

EXAMINING TITLE 42 AND THE NEED TO RESTORE ASYLUM AT THE BORDER

HEARING BEFORE THE SUBCOMMITTEE ON BORDER SECURITY, FACILITATION, AND OPERATIONS OF THE COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTEENTH CONGRESS SECOND SESSION

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Wednesday, April 6, 2022

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER SECURITY,
FACILITATION, AND OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:32 p.m., in room 310 Cannon House Office Building, Hon. Nanette Diaz Barragán [Chairwoman of the subcommittee] presiding.

Present: Representatives Barragán, Correa, Green, Clarke, Jackson Lee, Escobar, Higgins, Guest, and Clyde.

Chairwoman BARRAGÁN. The Subcommittee on Border Security Facilitation and Operations will come to order. Without objection, the Chair is authorized to declare a recess at any time. Thank you for joining today's hearing to examine the administration's use of Title 42, its upcoming termination, and the need to restore access to asylum at the border.

For 2 years, Customs and Border Protection has been expelling vulnerable migrants into Mexico and other countries without allowing them access to our asylum system. Vulnerable migrants are fleeing gang violence and persecution in El Salvador, Honduras, and Guatemala, political persecution and violence in Nicaragua, and kidnapping and political turmoil in Haiti. Because of Title 42, migrant families and adults have been unable to apply for asylum at ports of entry throughout the pandemic.

I would like to remind the committee that applying for asylum is legal under U.S. and international law. Instead, CBP expelled approximately 1.7 million migrants from the United States and denied vulnerable individuals the opportunity to seek protection.

While Title 42 order was supposedly based on a public health rationale, the science was never sound. A former senior official in the Trump administration called it a "Stephen Miller special." This order was a pretext to close the border to Black, Brown, and Indigenous people. Leading medical experts have consistently argued throughout Title 42's use that there has never been a solid public health justification for closing our border just to asylum seekers. Even if this policy had been based on public health, we must recognize that we have come a long way since March 2020, when this policy was first implemented.

With vaccines, masks, and other effective public health strategies now widely available, the United States can safely manage infections and the spread of the virus. There is no justification for deny-

ing vulnerable migrants the legal right to seek asylum. There is no justification for singling out migrants as a COVID risk. Republicans stoke fear about migrants bringing COVID-19 into communities, yet, they have fought to lift indoor mask mandates since the beginning of the pandemic.

Republicans say there is no safe way to allow migrants to travel into and throughout the United States, yet, they sued the Federal Government to lift the mask mandate on public transportation. We know masks and vaccines work. There is no evidence that denying people access to our asylum system prevents COVID.

However, we do know that Title 42 is harming migrants, including those who are most vulnerable. In fact, one of our witnesses here today has helped document nearly 10,000 instances of people being kidnapped, tortured, sexually assaulted, and murdered after being expelled under Title 42. Title 42 has also resulted in family separations. Parents who traveled at the border with their children have been denied the opportunity to request asylum. They are presented with two options. They can wait for an indeterminate amount of time in dangerous border towns where they are vulnerable to kidnapping and violence. Or they can send their children to the border alone to seek refuge. No family should have to make this choice.

I would also like to point out that CBP is not uniformly applying Title 42. For example, we have recently seen migrants from Europe exempted from this horrible policy, while Black and Brown migrants are quickly turned away. To be clear, Ukrainians should be allowed to enter the United States and seek humanitarian protection. But so should Haitians and Hondurans and Guatemalans, Africans, and others fleeing violence.

The U.S. Government has the capacity to allow any migrant, no matter which part of the world they are fleeing, the opportunity to request asylum. The Department has a plan for increasing its processing capacity and ending Title 42. I am willing to work with them to make sure they are prepared to process people in an orderly and humane manner.

We must also recognize that Title 42 did not stop migration to the United States. Although our Nation's doors were shut to asylum seekers for 2 years, migrants have been coming to our borders in large numbers. Conditions were so dangerous at home that they could not wait. Given the number of people already at our doorstep just waiting for a chance to ask for help, it is not surprising that the administration expects encounters to increase after Title 42 is lifted. But this is America, and our Government has the tools to safely process and screen people at the border as required by law to determine whether they qualify for asylum or other humanitarian protections.

With the proper planning, this is an opportunity for the administration to uphold its promise of creating a just and orderly process at the border. The Department has set up a Southwest Border coordination center to coordinate planning and operations across the interagency. It is working to get the personnel and resources in place to not only process migrants in a safe and humane manner, but also to provide migrants with vaccines.

I am just disappointed that the Department still needs more time to prepare to end Title 42. They have already had it for 2 years, and they have had 2 years to plan to end it. As the Department deploys resources and personnel at the border, the administration must also proactively coordinate with non-Government organizations and border communities in winding down the Title 42 order.

I look forward to hearing recommendations from our witnesses on specific actions the administration should consider in order to restore the asylum process in a humane manner, as well as on the harms caused by Title 42. I want to remind everybody, Title 42 is a CDC authority. It is an authority, a public health authority, to stop the spread of COVID-19. It is not an immigration law or a policy. It is a public health authority.

[The statement of Chairwoman Barragán follows:]

STATEMENT OF CHAIRWOMAN NANETTE BARRAGÁN

Thank you for joining today's hearing to examine the administration's use of Title 42, its upcoming termination, and the need to restore access to asylum at the border. For 2 years, Customs and Border Protection has been expelling vulnerable migrants into Mexico and other countries without allowing them access to our asylum system. Vulnerable migrants are fleeing gang violence and persecution in El Salvador, Honduras, and Guatemala, political persecution and violence in Nicaragua, and kidnappings and political turmoil in Haiti.

Because of Title 42, migrant families and adults have been unable to apply for asylum at ports of entry throughout the pandemic. I'd like to remind the committee that applying for asylum is legal under U.S. and international law. Instead, CBP expelled approximately 1.7 million migrants from the United States and denied vulnerable individuals the opportunity to seek protection. While the Title 42 order was supposedly based on a public health rationale, the science was never sound.

A former senior official in the Trump administration called it "a Stephen Miller special." This order was a pretext to close the border to Black, Brown, and Indigenous people. Leading medical experts have consistently argued throughout Title 42's use that there has never been a solid public health justification for closing our border just to asylum seekers.

Even if this policy had been based on public health, we must recognize that we've come a long way since March 2020, when this policy was first implemented. With vaccines, masks, and other effective public health strategies now widely available, the United States can now safely manage infections and the spread of the virus.

There is no justification for denying vulnerable migrants the legal right to seek asylum. There is no justification for singling out migrants as a COVID risk. Republicans stoke fear about migrants bringing COVID-19 into communities—yet they have fought to lift indoor mask mandates since the beginning of the pandemic.

Republicans say there is no safe way to allow migrants to travel into and throughout the United States—yet they sue the Federal Government to lift the mask mandate on public transportation. We know masks and vaccines work. There is no evidence that denying people access to our asylum system prevents COVID. However, we do know Title 42 is harming migrants—including those who are most vulnerable.

In fact, one of our witnesses here today has helped document nearly ten thousand instances of people being kidnapped, tortured, sexually assaulted, and murdered after being expelled under Title 42. Title 42 has also resulted in family separations. Parents who traveled to the border with their children have been denied the opportunity to request asylum.

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The Department has set up the Southwest Border Coordination Center to coordinate planning and operations across the interagency. It is working to get the personnel and resources into place to not only process migrants in a safe and humane manner, but also to provide migrants with vaccines. I'm just disappointed that the Department still needs more time to prepare to end of Title 42. They've already had 2 years to plan.

As the Department deploys resources and personnel at the border, the administration must also proactively coordinate with non-Government organizations and border communities in winding down the Title 42 order. I look forward to hearing recommendations from our witnesses on specific actions the administration should consider in order to restore the asylum process in a humane manner, as well as on the harms caused by Title 42.

Chairwoman BARRAGÁN. Now, the Chair would like to recognize the Ranking Member of the subcommittee, Mr. Higgins of Louisiana, for an opening statement.

Mr. HIGGINS. Thank you, Madam Chair, and I thank our witnesses for being here with us today, and for our panelist that is going to be joining us virtually.

Title 42 is a legal mechanism that Border Patrol uses and our law enforcement professionals use to try and stem the tide of millions of illegal immigrants crossing our Southern Border. We are losing our country down there.

In the summer of 2020, the criminal cartels were incredibly well-funded, very well-organized. They have deep council within their networks, within their chain of command, a lot of whom have been educated in America. They know American laws and American politics. These cartels run a vast, well-organized network that traffics human beings and drugs into America. Why are they coming to America? Because it is a big market for them. It is their business model and they are very good at it.

By the summer of 2020, when it began to be part of the narrative that there was a chance that then-candidate Biden might win the Presidential election, the cartels used their networks to begin prepping. They got ready. They beefed up their infrastructure. Based on my data, on the ground through Central America and Mexico all the way through Venezuela and Colombia where the pipeline and the Western Hemisphere begins, I was advised that we can anticipate as many as 2 million illegal crossings in 2021.

It never happened before. I talked about those numbers and it turned out I was off a little bit. I was low. We had 2.4 million illegal crossings in 2021. Their pipelines were filled. They were not interrupted by a hurricane or an earthquake, which was a possibility but didn't happen. They ramped up their capacities in the summer. Nothing was stopping them. It is the equivalent to having a passenger in every seat.

The cartels were making billions and sending untold amounts of incredibly deadly drugs into our country. They had 2.4 million illegal crossings including 500,000 that were young men plugged into the criminal networks in Mexico and Central America hooked up through their cartel connections to cross, a lot of them, owing their crossing money in the form of criminal services by delivering sex, slave labor, prisoners, and tragic souls who had fallen into that trap, and by carrying drugs. A backpack at a time into our country. Where did those guys go? They went deep into America to a neighborhood near you.

They all want to come here and be successful in their job and their job is to be part of the criminal network. Maybe they can get out of that trap, but it is very hard. You know, once someone goes down that path, it is very difficult for a young man that is involved in criminal networking, wherever he is, it is very hard to get out.

So, they have crossed into our country and they have been disbursed across America now. This is why your border communities might not show this as part of the business model, and boy, if you work for the cartel, you better not mess with the cartel's business model, which requires passage across our Southern Border for human trafficking and drug trafficking.

They have the category of human beings that cross over and want to interact with professional law enforcement. They turn themselves in. They are largely not violent. Some good people looking for a better life. We prefer that they come in legally and access our country through legal means, other than abuse of the asylum system, which those laws should be strengthened.

But there is the other category of the young men that avoid contact with law enforcement at the border. They are coming here for no good. Title 42 has allowed us to stem the tide. If we take Title 42 away, our country cannot sustain. We are headed for 3 million this year. People looked at me like I was crazy at the beginning of last year when I said 2 million. But my sources were right and America cannot support it, regardless of how peaceful you find communities here and there, son.

Our Nation cannot sustain this. I will say to my colleagues across the aisle in good faith, if you have a problem with Title 42, by all means use your Constitutional access to our judicial system, challenge it in court, and defeat it. If you think it is wrong and illegal, un-Constitutional, by all means, defeat it judicially. Right now, it is a legal tool that is needed on the border. If we take it away, I am afraid that the demise of our Nation will accelerate. What we are witnessing right now will become worse and worse and worse. Madam Chair, I yield.

[The statement of Ranking Member Higgins follows:]

STATEMENT OF RANKING MEMBER CLAY HIGGINS

Thank you, Madam Chair. I am looking forward to this timely hearing on the importance of Title 42 and to hear from all of our witnesses today.

The Biden administration has created one of the worst border crises in our Nation's history. Our Southern Border is completely out of control and being overrun by lawlessness, all due to this administration's open border policies.

In fiscal year 2021, Customs and Border Protection recorded nearly 2 million migrant encounters Nation-wide. To put that in perspective, that number is larger than the populations of Alaska and Delaware, the President's home State, combined.

For scale, our borders have been overrun by the equivalent of 2 new States! Biden's own DHS estimates that many as 18,000 migrants per day will attempt to cross the border after Biden ends Title 42. That's roughly a brand-new Congressional district every 40 days.

This fails to account for hundreds of thousands of gotaways who evaded law enforcement altogether. This administration and senior officials at DHS seem to throw all logic and reason out the window.

Unfortunately, the Biden administration's announcement last Friday to terminate the use of Title 42 authority to expel illegal aliens arriving at land borders is a grave mistake and will only further weaken our already crumbling border security.

The Trump administration began using Title 42 as means to keep the American people safe by preventing the excessive spread of COVID-19 across our borders when the disease was wreaking havoc across the world. And it was successful. More than 1 million illegal aliens—mostly single adults—were denied entry into the United States.

On the campaign trail and from Day 1 in office, President Biden pledged to “follow the science.”

Well, his administration is refusing to lift the mask mandate on public transportation, Democrats refuse to fully reopen the U.S. Capitol, and according to the Speaker of the House, it is still too dangerous to end proxy voting. Yet, the Biden administration is opening our Southern Border to undocumented and largely unvaccinated populations. Where is the “science” behind that?

Make no mistake, we have some of the finest men and women in law enforcement protecting the sovereignty of the United States, but their jobs are difficult, and they deserve to have every tool at their disposal, every authority necessary to protect themselves, our borders, and the American people.

In rolling back Title 42 authority, President Biden is intentionally jeopardizing the sovereignty and security of our Nation. To end this authority without a plan to secure command and control at the border is horrendous. This change in policy is being made despite knowing that it will cause border crossings to surge. Despite the warnings of front-line agents and pleas from border States.

Congress cannot sit idly by and watch the sovereignty of the United States be eroded.

We need to provide Customs and Border Protection officers and Border Patrol agents with the means to manage the overwhelming flow of illegal immigration and smuggling at the border. Axios reported there are already as many as 25,000 would-be illegal immigrants amassed at the border, waiting for the termination of Title 42.

Today, we are fortunate to have a true patriot and law enforcement leader with us—Sheriff Mark Dannels from southern Arizona. I look forward to hearing the sheriff's perspective on why Federal policies are important to State and Local law enforcement and the impact the Federal Government's policies have, either by following the law or disregarding it, on local communities.

I yield back the balance of my time.

Chairwoman BARRAGÁN. Thank you, Mr. Ranking Member. You mentioned 2 million. I think Poland has welcomed 2 million Ukrainians and they are the small size of New Mexico. So, something like—

Mr. HIGGINS. I appreciate that Madam Chair.

Chairwoman BARRAGÁN [continuing]. Two million.

Mr. HIGGINS. I don't work for Poland. I work for the citizens of America but thank you.

Chairwoman BARRAGÁN. OK. Well, I was just trying to put into perspective the numbers that you gave. Thank you, Mr. Ranking Member. I want to thank you for your opening remarks.

Members are reminded that the subcommittee will operate according to the guidelines laid out by the Chairman and the Ranking Member in their February 3 colloquy. Without objection, Members who do not sit on the committee may participate in this hearing. Members may also submit statements for the record.

[The statements of Chairman Thompson and Ranking Member Katko follow:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

APRIL 6, 2022

We know that Title 42 was never about public health. From the earliest days of the pandemic, the Trump administration sought to exploit COVID-19 to advance his anti-immigrant agenda. Simply put, the Trump administration used this order to prevent vulnerable migrants from seeking refuge in the United States.

It is not lost on me that the same people who used the Title 42 order to stoke fear about migrants bringing COVID into communities were among the first to lift indoor mask mandates and other pandemic response measures. Now that we have increased access to COVID-19 testing, vaccines, and masks and things are returning to normal, the Federal Government must also prepare to resume normal immigration processing at ports of entry.

That means terminating Title 42, a policy that has harmed hundreds of thousands of migrants. Latin Americans, Haitians, and other migrants have the legal right to request protection under U.S. law. The Biden administration must restore access and adjudicate asylum claims in a fair and timely manner.

But we must also recognize that terminating Title 42 is complex undertaking that requires significant planning. I expect to hear more about the Department's plans and am willing to help ensure it has the personnel and resources it needs to process migrants in an orderly and humane manner.

This must be a robust whole-of-Government operation. I look forward to hearing from our witnesses today on the impacts of Title 42 and welcome any suggestions they have on how the administration can best prepare for the wind-down of this policy.

STATEMENT OF RANKING MEMBER JOHN KATKO

APRIL 6, 2022

Thank you, Madam Chair. I am looking forward to this hearing and the testimony from our witnesses today.

This week, I joined Leader McCarthy and several of my colleagues at a meeting with the Border Patrol Council to discuss the crisis at the Southern Border.

Just as we predicted, the number of daily border encounters has been trending upwards since President Biden took office in January 2021.

The Biden administration has created an untenable situation—from which it may take several years to recover.

The irresponsible decision to roll back Title 42 public health authority, the halting of border wall construction, the lack of support for front-line law enforcement personnel, the undermining of the Migrant Protection Protocols, and the total absence of a long-term border security plan have all only made matters worse.

U.S. Customs and Border Protection is now seeing over 7,000 encounters daily and the Department of Homeland Security is said to be bracing for a significant mass influx of nearly 18,000 migrants daily when Title 42 ends.

As the United States finally gets a handle on managing the spread of new variants and moves steadily toward a post-pandemic recovery, now is not the time to end the use of Title 42 and jeopardize all that progress—especially as numerous countries continue to struggle with the rapid spread of COVID-19 and strengthening variants.

The very purpose of Title 42 is to prevent the introduction of any dangerous communicable diseases into American communities. We should be doubling down on protecting our economy and communities from health threats, not weakening them.

Our border security and immigration system cannot handle any more pull factors as the Biden administration has proven unwilling to secure our Southern Border.

As we are witnessing, the administration continues to strip every tool for managing the border crisis away from front-line law enforcement. Transnational criminal organizations and drug cartels are taking full advantage by highlighting the weak border security posture of the administration, while profiting from this crisis.

The administration continues to roll back common-sense border security measures, thereby feeding into a false narrative for would-be migrants and encouraging them to come to the United States to seek asylum.

Many migrants who make the dangerous journey to the United States will not be eligible under the law for asylum, forcing them to seek other ways to enter into the United States.

We know for a fact that cartels control who crosses the United States-Mexico border. They charge migrants exorbitant fees knowing that some will never be able to

repay—leading many of the migrants with only one option—to work off their fees. This work often leads them into a trafficking situation here in the United States.

Drugs, such as fentanyl, methamphetamine, and other fentanyl-laced drugs are pouring across the Southern Border and are destroying our communities and ending the lives of thousands of Americans every year.

This has got to stop.

I look forward to hearing the testimony of the witnesses today, especially from Sheriff Dannels, who is on the front lines in southern Arizona and knows first-hand how the border crisis is impacting our communities.

With that, I yield back the balance of my time.

Chairwoman BARRAGÁN. The Chair would now take the opportunity to recognize the full committee Chair, but I do not see him present. Therefore, we will move on. Next, I would recognize the Chair of—the Ranking Member of the full committee, Mr. Katko, but not seeing him either virtually. Mr. Higgins, I will also move on and take an opportunity now to welcome our panel of witnesses.

We have some of the witnesses here in person today and we have a witness also appearing virtually, as well.

First, in person, Mr. Aaron Reichlin-Melnick is a senior policy counsel at the American Immigration Council. Mr. Kennji Kizuka is an associate director of research and analysis for refugee protection at Human Rights First. Dr. Adam Richards is associate professor at George Washington University School of Medicine and a board member of Physicians for Human rights. Our last witness is virtually, Sheriff Mark Dannels is a sheriff in Cochise County, Arizona. Thank you for joining us virtually, sir.

Now, without objection, the witnesses' full statements will be inserted into the record. I now will ask each witness to summarize his or her statement for 5 minutes, beginning with Mr. Reichlin-Melnick.

STATEMENT OF AARON REICHLIN-MELNICK, SENIOR POLICY COUNSEL, AMERICAN IMMIGRATION COUNCIL

Mr. REICHLIN-MELNICK. Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the committee and subcommittee, my name is Aaron Reichlin-Melnick, and I am senior policy counsel for the American Immigration Council, a nonprofit organization dedicated to ensuring that the United States provides a fair process for all immigrants. I am here today and grateful for the opportunity to provide some perspective on the effect of Title 42 on border operations and management.

I am here today with one message. Title 42 has failed. Two years and 1.7 million expulsions later, border encounters are on track to hit record levels once again. As you will hear today, the evidence is clear. Title 42 is neither a meaningful public health measure, nor a successful deterrent. One statistic in particular demonstrates this failure. A staggering 94 percent of Mexican, Guatemalan, Salvadoran, and Honduran single adult migrants apprehended in the last 2 years have been expelled under Title 42.

If Title 42 were a successful deterrent, we would expect such a near-total border shutdown to reduce apprehensions at the border of that demographic, but that hasn't happened. Since the start of fiscal year 2021, single adults from those 4 countries accounted for 1.5 out of 2.5 million total apprehensions. So, how can this be? Because Title 42, itself, caused a four-fold increase in repeat border crossings. In fiscal year 2019, just 7 percent of people encountered

by CBP had previously crossed the border within the last 12 months. It is now 27 percent and has been for the last 2 years. This occurred for two reasons.

First, Title 42 almost entirely closed the ports of entry to asylum seekers. Facing desperation and insecurity in northern Mexico, even the most staunchly rule-bound asylum seekers may feel forced to cross the border repeatedly in the hopes of finding safety. Second, Title 42 expulsions to Mexico carry no collateral consequences. Meaning that the most likely outcome of a failed border crossing attempt is a quick expulsion back to Mexico where people face violence, insecurity, and the incentive to cross again.

Over the last 17 months, at least 820,000 border encounters were repeat encounters of the same person on their second, third, fourth, or even higher attempt. One person even told a reporter that he had been expelled 30 times under Title 42. Not only has this placed additional strain on the Border Patrol, it has also painted a distorted picture of the true number of people crossing the border.

Title 42 has also failed as a border management tool because for logistical and diplomatic reasons, it cannot be applied uniformly to all nationalities. Once a person is on U.S. soil, they can only be expelled to a country which will take them. Title 42 relies almost exclusively on Mexico as that destination. But when it agreed to Title 42, the government of Mexico placed significant limitations on the groups which could be expelled there. If someone cannot be expelled to Mexico, it is unlikely that they can be expelled at all. ICE does not have the capacity to carry out mass expulsions via air. Some countries place their own limitations on repatriation, like Cuba. These reasons, among others, are why Title 42 has failed as a border management policy.

As DHS prepares to lift Title 42 on May 23, its short-term goals should be to simultaneously recreate an actual asylum process at the ports of entry, ensure that those who cross irregularly are not held in Constitutionally-inadequate conditions, and free up Border Patrol agents from paperwork that keeps them out of the field. To do this, DHS should surge resources to CBP's Office of Field Operations for processing at the ports of entry and increase resources within the Border Patrol, including by detailing employees to act as Border Patrol processing coordinators and standing up additional soft-sided facilities.

Finally, we cannot discuss Title 42 in migration without looking to countries like Ukraine and acknowledging that migrants on the move around the world. Migration cannot be turned off with the push of a button. So, border management should not adopt the impossible goal of zero migration. Operational control of the border can and should include opportunities for desperate people to seek protection. Going forward, we should be honest not only about the challenges and costs of responding to migration, but also about the benefits that we as a Nation receive from people who still view this country as a beacon of freedom. In times of global displacement, the United States has long stepped up and done the right thing. By acknowledging that Title 42 was a failure, we can use this as an opportunity to do better.

Thank you and I look forward to your questions.

[The prepared statement of Mr. Reichlin-Melnick follows:]

PREPARED STATEMENT OF AARON REICHLIN-MELNICK

APRIL 6, 2022

Chairwoman Barragán, Chairman Thompson, Ranking Member Higgins, and distinguished Members of the subcommittee: My name is Aaron Reichlin-Melnick, and I serve as the senior policy counsel for the American Immigration Council, a non-profit organization dedicated to the belief that immigrants are part of our National fabric and to ensuring that the United States provides a fair process for all immigrants, including those who are seeking protection at the border. The Council works to strengthen America by shaping how America thinks about and acts toward immigrants and immigration and by working toward a more fair and just immigration system that opens its doors to those in need of protection and unleashes the energy and skills that immigrants bring.

The Council has long brought attention through research, advocacy, and litigation to ways in which the Department of Homeland Security (“DHS”) has responded to migrants at the border. In 2015, we helped bring a successful lawsuit against the Border Patrol’s Tucson Sector challenging un-Constitutional conditions of confinement for adults and children,¹ and we are currently suing U.S. Customs and Border Protection (“CBP”) for its unlawful policy of turning away asylum seekers at ports of entry, in part through a practice known as “metering.”²

I am grateful for the opportunity to be here today to help provide some perspective on the effect of Title 42 on border operations and management. Since Title 42 went into place over 2 years ago, the American Immigration Council has tracked the policy carefully and prepared research and analysis regarding its use, including through a dedicated publication on Title 42³ and extensive analysis of rising border encounters in 2021 and the effect of Title 42 on the border during that time.⁴

I am here today with one clear message: Title 42 has failed. As you will hear from other witnesses today, public health experts have repeatedly confirmed that Title 42 does not protect the American public from COVID-19 and has led to severe consequences for thousands of people seeking humanitarian protections in the United States. But on top of those flaws, Title 42 has also failed as a border management policy, leading to the highest levels of recidivism in decades. Two years after Title 42 went into place and over 1.7 million expulsions later, border encounters are on track to hit record levels once again. The evidence is clear; Title 42 is neither a meaningful public health measure nor a successful deterrent.

Title 42 itself has been a major contributor to increased border crossings because it caused a significant increase in repeat border crossings. In fiscal year 2019, just 7 percent of people encountered by CBP had previously crossed the border that year. In the 2 years since Title 42 went into place, the rate of repeat crossings rose to 27 percent. This is due in large part to the fact that under Title 42, individuals expelled back to Mexico are not subject to any collateral consequence. This lack of collateral consequences (other than the inherent risk of death in the journey), combined with the desperation and insecurity faced by people waiting at the border for the asylum process to restart, strongly incentivizes many migrants expelled under Title 42 to try again.

One statistic most obviously demonstrates Title 42’s failure. Since Title 42 went into effect, the Border Patrol expelled a staggering 94 percent of single adult migrants it encountered who were from Mexico, Guatemala, Honduras, or El Salvador. If Title 42 were a successful deterrent, we would expect such a near-total shutdown of the border to lead to declining apprehension numbers. Nothing of the sort has happened. Over the last 17 months, single adults from those 4 countries accounted for 1.5 out of 2.5 million total apprehensions. In total, there have been more than 750,000 repeat encounters under Title 42. Not only has this placed additional strain on the Border Patrol, it has also painted a distorted picture of the true number of individuals coming to the border.

Emboldened by this expulsion practice, within less than a year of Title 42 going into effect, smugglers began offering package deals that allow multiple attempts at

¹American Immigration Council, “Challenging Unconstitutional Conditions in CBP Detention Facilities,” <https://bit.ly/2PhdT0z>.

²American Immigration Council, “Challenging Customs and Border Protection’s Unlawful Practice of Turning Away Asylum Seekers,” <https://bit.ly/32Eo4z5>.

³American Immigration Council, “A Guide to Title 42 Expulsions at the Border,” October 15, 2021, <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>.

⁴American Immigration Council, “Rising Border Encounters in 2021: An Overview and Analysis,” March 4, 2022, <https://www.americanimmigrationcouncil.org/rising-border-encounters-in-2021>.

crossing the border for one fee.⁵ Last year one person even admitted to reporters that he had made 30 failed attempts to cross the border, each time being apprehended and expelled back to Mexico.⁶

In addition, DHS has been unable to expel most nationals of countries other than Mexico, Guatemala, Honduras, and El Salvador. Since Title 42 went into effect, Border Patrol agents expelled 72 percent of nationals of those 4 countries encountered at the border. By contrast, just 15 percent of nationals of other countries were expelled.

This nationality disparity is due to one of Title 42's biggest flaws as a border management tool; it relies almost exclusively on Mexico as the final destination for most expulsions, and Mexico has significantly limited the groups of people who can be expelled there. Once a person is physically on United States soil, they can only be expelled to a country which will take them. And if a person cannot be expelled to Mexico, they generally must be expelled by airplane to their home country. At the scale of current migration, this is simply impossible. ICE does not have, and has never had, the capacity to carry out mass deportation flights. And even if ICE had that capacity, many asylum seekers come from countries like Venezuela or Cuba which do not permit the United States to carry out mass deportation flights.

Thus, under the agreement with Mexico that allowed Title 42, Mexicans, Guatemalans, Hondurans, and Salvadorans subject to expulsion are sent right back to northern Mexico and incentivized to cross the border over and over again until they make it through. Individuals from other countries can cross the border between ports of entry and be safe in the knowledge that they are unlikely to be expelled.

Meanwhile, ports of entry have been almost entirely closed to asylum seekers for more than 2 years thanks to Title 42, which has created perverse incentives for even the most staunchly rule-bound asylum seekers. If they cannot return home and face the persecution they fled, and if they find themselves unable to reside indefinitely in Mexico, the only way for them to access the United States asylum process is to cross the border and hope they are not expelled. These reasons are why Title 42 has failed.

As DHS prepares to lift Title 42 on May 23, it must take common-sense steps to restore orderly processing at the border. DHS should immediately surge processing resources to the ports of entry and work to make it possible to seek asylum once again at the ports of entry. At the same time, DHS should work to increase processing resources within the Border Patrol, including detailing other DHS employees to act as Border Patrol Processing Coordinators and standing up additional soft-sided facilities, all with the goal of ensuring that no individuals are held in overcrowded and Constitutionally-inadequate conditions at the border and that Border Patrol agents are not kept out of the field due to do paperwork.

Finally, we cannot discuss Title 42 without noting that migrants are on the move around the world, and not just on their way to the United States. Last year, a record number of people applied for asylum in Mexico. Hundreds of thousands of Nicaraguans have fled political persecution, some going north to the United States and others going south to Costa Rica. In recent years, millions of Venezuelans have fled their homes and sought refuge in surrounding nations. Most recently, nearly 3 million Ukrainians have fled the invasion of Russia and sought refuge in Poland and surrounding nations.

Migration, especially that of refugees, is not something that can be turned off with the push of a button. Title 42 is ostensibly about public health, but today many people speak of it purely in terms of deterrence.⁷ Over the last decade, we have seen repeated cycles of failed deterrence policies, none of which have stopped people from coming to the border. Title 42 is the latest in that series of failures.

In times of global displacement, the United States has long stepped up and done the right thing. Rather than search around for yet another deterrent, we should be honest not only about the challenges and costs of border management, but also about the benefits that we as a Nation receive from people who still view this coun-

⁵Laura Gottesdiener, Sarah Kinoshian, "Migrant smugglers see boost from U.S. pandemic border policy," *Reuters*, November 12, 2020, <https://www.reuters.com/article/us-usa-immigration-smuggling-insight/migrant-smugglers-see-boost-from-u-s-pandemic-border-policy-idUSKBN27S24A>.

⁶Kate Morrissey, "Mexican adults are crossing the border again and again in attempts to reach the United States," *San Diego Union-Tribune*, July 11, 2021, <https://www.sandiegouniontribune.com/news/immigration/story/2021-07-11/mexican-adult-migrants>.

⁷See, e.g., Letter from 22 Members of Congress to DHS Secretary Mayorkas, March 29, 2022, <https://www.cornyn.senate.gov/sites/default/files/Texas%20Delegation%20Letter%20to%20DHS%20and%20HHS%20on%20Title%2042%20Cancellation.pdf> (urging the Biden administration to keep Title 42 in place as a deterrent).

try as a beacon of freedom. By acknowledging that Title 42 was a failure, we can use this as an opportunity to do better.

THE ORIGINS OF TITLE 42 AND THE CREATION OF “EXPULSIONS”

To understand how we reached this point, it’s necessary to explain the origin of Title 42 and the way in which it has been used operationally at the border.

On March 20, 2020, the Centers for Disease Control and Prevention (CDC) issued an order suspending “covered aliens” from entering the United States. The “covered” group included only those individuals who would be placed into “congregate settings” upon their entry to the United States, exempting American citizens, lawful permanent residents, individuals possessing valid visas, and anyone who was entitled to enter the United States. As Professor Lucas Guttentag wrote, the order was “like a bullseye drawn on the side of the barn around the arrow that has already been shot” at asylum seekers and those “crossing the border without documentation.”⁸ However, the CDC’s Title 42 order did not provide any guidance or instruction as to what would happen to individuals who had already entered the United States and were taken into the custody of Customs and Border Protection.

It was DHS, not the CDC, which created a concept that had never before existed in U.S. history; “expulsions.” An expulsion is an exercise in raw power in which the U.S. Government takes a person present on U.S. soil and forcibly sends them to another country. Unlike a deportation, an “expulsion” carries no further legal consequences—there is no “order of expulsion” entered by an immigration official that carries collateral consequences, no opportunity to appeal, and no process by which a migrant may challenge the decision to expel.

Thousands of people subject to Title 42 expulsions were not even issued the standard “A number,” but were simply fingerprinted and then pushed back across the border. Border Patrol agents did not even interview migrants to learn about how they had been smuggled into the country, a fact which Border Patrol agents told the Government Accountability Office (GAO) “negatively affected enforcement by reducing opportunities to gather intelligence.”⁹

Title 42 was put into place at a time when the United States had only limited, but not halted, international entry. Reporting suggests that the Trump administration used Title 42 as a transparent attempt to halt migration through the guise of public health, as Stephen Miller had apparently sought to do for years. Throughout the pandemic, even with border restrictions in place, millions of people drove or walked across the U.S.-Mexico border through the ports of entry each month.¹⁰

As the Trump administration planned Title 42 in mid-March 2020, it began negotiations with the Mexican government. On March 17, 2020, the Mexican government issued a statement in response to news reports that the Trump administration would soon begin expelling migrants, stating that the government of Mexico had not received a formal request from the United States Government to expel migrants. The government then went on to note that if such a proposal were to be formally advanced, the government of Mexico would consider it according to its own sovereign interests.¹¹

Negotiations continued over the following days. On March 21, 2020, the government of Mexico made the announcement that allowed Title 42 to go into effect at the Southern Border. It declared that “to minimize the build-up in United States Border Patrol stations,” it was considering “the regular internment of some citizens of El Salvador, Honduras, and Guatemala that are presented to Mexican immigration authorities.” The statement went on to declare that “The Mexican authorities will decide on a case-by-case basis whether these migrant persons will be admitted to [Mexico’s] national territory. For the sake of protecting vulnerable people, we will not accept minors or the elderly, among others. Likewise, citizens of other nationalities not mentioned previously will not be admitted. . . .”¹² The statement concluded with a note that the government of Mexico “has estimated that the number of mi-

⁸ Lucas Guttentag, “Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors,” *Just Security*, April 13, 2020, <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>.

⁹ U.S. Government Accountability Office, GAO-21-431: *CBP’s Response to COVID-19* June 2021, at 42, <https://www.gao.gov/assets/720/714997.pdf>.

¹⁰ Aaron Reichlin-Melnick and Jorge Loweree, “Tracking the Biden Agenda on Legal Immigration in the First 100 Days,” American Immigration Council, April 29, 2021, <https://www.americanimmigrationcouncil.org/research/tracking-biden-agenda-legal-immigration-first-100-days>.

¹¹ Government of Mexico, “Nota informativa RELACIONES EXTERIORES,” March 17, 2020, <https://www.gob.mx/sre/documentos/nota-informativa-relaciones-exteriores?State=published>.

¹² Government of Mexico, “Nota informativa RELACIONES EXTERIORES No. 11,” March 21, 2020, <https://www.gob.mx/sre/documentos/nota-informativa-relaciones-exteriores-no-11>.

grant persons who will be subject to this legal entry into Mexican territory will be less than 100 persons per day.¹³

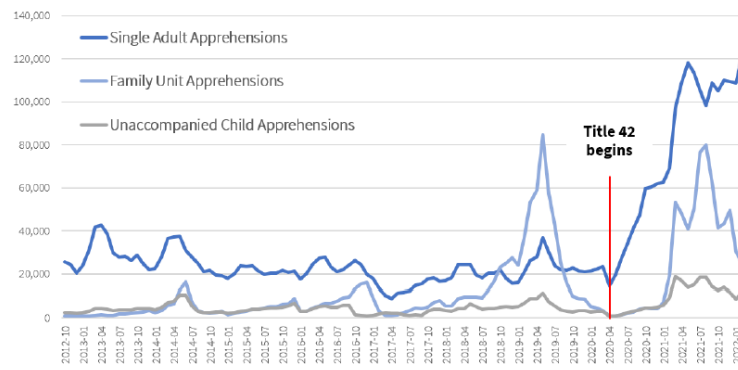
With that announcement, Title 42 began in earnest. The Mexican government's estimates were proven wrong within days. Even though Title 42 was in effect for just 10 days in March 2020, the Border Patrol carried out 6,984 expulsions of Mexicans, Hondurans, Guatemalans, and Salvadorans. Over the next 2 years, DHS would carry out an average of over 2,250 daily expulsions to Mexico.¹³

TITLE 42'S NEGATIVE EFFECT ON BORDER MANAGEMENT BECOMES APPARENT IN 2020

Within a week of Title 42 going into effect, much of the world shut down due to the coronavirus. On March 30, Mexico's Ministry of Health declared a National emergency and called for wide-spread lockdowns to slow the spread of the pandemic. As Mexico closed down in April 2020, the number of migrants taken into custody by the Border Patrol plummeted to the lowest level for an April in 10 years. But despite international lockdowns and the use of Title 42, migrants still came to the United States seeking protection or a better life. In total, the Border Patrol carried out 15,003 expulsions in April 2020, the overwhelming majority to Mexico.

Once lockdowns lifted in Mexico, the number of migrants crossing the border began picking up. Driven by deteriorating security situations and increased political repression across Central America, economic shocks caused by the pandemic, and two Category 4 hurricanes in November 2020 that left hundreds of thousands homeless, migration to the United States border rose every single month from May 2020 through July 2021. By October 2020, border apprehensions were at the highest level for a fall in 15 years, despite the fact that 91 percent of people encountered by the Border Patrol that month were expelled. This increase in encounters primarily consisted of single adult migrants, a demographic which has made up nearly two-thirds of all border encounters since Title 42 went into place (see Figure 1).

Figure 1: Border Patrol apprehensions by demographic, October 2012 through February 2022



Source: U.S. Customs and Border Protection, Nationwide Encounters, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>

Despite the fact that Title 42 technically permits the Border Patrol to “seal the border” in a way that had never been possible before, there is almost no evidence that it has a deterrent effect. This was true even in 2020, when Title 42 was used to the greatest extent. This is because: (1) Rapid returns to Mexico incentivize peo-

¹³ DHS has not provided exact figures on the number of migrants expelled to Mexico. As a result, this figure is an estimate, based on the assumption that nearly 100 percent of the 1.6 million Title 42 expulsions of nationals of Mexico, Guatemala, Honduras, and El Salvador since March 21, 2020, have been to Mexico. This assumption is supported by the GAO's June 2021 report on CBP's response to COVID-19, which indicated that through the end of December 2020, 92 percent of Title 42 expulsions occurred via land border to Mexico. U.S. Government Accountability Office, GAO-21-431: *CBP's Response to COVID-19*, June 2021, at 41, <https://www.gao.gov/assets/720/714997.pdf>. Over that same time period, 93.7 percent of all Title 42 expulsions were of nationals of Mexico, Guatemala, Honduras, and El Salvador, suggesting a near 100 percent rate of expulsions to Mexico for that demographic. See U.S. Customs and Border Protection, “Nation-wide Encounters,” March 15, 2022, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

ple to cross the border again, and (2) Mexico's limitations on the use of Title 42 prevents it from being applied to nearly half of all people who crossed the border in the last 2 years.

Since Title 42 went into place, 79 percent of single adults have been rapidly processed at the border and sent right back to Mexico without a deportation order. This arrangement incentivized repeated attempted crossings for multiple reasons, including that:

- Many individuals become more desperate following an expulsion, as they lose stability, resources, and often their personal belongings following expulsions. Because the border region remains highly dangerous for asylum seekers expelled back to Mexico, and because the Biden administration has not resumed normal processing of asylum seekers at ports of entry along the border, many people feel as if they have no choice but to make a renewed attempt to seek safety in the United States.¹⁴
- Due to post-COVID changes made at the Department of Justice in spring 2020, individuals who cross the border for the first time under Title 42 are largely exempt from Federal prosecution for misdemeanor "improper entry."¹⁵ They are also not issued a deportation order.¹⁶ For individuals crossing the border who are not planning on turning themselves in and asking for asylum, this policy eliminates two possible negative consequences of being apprehended by the Border Patrol. As a result, following a failed attempt to cross the border, some individuals are more willing to try again.¹⁷

In fiscal year 2019, just 7 percent of people who crossed the border had done so more than once. In fiscal year 2020, under Title 42, this rose to 27 percent, the level it has remained in fiscal year 2021 and fiscal year 2022. According to CBP, the average number of times a repeat crosser had been apprehended rose from 2.31 in fiscal year to 3.14 in fiscal year 2021, a 36 percent increase.¹⁸ In total, more than half a million encounters at the U.S.-Mexico border over the last 2 years have been repeat encounters of individuals who had already tried and failed at least once before. Despite nearly twice as many border apprehensions in fiscal year 2021 as in fiscal year 2019, the actual number of people encountered at the border was only 45 percent higher (see Figure 2).

¹⁴Kathryn Hampton, Michele Heisler, Alana Slavin, "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/>.

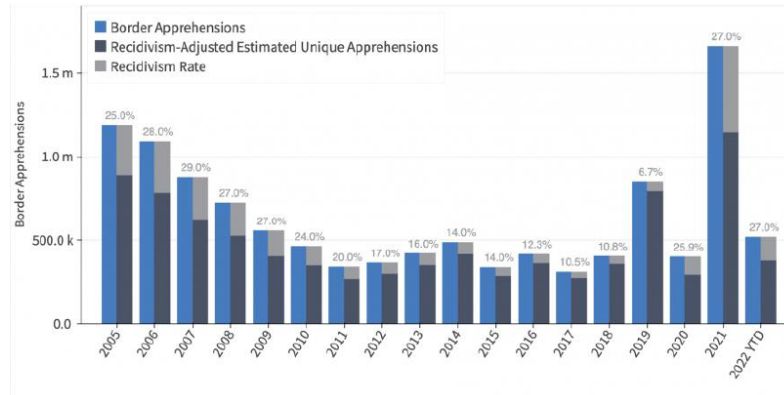
¹⁵"Major Swings in Immigration Criminal Prosecutions during Trump Administration," Transactional Records Access Clearinghouse, <https://trac.syr.edu/immigration/reports/633/>.

¹⁶American Immigration Council, "A Guide to Title 42 Expulsions at the Border," October 15, 2021, <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>.

¹⁷Andrew Rodríguez Calderón and Isabel Diaz, "Strict Border Enforcement Policies Put Migrants in Harm's Way. Title 42 Is No Exception," *The Marshall Project*, May 26, 2021, <https://www.themarshallproject.org/2021/05/26/strict-border-enforcement-policies-put-migrants-in-harm-s-way-title-42-is-no-exception>.

¹⁸Department of Homeland Security, "U.S. Customs and Border Protection Budget Overview, Fiscal Year 2023 Congressional Justification," (2022), at CBP-4, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection___Remediated.pdf.

Figure 2: Estimates of unique apprehensions, FY 2005 to December 2021



EXPULSIONS OF UNACCOMPANIED CHILDREN IN 2020 REVEALED SIGNIFICANT DIFFICULTIES IN USING TITLE 42 ON PEOPLE WHO COULD NOT BE EXPELLED TO MEXICO

Once a person from any country other than Mexico, Guatemala, Honduras, or El Salvador arrives on U.S. soil, DHS can only expel that person under Title 42 if: (1) Their home country (or a third country such as Mexico) agrees to accept them, or (2) if ICE has sufficient resources to both detain the person and expel them by air within a short period of time after they entered the country.

Throughout 2020, it became increasingly apparent that DHS struggled to expel any individuals who could not be expelled to Mexico. To carry out an expulsion by air, CBP or ICE is required to detain the individual for potentially days while waiting for a plane to become available. Certain countries also impose their own restrictions on Title 42 flights due to COVID-19 restrictions. As of June 2021, DHS HQ staff told the GAO that even though the United States had signed Title 42 repatriation agreements with 9 countries other than Mexico, due to COVID-19 “testing stipulations” on expulsions imposed by multiple countries, the agency was only carrying out Title 42 expulsion flights to Colombia, Dominican Republic, Haiti, and Ecuador.¹⁹

As the practice of expelling unaccompanied children in 2020 showed, expelling large numbers of people by air quickly became impractical. For nationals of some countries, the Border Patrol was required to hold people in custody for 72 hours or longer until a repatriation flight was available.²⁰ When Title 42 went into place, the Trump administration applied it to unaccompanied children, notwithstanding Federal laws which provided unaccompanied children the right to have their cases heard in immigration court. But there are no ICE detention centers for unaccompanied children, and the Border Patrol didn’t want to hold children in their custody for days.

To carry out Title 42 expulsions of unaccompanied children, DHS was forced to secretly rent hotel rooms and hire private contractors to stand guard over hundreds of children while they waited for a deportation flight.²¹ At one point, in order to meet the testing requirements put in place by Guatemala, DHS was first testing unaccompanied children to ensure that they weren’t positive for COVID-19, and then expelling them under Title 42—despite the lack of any public health need to expel children who’d tested negative.²²

¹⁹ U.S. Government Accountability Office, GAO-21-431: CBP’s Response to COVID-19, June 2021, at 41, <https://www.gao.gov/assets/720/714997.pdf>.

²⁰ Ibid.

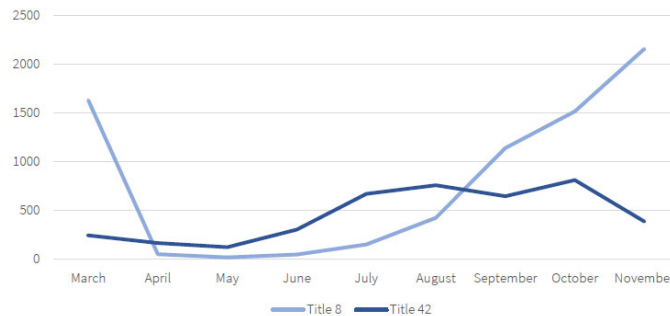
²¹ Nicole Narea, “DHS is holding migrant children in secret hotel locations and rapidly expelling them,” *Vox*, August 21, 2020, <https://www.vox.com/2020/8/21/21377957/migrant-children-unaccompanied-hotels-dhs-expulsion>.

²² Dara Lind and Lomi Kriel, “ICE Is Making Sure Migrant Kids Don’t Have COVID-19—Then Expelling Them to ‘Prevent the Spread’ of COVID-19,” *ProPublica*, August 10, 2020,

Continued

Even with these extreme measures, DHS was unable to expel most non-Mexican unaccompanied children as the number of children arriving at the border began rising back to pre-pandemic levels in 2020. In October 2020, the last full month in which unaccompanied children were expelled, only 35 percent of non-Mexican unaccompanied children were subject to Title 42 (see Figure 3).

Figure 3: Processing outcomes of non-Mexican unaccompanied children encountered by the Border Patrol, February through November 2020



Source: U.S. Customs and Border Protection, Nationwide Encounters, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>

DHS's inability to expel more than 1,000 non-Mexican unaccompanied children by air in a month foreshadowed the problems the agency would have in carrying out Title 42 in 2021, when hundreds of thousands of people arrived at the border who couldn't be expelled to Mexico.

TITLE 42 BREAKS DOWN FURTHER IN 2021

On January 24, 3 days after President Biden took office, the government of the Mexican State of Tamaulipas announced that it would no longer permit DHS to expel families back to Tamaulipas if a child in the family was under the age of 7.²³ As a result of Tamaulipas' refusal to accept the expulsion of families with young children, when the numbers of families arriving at the border in south Texas began rising in early February, the Biden administration was unable to expel the majority under Title 42 and was forced to release thousands of families.²⁴ Likely as a result of this shift, the number of families crossing the border in south Texas rose significantly in spring 2021, and the Biden administration was unable to expel the majority of them despite its desire to apply Title 42 to them.²⁵

Although the number of families coming to the border peaked in summer 2021 and then fell throughout the fall and winter, other demographic groups that could not be easily expelled under Title 42 began arriving in larger numbers in the second half of 2021. Nationals of countries other than Guatemala, Honduras, El Salvador, and Mexico could not be expelled to Mexico. Asylum seekers from primarily Western Hemisphere countries such as Venezuela, Nicaragua, Brazil, Ecuador, and Cuba who came to the border and crossed could largely not be expelled under Title 42.

The exception that proved this rule came in September 2021, when nearly 15,000 Haitians arrived in Del Rio, Texas and sought asylum. In response, the Biden administration decided to send a message and massively ramp up expulsions by air to Haiti, a move that led to the resignation of multiple administration officials and

<https://www.propublica.org/article/ice-is-making-sure-migrant-kids-dont-have-covid-19-then-expelling-them-to-prevent-the-spread-of-covid-19>.

²³ Elliot Spagat and Valerie Gonzalez, "Inside Biden's border plans: How optimism turned to chaos," Associated Press, November 3, 2021, <https://apnews.com/article/immigration-coronavirus-pandemic-donald-trump-joe-biden-health-af698c3434cc31dfbce43a66fbf43b49>.

²⁴ Adolfo Flores and Hamed Aleaziz, "Border Agents In Texas Have Started Releasing Some Immigrant Families After Mexico Refused To Take Them Back," *Buzzfeed News*, February 6, 2021, <https://www.buzzfeednews.com/article/adolfoflores/border-agents-in-texas-have-started-releasing-some>.

²⁵ U.S. Customs and Border Protection, "Nationwide Encounters," <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

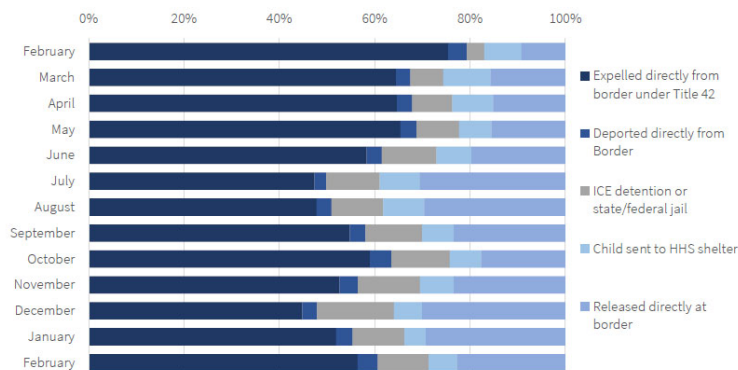
accusations of racism. In order to carry out roughly 8,000 expulsions to Haiti in a matter of 2 weeks, ICE had to sign an emergency contract with GEO Group, a private prison company, to carry out dozens of charter flights. The cost to the U.S taxpayer was \$15,758,960, or nearly \$2,000 per expulsion.²⁶ Continued mass expulsions at that rate would quickly bankrupt the agency.

THE BORDER IS NOT OPEN—BUT NEITHER IS IT CLOSED

However, just because individuals were not expelled did not mean that they were released at the border. Our independent analysis of data produced by DHS reveals that in the 13-month period from February 2021 through February 2022, 73.1 percent of Border Patrol encounters resulted in a migrant being expelled, repatriated, or sent to an ICE detention center (see Figure 4). In total, from February 2021 through February 2022:

- 60.2 percent of Border Patrol encounters led to an immediate expulsion under Title 42, either by bus or plane to northern Mexico, or by plane to the migrant's home country;
- 19.9 percent of Border Patrol encounters led to a person being released at the border under humanitarian parole, with a notice to report to an ICE office, or with a notice to appear in immigration court;
- 9.8 percent of Border Patrol encounters led to a person being sent to an ICE detention center or to a State, local, or Federal jail for criminal prosecution.
- 7.0 percent of Border Patrol encounters were of an unaccompanied child who was sent to a shelter run by the Office of Refugee Resettlement.
- 3.1 percent of Border Patrol encounters led to an immediate deportation or other form of repatriation.

Figure 4: Estimated outcomes of apprehensions at the border, February 2021 to February 2022



Source: U.S. Customs and Border Protection, Nationwide Encounters Page; CBP Status Report, *Texas v. United States*, 2:21-cv-00067, ECF No. 133-1 (March 15, 2022); CBP Status Report, *Texas v. United States*, 2:21-cv-00067, ECF No. 129-1 (February 15, 2022); CBP Status Report, *Texas v. United States*, 2:21-cv-00067, ECF No. 124-1 (January 14, 2022); CBP Status Report, *Texas v. United States*, 2:21-cv-00067, ECF No. 119-1 (December 15, 2021).

As Figure 5 shows, direct releases at the border over the last year (primarily families who cannot be expelled to Mexico) occurred in just 1 in 5 encounters. Roughly 2 out of every 3 encounters resulted in a failure to remain in the United States. For those individuals, the border was decidedly closed. Despite significantly increased crossings, CBP reports that its overall effectiveness at detecting and inter-

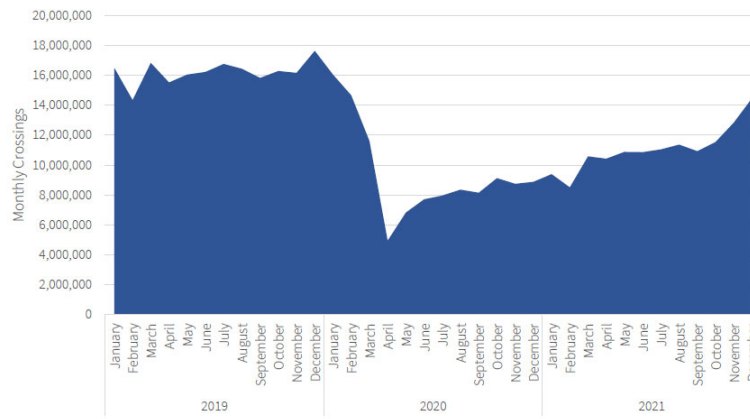
²⁶ Immigration and Customs Enforcement, "JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION," Sept. 27, 2021, <https://sam.gov/opp/91706b03fec145589a-73c92959cbbf4d/view>.

dicting migrants in fiscal year 2021 was 82.6 percent, higher than both the agency's target of 81.0 percent and the previous result of 79.4 percent in fiscal year 2020.²⁷

Importantly, when reviewing these numbers, it is important to consider the original stated purpose of Title 42—limiting the spread of COVID-19 from people crossing the border. But for the past 2 years, millions of people have crossed the border legally at the ports of entry each month. As Figure 5 shows, even at the height of the pandemic, closures in April 2020, more than 6 million people crossed the border. Until late 2021, there was no vaccine requirement to cross the border legally, nor were people crossing the border at ports of entry required to show a negative COVID-19 test.²⁸ At no point during the pandemic have U.S. citizens or lawful permanent residents been the target of any restriction on their entry from Mexico into the United States, because DHS declared in March 2020 that the reentry of U.S. citizens and lawful permanent residents was per se “essential travel.”²⁹

Since Title 42 went into place, people crossed the U.S.-Mexico border at ports of entry more than 225 million times—over 100 times greater than the number of people who crossed between ports of entry. In short, people crossing the border between ports of entry has constituted less than 1 percent of traffic across the U.S.-Mexico border since Title 42 went into effect. Yet until very recently, only the far smaller group was turned away on the basis of public health.

Figure 5: Number of People Crossing into the United States from Mexico at Ports of Entry, January 2019 to December 2022



Source: U.S. Department of Transportation, Border Crossing/Entry Data, <https://explore.dot.gov/#/views/BorderCrossingData/Monthly>

Despite claims that “the border is open” to migrants, since Title 42 went into place, over 1.7 million border encounters have resulted in an expulsion and over 60,000 people have been deported or otherwise sent back to Mexico under Title 8. By contrast, less than 1 million people have been processed under normal immigration law and either permitted to apply for asylum or sent to ICE detention centers. And throughout that time, cross-border traffic has continued in the millions, with people able to cross back and forth every day for school, work, or simply a shopping trip—most without being tested for COVID-19.

²⁷ Department of Homeland Security, “U.S. Customs and Border Protection Budget Overview, Fiscal Year 2023 Congressional Justification,” (2022), at CBP-4, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection_Remediated.pdf.

²⁸ Zolan Kanno-Youngs and Emily Cochrane, “The U.S. will reopen its land borders for fully vaccinated travelers,” *New York Times*, October 12, 2021, <https://www.nytimes.com/2021/10/12/us/politics/us-canada-mexico-borders-open.html>.

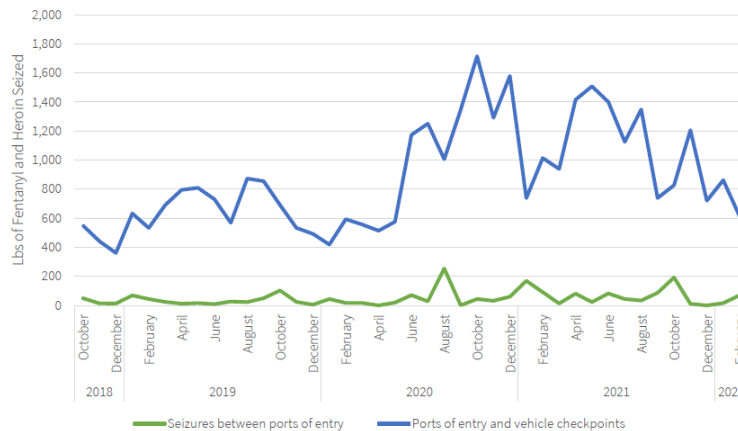
²⁹ U.S. Customs and Border Protection, “Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico,” 85 Fed. Reg. 16547, 16548 (March 24, 2020).

TITLE 42 AND INCREASED MIGRATION HAS NO IMPACT ON THE FLOW OF OPIATES INTO
THE UNITED STATES

The overwhelming majority of hard drugs such as fentanyl, heroin, and methamphetamine enter the United States through ports of entry, usually concealed in commercial traffic or passenger vehicles.³⁰ At a recent hearing in the Senate Homeland Security and Governmental Affairs Committee, Diane Sabatino, the deputy executive assistant commissioner of Customs and Border Protection, testified that just 15 percent of commercial vehicles and only 2 percent of private vehicles are screened for narcotics.³¹ As the Drug Enforcement Agency has long recognized, commercial ports of entry are the primary means by which fentanyl and other drugs enter the United States.³² Since the beginning of fiscal year 2019, just 5 percent of opiates seized at the border (heroin and fentanyl) have been seized by Border Patrol agents between ports of entry, rather than at the ports of entry or internal vehicle checkpoints.

Despite these facts, defenders of Title 42 have at times attempted to link the policy to the flow of opiates and other hard drugs across the border from Mexico, arguing that an increase in migrants distracts Border Patrol agents from their normal duties and provides opportunities for drugs to be smuggled into the United States. This argument is not supported by the data, which shows little change in the pattern of drug seizures during times in which migration is high. As demonstrated by Figure 6, the overwhelming majority of opiates continue to be seized at ports of entry and vehicle checkpoints regardless of whether migration is high or low.

Figure 6: CBP opiate seizures at the southwest border, by location of seizure, October 2018 to February 2022



Source: U.S. Customs and Border Protection, Drug Seizure Statistics, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

Migration increased significantly in 2019, fell through early 2020, increased throughout the second half of 2020, then doubled again in 2021. Despite these massive swings in migration across the Southern Border, there is no evidence that Border Patrol seizures of opiates between ports of entry were affected. Instead, the most likely driver in recent shifts in fentanyl seizures is the port of entry restrictions that

³⁰ Customs and Border Protection, Drug Seizure Statistics, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

³¹ Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Government Operations and Border Management, “Federal Government Perspective: Improving Security, Trade, and Travel Flows at the Southwest Border Ports of Entry,” November 17, 2021, <https://www.hsgac.senate.gov/hearings/federal-government-perspective-improving-security-trade-and-travel-flows-at-the-southwest-border-ports-of-entry>.

³² Salvador Rivera, “DEA: Local drug sales now fueling most of the bloodshed south of the border,” *Border Report*, March 7, 2022, <https://www.borderreport.com/hot-topics/border-crime/dea-local-drug-sales-now-fueling-most-of-the-bloodshed-south-of-the-border/>.

were in place from March 2020 through November 2021 and which correspond to a period of higher seizures at the ports of entry (see Figure 6). This is because the restrictions caused reduced traffic through the ports of entry and a shift in the demographics of the smugglers, which made it possible for CBP to detect and intercept a higher percent of narcotics.³³ Not surprisingly, after the restrictions ended in November and traffic across the border increased, CBP's ability to detect and intercept illicit narcotics at ports of entry has fallen, leading to reduced opiate seizures from December through February.

HOW THE BIDEN ADMINISTRATION SHOULD IMPLEMENT AN END TO TITLE 42

Over the last 8 years, in 2014, 2018–2019, and 2021, the United States has gone through successive times of high humanitarian migration. Each time, the response from the United States has been similar; aggressive, enforcement-centric, and focused on deterrence. Title 42 was intended to be the ultimate deterrent, blocking nearly all who came across and implementing a near-total denial of access to asylum. But Title 42 failed miserably in that goal, as this statement has already articulated. Our experiences over the last decade have shown that deterrence-based programs are limited in their effectiveness at best and actively harmful at their worst. The overarching lesson we've learned from a decade of attempts to slow or stop humanitarian migration is that U.S. border policy alone cannot solve the humanitarian crises that are driving migrants to the United States.

To prepare for the lifting of Title 42, DHS should immediately surge resources and manpower to the Office of Field Operations that would permit all ports of entry along the Southern Border to rapidly restart humanitarian processing of asylum seekers at levels at least twice or three times as high as in 2016. If necessary, Congress should provide additional funding targeted solely to facilitate DHS processing of individuals seeking asylum at ports of entry. DHS should cross-detail employees from across the agency and seek volunteers from other Federal agencies to assist with this mass operation to resume asylum processing at ports of entry. The Office of Refugee Resettlement (ORR) should also prepare additional shelter capacity and detail ORR caseworkers to the border to assist with the increased number of unaccompanied children crossing in recent months.

In addition, DHS should coordinate with humanitarian and legal NGO's that operate on both sides of the border to spread accurate information about restoration of asylum at ports of entry and to create an orderly, dignified, and humane process to access asylum. The State Department should simultaneously coordinate with Mexico to further increase shelter capacity on the Mexican side of the border, to encourage people to avoid the smugglers and instead come to the ports of entry. In addition, the State Department should work with Mexico to increase security surrounding the ports of entry, with a focus on limiting cartel access to vulnerable asylum seekers who are waiting to access asylum.

DHS should focus its strategy first on the ports of entry where flow would likely be highest; San Diego, El Paso, and Brownsville, and then smaller ports secondarily. The agencies should simultaneously begin a messaging campaign encouraging people seeking asylum to come to the ports of entry rather than crossing between POEs. The agencies should extensively coordinate with Mexican and U.S. border NGO's and build trust with allies, ensuring that those who are admitted are paroled in or placed in Alternatives to Detention (ATDs) rather than being sent to detention.

In addition to resourcing the ports of entry to resume asylum processing, DHS should immediately cross-detail as many people as possible to be Border Patrol processing coordinators and/or issue contracts to third parties to act as temporary processing coordinators. Congress should provide additional funding to the Department to help facilitate this expansion of processing, ensure increased transparency of Border Patrol spending and resource allocation, and provide for additional supervision of Border Patrol processing.

The increase in humanitarian processing will serve two primary goals; reduce the deprivation of rights that asylum seekers face in Border Patrol custody, while simultaneously permitting the Border Patrol to continue to carry out their primary law enforcement duties.

More efficient humanitarian processing of asylum seekers that frees up Border Patrol agents to carry out their enforcement functions will also mean that a higher percentage of migrants who are not seeking asylum will be subject to the Biden ad-

³³ Deborah Bonello and Luis Chaparro, "Mexican Cartels Are Using More U.S. Citizens to Smuggle Drugs Because of COVID," VICE News, November 5, 2020, <https://www.vice.com/en/article/88aazb/mexican-cartels-are-using-more-us-citizens-to-smuggle-drugs-because-of-covid>, <https://www.vice.com/en/article/88aazb/mexican-cartels-are-using-more-us-citizens-to-smuggle-drugs-because-of-covid>.

ministration’s plan to restore many of the deterrent-focused policies that existed prior to Title 42.³⁴ While we do not condone the use of “consequence-based” policies, which generally lack sufficient procedural safeguards to avoid refolement of asylum seekers, there is little doubt that the mass use of expedited removal and increases in immigration prosecutions will have at least some temporary deterrent effect on migrants, especially on those who were crossing the border repeatedly under Title 42. Thus, after an initial influx of asylum seekers who have been waiting in Mexico, the end of Title 42 is likely to lead to an eventual reduction in border crossings.

However, in discussing the deterrent effect of certain border policies, we must acknowledge that long-term border management should not adopt a goal of zero migration. “Operational control” of the border can and should include opportunities for desperate people to seek protection in the United States. And we must acknowledge that the flow of individuals seeking a better life has been a constant at the U.S. border for over a century. Even the harshest border policies, like the deliberate separation of families, did not stop people coming to the United States. We cannot change human nature, and there is nothing more human than seeking to protect yourself and/or your family, including by striking out for a new land to seek a better life.

CONCLUSION

Two years of evidence have shown that Title 42 was a failure. Rather than continuing to try to deter our way out of migration, we need to make a sustained investment in the creation of an orderly humanitarian protection system that reduces the incentives to cross the border between ports of entry and helps address the root causes of migration. Medium- and long-term solutions to asylum processing require time and political will, not simply yet another attempt to crack down.

The American Immigration Council looks forward to working with the subcommittee on these solutions.

Chairwoman BARRAGÁN. Thank you for your testimony. I now recognize Mr. Kizuka to summarize your statement for 5 minutes.

STATEMENT OF KENNJI KIZUKA, ASSOCIATE DIRECTOR, RESEARCH AND ANALYSIS FOR REFUGEE PROTECTION, HUMAN RIGHTS FIRST

Mr. KIZUKA. Thank you, Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the subcommittee. Thank you for holding his timely hearing on the Title 42 policy and for the opportunity to testify.

For over 40 years, Human Rights First has pressed the United States to take a leading role in upholding human rights. Today, my colleagues are supporting Ukrainian human rights defenders, documenting atrocities, working with partners around the globe to advocate for targeted sanctions against human rights abusers, and providing pro bono legal representation in the United States to refugees seeking asylum.

We applaud the Biden administration’s decision to terminate the Title 42 policy. It is not, and never was, a justifiable public health response to the pandemic, as epidemiologists and medical experts have repeatedly confirmed. Instead, the Title 42 policy has been used to evade U.S. asylum laws and treaty obligations. Asylum seekers have been blocked from requesting protection at ports of entry. People seeking refuge who are overwhelmingly Black, Brown, and Indigenous have been expelled to danger without an opportunity to apply for asylum.

Through field investigations and interviews with asylum seekers, attorneys, and human rights monitors, our refugee protection team

³⁴ U.S. Department of Homeland Security, “FACT SHEET: DHS Preparations for a Potential Increase in Migration,” March 30, 2022, <https://www.dhs.gov/news/2022/03/30/fact-sheet-dhs-preparations-potential-increase-migration>.

has documented the grave human rights violations that have been caused by this illegal policy. We have tracked at least 9,886 reports of kidnapping, torture, rape, and other brutal assaults on people blocked in or expelled to Mexico under Title 42 during the Biden administration. Many have been abducted and attacked by cartels that target asylum seekers expelled to Mexico.

A Salvadoran family with 8- and 12-year-old children, kidnapped almost immediately after being expelled to Mexico in the middle of the night, were held captive for 20 days locked in a storage room by men who repeatedly threatened to rape the mother. A 29-year-old Venezuelan asylum seeker turned away at the Hidalgo port of entry was abducted, threatened at knifepoint, and raped.

Black asylum seekers stranded in Mexico due to Title 42 face brutal violence. Mexican police beat an Afro-Honduran man in the head with a tree branch leaving him blind in one eye. In Tijuana, a man with a baton severely beat a Haitian asylum seeker in front of Mexican police, who did nothing.

Title 42 has also inflicted horrific harm on children blocked from protection and expelled to further danger. A 14-year-old Cuban boy chewed off his fingernails from the stress and anxiety of being expelled with his grandmother to Mexico, where they had been kidnapped and forced to watch as their abductors killed another kidnapping victim. A 13-year-old Honduran girl, who had been raped in Mexico, was expelled with her asylum-seeking mother back to Mexico despite threats against them by the attacker.

Blocking requests for asylum at ports of entry endangers lives. A young LGBT man fleeing political persecution in Venezuela was turned away at the Laredo port of entry and returned to highly dangerous Nuevo Laredo, where he and an American friend, who was trying to help him, had been kidnapped the day before. Following the instructions of Border Patrol agents to present herself legally, a Guatemalan woman was raped after attempting to seek protection at the San Ysidro port of entry, which she found closed to asylum seekers. Unable to request asylum at ports of entry because of Title 42 and facing grave dangers in Mexico, refugees have been pushed across the border between ports.

Recently, DHS has rightly exempted Ukrainian refugees from Title 42, receiving them at ports of entry. We urge DHS to also process asylum seekers from Africa, the Americas, and the Caribbean who remain stranded in danger, unable to seek asylum due to Title 42. This discriminatory double standard must end.

Restarting and ramping up asylum at ports of entry is also crucial to ending the disorder caused by Title 42. In addition, expulsions that return people to persecution or torture in violation of U.S. laws and treaty obligations must end, including expulsions to the deteriorating security and political situation in Haiti. The administration should ensure safe reception of people seeking asylum with support and legal information provided through border shelter networks and should work to establish a fair, timely, and accurate asylum process in communities where asylum seekers will stay.

Coordination with and support to NGO's providing assistance should also be strengthened. People fleeing for their lives will continue to arrive at the border to seek asylum as they have for more than 2 years with Title 42 in place. Extending Title 42 will only

exacerbate disorder and result in yet more grievous attacks against refugees illegally blocked from protection.

The United States has capacity to welcome asylum seekers and treat them with dignity. Other countries with far fewer resources host the vast majority of the world's refugees. Individuals, communities, and NGO's around this country stand ready to receive and welcome refugees. Thank you.

[The prepared statement of Mr. Kizuka follows:]

PREPARED STATEMENT OF KENNJI KIZUKA

APRIL 6, 2022

Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the subcommittee: On behalf of Human Rights First, I thank you for the opportunity to testify on the Title 42 policy and the need to restore asylum at the southern U.S. border.

Human Rights First is an independent, non-profit advocacy organization that for more than 4 decades has pressed the United States to take a leading role in promoting and defending human rights. The organization was founded in 1978, at a time when the United States was jailing and seeking to deport refugees fleeing repression in El Salvador, Guatemala, Haiti, and the Soviet Union, among other countries. Human Rights First worked with Members of Congress to pass the landmark 1980 Refugee Act, which established a legal framework for refugee protection. In our research and advocacy, we work with asylum seekers, attorneys, and other human rights organizations to ensure U.S. compliance with domestic refugee law and international treaty obligations, and our refugee representation team recruits and trains lawyers to provide pro bono legal representation to asylum seekers. Over the years, Human Rights First has helped thousands of refugees to receive asylum.

BACKGROUND

I am the associate director of research and analysis for refugee protection at Human Rights First. Over the past decade, I have worked in the United States, Mexico, and other countries to monitor and defend the human rights of refugees. I graduated from the U.C. Berkeley School of Law, order of the coif, and hold a Masters' degree in public policy from Princeton's School of Public and International Affairs. I was a judicial clerk for the Honorable Rosemary S. Pooler on the U.S. Court of Appeals for the Second Circuit. I currently serve as a member of the Human Rights Watch advisory committee on children's rights.

I first joined Human Rights First as an Immigrant Justice Corps legal fellow to represent asylum seekers before the asylum office and immigration court. Subsequently, I have led Human Rights First's efforts to document the impact of Trump and Biden administration policies at the southern U.S. border that violate U.S. refugee law and treaty obligations and return people to danger.

Since the Trump administration issued the first Title 42 order in March 2020 to block and expel people seeking safety in the United States without access to the U.S. asylum system, my colleagues at Human Rights First¹ and I have tracked the devastating human toll of this illegal policy. We have spoken with hundreds of asylum seekers, attorneys, and human rights monitors and published more than a dozen reports and research updates, including with partner organizations, that document the grave human rights violations caused by the Title 42 policy during both the Trump and Biden administrations: March 2022, February 2022, January 2022, December 2021, November 2021 (with Florence Immigrant and Refugee Rights Project), October 2021, August 2021, July 2021 (with Hope Border Institute), June 2021, May 2021 (with RAICES and Interfaith Welcome Coalition), April 2021 (with Al Otro Lado and Haitian Bridge Alliance), December 2020, and May 2020.

This research has identified nearly 10,000 reports of kidnapping, torture, rape and other brutal attacks on asylum seekers and migrants blocked in or expelled to Mexico by the U.S. Government under the Title 42 policy during the Biden administration alone.

On behalf of Human Rights First, I have also documented and tracked the human rights catastrophe caused by the so-called "Migrant Protection Protocols" under

¹ Allison Perlin, Ana Ortega Villegas, Julia Neusner, Lamisse Abdel Rahman, Martha Arreola, Miguel Pineda, and Rebecca Gendelman have also conducted interviews on behalf of Human Rights First with people turned away to danger due to Title 42.

which tens of thousands of asylum seekers and migrants have been forced to remain in Mexico facing similar targeted attacks as they wait for U.S. immigration court hearings.

THE TITLE 42 POLICY'S DEMISE IS A WELCOME AND NECESSARY STEP TOWARD A FAIRER, TIMELIER, AND LESS-TRAUMATIZING ASYLUM PROCESS

Human Rights First welcomes the Biden administration's announcement that the U.S. Department of Homeland Security (DHS) will terminate its use of the Title 42 policy to illegally block people from seeking asylum at U.S. ports of entry and halt expulsions of asylum seekers to grave danger. The Title 42 policy reportedly came straight from the xenophobic playbook of Stephen Miller—painting migrants as spreaders of disease as a pretext to block refugees and immigrants from the United States. But the Title 42 policy never had any reasonable basis as a public health response to the pandemic, as epidemiologists, medical experts, and the Centers for Disease Control and Prevention's own senior scientists repeatedly affirmed.

For more than 2 years, under both the Trump and Biden administrations, the policy has been used to evade U.S. immigration and refugee law. Citing Title 42, DHS has blocked refugees from Belarus, Cameroon, Colombia, Cuba, Ghana, Guatemala, El Salvador, Ethiopia, Honduras, Haiti, Jamaica, Mexico, Nicaragua, Nigeria, Russia, Ukraine, Venezuela, and other countries from seeking protection at U.S. ports of entry. With asylum largely unavailable at ports of entry, many asylum seekers facing grave dangers in Mexico are pushed to undertake border crossings between ports—fueling disorder and exposing them to added harms. At the same time, DHS has used Title 42 to expel refugees, who are overwhelmingly Black, Brown, and Indigenous, returning them to systematic human rights violations in Mexico and to the countries of persecution they fled.

Ending the Title 42 policy is a necessary first step toward upholding the Biden administration's commitment to establish a more fair, orderly, and humane immigration system. We remain, however, concerned that the policy's continued implementation through May 23 violates U.S. refugee law and will continue to turn away yet more refugees to grave harm.

During the implementation of the Title 42 policy's termination, DHS must begin accepting requests for asylum at U.S. ports of entry along the Southern Border, as required by U.S. law, and swiftly ramp up capacity. Many asylum seekers stranded in Mexico due to Title 42 have been waiting months or even years for an opportunity to seek protection in the United States at a port of entry. Every day that they are forced to wait in danger in Mexico is another day that they could be kidnapped, raped, or murdered.

DHS can provide exemptions under Title 42 to asylum seekers, as the welcome reception of many Ukrainians currently arriving at the Southern Border confirms. Yet, the administration has chosen to continue to block refugees primarily from Africa, the Americas, and the Caribbean from applying for asylum at ports of entry. Racially discriminatory access to asylum violates the fundamental principle of equal protection under law, as well as U.S. treaty obligations. Asylum seekers should be welcomed in the United States whether they are from Ukraine or Congo, Cuba, Haiti, Honduras, Nicaragua, Venezuela, or elsewhere.

We also urge the administration to immediately halt expulsions and to instead process asylum seekers under U.S. asylum law, which bars the return of asylum seekers to countries of persecution without an opportunity to apply for refugee protection in the United States and prohibits transfer to a third country where a person would face persecution or torture. Last month, the D.C. Circuit Court of Appeals found the Title 42 policy likely illegal and ruled that the U.S. Government "cannot expel [asylum seekers] to places where they will be persecuted or tortured." We are deeply concerned that the administration will continue to use Title 42 to expel asylum seekers to danger, including by returning Haitians to escalating insecurity in Haiti. Expulsions that would return individuals to persecution or torture violate U.S. refugee law and binding international treaty obligations.

As the administration restarts asylum at the border, it should halt the use of the flawed expedited removal process, avoid sending asylum seekers to immigration detention, and instead strengthen coordination with and support to NGO partners providing crucial humanitarian assistance at the border and case support services in destination communities.

Human Rights First has previously published its recommendations to the Biden administration to restore U.S. compliance with refugee law and create a fair, timely, and less-traumatizing asylum process, which are also summarized at the end of this testimony.

TO SAFEGUARD LIVES AND RESTORE ORDER, DHS SHOULD BEGIN ACCEPTING REQUESTS
FOR ASYLUM AT PORTS OF ENTRY ON THE SOUTHERN U.S. BORDER

For years, DHS has illegally turned back refugees attempting to approach U.S. ports of entry on the Southern Border to request asylum. Since March 2020, Customs and Border Protection (CBP) officers have cited the Title 42 policy to stop nearly all asylum seekers at the international border line before they can reach a port of entry to request protection, telling them asylum is not available in the United States due to the pandemic. Many people who would have sought asylum at a port of entry, including Cubans, Haitians, Nicaraguans, and Venezuelans who historically arrived through ports of entry, have been pushed to make dangerous crossings elsewhere, driving up the number of encounters between ports of entry.

Blocking asylum at ports of entry further exposes asylum seekers stranded in Mexico to abduction, torture, and extortion by the cartels that target them. Indeed, our research has found that some organized criminal organizations are working to actively prevent asylum seekers from approaching ports of entry, as the restoration of port of entry processing of asylum threatens the cartels' control and extortion efforts. 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."

U.S. ports of entry have unused capacity to process asylum seekers currently arriving at the border. Since August 2021, processing at Southern Border ports of inadmissible individuals, including asylum seekers, has dropped by 49 percent (from 13,326 to 6,841 in February 2022). These numbers remain well below monthly processing during the Obama administration when CBP processed 20,524 people at Southern Border ports of entry in October 2016, for example. Since then, ports of entry have received significant Congressional funding, including most recently through the fiscal year 2021 and 2022 appropriations, to upgrade and expand capacity (both in infrastructure and staffing) but have processed far fewer individuals than in 2016. The administration should leverage this capacity at U.S. ports of entry to immediately begin processing asylum claims during the implementation of the Title 42 termination.

Blocking Asylum at Ports of Entry Endangers Lives

In our research we have identified many cases in which asylum seekers blocked from asylum at ports of entry due to Title 42 have been subjected to harm amounting to persecution and torture on return to Mexico. DHS officers are also turning away asylum seekers trying to request protection at ports of entry who have previously been kidnapped and attacked in Mexico.

In one shocking incident, CBP officers turned away a Guatemalan man who was covered in blood from having been tortured by the cartel that abducted him as he tried to request protection at the international bridge leading to the Laredo port of entry. The man had been held for days and repeatedly brutally beaten by cartel members because he could not provide the phone number of a family member in the United States to extort. The man told me, "If I return to my country, I'll be killed. If I stay here, I'll be killed. I want an opportunity, for someone to consider my case."

When asylum seekers have arrived at a port of entry to request protection, CBP officers have turned them back to Mexico without allowing them to apply for asylum or referring them for a fear screening required under U.S. law for expedited removals. For instance, a young LGBT man fleeing political persecution in Venezuela managed to approach the Laredo port of entry to request asylum in the company of an American friend. He told me that CBP officers at the port refused to process his request for asylum and forced him back across the international bridge into Nuevo Laredo even though the day before the young man and his friend had been kidnapped and extorted as they searched for a place to stay for the night.

Even though DHS has refused to accept requests for asylum at ports of entry under the Title 42 policy and U.S. law guarantees the right to seek asylum at or after crossing the border, some Border Patrol agents falsely instruct refugees to seek protection at ports of entry. A Guatemalan woman was raped in Tijuana after she followed the instructions of Border Patrol agents to present herself "legally" at a port of entry. The woman, who was fleeing severe domestic violence with her 6-year-old daughter, had initially crossed the border near Mexicali and was expelled to Mexico under Title 42. The woman was attacked after the family relocated to Tijuana to attempt to seek asylum at the San Ysidro port of entry, where she found that DHS had closed the port to asylum seekers due to Title 42.

Asylum Seekers Pushed to Undertake Dangerous Crossings Between Ports of Entry

DHS's failure to comply with asylum law at ports of entry under the Title 42 policy has pushed asylum seekers to undertake increasingly dangerous border crossings away from ports. Analysis of Government data by Human Rights First and 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. 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 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 fiscal year 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, including Title 42, the overwhelming majority have crossed into the United States between ports. In fiscal year 2022 (through February 2022), with DHS effectively shuttering access to asylum at U.S. ports of entry, just 0.2 percent of Cubans and 2.2 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 Southern Border ports has followed a similar downward trend, declining from 32 and 56 percent, respectively, in fiscal year 2020, to just 0.2 percent in fiscal year 2022.²

The rise in crossings of the Southern Border away from ports of entry due to Title 42 has in turn led to increasing fatalities. 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. For instance, in January 2022, a 7-year-old Venezuelan girl drowned in the Rio Grande attempting to enter the United States with her mother near Ciudad Acuña. In March 2022, María Angélica, a 4-year-old Nicaraguan girl, drowned attempting to cross the Rio Grande. The child was swept away by a strong current, according to her mother.

To safeguard the lives of asylum seekers stranded in Mexico and to restore order at the border, DHS should begin to process asylum seekers at ports of entry as it prepares for the full termination of the Title 42 policy.

THE BIDEN ADMINISTRATION MUST HALT TITLE 42 EXPULSIONS THAT RETURN ASYLUM SEEKERS TO PERSECUTION AND FUEL INSECURITY

The Title 42 policy has fueled thousands of heinous targeted attacks against people seeking refuge in the United States who were turned away by DHS without an opportunity to apply for U.S. asylum or provided a fear screening required by Congress for expedited removals. Every day that DHS uses the Title 42 policy to block and expel people seeking refuge in the United States to places where they would face persecution and torture—in violation of the D.C. Circuit's ruling—the immense suffering this illegal policy has caused will continue to escalate.

Between January 21, 2021 and March 15, 2022, Human Rights First tracked at least 9,886 reports of murder, torture, rape, kidnapping, and other violent attacks on people blocked in or expelled to Mexico under the Biden administration's use of the Title 42 policy. This tally includes incidents published in media, interviews of asylum seekers carried out by Human Rights First, information supplied by attorneys and humanitarian services providers at the border, as well as reports catalogued through an on-going electronic survey conducted by the organization Al Otro Lado. However, these nearly 10,000 reported attacks are likely just a small fraction of the true scale of violence, as the vast majority of people expelled or blocked from protection due to Title 42 have not spoken with a human rights investigator, attorney, or journalist.

Our research over the past 2 years confirms that the Mexican cartels that exercise considerable territorial authority across an expanding area of Mexico have adapted their criminal enterprises to target and profit from kidnapping, torturing, and extorting asylum seekers and migrants stranded in Mexico due to Title 42. They are viewed by the cartels as obvious and easy prey due to their nationality, race, gender, sexual orientation, and perceived ties to U.S. family members, among other characteristics.

²DHS has not made data on Nicaraguans and Venezuelans arriving at ports of entry prior to fiscal year 2020 publicly available, but reports on asylum 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.

Murder

At least one person subjected to Title 42—a cognitively impaired 15-year-old boy with the functional development of a 5-year-old child—was murdered after being expelled by DHS to Mexico. His mutilated body was discovered after the boy fled alone across the border from Reynosa. According to a declaration filed by a lawyer assisting the boy's family after his killing, he was likely murdered for failing to pay a “fee” to one of the criminal groups that extort, kidnap, and attack people who attempt to cross the border without their permission.

Two asylum seekers placed in the similarly dangerous “Migrant Protection Protocols” are also known to have been murdered after DHS returned them to Mexico, including a 19-year-old Cuban asylum seeker and an asylum-seeking father from El Salvador.

Targeted Kidnappings and Attacks

People expelled under Title 42 to dangerous areas of the border region in Mexico are targeted for kidnapping, rape, torture, and other brutal attacks by the cartels and other organized criminal groups that prey on asylum seekers stranded in Mexico due to U.S. border policies. Our research on Title 42 has identified many reports of asylum seekers kidnapped or attacked in the moments after DHS officers returned them to Mexico through a U.S. port of entry. DHS has also expelled asylum seekers who were previously kidnapped or attacked in Mexico, thereby returning them to grave risk of further harm.

A 4-year-old Honduran boy and his pregnant asylum-seeking mother were abducted immediately after DHS expelled them to highly dangerous Nuevo Laredo. The terrified little boy was sick and not eating from the ordeal. His aunt, herself a refugee granted asylum who lives in Tennessee, told me the cartel that had abducted her family was threatening to harm them if she failed to pay a \$20,000 ransom. After the FBI failed to answer her requests for help, she managed to cobble together enough money from her savings and donations from other members of her church to secure the release of her nephew and sister.

After DHS turned away a 29-year-old Venezuelan asylum seeker at the Hidalgo port of entry, she was abducted and raped. A man impersonating a Mexican immigration official near the port told the woman he would help her register on an asylum wait list but instead took her to a rundown hotel where he held her against her will, threatened her at knifepoint, and sexually assaulted her.

DHS used Title 42 to expel to Mexico an 18-year-old Nicaraguan political dissident who had twice been kidnapped there, leaving him stranded in danger. After the second kidnapping in the border city of Nogales, the young man managed to escape his abductors and fled across the border to request asylum in the United States. But DHS officers expelled him back to danger in Mexico using Title 42.

A Salvadoran asylum seeker was kidnapped along with her husband and their 8- and 12-year-old children almost immediately following their expulsion by DHS in the middle of the night to Mexico. They had crossed the border near Reynosa to seek protection in the United States after fleeing death threats by the gang that had brutally attacked the woman and her husband in El Salvador. Finally free from captivity, but still stranded in danger in Mexico, after 20 terrifying days locked in a storage room by men who repeatedly threatened to rape her, the woman told my colleague, “[w]e cannot go back to El Salvador, and we cannot stay here. Why won't the United States let us ask for asylum?”

Widespread Anti-Black Brutality

Black asylum seekers blocked in or expelled to Mexico under Title 42 have faced severe dangers with many reports of targeted anti-Black violence and discrimination, including by Mexican authorities.

An Afro-Honduran asylum seeker who had been expelled to Ciudad Acuña by DHS told me that Mexican state police had beaten him so severely that he is now blind in one eye—a fact which was evident from his completely clouded pupil. The officers, he said, had hit him in the head with a tree branch. Unable to return home and with no way to seek asylum in the United States due to Title 42, he did not attempt to report the incident to authorities for fear of further retaliation.

In another incident we documented, a man with a baton severely beat a Haitian asylum seeker in Tijuana in front of Mexican police, who did not intervene. Another Haitian asylum seeker who witnessed the incident told a Human Rights First researcher, “[w]e felt like we couldn't say anything because we don't have any power here and we were afraid for our own lives. Haitians are targeted here . . . the police don't care. We have to protect ourselves and look out for one another.”

Our analysis of survey data collected by *Al Otro Lado* found that 61 percent of Haitian asylum seekers blocked from U.S. asylum protections were victims of crime

while stranded in Mexico and that 1 in 5 Haitian asylum seekers in the northern Mexican border region were victims of abuse by the police, including beatings, extortion, and threats.

Violence Against LGBTQ Asylum Seekers

LGBTQ asylum seekers stranded in Mexico who are unable to seek U.S. protection due to Title 42 have frequently faced attacks and discrimination in Mexico due to their sexual orientation and/or gender identity—as well as their race, nationality, and other characteristics. Our analysis of the asylum seeker survey conducted by Al Otro Lado shows that 89 percent of LGBTQ asylum seekers were the victim of an attack or attempted attack in the prior month.

Among the incidents of anti-LGBTQ violence identified in our research is a lesbian asylum seeker from Central America who was raped and repeatedly subjected to homophobic attacks in Mexico. When I met her in Ciudad Acuña, across the border from Del Rio, Texas, her arm was broken and bruises were visible on her face. Unable to seek asylum in the United States due to Title 42, she and her partner were sleeping on the streets. A group of men had recently attacked and beaten her as she sold sweets to passersby to try to survive.

A transgender Honduran asylum seeker was kidnapped and raped in Piedras Negras after DHS used Title 42 to repeatedly expel her to Mexico when she attempted to request protection in the United States. The woman was forced to escape the kidnappers by jumping out of a window, falling into a cactus that left painful needles stuck all over her body. The woman told my colleague at Human Rights First that she had fled Honduras after the gang that murdered and beheaded her brother also attacked her because of her gender identity.

Horrific Harm to Children, Family Separations

The Title 42 policy has inflicted horrific harms on children blocked from safety in the United States. Children expelled to Mexico under Title 42 have been kidnapped, raped, and assaulted. Many children blocked from protection due to Title 42 have been forced to live with their families in dangerous informal tent encampments, including in Tijuana and Reynosa, at the mercy of cartels and gangs that target asylum seekers stranded there. On visits to these squalid camps, we have repeatedly received reports of kidnappings and rapes of children.

A 13-year-old Honduran girl, who had been raped in Mexico and threatened by the attacker after reporting him to the police, was expelled by DHS back to Mexico with her asylum-seeking mother. Stranded in danger and unable to seek protection due to Title 42, the girl's mother told my colleague, "My daughter is afraid to go out. She can't go to school. She feels like [the man who raped her] is always watching her."

Armed men kidnapped a 7-year-old girl and her asylum-seeking mother just blocks from the port of entry in Ciudad Juárez after DHS expelled them there under Title 42. With no space available in local shelters, the family had been searching for a place to sleep for the night when they were abducted. Held captive for 2 months in a house with dozens of other kidnapped women and children, the family survived on meagre rations of potatoes and eggs. When we met them at a Juárez migrant shelter after they managed to escape, the girl's mother told a Human Rights First researcher they were hardly sleeping with nightmares from the trauma they had suffered.

Expelling children to a place where they were previously harmed is also deeply traumatizing. A 14-year-old Cuban boy chewed off his fingernails from stress and anxiety after DHS expelled him and his grandmother to Mexico under Title 42. There they had been kidnapped and forced to watch helplessly as their abductors murdered another kidnapping victim.

Title 42 has also driven family separations. In just the first few months of 2021, more than 2,000 children crossed into the United States alone after DHS expelled them to Mexico with their families. Some separated children crossed alone because their parents had been kidnapped. At a migrant shelter in Mexico, I met a mother desperate to reunite with her 8-year-old daughter. After DHS used Title 42 to expel the family, the woman was kidnapped in Reynosa as she searched for something to feed her daughter. By the time the woman was finally released, the girl had crossed by herself into the United States in search of safety. Other families blocked from protection due to Title 42 have made the impossible decision to send their children across the border to try to protect them from this horrific violence. A Honduran woman in the Tijuana encampment told me that she felt she had no choice but to send her daughters alone to the United States for fear they would be raped by men who had been threatening to assault them.

Complicity by Mexican Authorities

In our research, we have found that Mexican migration officials, police, military, and other authorities are frequently complicit in, if not directly responsible for, kidnappings and other violence against people turned back to or stranded in Mexico.

A Honduran asylum-seeking woman and other migrant women were extorted, raped, and threatened by Mexican migration officers immediately after DHS expelled them to Mexico. The officers demanded money from the woman and other people with whom she had been expelled and threatened to deport them. The officers locked the women in the group in a separate room, forced them to remove their clothes, and raped them. The woman told my colleague: “We did what they asked of us out of fear because they threatened to turn us over to a human trafficking network.”

Mexican police kidnapped 23 Nicaraguans who had been attempting to seek asylum in the United States at a checkpoint near Reynosa and handed the group over to a Mexican cartel that extorted their relatives for ransom. I learned of this mass kidnapping at a shelter in Reynosa from two Nicaraguan women who told me that they had witnessed the kidnapping and that some of the group, including their partners, remained in the hands of the cartel. They were deeply concerned for the safety of their loved ones and friends as at least one of the kidnapped asylum seekers had gone missing even though his family had paid ransom to try to secure his release.

After DHS expelled a Central American asylum seeker to Tijuana, Mexican immigration agents turned him over to a cartel that held him hostage in horrendous conditions for days. The man, who was fleeing threats from the gang that had murdered his father, reported to a colleague that the kidnappers beat other migrants in front of him, killing one man. He was only released after his family paid ransom.

Fueling Criminal Cartels, Undermining Security

The Title 42 policy has not only been a boon to the brutal criminal cartels in Mexico that target asylum seekers turned back by DHS for kidnapping, torture, and extortion, but has reduced DHS’s ability to collect information on these cartels that are increasingly fighting to exercise even greater control over border regions. The power of these cartels in the Mexican border region was reaffirmed last month, when a cartel that exercises significant control in Nuevo Laredo exchanged gunfire with Mexican authorities across the city, detonated grenades, and set 18-wheeler trucks ablaze on major highways, causing the U.S. Government to shut down international bridges, temporarily close the U.S. consulate, and advise U.S. citizens to shelter in place.

According to DHS officials, Title 42 undermines the agency’s ability to investigate cartel activity. A June 2021 Government Accountability Office report confirms that Border Patrol officials have concluded that rapid “expulsions under Title 42 have negatively affected enforcement by reducing opportunities to gather intelligence.” Because DHS has used Title 42 to quickly expel individuals without any legal process in most 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.

Expulsions to Danger in Haiti, Disparate Impact on Black Asylum Seekers

DHS has used Title 42 to block Haitian families and adults at the Southern Border from U.S. refugee protection, subjected them to abhorrent abuse in CBP custody and immigration detention, and expelled thousands to the country they fled without access to the U.S. asylum system. Since March 2020, more than 17,000 Haitians have been turned away by DHS under Title 42, many of them expelled directly to escalating insecurity and political instability in Haiti. A March 2022 Human Rights Watch report on Haiti found that “[t]he security situation in Haiti has dramatically deteriorated in recent years” with powerful gangs exercising control over so-called “lawless zones” in which over 1 million people live at the mercy of the gangs, which “reportedly use sexual violence to terrorize and control neighborhoods.” U.S. Department of State legal advisor and former Yale Law School Dean, Harold Koh, resigned from the Department after concluding that the use of Title 42 to expel people seeking protection to Haiti is “illegal and inhumane.” Daniel Foote, the former U.S. Special Envoy for Haiti, also resigned his post, denouncing Title 42 expulsions to Haiti as “inhumane [and] counterproductive.”

DHS’s treatment of Haitians has exposed the disparate impact of Title 42 on Black asylum seekers. Haitians encountered by DHS at the Southern Border are 34 times more likely than Canadians, Romanians, Russians, and Ukrainians (collectively) to be subjected to the Title 42 policy (26.7 percent versus 0.78 percent) than to be processed under Title 8 U.S. immigration authority, based on my analysis of the Government’s data on Southern Border encounters between March 2020 and

February 2022. Civil and human rights leaders have noted that the Title 42 policy is “infused with anti-Black racism” and has been used “to attempt to deter people, particularly Black migrants, from seeking refuge at the border.”

CONTINUING THE TITLE 42 POLICY WOULD FURTHER UNDERMINE U.S. LEADERSHIP IN
WELCOMING REFUGEES

The Title 42 policy has undermined U.S. credibility, global standing, and respect for international law. At a time when the U.N. Refugee Agency has reported that the number of refugees displaced around the world is “the highest ever seen,” the U.S. Government cannot credibly encourage other countries to welcome and host the vast majority of the world’s refugees while simultaneously turning away asylum seekers at our borders.

Many countries are providing refuge to people fleeing persecution, conflict, and disaster. In a single month, more than 2.3 million Ukrainians have arrived in Poland, which is more than double the number of unique individuals encountered by DHS at the U.S. Southern Border in all of fiscal year 2021. UNHCR estimates that Colombia, whose total population is less than one-sixth that of the United States, is hosting 2.4 million displaced Venezuelans. More than 1.5 million refugees reside in Uganda, making it one of the top 5 refugee-hosting countries. Turkey hosts the largest refugee population in the world. The proportion of refugees to the total population in Turkey is 10 times higher than the United States. By contrast, in the United States refugees and asylum seekers make up less than one-half of 1 percent of the population.

The United States has had capacity to manage arrivals of people seeking refuge here with the Title 42 policy in place, and we have the capacity to welcome people seeking asylum who arrive after the policy ends. But for months, there has been predictable fear-mongering with dangerous rhetoric equating people seeking refuge in the United States as an “invasion.” Already politicians and pundits are claiming that the “flood gates” are open and that there will be a “surge,” an “unstoppable wave,” or a “tsunami” of arrivals. This dehumanizing language falsely paints families and individuals seeking asylum in the United States as a mob poised to wreck the United States.

But political dissidents and LGBTQ people escaping repression are not an “invasion.” Families fleeing for their lives from deadly gangs and cartels that dominate their countries are not a “surge” or a “wave.” Journalists and activists trying to carry on their work in safety are not a “flood” or a “tsunami.”

If Title 42 is intended to deter migration, as the calls for its retention suggest, then it is a failure by this metric. For more than 2 years, the Title 42 policy has not stopped refugees forced to leave their homes in search of safety for themselves and their families. Refugees continue to arrive at the Southern Border, including people who were previously expelled under Title 42.

Last week, at a border shelter, a Human Rights First researcher interviewed a Haitian political activist forced to flee Haiti with his wife after receiving death threats for his work. In December 2021, they tried to seek asylum in the United States but were instead expelled in shackles on a flight to Haiti after enduring days of horrendous conditions in CBP custody. Because of continued death threats, the couple were forced to flee Haiti a second time. Now they are stranded in Tijuana, sleeping in a tent, hoping to attempt to request protection in the United States. The man said, “I’m really, really scared because, if I get sent to Haiti again, I’ll be dead.”

Extending the Title 42 policy for another 2 months or another 2 years will not, and cannot, stop refugee displacement, and it will not stop the arrival of asylum seekers at the border. Its continued use will only return yet more people who are running for their lives and hoping to find refuge in the United States to death, torture, rape, abduction, and other egregious human rights violations, generate further disorder, and exacerbate insecurity at the border.

To safeguard lives, re-establish an orderly asylum process, including at ports of entry, and comply with U.S. refugee law and treaty obligations, the United States must completely and permanently end the terror of the Title 42 policy.

RECOMMENDATIONS

Congress should exercise its oversight authority, while also providing appropriate appropriations, to ensure compliance with U.S. refugee law and treaty obligations in the processing of asylum claims and treatment of people seeking refuge in the United States. Specifically, Congress should confirm that:

- the Title 42 policy is brought to a swift and final end;
- the asylum processes adopted by Congress through the Refugee Act and subsequent legislation restart along the entire border, including at ports of entry; and

- people seeking refuge in the United States are not expelled to persecution or torture in violation of U.S. law and treaty obligations.

In addition, Congress should:

- reject any attempt to write the dangerous and discriminatory Title 42 policy into U.S. law;
- adopt a Refugee Protection Act to modernize U.S. asylum processes and bolster adherence to international refugee laws and norms;
- ensure that asylum seekers arriving at or after crossing the border are processed safely within the United States—not sent to unsafe third countries—and permitted to stay with families and in communities as their cases are decided—not jailed in immigration detention centers; and
- direct and fund a humanitarian response to refugee arrivals at the border, including support for and coordination with non-profit service providers at the border and in destination communities.

Chairwoman BARRAGÁN. Thank you for your testimony. I now will recognize Dr. Richards to summarize your statement for 5 minutes.

STATEMENT OF ADAM RICHARDS, ASSOCIATE PROFESSOR OF GLOBAL HEALTH AND MEDICINE, MILKEN INSTITUTE SCHOOL OF PUBLIC HEALTH, THE GEORGE WASHINGTON UNIVERSITY

Dr. RICHARDS. Thank you for the opportunity to speak here today to bring the public health and medical perspective regarding the impact of Title 42 expulsions. My name is Adam Richards, and I am an associate professor of Global Health and Medicine at the George Washington University and a member of Physicians for Human Rights Board of Directors.

So, as a physician, a public health professor, researcher, and practitioner, I know with intimate knowledge the devastating effects of COVID-19. Last year, I worked in a COVID isolation and quarantine unit at the center of epidemic in Los Angeles and saw the death and destruction from the novel coronavirus. I personally lost both patients and colleagues to COVID. Even for those who survive, COVID takes a toll on our bodies and on our communities.

Here in the District of Columbia, I work in a COVID recovery clinic and I take care of people with long-COVID. They are exhausted but they can't sleep. They have chronic headaches, shortness of breath, and difficulty concentrating. They struggle to work and to take care of their families. I take COVID-19 seriously and I want us as a country to do what we can to reduce our risk of infection, death, and disability.

However, expelling asylum seekers under Title 42 has not done anything to protect us from COVID. While PHR welcomes the CDC's recently announced plan to rescind Title 42 order effective May 23, the fact remains that public health should never have been invoked to further a political decision to block people from seeking asylum.

There is wide-spread scientific consensus that there is no public health justification for Title 42. As Dr. Fauci stated, COVID-19 transmission, "is not driven by immigrants." Expelling migrants is not the solution to an outbreak. A perspective article, last week's *New England Journal of Medicine*, also applies a scientific lens to Title 42 expulsions as completely lacking in epidemiological evidence and not reflecting public health best practice.

The U.S. Government can implement border processing safely. I am part of a national group of physicians and public health experts that has sent a series of letters to both the Trump and to the Biden administrations to repeatedly explain that Title 42 expulsions do not protect public health and to offer, instead, common-sense, evidence-based, rights-respecting recommendations for the safe processing of people who arrive at the U.S.-Mexico border.

We have strategies to drive the risk of COVID-19 to near zero with evidence-based public health tools. You know these—masks, social distancing, testing, and vaccines—to safely process asylum seekers at the border and ensure the risk to public health in the United States is close to non-existent.

However, threats to the health of asylum seekers who are prevented by Title 42 from crossing the border are very real. I heard these accounts first-hand in Tijuana, Mexico from asylum seekers who courageously described how they were extorted for money and exposed to physical and sexual violence. They shared how conditions on the border took a tremendous toll on their physical and mental health. For additional stories on the border, I suggest you read the report from July 2021 by a team of PHR researchers who visited Tijuana and Ciudad Juárez to document the health and human rights consequences of Title 42.

But if you aren't moved by stories and prefer quantitative studies with numbers, then it is worth highlighting again the work that Kennji Kizuka and his colleagues at Human Rights First have done that tracked more than, let's see, 10, 20, 30, 9,866 reports of kidnappings and other violent attacks against migrants and asylum seekers blocked in Mexico or expelled to Mexico since Biden took office. That is nearly 10,000 violent attacks that could have been prevented by ending Title 42.

You may be familiar with the historical legacy of using public health as a pretext to justify racist and xenophobic U.S. immigration policies. In the past, it was typhus, trachoma, and HIV, though the ever-shifting medical labels misused to exclude immigrants also went beyond so-called contagions to include mental health disorders, chronic disability, or even a poor physique. Today, the medical excuse misused to exclude is COVID.

These exclusionary practices are not now, and were not ever, based on sound public health principles. We, in medicine and public health often pretend that we are immune from the pernicious plagues of racism, xenophobia, and hate. Tragically, these pathologies continue to propagate within our ranks. Not anymore, not in our name. Tools exist to calibrate mitigation procedures to safely process migrants in response to local COVID conditions. There is no public health justification for Title 42. Thank you.

[The prepared statement of Dr. Richards follows:]

PREPARED STATEMENT OF ADAM RICHARDS

APRIL 6, 2022

Thank you for the opportunity to speak here today and to bring a public health and medical perspective regarding the impact of Title 42 expulsions. My name is Adam Richards, and I am an associate professor of global health and medicine at The George Washington University and a member of Physicians for Human Rights' (PHR) Board of Directors.

As a physician and public health professor, researcher, and practitioner, I have an intimate knowledge of the devastating effects of COVID-19. Last year, I worked in a COVID-19 isolation and quarantine center in Los Angeles when the city was at the epicenter of transmission and death from the novel coronavirus. I personally lost both patients and colleagues to COVID-19. Even for those who survive, COVID-19 takes a toll on our bodies and on our communities. Here in Washington, DC, I work in a COVID-19 recovery clinic, caring for patients with long COVID who continue to suffer physical and emotional consequences of the virus. They are exhausted but they can't sleep, they have chronic headaches, shortness of breath, and difficulty concentrating; they struggle to work and to take care of their families. I take COVID-19 seriously and I want us as a country to do what we can to reduce our risk of infection, death, and disability.

However, expelling asylum seekers under Title 42 has not done anything to protect us from COVID.

While PHR welcomes the Centers for Disease Control and Prevention's (CDC) recently-announced plan to rescind the Title 42 order effective May 23, the fact remains that public health should never have been invoked to further a political decision to block people from seeking asylum.

There is wide-spread scientific consensus that there is no public health justification for Title 42 expulsions. As Dr. Anthony Fauci stated, COVID-19 transmission "is not driven by immigrants," and "expelling [migrants] is not the solution to an outbreak." A Perspective article published last week in the leading American medical journal the *New England Journal of Medicine* also applies a scientific lens to Title 42 expulsions as completely lacking in epidemiological evidence and not reflecting public health best practice.

The U.S. Government can implement border processing safely. I am part of a national group of physicians and public health experts which has sent a series of letters to the Trump and Biden administrations to repeatedly explain that Title 42 expulsions do not protect public health, and to offer instead common-sense, evidence-based, rights-respecting recommendations for the safe processing of people who arrive at the U.S.-Mexico border.

As with the processing of people admitted from the "Remain in Mexico" policy, the U.S. Government should coordinate and share resources and information with Mexican public health authorities, the Federal Emergency Management Agency (FEMA), as well as with international organizations like the International Organization for Migration and the U.N. Refugee Agency and with U.S. and Mexican civil society organizations. It is critical to use masks, social distancing, and hand hygiene at border posts and during processing, while minimizing delays that keep people stuck in congregate settings and maximizing ventilation. The Government can repurpose larger locations appropriate for non-congregate processing to scale up reception capacities, should arrivals increase or shift. Testing capacity can be enhanced with mobile testing units. The Government can expand quarantine capacity and isolation capacity through the use of motels, mobile units, or other individualized accommodations for those who need to quarantine, under the jurisdiction of CDC or local health authorities. During transportation, masks should be used as well as well-ventilated, larger capacity vehicles to allow sufficient distancing, and frequently-touched surfaces should be cleaned and disinfected. People should be given health screenings and provided with health information and education in their primary language. PHR advocates for vaccines to be free, fair, and accessible and for equitable vaccine allocation and distribution that prioritizes marginalized communities, including all migrants, whether refugees, asylum seekers, or unauthorized immigrants.

We have strategies to drive the risk of COVID-19 to near zero, with evidence-based public health tools—masks, social distancing, vaccines, and testing—to safely process asylum seekers at the border and ensure the risk to public health in the United States is close to nonexistent. However, threats to the health of asylum seekers who are prevented by Title 42 from crossing the border are very real. I heard these accounts first-hand in Tijuana, Mexico from asylum seekers who courageously described how they were extorted for money and exposed to physical and sexual violence; they shared how conditions on the border took a tremendous toll on their physical and mental health.

A team of PHR researchers visited Tijuana and Ciudad Juárez last year to document the health and human rights consequences of the Title 42 order. The July 2021 research report documented family separations, abusive actions by U.S. and Mexico government officials, and acute medical and psychological impacts on asylum-seeking children and adults. Families described being held for days in crowded border facilities and denied emergency medical care in U.S. detention, including for sick children. During a pandemic, the U.S. Government is detaining migrants in crowded, inhumane, and unsafe conditions for days before expelling them, and is de-

nying children necessary emergency medical care. The psychological effects of expulsions and family separation are profound. Of the 26 participants who were administered validated screening tools by PHR, 25 (96 percent) screened positive for at least one mental health diagnosis; 25 (96 percent) screened positive for at least two disorders; and 23 (88 percent) screened positive for post-traumatic stress disorder (PTSD), anxiety, and depression. Of the 26 who were administered psychological screening tools by the research team, 23 people (88 percent) screened positive for PTSD related to events leading to the separation of their family, 25 (96 percent) screened positive for depression, and 24 (92 percent) screened positive for anxiety. The crowding created by Title 42 expulsions has stretched the Mexican health system to the breaking point. As a clinic coordinator in Tijuana told PHR researchers: “There are more and more people needing help . . . The health care system has collapsed.”

Although the stated justification of the Title 42-based expulsion is to prevent migrants from being held in congregate settings with the attendant risk of COVID-19 transmission, the Government is still placing migrants in congregate settings during the expulsion process. PHR interviews found that every aspect of the expulsion process, including holding people in crowded Customs and Border Protection holding cells for days without testing and then transporting them in crowded buses and planes, increases the risk of spreading and being exposed to COVID-19.

As Kennji Kizuka from Human Rights First (HRF), before me, has stated—but which bears repeating—HRF has tracked more than 9,866 reports of kidnappings and other violent attacks against migrants and asylum seekers blocked in Mexico or expelled to Mexico since President Biden took office. That is nearly 10 thousand violent attacks that could have been prevented by ending Title 42 expulsions. People are caught in an impossible situation, as they are unsafe in their own country, unsafe in Mexico, and yet cannot seek safety in the United States.

During one of my visits to Tijuana, I volunteered in a wound clinic for people living on the streets, where I met people with treatable infections who were prevented from accessing inexpensive and life-saving care. One man’s story in particular illustrates the health conditions and health risks in overburdened Mexican border states. He had a nasty skin infection, for which he’d been unable to receive definitive treatment. His infection progressed to the point that he was at risk for amputation or even losing his life. We explained that he needed to go to the hospital for aggressive wound care and IV antibiotics. He reluctantly agreed, but predicted that they would not admit him: “I have no money and I live on the street; they do not care about people like me.” On the next trip we learned that he had gone to the emergency room but had not been admitted; he was given some oral antibiotic pills and discharged to the street, where he died of his treatable wounds.

Now that I’m in Washington, I conduct medical examinations remotely for people who are unable to enter the United States due to the Title 42 order, including a man in substantial pain, with symptoms indicative of severe gastrointestinal conditions, for which any delay in treatment can result in life-altering complications or even death, and an elderly grandmother who is hard of hearing and almost blind, with severe rheumatoid arthritis and high blood pressure. She is terrified even to step outside her shelter after being kidnapped by cartel members and held for over 2 weeks with limited food and water. Other PHR clinicians have conducted remote evaluations for asylum seekers in Mexico with metastatic breast cancer, pregnancy at high risk for eclampsia with signs of premature labor, peptic and gastric ulcers at risk of perforation, repeated transient ischemic attacks and congestive heart failure, hypoxic brain injury, late-term pregnancy with severe anemia, and seizure disorders.

You may be familiar with the historical legacy of using the pretext of protecting health to justify racist and xenophobic U.S. immigration policies. In the past, it was tuberculosis and then HIV, and today it is COVID. These exclusionary practices are not now, and were not ever, based on public health principles. We in medicine and public health often pretend we are immune from the pernicious plagues of racism, xenophobia, and hate. Tragically, these pathologies continue to propagate within our ranks. Not anymore. There is no public health justification for Title 42 expulsions.

Congress should:

- Direct the Department of Homeland Security (DHS) to prepare facilities and personnel to process asylum seekers along the border, while implementing all necessary public health measures, including:
 - Testing, hand washing, mask wearing, social distancing, and vaccinations;
 - Processing of asylum seekers in well-ventilated, non-congregate settings; and
 - Non-custodial quarantine procedures under the authority of the CDC or local public health authorities;

- Encourage the DHS to partner with civil society and humanitarian aid organizations to further bolster capacity for humane processing;
- Follow and implement the “Public Health Recommendations for Processing Families, Children, and Adults Seeking Asylum or Other Protection at the Border,” published by public health experts, while restoring regular operations and processing along the border;
- Redirect funding away from any policies that may negatively impact the right to seek asylum;
- Propose and pass new legislation to affirm the full range of rights guaranteed to asylum seekers to counteract any executive or departmental policies or directives that effectively restrict individuals’ access to asylum protection; and
- Pursue policies that seek to create a safe environment for asylum seekers to fulfill their long-established legal right to pursue their asylum claims within the protection of the United States, policies that meaningfully guard against re-traumatizing asylum seekers and exposing them to preventable health risks.

Chairwoman BARRAGÁN. Thank you, Dr. Richards, for your testimony. I now will recognize our next witness who is virtual, Sheriff Dannels, to summarize your statement for 5 minutes.

STATEMENT OF MARK DANNELS, SHERIFF, COCHISE COUNTY, ARIZONA

Sheriff DANNELS. Good afternoon, Madam Chair Nanette Barragán, and Ranking Member Clay Higgins, and distinguished Members of this subcommittee. I appreciate the opportunity to address this committee regarding the status of our Southern Border from the aspect of a community/law enforcement perspective. I have served our border communities for 38 years, and prior to that as a member of our military serving in the U.S. Army stationed here on Fort Huachuca within Cochise County.

I have always been a genuine believer in the oath of office to protect our country and now my county as a duly elected sheriff for the last 9 years. I am the current president of the Arizona Sheriff’s Association, chair of the National Sheriff’s Association, Border Security, on the executive board for Western State Sheriffs, and an active member of Southwest Border Sheriffs.

All these associations share four objectives: Public safety, National security, humanitarian, and now health, due to the pandemic. In my submitted brief, I have shared with you an overview of Cochise County and the history of our border. I have personally experienced the good, the bad, the ugly of being a border country. My office has also addressed border-related crimes, smuggling of both illicit drugs, humans, weapons, and cash by our transnational organizations, i.e., criminal cartels.

I am proud of our relationship with our law enforcement partners that serve our communities. To begin, I want to thank our Customs and Border Patrol officers and agents who have worked tirelessly and diligently to protect this great Nation. I want to thank our Governor, Doug Ducey, and our State Congressional members for all their support, the men and women of the Cochise County sheriff’s office for their dedication and commitment to keeping our communities safe, and to my fellow sheriffs that stand united for the rule of law in the protection of their communities. Finally, I want to thank my citizens for their patience and support in a time of crisis and disarray here at our borders.

To best understand my presentation is to understand where we were approximately 18 months ago. My county was one of the safest counties along the Southwest Border based on our collective

efforts in messaging and, yes, enforcement efforts supported by legal consequences. We maintained a 100 percent conviction rate on any drug smuggler within Cochise County. Our border-related encounters were a manageable 400 per month. Yesterday, I got the stats that we are over 7,000. Border-related crimes were minimal at best, and most important, our citizens felt safe with their quality of life being promoted within their home and family.

Currently over the last year, the Southern Border experienced 379 percent increase of encounters, 1.7 million, representing over 160 countries, 180,000 pounds of meth, 10,000 pounds of fentanyl, 86,000 pounds of cocaine, 60 homicide suspects, 488 sexual assault suspects, and 336 weapon violations. Sadly, just in Arizona, over 160 migrant deaths in our southern Arizona.

In February 2022, there was 163,539 encounters with 151,869 being released in our country. Only a little over 11,000 were returned. Additionally, there was 53,464 got-aways and 67 deaths just in the month of February. In my area, we had 22,289 encounters with 21,209 being released and only 995 returned with 7 deaths and 16,000 migrants—excuse me—got-aways.

What is the direct impact on my county? We have seen infrastructure shutdown down here. Mainly what we deal with is the got-aways. We receive between 900 to 1,000 smugglers come to my country at \$1,000 per person to drive them 3 hours to Phoenix, Arizona in Maricopa County. That has created a huge impact. Between July 1 of 2021 and February 2022, \$1.1 million just in border-related crime being booked into my local jail.

A couple personal stories. A citizen in my county driving to her 65th birthday was struck by a 16-year-old smuggler who had three undocumented individuals in the vehicle, drove through a red light at 100 miles an hour, cut the car in half and killed her instantly. Her son drove up in the scene moments later. A home invasion where they broke into an elderly couple's home. They ransacked the home while the couple barricaded themselves in the bedroom.

I will say this, my fellow sheriffs and I tried to partner with this administration to include the President of the United States with high hopes to share a collective message, collective action plan, support the rule of law, prioritize our Southern Border, and provide updates to reference community impacts and concerns, with little to no success.

By allowing our border security mission and immigration laws to be discretionary, these criminal cartels continue to be the true winners. They exploit mankind—the exploitation of mankind is simply modern-day slavery. Allowing thousands of pounds of illicit drugs in our country continue to erode the core values of our families. Our voice of reason has been buried in what I call the intellectual avoidance by this administration and, yes, Members of the U.S. Congress. Committees have neglected and we are abandoned to rely on our own local and State resources to address border security that is in a crisis.

I will close out with my 5 minutes. I will say this. Once again, I thank this subcommittee for the invite and opportunity and now stand ready to answer any questions by Members. Thank you.

[The prepared statement of Sheriff Dannels follows:]

Mark Dannels
Sheriff

Tom Alinen
Chief of Staff

Office of the Sheriff Cochise County



SUBCOMMITTEE on Border Security, Facilitation and Operations

Introduction

Testimony of Mr. Mark J. Dannels, Cochise County Sheriff, Arizona before the Subcommittee on Border Security, Facilitation and Operations Hearing on "Examining Title 42 and the Need to Restore Asylum at the Border." The hearing will be held on Wednesday, April 6th, 2022 at 2:00 pm.

Chairwoman Nanette Barragan, Ranking Member Clay Higgins and Members of this Committee, thank you for the invitation to speak to you today on this very important subject reference; **Public Safety, National Security, Humanitarian and Health.**

History of Cochise County

With eighty-three miles of international border within its jurisdiction, Cochise County plays a significant role in combating drug and human trafficking organizations and the associated violent crime which adversely affects Arizona residents and other areas throughout the United States. In 1990 the Office of National Drug Control Policy (ONDCP) designated Cochise County as a High Intensity Drug Trafficking area within southern Arizona. This designation is a direct result of overwhelming and sustained levels of illicit drug and human trafficking within Cochise County.

With 6,219 square miles, Cochise County is as large as the states of Rhode Island and Connecticut combined. The estimated population of the county in 2022 is approximately 125,000. The geography of the county consists of seven incorporated cities to include the historical town of Tombstone. Surrounded by vast areas of desolate uninhabited desert and mountainous terrain, the seven cities only represent a combined area of 215 square miles, leaving 6004 square miles of unincorporated area. These desolate areas are routinely exploited for smuggling routes by the drug/human traffickers and pose one of the greatest challenges to local law enforcements effort in establishing border security and interdiction efforts. Cochise County is the 38th largest land mass county in the United States, and is home to the United States Army base, Fort Huachuca. Throughout the history of the county ranching and farming has played a significant part in its legacy.

Unlike other border counties in Arizona, Cochise County is unique in that there are two cities in the Republic of Mexico situated on the international border within the county. The cities of Agua Prieta and Naco, with an estimated population of 80,000 and 10,000 respectively, are well known to U.S. Law Enforcement officials as staging and operational centers for one of Mexico's largest and most notorious drug cartels. The Sinaloa Cartel has long employed the use of local

Mexican Drug and Human Trafficking Organizations (DTOs) to carry out the Cartel's illegal distribution and transportation into and throughout the United States.

These international DTOs also utilize their established smuggling routes in Cochise County to transport the Cartels illicit profits such as U.S. currency, firearms, and ammunition into Mexico. A large portion of the profit is used to sustain control over the corridor through the use of violence against law enforcement, rival trafficking organizations, and bribes of government officials.

The Mexican drug trafficking organizations operating in Cochise County are highly sophisticated and innovative in their transportation methods. Aside from the normal use of human backpackers (mules), clandestine tunnels, and vehicles, the trafficking organizations have resorted to the use of ultra light aircraft which cannot be detected by normal radar, cloned vehicles appearing to be law enforcement or other legitimate companies and the use of catapults which hurl bundles of marijuana into the U.S. to awaiting co-conspirators. The organizations utilize sophisticated and technical communications and counter surveillance equipment to counter law enforcements interdiction tactics and strategies. Scouts or observers are strategically placed along smuggling routes to perform counter surveillance on law enforcement and report their observations to those controlling the drug/human smuggling operation so they may avoid and elude law enforcement. The use of cell phones and sophisticated two-way radio encryptions for communications are standard equipment, as are night vision and forward looking infra-red devices.

Violence against innocent citizens, public officials, law enforcement, and rival drug/human trafficking groups in Mexico continues to escalate. Cochise County's law enforcement and private citizen fears of it spilling into the county were realized in 2010 when a longtime Cochise County resident rancher was senselessly murdered while inspecting fences on his ranch. Further complicating the concerns is the potential for foreign terrorist to employ drug/human trafficking organizations to smuggle individuals and or weapons of mass destruction into the United States through Cochise County.

The adverse affects of the drug and human trafficking organizations operating in Cochise County not only have significantly diminished the quality of life of county residents, but also placed unbearable strain upon the budgets and resources of private and government agencies in the county.

Historically speaking, illegal border crossings into the United States are well known in southern Arizona and recognized as a part of everyday life within Cochise County and throughout the southwest border. Many years ago, Cochise County citizens were not overly alarmed when they observed a handful of undocumented aliens travelling through private or public lands in search of jobs. Unfortunately, over time these groups dramatically increased in size and became more reckless, aggressive, and violent, bringing unrest and fear to the citizens living on the border. Examples of this include reckless high-speed pursuits, assaults on citizens, rapes, kidnappings, murders and home invasions to steal one's private and personal possessions. It was apparent the search for the American dream was being over-shadowed by these smugglers, mules, coyotes, bandits, and transnational criminals preying upon our citizens.

Having the true-life experience to live and work as a law enforcement officer/deputy and now Sheriff in Cochise County since 1984, it has been an educational lesson for me reference border security. I have witnessed the escalation of violence by these careless assailants on our citizens

raising the question, who actually controls our borders? Cochise County has become known as the gateway to illegal activity for those unlawfully entering the United States.

History: Federal Government's Border Security Plan of the 90s

In the early 1990s, the federal government prepared a plan to address the unsecure, unsafe border. At a press conference in Tucson, Arizona, a Border Patrol spokesman announced their intent to secure the populated areas of the border, specifically San Diego, Yuma and El Paso and the International Ports of Entry. These targeted areas, which I call the "Ps = Ports and Population", would be the federal government's focus points. The second half of their plan was to reroute the illegal activity/disturbances into the rural parts of the southwest border with the thought that these cartel organizations and smuggling groups would be deterred by the rugged and mountainous regions along the border.

Since the release of the plan, many changes have taken place. Specifically, Cochise County initially increased their staffing of Border Patrol agents from a handful of agents to an estimated 1300 agents stationed within Cochise County. Currently, we are down to 400 – 500 Border Patrol agents. To add, an estimated 200 Custom agents working at the port of entries (Douglas and Naco) and within the Cochise County to secure and protect the estimated 83 miles of international border. Infrastructure, such as metal fencing, lightning, cameras, sensors, radars, etc. have been installed between both ports and some distance beyond bringing some needed relief to this area and those that live within. Unfortunately, upgrades were halted by President Biden's executive order on his first day of office leaving our border's infrastructure in disarray. Secondary immigration checkpoints were established on routes (roadways) 20 – 40 miles north of the border but due to staffing shortages, remains closed most of the time.

Over the last 15 months, our southern border has drastically changed, (see attached statistics). Additionally, addressing a health pandemic during a drastic change has negatively impacted our community's Quality of Life. Title 42 was enacted under President Donald Trump and remains today, providing Customs & Border Patrol and my communities some relief. I respect the decision/debate to cancel Title 42, but sadly with lack of a shared action plan or collective message, the concerns by my fellow Sheriffs, Police Chiefs and our federal partners, promotes great concern. Sheriffs from National, Western and Southwest Associations have tried tirelessly to work with this administration with little to no success. It would be an understatement to say Sheriffs are frustrated.

I have personally experienced our once manageable border become a crisis over the last 15 months supported by the attached statistics and increased criminal activity. The Covid health pandemic placed many restrictions on foreign travel, but the conversation regarding illegal entry at our southern border was neglected by our federal leaders. The health exposure and risk experienced by law enforcement officers, deputies and agents became secondary in public restrictions and concerns. In fact, the intellectual avoidance by this administration to actively engage and support our efforts has been absent. Certain members of U.S. Congress continue to ignore our immigration laws/crisis abandoning communities as they struggle to address these challenges. I would remind my fellow elected leaders, we share the same Oath of Office to protect this great country, not to be driven by personal ideologies, but by and for the People.

The existing border plan has been in place for over 26 years and the following are some thoughts regarding the plan in current time:

- An increase in illegal smuggling/activity between the protected areas (ports)
- Increase in larger groups of undocumented aliens between the protected areas (ports)
- Increase in illegal activity outside the protected areas (ports)
- Fear/Frustration increased in rural Cochise County/Southwest Border
- Ranch and Farmlands damaged due to increased illegal activity
- Property (fencing, livestock, waterlines, etc.) damaged
- Burglaries/Thefts increased in rural Cochise County/Southwest Border
- Violent Crimes increased i.e., Homicides, Assaults, Rapes, Drug and Human Smuggling, etc. in rural Cochise County/Southwest Border
- Transnational Cartels/Smuggling Organizations controlled and set up smuggling routes in rural Cochise County/Southwest Border
- Lack of Border Patrol Agents directly on border
- Secondary checkpoints were established as a secondary deterrent but remain closed due to staff shortages
- Lack of Re-Definition to the plan of the 90s (time erased history)
- Loss of recreational land use due to fear of criminal activity
- Economic decline (Cochise County largest decrease in population)
- Legacy Ranches being sold
- Lack of Federally elected leaders to address unsecure border/fears creating a lack of trust and anger by citizens
- Questionable consequences by federal government by those committing border crimes
- Undue pressure on local law enforcement/Sheriffs to address issues, fear, and consequences for those committing crimes
- Lack of funding for local law enforcement/criminal justice system/corrections in order to address border crimes at the local level due to federal government lack of intervention
- Border Security shall be a Mandate, not a Discretionary program
- Border Security v. Immigration Reform (two different programs not to be blended)
- Lack of Trust and Confidence in our Federal Government

Action-Based Solutions Local-State Government

Local Solutions and Programs are no longer a thought, but a reality for bringing relief to our citizens who consciously choose to live near our borders. No better example of the importance of local law enforcement during a national crisis was the terrorist attack on September 11, 2001. First responders from local police and fire were the first on scene to address this horrific threat. Local law enforcement is best suited to best understand community needs and solutions based on the expectations of their citizens. Community policing begins and succeeds at the local level first.

As the Sheriff of Cochise County, I felt it was my elected and statutory duty (oath of office to support the United States Constitution and the Arizona Constitution) to protect and secure the

Freedoms and Liberties of my citizens, with or without the help of our federal law enforcement partners/policy makers. No longer a debate by those that live in the rural parts of the southwest border, the rural parts of the Southwest Border are NOT secure and are vulnerable for ANY type of transnational criminal activity.

Working with limited budgets and staffing, Sheriffs along the southwest border struggle each and every day to find ways to enhance the quality of life/safety for those they serve and bring a general sense of deterrence for those choosing our border as a venue to promote their criminal enterprises. The following bullet points are action-driven solutions implemented in hopes of bringing some relief and sense of security for those living in Cochise County:

- Balanced Community Policing (Education, Prevention, Enforcement)
- Transparency + Time = Community Trust
- Collaborated Efforts by all 3-levels of Government
- Creation of a Southwest Border Security Facility in Cochise County
- Law and Order Partnership between Sheriff and County Attorney
- Safe Street Enforcement Programs
- Private and Public Funding donations/grants to purchase upgraded equipment/communications
- Installation of New Radios/Towers/Consoles/Microwave
- Portable Radios to Citizens/Ranchers/Farmers/Schools
- Interoperability/Intelligence Sharing at all 3-levels
- Regional Application for Law Enforcement
- Financial Interdiction Unit
- Regional Border Team by Sheriff supported by Border Patrol, ICE, U.S. Forest
- Ranch Advisory Team
- Ranch Patrol
- Financial Crime Unit
- Consequence Driven Prosecution (all 3-levels)
- Local Trail-Cameras, Sensors, ATVs, Thermal Vehicle, Off-Road Vehicle, etc..
- Factual Situational Awareness for Media, Elected Officials, America
- Quarterly Law Enforcement Leadership Meetings
- Community Outreach Unit
- Community Meet & Greets within Communities
- Aviation Program (Helicopter & Drone)
- Positive-Interactive Use of Media and Social Media

Recommendations Federal Government

The Federal Government (elected and policy makers) has been slow to react to the voices and concerns of those living on the southwest border. Cochise County and other counties along the border have become VIP attractions, venues for those seeking to make a difference or promising change only to become another faded high-hope.

The following comprehensive recommendations are directly linked to our federal leaders:

- Collective Message between Local, State and Federal

- Shared Action Plan by Local, State and Federal Law Enforcement
- Remove "Politics" and Enforce the "Rule of Law"
- Hire more Immigration and Asylum Hearing Officers for all POEs.
- Re-evaluate the plan of the 90s and build upon successes
- Political-Will to make Border Security a Mandated Program
- Immediate need to address the Criminal Cartels (Transnational Organizations)
- Border Security First, Immigration Reform Second
- Maximize Allocated Resources such as Staffing
- Adequately Fund CBP
- Support and Embrace First-line Agents that work the border regions, they have a dangerous job and it's no secret that their frustration is high based on the unknown complexities reference their assignments, they have great ideas to share
- Secondary Checkpoints only after Primary border interdiction is satisfied by stakeholders
- Quality in Life/Citizens living on border supported by Sheriffs and State Governors regarding improved security/safety
- Funding supplement for Local Law Enforcement/Prosecution/Detention/Criminal Justice in support of border crimes
- Continued Funding and Support for Stone Garden Program
- Empowerment with action to Border Patrol Leadership/PAICs (currently Cochise County has dedicated and solution-driven leaders that work well with local law enforcement)
- Enhanced Funding for Regional Communication and Interoperability with local law enforcement
- Bring Local Law Enforcement to Border Security and Immigration discussions

Summary

Our local efforts have proven to be beneficial in bringing over-due solutions to an insecure border that has become a discretionary program by those federally elected leaders and policy makers that have been entrusted to protect our freedoms and liberties. As a Sheriff elected by the good people of my county, my biggest fear is another loss of life to one of my citizens and/or law enforcement officers/agents contributed to a border that is NOT secure. One would hope the priority of securing our border doesn't become just about a price tag and/or political posturing, but rather the legal and moral requirement to safeguard all of America, which so many heroic Americans have already paid the ultimate price for.

Today's opportunity to address this group instills fresh hope that our voice does matter and on behalf of the citizens of Cochise County, Arizona and beyond, we hope you won't forget us and will do your Constitutional mandate to bring positive change to an over-due vulnerable situation.

I will leave each one of you with an open invitation to visit Cochise County along with a personal-guided tour and visit with our citizens to hear/see first-hand America's true rural border.

Again, thank you very much for the opportunity to share this information with you. I will be happy to answer any questions you may have.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'MJD', is positioned above the printed name.

Sheriff Mark J. Dannels

Attachments

- a. Sheriff Mark J. Dannels Biography
- b. Arizona Sheriffs Association Letter re Border Security
- c. Western States Sheriffs Association Letter re Position Statement on Border
- d. Governor Doug Ducey's Letter to Secretary of Homeland Security
- e. National Sheriffs Association Letter re Public Safety Challenges on our Border
- f. Photographs/Handouts (34)



Sheriff Mark J. Dannels

Since November 2012, Sheriff Mark J. Dannels has been elected by the good citizens of Cochise County to serve as their 26th Cochise County Sheriff since 1881. I continue to be Humbled, Honored and Dedicated to my oath of office for this incredible opportunity to serve you all with my personal commitment to sustain your Quality of Life as you would expect and your Freedoms and Liberties as scribed in the United States and Arizona Constitutions.

Sheriff Mark J. Dannels is a 38-year veteran of law enforcement. He holds a master's degree in Criminal Justice Management from Aspen University and is a Certified Public Manager from Arizona State University. He has over 3000 hours of law enforcement training in his portfolio. He attended Disney's Leadership and Executive Training programs and is a graduate of the Rural Executive Management Institute. He began his law enforcement career in 1984 after serving a successful tour in the United States Army. He progressed through the ranks with the Cochise County Sheriff's Office to the position of Deputy Commander after working numerous specialty assignments and leadership roles to include an appointment by the Arizona Governor for his dedicated efforts directed toward highway and community safety.

Sheriff Dannels is a long time member of the Fraternal Order of Police, past member of the U.S. Department of Homeland Security Advisory Council, current member of the National Sheriffs Association where he serves as the Border Security Chairman, Southwest Border Sheriffs, Western Sheriffs Association Executive Board, Arizona Sheriffs Association where he serves as President, Chair of the Arizona Peace Officer Standards and Training Board, Arizona Homeland Security-Regional Advisory Council, Alliance to Combat Transnational Threats, Border Security Advisory Council, High Intensity Drug Trafficking Area and serves on several community service groups; San Pedro Kiwanis, Just Kids Inc., CASA, Sierra Vista Elks, the Boys and Girls Club of Sierra Vista, the Varsity Wrestling Coach at Buena High School, and teaches at Wayland Baptist University and Cochise College. Sheriff Dannels participates in many community outreach programs such as Project Graduation, Sizzle, Stocking Stuffers, Community Haunted House, Men who Cook, Kars for Kids, Miss Sierra Vista and Shop with a Cop.

Sheriff Dannels has been recognized and awarded the Medal of Valor, Western States Sheriff of the Year, Outstanding Business Person of the Year, Marquis Who's Who, Sheriff's Medal, Deputy of the Year, Distinguished Service Award, Unit Citation Award, National Police Hall of Fame, Lifesaving Award and dozens of community-service awards from service groups and governmental organizations.

Sheriff Dannels is married to Nickie, a Registered Nurse. They have three sons, Justin, a Police Officer/Corporal with the City of Sierra Vista, Ryan a Firefighter/Paramedic with the City of Sierra Vista, and Corey, a Lineman with the Sulphur Springs Valley Electric Cooperative.

Sheriff Dannels has 3 primary objectives: Organizational Development, Border Security and Community Outreach.

"A Sheriff for All the People"



ARIZONA SHERIFFS ASSOCIATION

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MARK DANNELS, COCHISE COUNTY SHERIFF, PRESIDENT
 MARK LAMB, PINAL COUNTY SHERIFF, VICE PRESIDENT

THE ARIZONA SHERIFFS ASSOCIATION IS THE ONE UNITED CREDIBLE VOICE REPRESENTING LAW ENFORCEMENT AND PUBLIC SAFETY FOR THE COUNTIES OF ARIZONA

March 19, 2021 - An Open Letter: Crisis at the Border

Arizona's Border Sheriffs are on the frontline of public safety issues involving our border with the Republic of Mexico. While semantical gamesmanship about what to call the current conditions on the border and endless theatrical politics of who is at fault may be of great interest in Washington, DC and in the media, they are of complete disinterest to sheriffs. The current conditions on the border are impacting public safety in our communities and by any reasonable measure constitute a humanitarian crisis. We are not far removed from these conditions. They are directly impacting our homes, our communities, our citizens, and our very way of life.

Nowhere else in the civilized world would we tolerate literally thousands of children (emphasis children) unaccompanied by a parent coming to an international border for refuge. This would be correctly viewed as an international humanitarian crisis. Our federal partners, at no fault of theirs, are completely ill-equipped to care for these children. Anywhere else in the world massive resources would be summoned to the border and relevant policies/politics would be under scrutiny. Yet, here today we have a posture that appears to tacitly encourage this, and we remain immersed in politics rather than solutions. We urgently need solutions, not politics.

Undocumented migration to this country is not a harmless activity. No matter how compassionate policy and posture on the northside of the border, we can do nothing to ameliorate the realities on the southside of the border. Migrants must interact with transnational criminal organizations (TCOs) to be shepherd to the border. They fully control the southside of the border. Some seek to enter the country undetected, which requires interaction with "coyotes." Migrants are being victimized criminally, sexually, and financially. TCO's profiteer nearly as much from trafficking humans as they do from drugs. Estimates are this may be a multi billion-dollar enterprise for them (source: Human Smuggling and the Associated Revenues. Rand Corporation. 2019). There are vast desert/mountain areas to be traversed in a harsh environment. Every year, Sheriffs find hundreds of bodies in the remote areas of border counties. Many will never be identified and what befell them will never be known. Tragically, a family somewhere will never know what happened to a loved one. To encourage this activity through policies and political rhetoric is not compassionate public policy. In fact, it is exactly the opposite.

We are learning about a record number of undocumented persons swarming the border and being taken into custody by federal law enforcement. This is potentially a small fraction of those coming into the country. In Cochise County, Arizona they have a sophisticated camera system along migrant routes across the border. These cameras detect significantly more traffic than our federal partners report capturing. In fact, our estimates are that only about 28% of the people crossing illegally are taken into custody. While the scope of the known crisis is enormous, we believe it may be underreported by close to 300%. While some will argue these are good people simply coming here for a better life, to not acknowledge that among them are dangerous criminals and persons who potentially pose national security concerns is either ignorant or willfully disingenuous. How is this not to be considered a crisis?

AN AFFILIATE MEMBER OF THE ARIZONA ASSOCIATION OF COUNTIES • JENNIFER MARSON, EXECUTIVE DIRECTOR

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POSITION STATEMENT ON BORDER CRISIS 26 MARCH 2021

The Western States Sheriffs' Association has engaged in discussions with its member Sheriffs who are in the midst of the crisis on the southwest border. What is certain at this point is the portrayal of the crisis by the media and its focus on issues surrounding family units, unaccompanied children, and sheer numbers. What has been ignored, yet can be verified as reality, is the safety to American communities along the southern border coupled with the everyday and real threats to the safety of local, state, and federal law enforcement officers who are on the front line. From the outside it appears the overarching dilemma is how our government can adequately care for thousands of illegal aliens who seek to cross our southwest border. Border Patrol agents have been reduced to daycare providers and transportation coordinators, all at the expense of a lack of enforcement on the border.

In consultation with our membership on the southwest border, it has become evident, based on information learned, that local law enforcement is a verified target of illegal aliens and drug smugglers crossing into the United States. Not reported in the national media is the countless violent interactions between local law enforcement and illegal aliens that are resulting in injury and death.

It is the position of the leadership of the Western States Sheriffs' Association that those counties and States across our southwest border are in desperate need of assistance to shore up their capabilities to safeguard their own communities and ensure the safety of their local law enforcement providers. WSSA leadership is prepared to call on the assistance of its membership to commit resources and time to assist our southwest border Sheriffs.

It is our sincere hope that this offer of assistance will be recognized by local county officials and State leaders and that the necessary declarations can be implemented that will provide the legal ability for outside assistance to be utilized.

There is a clear precedent for the massing of resources across this country as witnessed in response to natural disasters on an annual basis. The history of wildfire in the west and the ability to bring people and equipment to suppress the threat has shown the ability of interstate governmental agencies to work together.



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RESOLUTION 2021- 3

WHEREAS; the Western States Sheriffs' Association Border Security Committee represents Sheriffs from seventeen states west of the Mississippi River; and

WHEREAS; all member Sheriffs of the Western States Sheriffs' Association take seriously our oath to uphold the law, support and defend the Constitution against all enemies foreign and domestic, and protect the safety our respective county's citizens; and

WHEREAS; the current lack of security on our border with the Republic of Mexico presents a clear national security concern as we do not know who is crossing the border undetected that might be an international bad actor wishing our citizens harm; and

WHEREAS; the current lack of security on our border with the Republic of Mexico presents a compelling public safety danger as extreme amounts of illegal drugs are being trafficked into our country leading to addiction and overdose deaths; and

WHEREAS; the current lack of security on our border with the Republic of Mexico presents a compelling public safety danger as hardened criminals and gang members exploit the lack of security to enter the country to further victimize our citizens; and

WHEREAS; the current lack of security on our border with the Republic of Mexico presents a human rights crisis as unaccompanied children cross, or attempt to cross, into our country and our victimized by the cartels, the environment and our inability to properly care of them once inside the United States; and

WHEREAS; the presentation at an international border by unaccompanied children trying to cross into another country with no adult oversight and without proper documentation to do so would be considered a crisis requiring immediate action anywhere else in the civilized world; and

WHEREAS; the Border Security Committee of the Western States Sheriffs' Association demands immediate action from Washington, DC to recognize the conditions we face, partner with Border Sheriffs in reaching community-based solutions, cease with the political blame-game, and restore policies/practices that will secure our border; and

WHEREAS; the Border Security Committee of the Western States Sheriffs' Association holds no animus toward any person, group of persons or nationality. Our desire for border security is grounded in three unimpeachable reasons they are national security, public safety and human rights; and

RESOLVED; the Western States Sheriffs' Association Border Security Committee recommends the following:

1. The current administration should acknowledge with absolute clarity of language that a national security, public safety and humanitarian crisis exists on the border to galvanize our national efforts to address it in a manner completely devoid of politics.
2. Federal policies must be changed to affirmatively address the crisis we face on the border.
3. Federal policies/practices must adhere to Federal Law.
4. Zealous federal pursuit, and prosecution, of transnational criminal organizations that are profiting by facilitating illegal immigration.
5. The Office of Health and Human Service take over the care of ill and/or minor illegal immigrants and allow Homeland Security personnel to return to their appropriate duties.
6. A re-deployment of federal law enforcement personnel to the border to enhance enforcement of current law.
7. Appropriations in sufficient amounts for Homeland Security and the sub-divisions under the umbrella of Homeland Security to address the crisis at the border.
8. The agencies under Homeland Security work in conjunction and active collaboration with the Border Sheriffs to combat the humanitarian and public safety crisis that has been created at the border.
9. Actively engage and communicate with our member Sheriffs to ensure proper captioning of the problems faced by border counties and ensure that solutions are effectively reached.



DOUGLAS A. DUCEY
GOVERNOR

STATE OF ARIZONA
OFFICE OF THE GOVERNOR

EXECUTIVE OFFICE

February 17, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
MS 0525
U.S. Department of Homeland Security
2707 Martin Luther King, Jr. Ave SE
Washington, DC 20528-0525

Dear Secretary Mayorkas:

Numerous mayors, sheriffs and non-governmental organizations across Arizona have contacted my office with serious concerns and questions surrounding recent policy changes occurring at the United States border with Mexico. It is my understanding that law enforcement, healthcare leaders, government officials, and community organizations and infrastructure have not been consulted throughout the planning process or before the announcement of these new policies. This policy decision has caused confusion and misinformation throughout Arizona communities. Arizonans deserve to understand what led to these changes and what steps are being taken to involve state government, law enforcement, community leaders, and non-profit organizations as this policy is implemented.

The hasty announcement repealing the Migrant Protection Protocols (MPP) and the lack of details provided to crucial stakeholders in a border state during the development of this action is troubling.

My office has heard concerns from law enforcement and border communities that repealing MPP will result in a significant influx of unvetted individuals into the United States across the national border with Mexico. It is necessary and beneficial to consider the infrastructure and resources needed to monitor, care for and protect both the incoming individuals and surrounding communities — especially as our country and state are still combatting the COVID-19 pandemic.

In light of this, the repeal of MPP has raised numerous questions:

- How will individuals be monitored for health concerns and protected from COVID-19?
- How do the healthcare workers and facilities prepare and deal with this coming increase in cases and patients?
- Does the administration have a plan to keep migrants distanced from one another while

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2021-03

**THE NATIONAL SHERIFFS' ASSOCIATION RECOGNIZES THE CURRENT
PUBLIC SAFETY CHALLENGES OF A BORDER COUNTY**

WHEREAS, generally speaking, public safety and politics should not meet; and

WHEREAS, political debates over border security policies should instead be clear public safety discussions; and

WHEREAS, there are three clear and unimpeachable reasons to secure our international border with the Republic of Mexico:

- Public Safety,
- National Security,
- and Human Rights; and

WHEREAS, there is a compelling public safety interest in securing our border. The trafficking of drugs and humans through our southern border is an undeniable reality and clearly degrades public safety in border counties. The violence associated with drug trafficking impacts both sides of the border. The opioid crisis has led to the overdose deaths of thousands in the United States. Our deputies must now carry lifesaving NARCAN on their utility belts, because we are so often first on the scene and well trained in the use of the lifesaving medicine. The trafficking of humans results in higher crime in border communities and is facilitated by the drug cartels as another source of revenue. There is a clear public safety nexus to securing our international border; and

WHEREAS, due to the lack of security on the border we do not know who is crossing. Clearly, this could be exploited by foreign bad actors wishing to do harm domestically. It matters not whether it is one terrorist or dozens, as this is a strawman argument to detract from the reality of the terror threat in the U.S. One lone wolf foreign terrorist is a significant threat due to the changing nature of the terror threat we now face. We have seen ample evidence of this abroad with a lone terrorist using vehicles or crude weapons to inflict injury, death, and fear. There is a clear national security nexus to securing our international border; and

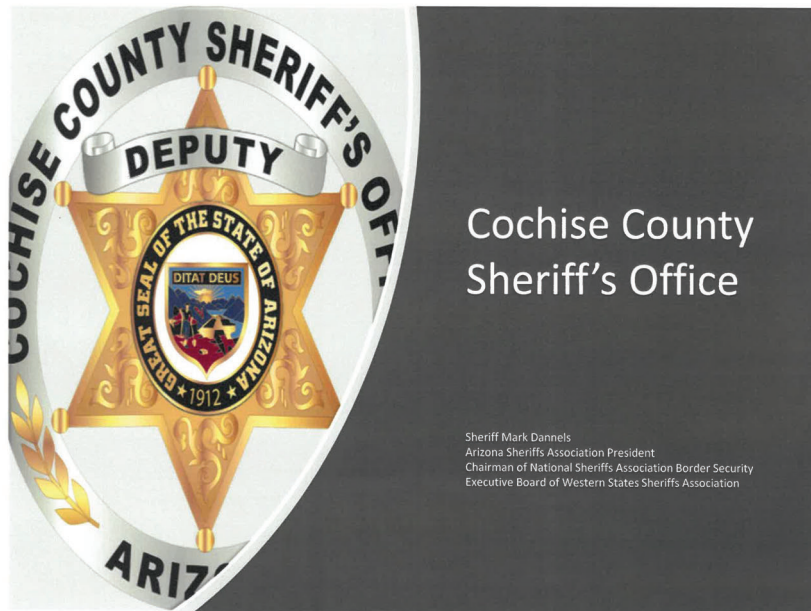
WHEREAS, the lack of security on the border serves as an incentive for undocumented immigration. This is not a harmless activity. Border Sheriffs recover hundreds of bodies a year in the remote areas of their counties. These are the result of migrant deaths at the hands of bandits or coyotes, or due to the harsh environmental conditions in the southwest. No matter how compassionate policy might be on the north side of the border, we will not impact the conditions on the south side of the border. Undocumented persons wishing to cross must interact with the drug cartels who control the plazas (entry points to cross the border). This interaction results in the financial, sexual, and criminal victimization of migrants. There is a clear human rights nexus to securing our international border; and

WHEREAS, politics should not, but unfortunately has, gotten in the way of thoughtful discourse on this issue and has done so at the detriment of public safety for border counties; and

WHEREAS, the rest of the Nation may see the issues along the border as being far removed from their communities and even fodder for political debate. However, the border impacts the entire Nation; and

NSA National Security initiatives

1. Direct CBP and ICE to enforce border related statutes. Cease all “no violation” decisions by CBP/ICE and allow them to pursue and stop illegal activity.
2. Strengthen border security enhancements, including, where appropriate, technologies, roads, cameras, structures, and aviation assets to deter significant openings utilized for human trafficking and drug cartel activities
3. Appoint a Border Federal Coordinating Officer (Czar) to be in located on the Border full time, similar to post disaster. Must have authority to move resources quickly and efficiently to combat the mass rapid movements. Must have the ability to hire, fire, budget, and have access to equipment and resources from San Diego to Brownsville.
4. Surge Air and Marine resources to place manned and unmanned surveillance along the Southern Border at designated zones seeing an increase of illegal activity.
5. Establish State Border State Safety Councils for every state to include: Law Enforcement, Community leaders, Feds, and stakeholders in attendance.
6. Direct the FCO and a Secretary’s senior advisor for Border security to attend each state, on their border, with Local, State and Federal Law Enforcement stakeholders for listening sessions.
7. Establish Border Safety Cooperative Agreements with states, local governments, social services entities, NGOs that includes cooperative agreements to work together for border stabilization. Permits Border states a voice in Federal security, interdiction, housing and transport actions. The federal government should match all expenditures by the border state involving manpower and infrastructure. Re appoint Sheriff stakeholders to DHS Advisory Council.
8. Recommend VP visit each Border state
9. Strengthen southern Mexican border with better intelligence and sharing of information with all US Federal agencies. Find a solution for narcotics information and operations sharing with the Government of Mexico.



Sheriffs Objectives

- Public Safety
- National Security
- Humanitarian
- Health (Covid-19)

CBP SW Border Statistics 2021

- 1.7 million encounters
- 63% of them other than Mexican
- 37% were Mexican
- 8% unaccompanied minors
- 64% were processed under Title 42
- 164 Countries breached our SW Border
- 162 Migrants Died in Southern Arizona

2021 CBP Criminals

- 60 Homicides Suspects
- 1178 Assault Suspects
- 2138 Drug Suspects
- 825 Burglary Suspects
- 1629 DUI Suspects
- 336 Weapon Suspects
- 488 Sexual Assault Suspects

2021 CBP Drugs

- 10,000 lbs Fentanyl
- 180,000 lbs Methamphetamine
- 86,000 lbs Cocaine
- 5000 lbs Heroin
- 311,000 lbs Marijuana
- 270 Drug Overdose Deaths per Day

CBP October 1 2021 to January 2022

- Chief Raul Ortiz, Most Complicated Border in his 30 years.
- 690,000 encounters
- 190,000 Got Aways
- 47,000 Got Aways per month
- Assaults up 29%
- All 31 Border Counties Negatively Impacted

CBP SW Border February 2022

- 163,539 Encounters
- 11,670 Turn Backs
- 53,464 Got Aways
- 67 Deaths

CBP Tucson Sector (Cochise County) February, 2022

- 22,289 Encounters
- 995 Turn-Backs
- 16,516 Got-Aways
- 7 Deaths

Throughout 2021: Got-Aways 10,000/month

SABRE

2021 Cochise County Sheriff's Office
Border Cameras:

43,229 encounters
51 Drug Smugglers

100 % Conviction Rate for Drug Smugglers

July 2021 to February 2022 Border Related Booking Costs were \$1.1
million in Cochise County

900 to 1000 Smugglers per month enter Cochise County to pick up
UDAs
Average \$1000 per UDA

Almost 100% Got Aways within Cochise County

100% Camouflaged

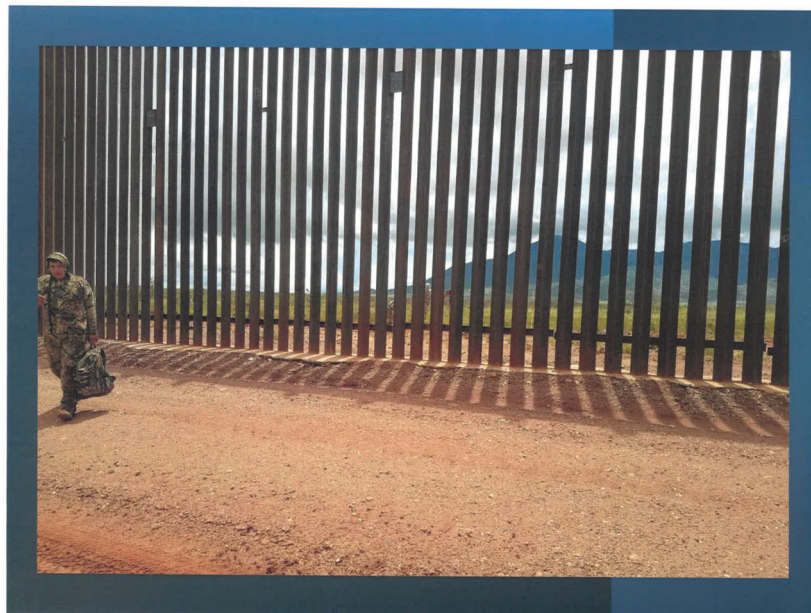
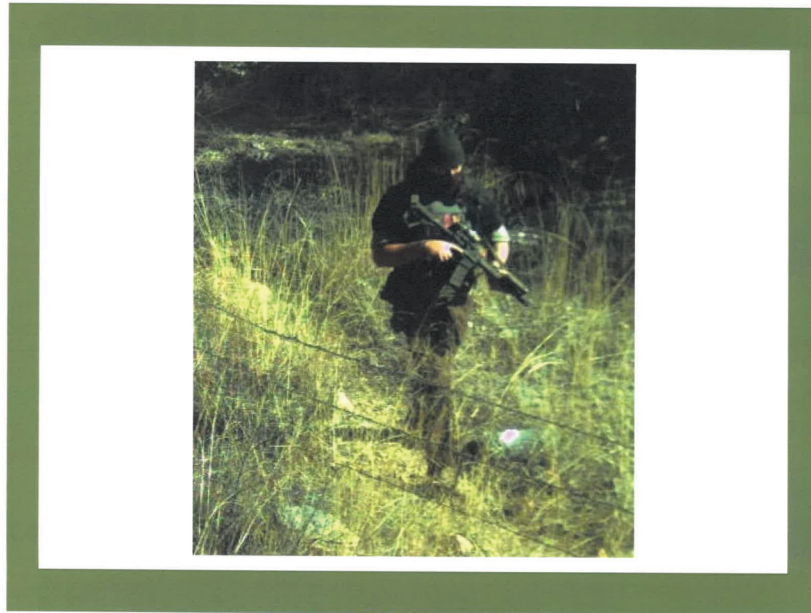
Aggravated UDAs that can't give up

Search & Rescue/Recovery Missions



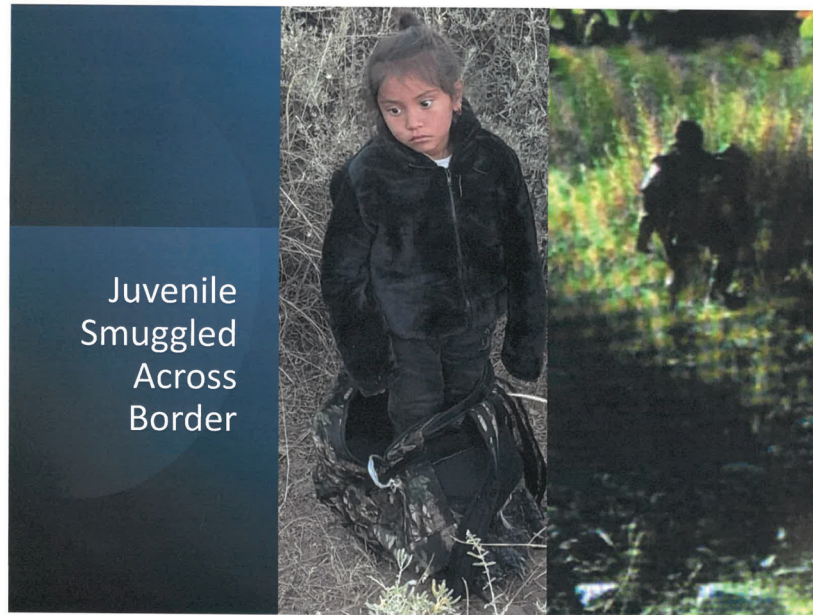
Do We Need a Better
Barrier?















94 Lbs. of Meth

OPERATION
SAFE STREETS

Reckless
Driving

Smuggling
Humans

Multi-Agency
Task Force

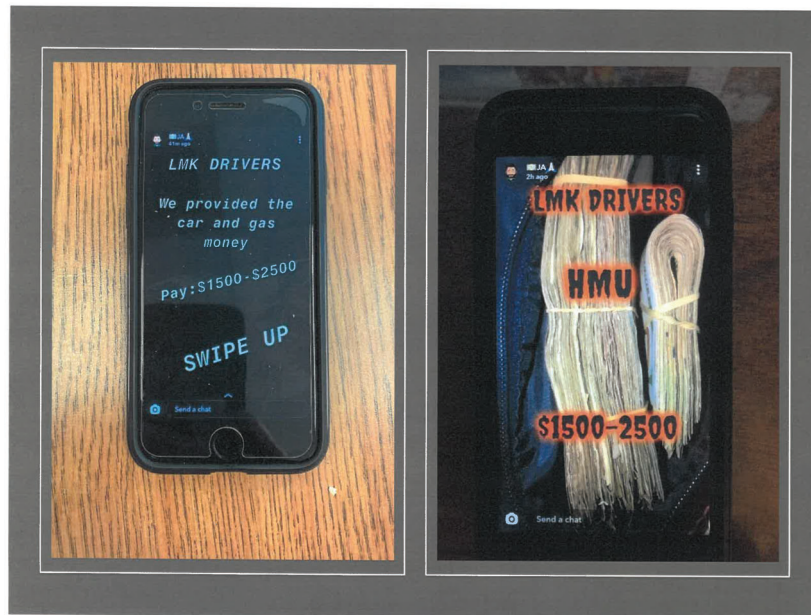






VIRTUAL RECRUITMENT

- Snapchat
- Instagram
- TikTok
- WhatsApp
- Facebook
- Twitter



Solutions

- Collective Message (Local, State & Federal)
- Shared Action Plan
- Oath of Office for all Elected Officials
- Support the Rule of Law at all Levels
- Remove the Politics
- Address the TNOs (Cartels)
- Fund CBP (U.S. Congress reduced their budget \$960 million)

Local/State Solutions

- Border Strike Force
- Supplemental Funding from State to Counties
- Virtual Camera System Support
- National Guard
- Equipment and Personnel
- Border Criminal Interdiction Team
- Border Operational Center
- Sex/Human Trafficking Unit

THANK
YOU FOR
YOUR
SUPPORT

- Sheriff Mark J. Dannels
- #520-732-0930 cell
- #520-432-9505 office
- SGT Tim Williams
- #520-353-5627 cell
- #520-432-9508 office
- **QUESTIONS & ANSWERS**

Chairwoman BARRAGÁN. Thank you, Sheriff Dannels, for your testimony. I want to thank all of our witnesses for their testimony. I will remind the subcommittee that we will each have 5 minutes

to question the panel. I will start with myself and recognize myself for 5 minutes.

My first question is for, you, Mr. Kizuka. The Biden administration has committed to ensuring orderly processing at the U.S. Southern Border. How would reopening ports of entry help the administration achieve this goal?

Mr. KIZUKA. Thank you, Representative Barragán. Opening ports of entry along the Southern Border is a crucial step that the Biden administration should take immediately to ensure that asylum seekers can present themselves safely and in an orderly manner and that their claims are processed under U.S. law that Congress adopted. For 2 years now, those laws have been ignored and asylum seekers have been turned away to danger, creating additional disorder, creating unnecessary suffering of people who return back to danger.

Chairwoman BARRAGÁN. Thank you. We have been hearing about alleged, you know, the cartel information. We can all agree the cartels should be shut down. I think that one of the things, by opening our ports of entry, is you are going to have people coming to the ports of entry as opposed to feeling like they have to go to a smuggler.

My next question for you is, Mr. Reichlin-Melnick, in your testimony you state that Title 42, an increased migration has no impact on the flow of opioids into the United States. Our Republican colleagues like to claim otherwise. Can you explain the data that supports your statement?

Mr. REICHLIN-MELNICK. Thank you, Rep Barragán. As former CBP Commissioner Gil Kerlikowske said recently, the drugs that are actually taking the lives of people here in the United States, methamphetamine, cocaine, heroin, and fentanyl, almost universally come through the ports of entry along the Southern Border. Indeed, if you look at the CBP's own data, 95 percent of all opioids that were seized at the Southern Border in the last 2 years—sorry—in the last 2½ years, were seized at the ports of entry or were seized at Border Patrol checkpoints in vehicles. That is because as the DEA itself says, “land transportation via the interstate system is the most predominant method of transporting illicit opioids.” Smugglers know that they can get drugs in through the ports of entry because as CBP's Diane Sabatino testified in the Senate in November, just 15 percent of commercial vehicles are screened for narcotics at ports of entry and only 2 percent of passenger vehicles are screened for narcotics.

Chairwoman BARRAGÁN. So, just to follow up on that. Which rules are effective in preventing the flow of opioids into the United States?

Mr. REICHLIN-MELNICK. As CBP has said for years, investments in technology at the ports of entry are the No. 1 thing that will help reduce the flow of opioids into the United States. The cartels are smart and they know that where they can get the drugs into the country is in tractor-trailers, in parcels, in packages, and through the mail. There is very little fentanyl coming across the border on the backs of migrants in backpacks. Nearly all of it comes in through the ports of entry.

Chairwoman BARRAGÁN. Thank you. Dr. Richards, my last 2 minutes is for you. As our understanding of COVID-19 has evolved and improved, so have the measures society can take to beat back the spread of the virus. I have two questions. What preventive measures can the administration use to mitigate the risk of COVID-19 infections at the border? No. 2, if these preventive measures are taken, do you believe migrants would pose a public health threat to border communities or the Nation?

Dr. RICHARDS. Thank you, Chairwoman Barragán, for those two questions. So, I think everybody by this point probably knows the answer to what we can do because it is the same things that we have been using in this country. It is masking and social distancing. One of the more effective things in this setting would be to minimize the time that people spend in congregate settings. So, detention is never a good idea. But limiting the amount of time that people have to spend in those congregate settings like detention centers, CBP facilities, would be great. But if you have to, you know, keep people in those facilities, we can definitely also keep them safe. Masking is highly, highly effective. You know, I have worked for months in this isolation center. People were coughing virus all around me. I still to this day, I don't think, have, you know, gotten COVID.

It is also worth noting that around the world, vaccination rates have been going up. So, people who present to our borders are more likely to be vaccinated. It is now over half of adults from most of the countries that folks come from now and encouraging vaccination is probably the single most important tool that we would have. So, it is great to that there is progress being made there.

There would not be a risk, I mean, there are over 50,000, you know, there are tens of thousands of cases that are transmitted internally in the United States. The number that would potentially sneak through would be infinitesimally small and not contribute in any meaningful way to transmission here. So, there is no risk to communities. Thanks.

Chairwoman BARRAGÁN. Well, thank you for that. We know that migrants that are coming now under other programs like Remain in Mexico, the United States is actually vaccinating them as they come in. So, there is opportunities to vaccinate migrants as they come in.

So, now, I would like to recognize the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Higgins, for your 5 minutes.

Mr. HIGGINS. Thank you, Madam Chair. Mr. Melnick, Mr. Kizuka, and Dr. Richards, I am going to ask you gentlemen a couple of yes or no questions. It is not a trap, just to set up my further question, and it is sort-of to all of you.

Dr. Richards, before I get started, thank you for working with the homeless, sir, in the streets of Los Angeles. My understanding is you are a part of that effort. So, as a compassionate child of God, I thank you for that work that you do.

So, Mr. Melnick, Kizuka, Dr. Richards, you are each an American citizen? Sir, yes?

Mr. KIZUKA. Yes.

Mr. HIGGINS. Yes? Yes?

Dr. RICHARDS. Yes.

Mr. HIGGINS. Yes? OK. Do each of you believe that your position on Title 42 is righteous, that you have eloquently stated, each of you? Do you believe you are righteous and solid in your position? Mr. Melnick.

Mr. REICHLIN-MELNICK. I believe the facts and the data support the conclusion.

Mr. HIGGINS. Yes, that is a—you may be a Congressman one day, sir, up here. If you are solid in your position, may I say, you can say, yes, I am solid in my position. Mr. Kizuka.

Mr. KIZUKA. Our opposition to Title 42 comes from our believe—

Mr. HIGGINS. I am not asking where it came from—

Mr. KIZUKA [continuing]. In compliance with—

Mr. HIGGINS [continuing]. Just do you feel solid?

Mr. KIZUKA [continuing]. U.S. law and treaty obligations.

Mr. HIGGINS. So, you feel it is a righteous position that you presented?

Mr. KIZUKA. It is the lawful position.

Mr. HIGGINS. OK. I am glad you said that. One would hope that your lawful position and your determination is also based upon what you feel is right. That is what righteous means. Dr. Richards.

Dr. RICHARDS. My statement reflects scientific evidence and medical and public health science. Thank you.

Mr. HIGGINS. So, you feel solid about it? It is a right position, a righteous position. I don't know why—

Dr. RICHARDS. You seem to have—

Mr. HIGGINS [continuing]. We are avoiding the word—

Dr. RICHARDS [continuing]. Different words.

Mr. HIGGINS [continuing]. Righteous, but I shall not—

Dr. RICHARDS. I stand by my statement. Thank you.

Mr. HIGGINS. So, let me ask you gentlemen, in your nonprofits have any of your nonprofits associated yourself or signed onto lawsuits against Title 42 in Federal court? The answer is no. You, Mr. Melnick, your organization has not. Mr. Kizuka.

Mr. KIZUKA. Yes, we have joined amicus briefs.

Mr. HIGGINS. Have you joined ACLU?

Mr. KIZUKA. We have joined amicus briefs in opposition to the Title 42. That is correct.

Mr. HIGGINS. OK. That is excellent. You were the young man that said your position was lawful. Dr. Richards, is your nonprofit, what is it called, CPI? Has it joined a lawsuit?

Dr. RICHARDS. I am here with Physicians for Human Rights. Community Partners International is another organization I have been affiliated with. I am no longer on the board of directors of that organization.

Mr. HIGGINS. Well, according to your background, I was just reading your background, sir. It is nothing to be ashamed of. Are you aware of—are you associated with any lawsuit against Title 42?

Dr. RICHARDS. Personally, I am unaware.

Mr. HIGGINS. OK. Well,—

Dr. RICHARDS. I am with Physicians for Human Rights.

Mr. HIGGINS [continuing]. Let me just say, gentlemen, that you could be. You could be if you feel passionately about your position, you are an American citizen, by all means, pursue your rights under the Constitution to seek legal remedy. But right now, Title 42 is legal.

Sheriff, are you there, my brother?

Sheriff DANNELS. Yes, Ranking Member.

Mr. HIGGINS. Sheriff, tell us what is going to happen on May the 23 in your community if Title 42 is lifted.

Sheriff DANNELS. We have great concern. Let me say that the Border Patrol agents, Customs, to include local law enforcement communities are very concerned because we have failed to recognize border security throughout the last 18 months, which has been a huge impact on my community, along with my sheriffs I work with on the Southwest Border. Effective May 23, when Title 42 goes away, this will compound our issues already in a community that addresses public safety, National security, and humanitarian with the deaths that we are seeing on our borders. So, until we get a manageable, reasonable policy and direction on our Southern Border, this will continue to get worse. It is a slippery slope as we speak.

Mr. HIGGINS. It is pretty bad, isn't it, Sheriff? In the interest of time, I only have 45 seconds remaining, my thin blue line brother, how long have you been wearing a badge, Sheriff?

Sheriff DANNELS. Thirty-eight years.

Mr. HIGGINS. In 38 years, have you ever seen anything like what we are facing right now?

Sheriff DANNELS. This is the worst I have ever seen it.

Mr. HIGGINS. You are sworn to protect and serve the citizens of your community, are you not?

Sheriff DANNELS. Yes, I am.

Mr. HIGGINS. Your men, your women, as to serve, and wear your badge, you're dedicated, compassionate, law enforcement professionals, sir?

Sheriff DANNELS. Yes.

Mr. HIGGINS. Well, some of us stand with them.

Sheriff DANNELS. Thank you.

Mr. HIGGINS. God bless you. Sheriff, I am at your avail. Madam Chair, I yield.

Chairwoman BARRAGÁN. Thank you, Mr. Ranking Member. Some of us stand with law enforcement too and we did help fund, make sure they had dollars under the American Rescue Plan. The Chair will now recognize other Members for questions they may wish to ask the witnesses. As previously outlined, I will recognize Members in order of seniority, alternating between Majority and Minority.

Members are reminded to unmute themselves when recognized for questions. The Chair recognizes for 5 minutes, the gentleman from California, Mr. Correa, for 5 minutes.

Mr. CORREA. Thank you, Madam Chair. I want to thank the witnesses, as well, for being here today. This is an important hearing, not just because it is about Title 42, but it touches about a very important issue, which is refugees to our Nation. Not just at the border, to our Nation, the historical context of how America has been open to refugees and what constitutes a refugee or not.

The four witnesses, I believe, have talked more or less of some of the facts that we have in front of us. But to me, bottom line is, 42 has been used inconsistently to address a bigger issue, which is the refugee challenge. I am very proud that the Biden administration just waived 42 and gave temporary protective status to the Ukrainian refugees.

A week and a half ago, I was at the Tijuana border, got off a plane at the airport. Had Ukrainian refugees welcoming other Ukrainian refugees to Tijuana getting ready to bring them over, process them, so to speak, help them in the process to the United States.

I just spoke to another Ukrainian activist who told me that in Mexico, Tijuana, Mexico, they are right now, Mexican government, setting up a soccer stadium to take in all of the Ukrainian refugees because they are essentially overwhelmed by the numbers. This is before the Russian refugees hit Tijuana, Mexico. We are looking at a very interesting and challenging situation. The question we have to ask ourselves as Americans is are we open to refugees or not? Mr. Ranking Member, your witness very correctly stated the ill effects of having cartels in the middle of the smuggling business. Eight- to \$10,000 per person is what these folks pay to get to the Mexican border, U.S.-Mexico border. I got to figure, you sell everything you own, your soul into human slavery to get to the U.S. border. Then you have very ugly outcomes.

I ask myself we can debate the facts. Let's talk about solutions, folks. I am going to ask the witnesses how practical would it be to set up a system where you can apply for refugee status in your home country? Ten thousand dollars you pay to get to the border. I was talking to a Central American ambassador that told me 80 percent of the ladies, the women, by the time they get to the U.S.-Mexico border, are either raped or sexually assaulted. A horrible situation. I would like us to reach across the aisle here and not talk about, you know, the negativity, but talk about the challenge, the problem in front of us. How can we get legitimate refugees to apply for refugee status in a safe manner that doesn't cost them \$10,000? They don't have to expose themselves to a 1,000-mile trip and be in harm's way.

Can we legitimately fund? Can we fund refugee application processes in their home countries, and have legitimate outcomes in a timely manner? I have like a minute left, but if any of the witnesses would care to answer that question. Is that something we can do? I got 55 seconds. Come on, folks, come on.

Mr. REICHLIN-MELNICK. Thank you, Representative Correa. The answer is is that we can support refugee processing in other countries. The correct time to do that would have been years ago. But we also have to recognize that there are some people who can't wait. If the cartels or MS-13 shows up at your home tomorrow and says if you don't leave, we are going to kill you and we are going to take your children, it is nice to know that you could have applied for refugee status, but you might have to leave the next day. All of us who have been to the border have talked to people who never wanted to leave, but they had to make a split-second decision because if they didn't, their lives were going to be lost. So, we have to put—

Mr. CORREA. I would say to you that those are factors we can look at. Because getting to the border and being in the situation that I see right now at the border, is also not a safe, acceptable situation. So, I hope that I can work with my colleagues across the aisle to figure this one out. Because, again, right now thinking about over the last 2 weeks, you got a stadium full of Ukrainian refugees that just popped up on you. You got a couple more coming at you. We got to figure out this problem sooner rather than later.

Finally, let me say, the U.S. Chamber of Commerce and others are stepping up and saying we need the workers. There is a win-win here somewhere. Madam Chair, I yield.

Chairwoman BARRAGÁN. Thank you, Mr. Correa. The Chair now recognizes for 5 minutes, the gentleman from Mississippi, Mr. Guest.

Mr. GUEST. Thank you, Madam Chairman. Before I begin, I would ask unanimous consent to submit Ranking Member Katko's Statement for the record.*

Chairwoman BARRAGÁN. No objection. Thank you.

Mr. GUEST. Sheriff, I want to thank you for joining us this afternoon. In your opening statement, you mentioned some statistics. I also want to cite some troubling statistics that have been provided by the Department of Homeland Security. Fiscal year 2021, CBP encountered a record number of immigrants along the Southwest Border, 1.73 million. Fiscal year 2022, we are on track to surpass that number. In the first 5 months, we have encountered 838,000 immigrants and current estimates are that we encountered over 200,000 in March 2022, bringing during the first 6 months of fiscal year 2022, bringing that number to over 1 million immigrants encountered across that Southwest Border.

We have seen reports recently that DHS after the expiration of Title 42, is preparing for a potential increase of as many as 18,000 immigrant encounters every day. Some 2½ to 3 times higher than the number of encounters that we are currently facing. We know that Title 42 has been successful. We saw it implemented under the administration of President Donald Trump. Under the original administration, over 90 percent of immigrants were returned to their country of origin under Title 42.

We have seen under the Biden administration, we have seen that number drop, but it is still above 50, 55 percent of immigrants that are encountered today by the Department of Homeland Security are returned to their country of origin under Title 42. Now, we know that in outdoor circumstances, that the use of Title 42, that an immigrant can be processed within as little as 15 minutes.

So, now here as we are within just 6 weeks, a little over 6 weeks of Title 42 coming to an end on May the 23, Sheriff, I want to ask you, as a 38-year law enforcement officer, someone who has dedicated your entire career to protecting your community at the Southwest Border, your continued daily interaction with Border Patrol, with the Department of Homeland Security, my question to you is are we prepared to deal with the surge of immigrants that the Department of Homeland Security is predicting? Can we in any shape, form, or fashion process anywhere close to 18,000 immi-

*The document has been previously included in the record.

grants coming across our border every day? Eighteen thousand immigrants over a 30-day period is over 500,000 immigrants in a individual month. So, are we prepared to deal with that surge of immigrants coming across the border?

Sheriff DANNELS. Member Guest, I will say this, no, we are not. What we are not talking about when it comes to our Southern Border is the rule of law. We are also not talking about border security. We turned this into two separate programs. We have immigration. We have border security. Sadly, border security has been set aside. The absent words within our border. So, talking to my fellow agents, talking to Federal leadership with Border Patrol, working with our communities, we are outpaced here on the Southern Border right now.

We run details right now every day costing my county \$17,000 a week just trying to help Border Patrol and keep our communities safe from the juvenile smugglers, the adult smugglers, the repetitive crime, home invasions, murder, you name it, we are seeing it down here. We are not exempt. This is happening all along our Southern Border right now. We need to get a handle on the rule of law, support our borders, support our men and women wearing the badge, and address immigration. We are missing the rule of law here and border security.

Mr. GUEST. Sheriff, during your opening statement, you also gave some individual examples about cases where we had seen immigration, illegal immigrants come across the border, and the impact that it had had on your citizens directly. So, my question is with Title 42 setting to expire, with the number of immigrants we believe that will dramatically increase, two things. One, what impact will this have on your community personally? Then what impact will this have on both human trafficking and drug smuggling?

Sheriff DANNELS. Well, Member Guest, the first thing I would say is this, that we need to understand, smuggling comes with criminal cartels. These transnational organizations they have no respect for Americans. They have no respect for communities that we are talking about today. It is going to be a huge impact.

We are already outpaced like I said a few minutes ago. We are already overwhelmed in these rural communities. There are 31 counties along the Southwest Border, 20 are considered rural like mine. We don't have the resources. All I hear is we are talking about CDC. Folks, I will just say in the last 18 months, I don't recall Dr. Fauci or anybody from CDC talking about our Southern Border and what law enforcement's been addressing when it comes to the health pandemic down here. I would argue that all day.

Nobody has talked to us and that is a big concern of the sheriffs. We have tried to reach to this administration to include letters to the President of the United States and it has gone on deaf ears. It is intellectual avoidance. So, if I say I am frustrated, if I say my fellow sheriffs are frustrated, that would be an understatement. So, we are concerned because there is not a collective action. There is not a collective shared plan. There is not a collective message, especially starting in communities with this administration.

Chairwoman BARRAGÁN. The gentleman's time has expired. I also want to point out that there is not a prediction that there is

going to be 18,000 migrants a day. The committee, rather the Department is preparing, preparing for different scenarios.

With that, I will yield to Mr. Green, the gentleman from Texas, for your 5 minutes. Mr. Green, I think you are still on mute. We still can't hear you, Mr. Green. OK. There we go, sir.

Mr. GREEN. I am audible. Thank you, Madam Chair. To the law enforcement officer who is there, I would have you know, I have great respect for law enforcement.

Sheriff DANNELS. Thank you.

Mr. GREEN. My uncle was a deputy sheriff. I believe that I am in Congress probably because of him. He told me when I was a very young child that I was going to be a lawyer. Because he was so well respected, from that moment forward, I wanted to be a lawyer. I never had any thought of being anything else. By the way, I didn't know what a lawyer was at the time. But my uncle said it and it meant something. So, I have great respect.

Sheriff DANNELS. Thank you.

Mr. GREEN. This problem at the border is something that we have been grappling with for some time. It seems to me that any solution is going to require doing something about the conditions that would cause a mother, knowing what can happen to her child along this route, cause that mother to say I am going to risk sending my child north because the conditions here are such that I don't believe my child is safe. So, it seems to me that we have to focus on doing something about those conditions.

I believe that the law enforcement officers, I don't doubt you when you say you are overwhelmed. But what you are doing is at the border and we have to do something beyond the border. We now have sent billions to Ukraine and I voted to do it and I will send more. I want to send planes. I want to do whatever we can do to help them. It seems to me that we can do something more for our neighbors. I think it is going to take the will of Congress to get it done. But that has to be a part of the solution.

Now, I have had a personal experience with this. I had a constituent, Mr. Escobar, who was deported. He was married to an American woman. He had two children born in the United States of America, no criminal history, and he was deported. I went to El Salvador three times. I brought him home on the third time. Three times he could not walk the streets. When he was deported, he became sort-of a target, if you will. So, we brought him home. He was within the law. Nothing outside of the law. But it is really sad to know the conditions that persons are living under such that they would send their children over this long distance.

The staff has provided me some intelligence that I would just like to share with everyone. I am sure that everyone has perused the documentation that we have. It reads families and other asylum seekers expelled back to Mexico are often targeted by drug cartels and face violence and extortion. In fact, human rights organizations have documented nearly 10,000 instances of people being kidnapped, tortured, sexually assaulted, and murdered after being expelled under Title 42. Title 42 is the law of the land. I am not debating whether that should not happen under the law of the land. Just stating the facts.

Conditions in Mexico have led to hundreds of parents fearing for the lives of their children. To choose to self-separate, send their children across the border alone, knowing that unaccompanied children would be accepted and cared for by the Department of Health and Human Services. It is a tragedy. So, Sheriff, I am appealing to you. I just want to know. Do you know enough about it? If you don't, I will understand. To give a comment about the conditions that are causing a mother to send her baby on this dangerous journey knowing what the consequences might be, but she would rather face that than have her child stay with her and suffer. You thoughts, Sheriff, please.

Sheriff DANNELS. Member Green, I appreciate those comments. One of my objectives as a sheriff and with my sheriff's association is humanitarian. We have big hearts here as we wear the badge, and we respect. I have talked to my sheriffs in Del Rio, Sheriff Martinez, Sheriff Wilmont, over in Yuma, Arizona. They see what you are talking about. That is what your—those examples.

In my section of the southeast corner of the State of Arizona, we don't see that. We see 100 percent aggravated individuals that are camouflaged and they are coming into the country for all ill intent. They are taking advantage of current times. That is what bothers me. That is why I am testifying today on the public safety side of this and the humanitarian side.

We also see the death. We also see those that die in the process of coming across our border because we have lost the managing side of it on the public safety side. That is where I come from.

There has got to be a balance. Member Green, I agree with you. There has got to be a balance. We need to take the politics out of this. We need to take the reelection thoughts out of it. Let's get to the business and secure our country and security our border and make this humanitarian and public safety and National security.

Mr. GREEN. Thank you, Madam Chair.

Chairwoman BARRAGÁN. Mr. Sheriff, thank you. The gentleman's time has expired. I will now yield to the gentleman from Georgia, Mr. Clyde, for your 5 minutes.

Mr. CLYDE. Thank you, Chairwoman and Ranking Member, for holding this hearing today. For our three witnesses who are here in the committee room, and we will start with Dr. Richards here, please answer yes or no to this question. Do you think border security directly relates to National security? Yes or no?

Dr. RICHARDS. I don't see how that has anything to do with public health or medical science.

Mr. CLYDE. OK. You are a doctor, sir, you have got an MD, a PhD, you are a smart guy. So, you don't have an opinion? Yes or no?

Dr. RICHARDS. The two are related, yes.

Mr. CLYDE. OK, all right. We will go to the next person. What do you think, sir? Does border security directly relate to National security?

Mr. KIZUKA. That is certainly an issue that certain Members of this House have tried to make a connection.

Mr. CLYDE. So, yes, or no?

Mr. KIZUKA. Receiving asylum seekers is not—

Mr. CLYDE. Yes or no, sir?

Mr. KIZUKA [continuing]. A National security issue.

Mr. CLYDE. Yes or no? You don't have an opinion. You, sir.

Mr. REICHLIN-MELNICK. It can, but it depends on the context.

Mr. CLYDE. So, it could?

Mr. REICHLIN-MELNICK. Again, it depends on the context of what we are talking about.

Mr. CLYDE. OK, all right. Do you think we have a secure border? I mean, you have seen the news. Do you think we have a secure border?

Mr. REICHLIN-MELNICK. By almost every metric, the border is in some ways more secure than it has been, according to Customs and Border Protection—

Mr. CLYDE. OK, all right.

Mr. REICHLIN-MELNICK [continuing]. Itself,—

Mr. CLYDE. Thank you. All right. We will go back to you.

Mr. KIZUKA. Returning asylum seekers to be kidnapped, raped, tortured in Mexico is not a secure border.

Mr. CLYDE. OK. We do not have a secure border. You, Doctor, do you think we have a secure border?

Dr. RICHARDS. From the perspective of human rights, human rights law, the treaties that the United States has ratified, and the 1980—

Mr. CLYDE. Just yes or no is fine, sir.

Dr. RICHARDS [continuing]. Refugee Act, then the answer is no. It is not secure.

Mr. CLYDE. We do not have a secure border.

Dr. RICHARDS. Individuals' rights are being violated. Thank you.

Mr. CLYDE. You know, we have a rule of law and this country is literally the most prosperous and the most free in the world because we have a rule of law. Because we believe that everyone should follow the law. We have immigration law.

Sheriff, what do you think? Do you think border security directly relates to National security?

Sheriff DANNELS. Absolutely, 100 percent correct on that. If I could add, Member, the fact that we have lost law enforcement on the Southern Border as a result of an unsecure border, both on the health side of it and the public safety because of violent acts. My office right now is investigating several acts here in the last few weeks that in the last month where an agent was—they tried to cut his throat. Had another one they tried to kill the agent. So, yes. A secure border is National security and community and public safety.

Mr. CLYDE. Thank you, Sheriff. Just a follow-up. As of right now, how much of your manpower goes into filling the gaps for the Federal Government as it relates to the flow of illegal immigration and smuggling? If Title 42 goes away, how do you think that will change for you, for your agency?

Sheriff DANNELS. Currently, we are spending \$17,000 a week out of a rural county sheriff's office to address border security. We have had over 1,000 calls in the last 8 to 9 months just border-related crimes, just to my office. We run details every day just to assist Border Patrol that are stretched very thin right now. Like I said, this is the worst I have ever seen it when it comes to the lack of management on our Southern Border.

Mr. CLYDE. So, you are spending almost \$1 million or right around \$1 million a year because the Federal Government is not doing its job when it comes to illegal immigration and smuggling. If Title 42 goes away, how much do you think that is going to change?

Sheriff DANNELS. It is going to compound that to levels I have never seen in my 4 decades almost. The State of Arizona provided my office \$12.8 million just to address the cost. In the first 5 months, my overtime budget both in jail and patrol was 92 percent expended. We don't have the funds. The State of Arizona and to Governor Ducey, that is why I thanked him, have been stepping up just to help us secure our borders here in southern Arizona.

Mr. CLYDE. Well, thank you. So, it is quite evident that if Title 42 goes away, it is going to be a huge impact on local law enforcement and local communities.

Sheriff DANNELS. Yes.

Mr. CLYDE. The Biden administration's decision to phase out and ultimately terminate Title 42, will only further exacerbate the crisis at our Southern Border. As of March 2022, U.S. Border Patrol officers and agents have expelled over 1.7 million illegal immigrants under Title 42 since its inception in March 2020.

During 2021, over 2 million illegal border immigrants were apprehended by Border Patrol, of which more than 400,000 were released into the United States. Apprehended illegal immigrants that were simply released into the United States, that is unconscionable. Thank you and I yield back.

Chairwoman BARRAGÁN. Thank you. The gentleman yields back. The Chair now recognizes the gentlewoman from New York, Ms. Clarke, for your 5 minutes.

Ms. CLARKE. Thank you very much, Madam Chair. Let me thank our Ranking Member for today's hearing. Let me go directly to my questions. My first question is to Mr. Kizuka. Title 42, in my humble opinion, is an inhumane policy that has allowed CBP to expel about 1.7 million migrants without granting them access to the asylum system. Your organization has documented nearly 10,000 instances of people being kidnapped, tortured, sexually assaulted, and murdered after being expelled under Title 42. Can you further describe the dangerous conditions that asylum seekers and migrants face upon their expulsion and how it disproportionately affects migrants of African descent?

Mr. KIZUKA. Thank you for that question, Representative. It is a sad truth that the Title 42 policy has had a devastating impact leading to grievous human rights violations of people who have been returned or blocked in Mexico, unable to seek asylum. We don't even know how many of the 1.7 million times Title 42 has been used were on people trying to seek asylum because there are no screenings, because the Department is not following U.S. law to determine who is an asylum seeker, who is in need of protection, who should be permitted to continue the asylum process.

For people who are trapped in Mexico, who are sent back to Mexico, they face daily violence. They are at risk of being kidnapped, of being tortured, of being extorted by the cartels that there has been so much concern about on this committee. Those are businesses of the cartels that have expanded because of Title 42, not

in spite of Title 42. They are not being depleted by Title 42. They are a boon to the cartels. They give the cartels an opportunity to target people who are trapped in Mexico. These policies have had a disproportionate impact on people of African descent because they face anti-Black discrimination and violence throughout Mexico.

As I mentioned in my remarks, we have documented many cases of people of African descent who have been attacked, including by Mexican authorities, police, migration, military, who were either directly responsible for those attacks or complicit in them. African descendant migrants also face discrimination. They have great difficulty finding a way to support themselves, to find a place to live while they are waiting to seek asylum in the United States. Many even today, are waiting near ports of entry hoping that the United States will comply, once again, with our U.S. asylum laws and permit them the opportunity to seek protection at a port of entry.

Ms. CLARKE. Very well. I thank you for your response. To Mr. Reichlin-Melnick and Dr. Richards, the United States response to the Ukrainian asylum seekers and refugees has illustrated that we are capable of processing migrants when we want to. What recommendations would you have so that the Federal Government can best use its resources to process migrants waiting to claim asylum?

Mr. REICHLIN-MELNICK. Thank you, Representative Clarke. We have recommended a resource surge to the ports of entry so that CBP can better process migrants arriving at ports of entry and prevent the kind of build-up that we are seeing occurring right now. For the last 4 years, access to asylum at the ports of entry has been heavily restricted. First, through metering, which the Trump administration put in place in 2018, and then through the near complete shutdown in 2020, due to Title 42.

If we had spent the last 4 years pouring money into the ports of entry and finding a way to process asylum seekers safely and humanely and orderly, far fewer people would feel the need to cross between the ports of entry. We can do this. Congress just funded the ports and Border Patrol and CBP to respond to migration. A lot of that money and resources should go to the ports of entry.

Ms. CLARKE. Thank you. Dr. Richards.

Dr. RICHARDS. Sure, thank you. Thank you for the question, Congresswoman. Well, the CDC has recognized that we need to be flexible in both time and place in how we respond and that that should be driven by science. So, as the coronavirus, you know, shifts in its intensity, in its severity, how lethal it is, our response is going to vary. We have more tools now, that is the good news, than we ever have before with treatments, certainly vaccines. As I mentioned in my comments, it is the usual public health tools of masking, social distancing, making sure you limit the number of people in detention, and the time spent in congregate settings. Thanks.

Ms. CLARKE. Very well. Thank you. Madam Chair, I yield back, and I thank you for this hearing. It is very important that we put the truth up front. Thank you, I yield back.

Chairwoman BARRAGAN. Thank you. The gentlewoman yields back. Now, the Chair will recognize Representative Escobar, the gentlewoman from Texas, for her 5 minutes.

Ms. ESCOBAR. Thank you so much, Madam Chair. I really appreciate the opportunity to wave on to the committee today and thank you for hosting this very important hearing. I want to thank all of our panelists for being here.

I serve in Congress representing the U.S.-Mexico border community of El Paso, Texas. I am a lifelong El Pasoan, a third-generation proud border resident. I am so proud to uplift the voice of my community, which has always engaged with migrants in the spirit of goodwill, welcoming the stranger, really embracing true American values.

You know, our Republican colleagues can't have it both ways. Just a week ago, weeks ago, they decried President Biden as not doing anything on the border. Then when he lifts Title 42, claiming what he was doing was working, so let's keep doing what he was doing. The fact of the matter is migration patterns have been changing. We started seeing that change 10 years ago. Not during the Biden administration, not during the Trump administration, but before that. Congress and administration after administration really has failed to act.

I am proud to be part of House Democrats who brought forward comprehensive immigration reform, but we get stymied at every turn by Republicans who choose to obstruct instead of work toward solutions. The truth is this is complicated. It is not easy. There is no one more who wants to see security and dignity than those of us who live on the U.S.-Mexico border. But addressing migration at the border and only at the border really is a signal of failure. I wish we could all recognize that failure and the opportunity.

We have had a test case during the entirety of the Trump administration and 1 year into the Biden administration. Do walls stop migration? Does Title 42 stop migration? We have tried that. For colleagues of mine who want to stop migration, I hope that the test case has proven what works and what doesn't work.

Mr. Reichlin-Melnick, I have a series of questions for you. I am going to try to get through as many of them, so if we can be succinct. First, you know, my colleagues talk about the number of encounters at the border and the media, CBP, have reported these numbers. Those numbers do they, are they representative of individuals arriving at the border or what do encounters mean, succinctly, if you could tell us?

Mr. REICHLIN-MELNICK. Yes. An encounter is an arrest of an individual taken by Customs and Border Protection. So, importantly, the same person can be arrested multiple times. In my opening statement, I talked about 1 person arrested 30 times and expelled every time under Title 42. That was 30 encounters. We actually know it hasn't been 2.5 million people over the last since the start of fiscal year 2021, despite 2.5 million encounters, there has been 820,000 repeat encounters. So, it is actually about 1.7 million. In addition, border crossings are actually lower than they were 20 years ago because—

Ms. ESCOBAR. I am going to interrupt you. That takes me—

Mr. REICHLIN-MELNICK. Yes.

Ms. ESCOBAR [continuing]. To my next question. So, the Sheriff mentioned this is the worst he has ever seen. Again, mind you, with walls and with Title 42, it is the "worst he has ever seen."

How do the numbers of encounters, you were about to get into that, what we have seen in the last year, how does that compare over time?

Mr. REICHLIN-MELNICK. Yes. So, 20 years ago people weren't coming through Cochise County. They were coming through the Tucson sector. I mean, which is also included in it. But they were coming a little bit further over west, and primarily in California, as well. But also, we had far fewer Border Patrol agents and far less surveillance at the border. So, in fiscal year 2000, when there were 1.7 million encounters, CBP and DHS estimates that there were an additional 2 million undetected unlawful entries. That is——

Ms. ESCOBAR. Very——

Mr. REICHLIN-MELNICK [continuing]. Not what it is today.

Ms. ESCOBAR. Perfect, thank you. Very quickly, when Members say people need to get in line or do it the right way, yes or no, has Congress created a line or a right way?

Mr. REICHLIN-MELNICK. For almost every migrant who comes to the border, the right way is to cross the border and seek asylum, because seeking asylum is legal. There is no other pathway.

Ms. ESCOBAR. When was the last time Congress updated immigration law?

Mr. REICHLIN-MELNICK. Nineteen ninety-six, but that was basically the last time. So, it has been almost 25 years.

Ms. ESCOBAR. Thank you. I would like to just talk a little bit about, in my remaining few seconds, securing the border and the question around whether the border has been secured. For over a decade, Republicans have told Democrats, if you will just secure the border, we will give you comprehensive immigration reform. Hundreds of millions of dollars later into border security, there has been no movement on comprehensive immigration reform. The more that we shrink legal avenues, which is what has happened, the more that we should anticipate that we will see more irregular crossings. So, I invite Congress to work on real solutions. Madam Chair, I yield back.

Chairwoman BARRAGÁN. Thank you. I want to thank our panelists. I want to thank all the Members for questions. I think this is a very important hearing. I think it is timely. Title 42, as I mentioned, is a tool of the CDC, the Centers for Disease Control, and was used as a public health declaration.

There has been a lot of talk about the rule of law. Frankly, the rule of law is that you can come to a port and you can apply for asylum. We are not following that rule of law. So, there is one agreement where we have where the rule of law is not being followed. Our frustration on our side is that because the rule of law is not being followed, immigrants can't come to a port of entry and seek asylum, which is legal in the United States.

So, that has been my frustration as I kind-of hear, and then we talked about border security. As we all know as Members of Homeland Security, we have been to multiple briefings and we know the largest terror threat is from not the Southern Border. It is the Northern Border. So, this is where I think—and maybe we need to have a conversation about that. But this is why I think it is helpful for us to have the hearing and I appreciate the participation on

both sides today. Again, to all our witnesses, I want to thank you all for your valuable testimony. And you, Sheriff, thanks for joining us virtually, as well.

Without objection, I submit statements for the record from Kids in Need of Defense, First Focus on Children, the Latin American Working Group, the Friends Committee on National Legislation, and the Young Center for Immigrant Children's rights.

[The information follows:]

STATEMENT OF KIDS IN NEED OF DEFENSE (KIND)

APRIL 6, 2022

Kids in Need of Defense (KIND) is the leading national organization working to ensure that no child faces immigration court alone. KIND was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie. We have served more than 20,000 unaccompanied children in removal proceedings, trained over 57,000 attendees in pro bono representation of these children, and formed pro bono partnerships with over 700 corporations, law firms, law schools, and bar associations. KIND's social services program facilitates the coordinated provision to unaccompanied children of counseling, educational support, medical care, and other services. Additionally, the organization's programs in Mexico and Central America work to address the root causes of forced migration and help protect the safety and well-being of migrant children at every phase of their migration journey. KIND's team has been on the ground on the in Mexico since 2020 providing legal orientations, case screenings, and assistance to vulnerable, unaccompanied children at the U.S.-Mexico border.

Since March 2020,¹ the U.S. Government has used the "Title 42" public health authority to carry out more than 1.7 million expulsions of individuals arriving to the United States between ports of entry²—including unaccompanied children—without providing them with a meaningful opportunity to request protection or legal safeguards. Independent public health experts have made clear that these Title 42 expulsions lack a valid public health rationale.³ The Department of Homeland Security (DHS) has also maintained entry restrictions that prevent unaccompanied children and other protection seekers from requesting humanitarian relief at ports of entry. Despite these restrictions, DHS has allowed access to ports of entry for other reasons that include shopping and tourism.

KIND welcomes the Centers for Disease Control and Prevention's announcement that the use of Title 42 will end on May 23, 2022. However, even during the time that unaccompanied children were exempt from Title 42, they remained unable to access protection at ports of entry. These port closures compel children to pursue more hazardous routes between official crossings, or outright deny them an opportunity to seek humanitarian relief. DHS must fully lift port of entry restrictions for protection seekers, including unaccompanied children. There are also serious concerns that unaccompanied children traveling with non-parental relatives, and Mexican children traveling on their own, are not being screened and protected in accordance with U.S. law, including the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).⁴ Altogether, without required due process safeguards intended to recognize unaccompanied children's particular vulnerability to exploitation, trafficking, and other threats, children face return to the very dangers they fled and/or areas where they confront pervasive violence or may be targeted for harm.

Moreover, the termination of Title 42 and reopening of ports of entry are only the first steps toward restoring humane and orderly processing at the U.S.-Mexico border. The Biden administration must also end the use of the "Remain in Mexico" policy that forces protection seekers to await U.S. immigration proceedings in dan-

¹Centers for Disease Control and Prevention (CDC), 85 Fed. Reg. 17060 (March 20, 2020); 42 USC § 265.

²Customs and Border Protection, "Southwest Land Border Encounters" (updated March 15, 2022); <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters#>.

³See, e.g., Physicians for Human Rights, "After Two Years of Health and Rights Abuses, it's Past Time to End Title 42 Border Expulsions: PHR" (March 17, 2022); <https://phr.org/news/after-two-years-of-health-and-rights-abuses-its-past-time-to-end-title-42-border-expulsions-phr/>.

⁴William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

gerous, unstable conditions.⁵ The administration should complement those measures with adoption of the below recommendations on both an immediate and long-term basis, which would help ensure appropriate reception and treatment of unaccompanied children and other protection seekers now and in the future.

RECOMMENDATIONS FOR IMPLEMENTING HUMANE AND ORDERLY BORDER PROCESSING FOLLOWING TERMINATION OF TITLE 42 AND THE REOPENING OF PORTS OF ENTRY TO PROTECTION SEEKERS

- *Hire child welfare professionals to administer screenings and care of children in Customs and Border Protection (CBP) custody.*—Children are held at the U.S.-Mexico border in CBP facilities originally designed for single adults and fundamentally unsuited to children's unique needs. CBP agents and officers trained in law enforcement, together with other personnel who lack child welfare expertise, administer these children's protection screenings and care. While broader reforms are critical to ensure the humanitarian reception of children in child-appropriate spaces, DHS can take immediate steps toward improved treatment of children in CBP custody by hiring State-licensed child welfare professionals to administer screenings and care of children in CBP facilities along the border. By assuming child welfare functions currently being performed by CBP agents and officers, child welfare professionals would not only improve conditions for migrant children but also ensure that CBP agents and officers are able to dedicate their time to the law enforcement functions for which they are specially trained.

Fiscal year 2022 omnibus legislation provided \$14.55 million to DHS to hire licensed child welfare professionals at border facilities. It is critical that DHS promptly on-board these experts.

- *Co-locate specialists from the Department of Health and Human Services (HHS)'s Office of Refugee Resettlement (ORR) in CBP border facilities.*—Some unaccompanied children arrive at the U.S.-Mexico border with family members such as aunts, uncles, grandparents, or adult siblings who are trusted caregivers but not their parents or legal guardians. These children meet the legal definition of an "unaccompanied alien child," as defined by the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008, under which they are afforded certain procedural protections.⁶ Under current practice, these children are separated from their non-parent family members, placed in U.S. custody, and hopefully later reunited with family after ORR review. CBP and ORR can avoid unnecessary separation from loving caregivers by immediately commencing the family reunification process during the time the family is in CBP custody. Through the placement of ORR Federal field specialists in CBP facilities, ORR could consider caregivers traveling with a child as potential sponsors and help facilitate the simultaneous release of the child and caregiver together. ORR staff can also rapidly identify children with known vulnerabilities or special needs and ensure their initial placement in facilities best-suited for their needs and similarly ensure that the process of identifying potential sponsors for all unaccompanied children begins as soon as possible. This reform would also reduce children's length of stay in CBP or ORR facilities. The Federal Government recently demonstrated its capacity to deploy a coordinated co-location model through its reception of unaccompanied Afghan children at airports and military bases. The agency should identify improvements needed to refine and scale this approach and to adopt a similar model at points along the Southern Border at the earliest date possible.

- *Undertake broader reforms to create a humanitarian reception model.*—Through engagement of a nongovernmental humanitarian actor, DHS and HHS can help ensure the appropriate reception, screening, and care of children who arrive in the United States at or between ports of entry. DHS's engagement of the American Red Cross to assist with reception during a period of significant border arrivals in 2021 was an example of successful collaboration. Efforts to formalize a humanitarian reception model over the long-term should continue beyond crisis response and involve outreach to and engagement with nongovernmental humanitarian organizations.

Modification of border facilities is also critical to ensure the availability of child-friendly spaces for temporary processing, designated areas in which children

⁵See KIND, "Forced Apart: How the 'Remain in Mexico' Policy Places Children in Danger and Separates Families (February 24, 2020); <https://supportkind.org/wp-content/uploads/2020/02/MPP-KIND-2.24updated-003.pdf>.

⁶Pub. L. 107-296; William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008) (TVPPRA).

can be screened by child welfare professionals in a confidential and child-appropriate manner, basic hygiene accommodations, and meeting spaces for in-person “Know Your Rights” presentations and other legal assistance by nongovernmental organizations. In addition, DHS should work to improve accountability and oversight of CBP’s compliance with legal requirements in the TVPRA, the *Flores* Settlement Agreement,⁷ and the Transport, Escort, Detention, and Search (TEDS) standards by allowing access to CBP facilities and monitoring by independent third parties, including nongovernmental organizations. The emphasis must be on ensuring the welfare, best interests, and rights of children, minimizing detention, and ensuring the safe and swift reunification of children with sponsors.

- *Expand legal representation of unaccompanied children.*—Congress and the Biden administration should prioritize the provision of legal representation to unaccompanied children in immigration proceedings before the Executive Office for Immigration Review (EOIR). Despite their unique vulnerabilities in the immigration system, many if not most unaccompanied children lack an attorney to assist them in navigating immigration proceedings with the highest of stakes for their lives and safety. Government data illustrate that unaccompanied children without an attorney have virtually no meaningful chance of receiving a fair day in court: EOIR statistics on completed immigration court cases from fiscal year 2018 through the first half of fiscal year 2021 show that immigration judges were almost 100 times more likely to grant legal relief to unaccompanied children with counsel than unaccompanied children without legal counsel.⁸ Though ORR currently provides financial support to a network of nonprofit legal services providers to enable legal representation of unaccompanied children, current needs far exceed existing funding and allocation. Amid continuing high numbers of unaccompanied children arriving to the United States, this due process crisis will only expand unless Congress and the administration prioritize measures to ensure that no child faces immigration court alone.
- *Enhance bilateral coordination between U.S. and Mexican officials to ensure safe transfer of unaccompanied children to the United States when it is in their best interests.*—At times, Mexican child welfare authorities encounter migrant children who are in Mexico but wish to reunite with family members in the United States and apply for protection there. When these authorities determine that it is in the child’s best interest to do so, children should be safely transferred to the United States and reunified with U.S.-based family, where they can seek legal protection. The U.S. and Mexican governments must develop and implement formal mechanisms for the safe transfer of unaccompanied migrant children in these circumstances.

CONCLUSION

The administration’s plan to end Title 42 is a welcome and long-overdue policy shift that will help return the United States to its founding principles as a Nation that protects the most vulnerable. But on its own, the termination of Title 42 is insufficient. Congress and the administration must reverse port of entry restrictions and take proactive steps to ensure the safe and orderly reception of unaccompanied children, families, and others arriving at the U.S.-Mexico border.

STATEMENT OF FIRST FOCUS ON CHILDREN

APRIL 6, 2022

Chairwoman Barragán, Ranking Member Higgins, and Members of House Homeland Security Subcommittee on Border Security, Facilitation, and Operations, we thank you for the opportunity to submit this statement for the record. First Focus on Children is a bipartisan child advocacy organization dedicated to making children and families a priority in Federal policy and budget decisions. As an organization that advocates for the health and well-being of all children, we have long urged both Congress and various administrations to uphold the best interests of the child in all immigration policy. Nearly a year ago, First Focus led more than 30 child ad-

⁷ *Flores v. Reno*, No. CV 85–4544–RJK (C.D. Cal. Jan. 17, 1997) (“*Flores* Settlement Agreement” or “*Flores*”).

⁸ KIND calculated this figure based on Executive Office for Immigration Review (EOIR) data published by the Congressional Research Service in its report titled “Unaccompanied Alien Children: An Overview,” p. 16 (September 1, 2021); <https://sgp.fas.org/crs/homsec/R43599.pdf>.

vocacy organizations to call on the Biden administration to end all Title 42 expulsions, particularly highlighting the harms for children in families.¹

We are pleased that the Biden administration has announced the termination of the Title 42 policy by May 23 and encourage a swift start to winding down the policy. While Title 42 was in place, at least 29,000 children in families, 9,000 under the age of 5 and 600 under the age of 1, have been expelled,² including more than 3,200 children to Haiti at a time when the Nation faces overlapping political crises and natural disasters.³ Despite unaccompanied children's exemption from this policy in 2021, a Human Rights First report found that unaccompanied children have been denied access to protection at ports of entry.⁴ In its most recent report, Human Rights First recorded almost 10,000 instances of kidnapping, torture, rape and other violence against those expelled.⁵

Reports have also confirmed that Title 42 led to family separation.⁶ Public reports estimate that over 2000 children previously expelled returned to the border by themselves between January 20 and April 5, 2021.⁷ Additionally, under Title 42 children arriving with family members such as older siblings and uncles are designated as unaccompanied and referred to the Office of Refugee Resettlement (ORR), while their family members are expelled under Title 42.⁸ Separation from parents, particularly for children who have already experienced trauma, leads to additional toxic stress and negative impacts for children's mental, physical, and emotional health that could be lifelong,⁹ and evidence shows that children's separation from loving caregivers that they know and trust has the same impact as separation from a parent.¹⁰

Title 42 never had a legitimate public health basis. Experts from the Centers for Disease Control and Prevention opposed the policy when it was first contemplated¹¹ and public health experts have repeatedly stated that there is no public health basis for the policy.¹² The claim that Title 42 had a public health rationale became even more specious as vaccines become more available in the United States and around the world and as U.S. States and localities began to lift COVID-19 restrictions. Rather, the pandemic was an excuse used by the previous administration to flout domestic and international asylum laws.

¹Letter to President Biden on Title 42, First Focus on Children (April 12, 2021), https://firstfocus.org/wp-content/uploads/2021/04/First-Focus-on-Children_Title42-2.pdf.

²"Illegal and Inhumane": Biden Administration Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount, Human Rights First 3 (October 2021), <https://www.humanrightsfirst.org/sites/default/files/IllegalandInhumane.pdf>.

³Returns of Migrants and Reception Assistance in Haiti, International Organization for Migration Haiti (January 9, 2022), <https://haiti.iom.int/sites/g/files/tmzbd11091/files/documents/factsheet-returns-9-january-2022.pdf>.

⁴Border Restrictions Lift, But Biden Administration Blocks Protection for Asylum Seekers and Children, Human Rights First, Florence Immigrant & Refugee Rights Project 7 (November 2021), <https://www.humanrightsfirst.org/sites/default/files/BorderRestrictionsLift%2C-BlockingAsylumSeekersContinues.pdf>; Two Years of Suffering: Biden Administration Continues Use of Discredited Title 42 Order to Flout Refugee Law, Human Rights First 5–6 (March 2022), <https://www.humanrightsfirst.org/sites/default/files/TwoYearsofSuffering.pdf>.

⁵Two Years of Suffering: Biden Administration Continues Use of Discredited Title 42 Order to Flout Refugee Law, *supra* note 4.

⁶Id.

⁷Nicole Sganga and Camilo Montoya-Galvez, *Over 2,100 Children Crossed Border Alone After Being Expelled with Families to Mexico*, CBS News (May 7, 2021), <https://www.cbsnews.com/news/migrant-children-left-families-asylum-border/>.

⁸Border Restrictions Lift, But Biden Administration Blocks Protection for Asylum Seekers and Children, *supra* note 7–8.

⁹Hajar Habbach, Kathryn Hampton, & Ranit Mishori, *You Will Never See Your Child Again: The Persistent Psychological Effects of Family Separation*, Physicians for Human Rights (February 25, 2020), <https://phr.org/our-work/resources/you-will-never-see-your-child-again-the-persistent-psychological-effects-of-family-separation/>.

¹⁰Key Points: Traumatic Separation and Refugee & Immigrant Children, The National Child Traumatic Stress Network, <https://www.nctsn.org/sites/default/files/resources/tip-sheet/key-points-traumatic-separation-and-refugee-immigrant-children.pdf> (last visited April 23, 2021) (noting that a child's relationships with a primary caregiver is critical to a children's ability to thrive, and that separation is one of the most potent stressors a child can experience).

¹¹Camilo Montoya-Galvez, *How Trump Officials Used COVID-19 to Shut U.S. Borders to Migrant Children*, CBS News (November 2, 2020), <https://www.cbsnews.com/news/trump-administration-closed-borders-migrant-children-covid-19/>.

¹²1300+ Medical Professionals From 49 State and Territories Call on CDC to End "Junk Science" Border Expulsion Policy, Physicians for Human Rights (October 28, 2021), <https://phr.org/our-work/resources/u-s-medical-professionals-demand-cdc-end-title-42/>.

The American people support policies that ensure our immigration system is fair, humane, and provides due process, including the end of Title 42 expulsions.¹³ As Title 42 winds down, we urge Congress and the administration to implement the following recommendations:

1. *Immediately begin to process asylum seekers at the border.*—Any delay in restoring the right to seek asylum at the border prolongs the proven risks of harm to children and families who have been expelled. We urge the administration to immediately allow asylum seekers, particularly children, Black and Indigenous asylum seekers, and other marginalized populations, to seek safety. Importantly, we urge the administration to not put asylum seekers into the Remain in Mexico Program, given the clear record of harm and denial of due process children, families, and individuals have suffered under that policy.¹⁴ To make this termination a success, we urge Congress and the administration to partner with and provide resources to migrant-serving organizations on the group to support those arriving.

2. *Prioritize child well-being in the restoration of asylum processing.*—To fully realize the President’s promise of a fair, orderly, and humane immigration system, the Biden administration must prioritize children’s health, safety, and well-being in the restoration of asylum processing. An asylum process that prioritizes children means:

a. *Children and their families can request protection at ports of entry, as well as elsewhere at the border.*—The denial of access to ports of entry has resulted in severe harm and even death as many families seeking protection at more dangerous points at the border. Earlier this year, multiple young children tragically died attempting to cross the Rio Grande river.¹⁵ We urge the administration to ensure that asylum seekers can access ports of entry to seek protection.

b. *Children and their families are allowed to pursue their immigration case in community.*—Research shows that detention is harmful to children’s mental and physical development.¹⁶ The use of technology to further monitor asylum seekers as an “alternative” to detention is also harmful. A survey of immigrants subject to electronic monitoring like ankle monitors found that most respondents experienced impacts on their physical and mental health and social isolation as a result of such technology.¹⁷ These technologies’ effects on adults impact children—in the same survey, respondents spoke of being unable to care for their children, play with their children, or engage in their children’s education because of the ankle monitor.¹⁸ Additionally, one parent

¹³ *State of the Union: New Poll Shows Majority of Likely Voters Support Bold Action on Immigration*, National Immigration Law Center Justice Fund (February 28, 2022), <https://www.immigrantjusticefund.org/press/2022/2/28/new-poll-shows-majority-of-likely-voters-support-bold-action-on-immigration> (finding that 63 percent of respondents support allowing asylum seekers to have their case heard and 52 percent support ending Title 42).

¹⁴ *Termination of the Migrant Protection Protocols Program*, Memorandum from Secretary Alejandro N. Mayorkas, U.S. Department of Homeland Security (June 1, 2021), https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf. *Termination of the Migrant Protection Protocols*, Memorandum from Secretary Alejandro N. Mayorkas, U.S. Department of Homeland Security (Oct. 29, 2021), https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf. *Explanation of the Decision to Terminate the Migrant Protection Protocols*, U.S. Department of Homeland Security (Oct. 29, 2021), https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-justification-memo-508.pdf. Camilo Montoya-Galvez, “Leave Me in a Cell”: The Desperate Pleas of Asylum Seekers Inside El Paso’s Immigration Court, CBS News (Aug. 11, 2019), <https://www.cbsnews.com/news/remain-in-mexico-the-desperate-pleas-of-asylum-seekers-in-el-paso-who-are-subject-to-trumps-policy/>. Brief for Amici Curiae Young Center for Immigrant Children’s Rights, et al. in Support of Appellant and Reversal, *Texas v. Biden*, Case No. 21-10806 (5th Cir., Sept. 27, 2021), available at https://static1.squarespace.com/static/597ab5f3beba7b0a625aaf45/t/61531cee91a6897acaf74c12/1632836847044/2021_09_27_00516031522-Amicus+Brief.pdf.

¹⁵ *Two Years of Suffering: Biden Administration Continues Use of Discredited Title 42 Order to Flout Refugee Law*, supra note 4, at 5.

¹⁶ Julie Linton, et al, *Detention of Immigrant Children*, America Academy of Pediatrics (May 2017) <https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full-text.pdf>.

¹⁷ Tosca Guistini, et al., *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, Cardozo School of Law Immigration Justice Clinic, Freedom for Immigrants, Immigration Defense Project 3 (July 2021), <https://larc.cardozo.yu.edu/cgi/viewcontent.cgi?article=1002&context=faculty-online-pubs>.

¹⁸ *Id.* at 20.

noted that the stigma and fear of electronic surveillance caused people to distance themselves not only from her, but also from her children.¹⁹

The distance from parents and community that results from electronic monitoring of immigrants has serious impacts on children's well-being and development, and such technology is unnecessary. Past programs providing case management for asylum seekers have ensured that children and families have access to services in the community and better understand their responsibilities for their immigration case.²⁰ We urge the administration to allow families to pursue their immigration case in their community with access to community-based resources and free from surveillance. Once again, a successful community-based support program will require partnership with and resources for migrant-serving non-profit organizations.

c. *Children and families have legal representation and support to develop their claim for protection.*—Immigration is a complex and confusing area of law, with multiple forms of protection which have different elements and standards of proof. For families who have experienced traumatic circumstances in their country of origin or on their journey to the United States, it can take time to adjust to the United States, find legal representation, and gather evidence and testimony to support their case. Even when a family finds counsel, they may need time to feel safe recounting sensitive facts that would support their case. For children whose claim to protection is tied to that of their caregivers, denying their parent or legal guardian the opportunity to fully develop their case risks denying a child access to protection. While we support steps the administration has taken to allow asylum seekers to present their case in a non-adversarial setting before an asylum officer, we urge that all asylum seekers have meaningful access to legal representation by funding legal services providers to build capacity. We also urge that asylum-seeking families and individuals have sufficient time to recover from their trauma and develop their immigration case.

3. *Establish a "best interests of the child" standard for all policy decisions, including immigration.*—A best interests standard considers a policy's impact on a child's safety, health, development, family unity, and identity.²¹ If such a standard had been meaningfully applied to Title 42, it would have been clear that the policy could not stand because of the danger children and their families would experience. Such a standard would also provide clear solutions for the fair, orderly, and humane processing of asylum seekers. In a 2020 election eve poll by Lake Research Partners, an overwhelming 81–13 percent of voters—more than 6–1 margin across all political persuasions—supported the establishment of such a standard, with 64 percent in strong agreement.²² We urge both Congress and the administration to adopt and apply such a standard to all policies that impact children.

We thank you again for this opportunity to submit written testimony. We look forward to working with you to implement common-sense policies that help immigrant children and families find safety and thrive. Should you have any further questions please contact Miriam Abaya, vice president for immigration and children's rights at miriama@firstfocus.org.

STATEMENT OF DANIELLA BURGI-PALOMINO, CO-DIRECTOR, LATIN AMERICA WORKING GROUP (LAWG)

APRIL 6, 2022

The Latin America Working Group (LAWG) submits this statement for the record for the Border, Security, Facilitation & Operations Subcommittee (House Homeland Security Committee) hearing, "Examining Title 42 and the Need to Restore Asylum at the Border" on April 6, 2022. As an organization that advocates for more just U.S. policies toward Latin America & the Caribbean and that defends the rights of

¹⁹Id. at 21.

²⁰*The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration*, Women's Refugee Commission 8 (June 2019), <https://s33660.pcdn.co/wp-content/uploads/2020/04/The-Family-Case-Management-Program.pdf>.

²¹Jennifer Nagda & Maria Woltjen, "Best Interests of the Child Standard: Bringing Common Sense to Immigration Decisions," *Big Ideas 2015—Pioneering Change: Innovative Ideas for Children and Families*, 11, March, 2015, <https://firstfocus.org/wp-content/uploads/2015/04/Best-Interests-of-the-Child-Standard.pdf>.

²²Bruce Lesley, *Voters Have Spoken and They Support Children*, First Focus on Children (Nov. 23, 2020), <https://firstfocus.org/blog/voters-have-spoken-and-they-support-children>.

migrants and refugees, LAWG has advocated for the end of the Centers for Disease Control and Prevention (CDC) Title 42 border order since its implementation in March 2020 under the Trump administration. The calls to end the policy have also come from other NGO's, public health experts, and Members of Congress, including Democratic leadership. To date, the policy has resulted in over 1.7 million expulsions of individuals without screening for protection, including via flights to Brazil, Colombia, El Salvador, Guatemala, Haiti, Honduras, and Mexico. Human rights organizations have documented nearly 10,000 instances of people being kidnapped, tortured, sexually assaulted, and murdered as they were denied access to seek asylum at the border as a result of Title 42, including families with small children and vulnerable people fleeing violence and persecution. This policy also has a disproportionate impact on Black people seeking asylum, especially Haitians.

LAWG documented the impact of Title 42 expulsions from the U.S.-Mexico border to Mexico's border with Guatemala from August-October 2021. Starting on Aug. 5, 2021, people were flown from the U.S.-Mexico border to cities, such as Villahermosa and Tapachula, in southern Mexico and bussed to locations along the Mexico-Guatemala border. At no point throughout this process, from their expulsion at the U.S.-Mexico border to their expulsion into Guatemala, did people have any chance to request asylum with U.S. or Mexican authorities or to have any contact with civil society or international organizations. There was no formal registration of people expelled upon their arrival to the airports in southern Mexico. They were taken directly off the planes, placed onto Mexican National Migration Institute (INM) buses, and driven to points along the border with Guatemala while being escorted by the Mexican National Guard. Civil society organizations were unable to document the full impact of these expulsions to southern Mexico due to the presence of organized crime and because these are extremely isolated and remote locations. However, the testimonies captured by organizations of adults, families, and children, including very young children, evidenced how people were left to fend for themselves upon arriving in Guatemalan territory, including having to figure out how to travel to their next destination without any means.

One such testimony of a Honduran man that was expelled under Title 42 in October 2021 from the U.S.-Mexico border to the city of Villahermosa in southern Mexico, and from there bussed to Honduras, reflects the suffering and human rights violations individuals were exposed to, "They put us on a bus from the border and took us to the airport, but we didn't know what was going to happen with us. Soon after boarding the plane, we saw a sign that said, 'Welcome to Villahermosa, Mexico.' That's when we said why are we being deported to Mexico if we are not Mexican? They left us there in the middle of nowhere until Mexican migration agents picked us up and brought us to the Mexico-Guatemala border, where they put us on another bus all the way to Honduras" (from an interview conducted by the organization Radio Progreso, Honduras and translated by LAWG). While it appears that Title 42 flights to southern Mexico have stopped for the time being, there were other instances of individuals being returned to countries they were not from under this policy, including Venezuelans expelled to Colombia in February 2022.

As LAWG, we are pleased to see the announcement of the termination of this policy for May 23, 2022 as a first step toward restoring access to asylum at the U.S.-Mexico border. However, we urge the Biden administration to begin the wind-down process in collaboration with civil society organizations well ahead of May 23 to begin to establish a fair, orderly, and humane asylum process. As Title 42 expulsions continue through May 23, it is also crucial for the Biden administration to utilize its discretion to exempt particularly vulnerable populations from the Title 42 policy. While we welcome reports of Ukrainians being exempted from Title 42 at the U.S.-Mexico border, we believe that exemptions should apply to vulnerable populations of all nationalities. Fully restoring access to asylum at the U.S.-Mexico border entails a safe reception of people seeking asylum at the U.S.-Mexico border that does not deny individuals the right to make their claims heard, guarantees family unity, and does not hold individuals in custody or detention for extended periods of time; coordinating with non-governmental organizations and shelters for swift transportation of asylum seekers to destination communities within the United States, and establishing access to services, legal counsel, and community-based case management as individuals undergo their immigration proceedings in the United States. LAWG reiterates the urgency of the full termination of this policy in a transparent and swift manner. The decision to turn the page on this cruel policy is well overdue. It is time, once again, for the United States to be a beacon to those seeking refuge from around the world.

STATEMENT OF FRIENDS COMMITTEE ON NATIONAL LEGISLATION (FCNL)

WEDNESDAY, APRIL 6, 2022

The Friends Committee on National Legislation (FCNL) is a national, non-partisan Religious Society of Friends (Quaker) organization that lobbies to advance peace, justice, and environmental stewardship. FCNL follows the faith-led principles of our policy document, *The World We Seek*, which calls us to advocate for humane migration practices that welcome the stranger and honor the Light of God in each individual. FCNL has decried the operation of Title 42, a public health measure weaponized against asylum seekers and misused to disincentivize migration, and we applaud the Biden administration's decision to rescind the policy on May 23, 2022. Thank you to this subcommittee for highlighting the harms of Title 42. We urge you to continue to reject Trump's anti-immigrant policy and instead uplift the right to seek asylum.

As further discussed in this statement, Title 42 has proven inefficient as a public health measure as well as a border management policy. The policy has rejected rights-respecting border management, perpetuated discriminatory treatment in our immigration enforcement practices, and undermined the right to claim asylum in the United States.

The public health facade of Title 42 should not be reinstated through legislative action, nor should the administration's termination be halted. The emergence of the novel COVID-19 virus petrified the world, but also led to a spirit of solidarity, perseverance, and humanity. However, during a season when society aimed to protect the most vulnerable, the Trump administration's exclusionary instincts led to the misuse of Title 42 of the Public Health and Welfare code in order to expel noncitizens under the guise of deescalating a public health emergency.

The efficacy of Title 42 was dubious from the onset as experts from the Center for Disease Control and Prevention rejected a public health rationale for the operation of Title 42. Throughout the pandemic, Dr. Anthony Fauci, an infectious disease expert and Presidential advisor, also made it clear that immigrants were not spreading COVID-19 in the United States.

Over the last 2 years, public health experts have repeatedly called for the termination of Title 42, citing its inefficiency and exacerbation of public health risks. During times of tragedy and peril, we must account for the well-being of all of humanity, and Congress must rely on practical protocols that uplift both public health and the lives of migrating communities.

Title 42 has functioned as an immigration enforcement wall that risked the well-being and lives of children, families, and individuals. Under Title 42, thousands suffered cruelties such as exploitation, kidnapping, sexual assault, and murder. The travesty of Title 42 has been notable as it operates alongside another harmful border policy from the Trump administration, the Migrant Protection Protocols (MPP). MPP requires asylum seekers to wait in Mexico until the adjudication of their U.S. asylum claims and has resulted in human tragedy and death as people seek protection from humanitarian crises. It would be unconscionable to strengthen or repackaging harmful border policies such as Title 42 or MPP.

When we look at the face of our migrating neighbors, we must see the image of God as we are all made in His likeness. The United States is well-equipped to simultaneously honor that of God in every human being, while investing in policies that streamline migration and prevent cruel practices. The challenge of this Nation and the responsibility of the 117th session of Congress is to create a migration scheme that recognizes that migration management prioritizes generosity, mercy, and safety—safety for communities within the interior and those seeking inclusion.

Migration initiatives should also address forced movement resulting from generations of policies that have threatened human security. Central to Quaker principles are the values of atonement, grace, and restoration, values that the United States should account for in its migration practices.

A history of U.S. militarism and interventionism has contributed to the fragility of many nations grappling with humanitarian crises and consequential migration flows. The United States should see its response to migration as necessary to acknowledge its global legacy. However, under Title 42, the world has observed the disparate treatment of Black and Brown immigrants seeking safety at U.S. borders, most notably with the forceful expulsion of Haitian natives. We implore Congress to embrace policies that appreciate the conditions inducing migration and uniformly uplift the dignity of all immigrants—regardless of nation of origin or race.

It is essential that individuals, families, and children seeking safety at our borders are given a full and fair opportunity to seek asylum. If our Nation does not afford due process to those who are most in need, we are failing in our basic duty

to fellow children of God and degrading our domestic and international legal obligations as well as our global leadership on human rights protection.

Top advisors from the Biden administration, human rights advocates, and legal scholars have stressed that Title 42 violates the fundamental right to seek asylum. The winddown of Title 42 should not continue the expulsion of vulnerable communities, and the United States should immediately coordinate fair, orderly, and humane asylum processes. The United States must restore and preserve the right to access to asylum, as outlined in both international and U.S. law.

The United States is strengthened when we stand together and value those most vulnerable who need protection. The repeal of Title 42 should not lead to alternative assaults on the right to seek asylum or to migrate. The U.S. Government should invest in existing community-based infrastructures across the United States, including borderlands, to ensure custodial and abusive practices do not surge following the termination of Title 42. Communities of faith have always been and will continue to be at the forefront of providing care to the most marginalized in our society. FCNL remains a partner in strengthening the efficacy of the U.S. asylum system and welcoming, safe border policies.

STATEMENT OF THE YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS

APRIL 6, 2022

The Centers for Disease Control and Prevention recent announcement to terminate the policy of expelling migrants under Title 42 of the U.S. Code, effective May 23, 2022 is an important step forward in ensuring children and families seeking protection at our borders can do so safely while remaining together. Congress must wholeheartedly support the termination of this illegal and inhumane policy. It must reject fear-based talking points, reclaim its commitment to welcoming asylum seekers, and acknowledge that as a Nation we have the resources and capacity to manage the border while respecting human dignity.

The impact of Title 42 on children has been devastating.

Title 42 puts children directly in harm's way by allowing Federal officials to send any child who arrives with a parent right back to the very danger they just fled. Families nearing the border have been forced to "choose" between remaining in dangerous conditions with their children or separating from them in hopes that they will be taken in as unaccompanied children and be safe. Migrant children who have remained with their families in border towns are often targeted for exploitation and some have been kidnapped or faced other forms of violence. Black asylum seekers are at heightened risk of harm due to racism.

The Young Center has been appointed to numerous children in Federal custody separated from family because of Title 42.

Since 2004, the Young Center for Immigrant Children's Rights has been appointed independent Child Advocate for unaccompanied and separated children in Federal custody. As Child Advocate, the Young Center submits best interests recommendations grounded in Federal law and the U.N. Convention on the Rights of the Child on behalf of unaccompanied children to Federal agencies. In the last 2 years, the Young Center has been appointed to numerous children who have separated from their parents to avoid being expelled back to danger under Title 42. Separation is often a last resort after trying to seek protection as a family. One child we were appointed to came to the border alone after being kidnapped with his mother for 2 months. Others have fled squalid conditions in makeshift camps. Once children make it across the border, they not only face the trauma of the separation, but also on-going fear for the safety of their parents and relatives left behind in the camps. These children often have little information about when they might reunify with family or the status of their legal case, which causes additional stress.

As a result of Title 42, family separation continues, but largely outside of public view.

Parents who send their children across the border alone hope that relatives in the United States will be able to sponsor these children out of Federal custody. But sometimes family members cannot care for another child or do not qualify as sponsors. Others are scared to make themselves known to U.S. immigration officials as they themselves do not have legal status and may put themselves—and children they may already be caring for—at risk if they were deported. If parents are admitted later without their children, they could face expedited removal and risk permanent separation from their children.

Congress must support the Biden administration's efforts to restore asylum and prioritize the best interests of children seeking safety.

U.S. refugee and immigration law requires our Government to guarantee people the right to seek asylum in the United States. Ending Title 42 is the first step toward fulfilling our minimum obligations under the law. It also provides an opportunity to build an immigration system which prioritizes children's safety and well-being. Congress must support these efforts and push for a Federally-mandated "best interests of the child standard," in which every immigration official who makes decisions about a child considers the child's right to safety, to express their own wishes for their future, to family unity, to liberty, to identity, and to the ability to grow and develop. As a part of this commitment, Congress must challenge the Government's reliance on any policy or practice which results in family separation.

Chairwoman BARRAGÁN. The subcommittee may have additional questions for the witnesses and we ask that you respond expeditiously in writing. The Chair reminds Members that the committee record remains open for 10 business days. Without objection, the subcommittee stands adjourned.

[Whereupon, at 2:54 p.m., the subcommittee was adjourned.]

