

November 3, 2023

*Sent via electronic mail*

The Honorable Joseph R. Biden, Jr.  
President of the United States  
1600 Pennsylvania Ave.  
Washington, DC 20500

**Re: Protecting our asylum system in negotiations with Congress**

Dear Mr. President,

I am writing in response to alarming reports that as part of negotiations with Congress, your Administration is considering supporting devastating changes to our asylum system. I urge you to take these changes off the bargaining table. They would threaten the lives and safety of millions of people coming to our country in search of protection, while doing nothing to strengthen management of the border or alleviate resource strains on receiving communities. Our nation's tradition as a beacon of hope and global leader, as well as your own personal leadership and commitments, are on the line.

According to media reports, your Administration is considering making it much harder for people seeking asylum to establish that they have a credible fear of persecution—abandoning a standard that Congress set decades ago in recognition of the life and death stakes involved. There is also reportedly a proposal to return to the abhorrent Remain in Mexico program, which originated with the Trump administration. You vowed to end it and your administration did so, recognizing that it caused significant harm to people seeking safety.

The U.S. asylum and refugee protection system has existed for over half a century, created in the wake of multiple atrocities in the world to which the global community and our country responded, Never Again. The basic integrity of this system is at stake in your negotiations. As we outline below, there are steps you can take to make it function more effectively—and ensure those in need of protection are able to access it. In contrast, the proposals on the table amount to a direct assault on this system that will leave vulnerable people in danger and threaten our moral credibility and commitments at this critical time.

These proposals also have no empirical basis as prior experiments with them can attest. Restrictions designed to make it more difficult for people establish their “credible fear” of persecution will not stop



**National Political  
Advocacy Department**  
915 15<sup>th</sup> Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20005-2112  
[aclu.org](http://aclu.org)

**Deirdre Schifeling**  
National Political Director

**Anthony D. Romero**  
Executive Director

**Deborah N. Archer**  
President

people from seeking protection in the United States, but will mean that people who have fled political violence, sexual assault, torture, and many other serious harms will be excluded from protection even though they have genuine claims -- and even though removing them to danger is a violation of U.S. and international law. Subjecting people seeking help to a more restrictive standard because they could not get an appointment at one of the only eight ports of entry providing those appointments is arbitrary. As we've already seen, it will not stop people from coming to the U.S.; it will, however, send people back to danger.

Moreover, resurrecting any version of a Remain in Mexico Policy (the "Migrant Protection Protocols") would create a humanitarian disaster at the border. During the two years it was enacted under President Trump and Stephen Miller's leadership, human rights organizations documented over 1,500 cases of rape, kidnappings, torture and other violence against migrants waiting in Mexico for their protection claims to be heard. In attempting to outsource our moral and legal responsibility to provide protection for asylum seekers to Mexico, our government fueled a humanitarian nightmare for migrants--as you recognized during your Presidential campaign and that your Administration worked valiantly to end quickly after coming into office. Allowing this policy to return would be an astonishing about-face triggering justifiable uproar.

Instead of embracing President Trump's past policies, we urge this Administration to invest in sensible, humane, and effective border management policies that will ensure people with claims for protection can be processed and that will relieve the resource strain on receiving communities. These include:

- Investing in better port processing by ensuring that the Office of Field Operations within Customs and Border Protection is sufficiently funded to efficiently and fairly screen and process arriving migrants at ports of entry, and expanding the number of ports where migrants can seek an appointment;
- Removing counterproductive barriers to migrants' self-sufficiency by increasing funding and support for USCIS to expedite employment authorization for asylum seekers and increasing USCIS staffing to reduce wait times and the backlog for other applications like Temporary Protected Status; and
- Increase funding for the Shelter and Services Program (SSP) so that receiving jurisdictions are able to better support for arriving migrants, including shelter, food, legal orientation programs, and medical care.

The ACLU looks forward to working with your Administration on measures that will improve border management and live up to our nation's commitments and best traditions of refugee protection. Please



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contact ACLU senior border policy counsel Sarah Mehta, [smehta1@aclu.org](mailto:smehta1@aclu.org) with any questions.

Sincerely,



Deirdre Schifeling (she/her)  
Chief Political & Advocacy Officer  
American Civil Liberties Union  
915 15 Street, NW  
Washington, D.C. 20005



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