

National Immigration Law Center's Statement for the Record

Submitted to House Judiciary Committee

"The Biden Border Crisis: Part I"

Wednesday, February 1, 2023 at 10:00AM

Dear Chairman Jordan, Ranking Member Nadler and Members of the committee:

Thank you for the opportunity to submit a statement on behalf of the National Immigration Law Center (NILC). We respectfully request that this statement be made part of the record for the Wednesday, February 1, 2023 House Judiciary Committee's hearing, "The Biden Border Crisis: Part I".

Introduction

At the National Immigration Law Center (NILC), we believe that immigrants are essential to the fabric of who we are as a nation. Since 1979, NILC's mission has been to defend and advance the rights of immigrants with low income. Since our establishment over 40 years ago, we've been at the forefront of many of the country's greatest challenges when it comes to immigration issues, and we continue to play a leadership role in addressing the real-life impact of policies that affect the ability of low-income immigrants to prosper. Through our litigation, policy advocacy, communications, and movement-building expertise, we support immigrants in living healthy, secure, and empowered lives.

We envision a society in which all of us — regardless of where we were born, the color of our skin, or how much money we have — should have the freedom to thrive. A core component of this vision is unobstructed and equal access to our asylum laws. Seeking asylum is an internationally-recognized and fundamental human right, yet we continue to see attempts to create barriers to asylum through programs such as Title 42, expedited asylum hearings, and the recently-proposed transit ban. The result of these restrictions is increased human suffering and death.

We submit this statement today to urgently ask the Committee and Congress to oppose all bans or restrictions on asylum, and recognize our nation's role in ensuring the safety and wellbeing of all — especially those most vulnerable and seeking protection.

A Duty to Uphold the Fundamental Right to Seek Asylum

The right to seek asylum is enshrined in our domestic as well as international law and standards. As Section 1158 of Title 8 of the U.S. Code explains, "Any [person] who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...), irrespective of such [person]'s status, may apply for asylum in accordance with this section..."¹. Yet, for nearly three years, presidents of both parties have used the pretext of public health to effectively cut off access to asylum in the United States under Title 42.

Title 42 undermines our country's commitment to welcome those seeking safety with dignity and humanity. At a time of rising levels of migration across the globe due to war, climate disasters, and

¹ 8 U.S.C. § 1158

gender-based violence, the U.S. must embrace its promise to build an equitable and humane 21st century immigration system that meets this moment in history, rather than adopt draconian policies that inflict systemic violence and cruelty upon Black, Brown, and Indigenous communities.² According to recent internal Border Patrol data, 2022 was the deadliest year on record for migrants attempting to cross the United States-Mexico border, with over 850 people having died seeking safety in this country.³

We urge Congress to reject these policies and refuse to normalize this cruelty, and instead build an equitable and humane 21st century immigration system that prioritizes care and compassion for all. According to a 2022 poll conducted by NILC's Immigrant Justice Fund, a majority of likely voters agree with us. The poll found the following top-line results from likely voters across the political spectrum:

- 71% support making it easier for undocumented workers who want to pay taxes to do so
- 71% support reducing backlogs in green card and citizenship applications
- 64% support creating a path to citizenship
- 63% support protecting asylum seekers in the U.S. from deportation
- 53% support ending "Remain in Mexico" or MPP
- 52% support ending Title 42 expulsions at the U.S.-Mexico border
- 52% support strengthening protections to allow undocumented workers to exercise their labor and civil rights without fear of deportation⁴

On January 18, 2023, over 290 organizations signed a letter urging the Biden Administration to uphold human rights and refugee law⁵ and to abandon its plans to issue a proposed rule that would require persons fleeing persecution to seek asylum in a "transit" country. A similar letter signed by 77 Members of Congress addressed to President Biden called for safe, humane, and orderly border policies instead of expansions to Title 42 and the reinstatement of the asylum ban.⁶ We are disturbed by reports of family separations, denials of relief, and prolonged detention for persons with bona fide asylum claims that place people in permanent limbo—caused by the former President's unlawful asylum ban. And we are extremely disappointed to learn that President Biden is doubling down on this approach with the proposed transit ban. This ban has increased asylum denial rates disproportionately for Black, Brown, and Indigenous asylum seekers, including those from Cameroon, Cuba, Guatemala, Eritrea and Venezuela.⁷

² "Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD)," Black Alliance for Justice Immigration, Haitian Bridge Alliance, Human Rights First, The Refugee and Immigrant Center for Education and Legal Services, and Robert F. Kennedy Human Rights. July 28, 2022.

https://rfkhr.imgix.net/asset/US-Coalition-anti-Black-Discrimination-in-Immigration_CERD-Report_072222.pdf

³ "At least 853 migrants died crossing the U.S.-Mexico border in past 12 months — a record high," Camilo Montoya-Galvez, CBS News. Oct. 28, 2022. <https://www.cbsnews.com/news/migrant-deaths-crossing-us-mexico-border-2022-record-high/>

⁴ "State of the Union: New Poll Shows Majority of Likely Voters Support Bold Action on Immigration," Immigrant Justice Fund, Feb. 28, 2022. <https://www.immigrantjusticefund.org/press/2022/2/28/new-poll-shows-majority-of-likely-voters-support-bold-action-on-immigration>

⁵ "Rights Groups Oppose Biden Plan to Resurrect Asylum Bans," Human Rights First, Jan. 19, 2023. <https://humanrightsfirst.org/library/rights-groups-oppose-biden-plan-to-resurrect-asylum-bans/>

⁶ "Menendez, Ocasio-Cortez, Booker, Luján, Padilla, Casar, Grijalva Lead Bicameral Coalition of Nearly 80 Lawmakers in Pushing Back Against the Biden Administration's Expansion of Title 42 and Proposed Asylum Transit Ban," Senator Bob Menendez et. al., Jan. 26, 2023.

https://www.menendez.senate.gov/imo/media/doc/letter_to_president_biden_on_the_administrations_border_policies.pdf

⁷ "Asylum Denied, Families Divided: Trump Administration's Illegal Third-Country Transit Ban," Human Rights First, July 15, 2020. <https://humanrightsfirst.org/library/asylum-denied-families-divided-trump-administrations-illegal-third-country-transit-ban/>

We are equally concerned about reports that the administration may seek to expand the use of expedited asylum hearings along the southern border. This proposal echoes Trump-era programs, such as Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP), that dramatically reduced the number of positive credible fear determinations nationwide. Under refugee and human rights law, individuals have the right to due process, including a fair hearing that is predicated on the goal of delivering justice – not dehumanizing efficiency. Rebecca Gendelman, Senior Research and Policy Counsel at Human Rights First, explains that “Expedited removal is a fatally-flawed process, and the Biden administration’s use of it has resulted in many asylum seekers wrongly ordered deported, including LGBTQ individuals and Haitians, Nicaraguans, Venezuelans, and others fleeing political persecution”.⁸

The human suffering incurred as a result of these restrictive policies and the harmful narratives that surround them is unacceptable. When Congress established the right to asylum, it did so without these unjust and impractical barriers. We encourage Congress to pass humane immigration policies and uphold our international obligation to honor asylum seekers who arrive at our southern border, to welcome them and adjudicate their claims fairly.

Conclusion

The title of this hearing is “Biden’s Border Crisis: Part 1”. If there is a “crisis” to discuss, it is the crisis of inhumanity and violence perpetrated against people seeking safety at our southern border. We call upon Congress to uphold our collective commitments to liberty and equality, to pursue meaningful and humane policies, and to uphold our international obligations to persons fleeing persecution.

This is a time for moral imagination and leadership. A 21st century immigration system must be grounded in values of racial, economic, and gender justice and inclusion. We should not perpetuate a dynamic of restricting access to basic rights and necessities that all human beings need.

Thank you for the opportunity to submit this statement for the record.

⁸ "Human Rights First Condemns Administration Plan to Fast-Track Asylum Screenings," Jan. 27, 2023. <https://humanrightsfirst.org/library/human-rights-first-condemns-administration-plan-to-fast-track-asylum-screenings/>