

Two Years of Suffering: Biden Administration Continues Use of Discredited Title 42 Order to Flout Refugee Law

For two years, the U.S. government has [illegally](#) blocked and [expelled](#) people seeking refuge at the southern U.S. border despite U.S. laws and treaties created to protect them. Since [March 20, 2020](#), the U.S. Department of Homeland Security (DHS) has used orders from the Centers for Disease Control and Prevention (CDC), purportedly issued under Title 42 of U.S. law, to prevent asylum seekers from requesting U.S. asylum and returning thousands to persecution, torture, and other horrific violence. In March 2022, the U.S. Court of Appeals for the D.C. Circuit found that the use of Title 42 to expel people to places where they would face persecution or torture is likely [illegal](#), violating U.S. refugee laws and international treaty obligations.

The grave human rights abuses faced by people turned away under Title 42 continue to mount every day that U.S. officials allow this policy's use to evade refugee law. Human Rights First has now tracked **at least [9,886 kidnappings, torture, rape, and other violent attacks on people blocked in or expelled to Mexico due to the Title 42 policy under the Biden administration – a new record of suffering.](#)**

Flouting refugee protection laws as a response to the COVID-19 pandemic is not and never was justified as a public health measure. Initially issued by the CDC under [orders](#) from senior Trump administration officials and despite [objections](#) by CDC experts, the Biden administration has continued the policy for migration policy and/or political reasons, according to various reports. CDC Director Dr. Rochelle Walensky re-issued a new version of the Title 42 [order](#) in August 2021, and has subsequently repeatedly extended it. The CDC must review whether to continue, modify, or end the Title 42 order by [March 30, 2022](#).

[Epidemiologists](#) and [medical experts](#) have [exhaustively established](#) that Title 42 does not protect public health, and in fact exacerbates the spread of COVID-19. The claimed public health justification for the Title 42 order has become even more transparently unjustified as the administration [lifts](#) other pandemic-related [international](#) travel restrictions and with mask mandates [lifted](#) in all 50 U.S. states. In March 2022, the CDC partially [terminated](#) the Title 42 order as to unaccompanied children following a federal court [ruling](#) that would have compelled the resumption of expulsions of unaccompanied children. In a [notice](#) explaining the decision, the CDC cited declining COVID-19 cases nationwide, including in communities along the U.S.-Mexico border, increased vaccination rates in the United States and countries of origin, and widespread availability of COVID-19 testing and other mitigation measures at facilities receiving migrants. Despite these factors applying equally to all people seeking refuge in the United States, the CDC has so far disingenuously maintained the Title 42 order to expel families and adults.

At this shameful [second anniversary](#) of the Title 42 policy, the Biden administration continues to illegally turn away asylum seekers without access to the U.S. asylum system. It is carrying out dangerous [expulsions](#) to countries refugees have fled, including: El Salvador, Guatemala, Haiti, Honduras, and Mexico, as well as expelling some Venezuelans to [Colombia](#). The Title 42 policy discriminatorily targets Haitian and other Black asylum seekers, spurs disorder at the border, undermines security, and separates families. While some [Ukrainians](#) fleeing the Russian invasion have been allowed to cross into the United States at southern border ports of entry, Customs and Border Protection (CBP) continues to cite Title 42 to illegally block [others](#) and to discriminatorily turn away many asylum seekers of other nationalities and races who have often been waiting for months or years in danger in Mexico to seek U.S. asylum protection.

The Biden administration must immediately end this disastrous policy and restart the asylum processes required under U.S. law along the border, including at ports of entry, as Human Rights First has

[recommended](#). In recent weeks, dozens of [members](#) of Congress have publicly called for an end to the Title 42 policy with Senate [leadership](#) condemning the Biden administration's decision to continuing sending asylum seekers "back to persecution and torture" as "wrong." The United States has the capacity to welcome people seeking refuge. Many faith- and community-based organizations along the border and throughout the United States are standing by ready to assist the families, adults, and children seeking refuge.

This factsheet updates prior research on the Title 42 policy by Human Rights First in [February 2022](#), [January 2022](#), [December 2021](#), [November 2021](#) (with Florence Immigrant and Refugee Rights Project), [October 2021](#), [August 2021](#), [July 2021](#) (with Hope Border Institute), [June 2021](#), [May 2021](#) (with RAICES and Interfaith Welcome Coalition), [April 2021](#) (with AI Otro Lado and Haitian Bridge Alliance), [December 2020](#), and [May 2020](#).

Exposing Blocked and Expelled Asylum Seekers to Grave Danger in Mexico

Turning asylum seekers away under Title 42 to grave dangers in Mexico and other countries of persecution has resulted in horrific, mounting human rights abuses. Between January 21, 2021 and March 15, 2022, Human Rights First has tracked at least [9,886](#) kidnappings, torture, rape, and other violent attacks on people blocked in or expelled to Mexico due to the Title 42 policy under the Biden administration. This tally includes incidents published in media, interviews of asylum seekers by Human Rights First, information from attorneys and humanitarian services providers at the border, as well as more than 7,000 incidents of violent attacks against migrants and asylum seekers stranded in Mexico that were reported through the ongoing electronic survey conducted by AI Otro Lado between February 2021 and March 2022.

Cartels and other organized criminal groups in Mexico have adapted their criminal enterprises to profit from [kidnapping](#) stranded asylum seekers and migrants, targeting them on the basis of their [race](#), nationality, gender, [sexual orientation](#), and/or other characteristics, including those perceived to have U.S. family members to extort. They include:

- A Nicaraguan family of six with two young daughters who were [kidnapped](#) in Reynosa in March 2022 remain in captivity pending payment of a \$30,000 ransom demanded by the abductors.
- A Honduran woman in Piedras Negras reported in February 2022 to AI Otro Lado that she had been kidnapped for six days, separating her from her 15-year-old son and 11-year-old daughter.
- Kidnappers [abducted and tortured](#) a pregnant Nicaraguan woman, Claudia Castro Andino, and her husband the day they were set to attempt to enter the United States in late February 2022. The woman was so severely beaten that she lost her baby. The couple remain in captivity. Castro Andino's husband sent an audio recording begging the family to meet the kidnappers demand for a \$15,000 ransom: "If we don't pay, they're going to kill us." Castro Andino pled, "mommy, don't let me die."

Mexican government authorities, including police, national guard, and immigration officials, regularly fail to investigate or prevent attacks and are often complicit in this violence. Mexican migration officials collude with cartels that target asylum seekers for kidnapping and extortion. In January 2022, a member of an organized criminal group in Ciudad Juárez told [Business Insider](#) that they pay Mexican migration officials \$100 per migrant handed over to the group to hold captive and collect ransoms. Mexican authorities also frequently extort migrants and asylum seekers, often threatening them with deportation. Recent attacks by Mexican police and migration officers on asylum seekers blocked in or expelled to Mexico due to Title 42 include:

- An LGBTQ asylum seeker stranded due to Title 42 in Ciudad Acuña reported through the AI Otro Lado survey in late February 2022 that police had stopped her and a female friend who were holding hands on the street, robbed, and groped them, threatening to rape them saying it would "take the lesbian out of them."

- A Honduran man blocked from seeking asylum because of Title 42 reported to the Al Otro Lado survey in January 2022 that Mexican migration officials in Reynosa sold him and his wife to a cartel for \$500 each and that cartel members raped his wife.
- A migrant woman told the Kino Border Initiative in February 2022 that a Mexican police officer in Sonora threatened to take her children if she refused to pay the extortion he demanded. Kino Border Initiative has noted that “extortions are so commonplace that migrants will no longer report them to us. When asked specifically if they’ve been extorted by Mexican authorities, some have answered, ‘oh, yes, but that’s just one of the things that happens.’”

Migrants and asylum seekers in Mexico frequently [avoid](#) reporting attacks to police because such information has been [shared](#) by Mexican government authorities to the very brutal cartels targeting them. For example:

- In February 2022, a man attempted to [kidnap](#) children from a shelter in Tijuana, after the children’s location was apparently shared with the would-be kidnapper by Mexican police following their mother’s report to the police of threats by her husband.

Citing Title 42, the Biden administration continues to block and expel asylum seekers, including [Ukrainians](#), to the highly dangerous city of Nuevo Laredo, where the U.S. Department of State has [warned](#) that “violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common.” In mid-March 2022, a cartel that exercises significant control in the region exchanged gunfire with Mexican authorities across the city, detonated grenades, and set 18-wheeler trucks [ablaze](#) on major highways, causing the U.S. government to [shut down](#) international bridges, temporarily [close](#) the U.S. consulate, and advise U.S. citizens in Nuevo Laredo to [shelter in place](#). A researcher with the Washington Office on Latin America (WOLA), Adam Isacson, who had visited Nuevo Laredo days prior in early March 2022 reported that cartel members wait on the Mexico-side of the Laredo port of entry to immediately kidnap asylum seekers and migrants after they are expelled by DHS and that cartel vehicles patrol the border vicinity. A humanitarian aid worker told Isacson that DHS had expelled to Nuevo Laredo a migrant woman even though she had previously been kidnapped and repeatedly sexually abused in captivity.

Trapped by Title 42 in Mexico, asylum seekers also face inherently dangerous and horrendous conditions without safe housing, adequate medical care, or sufficient food. A Guatemalan woman reported in February 2022 through the Al Otro Lado survey that she was forced to give birth in the bathroom of a shelter in Ciudad Juárez after doctors refused to provide her medical attention. Many asylum seekers have been forced to [sleep](#) in highly dangerous informal tent [encampments](#) in border cities subject to violent attacks, kidnapping, and extortion by the criminal organizations that control them. As of March 2022, approximately 2,000 people are waiting in the Reynosa encampment—many for more than six months—for the opportunity to request U.S. protection, according to Isacson from WOLA. He observed unsanitary conditions in the crowded camp, including unclean, overused portable toilets and waterlogged tents from rainfall. Migrants and asylum seekers told Isacson that kidnappings from the encampment and surrounding area are so common that most never leave the encampment. **In February 2022, the Tamaulipas State Human Rights Commission [announced](#) that it is investigating multiple reports of sexual violence against young girls in the Reynosa tent encampment.**

Targeting Haitian and Other Black Asylum Seekers

The Title 42 policy continues to have a disparate racial impact on Black asylum seekers and migrants. In a February 2022 [letter](#), more than 100 members of Congress expressed concern over the Biden administration’s treatment of Black migrants and asylum seekers, noting “Black migrants continue to face disparate and often inhumane treatment at every stage of the immigration enforcement process” and imploring the administration to “undo the United States’ draconian immigration policies . . . such as the use of

Title 42, that circumvent our humanitarian obligations.” U.S. civil rights groups have [repeatedly](#) called on the Biden administration to end the Title 42 policy, halt “deportation [flights](#) to Haiti,” and ensure “those seeking safety at our borders must be granted their legally [assured](#) chance to seek asylum.”

Haitian and other Black asylum seekers blocked in and/or expelled to Mexico continue to face widespread anti-Black violence and discrimination. Some recent incidents of violence targeting Black asylum seekers blocked in Mexico due to Title 42 include:

- In late January 2022, a Haitian woman in Matamoros reported to AI Otro Lado that Mexican police threatened to kill her and her five-year-old daughter, beat her husband, and stole the family’s money. The police left the wounded man on the street and dumped the woman and her daughter in another city at night.
- A Black transgender asylum seeker reported through the AI Otro Lado survey in late January 2022 that Mexican police officers beat, robbed, and raped him, and jailed him for three days without food.
- Asylum seekers from the Afro-Honduran Garifuna ethnic group reported to the AI Otro Lado survey multiple incidents of kidnappings and racist attacks by Mexican police while stranded in Mexico due to Title 42 including, a Garifuna Honduran man who recounted that he was nearly kidnapped in Piedras Negras and that police had attacked and racially abused him.

Since January 2021, DHS has removed more than [20,000](#) Haitians on at least [208](#) expulsion and deportation flights to Haiti. In March 2022, members of the [Congressional Black Caucus](#) called on the Biden administration to “Stop deporting and expelling people to Haiti. Now.” The families and adults expelled under Title 42 are being sent to life-threatening [insecurity](#) in Haiti without the fear screenings required by Congress and despite DHS having [designated](#) the country for Temporary Protected Status as “Haiti is grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses.”

- In March 2022, DHS appeared to have used Title 42 to expelled more than 300 Haitians who [arrived](#) at the Florida coast after a hazardous journey by boat – many of whom had fled due to “Haiti’s surge in kidnappings and gang-related violence.”

Those expelled to Haiti under the Biden administration face unimaginable horrors. For example,

- In January 2022, [Daniel](#), a Haitian asylum seeker expelled by DHS in September 2021, suffered brutal politically motivated attacks in Haiti, including being beaten with metal batons and wooden sticks.

Spurring Disorder, Pushing Deadly Crossings

The Biden administration’s use of the Title 42 policy is [spurring disorder](#) at the border. Expulsions drive repeat [crossings](#) and [inflate](#) the total number of border encounters. Due to Title 42, the percentage of individuals who have attempted to repeatedly cross the southern border has jumped by over 385 percent from 7 percent in fiscal year (FY) 2019 to 27 percent in FY 2022, according to government [data](#). Policies that block access to asylum at U.S. ports of entry push asylum seekers unable to access protection at official border posts to undertake dangerous crossings away from ports, as [reports](#) by the DHS Office of Inspector General have [confirmed](#). For example, with the continued use of these counterproductive and illegal policies, Cuban, Haitian, Venezuelan, and other asylum seekers, who largely sought asylum at ports of entry, are now overwhelmingly crossing between ports of entry, according to government [data](#) analyzed by Human Rights First.

At least 650 migrants and asylum seekers [died](#) crossing the U.S.-Mexico border in 2021, making it **the deadliest year since the International Organization for Migration began recording migrant deaths in 2014**. These crossings often involve crossing harsh terrain, swimming across hazardous rivers, and trekking

through deserts in sweltering heat. Recent deaths recorded of people attempting to cross the border to seek safety in the United States include an Ecuadoran woman fleeing gender-based violence who [died](#) crossing the desert to seek U.S. protection with her three-year-old daughter. Additionally, numerous migrants and asylum seekers, including young children, have drowned attempting to cross rivers with dangerous currents at the U.S. border.

- In January 2022, a **seven-year-old Venezuelan girl** [drowned](#) in the Rio Grande attempting to enter the United States with her mother near Ciudad Acuña. A Honduran man [drowned](#) attempting to cross the same river in February 2022.
- In March 2022, [María Angélica](#), a **four-year-old Nicaraguan girl**, **drowned attempting to cross the Rio Grande**. The child was swept away by a strong current, according to her mother. Mexican migration officers also [found](#) the body of another child, whose mother remains missing, in the Rio Grande near Ciudad Acuña in March 2022.

Unable to request asylum at U.S. ports of entry due to Title 42, many people seeking protection have no choice but to seek transit through cartels and other criminal groups that exercise [control](#) over U.S.-Mexico border regions. These organizations charge [exorbitant](#) amounts to approach the border, violently attack people who attempt to cross without paying, and [abuse, torture, and extort](#) people seeking U.S. asylum.

- A Salvadoran asylum seeker reported to Al Otro Lado in January 2022 that when she attempted to cross the border near Piedras Negras with a group of other asylum seekers, men kidnapped the woman and her four-year-old daughter separating them from the woman's nine-year-old son who managed to reach safety in the United States.
- The Kino Border Initiative reports that in Nogales “organized crime has become so protective of the business they have made from the border closure that they have begun watching the ports of entry . . . and harassing migrants who attempt to be processed there.”

Separating Families, Endangering Children

The Biden administration's continued use of Title 42 to block and expel asylum seekers is leading to family separations and endangering children. In some cases, DHS has returned families members alone to Mexico or separated families and returned them to different parts of Mexico. For example:

- In February 2022 DHS separated a Honduran grandfather from his two grandchildren, expelling the grandfather to Nogales rather than allowing him to seek protection with his grandchildren, who remained in the United States, according to Kino Border Initiative.
- Kino Border Initiative also assisted a woman whom DHS expelled without her daughters after the family crossed the border and approached CBP officers. The woman told Kino: “My daughters only have me. If something happens to me, I have no idea what's going to happen to them.”

DHS continues to illegally expel some unaccompanied children to danger in Mexico under Title 42 where cartels and other criminal organizations often target children for kidnappings and trafficking. For example, the Florence Project has [documented](#) numerous cases of attacks against children near ports of entry in Arizona. In addition, in March 2022, two Central American boys were [kidnapped](#) in Ciudad Juárez and held captive for a month before they managed to escape. Unaccompanied children have been exempt from the Title 42 order (which was fully terminated with respect to unaccompanied children in March 2022) since November 2020 following a court [order](#) blocking their expulsion and a [subsequent policy change](#). However:

- In February 2022, Border Patrol expelled a 17-year-old boy who told Kino Border Initiative that agents had “repeatedly told him to shut up and say his real age” when he told them he was 17.

- Kino Border Initiative assisted another 17-year-old boy in February 2022 whom Border Patrol expelled alone to Mexico, separating him from his younger brother. The agents accused the boy of presenting a fake birth certificate and threatened him with a 10-year prison sentence “if he didn’t say his real age.”

Failing to Manage Arrivals

The United States has capacity to manage arrivals of people seeking refuge. The number of people encountered at the southern border (*i.e.* not counting repeat crossings caused by Title 42 expulsions) has declined by 26 percent since [August 2021](#) (from 156,000 to 116,000 in [February 2022](#)). And southern border ports of entry continue to process only a small and now declining number of inadmissible individuals, including asylum seekers. Since August 2021, [processing](#) at southern border ports has dropped by 49 percent (from 13,326 to 6,841 in February 2022). These numbers remain **well below** monthly processing during the Obama administration when CBP processed [20,524](#) people at southern border ports of entry in October 2016, for example. U.S. ports of entry have subsequently received significant funding to upgrade and expand capacity (both in [infrastructure](#) and [staffing](#)) but have consistently processed far fewer individuals.

The Title 42 policy undermines U.S. credibility, global standing, and respect for international law, at the same time as the U.S. government asks other countries to welcome refugees while it simultaneously turns away asylum seekers in violation of refugee law. In the United States, [refugees and asylum seekers](#) are less than one-half of one percent of the [population](#). By contrast, in Turkey, which hosts the [largest](#) refugee population in the world, the proportion of refugees to the total [population](#) is ten times higher than the United States. In three weeks in February and March 2022, Poland took in more than [1.9 million Ukrainian](#) refugees, which is about the same number of [individuals](#) encountered at the U.S. southern border in the entirety of fiscal year 2021. UNHCR estimates that Colombia, whose total population is less than one-sixth that of the United States, is hosting [2.4 million](#) Venezuelans displaced abroad. More than [1.5 million](#) refugees reside in Uganda making it one of the top five refugee-hosting countries.

Violating U.S. Law, Treaty Obligations

Using the Title 42 policy to return people to places where they face persecution and torture violates U.S. refugee law and treaty obligations as [former](#) and [current](#) U.S. [government](#) officials, [federal courts](#), the [United Nations High Commissioner for Refugees](#), the [Inter-American Commission on Human Rights](#), the [Special Rapporteur on the Human Rights of Migrants](#), and the DHS [Office for Civil Rights and Civil Liberties](#) have all concluded. In March 2022, the U.S. Court of Appeals for the D.C. Circuit held that the Title 42 policy is likely illegal and that the US. government “[cannot expel](#) [asylum seekers] to places where they will be persecuted or tortured.” [Members of Congress](#) have repeatedly called on the Biden administration to end its use of Title 42 – a policy [U.S. Senator Chuck Schumer](#) has described as “a cynical effort by the Trump administration to use the pandemic as justification for expelling vulnerable migrants seeking refuge in this country.” The United Nations High Commissioner for Refugees [urged](#) the United States in May 2021 to “swiftly lift the public health-related asylum restrictions that remain in effect at the border and to restore access to asylum for the people whose lives depend on it, in line with international legal and human rights obligations.”