden administration sees it entirely through the lens of “[enforcement](#).” Control. Restriction. They’re spending billions of dollars to keep people out, instead of using a fraction of that money to facilitate an orderly, fair, and humane asylum process.

Policies that do not take into account human needs and human rights are bound to fail, causing more harm to people seeking safety. Around the world, people are displaced by climate disasters, political upheaval, and economic turmoil and asylum

seekers are fleeing violence and persecution in their home countries. A humanitarian crisis must be met with a humanitarian response.

- **Asylum ban:** Despite [opposition](#) from across the US, the administration is moving forward with an [asylum ban](#), now in effect as of 11:59 pm ET on May 11, 2023 (rapid analysis of the final asylum ban rule is available [here](#)). The asylum ban bars many refugees from asylum even though they are eligible under U.S. and international law, ties refugees' access to protection to a glitchy mobile phone app, and denies asylum access for many people based on their manner of travel to the United States.
- **Rapid screenings in CBP Custody:** The administration is committed to conducting rapid and summary screenings in CBP custody that will inevitably result in asylum seekers facing deportation because of insufficient time and lack of access to legal counsel to prepare their cases. Worse still, the administration has [truncated](#) the time asylum seekers will have to find legal assistance (from 48 hours to a mere 24 hours). How could anyone prepare a complicated legal case in 24 hours, much less one that has such high stakes of life or death?
- **Militarized force at the border:** Echoing the Trump administration, the Biden administration is also sending 1,500 active-duty troops to the southwest border, bolstering the narrative that people seeking protection present a threat requiring a militarized response, rather than a humanitarian response. Border communities are already over-militarized; as border communities work around the clock to support migrants with reception and care, this administration should be providing the communities with support, not optics.
- The White House has also announced that it will continue to forcibly return non-Mexican nationals to Mexico after the end of Title 42, under formal deportation orders—which will be particularly flawed due to the policies outlined above. The populations will reportedly include Cubans, Haitians, Nicaraguans, and Venezuelans, but there are scant details. This unprecedented policy shift marks a further deterioration of the U.S. commitment to refugee protection given the dangers and harms migrants will now continue to face after being deported to Mexico.
- While the Biden administration has announced positive steps such as a commitment to increase resettlement and parole, the administration has improperly used such steps to attempt to justify its denials of access to asylum.

These policies deny access to asylum for those who are most vulnerable and at immediate risk and who cannot wait for weeks or months for a mobile phone appointment in danger in Mexico or do not have passports or U.S. financial sponsors

to qualify for one of the limited new pathways. The administration's post-Title 42 plans also fail to address the urgent needs of border communities, non-governmental organizations, and cities and localities who have implored the administration to focus on increasing support and coordination for arrivals, processing, and onward transportation and services for people seeking safety at the border.

OTHER KEY POINTS

SOLUTIONS

President Biden often talks about the fact that we can do big things. We have already seen what our country can do when we decide to lead with compassion, rather than cruelty. The initial welcome of people from Ukraine is one example.

When it comes to asylum, it is not a question of resources. We're already spending billions of dollars on a militaristic approach that has not worked. It's a moral decision. Do we invest in a system that reflects our values and recognizes our shared humanity? Or do we continue to pour our resources into things that don't work and only cause more pain?

Leading experts on refugee protection, asylum law, and border management have outlined solutions the Biden administration should implement. They include:

- **Allowing people to access the regular asylum process**, no matter where they come from, no matter how they reach the border, and no matter how they cross - increasing asylum adjudication capacity and ending barriers imposed by the last administration.
- **Expanding safe migration pathways** for people who need protection, but not using that as an excuse to bar asylum access for people who aren't able to use those pathways.
- **Building infrastructure at U.S. ports of entry** to handle initial paperwork for people seeking asylum, and swiftly transporting them to nonprofits and community-based shelters.
- **Referring all asylum cases initially to USCIS rather than the Immigration Courts**, with reasonable timelines so that people have a chance at finding a lawyer and preparing a complete case.
- **Coordinating with and providing funding to nonprofits, community-based shelters, faith-based groups**, and other organizations that provide housing, clothes, food, legal information, and transportation to reunite people seeking asylum with relatives in the United States.

- **Investing in community-based case management services in cities around the country** to support people in navigating the immigration process and finding stability once they reach their destination.

WHAT NOT TO DO

Experts also identified failed policies and practices the Biden administration should not continue or revive. They violate U.S. and international law, undermine due process, and lead to the deportation of people who actually qualify for protection. They include:

- **Offering limited migration pathways as a trade-off to limit asylum access at the border.** The U.S. asylum system should be open and equal for everyone, no matter what country they come from or how they are able to reach the United States. Asylum exists to protect people fleeing for their lives, and many cannot safely wait for an application to be adjudicated at home or in another country.
- **Denying asylum to people simply because they traveled through another country and did not first seek asylum there.** Many of the countries people pass through on their way to the U.S. are [unsafe](#)—particularly for Black, Indigenous, and LGBTQ+ people seeking refuge—and none have the capacity to welcome folks we turn away.
- **Requiring use of the CBP One application as the sole way to access asylum.** Smartphone technology is fallible and will never be universally accessible. When the stakes are life or death, as they are in asylum cases, gatekeeping protection behind an app is dangerous, immoral, and cruel. It also violates our laws and treaty obligations.
- **Putting people seeking asylum in U.S. jails.** We should not penalize people that are simply exercising their legal right to seek asylum. This is traumatizing and inhumane. It also makes it much more difficult for them to access lawyers and prepare a complete case. People who qualify for asylum under U.S. law are being wrongly deported because they are unable to gather evidence to prove their cases from inside a jail. This is unfair, an affront to due process, and not how our system should operate.
- **Making a rushed final decision in an asylum case at the border.** Preparing an asylum case requires extensive evidence and an understanding of complex legal issues. When we make people prepare their case from a border holding cell, we set them up to fail. We should not be deporting people who qualify for asylum under U.S. law because they have not been able to meaningfully

consult with an attorney or gather proof for their case. In life-or-death situations like this, fairness must be the priority, not speed.

Restoring regular asylum processing is the right thing to do strategically and morally.

There is a humane way to do it, if we recognize that this issue requires a humanitarian response rather than treating it like an “enforcement” task.

VALUES AND WELCOMING

This is about who we are, and who we want to be.²

The U.S. has long held itself up as a beacon of hope, safety, and freedom for the world. Immigrants and refugees are part of the fabric of our nation; their arrival is a new point of opportunity for everyone. When people risk everything to seek protection for themselves and their families, they should be recognized for their acts of courage and resilience, not turned away or confronted with xenophobic attacks.

We cannot claim to be a nation that fights for human rights everywhere else when we turn our backs on people seeking a chance at survival and a better future. We need to be an example and leader for other countries.

The U.S. is at its best when it welcomes people seeking asylum with dignity and compassion.

Everyone deserves a safe place to live and thrive. That’s what people seeking asylum are looking for, too. They are some of the bravest people we know. Think about their resilience in the face of what they have fled, and how they have been received. Instead of treating their existence as a political liability or a security issue, we must treat it as the urgent humanitarian challenge it is. That is why our policies need to be oriented toward protecting people, not repressing their chances of getting safe.

Welcomers are already helping their new neighbors who are seeking asylum. The government should follow our lead.

Shelters, legal aid groups, and humanitarian service providers are already assisting people who have the opportunity to pursue their legal cases in the United States. This is the same spirit that brought people who want to help to show up to bus stops and gathering points in San Diego, Martha’s Vineyard, Washington, DC, New York City, and Chicago.³

If we work together, the government and people can do great things.

Our partners are ready to work with all levels of the government to ensure that people can pursue asylum claims in a dignified and orderly manner. The federal government can help by working with us and providing appropriate funding and resources to support humanitarian service providers.

² This message was taken from draft points written by FIRRP. See the full document [here](#).

³ See our guide: [How to talk about the buses of migrants and asylum seekers](#).

#WelcomeWithDignity's [poll](#) found most Americans support asylum.

In a representative survey of 1,000 Americans, nearly three-quarters of respondents (73.4%) either strongly or somewhat agreed that the United States should provide asylum to people fleeing persecution and/or violence in their home country.

HOW TO DEAL WITH NEGATIVE TERMINOLOGY AND FRAMING

Words matter. Don't use dehumanizing language.

Using words like “surge” or “wave” to refer to people seeking asylum at the border; talking about “processing” them; or referring to people by their immigration status alone (i.e. “asylum seekers,” “refugees,” “UACs”) is dehumanizing. Recent events in Texas have shown dehumanizing language has deadly consequences.

It equates people seeking safety with natural disasters, threats, or inanimate objects, rather than highlighting our shared humanity. Here are some phrases to use instead:

- Communities and organizations across the border and country are ready to **handle an increase in** arrivals of people seeking asylum.
- Across the country, organizations have stepped in to fill the gaps in services for **a rising number of people seeking safety**, where state and federal governments have fallen short.
- Other words to use: uptick, incremental, additional, rise, people, children, moms and dads, families, applying, entering, seeking.

When asked if there is a “crisis” at the border, use these pivots.

- There is a humanitarian need at the border, and we're ready to address it as community organizations, with support and coordination at all levels of government.
- Migration to the U.S.-Mexico border is not new. Migration is a part of the human experience. Organizations on both sides of the border and around the country are experts at welcoming people seeking asylum with dignity, including meeting basic needs, helping them reach their final destinations in the United States, and assisting them with their legal cases. The welcome we have seen in communities across the country reflects what local organizations have been doing at the border for decades, and is a model for what we want to see from the U.S. government.

When the bogeyman of a “migrant surge” is raised, use these pivots.⁴

⁴ This guidance was taken from draft points written by FIRR. See the full document [here](#).

- The real question is how do we want to lead—with disregard for international law and humanity? Or with a true embrace of our nation’s values of freedom, fairness, and equal opportunity? If we dig deeper, this sensationalization of a “surge” reinforces what has been a racist and incorrect story: that migration is dangerous and needs to be reduced, and that people seeking safety and freedom deserve to be punished.
- Policies like Title 42 have prevented people from exercising the right to seek asylum at the U.S. border for over three years. It is not surprising that we are seeing an increase in the number of people coming to the border in the hopes their claims will finally be considered.
- Title 42 and other policies that restrict access to asylum have caused disorder by displacing people, stranding them in dangerous conditions, and forcing them to make multiple attempts at seeking safety because they have no other option.
- Restarting asylum processing will restore order at the border and keep migrants safe. When they are forced to wait in Mexico for months or longer, bad things happen to them.
- Migration is natural and helps our country flourish. Politicians who call the existence of people seeking safety a “crisis” are deliberately stoking fear, using racist rhetoric to distract the media from their own leadership failures.
- The real crisis is a humanitarian one caused by our broken immigration system that has truncated legal immigration options, and put children and families in harm’s way. The basic concept that immigration is primarily an enforcement challenge has failed because it doesn't reflect reality. Migration is a human need. U.S. policies should allow people to migrate safely, not close the door to people seeking protection. Global displacement is also a reality and requires a long-term multinational approach.

How to address a need for resources, or when someone says border towns are “overrun.”

An uptick in people seeking safety means that organizations at the border and across the country need support from local, state, and federal governments, and from compassionate community members willing to volunteer and donate their time and resources.

Instead of politicizing the issue, elected officials must work with groups on the ground and provide much-needed government funding to organizations that have stepped up to welcome and support migrants and people seeking asylum, both at the border and inside the U.S.

Much of the money that is currently spent on militarizing the border and detaining people who are seeking protection could be used for humane border reception, legal aid, and ensuring that USCIS and immigration courts have enough employees and judges to decide asylum claims in a fair, orderly, and timely manner. These are proven solutions that President Biden [promised](#) to implement.

Organizations at the border and across the country have long sought government support to address the humanitarian needs of migrants. More funding will ensure a humane and dignified reception process for people seeking safety.

MESSAGING ON THE ASYLUM BAN

Overview

The Biden administration is replacing Title 42 with a new asylum ban that is a mishmash of cruel Trump policies that the federal courts [repeatedly struck down](#) as unlawful. The ban violates U.S. and international law and is now being [challenged in court](#).

Biden's asylum ban makes people ineligible for asylum - and subject to deportation - if they pass through another country on their way to the United States and don't try to get asylum there first. These countries are often very dangerous for migrants and people seeking asylum. None of them have functioning asylum systems with capacity to see more cases. Analysis of the final rule is available [here](#).

People can theoretically avoid the ban by scheduling an appointment on a smartphone app called CBP One. But CBP One is riddled with glitches - it's been called "asylum Ticketmaster" - and it's only available in some languages, to people with reliable internet access, who are literate... and who just get lucky enough to book an elusive appointment. Some people have been trying and failing to get an appointment for **months**.

Replacing one unlawful Trump-era policy with a different one is a **legal, moral, and political mistake**.

[Focus on values-based messaging](#)

- President Biden's asylum ban will harm most people seeking asylum and inflict disproportionate suffering on Black, Indigenous, LGBTQIA+, and disabled folks, as well as pregnant people and children fleeing persecution.
- This policy goes against everything the U.S. supposedly stands for: offering safe haven to people fleeing persecution; honoring brave parents who want the

best for their children, as we all do; and, welcoming those “huddled masses yearning to breathe free.” Immigrants and refugees make our country better.

Call out the Biden administration for breaking its promises to restore asylum:

- Biden campaigned on [promises](#) to turn the page on Trump-era cruelty. He even promised to rescind Trump’s asylum bans. Now Biden is taking a page straight from the Trump playbook, resurrecting some of his worst policies.

Combat the language coming out of the White House that is rooted in enforcement, “deterrence,” and a negative perception of asylum seekers:

- The Biden administration is posturing about hardline “[enforcement](#)” and “detering” migration. This language actively dehumanizes people seeking asylum. It’s based on the idea that our goal should be keeping people out, not building a fair and humane system that works. And we know that when people are fleeing for their lives, no level of cruelty will “deter” them from seeking safety.
- These so-called enforcement measures are not upholding the law, they’re breaking it. Everyone has the legal right to seek asylum. Turning people away - and returning them to places where they face persecution or torture - is illegal.
- Policymakers are capitalizing on this issue to advance their political agenda, stoking fear among their constituents and rejecting [evidence-based solutions](#) to the challenges at our border.
- Renew our call for solutions toward building a *humane, fair, and dignified* asylum system.

Emphasize the amount of support for migrants and OPPOSITION to the asylum ban

- After the rule was proposed, over 51,000 comments were submitted by individuals, organizations, and politicians from the president’s own party in the 30-day comment period. Over 1,700 comments every day.
- The [vast majority of comments](#) opposed the ban, [including](#) those from Black-led, civil rights and LGBTQ+ organizations; major unions; Catholic Bishops; rabbis; Holocaust survivors and their families; the asylum officers’ union; former immigration judges; the U.N. Refugee Agency (UNHCR); and 82 democratic Members of Congress.
- [Anti-immigrant hate groups](#), in contrast, welcomed the proposed ban. Is this who Biden wants to please?

ADDITIONAL RESOURCES

- John Oliver's [Last Week Tonight episode](#) on Title 42
- [Booking Memo to Share with Reporters](#)
- [List of Organizations Serving Asylum Seekers at the Border](#) [Please encourage folks to donate!]
- Statement from the California Welcoming Task Force on the three-year anniversary of Title 42 (in [English](#) and [Spanish](#))
- [One-pager](#) on messaging dos and don'ts from JAC and BSP Research
- [How to talk about asylum over the holidays](#) (still relevant!)
- [Statement](#) from the Rio Grande Valley Welcoming Committee on the May 7 tragedy in Brownsville (and [WWD response](#))
- [Flyers](#) and videos to help people seeking asylum manage media requests (available in English, Spanish, French, Haitian Kreyol, and Portuguese).
- [Human Rights First asylum ban landing page](#)
- [Human Rights First Title 42 landing page](#)

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