



BORDER HEALTH JUSTICE

Ensuring Due Process and Public Health Safety Amidst the Covid-19 Pandemic

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Glossary of Terms

Below is a list of defined key terms. These definitions are meant to give readers an overview of immigration, public health, and legal jargon used in association with Title 42. This list only includes terms used in this report.

Apprehension - Apprehension is allowed under Title 8 and is defined as the physical control or temporary detainment of an undocumented migrant.¹

Asylum Seeker - A person, fleeing war, violence, or persecution, who is seeking international sanctuary. Asylum seekers must apply for protection at a port of entry or after they have entered the U.S.. Asylum seekers are considered unauthorized or undocumented immigrants until their asylum application is approved.

COVID-19 - A highly contagious disease, caused by the SARS-CoV-2 virus, that plagued the world in March 2020.

Expulsion - The removal of an undocumented migrant from the U.S.

Refugee - A person fleeing war, violence, or persecution that requests international sanctuary and, if approved, receives protected status before entering the country.

Unauthorized or Undocumented Immigrant - An unauthorized or undocumented immigrant is someone without legal status. People who are undocumented may have entered the U.S. without inspection or overstayed a Visa.

Legal Permanent Resident (LPR) - A non-citizen who holds a green card that grants legal authorization to permanently live in the U.S. If eligible, LPRs can apply to become naturalized U.S. Citizens.

Unaccompanied Children (UC) - Migrant youth under 18 years of age who immigrate to the U.S. without the company of an adult. Unaccompanied minors are always considered unauthorized or undocumented immigrants.

Title 42 - A federal law (section 256 of U.S.C. Title 42) that prohibits the entry of individuals from countries with dangerous contagious diseases.

Due Process - Due Process is the constitutional obligation of the federal government to implement the promise of a fair procedure.

Expedited Removal - A federal policy (see 8 U.S.C. § 1225(b)(1)) that allows immigration officials to expeditiously deport immigrants - undocumented and non-citizens alike - without a hearing, the opportunity to see a judge or an attorney, or the right to appeal²

1. According to Department of Homeland Security (DHS), the term ‘apprehension’ (when used not in association with Title 8) is defined as the arrest of a removable undocumented immigrant by DHS.

2. Immigrant Legal Resource Center, and Stanford Law School. “TOOLKIT TO ASSIST PEOPLE FACING EXPANDED EXPEDITED REMOVAL.” Immigrant Legal Resource Center, n.d.
www.ilrc.org/sites/default/files/resources/2017.07_ilrc_expedited_removal_final.pdf.

Executive Summary

Since the implementation of Title 42 during the COVID-19 pandemic, over a million asylum seekers who presented to the Southwestern U.S. border have been denied entry into the U.S., raising significant health and humanitarian concerns from health, legal, and community experts alike. Guided by our client and community partners at the COVID-19 Task Force on Racism & Equity at the Center for the Study of Racism, Social Justice & Health at UCLA, this report explores alternative solutions through which federal agencies can improve public health for both migrants and U.S. residents during a pandemic—while also ensuring due process for migrants.

We conducted a literature review investigating impacts and challenges with Title 42 and analyzing data released by government agencies. We corroborated this research with interviews of 25 stakeholders in the health, government, and legal sectors. Based on our findings and analysis, we find that Title 42 has negligible positive effects on health - and perhaps even negative consequences - and significantly impedes due process. **We unequivocally advocate for Title 42 to be rescinded.**

We identified **six alternative policy** options that federal agencies could consider to protect health and due process. We evaluated the options based on six criteria: impact on health of migrants, impact on health of US residents, impact on due process, political feasibility, administrative feasibility, and financial feasibility.

From this evaluation, our highest priority policy recommendation is for U.S. Customs and Border Protection (CBP) to provide opportunities for migrants to receive COVID-19 vaccinations and boosters. We also support CBP providing on-site and site-wide COVID-19 rapid antigen testing for symptomatic migrants and appropriate triage and treatment for those who test positive. Finally, we suggested three other policies that are larger-scale interventions: increasing facility capacity and staffing for asylum cases, increasing migrants' access to legal counsel; and transferring responsibilities involved with the screening of asylum claims to qualified Non-Governmental Organizations (NGOs) with community connections.

Collectively, these policies address the urgent COVID-19 crisis at the border and help reform the system by which migrants seek asylum during a pandemic. While we recognize these policies are not enough to entirely transform the system by which migrants seek asylum, and inherent humanitarian issues continue to exist, we hope that it contributes to the conversation on moving towards a more equitable and just immigration system.

A close-up photograph of a person wearing a white, pleated PM2.5 face mask. The mask has a small label with 'PM2.5' printed on it. The person's eyes are visible above the mask. A semi-transparent teal rectangular overlay covers the left side of the image, and a thin yellow border frames the entire composition.

CHAPTER ONE

INTRODUCTION

Introduction

On March 13, 2020, the Trump administration declared the spread of COVID-19 a national emergency in the U.S.^{3,4} During the early stages of the COVID-19 pandemic, the U.S. rapidly responded with public health strategies such as the Title 42 order. Title 42 allowed the closure of U.S. borders to asylum seekers to limit the transmission of infectious diseases from other countries. Despite inadequate evidence indicating that significant infectious disease control results from banning migrants and asylum seekers, as well as disapproval from health experts and authorities at the Centers for Disease Control and Prevention (CDC), the order was implemented on March 20, 2020 under pressure from the Trump administration.⁵ Since then, significant safety concerns have risen around the detention and expulsion processes allowed by Title 42. The implementation of this order has sparked widespread concern over its impacts on the health, legal rights, and human rights of asylum seekers—who are low-income, racially marginalized migrants unable to return to their home country due to fear of persecution.^{6,7}

Before delving deeper, a brief note on terminology: We recognize that Title 42 is a broader statute with implications beyond its application to refuse entry to migrants during the pandemic. In this paper, when we refer to “Title 42,” we are referring to this specific application. Additionally, we will refer to migrants and immigrants interchangeably with asylum seekers. We recognize that not all migrants who cross the border are seeking, eligible, or aware about the asylum process.

Overview of the Impacts of Title 42

Title 42 supersedes all other U.S. laws — including statutes that permitted migrants to seek asylum in the U.S. —under the pretext of public health surveillance.⁸ Asylum seekers often endure long journeys to the U.S., escaping human rights violations, political and social turmoil, gang violence, gender-based persecution, permanent displacement, among other injustices.⁹ Title 42 threatens their lives by denying them safe harbor and judicial review, and instead expels migrants to dangerous conditions in their home country or Mexico.

3. Biden, Joseph R., Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic §. Presidential Actions (2021). www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/#:~:text=On%20March%2013%2C%202020,of%20the%20Nation.%3C

4. “Basics of Covid-19.” Centers for Disease Control and Prevention. November 4, 2021. www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.html.

5. De La Rosa, Pablo. “Title 42 Migrant Expulsions Had No Basis in Public Health, Says Former CDC Deputy Director.” Texas Public Radio, November 29, 2021. www.tpr.org/border-immigration/2021-11-26/title-42-migrant-expulsions-had-no-basis-in-public-health-says-former-cdc-deputy-director.

6. “Refugees and Asylees,” U.S. Department of Homeland Security, accessed April 11, 2022, <https://www.dhs.gov/immigration-statistics/refugees-asylees>.

7. Pollack, Harold A., and Caroline Kelly. “Covid-19 and Health Disparities: Insights from Key Informant Interviews: Health Affairs Forefront.” Health Affairs, October 27, 2020. www.healthaffairs.org/doi/10.1377/forefront.20201023.55778/full/.

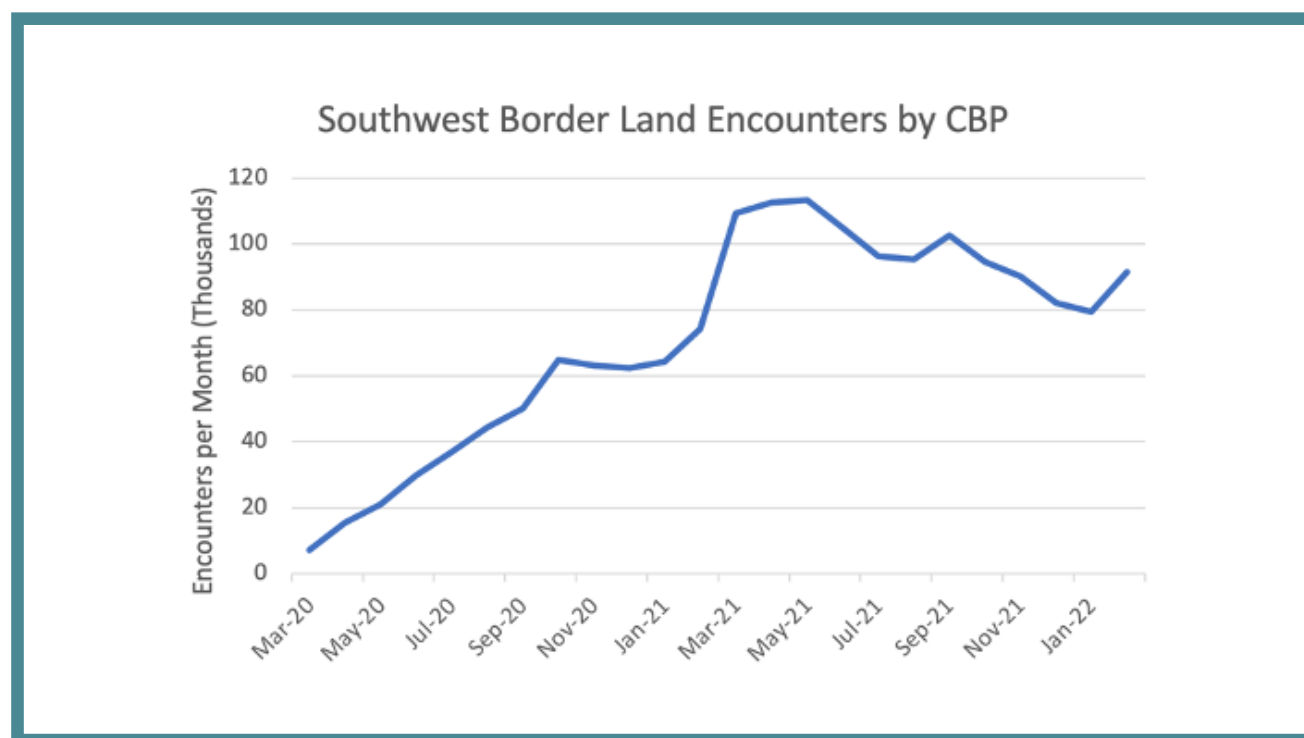
8. Kathryn Hampton et al., “Neither Safety nor Health: How Title 42 Expulsions Harm Health and Violate Rights.” Physicians for Human Rights, July 28, 2021. www.phr.org/our-work/resources/neither-safety-nor-health/.

9. “What is happening at the U.S. southern border?” Rescue, updated April 6, 2022,

Since its implementation, **1.7 million migrants have been expelled to Mexico, or their country of origin**, under Title 42.¹⁰ Most migrant encounters by Customs and Border Protection (CBP) during the pandemic have ended in expulsion under Title 42. Across all months, there has been an increase in the absolute number of expulsions from year to year (Figure 1); for example, in October 2020, CBP expelled 64,894 migrants under Title 42, compared to 94,414 in the following year. Reasons for this vary from heightened patrolling and enforcement, to a larger number of migrants seeking entry to the U.S..¹¹

Figure 1: Title 42 Expulsions at the U.S.-Mexico Border from March 2020-Feb. 2022

Adapted from Source: U.S. Custom and Border Protection.¹²



Title 42 has created due process violations. Migrants, except for those falling into special exempt categories (mentioned later in this report), can no longer access the U.S. immigration system, nor have their due process rights respected.¹³ Instead, they are being expelled without notice of the Title 42 expulsion process, a fair hearing, the right to present evidence, or the opportunity to seek legal counsel, and CBP is not informing them about their rights.^{14, 15}

10. "Southwest Land Border Encounters (by Component)." U.S. Customs and Border Protection, March 15, 2022.

<https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component#>.

11. Gramlich, John, and Alissa Scheller. "What's Happening at the U.S.-Mexico Border in 7 Charts." Pew Research Center. November 9, 2021.

<https://www.pewresearch.org/fact-tank/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/>.

12. "Southwest Land Border Encounters (by Component)." U.S. Customs and Border Protection.

13. *Al Otro Lado, Inc. v. Mayorkas*, 17-cv-02366-BAS-KSC(S.D. Cal. Sep. 2, 2021)

14. Kino Border Initiative and Network Lobby for Catholic Social Justice, "Due Process Denied: CBP Abuses at the Border October 2020-July 2021," *Kino Border Initiative*, August 22, 2021,

<https://www.kinoborderinitiative.org/wp-content/uploads/2021/08/KINO-NETWORK-CBP-Abuses-consolidated.pdf>.

15. *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004); *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985); *Ward v. Village of Monroeville*, 409 U.S. 57, 61-62 (1972); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

These actions are leading to expedited expulsions, which have significantly affected the number of migrants who have applied for asylum since March 2020. Under Title 42, asylum court cases have decreased by over 60%, and between April 2020 and January 2021, *only 611 individuals entered the asylum process*, compared to 1,552 in February 2020, *alone*.¹⁶

Without the opportunity to access asylum and with threats of persecution, **thousands of migrants have become suspended at the border with nowhere to go**, forcing them to congregate in refugee camps with precarious conditions¹⁷ (Image 1). Along with a scarcity of basic needs (e.g., food, water, and shelter), these conditions make migrants vulnerable to kidnappings, torture, rape, family separation, and other human rights violations.¹⁸ Children are particularly vulnerable. In its original form, Title 42 was used more than 29,000 times to expel minors under 18, including 9,000 children under five and 600 infants under one.¹⁹

Image 1 August 2021;
A makeshift migrant
encampment in Reynosa,
Mexico, across from Hidalgo,
Texas, home to thousands of
transient migrants.

Source: Sarahbeth Manet/The
New York Times²⁰



COVID-19 created additional risks. Despite crowded conditions and limited resources, encampments initially controlled the spread of COVID-19 well, largely thanks to collaborations between migrants, Non-Governmental Organizations (NGOs), and volunteers.²¹ However, in December 2021, the highly contagious Omicron variant brought new challenges. With the Omicron variant spreading rapidly, NGO and volunteer capacity struggled to keep up.

16. "Rising Border Encounters in 2021: An Overview and Analysis." American Immigration Council, March 4, 2022.

<https://www.americanimmigrationcouncil.org/rising-border-encounters-in-2021#:~:text=Violence%20and%20impunity%20also%20continued,been%20waiting%20in%20other%20countries.>

17. Jordan, Miriam. "A Squalid Border Camp Finally Closed. Now Another One Has Opened." The New York Times, August 25, 2021. www.nytimes.com/2021/08/25/us/migrant-camp-reynosa-remain-in-mexico.html.

18. Taladrid, Stephania. "The Continued Calamity at the Border." The New Yorker, January 18, 2022. www.newyorker.com/news/dispatch/the-continued-calamity-at-the-border.

19. Human Rights First, "Illegal and Inhumane": Biden Administration Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount." www.humanrightsfirst.org/resource/illegal-and-inhumane-biden-administration-continues-embrace-trump-title-42-policy-attacks

20. Jordan, Miriam. "A Squalid Border Camp Finally Closed. Now Another One Has Opened."

21. Brigida, Anna-Catherine. "Refugees Hold the Line Against a Pandemic," December 17, 2020.

www.usnews.com/news/best-countries/articles/2020-12-17/migrant-camp-on-mexicos-border-limits-the-spread-of-covid-19.

However, in December 2021, the highly contagious Omicron variant brought new challenges. With the Omicron variant spreading rapidly, NGO and volunteer capacity struggled to keep up. Mexican hospitals became overwhelmed, and many migrants needing medical treatment were often given the lowest priority because they were not Mexican nationals.²² Furthermore, **access to testing and vaccination was (and remains) limited**,²³ and **migrants face serious risk of COVID-19 exposure under CBP custody**, where they are often held in congregate detention settings in conditions that make physical distancing nearly impossible.²⁴

Changes under Title 42 have caused an increase in exposure to the dangers of repeated border crossing attempts and migrant mortality. Since the implementation of Title 42, the number of migrants trying to enter the U.S. multiple times has increased three-fold, from 7% in March 2020 to 40% in October 2020.²⁵ The migration journey, on its own, is filled with severe physical and mental trauma; repeated crossing attempts amplify this trauma and increase concern for migrants' well being.²⁶ In fact, many migrants are dying from these conditions. In 2021, CBP recorded 650 migrants dying during attempts to cross the border, the highest mortality rate since 2014, and over double the amount of deaths reported in 2020.²⁷ Causes of mortality range from elemental exposure (i.e., extreme heats or freezing temperatures), to illnesses and violence.²⁸

Violence against migrants has also increased. Since 2019, CBP officers have increasingly used violent force on migrants, while assaults by migrants on CBP officers has decreased.^{29, 30} In September 2021, images of CBP agents on horses pursuing, corralling, and whipping Haitian migrants at the Rio Grande River brought to light the severity of the abuse against migrants by CBP (Image 2).³¹

22. Tania Garcia, interview

23. Narea, Nicole. "Migrants in Mexico Are on Their Own against Omicron." Vox. Vox, January 30, 2022. <https://www.vox.com/policy-and-politics/22902501/migrants-mexico-omicron-surge-health-care>.

24. Nikos-Rose, Karen. "Immigrants in ICE Detention Face High Risks in COVID-19 Pandemic." UC Davis, March 15, 2021. <https://www.ucdavis.edu/coronavirus/news/immigrants-ice-detention-face-high-risks-covid-19-pandemic>.

25. "Rising Border Encounters in 2021 An Overview and Analysis." American Immigration Council.

26. Long-García, J.D. "Migrants at the U.S. Border Are Often Traumatized. JRS Provides the Mental Health Services They Desperately Need." America Magazine, February 14, 2022.

<https://www.americamagazine.org/politics-society/2022/02/14/caminar-contigo-migrant-border-jrs-242354>.

27. Alvarez, Priscilla. "At Least 650 Migrants Died Crossing the U.S.-Mexico Border This Year." CNN, December 9, 2021. <https://www.cnn.com/2021/12/09/politics/migrants-dying-crossing-us-mexico-border/index.html#:~:text=That%27s%20up%20from%20254%20deaths,agency%20has%20tracked%20this%20data>.

28. "Human Rights First Tracker of Reported Attacks during the ..." Human Rights First. Accessed April 3, 2022. <https://www.humanrightsfirst.org/sites/default/files/AttacksonAsylumSeekersStrandedinMexicoDuringBidenAdministratio%20n.10.21.2021.pdf>.

29. "Assaults and Use of Force Statistics." U.S. Customs and Border Protection, March 15, 2022. <https://www.cbp.gov/newsroom/stats/assaults-use-force>.

30. "CBP Use of Force Policy Handbook." U.S. Customs and Border Protection. Law Enforcement Safety and Compliance Directorate, January 2021. https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/cbp-use-of-force-admin-guide-procedure-handbook_4500-002B.pdf.

31. Sullivan, Eileen, and Zolan Kanno-youngs. "Images of Border Patrol's Treatment of Haitian Migrants Prompt Outrage." The New York Times. The New York Times, September 21, 2021. <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.



Image 2: A border patrol agent raises a whip at Haitian migrants.

Source: Paul Ratje/Agence France-Press/Getty Images³²

Although Title 42 aims to protect public health, it has generated significant concern about its negative impacts. The goal of this report is to explore these concerns and propose policy alternatives that maintain due process, while simultaneously mitigating COVID-19 transmission and bolstering public health for both migrants and U.S. communities. We hope these recommendations are not only applicable to the on-going pandemic, but also serve as precedents for future scenarios where public health and due process seem at odds.

Additional Information on Impacts of Title 42

To maintain brevity, we created an appendix which expands on the impacts of Title 42, including demographic information of migrants, comparisons to Title 8 apprehensions, and further detail on the number of asylum cases, repeated border crossings, use of force on migrants, and migrant mortality and experiences of violence. Please refer to Appendix A for this information.

32. Ibid.

Client: The COVID-19 Task Force on Racism & Equity at the Center for the Study of Racism, Social Justice & Health at UCLA

Created to respond to health and social inequities exacerbated by COVID-19, The COVID-19 Task Force on Racism & Equity at the Center for the Study of Racism, Social Justice & Health at UCLA collaborates with community organizations, service providers, and advocates to provide research and analytical support for their advocacy work. The Task Force, founded under the leadership of Dr. Chandra L. Ford, consists of 24 members, of which Dr. Bitu Amani, Co-Chair, and Alejandra Cabral are our primary collaborators.

Since its creation, the Task Force has led projects that highlight the experiences of the communities most impacted during the pandemic. It spearheaded a COVID-19 Storytelling Project -- creating reports, press releases, and materials to showcase their findings -- and developed Project Re[Focus] to track and address the inequities of the pandemic. Through their work, they have centered marginalized groups that have been severely impacted by both COVID-19 and government responses to this virus.

With this report, we hope to provide the Task Force with reliable research and policy alternatives that prioritize health and due process rights of migrants and the U.S. population. We draw from principles of a health justice framework³³ to take steps toward health equity for migrants, who are often overlooked and disregarded, especially during this global pandemic.³⁴ Our project draws on these principles in accordance with the policy goals of our client. While no set of policies will address all the issues with immigration and structural determinants of health, we hope our equity-minded work assists the advocacy efforts of our client and their community partners.

33. The term, "health justice framework," refers to a call from the medical community to prioritize delivery of care from a health equity and social justice lens.

34. Benfer, E. A., Mohapatra, S., Wiley, L. F., & Yearby, R. (2019). Health justice strategies to combat the pandemic: Eliminating discrimination, poverty, and health disparities during and after COVID-19. *Yale J. Health Pol'y L. & Ethics*, 19, 122.

Policy Question

This report focuses on the application of Title 42 in the U.S.-Mexico border. Although Title 42 impacts both the U.S.-Canada and U.S.- Mexico border, the Southern border is most impacted. In this area, CBP apprehends and expels migrants at rates that are hundreds, if not thousands, of times greater than at the Northern border.³⁵ With this in mind, we explore the following policy question:

POLICY QUESTION

Amidst a global pandemic, how can federal agencies ensure due process for asylum seekers while prioritizing the public health of both migrants and U.S. residents?

We aim to support our client’s goal of identifying human-centered policy options that are alternatives to Title 42. The nature of the policies we propose address the health and legal needs of migrants, while considering the risks of COVID-19 on communities in the U.S.

35. “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions FY2021.” U.S. Customs and Border Protection. Accessed April 3, 2022.
www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2021#wcm-survey-target-id.



CHAPTER TWO

BACKGROUND

About Title 42

Title 42 allows individuals who are deemed to carry “serious danger of the introduction of disease (COVID-19)” and come from “Coronavirus Impact Areas” to be denied entry into the U.S.^{36, 37} This policy supersedes statutes that protected children from human trafficking, allowed migrants to seek asylum, and prevented persecuted individuals from returning to unsafe conditions in their home country. Thus, under Title 42, the CBP was authorized to turn away and expel asylum seekers, unaccompanied children (UC), and non-citizens entering without inspection at U.S. land borders.³⁸ Migrants were expelled back to their home country,³⁹ or into Mexico,⁴⁰ even if they are from other countries.⁴¹

Updates to Title 42

After Title 42 went into effect, the American Civil Liberties Union (ACLU) filed litigation to rescind it, citing violations of multiple laws including the Public Health Service Act of 1944.⁴² As originally passed, this act was designed to grant quarantine power to health authorities to apply to everyone arriving from a foreign country where contagious disease exists, including U.S. citizens.⁴³ This authority was never meant to be used to determine which persons could be expelled or removed from the U.S.. In fact, Congress kept any reference to immigrants out of the law’s text due to concerns of future discrimination against immigrants.⁴⁴ However, Title 42 applies only to migrants, explicitly excluding U.S. citizens, lawful permanent residents, and those holding valid travel documents, among other groups.⁴⁵

36. “42 USC 265 Suspension of Entries and Imports from Designated Places to Prevent Spread of Communicable Diseases.” U.S. Codes, House. Accessed April 3, 2022.

<https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title42-section265&num=0&saved=%7CKHRpdGxlOjYIHNIY3Rpb246MjY0IGVkaXRpb246cHJlbGltKQ%3D%3D%7C%7C0%7Cfalse%7Cprelim>

37. American Immigration Council “A Guide to Title 42 Expulsions at the Border,” October 15, 2021.

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

38. *Huisha-Huisha v. Mayorkas*, Civ. Action 21-100(EGS)(D.D.C. Sep. 16, 2021)

39. Only if the country accepted expulsions - and most did not

40. Mexico only accepted limited numbers of Mexicans and Central Americans each day

41. *Ibid.*

42. *Ibid.*

43. *Ibid.*

44. “Q&A: U.S. Title 42 Policy to Expel Migrants at the Border.” Human Rights Watch, April 8, 2021.

<https://www.hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border#>.

45. U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC), “Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists,” August 8, 2021, https://www.cdc.gov/coronavirus/2019-ncov/downloads/CDC-Order-Suspending-Right-to-Introduce-Final_8-2-21.pdf.

Exceptions to Title 42 occurred only with an advanced legal case on an individualized case basis. In February 2021, the CDC exempted UC from expulsion under Title 42.^{46, 47} More recently, in March 2022, the U.S. Court of Appeals for the District of Columbia (D.C.) ruled that migrant family units facing persecution or torture should also be exempt from Title 42.⁴⁸ Later in this month, the Biden Administration released news of their goal to fully rescind Title 42 by May 2022.⁴⁹ This change is not expected to happen immediately. Given the number of migrants at the border, the Biden Administration is planning to expand CBP holding capacity (by creating tent facilities) and increase migrant processing capacity (by augmenting transportation networks and adding personnel at the border) before Title 42 is fully lifted.⁵⁰ It will defer to the CDC to carry out this change, with a goal of “winding down” Title 42 by late May 2022.^{51, 52}

The Asylum Process Before Title 42

Asylum was created to be a legal protection that allows individuals to reside in another country if significant safety risks exist in their country of origin.⁵³ **Its protections are granted to people that suffer or fear the persecution of one, or more, of the following categories: race, religion, nationality, membership in a particular social group, and political opinion.**⁵⁴

The defensive asylum process impacts migrants apprehended at the border or those detained domestically by Immigration and Customs Enforcement (ICE).⁵⁵ These migrants are immediately sent to removal proceedings and must express fear of returning to their country to begin the asylum process.

46. “A Guide to Title 42 Expulsions at the Border.” American Immigration Council.

47. These expulsions had stopped in October 2020 after litigation

48. Sullivan, Eileen. “U.S. Can’t Use Health Rule to Expel Migrant Families Facing Persecution, Court Says.” The New York Times. The New York Times, March 4, 2022.

<https://www.nytimes.com/2022/03/04/us/politics/title-42-migrant-families-ruling.html>.

49. Sacchetti, Maria, and Nick Miroff. “Biden Administration to Lift Pandemic Border Restrictions.” The Washington Post. WP Company, March 30, 2022.

<https://www.washingtonpost.com/national-security/2022/03/30/title-42-border-restrictions-no-longer-needed-public-health-cdc-says/>.

50. Sacchetti, Maria, and Nick Miroff. “Biden Administration to Lift Pandemic Border Restrictions.

51. Ibid.

52. “What Is Title 42, the COVID-19 Border Policy Set to End in Late May?” Accessed April 12, 2022.

<https://www.cbsnews.com/news/title-42-immigration-border-biden-covid-19-cdc/>.

53. “What Is Asylum?” UNHCR: The UN Refugee Agency. Accessed April 3, 2022. www.help.unhcr.org/usa/applying-for-asylum/what-is-asylum/.

54. Asylum §, U.S. Citizenship and Immigration Services, n.d. www.uscis.gov/humanitarian/refugees-and-asylum/asylum

55. There is also an affirmative asylum process. In the affirmative process, asylum seekers are physically present in the U.S.. For this process to apply, their application must be submitted at a port of entry within one year of their arrival, and they must not be in removal proceedings. Afterward, applicants are to be interviewed by an asylum officer, who determines the migrant’s eligibility for asylum. Source: <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process>

CBP officers are to ensure that migrants have an opportunity to express claims of fear by asking four standardized questions around these potential concerns. These questions are:

*“Why did you leave your home or country of last residence?
Do you have any fear or concern about being returned to your
home country or being removed from the United States?
Would you be harmed if you are returned to your home
country or country of last residence?
Do you have any questions or is there anything else you would
like to add?”*⁵⁶

CBP officers do not have discretion on whether a migrant’s asylum case is credible, nor do they hold authority to refer migrants to the next step in the process. If migrants claim fear of persecution, CBP must refer them to a U.S. Citizenship and Immigration Services (USCIS) asylum officer for further screening. If credible fear is found, applicants must file their defensive request with an immigration judge in the Department of Justice. Asylum seekers have to prove that they are targets of persecution or have a “well-founded fear” of persecution in their home country.^{57, 58, 59}

The Asylum Process Under Title 42

As it stands today⁶⁰, the asylum process is superseded by Title 42. Nearly all asylum seekers encounter CBP and are detained under alarmingly crowded conditions (*Image 3*).⁶¹ There is no universal fear screening conducted by CBP, even if migrants express fear of persecution. While in detention, migrants are briefly screened for exemptions, biometric information, COVID-19 symptoms, and expelled without a formal order of deportation.⁶²

56. “Claims of Fear.” U.S. Customs and Border Protection, July 17, 2020.

www.cbp.gov/newsroom/stats/sw-border-migration/claims-fear.

57. “Credible Fear Interview: A Critical Step in the Asylum Process.” Documented, March 12, 2021.

<https://documentedny.com/2021/03/12/credible-fear-interview-a-critical-step-in-the-asylum-process/>.

58. Obtaining Asylum in the United States § (n.d.).

<https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states>

59. “Frequently Asked Questions about Asylum and the Border.” Human Rights First, December 2013.

<https://www.humanrightsfirst.org/sites/default/files/FAQAsylum-Border.pdf>.

60. Today is April 2, 2022.

61. Castillo, Andrea, and Karen Garcia. “Title 42 Explained: The Obscure Public Health Policy at the Center of a U.S. Border Fight.” Los Angeles Times. Los Angeles Times, October 25, 2021.

<https://www.latimes.com/politics/story/2021-10-25/what-is-title-42-how-does-it-impact-us-border-immigration>.

62. Castillo, Andrea, and Karen Garcia. “Title 42 Explained: The Obscure Public Health Policy at the Center of a U.S. Border Fight.”

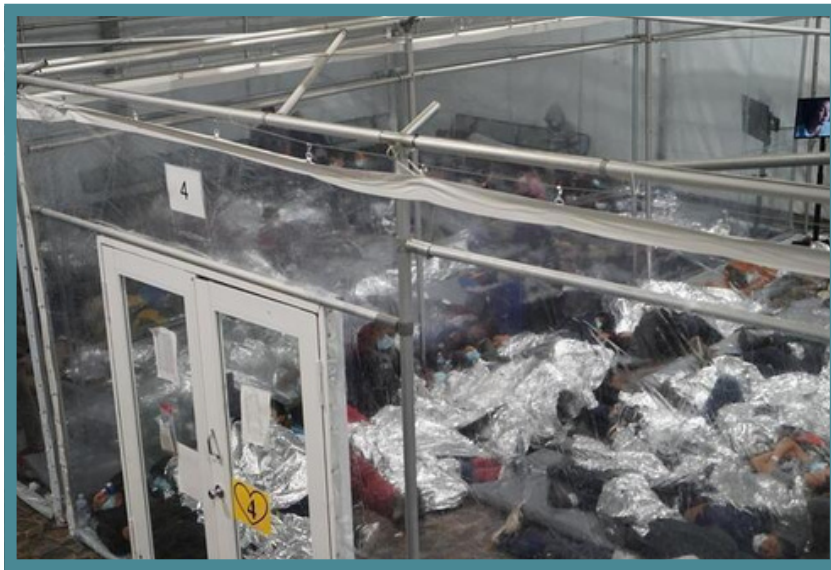


Image 3 In Texas, a pod meant to accommodate 32 people holds more than 100 people during the pandemic.

Source: CBS News⁶³

During the expulsion process, CBP distinguishes between placing migrants on an expulsion flight, or immediately expelling them. Those subject to immediate expulsion are escorted to Mexico, or transported to the nearest port of entry.^{64, 65} Migrants waiting for expulsion flights endure temporary detention at a(n) CBP, ICE, or U.S. Border Patrol holding facility.^{66, 67}

COVID-19 procedures differ drastically between ICE and CBP. While ICE has a few standard procedures, including COVID-19 screenings (see Appendix B) and testing for migrants within 12 to 24 hours upon arrival, CBP has fewer standard practices.⁶⁸ Under CBP custody, COVID-19 testing is limited. The scarcity of tests only causes CBP to test visibly ill and symptomatic migrants.⁶⁹ Those with symptoms are referred to local government agencies and NGOs for testing and diagnosis.⁷⁰ Migrants that test positive are supposed to be held an additional 10-days in a quarantine facility.⁷¹

63. Villareal, Mireya, Nicole Sganga, and Camilo Montoya-Galvez. "Inside a Border Patrol Facility Holding 16 Times More Migrants than Its Capacity." CBS News. CBS Interactive, March 31, 2021.

<https://www.cbsnews.com/news/immigration-border-patrol-migrant-holding-facility-over-capacity/>.

64. Falcone, Olivia. "Title 42 Expulsion Policy Must Go: Inhumane Border Policy Is Restricting Access to Asylum." Physicians for Human Rights, July 7, 2021.

<https://phr.org/our-work/resources/title-42-expulsion-policy-must-go-inhumane-border-policy-is-restricting-access-to-asylum/>.

65. U.S. Customs and Border Protection, "COVID-19 CAPIO" (n.d.).

<https://www.documentcloud.org/documents/6824221-COVID-19-CAPIO.html>.

66. COVID-19 CAPIO §

67. Castillo, Andrea, and Karen Garcia. "Title 42 Explained: The Obscure Public Health Policy at the Center of a U.S. Border Fight."

68. <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>

69. Singer, Audrey. "U.S. Customs and Border Protection (CBP) Covid-19 Policies ..." Congressional Research Service, September 20, 2021.

<https://crsreports.congress.gov/product/pdf/IN/IN11741>.

70. CBP Releases July 2021 Operational Update § (2021).

<https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2021-operational-update>.

71. Nick Miroff and Maria Sacchetti, "Biden resumes fast-track deportation flights for migrant families, but many unable to travel after positive covid tests," *The Washington Post*, July 30, 2021,

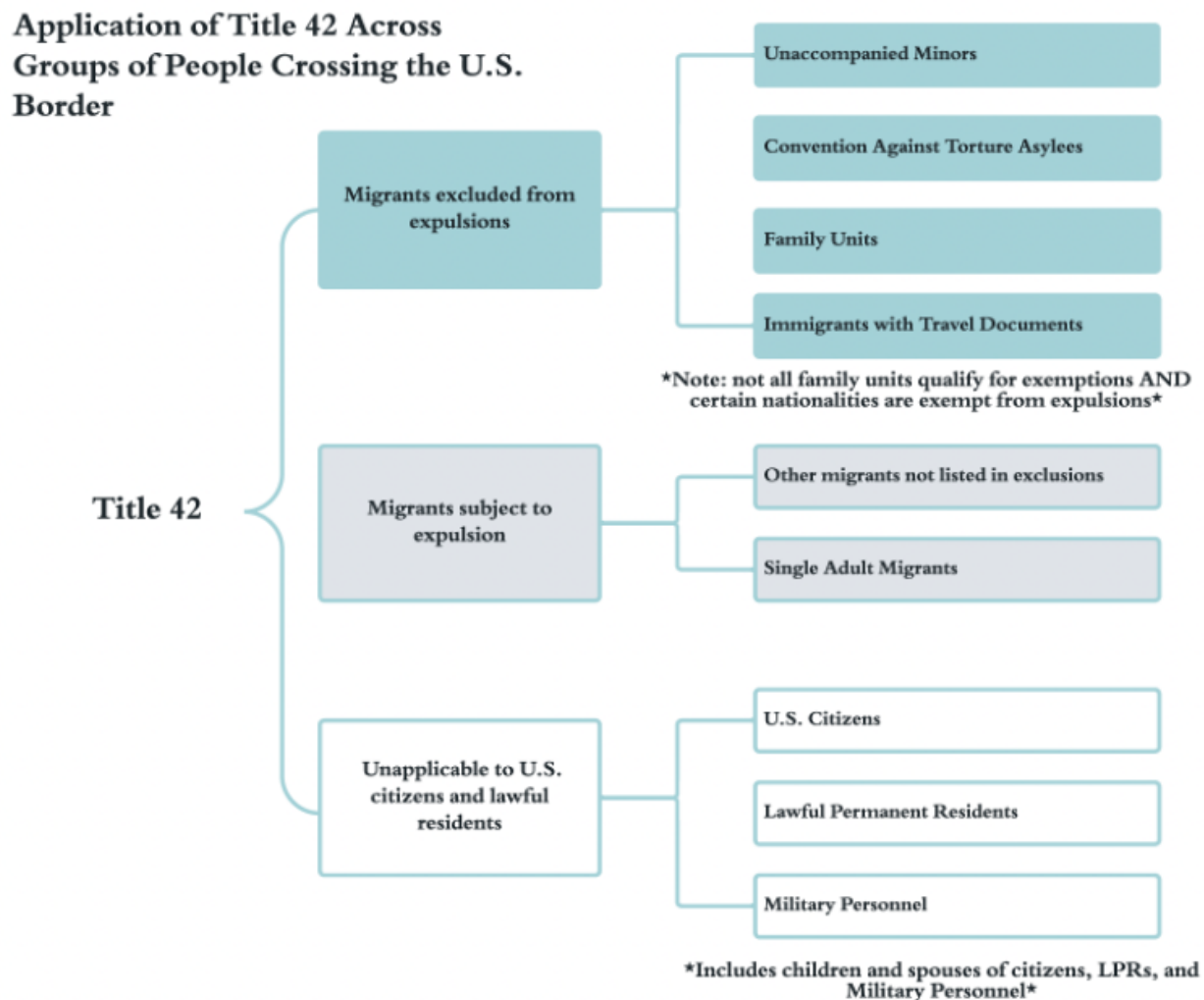
https://www.washingtonpost.com/national/biden-deportation-flights-covid/2021/07/30/fcead208-f154-11eb-ab6f-b41a066381df_story.html.

However, despite these efforts, COVID-positive migrants have been placed on expulsion flights. Reports indicate that 11 countries confirmed deportees returning from the U.S. with COVID-19.⁷²

Figure 2 describes how Title 42 is applied to various groups of people crossing the U.S.-Mexico border. Along with the limited exceptions for UCs and family units described, migrants with valid claims of torture are also supposed to have the opportunity to undergo further screening as a Convention Against Torture (CAT) Asylee. Otherwise, nearly all single adult migrants may be subject to Title 42; Figure 3 describes the process of expulsion for these migrants.

Figure 2 Application of Title 42 Across Groups of People Crossing the Border

Source: Visual created by Border Health Justice Team.⁷³



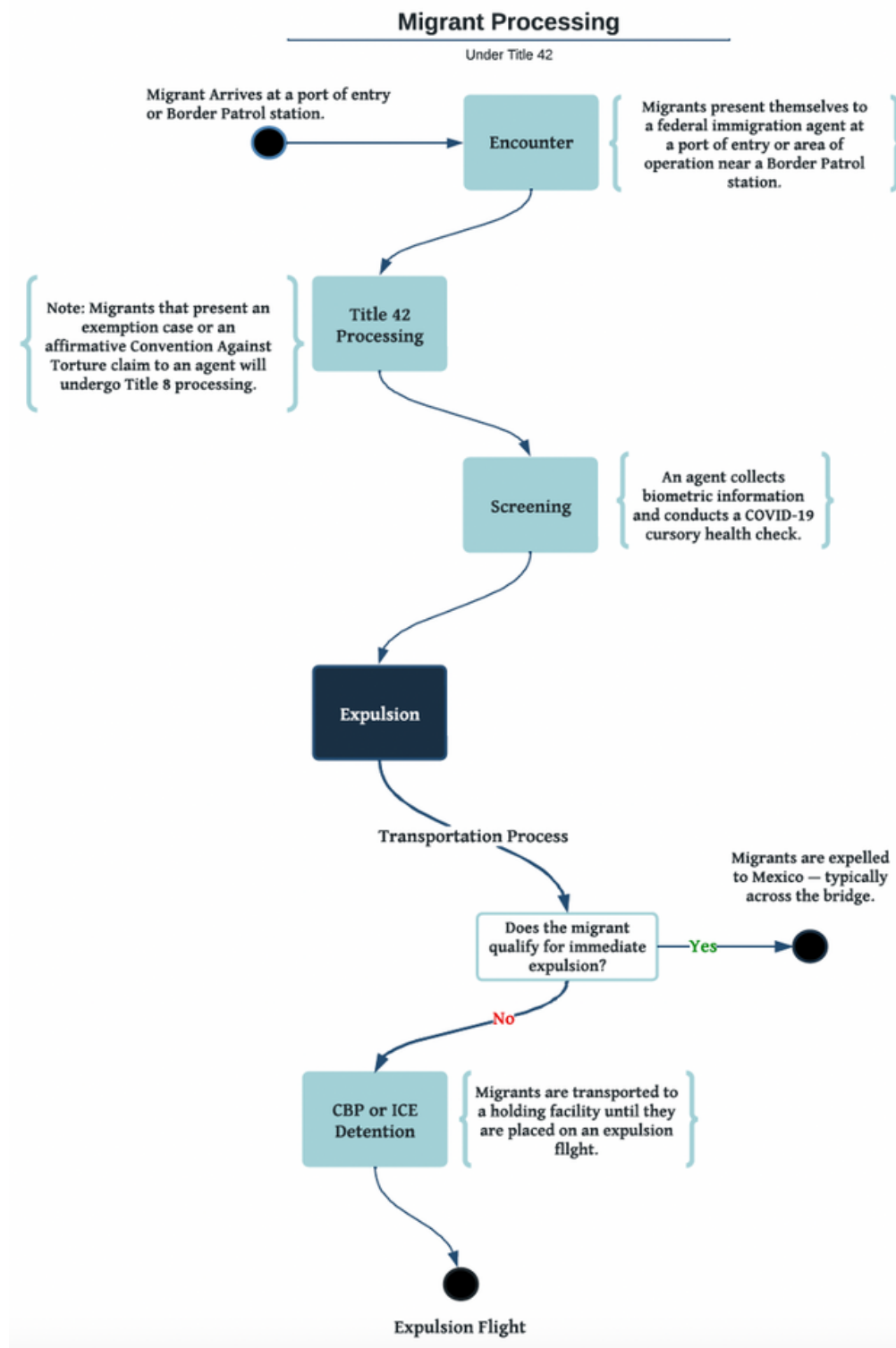
72. Emily Kassie and Barbara Marcolini, “‘It Was Like a Time Bomb’: How ICE Helped Spread the Coronavirus,” The New York Times, updated July 10, 2020,

<https://www.nytimes.com/2020/07/10/us/ice-coronavirus-deportation.html?login=email&auth=login-email>.

73. Here, the word “current” is referring to exemptions made as of April 2, 2022.

Figure 3 Application of Title 42 Across Groups of People Crossing the Border

Source: Visual created by Border Health Justice Team.⁷⁴



76. Here, the word “current” is referring to exemptions made as of April 2, 2022.

The background of the slide features a hand holding a Brazilian passport. The passport cover is dark green and has the text 'MERCOSUL', 'REPÚBLICA FEDERATIVA DO BRASIL', and 'PASSAPORTE' visible. The Brazilian coat of arms is also present. A semi-transparent teal rectangle is overlaid on the left side of the image, containing the chapter title. The entire slide is framed by a thin yellow border.

CHAPTER THREE

METHODOLOGY

To explore our policy question, we collected qualitative data by conducting interviews and reviewing literature to understand the nuances of Title 42 from a legal, health, government, and advocacy perspective. We aimed to understand the intent and context for the original passage of Title 42, changes in its application and global environment during its tenure, and its impact. To craft policy options, we investigated challenges surrounding its implementation and alternatives, and sought out opportunities for improving health and protecting the rights of asylum seekers. This chapter explains our methodology and provides information about the backgrounds of stakeholders interviewed.

Study Design and Data Collection

We used a concurrent triangulation approach to our mixed-methods design of quantitative and qualitative data.^{75, 76} This allowed us to streamline data collection, integrate data during the interpretation phase, and corroborate how Title 42 supersedes due process and public health principles. Quantitative data was derived from apprehension, expulsion, and COVID-19 rates at the southern border as reported by CBP and the CDC. We focused on data from CBP and the CDC as the main federal agencies connected to Title 42's implementation at the U.S.-Mexico border. Qualitative data was derived from interviews conducted with community, health, government, and legal experts that provided insight into the intricacies of Title 42 and its impact on migrants. We supplemented our data with news articles from prominent and trustworthy sources (e.g., New York Times, LA Times, etc.) to enhance our knowledge given the changing and fluid landscape of this policy.

Interviews occurred virtually, via Zoom or phone, in one-on-one or small group settings with our stakeholders and team. With participants' consent, 24 of 25 of interviews were recorded, and all were transcribed and reviewed for accuracy as well as for the removal of confidential information. Both participants and our team were encouraged to join the interview in a quiet and private space where conversations would not be overheard. To respect confidentiality, the option to use a pseudonym was offered to everyone. This report was shared with all interviewees to foster participant inclusiveness, to ensure accurate data representation, and to obtain the consent from participants quoted.⁷⁷

75. Castro, Felipe González, Joshua G. Kellison, Stephen J. Boyd, and Albert Kopak. "A Methodology for Conducting Integrative Mixed Methods Research and Data Analyses." *Journal of Mixed Methods Research* 4, no. 4 (October 2010): 342–60. <https://doi.org/10.1177/1558689810382916>.

76. A "convergent parallel mixed-methods design" is a mixed-methods approach that allows researchers to study both qualitative and quantitative data independently and analyze results concurrently.

77. Tsai AC, Kohrt BA, Matthews LT, et al. Promises and pitfalls of data sharing in qualitative research. *Soc Sci Med*. 2016;169 191-198. doi 10.1016/j.socscimed.2016.08.004

Recruitment

Recruitment occurred via targeted emails. We used a non-random purposive sampling strategy to connect with experts on Title 42, immigration, due process, and public health. Snowball sampling was used to augment the sample size. Prior to the interview, all interviewees were given an information sheet with details about our study and the interview questions. Interviews were conducted from December 2021 to February 2022.

Data Analysis

We used thematic analysis to label, organize, describe, and interpret our qualitative data.⁷⁸ Interview transcripts (n=25) were reviewed by the research team to develop codes (i.e., descriptive keywords or phrases) that helped us analyze the data.⁷⁹ We reviewed the first two transcripts as a research group and developed a codebook. After that, transcripts were reviewed by at least two group members and coded in the codebook. This iterative process led to the emergence of general themes and sub-themes that centered our analysis on equitable policy alternatives that prioritize due process and public health.

Stakeholders

We interviewed 25 individuals from several stakeholder groups. These groups include community advocates, legal, health, and government experts, most with extensive knowledge about Title 42. The following section describes their expertise and connection to this policy:

Community Advocates

Community advocates are on the ground, directly supporting migrants impacted by Title 42 on both sides of the border. Their roles range from warning migrants about the dangers of crossing the border, to explaining their legal rights if migrants are on U.S. soil. They hold a deep and valuable understanding of what migrants are going through because they are working directly with them.

Legal Experts

Immigration law is complicated. Legal experts shared their understanding of the nuances involved with immigration law, the legal grounds for Title 42, and its ability to supersede due process. We spoke to immigration attorneys and legal scholars, whose work is either focused on Title 42, or immigration law in general.

78. Nowell, Lorelli S., Jill M. Norris, Deborah E. White, and Nancy J. Moules. "Thematic Analysis: Striving to Meet the Trustworthiness Criteria." *International Journal of Qualitative Methods*, (December 2017). <https://doi.org/10.1177/1609406917733847>.

79. Boyatzis, Richard E. *Transforming qualitative information: Thematic analysis and code development*. sage, 1998.

Health Experts

Because Title 42 was implemented as a direct result of COVID-19, we found it important to seek the expertise of academics, public health professionals, and physicians. Our interviewees have a thorough understanding of the dangers of COVID-19 and Title 42 on migrants and the U.S. domestic public. Their experience has provided us with evidence-based recommendations that prioritize public health principles in the midst of a pandemic.

Government Experts

While the impacts of Title 42 are primarily related to legal and health concerns, there are also governmental implications that we sought to understand. We contacted the offices of elected officials to learn about the intricacies involved in the implementation of Title 42. Although all offices did not respond, we interviewed two government employees with expertise on immigration policy. Their perspectives helped us understand the intricacies of policy and political limitations around this issue.

In our interview sampling, we strived to obtain a balanced representation from professionals in each stakeholder group. **Table 1** provides an overview of the organizations our interviewees are affiliated with.

Table 1 Stakeholders Interviewed

Stakeholder Category	Organization or Individual Entity Interviewed	# of People Interviewed
Community Advocates	<ul style="list-style-type: none"> • Latin America Working Group • Human Impact • Latino Advocacy; La Resistencia • Florence Immigrants and Refugee Rights Project Women's Refugee Commission • Advocate Visitors with Immigrants in Detention (AVID) San Diego Immigrant Rights Consortium/Alliances San Diego • Inland Coalition for Immigrant Justice (ICIJ) 	8
Legal Partners	<ul style="list-style-type: none"> • UCLA Center for Immigration Law and Policy • American Immigration Lawyers Association • National Immigrant Justice Center a Heartland Alliance • Program • ACLU Immigrant Rights' Project • Kino Border Initiative • UC Berkeley Professor of Law • Immigrant Defenders Law Center • CHIRLA • Espacio Migrante Legal Clinic 	9
Health Experts	<ul style="list-style-type: none"> • Flying Samaritans at UCLA • Los Angeles Human Rights Initiative • Advocacy Organization for Immigrant Youth Rights⁸⁰ • UCLA Professor of Public Health • Boston Medical Center Immigrant & Refugee Center • UCLA Charles R. Drew University of Medicine and Science 	6
Government Experts	<ul style="list-style-type: none"> • UT Austin UT Austin Central America and Mexico Policy Initiative • Los Angeles Mayor's Office of Immigrant Affairs 	2
Total Interviews:		25

80. A pseudonym.

CHAPTER FOUR

FINDINGS



From our stakeholder interviews and literature review, we synthesized key findings associated with Title 42. These findings are organized in *Table 2*.

Table 2 Key Findings

Theme	Key Finding
A. Title 42 has a weak rationale for implementation.	1. Title 42 lacks public health benefits and contributes to significant costs.
B. There is poor implementation of and lack of adherence to evidence-based COVID-19 safety protocols.	2. Basic infection control measures are being neglected, posing significant COVID-19 risks to migrants held in congregate settings during immigration proceedings and the expulsion process. 3. There are national and international examples of how to safely process migrants during the pandemic as well as existing alternatives to detention that are less costly.
C. Asylum rights are being violated, and migrants' often lack legal support.	4. Migrants lack understanding of their rights, which CBP officers often do not inform them about. 5. CBP agents are either not screening migrants for asylum or are overstepping their roles by judging what is "credible fear."
D. There is significant evidence that migrants are being treated inhumanely and placed in unsafe conditions.	6. CBP agents execute excessive and unjustified force on migrants encountered at the border. 7. Temporary shelter accommodations for migrants are underfunded and existing, cost-efficient alternatives to detention are not being used. 8. Expulsion, and the threat of its occurrence, pose tremendous safety risks to migrants.

Theme A » Title 42 has a weak rationale for implementation

Finding 1: Title 42 lacks public health benefits and contributes to significant costs.

All health experts that we interviewed believe that Title 42 has insignificant public health benefits. Many pointed out that **the belief that “migrants bring disease” is a misconception rooted in a long history of xenophobia, not public health.**⁸¹ The following quote from Dr. Michele Heisler, Medical Director at Physicians for Human Rights (PHR), captures the sentiments expressed by all medical experts we interviewed:

*“All credible sources of evidence point to the same cause: Low vaccination rates are the main driver of coronavirus spread. This is a pandemic of the unvaccinated—a public health issue and not a border issue. Officials who scapegoat asylum seekers for COVID-19 are ignoring science while embracing xenophobia and racist tropes equating immigrants with disease vectors. They should instead focus on improving vaccine uptake and advancing common-sense public health measures...”*⁸²

Furthermore, **case studies show that migrants have lower rates of COVID-19 than the general U.S. population.**⁸³ While, in theory, allowing migrants in the U.S. during a pandemic could increase population risks, public health experts from our interviews and literature reviews overwhelmingly declared that this risk is negligible. Considering that asylum seekers are approximately 1% of travelers and that the border remains open to other travelers, our interviewers believe this argument is difficult to justify.⁸⁴

Our interviewers also highlighted the significant health risks posed by Title 42. They shared that the processing of high volumes of migrants has required the use of packed vehicles and crowded detention and processing facilities. These **crowded settings** (described below), **combined with a lack of COVID-19 safety protocols, pose infection concerns not just for migrants, but also for CBP officers and the communities they go home to.** Migrants face added health and safety risks from expulsion (described below).

81. Joel Rose, “Some Republicans Blame Migrants For COVID-19 Surges. Doctors Say They’re Scapegoating,” *NPR*, August 10, 2021, <https://www.npr.org/2021/08/10/1026178171/republicans-migrants-covid-19-surges>.

82. Robbery Farley, “Migrants Not Responsible for Latest COVID-19 Surge,” *FactCheck.org*, October 8, 2021, <https://www.factcheck.org/2021/10/scicheck-migrants-not-responsible-for-latest-covid-19-surge/>.

83. Nicole Sganga, “FEMA chief says COVID-19 positivity rate among migrants is less than 6%, lower than Texas average” *CBS News*, March 16, 2021, <https://www.cbsnews.com/news/covid-immigration-migrants-mexico-border/>.

84. Team member of ACLU Immigrants’ Right Project. Interview by authors, Olivia Wu and Ashley Reyes. Virtual, January 28, 2022.

Legal experts explained that the ACLU and transnational organizations advocated for exemptions to Title 42 to minimize the life-threatening circumstances that asylum seekers face. The history of these exemptions shaped our framework for alternatives (see Appendix C for further details on these exemptions).

Theme B » There is poor implementation of and lack of adherence to evidence-based COVID-19 safety protocols

Finding 2: Basic infection control measures are being neglected, posing significant COVID-19 risks to migrants held in congregate settings during immigration proceedings and the expulsion process.

A CDC memo released August 2021 claims that CBP cleans and disinfects facilities in accordance with CDC guidance, provides daily surgical masks to both employees and all persons in custody, and encourages “enhanced physical distancing and cohorting.”⁸⁵ To prevent COVID-19 spread, the CDC recognizes the importance of testing and vaccination in CBP operations.⁸⁶ CBP claims to be working “with appropriate agencies that facilitate testing, diagnosis, isolation, and treatment of migrants.” However, many of our interviewees and literature review suggest this is false.⁸⁷

Multiple interviewees working directly with border communities and migrants report **inconsistent mask usage by CBP employees**, and that **migrants without a mask are not provided with one**. A case report shared by Jennifer Whitlock, Policy Counsel Government Relations at the American Immigration Lawyers Association, states that:

“...there was an increase in migrants testing positive while in detention in January 2022 (from 1.3% to 12.7%). Although official ICE policy guidance on protective measures is to test everyone when they get in and wear masks, government inspection reports that mask compliance is very low, even amongst the staff (who are bringing COVID-19 in and out of facilities).”⁸⁸

85. U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC), “Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists,” August 8, 2021, https://www.cdc.gov/coronavirus/2019-ncov/downloads/CDC-Order-Suspending-Right-to-Introduce_Final_8-2-21.pdf.

86. U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC), “Order.”

87. “CBP Releases July 2021 Operational Update,” U.S. Customs and Border Protection, August 12, 2021, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2021-operational-update>.

88. Jennifer Ibanez Whitlock, interviewed by Nivedita Keshav and Olivia Wu, conducted virtually, January 26, 2022.

Social distancing is not implemented as migrants are forcefully placed in crowded processing facilities, detention centers, and vehicles.⁸⁹ Border Patrol facilities exceeded capacity during the pandemic by holding 16x more migrants than permitted; a tent meant to temporarily shelter 250 migrants held more than 4,000 in Donna, Texas.⁹⁰ Almost all of our stakeholders expressed concerns about how CBP’s “temporary” detention centers create conditions that lead to increased risk of COVID-19 due to a lack of social distancing. Noah Schramm, Project Coordinator at Florence Immigrant Rights Project, mentioned:

*“...for health and humanitarian reasons, detention is not the answer. It might make sense in some cases (major threat or flight risk) but the vast majority who are incarcerated are folks who are fleeing violence. It is difficult to justify Title 42 now that we have effective measures to keep people from getting severely sick.”*⁹¹

CBP detention facilities are designed for short-term custody, ideally not exceeding more than 72 hours.^{92, 93} However, an Office of Inspector General (OIG) inspection report from June 2019 about five CBP facilities in Rio Grande, Texas showed that single adults had been held for over a month in overcrowded cells.⁹⁴ Even with testing availability, **all physicians and health experts emphasized that these close-quarter conditions are not in line with public health and worsen the risk of COVID-19.** Migrants detained in these facilities also experienced unsanitary conditions, inadequate access to medical care and hygiene items, and improper Transport, Escort, Detention, and Search (TEDS) requirements such as showers or hot meals.⁹⁵ A community advocate from La Resistencia with first hand experience hearing countless of these stories stated:

*“Conditions are terrible. Medical services are run by ICE - not health professionals - and neglect is rampant. COVID-19 cases are rising amongst both detained individuals and employees. Employees bring a particular health concern of bringing the virus back to their domestic communities.”*⁹⁶

89. Kathryn Hampton et al., “Neither Safety nor Health: How Title 42 Expulsions Harm Health and Violate Rights,” Physicians for Human Rights, July 28, 2021, <https://phr.org/our-work/resources/neither-safety-nor-health/>

90. Mireya Villareal et al., “Inside a Border Patrol facility holding 16 times more migrants than its capacity,” *CBS News*, March 31, 2021, <https://www.cbsnews.com/news/immigration-border-patrol-migrant-holding-facility-over-capacity/>.

91. Noah Schramm, interview by author Nivedita Keshav, conducted virtually, January 27, 2022.

92. U.S. Customs and Border Protection, “National Standards on Transport, Escort, Detention, and Search,” October 2015, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

93. Camilo Montoya-Galvez, “Coronavirus infections inside U.S. immigration detention centers surge by 520% in 2022,” *CBS News*, updated January 14, 2022, <https://www.cbsnews.com/news/immigration-detention-covid-cases-surge/>

94. “Immigration Detention in the United States by Agency.” American Immigration Council, January 2, 2020.

https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detention_in_the_united_states_by_agency.pdf.

95. Camilo Montoya-Galvez, “Coronavirus infections inside U.S. immigration detention centers surge by 520% in 2022.”

96. Maru Mora Villalpandi, interview by authors Olivia Wu and Nivedita Keshav, conducted virtually, January 26, 2022.

As this advocate mentions, not just migrants, but also border patrol agents and staff have increased health risks from the practice of detention. Without a vaccine or mask mandate, CBP reports that over 18,614 CBP employees have tested positive since the start of the pandemic and 64 have passed away.^{97,98,99}

Testing is not available at holding facilities; symptomatic migrants may not be tested at all and depending on their location, might be transferred to quarantine facilities with capacity to accept them.¹⁰⁰ CBP relies on local public health systems for testing and treatment of symptomatic individuals, despite this not always being operationally feasible. CBP agents at one sector emphasized how unsustainable it is to depend on local health systems and border communities for testing.¹⁰¹ An OIG inspection revealed that **CBP staff did not conduct medical screenings because they were not trained to identify need for medical attention, and agents did not have the resources to conduct testing given that they are a law enforcement agency.** In terms of resources, it is important to mention that since 2003, CPB's budget has *tripled* from \$5.9 billion to over \$17.7 billion.¹⁰²

Vaccinations are not being offered by CBP, and a program to offer vaccines to all migrants was purportedly nixed over concerns that this would incentivize more migrants to come to the border.¹⁰³ This lack of implementation poses serious health risks to migrants, CBP officers, and surrounding communities in the U.S., Mexico, and beyond — which undermines the intent of implementing Title 42.

Now that Title 42 is expected to be lifted, it is important to note that this could create a situation where more migrants are placed in ICE custody while asylum cases are processed through the legal system. Conditions in ICE custody closely resemble those of CBP, with the imprisonment of medically vulnerable migrants in over-crowded cells and withholding COVID-19 tests to avoid dealing with positive results.¹⁰⁴ Many migrants are subjected to these conditions for prolonged periods, as even prior to Title 42, the processing of asylum cases took years.^{105, 106} If migrants are detained in congregate settings during this time, the risks to public health could be exacerbated.

97. "Protecting the DHS Workforce," Department of Homeland Security, accessed April 4, 2022,

<https://www.dhs.gov/coronavirus/protecting-dhs-workforce>.

98. "COVID-19 Vaccination Requirement," U.S. Customs and Border Protection, last modified January 22, 2022,

<https://www.cbp.gov/careers/covid-19-vaccination-requirement>.

99. "CBP Releases December 2021 Monthly Operational Update," U.S. Customs and Border Protection, release date January 24,

2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-december-2021-monthly-operational-update>.

100. Singer, Audrey. "U.S. Customs and Border Protection (CBP) Covid-19 Policies ..." Congressional Research Service, September 20, 2021.

<https://crsreports.congress.gov/product/pdf/IN/IN11741>.

101. Department of Homeland Security Office of Inspector General, "DHS."

102. American Immigration Council, "A Guide."

103. Eileen Sullivan, "Biden Administration Will Start Vaccinating Migrants at Border," *The New York Times*, March 28, 2022,

<https://www.nytimes.com/2022/03/28/us/politics/vaccines-migrants-border.html>.

104. Jessical Bansal, "Mass ICE Detention is Unnecessary— and We Have Proof," *ACLU Southern California*, June 9, 2021,

<https://www.aclusocal.org/en/news/mass-ice-detention-unnecessary-and-we-have-proof>.

105. American Immigration Council, "Asylum in the United States," June 11, 2020,

<https://www.americanimmigrationcouncil.org/research/asylum-united-states>.

106. "Can I Make My Asylum Case with USCIS Go Faster?" Asylum Seeker Advocacy Project, November 1, 2021,

<https://help.asylumadvocacy.org/make-asylum-case-faster/>.

Finding 3 There are national and international examples of how to safely process migrants during the pandemic as well as existing alternatives to detention that are less costly.

Our stakeholders and literature review revealed numerous ways in which borders, in the U.S. and globally, have remained open to migrants with safety protocols for travel.

One of our interviewees, a physician in an urban city with a high refugee population in the U.S., provided an example of how the U.S. safely accepted Afghan refugees in 2021. Prior to arriving in the U.S., Afghan refugees were required to have their first COVID-19 vaccine (with acceptable exceptions) and were provided with vaccination if they did not have it.^{107, 108} Those arriving in New Haven, Connecticut were tested days before traveling to the U.S., and then weekly for five consecutive weeks while navigating the resettlement process.^{109, 110} In Virginia, they arrived at military bases and underwent COVID-19 testing, with accommodations for safe quarantine, before proceeding to their final destination.¹¹¹

Other countries successfully integrated public health strategies into their immigration system during the pandemic.¹¹² The Council of Europe highly discouraged the detention of migrants, refugees, and asylum seekers amid the pandemic, emphasizing the need to pursue alternatives to detention.¹¹³ More than 20 European countries did not ban the entry of asylum seekers.¹¹⁴ All European Union (EU) countries took precautionary health measures at asylum offices by using masks, temperature checks, social distancing, and installing plexiglass to keep the asylum process running.¹¹⁵ Germany is the only country that made asylum seekers a first priority group to be vaccinated. Finland, Germany, and Portugal used safe housing options to protect vulnerable populations and decrease the number of people in migration reception centers.

107. "Afghan Parolee Vaccination Status," U.S. Citizenship and Immigration Services, accessed April 4, 2022, <https://www.uscis.gov/vaccination-status>.

108. Matt Gregory, "VERIFY: What vaccinations are Afghan refugees required to get?" *Washington USA 9*, September 20, 2021, <https://www.wusa9.com/article/news/verify/afghan-refugees-vaccination-requirements-verify/65-55f2a10a-f851-4803-935f-091f3eda8a53>.

109. Hope Kirwan, "Afghan Refugees in US Navigating Cultural Changes," *U.S. News & World Report*, February 14, 2022, <https://www.usnews.com/news/best-states/wisconsin/articles/2022-02-14/afghan-refugees-in-us-navigating-cultural-changes>.

110. "New COVID-19 Testing Program for Afghan Evacuees Launches in New Haven," Yale School of Public Health, January 18, 2022, <https://ysph.yale.edu/news-article/new-covid-19-testing-program-for-afghan-evacuees-launches-in-new-haven/>.

111. Olivier Knox, "The Daily 202: Cots, COVID tests, and controversy. Welcome to America, Afghan refugees," *The Washington Post*, August 26, 2021, <https://www.washingtonpost.com/politics/2021/08/26/daily-202-cots-covid-tests-controversy-welcome-america-afghan-refugees/>.

112. "Migrants, refugees and asylum seekers should not be held in detention centers. Alternatives to detention are needed," Council of Europe, accessed April 4, 2022, <https://www.coe.int/en/web/portal/covid-19-migrants-refugees-and-asylum>.

113. Ibid.

114. Claire Hansen, "Pressure Amps Up on Biden to Rescind Title 42 Border Order," *U.S. News & World Report*, June 3, 2021, <https://www.usnews.com/news/national-news/articles/2021-06-03/pressure-amps-up-on-biden-to-rescind-title-42-border-order>.

115. Sophie Stuber, "How COVID-19 made it harder to find safety in the EU," *The New Humanitarian*, January 7, 2021, <https://www.thenewhumanitarian.org/analysis/2020/01/07/EU-asylum-application-coronavirus>.

As for case processing, France resumed asylum procedures at limited capacity last summer using remote hearings. Ireland, Latvia, and Norway even conducted online immigration proceedings.¹¹⁶

Olivia Sunberg Diez from the European Policy Centre highlights that these strategies made it “a lot easier to comply with human rights and public health standards.”¹¹⁷ Notably, the UN Refugee Agency states that refugees and other forcibly-displaced stateless people have COVID-19 rates that are similar or lower compared to host communities.¹¹⁸

Overall, there is a lack of evidence to suggest that refugees have led to an increase in COVID-19 rates. According to the WHO, there is significant evidence to suggest that denial of entry to people from affected areas is not usually effective in preventing importation of cases and can actually lead to *significant* economic and social impact.¹¹⁹ While Title 42 focused on limiting migration, other countries successfully processed refugees and asylum seekers, implying that there are more effective alternatives to detention that are more humane and increase compliance with court hearings.

Theme C » Asylum rights are being violated, and migrants’ often lack legal support

Finding 4: Migrants lack understanding of their rights, which CBP officers often do not inform them about.

Several community advocates and legal experts noted that the lack of access to legal counsel, existing before and after the implementation of Title 42, was one of the biggest issues with this policy. This led to migrants often not being informed of their rights. Our literature review supported this result.

This legal knowledge gap impacts the migration process from the beginning. As mentioned, Title 42 exemptions exist for unaccompanied children, family units, and migrants claiming torture under CAT. Many migrants are not aware of these exemptions, and are expelled even if they qualify. According to a member of the ACLU’s Immigrant Rights Litigation Team, the exemption under CAT is rarely used because migrants are not informed about their rights or option to access this provision. Further evidence of a knowledge gap exists by noting that 10 UCs were expelled after the Biden Administration’s order to exempt minors from expulsions, bringing into question if UCs know to present their age or if CBP agents know how to identify these cases.¹²⁰

116. These online proceedings used for first-time asylum seekers, and for appeal hearings to allow asylum seekers to apply for protection

117. Ibid.

118. UNHCR, “REPORT ON UNHCR’s RESPONSE TO COVID-19”, The UN Refugee Agency, April 10, 2020

<https://reporting.unhcr.org/sites/default/files/COVID-19%20progress%20report%20-%2004.10.20%20-%20FINAL.pdf>

119. “Refugees and migrants in times of COVID-19 mapping trends of public health and migration policies and practices,” Geneva: World Health Organization, 2021.

120. U.S. Customs and Border Protection. “Nationwide Encounters.” Accessed April 13, 2022.

<https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

A PHR report reveals incidents of CBP agents refusing to provide basic information about migrants' detention and expulsion, often providing false or misleading information instead.¹²¹ In PHR's report, they found that 16 asylumseekers were not informed about their expulsion and 10 were deceived by CBP about the Title 42 process.

A policy associate from the Women's Refugee Committee stated that CBP officials constantly lied to migrants by telling them that they were being moved to a different facility, when in reality they were being deported back to their home country.¹²² To make matters worse, Margaret Cargioli, an attorney for the Immigrant Defenders Law Center, shared that some migrants are being expelled to other countries they are not familiar with, without notice.¹²³

Another important perspective is that there are limits to how long migrants, and in particular UCs, can be detained. However, many migrants are not aware of this, and often remain in detention longer than is *legally* allowed.¹²⁴ UC must be transferred to the Office of Refugee Resettlement (ORR) within 72 hours of arriving at a CBP facility; however, reports show that they spend an average of 117 hours in detention.¹²⁵

A legal advocate with the Florence Immigrant and Refugee Rights Project emphasized a dire need for additional support at the border, as many migrants are uninformed about the complexities and rights they are afforded in the asylum-seeking process, and NGOs have limited capacity to assist the large number of migrants at the border.¹²⁶

Finding 5: CBP agents are either not screening migrants for asylum or are overstepping their roles by judging what is “credible fear.”

As described, under Title 42, CBP can immediately expel migrants despite claims of credible fear. This is an overstep because USCIS asylum officers have the authority and expertise to determine whether an asylum case has proof of credible fear to proceed — not CBP.¹²⁷ By not referring migrants to USCIS asylum officers for credible fear screenings, CBP is putting migrant lives at risk.

121. Kathryn Hampton et al., “Neither Safety nor Health: How Title 42 Expulsions Harm Health and Violate Rights,” *Physicians for Human Rights*, July 28, 2021, <https://phr.org/our-work/resources/neither-safety-nor-health/>.

122. Kimiko Hirota, interview by authors Ashley Reyes and Jose Negrete Manriquez, conducted virtually, January 27, 2022.

123. Margaret Cargioli, interview by author Melissa Candell Villacreses, conducted virtually, February 11, 2022.

124. “Detention of Migrant Children,” National Conference of State Legislatures, November 24, 2020, <https://www.ncsl.org/research/immigration/detention-of-migrant-children.aspx>.

125. Ordoñez, Franco, and Dana Farrington. “Young Migrants Held by Border Patrol Far Longer than Allowed, Document Shows.” NPR. NPR, March 16, 2021.

<https://www.npr.org/2021/03/16/977853878/young-migrants-held-by-border-patrol-far-longer-than-allowed-document-shows>.

126. Noah Schramm, interview by author Nivedita Keshav, conducted virtually, January 27, 2022.

127. Human Rights First, “Allowing CBP to Conduct Credible Fear Interviews Undermines Safeguards to Protect Refugees,” April 2019, https://www.humanrightsfirst.org/sites/default/files/CBP_Credible_Fear.pdf.

Our interviewee, Pedro de Velasco, Director of Education and Advocacy at the Kino Border Initiative, stated that CBP has wrongfully expelled migrants that face credible fear by: failing to conduct the screening process, refusing to listen to credible fear claims, applying their subjective perceptions of what counts as credible fear, disregarding migrants' accounts about the dangers faced in their home countries, and telling migrants that "there is no asylum."¹²⁸

These accounts were captured in a report conducted by the Kino Border Initiative and Network Lobby for Catholic Social Justice of 35 instances of due process denied by CBP between October 2020 to July 2021.¹²⁹ The report captures daunting snapshots of CBP's dismissal of credible fear claims and their appalling treatment towards migrants. In one instance:

"A Salvadoran woman, her 10-year-old daughter, 1-year-old son, brother, cousin, and cousin's daughter, entered the United States... They saw a Border Patrol truck arriving and waited for it to arrive so they could ask for asylum. The Border Patrol agent who got out of the truck was enraged. He pulled a gun on the mother and family. He berated them, calling them 'damned criminals,' 'rats,' 'terrorists,' and 'criminals,' as they cried and asked for asylum. He spoke English and Spanish but spoke Spanish poorly, but the Salvadoran woman said she understood enough. He continued to pull his gun on them even though they were not posing any threat to his safety. They were unarmed and with children. She believed that he was going to kill them.

*Then, another agent arrived... She told those agents that they were seeking asylum, but they said they didn't speak Spanish. Once they were transported to an open-air outpost, she asked the agents there for asylum and got the same answer... Despite telling 7 or 8 different agents that they were hoping to seek asylum in the United States, they were repeatedly told that no one spoke Spanish and were never given a fear assessment. They were all expelled to Nogales, Sonora."*¹³⁰

While Title 42 removes credible fear screenings as a part of the asylum process, one area where screening remains required is if a migrant makes a claim of torture, invoking CAT. CBP officers should make minimal judgements on claims of torture and refer migrants to USCIS asylum officers for further screening, but our research shows that they often do not.¹³¹ CBP statistics reported in September 2021 show that only 3,217 screenings were conducted out of more than 1 million encounters (0.3% of encounters) and, of these, only 272 (or 8%) passed CAT interviews.¹³²

128. Pedro de Velasco, interview by author Nivedita Keshav, conducted virtually, February 2, 2022.

129. Kino Border Initiative and Network Lobby for Catholic Social Justice, "Due Process Denied: CBP Abuses at the Border October 2020-July 2021."

<https://www.kinoborderinitiative.org/wp-content/uploads/2021/08/KINO-NETWORK-CBP-Abuses-consolidated.pdf>.

130. Kino Border Initiative and Network Lobby for Catholic Social Justice, "Due Process Denied: CBP Abuses at the Border October 2020-July 2021."

<https://www.kinoborderinitiative.org/wp-content/uploads/2021/08/KINO-NETWORK-CBP-Abuses-consolidated.pdf>

131. Human Rights First, "Allowing."

132. Camilo Montoya-Galvez, "Few migrants processed under Title 42 border policy are screened for U.S. protection," CBS News, October 15, 2021, <https://www.cbsnews.com/news/immigration-title-42-border-policy-migrants-screened-us-protection/>.

CBP officers' failure to properly implement the law contributes to the violation of migrants' due process rights by denying them credible fear interviews. Even before Title 42, evidence suggests that CBP did not properly screen, nor refer migrants to a USCIS asylum officer.¹³³ CBP agents' decision of when to expel or refer migrants to USCIS asylum officers causes discrepancies in the legal process. This creates concerns about inconsistent applications of Title 42 (see Appendix B for demographic characteristics of those expelled under Title 42 and those apprehended under Title 8).

Theme D » There is significant evidence that migrants are being treated inhumanely and placed in unsafe conditions

Finding 6: CBP agents execute excessive and unjustified force on migrants encountered at the border.

Several legal scholars and community advocates brought further concerns about the use of excessive force by CBP when first encountering migrants at the border, corroborating concerns found in our literature review.

There are documented reports of CBP physically and verbally coercing migrants. According to an account from the PHR report, a CBP officer used physical force to prevent a migrant from setting foot on U.S. soil. This migrant shared her story:

“Six agents ran towards me. One agent shoved me down. Another agent put his knee on my spine, and I could not breathe. Everything was happening very fast, so I don’t remember all of it. Someone took a video and it was shown on the news. I saw that the agent’s knee was on my back for 40 seconds. On the video I saw that one of the agents pointed a weapon at me, I don’t know if it was a gun or a taser. They also knocked my daughter to the ground, and she fell to her knees, and they handcuffed her. They also threw my son to the ground, and then they also handcuffed him; the handcuffs left a mark on his wrist.... They are only children, they are only 13 and 14 years old.”¹³⁴

An interviewee from the Kino Border Initiative expressed concern about CBP officers' use of force based on hearing numerous stories from migrants at the border. For an example, a Salvadoran woman described her family's experience attempting to enter the U.S. in February 2021:

133. Hilda Bonilla, “CBP Officers Take on Role of Asylum Officers – This Lawsuit Demands to Know Why,” *Immigration Impact*, October 8, 2019, <https://immigrationimpact.com/2019/10/08/cbp-asylum-officers-lawsuit/#.Yim8WN-IaL0>

134. Kathryn Hampton et al., “Neither Safety.”

*“They approached the DeConcini port of entry in Nogales. There, an agent shoved the woman who was eight months pregnant in the chest. The woman pleaded with the agent to not turn them back as they were fleeing danger in Mexico. The agents, both male and female, simply laughed at them when they explained the danger and said the family must go back. When the family said they had nowhere to go, the agents said that was not the agents’ problem.”*¹³⁵

In another account, a Guatemalan man describes his experience migrating in August 2021

*“...the dog the agents brought with them attacked him and knocked him face down into a cactus. One of the spines penetrated near his eye, causing his face to bleed. When the man with eye injury asked for help, the agents said no, and that this is what happens to people who come here....the agent grabbed the Guatemalan man by the neck. The man said he felt like he was being choked... The Guatemalan man’s brother-in-law was dehydrated and vomiting. As he lay on the ground, begging for water, an agent put his foot on the man’s back and then kneeled on him. It was not until they arrived at a temporary outpost nearly two hours later that they got water. The group was expelled to Nogales, Sonora the next morning.”*¹³⁶

Since 2019, **the use of force by CBP officers on migrants has steadily increased, while assaults by migrants on CBP officers has decreased** (Table 3). The most common type of use of force by CBP officers is vehicular immobilization or pursuit, followed by “less lethal” and “other” mechanisms and a small percentage of firearm use. Assault incidents involving migrants most commonly involve physical assault, followed by rocks, projectiles, vehicles, and rarely firearms, knives, or other objects.^{137, 138}

Table 3 Increasing Use of Force, Decreasing Assaults, as Reported by CBP

Source: Customs and Border Patrol¹³⁹

Fiscal Year	Use of Force Incidents by CBP Officers	Assault Incidents by Migrants
2019	592	484
2020	610	404
2021	768	468
2022 (YTD)	290 (Oct. 2021-Jan. 2022 only)	153 (Oct. 2021-Jan. 2022 only)

135. Kino Border Initiative and Network Lobby for Catholic Social Justice, “Due Process Denied.”

136. Kino Border Initiative and Network Lobby for Catholic Social Justice, “Due Process Denied.”

137. “Assaults and Use of Force Statistics.” U.S. Customs and Border Protection.

138. “CBP Use of Force Policy Handbook.” U.S. Customs and Border Protection.

139. “Assaults and Use of Force Statistics.” U.S. Customs and Border Protection.

Anecdotal reports by migrants, stated between October 2020 and July 2021, describe that the brutal handling by CBP officers entailed “confiscating all belongings including baby food and diapers, being forced to sleep on the floor (under bridges), in freezing facilities, and even outright physical attacks.”¹⁴⁰

Finding 7: Temporary shelter accommodations for migrants are underfunded and existing, cost-efficient alternatives to detention are not being used.

Several interviewees supported utilizing shelters, instead of detention, to accommodate asylum seekers. Shelters serve an important function in housing migrants until long-term community placement can be arranged. Shelters are commonly operated by local nonprofit, faith-based or governmental entities and provide beds, food, and other basic needs. These organizations are funded through a combination of donations, government contracts with the Federal Emergency Management Agency (FEMA), and funding by local cities.^{141, 142} However, interviewees highlighted that shelters are underfunded and lack the capacity to handle large influxes of migrants.

Figures 5 and 6 show the FY2021 and FY2022 annual budgets for several government organizations including ICE, FEMA, and CBP. From 2021 to 2022, CBP’s budget decreased by 6% and ICE’s budget decreased by 5%,^{143, 144} though they remain substantially funded at \$16,289,640,000 and \$8,371,096,000, respectively. Meanwhile, FEMA’s budget increased by 12%, amounting to \$28,376,429,000. This increase allowed FEMA to direct \$110 million to organizations providing humanitarian assistance to migrants at the border—including “mass sheltering; mass feeding; assistance to food pantries and food banks...and transition assistance from shelters to stable living conditions.”¹⁴⁵ Such services are vital to support migrants and represent an opportunity for further investment.

140. Kino Border Initiative and Network Lobby for Catholic Social Justice, “Due Process Denied: CBP Abuses at the Border October 2020-July 2021.”

141. “FEMA Awards \$110 Million to the Emergency Food and Shelter Program to Assist Migrants,” Federal Emergency Management Agency, March 18, 2021,

<https://www.fema.gov/press-release/20210318/fema-awards-110-million-emergency-food-and-shelter-program-assist-migrants>.

142. Jackie Wang, “City funding for migrant assistance sparks heated remarks at council session,” *San Antonio Report*, August 19, 2021, <https://sanantonioreport.org/city-funding-for-migrant-assistance-sparks-heated-remarks-at-council-session/>.

143. U.S. Department of Homeland Security, “FY 2022 Budget in Brief,” November 12, 2021, https://www.dhs.gov/sites/default/files/publications/dhs_bib_-_web_version_-_final_508.pdf.

144. Ibid.

145. FEMA, “FEMA Awards \$110 Million to the Emergency Food and Shelter Program to Assist Migrants.”

Figure 5: FY 2022 Percent of Total Budget Authority by Organization

Source: US. Department of Homeland Security ¹⁴⁶

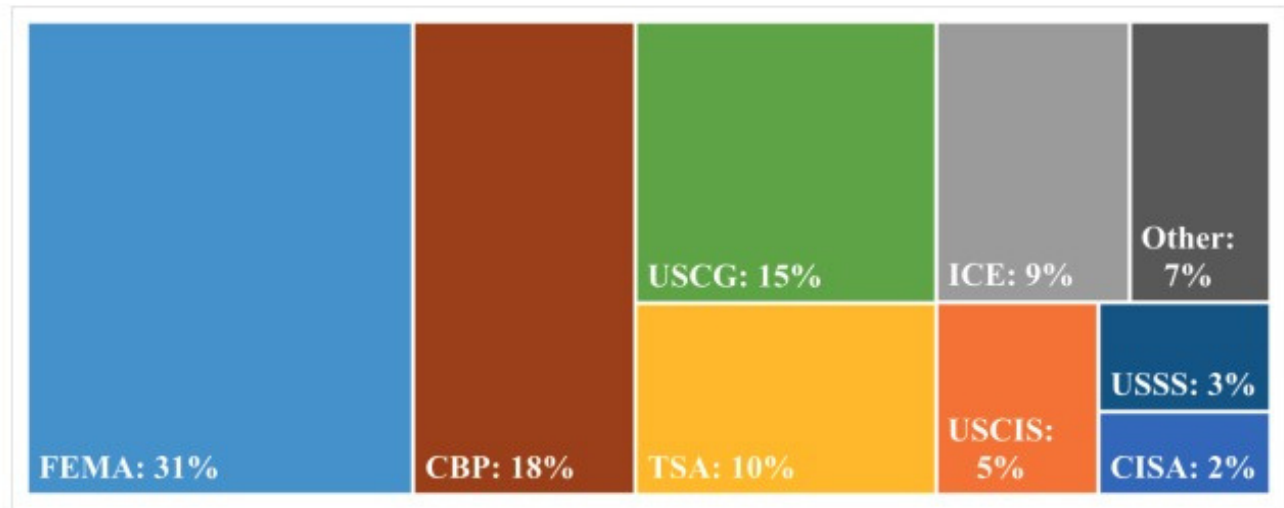
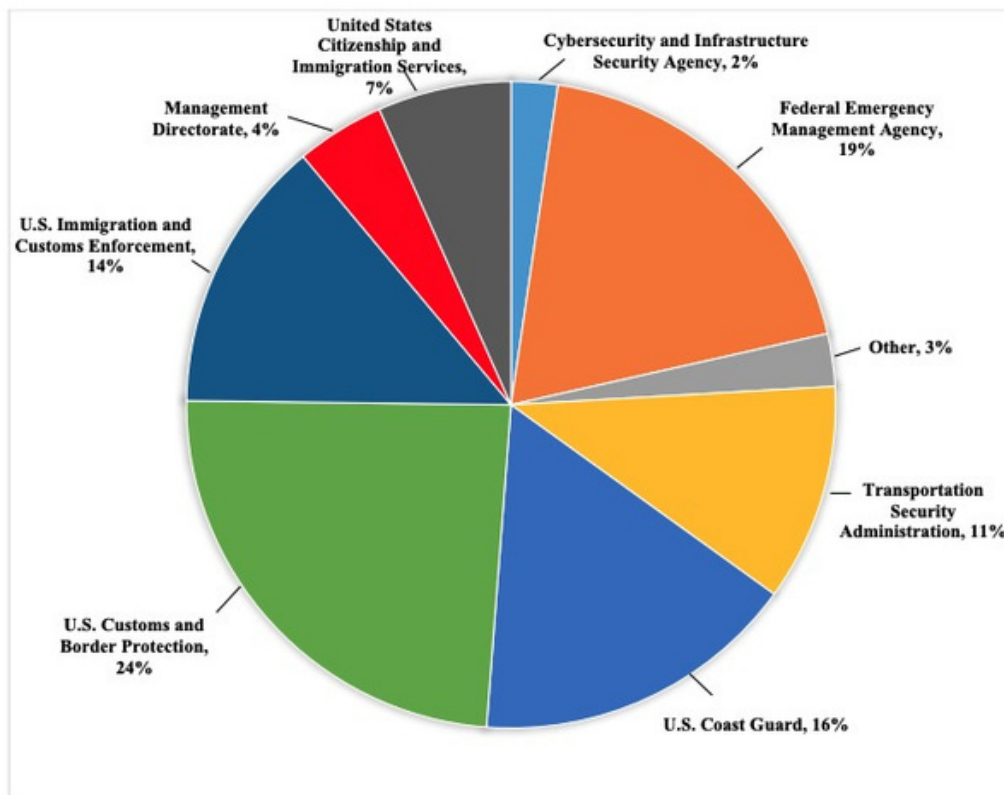


Figure 6 FY 2021 Percent of Total Budget Authority by Organization

Source: US. Department of Homeland Security ¹⁴⁷



146. U.S. Department of Homeland Security, "FY 2022."

147. U.S. Department of Homeland Security, "FY 2021."

Finding 8: Expulsion, and the threat of its occurrence, pose tremendous safety risks to migrants.

Across the Mexican border, crowds of migrants are living on streets, encampments, shelters, and tenement houses. Although shelters can offer supportive services, they remain underfunded and overburdened and are unable to keep up with demand. In an interview conducted by Vice News with Haitian migrants, a Haitian mother stated:

"We only have access to water for two to three hours. The situation is painful. Even if our children are sleepy we can't go inside for them to sleep. We ask for the American government to help us out of this situation [in Mexico] so we can go and live with our families."¹⁴⁸

Several interviewees pointed out how these living situations often lack sufficient access to services, basic sanitation, and supplies such as clean drinking water, toilets, and food. As a result, this puts migrants at risk of infectious diseases and exposes them to extreme weather.¹⁴⁹ Additionally, there is a lack of access to medical and psychiatric care for those requiring medical attention. Many migrant families are going to public Mexican hospitals to seek emergency treatment for medical conditions including brain injuries, diabetes, high blood pressure, asthma, and depression.¹⁵⁰ However, they are often denied care due to their status as undocumented immigrants in Mexico.

Nearly half of interviewees pointed out **expulsion to Mexico also includes risks of discrimination, harassment, kidnapping, rape, trafficking, extortion, and attacks based on race, gender, and sexual orientation**. Pedro de Velasco from the Kino Border Initiative, highlighted that migrants are easily being identified and targeted by organized crime.¹⁵¹ In the past migrants could just approach the border and ask for asylum. Because they can no longer do this, organized crime can "act and terrorize" and take advantage of migrants in their vulnerable state.¹⁵² They invite, or aggressively force, migrants to take their help and carry out various forms of kidnapping and extortion. These crimes are rarely reported. When migrants approach the Mexican prosecutor's office, they are not believed because it is assumed they are making false claims to support an asylum case. Taylor Levy, an attorney at the ACLU, corroborated this, further sharing in a supplemental declaration:

148. *Thousands of Haitians Are Trapped at the U.S.-Mexico Border*. YouTube. Vice News, 2021.

<https://www.youtube.com/watch?v=n1wxCmMMYJs>.

149. Harvard Global Health Institute et al., "A Population in Peril: A Health Crisis Among Asylum Seekers on the Northern Border of Mexico," July 2020, https://globalhealth.harvard.edu/wp-content/uploads/2020/07/A_Population_in_Peril.pdf.

150. Taylor Levy, "Supplemental Declaration of Taylor Levy," ACLU, August 11, 2021, https://www.aclu.org/sites/default/files/field_document/2021.08.11.0118_declaration_of_taylor_levy_0.pdf

151. Pedro de Velasco, interview by author Nivedita Keshav, conducted virtually, February 2, 2022.

152. Ibid.

*“Many families report being robbed, bribed, kidnapped, beaten, and sexually assaulted by Mexican police. Other migrants report Mexican immigration officials demanding \$500 bribes in exchange for their release; some expelled migrants report being handed over directly to kidnappers by Mexican immigration officials immediately upon expulsion.”*¹⁵³

Margaret Brown Vega from AVID also shared:

*“[a] 58 year old woman [was] expelled 5 times, encountered traffickers, and was abused. [She] is now in detention after her last attempt to flee the murders and horrors in her country of origin.”*¹⁵⁴

A report completed by PHR also found that U.S. officials carried out expulsions of migrants under extremely dangerous conditions. Many migrants were expelled in the middle of the night, when it is difficult to find safe shelter and there is an increased risk of being targeted by cartels.¹⁵⁵

One declared:

*“At 1 a.m. they left us at the bridge in Juárez. I asked them why they would throw us to the streets at night with children, and an agent said, ‘That’s your problem, that is not my problem.’”*¹⁵⁶

PHR interviewed 28 migrants, of these 22 described being subjected to lateral expulsions where they were transferred and expelled from a different port from which they entered. This transplanted them to unfamiliar conditions, not knowing the surroundings or people.

The threat of expulsion places minors at particular risk. Unaccompanied minors are currently exempted from Title 42¹⁵⁷ and, between 2020 and 2021, there are increasing numbers of UCs attempting to cross the border (Figure 7).

153. Taylor Levy, “Supplemental Declaration of Taylor Levy,” ACLU, August 11, 2021,

https://www.aclu.org/sites/default/files/field_document/2021.08.11.0118_declaration_of_taylor_levy_0.pdf.

154. Margaret Brown Vega, interview by author Melissa Candell Villacreses, conducted virtually, January 28, 2022.

155. Kathryn Hampton et al., “Neither Safety.”

156. Ibid.

157. “What Is Title 42 and How Does It Impact Children and Families?” Young Center for Immigrant Children's Rights, October 12, 2021.

<https://www.theyoungcenter.org/stories/2021/10/12/what-is-title-42-and-how-does-it-impact-children-and-families>.

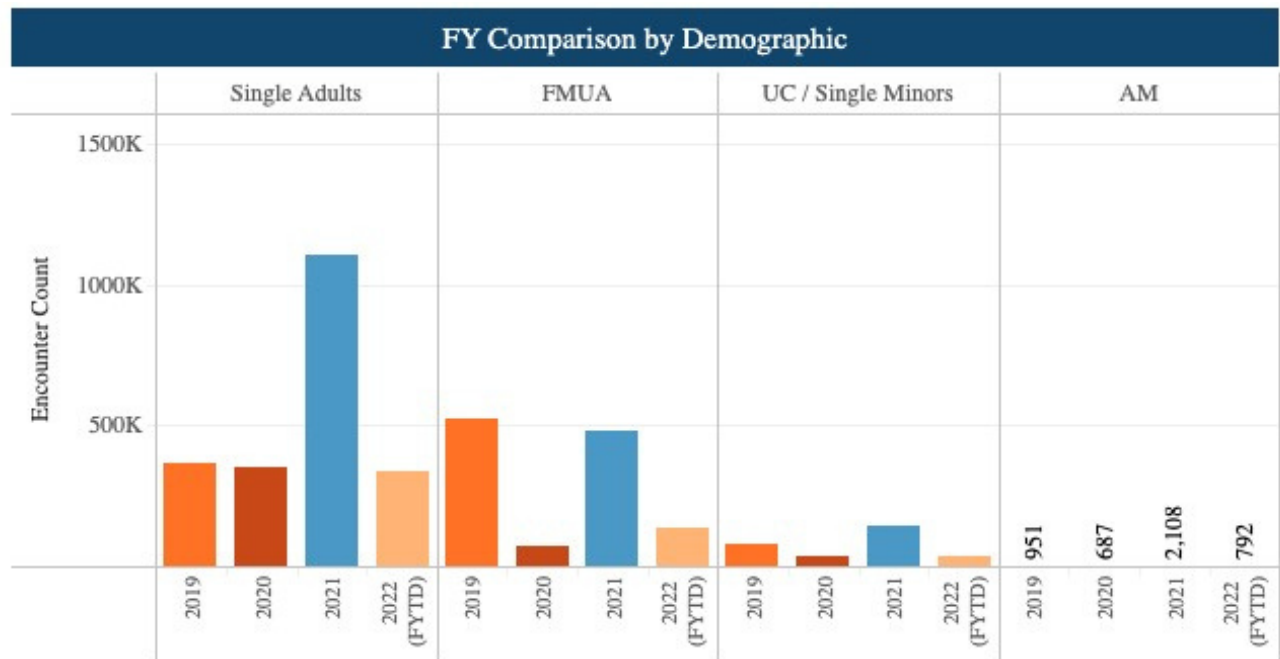
A handful of interviewers pointed out that many parents made the painful decision to send their child to the U.S. border, alone, so that they can have a better chance of seeking asylum.¹⁵⁸ The migration journey is incredibly dangerous, and while trekking through Mexico, it is not uncommon to experience organized crime recruitment, trafficking, sexual exploitation, and all forms of abuse.¹⁵⁹ In turn, parents attempt to cross between ports of entry.

A nonprofit legal service provider in Arizona commented:

*“The thing I would want to note is that Title 42 is creating unaccompanied minors in the sense that you are starting with people who want to...seek asylum as a family...and [they’re] not permitted to do that and [they] recognize that here’s this chance to at least get the kids through...To some degree [the separation is] a problem being created by the U.S..”*¹⁶⁰

Figure 7: Southwest Land Border Encounters by Fiscal Year

Source: Customs and Border Patrol¹⁶¹



Source: USBP and OFO official year end reporting for FY19-FY21; USBP and OFO month end reporting for FY22 to date. Data is current as of 01/04/2022.

FMUA: Individuals in a Family Unit; UC: Unaccompanied Children; AM: Accompanied Minors

158. Gomez Licon, Adriana. “There Was No Going Back’: Migrants Send Kids into Us Alone.” AP NEWS. Associated Press, May 15, 2021. <https://apnews.com/article/donald-trump-immigration-health-coronavirus-pandemic-government-and-politics-e27116bab6186b1161aa62704b3e591e>.

159. Arthur, Andrew R. “Unaccompanied Alien Children and the Crisis at the Border.” Center for Immigration Studies, April 1, 2019. <https://cis.org/Report/Unaccompanied-Alien-Children-and-Crisis-Border>.

160. Noah Schramm, interview by author Nivedita Keshav, conducted virtually, January 27, 2022.

161. “Southwest Land Border Encounters (by Component).” U.S. Customs and Border Protection.

Limitations

There are some limitations with our research. Although our research is on people seeking asylum, there are other migrant groups (e.g., people seeking to study or reconnect with family) whose due process rights may be equally impacted by this law. Our study does not analyze the effects of Title 42 on those groups. Furthermore, because the nature of our study is centered on public health and COVID-19, our research does not thoroughly address the social, physical, and psychological effects of forced expulsion. Migrating to the U.S.-Mexico border, especially in the midst of a pandemic, often comes with serious traumatic experiences that impact the well-being of the people being affected by Title 42.

The scope of our interview groups was another limitation. We did not interview migrants directly impacted by Title 42; however, we did interview stakeholders and read reports from organizations that work directly with migrants. While our sample of participants included diverse and unique perspectives, we experienced challenges, related to physical and scheduling limitations, while reaching out to healthcare professionals, legal experts, and community advocates. These challenges were related to scheduling conflicts due to the COVID-19 surge in January 2022 and to time constraints from participants. We also experienced difficulty obtaining interviews from government agencies and elected officials given the political nature and sensitivity of the issue and agencies' reluctance to speak about this.

Lastly, inherent with standard qualitative interviews, there is some level of social desirability bias. Measures were taken to address this by having trained interviewers who could maintain clear and balanced input and keep the conversation on track.¹⁶²

162. Nederhof A.J. Methods of coping with social desirability bias: a review. *Eur J Soc Psychol.* 1985;15(3) 263–280

CHAPTER FIVE

POLICY CRITERIA



We use the following criteria to evaluate our policy options: (1) Impact on U.S. Domestic Health, (2) Impact on Migrant Health, (3) Impact on Due Process, (4) Political Feasibility, (5) Administrative Feasibility, (6) Financial Feasibility. This criteria facilitated our goal of providing equitable, evidence-based policy alternatives that ensure due process while maintaining the safety of migrants and communities in the US.

Criteria and Description	Method of Evaluation
<p>Impact on U.S. Domestic Health: What impact will this policy have on the health of communities in the U.S.?</p> <p>Title 42 is defended as a public health policy. Thus, we find it critical to understand and assess the effects on “health impact” that an alternative policy may have. We define health impact to include not only COVID-19 incidence, morbidity, and mortality, but also the effects on broad health conditions (i.e., access to primary care and spread of other infectious diseases). Border agents and those working in CBP are considered part of the U.S. domestic communities.</p>	<p>Low: This policy will negatively impact the health of U.S. residents.</p> <p>Medium: This policy will have a neutral impact on the health of U.S. residents.</p> <p>High: This policy will significantly improve the health of U.S. residents.</p>
<p>Impact on Migrant Health: What impact will this policy have on the health of migrants?</p> <p>This criterion considers the health impact (as defined above) of Title 42 on migrants. It also accounts for the following circumstances as an attempt to capture the impact of the migration journey:</p> <ul style="list-style-type: none"> • Impact on mental health • Consideration of the potential violence experienced (e.g., rape, assault, murder). • Cumulative effects of migration trauma (before and during migration, at the border, and after the relocation that happens at the border) 	<p>Low: This policy will negatively impact the health of migrants.</p> <p>Medium: This policy will have a neutral impact on the health of migrants.</p> <p>High: This policy will significantly improve the health of migrants.</p>
<p>Impact on Due Process: Does this policy maintain due process for migrants seeking asylum at the border?</p> <p>Along with prioritizing the principles of health and safety, our other primary goal is to maintain due process for migrants. Thus, we define this criteria as the likelihood of reform to uphold asylum-seeking rights. This includes ensuring that asylum seekers:</p> <ul style="list-style-type: none"> • Are aware of their rights and options, • Have opportunities to present their case for humanitarian protection to qualified asylum officers and judges, • Have their asylum requests processed in a timely manner, and • Are treated with humanity throughout the process. 	<p>Low: This policy will supersede due process.</p> <p>Medium: This policy will have no discernable impact on due process.</p> <p>High: This policy will uphold the rights to due process.</p>

Political Feasibility: Will there be sufficient support from influential stakeholders to adopt this policy?

News outlets reveal that Title 42 expulsions were “allowed”¹⁶³ by CDC orders after being pressured by the Trump Administration. This suggests that the removal of Title 42 is as much of a political issue as it is legal.

In this criterion, we analyze how amenable influential stakeholders might be to our proposed alternatives by considering government officials’ attitudes towards Title 42, federal public health policies related to the pandemic, and historical stances on other migration and health issues.

Low: This policy is unlikely to be implemented due to opposition by influential stakeholders.

Medium: This policy may be implemented, likely with discussion and compromises between stakeholders.

High: This policy is likely to be implemented due to high support from influential stakeholders.

Administrative Feasibility: Does this policy require significant coordination from stakeholders?

This criterion considers the capacity of stakeholders (i.e., CBP, DHS, operational and advocacy NGOs, and Mexican organizations) to implement and oversee policy changes. The involvement of more stakeholders suggests greater complexity and difficulty.

Low: Implementation of this policy is unlikely due to the complexity of stakeholder coordination and capacity.

Medium: Implementation of this policy is possible but will require some stakeholder coordination and capacity expansion.

High: Implementation of this policy is relatively straightforward, with minimal stakeholder coordination and capacity expansion

Financial Feasibility: Will this policy require significant start-up or maintenance costs?

This criterion considers the costs of alternatives to achieve desired outcomes. We use it to account for start-up or maintenance costs associated with the implementation and longevity of the policy. The costs we account for include:

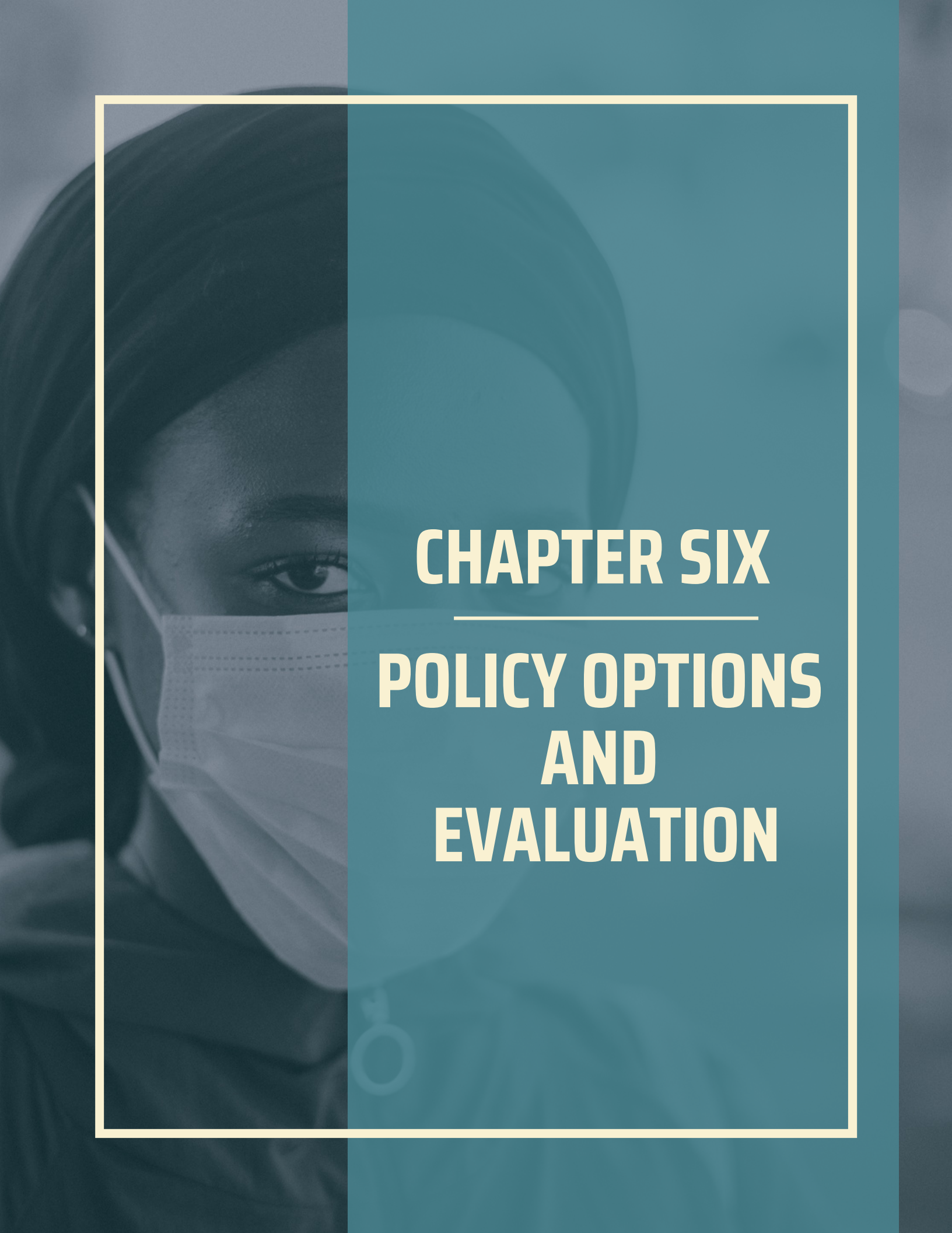
- Hiring more personnel (e.g., health professionals, judges, legal counsel, social workers, mental health professionals, administrative staff, translators, CBP and/or DHS workers, etc.),
- Constructing of shelters and processing facilities, and
- Resources related to essential living supplies, Personal Protective Equipment (PPE), and informational opportunities (pertaining to legal assistance, social work, etc.).

Low: Amongst considered alternatives, this option requires significant costs

Medium: Amongst considered maintenance this option requires moderate costs

High: Amongst considered alternatives, this option requires minimal costs

163. The word, *allowed*, is placed in quotes to signal that although the CDC permitted the implementation of Title 42, it did so under pressure from the Trump Administration, not because it had scientific backing to justify its necessity.



CHAPTER SIX

POLICY OPTIONS AND EVALUATION

To address our findings, we present six policy options informed by our literature review and interviews. Again, our goal is to restore due process for asylum seekers while protecting the health of migrants and the U.S. population at large within the context of COVID-19. It is important to note that in our findings, we identified broader health, legal, and political issues that existed prior to the pandemic. To resolve these issues, a transformation of the entire immigration system would be necessary; however, this is outside the scope of our project.

All 25 interviewees unanimously advocated to rescind Title 42, which we echo. Given that Title 42 bars access to legal entry to the U.S. for all migrants, regardless of circumstance and with rare exceptions, it negates due process entirely. With regards to the primary purpose of this order — which was to slow the spread of COVID-19 — none of our stakeholders believed that there was significant public health benefit from it. The following policy options are recommendations in the context of Title 42 being rescinded *Table 4* illustrates which policy we recommend for each finding.¹⁶⁴

Policy Options

1. Require CBP to provide on-site and site-wide COVID-19 rapid antigen testing for migrants.
2. Require CBP to provide opportunities for COVID-19 vaccinations and boosters to migrants.
3. Increase facility capacity and staffing for asylum processes.
4. Increase migrants' access to legal counsel.
5. End expulsions and detention and move migrants into community settings with case management services.
6. Responsibilities involved with asylum screenings should be transferred to qualified NGOs with community connections.

164. Here, we find it important to remind readers that as of late March 2022, the Biden Administration ordered to rescind Title 42 entirely by May 2022. The logistics of this have not been released. All that we know is what has been explained in this report.

Table 4 Summary of Key Findings and Proposed Policy Options

Key Findings	Policy Options
1. Title 42 lacks public health benefits and contributes to significant costs; its exemptions are not a solution to the problems it causes.	<i>Rescind Title 42 & Implement Suggested Policy Options</i>
4. Basic infection control measures are being neglected, posing significant COVID-19 risks to migrants held in congregate settings during immigration proceedings and the expulsion process.	Option 1 Require CBP to provide on-site and site-wide COVID-19 rapid antigen testing for migrants.
5. There are national and international examples of how to safely process migrants during the pandemic as well as existing alternatives to detention that are less costly.	Option 2: Require CBP to provide opportunities for COVID-19 vaccinations and boosters to migrants.
2. Migrants lack understanding of their rights, which CBP officers often do not inform them about.	Option 3: Increase facility capacity and staffing for asylum processes.
3. CBP agents are either not screening migrants for asylum or are overstepping their roles by judging what is “credible fear.”	Option 4: Increase migrants’ access to legal counsel.
6. CBP agents execute excessive and unjustified force on migrants encountered at the border.	Option 5: End expulsions and detention and move migrants into community settings with case management services.
7. Temporary shelter accommodations for migrants are underfunded and existing, cost-efficient alternatives to detention are not being used.	Option 6: Responsibilities involved with asylum screenings should be transferred to qualified NGOs with community connections.
8. Expulsion, and the threat of its occurrence, pose tremendous safety risks to migrants.	

Policy Option 1: Require the CBP to provide on-site and site-wide COVID-19 rapid antigen testing for migrants and appropriate triage and treatment for those who test positive.

According to the OIG, CBP does not test migrants, nor is it required to.¹⁶⁵ Instead, CBP contacts the local Public Health Department for testing guidance for migrants symptomatic with a Covid-Like Illness (CLI).¹⁶⁶ If testing is recommended, individuals are transferred to the emergency room for COVID-19 testing and evaluation. These transfers can delay treatment and increase the risk of COVID-19 exposure during the transportation process. This policy option requires CBP to provide on-site and site-wide rapid antigen testing for all migrants, rather than outsourcing to local health departments.

COVID-19 testing protocols are readily available through the CDC.¹⁶⁷ Implementing testing would require that CBP refer all migrants to medical professionals for screening. If screened positive, a rapid antigen test should be provided to migrants and instructions to administer this test oneself should be given. A rapid antigen test is cost effective compared to a Polymerase Chain Reaction (PCR) COVID-19 test that takes longer to provide results. Those who test positive would need to be triaged by a trained medical professional, such as a nurse. Standard triage procedures are readily available through the CDC¹⁶⁸ and the number of nursing professionals could be scaled depending on the facility or port of entry at which migrants are being seen. While outside the scope of our project, it is important to ensure that migrants have access to adequate and reliable health care for COVID-19 and general care for acute or chronic illnesses.

165. “DHS Needs to Enhance Its COVID-19 Response at the Southwest Border.” Office of Inspector General. Department of Homeland Security, September 10, 2021. <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-60-Sep21.pdf>.

166. Ibid.

167. “Test for Current Infection.” Centers for Disease Control and Prevention, March 31, 2022. <https://www.cdc.gov/coronavirus/2019-ncov/testing/diagnostic-testing.html>.

168. “Triaging Sick Patients.” Centers for Disease Control and Prevention, July 14, 2021. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/non-us-settings/sop-triage-prevent-transmission.html>.

Evaluation

Impact on U.S. Domestic Health: **High**

Increased access to COVID-19 testing has positive impacts on health, with studies supporting its use to reduce COVID-19 incidence and mortality.^{169, 170}

If implemented, this policy will likely mitigate the spread of COVID-19 by quickly identifying, quarantining, and providing medical care for migrants that test positive. This spread will be mitigated not just for migrants, but also for CBP officers and the communities they interact with.

Impact on Migrant Health: **High**

As mentioned, increasing access to COVID-19 testing will positively impact the health of migrants.

Impact on Due Process: **Medium**

This policy would not alter issues identified with due process.

Political Feasibility: **Medium**

Influential stakeholders may be divided on their support. We anticipate that healthcare professionals (e.g., public health administrators, nurses, etc.) might be receptive to this change. The general public might also feel more comfortable if migrants entering the U.S. were vaccinated. However, some federal agencies might not support this option given the increased responsibilities that come with testing and triaging migrants.

Administrative Feasibility: **Medium**

We envision that this policy will require an increased administrative capacity to coordinate training for COVID-19 screenings, to transmit rapid antigen tests to CBP sites, to oversee the use of these tests, and to transport COVID-19 positive migrants to hospitals or quarantine facilities. Because of these demands, we anticipate that implementing this policy is possible, but will require increased administrative capacity.

Financial Feasibility: **Low**

We anticipate that implementation of this policy will result in considerable costs. Examples of such costs include the hiring of translators, repeated purchase of rapid antigen tests, and the hiring or transfer of nurses to medical facilities that require increased capacity.

169. Terriau, Anthony, Julien Albertini, Emmanuel Montassier, Arthur Poirier, and Quentin Le Bastard. "Estimating the Impact of Virus Testing Strategies on the COVID-19 Case Fatality Rate Using Fixed-Effects Models." *Nature News*. Nature Publishing Group, November 4, 2021. <https://www.nature.com/articles/s41598-021-01034-7>.

170. Terriau, Anthony, Julien Albertini, Arthur Poirier, and Quentin Le Bastard. "Impact of Virus Testing on COVID-19 Case Fatality Rate: Estimate Using a Fixed-Effects Model." *ResearchGate*, May 2020. https://www.researchgate.net/publication/341096598_Impact_of_virus_testing_on_COVID-19_cse_fatality_rate_estimate_using_a_fixed-effects_model.

Policy Option 2: Require the CBP to provide opportunities for COVID-19 vaccinations and booster shots to migrants.

Numerous interviewers and all health experts commented on the need to implement science-based public health measures to combat the spread of COVID-19.¹⁷¹ Vaccines significantly reduce the incidence of COVID-19, hospitalization, and mortality for both the vaccinated and their surrounding communities.¹⁷² This policy proposes to provide immediate, site-wide opportunities to access vaccines and booster shots.¹⁷³ To administer this, hiring additional healthcare professionals (enrolled as vaccination providers in the CDC's COVID-19 Vaccination Program) is required to vaccinate migrants¹⁷⁴, and hiring administrative personnel is also required to oversee vaccine supply chain and logistics.

Our research yielded conflicting findings on whether COVID-19 vaccination requirements should be mandatory for migrants. As of March 2022, all non-U.S. travelers (i.e., individuals who are not citizens, nationals, lawful permanent residents, or immigrant visa holders) are required to be fully vaccinated before entering the U.S. by air, or land.^{175, 176} However, given the circumstances of asylum seekers and the dangers of not being allowed to access the asylum process, some advocates believe that vaccinations should be provided, but not mandated. Several community advocates expressed concerns that a mandate could further delay, restrict, or create additional barriers for migrants seeking protections at the border - risks that outweigh the health benefits.¹⁷⁷

171. "Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border." Columbia Public Health, December 2022.

<https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/public-health-recommendations-processing-families-children-and-adults-seeking-asylum-or-other>.

172. Lopez Bernal J, Andrews N, Gower C, Robertson C, Stowe J, Tessier E, Simmons R, Cottrell S, Roberts R, O'Doherty M, Brown K, Cameron C, Stockton D, McMenamin J, Ramsay M. Effectiveness of the Pfizer-BioNTech and Oxford-AstraZeneca vaccines on covid-19 related symptoms, hospital admissions, and mortality in older adults in England: test negative case-control study. *BMJ*. 2021 May 13;373 n1088. doi: 10.1136/bmj.n1088. PMID: 33985964; PMCID: PMC8116636.

173. Allen, Scott A., and Josiah D. Rich. "Whistleblower Disclosure from DHS Medical Experts on Continuing Health and Safety Risks to Immigrants, Workers, and the Public from Current COVID-19 Measures and Practices in Immigration Detention Settings." Government Accountability Project, January 26, 2022.

<https://whistleblower.org/wp-content/uploads/2022/01/012622-LETTER-TO-MAYORKAS-FROM-DRS-RE-COVID-IN-IMM-DETENTION.pdf>.

174. "Vaccinations." Safer Federal Workforce. Accessed April 4, 2022.

<https://www.saferfederalworkforce.gov/faq/vaccinations/>.

175. "DHS to Require Non-U.S. Individual Travelers Entering the United States at Land Ports of Entry and Ferry Terminals to Be Fully Vaccinated against COVID-19." DHS to Require Non-U.S. Individual Travelers Entering the United States at Land Ports of Entry and Ferry Terminals to Be Fully Vaccinated Against COVID, January 20, 2022.

<https://www.dhs.gov/news/2022/01/20/dhs-require-non-us-individual-travelers-entering-united-states-land-ports-entry-and>.

176. "International Travel For Non-U.S. citizen, Non-U.S. immigrants," Centers for Disease Control and Prevention, updated January 27, 2022, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/noncitizens-US-air-travel.html>.

177. Becerra, Xavier, Alejandro Mayorkas, and Dr. Rochelle Walensky. "January 2022 Letter on Vaccination at the Southern Border." Search the website, January 28, 2022.

<https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/january-2022-letter-vaccination-southern-border>.

Considering the vulnerability of migrants, **our policy proposal mirrors existing CDC and ICE vaccination requirements for vulnerable populations.** For refugees, the CDC does not mandate vaccinations upon entry, but it does require refugees to vaccinate within one year of arrival; newly resettled refugee populations must be “supported in receiving a COVID-19 vaccine” by U.S. organizations (with exceptions for special populations, such as individuals with certain medical conditions).^{178, 179, 180} Moreover, ICE currently takes a voluntary approach to vaccinations in detention centers; it does not mandate COVID-19 vaccines for all migrants, but aims to provide opportunities for vaccination to unvaccinated individuals within 14 days of arrival to a facility.¹⁸¹ Although optional vaccines do not guarantee high receptivity, community advocates' experiences with migrants help us predict that migrants would overwhelmingly be interested in, or at least amenable to the vaccine.

Evaluation

Impact on U.S. Domestic Health: **High**

Implementing this policy would significantly benefit border communities, federal employees, and the larger public as it will increase the number of vaccinated individuals entering the country, thereby decreasing the risk for COVID-19 incidence and mortality rates.

Impact on Migrant Health: **High**

This policy would significantly benefit the health of migrants. It will decrease the health risks associated with COVID-19 exposure and make the vaccine readily available for those who are not able to obtain vaccination status in their home countries, or in Mexico.

Impact on Due Process: **Medium**

This policy would not alter issues identified with due process.

Political Feasibility: **High**

Stakeholders will likely be receptive to this policy given the Biden Administration’s push to increase rates of vaccinations and the fact that the USCIS is requiring people to be vaccinated if they want to become Legal Permanent Residents (LPRs) —which is an option migrants will have, if granted asylum.

Administrative Feasibility: **Medium**

If implemented, this policy would require some stakeholder coordination and capacity expansion. For instance, more administrative staff will be needed to manage the program’s logistics, which may include the ordering of vaccines, coordinating medical staff schedules, vaccination card disbursements, etc.

Financial Feasibility: **Medium**

The U.S. has purchased a significant amount of COVID-19 vaccines that can be reallocated at the border. Relative costs would derive from the hiring of healthcare professionals enrolled as vaccination providers and of administrative staff.

178. “Immigrant, Refugee, and Migrant Health: COVID-19 in Newly Resettled Refugee Populations.” Centers for Disease Control and Prevention, November 9, 2021.<https://www.cdc.gov/immigrantrefugeehealth/resources/refugee-populations.html>.

179. “Vaccine Information for Adults: Immigrants and Refugees.” Centers for Disease Control and Prevention. Centers for Disease Control and Prevention, March 27, 2019.<https://www.cdc.gov/vaccines/adults/rec-vac/immigrants-refugees.html>.

180. “Vaccination Requirements.” USCIS, October 1, 2021.

<https://www.uscis.gov/tools/designated-civil-surgeons/vaccination-requirements>.

181. “U.S. Immigration and Customs Enforcement Enforcement and Removal Operations: COVID-19 Pandemic Response Requirements,” 2021.

Policy Option 3: Increase facility capacity and staffing for asylum processes.

The asylum process can be reformed to humanely, safely, and efficiently process migrants. **CBP funds** used for expulsion, detention, and border militarization **can be redirected to renting or building additional processing facilities and safe shelters, as well as to hire additional staff.**

Changes can begin at the Rio Grande Valley and Del Rio Border Patrol sectors in Texas — two areas with a disproportionate amount of encounters.

According to CBP, public-health protocols require many facilities to maintain 25% capacity and up to 50% at specialized central processing centers and soft-sided facilities.¹⁸² This protocol is not being followed. For example, on August 1, 2021, CBP was at 389% of its overall COVID-19 adjusted capacity along the southwest border.¹⁸³ On this day, the Rio Grande Valley sector, which normally holds 3,485 people, was holding 10,002 migrants (783% over COVID-19 adjusted capacity and 287% over its non-adjusted capacity).¹⁸⁴ This COVID-adjusted overcapacity leads to an increased risk of COVID-19 by not keeping people at least six feet apart at all times. Therefore, additional facilities must be rented to temporarily achieve a 50% capacity in processing facilities and build new centers to ensure appropriate space during future surges. Rather than investing in more ICE detention beds, investments must be made to ensure sufficient space to safely process migrants and avoid the associated health risks that affect everyone.¹⁸⁵

Additionally, staffing must increase to equitably and efficiently process migrants. Increases in staffing can be prioritized according to need, and staffing can be scaled up or down according to surges.

Increases in staffing include hiring more:

- Nurses to triage migrants with COVID-19,
- Case managers to assist migrants while immigration hearings are ongoing,
- Immigration judges and legal representatives to increase capacity during court hearings, and
- USCIS asylum officers and administrative staff to assist with asylum claims and processing.

In a notice of proposed rulemaking made to DHS, the Biden administration proposed to conduct an overhaul of the immigration system to address the backlog of cases in 2021.¹⁸⁶ DHS projected to spend between \$180 million and upwards of \$438 million to expand the asylum workforce. DHS delineated the \$180 million investment would allow USCIS to hire 800 asylum officers and support staff to process 75,000 asylum cases annually.¹⁸⁷

182. DECLARATION OF DAVID SHAOULIAN § (2021).

<https://int.nyt.com/data/documenttools/shahoulian-declaration/1b52f4354fb0d655/full.pdf>.

183. Ibid.

184. Ibid.

185. Ibid.

186. “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers” Department of Homeland Security, August 8, 2021, <https://public-inspection.federalregister.gov/2021-17779.pdf>.

187. Eric Katz, Biden Proposes Dramatic Hiring Surge in Asylum Workforce as Part of Immigration Overhaul,” Government Executive, August 18, 2021,

<https://www.govexec.com/workforce/2021/08/biden-proposes-dramatic-hiring-surge-asylum-workforce-part-immigration-overhaul/184647/>.

Meanwhile, the upper bound estimate of \$438 million would allow USCIS the capacity to hire 2,000 asylum officers and support staff to process 150,000 asylum cases annually.^{188, 189} Other costs not mentioned in the notice, but crucial to expanding the asylum process, include increasing the number of immigration judges. A report from the Bipartisan Policy Center (BPC) indicates hiring more judges would significantly “expedite cases” and “decrease the average time in custody for migrants.”^{190, 191} The BPC recommends hiring 182 to 365 additional judges to address the backlog of cases, costing approximately \$259 million to hire 238 judges (only 8.6% of the ICE Custody Operation Budget).¹⁹² Together with the costs of hiring asylum officers, this ranges to about \$439 million to \$697 million. This provides a rough estimate of how much would be needed to significantly increase processing capacity at the border. However, because it is hard to predict how the rescission of Title 42 will impact processing centers, and because some centers will have larger amounts of migrants than others, it is hard for us to provide a hard estimate on the amount of additional staff that should be hired for this policy option.

Evaluation

Impact on U.S. Domestic Health: High	If CBP were to implement COVID-19 protocols and asylum cases were timely processed, border agents would have a lower chance of contracting the virus and transmitting it to border communities.
Impact on Migrant Health: High	If CBP were to implement COVID-19 protocols and asylum cases were timely processed, migrants would have a lower chance of contracting the virus.
Impact on Due Process: High	Hiring additional USCIS asylum officers increases capacity to process cases and properly refer migrants to an immigration judge or to other immigration proceedings. Having additional staff allows for efficient processing especially during influxes of migration.
Political Feasibility: High	Since President Biden passed Executive Order 14010 (aimed to safely and orderly process asylum seekers), and Senate Republicans and Democrats collaborated on the Bipartisan Border Solutions Act (aimed to establish new processing centers for asylum seekers and to expedite cases), this policy is expected to have a high acceptance from the Executive Branch and Congress. ¹⁹³
Administrative Feasibility: Low	Administrative feasibility for this option is low because it would require the hiring of several stakeholders (e.g., administrative staff, immigration judges, case managers, etc.) to coordinate it.

188. Ibid.

189. Ibid.

190. Ibid.

191. Ibid.

192. “Why Hiring More Judges Would Reduce the Immigration Court Backlog,” *BPC Action*, January 2019, <https://bpcaction.org/wp-content/uploads/2019/01/Courts-One-Pager.pdf>.

193. “Bipartisan Border Solutions Act.” United States Senator John Cornyn, Texas. Accessed April 4, 2022. <https://www.cornyn.senate.gov/node/6249>.

Financial Feasibility: Costs are high and include costs of rental and construction of facilities as well as the costs of hiring personnel.
Low

Policy Option 4: Increase migrants’ access to legal counsel.

As noted in our findings, asylum seekers encounter various legal challenges with CBP. For review, examples of such issues include migrants not being: aware of their rights and eligibility for Title 42 exemptions, asked about their risk of torture, informed about their whereabouts as they are transmitted to detention or expulsion, among other injustices. A solution for these issues is to provide migrants with access to free legal counsel.

This policy option would require the creation of a government funded project, which we will call the Migrant Legal Assistance Program (MLAP). To create MLAP, the federal government would need to allocate funding for local governments in CA, AZ, NM, and TX border towns to implement and administer a partnership with local community organizations (e.g., CHIRLA, Florence Immigrant & Refugee Rights Project, etc.) that can provide migrants with free legal services. These services would be made available to migrants at the border and as well as to those under CBP and/or ICE custody. Considering the high demands for such a resource, we anticipate that costs will be high for MLAP to be implemented and administered. Funding for this program would go towards hiring and sustaining immigration attorneys, legal assistants, multilingual translators, and administrative staff to expand the capacity of organizations that provide reliable immigration legal services. Administratively, these roles would require staff to develop canvassing-style outreach education at the border to inform migrants about their rights before they seek asylum; it would also require a collaboration with ICE to service migrants in detention and/or in expulsion proceedings.

Evaluation

**Impact on U.S.
Domestic Health:**
Medium

This policy would have no impact on the health of communities in the U.S.

**Impact on
Migrant Health:**
High

If implemented, this policy offers the possibility of increasing the mental health of migrants as knowing they can access reliable legal information can reduce their anxieties around the asylum process. Although asylum would not be guaranteed, the creation of MLAP would also minimize the physical stress caused by the fear of returning to the circumstances faced in migrants’ home country.

**Impact on
Due Process:**
High

We anticipate that access to legal counsel will significantly impact migrants’ rights to due process given that this policy will provide them with a legal team to rely on.

Political Feasibility:
Medium

The political feasibility for this policy is medium as we suspect that the federal government would be open to this policy. Various members of Congress have proposed to expand the DOJ’s Legal Orientation Program and Legal Access at the Border programs or propose similar programs. We anticipate this policy to have receptibility among the executive and members of Congress.

**Administrative
Feasibility:
Medium**

This policy is administratively feasible and would require an expanded capacity of staff for both local government offices and community organizations contracted to do this work.

**Financial Feasibility:
Low**

Given the nature of this program, we estimate that costs will be high as staff and administrative coordination will be required.

Policy Option 5: End expulsions and detention and move migrants into community settings with case management services.

As many experts noted, the expulsion process and detention jeopardizes migrants' health, safety, and due process rights. Regardless if migrants stay under short-term CBP or ICE custody prior to expulsion or are placed in long-term detention at ICE facilities, migrants risk COVID-19 infection once placed in congregate facilities. Given this, we recommend that DHS end expulsions and pursue alternative strategies to detention. Migrants could be granted parole, assigned a case manager, and placed in community settings with monitoring. This can be accomplished by **increasing funding for FEMA to support a community-monitoring system led by local nonprofits and faith-based organizations.**

Based on our interviews and research, alternatives to detention (ATD) have consistently proven to cost significantly less than detention, enhance compliance with immigration check-ins and hearings, and have been found to be a more humane method to process migrants and asylum seekers.^{194, 195, 196, 197} Reports show that the average costs of ICE detention ranges from \$170 per day for long-term stay, \$30 for short-term stays, and up to \$798 per day for families.¹⁹⁸ While, ATD costs an average of \$10 to \$24 a day and parole incurring no extra costs.^{199, 200} The parolee is permitted to remain in the country for the duration of their parole and may be granted temporary work authorization.²⁰¹ In a parole system, migrants are granted immigration parole and assigned to a case manager.

194. "The Real Alternatives to Detention." American Immigration Lawyers Association. AILA, Women's Refugee Commission, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, and Migration and Refugee Services, June 2019. <https://www.aila.org/infonet/the-real-alternatives-to-detention>.

195. "Report: A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration." National Immigrant Justice Center, April 22, 2019. <https://immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration>.

196. "U.S. Detention of Asylum Seekers - Seeking Protection, Finding Prison." Human Rights First, April 2009. <https://www.corteidh.or.cr/tablas/r25623.pdf>.

198. Nowrasteh, Alex. "Alternatives to Detention Are Cheaper than Universal Detention." CATO Institute, June 20, 2018. <https://www.cato.org/blog/alternatives-detention-are-cheaper-indefinite-detention>.

199. "U.S. Detention of Asylum Seekers - Seeking Protection, Finding Prison." Human Rights First.

200. Nowrasteh, Alex. "Alternatives to Detention Are Cheaper than Universal Detention." CATO Institute.

201. Andorra Bruno, "Immigration Parole," Congressional Research Service, October 15, 2020, <https://crsreports.congress.gov/product/pdf/R/R46570>.

In August 2021, several notable public health experts advocated for the Family Case Management Program (FCMP) as a viable community-based alternative to detention in a letter written to the CDC. Implemented from January 2016 through June 2017, the FCMP focused on individualized and specialized case management services for families seeking asylum at the U.S. border. This program allowed caseworkers to help families navigate immigration process and encourage compliance with government immigration requirements.²⁰² Notably, the FCMP program achieved a 99% compliance rate with immigration requirements at a significant fraction of the cost of detention (\$38 for FCMP vs \$798.43 for Family Detention Space).²⁰³ Similarly, in 2013, the Family Placement Alternatives (FPA) managed by non-profits and faith-based organizations showed equivalent results. FPA achieved a 97% appearance rate in court and cost only an average of \$24 per day and \$50 for family units.²⁰⁴ The FCMP and FPA illustrate the success of community-based organizations and nonprofit in administering case management programs; their track record serving immigrant populations and expertise on community dynamics has strengthened trust and rapport with migrant communities.²⁰⁵ Funding these programs would allow for humane processing without detaining migrants in congregate facilities with ICE and CBP.

Evaluation

Impact on U.S. Domestic Health: **High** By decriminalizing asylum seeking and ending congregate detention of migrants, this option will protect migrants and border facility personnel from being exposed to the unhealthy conditions that allow the rapid transmission of COVID.

Impact on Migrant Health: **High** By decriminalizing asylum seeking and ending congregate detention of migrants, this option will protect migrants and border facility personnel from being exposed to the unhealthy conditions that allow the rapid transmission of COVID. This would also protect migrants from experiencing the risks to health and safety post-expulsion.

Impact on Due Process: **High** If asylum seekers were not placed in detention or expelled, and were able to have their cases processed, this would have a positive impact on due process.

Political Feasibility: **Low** While campaigning, the President indicated that he would end detention for migrants; however, since assuming office, no steps have yet been taken in this direction.²⁰⁶ Furthermore, only select members of Congress, including Pramila Jayapal and Alexandria Ocasio-Cortez, have spoken about the importance of ending detention for migrants.^{207, 208} It would likely be challenging for this option to gain political support.

202. "The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration." Women's Refugee Commission, June 2019.

<https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/The-Family-Case-Management-Program.pdf>.

203. Ibid.

204. Nowrasteh, Alex. "Alternatives to Detention Are Cheaper than Universal Detention." CATO Institute.

205. "The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration." Women's Refugee Commission.

206. Ortiz, Analise, and Andy Hoover. "ACLU Rebukes President Biden for Breaking Campaign Promise to End Privatized Immigration Detention." ACLU Pennsylvania, September 29, 2021.

<https://www.aclupa.org/en/press-releases/aclu-rebukes-president-biden-breaking-campaign-promise-end-privatized-immigration>.

207. "Jayapal Leads Members in Urging Secretary Mayorkas, Acting Director Johnson to End the Use of For-Profit Immigration Detention Centers." Congresswoman Pramila Jayapal, March 10, 2022. <https://jayapal.house.gov/>.

208. Kelly, Caroline. "Ocasio-Cortez Compares Migrant Detention Facilities to Concentration Camps." CNN, June 18, 2019. <https://edition.cnn.com/2019/06/18/politics/alexandria-ocasio-cortez-concentration-camps-migrants-detention/index.html>.

**Administrative
Feasibility:
Medium**

A considerable amount of coordination must occur between border agents, community based shelters, and entities for long-term placement. However, the FCMP and FPA have demonstrated that this can successfully occur.

**Financial Feasibility:
High**

Redirection of funds from CBP and ICE to CBOs and nonprofits may increase cost slightly. The fiscal cost for pursuing alternatives to detention would be less than the cost of detaining migrants.^{209, 210} Of note, the FY 2022 budget includes \$475 million for ICE to support expanded access to the Alternatives to Detention (ATD) program and community-centric case management for families seeking asylum.²¹¹ However, given that case management programs function best when led by organizations that can build trust with immigrant communities, this money should be redirected from ICE to community-based organizations to carry out case-management duties.

Policy Option 6: Responsibilities involved with asylum screenings should be transferred to qualified NGOs with community connections.

This policy option provides safeguards to protect asylum seekers by separating asylum protection screening from immigration enforcement. As such, DHS can contract with an NGO to step in and conduct screenings instead of CBP officers for the reasons stated in Finding 7. NGOs contracted should be well-established, with legal expertise and a strong track-record of service and trust in vulnerable communities.

DHS can put out a call to find an appropriate NGO through its Office of Partnership and Engagement (OPE). **The OPE**, which coordinates DHS's outreach efforts with stakeholders nationwide, including NGOs, **can lead a selection process that prioritizes organizations that are 1) well-established** (with 10+ years working with migrants at the border), **2) have legal expertise**, and **3) have a strong track-record of service in vulnerable communities**. These three requirements can ensure that any NGO selected can effectively carry out screenings with enough capacity, expertise, and sensitivity.

Additionally, the President's Budget for FY 2022 for CPB proposes \$1.2 billion to be focused on two areas: border technology/surveillance and mission enhancements.²¹² More than 50% of the budget is for border technology/surveillance and upgrades to the Land Ports of Entry (LPOE) -- the rest is allocated to items like medical services, transportation, and data processing. Notably, only \$9.1 million is allocated to Border Patrol Processing Coordinators, who are responsible for receiving and processing detainees in CBP facilities.

209. Signer, Jordana. "Immigrant Detention Is Expensive, and Alternatives Are Just as Effective." Human Rights Watch, November 15, 2021. <https://www.hrw.org/news/2021/11/15/immigrant-detention-expensive-and-alternatives-are-just-effective>.

210. ACLU. "Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock-Up." ACLU. Accessed April 4, 2022. https://www.aclu.org/sites/default/files/assets/aclu_atd_fact_sheet_final_v.2.pdf.

211. "Appropriations Committee Releases Fiscal Year 2022 Homeland Security Funding Bill." House Committee on Appropriations, June 30, 2021. <https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2022-homeland-security-funding>.

212. U.S. Department of Homeland Security § (n.d.).

https://www.dhs.gov/sites/default/files/publications/dhs_bib_-_web_version_-_final_508.pdf.

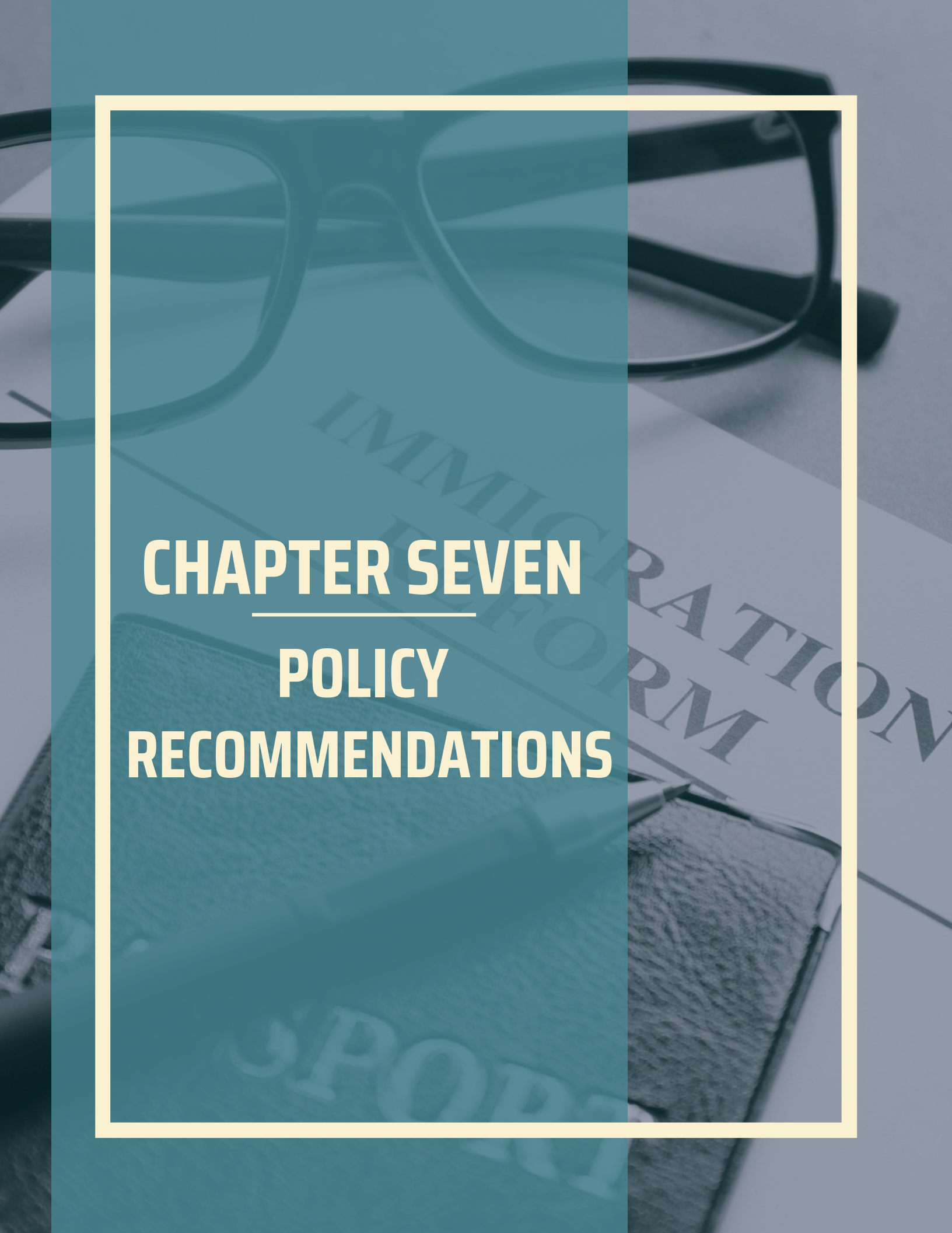
Therefore, at least 50% of the budget from border technology/surveillance should be redirected to support the efforts of the NGO responsible for conducting screenings. The financial support from DHS would ensure that the NGO is able to hire and scale the number of screeners needed, invest in COVID-19 PPE, provide funds for educational materials and translation services, support travel and living expenses for screeners (who may have to travel or relocate to near the border), and invest in the expansion of the organization to meet the needs at the border.

Evaluation

Impact on U.S. Domestic Health: Medium	<p>The impacts to the health of U.S. communities is neutral. For CBP officers, they will no longer be involved in the screening process, which decreases their exposure risk by decreasing the number of migrants they interact with. However, the risk will be transferred to NGO staff who are also in U.S. communities, and therefore, the net impact is neutral.</p>
Impact on Migrant Health: High	<p>The overall health of migrants will be significantly improved by this policy since they will be screened properly for exemptions to expulsion. Therefore, migrants whose health and safety are at risk due to expulsion may be able to apply for asylum and avoid threats to their wellbeing.</p>
Impact on Due Process: High	<p>This policy will uphold due process rights for migrants by creating a process that allows them to exercise their rights to a proper credible fear screening and referral by a trained, sensitive, and non-adversarial person.</p>
Political Feasibility: Medium	<p>The implementation of an NGO to replace CBP officers in conducting screenings will likely require further discussion and compromises between DHS, the NGO involved, and the Biden Administration. While NGOs are often involved with migrants during the migration process, some of the community advocacy NGOs we interviewed described their strained relationship with DHS's ICE and CBP organizations. At the same time, NGOs already have demonstrated a long and successful history of supporting migrants at the border.</p>
Administrative Feasibility: Low	<p>Due to the creation of a new partnership between DHS and an NGO, this would require significant coordination and capacity building. This includes building new standard operating procedures, Memorandums of Understanding, and procedures for implementation and evaluation.</p>
Financial Feasibility: Low	<p>This policy will result in significant costs (approximately \$600 million). These funds would come from the border technology/surveillance budget to support the efforts of the NGO responsible for conducting screenings..</p>

Table 4 Policy Evaluation Summary

Policy Options	Impact on U.S. Domestic Health	Impact on Migrant Health	Impact on Due Process	Political Feasibility	Administrative Feasibility	Financial Feasibility
Option 1 Require the CBP to provide on-site and site-wide COVID-19 rapid antigen testing for symptomatic migrants and appropriate triage and treatment for those who test positive	High	High	Medium	Medium	Medium	Low
Option 2 Require the CBP to provide opportunities for COVID-19 vaccinations and boosters to migrants	High	High	Medium	High	Medium	Medium
Option 3 Increase facility capacity and staffing for asylum processes	High	High	High	High	Low	Low
Option 4 Increase migrants' access to legal counsel	Medium	High	High	Medium	Medium	Low
Option 5 End expulsions and detention and move migrants into community settings with case management services	High	High	High	Low	Medium	High
Option 6 Responsibilities involved with the screening of asylum claims should be transferred to qualified Non-Governmental Organizations (NGOs) with community connections	Medium	High	High	Medium	Low	Low



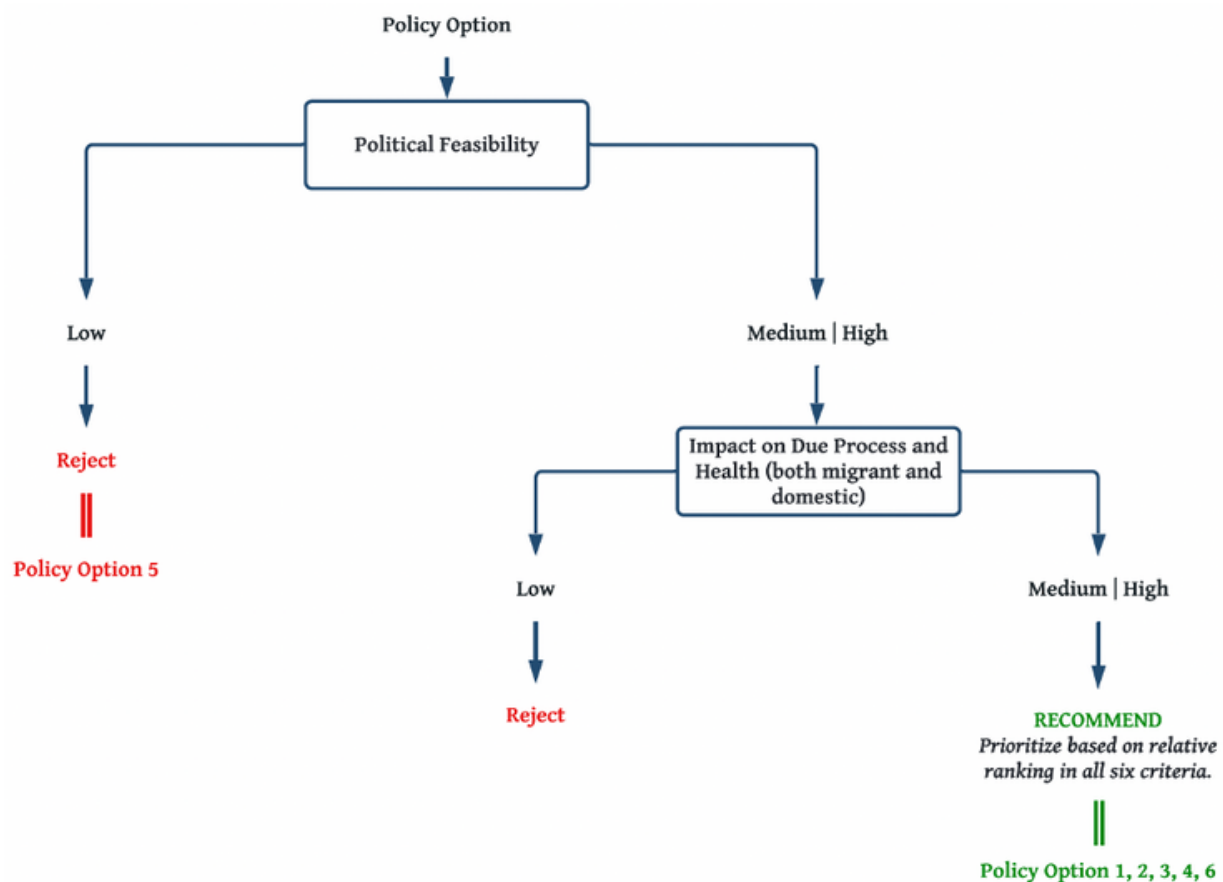
CHAPTER SEVEN

POLICY RECOMMENDATIONS

Based on our findings, our predominant recommendation was to rescind Title 42; as of April 2022, the Biden Administration announced that Title 42 will be fully lifted by May 2022.²¹³ Therefore, our policy recommendations proceeded with this context in mind.

As illustrated in *Figure 7*, policies were deprioritized if they had low political feasibility, given that such policy changes need to be instituted at the federal level. We then prioritized policies if they had a high or medium impact on health (given that increased disease risk was the basis for Title 42) and a high or medium impact on due process. Policies that had high political feasibility were ranked higher than those that had medium political feasibility. Options with medium administrative and financial feasibility were considered higher priority compared to those with low administrative and financial feasibility given ease of implementation. Lastly, policies with high impact on the health of migrants and due process were ranked higher than policies with medium impact on the health of migrants and due process. Through this strategy, we affirm the principles of a health justice framework and foreground the advocacy goals of our client to redress the disproportionately negative impact of Title 42 on migrants, refugees, and vulnerable communities.

Figure 7 Method of Evaluation



213. "Statement by Secretary Mayorkas on CDC's Title 42 Order Termination." Statement by Secretary Mayorkas on CDC's Title 42 Order Termination | Homeland Security, April 1, 2022.
<https://www.dhs.gov/news/2022/04/01/statement-secretary-mayorkas-cdcs-title-42-order-termination>.

Recommended Policies *(in order of priority)*

Policy Option 2 Require the CBP to provide opportunities for COVID-19 vaccinations and boosters to migrants.

Policy Option 3 Increase facility capacity and staffing for asylum cases.

Policy Option 4 Increase migrants' access to legal counsel.

Policy Option 1 Require the CBP to provide on-site and site-wide COVID-19 rapid antigen testing for symptomatic migrants and appropriate triage and treatment for those who test positive.

Policy Option 6 Responsibilities involved with the screening of asylum claims should be transferred to qualified Non-Governmental Organizations (NGOs) with community connections.

Of all policy options considered, we believe all are feasible with the exception of Policy Option 5 (End expulsions and detention and move migrants into community settings with case management services.) due to its low political feasibility, though we otherwise endorse advocacy for this policy change.

The policy options above can be implemented as stand-alone policies or combined to create larger reform that can pave the way for transformation of the immigration process. While our recommendations provide downstream solutions to downstream problems created by Title 42, we hope to have provided detailed documentation and rigorous analysis of options to reform the immigration process beyond the setting of a global pandemic. This report can be used by our client to inform stakeholders such as federal agencies and ensure evidence-based solutions are carried out when protecting the health, rights, and well-being of all human beings, especially for particularly vulnerable communities such as migrants.

Additional Recommendations

Furthermore, though not listed as a policy option, it is important that there are **accountability and oversight mechanisms for all organizations that interact with migrants and/or will be involved in the implementation of these policies**, particularly CBP. A common theme across findings was that CDC recommendations and CBP policies are inconsistently enforced or blatantly disregarded — which was demonstrated by violations of COVID-19 safety measures, CBP’s unjustified use of force during migrant encounters, CBP’s overstep of their roles in asylum screenings, and migrants being held in congregate detention centers for unacceptable lengths of time. Though a specific mechanism for oversight is out of the scope of this paper, we recommend that one be implemented with all of our suggested policy options, as well as existing policies (i.e., requirements for masking, social distancing, and sanitation). Nonetheless, this is not a permanent solution to these issues. As we have mentioned, the immigration system requires radical transformation to foster a safe and humane processing system for asylum seekers and other migrants.



CHAPTER EIGHT

CONCLUSION

Conclusion

It has been over two years since Title 42 was implemented to restrict migration and expel migrants under the guise of public health during the COVID-19 pandemic. While the Biden Administration announced that the order will be lifted in May 2022, the order remains ongoing at the conclusion of this report, neglecting and expelling asylum seekers and creating conditions that go against public health principles. This report was built with the understanding that Title 42 should be rescinded *and* due process and public health safety need to be prioritized during the emergency of COVID-19.

Through our extensive literature review, expert interviews, and analysis of COVID-19 and CBP data, we created recommendations that can inform and guide federal agencies to ensure due process for asylum seekers while prioritizing the public health of both migrants and U.S. residents. We prioritized recommendations that targeted the areas most affected by Title 42 due process and health. We considered the political landscape and reception of the recommendations, given the political nature of immigration policy in the U.S., and took into account small and large scale changes. Our recommendations build on previous work calling an end to Title 42 and provide a series of steps that are important to consider when addressing the current state of the asylum seeking process for migrants in the U.S.-Mexico border. We hope these recommendations serve as a turning point for further immigration reform where migrants are no longer scapegoated as vectors of disease and are treated, humanely, as people who deserve rights, dignity, and respect.

Appendices

Appendix A

Demographics of Migrants and Differences in Use of Title 42 versus Title 8

From October 2021 through January 2022, CBP encountered 643,630 migrants, of which 335,844 (52%) were expelled under Title 42 and 307,786 (48%) were apprehended under Title 8.²¹⁴ Between these two types of encounters, there are significant differences in the citizenship, group characteristics (e.g., single vs. family unit), and age of migrants, as well as the location of the encounter.

Looking at Title 42 expulsions (Figure 1), majority of migrants expelled were single adults (291,073; 95%), had Mexican citizenship (207,203; 67%) or citizenship in Central America's Northern Triangle countries of Guatemala, Honduras, and El Salvador (116,927; 35%).²¹⁵

Migrants were also most likely crossing the Rio Grande Valley, Tucson, Del Rio, or El Paso (Figure 3).²¹⁶ This contrasts with Title 8 apprehensions (Figure 2).

Under Title 8, apprehensions included a lesser proportion of single adults (141,357; 46%) and more Individuals in Family Units (119,722; 38.9%) and unaccompanied children (46,707; 15%).²¹⁷ All were primarily categorized as not being Mexican nationals (228,619; 74%) or from countries in Central America's Northern Triangle (79,167; 26%) and were most likely crossing in the Rio Grande Valley, Del Rio, or Yuma (Figure 3).²¹⁸

Though the category of "Other" citizenship is not defined by CBP, common countries from which migrants are arriving include Ecuador, Brazil, Venezuela, Nicaragua, Cuba, Haiti, and Columbia.²¹⁹ One reason that we see differences in citizenship between those who are expelled versus apprehended could be that DHS can only expel migrants using Title 42 if a country is willing to accept them and DHS has the resources to expel them. For example, repatriation flights to farther countries (e.g., Haiti) are expensive (over \$15 million for 8,000 expulsions) and require navigation of COVID-19 travel restrictions. In contrast, expelling migrants across the border to Mexico is easier and less costly.²²⁰ Thus, we see a difference in the application of Title 42 that is not related to public health or safety risks, but is primarily logistical.

214. "Southwest Land Border Encounters (by Component)." U.S. Customs and Border Protection.

215. "Southwest Land Border Encounters (by Component)." U.S. Customs and Border Protection.

216. Ibid.

217. Ibid.

218. Ibid.

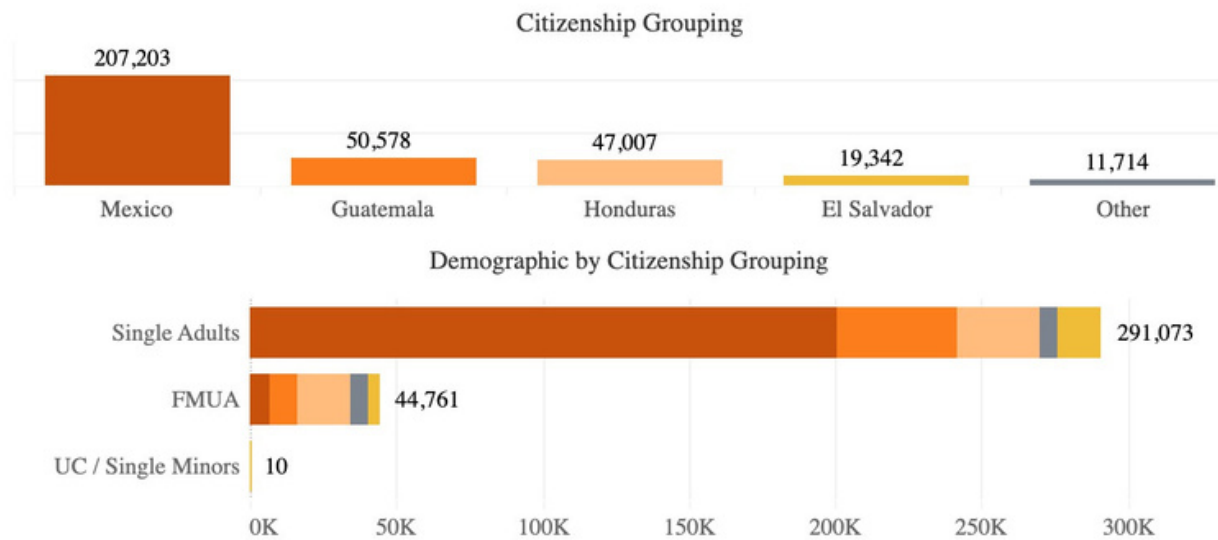
219. "Southwest Land Border Encounters (by Component)." U.S. Customs and Border Protection.

220. "Rising Border Encounters in 2021 An Overview and Analysis." American Immigration Council.

When considering geography in the application of Title 8 and Title 42 (Figure 3), one cause of disparity could be that each port of entry has its own jurisdiction for enforcing these federal orders. Another conjecture could be that characteristics of migrants vary with each border region, thus resulting in more or less expulsions based on these criteria.

Figure 1: CBP Title 42 Expulsions Demographics, FY2022 YTD (Oct. 2021 - Jan. 2022)

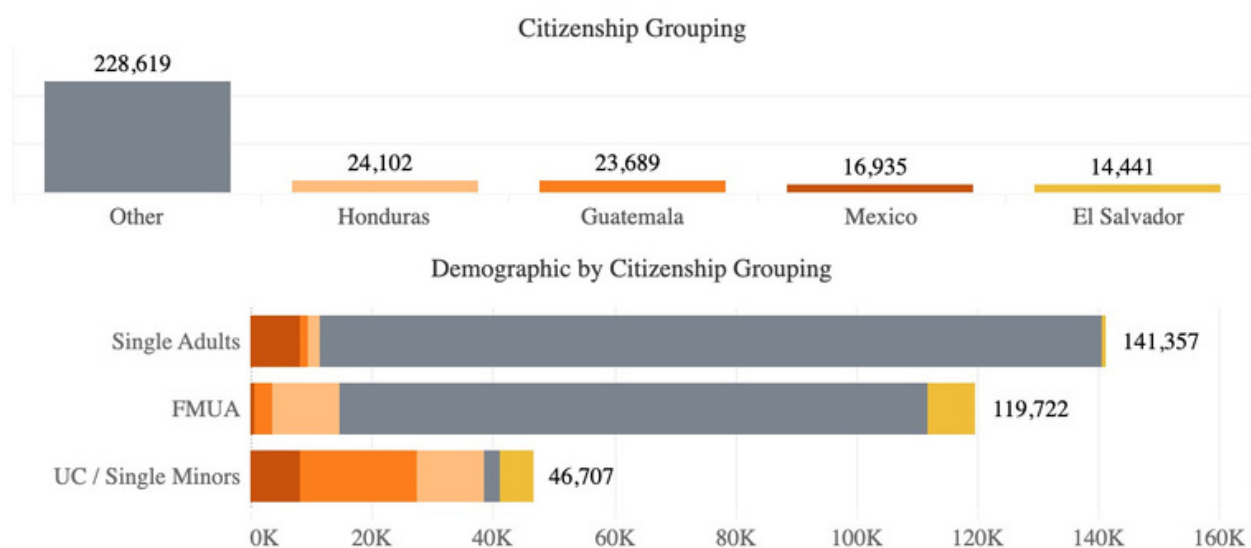
Source: Customs and Border Patrol²²¹



Source: USBP and OFO month end reporting for FY22TD. Data is current as of 02/03/2022.

Figure 2: CBP Title 8 Apprehensions Demographics, FY 2022 YTD (Oct. 2021 - Jan. 2022)

Source: Customs and Border Patrol²²²



Source: USBP and OFO month end reporting for FY22TD. Data is current as of 02/03/2022.

221. "Southwest Land Border Encounters (by Component)." U.S. Customs and Border Protection.

222. Ibid.

Figure 3: U.S. Southwestern Land Border Map

Source: Customs and Border Patrol²²³



Number of Expulsions and Causes of Migration

In the 24 months since its implementation, Title 42 has expelled over 1.7 million migrants to Mexico or their country-of-origin.²²⁴ Across all months, there is an increase in the absolute number of expulsions from year to year; for example, in October 2020, CBP expelled 64,894 migrants under Title 42, and the following year 94,414 (an approximate 30% increase). Reasons for this vary from heightened patrolling and enforcement to a larger number of migrants seeking entry to the U.S..

Over 1.5 million migrants arrived in the U.S.-Mexico border in 2021, leading to levels of CBP encounters that have not been seen in over 20 years (see *Figure 4*). This increase in encounters has occurred in conjunction with an increased international destabilization. Examples of such destabilization include drought and hurricanes that devastated crops and brought widespread food insecurity to Honduras and Guatemala, the economic hardship and anti-immigrant sentiments faced by Venezuelan and Haitian refugees in South America, and the political instability in Nicaragua and Cuba.²²⁵ Because of these circumstances, more and more migrants are seeking refuge in the U.S..

Although most migrant encounters during the pandemic have ended in expulsion under Title 42 and the absolute numbers of expulsions continue to rise, the proportions of expulsion have decreased steadily over 2021. This contrasts apprehensions made under Title 8, which is a pre-pandemic federal law regarding immigration and nationality admissibility. Migrants apprehended under Title 8 receive further screening, after which they may be expelled or accepted into the asylum process (*Figure 5*).²²⁶ See *Figure 6* for a comparison of the common regions for Title 8 apprehensions and Title 42 expulsions.

223. Ibid.

224. "Southwest Land Border Encounters (by Component)." U.S. Customs and Border Protection.

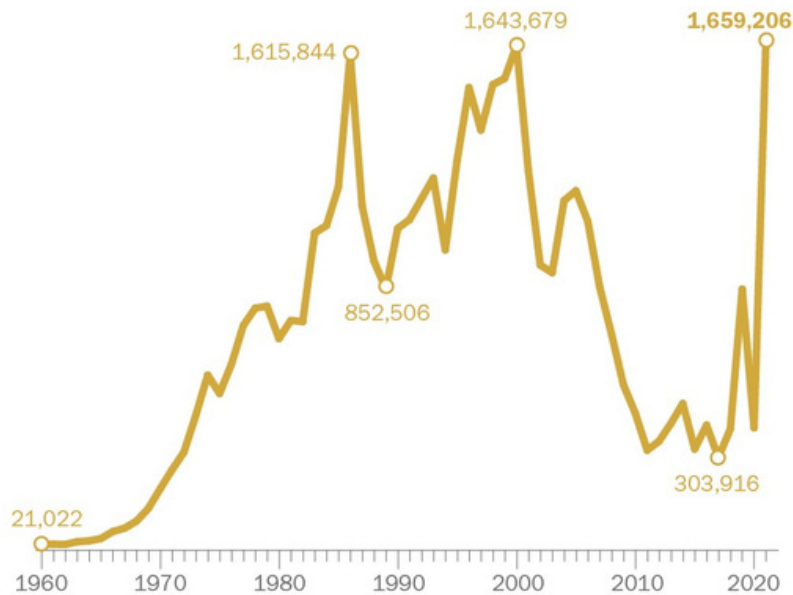
225. "Rising Border Encounters in 2021: An Overview and Analysis." American Immigration Council.

226. Gramlich, John, and Alissa Scheller. "What's Happening at the U.S.-Mexico Border in 7 Charts." Pew Research Center.

Figure 4: Migrant Encounters at the U.S.-Mexico Border, 1960-2021

Source: Pew Research Center²²⁷

Migrant encounters at U.S.-Mexico border, by fiscal year



Note: Beginning in fiscal 2020, annual totals combine expulsions and apprehensions into a new category known as encounters. Annual totals before fiscal 2020 include apprehensions only.

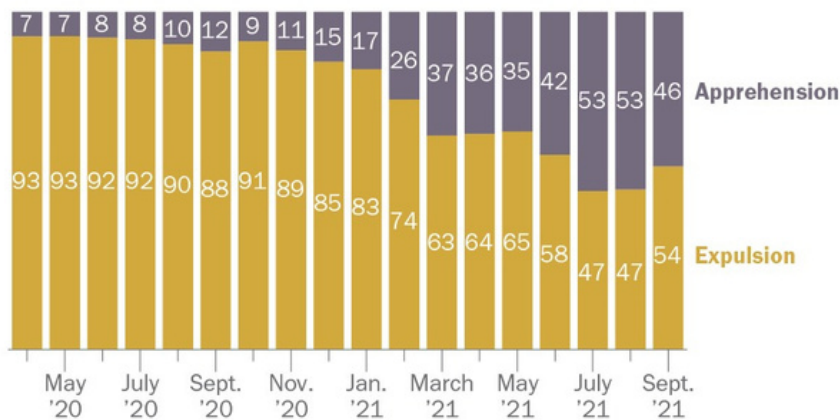
Source: U.S. Customs and Border Protection.

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Figure 5: Title 42 Expulsions at the U.S.-Mexico Border from March 2020-January 2022

Source: Pew Research Center²²⁸

% of migrant encounters at U.S.-Mexico border that resulted in ...



Source: U.S. Customs and Border Protection.

PEW RESEARCH CENTER

227. Ibid.

228. Ibid.

Figure 6: U.S. Southwestern Land Border Map

Source: Customs and Border Patrol²²⁹

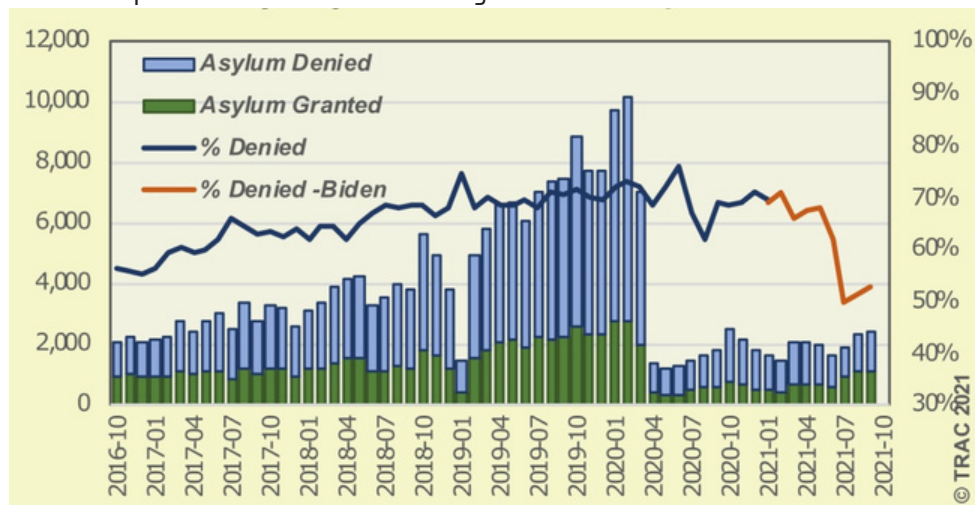


A Drastic Decrease of Asylum Cases

Before Title 42, 2019 data from the Department of Homeland Security (DHS) shows that the Executive Office for Immigration Review received 210,752 affirmative asylum applications and approved 46,508 defensive and affirmative asylum applications.²³⁰ After Title 42, these numbers dropped drastically. Between April 2020 and January 2021, only 611 individuals entered the asylum process, compared to 1,552 individuals in February 2020 alone (see *Figure 7*).²³¹ Asylum court decisions decreased by 60% from 60,079 in 2020 to 23,927 in 2021.

Figure 7: Monthly Immigration Court Asylum Decisions, October 2016-September 2021

Source: Department of Homeland Security²³²



229. "Southwest Land Border Encounters (by Component)." U.S. Customs and Border Protection.

230. Baugh, Ryan. "Annual Flow Report: Refugee and Asylees: 2019." Department of Homeland Security, September 2020. https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/refugee_and_asylee_2019.pdf.

231. "Rising Border Encounters in 2021 An Overview and Analysis." American Immigration Council.

232. "Asylum Grant Rates Climb Under Biden." TRAC, Syracuse University, November 10, 2021. <https://trac.syr.edu/immigration/reports/667/>.

Increased Migrant Mortality and Experiences of Violence

In 2021, CBP recorded 650 migrants dying during attempts to cross the border, the highest mortality rate since 2014, when records of migrant mortality first began being kept. In 2020, 254 deaths were reported and 300, in 2019.²³³ Causes of mortality range from elemental exposure (i.e., extreme heats or freezing temperatures), to illnesses and violence.²³⁴ Since President Biden took office, Humans Rights First organizations have documented at least “...7,647 kidnappings, sexual assaults, and other violent attacks against people blocked at ports of entry or expelled to Mexico by DHS.”²³⁵ These numbers frame the magnitude and gravity of risks that migrants face in search for protection from persecution - and the dangers they face when turned away.



Image 4 A memorial for a migrant who died attempting to cross the U.S.-Mexico border.

Source: David McNew/Getty²³⁶

Increased Repeated Crossings

Since the implementation of Title 42, the number of migrants trying to enter the U.S. multiple times has increased three-fold -- from 7% in March 2020 to 40% in October 2020.²³⁷ Quick expulsions without a deportation order, dangerous conditions on the border, and extremely limited resources all incentivize this increase in repeated crossings.²³⁸ The fact that this is happening is alarming. The migration journey, on its own, is filled with severe physical and mental trauma; repeated crossing attempts amplify this trauma and increase concern for migrants' wellbeing.²³⁹

233. “Human Rights First Tracker of Reported Attacks during the ...” Human Rights First. Accessed April 3, 2022. <https://www.humanrightsfirst.org/sites/default/files/AttacksonAsylumSeekersStrandedinMexicoDuringBidenAdministration.10.21.2021.pdf>.

234. Alvarez, Priscilla. “At Least 650 Migrants Died Crossing the U.S.-Mexico Border This Year.” CNN, December 9, 2021. <https://www.cnn.com/2021/12/09/politics/migrants-dying-crossing-us-mexico-border/index.html#:~:text=That%27s%20up%20from%20254%20deaths,agency%20has%20tracked%20this%20data.>

235. “Human Rights First Tracker of Reported Attacks during the ...” Human Rights First. <https://www.humanrightsfirst.org/sites/default/files/AttacksonAsylumSeekersStrandedinMexicoDuringBidenAdministration.10.21.2021.pdf>.

236. Direct Source Website: <https://cdn3.vox-cdn.com/assets/4242141/77179630.jpg>

237. “Rising Border Encounters in 2021 An Overview and Analysis.” American Immigration Council.

238. “Rising Border Encounters in 2021 An Overview and Analysis.” American Immigration Council.

239. Long-García, J.D. “Migrants at the U.S. Border Are Often Traumatized. JRS Provides the Mental Health Services They Desperately Need.” America Magazine, February 14, 2022.

<https://www.americamagazine.org/politics-society/2022/02/14/caminar-contigo-migrant-border-jrs-242354>.

Due Process Violations

Title 42 has created due process violations. As defined by the U.S. Supreme Court, procedural due process typically includes the following:

Procedural Due Process

1. “Notice of the government’s proposed action
2. An opportunity for a fair hearing before an impartial decision-maker,
3. The right to present evidence and confront the government’s evidence, and
4. The right to be represented by counsel.”²⁴⁰

Because the purpose of Title 42 is to expel migrants as quickly as possible, most migrants --with the exception of those falling into exempt categories previously mentioned -- are no longer able to present their asylum case in front of a judge.²⁴¹ This leads to them being denied their due process rights. To make matters worse, aside from their use of force against migrants, CBP officers fail to communicate critical information to migrants. In fact, some have reported that CBP officers do not inform migrants about their legal rights and they do not explain the expulsion process.²⁴² To exemplify this lack of transparency, the Kino Border Initiative documented the experiences of migrants with CBP agents. Below is their recount of what a Guatemalan mother and her two-year-old son faced under CBP custody:

“Agents never inquired why she had come to the United States. She didn’t realize she was being expelled until she was already traveling in CBP transport to the border. She and her son were expelled the same day to Mexico and given no information as to why they were being expelled.”²⁴³

Further recount of CBP abuses and the impact of the denial of due process on migrants can be found in the Kino Border Initiative’s report, *Due Process Denied*.

240. Hamdi v. Rumsfeld, 542 U.S. 507, 533 (2004); Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542 (1985); Ward v. Village of Monroeville, 409 U.S. 57, 61-62 (1972); Fuentes v. Shevin, 407 U.S. 67, 80 (1972).

241. *Al Otro Lado, Inc. v. Mayorkas*, 17-cv-02366-BAS-KSC(S.D. Cal. Sep. 2, 2021)

242. “Due Process Denied: CBP Abuses at the Border October 2020-July 2021.”

243. Ibid.

Appendix B

ICE COVID-19 Screening Questions

These are the verbal screening questions that ICE asks migrants to check for symptoms of COVID-19 and close contact with COVID-19 positive individuals.

“Today, or in the past 24 hours, have you had any of the following symptoms:

- Fever, felt feverish, or had chills?
- Cough?
- Shortness of breath or difficulty breathing?
- Fatigue?
- Muscle or body ache?
- Headache?
- Sore throat?
- New loss of taste or smell?
- Congestion or runny nose?
- Nausea, vomiting or diarrhea?
- In the past fourteen days, have you had close contact with a person known to be infected with COVID-19 where you were not wearing the recommended proper PPE? [Close contact is defined as being within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period* starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to test specimen collection) until the time the patient is isolated.”²⁴⁴

244. “U.S. Immigration and Customs Enforcement Enforcement and Removal Operations: COVID-19 Pandemic Response Requirements,” 2021.

Appendix C

Additional Findings from our Research

Another key theme that emerged from our interviews with legal experts was the history of litigations of and exemptions to Title 42. Recognizing the dangerous and often life-threatening circumstances that asylum seekers face, the ACLU and transnational community organizations advocated for the creation of exemptions to Title 42.

The ACLU exemptions process was negotiated with the federal government and allowed ACLU staff to bring particularly vulnerable individuals to official ports of entry to be processed by DHS for possible entry. These individuals were identified by the ACLU through their own, internal criteria (for example, women with late-term pregnancies). It was unclear what criteria DHS used to determine who could ultimately be allowed entry, but there appeared to be a maximum quota each day. Approximately 10,000 individuals were allowed to enter the U.S. through this process, which was put to a stop in August 2021 by the U.S. government when the ACLU formally filed litigation against the use of Title 42.

The second exemption process was managed by an international consortium of NGOs, and similarly brought vulnerable individuals (of their own criteria) to ports of entry for processing. This consortium ultimately disbanded because of drug cartel threats creating significant safety concerns for staff accompanying migrants, as well as institutional lack of resources and funding.

At the time, these exemptions represented the only legal entry point for most migrants into the U.S.. However, this practice was not a long-term, sustainable solution. Pedro de Velasco of Kino Border Initiative described how this exemptions process was originally framed as a “temporary transition” to ending Title 42. It was meant to last for only one month, but was extended until NGOs no longer had the capacity to continue. A migration policy expert in the U.S. Department of State's Bureau of Population, Refugees, and Migration, supported this view. They pointed out that the exemptions process shifted the burden of processing immigrants from the U.S. government to the ACLU and international non-profits, and shared that the overwhelming consensus from community advocates was to refrain from resuming an exemptions process that required organizations to work alongside and enable Title 42. With the termination of both of these exemptions processes, there remains no legal pathway for asylum seekers to enter the United States under Title 42 (with the one exception being unaccompanied children).²⁴⁵

245. “Title 42 Order Reassessment and Exception for Unaccompanied Noncitizen Children.” Centers for Disease Control and Prevention. Centers for Disease Control and Prevention, July 16, 2021.
<https://www.cdc.gov/media/releases/2021/s0716-title-42-order.html>.