



Title 42: What It Is and How You Can Help End It

By Chloe Canetti

What is Title 42?

“Title 42” refers to an obscure provision of U.S. law that was originally enacted in 1944 to allow the government to quarantine people entering the country if necessary “to prevent the introduction, transmission, or spread of communicable diseases.”¹ At the beginning of the COVID-19 pandemic, Trump administration officials required the Centers for Disease Control and Prevention (CDC) to issue an order using Title 42 as justification to allow the Department of Homeland Security to quickly expel asylum seekers who arrived at the U.S.-Mexico border, without giving them a chance to seek asylum.² The CDC issued the order on March 20, 2020, against objections from the nation’s top infectious disease experts— including CDC health officials— who determined that there was no public health basis for the order.³

The order does not apply to all people crossing the border or all people who could potentially spread COVID-19. The order applies “to persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a... Border Patrol station at or near the United States borders.”⁴ People in this category would include those who are fleeing danger and crossing the border without documentation, and who are then detained in Border Patrol facilities. The order

does *not* include U.S. citizens, lawful permanent residents, military personnel, and persons with valid travel documents, among others. Even though anyone crossing the border can spread COVID-19 into the United States, the order specifically targeted only the most vulnerable persons fleeing danger and traveling without documentation to be turned away.

The order has been widely condemned as a violation of asylum seekers’ basic human rights. A Human Rights Watch report found that Title 42 expulsions violate the Convention Against Torture, the International Covenant on Civil and Political Rights, and the 1967 Protocol Relating to the Status of Refugees by allowing the United States to “return asylum seekers to face threats to their lives and freedom without affording them an opportunity to apply for asylum.”⁵

What is Happening to People Who Are Expelled Under Title 42?

Many people reaching the U.S.-Mexico border have fled dangerous and desperate situations of poverty, gang violence, natural disaster, or political upheaval in their home countries. People expelled under Title 42 are not given the chance to seek protection and apply for asylum. As a result, they are either immediately returned to their home countries where they face persecution or other life-

threatening danger, or they are expelled to Mexico. Once in Mexico, these migrants do not have legal status and cannot legally work.⁶ They are unable to access basic services and are vulnerable to harassment by gangs that target migrants. Migrants pushed back into border cities in Mexico have reported being “sexually assaulted, abducted for ransom, extorted, robbed at gunpoint, and subjected to other crimes.”⁷

What is the Current Status of Title 42?

Despite widespread backlash against the order and its effects on those seeking asylum, the Biden administration has continued to use Title 42 to turn away asylum seekers. In May of this year, 62% of those apprehended at the U.S.-Mexico border were expelled back to Mexico under the policy.⁸

Although the Biden administration has exempted unaccompanied children and some families from the expulsions, the vast majority of those coming to the border are still being turned away. Pressure has ramped up in recent months to end the policy, as the pandemic continues to improve in the United States and even the flawed justifications originally used for the policy are weakening. In late April, USCRI joined 190 other organizations in a letter calling on the administration to end the policy. On May 20, the United Nations High Commissioner for Refugees issued a statement condemning the government’s continued use of Title 42 and hinting that it may be a violation of international law.⁹

The Biden administration has recently begun signaling future changes to the asylum system, and it appears the administration is considering ending the use of Title 42 by the

end of July. However, officials familiar with the discussions around the issue have reported that single adults may still be expelled throughout the summer, and that those who are allowed into the United States may be subjected to expedited removal.¹⁰ This piecemeal approach will disproportionately affect LGBTQ+ and African asylum seekers, who are more likely to travel alone and thus to be expelled at higher rates than other populations.

The administration is also considering alternatives to Title 42, including the use of ankle monitors and expedited removal proceedings to process migrants faster once they are allowed entry.¹¹ USCRI does not recommend the use of ankle monitors or expedited removal as appropriate alternatives to Title 42 expulsions.

What can we do about Title 42?

You can help call for an end to Title 42! Email or tweet at your members of Congress and tell them to urge the Biden administration to end this policy and restore the human rights of asylum seekers. [Click here to learn more and take action.](#)

¹ 42 U.S.C. § 264.

² Burke, Garance and Jason Dearen. "Pence Ordered Borders Closed After CDC Experts Refused." Associated Press (Oct. 3, 2020), <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>.

³ *Id.*

⁴ 85 Fed. Reg. 65806 (2020), <https://www.federalregister.gov/documents/2020/10/16/2020-22978/order-suspending-the-right-to-introduce-certain-persons-from-countries-where-a-quarantinable>.

⁵ "Q&A: US Title 42 Policy to Expel Migrants at the Border." Human Rights Watch (Apr. 8, 2021), <https://www.hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border#>.

⁶ *Id.*

⁷ *Id.*

⁸ "Number of Migrants at US Border Hits New Record High." BBC News (June 10, 2021), <https://www.bbc.com/news/world-us-canada-57422618>.

⁹ Grandi, Filippo. "Statement Attributable to UN High Commissioner for Refugees Filippo Grandi on the Need to End US COVID-19 Asylum Restrictions." UNHCR (May 20, 2021), <https://www.unhcr.org/news/press/2021/5/60a687764/statement-attributable-un-high-commissioner-refugees-filippo-grandi-need.html>.

¹⁰ Sullivan, Eileen and Zolan Kanno-Youngs. "Biden Officials Consider Phasing Our Rule that Blocked Migrants During Pandemic." New York Times (June 24, 2021), <https://www.nytimes.com/2021/06/24/us/politics/biden-title-42-migrants-coronavirus.html?referringSource=articleShare>.

¹¹ *Id.*