

## **Externalizing Asylum**

How US policies evade international obligations and spread the criminalization of migration into Central America.

### **Acknowledgements:**

This report is published by the Black Alliance for Just Immigration (BAJI).

Author

Metztlal Ocbazghi, Research Consultant

Editor

Nekessa Opoti, Communications Director

Cover design

Walter Cruz

BAJI fights for the rights of Black migrants and African Americans through organizing, legal advocacy, research, policy, and narrative building to improve the conditions of Black communities by advancing racial justice and migrant rights. BAJI was founded seventeen years ago by veteran civil and human rights activists who were concerned about a wave of unjust immigration enforcement laws. BAJI has offices, staff and organizers in Atlanta, GA; Los Angeles, CA; Houston, TX; Miami, FL; Minneapolis, MN; Wichita, KS; New York, NY and Washington D.C.

BAJI is especially appreciative of Gabriella Oveido with the [Centro por la Justicia y la Derecha Internacional](#) (CEJIL), and Dennis Castillo Fuentes with the [Instituto sobre Migración y Refugio LGBTIQ para Centroamérica](#) (IRCA CasaAbierta) for contributing their expertise and providing important context on the impact of migration policies at the local and community level in Central America.

Most significantly, BAJI is eternally grateful to the Black migrants who have shared their personal stories with us. We continue to make a commitment to amplify their experiences and to fight for more just laws so that they may find the safety and dignity that they deserve.

### **PREFERRED CITATION**

Ocbazghi, Metztlal (Washington DC, 2023. Last edited 2024). "How US policies evade international obligations and spread the criminalization of migration into Central America." Black Alliance for Just Immigration (BAJI).

## Introduction

Faced with inhumane migration policies in Europe, an increasing number of Black migrants are traveling through South and Central America in the hopes of seeking asylum in the United States. A substantial shift in both the number and demographics of migrants arriving at the U.S.-Mexico border has resulted in restrictive and discriminatory migration policies throughout the region.

In BAJI's [series opener where we critique harmful asylum policies](#), we defined 'externalizing asylum' as a practice that imposes restrictive migration policies beyond a country's border to evade its legal obligations. Instead of acknowledging the limits of transit countries, the United States pushes its responsibility to provide asylum protections onto Central American countries in order to circumvent international law. In many Central American countries, irregular migration is not a criminal offense. Despite this fact, the United States uses regional migration agreements to export harmful anti-migrant policies that increase militarized border police, restricts border controls, and leads to the illegal detention and deportation of migrants.

Externalizing asylum disproportionately harms Black migrants. Policies that criminalize migration and restrict freedom of movement force Black migrants to remain in countries that struggle with systemic racism and subject them to biases in asylum processing, access to care, and legal representation. While in transit, Black migrants are especially vulnerable to violence, extortion, discrimination, and prolonged detention. Restrictive policies do not stop migrants from seeking safety abroad. Instead, they jeopardize the safety of migrants in need of protection and exacerbate dangerous conditions faced while in transit.

In this report, we call out the United States for evading its obligations under international law and spreading policies that criminalize migration throughout Central America.

## United States

In recent years, the right to seek asylum in the United States has been repeatedly violated through restrictive border policies, including [Title 42, the 'Remain in Mexico' policy, and "metering"](#). The United States' unwillingness to uphold asylum laws, especially for Black migrants, stretches back to the unlawful detention of over 30,000 Haitian asylum-seekers at Guantanamo Bay in the 1980s.<sup>[1]</sup> Every iteration of US immigration policy creates physical and administrative hurdles to limit Black migrants' ability to legally apply for asylum.

Soon [after Title 42 ended](#), the United States implemented a new set of immigration rules that continues to violate migrants rights. In 2023, the Biden administration launched an asylum and transit ban that imposes a "presumption of ineligibility for asylum" and a requirement to apply for asylum in a transit country before arriving at the US border.<sup>[2]</sup> Although the policy was struck down in US District Court, it remains in effect while the Biden administration appeals the decision.<sup>[3]</sup> In addition, the Biden administration also announced that migrants will soon be required to complete asylum screenings in processing centers in Colombia and Guatemala, with more centers to come

throughout Central America.<sup>[4]</sup> In the centers, migrants will be pre-screened to determine eligibility for refugee resettlement, parole programs, family reunification or existing labor visas. Migrants must be determined eligible for a legal pathway before continuing their journey, and those that do not go through processing centers will face penalties and restricted access to asylum processing at the US border.

The asylum and transit bans are an egregious violation of asylum law and the processing centers will create hurdles that effectively diminish the rights of asylum seekers, leaving them stranded in transit countries indefinitely. The centers are expected to screen 5,000 to 6,000 migrants a month, however the flow of migration through the region is drastically higher.<sup>[5]</sup> In July 2023 alone, over 55,000 migrants crossed into Central America through the Darien Gap<sup>[6]</sup> and the US Customs and Border Patrol reported over 180,000 migrant encounters across the US southwest land border.<sup>[7]</sup> In addition to prolonged wait times, transit and third-party countries have agreed to accept asylum referrals, including Colombia, Guatemala, Canada, and Spain.<sup>[8]</sup> Asylum applications for migrants that would otherwise be eligible for protections would instead be pushed onto other countries, violating migrants' rights to seek asylum in the United States.

Migrants will be required to use a mobile app in order to schedule appointments at the centers, a process that is already creating undue burdens for asylum seekers at the US-Mexico border through CBPOne.<sup>[9]</sup> In Mexico, migrants with little financial means struggle to find available appointments, wait indefinitely in camps with inadequate safety measures, and are sometimes required to travel significant distances to reach their appointment location.<sup>[10]</sup> Black migrants face specific challenges with mobile app software like CBPOne. Civil society organizations have reported that the app's facial recognition software fails to register Black migrants with darker skin tones, leaving them without the ability to schedule appointments.<sup>[11]</sup>

These immigration rules are designed to allow the US to evade the responsibility to provide asylum protections while imposing stricter penalties at its southern border under Title 8. In 2022, US immigration agencies reported a record-high of over 2.4 million migrant encounters at the southern border.<sup>[12]</sup> The total number of arrests made by the U.S. Customs Border Patrol specifically has nearly doubled between FY2019 and July of FY2022, while **the number of arrests for Black migrants has increased ten-fold within the same time-frame.**<sup>[13]</sup> After Title 42, Title 8 is the sole authority to process and remove migrants at the border and the Biden administration has expanded penalties under this law. Migrants that cross the US border now face re-entry bans, possible criminal charges, and an expanded expedited removal process.<sup>[14]</sup> Title 8 and the asylum ban have led to mass due process violations and the systematic deportation of individuals who may qualify for protection in the United States.<sup>[15]</sup>

The United States' approach to migration is void of the humanitarian obligations required by international law and starkly contrasts the Biden administration's empty promises to protect migrants. The United States exports its security-focused migration practice throughout Central America through agreements that increase restrictive policies and militarize border police.

## Panama

For many Black migrants, the first encounter with the US immigration system happens once they arrive in Panama. As the only strip of land connecting North and South America, Panama's southern border is one of the most vital parts of migrants' journey to the United States. More migrants are crossing the Darien Gap, sixty miles of dense forest along the Colombia-Panama border, than ever before. Those that survive one of the world's most dangerous migration routes continue their journey north through Central America to reach the United States.

As of July 2023, **over 251,000 migrants crossed through the Darien Gap**, which is nearly **four-times the number reported in the same period last year.**<sup>[16]</sup> A significant share of migrants crossing into Panama are from majority Black countries of origin. Since 2021, over 156,000 Black migrants have crossed the Darien Gap.<sup>[17]</sup> In January 2023 alone, **over 24,000 Black migrants entered Panama, making up 45% of the total migration flow.** Haiti, Cameroon, Somalia, Congo, and Nigeria are among the top countries of origin.

Within the region, Panama has one of the closest diplomatic ties with the United States and a long history of cooperation on migration policy. **In 2015, the United States entered into agreements with Panama, Colombia, and Costa Rica to restrict the movement of African, Caribbean, and Asian migrants crossing the Darien Gap.**<sup>[18]</sup> These agreements established a 'controlled flow' migration approach, where US-funded border police manage the flow of migrants crossing into Central America. In 2022, US-Panama cooperation was reinforced through the Bilateral Arrangement on Migration and Protection.<sup>[19]</sup> The treaty further integrates migration management processes between Panama and the United States by adopting US-style border policies that increase border policing and the illegal detention of migrants.

According to Centro por la Justicia y la Derecha Internacional (CEJIL), a human rights organization based in Latin America, Panama's restrictive migration management process has a devastating impact on vulnerable migrants in the region, particularly Black, indigenous, women, and LGBTQIA groups. After crossing through the Darien Gap, migrants are immediately confronted by SENAFRONT, Panama's border patrol trained and funded by the US military. Migrants are then transported directly to illegal detention centers run by Panamanian authorities. These centers are inaccurately referred to as "camps" and do not uphold humanitarian standards or access to asylum processes required by international law. Migrants are held in detention centers for weeks until they are scheduled to be transported by bus to the Panama-Costa Rica border. The Panamanian government charges migrants a fee for this transportation and those with little financial means remain in detention until they are able to raise funds. While Panamanian authorities oversee the detention facilities at its southern border, the United States directly funds this migration management system that leads to the systematic abuse of migrants.

**Black migrants are among the largest groups crossing the Darien Gap and criminalization policies and systematic racism affect the way they are perceived and treated by border police.** CEJIL reported specific cases of torture, inhumane treatments, and a pattern of hostility towards Black

migrants by border police and within the detention centers. Survivors of the Darien Gap crossing are often victims of sexual violence and do not have access to adequate care. **Black women specifically receive less medical attention while in detention.** SENAFRONT lacks accountability mechanisms for its officers, who act with impunity when violating migrant rights. In 2023, the United Nations published a report documenting claims of sexual abuse, deprivation of liberty, and forced labor in the detention centers.<sup>[20]</sup> Migrants perform forced labor and SENAFRONT officers request sexual exchanges from women and girls who lack the money to cover transportation costs. Panama fails to create systems to investigate these incidents and denies migrants access to justice when they are victimized by SENAFRONT agents.

**Many agreements between the United States and Central American countries are not public, and the lack of transparency prevents the creation of accountability and human rights mechanisms to protect migrants.** According to the United Nations High Commissioner for Refugees (UNHCR), such policies lead to the indefinite “warehousing” of migrants in isolated places or in punitive conditions, at great harm to their physical and mental health.<sup>[21]</sup> **Despite overcrowding in their existing immigration camps, the US continues to pressure the Panamanian government to hold more extra-continental migrants.** The UNHCR has been clear that measures to directly or indirectly prevent asylum-seekers and refugees from reaching a particular ‘destination’ country, neglecting to guarantee safeguards and international protections, and shifting responsibility for meeting international protection needs to another state is a violation of human rights law and places migrants at greater risk.

## Costa Rica & Nicaragua

Despite well-documented human rights violations in Panama, the United States continues to incentivize migration policies that criminalize migrants seeking humanitarian protections. The number of migrants crossing from Panama into Costa Rica has increased by 77% between 2021 and 2022.<sup>[22]</sup> **In response to increased migration flows, the United States, Costa Rica, and Panama entered into a multilateral agreement in 2023 to crack down on migrants crossing through the Darien Gap and increase deportations to Colombia.**<sup>[23]</sup> In Costa Rica, migrants are required to obtain visas in order to move throughout the country and without documentation, the Costa Rica-Venezuela border is very difficult to cross. **Nicaragua has a history of banning migrants from Haiti, Cuba, and African countries from entering its southern border. In 2016, Black migrants were systematically refused entry and those that made it into Nicaragua were arrested and deported back to Costa Rica.**<sup>[24]</sup> Today, many Black migrants still live in towns along the border waiting for opportunities to cross irregularly. Strict border controls push migrants to rely on human traffickers that charge relatively expensive fees to transport them across Costa Rica’s northern border. **To avoid border police, traffickers often use highly dangerous routes and migrants are exposed to extortion, sexual abuse, and other forms of violence throughout the journey.**

Many Black migrants end up staying in Costa Rica indefinitely because they do not have the resources to continue their journey. **While human rights standards are broader in Latin America,**

**many countries in the region struggle with anti-Blackness and face serious concerns over their ability and willingness to integrate Black and other non-Spanish speaking migrants.** Instituto sobre Migración y Refugio LGBTIQ para Centroamérica ([IRCA CasaAbierta](#)), an organization providing direct service to LGBTQIA refugees in Costa Rica, reported that **Black migrants face significant challenges due to racism, xenophobia, and discrimination against “pobres” (the poor).** Many migrants obtain 3-month work visas to earn enough money to cross the border and have access to social services that help them find work. However, without Spanish-language skills, Black migrants face barriers to receiving employment authorizations and social services. Without work, Black migrants are unable to continue their journey.

## **Northern Triangle: Honduras, Guatemala, & Mexico’s Southern Border**

As US-bound migrants continue on their path through Central America, they face abusive, anti-migrant border policies in the Northern Triangle. **Despite challenges in Nicaragua, Black migrants accounted for over 15% of migrants entering Honduras between January 2022 and March 2023.**<sup>[25]</sup> Migrants from Haiti were the largest country of origin for Black migrants, with significant increases in other nationalities, including Senegal, Somalia, and other African countries. As part of its response to the demographic shift in migrants traveling through the Northern Triangle, the United States continues to impose its restrictive policies through the Central America Regional Security Initiative, formerly the Merida Initiative. Established during the Obama administration, the initiative focuses on enhancing security in the region by tightening border controls, increasing the capacity of law enforcement, and targeting drug traffickers. However, the United States has since used the initiative to provide funding and technical assistance to border enforcement agencies in the Northern Triangle in exchange for increases in migrant apprehensions, detention centers, and deportations along their borders.

**Due to its proximity to the United States, the Guatemala-Mexico border hosts the region’s most coordinated operations to apprehend and detain migrants.** With funding from the Merida Initiative, Mexico established El Programa Frontera Sur (Southern Border Plan) that increases military bases and security checkpoints throughout Chiapas, its southern border state.<sup>[26]</sup> **From 2015 to 2022, the US State Department has spent more than \$58.5 million in funding Mexico’s southern border enforcement, including inspection equipment, vehicles, and training for enforcement agents.**<sup>[27]</sup> US-Mexico migration agreements continue to have a drastic impact on migrant apprehensions and detention. **In 2021, Mexico apprehended the highest number of migrants ever recorded**<sup>[28]</sup> **and migrant detentions increased by 44% over the following year.**<sup>[29]</sup> **Guatemala has also increased its military presence at its borders and informally accepts migrants who are deported from the United States and Mexico.** During the Trump administration, Guatemala enforced the Asylum Cooperation Agreement (ACA) that allowed the United States to deport asylum seekers to Guatemala to complete the asylum process.<sup>[30]</sup> Although this policy has ended, Guatemala continues to receive illegally deported migrants. Mass deportations of migrants of various nationalities are reportedly carried out by Mexican immigration authorities, where migrants are denied access to asylum processes and their identification



documents are confiscated or destroyed.<sup>[31]</sup> Black migrants are disproportionately harmed by externalization agreements that militarize border police and penalize migrants. In our [Target on Us](#) report, published in partnership with [El Instituto para las Mujeres en la Migración](#) (IMUMI), we highlight the dangers faced by Black migrants in Mexico's southern border region. Due to skin color, Black migrants are often more visible to immigration authorities and are targets for local gangs.<sup>[32]</sup> This heightened risk pushes Black migrants to seek more dangerous pathways and once again, makes them more susceptible to extortion and abuse by border police and traffickers.

In 2021, the United States announced an additional agreement with Mexico, Guatemala, and Honduras to provide funding and technical assistance in exchange for increased enforcement at their borders. As part of the agreement, ***Honduras added 7,000 police and military officers to disperse large groups of migrants, Guatemala increased their border police by 1,500 and set up 12 checkpoints along its southern border, and Mexico agreed to maintain 10,000 military personnel at its southern border with Guatemala to double migrant apprehensions.***<sup>[33]</sup> In the same year, Mexico and the United States entered into the U.S.-Mexico Bicentennial Framework for Security, Public Health, and Safe Communities.<sup>[34]</sup> This security agreement provides further funding and resources to apprehend and detain migrants, including the installation of biometric screening equipment. ***In Mexico, biometric data equipment is installed in every migrant detention center in the country and feeds data directly into US agency databases. Guatemala, Honduras, and El Salvador also collect and share migrants' biometric data with the United States and do not include safeguards to protect vulnerable migrants.***<sup>[35]</sup> The use of biometric data for border enforcement is incredibly dangerous. It violates migrants' rights to privacy and leads to the creation of discriminatory and racially biased profiling. With this data, US border agencies have the ability to arbitrarily profile and monitor migrants and predict migration flows to increase apprehensions throughout the region.

## Conclusion

Through the agreements outlined above, the United States evades its legal obligation to provide asylum processes to vulnerable migrants. Despite promises to launch a humanitarian-centered approach to address the root causes of migration, the Biden administration continues to impose an oppressive system of criminalization. By pushing this harmful anti-migrant approach beyond its borders into Central America, the United States is endangering the livelihoods of countless migrants. These policies do not stop migrants from seeking safety abroad, but instead create more dangerous conditions in transit countries that do not have the capacity to manage an influx of US-bound migrants. Increased migrant apprehensions and detention centers violate core human rights principles and undermine the 1951 Refugee Convention, which specifically forbids imposing penalties on migrants without assessing the merits of their asylum claim. Migration agreements between the United States and countries in Central America directly violate the rights afforded to migrants under international law.

Black migrants are disproportionately harmed by externalization policies in Central America. Stricter border controls place a target on Black migrants that face systematic racism, xenophobia,

and increased risks of violence and extortion at the hands of border police and traffickers. The United States must put an end to evading its obligations under international law and spreading policies that criminalize migration throughout Central America.