



US Discrimination Against Black Migrants, Refugees and Asylum Seekers at the Border and Beyond

Since the CERD Committee last reviewed the US in 2014, the US has continued its historical pattern of abuse and implemented a series of policies at its borders that disparately impact and violate the human rights of Black migrants, refugees, and asylum seekers. The policies also disregard *non-refoulement jus cogens* obligations and the CERD Convention, which prohibit discrimination against all persons under US jurisdiction, including non-citizens, on the basis of race and national origin. These practices are detailed more fully in a [Shadow Report](#) to the Committee.¹

- **Racist and xenophobic hate speech, including “invasion” and “replacement” rhetoric, undergirding a policy of deterrence of Black migrants:** Local, state, and federal officials have repeatedly used [rhetoric of the white supremacist “great replacement” conspiracy theory](#) to characterize non-citizens at the US-Mexico border, describing the arrival of Haitians as an “[invasion](#).” Alongside the long history of discriminatory US policy towards Haitian and other Black non-citizens, such rhetoric reflects a racial hierarchy in immigration policy that deters and blocks Black non-citizens from entering the US. [Former President Trump’s racist hierarchy](#) was clear when in January 2018, he asked, “Why are we having all these people from shithole countries come here?,” prompting a [federal court to hold](#) a Trump policy was likely politically motivated and “based on race and/or national origin/ethnicity against non-white immigrants in general and Haitians in particular.” See Shadow Report at ¶ 21-24 and 91-100.
- **Violent, disparate, and discriminatory mistreatment of Haitian asylum seekers, as seen in Del Rio, Texas:** In September 2021, heavily armed US Border Patrol agents subjected 15,000 asylum seekers in the [Del Rio encampment](#), who were overwhelmingly Haitian, to physical violence, verbal threats, acts of intimidation, and inhumane and degrading conditions, and then deported most of them back to Haiti, despite unprecedented gang violence and political instability, without the opportunity to seek asylum protection. This mistreatment was an emblematic manifestation of [US attempts to systematically deter Haitians and other Black migrants](#) from seeking asylum in the US, yet after a 10-month investigation into the Del Rio incident, the US government did not interview a single migrant and did not announce any policy changes or findings related to its treatment of Black migrants as a group. See Shadow Report at ¶ 25-42.
- **En Masse Expulsion of Haitians Under Title 42:** Since March 2020, the start of the Covid pandemic, the US has used the [Title 42 policy as a false public health pretext to block asylum](#) at US ports of entry and to expel migrants and asylum seekers to Mexico or their countries of persecution without access to the US asylum system or refugee protection screenings. The US has [disproportionately targeted Haitians for expulsion](#) under Title 42, expelling over 22,000 individuals in two years, including babies and pregnant women. US top legal expert Harold Koh concluded that the use of Title 42 to expel people seeking protection, “especially migrants fleeing from Haiti,” is “[illegal and inhumane](#).” In May 2022, the [UNHCHR observed](#) that “armed violence has reached unimaginable and intolerable levels in Haiti.” Yet, the US continued to target Haitians for expulsion. In May 2022, Haitians represented 6% of the migrants crossing the border with Mexico but occupied [60% of expulsion flights](#). Between March and May 2022, the [US processed 98.9% of the 23,000 Ukrainians](#) who arrived at the US border - nearly all were granted parole for admission and not placed in removal proceedings and only 0.6% were subjected to Title 42. In comparison, only 23.5% of the 18,000 Haitians encountered along the border in that same period were able to present at ports of entry and 26.3% were subjected to Title 42, a rate more than 40 times higher than Ukrainians. Of particular concern, the Haitian government has recently started [arresting deportees](#) with a criminal record at the airport when they arrive and holding them for ransom in the National Penitentiary, where they are not given food, water, or medical assistance. See Shadow Report at ¶ 41, 43-50.

¹ See Black Alliance for Just Immigration, Haitian Bridge Alliance, et al., *Anti-Black discrimination against non-citizens and ongoing violations of international protections for migrants, refugees, and asylum seekers of African descent* (August 2022), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_49305_E.pdf.



- **Metering and Migrant Protection Protocols, commonly known as Remain in Mexico:** As a result of Title 42, which has blocked entry to the border, as well as policies such as “metering,” and the Migrant Protection Protocols (“Remain in Mexico”), the US has forced asylum seekers to await entry and US immigration court proceedings in cartel-controlled border regions of Mexico. [Black asylum seekers stranded in Mexico](#) are [targeted due to their race and nationality](#) by Mexican immigration officials and police (extortion, bribes, and violence) and by cartels (kidnapping, rape, murder, trafficking, robbery, and other forms of violence). See Shadow Report at ¶ 51-54.

Questions for the US Government

Measures on racist and anti-immigrant hate speech and propaganda:

- What steps are being taken by the White House, Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to investigate and combat government officers and officials from using rhetoric of the white supremacist “great replacement” conspiracy theory to characterize non-citizens at the US-Mexico border, particularly Black non-citizens such as Haitians?

Measures on U.S. refugee law and immigration policy:

- How does the US explain the disparity in treatment of Haitians presenting themselves at the US border, as seen in Del Rio and Title 42 expulsions, compared to the treatment of Ukrainians?
- What steps are the DHS and CBP taking to restore access to asylum at the border, including at ports of entry, and to halt all expulsions under Title 42, including to Haiti? What steps are being taken to allow migrants crossing the border to make their claims for asylum and other protections in non-adversarial, trauma-informed interview settings while retaining the guarantee of a hearing before an immigration judge, and to ensure access to effective legal representation, language-accessible information, interpretation in their primary language, timely access to supporting evidentiary documents, and time to prepare?
- What is the process by which DHS and the US State Department assess the risk of danger and approve expulsions and deportations to Haiti, Cameroon, and other countries facing extraordinary circumstances of violence, where return would put their nationals at serious risk of harm? Given the lack of political stability and state of chaos, does Haiti have the capacity to receive and safely reintegrate Haitian nationals deported to Haiti? Has the US Embassy or USAID followed up with those return to assess whether those returned to Haiti are in fact safe?
- What actions has the US government taken in response to recent reports of the Haitian government arresting deportees at the airport when they arrive from the US, such as Patrick Julney who was deported on June 6, 2022, and holding them in the National Penitentiary without warrant or criminal charge until they pay a ransom, where they are deprived of food, potable water, and medical assistance?
- When will the US publicly adopt and implement the Durban Declaration and Programme of Action (DDPA)?

Measures on equitable access to justice for violations of the Convention:

- Describe the efforts being taken to investigate and prevent violent, disparate and discriminatory treatment against Haitian and other Black asylum seekers at the border, such as Border Patrol’s conduct in Del Rio, Texas in September 2021? What is the status of the investigations into the events in Del Rio, Texas? What policy changes have been suggested and implemented to prevent this type of misconduct from reoccurring?
- What steps are being taken by the US government to reengage executive, legislative, and judicial processes to provide transitional justice regarding slavery, colonialism, and neocolonial imperialism to address root causes of displacement, as called for by the DDPA and recently affirmed by the UNHCHR?