

US-Mexico border

Analysis

Biden's migrant order is recipe for chaos at US border: 'It will only cause suffering'

Maanvi Singh

With high levels of people seeking asylum, and after failed attempts to pass reforms, Biden has presented his most aggressive restrictions yet

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Children play near the border wall by the US-Mexico border. Photograph: Go Nakamura/Reuters

Joe Biden on Tuesday signed an aggressive new immigration order suspending asylum rights, signalling that “securing the border” was a central tenet of his re-election bid.

At the southern US border, the policy is set to cause chaos and hardship for those seeking the protection of the United States.

The executive order **revealed** on Tuesday revokes - at least temporarily - the country's longstanding promise that anyone who sets foot on US soil can ask for refuge.

Starting at 12.01am Wednesday, the government will be able to return people apprehended at the border to **Mexico** or their home countries within hours or days if a daily number of crossings is exceeded, giving them little chance to apply for asylum.

On Tuesday afternoon, lawyers who work with people attempting to cross the border were still scrambling to understand how exactly the order would work - as detailed regulations had yet to be made public. But what was sure, they said, was that it would create panic and chaos at the border in the short term. The rush of people fleeing violence and chaos in their home countries is unlikely to stop overnight, they cautioned.

“It can't be counted on to reduce, or to stop, people from coming,” said Monika Y Langerica, a senior attorney with the Center for Immigration Law and Policy (CILP) based at the border in San Diego. “But it certainly will create confusion. It will create disorder, and it will put people's lives in danger.”

'This is reminiscent of the Trump era'

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Biden's order is a drastic reversal for a president who campaigned on promises to rebuild the asylum system and adopt more humane immigration practices than his predecessor. But as the number of people requesting asylum at the border reached historic highs last year, and after attempts to pass immigration reforms were blocked by Republicans in the legislature, Biden presented his most drastic restrictions on migration yet.

To suspend the number of people who can apply for asylum, Biden is relying on the same mechanism Donald Trump turned to during his presidency: section 212(f) of the Immigration and Nationality Act.

Biden administration officials have stressed that the new measures don't mean a return to the extreme policies from the Trump era, including the separation of children or the "Muslim ban" on immigrants from certain Middle Eastern and African countries.

Biden himself has bristled at any comparison.

"I will never demonise immigrants," he said at the White House on Tuesday. "I'll never separate children from their families at the border. I will not ban people from this country because of their religious beliefs."

Indeed, Trump, who **often echoes Hitler** in his assertions that immigrants are "poisoning the blood" of this country, mounted a concerted effort to break down the US asylum and refugee system during his presidency. And he has put forth an even **more extreme** anti-immigrant vision for a second term than his first, promising mass deportations and detention camps.

Biden has slowly restored some of the legal pathways to immigration that Trump had sought to break down. And there are some exceptions to the executive order built in, including for unaccompanied children.

But in the 40 years since the US created its asylum system, no other Democrat suspended people's ability to seek refuge in the US - an international right. This is the first time there has been a numerical cap broadly on people seeking asylum, lawyers said.

The recent executive order suggests that people apprehended and turned away under the policy will not be able to enter the US for five years - a more stringent penalty than was deployed against those people under Trump's Covid-19-era migration restrictions. Moreover, under the order, people apprehended near the border will have to "manifest" their fear of prosecution if deported, and will not be explicitly asked by immigration officials, as has been the case for decades. This practice, known unofficially as a "shout test", could turn back those who could still be eligible for protections. Those who do volunteer that they are fearful of returning home will face a higher bar to qualify, such as proving they may face torture or death if they return.

Langanica pointed out that the Department of Homeland Security's fact sheet on the new policies differed from the White House fact sheet and from the language of the executive order proclamation. "This is very reminiscent of the Trump era, where we saw major policy changes without adequate notice," she said.

'It will only cause suffering'

Meanwhile, human rights advocates say, Biden's order - which is the latest in a number of policy changes aimed at drastically reducing access to the US asylum system - is unlikely achieve its intended purpose of reducing arrivals at the border.

Logistically, it is impossible to completely shut down the border, said Faisal Al-Juburi, chief external affairs officer at Raices, an immigrant support and



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"Phrasing this as 'shutting the border' is much more of a PR statement," Al-Juburi said. "When we look at actually about 30 years of deterrence practices, we know they don't work long term. What we consistently see is that people just end up taking greater risks."

The US saw high levels of crossings in decades prior, including in the 1980s and mid-2000s. However, people are now increasingly [presenting themselves to authorities](#) in hopes of getting protection.

Lawyers and advocates say deterrence policies, such as those outlined in Biden's executive order, incentivise families in vulnerable situations to make desperate choices. "What we expect to see is a lot of people in desperate situations, for example, separate from their children, and send their children up across the border," said Alvaro Huerta, director of litigation and advocacy at the Immigrant Defenders Law Center.

Already, the US-Mexico border is the world's [deadliest](#) migration land route. People crossing vast, desolate expanses of desert between ports of entry routinely die of dehydration and hunger.

"This is a cynical effort by the administration to make themselves look tougher at the border, but it's really going to shut down avenues, lifesaving avenues, for asylum seekers," Huerta said.

Meanwhile, legal pathways to asylum are increasingly inaccessible. Even those seeking asylum at ports of entry, through a process that the White House emphasises remains open to applicants, have found themselves [languishing](#) in frigid and searing desert temperatures, waiting in makeshift camps for their turn to be seen at immigration processing centres.

"Similar policies enacted by Trump demonstrated that this order will fail to deter asylum seekers. Rather, it will only cause suffering and death, as legitimate refugees will be unable to access protection," emphasised Erika Pinheiro, executive director of Al Otro Lado, a non-profit group that helps asylum seekers at the border.

The American Civil Liberties Union has already announced its intention to legally challenge the order, though it remains unclear how easily the policy can be dismantled in court and whether it will be allowed to remain in effect while legal challenges are pending.

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