



# ARGOS

INTERNATIONAL OBSERVATORY  
ON MIGRATION AND HUMAN RIGHTS

## ARGOS REJECTS TITLE 42 REMOVAL POLICY AGAINST MIGRANTS IN THE US

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Since the start of the COVID-19 pandemic, under Title 42 US authorities have removed hundreds of thousands of asylum seekers and undocumented migrants without due process. This includes families who have been arbitrarily separated from their children (who go on to be detained equally at risk of deportation, including away from their families), justifying the rapid removals as a health measure in the midst of the pandemic.

Based on an obscure and little-known 75-year-old law: The Public Health Service Act of 1944, the Department of Health and Human Services (HHS) issued an emergency regulation to implement a specific aspect of that law. Section 265 of Title 42 of the US Code allows the Director of the Center for Disease Control and Prevention (CDC) to prohibit the introduction into the United States of persons when the Director believes there is a serious danger of introduction of a communicable disease, a measure then implemented not by health authorities, but by instructing US Immigration and Customs Enforcement (ICE) and Border Protection (BPC) to enforce it. (ICE) and Border Protection (CBP), through US Customs and Border Patrol agents, primarily against migrants arriving without visas.

The Title 42 **removal policy** has effectively closed the US land and coastal border as a social, economic and political strategy, further militarizing migration management through policies focused on cruelty, punishment and deterrence, reflecting the **criminalization of the immigrant population** in the United States. Title 42 directly affects people crossing Mexico's borders into the United States through ports of entry on a daily

basis (nearly 9,000,000 people in December 2020 alone), who would be held in congregate settings, and instructing agents to process migrants for removal as quickly as possible. This has generated a dramatic shift in the demographics of border apprehensions to levels not seen in over a decade, creating an artificial bottleneck at the border.

Under an agreement reached with the Mexican government in late March 2020, Border Patrol began sending Mexican, Guatemalan, Honduran and Salvadoran families and single adults to Mexico, who are apprehended by CBP, and immediately sent back to their home countries, without any opportunity to apply for asylum. Tens of thousands of families and children have been removed: **since March 2020, CBP has conducted more than 642,700 Title 42 removals. In March 2021 alone, more than 105,000 individuals were deported.**

Most of the children removed were not travelling alone; they were declared “unaccompanied” by Title 42; however, the number of children classified as “unaccompanied minors” is unclear. About 16% of the children interviewed by the Immigrant Defenders Law Center in Los Angeles between December and 24 March travelled with family members who were subsequently removed. On 27 March this year, CBP held 5,767 “unaccompanied children” in its custody. In the first three months of 2021, 33,000 “unaccompanied children” arrived, of whom CBP removed more than 15,000, increasing the children’s vulnerability to trafficking and other harms. There are thousands of cases of “unaccompanied children” filling detention centers, leaving them with no viable means of obtaining protection, exposing their integrity within the facilities (there is an incidence of sexual abuse of children by facility staff) or to abduction by cartels and human traffickers once removed.

Although President Joe Biden promised during his campaign to restore access to asylum, today thousands of migrants are still being removed from the US under Title 42. Thus, the Biden-Harris administration is falsely using the excuse of the health hazards of the COVID-19 virus to justify the continuation of Title 42 as a massive structural way to perpetuate the humanitarian crisis at the border.

**The application of Title 42 is in violation of the International Covenant on Civil and Political Rights (ICCPR), to which the US is a party, the Refugee Convention, the 1967 Protocol Relating to the Status of Refugees, the Convention Against Torture, as well as the Immigration**

and Nationality Act, the Trafficking Victims Protection Reauthorization Act (TVPRA of 2008) and others; all of which prohibit removals or c in circumstances where individuals are at substantial risk. In addition, US federal courts have also rejected the legal basis for the use of Title 42: a federal district court blocked the application of the order to unaccompanied children.

**The Title 42 removal policy is based on a false assumption**, used to discriminate against immigrants. Quarantine authority was never intended to be used to determine which non-citizens may or may not be expelled or removed from the U.S. Yet a policy is pursued that has no scientific basis as a public health measure, singling out certain travelers for removal. The void of the supposed public health rationale behind such a policy is evidenced when ICE claims: “it ensures that migrant children do not have COVID-19 and then removes them to ‘prevent the spread’ of COVID-19”. The Department of Homeland Security (DHS) screened many migrants, including unaccompanied children, for COVID-19 before removing them.

Public reports indicate that even CDC scientists expressed opposition to this invocation of Title 42, arguing that there was no public health justification to support it. CDC Director Robert R. Redfield acknowledged that his order is being used to turn away refugees and asylum seekers and stated his belief that doing so was legal. It should be recalled that the UN Refugee Agency (UNHCR) issued guidance on 16 March 2020 calling for border measures related to COVID-19 to be non-discriminatory and limited to those that are necessary, proportionate and reasonable for the purpose of protecting public health.

**In the face of this serious policy of expulsion:**

- 1) We demand that fair and humane treatment of migrants be guaranteed, regardless of their migratory status, by responding to people arriving at the border in a manner that is fair, efficient and respectful of their rights, and by implementing public health measures to limit the spread of COVID-19.
- 2) We call for the repeal of Title 42, and the closure of all facilities (private and non-profit) for asylum seekers or unaccompanied children.
- 3) We demand that measures be put in place to protect public health by stopping the expulsion and return of migrants, providing them with

medical treatment or asylum services, translation where necessary, the use of personal protective equipment, frequent testing and social distancing, and ensuring that asylum seekers and migrants have adequate shelter, prioritizing family and small group care.

4) We demand that the basic human rights of families be guaranteed without separating adults from children, abolishing detention of child migrants in all its forms, and providing basic standards of care to ensure children's physical safety, access to legal services information and access to emergency clinical services; adapting border facilities to children's specific vulnerabilities and needs, through safe and licensed child care facilities with appropriately trained staff.

5) We call on the United States to accede to international conventions and protocols on refugee and related international law concerning racial, gender and other forms of discrimination.