

Statement for the Record of the National Immigrant Justice Center
House Committee on Oversight and Accountability
Hearing with Chief Border Patrol Agents
February 7, 2023

I. About the National Immigrant Justice Center

The National Immigrant Justice Center (NIJC) has for over three decades dedicated itself to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers. NIJC provides direct legal services to approximately 10,000 low-income individuals each year and advocates for these populations through policy reform, impact litigation, and public education. NIJC provides the following statement for the record on pressing immigration policy issues with recommendations towards developing a humane border management and immigration system.

II. Overview

The United States has the moral and legal obligation to ensure asylum access to those arriving at U.S. borders and ports. Policies that uphold this obligation are vital to protect the rights of migrants and central to a functioning border processing system. The false conflation of security and migration control over the decades has perpetuated the mistaken notion that tough-on-migration programs lead to greater security. On the contrary, policies that restrict access to asylum at ports of entry not only violate the law, but force people to seek entry through dangerous terrain, leading to record-high numbers of [deaths on the border](#) and fueling criminal networks that prey on migrants in desperate situations.

Closing off asylum access and implementing punitive programs at the border causes widespread harm and is ineffective toward the government's stated goals. The United States must shift away from punishing migrants arriving at the U.S. southern border and instead allocate resources towards processing and humanitarian needs.

III. Protecting Asylum Rights with Humane and Sensible Border Solutions

The United States has the moral and legal obligation to ensure asylum access to those arriving at U.S. borders and ports. The Refugee Convention, which Congress incorporated into U.S. law, was borne out of the horrors of World War II and the Holocaust. Policies that uphold this

obligation are vital to protect the rights of migrants and central to a functioning border processing system.

Policies implemented during the Trump administration, however, including the Title 42 mass expulsions policy and asylum bans that deny protection on the basis of a person's manner of entry, stand in blatant violation of U.S. obligations. [Under the Title 42 expulsion program](#), people are routinely expelled to the same places they fled, or to border towns in Mexico where many are targeted for kidnapping and violence. [Current](#) and [former](#) Biden [senior officials](#) have called this policy inhumane and unlawful, as it upends decades of asylum law in violation of the 1980 Refugee Act and binding international obligations.

This program has resulted in [countless](#) kidnappings, assaults, and deaths for those returned to vulnerable conditions in Mexico. Despite the fact that the administration has upheld Title 42 as necessary for immigration deterrence purposes, Title 42 has had the counterproductive effect of significantly increasing the number of encounters at the border. Under Title 42, individuals who are expelled to Mexico within hours after apprehension may try again a second or third time to cross, driven by their need to seek safety. Some individuals have made dozens of failed attempts to cross the border and been turned back under Title 42 each time. The increase in repeat border crossing attempts has resulted in misleading, [conflated](#) apprehension figures. Programs such as Title 42 also fly in the face of the administration's [commitment](#) to racial equity, as they disproportionately impact [Black, Brown](#), and [Indigenous](#) asylum seekers.

Policies that protect the rights of migrants are central to a functioning border processing system.

IV. Ending misguided, unaccountable, and harmful deterrence approach

The Biden administration continues to [approach border management](#) under the premise that administering punitive "[consequences](#)" will prevent migrants from future border crossing attempts. But historic migration [data](#) shows that attempts to prevent immigration through [prosecutions and other punitive measures](#) do not actually drive down immigration numbers. Further, policies that impose harsh and punitive measures on migrants seeking safety or a better life force people to seek entry through dangerous terrain, leading to record-high numbers of [deaths on the border](#) and fueling criminal networks that prey on migrants in desperate situations.

In addition to migrant prosecutions and expulsion policies, expedited processing is another harmful approach the government has used as a failed border management tool. Under expedited removal, Customs and Border Protection (CBP) officers are gatekeepers to the asylum process,

even though CBP has long been documented to [fail to properly record expressions of fear](#) and refer people for credible fear interviews. Expedited removal operates as a form of summary deportation that bypasses the courtroom and carries severe consequences for migrants seeking relief or lawful status. Nevertheless, the Biden administration has announced plans to [increase the use of expedited removal](#) and [rapid asylum processing](#), sacrificing key due process protections.

People fleeing persecution deserve a fair and efficient process, not a rushed and truncated one.

V. Protecting Family Integrity

Human rights experts and [legal scholars](#) found that the intentional harm behind the Trump administration's policy of separating families constituted government-sanctioned torture. The Biden administration officially [rescinded](#) the policy and established an interagency Task Force to [reunify families](#) separated as a result of Zero-Tolerance or "any other related policy, program, practice, or initiative."

Nevertheless, families [continue to suffer](#) from separations resulting from deterrence programs carried out by the Biden administration. In Fiscal Year 2021, CBP recorded the separation of 227 families at the border, "[marking a 252 percent increase](#)" from the year prior. DHS [reported](#) an additional 77 cases of forced separation from October 1, 2021 through May 31, 2022. These are merely the cases that are recorded, and do not account for the cases that go undocumented, such as ones reported by NIJC and other [legal service providers](#). The figures also do not account for separations that occur when families are separated by Title 42 expulsion, which occurs all too frequently when families are forced to separate at some point along their journey and some family members are processed into the United States while others are turned back to harm.

The alarming increase in separations under the Biden administration merits urgent investigation and action. Four years after the devastation of the Zero-Tolerance family separation program, it is unconscionable that the U.S. government continues to tear families apart. To date, DOJ and DHS officials have failed to implement many of the basic [recommendations](#) issued by oversight and watchdog agencies in the wake of Zero-Tolerance, such as allowing for parents to [communicate](#) with the child from whom they have been separated and ensuring prompt reunification.

The U.S. government can no longer ignore its obligations to uphold the fundamental rights of immigrants and asylum seeking families, including the right to family integrity.

VI. Recommendations for Border Solutions that Uphold Rights of Asylum Seekers and Refugees

The Biden administration must move away from the inhumane and counterproductive policies that were central to the Trump administration's anti-immigrant policymaking. Below are some immediate actions that the administration can take at the border:

- Develop and support robust communication and planning between federal, state and local governments, and civil society;
- Fully fund and support civil society, including social and legal service providers;
- Create non-custodial, humanitarian reception centers at the border, instead of jailing migrants and asylum seekers; and
- Overhaul the federal immigration budget by moving funds away from detention and enforcement and toward asylum processing and humanitarian needs.
- While taking these steps the administration *must* abide by its obligation to ensure asylum access to those arriving at the United States' borders and ports.

NIJC has detailed these steps in an [analysis issued in January 2023](#).

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