



# SURVIVING DETERRENCE:

HOW US ASYLUM DETERRENCE POLICIES  
NORMALIZE GENDER-BASED VIOLENCE

A Report by Oxfam America and the Tahirih Justice Center



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### Content Warning

Please be aware that this report contains secondhand accounts of sexual violence, torture, kidnapping, assault, harassment, racism, and transphobia that migrants and asylum seekers have faced at the US southern border. These are painful stories of survival that detail trauma and abuse by fellow migrants, organized criminal networks, and state officials, and include accounts of institutional harm and neglect.

## ACRONYMS

<b>CBP</b>	US Customs and Border Protection
<b>DHS</b>	US Department of Homeland Security
<b>DOJ</b>	US Department of Justice
<b>DOS</b>	US Department of State
<b>EO</b>	Executive Order
<b>GBV</b>	Gender-based violence
<b>INA</b>	US Immigration and Nationality Act
<b>LGBTQI+</b>	Lesbian, gay, bisexual, transgender, queer, and intersex
<b>MPP</b>	Migrant Protection Protocols (also referred to as RMX)
<b>PSG</b>	Particular social group
<b>RMX</b>	Remain in Mexico (policy and program; also referred to as MPP)
<b>UNHCR</b>	United Nations High Commissioner for Refugees

# EXECUTIVE SUMMARY

Migrants and asylum seekers often flee unspeakable acts of gender-based violence (GBV) at home such as human trafficking, sexual assault, sexual slavery, kidnapping, harassment, and other trauma. In trying to seek safety in the US, many endure further atrocities and exploitation at the US-Mexico border. Drawing on interviews and surveys of social and legal service providers working at the US southern border, this report documents how migrants and asylum seekers experience gender-based harm in two different but related ways as a consequence of seeking safe haven in the US. This report focuses on the experiences of women, girls, and lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) individuals.

First, we find that US asylum deterrence policies engender conditions that cause GBV to proliferate at the US southern border because:

- 1) Border closures and expulsions increasingly force migrants to rely on precarious housing conditions that make them more susceptible to various forms of GBV;
- 2) cartels and other organized criminal networks can more easily target migrants when they wait for prolonged periods of time at the border or are routinely expelled while trying to access US asylum and immigration processes; and
- 3) survivors of GBV who are fleeing persecutors at home face an increased risk of being found and re-harmed by such persecutors while waiting at the border to access the US asylum process.

The risks of suffering GBV while waiting at the southern US border are compounded for Black migrants who are disproportionately impacted by US deterrence policies and consequently face further anti-Black discrimination from other migrants, criminal networks, and Mexican officials.

Second, the US asylum process is woefully trauma-uninformed and systemically disadvantages and re-traumatizes survivors of GBV who are ultimately able to apply for relief. In implementing policies that are by design punitive and cruel, the very gatekeepers of the asylum process—US Customs and Border Protection (CBP) officers<sup>1</sup>—routinely engage in abusive and even violent conduct in certain cases. We also find that the US asylum legal framework itself denies equal access to protection for survivors by failing to explicitly name gender as a ground of asylum.

We find that the harm that women, girls, and LGBTQI+ individuals suffer on account of their sex, gender identity and expression, and sexual orientation—while both waiting to access, and in the course of applying for, relief—is experienced as an inevitable and normalized consequence of seeking safety in the US. While the Biden administration has recently taken some steps to restore access to asylum at the US border, more must be done to ensure that the US fully abandons its punitive, deterrence-based approach to asylum. We conclude that by choosing this approach, the US is complicit in systemically harming and devaluing the lives of women, girls, and LGBTQI+ individuals desperately seeking access to safe haven through the asylum process as enshrined in US law. As such, the US is repudiating its legal obligations under both domestic US law and the United Nations 1951 Convention and 1967 Protocol Relating to the Status of Refugees. The US is also failing its moral obligations to respect the dignity of all migrants.

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<sup>1</sup> We use the term “CBP” because the vast majority of our interview respondents refer to US officials at the border as “CBP.” These officials are most likely Border Patrol agents.

Rectifying these harms requires the US to reject a punitive deterrence-based paradigm in favor of one that honors the humanity of all. Such a transformation necessitates a significant normative shift in US politics and culture. To help realize this transformative vision, the US government should take the following immediate and significant steps:

- 1) Discontinue the use of deterrence policies designed to penalize and punish migration. Fully abandoning these policies will help mitigate the conditions that foster widespread GBV in Mexico at the US border and re-traumatization of asylum seekers at the hands of US officials.

In place of deterrence policies, we urge the US government to:

- 2) Invest in an asylum-seeker-centered model of service provision by establishing Welcome Centers where asylum seekers can access critical legal and humanitarian resources. Access to key trauma-informed resources and information in survivors' native languages promotes protection for survivors while helping to prevent re-traumatization and reduce instances of racial and gender-based harm by US officials.
- 3) Implement trauma-informed policies and practices within all components of US agencies that interface with migrants and asylum seekers, with a particular focus on US Border Patrol. Implementation must include rigorous trainings on such practices, collaboratively developed with outside experts including survivors, and robust accountability measures for lack of compliance.

- 4) Eradicate racial bias within all components of US agencies that interface with migrants, with a particular focus on US Border Patrol. Training on agencies' Equity Action Plans must be developed and presented collaboratively with outside experts and those most directly impacted by racial bias. Robust accountability measures for lack of compliance must be imposed.
- 5) Explicitly recognize gender as a key modality of persecution alongside those already named in the Refugee Convention. The US can do so by amending the Immigration and Nationality Act to name gender as a sixth ground of asylum and as a cognizable particular social group (PSG), and by revising the asylum application accordingly so that survivors are aware of their eligibility for relief.
- 6) Support alternative pathways for processing asylum seekers; for example, through the Refugee Protection Act's Central American Refugee Program. The program protects survivors of GBV through its designation of Refugees of Special Humanitarian Concern.
- 7) Align US immigration and asylum policies with US foreign policy goals that seek to reduce GBV and promote women's economic and social empowerment. US foreign policies must mitigate the risk of GBV and economic deprivation that women, girls, and LGBTQI+ migrants experience at the US southern border. The US government must also ensure that bilateral migration agreements include commitments to ensure safe and secure journeys.

# 1. INTRODUCTION

Every day, migrants and asylum seekers who have experienced violence, deprivation, and exploitation arrive at the US southern border. They are, however, often met with hostile US policies that violate their humanity as well as their legal rights. For decades, the primary objective of US immigration and asylum policy has been to deter migrants and asylum seekers from reaching US borders. Widely condemned policies such as family separation, expulsions of asylum seekers via Title 42 of the US Code (Title 42),<sup>2</sup> and forcing asylum seekers to return to Mexico to await their day in court under the Department of Homeland Security's (DHS) so-called "Migrant Protection Protocols" (MPP),<sup>3</sup> also referred to as Remain in Mexico (RMX),<sup>4</sup> are only the most recent and sweeping efforts designed to achieve this objective. Other examples include border walls; increased surveillance; minimal due process; detention of migrants and asylum seekers; prosecution of asylum seekers for unlawful entry; reduced access to benefits such as health care and labor rights; and bilateral agreements with countries of origin or third countries to limit the ability of asylum seekers to reach US borders.<sup>1</sup>

Yet extensive research shows that deterrence policies rarely discourage migration.<sup>ii</sup> Rather, they harm and endanger those whose circumstances at home are so dire that they risk their lives to flee at all costs. For some, these policies can make the journey in pursuit of safety more perilous than the initial threat that prompted them to flee.<sup>iii</sup> For example, a social services

provider we interviewed for this report, Alicia,<sup>5</sup> shared the story of a former client, a young mother, who endured gender-based violence (GBV) both in her home country and during her journey to the US-Mexico border in search of safety. Rather than being welcomed with compassion, she encountered a closed border. Despite this, Alicia's client noted that she would endure the severe trauma of her journey all over again for the chance to secure a safe future for her son:

*"I saw an 18-year-old girl who...had experienced significant trauma...She was...sold to men in organized crime back in [her home country]. She made the journey [to the US-Mexico border] by herself with her two-year-old son...She was sexually assaulted several times during that journey... when you saw her, she was just like a shell of a person... And she ended up telling me, 'You know, I don't care. I would do it again...I mean, at least he would have a chance.' That really stuck with me because...they're fleeing violence and impossible situations, so we're the ones that need to do so much better."<sup>6</sup>*

Alicia's client's experience highlights in devastating detail the reality that deterrence policies do not stop migrants and asylum seekers from seeking refuge. It also illustrates the particular trauma and harm that survivors of GBV endure to seek asylum in the US.

<sup>2</sup> Title 42 U.S.C. Section 265 of the 1944 Public Health and Service Act allows the US government to deny the entry of any individual who poses a danger of introducing communicable diseases into the US. It has been used since the beginning of the COVID-19 pandemic by the US government to exclude and expel migrants seeking asylum at US borders. See [https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons\\_Final\\_3-20-20\\_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf).

<sup>3</sup> Pursuant to Section 235(b)(2)(C) of the Immigration and Nationality Act, the US government has implemented the Migrant Protection Protocols (MPP) since 2019 in order to expel or return asylum seekers to Mexico for the duration of their immigration proceedings. The policy is referred to as the "Remain in Mexico" (RIM or RMX) policy by those seeking to highlight how the policy does not in fact offer "protection" to migrants.

<sup>4</sup> In this report we refer to Migrant Protection Protocols (MPP) as Remain in Mexico (RMX). However, many of our interview respondents refer to it as "MPP."

<sup>5</sup> All names of interviews respondents have been changed to maintain anonymity.

<sup>6</sup> Interview 23, April 2022.



Scene inside the dormitories at the Agape Mission which currently serves as a migrant shelter. Tijuana, Baja California Norte, Mexico. Winter, 2022. Please note that the data and analysis of this report do not include this shelter. ©James Rodriguez/Oxfam America.

US expulsion and other deterrence-driven policies also, as this report demonstrates, actively create conditions that foster GBV at the US southern border and harm and marginalize survivors during the asylum process. Our research uncovers how expulsions under Title 42, “returns” under RMX,<sup>7</sup> and asylum “turnbacks,”<sup>8</sup> including those under the now-defunct metering program, have led to increased exposure to bodily harm and psychological trauma for migrants at the border, including those who have already experienced GBV at home. Second, we find that the US government is directly responsible for causing harm to survivors. The very gatekeepers of the asylum process—US Customs and Border Protection (CBP) officials—routinely engage in conduct that perpetuates institutional harm against asylum seekers. And, for those survivors who manage to overcome these obstacles and apply for asylum in the US, we find that the

asylum application process itself obstructs survivors’ access to protection and can re-traumatize them as they seek legal status and safety.

In sum, this report concludes that asylum deterrence measures increase migrants’ risk of exposure to GBV at the US-Mexico border, and the lack of a more trauma-informed asylum process harms and disadvantages survivors. The US has a legal and moral obligation to protect the rights and respect the dignity of migrants. Deterrence policies directly conflict with US international human rights obligations and domestic laws<sup>9</sup> by blocking, rather than facilitating, access to the asylum process. Accordingly, the US must reject a deterrence-based framework and replace it with a trauma-informed, equitable, accountable, and service-oriented one for the benefit of all.

7 Under RMX, Customs and Border Protection (CBP) officers systematically prohibit asylum seekers from remaining in the US while their asylum claims are pending, instead returning them to Mexico to wait; this is referred to as “return.”

8 A “turnback” occurs when US officials block or reject asylum seekers from making an asylum claim at a port of entry along the U.S.-Mexico border. For example, under the metering program, which was rescinded in 2021, turnbacks occurred when US CBP officers, would not accept asylum claims at the port of entry, and instead placed asylum seekers on a waitlist, forcing them to wait in a queue in Mexico to be able to apply. The metering program is only one example of how turnbacks may occur.

9 For example, the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol, and the US Refugee Act of 1980.

# 2. OVERALL METHODOLOGY AND STUDY PARAMETERS

Oxfam America and the Tahirih Justice Center jointly produced this report. Our research draws on 30 semi-structured interviews and 34 surveys of social and legal service providers working directly with survivors of GBV on both sides of the US southern border. Research subjects were compensated for their participation.<sup>10</sup> Both the interviews and surveys were anonymized and conducted in English and Spanish; all names of providers found within this report are pseudonyms. The data were collected between January 2022 and May 2022 and apply to conditions at the border and shifts in US policies between 2018 and 2022. A potential limitation of interview and survey data is that they cannot quantitatively capture the total number of migrants who experience the types of harm that the report documents. However, the data do give an indication of the overall prevalence of such harm.

Our methods were grounded in feminist research principles,<sup>11</sup> in particular, with regard to our decision to interview providers who serve survivors rather than survivors themselves. This method minimizes the risks of re-traumatizing survivors during the research process, particularly in light of our limited ability to adequately provide care for them in the event of re-traumatization. In two instances, interviewees, who were paid staff of their organizations, were also migrants themselves, but they did not disclose whether they were survivors of GBV. Consistent with feminist research methodologies, we shared our draft report with a small pool of interview participants and provided an opportunity for them to comment on it. The report is available in Spanish and has been shared with all interview and survey participants who indicated they wanted a copy.

## 2.1 DEFINITIONS

For the purposes of our research, we define GBV as a pernicious and pervasive systemic human rights abuse inflicted because of one's gender identity, gender expression, sexual orientation, and/or sex assigned at birth.<sup>12</sup> There are various forms of GBV, including domestic and intimate partner violence, rape, sexual harm, forced female genital mutilation/cutting, forced intersex genital surgeries, forced marriage, forced sterilization, forced pregnancy, human trafficking, and other forms of physical, sexual, psychological, economic, or sociocultural violence often inflicted as punishment for violating gender norms.<sup>13</sup> Although GBV impacts individuals of all gender identities and sexual orientations, the findings in the report reflect the experiences of women, girls, and lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) individuals, and not cisgender heterosexual men and boys. We define the US-Mexico border as encompassing cities, ports of entry, immigration detention centers, public spaces, shelters, and encampments located within 100 miles of the US-Mexico border in either country. Throughout the report we use the term "migrant" to mean any individual who is travelling from their home country seeking entry into the US. These individuals may or may not intend to claim asylum in the US. We use the term "asylum seekers" when referring to individuals who are specifically seeking to claim asylum (or are currently doing so) in the US.

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<sup>10</sup> Participants in the study were compensated with Amazon (Mexico and US) and Visa gift cards.

<sup>11</sup> We drew from the following resource: Oxfam Canada, "Feminist Monitoring, Evaluation, Accountability and Learning" (2021), <https://www.oxfam.ca/wp-content/uploads/2020/06/Oxfam-Canada-Feminist-MEAL-Guidance-Note-English.pdf>.

<sup>12</sup> We base this definition on the one provided by United Nations High Commissioner for Refugees (UNHCR). See UNHCR, "Gender-Based Violence," <https://www.unhcr.org/en-us/gender-based-violence.html>.

<sup>13</sup> This is not an exhaustive list and is based on some of the more prevalent types of GBV that are included in asylum cases.

## 2.2. INTERVIEW METHODOLOGY

Interview participants included service providers from 17 distinct nonprofit, nongovernmental organizations, 7 of which are based in Mexico, 7 of which operate in both the US and in Mexico, and 3 of which are based exclusively in the US. The 30 providers we interviewed include those who operate shelters and provide psychosocial support, medical services, humanitarian relief, legal assistance, and other social services. The majority work on the Mexican side of the border. Five participating social service organizations indicated that they specifically serve Black migrants, and 6 organizations indicated that they specifically serve LGBTQI+ migrants. Providers work in 15 cities along the border, which encompass towns in the US states of California and Texas and the Mexican states of Baja California, Coahuila, Nuevo Leon, and Tamaulipas.

All interviews but one were conducted by a research consultant fluent in both English and Spanish; the remaining interview was conducted in English by one of the authors. Prior to the start of the interviews, all participants signed informed consent forms detailing their right to: 1) terminate the interview at any time; 2) refuse to answer any question; 3) understand how the data would be used; and 4) review any full quotes that would be used in the study. All research protocols were reviewed by Oxfam America's Safeguarding officer. All interviews were conducted virtually, recorded with participants' written consent, and then transcribed. Interviews were generally 45 minutes to one hour in length. The transcriptions of the interviews were coded by hand and analyzed.

## 2.3. SURVEY METHODOLOGY

We conducted 34 online surveys to augment the interview data and findings. The survey was only open to providers who work with clients who have experienced GBV. We drew upon the initial interview findings to develop the survey questions in order to fill gaps in our research. Namely, given that our interviews were heavily focused on providers in Mexico, most could not speak to the experiences of asylum applicants. As a result, the survey sample includes a larger number of providers who work in the US, and the survey yielded additional data relating to the asylum process itself. Further, the survey sought to gather data on the prevalence of GBV at the border and the prevalence of the dynamics identified in the interview data.<sup>14</sup> That is, survey respondents were asked to rank on a scale of 1–5 (not at all, sometimes, about half the time, frequently, or very frequently) how common it is for their own clients to experience various forms of gendered harm and violence. This includes evaluating the likelihood of harm at the hands of particular types of perpetrators and at certain sites of violence as well as institutional harm in relation to experiences with US immigration officers and the asylum process. Respondents were asked to select rankings based on their direct personal knowledge of trends in their clients' experiences. As noted above, the survey responses were anonymized, and the survey was distributed through email listservs of providers who assist asylum seekers. We had to pause data collection for a few hours due to spamming from respondents not working with migrants. Responses from that time period are excluded from our analysis to ensure that it is not inadvertently based on false data. In the aftermath of the spamming incident, a new link that was password protected was shared over provider listservs, and an additional eight responses were recorded.

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<sup>14</sup> The broad categories of questions included: 1) prevalence of GBV among clients; 2) the forms of GBV that clients most frequently experience, including types of perpetrators and sites of violence; 3) experiences of GBV after expulsion from the US; 4) experiences with CBP officers; and 5) clients' experiences with applying for asylum.

# 3. US ASYLUM DETERRENCE POLICIES

The US has long imagined itself as a nation that welcomes refugees and immigrants, and as a model human rights champion for the rest of the world to emulate. Yet the US simultaneously implements policies deliberately designed to keep even the most vulnerable individuals out.<sup>15</sup>

The US's asylum deterrence policies contrast sharply with its long-standing commitment to upholding the right to asylum for refugees. By ratifying the 1967 Protocol to the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention), the US acceded to all of the critical provisions of the Convention<sup>16</sup> and passed the Refugee Act of 1980 to implement its obligations under it. By adopting the Convention's refugee definition, the Refugee Act creates the possibility of obtaining legal immigration status and a pathway to citizenship for individuals who cannot return to their home countries due to past persecution or a well-founded fear of future persecution based on race, religion, nationality, political opinion, and membership in a particular social group (PSG).<sup>iv</sup>

However, in both policy and practice, the US falls far short of its domestic and international legal obligations. In addition to forbidding turning away refugees,<sup>17</sup> the Convention prohibits penalizing individuals who enter a country irregularly to seek asylum.<sup>18</sup> It also bars discrimination based on race, religion, or country of origin.<sup>19</sup> Yet, despite these obligations, the US disproportionately incarcerates non-white migrants and asylum seekers as a means of deterrence.<sup>20</sup>

Modern US asylum deterrence policies have evolved out of the racialized efforts of the US government in the 1970s and 1980s to block Black, brown, and Indigenous<sup>21</sup> asylum seekers from entering the US; specifically, Haitians,<sup>v</sup> El Salvadorans, and Guatemalans.<sup>vi</sup> Following substantial non-white migration in the 1980s and early 1990s, the US discriminatory approach to asylum hardened into a broader strategy of deterrence through punitive measures. The 1996 Illegal Immigration Reform and Immigration Responsibility Act pushed more asylum seekers into adversarial immigration courts and established a one-year filing deadline for asylum, with limited exceptions. In 1994, the US Border Patrol expressly adopted "prevention

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15 Two recent examples being Title 42 and the Remain in Mexico policy.

16 The 1967 Protocol Relating to the Status of Refugees (also known as the Refugee Protocol) incorporated articles 2–34 of the Convention [M. A. Sweeney, S. Shebaya, and D. K Collopy, "Detention as Deterrent: Denying Justice to Immigrants and Asylum Seekers," *Georgetown Immigration Law Journal* 36 (2021): 292–323].

17 Article 33(1) of the Convention requires that "no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

18 Article 31 of the Convention provides that "the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence

19 Congressional Research Service 2019, pg. 9; quoting US Department of Justice, Immigration and Naturalization Service Asylum Program, History of the United States INS Asylum Officer Corps and Sources of Authority for Asylum Adjudication, September 1999, which states that the Refugee Act intended "to establish a politically and geographically neutral adjudication for both asylum status and refugee status, a standard to be applied equally to all applicants regardless of country of origin."

20 For one example, see J. Loyd and A. Mountz, "The Caribbean Roots of U.S. Migration Policy," *NACLA Report on the Americas* 51:1 (2019): 78–84.

21 We use the term "Indigenous" to refer to individuals from Indigenous groups in Central and South America, who may not speak Spanish as their first language. However, we recognize that many migrants from Central and South America may not self-identify as Indigenous, but rather as part of specific ethnic groups that are marginalized in their country of origin.

through deterrence<sup>22</sup> as a fundamental strategic objective, putting to paper a policy that had existed in practice for at least two decades. Further, in 2014, the Obama administration announced that it would increase detention of asylum-seeking families at the southern border, “to deter others from...illegally crossing into the United States.”<sup>vii</sup>

The most recent examples of US asylum deterrence policies that are addressed in this report include Title 42 expulsions, implemented in March 2020; RMX, implemented in January 2019; and the metering program,<sup>23</sup> first implemented in 2016 and rescinded in 2021.<sup>24, 25</sup>

Fortunately, RMX was officially terminated in August 2022 pursuant to a court order.<sup>26</sup> Asylum seekers are no longer being enrolled in the program, and those who are already in it are gradually being disenrolled. Unfortunately, however, asylum seekers remain in danger because DHS requires them to wait until their next court appearance to disenroll, which could be weeks or months away.<sup>27</sup> In addition, ongoing litigation over RMX could force—or at least allow—DHS to begin re-enrolling people as soon as October 2022.

As for expulsions under Title 42, children are currently exempt, and families may not be expelled to a country where they fear persecution or torture. In practice, many families who do fear persecution are still being expelled though because DHS requires them to affirmatively volunteer such information when they first encounter a Border Patrol agent. Further, a May 20, 2022 court order requires the Administration to continue Title 42 expulsions unless it issues regulations ending the program following public comment. The administration has yet to begin that process. Expulsions under Title 42 therefore continue; as of July 2022, the total number of expulsions under this policy for fiscal year 2022 have already far exceeded all Title 42 expulsions for fiscal year 2021.

Title 42 expulsions, returns under RMX, and the prior implementation of metering all underscore how policies designed to deter asylum seeking are in effect used as a

proxy for border control to limit overall immigration to the US.<sup>viii, ix</sup> As further evidence of the US’s most recent efforts to limit immigration writ large, the refugee acceptance ceiling and actual refugee admissions were significantly slashed in fiscal year 2017. While the Biden administration set the ceiling for fiscal year 2022 at 125,000, which is much higher than in previous years, actual admissions continue to fall well below it. And, as noted above, the US has consistently used punitive measures across administrations to deter migration generally, such as minimal due process, incarceration of migrants, and location of detention centers in remote areas where access to counsel is scarce.

There have been racial disparities in the implementation of Title 42 expulsions: in early to mid-2022, a number of asylum seekers from Ukraine and Russia were granted entry into the US while the vast majority of Black, brown, and Indigenous asylum seekers were simultaneously denied entry.<sup>x</sup> Studies also document the disproportionate levels of violence that Black migrants face at the hands of US officials at the US border.<sup>xi</sup> By placing those most vulnerable to harm in Mexico, such as LGBTQI+ asylum seekers, the US’s Title 42 expulsion policy leaves them at an even greater risk for violence.<sup>xii</sup> Moreover, recent studies have found that expulsions under Title 42 are associated with a significant number of kidnappings and violent attacks on migrants who have been expelled.<sup>xiii</sup> These reports uncover that the violence migrants face after expulsion includes sexual assault and attacks due to gender identity and/or expression. This report builds on these previous findings to examine how US policies impact GBV at the US-Mexico border and the ways in which US asylum deterrence policies impact those who have previously survived GBV.

22 See <https://www.hsd.org/?abstract&did=721845>.

23 Metering was a process by which CBP officers stationed at the US-Mexico border placed a daily limit on the processing of asylum seekers by citing a supposed lack of capacity and thereby forced asylum seekers to stay in Mexico for months before beginning the asylum process. CBP began using metering in 2016, and it was expanded border-wide in the summer of 2018. CBP largely suspended the use of metering in 2020 and fully rescinded the policy in 2021. See <https://crsreports.congress.gov/product/pdf/LSB/LSB10295>.

24 Please see <https://refugees.org/wp-content/uploads/2022/03/MPP-TimelineFinal.pdf> for a detailed timeline.

25 Other changes in the second iteration of RMX include the requirements that 1) the US provide transportation for program enrollees from ports of entry to shelters; and that 2) a spot in a shelter for migrants is guaranteed.

26 <https://time.com/6192726/supreme-court-remain-in-mexico/>.

27 <https://time.com/6208555/remain-in-mexico-mpp-program-unwind/>.

# 4. FINDINGS

## 4.1. HIGH RISK OF EXPOSURE TO GBV AT THE US-MEXICO BORDER

US expulsions, returns, and turnbacks of asylum seekers have exponentially increased the volume of individuals regularly concentrated at the border at any given time. Ninety-two percent of survey respondents have clients who have been expelled under Title 42, while 86 percent have clients who were turned away from the border without being able to make an asylum claim.<sup>28</sup> One estimate suggests that in February 2020, approximately 15,000 people were waiting at the border to begin asylum processes, with some of these individuals already having waited multiple years.<sup>xiv</sup> A recent estimate from April 2022 indicated that between 30,000 to 60,000 migrants were waiting at the US-Mexico border.<sup>xv</sup>

Our data indicate that rates of GBV in border cities in Mexico—where most of our interview respondents work—are very high: respondents estimate that anywhere between 30 percent and 90 percent of their clients experience GBV there. And 75 percent of survey respondents indicate that their clients have faced kidnapping and/or extortion at the border either frequently or about half the time; 68 percent indicate that their clients have been raped and/or sexually assaulted frequently at the border.

While various factors can impact the risk of GBV in any setting, 87 percent of interview respondents (26 out of 30) note that by forcing vulnerable individuals to wait at the border indefinitely, US deterrence policies foster conditions that significantly increase the risk of exposure to GBV. They do so in three specific ways:

- 1) Border closures<sup>29</sup> and expulsions increasingly force migrants into precarious housing conditions such as severely overcrowded shelters; informal, ad hoc camp settlements; and homelessness. These conditions make migrants more vulnerable to various forms of GBV.
- 2) Cartels and other organized criminal networks can more easily target migrants for GBV when they wait for prolonged periods of time at the border, are routinely expelled from the US, lack employment opportunities, and also lack secure housing.
- 3) Waiting at the border in Mexico, rather than being able to access the asylum process within the US, increases the likelihood that persecutors from home whom asylum seekers are fleeing will find and harm them with impunity.

### 4.1.1. OVERCROWDING AND INSECURE LIVING CONDITIONS

As noted above, US policies have closed the border to the majority of asylum seekers for the past three years. As a result, they have had to wait en masse for permission to enter and/or apply for relief for extended periods without access to safe, sustainable housing. According to our survey participants, migrants frequently experience overcrowding in shelters and informal camps, or homelessness after enrollment in RMX or after expulsion from the US under Title 42. Many providers directly tie the existence of the camps and overcrowding at shelters to US policies:

<sup>28</sup> As a reminder, any time an asylum seeker is denied or blocked from making an asylum claim, it is referred to as a turnback

<sup>29</sup> In this section, and throughout the rest of the report, we use the term “border closure” to encompass policies that “return” and “turn back” migrants and asylum seekers attempting to enter the US.

*"[T]hese camps...shouldn't exist; people should be able to go to the port of entry and say, 'I would like to apply for asylum,' and the person should be allowed to enter the US and be put into immigration proceedings. That's how it's supposed to work. But because of these policies, like metering<sup>30</sup> and Title 42 and MPP,<sup>31</sup> instead people are forced to wait indefinitely in extraordinarily dangerous conditions in order to even have the most basic access to the US asylum system; [they] are forced to be homeless or to live in migrant shelters that are crowded."<sup>32</sup>*

Another respondent further argues that "if the immigration system worked the way it should work, there wouldn't even be shelters."<sup>33</sup>

Approximately 60 percent of interview respondents have clients who have experienced GBV within shelters themselves. Survey respondents, on average, note that their clients have faced GBV at camps, shelters, or public spaces due to homelessness about half the time. Women, girls, and LGBTQI+ individuals, our interviews highlight, are the most vulnerable to GBV in shelters and camps at the hands of other migrants staying there, persecutors from home, and/or members of organized criminal networks. As one respondent reflects:

*"In the case of women, and especially in the case of adolescents and girls, they experience sexual violence by people who are staying in the same shelter or in the same space in the same camp."<sup>34</sup>*

Because shelters are often overcrowded and under-resourced, staff are ill-equipped to ensure that they are safe spaces or to follow up on allegations of abuse. The crowded nature of the shelters, many respondents note, makes it easier for perpetrators of GBV to inflict violence unnoticed:

*"Sometimes there are people in the shelters that are abusers themselves. We've had many reports of children who have been sexually abused in migrant shelters because of the amount of people that are staying there. It can be hard for the people running the shelters to control that sort of thing, and then people are afraid to report it."<sup>35</sup>*

Furthermore, some respondents note that the rapid proliferation of shelters due to the increasing number of migrants waiting at the border has increased concerns about the lack of resources for the oversight of the individuals or organizations that are running them:

## Approximately 60 percent of interview respondents have clients who have experienced GBV within shelters.

*"[Shelters] have been overwhelmed in their capacity...[There is a] lack of training for those in charge of the shelters. Some of these [shelters] are born out of people's good will, but there is no preparation, no capacity, no security... which represents a risk in the face of the possible entry of organized crime into these spaces."<sup>36</sup>*

Migrants who cannot find accommodation in shelters may resort to living in informal camp settlements. Close to 30 percent of interview respondents share stories of clients living in camps who experienced GBV. Encampments pose distinct risks for GBV from those posed by shelters, given the additional lack of privacy and increased exposure to the environment and potential new or repeat abusers:

*"All the conditions are in place for gender-based violence to occur in these spaces...Women have to protect themselves from practically everything when they are in a camp...At least in shelters, there is a door that distinguishes one [space] from another one that [may] serve as a safeguard. But in a camp, they are outside; they are susceptible to anyone [entering to] violate them."<sup>37</sup>*

Cartels are also a significant threat for migrants in camps; respondents highlight that cartels often survey camps in order to target migrants:

*"And really, there are very few options for people at their tent camp. It's just...a place that was really dangerous, surveilled by cartels, where people had been kidnapped."<sup>38</sup>*

Additionally, some respondents note that some camps are effectively controlled by cartels, increasing the risk of GBV. Vulnerability to GBV is just as pronounced for those who live in abandoned or derelict buildings or on the streets. Survey respondents, on average, note that clients who have been sexually assaulted have been frequently assaulted in public spaces due to homelessness.

30 Although CBP formally rescinded the metering program in 2021, research participants were asked to reflect on the impacts of US immigration and asylum policies over the past five years, which encompassed a range of policies, including metering.

31 As a reminder, MPP refers to Remain in Mexico.

32 Interview 7, February 2022.

33 Interview 6, February 2022. Please note that the original language of the quote is Spanish.

34 Interview 20, March 2022. Please note that the original language of the quote is Spanish.

35 Interview 7, February 2022.

36 Interview 5, March 2022. Please note that the original language of the quote is Spanish.

37 Interview 12, February 2022. Please note that the original language of the quote is Spanish.

38 Interview 7, February 2022.

In these ways, overcrowding at the border exacerbates the risk of experiencing GBV. Although these conditions—namely, insecure housing and the violence it drives—exist in Mexico, US policies play a significant role in fueling them. In fact, migrants experiencing GBV as a result of unsafe housing conditions have had little recourse but to continue to wait in such conditions to gain access to asylum. For example, a provider shares how her client had sought an exemption to expulsion<sup>39</sup> under Title 42 because she had been raped in a shelter by the shelter’s owners, only to be denied.<sup>40</sup> A number of providers note that most of their clients who experience sexual assault, rape, and/or harassment rarely report these experiences of violence, citing the apathy of officials in Mexico as the reason. Such experiences have normalized the idea that GBV is inevitable if one hopes to seek asylum. As our data show above, the expectation of experiencing GBV is intimately tied to US policies that expel and close the border to asylum seekers.

### 4.1.2 INCREASED EXPOSURE TO CARTELS

The violence that migrants experience at the hands of cartels has been well documented in previous studies.<sup>xvi</sup> Research conducted between 2018 and 2021 documents the high number of kidnappings of asylum seekers who were expelled under Title 42 or subjected to RMX.<sup>xvii, xviii</sup> Over 40 percent of our interview respondents likewise recount stories of clients targeted by cartels for GBV. In particular, survey respondents on average indicate that members of cartels and/or organized criminal networks are frequently the perpetrators of GBV upon their clients—specifically, sexual assault. To paraphrase an interview participant, the US government hands the cartels their victims because migrants at the border have no other way and are desperate.<sup>41</sup> We detail below how US expulsion and border closure policies make migrants sitting targets for violence by cartels and particularly GBV (kidnapping, trafficking, extortion, and sexual assault).

First, such policies create a large, at-risk population whose location, actions, and vulnerabilities are predictable. Survey respondents on average note that their clients have experienced kidnapping and/or sexual assault within 72 hours after being enrolled in RMX about half the time. Interview respondents note that cartels surveil ports of entry and other locations where migrants are known to be expelled or turned back in order to target them for violence. For example, one respondent, Ana, describes how cartels may easily target migrants returned under RMX:<sup>42</sup>

*“People [subject to the] MPP would be taken to court, and then they’d be released back into Mexico after their court date in the same place at the same time every day. And the cartels have observers all over the place, and so they started catching on to this pattern, and they would just kidnap people upon release out of US custody because those were folks that they thought were most likely to have someone in the US that they can extort for dollars.”<sup>43</sup>*

A provision under the Biden administration’s second RMX program required that the US transport enrolled individuals from ports of entry to shelters in Mexico and confirm that a shelter will accept them. While this may have helped thwart cartel surveillance of migrants’ movements, many of our interview respondents note that their clients continued to be at high risk of violence by cartels because RMX processing was so lengthy. In fact, the provider above, Ana, notes that even under the second, revamped RMX program, many clients who were returned to Mexico or denied entry into the US remained “easy targets for cartels,” particularly for sexual assault. For example, as described in the previous section, cartels often surveil informal encampments, increasing risks specifically for women and girls; further, our research indicates that shelters are sites of GBV. Another respondent describes how in 2022, RMX enrollees had to incur enormous costs to travel to the US for their asylum proceedings because renting a car kept them safer from the cartels than taking the bus.

Expulsions under Title 42 are also associated with repeated crossings: prior to Title 42 expulsions in March 2020, only about 7 percent of migrants crossed the border multiple times, which increased to around 27 percent in 2021.<sup>xix</sup> Repeated crossings increase migrants’ exposure to violence by cartels and in turn increase the risk of expulsion itself. Asylum seekers in desperate need of safe haven are more likely to attempt to re-cross using more dangerous routes than during previously unsuccessful attempts to cross at ports of entry. Expulsions can be particularly risky for women,<sup>44</sup> especially when carried out in the middle of the night as one respondent, Tina,<sup>45</sup> notes:

*“CBP will expel women at 3 a.m. in one of the most dangerous cities in the world. So, they are completely unprotected. They don’t know where they are, and our [US] government just dumps them in the middle of the night...The process of expulsion is really traumatic.”<sup>46</sup>*

39 Under Title 42, asylum seekers can be granted permission to enter with consideration given to “significant law enforcement, officer and public safety, humanitarian, and public health interests.”

40 Interview 22, April 2022.

41 Interview 4, January 2022.

42 It is likely that Ana is referring here to the implementation of RMX under the Trump administration. However, we were unable to confirm this definitively.

43 Interview 13, February 2022.

44 We use the term “women” to denote all who identify as women.

45 All names have been changed.

46 Interview 22, April 2022.

## 58 percent of survey respondents note that their clients have frequently or very frequently faced violence because of their sexual orientation or non-cisgender identity while at the border.

Second, many migrants are unable to support themselves at the border because of limited economic opportunities. Migrants awaiting entry into the US often have to live in remote parts of border towns and cities, far from downtown areas where employment opportunities are more plentiful. Extended wait times because of exclusion from the asylum process increase asylum seekers' economic vulnerability as well as their desperation in needing to generate income. As another respondent explains, this often means that women who are in the process of searching for work, or who do have employment but who have to travel for work, face an even greater risk of violence from the cartels, such as sex trafficking:

*"In general, women who are trying to either find work or [who are]...commuting to and from their jobs, [are] exposed...to the risk of being followed. It is already known that in border cities, or at least in Ciudad Juarez, people know how to identify migrants and go after them for extortion, often to kidnap them in order to get what little money they have. They are...very clear targets for certain criminal groups in Mexico, many of which are dedicated exclusively to extorting migrants. And well, women are a more vulnerable target...And if we add to that the issue of sexual violence? I think this is a very big challenge for women: how to survive during the time it takes for the resolution of their [asylum] processes."<sup>47</sup>*

As the respondent states, prolonged wait times to apply for asylum at the border yield a dire economic reality, increasing the risk that women will be targeted by cartels. In addition, the longer they wait, the more isolated they are from any type of stable community, which makes women and LGBTQI+ individuals in particular even more vulnerable to violent crime. Tina, who spoke above about the dangers that expulsions pose, continues, by explaining:

*"[The] MPP is traumatic...It forces women to be unemployed... and vulnerable to organized crime and to just sort of be victims of random crime as well, because they're clearly migrants."*

Moreover, as another respondent notes, the extreme poverty that migrants face while waiting and trying to apply for asylum at the border is violence in and of itself:

*"I have hundreds of messages from women, from single mothers asking me for support for milk, for diapers...So that is violence, that is violence against the person."<sup>48</sup>*

As such, expulsion itself, and the insecure economic and housing conditions that expulsions and border closures engender, not only produce harm in and of themselves, but as discussed above, also increase the risk of migrants being targeted by cartels. News reports indicate that some cartels' primary criminal activities specifically involve extorting migrants.<sup>xx</sup> Our data, in particular, indicate that members of cartels are frequently the preparators of GBV, namely, sexual assault. Although cartel violence is widespread in certain border regions in Mexico, our data indicate that cartel violence against migrants does not occur in a vacuum; it is tied to the border conditions driven by US immigration and asylum deterrence policies.

<sup>47</sup> Interview 12, February 2022. Please note that the original language of the quote is Spanish.

<sup>48</sup> Interview 1, February 2022. Please note that the original language of the quote is Spanish.

**“it’s almost like the border is used [as a] conduit for abusers.”**

### 4.1.3 INCREASED EXPOSURE TO VIOLENCE FROM PERSECUTORS FROM HOME

Approximately 20 percent of interview respondents and 25 percent of survey respondents indicate that increased wait times at the border mean that women are frequently found and harmed by the persecutors from whom they initially fled in search of safety. As one respondent characterizes the border, “it’s almost like the border is used [as a] conduit for abusers.”<sup>49</sup> Interviews highlight that one of the consequences of border closure and the virtual elimination of asylum access is that a number of abusers are able to locate and re-traumatize survivors:

*“Well, the biggest barrier right now is Title 42, that people are not able to access the asylum system at all. This directly puts people’s lives in danger. There are people whose... abusers have found them at the border, have continued to attack them physically [and] continue[d] to threaten them.”<sup>50</sup>*

Several respondents have clients whose abusers found them in shelters or camp settlements as they waited to seek asylum in the US. As noted above and by other respondents, the existing network of shelters dedicated to survivors is under enormous strain and cannot adequately protect clients from abusers. Furthermore, interviews highlight that some women attempt to move from border city to border city to escape abusers, which makes them even more susceptible to violence as they travel. Relatedly, we find that GBV at the hands of partners or family members is common for migrants at the border: our survey respondents, on average, indicate that their clients have experienced GBV in the form of domestic, intimate partner, or other intrafamilial violence frequently. For these survivors, prolonged wait times at the border only further increase the risk of repeated violence by abusers that they have had to travel with.

### 4.1.4 COMPOUNDED RISKS FOR LGBTQI+ MIGRANTS

The risks of experiencing GBV, specifically due to insecure housing and exposure to violence at the hands of cartels at the border, are compounded for LGBTQI+ migrants.<sup>51</sup> LGBTQI+ migrants experience GBV at high rates at the border: 58

percent of survey respondents note that their clients have frequently or very frequently faced violence because of their sexual orientation or non-cisgender identity while at the border. One survey respondent notes that 100 percent of their LGBTQI+ clients have faced sexual violence. All of the providers we interviewed who work with LGBTQI+ migrants note that homophobia and transphobia are prevalent at the border. This environment, coupled with the protracted and uncertain nature of displacement at the border due to US immigration policies, increases the risk of violence for LGBTQI+ migrants.

The discrimination that LGBTQI+ migrants face also increases the difficulty of securing safe housing. Moreover, many interviews highlight the targeting of LGBTQI+ individuals within shelters:

*“We’ve seen a lot of attacks happening in shelters, especially where, you know, we’ve seen the attackers making comments like, “I’ll teach you how to be a real woman” when they know that the person identifies as lesbian or queer. We’ve seen many, many trans women get beat up because of their gender identity, and it’s extremely dangerous for them to be at the border.”<sup>52</sup>*

Our interviews also highlight that transgender clients in particular are at risk for GBV at the border; approximately 65 percent of all interview respondents spoke of the risk of violence that their transgender clients face as they wait to make asylum claims. Interview respondents cite countless examples of transgender clients who are physically assaulted because of their gender identity and state that many are solicited for sex work. Interviews also highlight that LGBTQI+ migrants face many barriers to finding employment, which increases their vulnerability to GBV. Moreover, the interview data indicate that LGBTQI+ migrants face significant harassment by police in border towns in Mexico, further exacerbating their risk of experiencing violence. These factors—housing discrimination, risk of violence in camps and shelters, lack of employment opportunities, and harassment by the police owing to their gender identities and sexual orientations—compound the risks of violence as LGBTQI+ migrants wait to apply for asylum.

In addition, transgender migrants experience GBV as they interact with the US asylum and immigration systems. For example, respondents note that transgender migrants become targets for violence when held in US immigration detention centers together with populations that do not match their gender identities. One respondent further describes how transgender migrants are often placed in isolation because of their gender identity, which negatively affects their mental health:

<sup>49</sup> Interview 10, March 2022.

<sup>50</sup> Interview 7, February 2022.

<sup>51</sup> Our data from interviews generally reflect on the experiences of gay, lesbian, queer, and transgender individuals; interviewees did not raise the experiences of non-binary or intersex clients.

<sup>52</sup> Interview 7, February 2022.

*“Detention centers don’t have any specific area for trans folks, and they’re not very willing to house trans folks with men or with women. And so, they’ll just put them in solitary, and they’ll be in solitary for the whole time that they’re in detention—[for] months at a time—not to mention [lack of] access to hormones [and other] medication.”<sup>53</sup>*

As such, LGBTQI+ migrants not only experience significant risk of GBV while they wait at the border, but also once they have entered the US immigration system, as has been documented in other reports.

#### 4.1.5 COMPOUNDED RISKS OF GBV FOR BLACK MIGRANTS

Similarly, anti-Blackness at the border can magnify the risks of GBV for Black migrants, particularly for women, girls, and non-cisgender individuals (in particular those from Haiti and West Africa) as they wait in Mexico for the opportunity to apply for asylum in the US. Providers who work with Black clients (approximately 30 percent of our interview respondents) note that Black women and girls are often heavily sexualized and suffer high rates of harassment as they are frequently solicited for sex work. One respondent recounted how the first words her client, a young Black woman, learned in Spanish were “How much?” because of how often men propositioned her for sex work.<sup>54</sup> This young woman’s experience reflects the long history, rooted in colonialism, of the hypersexualization of Black women across a variety of different countries.<sup>xvii</sup>

Many respondents also note that non-Spanish- and non-English-speaking Black migrants face significant barriers to accessing employment and services, from housing to food to translation. Interview respondents note that the isolation posed by language and cultural barriers can cause harm, particularly for Black women travelling with their persecutors, because they have such limited access to the support they need in order to escape. One provider recalls how a former client from Haiti who was travelling with her abuser was unable to leave him due primarily to language and cultural barriers:

*“I had one very memorable case of a woman who was in an abusive relationship she was trying to flee from. Because she was stuck in Tijuana and not able to cross, [her abuser] had confiscated her passport and all of her documents. It was very clear that he was able to kind of control her in a way that was unique to her vulnerability, that was a product of the geographic situation of her being stuck in Tijuana and reliant on a limited Haitian-[Creole]-speaking community there.”<sup>55</sup>*

The risks of GBV for many Black migrants are also compounded because of discrimination in housing and targeting by cartels, similar to the experience of LGBTQI+ migrants. Our data find that Black migrants face significant difficulty securing housing free of harassment and discrimination. Black clients, many providers note, are also easier targets for cartels due to their racial identity and/or skin color. A provider gave the example of one of his clients, a Garifuna woman, who, after being kidnapped and raped by cartel members, lives in added fear because she knows that her skin color makes her status as a migrant more conspicuous. As a result of her experiences at the border as a Black woman, she felt that she had no choice but to have her daughter try to cross into the US without her while she continues to wait for a chance to apply for asylum.

Interviews also highlight that the safety risks for Black migrants posed by insecure housing and cartels are compounded by discrimination at the hands of the Mexican police. Lana, a service provider, shares the particularly harrowing experience of one her clients that underscores the intersectional vulnerability of being Black and bisexual at the border:

*“He was walking on the street in Tijuana one day and some men drove up in a car and asked him, ‘Are you looking for work? Are you Haitian?’ And he said, ‘Yes.’ They took him in the car, put a gun to his head, and kidnapped him, taking him to a compound where there were about 10 people in the building. They told him, ‘You are going to become a prostitute. This is your job.’ They forced him to have sex with all 10 of the people in the house. He was kidnapped and kept in this house for months, where he was forced to have sex with both men and women. He is bisexual, which made him a lot more vulnerable. He was finally able to escape. But he didn’t file a police report because he was told that if he filed a police report, the same cartel that kidnapped him would find him because the police worked with the cartel...He had absolutely no access to justice. And now he is just living every single day in fear. He told us that when he is walking down the street in Tijuana and a car slows down, he just sprints because he is afraid of getting kidnapped again.”<sup>56</sup>*

**“We’ve seen many, many trans women get beat up because of their gender identity, and it’s extremely dangerous for them to be at the border.”**

<sup>53</sup> Interview 13, February 2022

<sup>54</sup> Interview 11, February 2022.

<sup>55</sup> Interview 28, March 2022.

<sup>56</sup> Interview 24, February 2022.

It is important to understand the violence perpetrated upon Lana’s client as the intersection of anti-Blackness and the inhumane conditions at the border exacerbated by US policies. As this report argues, the prevalence of cartels targeting migrants must be understood as a byproduct of US policies that have created a large population of vulnerable migrants, such as the client above, for the cartels to target.

Further, respondents note that Black migrants have an even harder time accessing asylum and are often treated differently than other migrants by US immigration officials. Previous studies also document the violence that Black migrants face at the hands of US immigration officials both at the border<sup>xxiii</sup>—a recent example being the treatment of Haitian migrants in Del Rio, Texas in 2021<sup>xxiv</sup>—and within the immigration system at large.<sup>xxv</sup> In one example, a respondent notes that immigration officials routinely ask for additional identification and documentation from Black migrants as compared to non-Black migrants:

*“I would take people to the border to present to the volunteer who would be registering people to be, you know, part of the waitlist [for metering]...They would routinely, for Black migrants, ask for two forms of identification, whereas with, you know, migrants who are from Central America and not Black...they would just ask for one form of identification.”<sup>57</sup>*

By disproportionately expelling or returning Black migrants to Mexico, US policies place them at further risk of GBV at the border—a risk that is then compounded by the significant anti-Black discrimination that they face there.

## 4.2. THE US ASYLUM PROCESS IS COMPLICIT IN MARGINALIZING AND HARMING SURVIVORS OF GBV

Just as US border policies create conditions that increase the risk of GBV for migrants at the US-Mexico border, our research finds that the actual US asylum process is hostile rather than compassionate towards those survivors of GBV who are ultimately able to surmount the obstacles to accessing it. The harm that GBV survivors experience within the US asylum system is indicative of broader harm that US asylum processes engender; providers we spoke to characterize the US asylum system as devoid of “empathy” and as a producer of institutional harm.

In particular, many respondents note that US immigration institutions are not responsive to the specific concerns of women and LGBTQI+ migrants, producing institutional gender-based harm. As another provider sums it up, the US system should be one where “women are heard, [and] where children are listened to and cared for”<sup>58</sup> as a step toward making it more humane. A painful example, shared by a provider recalling a client who had been detained by CBP<sup>59</sup> at the border, highlights the ways in which US officials ignore women’s needs. This client, a young woman, was forced by CBP to spend over 72 hours in a cell without access to sanitary items she needed for menstruation while being harassed by a CBP officer:

*“She was held in a holding cell that you’re not supposed to be in for more than 72 hours, like right at the border, but she was there for...maybe five days...She was held for significantly longer than she was supposed to be and was only allowed to be in her underwear. She was on her period and was given no menstrual sanitary items—pads, tampons or anything...[She was] forced to sit there cold in her underwear with this one officer that she said she felt like had it out for her...[he would] say really mean things to her and not let her sleep and make her get her little kid up who’s only five.”<sup>60</sup>*

The harrowing experience of this client is indicative of a system that regularly violates the dignity and safety of asylum seekers, often marginalizing women as well as LGBTQI+ migrants. These violations, as our research demonstrates, produce institutional harm for survivors of GBV seeking asylum in the US. As further described below, survivors frequently face an adversarial system through the intimidation, harassment, and in some cases violent conduct of US immigration officials, as well as through the mechanics of an asylum application process that is woefully and glaringly trauma uninformed.

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**“[Survivors are] telling their stories of... rape and sexual assault, and the [Border Patrol] officers are just grilling them about minor inconsistencies...”**

57 Interview 28, March 2022.

58 Interview 1, February 2022. Please note that the original language of the quote is Spanish.

59 See footnote 1.

60 Interview 13, February 2022.

### 4.2.1. THE ROLE OF US CBP OFFICERS IN DISMISSING, DETERRING, AND HARMING SURVIVORS

A well-established fact about the US asylum system is the arbitrary nature of whether one is granted relief.<sup>61</sup> Our interviews and a number of other studies<sup>62</sup> describe how success often depends on one's port of entry and the jurisdiction where one's asylum case is heard. CBP officers, as gatekeepers to the US asylum process, also hold tremendous discretion in deciding the fate of asylum seekers. Our interview data show how this is particularly problematic and pronounced for survivors of GBV. While survivors at the border must first inform CBP officials that they wish to apply for asylum in order to do so, engaging with CBP can itself re-traumatize them and set them up for failure. Providers also note that CBP officers often decide whether to grant or deny humanitarian parole<sup>63</sup> requests with little explanation or pattern:

*"We really don't understand why CBP approves some people for humanitarian parole and denies others. We have so many clients who are living in such vulnerable conditions and are really living in life-or-death situations, and CBP has rejected their humanitarian parole applications. One of the first cases that I personally worked on was a Haitian man who was HIV-positive with very severe mental health issues. He was experiencing suicidal ideation while living in the Chaparral refugee camp, and his humanitarian parole case was denied."*<sup>62</sup>

Moreover, consistent with the goal of deterrence itself, the behavior of CBP officers toward asylum seekers is often demeaning; a number of respondents recount instances where they ignored or belittled survivors:

*"Yeah, I mean, we've had people who are victims of gender-based violence in Mexico, go to the port of entry and ask immigration officials if they could apply for asylum...[In some cases] immigration officials responded by laughing at the person. I've seen this personally in multiple cases."*<sup>63</sup>

Such behavior by CBP officers not only leaves survivors feeling degraded, but contrary to the dictates of the Refugee Convention, it can also discourage survivors from asking for asylum at all, even upon arriving at the border:

*"She wanted to tell the officer, 'I want to seek asylum. I'm afraid to return to my country.' But the officer made it impossible for her to say that; he did not allow her [to speak], shut her down every single moment and said, 'I am talking, you need to listen to me.'"*<sup>64</sup>

Such behavior also underscores how asylum seekers interact with officers who are not trained to engage with them as survivors of trauma. Alarmingly, there is copious evidence that DHS enforcement agents, including CBP officers, are perpetrators of gender-based violence themselves, including allegations of domestic abuse and sexual harassment of colleagues.<sup>65</sup> Reports also suggest a widespread lack of accountability for abuse perpetuated by CBP officers, including significant bodily harm inflicted upon migrants.<sup>66</sup> Relatedly, the use of CBP officers to regulate the entry of asylum seekers poses additional challenges for survivors who have been abused by military, police, or paramilitary forces. For example, one interview respondent describes how a client from Cameroon who had been assaulted by military police could not bring herself to interact with border patrol as a result.

These and countless other examples from previous reports<sup>67</sup> illustrate how US policies driven by deterrence both reflect and influence the conduct of CBP officials. In DHS's 2020–2024 fiscal year plans, one of the only references to asylum is a note that the US immigration system remains "vulnerable to fraudulent claims for asylum and refugee status."<sup>68</sup> This focus on deterrence and fraud prevention comes at the cost of protecting vulnerable asylum seekers and affording them basic due process:<sup>65</sup>

*"They [CBP] make it abundantly clear that their job is keeping people out and not to actually do anything to monitor the safety or the well-being of people that are in the border region."*<sup>66</sup>

While the adversarial approach taken by CBP does not deter migration, this approach violates the Refugee Convention by reducing the chances that survivors who have already risked their lives to flee will even begin the asylum application process: 65 percent of survey respondents indicate that their clients have been expelled or turned back frequently or very frequently from the US because CBP officials have not followed required procedures, e.g., allowing asylum seekers to apply for asylum if they indicate a desire to do so. Survey respondents, on average, also indicate that about half the time their clients have not applied for asylum because of intimidation or discouragement by US immigration officials at the border. Providers note that CBP officers are generally unaware of asylum law and proceedings:

*"CBP specifically doesn't really understand asylum law, and so they often don't understand how to place people in proper proceedings. I think that that's also a failure of our system of not having any oversight of CBP...There needs to be a lot more oversight of CBP and training."*<sup>67</sup>

61 Humanitarian parole allows an individual to remain in the US temporarily for urgent humanitarian reasons, or to confer a significant public benefit. See <https://www.uscis.gov/forms/explore-my-options/humanitarian-parole>.

62 Interview 24, February 2022.

63 Interview 7, February 2022.

64 Interview 25, February 2022.

65 Recent news reports suggest that border patrol officers may be discarding documents, including passports and birth certificates of migrants that they interact with, which could negatively impact any potential asylum claims. See M. del Bosque, "," *The Guardian*, May 8, 2022.

66 Interview 29, February 2022.

67 Interview 30, April 2022.

The lack of trauma-informed training and accountability for the very gatekeepers to the asylum system serves in effect as yet another form of deterrence for survivors—this time, at the back end of their flight from persecution.<sup>68</sup>

## 4.2.2. TRAUMA, GBV, AND THE ASYLUM APPLICATION PROCESS

The United Nations High Commissioner for Refugees (UNHCR), in its “Handbook on the Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees,” calls upon states to implement asylum procedures that consider the trauma, fear, and dispossession that many refugees face. It asks states to provide translators and other services and to ensure that refugees interact with state officials who understand human rights commitments. The UNHCR’s handbook also acknowledges that asylum seekers may not have access to documentary proof for their claims, and as such it should be the responsibility of the government agent to either try to gather the necessary proof or to ascertain by other means the validity of asylum seekers’ claims. In short, asylum seekers are to be given the benefit of the doubt.<sup>69</sup>

The US asylum system, by contrast, takes an inappropriately adversarial approach to asylum seekers. This is particularly evident in how the impacts of trauma are given little-to-no consideration when CBP officials encounter survivors or other officials are required to evaluate their credibility. Over 60 percent of interview respondents observed manifestations of post-traumatic stress disorder in the demeanor and/or conduct of their clients who are GBV survivors. Interview respondents note that as a result of trauma, survivors may need to participate in multiple interviews, and need sufficient time, before they are able to share their stories:

*“Because of the trauma and the shame that is associated with gender-based violence, [clients] are reluctant to admit what’s happened to them...A client...who had been raped in Honduras where she was from was so afraid that she didn’t*

*want to tell anyone, including the Border Patrol officers that interviewed her...it took many, many hours’ worth of interviewing before she felt comfortable enough to talk to us about it as well.”<sup>70</sup>*

Due to both acute and/or prolonged trauma, a survivor of GBV may be unable to articulate their need for asylum on the spot in a way that is acceptable to CBP.<sup>71</sup> Their statements may then be taken out of context and unfairly used to discredit them if they try to ask for asylum again in the future.

Our interviews highlight how critical it is for survivors of trauma to receive specialized mental health services to help them process and ultimately articulate what has happened to them, as required in order to fill out the asylum application and orally present their cases in interviews with US asylum officers and during adversarial court proceedings. Many also struggle to build a legal narrative that the US asylum system deems credible because of how trauma impacts memory and compromises one’s ability to recall and recount details in a linear, chronological manner.<sup>72</sup> Approximately 60 percent of our interview respondents note that their clients who are survivors of GBV have difficulty gathering evidence and creating coherent timelines to fit inappropriately narrow credibility standards. Interviews highlight that when hearing testimony from survivors, asylum officials may seize upon small discrepancies in details or timelines that, in light of trauma, may have no actual bearing on credibility. As one provider who works with minors explains:

*“The level of trauma [for survivors] is very high because they’re telling their stories of gender-based violence, often rape and sexual assault, and the officers are just grilling them about minor inconsistencies...But we see that over and over again with both immigration judges [and] asylum officers who act like our clients are lying or kind of start from a place where they doubt their credibility.”<sup>73</sup>*

68 See *Zubeda v. Ashcroft*, 333 F.3d 463, 476 [3d. Cir. 2003] (vacating a Board of Immigration Appeals decision based in part on inconsistencies between the asylum testimony and the credible fear interview): “Numerous factors that might make it difficult for an [individual] to articulate his/her circumstances with the degree of consistency one might expect from someone who is neither burdened with the language difficulties, nor haunted by the traumatic memories, that may hamper communication between a government agent in an asylum interview and an asylum seeker.”

69 See <https://www.unhcr.org/4d93528a9.pdf>, in particular Sections 195–205.

70 Interview 7, February 2022.

71 Simply recounting sexual abuse can be traumatic, because in doing so, the victim must “relive the crime mentally and emotionally, leading some to feel as though the sexual assault is recurring.” See M. Garvin et al., “Allowing Adult Sexual Assault Victims to Testify at Trial via Live Video Technology” (National Crime Victim Law Institute, Violence Against Women Bulletin at 1–2, September 2011).

72 See J. Chaudhary, “Memory and Its Implications for Asylum Decisions,” *Journal of Health & Biomedical Law* 37 (2010): 44–45. Victims of repeated physical or sexual abuse may confuse details of particular incidents such as time or dates of particular assaults. *Singh v. Gonzales*, 403 F.3d 1081, 1091 (9th Cir. 2005) [citing D. Davis and W. C. Follette, “Foilbes of Witness Memory for Traumatic/High Profile Events,” *Journal of Air Law and Commerce* 66, no. 4, article 6 [2001]: 1421–1549; see also, e.g., *Fiadjo v. Att’y Gen.*, 411 F.3d 135, 154 [3d Cir. 2005] (“Trauma ... may have a significant impact on the ability to present testimony.”)]. See also, e.g., Dept. of Health and Human Services, SAMSA, “A Treatment Protocol: Trauma-Informed Care in Behavioral Health Services,” 61–62 [2014] [common effects of trauma include “exhaustion, confusion, sadness, anxiety, agitation, numbness, dissociation, confusion, physical arousal, and blunted affect”]; 136 id. at 69 [noting that signs of dissociation include fixed or “glazed” eyes, sudden flattening of affect, long periods of silence, monotone, responses that are not congruent with the present context or situation].

73 Interview 30, April 2022.

Another example of how trauma impacts credibility for survivors of GBV is the fact that, according to a number of interviewees, many survivors choose not to report violence to their local authorities. Survivors may fear humiliation by police and retaliation from their abusers if they find out. In societies where police routinely ignore such reports, there is little incentive for survivors to come forward and risk the wrath of an enraged abuser determined to inflict punishment.<sup>xxxii</sup> Yet survivors' failure to report violence is often used to discredit them. Lack of reporting, as our interview respondents note, also makes it very difficult for survivors to prove a basic element of asylum: a failure of state protection.<sup>xxxiii</sup>

The process of establishing credibility is also often racialized within the US asylum system. A respondent recalls a case in which a judge did not believe a Black woman because he felt that her demeanor as a survivor of GBV was different from other, non-Black survivors.<sup>74</sup> For Indigenous clients, language barriers compound challenges to building convincing narratives. Interviewees note that many clients from Central and South America who do not speak Spanish have a hard time accessing appropriate interpreters. The lack of adequate translation services can lead to gaps or inconsistencies in clients' statements during the initial asylum screening process, which can then be used against them during court proceedings.

Given the discretionary power that judges hold in adjudicating asylum cases<sup>xxxiv</sup> and the inadequacy of training on trauma-informed practices, survivors can face significant re-traumatization within the courtroom. This is particularly the case when they lack legal counsel. One interviewee recalls how her client, a young mother from Central America, was derided by the immigration judge for bringing her crying child to the courtroom. The interviewee notes that this left her client unable to effectively share her story with the judge. And for survivors who identify as women, encountering cisgender male officials throughout the asylum process can often create barriers to sharing their stories:

**“She wanted to tell the officer, ‘I want to seek asylum. I’m afraid to return to my country.’ But the officer made it impossible for her to say that; he did not allow her [to speak], shut her down every single moment.”**

*“Women who are historically accustomed to being persecuted by men are obviously going to have a very difficult time telling their story, revealing the most important issues that have been traumatic for them to a male judge and to be grilled by a male trial attorney...[The asylum] structure tends to still be very male dominated, which intuitively creates an environment that makes women feel uncomfortable and unsafe.”<sup>75</sup>*

In these ways, the US's adversarial asylum system does not account for how trauma impacts asylum seekers—and particularly survivors of GBV—and puts them at a distinct disadvantage at every step of the process.

74 Interview 22, April 2022.

75 Interview 22, April 2022.

### 4.2.3 THE US LEGAL FRAMEWORK FOR ASYLUM INHERENTLY DISADVANTAGES SURVIVORS OF GBV

The difficulties survivors face in meaningfully accessing the US asylum system are further exacerbated by the asylum legal framework itself. To win asylum, claimants must prove past persecution or fear of future persecution on account of one or more of the following five categories: race, religion, nationality, membership in a PSG, and/or political opinion. Sex, gender, or GBV are not explicitly named as a basis for asylum. This framework is reflected in the questions claimants are required to answer on the asylum application. Likewise, the questions make no mention of gender-based persecution, and—more importantly—the specific types of harm that this term signifies. This can create an additional burden on survivors to understand asylum law and how their experience of GBV can be a ground of asylum. In fact, 62 percent of survey respondents note that their clients who are GBV survivors frequently or very frequently do not apply for asylum because of a lack of familiarity with the complexities of US asylum law and procedures.

On average, respondents in our survey state that survivors frequently have not applied for asylum because of the difficulty of building a narrative—including around GBV—that is responsive to the application questions as currently worded. Of the providers who assist survivors with their applications, many note the difficulty of describing GBV as the basis of the claim. Some providers advise clients to make it a secondary basis because they fear GBV alone will not be enough. Most disturbing—but not surprising—is that our interviewees report that many survivors do not even classify the harm that they have survived as violence at all. Rather, they note that survivors understand their experiences of GBV such as rape and attempted femicide or torture as simply a “normal” part of their lives.<sup>76</sup>

Asylum claims based on GBV are often brought under the PSG ground, yet interviewees also note the extreme challenge of explaining to judges that survivors can be members of a cognizable PSG. Providers with experience working with clients on asylum cases note that judges can be highly skeptical of the PSG survivors assert. One interviewee shares an example of a specific PSG that a survivor of domestic violence asserted membership in: “women who cannot leave their marriage.” The judge found that the abuser was not motivated to abuse

“Sixty-two percent of survey respondents note that their clients who are GBV survivors frequently or very frequently do not apply for asylum because of a lack of familiarity with the complexities of US asylum law....”

the applicant because of her membership in this PSG, but rather that he would indiscriminately abuse all women. The interviewee explains that judges often reject this PSG as too broad when an abuser has a history of abusing other partners. At the same time, this provider notes that judges often see GBV as a personal dispute that happens within the home, and as such, it is not the US’s problem to fix. In these cases, a gender-based PSG might be considered too narrow. As a result, this provider notes that women who are political dissidents or former election officials are much likelier to succeed when they bring claims on this basis than those who bring claims on the basis of membership in a gender-based PSG.

By omitting explicit mention of gender, the US asylum framework both reflects and perpetuates a long-standing, culturally entrenched devaluation of women, girls, and non-cisgender individuals among both adjudicators and survivors alike.

Finally, in light of the above, survivors face tremendous obstacles to navigating the asylum process if they do not have legal representation and mental health services. Yet the US does not fund counsel for asylum seekers, and low-cost, or pro bono, legal access is quite limited: 59 percent of survey respondents note that their clients who are survivors of GBV have not applied for asylum frequently or very frequently because of a lack of legal representation. Most survivors need highly specialized, expert legal assistance to develop a compelling gender-based asylum case within a system that does not explicitly name gender as a basis for asylum. In this way, the system they encounter itself reduces their chances of gaining asylum in the US.

<sup>76</sup> For example, in 2022, a Tahiri client who survived repeated sexual assaults was denied permission to apply for asylum at the US border because she told a Border Patrol officer that she came to the US in search of a better life for her son. She did not know to specify that a better life meant a life free of persecution.

# 5. POLICY RECOMMENDATIONS AND CONCLUSION

In the US, opposing visions of immigration exist. In one, the US is a land of immigrants and one that welcomes asylum seekers. The other argues for an ethnonationalist state that must protect itself from the “threat” of migrants. Since its inception, US immigration policy has aimed to keep out certain groups of immigrants based mostly on racial identity. At the same time, the ethnonationalist view of the US has arguably become more mainstream and strident in the past few decades. This report documents the human toll of such a vision, and specifically how it harms women, girls, and LGBTQI+ individuals.

Our findings show how US asylum deterrence policies, as well as the US asylum legal framework and process itself, are complicit in harming and marginalizing survivors of GBV and those most vulnerable to it. These policies normalize GBV as an inevitable consequence of pursuing safe haven in the US. Although our research highlights GBV that occurs in Mexico, our data demonstrate that US policies integrally influence its nature and scope.

First, our data show how policies such as expulsions under Title 42, returns under RMX, and turnbacks contribute to conditions that foster various forms of GBV at the US-Mexico border such as rape, human trafficking, sexual assault, psychological trauma, kidnapping, and other abuses in the following ways:

- 1) Expulsions and border closures increasingly force migrants into precarious housing conditions. This increases their vulnerability to violence and harassment because of sex, gender identity and expression, sexual orientation, and racial or ethnic identity.

- 2) Cartels and other organized criminal networks can more easily target migrants for GBV when they wait for prolonged periods of time at the border, are routinely expelled from the US, lack employment opportunities, and also lack secure housing.
- 3) Prolonged wait times at the border in conjunction with insecure housing make it much easier for perpetrators of GBV to locate and re-harm survivors who have tried to flee persecution at home such as domestic violence and related abuse.

The risks of suffering GBV at the US border are magnified for Black migrants who are disproportionately impacted by hostile US policies and consequently face further anti-Black discrimination and violence at the border.

Second, our report details the ways in which the US asylum system and application process itself can re-traumatize survivors of GBV and impair their ability to fully and fairly present their claims. US Border Patrol officers—as the gatekeepers of the asylum process—routinely engage in abusive and even violent conduct toward survivors in certain cases. We also find that the US asylum legal framework itself denies equal access to protection for survivors by failing to explicitly name gender as a ground of asylum.

To rectify these harms, the US must implement a vastly different system than the one it currently employs. It must be one that is humane and that actively centers the legal rights and dignity of asylum seekers and migrants, rather than one that harms them. This new approach requires a significant normative shift in US politics and public discourse.

There are, however, concrete steps that the US government can take at the executive and congressional levels to begin to realize such a transformation and to mitigate the harm that current US policies engender. To that end, we urge the US government to take the following actions:

### 1. Abandon the deterrence-based immigration and asylum paradigm.

Extensive research shows that deterrence policies do not actually work to deter migration<sup>xxxix</sup> and needlessly harm migrants and asylum seekers instead, in clear violation of US human rights obligations. To restore compliance, and promote a system that respects the dignity of all migrants, the Biden administration must:

- **Cease the use of policies that require asylum seekers to wait in Mexico before or while applying for relief.**

Examples past and present include the metering program, the Migrant Protection Protocols/Remain in Mexico,<sup>77</sup> and expulsions under Title 42. Specifically, the administration should immediately:

promulgate regulations terminating the Title 42 expulsions policy consistent with *State of Louisiana et al. v. Centers for Disease Control and Prevention, et al.*<sup>78</sup> In the interim, consistent with *Huisha-Huisha v. Mayorkas*<sup>79, 80</sup> as well as the Immigration and Nationality Act of 1965, DHS should also require all Border Patrol officials to affirmatively ask all migrant families and individuals they encounter in the US who have entered without inspection if they have a fear of return and would like to apply for asylum;

permit remaining RMX enrollees to disenroll from the program at any US port of entry.

- **Cease the use of new or other existing immigration and asylum deterrence policies.** While ending border closure and expulsion policies is a critical first step toward promoting a more humane asylum system and restoring compliance with US human rights obligations, these policies must not be replaced with new deterrence policies. The US should also abandon use of other policies that harm rather than protect asylum seekers such as detention and prosecution for irregular entry. It is well known that detention produces significant psychological and physical harm.<sup>81</sup> It adversely impacts LGBTQI+ individuals in particular; many experience harassment while in detention because of their sexual orientation and/or gender identities. And transgender individuals who are placed in isolation or with populations that do not match their gender identities face further threats to their physical and mental wellbeing.<sup>81</sup>

**Our findings show how US asylum deterrence policies, as well as the US asylum legal framework and process itself, are complicit in harming and marginalizing survivors of GBV and those most vulnerable to it. These policies normalize GBV as an inevitable consequence of pursuing safe haven in the US.**

The US Congress should also pass legislation such as the Refugee Protection Act, which would expressly prohibit expulsions and turnbacks of asylum seekers.<sup>82</sup>

### 2. Invest in an asylum-seeker-centered model of service provision.

Legislation establishing and funding “Welcome Centers” for asylum seekers at the border is one potential new pathway toward creating a more humane and service-oriented system that rejects a deterrence-based approach. We propose that at these centers, asylum seekers would receive Know Your Rights information translated into their native languages. They would further receive assistance accessing government-funded and/or other legal counsel, social services, medical, employment, mental health, cultural orientation, transportation, housing, and other auxiliary services as potentially complemented by the DHS Case Management Pilot Program (CMPP).<sup>82</sup>

We envision that Welcome Center personnel would have experience in trauma-informed, survivor-centered service delivery as defined in recommendation 3 below. Personnel would receive regular, in-person training anchored in compassion, respect, and the fundamental premise that pursuing asylum is a legal right under the Immigration and Nationality Act. Both training curricula and resources provided to asylum seekers would be developed collaboratively with outside experts—including survivors of trauma and practitioners who serve them. Independent monitors would have unrestricted access to Welcome Centers, and personnel performance evaluations would include detailed assessments of compliance with trauma-informed, survivor-centered practices.

77 See <http://justiceactioncenter.org/wp-content/uploads/2022/08/certified-judgment-RMX.pdf>.

78 For an overview see Law360, “*Louisiana et al. v. Centers for Disease Control and Prevention et al.*,” <https://www.law360.com/cases/624af481d47fb101112b48db/articles>.

79 For an overview see ACLU, “*Huisha-Huisha v. Mayorkas*” (2022), <https://www.aclu.org/cases/huisha-huisha-v-mayorkas>.

80 Oxfam America is a plaintiff in this suit.

81 See for example the following article on the impact of detention on the health of asylum seekers: E. K. Singer, K. Molyneux, K. Kaur, N. Kona, G. S. Malave, and K. A. Baranowski, “The Impact of Immigration Detention on the Health of Asylum Seekers during the COVID-19 Pandemic,” *SSM - Qualitative Research in Health* 2 (2022).

82 See Section 135.

### 3. Fully and meaningfully implement trauma-informed, survivor-centered policies and practices within all US Department of Homeland Security (DHS), Department of Justice (DOJ), and Department of State (DOS) components that interface with migrants and asylum seekers.

Policies should be anchored in compassion, respect, and the fundamental premise that pursuing asylum is a legal right under the Immigration and Nationality Act. According to DOJ, a trauma-informed approach “emphasizes creating services and programs that are sensitive and directly responsive to the trauma that many survivors experience after a violent crime. Trauma-informed care programs identify and limit potential triggers to reduce their re-traumatization and protect their mental and emotional health...”<sup>83</sup> DOJ defines a victim/survivor-centered<sup>83</sup> approach as: “[T]he systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner...[it] seeks to minimize re-traumatization...by providing the support of victim advocates and service providers.”<sup>84</sup>

Trauma-informed and survivor-centered policies that the Biden administration should adopt include:

- **allowing survivors sufficient time to process trauma and access counsel and mental health services before requiring them to present their asylum claims.** Policies that impose accelerated adjudication times for all asylum claims<sup>85</sup> should be rejected;
- **applying credibility standards generously, consistent with UNHCR guidelines on women’s refugee status determinations<sup>86</sup> and best practices developed by trauma experts that recognize how trauma impacts the demeanor of survivors and their ability to recount chronological timelines and traumatic details.** For example, during asylum interviews, survivors must be informed of their right to pursue asylum as a principal applicant and not merely as a derivative of their husband or parent. Accurate, culturally competent translation must also be viewed as essential to the adjudication process, and survivors should be permitted to choose the gender of their adjudicator and interpreter.

Comprehensive, up-to-date, ongoing in-person training on policies should be mandatory for all agency personnel. Training curricula should be developed and presented collaboratively with outside experts, including survivors of GBV and practitioners who serve them. Topics should include trauma, gender-based violence, racial discrimination, exploitation of children, and discrimination against LGBTQI+ individuals.

To help ensure that the US Border Patrol in particular complies with trauma-informed and survivor-centered policies:

- **the Biden administration should promulgate regulations requiring that US Border Patrol personnel performance evaluations include detailed, ongoing assessments of compliance and that awarding of annual bonuses is contingent upon compliance.**

The US Congress should:

- **establish independent monitors to oversee US Border Patrol** engagement with all migrants. Monitors should reinforce the fundamental premise that all individuals are entitled to due process in applying for relief as provided in the Immigration and Nationality Act, and that Border Patrol’s functions do not include influencing an asylum seeker’s decision as to whether to apply. Monitors should document and intervene if they observe any attempt, through threats, coercion, intimidation, antagonism, or any other means, to dissuade an individual from pursuing their legal rights;
- **pass legislation that promotes independent accountability measures. Examples include:**
  - the Investigative Integrity Act.** The Act is designed to “protect the integrity of criminal investigations into use-of-force incidents involving federal employees and to prevent agencies from sidestepping Department of Justice (DOJ) oversight. The Investigative Integrity Act will: (1) Establish Department of Justice (DOJ) primacy over all use-of-force investigations involving federal law enforcement officers; (2) Provide DOJ authority to analyze federal agency patterns and practices of use of force. (DOJ currently only has authority to look at state/local law enforcement patterns and practices); and (3) If a federal employee does interfere with the DOJ investigation, the bill mandates that the Attorney General (AG) consider charging that person with obstruction of justice;”<sup>87</sup>

83 We use the term “survivor” to denote individual who has experienced GBV. However, the US DOJ uses the term “victim.”

84 This definition is used by the DOJ in the context of human trafficking prosecutions but is equally applicable in the immigration and asylum context: <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/>.

85 See Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18,078 (Mar. 29, 2022), DHS Docket No. USCIS-2021-0012, RIN 1615- AC67; A.G. Order No. 5369-2022, RIN 1125-AB20.

86 UNHCR Guidelines on International Protection, Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, Section 68; see also, e.g., Executive Committee of the High Commissioner’s Programme, Refugee Women and International Protection No. 64, § a)(iii) (1990).137

87 See < <https://www.congress.gov/bill/117th-congress/senate-bill/1700>>

**the Border Accountability, Oversight, and Community Engagement Act.** The Act aims to promote accountability by (1) establishing a DHS Commission comprised of representatives from northern and southern border states to help develop policy; (2) establishing the DHS Office of the Ombudsman to address border issues; (3) establishing a CBP border liaison office; (4) mandating certain training and education for CBP; and (5) requiring reports on CBP use of body-worn cameras, use of force policies, and death of migrants while in custody.<sup>88</sup>

#### **4. Eradicate racial bias within Department of Justice (DOJ), Department of Homeland Security (DHS), and Department of State (DOS) components that interface with migrants and asylum seekers.**

This report and many others document how racial bias continues to shape the development and implementation of US asylum and immigration policies. As this report explains, racial bias can be particularly insidious for women and LGBTQI+ individuals. It is past time for the DOJ, DHS, and DOS to address and rectify the inherent racial bias within US immigration and asylum policies.

DOJ, DHS, and DOS have all issued Equity Action Plans that aim to advance equity, racial justice, civil rights, and equal opportunity for all, including “people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”<sup>xliii, xliiv, xlv</sup> We urge the administration to fully implement the Equity Action Plans. We acknowledge, however, that their implementation cannot mitigate the full force of racial bias in US immigration and asylum policies. Yet it is a critical starting point.

Training curricula for the Equity Action Plans should be developed and presented collaboratively with outside experts, including directly impacted individuals and practitioners who serve them.

To help ensure compliance with the Equity Action Plans, the Biden administration should promulgate regulations requiring that agency personnel performance evaluations include detailed, ongoing assessments of compliance, and that awarding of annual bonuses is contingent upon compliance. Regulations should also require that, pursuant to Section V of DHS’s Plan, information about complaint and redress procedures be appended to all immigration forms.

#### **5. Explicitly recognize gender as a key modality of persecution in US asylum law.<sup>xlvi</sup>**

Survivors of gender-based violence, and particularly those who are indigent and have no access to counsel, face systemic obstacles when applying for asylum. Survivors have no way of knowing that they may qualify when filling out the asylum application because it omits any mention of gender as a basis for relief. This is because gender is not explicitly named in the US Immigration and Nationality Act (INA) as a ground of asylum, nor is it listed in either the INA or implementing regulations as an example of a cognizable PSG. The 1951 Refugee Convention did not explicitly include gender in its definition of a refugee, although UNHCR guidelines allow for gender-based claims to be brought, most often under the PSG ground. Numerous other Convention and Protocol signatories—such as Spain, Sweden, and the Czech Republic—have updated their laws to name gender as either a PSG and/or an independent, sixth ground of asylum.<sup>xlvii, xlviii</sup> It is past time for the US to do the same.

To this end, the US Congress should amend the Immigration and Nationality Act to name gender as a sixth independent ground of asylum and also name gender as an example of a cognizable PSG. In the interim, until the INA is amended, the administration should promulgate regulations that 1) name gender as an example of a cognizable PSG; 2) require that DHS append its pamphlet on GBV<sup>89</sup> to all immigration forms, with links to translated versions; and 3) require that the asylum form specify that gender is an example of a PSG and include a non-exhaustive list of examples of GBV such as domestic violence, forced marriage, and female genital mutilation/cutting.

88 See <https://www.lujan.senate.gov/newsroom/press-releases/lujan-colleagues-introduce-border-patrol-accountability-legislation/>

89 See [https://www.dhs.gov/sites/default/files/2022-07/OPS\\_DHS\\_GenderBasedViolence\\_%20ENG.pdf](https://www.dhs.gov/sites/default/files/2022-07/OPS_DHS_GenderBasedViolence_%20ENG.pdf).

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Despite the administration’s stated goal of reducing gender-based violence at home and abroad, and its recognition that economic insecurity increases vulnerability to violence and abuse, in practice, US immigration and asylum policy systematically disenfranchises and endangers women, girls, and LGBTQI+ individuals.

#### **6. Support alternative pathways for processing asylum seekers, such as the Refugee Protection Act Section 206(c)(5)(A).**

The US Congress must pass the Refugee Protection Act, which creates a Central American Refugee Program protecting “Refugees of Special Humanitarian Concern.”<sup>90</sup> Refugees of Special Humanitarian Concern are those who have suffered or fear persecution in the form of domestic, sexual, or other forms of gender-based violence, including forced marriage and persecution based on sexual orientation or gender identity. The program must include 1) comprehensive outreach to inform the public of its existence; 2) a trauma-informed approach to staff hiring, service delivery, and training; 3) full funding and implementation of the State Department Equity Action Plan; 4) staff performance evaluations that assess compliance with the plan and trauma-informed practices outlined in the training curricula; 5) collaboration in developing training curricula with outside experts—including survivors of trauma and practitioners who serve them—on trauma, gender-based violence, human trafficking, exploitation of children, and racial equity; 6) safety measures that aim to reduce survivors’ risk of harm while they wait for their cases to be processed; and 7) independent monitors to oversee proper implementation of the program.

#### **7. Align US immigration and asylum policies with US foreign policy goals that seek to reduce gender-based violence and promote women’s economic and social empowerment.**

In March 2021, President Biden signed an Executive Order (EO) establishing the White House Gender Policy Council (GPC).<sup>i</sup> The EO mandates that the GPC coordinate the federal government’s activities related to gender equity and equality, including: 1) to coordinate an “interagency response to gender-based violence at home and abroad;” and 2) to establish a new position—the Special Assistant to the President and Senior Advisor on Gender-Based Violence, tasked with reviewing and updating the 2016 “United States Strategy to Prevent and Respond to Gender-Based Violence Globally.”<sup>ii</sup>

Building on this EO, in October 2021 the administration released the first-ever National Strategy on Gender Equity and Equality, which included “Promot[ing] Gender Equity and Fairness in Justice and the Immigration System” as one of its 10 strategic priorities.<sup>iii</sup> In particular, the strategy commits to reducing “vulnerability to abuse and exploitation” while strengthening access to “safety, justice, and asylum and humanitarian relief for immigrants and noncitizens, especially women, girls, and LGBTQI+ individuals,” including those who have faced persecution “on the basis of membership in a gender-based group—such as victims of gender-based violence.” The strategy also promises to “seek timely adjudication of immigration petitions for survivors of domestic violence, sexual assault, and human trafficking, and other crimes” and to “support humane and trauma-informed practices at the US border.”<sup>iiii</sup>

Similarly, the administration’s foreign policy goals are grounded in the notion that the “full participation of all people—including women and girls—across all aspects of our society is essential to the economic well-being, health, and security of our Nation and of the world.”<sup>iv</sup> This is particularly relevant in Central America, where the US has invested heavily in promoting women’s empowerment and combatting gender-based violence, both for its own sake and as a means of addressing irregular migration.

Despite the administration’s stated goal of reducing gender-based violence at home and abroad, and its recognition that economic insecurity increases vulnerability to violence and abuse, in practice, US immigration and asylum policy systematically disenfranchises and endangers women, girls, and LGBTQI+ individuals. As the accounts in this report demonstrate, the US has a long way to go to live up to these and other commitments on gender equity; in fact, the US is one of only seven countries that has yet to ratify the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

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90 See Refugee Protection Act of 2019, <https://www.congress.gov/bill/116th-congress/house-bill/5210/text#toc-H22B0D37162954D5AAA177F47B6CE4C42>.



Tents on the courtyard of the Agape Mission which currently serves as a migrant shelter. Tijuana, Baja California Norte, Mexico. Winter, 2022. Please note that the data and analysis of this report do not include this shelter. ©James Rodriguez/Oxfam America.

While US foreign policies focus on addressing the root causes of migration and supporting gender equality, they must also address the ways in which bilateral<sup>lv,lvii</sup> migration agreements that aim to deter migration fuel perilous journeys that increase the risk of GBV. This includes agreements that result in the US abdicating its responsibilities to asylum seekers and in third-party countries enforcing deterrence measures on behalf of the US;<sup>91</sup> this is neither sustainable nor humane. We urge the Biden administration to:

- **include commitments to ensure safe and secure journeys in bilateral migration agreements.** Agreements must be transparent and consistent with US domestic and international human rights obligations;
- **Implement US foreign policies that promote women’s economic empowerment, prevent the economic deprivation that women, girls, and LGBTQI+ migrants experience at the US southern border, and mitigate the risk of their exposure to GBV;**
- **fully fund and implement all of the immigration justice-related commitments in the National Strategy on Gender Equity and Equality, particularly improving pathways to safety for GBV survivors.**

The US’s racialized, deterrence-based asylum system harms survivors of gender-based violence, and women, girls, and LGBTQI+ individuals in particular. It drives conditions that increase their risk of experiencing GBV at the US southern border. It is imperative and long overdue for the US to change course by implementing policies that align with, rather than violate, its international human rights commitments and moral obligations. We believe that these recommendations will bring the US closer to establishing a more humane and welcoming immigration and asylum system rooted in dignity and respect for all migrants, rather than in dehumanization and xenophobia. If implemented, these recommendations will serve as a critical step toward establishing a system that centers, rather than marginalizes and harms, the most vulnerable. Continuing to use deterrence as the foundation of US migration policies will only inflict further suffering upon large numbers of individuals, including survivors of GBV and other abuses. We urge the adoption of the recommendations in their entirety.

91 A recent example is the now-defunct Asylum Cooperation Agreements that the US had with El Salvador, Guatemala, and Honduras that required asylum seekers to seek refuge in those countries before applying for asylum in the US. The US also routinely relies on Mexico’s National Guard to deter US-bound migrants from crossing from Mexico’s southern border with Guatemala (see *Aljazeera*, “Mexico and US to Launch Plan to Stem Central American Migration,” December 1, 2021, <https://www.aljazeera.com/news/2021/12/1/mexico-and-us-to-launch-plan-to-stem-central-america-migration>).

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COVER IMAGE: Scene inside the dormitories at the Agape Mission which currently serves as a migrant shelter. Tijuana, Baja California Norte, Mexico. Winter, 2022. The image was chosen so as to protect the anonymity of its subject. Please note that the data and analysis does of the report does not include the shelter in this image. ©James Rodríguez/Oxfam America.



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