



Explainer: The Biden Administration's January 2023 Border Plan

I. Background

On January 5, President Biden [announced](#) a series of border policy initiatives designed to respond to increasing arrivals of irregular migrants at the Southwest border.

The plan includes three key components:

- 1) Further restrictions and enforcement consequences for certain migrants arriving at the Southwest border, including asylum seekers;
- 2) Expanded legal pathways for certain prospective migrants able to apply from outside of the U.S. or at official ports of entry; and
- 3) Additional resources and personnel to support border security and communities welcoming migrants.

While some of the policy changes have yet to take effect – and others have already been subject to legal challenges – the administration's plan includes some of the most substantial border policy reforms since President Biden took office.

The administration has already [cited](#) initial progress since the launch of the initiative, reporting dramatic declines of border encounters for certain populations since the policies were put into place. However, the policies raise serious concerns regarding the safety of migrants arriving at the border and whether the expanded legal pathways are accessible or broad enough to serve as a real alternative to irregular migration.

This explainer will describe all the elements of the new border plan, their likely impact, and concerns associated with their implementation.

II. What are the various border policy changes announced by President Biden?

The core of the new border policies are an expanded version of the administration's [October 2022 efforts](#) to respond to an increasing number of Venezuelan migrants. To that end, the policies expand Title 42 expulsions to additional nationalities, with the consent of the Mexican government, and allow a limited number of prospective migrants from those same nationalities to apply for a private sponsorship parole program.

But there are also additional elements to the administration's proposal that were not part of the October plan. To break it all down, the Biden administration's January 2023 border policy plan includes:

- 1. Further restrictions and enforcement on migrants arriving at the Southwest border.**

- The U.S. has agreed with Mexico to immediately expel 30,000 Nicaraguans, Haitians, and Cubans each month under [Title 42](#), the pandemic-era health policy used by both the Trump and Biden administrations to immediately expel arriving migrants without allowing them to make claims for asylum or other humanitarian protections. The use of Title 42 relies on receiving countries agreeing to the rapid expulsions. Prior to January 5, arriving migrants from Nicaragua, Haiti, and Cuba were largely exempt from Title 42 because both their home countries and Mexico refused to accept them upon expulsion.

While some arrivals from these three additional countries will be able to access exemptions to Title 42 expulsions, those that are returned to Mexico will be subject to notoriously dangerous conditions. A Human Rights First [report](#) has documented over 10,000 incidents of kidnapping, torture, rape, and other violent attacks on those who have been blocked or expelled to Mexico under Title 42.

- The U.S. will begin the rulemaking process to limit the ability of many arriving migrants to present asylum claims. This “transit ban” rule would create new procedures barring arriving migrants from making asylum claims between ports of entry if they have traveled through a third country on their way to the United States and did not first seek protection in that third country. The specifics of the rule are not yet clear, but [available information](#) indicates it may be a procedure similar to the Trump-era “transit ban” that was [repeatedly struck down](#) by the courts. The right to apply for asylum at the border — including between ports of entry and “irrespective of status” — has been [enshrined](#) by Congress under U.S. federal law.

2. Expanded legal pathways for certain prospective migrants

- The U.S. will expand eligibility of a private sponsorship parole program created for Venezuelan migrants in October to Nicaraguans, Haitians, and Cubans. The program, which previously had an overall cap of 24,000, will be available to up to 30,000 individuals per month. Successful applicants will be allowed to enter the U.S., apply for work authorization, and be protected from deportation for two years. Migrants who cross irregularly into Panama, Mexico, or the U.S. will not be eligible for parole under the program and the program will be contingent on the ongoing expulsions of individuals under Title 42. Additional information about eligibility and the application process for the parole program is included in Section III of this explainer.
- The U.S. will expand the use of an online appointment portal via the [CBP One](#) mobile app to streamline processing of asylum seekers at official ports of entry and to facilitate applications to the newly expanded parole program. For years, asylum seekers who try to request protections at official ports of entry along the border have either been turned away or subject to lengthy and often disorganized [“metering”](#) lines. The U.S. has now pledged to streamline this process, although the use of the new application has [already](#) faced functionality challenges and raised capacity concerns.
- The U.S. reiterated its pledge from the June 2022 Los Angeles Declaration on Migration and Protection to triple refugee resettlement from the Western hemisphere in FY 2023 and FY 2024, including the resettlement of over 20,000 refugees over that time. The U.S. [resettled](#) 2,485 total refugees from the hemisphere in FY 2022, and through the first quarter of FY 2023 is [on track](#) to resettle 3,732 — still far below the numbers needed to meet the target resettlement levels.

3. Additional resources and personnel to support border security and communities welcoming migrants

- The U.S. will surge available resources — including funding included in the recently-passed FY 2023 omnibus spending package — towards Department of Homeland Security (DHS) and Department of Justice (DOJ) efforts to process asylum cases at the border, as well as towards Border Patrol (USBP) and Office of Field Operations (OFO) to add additional personnel. The current asylum backlog in immigration courts is the highest ever, exceeding 785,000 cases. Even rapid asylum processing at the border under [expedited removal proceedings](#) can take months to complete — and often represents only the first stage in applicants' cases. The increased funding for additional personnel is at addressing longstanding hiring shortages and high turnover rates among border security and processing personnel at USBP and OFO .
- The U.S. will increase funding for communities welcoming arriving asylum seekers both domestically and across the Western Hemisphere. The Biden administration announced expanded outreach efforts to nonprofits and faith-based organizations working to welcome migrants, as well as additional federal funding to border cities and receiving communities. The administration also [announced](#) \$23 million in additional humanitarian assistance to support shelter, health, legal assistance, and other humanitarian assistance for migrants in Mexico and Central America.

III. What are the eligibility requirements of the newly expanded parole program?

Parole is a [tool](#) that allows specific groups of individuals to enter and temporarily stay in the United States for humanitarian reasons or because their entrance is determined to be in the public interest.

DHS has said the expanded [private sponsorship parole program](#) will operate the same as the [one that has already offered protections to thousands of Venezuelans](#) since October 2022. To apply for and be granted parole via the program, prospective beneficiaries must:

- Be a Venezuelan, Nicaraguan, Haitian, or Cuban national or an immediate family member of one of those nationals outside the United States,
- Hold a valid passport from any country, and
- Have a sponsor in the U.S. who has agreed to provide financial and resettlement assistance and filed a declaration of financial support ([Form I-134](#)).

Prospective beneficiaries will NOT be eligible if they:

- Are a resident, dual-national, or refugee in another country,
- Are an unaccompanied child,
- Have been ordered removed from the U.S. in the past 5 years, or
- Have crossed irregularly or unlawfully into the U.S., Mexican, or Panamanian borders after January 5, 2022 (or after October 19 if Venezuelan).

Upon initial acceptance parolees must:

- Provide for their own legal, commercial air travel to an interior U.S. port of entry (not at the border), and
- Pass vetting and screening procedures established by DHS and Customs and Border Protection (CBP).

To serve as a sponsor for the program, individuals must:

- Hold lawful status in the U.S. (nonimmigrants, parolees, asylum recipients, and those on Temporary Protected Status *are* eligible to serve as sponsors),
- Demonstrate proof of financial capability to ensure housing for the parolee and to ensure other needs are met for the duration of the parole period, and
- Pass security and background vetting designed to pick up flags related to human trafficking and exploitation concerns.

There will not be a fee to apply for the program and sponsors will not be required to have a familial connection to the prospective beneficiary. To begin the process, sponsors must only submit the correct [form](#) for each beneficiary they wish to support.

IV. What are some of the concerns associated with the administration's plan?

While the administration's plan includes substantive steps to address the humanitarian, logistical, and security challenges we face at the border, certain elements of the plan raise concerns regarding the treatment of vulnerable migrants and the long-term impact on border security and management.

1. Return of vulnerable migrants into danger and persecution

The right to apply for humanitarian protection at the border, regardless of status or the countries traveled through *en route*, is protected under U.S. law. Arriving between ports of entry and making an asylum claim is an existing legal pathway to the U.S. The expanded use of Title 42 and the proposed asylum "transit ban" infringe upon the rights of those seeking protection. As the administration itself has repeatedly acknowledged, Title 42 has resulted in the return of vulnerable migrants into [dangerous contexts](#) where many are likely to be persecuted and attacked.

2. Limited eligibility and access to safe legal pathways

The administration has justified the additional restrictions for vulnerable migrants arriving at the border by directing migrants to instead apply for the newly expanded humanitarian pathways — including the private sponsorship parole program and the streamlined processing at official ports of entry.

Growing effective alternatives to irregular migration at the border is [critical](#), but the majority of migrants fleeing to the Southwest border will not be able to access the newly expanded pathways created by the administration's January plan. Many of those fleeing to the Southwest border are among the poorest and most vulnerable forced migrants in the hemisphere. Many are those who are desperate enough to cross the Darién Gap, a 60+ mile jungle footpath considered one of the [most deadly](#) migratory routes in the world.

Most of these individuals do not have the resources or connections to secure a sponsor in the U.S., travel documents, airfare, or to wait in their homes while their applications are processed, all of which are necessary to access the new parole program.

The expanded and streamlined processing of humanitarian claims at ports of entry has also raised [concerns](#). In its first weeks of operation, the CBP One app has repeatedly reached capacity

and stopped accepting new appointments. In other cases, available appointments were too far from where the applying asylum seekers were located, and other concerns have [been raised](#) regarding the app's lack of accessibility. The app is only available in Spanish and English, and it requires a smartphone, access to Wi-Fi or a data plan, and the ability to navigate a complicated verification process.

3. Congressional action is needed to follow through on resource provision and personnel efforts

A large plank of the administration's plans is to surge resources and personnel to bolster the asylum system, improve border security outcomes, and support border cities and other communities welcoming migrants. Some of these efforts have already borne fruit. The U.S. is on track in FY 2023 to adjudicate a [record number](#) of asylum cases, and there is a significant increase in available [grant funding](#) for nonprofits and shelters working with newly-arrived migrants.

But the administration is limited in its ability to allocate resources to the border response effort without further congressional assistance. The [recently-passed FY 2023 omnibus spending package provided for important new border funding and resources](#), but Congress will almost certainly need to pass supplemental appropriations and additional legislation to adequately resource the many challenges we face at the border. Absent further congressional support, the administration could soon run out of resources and capacity to address these challenges.

V. What have been some early impacts of the policy changes?

While it is too early to determine the long-term effects of the Biden administration's new border initiatives, the plan has already had significant impacts on arriving migrants and border management.

The expanded parole program has already started approving protections to many prospective migrants. As of January 27, [over 7,500 migrants](#) have been approved to come to the U.S. under the program. Additionally, the Biden administration has [touted](#) the initial impact that plan has had in discouraging new border arrivals. In the initial weeks following the rollout of the parole program, [CBP data indicated](#) that there a 97% drop in irregular migration from the four impacted countries, falling to just 115 encounters a day.

However, since the plan's announcement, many vulnerable asylum seekers from Nicaragua, Haiti, Cuba, and Venezuela have [already been expelled](#) into Mexico under Title 42, where they remain in limbo, unsure where to go for protection. Many face persecution or violence upon return to their home countries, and Mexico has ordered them to leave the country within 20 days. Furthermore, migrants who were in the midst of the dangerous journey to the border when the policy dropped now face increasingly bleak prospects of protection in the U.S., and some have begun to attempt to seek protection elsewhere.

It is not yet clear whether these impacts — or the policies that have spurred them — will be sustainable at the border. On January 24, Texas Attorney General Ken Paxton led a coalition of 20 Republican-led states in [filing a lawsuit](#) attempting to block the implementation of the new parole program, creating the possibility that federal courts may halt that portion of the plan.

In addition, on January 30, the Biden administration announced the intended end of the public health emergency associated with the COVID-19 pandemic on May 11, 2023 — a move that

would also likely [automatically end](#) the use of Title 42, a policy predicated on the existence of the health emergency. In the absence of Title 42, the administration may attempt to rely on [other enforcement mechanisms](#) to block or quickly return migrants who are currently eligible for the parole program.

The long-term impact of the plan remains uncertain. Because humanitarian parole is only a temporary tool with no pathway to permanent lawful status, most of those accepted will eventually need to return to their country of origin, in the absence of adjustment legislation from Congress or successful claims for asylum or other legal protections. Given the [longstanding failure](#) of enforcement-focused policies to sustainably deter arriving migrants, it's unclear whether the initial reduction in irregular migration can be maintained. However, the opening of alternative legal pathways like parole and private sponsorship are encouraging and, if expanded, hold promise as part of a long-term border management strategy.