

There's No Excuse for Joe Biden Not to Make Immigration Policy More Humane

Via [Jacobin](#)

In the last few weeks, the Biden administration seems to have taken progressive criticism on its immigration missteps to heart. Reversing course after months of foot-dragging, Joe Biden announced he would make good on his promise to raise the refugee cap to 62,500 for the rest of this fiscal year and ended contracts for border wall construction.

Leftists should celebrate these major victories for human decency. But we also shouldn't lose sight of the many issues left in our immigration system that have major, and, in some cases, deadly, consequences for thousands. And unlike legislative changes, which depend on the approval (or, at least, begrudging acceptance) of moderate Democrats, many of Biden's choices on immigration are entirely up to him and his executive appointees.

The Good

So far, the Biden administration has made notable strides toward reshaping our immigration system after four years of Trump. In his first three months in office, Biden [ended](#) the "remain in Mexico" policy, [jettisoned](#) Trump's wealth test for immigrants, [reversed](#) Trump-era restrictions on eligible asylum claims that discriminated against LGBTQ asylees and victims of gang and domestic violence, and [halted construction](#) of the border wall. Further, he [reestablished](#) the Central American Minors program that allows certain at-risk Central American youths to live in the United States, rescinded the "[zero tolerance](#)" policy that was responsible for family separation at the border, and [ended](#) the racist Muslim and African travel

bans.

The Biden administration has also made inroads to quickly process and house unaccompanied migrant children. For instance, in March, more than [five thousand minors](#) were stuck in Customs and Border Protection (CBP) facilities, but by the beginning of this week, that number had dropped to roughly six hundred as the administration successfully housed the children with family members or foster homes. The amount of time children have had to stay in CBP facilities has also fallen precipitously to only [twenty-eight hours](#) from 133 hours a month ago.

Biden has also indicated that a more humane immigration system is a long-term priority. In his inaugural budget request, released last month, Biden requested sufficient funding to settle up to 150,000 refugees in the 2022 fiscal year, which would be the highest level since [1981](#).

But around the same time as it released its budget request, the administration hesitated in its promise to raise the refugee cap for the rest of this current fiscal year ending in September. Without raising the cap, which Trump had lowered to a historic low of fifteen thousand, Biden would have been on track to accept even fewer refugees than Trump.

Thankfully, after massive outrage from progressives and immigrant rights activists, Biden [announced this week](#) that he would raise the cap to 62,500, an immense win for the thousands of refugees now eligible to come to the United States. And it's hugely important that raising the cap happened now instead of in the next fiscal year; refugees must apply for refugee status from outside the United States, meaning that they often must wait for years in refugee camps, which are notoriously dangerous, particularly during the pandemic.

Recent nominations for immigration officials also display

some, albeit limited, progress. Biden nominated [Ed Gonzalez](#) as the next director of Immigration and Customs Enforcement (ICE) and [Chris Magnus](#) as the head of CBP. Both Gonzalez and Magnus have been lauded as progressives by [Adam Isacson](#) from the Washington Office on Latin America, a humanitarian nonprofit, and various [local figures](#). Gonzalez previously fought against turning undocumented detainees over to ICE during the Trump presidency, and Magnus adopted positions at odds with the border patrol and police unions, such as refusing to cooperate with federal authorities to detain undocumented immigrants and joining a Black Lives Matter protest after the death of Michael Brown.

But Harris County, where Gonzalez is sheriff, has had the [highest number of ICE arrests in the nation](#), with the majority of arrestees being transferred from the sheriff's office. And Magnus resisted attempts to make Tucson a sanctuary city and delayed the release of body-camera footage of the death of Carlos Ingram Lopez, a twenty-seven-year-old Latino man who died in police custody. Even if Gonzalez and Magnus live up to the more optimistic predictions, their impact will be limited without dramatic changes at the systemically flawed agencies, with internal cultures that celebrate policing immigrants, they may soon lead.

The Bad

For all the encouraging steps Biden has taken to protect immigrants, the administration has also endangered migrants through other policy choices, made either due to erroneous beliefs that we don't have the capacity to take in more immigrants or fear of right-wing backlash.

Some of these choices have violated past pledges, such as Biden's vow to halt deportations for his first hundred days. One of the most egregious is the administration's continued use of Title 42 of the 1944 Public Health Service Act to [expel asylum seekers](#) without due process, which may violate [US](#)

[obligations](#) under international and domestic law. Trump's Centers for Disease Control and Prevention (CDC) invoked Title 42 last year in an unprecedented move to expel migrants due to their supposed COVID-19 risk. In February, [72 percent](#) of all migrants seeking entry were expelled via Title 42.

Under Biden, Title 42 has been particularly harmful for Haitian asylees; more have been [expelled](#) during the first few months of Biden's presidency than were by Trump in a whole year. Biden's removal of Haitian asylum seekers may also violate international law: two international agreements to which the United States is party, the 1951 Refugee Convention and its 1967 Protocol relating to the status of refugees, [prohibit expulsion](#) of migrants back to countries where they are likely to face persecution, something a leaked Department of Homeland Security (DHS) [report](#) indicates the Biden administration knew was a risk for Haitian migrants. And, in a particularly cruel twist, some migrants decided to make the journey to the United States after Biden's victory, believing he would make good on his promised [deportation moratorium](#).

In addition to potential legal prohibitions, advocates have also highlighted that deportation proceedings necessarily confine migrants in crowded detention centers and planes. Even migrants who have tested negative for COVID-19 have been expelled, contradicting any public health justification for Title 42. Haiti has so far received zero doses for its population of 11 million, which gives Haitian asylum seekers no effective means to get vaccinated before requesting asylum.

Biden appears to be violating other campaign promises as well. Contrary to a vow to [end family detention](#) altogether, Biden has [rebranded](#) the South Texas Family Residential and Karnes County Residential centers as "family reception centers" that aim to rapidly process immigration claims. The Biden administration has also reopened [large child detention centers](#) in Carrizo Springs, Texas, and Homestead, Florida,

which have faced criticism for reports of [sexual abuse](#), overcrowding, and [poor conditions](#).

Though these facilities are meant to hold immigrants for no longer than seventy-two hours (longer holding periods are illegal), in March, three thousand children were held longer than the legal limit. [Immigrant advocates](#) have highlighted that there's no reason for these facilities in the first place – migrants can be released into the United States, where they often have loved ones waiting for them.

Some [immigrant rights advocates](#) have described the administration's efforts to shorten detention times as a good "first step," but are pushing for the end of family detention altogether. Experts have argued that detaining children for [any amount of time](#) is traumatizing, and the harsh conditions and restricted mobility of these facilities is dehumanizing and harmful to children and adults alike.

Biden is upholding the detention regime that the Obama administration [vastly expanded](#) in 2014 when it began detaining families for as long as it took to process their immigration cases. Obama officials were explicit that this policy was meant to be a deterrent for migrants, harshly punishing those who made it to the border to serve as an example. Former DHS chief Jeh Johnson told the Senate that the detention policy was part of an "[aggressive deterrence strategy](#)." Though [federal courts](#) have since ruled that it's unlawful for ICE to detain some migrants as a means of deterring others, continuing punitive border policy under Biden serves the same purpose. Mayorkas was clear about the administration's priorities in March, telling migrants, "[Do not come](#)."

In other cases, the Biden administration's actions have been insufficient to undo Trump-era immigration policies once and for all. On the campaign trail, Biden said he would withdraw from Trump's wall-related eminent domain cases along the border, but in April, his administration seized [six acres](#) from

a family in Hidalgo County, Texas. The administration delayed the 140 active [eminent domain cases](#) pending a sixty-day review period – but that deadline came and went without the Department of Justice dropping the cases. The administration has also failed to return land already seized from numerous families.

Biden [suspended](#) another of Trump's cruelest immigration policies, the Migrant Protection Protocols – better known as the “remain in Mexico” policy. But while the policy gets revised, thousands of migrants are [still stuck in Mexico](#) and unable to enter the country while they await their hearings. Other migrants seeking to enter the United States have been [explicitly told by DHS Secretary Mayorkas](#) to continue to wait in Mexico due to a CDC Trump-era order to expel all undocumented migrants due to public health risks – an order CDC health experts have [decried](#) as unnecessary and politically motivated.

No Excuse

Some fixes to our immigration system will require legislation, but the executive branch can do much unilaterally. Senators Joe Manchin and Kyrsten Sinema may be able to block pro-immigration legislation, but they can't prevent Biden from allowing in more refugees and asylees – nor can they force CBP or ICE to detain and deport more undocumented immigrants.

Biden's recent moves to raise the refugee cap and end some Trump-era policies show that he has the power to do good now. Any reluctance from Biden to use the full extent of his power to protect vulnerable people is inexcusable.