

January 18, 2023

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear President Biden:

We write to express our great concern over the new asylum restrictions announced by your administration. While we applaud the creation of new legal pathways for Cubans, Haitians, and Nicaraguans modeled off the existing parole programs for Venezuelans, it is disappointing that these pathways come at the expense of the legal right to seek asylum at the southern border. Instead of issuing a new asylum transit ban and expanding Title 42, we encourage your administration to stand by your commitment to restore and protect the rights of asylum seekers and refugees.

The right to seek asylum is enshrined in domestic and international law. Four decades ago, the Senate unanimously codified the protections of the 1951 Refugee Convention. Congress further made clear that seeking asylum at the border, “whether or not at a designated port of arrival,” is lawful. The administration’s announced border enforcement actions circumvent this law by not only expanding Title 42 beyond what is required by any court but by further implementing policies to deter and penalize people exercising their legal right to seek asylum at the border.

Last year, we welcomed your administration’s announcement that it would move to end Title 42, and we continue to support your efforts in the courts to ensure a timely end to the policy. We are therefore distressed by the deeply inconsistent choice to expand restrictions on asylum seekers after your administration determined it was no longer necessary for public health. Title 42 circumvents domestic law and international law. Human rights groups have extensively [documented more than 10,000 violent attacks](#) – including kidnappings, serious assaults, and deaths – against individuals who were expelled to or blocked in Mexico due to Title 42 since the beginning of your administration, with a disproportionate impact on Black, Brown, LGBTQ+, and Indigenous migrants.

We are further concerned by the administration's announcement that it will be issuing a proposed rulemaking in the coming days that would require asylum seekers to first apply for asylum in a transit country instead of allowing them to seek their legal right to asylum at our southern border. This, in effect, is a transit ban. The courts rightly rejected the Trump administration’s attempt to categorically end asylum when he similarly required asylum seekers to seek asylum in transit countries. Specifically, the Ninth Circuit Court of Appeals found that the Trump-Era Third Country Transit ban violated well-settled U.S. asylum laws that prohibit turning people away unless they have “firmly resettled” in a transit country, especially not if conditions in the transit country are not safe. At the time of this ruling, countries across the Western Hemisphere were unable to meet such requirements. There does not appear to be evidence to show that country conditions in transit countries have improved since the relevant appellate decision was rendered as to justify a new Third Country Transit bar. As the administration well knows, current conditions in Mexico – the primary transit country – cannot ensure safety for the families seeking refuge in the United States. We urge the Biden Administration to engage quickly and meaningfully with members of Congress to find ways to adequately address migration to our southern border that do not include violating asylum law and our international obligations.

Additionally, while the humanitarian parole policies for Cuba, Haiti, Nicaragua, and Venezuela are positive, these parole policies cannot displace existing asylum laws. The parole policy’s requirements

for passports, financial support in the United States, and the financial resources to travel by air to the United States means that the most vulnerable in those nations will not be able to take advantage of those programs. When Congress established the right to asylum, it did so without such requirements on where people may have previously traveled through or other pathways available. It is, in fact, necessary that asylum must be maintained and strengthened to ensure that safety is within reach, particularly for the most vulnerable.

In your announcement of the parole program, you acknowledged that seeking asylum is a human right and harkened back to the Jewish refugees arriving on our shores to seek safety from the horrors of Nazi persecution during the Holocaust. That sentiment remains true, and the American people agree. In recent months many of our communities have mobilized to [welcome asylum seekers](#) arriving to cities with open arms, and [polling shows](#) that voters support asylum. It is unconscionable that asylum seekers have no option but to sleep in the streets of El Paso, in overcrowded shelters in Juarez, or in tents in Reynosa, but new asylum restrictions against migrants will not solve this problem. We believe that your administration can and must continue to expand legal pathways for migrants and refugees into the United States -- without further dismantling the right to seek asylum at our border. This right is a pillar of the post-war international order to which the United States has committed itself. We are ready to work with you to ensure that we can have a safe, humane, and orderly border that upholds the right to asylum.

Sincerely,

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