



Background on Supplemental Funding Negotiations: Protecting Immigrant Communities and People Seeking Asylum (December 2023)

The ACLU is gravely concerned that foundational immigrants' rights and legal protections are being bartered away as the price for foreign aid. Below we highlight some of the policies considered and their dangerous and permanent impact on our communities, our legal system, and our values. Policies that strip these critical protections and violate basic human rights will cause lasting damage and we urge you to reject them.

1. Nationwide Expedited Removal

Expedited removal is a fast-track deportation program where people are ordered removed from the U.S. without basic due process—no court hearing, no meaningful access to an attorney, virtually no recourse for incorrect deportation decisions made by immigration officers. This process, which currently applies to people arriving at our borders or who have only been in the U.S. for 14 or fewer days, is riddled with errors and has resulted in the erroneous deportation of U.S. citizens, people seeking asylum, lawful residents, and unaccompanied children. President Trump attempted to expand this deportation scheme nationwide, targeting settled residents and community members throughout the country and violating their right to due process, and proposes to do so if elected to a second term. If this nationwide expansion is resurrected, even after the Biden Administration rescinded it and DHS found it operationally impracticable, it will result in the separation of families, an unprecedented expansion of interior deportations, and terror in our communities.

2. Expulsion Authority and Asylum Cap

One proposal would reportedly create a new expulsion authority, similar to Title 42, that would allow the government to bypass the immigration laws and deport people at the border without even the minimal process provided under expedited removal. When the ACLU previously challenged Title 42, Judge Walker—who was appointed by President Trump—wrote of migrants being “forced to walk the plank” by the expulsion authority and “stomach-churning evidence of death, torture, and rape” that results from it. A related proposal would put a limit or cap on the number of people who can receive asylum each year. None of this would stop people from coming to the United States to seek protection but would instead just create more confusion at the border. It could instead incentivize people to, on the one hand, rush to the border to beat the cap, and on the other, evade immigration authorities once the cap is reached. As of December 2022, Human Rights First tracked over 13,480 reports of murder, torture, kidnapping, rape, and other violent attacks on migrants and asylum seekers blocked in or expelled to Mexico under Title 42 since President Biden took office. Since May 2023, more than 1,300 migrants waiting in Mexico for port of entry appointments under President Biden’s current policy have been subjected to torture, rape, kidnapping, extortion, and other violent attacks.

3. Transit Ban

A “transit ban”—another Trump administration policy—would bar people from even applying for asylum in the U.S. unless they had already applied for asylum and received a formal denial in one of the countries they traveled through en route to the U.S. The Biden administration knows that virtually no one can meet this requirement. During the ten months the Trump transit ban was in effect, fewer than two percent of asylum seekers were able to show they were denied asylum by a country through which they traveled—meaning that the overwhelming majority of people seeking safety, including those with strong and viable claims for asylum, never got the chance to even request protection. Moreover, and despite this extremely harsh effect on people fleeing persecution, the

transit ban had *no measurable effect* on border crossing numbers. Earlier this year, DHS [acknowledged](#) that the relevant data demonstrated that there is “no reason to believe” that the Trump administration’s transit ban “had any noticeable impact on encounters along the [southwest border] while it was in effect.”

4. Creating a much more Restrictive “Credible Fear” Asylum Standard

The “credible fear” standard applies to people in expedited removal and was created in 1996, when expedited removal was first adopted, to prevent people feeling violence and persecution from being quickly deported back to the dangers they fled without the chance to seek asylum, as required by international law. Currently, USCIS interviews individuals to determine if they have a “credible fear”—i.e., if there is a “significant possibility” they could show *in court* that if deported they risk persecution on account of a protected ground (race, religion, nationality, political opinion, or membership in a particular social group). Proposals to raise this threshold screening and require a “more likely than not” showing or another heightened standard will result in people with strong asylum claims being deported due to the difficulty people have presenting their claims immediately upon their arrival, when many are traumatized after recently escaping violence and immediate danger, and most are detained without the chance to consult a lawyer. The Biden Administration has already tried subjecting some people to a higher screening standard. This has resulted in a drop in the number of people passing their screening interviews, meaning that more people are being deported to places where they face persecution, sexual violence, torture, and death. Yet this harsh policy has resulted in *no decrease* in the number of people attempting to find protection in the United States.

5. Mandatory Detention

The White House has reportedly proposed an enormous expansion of immigrant detention, which will strip ICE and CBP of discretion to release individuals from detention. It could lead to the detention of families, including young children. Expanding detention on this scale will overwhelm ICE’s resources, leading to more abuses in custody—including sexual assault, solitary confinement, and medical neglect. To double-down on costly detention policies at a time when ICE is detaining an unprecedented 39,000 people defies common sense. In FY 2023, over [99 percent](#) of people released to the community and whose asylum cases were decided by immigration judges appeared for their hearings. The only beneficiary will be private prison companies.

6. Massively Increasing CBP and ICE Budgets

The Senate supplemental funding bill would inject \$7.6 billion to ICE and CBP, on top of their collective \$25 billion budget. This includes \$1.3 billion for expanding ICE’s operational capacity. At a time when former President Trump is threatening sweeping anti-immigrant raids, sprawling detention camps, and mass deportations should he be re-elected, the last thing Congress should be doing is exponentially expanding the capacity of ICE and CBP. Trump weaponized ICE and CBP against long-time residents, so-called “sanctuary cities”, and people engaged in political protest, and would likely seek to do so once again.

7. Restricting Humanitarian Parole

The long-standing parole authority has been used by Presidents of both parties for decades to help people affected by humanitarian disasters find safety in the U.S., including most recently and with broad public support, Afghans who assisted U.S. forces and Ukrainians fleeing Vladimir Putin’s invasion. Parole has been an essential tool to support humane and orderly border management, offering a lawful pathway for people to enter the U.S. temporarily. Restricting one of the few lawful pathways to seek protection in the U.S. will hamper this and any future administration’s ability to respond to emergency situations overseas, and will force more people who need urgent protection to undertake dangerous journeys and arrive at our borders without prior approval.