



The Biden Administration just extended its asylum ban at the southern border indefinitely—here's what that means for children and families who are fleeing violence

Effective October 1, the Biden administration has [taken action](#) to indefinitely extend current restrictions on the ability to apply for asylum at the U.S.-Mexico border, which have come to be known as the “asylum ban.” Children’s Defense Fund-Texas (CDF-TX) is deeply concerned about the devastating impact of these restrictions on migrant children and their families who are seeking protection in the United States because their lives are at risk. These restrictions cut off underserved children and their caregivers from accessing the protection they are legally entitled to under U.S. and international law, leaving them to wait indefinitely in dire conditions in Mexico where they are vulnerable to [kidnapping, torture, and sexual violence](#).

What is the right to apply for asylum?

Asylum is a form of protection that allows a person to remain in the United States if they meet the requirements to be legally recognized as a refugee. “Refugee” is [defined](#) under the Immigration and Nationality Act as a person who is outside their home country and is unable or unwilling to return to that country because they have suffered persecution there or because they have a well-founded fear of facing persecution in the future. In other words, refugees are people whose lives are in danger simply because of who they are and who, as a result, cannot safely return to the country from which they came.

Applying for asylum does not automatically guarantee that a person will be granted asylum or allowed to stay permanently in the U.S. To be granted asylum, a person must show that they meet the refugee definition because they have a well-founded fear of persecution because of their race, religion, nationality, membership in a particular social group, or political opinion. People who are granted refugee protection through a successful application for asylum in the United States are called “asylees.”

Where did the right to seek asylum come from?

The legal right to apply for asylum is protected under U.S. and international law. The U.S. has international treaty obligations to uphold the right to seek asylum.

Following the holocaust and the displacement of millions of refugees across Europe after World War II, the international community developed an international treaty called the [1951 Refugee Convention](#) to protect the fundamental human rights of refugees—those who had been forced to flee their home countries due to war or persecution—and to create international standards for humane treatment of refugees. In 1967, a second international treaty, the [Protocol Relating to Status of Refugees](#), extended refugee protection to people worldwide who continued to be displaced by other conflicts after World War II.

Both the 1951 Refugee Convention and its 1967 Protocol are based on the idea that in cases where a person cannot depend on their own government to protect them from persecution, that person is entitled to receive protection from other countries who have agreed to follow the Refugee Convention and its Protocol. In many cases, asylum seekers cannot look to the government or the police in their home country for protection because the authorities are the ones persecuting them. This is often the case in places like Iran, China, or Cuba, where political opposition to the ruling party is treated as a crime. In other cases, the authorities in an asylum seeker's home country are unable or unwilling to protect an asylum seeker from the people harming them. This is often the case in parts of Mexico and Central America, where gangs can extort, kidnap, and murder with impunity because of [government corruption](#) or because [the gangs have become more powerful](#) than the local authorities.

The key principle enshrined in the Refugee Convention and its Protocol is the legal concept of [non-refoulement](#), or “no forcing back.” As stated under Article 33 of the Convention, the principle of non-refoulement means that countries must not expel or return a person “in any manner whatsoever” to territories where their “life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion.” Non-refoulement applies to [both refugees and asylum seekers](#), which means that under international law, no one who applies for asylum should be removed from the United States until their application has been reviewed and it has been determined that they are not at risk of persecution, torture, or other serious human rights violations in the country where they will be sent.

The United States signed the Protocol in 1968, which [legally obligates the U.S.](#) to comply with most of the other provisions of the original Refugee Convention as well, including upholding the right to apply for asylum and avoiding sending refugees back to a country where they would face persecution. The legal obligations of this international treaty were then incorporated into U.S. law under the [Refugee Act of 1980](#). Today, the principle of non-refoulement is also recognized as a customary international law, which means that [all nations are required to follow it](#), regardless of whether they have signed the Refugee Convention or its Protocol.

What is the asylum ban?

The asylum ban began with a [new rule issued by the federal government](#) on May 16, 2023, under which most people who crossed the southern border after traveling through a third country were *presumed ineligible to apply for asylum*. The rule included few exceptions, and those to whom the rule applied faced an uphill battle demonstrating “exceptionally compelling circumstances” to be allowed to apply.

In June 2024, the Biden administration announced [additional restrictions](#) on asylum which would be triggered any time the average number of people crossing the border between ports of entry reached 2,500 or more per day over a 7-day period, and would remain in place until the average number of crossings between ports of entry dipped below 1,500 per day over a 7-day period. These restrictions make most people who cross the southern border between ports of entry *generally ineligible to apply for asylum*. Additionally, U.S. immigration officers are no longer required to ask migrants whether they fear being returned to their home country to screen them for eligibility for other forms of protection. Finally, those who do express fear but are subject to this rule face a higher standard of proof for establishing their fear of persecution or torture to avoid removal. The June rule is currently being [challenged in court](#) by the ACLU and other immigrants' rights groups based on arguments that it violates existing U.S. law and that it will violate the Refugee Convention by leading to the systematic removal of people to countries where they face persecution or torture.

Now, under the [updated rule](#) that takes effect on October 1, asylum restrictions are *highly likely to remain in effect indefinitely* because of changes made to the threshold numbers of daily border crossings used to determine when the restrictions go into effect and how those numbers are calculated. According to this latest rule, asylum restrictions will remain in place until the daily number of migrants apprehended after crossing the border drops below a daily average of 1,500 people over a much longer period of 28 days. Daily apprehensions of migrants have not dropped below those numbers [since July 2020](#). All unaccompanied minors taken into custody after crossing the border will now be included in the tally of daily crossings that is used to determine whether asylum restrictions can be lifted. Under the June rule, only children from Mexico and Canada were [included in the tally](#).

These restrictions set up [illegal barriers to accessing asylum and violate U.S. and international law](#) by pushing asylum seekers out of the U.S. to places where they may face persecution—in some cases, returning them to the same place they fled in the first place.

Why are so many people trying to cross the southern border right now?

The humanitarian crisis on the southern U.S. border between Texas and Mexico is part of a larger, global crisis in which unprecedented numbers of people around the world—[more than 1 in every 69 people on Earth](#)—have been forced to flee their homes. This includes [about 47.2 million children](#) who have been displaced by conflict and violence.

Former president Trump has [claimed without evidence](#) that large numbers of people seeking to enter the U.S. are coming from prisons, jails, and “insane asylums.” Yet the fact is that many of those attempting to cross the U.S.-Mexico border are planning to apply for asylum. Far from posing a danger to the U.S., these children and their families have instead been the victims of crime and violence in their home countries and are seeking a safe place to rebuild their lives. Furthermore, research shows that immigrants—including those applying for asylum—are [60% less likely to be incarcerated](#) than people born in the United States, which suggests that they are “significantly less likely to commit crimes than the U.S.-born.”

Are people committing a crime when they cross the border irregularly to ask for asylum?

No. It is a common misconception that people are crossing the border “illegally” when they enter the country between ports of entry with the intention to turn themselves in to the Border Patrol to ask for protection after they arrive. However, **both U.S. and international law protect the right to apply for asylum after crossing the border irregularly** (which means crossing without valid entry documents or without inspection at places besides official ports of entry).

Over the last few years, both the [Trump](#) and Biden administrations have sought to limit access to asylum in ways that violate U.S. and international law. However, under section 208 of the Immigration and Nationality Act ([8 USC 1158](#)), anyone who is physically present on U.S. soil has the right to apply for asylum if they fear returning to their home country because of persecution based on their race, religion, nationality, membership in a particular social group, or political opinion. This right applies regardless of whether the person entered the U.S. at a port of entry or elsewhere along the border.

The asylum provisions of the Immigration and Nationality Act are based on the United States’ commitments under the [Refugee Convention and its Protocol](#), so asylum is a basic human right protected under both U.S. and international law.

Why don't people just apply for asylum at a port of entry instead?

Under the asylum ban, people who want to apply for asylum at a port of entry must first make an appointment using the [CBP One app](#). Although booking an appointment online in advance may seem straightforward, it has proven [nearly impossible](#) for many of the most disadvantaged people to obtain an appointment.

First, many individuals are unable to use the app because they cannot read or write, are unfamiliar with technology, or because the app is not available in their language (the app only provides three language options: English, Spanish, and Haitian Creole). Some people live with disabilities that prevent them from successfully using the app. In contrast, others cannot use the app due to a lack of access to up-to-date smartphones, internet, cellular data, or reliable electricity.

Those who are able to use the app are often prevented from booking an appointment because of [technical glitches](#) that has plagued the app since its rollout.

Customs and Border Protection has also capped the number of available appointments at [1,450 per day](#). With tens of thousands of people attempting to make appointments each day, this artificial limit effectively creates a [lottery system](#) in which children and families wait indefinitely in dangerous, inhumane conditions. In Mexico, while awaiting appointments, asylum seekers are often targeted for [kidnapping, torture, and other horrific violence](#) that mirrors the persecution they sought to escape in their home countries.

Applying for asylum is a human right. Children and families seeking asylum deserve a compassionate, legal, and fair application process.

As long as their lives are threatened, families will continue to do whatever it takes to survive. Restrictions on asylum and inhumane border policies (like [Operation Lone Star](#) in Texas) that seek to discourage asylum applications by making the process more dangerous or difficult only serve to intensify the suffering that asylum seekers experience without doing anything to address the conditions forcing them to flee their homes.

CDF-Texas does not believe the global crisis of displacement and forced migration can be solved with border restrictions, detention centers, or deportations. It can only be addressed through compassion, acknowledgment of our interdependence as human beings, and commitment to finding solutions that honor our moral and legal responsibilities toward one another.

Children seeking asylum are not a burden or a threat. They are seeds full of promise, waiting to be nurtured in communities of safety and allowed to flower into their full potential. Each of these children contains a world inside them, and they form a piece of our collective future. CDF-TX is committed to building a world in which all children—including those seeking asylum—flourish.

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This document is intended to provide general information and does not constitute legal advice.