Public Health and Border Security Act Analysis
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The S.4036 Public Health and Border Security Act of 2022 (“Lankford”) would hurt asylum seekers, undermine public health, and create chaos and disorder at the border. A companion bill of the same name (H.R. 7458) was also introduced in the House.

What does the Lankford Bill do and what is Title 42?

The Lankford Bill codifies a policy often referred to as “Title 42.” Title 42 is a section of the Public Health Service Act that hasn’t been invoked since 1929 but was dusted off in 2020 by the Trump administration to permit the mass expulsions of all migrants arriving at the U.S. borders without even a basic screening for asylum or trafficking. The Title 42 order, issued by the Centers for Disease Control and Prevention (CDC), has been used for more than two years to illegally block and expel to danger people requesting asylum at the southern U.S. border. Public health experts agree there was never a legitimate public health basis for the order, and there is even less so today given the tools available for protection from virus spread.

In April 2022, the CDC announced it would terminate the Title 42 order, as of May 23rd. However, a preliminary injunction issued in Louisiana v. Centers for Disease Control and Prevention, a lawsuit brought by Republican Attorneys General in Louisiana, Arizona, and other states, enjoined the federal government from ending the disastrous Title 42 policy. The Lankford Bill would wrest the authority to make public health determinations from the CDC, keeping the Title 42 order in place until the public health emergency connected to COVID-19 is terminated. By tying decisions around COVID-19 emergency declarations to the border, the Bill would significantly undermine the federal COVID-19 response. It would also indefinitely extend the harmful practice of expulsions, without any legitimate public health basis.

Any vote for the Lankford Bill is a vote to undermine and override the Refugee Act, passed unanimously in 1980. If the Bill passes, it will mark a significant step toward the end of asylum in the U.S.

Title 42 expulsions violate U.S. asylum laws and international treaty obligations.

- U.S. law and treaty commitments require that every person who fears return to their country should have an opportunity to apply for asylum or other protections in the United States. Yet Title 42 expulsions return families and adults at the border to life-threatening dangers in Mexico, Haiti and other countries, without even a screening for fear. This means that the United States is systematically returning people back to the hands of their persecutors. Under the Biden administration, there have been over 10,250 reported violent attacks, including kidnapping and rape, against people expelled to Mexico under Title 42.
- Title 42 and other policies that deploy harsh enforcement measures at the border do little to prevent people from coming. Even the extreme and widely publicized practice of family separation did not deter people from coming to the United States. Aside from the failure of these policies to achieve their stated goals, a federal court ruled that it was illegal to deny someone bond to send a deterrent message to people who were not even in the country. In order to truly address the numbers of individuals and families coming to our borders, we must
address the root causes of migration, restore our humanitarian protection systems, and offer alternative pathways to entry.

**Title 42 harms border management and undermines border security.**

- Because Title 42 expulsions prevent people fleeing violence from seeking safety, the policy contributes to chaos at the border as people undertake repeated attempts to cross in order to access asylum protections. According to CBP data, the percentage of people who have attempted to repeatedly cross the southern border has jumped by over 385 percent from FY 2019 to FY 2022, from seven percent to 27 percent as of May 2022.
- Transnational organized crime benefits from harsh border measures because without safe pathways to seek protection, migrants are often forced to rely on smugglers to get them to US soil. With Title 42 in place, smugglers are charging the same migrants multiple times to make additional attempts to cross the US-Mexico border.

**Title 42 does nothing to protect public health.**

- The Title 42 policy was never justified as a public health measure. Senior CDC experts objected to the policy from its inception. Epidemiologists and medical experts have repeatedly confirmed that the Title 42 policy undermines public health responses to COVID-19 and that the pandemic, including emerging variants, can be addressed through existing precautions, such as offering vaccinations, testing, masking, and avoiding the use of congregate detention.
- Epidemiologists and public health experts have repeatedly said that we can both protect public health and the lives of people seeking refuge by using the kinds of public health measures we all now use.

**The Lankford Bill makes access to asylum contingent on termination of the COVID-19 emergency declaration, a decision with widespread public health and safety ramifications.**

- The Lankford Bill states that the CDC’s Title 42 expulsions order must remain in place until at least 60 days after termination of the COVID-19 related emergency declaration.
- The decision to end the COVID-19 public health emergency declaration is an incredibly consequential one, as the termination will limit or end the government’s flexibility to respond to COVID-19 related public health needs, including the issuance of waivers or modifications of Medicare, Medicaid and CHIP requirements, and the authorization of certain medical measures such as early approval of vaccines. The Kaiser Family Foundation estimates that between 5.3 and 14.2 million people could lose Medicaid coverage when the public health emergency is terminated.
- Tying asylum access to the public health needs of millions will unnecessarily politicize both immigration and public health, with harmful consequences for both.