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Biden cuts time for migrants to get lawyers, echoing Trump policy as Title 42 expires

Hamed Aleaziz

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U.S. Border Patrol agents make contact with migrants hoping to cross into the United States from Tijuana. (Carolyn Cole / Los Angeles Times)

The Biden administration, desperate to limit border crossings after a key pandemic-era measure [expired late Thursday](#), slashed the amount of time asylum seekers have to find lawyers before their crucial first interviews with immigration officials.

The Trump administration issued a similar policy in 2019, but that effort was later blocked by a federal court. President Biden's move is the [latest example](#) of him adopting a Trump-style scheme in an attempt to manage high numbers of border crossings.

Biden's version of the policy, outlined in an email sent to asylum officers Wednesday and obtained by The Times, gives asylum seekers at least 24 hours to find and consult an attorney once they receive information on



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not pass their first screening, known as a "credible fear" interview.

[Title 42](#), a decades-old policy invoked during the COVID-19 pandemic to allow border agents to quickly turn back migrants, expired just before midnight on Thursday, and officials were expecting a spike in migrants trying to cross the border. Complicating matters, just hours before Title 42's expiration, a federal judge in Florida blocked the Biden administration from quickly releasing migrants from Border Patrol custody without court notices.

Border agents already apprehended more than 10,000 migrants in a single day Tuesday, according to internal data obtained by The Times. By Wednesday, U.S. Customs and Border Protection had more than 28,000 migrants in custody, significantly more than its facilities are rated to hold, the data showed.

"In support of the Department's goal to more quickly provide relief to those who are eligible while more quickly removing those who are not, effective immediately the minimum time between the noncitizen's acknowledgment of receipt of the Form M-444, Information about credible fear Interview, and the credible fear interview will be 24 hours," a lead U.S. Citizenship and Immigration Services official on asylum wrote in the email announcing the change.

The directive also made clear that migrants who request to reschedule their initial interviews will need to "demonstrate extraordinary circumstances" to do so as to not "unreasonably delay the overall process."

USCIS will "continually assess" whether a return to the 48-hour wait period is appropriate, according to the email.

A USCIS spokesperson said in a statement that the agency "is committed to ensuring that noncitizens in expedited removal are given time to consult with the person of their choosing after being referred to USCIS for a credible fear interview. In order to expeditiously process noncitizens in expedited removal, USCIS will ensure that noncitizens will have at least 24 hours for consultation."

Biden administration officials believe that deterrence, through quick deportations and a policy that [limits asylum for those who cross without](#)



there is a significant possibility that they could establish they have a well-founded fear of persecution in their home country usually get to stay in the U.S. and pursue their asylum cases in immigration court.

Migrants who can't clear that bar are usually deported.

“The decision to cut the time makes it clear that the Biden administration is doing everything possible to fast-track people for deportation as opposed to giving them the opportunity to truly access due process and a fair chance to have their asylum claim adjudicated,” said Taylor Levy, an immigration attorney specializing in border cases.

The so-called consultation period for asylum seekers is crucial, advocates have previously said.

Immigration lawyers argued that former President Trump's version of the policy, which allowed migrants a business day, rather than 48 hours, limited migrants' ability to find attorneys, gather evidence and prepare for the interview.

The Trump policy was one of the first changes under the leadership of then-USCIS head Ken Cuccinelli, who followed the Trump administration's continuous efforts to limit asylum at the border and deport more migrants. Ur Jaddou, Biden's director of the agency, called Trump's effort "another way to limit the process" and said it would lead to "more deportations."

A federal court blocked the policy after advocates challenged the legality of Cuccinelli's appointment.

“For asylum seekers, credible-fear interviews are often matters of life and death. Cutting in half the time that people have to prepare for what might be the most important interview of their life raises the risk of errors even higher,” Aaron Reichlin-Melnick, policy director at the American Immigration Council, said Thursday. “The Biden administration should stop trying to sacrifice due process and a fair shot at protection for expediency.”

The administration has said it is prepared for the end of the Title 42 policy and [will send troops](#) to the border, [institute a policy](#) that limits asylum for those who cross without permission, surge asylum officers and judges to help process people and rapidly deport those who do not have a right to

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turn back nationals from Cuba, Venezuela, Haiti and Nicaragua to Mexico.

“The border is not open, it has not been open, and it will not be open subsequent to May 11. And the smugglers who exploit vulnerable migrants are spreading misinformation,” DHS Secretary Alejandro N. Mayorkas said in a recent news conference. “They are spreading false information, lies in a way to lure vulnerable people to the southern border, and those individuals will only be returned. To the individuals themselves who are thinking of migrating: Do not believe the smugglers.”

While the administration has pursued deterrence-focused policies, it has also opened up more slots for asylum seekers to seek entry at ports of entries and will create processing centers to help migrants determine whether they have a legal path to the U.S.

At the same time, the Biden administration will allow migrants from Honduras, Colombia, El Salvador and Guatemala to apply to enter the U.S. if they qualify for a family reunification program.

The Department of Homeland Security will continue to also allow immigrants from Cuba, Nicaragua, Haiti and Venezuela who have verified sponsors in the U.S. to apply to enter the country legally.

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