

The Opposite of Orderly and Humane: Use of Title 42 Spurs Disorder and Undermines Security

The Biden administration's use of Trump administration policies to turn away people seeking protection along the border with Mexico is spurring disorder and escalating security threats. These policies are also responsible for systematic human rights abuses and violations of refugee law that Human Rights First has [repeatedly documented](#). Since President Biden took office in January 2021, there have been at least [8,705](#) reports of kidnapping, rape, torture and other violent attacks on migrants and asylum seekers blocked in or expelled to Mexico by the Department of Homeland Security (DHS). The rapid expulsion of migrants without any legal process has resulted in massive increases in repeat border crossings and, as a result, inflated Customs and Border Protection (CBP) apprehension statistics. The failure of U.S. agencies to comply with asylum law at official U.S. ports of entry has pushed asylum seekers to undertake increasingly dangerous border crossings away from ports. With the continued use of these counterproductive and illegal policies, Cuban, Haitian, Venezuelan and other asylum seekers, who largely sought asylum at ports of entry, are now overwhelmingly crossing between ports of entry, as government data confirms. For people seeking protection at the southern U.S. border, the U.S. asylum system remains far from the "[orderly and humane](#)" process the Biden administration pledged to create.

The [Title 42](#) policy has created a vicious cycle of disorder as CBP deploys staff away from processing at ports of entry to respond to increased crossings between ports and in vehicle lanes, even though the failure to process asylum seekers at ports of entry is a major factor driving many to cross away from the ports. Title 42 and other policies that evade U.S. asylum law also drive family separations and contribute to the arrival of unaccompanied children, as some parents fear leaving their children even longer in danger in Mexico to wait to be able to seek asylum together in the United States.

These counterproductive policies have also been a boon to the brutal criminal cartels in Mexico that present a serious [threat](#) to both U.S. security and the lives of the asylum seekers who are turned back to areas under their control. As these turnback policies have escalated, cartels have adapted to further target asylum seekers turned away by CBP – kidnapping them, purporting to charge them for the right to remain in Mexico, torturing them and demanding ransom payments from their U.S. family members. Some organized criminal organizations are working to actively prevent asylum seekers from approaching ports of entry, as the restoration of port of entry processing for asylum seekers threatens the cartels' control and extortion efforts. In addition, CBP reports that the use of Title 42 has reduced the agency's ability to collect information on the Mexican cartels that are increasingly fighting to exercise even greater control over border regions.

To address the disorder created by policies restricting access to asylum at the southern border and the insecurity it has generated, the Biden administration must:

- restart receiving requests for asylum, including at ports of entry—as required by U.S. law—and
- stop using Title 42 and other turn back policies, which inflate Border Patrol encounters as people repeatedly attempt to cross the border through increasingly remote and dangerous routes.

Creating Disorder

Title 42 expulsions have triggered the skyrocketing number of individuals attempting multiple times to cross the border away from ports of entry and artificially inflated CBP's border encounters statistics, which the agency has acknowledged "overstate" the number of migrants encountered at the border.

- **Due to Title 42, the percentage of individuals who have attempted to repeatedly cross the southern border has jumped by over 385 percent from 7 percent in FY 2019 to 27 percent in FY 2022.** Information released by [CBP](#) shows that in fiscal year (FY) 2019, repeat crossings stood at 7 percent of CBP encounters, but with Title 42 in place since March 2020 repeated crossings have risen to 27 percent of CBP encounters in FY 2021 and FY 2022 (through January 2022).
- **A June 2021 [report](#) by the Government Accountability Office (GAO) found that Title 42 expulsions have led to “some individuals trying to cross the border multiple times per day.”** The report also noted that during the first quarter of FY 2021 the repeat crossing rate rose to 34 percent – meaning that one in three people encountered at the border at that time had been previously expelled or deported.
- **Repeat crossings triggered by Title 42 expulsions have artificially inflated CBP’s southern border apprehension statistics.** CBP has [concluded](#) that the number of border encounters “was partly driven by high recidivism rates (repeat encounters) among individuals processed under the CDC’s Title 42 public health authorities, meaning the actual number of unique individuals attempting to cross the border was substantially lower than total encounters.” For example, in January 2022, government [data](#) shows that more than 42,000 encounters with CBP at the southern border were with individuals who had crossed the border multiple times, such that CBP acknowledged that its encounters statistics “[overstate](#) the number of unique individuals arriving at the border.”

Many asylum seekers who could not seek protection at a port of entry because of Title 42 restrictions have been forced to cross the border between ports of entry to attempt to request asylum.

- **Government data, as well as recent [analysis](#) by the CATO Institute, confirm that policies that block or reduce asylum processing at ports of entry drive crossings of the border away from ports of entry by asylum seekers who are unable to access protection at official border posts.¹**
 - In FY 2017, for instance, 99 percent of the total number of Cubans and Haitians [encountered](#) at the southern border arrived through a [port](#) of entry. However, after the launch of illegal turnback policies that prevent asylum seekers from requesting protection at ports of entry, the overwhelming majority have crossed into the United States between ports of entry. In FY [2022](#) (through January 2022), with asylum access effectively shuttered at U.S. ports of entry, just 0.8 percent of Cubans and 3 percent of Haitians arriving at the southern border entered through a port of entry.
 - More limited government [data](#) also shows that the percentage of Nicaraguans and Venezuelans presenting themselves at U.S. ports of entry has followed a similar downward trend, declining from 32 and 56 percent, respectively, in FY 2020, to just 0.5 and 0.7 percent in FY 2022. Data on Nicaraguans and Venezuelans arriving at ports of entry prior to FY 2020 is not publicly available, but [reports](#) on metering wait lists suggest that high percentages of people from these countries sought protection at ports prior to the implementation of Title 42 and other restrictions on asylum at ports of entry.
 - Blocking asylum at ports of entry has recently pushed asylum seekers to cross at points along the [Arizona](#) border away from official ports of entry. According to government [data](#), 64 percent of arrivals in January 2022 to the Yuma Border Patrol sector were individuals from Cuba, Haiti, Nicaragua, and Venezuela – many of them seeking asylum.
- **[Reports](#) by the Office of Inspector General (OIG) for DHS have repeatedly [confirmed](#) that restrictions on asylum at ports of entry push asylum seekers to cross the border away from these**

¹ U.S. [law](#) guarantees the right of people seeking protection in the United States to request asylum at a U.S. port of entry or after crossing the border into the United States.

ports. For instance, a Border Patrol [supervisor](#) told OIG that “the Border Patrol sees an increase in illegal entries when [noncitizens] are metered at ports of entry.”

- In addition, with Title 42 used to block asylum seekers from approaching U.S. ports of entry at pedestrian crossings, **some asylum seekers have resorted to [attempting](#) to reach ports of entry through [vehicle lanes](#), resulting in the further diversion of CBP officers to monitor these crossings points.**

Restrictions on asylum at the border due to the Title 42 policy have led to a massive rise in increasingly dangerous border crossings away from ports of entry.

- **The percentage of individuals encountered at the southern border who arrived through a port of entry has declined by nearly 600 percent since Title 42 was first implemented in March 2020.** From April 2020 to January 2022 government [data](#) shows that 4.5 percent of individuals [encountered](#) at the [southern border](#) without a visa or other permission to enter the United States arrived through a port of entry compared to 26.8 percent in FY 2016 and FY 2017 before DHS imposed restrictions on access to asylum through metering and Title 42 along the southern border.
- **Crossings of the southern border away from ports of entry have turned increasingly deadly.** At least [650 people](#) are known to have died while crossing the U.S.-Mexico border in 2021, the highest figure recorded since the International Organization for Migration began tracking in 2014. Others have [drowned](#) while attempting to reach the United States by [sea](#).
- **The increase in dangerous, remote border crossings due to Title 42 is also reflected in a substantial rise in search and rescue efforts by CBP, according to government [data](#).** Rescue operations increased by 260 percent in FY 2021 (12,833) compared to FY 2019 (4,920) before Title 42 was implemented. With 5,398 search and rescue operations during the first four months of this fiscal year, 2022 is on track to set a new record. In 2021, CBP also reported a “[dramatic increase](#)” in migrants arriving by [sea](#).

The dangers faced by families who are turned away to or stranded in Mexico due to the use of Title 42 has [driven](#) an increase in the number of unaccompanied children crossing the U.S.-Mexico border.

- Many asylum-seeking families have reported making the impossible decision to send their children alone across the border to attempt to protect them from the dangers they face stranded in Mexico due to Title 42. For instance, a legal service provider reported that [16 percent](#) of the hundreds of unaccompanied children, who are exempt from Title 42 following a 2020 court [order](#), screened by the organization had initially been travelling with family members who were expelled under Title 42. Similarly, [government data confirms](#) that other policies that return families to danger result in increases in unaccompanied children crossing the border – over 560 children who were forced to wait in danger in Mexico with their families under the Remain in Mexico policy have also entered the United States without their parent or guardian.

DHS reassignments of CBP officers from ports of entry to carry out Border Patrol enforcement of the Title 42 policy reduces capacity at ports to process asylum seekers and other travelers – creating a counterproductive cycle as the lack of port processing causes more crossings between ports of entry.

- **DHS has repeatedly [assigned](#) CBP officers from ports of entry to undertake Border Patrol duties, further reducing capacity at ports of entry.** For instance, in summer 2021, a CBP officer told Human Rights First that long border crossing delays for travelers at the Hidalgo, Texas port of entry were the result of CBP officers temporarily assigned to assist Border Patrol with processing at the Donna facility.

Undermining Security

Expulsions of asylum seekers and migrants to Mexico under Title 42 have further empowered and enriched the cartels and other criminal organizations that kidnap, torture, extort, and exploit migrants.

- **Between January 21, 2021 (when President Biden took office) and January 12, 2022, Human Rights First tracked at least [8,705](#) reports of kidnapping, rape, torture, and other violent attacks on migrants and asylum seekers blocked in or expelled to Mexico by DHS.** There, cartels specifically target migrants often because of their nationality and actual or perceived ties to family and communities in the United States. [Abducting](#) migrants and [asylum seekers](#) stranded because of U.S. government policies that turn them back to danger in Mexico has become a major illicit activity for cartels in Mexico that demand upwards of \$20,000 in [ransom](#), often from [family](#) members in the United States, to free kidnapped individuals. Cartels in Mexico reportedly extort [hundreds of millions](#) of dollars from migrant kidnappings each year.

Blocking asylum at ports of entry pushes asylum seekers into the hands of deadly cartels and organized criminal groups that control access to the U.S.-Mexico border and threaten U.S. security.

- **Border Patrol officials have concluded that rapid “expulsions under Title 42 have negatively affected enforcement by reducing opportunities to gather intelligence,” according to a June 2021 GAO [report](#).** Because DHS is using Title 42 to quickly expel individuals without any legal process in many cases, Border Patrol agents reported that they “are unable to thoroughly interview individuals in custody,” which “limit[s] the opportunity to gather information,” including about cartels operating along the border. A 2020 Department of Homeland Security [threat assessment](#) found that “among [transnational criminal organizations], Mexico-based cartels pose the greatest threat to the [United States] because of their ability to control territory—including along the U.S. Southwest Border—and co-opt parts of government, particularly at a state and local level.”
- **With access to asylum at ports of entry blocked, many asylum seekers are pushed into the hands of deadly [cartels](#) that exercise control of many areas along the border.** The Kino Border Initiative, a nonprofit organization assisting migrants at the Arizona border, for example, [reported](#) that in Nogales, Sonora “organized crime has become so protective of the business they have made from the border closure that they have begun watching the ports of entry . . . and harassing migrants who attempt to be processed there.”
- **Cartels are increasingly fighting to profit from migrants stranded in Mexico under policies like Title 42, killing many as they battle one another for control of border regions.** For instance, in the Mexican state of Sonora, which borders Arizona, at least two cartels have been battling “for control of criminal activities along Sonora’s northern border,” according to [Insight Crime](#). In April 2021, the U.S. Department of State warned U.S. citizens to avoid the Mexicali area in Baja California due to “violence between rival cartel factions” that have been fighting for [control](#) of the border region. In September 2021, a group of 13 migrants were kidnapped and [murdered](#) near the border city of Ciudad Juárez in what appears to be an extension of the ongoing conflict between rival cartels there. Robert Almonte, a former U.S. Marshall and security consultant on Mexican cartels, has [noted](#) that with border crossings increasing, the cartels “are involved more than ever. They don’t see these migrants as people. They see them as commodities, like drugs. And if [the trafficked migrants] ‘belong’ to a rival cartel, they’re going to kill them.”