

Immigration

Concluding Observation 18

In the absence of comprehensive immigration reform legislation, the United States has continued to aggressively enforce existing immigration laws.

Many of these laws block access to asylum and other forms of relief and status – to the detriment of communities of color. Following some reforms by the Obama administration, the Trump administration engaged in anti-immigrant cruelty in policy and practice. Systemic disparities in asylum decisions occurred, with significant declines in grant rates for asylum seekers from Africa, the Americas, the Caribbean, and South Asia.

The Biden administration has worked to repeal some of these restrictive immigration-related agency policies. Despite these changes, the Biden administration's immigration record still leaves much to be desired, and systemic issues of racial discrimination against migrants remain. For example, in January 2021, President Biden issued Proclamation 10141, which revoked Executive Order 13780 and other proclamations that prevented certain people, primarily from Muslim and African countries, from entering the United States. Since then, no further travel bans based solely on country of origin have been issued. However, U.S. visa sanctions on so-called recalcitrant countries operate in a similar fashion to the Muslim and African travel bans, and the majority of current visa sanctions affect countries in the Global South. In February 2021, President Biden issued Executive Order 14011, which condemned the intentional separation of children from their parents or legal guardians under the previous administration's use of the "zero tolerance policy" and established a family reunification task force. Unfortunately, only a small number of potentially eligible families have registered with the government.

In March 2020, the United States used its obscure and rarely invoked Title 42 authority to require the summary expulsion of unauthorized single adults and

family units arriving at land ports of entry, whether they intended to seek asylum or not, in a purported effort to control the spread of COVID-19. In March 2022, the United States terminated this order with respect to unaccompanied noncitizen children. On April 1, the United States announced its plans to terminate the Title 42 order with respect to single adults and family units beginning on May 23, 2022. On May 20, a federal judge granted a preliminary injunction preventing the termination of the policy. Expulsions under the Title 42 authority have led to more than 10,000 reported incidents of kidnapping, torture, rape, and other violent attacks on those expelled to Mexico. Furthermore, the Title 42 policy has a disproportionate impact on Black asylum seekers and migrants, who face widespread anti-Black violence and discrimination in Mexico. Since January 2021, the United States has removed more than 20,000 Haitian migrants on at least 208 expulsion and deportation flights to Haiti. Notably, after the Russian invasion of Ukraine, the U.S. issued a memo authorizing the exemption of Ukrainian nationals from expulsions under Title 42 on a case-by-case basis.

In February 2021, the United States began the first phase of the effort to process people who were forced to "remain in Mexico" while their asylum claims were adjudicated under the Migrant Protection Protocols. In October 2021, the Biden administration issued a memo terminating the Migrant Protection Protocols, which it can now implement following the Supreme Court's decision in *Texas v. Biden*.

In January 2021, President Biden issued an executive order phasing out contracts with private prison companies. In March 2022, the United States announced it would close or scale back the use of four criminal detention facilities due to dangerous conditions for detainees, such as lack of adequate medical care, racial discrimination, and more.

Recommendations

- Congress must pass immigration reform that provides a pathway to citizenship for millions of undocumented individuals who have lived in the United States for an average of 14 years.
- Congress must strengthen asylum law, including measures that prevent the abuse of obscure authorities like Title 42 to enact virtual bans on asylum under dubious pretenses.
- Given legislative difficulties, the Biden administration must look actively for executive actions that can further immigration justice, such as:
 - Designate and re-designate where appropriate Temporary Protected Status for countries in the Global South.
 - Direct U.S. Citizenship and Immigration Services and the Department of State to modernize their processing systems to efficiently process all pending and current immigration benefit applications.
- Direct the Department of Homeland Security (DHS) to terminate all existing contracts with private prisons and county jails housing immigrants who are detained and place a moratorium on all future such contracts or expansions.
- Direct DHS and the Department of State to repair the harms of the Muslim and African bans by immediately and automatically reopening, reconsidering, and expediting all visa applications that were subject to the bans.
- The Biden administration must protect noncitizen workers by restoring the Interagency Working Group for the Consistent Enforcement of Labor, Employment and Immigration Laws, and by creating a mechanism for undocumented and nonimmigrant workers involved in labor disputes to apply for deferred action.
- The Biden administration must end immigration-related criminal prosecutions for illegal entry or reentry into the United States under U.S. Code Sections 1324, 1325, and 13.

Read the full report, “[Holding the Line: Combating Racial Discrimination in a Divided America](https://civilrights.org/CERD2022),” here: civilrights.org/CERD2022.