



## ADDITIONAL ADVOCACY RELATED TO TITLE 42<sup>1</sup>

### WHAT'S HAPPENING?

[Title 42](#) is the Code of Federal Regulations that the President can use to expel people at our borders in times of public emergency. Trump first invoked this provision in March, 2020 as a result of the COVID-19 pandemic but since July, 2021, when vaccinations were widely available, [Public health experts](#) and [advocates](#) have repeatedly called for the Biden administration to terminate Title 42 and cited the disproportionate impact Title 42 has had on Black migrants and refugees, including [Haitian asylum seekers](#), who have been denied and deported back to dangerous conditions. Ports of entry have been open to shoppers, tourists, and other travelers since [November](#), but asylum seekers, even those with proof of vaccination, continue to be [blocked and expelled](#).

Title 42 deprives asylum seekers of their legal right to pursue protection, allowing border officials to rapidly expel them to Mexico or to their home countries with no process whatsoever. The policy [violates the right](#) of people fleeing persecution not to be returned to danger, which is enshrined in the United States' laws and international treaty obligations.

Critically, **Title 42 does not protect public health**. The CDC order authorizing the expulsions was issued over [objections](#) by senior CDC medical [experts](#) that it lacked a public health justification. The Biden administration has continued the abuse of Title 42 over the objections of [more than 100 members of Congress](#), [public health experts](#), and [top advisors](#) from the administration. Practitioners have found Title 42 to [exacerbate](#) the spread of COVID-19 and other public health challenges.

In addition, **Title 42 fuels violence, the other epidemic that our country and others are fighting, and chaos at the southern border**. Since President Biden took office, there have been at least [8,705 reports of violent attacks](#)—including rape, kidnapping,

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<sup>1</sup> Material taken from the Immigration Hub, <https://theimmigrationhub.org/#:~:text=The%20Immigration%20Hub%20is%20a,Read%20more%20about%20us>.

and assault—against people blocked from requesting protection at the U.S.-Mexico border and/or expelled to Mexico under Title 42, as tracked by Human Rights First.

**Finally, as already indicated, Title 42 has had a disparate impact on Black migrants seeking safety.** Under the Biden administration, Title 42 has been used to expel Black refugees back to the countries they fled and to dangerous regions in Mexico without access to the U.S. asylum process. Despite national outcry following brutality against Haitian families in Del Rio, the administration's cruelty towards Haitian people seeking asylum has escalated. Since taking office the administration has sent over 200 removal flights to Haiti.

Last week, two separate courts issued two conflicting or "dueling" rulings regarding litigation that has been brought against the Biden administration for continuing to invoke Title 42.

First, on Friday, March 4<sup>th</sup>, the Court of Appeals for the D.C. Circuit [issued](#) a generally positive decision in *Huisha-Huisha v. Mayorkas*, a class action lawsuit brought on behalf of asylum-seeking families. Though it will not take immediate effect, the ruling partially restores a lower court injunction blocking Title 42 expulsions of families. The D.C. Circuit decision makes clear that it is illegal for the government to expel people to places where they would face persecution or torture under the guise of a sham public health order. While the decision technically applies only to families, the reasoning in the opinion applies to every person seeking protection. The Court expressed serious doubt about whether Title 42 serves any public health purpose at all, echoing what public health experts have been saying all along. The court called out the administration's failure to submit any testimony from the CDC to support Title 42. The ruling also exposed the hypocrisy of the Biden administration's decision to defend Title 42, while simultaneously working to terminate the Remain in Mexico program which subjects people seeking asylum to many of the same dangers.

Just hours after the ruling in *Huisha-Huisha*, a Texas judge handed down a [decision](#) ordering the administration to stop exempting unaccompanied children from Title 42. The decision was issued in a lawsuit brought last year by the state of Texas, which challenges the Biden administration's choice to halt expulsions of unaccompanied children. The judge concluded that the administration's decision to exempt vulnerable children from Title 42 was "arbitrary or capricious." The Texas ruling rests on the premise that COVID-19 justifies putting vulnerable children on deportation flights alone, or sending them to fend for themselves in some of the most dangerous cities in Mexico. The Texas government grounds this lawsuit in the pandemic, yet opposes

COVID-19 measures in virtually every other context.

However, this past Friday, March 11th, the CDC [posted](#) a [new order](#) related to Title 42's application to unaccompanied children exempting all unaccompanied minors.

We must continue to push the Biden administration to terminate Title 42 for families and all migrants. It is unclear how the Texas judge will respond to the CDC's latest order. Regardless, we must demand that President Biden and Vice President Harris uphold refugee law, end the use of Title 42, and establish a safe and fair asylum process at the border. It is more urgent than ever that the Biden administration end Title 42 and welcome all people seeking protection with dignity. Every day that Title 42 remains intact, our government is placing vulnerable families, children, and adults directly in harm's way. Re-opening the border is an opportunity to create the just and dignified system we know is possible, in which people seeking protection are welcomed and given a fair chance at asylum - rather than simply being expelled. It's also an opportunity to get people vaccinated. Many asylum seekers are coming from places and circumstances where they don't have access to vaccines. Border crossings are perfect places to deliver vaccines, increase the vaccinated population and ameliorate the effects of the pandemic.

## CALL/LETTER SCRIPT

My name is \_\_\_\_\_ and I live at \_\_\_\_\_ and I vote. I am calling/writing to demand that the use of Title 42 be terminated for all migrants. **The United States has the ability to protect public health and safeguard the lives of children, families, and adults seeking asylum and other humanitarian protection** - just like we have for non-asylum seekers during the pandemic. **Epidemiologists and public health experts have [repeatedly called on the Biden administration to revoke the Title 42 order](#)**, stating that we can both protect public health and the lives of people seeking refuge by relying on the kinds of public health measures we all now use. Instead of blocking people seeking humanitarian protection, the U.S. government should employ measures recommended by [public health experts](#) and [UNHCR](#) - such as distancing and masks, health screenings, testing, and use of non-congregate settings - to [quickly](#) process and parole asylum seekers, pending the completion of their immigration proceedings.

**Note:** For this script, it would be more effective if you were able to add any kind of personal story—either about your own or your family's immigration experience if there was humanitarian need, or about a loved one, a colleague, a neighbor or a friend. If you

have no personal immigration stories you can add information about why you think it is important to make sure that there is a remedy for all that is accessible and immediate.

**Additional Information to add to Calls or Letters:**

- o **Immigration Hub Press Call Release:** [Senate Majority Leader Chuck Schumer, US Senator Bob Menendez, Congresswoman Nanette Diaz Barragán, Immigration and Children Advocates Call on President Biden to Revoke Title 42](#)
- o **CHC Statement:** [Congressional Hispanic Caucus Statement on Revoking Title 42 \(Tweet\)](#)
- o **Congressional Letter:** [Booker, Bush Led 100 Congressional Colleagues in Urging President Biden to Reverse Inhumane Immigration Policies Impacting Black Migrants \(Tweet\)](#)
- o **Tweets from Members of Congress:** Sen. Bob Menendez [Tweet & Joint Statement](#); Sen. Cory Booker [Tweet](#); Sen. Elizabeth Warren [Tweet](#); Rep. Nanette Barragán [Tweet](#); Rep. Ayanna Pressley [Tweet](#); Rep. Raul Grijalva [Tweet](#); Rep. Debbie Wasserman Schultz [Tweet](#)

[Contact your legislators](#) and the [President](#) directly and ask them to terminate Title 42 for all migrants now.