

NEEDS IMPROVEMENT



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**A PROGRESS REPORT ON THE BIDEN
ADMINISTRATION'S RECORD ON MAKING
THE UNITED STATES A SAFE REFUGE**

**AMNESTY
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First published in 2021
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: AMR 51/4297/2021
Original Language: English

PROGRESS REPORT SUMMARY

| Subject Area | Overall Feedback | Remarks and Recommendations |
|--------------------------------|---|-----------------------------|
| Immigration Detention | COURSE CORRECTION URGENTLY NEEDED  | p. 6 |
| Access to Asylum at the Border | COURSE CORRECTION URGENTLY NEEDED  | p. 8 |
| Unaccompanied Children | STILL IN PROGRESS  | p. 9 |
| Climate Displacement | STILL IN PROGRESS  | p. 10 |
| Refugee Protection | STILL IN PROGRESS  | p. 11 |
| Temporary Protected Status | STILL IN PROGRESS  | p. 12 |

President Biden assumed office pledging a fair and humane immigration system, placing racial justice and human rights at the heart of his vision. His promised agenda was a stark contrast to that of President Trump’s administration, which used xenophobia to justify punitive and cruel policies that dismantled access to protection for many people.

Yet the Biden administration has yet to [act boldly](#) to undo the Trump administration’s harm and restore humanity in how the U.S. treats refugees, asylum-seekers, and immigrants. Despite some welcome changes, overall progress has been slow and uneven. Most alarmingly, the administration needs to immediately reverse its direction on immigration detention, where it is rapidly going backwards, and fully restore access to asylum at the U.S. southern border, where it continues to maintain the Trump administration’s policy of blocking and expelling people at the border. Failure to act and course-correct is a betrayal to people seeking safety.

Rebuilding an immigration system takes time, but nearly half a year in, the administration still needs to deliver promised change. No matter the situation or who heads the administration, the government cannot get out of its human rights obligations.

Systemic reform that respects human rights means explicitly addressing the racism underlying the U.S. immigration system. But current policies that perpetuate deterrence, detention, and deportation do the opposite and must be eliminated to end [systemic harms](#) against Black and Brown communities. As President Biden [commits](#) “to advance racial justice through the whole of our government...to root out systemic racism from our laws, our policies, and our hearts,” he should establish a dedicated White House Task Force on Black Immigrants.

President Biden has a clear choice: retain inhumane policies and own the stain they leave on his administration’s human rights record, or turn rhetoric into concrete action and firmly [put human rights and racial justice at the center](#) of his immigration plans. There is still hope for change, but words alone will not achieve it.

President Biden has committed “...to advance racial justice through the whole of our government... to root out systemic racism from our laws, our policies, and our hearts...”

President Biden, A Proclamation on Day Of Remembrance: 100 Years After The 1921 Tulsa Race Massacre, May 31, 2021

RUBRIC: Human Rights Standards

Under international law, the U.S. government has an obligation to ensure that the human rights of refugees, asylum-seekers, and immigrants are respected, protected, and fulfilled.

Enshrined in international and domestic law, the right to seek asylum is a bedrock of refugee protection. Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the latter of which the U.S. incorporated into domestic law through the 1980 Refugee Act, governments must uphold the right to seek asylum. The U.S. government codified in domestic law the right to seek asylum both at and between ports-of-entry along the U.S. border.

Immigrants and asylum-seekers, as anyone else, must benefit from a legal presumption of liberty and not be subject to arbitrary detention. Detaining people solely on account of their immigration status constitutes arbitrary detention. Asylum-seekers should not be detained, but if they are, it must only be only in exceptional circumstances. Detention should only be a measure of last resort, after non-custodial alternatives have proven or been deemed insufficient. When detention occurs, it must be the least restrictive as possible for the shortest period of time.

Under international human rights standards, all actions concerning children should be guided by the best interests of the child. Children should never be detained, as it is not in their best interests. If they are, it must only be in exceptional circumstances for the shortest possible time and in the least restrictive setting possible, in a facility that is appropriate to the child's needs.

The U.S. government is under the obligation not to return individuals to a situation in which they would be at risk of torture or other serious human rights abuses: the principle of non-*refoulement*. This includes not only their countries of origin, but any other place where they would face risk of serious harm.



IMMIGRATION DETENTION: COURSE CORRECTION URGENTLY NEEDED

After initial positive changes, such as the [release](#) of all families from long-term immigration detention and the rescission of harmful and unlawful enforcement policies, a [promising](#) start has fizzled out.

The administration is swiftly moving in the wrong direction by increasing Immigration and Customs Enforcement's (ICE) unnecessary, harmful, and unlawful reliance on immigration detention. Shortly after President Biden took office, ICE [reported](#) detaining 13,860 people on February 5. As of June 11, the number of people ICE [reported](#) detaining has skyrocketed 82 percent to 25,238. His proposed budget for fiscal year (FY) 2022 funds detention space for [32,500 beds](#). Returning to [Obama administration levels](#) of detention is not progress; it is history repeating itself.

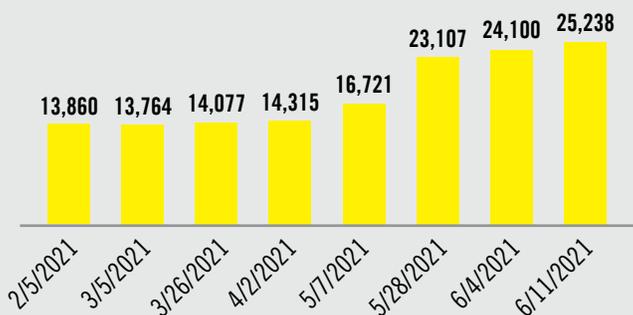
The drastic rise in the number of detained people reflects how the Department of Homeland Security (DHS) is [reverting back](#) to a blanket use of [detention for people arriving at the border](#). Its [interim enforcement guidelines](#) are categorically prioritizing people arriving at the border for detention. [Recent statements](#) suggest the Biden administration will continue to rely on mass detention for people arriving at the border, particularly when it ceases to misapply the public health quarantine – called Title 42 – to block access to safety at the border.

Although the long-term detention of families is a positive step, the [policy remains on the books](#) and is funded in the [FY 2022 budget proposal](#). Family detention should be ended altogether, and families seeking safety should be initially processed in border reception and welcome centers run by qualified nongovernmental organizations.

No one should be detained for seeking safety or detained solely because of their immigration status. The blanket use of detention is not only unlawful under refugee protection and human rights standards, it is also at odds with U.S. law guaranteeing the right to seek asylum regardless of how a person enters the country, feeding a harmful narrative that dehumanizes immigrants and people seeking safety.

Furthermore, the administration is endangering the lives of people needlessly detained when it could release them. During the COVID-19 pandemic, ICE and its contractors have [proven over and over again](#) that they are unable or unwilling to provide even a basic standard of care. Without a systemwide plan to vaccinate people under ICE custody, and inadequate social distancing, personal protective equipment, sanitation, and access to care, the [COVID-19 cases in ICE detention](#) have been five times that of prisons and 20 times that of the

NUMBER OF PEOPLE DETAINED BY ICE



Shortly after President Biden took office, ICE [reported](#) detaining 13,860 people on February 5. As of June 11, the number of people ICE [reported](#) detaining has skyrocketed 82 percent to 25,238.

As a candidate, President Biden promised to “[e]nd for-profit detention centers” as “[n]o business should profit from the suffering of desperate people fleeing violence.”

population at large. ICE also continues to [transfer people between facilities](#), violating Centers for Disease Control and Prevention (CDC) guidance and ICE policy and exacerbating transmission of COVID-19. ICE is not only putting the lives of the people under its care at risk but similarly endangering surrounding communities.

Further compounding the harm, the [vast majority](#) of people in detention are held in privately operated prisons, where [financial incentives](#) appear to dictate the [quality of care](#) they receive, and nearly all others are held in county jails that contract with the federal government. Immigration detention has become a lucrative profit-making endeavor, and the largest private prison operators have seen [their profits soar over a four-year period](#) into the billions of dollars. Private prison companies are a principal driver of an abusive system, and their unchecked and unexamined presence must end. Private or public, large numbers of facilities detaining immigrants have been [linked](#) to [human rights violations](#) – they are notorious for poor treatment, including unsafe and unsanitary conditions, assault and abuse, [negligent medical care](#), and excessive use of solitary confinement.

As a candidate, President Biden [promised](#) to “[e]nd for-profit detention centers” as “[n]o business should profit from the suffering of desperate people fleeing violence.” While the President has [instructed](#) the Justice Department to stop contracting with private prisons, it is hard to understand why he has made no such order with respect to DHS for immigration detention, especially since he [pledged](#) to do so. DHS ordering the [end of ICE contracts at two facilities](#) shows that the administration knows there is a problem, and it can act decisively to phase out all contracts with private prison companies and county jails if it has the political will.

The continued use of arbitrary detention makes immigration detention an exception to the President’s agenda on racial justice. As with criminal detention, Black and Brown communities comprise the majority of people in immigration detention, both a reflection and perpetuation of systemic racism. Racial justice requires more than rhetoric; it requires dismantling the current immigration detention system.

RECOMMENDATIONS

The Biden administration should:

End arbitrary, mass detention: Incorporate a presumption of liberty in custody determinations, and asylum-seekers and immigrants should be allowed to live in the community, supported by sponsors and community-based programs operated by non-profits to assist individuals in navigating the immigration process.

Release people held in immigration detention through an [affirmative file review process](#) with a presumption of liberty, prioritizing people who are most at risk of harm in custody including families and children, transgender individuals, HIV+ individuals, pregnant people, and those at heightened risk of COVID-19.

Ensure that it protects the health and wellbeing of people under its care and custody, including halting transfers in violation of CDC guidance and ICE policy, and enacting all precautions against COVID-19, including universal access to vaccinations.

Phase out ICE contracts with private prison companies and county jails, prioritizing facilities with the worst records for negligent and abusive care and conditions and lack of accountability.

End family detention and close all three family detention centers.



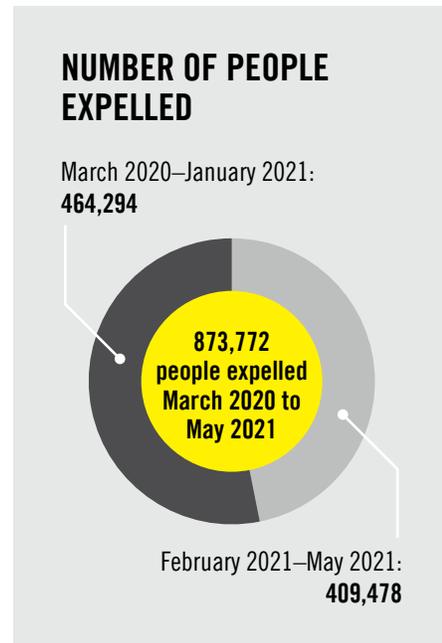
ACCESS TO ASYLUM AT THE BORDER: COURSE CORRECTION URGENTLY NEEDED

Since President Biden came into office, the administration has taken some necessary but far from sufficient steps to restore access to asylum at the border. Through its creation of the [Family Reunification Task Force](#), the Biden administration has [begun reuniting families](#) separated under the Trump administration. Although the harm to families can never be fully healed, this process is a serious attempt to begin providing redress to families targeted by the previous administration's [incalculably cruel policy](#). DHS [terminated](#) the Trump administration's Migrant Protection Protocols program, which stranded asylum-seekers in danger in Mexico, but [more needs to be done](#) to fully wind it down and ensure access to asylum for all people affected.

Yet, the Biden administration has shamefully continued the Trump administration's policy of misusing the [Title 42 public health authority](#) to block and expel people at the border, recklessly endangering lives. Between March 2020 and May 2021, the government summarily expelled [nearly 875,000 people](#), particularly affecting [Black immigrants and asylum-seekers](#). The Biden administration has expelled [over 400,000](#) of those people. This misuse of Title 42 continues despite [objections by CDC officials](#) and against the [recommendations of public health experts](#). All of this was entirely unnecessary and [violates U.S. obligations](#) to uphold the right to seek asylum and not forcibly return individuals to a place where they would be at risk of serious human rights harm.

Simply put: there is no public health rationale to treat immigrants and asylum-seekers differently, and it is causing [irreparable harm](#) to them. The welcoming of unaccompanied children at the border, while continuing the expulsion of families and individuals, has created [family separation](#). Recent [exemptions for individuals](#) identified as uniquely vulnerable are a limited but positive development, but do not relieve the government of its obligation to uphold all people's right to seek asylum or not be forcibly returned.

Restoring access to asylum requires upholding due process. The use of the [expedited removal process](#) for considering asylum claims should be [rejected](#), while [expedited scheduling](#) for immigration court hearings gives cause for concern. Reform packaged as efficiency-based due process is not a guarantee of either.



RECOMMENDATIONS

The Biden administration should:

Immediately stop expelling individuals and families under Title 42.

Rescind the CDC order and accompanying Health and Human Services final rule.

Restore fair and humane asylum processes that provide a meaningful opportunity to ask for protection at the U.S. southern border. This should include freedom from arbitrary detention and upholding due process, including rejecting the use of the expedited removal process.

Provide universal legal representation for individuals in immigration proceedings.



UNACCOMPANIED CHILDREN: STILL IN PROGRESS

Faced with a humanitarian challenge, the administration undertook an urgent [whole-of-government](#) response to welcome unaccompanied children arriving at the border. Mobilizing emergency intake sites helped address children’s welfare swiftly by moving them out of Customs and Border Protection (CBP) facilities, which are no place for children to stay a moment longer than absolutely necessary. There are ongoing efforts to improve the conditions at these intake sites, to facilitate more timely releases, and activate more of the already existing capacity in licensed facilities.

But the administration must act much faster to move children from these emergency intake sites and close them down altogether. Emergency care is not suitable for the long-term; it is a stopgap measure for discrete, short periods. There are serious consequences for the [physical and mental health and well-being](#) of children held in facilities in inadequate conditions and for prolonged periods.

The Fort Bliss site in Texas in particular raises concerns.

The administration also urgently needs to start implementing reforms for systemic changes at the Office of Refugee Resettlement (ORR) to reverse the government’s historic pattern of relying on emergency sites for unaccompanied children. Since January 2021, approximately 50,000 unaccompanied children have crossed into the U.S. in search of safety. Children’s rights should not be short-changed due to lack of planning and system reform. Reform needs to begin now or this needless cycle of emergency response will persist, with children paying the price.

In addition, the Biden administration continues to misuse the Trafficking Victims Protection Reauthorization Act to [immediately return almost all unaccompanied Mexican children to Mexico](#). CBP is failing to adequately consider the protection needs of Mexican children by forcibly returning them and belying the administration’s commitment to welcome children seeking safety.

U.S. BORDER PATROL TREATMENT OF UNACCOMPANIED MEXICAN CHILDREN (NOV. 2020 TO APR. 2021)

10,100



Returned to Mexico within hours or days

465

Transferred to ORR child-protection specialists

RECOMMENDATIONS

The Biden administration should:

Urgently address conditions at emergency intake sites and raise the standard of care to meet children’s best interests, while implementing changes to safely release them faster from such sites and communicating a transparent plan to stop their use altogether.

Expand its network of licensed facilities, prioritizing foster care placement and small-care settings; streamline the vetting process for releasing children to facilitate their safe and expeditious release to family members or other sponsors; increase post-release services; and re-orient the model of care to children living with family and caretakers rather than in government custody.

Ensure that unaccompanied Mexican children are given fair and meaningful access to asylum, as all unaccompanied children and people seeking safety should be, and not turned back with summary and inadequate considerations of their protection needs.

Provide legal representation for unaccompanied children.



CLIMATE DISPLACEMENT: STILL IN PROGRESS

President Biden's [executive order](#) on planning for climate displacement is a vital opportunity to address the human rights of refugees, asylum-seekers, and migrants in the context of climate change. The administration [must draw up plans](#) on climate displacement based on [human rights](#) and humanitarian protection. No one wants to leave home without a choice, and every effort should be made to ensure people can live with dignity, safety, and security in their home countries. But when they cannot and are forced to leave, their right to seek asylum must be upheld and other safe and orderly pathways to protection must be ensured.

Efforts to address root causes cannot and should not be a pretext for [increased border control](#). Successful climate adaptation and resilience requires addressing human rights and humanitarian protection, or root causes will never be adequately addressed and the cycle of grievous reasons for climate-related human mobility and human rights violations will persist. A [regional solution](#) addressing root causes of displacement and migration must look not only at the northern countries of Central America but also transit countries such as Mexico.

RECOMMENDATIONS

The Biden administration should:

Develop a strategy to address climate displacement based on human rights and humanitarian protection.

Enhance existing protection mechanisms and admission pathways such as Temporary Protected Status, refugee resettlement, asylum access, humanitarian parole, and employment and other visas.

Strengthen support to internally displaced persons and refugee programs.

Support Congressional initiatives to develop mechanisms for complementary protection.

Ensure the participation of people displaced by climate change in national, regional, and international decision-making processes.

Not provide financial assistance, training or equipment, or pursue bilateral diplomatic agreements or other policy measures, to effect migration control measures which undermine the right to seek asylum or result in *refoulement*.



REFUGEE PROTECTION: STILL IN PROGRESS

President Biden started office with strong steps to welcome refugees and others seeking a new life and safety in the U.S. and to repudiate the xenophobic policies of the prior administration. He rescinded the Muslim and African bans and signed an [executive order](#) to rebuild the U.S. refugee resettlement program, including an expansion of the [community sponsorship system](#) that includes a [new private sponsorship program](#). Most recently, he [ended discriminatory quotas](#) on the admission of refugees from certain countries.

However, President Biden waited until early May to formally recommit to admit up to 62,500 refugees this fiscal year. Despite [notifying Congress in February](#) that the administration planned to admit up to 62,500 refugees, the President stunningly [slashed that number](#) to 15,000 in mid-April, maintaining former President Trump's historically low refugee goal. Only after public outcry did the President walk back to his original commitment. While this [recommitment to 62,500](#) is welcome, it must be a down payment on his campaign promise to [welcome 125,000 refugees](#) in his first year in office.

After four years of devastating retreat on refugee protection, and in light of this year's 70th anniversary of the Refugee Convention, the Biden administration should take this moment to reassert U.S. leadership by meeting its promise to rebuild the refugee program and by reestablishing the importance of this lifesaving program through international cooperation for global refugee protection.

RECOMMENDATIONS

The Biden administration should:

Act expeditiously and with full government resources to admit 62,500 refugees by October 2021, consistent with the presidential determination (PD) for FY 2021.

Issue a PD of 125,000 for FY 2022, as pledged.

Expand the community sponsorship system, including launching a private sponsorship program and promoting robust co-sponsorship programs.

Significantly increase financial support to national and international organizations working on the front lines with refugees and international humanitarian programs.



TEMPORARY PROTECTED STATUS: STILL IN PROGRESS

The administration should more robustly grant [humanitarian protection through Temporary Protected Status](#) (TPS) to protect people already in the U.S. from forced return to their countries of origin because of ongoing armed conflict, “extraordinary and temporary conditions,” and environmental disasters. Utilizing TPS enables the U.S. to uphold its obligation to prevent forced return (*non-refoulement*), including in the context of [climate change](#). The administration’s welcome [redesignation of TPS for Haiti](#) will keep families together and safe, and is one of many steps needed toward greater racial equity and immigrant justice.

RECOMMENDATIONS

The Biden administration should:

Retroactively designate TPS for Haiti to January 20, 2021.

Designate TPS for countries in urgent need of humanitarian protection from forced return: the Bahamas, Cameroon, El Salvador, Guatemala, Guinea, Honduras, Hong Kong, Lebanon, Mauritania, Nepal, Nicaragua, Sierra Leone, Somalia, South Sudan, Sudan, and Yemen.

Expand the use of TPS to prevent forced return in violation of the obligation of *non-refoulement* in the context of climate change.

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