



Six Actionable Recommendations to Improve Safety and Wellbeing for Asylum-Seeking Families in the Context of the Biden Administration’s Fast-Tracked Deportations

For many years, families fleeing instability and persecution at home have trudged through treacherous terrain, camped in makeshift tents, and risked unimaginable violence en route to finally reach the United States-Mexico border. Once stateside, they have hoped for welcome, opportunity, and protection — in other words, their chance at the American dream, defined at least in part by its promise of safety.

At the same time, the U.S. government has struggled with how to process asylum-seeking families as part of its antiquated immigration system, which has not been meaningfully updated in decades and reflects some of the most punitive attributes of the U.S.’s carceral policies. As a result, across multiple recent presidential administrations, parents and children have been detained, expelled, or forced to wait in dangerous Mexican border towns. And, with each operational change, these families’ safety and wellbeing have been chronically undermined.

In the spring of 2023 — as the Biden administration prepared for a major shift toward even stricter enforcement of existing immigration laws amid the end of a public health measure tied to the Covid-19 pandemic — federal officials risked continuing this cycle of extreme harm as they reportedly considered bringing back the ill-conceived practice of migrant family detention.¹ Thankfully, the administration instead decided to use a framework from its prior rulemaking (the Asylum Processing Interim Final Rule, also known as the Asylum Officer Rule) as a model for what is now called Family Expedited Removal Management (FERM), a recently developed program predicated on the use of alternatives to detention. Still, FERM was designed to be a harsh deterrent for migrant families, by rushing asylum seekers through a speedy adjudication process and then rapidly repatriating those who failed it.

Through FERM, families are not held long-term in federal facilities and can travel to their destinations in the country’s interior, even as they undergo accelerated initial screenings for humanitarian relief. By allowing them to take their first steps toward qualifying for protection from outside of government custody, the Biden administration’s initiative has acted as a positive substitute for the U.S.’s legacy of family detention. And yet, the program as it is currently implemented often does not allow asylum seekers the time or resources they need to adequately prepare for potentially life-or-death interviews that are scheduled within mere days of their arrival to the country.

Because of these impracticalities, the U.S. government is creating challenges for families and itself that undermine some of the most consequential benefits of a program that is not reliant on detention. But unlike other areas of the immigration system, which would require legislative interventions to fix, many of these challenges can be remedied or at least mitigated through actionable solutions within the executive branch. This position paper details realistic policy changes that the Biden administration could make to help ensure asylum seekers enrolled in FERM have access to a process that is as fair, efficient, and humane as possible in the context of fast-tracked proceedings.

A. What Is FERM?

Family Expedited Removal Management (FERM) is the Biden administration's answer for its perceived need to quickly process children and parents through a legal authority called expedited removal, which allows for especially quick deportations if someone cannot prove they have a credible fear of persecution or torture. In short, FERM gives the federal government a way to monitor asylum-seeking families through multiple technological and surveillant alternatives to detention — GPS ankle monitors, a phone application, and nighttime curfews — while they go through the expedited removal process from within the U.S. Families may be enrolled in FERM if the destination city they name is an active site for the program, and if they're from a country to where the U.S. has regular repatriation flights.² By the end of fiscal year 2023, FERM had been implemented in 45 cities across the country.³

The U.S. government has targeted a swift 30-day timeline for the entire FERM cycle, from the moment families are processed at the U.S.-Mexico border to when they either move on to the next hurdle in their protection claim or are deported. Over that month, most families travel from the border to their destination cities in the U.S. interior, go through orientation for their intensive alternatives to detention program, perhaps try to find an attorney, and prepare for and participate in initial protection screenings, which are formally known as credible fear determinations.

In cases where families receive a negative credible fear determination, they may argue their case during a limited review in front of an immigration judge, but only within a short period of time. All the while, enrolled families are otherwise occupied with arranging for their personal wellbeing by finding shelter, reuniting with relatives already living stateside, and finding emergent medical care if needed — including for injuries sustained on their arduous journeys to the U.S.

All of this activity takes place in a context where, after separate rulemaking by the Biden administration last year (the “Circumvention of Lawful Pathways” rule), many asylum seekers — including families — are ineligible for asylum, not because of the merits of their claim, but because they traveled through Mexico or another third country en

route.⁴ They may still overcome the first hurdle for lesser forms of relief during their credible fear adjudications, but to do so, they will need to meet an even higher threshold.

At the end of FERM, fortunate families who can show potential eligibility for protection are allowed to stay in the U.S. and pursue their cases. But those who cannot meet required standards are promptly repatriated via removal flights – again, only about 30 days after arrival. This is in stark contrast with how other families who are not subject to expedited removal through FERM experience the U.S. asylum process today, when they are typically released into the country to undergo full immigration proceedings and often have years to prepare their cases.

B. Is FERM Preferable to Family Detention?

While FERM has a number of significant drawbacks – which will be detailed further below – the program is undoubtedly preferable to the long-term detention of children and families. Across multiple presidential administrations, family detention has negatively affected parents, created due process concerns, and harmed children’s physical and psychological health, all while costing U.S. taxpayers far greater sums than more humane alternatives.⁵ In fact, in 2016, an advisory committee for U.S. Immigration and Customs Enforcement (ICE) was asked to make recommendations for family detention best practices. The committee’s primary recommendation: “DHS [the Department of Homeland Security] should discontinue the general use of family detention.”⁶

FERM’s greatest positive is that it follows that recommendation and does not hold families in detention centers, where experts agree they do not belong. By avoiding extended stays in federal facilities, children are not exposed to the well-documented health risks that they might endure in a more restrictive, carceral setting. Families may also have greater access to resources and services such as legal representation, more holistic medical care, public schooling, and a vaster support network.

In practice, however, those potential advantages can be undercut by some of FERM’s more enforcement-focused features. Even so, the new program – alongside the Biden administration’s decision to indefinitely suspend family immigration detention – deserves recognition for protecting children from the overwhelmingly negative effects of being held in carceral settings.

C. How Does FERM Work – And How Can It Be Improved?

As FERM operates now, families’ greatest obstacles to justice are mostly logistical. From its accelerated timeframe to its vast geographical radius for enrollment, the program

makes it unrealistic for many families to access fair and meaningful adjudications. At the same time, a lack of transparency and flexibility makes it so that families in FERM may face significant immigration consequences for errors or missed appointments — or even for emergencies outside of their control.

Here, we explain how asylum seekers in FERM experience the program today and what modest adjustments the Biden administration could make to improve it.

1. FERM's Timeframe

Right now, families in FERM are supposed to have their initial asylum screenings — their credible fear interviews — within 6-12 days after they're referred to the program at the U.S.-Mexico border.⁷ In that time, families must find a way to travel from where they entered the country to their chosen destination cities, which have been as far flung as Boston; Indianapolis; Kansas City; Manassas, Virginia; Salt Lake City; or St. Paul, Minnesota.⁸ Sometimes, asylum seekers have help from shelters, nonprofits, or similar organizations to book their transit, but other times, they're largely on their own to figure out how to make it across the country by bus, train, or plane. Once they finally arrive at their destinations, some of them will have a support system already in place. Many others will need to seek out housing and other necessities for survival with little guidance.

Understandably, after arriving in the U.S. and promptly relocating to a new city, asylum seekers may require some extra time to get themselves and their families sheltered and situated. Additionally, families need to rest, address outstanding medical issues, and acclimate to a new environment. The head of household also must attend appointments for their Intensive Supervision Appearance Program (ISAP) — their “alternative to detention” monitoring — and with an ICE deportation officer, which are time-consuming in themselves. Amid these responsibilities, an additional several weeks before the initial credible fear interview would be invaluable for families and allow those with viable protection claims the time and space needed to more capably present their cases.

In particular, the current timelines — juxtaposed against everything asylum seekers must do in the days between enrollment in FERM and their credible fear interviews — make it exceedingly difficult for migrant families to even attempt to obtain legal representation. Noncitizens in immigration proceedings can access counsel, either through paying attorneys' fees or on a pro bono basis. But unlike in the federal criminal justice system, the U.S. government is not required to provide representation.⁹

And yet, counsel has proven essential for asylum seekers in FERM — out of a sample of 136 families, the nonprofit law firm Americans for Immigrant Justice found that 92% of those who benefited from a legal consultation before their initial screenings with an

asylum officer were able to move forward with their requests for protection. That number dropped to only 43% for those who did not receive such individualized legal help.¹⁰ In this context, it is startling and troubling that recent data showed only 2.6% of asylum seekers in FERM had been able to secure lawyers.¹¹

At the same time, because of the Biden administration's aforementioned "Circumvention of Lawful Pathways" rule, those in FERM are often expected to meet a significantly higher burden of proof than in the past in order to pass their credible fear interviews.¹² If they receive a negative determination and an immigration judge affirms that decision, they may be repatriated almost immediately. These expedited adjudications — potentially erroneous when families lack time to prepare — could have the harrowing consequence of sending parents and children to imminent danger or even death.¹³

Recommendation 1: *Allow families several more weeks before the credible fear interview.*

2. FERM's Radius for Enrollment

Families enrolled in FERM are required to visit a number of facilities within a matter of days or weeks, some of which are hours apart — and hours away from where they actually live. For one, they must go to the local office of the contractor managing their intensive supervision program almost immediately upon arriving in their destination city and multiple times thereafter. They similarly receive call-in letters for appointments with an ICE deportation officer, to further enroll in their alternatives to detention.

For the credible fear interview, families must travel to a local or regional U.S. Citizenship and Immigration Services (USCIS) office at least twice — once for the interview itself and once to pick up the asylum officer's decision. Notably, in some FERM locations, families are required to visit the closest USCIS Asylum Office, while others need only go to the nearest USCIS Field Office. For example, families in Denver are interviewed at the Denver Field Office. However, families in Hartford, Connecticut, are required to transit multiple hours to the Boston Asylum Office instead of the Hartford Field Office. Similarly, families in Indianapolis must travel to the Chicago Asylum Office despite having a local field office nearby. Then, if they undergo an immigration judge's review of their negative credible fear determination, they may need to visit an immigration court, which can also be far afield.

That's a significant array of different locations that families must be able to reach within their first 30 days in the U.S., despite little knowledge of the area and few resources at their disposal. This fosters confusion, with some families struggling to sort out which office they're supposed to visit for what purpose. In addition, because of inconsistent

policies like the ones mentioned above, some asylum seekers report their families have had to travel unduly long distances between states to attend mandatory appointments, often with children in tow. Many do not have access to or understanding of public transit, and some have spent hundreds of dollars on car services to make each trip.

Recommendation 2: *The Biden administration should limit FERM’s radius for enrollment to families who give a destination within 60 miles from all of the local offices or immigration courts that they may be required to visit, ensuring that asylum seekers can attend their appointments without undertaking significant financial and logistical burdens. Officials should also clarify which types of appointments occur where, as well as the different responsibilities and authorities of each agency and facility, so asylum seekers better understand where they must go when.*

3. Alternatives to Detention Requirements

Families in FERM are enrolled in three separate forms of monitoring and mobility limitations: a more restrictive GPS ankle monitor for the head of household, a less visibly stigmatizing but still tedious SmartLINK phone application, and a home detention curfew.¹⁴

According to ICE’s own guidance, each noncitizen enrolled in alternatives to detention should receive an “individualized determination as to their level of supervision,” taking into consideration community or family ties, caregiver concerns, and humanitarian or medical issues, among other factors.¹⁵ Despite this guidance, heads of household enrolled in FERM are systematically placed under the same alternatives to detention. And, even as the families try to pass their initial protection screenings and remain stateside, parents in the program face significant limits on their movement that have led many to experience fear or shame, especially when facing extensive monitoring in front of their children.¹⁶

Even more concerning, people who are pregnant or breastfeeding — or who otherwise have health challenges and needs that should render them ineligible for such intensive surveillance — could nevertheless find themselves forced to use alternatives to detention that are inappropriate for their circumstances.¹⁷ Categorically requiring ankle monitors for those who are pregnant, breastfeeding, or facing other relevant health conditions raises alarms given instances where the devices have caused bleeding, electric shocks, burns, and other medical problems.¹⁸

Recommendation 3: *The Biden administration should make individualized assessments around alternatives to detention for heads of household enrolled in FERM, to ensure the best use of its limited resources while honoring the*

particular vulnerabilities of asylum-seeking families. To the extent that the administration continues to require GPS monitoring for asylum seekers in FERM, ICE should cease enrolling and immediately disenroll families if their head of household cannot safely and reasonably be placed on a GPS tracking device — especially if they are pregnant or nursing.

4. Family Separation

In some heartbreaking circumstances, FERM's limited definition of who counts as a family unit has resulted in loved ones being separated. For purposes of the program, a family unit consists of at least one biological parent or legal guardian and at least one child under the age of 18. Within these confines, there have been numerous recorded instances where children 18 years or older or stepparents have been separated from the rest of their nuclear family and placed in immigration detention or otherwise processed, while the rest of their relatives have gone through FERM. In a worst-case scenario, this means that some family members could be deported, while others are allowed to stay.

Such family separations are not only traumatic, but they also put undue stress on asylum seekers themselves, who then struggle to focus on their upcoming adjudications as they worry about loved ones who are in detention or have already been repatriated. If part of a family goes through FERM while the rest is detained in another city or state, it likewise unnecessarily creates duplicative work for the federal government, as officials have to conduct at least two separate expedited removal processes and protection screenings. Instead, they could maximize their capacity by not separating families and adjudicating spouses and children under the age of 21 as derivatives to their relatives' asylum claims. It is both more efficient and more compassionate to generally keep families together as they pursue protection in the U.S.

Recommendation 4: *DHS should ensure that families traveling together — including children over 18, siblings, stepparents, grandparents, and other close relatives — are not separated to place certain members in FERM.*

5. Lack of Publicly Available Details

Despite previous commitments from DHS representatives to publicly release essential data on FERM enrollments and outcomes, the federal government has shared very little information. Service providers have at times not been informed in a timely manner that FERM was being implemented in a city where they work, while organizations that examine the program's impact continually lack details on logistics and outcomes broken down by asylum seeker demographics, location, and other factors.

Recommendation 5: *The Biden administration should share data about where FERM is being implemented and what its outcomes are.*

6. Need for Local Points of Contact

Inevitably, families enrolled in FERM may experience emergencies or circumstances that necessitate shifting an appointment or require special accommodation. For example, if a parent misses their credible fear interview because a child needs to go to the hospital or because they were unable to secure a means of transportation, attorneys, advocates, and the families themselves should know whom to contact to remedy the situation quickly, before it escalates toward potential deportation. Similarly, if families require special accommodations — whether it be interpretation services, an asylum officer of a particular gender to more comfortably discuss sensitive information regarding sexual violence, or accommodations for disabilities — they and their advocates should have a direct line to someone who can service those requests ahead of any appointments.

Yet attorneys do not currently have clear points of contact for FERM in each participating city who can respond to such requests in a timely manner. And, with messages often going unanswered, this lack of effective communication creates a chaotic situation where some families do not receive the care and attention they deserve.

Recommendation 6: *USCIS, ICE, and the immigration courts should establish local points of contact in every city with the FERM program, who can respond to inquiries, requests, and urgent notifications. These points of contact should also be readily available to asylum seekers who have been unable to access attorneys, as for now, the vast majority of families in FERM go through the process unrepresented.*

D. Conclusion

In a recently proposed bipartisan compromise on border and immigration policy changes, lawmakers devised a new process for noncustodial removal proceedings that included many elements of the Asylum Processing Interim Final Rule — and by extension, FERM.¹⁹ Although that legislative package has since stalled, it remains a testament to how policymakers are leaning into expedited asylum processing largely outside of detention and immigration courts. In this context, FERM represents a potential case study for how such a processing scheme is functioning in real time, and how a dedication to speed over justice can unnecessarily encumber a program that otherwise has some clear positives alongside its drawbacks.

It's understandable that the federal government would want to move asylum seekers through the adjudicatory process more quickly than the current average wait times of over 6 years for USCIS and 4.3 years in immigration courts.²⁰ But while those timelines are far too slow — posing challenges for asylum seekers as witnesses die, country

conditions change, and evidence grows stale — FERM’s current format likewise does not strike the right balance between fairness and efficiency. Moreover, serious questions surround whether it could be rapidly expanded to cover more asylum seekers while ensuring basic due process protections.

To mitigate these concerns, the Biden administration can improve FERM by implementing this paper’s six recommendations, which would help protect the rights of asylum seekers and bolster advocates and attorneys as they assist families within the confines of the program. These subtle changes to FERM are almost immediately actionable, and — although they are modest and do not fully address issues with fast-tracked deportation processes — they would make a world of difference for families trying to navigate the U.S.’s byzantine asylum system.

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