

The Impact of the Asylum Ban on Children Seeking Safety in the United States

The Biden Administration's new border policy imposes a near-ban on the ability of asylum seekers to apply for safety in the United States. Families and adults alone who do not follow restrictive new policies before they reach the U.S.-Mexico border can be banned from requesting asylum. Although unaccompanied children are exempted from the ban, the new policies could undermine the safety of all children, as the new policies create a more dangerous and unstable environment for anyone attempting to seek protection at the border.

Under the policy, an individual seeking protection is ineligible for asylum if they: traveled through another country and did not apply for and receive a denial of asylum or other protection there; do not have permission through an approved parole process to travel to the border; or if they present at a port of entry without a prescheduled appointment through the "CBP One" mobile device app or cannot prove that it was not possible to use or access the app. They may be eligible to apply if they can demonstrate that these requirements should not apply to them or if they meet one of the exceptions.

The rule will put children, families, and others seeking safety at greater risk of harm

Requiring people to apply for asylum in a country through which they travel before arriving at the border is not a viable option for many. The control of gangs and other organized criminal organizations span regions; the violence and other harm children and families fled in their countries of origin may also be pervasive in the countries through which they cross. In addition, the protection systems of countries such as El Salvador, Guatemala, and Honduras lack sufficient capacity, resources, and reach to ensure the protection of children and other asylum seekers against such threats.

While the ban contains several provisions intended to protect family unity, these exceptions and safeguards will be unattainable for many protection seekers who would be required to provide supporting evidence and documentation of imminent harm, for example, after navigating perilous circumstances and without legal counsel to assist them.

Past experience with restrictive policies has demonstrated that even when unaccompanied children are exempt from such policies, such as with Title 42 under the Biden Administration, they often face significant barriers to accessing protection at the border and face harmful turnbacks, separations, or confusion about procedural protections that hinder their ability to request protection. This ban risks these same harms—increasing the vulnerability of children, families, and other protection seekers to return to harm.

The ban will likely lead to more family separations

If children and families are denied access to asylum in the United States, they face grave dangers in Mexico, including exploitation by cartels and other criminal actors, sexual assault, kidnapping, and other harms.

Without access to the United States and unable to apply for new parole processes due to limited eligibility criteria, or lack of a financial sponsor in the United States, some families face impossible decisions to wait in danger or to separate so that their children may seek protection in the United States. Children could also be forced to seek safety alone in the United States if they lose a parent or other caretaker due to the violence and insecurity in northern Mexico.

The ban is inconsistent with U.S. and international law

By dramatically limiting asylum eligibility for most individuals who travel through another country in their search for protection, the rule constricts the United States' humanitarian protection system and risks the return of protection seekers to countries where their lives and freedom are threatened. The ban is now being **litigated**.

KIND urges the Department of Homeland Security and the Department of Justice to withdraw the ban and dedicate their efforts to deploying appropriate resources, staffing, and expertise to ensure humane and orderly reception and full and fair access to asylum at the U.S.-Mexico border.

KIND also reiterates its longstanding recommendations that the Department of Homeland Security (DHS) consider alternative policies that can provide safer and more efficient processing of children and families:

- DHS must immediately hire and place state-licensed child welfare professionals at the border to screen and care for children, as directed and funded through recent appropriations laws passed by Congress. Child welfare professionals at the border will improve outcomes for children and allow Customs and Border Protection agents and officers to focus on law enforcement tasks for which they have been specially trained.
- DHS must collaborate with specialists from the Department of Health and Human Services at the border, who can assist in identifying timely and appropriate placements for unaccompanied children and promote family unity by evaluating whether non-parent caregivers who arrive with children may be able to serve as safe and appropriate sponsors—helping to avoid unnecessary separations and potentially reducing children's time in government custody.

To read KIND's full recommendations, see: **Key Protections for Unaccompanied Children as the End of Title 42 Draws Near**

