An asylum seeker from Nicaragua waits with his wife and eight-year-old son to enter a U.S. port of entry to change their asylum court dates. (Photo by PAUL RATJE/Agence France-Presse/AFP via Getty Images)
INTRODUCTION

President-elect Biden has promised a broad array of reforms that would impact refugees, asylum seekers, and other forced migrants. He has indicated he will restore Temporary Protected Status, place a moratorium on deportations, and end prolonged detention and for-profit detention centers. These are all crucially important to the safety and security of migrants and their families in the United States and other countries, especially in the Western Hemisphere. President-elect Biden has also promised to end the Trump administration’s policy of making asylum seekers “remain in Mexico” while awaiting hearings in U.S. immigration court.

However, in recent weeks, a flawed and fatalistic view of migration to the U.S. southern border has taken hold in some media accounts and reports. It goes like this: President Trump’s Remain in Mexico (or MPP) policy has created a logistical and humanitarian crisis at the southern U.S. border that, despite President-elect Biden’s promises, will be very difficult to undo. Further, a combination of pull and push factors (especially in the wake of hurricanes in Central America) will lead to increased migration to the southern U.S. border this spring such that President-elect Biden will have little choice but to keep the border sealed under an order from the Centers for Disease Control and Prevention (CDC), as he attempts to deal with COVID-19 in border states and fulfill other immigration policy promises—including uniting families the Trump administration ripped apart two years ago.

There are several problems with this line of argument, many of which are addressed in this report. Most fundamentally, keeping the border sealed and migrants waiting in Mexico will perpetuate serious abuses. Family separations and other violations of human rights, as well as violations of U.S. law, will continue to occur under a Biden administration that does not implement new policies at the border. Recently, MPP and the CDC border closure have exacerbated smuggling and trafficking at the border, as well as other forms of abuse against migrants. For example, the CDC order has led to the repatriation of Nicaraguan dissidents as well as the return of a sexually abused Guatemalan child. It has also led asylum seekers to try to cross undetected in remote desert areas. Further, unwinding MPP and allowing asylum seekers to ask for protection at the border is not only the right thing to do, but also feasible with the proper planning. Indeed, it presents the incoming administration with an opportunity to rethink migration management, especially for those seeking asylum, and to implement a new screening process that is both more humane and more efficient.

President-elect Biden has invoked President Franklin Delano Roosevelt—healer, rebuilder, and practical problem solver—as a model. During World War II, Roosevelt planned and devoted significant resources to resolving the largest displacement crisis
the world had ever known. This planning was part of an effort to ensure that what
dhappened in 1939 to the S.S. St. Louis—a ship of asylum-seeking Jews turned away by
the United States and other countries—would not occur again.

During his first week in office, President-elect Biden should issue an executive order on
border asylum policy that departs dramatically from that which President Trump put forth
during his first week. President Biden’s executive order should give asylum seekers
access to the border and provide for cooperation with border states and shelters to
safely and humanely receive asylum seekers. It should allocate resources to alternatives
to detention, including case management, and to improved adjudication of asylum claims
in immigration courts, especially through provision of legal services. It should also
commit to ending practices associated with expedited removal of asylum seekers that
have resulted in abuses, and to the use of parole to unwind MPP. Finally, through
revocation of Trump administration decisions, regulations, and policies, as well as
through settlement of lawsuits and the withdrawal of appeals to federal courts regarding
these policies, the executive order should commit to restoring asylum eligibility to those
who have fled persecution but have been denied or prevented from obtaining protection.

In taking such action, President-elect Biden would be fulfilling not only his campaign
promises but the commitment he made when he voted for Senate passage of the
Refugee Act of 1980. That law, supported by large majorities of both parties, promised to
ensure fair access to asylum at the border.

This report shows why it is imperative that the Biden administration do this rather than
keep us mired in a policy framework that does not work and that has led to a cycle of
crises. It does so by looking back to a momentous time of transition about thirty years
ago. With the Cold War ending, the United States had to rethink its assumptions about
who merited refugee status. Only a handful of refugee resettlement slots in the U.S.
Refugee Program were allotted to Central Americans, and the United States had not yet
developed clear procedures for effectively handling asylum seekers at the southwestern
border. Rather than acknowledge the forces pushing people northward, U.S.
policymakers adopted a paradigm that was focused primarily, if not exclusively, on
deterrence. This is a paradigm that we are still in today.

At different points over the past thirty years, humanitarian and constructive policies have
tempered the harshness of this paradigm, and such policies have also brought benefits in
terms of cost and efficiency. These policies need to be adapted and scaled up. But they
also need to be placed within a welcoming framework that does not presume asylum
seekers are a threat. Instead of devoting tremendous resources to a futile and rights-
violating attempt to block those already on the move, we have to try to better
understand the drivers of migration, which, for Central Americans, include corruption,
poverty, insecurity, and violence. We must devote resources instead to humanely
receiving asylum seekers and adjudicating their claims fairly. We also have to
stop assuming that the best place to manage admissions of all Central Americans seeking protection is at the border.

THE DETERRENCE PARADIGM

The deterrence paradigm has been implemented repeatedly using the same counterproductive strategies.

1988-89: “Putting up a Dam”

In 1988 there was a large uptick in asylum seekers at the U.S. border, especially Nicaraguans driven northward by policies of the Nicaraguan government and the destruction wrought by a hurricane, but also many people from Guatemala, El Salvador, and Honduras. In a clumsy attempt at deterrence, the Reagan administration announced in December 1988 that it would no longer preliminarily screen asylum seekers, release them on bond, and allow them to pursue their cases in immigration court elsewhere in the country once settled with friends and family. Instead, asylum seekers were required to stay in South Texas until their applications were processed.

“If you look at it as a stream of people,” a Red Cross worker said at the time, “the effect of the regulation was like putting up a dam.”[1] By January 1989, the two existing shelters in Brownsville were full, and asylum seekers were living in motels and open fields in Brownsville. The mayor of Harlingen shut down the office of the Immigration and Naturalization Service (INS) there because asylum seekers were sleeping outside. Those awaiting adjudication of their asylum claims lacked food and shelter and were not authorized to work. Nor did the federal government offer funds to local authorities to help accommodate the waiting asylum seekers. “There’s not a lack of compassion here,” the Cameron County judge said. “But this is really something that has to be addressed at the state and national and even international level.”[2]

The George H.W. Bush Administration: Detain and Discourage

Rather than do that, the new George H.W. Bush administration doubled down on an enforcement plan to address the self-imposed asylum “crisis.” That so-called crisis was, as one Reagan administration immigration official pointed out, insignificant when compared to the numbers of refugees recently resettled in the United States from Vietnam and the Soviet Union.[3] The INS began requiring that asylum seekers go to its facility at Port Isabel, Texas, known colloquially as “El Corralon.” It sent families to what the INS commissioner called “soft detention” run by the Red Cross.[4]

At Port Isabel, INS examiners quickly screened asylum applicants, detained those they rejected in a prison and tents, and issued them orders to go to immigration court for deportation proceedings.
The examiners doing the screenings had no special training or experience with asylum. As an observer of proceedings wrote, “forty-five new asylum examiners issued pro forma denials to virtually all applicants.”[5] A bipartisan study mission dispatched to the border by the immigration subcommittee of the Senate Judiciary committee noted that the process of examining and issuing decisions on applications in a single-day was unfair to those with meritorious claims.

When, the following month, detainees protested by “peel[ing] up a section of the ten-foot fence surrounding the recreation yard and shouting for freedom,” the INS sent in 130 border patrol officers to tamp it down.[6]

In response to this new approach by the INS, asylum seekers stopped presenting themselves to the authorities in the Rio Grande Valley, though apprehensions of Central Americans crossing the border continued to rise. Nonetheless, at a Congressional hearing in March 1989, INS Commissioner Alan Nelson insisted that the deterrence policy was working and that there was no need for emergency federal funds for humanitarian aid.[7]

The Senate study commission found it “most disturbing” that “Central Americans with promising asylum claims...had no intention of risking detention and deportation by applying for asylum.”

**Lack of Legal Assistance and Lack of Fair Process**

Like the Senate study commission, an American Bar Association (ABA) delegation went to South Texas to see the situation for itself. The delegation found that 2,500 people were being detained at Port Isabel detention center, which had a 1,100-bed capacity. Though the INS gave detainees a list of legal service providers, the delegation found that “a detainee could call the first seven of the nine programs listed and never reach an agency providing the assistance he or she requires.”[8] The delegation noted the crowded and poor conditions—1,000 female detainees were living in canvas tents of 500 beds each with no running water—but it did not see mistreatment of detainees by the guards that soon made headlines in Brownsville.[9]

The delegation also observed immigration court proceedings at Port Isabel. At mass initial hearings that occurred weeks after they were detained, unrepresented asylum seekers were first advised of their rights. Some judges implied that the only way to get out of detention was to accept deportation (rather than apply for bond) and discouraged applications for asylum by emphasizing that it was a long and arduous process. At subsequent hearings, those who indicated a desire to apply for asylum were given two weeks to submit their completed asylum applications, in English (though a hearing on the merits of these submitted applications would not take place until many months later).
The ABA delegation noted that sufficient “legal assistance is simply not available” in South Texas, despite efforts by highly committed local organizations. It recommended that asylum applicants be given the opportunity to spread out and relocate to communities where they have ties and where more legal services were available. It also suggested that asylum applications be printed in languages other than English and applicants should be permitted to respond in their native languages. “[G]overnment interpreters who translate immigration court proceedings could be utilized for translating the written applications into English.”

The Senate study commission also recommended a different approach at the border. It suggested that the INS not focus exclusively on enforcement but also devote resources to the training of asylum officers. It recommended that the executive branch consult with local border communities on “humanitarian aspects” of receiving asylum seekers. It further suggested that the UN High Commissioner for Refugees “advise” asylum applicants and “refer appropriate cases to INS with a recommendation of approval.” The new Bush administration and Congress, the Senate report concluded, “are faced with both a genuine challenge and a great opportunity—how to develop lasting and appropriate asylum procedures.”

**Externalize and Divert**

But the South Texas policy was only one prong in the new administration’s deterrence strategy. The administration was also appealing federal court decisions that found the INS denied Salvadorans a fair chance to apply for asylum (Orantes-Hernadez v. Thornburgh) and detained unaccompanied children for prolonged periods (the latter is the well-known *Flores* litigation, which commenced during the Reagan administration). Further, in 1989, the administration began pressuring and helping Mexican immigration authorities to arrest and deport thousands of Central American asylum seekers heading north to the United States, resulting in human rights violations and refoulement (that is, return to a place where the asylum seeker has a well-founded fear of persecution).[10] By 1990, Attorney General William Barr “devoted a lot of effort and energy” to “putting up fences” to “shut down the border” in California. As he recounted, “we kept on pushing [immigrants] further west,” away from the cities and into remote areas (or, as Barr put it, “open ground”). Back in South Texas, the new INS Commissioner Gene McNary doubled immigration detention capacity.

These strategies—the building of border walls, U.S. help for Mexico to impede northward migration, and detention (including of families)—persisted and expanded under both Democratic and Republican administrations over the next two decades.

**LIMITED REFORM, 1990-2016**

**Creation of Asylum Office, but Underfunded**
What limited reform there was came largely as result of litigation culminating in a ruling that Central American asylum seekers had not been accorded fair asylum screenings. In American Baptist Churches v. Thornburgh (known as the ABC case), a California federal court explicitly ruled that foreign policy and border enforcement considerations are not proper factors in determining statutory eligibility for asylum. Largely as a result, the INS established a special corps of officers extensively trained in asylum law, country conditions, and interview techniques. Members included former Peace Corps volunteers, refugee resettlement officers, academics, attorneys, immigrants, and refugees.[11] The officer corps was to be responsible for screening asylum seekers, and designed to be independent and separate from the enforcement operations of the INS.

Unfortunately, from the get go, it was understaffed and underfunded; there were not enough asylum officers to efficiently adjudicate the growing number of claims so that a backlog developed. Recognizing the problem, Congress in 1994 funded an expansion of the asylum officers corps and additional immigration judges, which helped keep up with applications. But while Congressional appropriations for enforcement and border security have grown tremendously since the 1990s, not so for the asylum office. The staff devoted to asylum adjudication in the United States was much smaller than that of a number of other countries in the global north (such as Germany, Sweden, and France) dealing with the same challenges.[12] Asylum adjudication also remained embedded within the enforcement bureaucracy of INS and the immigration courts. Unlike in other countries, and as was recommended by reformers in the 1990s, no centralized asylum office was created where cases could be assessed and appealed and handled by officers and judges who focused only on asylum.[13]

In order to try to limit the number of new claims coming in, a 1994 regulation imposed a six-month wait time for work authorization. The regulation also sped up the screening process such that asylum seekers were more quickly referred to immigration court. The stated goal of the rule was to discourage frivolous claims filed solely to obtain work authorization and to enable the INS to more promptly grant asylum—and then work authorization—to those who merited it.[14] To clear up the backlog of Central American asylum seekers whose cases had been pending since the 1980s or were granted new hearings through settlement of the ABC case, Congress passed legislation in 1997 that provided them with a path to permanent residence.

**Expedited Removal Expands and Grows Inefficient**

In late 1996, Congress passed and President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act. The law, which went into effect in April 1997, provides for expedited removal of those who arrive without proper documents. Initially implemented at ports of entry, expedited removal expanded in 2004 to apply to those arrested for entry without inspection within two weeks of arrival and within 100 miles of the southern border, and it later was expanded further. Those subject to expedited removal who express fear of return to their home countries are supposed to be referred
by Border Patrol officers to asylum officers for “credible fear” interviews. At these
interviews, asylum seekers must show a significant possibility that they could establish
that they merited asylum in subsequent full hearings before an immigration judge.

In the new millennium, the problems with processing asylum seekers using expedited
removal became apparent. In 2005 the U.S. Commission on International Religious
Freedom found that Border Patrol officers neglected to refer a significant percentage of
asylum seekers with legitimate fears for credible fear interviews and even more
pervasively created unreliable records of their encounters with asylum seekers that were
later relied upon by immigration judges adjudicating cases. Furthermore, though the
number of people requesting asylum in the 1990s while attempting to enter the United
States was small, this number grew in the 2010s, and a much higher percentage of
asylum seekers were put into expedited removal. By the mid 2010s, apprehensions of
Mexican adult migrants at the border were at their lowest in decades, and Central
American parents and children fleeing violence made up increasing proportions of
arrivals. The credible fear screening process became increasingly inefficient, as demands
on the system increased substantially.

Asylum seekers subject to expedited removal were transferred from the border to
Immigration and Customs Enforcement (ICE) custody, as the 1996 statute mandates
detention at least until credible fear interviews. Numerous asylum officers were detailed
to border detention centers to conduct interviews. Credible-fear interview requests to the
asylum office rose from 9,000 in FY 2010 to 79,000 in FY 2017. If deemed to have a
credible fear of persecution, mostly unrepresented asylum seekers began brand new
proceedings before immigration judges. Between 2013 and 2017, immigration court
judges saw a rise of over 400 percent in “defensive” asylum cases like these. These
judges were already swamped by cases referred to them by ICE through ramped up
interior enforcement efforts. The immigration court backlog ballooned while funding and
hiring for the courts did not keep pace.

Insufficient Progress during the Obama Administration

The Obama administration tried some new approaches. In 2014 it pioneered a Central
American Minors program that allowed parents legally in the United States to bring their
children to the United States as refugees—but not on a scale that made a significant
impact. The same is true about an alternative to detention family case management
program that had great success in ensuring asylum seekers attended their court
hearings. Begun in 2016, the program served only 952 families.

More broadly, the Obama administration expanded family detention and put thousands
of asylum-seeking families on an accelerated immigration court docket such that many
were unable to find attorneys and were rapidly deported. The Obama administration did
fund legal orientation programs for detained asylum seekers and for custodians of
unaccompanied minors. However, without additional appropriations from Congress,
these programs could not assure that asylum-seeking children and families had counsel, which make proceedings more efficient and fair.

Further, after Department of Homeland Security (DHS) Secretary Jeh Johnson announced in November 2014 that those attempting to unlawfully enter at the border were a top enforcement priority, Immigration and Customs Enforcement (ICE) dramatically reduced releases from detention of asylum seekers who had passed credible hearings as they were supposed to do per a 2009 asylum parole directive. Only 47 percent of parole requests were granted to credible claimants in the first nine months of 2015, while 80 percent of arriving asylum seekers found to have a credible fear were granted parole from detention in fiscal year 2012.

Finally, between 2014 and 2016, the Obama administration supported with funds, training, and personnel Mexico’s aggressive apprehension of Central American asylum seekers heading northward, including through the use of military checkpoints and roundups, detention, and deportation. The Obama administration also made foreign aid to Central America contingent on implementation of migration control measures, including the interception of children and families attempting to flee northward.

**THE TRUMP ADMINISTRATION**

Starting in 2017, the Trump administration began replaying the strategies of thirty years ago at a higher volume. The result is very similar to what one attorney observed at the March 1989 congressional hearing: “there is this self-fulfilling prophecy that all the claims are frivolous because we are attempting to deter them, and virtually all claims are denied.”

The Trump administration changed the training for credible fear interviews, eliminating guidance to consider trauma and cultural background when assessing credibility and illegally raising the evidentiary threshold to pass. The administration also compelled the asylum office to train officers of Customs and Border Protection (CBP) to conduct such interviews, undermining the policy goal of ensuring the most responsible screening and the separation between asylum adjudication and immigration enforcement. The Trump administration also diverted funding from asylum adjudication to fraud detection. And it lengthened the asylum application and mandated that such applications be denied for technical errors.

Numerous Trump administration policies have hampered the immigration courts while limiting due process for asylum seekers. The Trump administration suspended the legal orientation program and immigration court help-desk. Later, for orientation sessions, it replaced in-person interpreters in immigration courts with pre-recorded advisory videos that warn against filing frivolous asylum claims without explaining what asylum is.
Attorneys General Sessions and Barr issued decisions limiting the ability of asylum seekers to testify on their own behalf, to have bond hearings with immigration judges so as to be released from detention, and to prevent grants of asylum from being overturned on appeal. The Trump administration attorneys general have also issued decisions limiting the ability of immigration judges to grant continuances, to terminate cases, or administratively close them in circumstances where those outcomes serve the interest of justice.

Further, the Executive Office of Immigration Review (EOIR), the division of the Justice Department that houses the immigration courts, has finalized a new rule creating a deadline of 15 days after an initial hearing for submission of asylum applications and allowing judges to submit their own evidence in asylum proceedings, while also giving less weight to evidence on human rights and country conditions coming from independent, nongovernmental organizations.

Furthermore, the Attorney General and Executive Office of Immigration Review used a new speeded up and politicized hiring process to promote and appoint to the Board of Immigration Appeals (BIA, the body within EOIR that reviews immigration court decisions) immigration judges who have denied asylum cases at much higher rates than immigration judges nationally. In 2020, the Board of Immigration Appeals issued decisions that dismiss due process problems in asylum hearings conducted through video, limit the ability to challenge a denial of asylum based upon additional evidence, bars from asylum eligibility those who lived in a third country where they were maltreated.

Democratic senators, including Kamala Harris, have asked the Government Accountability Office to investigate a range of Trump administration actions that appear to have compromised the integrity, independence, and effectiveness of the immigration courts.

Limits on eligibility for asylum and due process for asylum seekers (both discussed further below) are part of a larger Trump administration strategy of deterrence. The new BIA has issued decisions, or reaffirmed higher level Trump administration guidance, that narrow grounds for asylum, keep asylum seekers detained, and uphold procedures of the Remain in Mexico program. By World Refugee Day in June 2020, 81 members of Congress, again including Vice-President elect Harris, wrote the President to demand he “reverse the litany of policies...that have effectively dismantled our nation’s asylum system.”

**Detain and Deprive**

Soon after assuming office, President Trump issued an executive order on border enforcement directing DHS to “ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings.” This
led ICE to stop releasing asylum seekers who had passed credible fear interviews. Instead, ICE increasingly transferred them from the border to private prisons in remote areas where there was little access to counsel and rampant medical neglect. In 2018, the administration used “El Corallón” at Port Isabel as a place from which to deport parents it had criminally prosecuted for illegal entry and separated from their children. In 2019, fighting against the court mandated standards for the detention of unaccompanied minors in the Flores settlement, a government attorney told a federal court it should not be required to provide child migrants in Border Patrol custody with soap and warm blankets.

Dump and Disorder

In late 2018, DHS ended its practice, begun in June 2014, of coordinating the release to shelters or travel arrangements to sponsors of asylum-seeking families who arrived at the border. Instead, DHS simply left thousands of asylum seekers directly at bus stations and on city streets without any federal support or even adequate paperwork about when and where they were to report to immigration court. Shelters and non-profit organizations collected supplies, called for volunteers, and asked local governments for help providing asylum seekers with temporary shelter and basic supplies, facilitating their travel to relatives, and explaining to them how to pursue their cases at their destinations. The Trump administration did not take advice from its own Homeland Security Advisory Council to provide federal funds to localities; indeed, DHS denied Pima County, Arizona, the ability to reallocate funds from enforcement toward humanitarian aid.

While engaging in this chaotic release program, the Trump administration pressured Mexico, through threat of tariffs, to deploy its National Guard to stop Central American asylum seekers from making their way north. By the end of 2019 and early 2020, the administration was also simultaneously implementing several policies focused on externalization—that is using a variety of means to keep asylum seekers away from the U.S. border. The result has been costly, chaotic, inhumane, and illegal.

MPP

The administration’s most ambitious externalization policy is its “Migration Protection Protocols” (MPP) or the Remain in Mexico program. In this program, Customs and Border Protection officials begin the processing of asylum seekers—whether they appear at ports of entry along the southern border or are apprehended near the border within the United States—by giving them paperwork indicating when they must appear in immigration court. Until then, they must remain in Mexico. Thousands of the asylum seekers in MPP have been subject to kidnapping, torture, rape, extortion, and assault in Mexico. Many in the program lack access to adequate shelter, food, and basic services, including medical care, school, and legal counsel. At immigration court hearings, asylum seekers told judges that they called in vain all the phone numbers on the list of legal
service providers given to them by DHS. Asylum seekers who missed hearings—
sometimes because they were kidnapped in Mexico—were subjected to deportation,
barred from seeking asylum, and separated from family members in the United States.
Almost 30,000 asylum seekers in MPP have been ordered “deported in absentia.”

Implementation of numerous policies focused almost exclusively on deterrence is not
only inhumane and unfair but also inefficient and expensive.

For example, Refugees International witnessed the case of a married couple who fled
their home country for the same reason and whose cases could not be consolidated
because the wife was placed in the Remain in Mexico program and the husband placed
in a Texas detention center. In late 2019, judges were so overwhelmed with MPP cases
in El Paso that hearings on the merits of asylum claims were delayed two years or more.
In the summer of 2019, the Trump administration established expensive and secretive
“port courts” in Laredo and Brownsville to hold hearings for asylum seekers who were
living in shelters and tents in Mexico. Judges saw asylum seekers through TV screens
and granted a miniscule number of claims in a process that was anything but fair. Now,
during the pandemic, these courts stand idle while costing millions of dollars.[15]

As the ABA delegation said of the “INS Enhancement Plans for the Southern Border” in
1989, the Remain in Mexico policy hurts “bona fide applicants” as much as it does those
with less meritorious claims. The rate of asylum grants for Guatemalans in MPP, 0.3
percent, is even lower than their asylum grant rate in 1989, which, as noted above, a
federal court then ruled was illegal and discriminatory. The low grant rate in 2020 is not
just a product of MPP, but of several additional decisions by Attorneys General
decreeing that the dangers asylum seekers have fled—especially gender-based violence
and the targeting of families by gangs—do not merit protection.

ACA and PACR

The Trump administration put in place additional deterrence policies in 2019 and 2020.
Over the course of the summer of 2019, the Trump administration negotiated
agreements with Guatemala, El Salvador, and Honduras to send asylum seekers from the
border to those countries to seek asylum. The administration did this knowing well the
countries lacked “functioning asylum system[s]” and in the face of opposition of several
House committee chairs. Implementing the agreement with Guatemala, like
implementing MPP, required the asylum office and immigration courts to devote
tremendous resources to diverting rather that adjudicating protection claims, which
many asylum officers vocally opposed.

In early 2020, Refugees International traveled to Guatemala to interview Salvadoran and
Honduran asylum seekers transferred there from the U.S. border. Most were extremely
desperate and afraid: they felt unsafe and lacked support in Guatemala and
felt they had no alternative but to return to their home countries, despite fearing persecution there, or to try again to reach the United States, where they had relatives. Many had spent between a week and two weeks at a CBP “processing center” at Donna, Texas, where they complained of frozen food, a lack of medical care, access to only one shower and a short telephone call, and inhumane treatment by the guards.

The Donna facility and a Border Patrol tent near El Paso were also used to implement an asylum screening program for Central Americans called PACR (Prompt Asylum Claim Review), a policy much more rapid and summary than that implemented by the INS in South Texas in 1989. Under PACR, asylum seekers from Central America were given telephonic screenings about their fear of persecution soon after apprehension and while in CBP custody. They had no ability to meet in person with counsel and were given less than an hour to call attorneys provided on a list by CBP. Asylum seekers subject to PACR tried and failed to reach attorneys on the list. And after asylum officers denied they had a credible fear of persecution, they had only cursory review hearings with immigration judges, also over the telephone.

CDC Order

Perhaps the most dramatic limit on access to asylum at the border occurred with the onset of COVID-19 when DHS implemented a Centers for Disease Control order facilitating the turning away and expulsion of thousands of asylum seekers and unaccompanied children, which is “a humanitarian disgrace and a legal travesty.” Public health experts have dismissed the CDC order as politically motivated. As Refugees International has reported, there is no justification for treating asylum seekers as a special class of persons presumed to be “potential vectors of disease” and a danger to the public health of the United States. There is no evidence, for example, that arriving asylum seekers pose a meaningful risk of carrying the virus into the country when compared to the tens of thousands of truck drivers, returning citizens, and other travelers who are permitted entry by the CDC orders.

The Order suggests that it is the processing and detention practices employed by CBP in handling asylum seekers at the border that are the true danger to the nation’s public health. But, since the advent of COVID-19, CBP officers have reported that the vast majority of ports of entry are able to maintain proper social distancing during processing “CBP holds asylum seekers,” the CDC Order relates, “in the common areas of [border] facilities, in close proximity to one another, for hours or days, as they undergo immigration processing. The common areas of such facilities were not designed for, and are not equipped to, quarantine, isolate, or enable social distancing by persons who are or may be infected with COVID-19.” Detaining asylum seekers in crowded border facilities for several days does indeed make it difficult to prevent the spread of COVID-19 within those facilities. But, DHS is not required to so detain asylum seekers; CBP has the legal authority to release asylum seekers from the border to the homes of family members or friends where asylum seekers could socially distance and
self-isolate and be permitted to continue their cases in immigration court. The Order falsely presumes that asylum seekers “lack” these homes, but the vast majority of asylum seekers have them. And, in fact, under the CDC order, DHS has expelled children who have tested negative for COVID-19 and is currently detaining in congregate settings migrants who it cannot quickly expel (and who have tested negative for COVID-19).

The Trump administration is currently appealing a federal court order enjoining it from expelling unaccompanied children under the order. The Trump administration claims that admitting unaccompanied children would overwhelm hospitals in border states and shelters of the Office of Refugee Resettlement in other parts of the country. Child advocates and public health officials point out that no unaccompanied children have been hospitalized and that arriving children have homes of sponsors to which they can be quickly released to self-isolate. Further, while the government insists that the CDC order deters migration, the number of unaccompanied children arriving in the United States has risen steadily since it was put in place. A declaration to the court from Mark Morgan of CBP notes that the agency apprehended 741 unaccompanied minors in April 2020, 1,691 in June 2020, 3,103 in August 2020, and 4,764 in October 2020. At a press conference on December 14, 2020, Morgan blamed rising numbers of unaccompanied minors on the court ruling in November that prevented their expulsion. But, by his own account, the number of unaccompanied minors who crossed the border decreased slightly between October and November.

ADAPTING PAST POLICIES AND INTRODUCING NEW SOLUTIONS

It is crucial for the Biden administration to reverse course, rather than put its Justice Department in the unenviable position of having to defend an invalidated deterrence paradigm in federal court cases over MPP, the CDC order, and other Trump administration bars on asylum that violate U.S. obligations against non-refoulement (or non-return of asylum seekers to persecution) and the Refugee Act of 1980. The Biden administration should prioritize withdrawing Trump administration appeals or settling cases, where federal courts have entered injunctions against Trump regulations and policies. This is most urgent for the MPP case pending before the Supreme Court.

Further, the U.S. southern border would be safer and more amenable to effective management if the incoming administration put a fraction of the resources deployed for deterrence towards safe and humane reception and processing. The Biden administration should engage the State Department, Mexican officials, state and local public health authorities, the United Nations High Commissioner for Refugees, non-profit organizations, and others to bring humanity and efficiency to the system.
Ensuring Access to Protection at the Border

On January 20, President-elect Biden should direct the CDC to revoke the CDC border order and direct the Secretary of HHS to rescind its interim final rule authorizing the order. The President should then direct HHS to consult with local public health officials in U.S. border communities (and Mexican counterparts, when appropriate) and with CBP officials at each port of entry to devise a plan to end the ban. The plan should be implemented as quickly as possible.

We understand and appreciate that it would be difficult to implement such a plan immediately. On the other hand, every day that a plan is not in place is another day during which individuals in fear of persecution will be denied access to asylum. (Thus, even during an interim period, the Biden administration should direct DHS to put measures in place that address urgent protection concerns involving would-be asylum seekers).

The Biden administration should be informed by the general protocols already recommended by public health officials, the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM). The President should direct his administration to provide ports with significant and substantial additional funding, personnel, personal protective equipment (PPE), testing machines, and vaccines (when they are available). Rather than detaining asylum seekers in congregate settings, CBP should instead allow asylum seekers to wait for their court hearings with their families or other contacts in the United States through parole, case management, and other alternatives to detention.

We do not underestimate the policy and political challenge of lifting the ban. At the same time, we cannot escape the fact that it reflects poor public policy. As we have indicated, it is not evidenced-based, and there has been movement across the U.S. southern border of populations that posed no lesser public health risk than the asylum seeker population, and who are coming for far less compelling reasons. Thus, we cannot escape the fundamental conclusion that this unfortunate policy must be undone.

Several components of a policy change are critical. In particular, the administration must:

1) Devise a protocol for rapid testing of asylum seekers.

2) Enhance the capacity of shelter facilities at the southern border to safely receive asylum seekers on a temporary basis. This means providing resources that will permit best practices, including social distancing, use of PPE, quarantine practices as appropriate, and other critical safeguards.
3) Provide guidelines and support for safe transit of asylum seekers to join family members and other sponsors in other parts of the country while awaiting consideration of asylum claims.

4) Provide general protocols for quarantine and other best practices at destination locations during pendency of asylum determination—and in accordance with quarantine and other requirements imposed by state authorities.

President-elect Biden has said he is committed to public-private partnerships in providing humanitarian aid at the southern border. A network of shelters along the border, run by local and faith-based organizations, received over 350,000 asylum seekers in 2019 with the support of private funding and national non-governmental organizations. The Biden administration should provide grants to these border shelters and to localities and local public health authorities to ensure adequate resources (space, staff, and supplies) are available and protocols are in place in order to receive asylum seekers in a way that protects the public health.

For the few asylum seekers who do not have destination locations, the administration should work with local public health authorities and non-profit organizations to arrange for sheltering in accordance with best practices. And for those who test positive for COVID-19, the administration should work with local authorities and local non-profits to secure appropriate facilities for isolation and care.

In recent months there has been an increase in movement of unaccompanied minors to the southern border, but we believe this issue can be effectively managed. Unaccompanied Central American children and Mexican children with protection needs should be transferred from CBP to ORR custody as quickly as possible. ORR shelter space could be reserved for truly unaccompanied children if children arriving at the border with adult relatives or caregivers are not automatically separated from them and so not sent to ORR facilities. This can be done in compliance with existing statutory requirements by having Department of Health and Human Services staff at ports of entry confirm and document the safety, legitimacy, and nature of the relationship between child and relative or caregiver, such that child can be released with them (with the child still designated as unaccompanied.)

Practitioners in the field estimate that such an approach would avoid ORR custody for up to 30 percent of children coming to the border. This procedural change is both efficient and extends President-elect Biden’s commitment to keeping families together. Further, for the duration of the public health emergency, the Biden administration should allocate additional funding and resources to speed up discharges from ORR shelters, including for the sponsor-search process, sponsor vetting, home studies, and sponsor clearance within case management at care providers.
Unwinding the Remain in Mexico Policy

President Biden should direct the orderly wind-down of the MPP policy, including revocation of former Secretary Nielsen’s January 25, 2019 MPP implementation memorandum (and all subsequent MPP policy guidance). The wind-down should begin as soon as the port public health protocols previously discussed are in place.

Unwinding the Remain in Mexico policy will require coordination across borders. By January 2021, there will be about 25,000 MPP cases scheduled for upcoming hearings in U.S. immigration court. Many of these MPP returnees are in the vicinity of the U.S.-Mexico border, but others have been transported or have moved elsewhere in Mexico. In addition, there are about 28,000 individuals, who, for various reasons, have been deported in absentia because they did not appear at their last MPP hearing in immigration court. Finally, there is a third group, about 10,000, who did not gain asylum in immigration court proceedings—proceedings that were fundamentally unfair.

Because all the individuals in MPP have been subjected to a fundamental lack of fairness, the Biden administration must develop remedies for them all.

It is crucial that the Biden administration direct DHS and the State Department’s Bureau of Population, Refugees, and Migration (PRM) to work with the International Committee of the Red Cross, UNHCR, the Mexican Commissioner for Refugee Assistance (COMAR), the IOM, Mexican authorities (federal, state and local), U.S. embassy and consular personnel, shelters and non-profit organizations in Mexico, and U.S. legal service providers to inform those with pending MPP hearings about how the program will end. The administration should establish a website and hotline publicizing the process in relevant languages. DHS should send notice of the procedures to all attorneys of record for MPP cases.

The plan to end the MPP program must include the opportunity for asylum seekers with pending cases to have those cases heard in immigration courts in the United States and include permission for claimants to enter the country prior to their hearings.

The Biden plan should be comprised of an orderly process that gives preference to those whose cases have been pending for the longest periods or who may be facing the most serious risk. These claimants would be given the first appointments to appear at ports of entry or at U.S. consulates in Mexico. There, they should be granted parole to facilitate their admission into the United States to pursue their cases in immigration court. (A very high percentage of asylum seekers in MPP have family or friends in the United States who they can stay with while awaiting their court hearings.)

A rush to the port of entry could be avoided through the appointment process. For example, the approximately 2,000 people placed in MPP in September 2019 could be paroled the week before the approximately 2,000 people placed in MPP in October 2019. Further, it is likely that only approximately half of those eligible for parole during each week will take advantage of it given the dispersal of those in MPP.
At ports of entry, DHS should coordinate release of parolees to shelter networks near the border. DHS should also consider using contracted planes to more efficiently and safely fly parolees to their destinations far from the border so as to avoid transportation bottlenecks in border states. For all parolees, attorneys from DHS should file changes of venue with the immigration court to the location where the parolees intend to reside pending the outcome of their hearings. DHS should also be directed to release with an order of supervision anyone apprehended after entering without inspection who has proof that they have a pending MPP case.

It is crucial that the Biden administration provide support (humanitarian, medical, communications) for Mexican shelters housing asylum seekers awaiting their appointments to receive parole. Mexico should be encouraged to issue Temporary Humanitarian Visas to all MPP asylum seekers waiting for their appointments.

During this process, and while there are still claimants in Mexico, the Biden administration should increase support for UNHCR and other observers who can identify urgent protection cases for expedited handling. The hotline mentioned above might be used to schedule earlier appointments in emergency cases.

The Biden administration should support the International Organization for Migration (IOM) in facilitating air travel where feasible or necessary to bring MPP asylum seekers to the United States. Further, U.S. consulates in Mexico should provide air transportation to final destination cities in the United States to MPP parolees.

The Biden administration should also establish meaningful remedies for those who were either denied asylum or deported in absentia. There are a range of remedies the administration should consider adopting beyond rescinding deportation orders and effectively reopening all such cases. Remedies could include consideration for humanitarian asylum in light of the trauma endured while waiting in Mexico, identifying this group as one of special humanitarian concern under the U.S. Refugee Admissions Program, or other means including parole.

**Establish Humane Reception by Fall 2021**

Once the national health emergency is declared over and congregate settings are again safe, the Biden administration should establish humane reception centers at the border. These reception centers should not be under the control of a U.S. agency whose principal responsibility is law enforcement, but rather an agency whose principal role is service provision. Reception centers should be open to monitoring by UNHCR, attorneys, and human rights organizations. Newly arriving asylum seekers should be transferred to these reception centers swiftly after initial identification and processing by CBP, whose members should receive training on humane reception. Reception centers should exist all along the border and should be staffed by DHS personnel,
medical professionals and social workers and provide legal rights orientations to asylum seekers.

Implement Fair and Efficient Adjudication

As access to protection at the border is made available and MPP is unwound, it is imperative that the Biden administration implement fair screening and efficient adjudication in immigration court. Over time, there are two approaches the Biden administration could take.

1. USCIS could issue a policy guidance that instructs asylum officers to conduct credible fear interviews in a culturally sensitive and trauma-informed manner and in accord with UNHCR guidelines. DHS could then issue a regulation that would allow an asylum officer to conduct a full interview after a positive credible fear determination. A positive assessment by an asylum officer after this interview would allow an immigration judge to grant asylum without holding a hearing. This would allow for faster adjudication of claims. Negative determinations by asylum officers could be appealed to an immigration judge. So formal safeguards of a full immigration court hearing would remain for appeals. Whatever the merits of this option in the long term, its implementation is not feasible during the public health emergency because it requires detention in congregate settings that pose an unacceptable risk to people guilty of nothing else but a need for protection.

2. Under the 1996 immigration law, DHS has the discretion not to place asylum seekers in expedited removal but instead into full removal proceedings—indeed this is precisely how the MPP program has worked. To avoid the diversion of asylum officers to the border to conduct credible fear interviews and the detention of asylum seekers subject to expedited removal, the next Secretary of Homeland Security could direct that officials issue asylum seekers encountered at the border notices to appear in the immigration courts at their final destination location. For those who cannot be released to family, DHS should contract directly with community based non-profit organizations to provide case management services to asylum seekers who do not have family sponsors. In the short term, and until the end of current public health emergency, the administration must move forward with this second option.

Either option will create challenges that would have to be met with provision of additional resources. For example, the first option would continue to require that USCIS officers be sent to the border and, without additional personnel, would limit capacity to address the backlog of asylum cases elsewhere in the country and to conduct interviews of applicants for refugee resettlement. It would also create challenges for the very few legal service providers at the border. The new administration could conceivably implement a combination of the two after the end of the current public health emergency. But there is no question that DHS must renounce Trump
administration policies that have sought to make a sham of the credible fear screening process (as in the PACR program) and to expand the use of expedited removal to individuals living anywhere in the United States for up to two years.

The Biden administration must also immediately reverse policies that make applying for asylum especially difficult for those lacking resources and counsel. It should simplify, shorten, and translate the current asylum application and revoke policies mandating rejection of applications for technical errors and blank spaces. It also must eliminate—including through settling litigation and reversing regulations—fees to apply for asylum when in immigration court proceedings and for work authorization applications.

The Biden administration must also rescind a May 2019 memorandum limiting USCIS’s initial jurisdiction over unaccompanied children’s asylum applications so that children’s asylum applications stay with the asylum office, whose officers should receive special training to handle such cases.

**Provision of Legal Services**

To improve the efficiency in immigration courts, ensure appearance rates at court, and improve due process, the Biden administration should, within its first 100 days, expand services such as the Immigration Court Help Desk and Legal Orientation Programs to all immigration courts (in partnerships with non-profit organizations) and fund and facilitate on-going training opportunities for accredited representatives for asylum seekers. To avoid delays because of a lack of interpreters, especially for indigenous language speakers, the director of EOIR could identify opportunities for sharing interpreter and translation services with DHS. EOIR should fully restore the BIA Pro Bono Project, which secures legal representation in immigration cases under appeal, and which the Trump administration has severely limited.

**Regulatory Reform**

After issuing an Executive Order on border asylum policy, President Biden should instruct the DHS secretary and the Attorney General to immediately rescind regulations that were issued as interim final rules and that violate the Refugee Act: one that bars asylum seeking by those who cross between ports of entry, another that bars eligibility for those did not apply for protection in at least one country through which they transited en route to the United States, and a third that allows for the implementation of Asylum Cooperative Agreements without consideration of best practices. Government appeals to the federal courts to uphold these rules should be withdrawn. President Biden should also negotiate an end to the asylum cooperative agreements that the Trump administration signed with Guatemala, El Salvador and Honduras to send asylum seekers there to have their cases heard.
President Biden should instruct the DHS Secretary and the Attorney General to rescind the rule “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review” in its entirety through interim guidance and a new Notice of Proposed Rulemaking. The same should be done regarding the rules on Security Bars and Processing and for Procedures for Asylum and Withholding of Removal. Both of these rules limit asylum eligibility and due process for asylum seekers in ways that are at odds with the U.S. Refugee Act and the Refugee Convention.

In addition, the Biden administration should institute measures to reverse two rules that drastically prolong the time asylum seekers have to wait to gain work authorization (thus impeding their ability to secure housing, food, medical care, and legal counsel) and strip work authorization from those appealing their asylum applications to federal court. The rules may force asylum seekers into exploitative work in the underground economy or to abandon their claims. They not only clash with obligations under the Refugee Convention, but also President Biden’s commitment to ensuring immigrants can contribute to our communities without being relegated to the shadows.

During his first year in office, President-elect Biden should instruct DHS and EOIR to consult with legal organizations on the writing new regulations that would clarify asylum standards and procedures informed by UNHCR guidelines. The Attorney General should be instructed to vacate decisions, including Matter of A-B- and Matter of L-E-A-, that conflict with these guidelines, and have DHS issue policy guidance accordingly.

**Immigration Court Reform**

EOIR policies during the Trump administration have been at odds with principles of due process and judicial independence. These include the imposition of numeric case completion quotas and docket management policies that deprive asylum seekers of procedural protections; appointment of judges who almost exclusively come from prosecutorial backgrounds (especially working at DHS and in law enforcement); promotion to permanent positions on an expanded BIA of judges with asylum denial rates much higher than the national average; and procedures that limit the ability of claimants to effectively appeal their cases. The Biden administration should conduct an urgent review of EOIR hiring practices and immigration court procedures and develop recommendations for regulatory or structural changes consistent with the protection needs of asylum seekers.

**Appropriations Requests**

Biden administration budget requests should prioritize non-profit operated alternative to detention case management programs. Further, the administration should request additional funding for oversight by the DHS Office of Civil Rights and Civil Liberties, the DHS Office of the Inspector General, and the CBP Office of Professional Responsibility.
The Biden administration budget request should include increased funding for hiring of immigration judges and asylum officers from diverse backgrounds and with expertise in immigration and refugee law and experience working with vulnerable populations. It should also include in its requests funds to ensure appointed counsel to asylum seekers and other vulnerable migrants (children, those with disabilities, and survivors of torture, abuse or trafficking) who cannot afford representation.

Finally, President-elect Biden should fulfill his promise of “dramatically increas[ing] U.S. government resources to support migrants awaiting assessment of asylum of their asylum claims” by asking Congress to appropriate funds to ensure that asylum seekers have access to housing and health, including mental health services. This might be done through grants to states and local governments or to non-profit organizations and resettlement agencies serving asylum seekers and refugees.

**Expanded Refugee Resettlement and other Legal Pathways**

So many forcibly displaced Central Americans make the journey to the United States and seek asylum at the border because they lack any other way to find protection. Since the mid-1990s, an average of about 5 percent of refugees resettled in the United States through the U.S. Refugee Admissions program have come from Latin America and the Caribbean. Further, many Central Americans specifically seek refuge in the United States because they have close relatives who have lived in the United States for decades, though these relatives have undocumented or temporary statuses that make them unable to sponsor migration of family. Moreover, few temporary work visas are currently available to Central Americans.

**Establish a Refugee Resettlement Program for Central Americans**

President-elect Biden has announced a commitment to a worldwide U.S. Refugee Admissions annual ceiling of 125,000. This measure, which Refugees International strongly supports, would represent a substantial increase beyond the 15,000 worldwide ceiling announced by President Trump for 2021. The Trump administration announcement includes a figure of 1,000 refugees who are nationals or habitual residents of El Salvador, Guatemala, or Honduras. That number is significantly less than the number of refugee visas that were available to Central Americans in 1989 (3,500) and should be increased as significantly as possible.

As Refugees International has indicated previously, the new administration should authorize both in-country processing (from countries of origin) as well as processing from within Mexico and other countries where Central Americans may be receiving temporary refuge. A special effort should be made to ensure this program is accessible to Central Americans who returned to their countries of origin after being placed in the MPP program or subject to transfer under the Asylum Cooperative Agreement. Facilities in Guatemala and Honduras that the Trump administration built for transfer under...
Asylum Cooperative Agreements might be instead used for in-country processing of refugees. Moreover, the U.S. Congress should take legislative action to ease the evidentiary burden for categories of applicants likely to be at particular risk of persecution, as it has done in the past.

Other experts and advocates have urged the establishment of broader pathways—beyond the U.S. Refugee Admissions program—for enabling Central American migrants at risk to come to the United States, an idea that Refugees International also strongly endorses. Through this combination of approaches, the goal should be a five-year program that could annually provide protection in the United States, on average, to 50,000 or more Central Americans who would otherwise be at risk within or outside their countries of origin.

**Revive and Expand the Central American Minors Program**

President-elect Biden has promised to consider re-implementing an Obama administration program for Central American refugee children. But the Central American Minors program (CAM), which existed from 2014 through 2017, was a limited lifeline. CAM only was available to children whose parents were authorized to live in the United States; and very few Guatemalan children were eligible because their parents lacked Temporary Protected Status. Additionally, the approval rate for refugee status within CAM was also significantly lower than in other U.S. refugee programs. Many of the claims involved a fear of persecution based on membership in a particular social group, persecution by gang members, and gender-based violence. Children often could not articulate these claims effectively and, because many overseas refugee claims are not based on membership in a particular social group, were rejected by Refugee Officers.

During the first year of the Biden administration, the CAM program should expand the definition of eligible U.S. relatives who can submit applications on behalf of a child. Central American minors who are in Mexico or other countries should also be eligible. Parole should be available for those who cannot qualify as refugees. The administration should also consider expanding CAM eligibility to include parents outside the United States who have children living in the United States, regardless of the children’s immigration status, where either the parent or the child may be at risk. Adequate resources should be provided to make the program speedy and safe: for refugee teams conducting interviews at multiple sites in the region, for organizations helping to handle applications, for shelters for children in immediate danger, for travel costs to the United States for all children (including those granted parole). All children who enter the United States under CAM (including those paroled) should be eligible for ORR services.

Expanded CAM and the proposed resettlement programs from the Western Hemisphere must, especially in the near term, be in addition to, not a replacement for, seeking asylum at the U.S. border. And as mentioned above, to ensure that a significant percentage of at-risk Central Americans qualify for refugee status, Congress would need
to take legislative action to ease the evidentiary burden for categories of applicants likely to be at particular risk of persecution, as Congress has done in the past. This would be especially valuable for Central American youth who lack U.S. relative sponsors and who are between the ages of 18 and 21 such that they are too old for CAM but are at risk of targeting by gangs.

Nongovernmental and community organizations, as well as UNHCR and IOM, might also refer youth to apply for visas to study in the United States. Under current circumstance, the vast majority would not be eligible. But Congress could pave this “complementary” path by creating a special category of student visas that do not require that students return home, have English fluency, pay a fee, or have substantial funds, and do not prohibit employment. Student groups and universities in the United States, already very much interested in this issue, can help with integration once in the United States. Students should be able to bring spouses and children with them and to obtain a green card after a year of academic study.

Other legal pathways can be paved by the President, especially working with Congress. Those Central Americans who are not eligible for refugee visas might be recommended for temporary worker visas, an increased number of which could be arranged through bilateral agreements with the Central American governments or through legislation. In accord with President-elect Biden’s commitment to ensuring fair labor standards and a path to legalization for longtime agricultural workers, temporary worker visas should not tie workers to one employer and should include a pathway to permanency for those who work in the United States for several years.

Legalization and Family Unity

President-elect Biden should encourage Congress to pass legislation providing a path to permanent residence for asylum seekers whose cases have been backlogged for more than five years and for those who have had Temporary Protected Status for seven years. This legalization program fulfills important protection objectives: asylum seekers and TPS holders have compelling protection needs that the United States should have addressed by now. Further, regularizing the status of asylum seekers in this way, as Congress did in the 1990s, will eliminate a significant amount of the asylum backlog and allow relatives to sponsor family members.

CONCLUSION

Tragically, it is difficult to overestimate the damage done to the lives of hundreds of thousands of asylum seekers and their families by the current presidential administration. Moreover, while the draconian policies and practices that have been imposed will not be simple to reverse, they can and must be reversed. It is encouraging that the President-elect has committed to doing so. The actions we recommend in this
report will help to realize that commitment, serve the national interests of the United States, and meet solemn obligations to those forced to flee persecution.

ENDNOTES


[12] In 1992, 103,447 asylum claims were handled by 297 asylum officers in the United States. In Germany, 438,191 claims were handled by 3,500 asylum officers; in Sweden, 83,963 claims were handled by 800 officers; in France, 27,486 claims were handled by 600 officers. See, Gregg A. Beyer, "Reforming Affirmative Asylum Processing in the United States: Challenges and Opportunities," *American University Journal of International Law and Policy* 9. 4. (1994), 50.


[15] Like an observer of proceedings in the South Texas immigration courts in 1989, when I watched Remain in Mexico hearings in the tent courts in 2019, I was constantly aware of the ways DHS attorneys had an “unfair” advantage in their interactions with judges. (Koulish, 554) I also was aware of problems with translation during hearings and the fact that exchanges between judges and attorneys were not translated for the asylum seekers. (Koulish, 559).