



Testimony of Kennji Kizuka

Associate Director of Research and Analysis for Refugee Protection, Human Rights First

U.S. House, Committee on Homeland Security

Subcommittee on Border Security, Facilitation, and Operations

“Examining Title 42 and the Need to Restore Asylum at the Border”

April 6, 2022

Chairwoman Barragán, Ranking Member Higgins, and distinguished members of the Subcommittee:

On behalf of Human Rights First, I thank you for the opportunity to testify on the Title 42 policy and the need to restore asylum at the southern U.S. border.

Human Rights First is an independent, non-profit advocacy organization that for more than four decades has pressed the United States to take a leading role in promoting and defending human rights. The organization was founded in 1978, at a time when the United States was jailing and seeking to deport refugees fleeing repression in El Salvador, Guatemala, Haiti, and the Soviet Union, among other countries. Human Rights First worked with members of Congress to pass the landmark 1980 Refugee Act, which established a legal framework for refugee protection. In our research and advocacy, we work with asylum seekers, attorneys, and other human rights organizations to ensure U.S. compliance with domestic refugee law and international treaty obligations, and our refugee representation team recruits and trains lawyers to provide *pro bono* legal representation to asylum seekers. Over the years, Human Rights First has helped thousands of refugees to receive asylum.

Background

I am the associate director of research and analysis for refugee protection at Human Rights First. Over the past decade, I have worked in the United States, Mexico, and other countries to monitor and defend the human rights of refugees. I graduated from the U.C. Berkeley School of Law, order of the coif, and hold a Masters’ degree in public policy from Princeton’s School of Public and International Affairs. I was a judicial clerk for the Honorable Rosemary S. Pooler on the U.S. Court of Appeals for the Second Circuit. I currently serve as a member of the Human Rights Watch advisory committee on children’s rights.

I first joined Human Rights First as an Immigrant Justice Corps legal fellow to represent asylum seekers before the asylum office and immigration court. Subsequently, I have led Human Rights First’s efforts to document the impact of Trump and Biden administration policies at the southern U.S. border that violate U.S. refugee law and treaty obligations and return people to danger.

Since the Trump administration issued the first Title 42 order in March 2020 to block and expel people seeking safety in the United States without access to the U.S. asylum system, my colleagues at Human Rights First¹ and I have tracked the devastating human toll of this illegal policy. We have spoken with hundreds of asylum seekers, attorneys, and human rights monitors and published more than a dozen

¹ Allison Perlin, Ana Ortega Villegas, Julia Neusner, Lamisse Abdel Rahman, Martha Arreola, Miguel Pineda, and Rebecca Gendelman have also conducted interviews on behalf of Human Rights First with people turned away to danger due to Title 42.

reports and research updates, including with partner organizations, that document the grave human rights violations caused by the Title 42 policy during both the Trump and Biden administrations: [March 2022](#), [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](#).

This research has identified nearly [10,000](#) reports of kidnapping, torture, rape and other brutal attacks on asylum seekers and migrants blocked in or expelled to Mexico by the U.S. government under the Title 42 policy during the Biden administration alone.

On behalf of Human Rights First, I have also documented and tracked the human rights catastrophe caused by the so-called “Migrant Protection Protocols” under which tens of thousands of asylum seekers and migrants have been forced to remain in Mexico facing similar targeted attacks as they wait for U.S. immigration court hearings.

The Title 42 Policy’s Demise Is a Welcome and Necessary Step Toward a Fairer, Timelier, and Less-Traumatizing Asylum Process

Human Rights First [welcomes](#) the Biden administration’s [announcement](#) that the U.S. Department of Homeland Security (DHS) will terminate its use of the Title 42 policy to illegally block people from seeking asylum at U.S. ports of entry and halt expulsions of asylum seekers to grave danger. The Title 42 policy reportedly came straight from the xenophobic playbook of [Stephen Miller](#)—painting migrants as spreaders of disease as a pretext to block refugees and immigrants from the United States. But the Title 42 policy never had any reasonable basis as a public health response to the pandemic, as [epidemiologists](#), [medical experts](#), and the [Centers for Disease Control and Prevention](#)’s own [senior scientists](#) repeatedly affirmed.

For more than two years, under both the Trump and Biden administrations, the policy has been used to evade U.S. immigration and refugee law. Citing Title 42, DHS has blocked refugees from Belarus, Cameroon, Colombia, Cuba, Ghana, Guatemala, El Salvador, Ethiopia, Honduras, Haiti, Jamaica, Mexico, Nicaragua, Nigeria, Russia, Ukraine, Venezuela, and other countries from seeking protection at U.S. ports of entry. With asylum largely unavailable at ports of entry, many asylum seekers facing grave dangers in Mexico are pushed to undertake border crossings between ports—fueling disorder and exposing them to added harms. At the same time, DHS has used Title 42 to expel refugees, who are overwhelmingly Black, Brown, and Indigenous, returning them to systematic human rights violations in Mexico and to the countries of persecution they fled.

Ending the Title 42 policy is a necessary first step toward [upholding](#) the Biden administration’s [commitment](#) to establish a more fair, orderly, and humane immigration system. We remain, however, concerned that the policy’s continued implementation through May 23 violates U.S. refugee law and will continue to turn away yet more refugees to grave harm.

During the implementation of the Title 42 policy’s termination, DHS must begin accepting requests for asylum at U.S. ports of entry along the southern border, as required by U.S. law, and swiftly ramp up capacity. Many asylum seekers stranded in Mexico due to Title 42 have been waiting months or even years for an opportunity to seek protection in the United States at a port of entry. Every day that they are forced to wait in danger in Mexico is another day that they could be kidnapped, raped, or murdered.

DHS can provide exemptions under Title 42 to asylum seekers, as the welcome reception of many Ukrainians currently arriving at the southern border confirms. Yet, the administration has chosen to continue to block refugees primarily from Africa, the Americas, and the Caribbean from applying for asylum at ports of entry. Racially discriminatory access to asylum violates the fundamental principle of equal protection under law, as well as U.S. treaty obligations. Asylum seekers should be welcomed in the United States whether they are from Ukraine or Congo, Cuba, Haiti, Honduras, Nicaragua, Venezuela or elsewhere.

We also urge the administration to immediately halt expulsions and to instead process asylum seekers under U.S. asylum law, which bars the return of asylum seekers to countries of persecution without an opportunity to apply for refugee protection in the United States and prohibits transfer to a third country where a person would face persecution or torture. Last month, the D.C. Circuit Court of Appeals found the Title 42 policy likely illegal and [ruled](#) that the U.S. government “cannot expel [asylum seekers] to places where they will be persecuted or tortured.” We are deeply concerned that the administration will continue to use Title 42 to expel asylum seekers to danger, including by returning Haitians to escalating insecurity in Haiti. Expulsions that would return individuals to persecution or torture violate U.S. refugee law and binding international treaty obligations.

As the administration restarts asylum at the border, it should halt the use of the flawed expedited removal process, avoid sending asylum seekers to immigration detention, and instead strengthen coordination with and support to NGO partners providing crucial humanitarian assistance at the border and case support services in destination communities.

Human Rights First has previously published its recommendations to the Biden administration to [restore U.S. compliance with refugee law](#) and create a [fair, timely, and less-traumatizing asylum process](#), which are also summarized at the end of this testimony.

To Safeguard Lives and Restore Order, DHS Should Begin Accepting Requests for Asylum at Ports of Entry on the Southern U.S. Border

For years, DHS has [illegally](#) turned back refugees attempting to approach U.S. ports of entry on the southern border to request asylum. Since March 2020, Customs and Border Protection (CBP) officers have cited the Title 42 policy to stop nearly all asylum seekers at the international border line before they can reach a port of entry to request protection, [telling](#) them asylum is not available in the United States due to the pandemic. Many people who would have sought asylum at a port of entry, including [Cubans, Haitians, Nicaraguans, and Venezuelans](#) who [historically](#) arrived through ports of entry, have been pushed to make dangerous crossings elsewhere, driving up the number of encounters between ports of entry.

Blocking asylum at ports of entry further exposes asylum seekers stranded in Mexico to abduction, torture, and extortion by the cartels that target them. Indeed, our research has found that some organized criminal organizations are working to actively prevent asylum seekers from approaching ports of entry, as the restoration of port of entry processing of asylum threatens the cartels’ control and extortion efforts. The Kino Border Initiative, a nonprofit organization assisting migrants at the Arizona border, for example, [reported](#) that in Nogales, Sonora “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.”

U.S. ports of entry have unused capacity to process asylum seekers currently arriving at the border. Since August 2021, [processing](#) at southern border ports of inadmissible individuals, including asylum seekers, 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. Since then, ports of entry have received significant Congressional funding, including most recently through the fiscal year 2021 and 2022 appropriations, to upgrade and expand capacity (both in [infrastructure](#) and [staffing](#)) but have processed far fewer individuals than in 2016. The administration should leverage this capacity at U.S. ports of entry to immediately begin processing asylum claims during the implementation of the Title 42 termination.

Blocking Asylum at Ports of Entry Endangers Lives

In our research we have identified many cases in which asylum seekers blocked from asylum at ports of entry due to Title 42 have been subjected to harm amounting to persecution and torture on return to Mexico. DHS officers are also turning away asylum seekers trying to request protection at ports of entry who have previously been kidnapped and attacked in Mexico.

In one shocking incident, CBP officers turned away a Guatemalan man who was covered in blood from having been [tortured](#) by the cartel that abducted him as he tried to request protection at the international bridge leading to the Laredo port of entry. The man had been held for days and repeatedly brutally beaten by cartel members because he could not provide the phone number of a family member in the United States to extort. The man told me, “If I return to my country, I’ll be killed. If I stay here, I’ll be killed. I want an opportunity, for someone to consider my case.”

When asylum seekers have arrived at a port of entry to request protection, CBP officers have turned them back to Mexico without allowing them to apply for asylum or referring them for a fear screening required under U.S. law for expedited removals. For instance, a young LGBT man fleeing political persecution in Venezuela managed to approach the Laredo port of entry to request asylum in the company of an American friend. He told me that CBP officers at the port [refused](#) to process his request for asylum and forced him back across the international bridge into Nuevo Laredo even though the day before the young man and his friend had been kidnapped and extorted as they searched for a place to stay for the night.

Even though DHS has refused to accept requests for asylum at ports of entry under the Title 42 policy and U.S. [law](#) guarantees the right to seek asylum at or after crossing the border, some Border Patrol agents falsely instruct refugees to seek protection at ports of entry. A Guatemalan woman was raped in Tijuana after she [followed](#) the instructions of Border Patrol agents to present herself “legally” at a port of entry. The woman, who was fleeing severe domestic violence with her six-year-old daughter, had initially crossed the border near Mexicali and was expelled to Mexico under Title 42. The woman was attacked after the family relocated to Tijuana to attempt to seek asylum at the San Ysidro port of entry, where she found that DHS had closed the port to asylum seekers due to Title 42.

Asylum Seekers Pushed to Undertake Dangerous Crossings Between Ports of Entry

DHS’s failure to comply with asylum law at ports of entry under the Title 42 policy has pushed asylum seekers to undertake increasingly dangerous border crossings away from ports. [Analysis](#) of government data by [Human Rights First](#) and the [CATO Institute](#) confirm that policies that block or reduce asylum processing at ports of entry drive crossings of the border away from ports of entry by asylum seekers who are unable to access protection at official border posts. [Reports](#) by the Office of Inspector General (OIG) for DHS have repeatedly [confirmed](#) that restrictions on asylum at ports of entry push asylum seekers to cross the border away from these ports. For instance, a Border Patrol [supervisor](#) told OIG that “the Border Patrol sees an increase in illegal entries when [noncitizens] are metered at ports of entry.”

In FY 2017, for instance, 99 percent of the total number of Cubans and Haitians [encountered](#) at the southern border arrived through a [port](#) of entry. However, after the launch of illegal turnback policies that prevent asylum seekers from requesting protection at ports of entry, including Title 42, the overwhelming majority have crossed into the United States between ports. In [FY 2022](#) (through February 2022), with DHS effectively shuttering access to asylum at U.S. ports of entry, just 0.2 percent of Cubans and 2.2 percent of Haitians arriving at the southern border entered through a port of entry. More limited government [data](#) also shows that the percentage of Nicaraguans and Venezuelans presenting themselves at southern border ports has followed a similar downward trend, declining from 32 and 56 percent, respectively, in FY 2020, to just 0.2 percent in FY 2022.²

The rise in crossings of the southern border away from ports of entry due to Title 42 has in turn led to increasing fatalities. At least [650](#) people are known to have died while crossing the U.S.-Mexico border in 2021, the highest figure recorded since the International Organization for Migration began tracking in 2014. For instance, 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. In March 2022, María Angélica,

² DHS has not made data on Nicaraguans and Venezuelans arriving at ports of entry prior to FY 2020 publicly available, but [reports](#) on asylum wait lists suggest that high percentages of people from these countries sought protection at ports prior to the implementation of Title 42 and other restrictions on asylum at ports of entry.

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.

To safeguard the lives of asylum seekers stranded in Mexico and to restore order at the border, DHS should begin to process asylum seekers at ports of entry as it prepares for the full termination of the Title 42 policy.

The Biden Administration Must Halt Title 42 Expulsions That Return Asylum Seekers to Persecution and Fuel Insecurity

The Title 42 policy has fueled thousands of heinous targeted attacks against people seeking refuge in the United States who were turned away by DHS without an opportunity to apply for U.S. asylum or provided a fear screening required by [Congress](#) for expedited removals. Every day that DHS uses the Title 42 policy to block and expel people seeking refuge in the United States to places where they would face persecution and torture—in violation of the D.C. Circuit’s [ruling](#)—the immense suffering this illegal policy has caused will continue to escalate.

Between January 21, 2021 and March 15, 2022, Human Rights First tracked at least [9,886](#) reports of murder, torture, rape, kidnapping, and other violent attacks on people blocked in or expelled to Mexico under the Biden administration’s use of the Title 42 policy. This tally includes incidents published in media, interviews of asylum seekers carried out by Human Rights First, information supplied by attorneys and humanitarian services providers at the border, as well as reports catalogued through an ongoing electronic survey conducted by the organization *Al Otro Lado*. However, these nearly 10,000 reported attacks are likely just a small fraction of the true scale of violence, as the vast majority of people expelled or blocked from protection due to Title 42 have not spoken with a human rights investigator, attorney, or journalist.

Our research over the past two years confirms that the Mexican cartels that exercise considerable territorial authority across an expanding area of Mexico have adapted their criminal enterprises to target and profit from kidnapping, torturing, and extorting asylum seekers and migrants stranded in Mexico due to Title 42. They are viewed by the cartels as obvious and easy prey due to their nationality, race, gender, sexual orientation, and perceived ties to U.S. family members, among other characteristics.

Murder

At least one person subjected to Title 42—a cognitively-impaired 15-year-old boy with the functional development of a five-year-old child—was murdered after being expelled by DHS to Mexico. His mutilated body was discovered after the boy fled alone across the border from Reynosa. According to a [declaration](#) filed by a lawyer assisting the boy’s family after his killing, he was likely murdered for failing to pay a “fee” to one of the criminal groups that extort, kidnap, and attack people who attempt to cross the border without their permission.

Two asylum seekers placed in the similarly dangerous “Migrant Protection Protocols” are also known to have been murdered after DHS returned them to Mexico, including a [19-year-old Cuban asylum seeker](#) and an [asylum-seeking father from El Salvador](#).

Targeted Kidnappings and Attacks

People expelled under Title 42 to dangerous areas of the border region in Mexico are targeted for kidnapping, rape, torture, and other brutal attacks by the cartels and other organized criminal groups that prey on asylum seekers stranded in Mexico due to U.S. border policies. Our research on Title 42 has identified many reports of asylum seekers kidnapped or attacked in the moments after DHS officers returned them to Mexico through a U.S. port of entry. DHS has also expelled asylum seekers who were previously kidnapped or attacked in Mexico, thereby returning them to grave risk of further harm.

A four-year-old Honduran boy and his pregnant asylum-seeking mother were abducted immediately after DHS expelled them to highly dangerous Nuevo Laredo. The terrified little boy was sick and not eating from the ordeal. His aunt, herself a refugee granted asylum who lives in Tennessee, told me the cartel that had abducted her family was threatening to harm them if she failed to pay a \$20,000 ransom. After the FBI failed to answer her requests for help, she managed to cobble together enough money from her savings and donations from other members of her church to secure the release of her nephew and sister.

After DHS turned away a 29-year-old Venezuelan asylum seeker at the Hidalgo port of entry, she was [abducted](#) and raped. A man impersonating a Mexican immigration official near the port told the woman he would help her register on an asylum waitlist but instead took her to a rundown hotel where he held her against her will, threatened her at knifepoint, and sexually assaulted her.

DHS used Title 42 to expel to Mexico an 18-year-old Nicaraguan political dissident who had twice been [kidnapped](#) there, leaving him stranded in danger. After the second kidnapping in the border city of Nogales, the young man managed to escape his abductors and fled across the border to request asylum in the United States. But DHS officers expelled him back to danger in Mexico using Title 42.

A Salvadoran asylum seeker was kidnapped along with her husband and their 8- and 12-year-old children almost immediately following their [expulsion](#) by DHS in the middle of the night to Mexico. They had crossed the border near Reynosa to seek protection in the United States after fleeing death threats by the gang that had brutally attacked the woman and her husband in El Salvador. Finally free from captivity, but still stranded in danger in Mexico, after 20 terrifying days locked in a storage room by men who repeatedly threatened to rape her, the woman [told](#) my colleague, “[w]e cannot go back to El Salvador, and we cannot stay here. Why won’t the United States let us ask for asylum?”

Widespread Anti-Black Brutality

Black asylum seekers blocked in or expelled to Mexico under Title 42 have faced severe dangers with many reports of targeted anti-Black violence and discrimination, including by Mexican authorities.

An Afro-Honduran asylum seeker who had been expelled to Ciudad Acuña by DHS told me that Mexican state police had beaten him so severely that he is now [blind](#) in one eye—a fact which was evident from his completely clouded pupil. The officers, he said, had hit him in the head with a tree branch. Unable to return home and with no way to seek asylum in the United States due to Title 42, he did not attempt to report the incident to authorities for fear of further retaliation.

In another incident we documented, a man with a baton severely beat a Haitian asylum seeker in Tijuana in front of Mexican police, who did not intervene. Another Haitian asylum seeker who witnessed the incident [told](#) a Human Rights First researcher, “[w]e felt like we couldn’t say anything because we don’t have any power here and we were afraid for our own lives. Haitians are targeted here . . . the police don’t care. We have to protect ourselves and look out for one another.”

Our analysis of survey data collected by AI Otro Lado found that [61 percent](#) of Haitian asylum seekers blocked from U.S. asylum protections were victims of crime while stranded in Mexico and that [one in five](#) Haitian asylum seekers in the northern Mexican border region were victims of abuse by the police, including beatings, extortion, and threats.

Violence Against LGBTQ Asylum Seekers

LGBTQ asylum seekers stranded in Mexico who are unable to seek U.S. protection due to Title 42 have frequently faced attacks and discrimination in Mexico due to their sexual orientation and/or gender identity—as well as their race, nationality, and other characteristics. Our analysis of the asylum seeker survey conducted by AI Otro Lado shows that [89 percent](#) of LGBTQ asylum seekers were the victim of an attack or attempted attack in the prior month.

Among the incidents of anti-LGBTQ violence identified in our research is a lesbian asylum seeker from Central America who was raped and repeatedly subjected to homophobic attacks in Mexico. When I [met](#) her in Ciudad Acuña, across the border from Del Rio, Texas, her arm was broken and bruises were visible on her face. Unable to seek asylum in the United States due to Title 42, she and her partner were sleeping on the streets. A group of men had recently attacked and beaten her as she sold sweets to passersby to try to survive.

A transgender Honduran asylum seeker was kidnapped and raped in Piedras Negras after DHS used Title 42 to repeatedly expel her to Mexico when she attempted to request protection in the United States. The woman was forced to escape the kidnappers by jumping out of a window, falling into a cactus that left painful needles stuck all over her body. The woman [told](#) my colleague at Human Rights First that she had fled Honduras after the gang that murdered and beheaded her brother also attacked her because of her gender identity.

Horrific Harm to Children, Family Separations

The Title 42 policy has inflicted horrific harms on children blocked from safety in the United States. Children expelled to Mexico under Title 42 have been kidnapped, raped, and assaulted. Many children blocked from protection due to Title 42 have been forced to live with their families in dangerous informal tent encampments, including in Tijuana and Reynosa, at the mercy of cartels and gangs that target asylum seekers stranded there. On visits to these squalid camps, we have repeatedly received reports of [kidnappings](#) and [rapes](#) of children.

A 13-year-old Honduran girl, who had been [raped](#) in Mexico and threatened by the attacker after reporting him to the police, was expelled by DHS back to Mexico with her asylum-seeking mother. Stranded in danger and unable to seek protection due to Title 42, the girl's mother told my colleague, "My daughter is afraid to go out. She can't go to school. She feels like [the man who raped her] is always watching her."

Armed men kidnapped a seven-year-old girl and her asylum-seeking mother just blocks from the port of entry in Ciudad Juárez after DHS expelled them there under Title 42. With no space available in local shelters, the family had been searching for a place to sleep for the night when they were abducted. Held captive for two months in a house with dozens of other kidnapped women and children, the family survived on meagre rations of potatoes and eggs. When we met them at a Juárez migrant shelter after they managed to escape, the girl's mother [told](#) a Human Rights First researcher they were hardly sleeping with nightmares from the trauma they had suffered.

Expelling children to a place where they were previously harmed is also deeply traumatizing. A 14-year-old Cuban boy chewed off his fingernails from stress and anxiety after DHS [expelled](#) him and his grandmother to Mexico under Title 42. There they had been kidnapped and forced to watch helplessly as their abductors murdered another kidnapping victim.

Title 42 has also driven family separations. In just the first few months of 2021, more than [2,000](#) children crossed into the United States alone after DHS expelled them to Mexico with their families. Some separated children crossed alone because their parents had been kidnapped. At a migrant shelter in Mexico, I met a mother desperate to reunite with her eight-year-old daughter. After DHS used Title 42 to expel the family, the woman was kidnapped in Reynosa as she searched for something to feed her daughter. By the time the woman was finally released, the girl had [crossed](#) by herself into the United States in search of safety. Other families blocked from protection due to Title 42 have made the impossible decision to send their children across the border to try to protect them from this horrific violence. A Honduran woman in the Tijuana encampment told me that she felt she had [no choice](#) but to send her daughters alone to the United States for fear they would be raped by men who had been threatening to assault them.

Complicity by Mexican Authorities

In our research, we have found that Mexican migration officials, police, military, and other authorities are frequently complicit in, if not directly responsible for, kidnappings and other violence against people turned back to or stranded in Mexico.

A Honduran asylum-seeking woman and other migrant women were extorted, raped, and threatened by Mexican migration officers immediately after DHS expelled them to Mexico. The officers demanded money from the woman and other people with whom she had been expelled and threatened to deport them. The officers locked the women in the group in a separate room, forced them to remove their clothes, and raped them. The woman [told](#) my colleague: “We did what they asked of us out of fear because they threatened to turn us over to a human trafficking network.”

Mexican police kidnapped 23 Nicaraguans who had been attempting to seek asylum in the United States at a checkpoint near Reynosa and handed the group over to a Mexican cartel that extorted their relatives for ransom. I learned of this mass kidnapping at a shelter in Reynosa from two Nicaraguan women who told me that they had witnessed the kidnapping and that some of the group, including their partners, remained in the hands of the cartel. They were deeply concerned for the safety of their loved ones and friends as at least one of the kidnapped asylum seekers had gone [missing](#) even though his family had paid ransom to try to secure his release.

After DHS expelled a Central American asylum seeker to Tijuana, Mexican immigration agents turned him over to a cartel that held him hostage in horrendous conditions for days. The man, who was fleeing threats from the gang that had murdered his father, [reported](#) to a colleague that the kidnappers beat other migrants in front of him, killing one man. He was only released after his family paid ransom.

Fueling Criminal Cartels, Undermining Security

The Title 42 policy has not only been a boon to the brutal criminal cartels in Mexico that target asylum seekers turned back by DHS for kidnapping, torture, and extortion, but has reduced DHS’s ability to collect information on these cartels that are increasingly fighting to exercise even greater control over border regions. The power of these cartels in the Mexican border region was reaffirmed last month, when a cartel that exercises significant control in Nuevo Laredo 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 to [shelter in place](#).

According to DHS officials, Title 42 undermines the agency’s ability to investigate cartel activity. A June 2021 Government Accountability Office [report](#) confirms that Border Patrol officials have concluded that rapid “expulsions under Title 42 have negatively affected enforcement by reducing opportunities to gather intelligence.” Because DHS has used Title 42 to quickly expel individuals without any legal process in most cases, Border Patrol agents reported that they “are unable to thoroughly interview individuals in custody,” which “limit[s] the opportunity to gather information,” including about cartels operating along the border.

Expulsions to Danger in Haiti, Disparate Impact on Black Asylum Seekers

DHS has used Title 42 to block Haitian families and adults at the southern border from U.S. refugee protection, subjected them to [abhorrent abuse](#) in CBP custody and [immigration detention](#), and expelled thousands to the country they fled without access to the U.S. asylum system. Since March 2020, more than [17,000](#) Haitians have been turned away by DHS under Title 42, [many](#) of them expelled directly to escalating [insecurity](#) and political [instability](#) in Haiti. A March 2022 Human Rights Watch [report](#) on Haiti found that “[t]he security situation in Haiti has dramatically deteriorated in recent years” with powerful gangs exercising control over so-called “lawless zones” in which over one million people live at the mercy of the gangs, which “reportedly use sexual violence to terrorize and control neighborhoods.” U.S. Department of State legal advisor and former Yale Law School Dean, Harold Koh, resigned from the

Department after [concluding](#) that the use of Title 42 to expel people seeking protection to Haiti is “illegal and inhumane.” Daniel Foote, the former U.S. Special Envoy for Haiti, also resigned his post, [denouncing](#) Title 42 expulsions to Haiti as “inhumane [and] counterproductive.”

DHS’s treatment of Haitians has exposed the disparate impact of Title 42 on Black asylum seekers. Haitians encountered by DHS at the southern border are 34 times more likely than Canadians, Romanians, Russians, and Ukrainians (collectively) to be subjected to the Title 42 policy (26.7 percent versus 0.78 percent) than to be processed under Title 8 U.S. immigration authority, based on my analysis of the government’s [data](#) on southern border encounters between March 2020 and February 2022. [Civil and human rights leaders](#) have noted that the Title 42 policy is “infused with anti-Black racism” and has been used “to attempt to deter people, particularly Black migrants, from seeking refuge at the border.”

Continuing the Title 42 Policy Would Further Undermine U.S. Leadership in Welcoming Refugees

The Title 42 policy has undermined U.S. credibility, global standing, and respect for international law. At a time when the U.N. Refugee Agency has reported that the number of refugees displaced around the world is “[the highest ever seen](#),” the U.S. government cannot credibly encourage other countries to welcome and host the vast majority of the world’s refugees while simultaneously turning away asylum seekers at our borders.

Many countries are providing refuge to people fleeing persecution, conflict, and disaster. In a single month, more than [2.3 million Ukrainians](#) have arrived in Poland, which is more than double the number of unique [individuals](#) encountered by DHS at the U.S. southern border in all 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](#) displaced Venezuelans. More than [1.5 million](#) refugees reside in Uganda, making it one of the top five refugee-hosting countries. Turkey hosts the [largest](#) refugee population in the world. The proportion of refugees to the total [population](#) in Turkey is ten times higher than the United States. By contrast, in the United States [refugees and asylum seekers](#) make up less than one-half of one percent of the [population](#).

The United States has had capacity to manage arrivals of people seeking refuge here with the Title 42 policy in place, and we have the capacity to welcome people seeking asylum who arrive after the policy ends. But for months, there has been [predictable fearmongering](#) with dangerous rhetoric equating people seeking refuge in the United States as an “[invasion](#).” Already politicians and pundits are claiming that the “[flood gates](#)” are open and that there will be a “[surge](#),” an “[unstoppable wave](#),” or a “[tsunami](#)” of arrivals. This dehumanizing language falsely paints families and individuals seeking asylum in the United States as a mob poised to wreck the United States.

But political dissidents and LGBTQ people escaping repression are not an “invasion.” Families fleeing for their lives from deadly gangs and cartels that dominate their countries are not a “surge” or a “wave.” Journalists and activists trying to carry on their work in safety are not a “flood” or a “tsunami.”

And if Title 42 is intended to deter migration, as the calls for its retention suggest, then it is a failure by this metric. For more than two years, the Title 42 policy has not stopped refugees forced to leave their homes in search of safety for themselves and their families. Refugees continue to arrive at the southern border, including people who were previously expelled under Title 42.

Last week, at a border shelter, a Human Rights First researcher interviewed a Haitian political activist forced to flee Haiti with his wife after receiving death threats for his work. In December 2021, they tried to seek asylum in the United States but were instead expelled in shackles on a flight to Haiti after enduring days of horrendous conditions in CBP custody. Because of continued death threats, the couple were forced to flee Haiti a second time. Now they are stranded in Tijuana, sleeping in a tent, hoping to attempt to request protection in the United States. The man said, “I’m really, really scared because, if I get sent to Haiti again, I’ll be dead.”

Extending the Title 42 policy for another two months or another two years will not, and cannot, stop refugee displacement, and it will not stop the arrival of asylum seekers at the border. Its continued use will only return yet more people who are running for their lives and hoping to find refuge in the United States to death, torture, rape, abduction, and other egregious human rights violations, generate further disorder, and exacerbate insecurity at the border.

To safeguard lives, re-establish an orderly asylum process, including at ports of entry, and comply with U.S. refugee law and treaty obligations, the United States must completely and permanently end the terror of the Title 42 policy.

Recommendations

Congress should exercise its oversight authority, while also providing appropriate appropriations, to ensure compliance with U.S. refugee law and treaty obligations in the processing of asylum claims and treatment of people seeking refuge in the United States. Specifically, Congress should confirm that:

- the Title 42 policy is brought to a swift and final end;
- the asylum processes adopted by Congress through the Refugee Act and subsequent legislation restart along the entire border, including at ports of entry; and
- people seeking refuge in the United States are not expelled to persecution or torture in violation of U.S. law and treaty obligations.

In addition, Congress should:

- reject any attempt to write the dangerous and discriminatory Title 42 policy into U.S. law;
- adopt a Refugee Protection Act to modernize U.S. asylum processes and bolster adherence to international refugee laws and norms;
- ensure that asylum seekers arriving at or after crossing the border are processed safely within the United States—not sent to unsafe third countries—and permitted to stay with families and in communities as their cases are decided—not jailed in immigration detention centers; and
- direct and fund a humanitarian response to refugee arrivals at the border, including support for and coordination with non-profit service providers at the border and in destination communities.