



**TITLE 42: A LINGERING
THREAT TO MIGRANTS
TRYING TO ENTER THE USA**



**IN MAY
2021**

THE BIDEN-HARRIS
ADMINISTRATION
ANNOUNCED A RADICAL
INCREASE IN THE ANNUAL
QUOTA FOR GRANTING
REFUGEE STATUS TO 62,500
PEOPLE, WHICH WAS
KEPT BY TRUMP AT 15,000



*©Title 42: A lingering threat to migrants trying
to enter the USA*

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asylum seekers

Author: Guillermo Arias |
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Our views seek to investigate the social, economic, political and cultural phenomena surrounding human migration in different areas of the world, with the aim of defending the universality of human rights.

We observe the migratory processes by looking at their structural causes, the vulnerable populations, the various actors involved and the possible strategies of alarm, denunciation, follow-up and resolution of cases.

We focus on the specialized production of reports, maps and pedagogical contents, which serve as tools for research and action, and which can be useful to social, academic, civil and multilateral organizations.

The evocation of the ARGOS myth -the one with multiple eyes- inspires us to observe, with a plurality of perspectives, the migratory phenomena and the possible recommendations that guarantee free human mobility in conditions of equality and non-discrimination.

To the multiple and diverse threats that permanently hover over the thousands of migrants who try to cross the dangerous border between Mexico and the United States on a daily basis, for a little over a year now, one more has been added, which also encourages or favors both the abuses of the US government and the reprehensible actions of organized crime that revolve around the phenomenon of human mobility in the region. This is the application of the little-known health provision known as “Title 42”, which was strategically invoked in March 2020 by the Republican administration of Donald Trump and which, erroneously, it was thought would be annulled with the arrival of the Democratic administration of Joe Biden. Sadly, that has not happened.

According to the US migrant relief organization American Immigration Council¹, despite the existence of the historic right to seek asylum for people arriving at the southern border from Mexico, this fundamental right was abruptly suspended as of 20 March 2020.

In a document released² on the one-year anniversary of the implementation of the much-criticized measure and in the absence of rectification by the Biden administration, the American Immigration Council explained that migrants attempting to enter the United States, as well as those seeking asylum, have been systematically rejected and expelled back to Mexico or their countries of origin under an ancient and little-known provision of the 1944 Health Care Act, Section 265 of Title 42, which Trump invoked to achieve his long-desired goal: closing the border.

1 Available in: <https://www.americanimmigrationcouncil.org/research/tracking-biden-agenda-immigration-enforcement>

2 Available in: <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>

“With this provision, hundreds of thousands of people have been expelled since the beginning of the pandemic, even though ports of entry remain open with nearly nine million people crossing the southern border in December 2020 and thousands of people flying into the US every day,” the organization denounces in the document.

This situation, which threatens the flow and lives of migrants attempting to enter the US, began on 20 March 2020 when the Department of Health and Human Services (HHS), under the guise of a global COVID-19 emergency, issued an emergency regulation to regulate the flow of migrants. This situation, which threatens the flow and lives of migrants attempting to enter the US, began on 20 March 2020 when the Department of Health and Human Services (HHS), under the guise of the global emergency over COVID-19, issued an emergency regulation³ to activate a specific aspect of the US Health Act. According to the legislation invoked, section 265 of Title 42 authorizes the directors of the Centers for Disease Control and Prevention (CDC) to prevent the entry into the United States of persons when it suspects “a serious danger of introduction of a communicable disease into the United States”.

The provision allows any border official, including Customs and Border Protection (CBP) officers and Border Patrol agents, to enforce the order given to the CDC, i.e. to act in their discretion and prevent entry into the US on suspicion of being a COVID-19 carrier, of persons from any country who are attempting to enter via Canada or Mexico and who would normally “be introduced in a congregate environment” at a port of entry or port of entry or border patrol agent. This affects persons from any country attempting to enter the US

3 Available in: [https://www.cdc.gov/coronavirus/downloads/10.13.2020-CDC-Order-Prohibiting-Introduction-of-Persons -FINAL-ALL-CLEAR-encrypted.pdf](https://www.cdc.gov/coronavirus/downloads/10.13.2020-CDC-Order-Prohibiting-Introduction-of-Persons-FINAL-ALL-CLEAR-encrypted.pdf)

via Canada or Mexico who would normally “be brought into a congregate environment” at a port of entry or Border Patrol station on suspicion of carrying COVID-19. This affects persons who are regularly detained after arriving at the border, including asylum seekers, unaccompanied children, and persons attempting to enter the country without inspection.

According to statistics from the US Bureau of Customs and Border Protection⁴, between October 2020 and April 2021, more than half a million people, specifically 536,793 migrants, have been removed under Title 42 at the southern border alone. Between October 2020 and April 2021, more than half a million people, specifically 536,793 migrants, have been removed under Title 42 at the southern border alone.

U.S. Border Patrol Monthly Enforcement Encounters 2021: Title 42 Expulsions and Title 8 Apprehensions

U.S. Border Patrol (USBP)	Enforcement Actions	OCT	NOV	DEC	JAN	FEB	MAR	APR	YTD 21 TOTAL
Southwest Border	Title 42 Expulsions ²	63,007	61,276	60,596	62,531	72,322	107,098	109,963	536,793
	Title 8 Apprehensions ¹	6,044	7,886	10,546	12,783	25,320	62,115	63,497	188,191
	Total	69,051	69,162	71,142	75,314	97,642	169,213	173,460	724,984
Northern Border	Title 42 Expulsions ²	27	66	25	16	17	34	30	215
	Title 8 Apprehensions ¹	46	26	30	27	29	82	51	291
	Total	73	92	55	43	46	116	81	506
Land Border Total	Title 42 Expulsions ²	63,034	61,342	60,621	62,547	72,339	107,132	109,993	537,008
	Title 8 Apprehensions ¹	6,090	7,912	10,576	12,810	25,349	62,197	63,548	188,482
USBP - Total Land Border Enforcement Encounters		69,124	69,254	71,197	75,357	97,688	169,329	173,541	725,490

Source: USBureau of Customs and Border Protection⁵.

From the very moment of the activation of Title 42 of the US Health Care Act, the measure was labelled as a political action and not a health measure. The measure was described

4 Available in: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>

5 Available in: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>

as a political action rather than a health measure. Despite the claim that the order was necessary to “protect the United States from a public health problem”, a year after its implementation, the American Immigration Council denounced that public statements, denunciations, press reports and scientific reports showed that the origin of this measure came from the Department of Homeland Security (DHS) and the White House.

In fact, scientists at the Centers for Disease Control and Prevention (CDC) strongly expressed their rejection of the measure, arguing that there was no public health justification for implementing it.

Nevertheless, the measure was upheld. In March 2020, then-Republican Vice President Mike Pence ordered the Agency for Disease Control to “use its emergency powers to effectively seal the borders of the United States”, in order to override the publicly expressed opinion of some scientists at the agency who said there was no evidence that the action would stop the coronavirus, according to an AP report⁶ released in October last year that revealed the Trump administration’s moves to maintain the measure despite scientific criticism.

What is difficult to understand, both for Americans and the international community, is that despite the criticisms made by the Democratic Party in 2020, the election promises made before the November 2020 elections and the first statements upon taking office in January 2021, the Democratic administration of Joe Biden has shown no change to the policy imposed by Trump.

Although in May 2021 the Biden-Harris administration announced a radical increase in the annual quota for granting refugee status to 62,500 people, which was kept by Trump

⁶ Available in: <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>

at 15,000, for the independent news organization Truthout⁷, such a move “does not change the other massive structural ways in which the Biden-Harris administration continues to perpetuate the crisis at the border”.

In an article⁸ by US academic Marjorie Cohn⁹, spokespersons describe what is happening at the border as a genuine humanitarian and human rights crisis. “There is no crisis at the border caused by migrants. There is a humanitarian and human rights crisis because the US government has effectively closed the border to asylum seekers and has not allowed them to apply for asylum since March 2020,” said Nicole Phillips, legal director of the Haitian Bridge Alliance¹⁰, an NGO that provides assistance to Haitian immigrants in California.

According to Truthout, the Biden-Harris Administration’s continued implementation of the Title 42 measure continues to cause family separations and threaten the lives of children, adolescents and adults, as documented in an April 2021 report published by migration NGOs Human Rights First, Haitian Bridge Alliance and Al Otro Lado. According to the document, the measure drives families to send their children across the border to protect them from kidnapping, sexual assault and other forms of violence.

It is clear that this measure makes migrants “easy targets” for kidnappers and others when they are returned to Mexico. This was denounced by the Los Angeles Times in an article published¹¹ last April based on testimonies.

7 Available in: <https://truthout.org/>

8 Available in: <https://truthout.org/articles/us-made-border-crisis-persists-despite-bidens-about-face-on-refugee-cap/>

9 Available in: <https://marjoriecohn.com/biography/>

10 Available in: <https://haitianbridge.org/index.html>

11 Available in: <https://www.latimes.com/espanol/eeuu/articulo/2021-04-29/biden-dijo-que-queria-expulsar-a-mas-familias-de-inmigrantes-en-vir>

For its part, HumanRightsFirst¹², citing Truthout, identified at least 492 reports of violent attacks since 21 January 2021, including kidnappings, rapes and assaults on people stranded at the border or expelled into Mexico.

In addition to the obvious dangers caused by organized crime surrounding migration south of the US border, which has intensified with the implementation of Title 42, there has also been an increase in the mistreatment of migrants by the US authorities. In addition to violent arrests, arbitrary detentions and deportations without the right to apply for asylum, there is poor humanitarian care.

According to the Human Rights First report cited by Truthout, people who are not sent to Mexico and who are detained by the Border Patrol suffer multiple abuses, are denied emergency medical care, have their belongings stolen, and their deportations are carried out at night to dangerous border cities.

In conclusion, non-governmental organizations, multilateral agencies and the international community at large expect an immediate rectification by the Biden administration on US southern immigration policy and specifically on the application of Title 42, which experts say violates the Immigration and Nationality Act as well as the Refugee Convention, which grant non-citizens the right to asylum if they can demonstrate a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion. It also violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which contains a non-refoulement provision.

Finally, it contravenes the provision of the United Nations Refugee Agency (UNHCR), which has repeatedly stated that,

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12 Available in: <https://www.humanrightsfirst.org/>

during the pandemic, asylum seekers and refugees should not be expelled in border areas without an individualized analysis of their protection needs, as this violates international law.

