

## THE HISTORICAL PRECEDENT OF DISCRIMINATORY U.S. IMMIGRATION POLICY TOWARD HAITIANS

Earlier this year, the Biden administration redesignated Haiti for Temporary Protected Status (TPS), which grants deportation immunity to immigrants already in the United States who are unable to return to their home country due to natural disaster or extreme political upheaval. In a Federal Register notice published on August 3<sup>rd</sup>, 2021, the Department of Homeland Security (DHS) [stated](#) “Haiti is grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses.” An already delicate Haitian body politic was further destabilized by the assassination of former Haitian President Jovenel Moïse, causing a [political power struggle](#) and an exacerbation of gang violence. Two weeks later, a massive earthquake ravaged the island, evoking the same sort of devastation as the 2010 earthquake created, from which the country has still not fully recovered.

On September 18<sup>th</sup>, 2021, DHS made the announcement of a new [‘Strategy to Address Increase in Migrants in Del Rio’](#). The Strategy was in response to a swell of primarily Haitian migrants arriving at the U.S. border at Del Rio, Texas, and ultimately resulted in the swift expulsion of thousands of Haitians either back across the border into Mexico, or on repatriation flights to Haiti, without having received their lawful right to an asylum screening. [Images](#) surfaced of Customs and Border Protection (CBP) agents on horseback assaulting Haitian migrants with whips and cords, causing outrage among both the immigration advocacy community and the general American public. However, the abrupt turnaround by the Biden administration from the redesignation of TPS, to the aggressive pushback of Haitian asylum seekers at the border, is indicative of a long history of mistreatment of Haitian immigrants by the United States that precedes this most recent action. The following Policy Snapshot outlines a series of key immigration policies implemented over the last four decades that have inordinately targeted Haitians, beginning with a comparison of how Cubans and Haitians fleeing authoritarian rule were treated in the late 1970s-early 1980s, and moving through to the discriminatory usage of Title 42 today.

### Misclassification of Haitians Fleeing Authoritarian Rule

In the late 1970s during the [second brutal Duvalier](#) regime, Haitians began to migrate by sea to the United States in significant numbers. Jean-Claude Duvalier had continued in his father’s footsteps asserting authoritarian rule, suppressing dissidents, and committing mass violations of human rights. Though the United States took note of both father and son Duvalier’s massacres, it [tolerated each regime](#) as antidotes to communism while the Cold War boiled hot in Washington. Cubans had made a similar journey across the Atlantic a decade before to flee Fidel Castro’s dictatorship, and were granted a pathway to citizenship under the [Cuban Adjustment Act of 1966](#). The Haitians seeking asylum, however, were deemed by the United States as ‘economic immigrants’ looking for higher paying jobs and better living conditions, as opposed to political asylees escaping violence in their home country. This categorization rendered them [ineligible for asylum](#), and subject to immediate deportation upon arrival in the United States.

## Haitian Migrant Interdiction Operations

In 1981, then President Ronald Reagan signed an agreement with Jean-Claude Duvalier which set into motion the Haitian Migrant Interdiction Operations. Reagan subsequently authorized the U.S. Coast Guard to interdict ships “of foreign nations with whom we have [arrangements](#)” if officials were skeptical of the legality of people on board. Coast Guard officials began to board ships that they suspected to be carrying undocumented migrants, screen them for asylum eligibility, and send them back to their country of origin if they failed to prove a fear of returning to their home country. Over the next ten years, [nearly 25,000 Haitians](#) were picked up in international waters by the Coast Guard, and only 28 of those were able to process asylum claims. In 1991, the first democratically elected Haitian President Jean-Bertrand Aristide was successfully ousted by a [brutal coup](#). Thousands of his supporters were targeted by proponents of the coup, and widespread violence erupted again. Over the next six months, [34,000 Haitians](#) were intercepted by the Coast Guard. Yet, the sheer influx made asylum screenings at sea nearly impossible. To accommodate these numbers, a camp was set up at Guantanamo Bay, Cuba, to temporarily house Haitians while they awaited processing. However, this temporary solution became untenable when the camps became too overcrowded. Ultimately, then President George H.W. Bush authorized the Coast Guard to turn back ships [without screening](#) those on board.

## Utilizing HIV/AIDS As Screening Tool

For those Haitians lucky enough to pass the Coast Guard or Port of Entry screening, another obstacle awaited them. The HIV/AIDS crisis had begun to taper off in the United States after [its height](#) in the mid-1980s. Haiti was hit hard by the crisis, yet by the early 1990s, the rate of transmission in Haiti was [even lower](#) than in the United States. Nevertheless, screened-in Haitians were tested for HIV, and those who had a positive result were then held to [higher standards](#) in establishing a well-founded fear of persecution needed for asylum. Haitians who were interdicted at sea and ultimately screened-in were also tested. Individuals who tested positive in such circumstances were sent to a quarantined section of Guantanamo Bay, where they lived in squalor, and did not have access to adequate medical care. Numerous groups representing HIV positive Haitians eventually [sued](#) the U.S. government for First Amendment and due process rights infractions.

## The COVID-era and Title 42

The Trump administration carried on the old political tactic of claiming that immigrants bring disease with the invocation of Title 42. In March of 2020, the Department of Health and Human Services issued an [emergency regulation](#) to implement a section of a [1944 U.S. public health law](#) which permits the Director of the Centers for Disease Control and Prevention (CDC) to prohibit individuals from entering the United States if the Director believes there is “serious danger of the introduction of a [communicable] disease into the United States.” Upon its issuance, CBP immediately began expelling individuals who were arriving at the U.S.-Mexico border without an opportunity to seek asylum, citing the provision of Title 42. After an agreement was reached with Mexico, CBP sent migrants from Guatemala, Honduras, and El Salvador to Mexico, though [reports](#) indicate the Mexican government has consequently expelled many of them into remote areas of the Guatemalan jungle. Groups, such as Haitians, who were not included in the agreement, were either placed into Immigration and Customs Enforcement (ICE) detention facilities, or onto flights directly back to their home country. When President Biden took office in January of 2021, immigration advocates hoped his

administration would admonish the provision. Yet it has remained a substantial part of his immigration policy. The expulsion of Haitian asylum seekers arriving in droves at the U.S.-Mexico border since their former President's assassination, and the subsequent devastating natural disaster, has been repeatedly justified by Title 42. The [head of Haiti's national migration office](#) has plead with the Biden administration for a 'humanitarian moratorium' on forced returns, citing that the ongoing security issues in the country are making it [increasingly challenging](#) to receive deportees. However, DHS Secretary Alejandro Mayorkas says the expulsions will continue as long as the spread of COVID-19 remains a risk, and [insists](#) that the conditions in Haiti are, in fact, safe for migrants to be sent back.

## **Moving Forward**

While the Biden administration cannot change the discriminatory treatment of Haitians migrants over the course of the last forty-five years, it can take concrete steps to protect them moving forward. In order to attempt to rectify that harm already done to Haitians, we recommend the Administration put an immediate stop to expulsions without first conducting comprehensive screening for asylum eligibility; end the usage of Title 42 as a justification for stripping migrants' legal right to asylum screening; and reinstate and expand the [Cuban-Haitian Entrant Program](#).

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