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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 3rd, 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 18th, 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 brief 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. It then proposes a series of actions the Biden administration must take to restore all rights and benefits to Haitians seeking asylum currently, and to ensure the protection of Haitian immigrants moving forward.

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.

Policy Recommendations

While the Biden administration cannot change the discriminatory treatment of Haitian migrants over the course of the last 45 years, it can take concrete steps to protect them moving forward. In order to attempt to rectify the harm already done to Haitians, we recommend the administration take the following steps:

1. Put an immediate stop to all expulsions and deportations that occur without conducting comprehensive asylum eligibility screenings for all migrants.

These deportations violate Haitians’ and other asylum-seekers’ basic human right to seek asylum at U.S. borders.

According to U.S. law, any person who “arrives in the United States (whether or not at a designated port of arrival...), irrespective of such [person’s] status, may apply for asylum” (emphasis added). Even Haitians who are not arriving at ports of entry have the right to seek asylum under U.S. law. In addition to the right to seek asylum, migrants have the right not be returned to a place where their lives or liberty would be in danger. This principle of nonrefoulement is enshrined in multiple international human rights conventions, including the 1951 Refugee Convention and the Convention Against Torture. Deporting Haitians back to Haiti without any regard for their safety after deportation is a clear violation of the principle of nonrefoulement.

2. End the usage of Title 42 as a justification for deportation.

There have been more Title 42 expulsions in the first few months of the Biden administration than during an entire year of Trump's administration. As evidenced by the discriminatory nature of stopping Haitians from seeking asylum due to fear of HIV transmission in the 1990s, using Title 42 as justification for deporting Haitian migrants today is not only unlawful, but it is rooted in prejudice and serves to perpetuate xenophobic narratives about immigrants and disease.

3. Reinstate and expand the Cuban-Haitian Entrant Program to ensure protection for Haitian migrants moving forward.

The Cuban-Haitian Entrant Program (CHEP) was first defined in the Refugee Education Assistance Act of 1980, and enabled certain Cuban and Haitian nationals who are neither refugees or asylees eligibility for benefits to the extent as refugees, including Office of Refugee Resettlement (ORR) benefits and mainstream benefits, such as Medicaid. The program allowed certain Cuban and Haitian migrants to be paroled into the United States, where they had access to benefits and services while their asylum case was pending, or another legal pathway to citizenship was being pursued. Funding for CHEP was cut by the Trump administration in September 2017. However, implementing service providers still have the infrastructure to provide CHEP benefits and services if appropriate funding were granted. Unfortunately, CHEP did not disable the United States from detaining, expelling, or pushing back Cuban and Haitian migrants (see the Interdiction policy, for example). Therefore, a reinstated CHEP program must include a provision that acknowledges and validates all asylum seekers’ legal right to comprehensive screening before they can be expelled or detained.

United States Issue Updates

• **Biden Administration Proposes Refugee Admissions Goal of 125,000**

On Monday, September 20th, President Biden announced his intention to set the refugee admissions goal (also called the Presidential Determination, or PD) for fiscal year 2022 to 125,000 refugees. In line with the requirements for setting the PD, the State Department transmitted the President's Report to Congress to propose the number and provide a justification. The report explains that the doubling of the admissions goal from last year is meant to account for the new P-2 refugee designation for Afghans, as well as continuing turmoil that has caused mass migration from the Northern Triangle countries of Honduras, Guatemala, and El Salvador. This number has been welcomed by immigration advocates, who reminded the president that he promised to raise refugee admissions to that level while he was on the campaign trail. However, given that the world is facing the largest refugee crisis in history, advocates also urge the president to consider raising the number to 200,000. To read the President's Report to Congress on Proposed Refugee Admissions for Fiscal Year 2022, [click here](#).

• **Biden Administration Begins Mass Expulsions of Haitians**

On Saturday, September 18th, the Department of Homeland Security (DHS) announced a six-step plan to expel and keep out Haitian migrants, amid an influx resulting from the increasing turmoil in Haiti. The plan includes: (1) adding more border patrol agents to secure the border, (2) processing Haitian migrants faster to allow for quick expulsion, (3) ramping up removal flights to Haiti, (4) working to ensure that people expelled will be accepted by the countries to which they are returned, (5) taking action to "reduce crowding and improve conditions for migrants on U.S. soil," and (6) working to provide assistance to those who are deported. To read DHS' policy, [click here](#). To see USCRI's statement on Haitian expulsions, [click here](#).

• **Senate Parliamentarian Rules that Path to Citizenship Should Not be Included in Budget Reconciliation**

On Sunday, September 19th, the Senate Parliamentarian Elizabeth MacDonough ruled that a path to citizenship for undocumented immigrants, TPS holders, and DREAMers should not be included in the reconciliation bill. The parliamentarian, who is the non-partisan arbiter of Senate rules, found that the impact of the proposed policy change would drastically outweigh the budgetary impact of the proposal, and would thus be inappropriate for inclusion in the budget. This decision is a blow to immigration advocates, as the reconciliation bill only requires a simple majority to pass the Senate, and would have been easier to pass than a normal bill. Senator Schumer and other immigration champions have already begun preparing an alternate proposal in an attempt to address the parliamentarian's concerns while still forging a pathway to citizenship. To read the ruling, [click here](#).

• **Federal Judge Rules that Use of Title 42 to Expel Families is Illegal**

On Thursday, September 16th, a federal judge for the U.S. District Court for the District of Columbia granted an injunction against the application of Title 42 to expel family units from the United States without a chance to seek asylum.

United States Issue Updates (Cont'd)

The court in *Huisha-Huisha v. Mayorkas* found that Title 42 does not give the executive branch authority to expel persons from the country in the name of public health. Although the judge in the case found that the use of Title 42 is illegal as applied to all classes of immigrants, the ruling only applies to families. The judge stayed his ruling for 14 days, and the Biden administration has chosen to appeal, demonstrating the administration's active stance of attempting to halt migration from the southern border into the United States. To read the opinion, [click here](#).

- **Biden Administration Authorizes Sanctions Against Perpetrators of Ethiopia Conflict**

On Friday, September 17th, President Biden issued an executive order allowing the Secretary of the Treasury to impose financial sanctions on anyone who is found to be responsible for or complicit in “actions or policies that threaten the peace, security, or stability of Ethiopia, or that have the purpose... of expanding or extending the crisis.” These actions include corruption, obstructing the delivery of humanitarian aid, targeting civilians, attacking UN personnel, undermining democratic institutions, and undermining the territorial authority of Ethiopia among other acts.

The executive order comes amid a surge in famine deaths in Ethiopia, as humanitarian aid to the most direly impoverished regions has run out and the blockade continues to prevent new aid from entering. So far, no sanctions have been implemented using the executive order. The State Department is also soon expected to release a determination on whether the violence against the Tigrayan population in Ethiopia constitutes a genocide. USCRI has called upon the administration to release its determination [immediately](#). To read more about USCRI's stance, [click here](#). To read the executive order, [click here](#).

Around the World in International Migration

• UNICEF Reports Record Number of Children Living as Migrants or Refugees

A [new report](#) from UNICEF describes a record number of children living outside their country of birth, and tells the experiences and vulnerabilities of children throughout their journeys. According to the report, 35.5 million children are living as migrants or refugees, of which an estimated 10 million are refugees and 3 million are asylum seekers. The report emphasized that migrant women and girls are particularly vulnerable to exploitation, and noted that gender gaps in education are exacerbated in humanitarian settings. In total 3.6% of the global population—281 million people—live as migrants or refugees. The report's methodology did not include internally displaced people.

• WFP Cuts Rations for 440k Refugees in Kenya

The [United Nations World Food Programme \(WFP\)](#) has announced that it will implement further cuts to rations for 440,000 refugees in Kenya because of shortfalls in funding. Beginning in October, refugees in the Dadaab, Kakuma, and Kalobeyei settlements will receive 52% of a full ration, down from 60%. A full ration is the minimum daily requirement for a person. WFP has been unable to provide full rations since 2018. WFP is asking for about \$40 million to restore full food rations to refugees in the settlements over the next six months.

• Sharp Increase in Migrant Deaths Off Canary Islands

Migrant deaths in the Canary Islands migration corridor—from West Africa to the [Canaries](#), and from the [Canaries to Europe](#)—reached a record high in August, according to the International Organization for Migration (IOM). 379 people died last month, compared to 320 fatalities in August 2020. However, because many drownings leave no trace, the true number of deaths is likely to be much higher. "Invisible shipwrecks, in which there are no survivors, are believed to be frequent occurrences on this route but are nearly impossible to verify," said Frank Laczko, Director of IOM's Global Migration Data Analysis Center. In the first eight months of 2021, 9,386 people have arrived in the Canary Islands by sea, a 140% increase over the same period in 2020 (3,933).

• Uganda Reaffirms Commitments to Refugees

In an editorial written in Al Jazeera, Minister of Foreign Affairs Jeje Odongo reaffirmed Uganda's commitment to refugee resettlement and protection. "Uganda's doors will remain open," Odongo wrote. "We know deeply the hopelessness of the dispossessed. That is why Ugandans say refugees are our brothers and sisters. That is why our door will always be open to them." The editorial comes as the Uganda government has taken criticism for accepting 2000 Afghan refugees at the request of the U.S. government. Uganda hosts nearly 1.5 million refugees who have fled violence in [Burundi](#), the Democratic Republic of Congo, and South Sudan. To read the full editorial, [click here](#).



USCRI's Action and Resources on Afghanistan

For more information about the crisis in Afghanistan, resources for Afghan allies, and updates, please check out the links below:

[Resources for Afghan Allies](#)

[Human Faces of the Crisis in Afghanistan](#)

[USCRI Statement Calling for Extension of Evacuations](#)

[USCRI Snapshot: Humanitarian Parole for Afghan Evacuees](#)

Upcoming Meetings & Events

Unaccompanied Children and Immigration Trauma – September 28

On Tuesday, September 28 at 1 pm ET, USCRI and the Children's Equity Project will host the webinar "Trauma Pre-, During, and Post-Migration: Behavior, Relationships, Learning, and Wellness for Unaccompanied Children." The speaker will be Dr. Vilma Reyes of UCSF. For more information and to register, [click here.](#)

The Refugee Story: Beginning, Middle and End – September 30

On Thursday, September 30th at 9pm ET, UC Berkeley Extension will host a discussion on whether some individuals have rights to tell stories about refugees and trauma, as well as collective vs. individual truth. For information and to register, [click here.](#)

Conditional Citizens – October 14

On Thursday, October 14 at 9 pm ET, Pulitzer Prize finalist and author Laila Lalami will host an event for her book *Conditional Citizens*, on those who cannot enjoy the full rights of citizens. For more information and to register, [click here.](#)

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If you have any questions or comments, please contact the Policy and Advocacy Division at policy@uscrimail.org.