

## ➤ The COVID-19 Pandemic and State Responses to Asylum Seekers

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Among the many crises that were exposed and exacerbated by the COVID-19 pandemic was the crisis of commitment to refugee protection. As the end of the pandemic is finally imaginable, the global refugee protection regime is in danger of becoming one of its many casualties. Some scholars have argued that, rather than shifting the course of refugee protection, the COVID-19 pandemic has merely [accelerated the trajectory of history](#) that was already in motion pre-pandemic, and has pushed the global refugee protection regime to the [brink of total collapse](#). By this logic, COVID-19 did not cause the end of asylum. Rather, it enabled many states to enact policies that they had long desired, giving them cover to violate their international protection obligations under the guise of public health concerns for their own citizens.

Governments can only fulfill their protection obligations during a pandemic if there is an explicit political commitment to do so. Public panic about unfamiliar, new illnesses combined with xenophobia make such commitments very challenging, if not impossible. Without vigilance, compassion, and significant financial investment in humane processing, displaced people are likely to experience extended interruptions in their mobility during a pandemic, which not only delays any hope of protection, but also leaves them extremely vulnerable to contracting the disease while they wait in situations of limbo.

In early 2020, when the pandemic began to

spread globally and destination states shut down their borders, the UN Refugee Agency (UNHCR) issued [legal guidelines](#) reminding states that while they could institute measures designed to screen or quarantine asylum seekers, they still must find ways to allow people to make asylum claims. Predictably, such reminders did little to prevent the devastating rejection of asylum seekers that followed.

For example, in the United States, the Department of Homeland Security (DHS) used [an order](#) from the Centers for Disease Control (CDC) known as Title 42 to turn away people who were legally seeking asylum at the U.S./Mexico border beginning in March 2020. In doing so, DHS was very transparently building on previous attempts to stop people entering the United States from the south. DHS claimed that this order was needed because asylum seekers posed a particular public health risk. But in many ways, this policy merely represented a continuation of the [Migrant Protection Protocols](#) (MPP), which predated COVID by over a year, and which required people to wait in camps on the Mexican side of the border for their asylum hearing. Meanwhile, border traffic that was deemed essential to the economy was allowed to continue throughout the pandemic.

The organization [Human Rights First](#) has extensively documented the dangers created by this CDC expulsion policy, including accounts of over 1,500 murders, rapes, kidnappings, and assaults of people who were forced to remain indefinitely in Mexican border regions controlled by

gangs. In an open letter, a group of leading public health experts urged the administration not to [“circumvent laws and treaty protections designed to save lives and enable the mass expulsion of asylum seekers.”](#) The letter went on to accuse the administration of using COVID-19 as a “pretext” to override the United States’ humanitarian obligations. But the Trump administration ignored such scathing accusations and continued the policy.

The new Biden administration has taken major steps to undo some of these inhumane practices. It [ended the MPP program](#) and is beginning to process some of the tens of thousands of people who have been languishing in the border region. However, President Biden has not ended Title 42. Instead, he issued an [Executive Order](#) calling for a review of the policy. [Immigration advocates](#) have criticized Biden for not doing enough to depart from Trump’s policies, while conservatives have said he is doing too much. For example, the Governor of Texas has refused to participate in a testing program for people entering the United States, saying he would [“not aid a program that makes our country a magnet for illegal immigration.”](#) This political pushback has been strong despite [a complete lack of evidence](#) that entering migrants are actually more likely to carry the disease.

The U.S. example illustrates the political difficulties of taking even the smallest of steps to treat asylum seekers with humanity during a pandemic. Receiving states absolutely should not use pandemics as an excuse to keep people with protection needs from making asylum claims. They should provide them with testing and quarantine facilities that enable their

claims to move forward. However, the COVID-19 pandemic provides little hope that states will be willing to make such investments now or in the future.

Perhaps the only argument that could sway state governments into action is that humane treatment of asylum seekers helps prevent pandemics’ spread. Especially when delays become protracted, displaced people are very vulnerable to disease. Refugee camps and asylum seeker shelters are overcrowded and have limited sanitation, making it next to impossible for people living there to maintain social distancing or adequate handwashing. Once people become ill, it is very difficult to isolate them to prevent the spread of disease, and healthcare services are often sub-par. For example, [Rakhine state in Myanmar](#), where many displaced Rohingya people live in detention camps, has only one doctor per 83,000 people, and only one lab that can process COVID-19 test results. It also has very limited clean water and open, shared latrines, which each serve about 600 people. As isolated and contained as states attempt to make such spaces, diseases inevitably spread into the wider citizen population of host states.

Even in much wealthier countries, immigrant [detention centers](#) have become devastating hot spots for the spread of COVID-19, as have all carceral settings that confine people in close quarters. One of the most significant steps host states could take is to reduce or eliminate situations where asylum seekers are detained in close quarters. Such a step would prevent the spread of disease in general, not just during pandemics. Perhaps the lessons learned about the dangers of congregate confinement of asylum seekers during the COVID-19

pandemic will spur state governments to come up with alternative processing procedures. UNHCR has long made [its opposition to detention](#) known, but in the aftermath of this pandemic, the agency has more evidence at its disposal to show why detention is not just cruel but unsafe as well.

Many deterrence and exclusion policies had already made displaced people vulnerable pre-pandemic. For governments to prepare for future global health emergencies and prevent disruption to protection of displaced people, they first need to decide that they actually want to fulfill their protection obligations. The first and most important step for UNHCR to take in the aftermath of the pandemic is to try to revive a sense of global responsibility for displaced people, perhaps by appealing to their self-interest. In the end, none of the second-order crises that flow from a lack of commitment to protecting people can be solved without the reaffirmation of that bedrock principle.