

IMMIGRATION AND MIGRATION

The Biden Administration Takes Actions to Restructure Migration to the U.S.-Mexico Border
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Anticipating the expiration of the COVID-19 public health emergency on May 11, 2023, and with it the end of the special immigration regime instituted by the Center for Disease Control and Prevention's (CDC) public health orders, the Biden administration has taken measures to restructure migration to the U.S.-Mexico border.¹ Incentives for migrants in the form of new and expanded pathways for entry have been created, and disincentives in the form of exclusions from these and other pathways have been constructed. These actions are designed to reduce the number of migrants and asylum seekers who travel to the border. In conjunction with Canada, Colombia, Guatemala, Mexico, and Spain, among others, the Biden administration is seeking to establish a regional, comprehensive, and collaborative approach to migration, as envisioned in the Los Angeles Declaration on Migration and Protection in June 2022.² Two of the key components of the administration's strategy are parole processes for migrants from four countries and a rebuttable presumption of asylum ineligibility for non-citizens who enter the United States from Mexico without entry documents. Both were immediately challenged in court.

The COVID public health orders established a special regime—known colloquially as “Title 42”³—that effectively displaced parts of Title 8's Immigration Code for most

¹ The CDC issued its first order in March 2020 and its final one in August 2021. See Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 26, 2020); Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 85 Fed. Reg. 65,806 (Oct. 16, 2020); Public Health Reassessment and Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 86 Fed. Reg. 42,828 (Aug. 5, 2021) [hereinafter August 2021 Order]. The August 2021 order, by its own terms, expired automatically on May 11 with the lapse (due to non-renewal) of the Secretary of Health and Human Services' declaration that COVID-19 constituted a public health emergency. See *id.* at 42,841 (“This Order shall remain effective until . . . the expiration of the Secretary of HHS' declaration that COVID-19 constitutes a public health emergency”); 42 U.S.C. § 247d (declarations of public health emergencies expire after ninety days); Sec'y of Health and Human Services Xavier Becerra, Renewal of Determination That a Public Health Emergency Exists (Feb. 9, 2023), at <https://aspr.hhs.gov/legal/PHE/Pages/COVID19-9Feb2023.aspx> [<https://perma.cc/3KUY-ZHEX>] (final renewal of the COVID-19 public health emergency); Office of Management and Budget, Statement of Administration Policy (Jan. 30, 2023), at <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf> [<https://perma.cc/2XUC-GJ4G>] (“At present, the Administration's plan is to extend the emergency declarations to May 11, and then end both emergencies on that date.”). The administration had previously attempted to revoke the August 2021 order by rule in April 2022. See Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 87 Fed. Reg. 19,941 (Apr. 6, 2022). That action was the subject of litigation (now moot) that sought to declare the revocation invalid, which would have restored the August 2021 order had it been successful. See Adam Liptak, *Supreme Court Cancels Arguments in Title 42 Immigration Case*, N.Y. TIMES (Feb. 16, 2023), at <https://www.nytimes.com/2023/02/16/us/politics/supreme-court-title-42-immigration.html>; *Louisiana v. CDC*, 603 F. Supp. 3d 406 (W.D. La. 2022); *Arizona v. Mayorkas* (S. Ct. May 18, 2023).

² White House Press Release, Los Angeles Declaration on Migration and Protection (June 10, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection> [<https://perma.cc/A8JX-CLP3>] [hereinafter Los Angeles Declaration].

³ See 42 U.S.C. §§ 262, 265; 42 CFR § 71.40.

undocumented migrants at the southwest border.⁴ Under the public health order, the CDC “suspend[ed] the [entry of] certain persons into the United States from countries or places where the quarantinable communicable disease exist[ed] in order to protect the public health from an increase in risk of the introduction of COVID–19.”⁵ Pursuant to the order, the government expelled undocumented migrants peremptorily, including without asylum screenings.⁶ Title 42 facilitated and sped border enforcement and was used to expel people more than 2.8 million times.⁷ Title 8 immigration procedures, in contrast, would have required the government to allow undocumented migrants an opportunity to claim asylum, which would have been a longer and more intensive process, even under expedited removal authorities. Expulsion under the public health order, however, did not result in any penalties to expellees, and so undocumented migrants, if caught, could try again to enter the United States. Title 8, on the other hand, bars for five years the admission of persons who were previously removed through expedited removal.⁸

The Biden administration anticipated that the return to the Title 8 framework in May 2023, following the expiration of the public health order, would overwhelm the Department of Homeland Security’s (DHS) processing, detention, and removal capacities at the border.⁹ The number of migrant encounters by the U.S. Border Patrol at the U.S.-Mexico border had already reached an all-time high, with 221,342 in December 2022 alone.¹⁰ The combination of unparalleled numbers of migrants and a full return to a Title 8 system portended a crisis at the border, with overcrowded detention centers.

Seeking to preempt this, and in the absence of progress toward immigration reform in Congress, the administration resorted to its own authorities to deter migrants from coming to the border by providing alternatives and shifting incentives. As noted by Secretary of Homeland Security Alejandro Mayorkas, the administration’s framework, which had been

⁴ Persons entering from Mexico continued to be processed under Title 8 if they were excluded from the public health order or if they could not be returned to Mexico because the Mexican government would not accept them.

⁵ August 2021 Order, *supra* note 1, at 42,830. Covered persons include those “traveling from Canada or Mexico (regardless of their country of origin) . . . [who are, with certain exceptions,] noncitizens who do not have proper travel documents, noncitizens whose entry is otherwise contrary to law, and noncitizens who are apprehended at or near the border seeking to unlawfully enter the United States between [ports of entry].” *Id.* at 42,841.

⁶ See Kristen E. Eichensehr, *Contemporary Practice of the United States*, 116 *AJIL* 164, 198–202 (2022). Regarding the expulsions carried out pursuant to Title 42, the UN High Commissioner for Refugees said in May 2021 that “[g]uaranteed access to safe territory and the prohibition of pushbacks of asylum-seekers are core precepts of the 1951 Refugee Convention and refugee law, which governments are required to uphold to protect the rights and lives of refugees.” See UN High Commissioner for Refugees Filippo Grandi on the Need to End US COVID-19 Asylum Restrictions (May 20, 2021), at <https://www.unhcr.org/mx/news/news-releases/statement-attributable-un-high-commissioner-refugees-filippo-grandi-need-end-us> [<https://perma.cc/4RUL-7ZZG>].

⁷ See Jonathan Blitzer, *Title 42 Is Gone, but What Are Asylum Seekers Supposed to Do Now?*, *NEW YORKER* (May 20, 2023), at <https://www.newyorker.com/news/daily-comment/title-42-is-gone-but-what-are-asylum-seekers-supposed-to-do-now> [<https://perma.cc/V5XV-JPEN>].

⁸ See 8 U.S.C. § 1182(a)(9)(A)(i).

⁹ See *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11,704, 11,706 (Feb. 23, 2023).

¹⁰ See U.S. Customs and Border Protection, *Southwest Land Border Encounters*, at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> [<https://perma.cc/RVY2-7N6M>]. Most of those (nearly 70 percent) were apprehensions under Title 8, not Title 42. See John Gramlich, *Monthly Encounters with Migrants at U.S.-Mexico Border Remain Near Record Highs*, *PEW RES. CTR.* (Jan. 13, 2023), at <https://www.pewresearch.org/short-reads/2023/01/13/monthly-encounters-with-migrants-at-u-s-mexico-border-remain-near-record-highs> [<https://perma.cc/4CEA-AT6T>].

in preparation for a year and a half¹¹ and put in place in stages since the end of 2022, broadly does two things: it “build[s] lawful pathways for people to come to the United States without resorting to the smugglers” and “impos[es] consequences on those who do not use those pathways and instead irregularly migrate to [the] southern border.”¹² The goals are to organize migration and make it safer, move migrants away from the southwest border, and to provide opportunities for lawful entry.

Designed to respond to the current causes of migration, particularly the economic, environmental, political, and humanitarian crises in Cuba, Haiti, Nicaragua, and Venezuela, the lawful pathways the administration has created or expanded include parole processes, family reunification parole programs, work visas, and refugee admissions. Since October 2022, DHS has announced four parole processes that allow non-citizens to enter the United States temporarily “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”¹³ The first, for Venezuelans,¹⁴ was followed by three others, for Cubans, Haitians, and Nicaraguans.¹⁵ Under these programs, “beneficiaries” must have “supporters” who commit to financially maintain the parolee for two years, which is the duration of the parole. Up to 30,000 persons per month are eligible in the aggregate across the four programs. DHS has also announced new family reunification parole processes for certain nationals from Colombia, El Salvador, Guatemala, and Honduras and is expanding existing programs for Cuba and Haiti.¹⁶ Separately, the administration has increased the availability of temporary work visas, including doubling the number of H-2B visas and specifically setting aside 20,000 of those for nationals of El Salvador, Guatemala, Haiti, and Honduras.¹⁷ It has also promised to double the number of refugees admitted from the western hemisphere and modernize the U.S. Refugee Admissions Program.¹⁸

¹¹ The administration initially focused on Central America. See U.S. Strategy for Addressing the Root Causes of Migration in Central America (July 2021), at <https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf> [<https://perma.cc/B4KK-AWL7>]; Collaborative Migration Management Strategy (July 2021), at <https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf> [<https://perma.cc/NU4D-DZNA>].

¹² See U.S. Dep’t of State Press Release, Secretary Antony J. Blinken and Secretary of Homeland Security Alejandro Mayorkas at a Joint Press Availability (Apr. 27, 2023), at <https://www.state.gov/secretary-antony-j-blinken-and-secretary-of-homeland-security-alejandro-mayorkas-at-a-joint-press-availability> [<https://perma.cc/7WJ3-QBTP>] [hereinafter Blinken and Mayorkas Press Availability].

¹³ 8 U.S.C. § 1182(d)(5)(A); see also 8 CFR § 212.5.

¹⁴ See Implementation of a Parole Process for Venezuelans, 87 Fed. Reg. 63,507 (Oct. 19, 2022) [hereinafter Venezuela Parole Process]. The program was updated in January 2023. See Implementation of Changes to the Parole Process for Venezuelans, 88 Fed. Reg. 1279 (Jan. 9, 2023). It was based on an earlier parole process for Ukrainians. See Implementation of the Uniting for Ukraine Parole Process, 87 Fed. Reg. 25,040 (Apr. 27, 2022).

¹⁵ See Implementation of a Parole Process for Cubans, 88 Fed. Reg. 1266 (Jan. 9, 2023) [hereinafter Cuba Parole Process]; Implementation of a Parole Process for Haitians, 88 Fed. Reg. 1243 (Jan. 9, 2023) [hereinafter Haiti Parole Process]; Implementation of a Parole Process for Nicaraguans, 88 Fed. Reg. 1255 (Jan. 9, 2023) [hereinafter Nicaragua Parole Process].

¹⁶ See U.S. Citizenship and Immigration Services, Family Reunification Parole Processes, at <https://www.uscis.gov/FRP> [<https://perma.cc/Z8VC-95FR>].

¹⁷ See Andrew Kreighbaum, *Work Visa Expansion Aims to Ease Border Surge, Summer Labor Woes*, BLOOMBERG L. (May 26, 2023), at <https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-labor-report/X1MANFL8000000>; U.S. Citizenship and Immigration Services, H-2B Temporary Non-agricultural Workers, at <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.

¹⁸ U.S. Dep’t of Homeland Security Press Release, Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration (Apr. 27, 2023), at <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration> [<https://perma.cc/U2BV-E836>].

The starting point for each of these four pathways is away from the border. Visa applications and refugee referrals occur outside the United States. The rules for the parole processes disqualify those who have “crossed irregularly into the United States, between [ports of entry]” or have “irregularly crossed the Mexican or Panamanian borders.”¹⁹ To make access to these pathways more convenient and available, and thus to encourage migrants and refugees to use them and not travel to the U.S.-Mexico border, the United States is creating regional processing centers (RPC), known as “Safe Mobility Offices.”²⁰ RPCs will be staffed by officials from the International Organization for Migration (IOM) and the UN High Commissioner for Refugees (UNHCR), as well as personnel from DHS and the U.S. Department of State.²¹ Migrants and refugees “will be able to make an appointment on their phone to visit the nearest RPC before traveling, receive an interview with immigration specialists, and if eligible, be processed rapidly for lawful pathways to the United States, Canada, and Spain.”²² The first RPCs of a projected one hundred centers will be located Colombia and Guatemala.²³ “The whole model is to reach the people where they are, to cut the smugglers out, and to have them avoid the perilous journey that too many do not make,” Secretary Mayorkas explained.²⁴

To further induce the use of these pathways and discourage travel to the border, the administration has promulgated a new rule that penalizes asylum applicants who cross into the United States “irregularly,” that is, without valid entry documents. The rule establishes “a rebuttable presumption of ineligibility for asylum” for non-citizens who irregularly “enter[]

[hereinafter U.S. Government Announces Sweeping New Actions]; U.S. Dep’t of State, Report to Congress on Proposed Refugee Admissions for Fiscal Year 2023, at 5 (Sept. 8, 2022), at https://www.state.gov/wp-content/uploads/2022/09/FY-2023-USRAP-Report-to-Congress_FINAL_7-Sep-2022.pdf [<https://perma.cc/5EN7-JCD4>]. The allocation of refugees from Latin America and the Caribbean for fiscal year 2023 is 15,000. See White House Press Release, Memorandum on Presidential Determination on Refugee Admissions for Fiscal Year 2023 (Sept. 27, 2022), at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/27/memorandum-on-presidential-determination-on-refugee-admissions-for-fiscal-year-2023> [<https://perma.cc/E9XQ-ZYN3>]. This is the same allocation as for fiscal year 2022. See White House Press Release, Memorandum for the Secretary of State on Presidential Determination on Refugee Admissions for Fiscal Year 2022 (Oct. 8, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/memorandum-for-the-secretary-of-state-on-presidential-determination-on-refugee-admissions-for-fiscal-year-2022> [<https://perma.cc/ZY5T-HZDP>].

¹⁹ Venezuela Parole Process, *supra* note 14, at 63,515; Cuba Parole Process, *supra* note 15, at 1276; Haiti Parole Process, *supra* note 15, at 1252; Nicaragua Parole Process, *supra* note 15, at 1263. Cuba and Haiti applicants are also ineligible if they are interdicted at sea. See Implementation of a Change to the Parole Process for Cubans, 88 Fed. Reg. 26,329, 26,331 (Apr. 28, 2023); Implementation of a Change to the Parole Process for Haitians, 88 Fed. Reg. 26,327, 26,329 (Apr. 28, 2023).

²⁰ U.S. Dep’t of State Press Release, U.S.-Colombia Joint Commitment to Address the Hemispheric Challenge of Irregular Migration (June 4, 2023), at <https://www.state.gov/u-s-colombia-joint-commitment-to-address-the-hemispheric-challenge-of-irregular-migration> [<https://perma.cc/3DD4-HZP3>].

²¹ See General Information on “Movilidad Segura,” at <https://movilidadsegura.org/en> [<https://perma.cc/8LBS-KGDP>].

²² U.S. Government Announces Sweeping New Actions, *supra* note 18.

²³ U.S. Dep’t of State Press Release, Senior Administration Officials on Additional Regional Migration Management Measures the United States Will Implement Together with Regional Partners When Title 42 Public Health Order Lifts (May 10, 2023), at <https://www.state.gov/senior-administration-officials-on-additional-regional-migration-management-measures-the-united-states-will-implement-together-with-regional-partners-when-title-42-public-health-order-lifts> [<https://perma.cc/C22T-TH6S>]; White House Press Release, Joint Statement from the United States and Guatemala on Migration (June 1, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/01/joint-statement-from-the-united-states-and-guatemala-on-migration> [<https://perma.cc/7DMZ-36BB>].

²⁴ Blinken and Mayorkas Press Availability, *supra* note 12.

the United States from Mexico . . . after . . . travel[ing] through a country other than [their] country of citizenship” when that country is a party to the 1951 Refugee Convention or the 1967 Protocol.²⁵ The presumption can only be rebutted by demonstrating “by a preponderance of the evidence that exceptionally compelling circumstances exist.”²⁶ If not rebutted by the person claiming asylum, “then the asylum officer . . . [will] enter a negative credible fear determination with respect to [their] asylum claim.”²⁷ That negative determination can only be overcome by establishing “a reasonable possibility of persecution,” a much more difficult standard to satisfy than the otherwise applicable “significant possibility” threshold.²⁸ The rule thus decreases the chances that non-Mexican nationals will be granted asylum.²⁹ An exception to the rule, however, allows migrants in central and northern Mexico (but not elsewhere) who schedule appointments at ports of entry through the CBP One app to seek asylum without the rebuttable presumption applying.³⁰ This exception has the effect of establishing another lawful pathway. On June 1, 2023, Assistant Secretary for Border and Immigration Policy Blas Nuñez-Neto, announcing an increase in the number of appointments available through the app from 1,000 to 1,250 per day, said that this “demonstrates our continued emphasis on lawful pathways to the U.S. and making sure that migrants have safe and orderly options to come to the United States.”³¹ Arrests of undocumented migrants seeking to enter the United States have decreased 70% since the expiration of Title 42.³²

Understanding that unilateral acts alone, such as pathways and penalties, will not stem the flow of migrants, the Biden administration, in contrast to its predecessors, and in line with the Los Angeles Declaration, is taking a regional and international approach.³³ This includes expanding legal pathways in other countries. Belize, Colombia, Costa Rica, and Ecuador,

²⁵ See Circumvention of Lawful Pathways, 88 Fed. Reg. 31,314, 31,450, 31,451 (May 16, 2023) (codified at 8 CFR § 208.33 and 8 CFR § 1208.33). Exceptions to this presumption apply only to: unaccompanied children; those who were granted authorization pursuant to a parole process; those who have a pre-scheduled appointment or can show by a preponderance of the evidence that “it was not possible to access or use the DHS scheduling system due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle”; and those who “[s]ought asylum or other protection in a country through which the alien traveled and received a final decision denying that application.” *Id.*

²⁶ *Id.* “Compelling circumstances” include that the non-citizen “[f]aced an acute medical emergency,” “[f]aced an imminent and extreme threat to life or safety,” or “[s]atisfied the definition of ‘victim of a severe form of trafficking in persons.’” *Id.*

²⁷ *Id.*

²⁸ *Id.* The rebuttable presumption rules apply in any asylum claim, including expedited removal, affirmative asylum adjudications, and removal proceedings.

²⁹ Away from the border and outside the United States, individuals must pursue the refugee pathway. Hence, a person cannot apply for asylum at an RPC but can be processed there as a refugee.

³⁰ U.S. Customs and Border Protection, CBP One™ Mobile Application, at <https://www.cbp.gov/about/mobile-apps-directory/cbpone> [<https://perma.cc/3AGR-DYDB>].

³¹ CPB (@CPB), TWITTER (June 1, 2023, 2:00 p.m.), at <https://twitter.com/CBP/status/1664331131225776135> [<https://perma.cc/MQK9-JX7D>]. Initially, not enough appointments were available through the app to match the demand. See Maria Abi-Habib, Emiliano Rodríguez Mega, Edgar Sandoval & J. David Goodman, *Migrants Struggle to Get Appointments on Border Protection App*, N.Y. TIMES (May 11, 2023), at <https://www.nytimes.com/2023/05/11/us/migrants-border-app-cbp-one.html>.

³² See Alicia A. Caldwell & Michelle Hackman, *Border Arrests Have Dropped 70% Since Title 42 Ended, Biden Administration Says*, WALL ST. J. (June 6, 2023), at <https://www.wsj.com/articles/border-arrests-have-dropped-70-since-title-42-ended-biden-administration-says-3d00dc48>.

³³ Now with twenty-one endorsing countries, the Los Angeles Declaration includes four pillars: “Promoting Stability and Assistance for Communities of Destination, Origin, Transit, and Return,” “Promoting Regular Pathways for Migration and International Protection,” “Promoting Humane Migration Management,” and “Promoting Coordinated Emergency Response.” See Los Angeles Declaration, *supra* note 2.

according to the administration, “are each implementing new regularization or temporary protection policies to provide legal status to hundreds of thousands of migrants.”³⁴ Canada, Mexico, and Spain “have expanded refugee resettlement and temporary work opportunities.”³⁵ And Guatemala and Mexico have “significantly grown their asylum system[s].”³⁶ It also includes enforcement cooperation. Mexico announced that it would “for the first time . . . accept the returns under Title 8 authorities of nationals of Cuba, Haiti, Nicaragua, and Venezuela.”³⁷ The United States, Colombia, and Panama are collaborating on an anti-smuggling campaign in the Darién gap.³⁸ And Colombia, Cuba, Ecuador, Guatemala, Peru, and other countries have agreed to receive removal flights from the United States.³⁹ And it includes money for economic development and humanitarian assistance, such as “funding the staffing and capacity-building of local asylum centers and systems, and supporting registration and documentation efforts so that individuals can gain and demonstrate legal status.”⁴⁰

International organizations and non-governmental organizations have criticized the rule instituting a rebuttable presumption of ineligibility for asylum.⁴¹ In a joint statement, IOM and UNHCR asserted that the rule was “incompatible with principles of international refugee law.”⁴² The American Civil Liberties Union (ACLU), which led the successful legal fight against President Donald J. Trump’s entry and transit bans,⁴³ pointed out the similarities between those

³⁴ White House Press Release, Fact Sheet: Biden-Harris Administration Announces New Border Enforcement Actions (Jan. 5, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions> [<https://perma.cc/S4ZA-L5TX>] [hereinafter New Border Enforcement Actions Fact Sheet]; see also Blinken and Mayorkas Press Availability, *supra* note 12.

³⁵ New Border Enforcement Actions Fact Sheet, *supra* note 34; see also Dep’t of Homeland Security Press Release, Trilateral Statement on Joint Commitment to Latin America (May 3, 2023), at <https://www.dhs.gov/news/2023/05/03/trilateral-statement-joint-commitment-latin-america> [<https://perma.cc/P3LE-VM77>].

³⁶ New Border Enforcement Actions Fact Sheet, *supra* note 34. Human Rights First has concluded that Guatemala is not safe for refugees and asylum seekers. See Human Rights First, *Is Guatemala Safe for Refugees and Asylum Seekers?* (June 2019), at <https://humanrightsfirst.org/wp-content/uploads/2022/10/IsGuatemalaSafeForRefugeesandAsylumSeekers.pdf> [<https://perma.cc/K8DL-LCXH>].

³⁷ White House Press Release, Press Briefing by Press Secretary Karine Jean-Pierre and Secretary of Homeland Security Alejandro Mayorkas (May 11, 2023), at <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/11/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-homeland-security-alejandro-mayorkas> [<https://perma.cc/V27E-4RX8>] [hereinafter Press Briefing]; White House Press Release, Mexico and United States Strengthen Joint Humanitarian Plan on Migration (May 2, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration> [<https://perma.cc/F3ZY-CNHJ>].

³⁸ See Press Briefing, *supra* note 37.

³⁹ See *id.*; U.S. Immigration and Customs Enforcement Press Release, ICE Announces Additional Enforcement and Removal Actions (May 11, 2023), at <https://www.ice.gov/news/releases/ice-announces-additional-enforcement-and-removal-actions> [<https://perma.cc/3KZ6-J8MQ>].

⁴⁰ Blinken and Mayorkas Press Availability, *supra* note 12.

⁴¹ See, e.g., Letter from 292 Civil, Human Rights, and Immigrant Rights Groups to President Biden (Jan. 18, 2023), at https://humanrightsfirst.org/wp-content/uploads/2023/01/Letter-to-President-Biden-re_asylum-ban-NPRM-1.pdf [<https://perma.cc/DF87-JXK7>].

⁴² International Organization for Migration Press Release, The New US Government Rule That Restricts Access for Asylum Seekers Who Arrive Irregularly After Transiting Through Another Country Is Incompatible with Principles of International Refugee Law (May 12, 2023), at <https://www.iom.int/news/americas-crossroads-iom-and-unhcr-call-collaborative-response-refugees-and-migrants> [<https://perma.cc/6UQW-WFJR>].

⁴³ See *East Bay Sanctuary Covenant v. Garland*, 994 F.3d 962 (9th Cir. 2021); *East Bay Sanctuary Covenant v. Barr*, 519 F. Supp. 3d 663 (N.D. Cal. 2021); *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640 (9th Cir. 2021).

and the Biden rule.⁴⁴ It also sought to undercut the administration's arguments that lawful pathways were practically available. Asylum seekers, the ACLU noted, "are often those least likely to have the resources or capability to use a complicated smartphone app in a foreign language or wait weeks or months in danger for an appointment."⁴⁵ They are also not likely to have the ability to make use of the parole system, since many, including the most vulnerable, will not "have a U.S. financial sponsor, a passport, resources to pay for a costly plane ticket, and the ability to wait for the application's approval."⁴⁶ Nor should asylum seekers be required to stay in third countries, as "these countries have not developed working asylum systems and . . . for many migrants, it would be pointless and life-threatening to stay and apply."⁴⁷ The ACLU has sued to declare the new asylum rule invalid.⁴⁸ Another case, brought by Texas, requests the same relief.⁴⁹ A separate lawsuit, filed by Texas and twenty other states, seeks a ruling that the new parole programs are unlawful.⁵⁰

⁴⁴ See Katrina Eiland & Jonathan Blazer, Biden Must Reverse Plans to Revive Deadly Trump-era Asylum Bans (Jan. 26, 2023), at <https://www.aclu.org/news/immigrants-rights/biden-must-reverse-plans-to-revive-deadly-trump-era-asylum-bans> [<https://perma.cc/K82C-FBWE>].

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Amended and Supplemental Complaint for Declaratory and Injunctive Relief, East Bay Sanctuary Covenant v. Biden, Case No. 4:18-cv-06810 (N.D. Cal. May 11, 2023), at <https://www.aclu.org/wp-content/uploads/2023/05/COMPLAINT-East-Bay-Sanctuary-Covenant-v.-Biden.pdf> [<https://perma.cc/22CD-VDG2>].

⁴⁹ See Complaint, Texas v. Mayorkas, Case No. 2:23-cv-00024 (W.D. Tex. May 23, 2023), at <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Original%20Complaint.pdf> [<https://perma.cc/HA3J-KJ8U>].

⁵⁰ See Amended Complaint, Texas v. U.S. Dep't of Homeland Security, Case No. 6:23-cv-00007 (S.D. Tex. Feb. 14, 2023), available at <https://clearinghouse.net/doc/136634>.