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The Land of Opportunity?: Title 42 As A Restrictive Immigration Tool In The United States

A Thesis in Political Science

By

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### **Abstract**

In March 2020, the globe was struck by the rapid spread of COVID-19. In response, world leaders issued public health recommendations to institute appropriate measures to curb the transmission of the pandemic. The Trump administration argued that massive flows of migrants at the US southern border would spread infection to American border agents, migrants, and the larger public. If left unaddressed, the administration worried that the flow of migrants would cripple the nation's immigration system, overwhelm the healthcare system, and damage national security. Thus, President Trump introduced Title 42 with intentions of protecting the health and well-being of Americans.

This thesis examines the implementation of Title 42 under the Trump administration as well as its continuation under the Biden administration. The thesis analyzes the extent to which the policy became a tool for restricting immigration into the US. It shows how an emergency federal health policy meant to deal with a pandemic was adopted and promoted by different actors in the federal and state governments to achieve their anti-immigrant restrictive agenda. I argue that Title 42 was ultimately not about improving public health, but a means to controlling immigration and excluding vulnerable migrant communities of the non-western world. This thesis sheds light on how Title 42 has damaged the asylum system and reveals the deeply intertwined connections between pandemic related health measures and racialized immigrant control.

*Keywords:* Title 42, COVID-19, Coronavirus Pandemic, Asylum Seeking, Xenophobia, Immigration, Public Health

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## Chapter 1: Introduction

In March 2020 the globe was shut down into a state of helplessness as the coronavirus (COVID-19) pandemic was rapidly spreading all over the world. The last time the United States experienced a public health crisis of such a gravity was the 1918 Influenza pandemic.

Americans were not prepared to respond to the abrupt outbreak of COVID-19. President Trump and the CDC were challenged with developing a proper plan to address the quickly evolving pandemic. The first case appeared in Washington State in late January, and weeks later more cases started to be spotted across the country. By March 1, the Governor of New York Andrew Cuomo announced the first COVID-19 case in the state (Ferre-Sadurini and Cramer 2020). Within days, the state was reporting thousands of infections. The White House and the Center for Disease Control (CDC) officials were rushing to develop a response. Yet, unlike other countries, the US COVID-19 response in the initial phases did not include shutting down parts of the country or enforcing mask wearing or social distancing.

Once the World Health Organization (WHO) characterized COVID-19 as a pandemic on March 11, the Trump administration imposed a travel restriction from Europe for 30 days given the rapid rise in cases in countries like Italy (BBC News 2020). However, even with limited travel restrictions in place, travel in and out of the US was still posing a public health concern. By this point countries all over the world were reporting an increasing number of cases and deaths. To slow the spread of the COVID-19, the Trump administration decided to impose restrictions on immigration into the US including travel bans and closing the borders to China and Europe. As the situation worsened with thousands of people becoming infected by the virus, the Trump administration and CDC were considering stricter public health measures at the borders.

On March 20th, members of the Coronavirus Task Force held a press briefing to provide updates about the steps the presidential administration was taking to minimize the impact COVID-19. Former President Trump started calling it the “Chinese virus” while referring to the steps his administration was taking to contain the spread of the virus (US Embassy 2020). His use of the term started inciting violence and hate speech against Asian Americans. Doubling down on his xenophobic tone, he mentioned that public health officials were extremely concerned about the consequences of mass uncontrolled movement of migrants and asylums seekers into the US through the southern border. He claimed that controlling this movement was already difficult during normal times and it would worsen during a global pandemic. According to the administration, these massive flows would spread infection to American border agents, migrants, and the larger public, which if left unaddressed, would cripple the nation’s immigration system, overwhelm the healthcare system, and damage national security (US Embassy 2020). Thus, the administration introduced Title 42 with intentions of protecting the health and well-being of Americans. Title 42 states that the Surgeon General (today the Director of the CDC) may prevent the entry of individuals into the US if there is reason to believe such populations pose a public health threat (Cornell Law School 2022). As a result, the normal procedures tailored to asylum seekers were suspended by immediately expelling them to their countries of origin. The administration claimed that restricting immigration under Title 42 would help in containing COVID-19 on the southern border and help stop the spread inside the country.

As the US transitioned to a new presidential administration, Title 42 continued. For the remainder of the Trump administration, the president undermined the gravity of the pandemic. Although vaccine rollout began on a limited basis under his presidency, once President Biden stepped into office, vaccine rollout expanded across the country. Rates of infection and deaths

began to go down, as a result, and the initial pandemic-time restrictions slowly began to be eased as people tried to return to normalcy. However, at the border agents were admitting people on a very limited basis while the rest were immediately expelled under Title 42 despite a serious threat of the pandemic subsiding. This overall story presents the restrictive use of Title 42 that goes beyond just public health.

This thesis examines the implementation of Title 42 under the Trump administration and how it was continued under the Biden administration. It analyzes the extent to which the policy became a tool for restricting immigration into the US and how an emergency federal health policy, Title 42, meant to deal with a pandemic was also adopted and promoted by different actors in the federal and state governments to achieve their anti-immigrant restrictive agenda. I look at the literature on the history of health measures where immigrants were portrayed as disease carriers to show how health policies aimed at immigrants have historically often functioned as restrictive tools. I situate the implementation of Title 42 in this larger historical literature to suggest that diseases and pandemic are often racialized and they feed into existing xenophobic discourse against immigrants. Later, I discuss the changes Title 42 made to the existing asylum-seeking process. I contrast the Trump administration's and the Biden administration's use of Title 42 to analyze if their distinctive stances on immigration made a difference in the policy's execution. Specifically, I identify how each utilized Title 42 to meet their own political needs even as the Trump and Biden administrations took different approaches to Title 42. Furthermore, I analyze the impact immediate expulsions have had on single adults, families, and unaccompanied children seeking humanitarian protection. Overall, this thesis investigates the use of Title 42 throughout the course of the last two and half years to demonstrate how health policies and anti-immigrant exclusionary policies were intertwined.



I argue that implementation of Title 42 was not necessarily about improving public health, but it became a way to control immigration and exclude vulnerable migrant communities coming from Latin America. As the pandemic has unfolded and data has shown increased progress toward disease containment globally, these improvements have not been reflected in the border restriction policies that were implemented through Title 42. For President Trump, reducing the influx of migrants at the southern border was at the forefront of his political agenda and, as I show in subsequent chapters, his administration utilized the pandemic and Title 42 to the fullest extent to shut down asylum on the southern border (Southern Poverty Law Center). However, even under the Biden administration, which campaigned on a more humane approach towards migrants arriving at the border, Title 42 has stayed on for a considerable period of time before it was suspended by a federal court in November 2022 (Ward and Gerstein 2022). The Biden administration struggled to take a clear stance on Title 42 and even after its initial commitment and attempt to scrap the measure, the administration kept using it to slow the influx of migrants into the country. The thesis also notes the role of Republican governed states and federal courts in extending the life of Title 42. Both administrations have used the pandemic to restrict immigration using the perceived threat of immigrants as disease-carriers. I argue that such a narrative is not rooted in data, but rather a deep fear of newcomers from Latin America. In developing this argument, the thesis sheds light on the failure to adhere to human rights obligations that exist for asylum-seekers and migrants, which ultimately strips them of the opportunity to create a new life of safety and security away from the countries that they are fleeing.

The second chapter reviews literature on the relationship between public health and immigration. Particularly, it looks at the origin of the perception of immigrants as

disease-carriers. It draws on scholars of sociology and history, including Howard Markel and Alexandra Stern, to show how race and nationality were used as measures of good health (Markel and Stern 2002). These connections created a false understanding that illness is associated with the land they come from, painting non-western nations as unsanitary and disease-ridden. As epidemics continued to break out across the globe and as global migration happened more frequently, a phobia of newcomers began to dominate American immigration policy. I show how the American immigration system is rooted in the racialization of disease, which is exemplified through the xenophobic nature of Title 42.

The third chapter will look at the implementation of Title 42 under the Trump administration. It begins by defining who asylum seekers are and explains the asylum-seeking process before Title 42. Tasked with addressing the evolving public health crisis, the chapter shows that the decision to implement Title 42 is not based on the recommendations made by public health experts. Title 42 was advocated by the administration on the basis of potential public health dangers from asylum seekers and migrants crossing the border, but the CDC did not endorse this position (Reznick 2022). At the same time, supporters of the policy, including high ranking members of Trump's cabinet and Republican senators, cited the urgency of prioritizing American workers as the justification for Title 42 (Hawley 2020). As a result of this mixing of political need to control immigration and the public health measures on the border to contain the pandemic, asylum seekers were forced back to dangerous conditions.

The fourth chapter describes how the Biden administration has dealt with Title 42. Before the pandemic began to subside, President Biden continued expelling asylum seekers with the exception of unaccompanied children (CDC 2021). Eventually, when his administration decided to end the policy, legal interventions by the Republican governed states blocked him from doing

so (Garcia 2022). Furthermore, those opposed to lifting Title 42 were not only Republicans, but also members of the Democratic party. Specifically, the administration used Title 42 to restrict the entry of Venezuelan asylum seekers into the US (Beitsch and Bernal 2022). This became politically expedient for President Biden and he began to enforce the measure aggressively even while his administration was arguing in the court for repealing the measure. The consequences of this was to force vulnerable populations into dangerous journeys as they tried to enter the US unauthorized, or back to areas riddled with violence and poverty. The chapter concludes by highlighting the voices of advocates who proposed alternative policy initiatives that would not endanger the lives of migrants. The final scrapping of the measure by a federal court in November 2022 will likely end the regime of Title 42 but not without inflicting immense damage on asylum seekers and revealing the deeply intertwined connections between pandemic related health measures and racialized immigrant control.

## **Chapter 2: Disease, Race, and Immigration Control**

One of the most powerful rationales for restricting immigration in the US is rooted in the need to protect national public health. The federal government prioritized safeguarding Americans from infectious diseases, deleterious genetic traits, and chronic conditions or disabilities (Markel and Stern 1999, 1314). Medical historians have long noted how the fear of disease shaped health checks and quarantine processes at immigration centers, and overtime how these public health concerns were used to shape immigration policies. As public health screenings evolved and officials began looking for more specific signs of illnesses in newly arrived immigrants, eventually these medical personnel began to associate immigration with disease. In response, the American government began investigating which immigrants were believed to be carrying diseases, and used this as a means of creating exclusionary policies. Recent policies like Title 42 exemplify how public health measures are executed to control border policies and restrict immigration.

This literature review analyzes the medical racialization of immigrants arriving at the first ports of entry. As epidemics arose in areas across the globe, immigration law was specifically designed to address public health concerns by containing the spread of illnesses as much as possible; however, these public health concerns were later used to shape public health legislation that was embedded in the belief that immigrants were disease-carriers. The scholars discussed in this chapter identify how nativism and notions of eurocentrism led to an understanding of diseases as strictly foreign born, thus enforcing the idea that outsiders are dangerous. After a review of the literature that illustrates the restrictive nature of public health that often doubled as tools to control immigration, the thesis analyzes the current Title 42 policy to show how it tried to achieve goals that such policies have historically been known for doing.

## **The Racialization of Diseases**

The racialization of diseases can be traced back to the century of European colonization across the globe that created hierarchies depicting non-European nations as disease-ridden. The conception of non-Europeans as socially lower and weak enabled European nations to believe that they are inherently superior. When the first disease outbreak happened between 1851 to 1938 in Europe, medical sociologist Alexandre White found that the early International Sanitary Conventions did not police the spread of these pathogens across international borders (White 2020, 1250). However, when diseases were emerging in colonial sites in majority Asian and Muslim countries, aggressive responses were carried out towards these populations globally. For instance, after the smallpox epidemic was reported in Hong Kong, the American Congress authorized the construction of a quarantine station in California for new arrivals. Officials would place steerage passengers, majority of passengers who were Chinese or Japanese, into detention barracks for observation regardless of their health (Lucaccini 1996). On the contrary, cabin passengers that were mostly white did not undergo detainment for observation purposes. The intensifying view of non-western countries as disease-carriers pushed western nations to endorse the creation of the WHO, where they presented their policy agendas regarding disease as national security concerns (White 2020, 1251). As national security concerns, this means that governments can take any actions they see fit to protect the safety of their borders. White acknowledges the history of international disease control as largely shaped by a distinctly European perspective that paints postcolonial sites as dangerous. He argues that such notions are rooted in bigotry rather than facts.

In the US, nativist ideals paint immigrants as damaging the reputation and performance of the country as a whole. Specifically, the term “medicalized nativism” can best describe the beliefs about disease to justify prevailing prejudices against foreigners and to exclude them (Kraut 1998, 256). In Alan Kraut’s “Silent Travelers,” he describes the relationship between public health and immigration as a “double helix” of health and fear, where the phobia of the diseased immigrant drives public health responses. He references a 1902 *North American Review* Article in which Terence Powderly, General of Immigration, called for stricter health controls on those arriving at ports of entry. Powderly promoted fear amongst Americans after saying that if widespread illnesses were not approached with caution, that the future American might be “hairless and sightless” (Kraut 1998, 58). Given the extreme nature of his rhetoric, Americans supported the policy to push foreigners out by any means necessary. This persistence of xenophobic language, especially from high-ranking officials, to describe non-Americans sets the tone for the rest of the American public to believe their perceptions as true.

American medical literature notes that the social perception of immigrants as health threats is typically far greater than the actual danger. In actuality, Americans are scaring themselves more with the perception rather than any evidence demonstrating immigrants as disease-carriers. In 2002, researchers at the University of Michigan found that these fears were rooted in racist and white supremacist notions of racial hierarchy: “evolutionary doctrines upheld a belief in the racial degeneracy of most nonwhite groups, it was relatively easy to attribute the weary condition of some immigrants—whether impoverished, malnourished, or suffering from a particular ailment—to their biological inferiority” (Markel and Stern 2002). For example, at Ellis Island a national concern that immigrants would lower the quality of American society led to inspectors frequently stopping and questioning individuals if they suspected them to be of a

particular racial background (Lange 2015, 67). Although some inspectors took notice of their own prejudice and of others, they were forced to continue these protocols. In fact, inaccurate medical detainments were common as a result of the presumed relationship between overall health and the ability to assimilate into American society. By looking at the flaws of new arrivals and searching for what was considered defective, Americans were taking away the opportunities for newcomers to embrace American-ness even before arriving in the country.

Drawing on the framework of immigration and disease, linkages amongst disease, blood, ethnicity, nationality, and citizenship falsely paint the picture that ethnic groups are bound to carry specific diseases with them. This was evident in the 1980s US AIDS epidemic response to Haitian immigrants. The CDC connected Haitians with hemophiliacs, heroin users, and homosexuals, all of which were considered to be high risk for developing AIDS (Cohen 2007). Later, officials decided that Haitians arriving after 1977 could not donate blood, and ultimately extended this ban in 1990 to anyone of Haitian descent regardless if they were born in the US. According to Professor George Fouron of SUNY Stony Brook, “this classification implied that Haiti was a naturally diseased place that killed. ‘Haitians’ and all individuals associated with them were diseased people and, therefore, had to be identified, surveilled and kept isolated from the rest of the US population, ‘otherising’ them” (Fouron 2013). Such an “otherising” process meant that Haitians of all backgrounds were stigmatized by not only Americans, but all other non-Haitian groups as well. A similar process happened at Ellis Island. Historically, immigrants that were detained for longer periods of time were more susceptible to developing illnesses as a result of the dirty and overcrowded environment they waited in (Lange 2015, 70). With higher levels of people becoming ill, officials began to believe that immigrants were bringing diseases with them from their countries of origin, ultimately enforcing the notion that disease and

nationality are connected. In the case of the Haitian community, the belief that individuals of this background were AIDS-ridden worked hand in hand with racism in the US. By out casting an already racially minoritized group, the false understanding of immigrants negatively affecting public health also perpetuated discriminatory immigration laws against people of color.

### **Immigration Measures as Public Health Tools**

As immigration to the US grew, the federal government began enacting laws that dealt with the management of arrival of sick migrants at ports of entry. When the first major wave of immigration from Irish and German immigrants took place, Americans noticed that many were arriving in the US feeling ill, and called for the passage of the Steerage Act of 1819 to require better conditions on ships while simultaneously asking for the demographic information of passengers. This was the first instance in which the federal government began targeting specific immigrant groups at ports of entry, setting the foundation for the later racialization that takes place for non-European immigrants. Over time, the fear of illness grew stronger and the nation enacted more legislation to deal with disease containment. The Immigration Act of 1891 excluded the entry of “persons suffering from a loathsome or dangerous contagious disease” (Customs and Border Protection). This law enforced the idea that diseases can only arrive from the outside, convincing Americans that immigrants need to be inspected and monitored for the sake of protecting themselves.

As more demographic information about immigrants was collected, public health officials drew distinctions between the different groups that were arriving. In the late nineteenth century, it was decided that northern and western European immigrants were worthy of entry to the US, whereas those from eastern and southern Europe were deemed “undesirables.” As immigration



from other parts of the world began to make their way to the US, the nation implemented more restrictive immigration laws that excluded certain groups. The Chinese Exclusion Act<sup>1</sup> is the first piece of immigration legislation that barred entry of a specific group into the US. Becoming sick at the Angel Island arrival point, American officials were certain the Chinese were bringing illnesses with them. However, a historian for the California Department of Parks and Recreation described the immigration facility as “crowded and unsanitary” (Daniels 1997). Therefore, if groups were getting sick, it was actually due to a failure of American public health and immigration personnel to protect new arrivals. Yet, the US continued to practice their measures without change because in their eyes, it is non-Americans who were the disease carriers.

The growing fear of immigrants as unsanitary and contagious promoted the use of inhumane immigration checks at the border. As a result of the yellow fever epidemic in Mexico in the mid-nineteenth century, the American government founded the National Board of Health which sent physician John Hunter Pope to the Texas-Mexico border. Pope’s evaluation declared the Mexican population with “filth” amongst other negative adjectives that were racially driven by the Anglo elites he met with during his tour of the area (Hall and Mckiernan-Gonzalez 2015). This portrayal of Mexico as a naturally dirty and unsanitary place set the roots for the creation of the 1910 disinfection plant that aimed to disinfect “vermin infested” travelers (Pierce 1917). Known as gasoline baths, Mexicans entering the US were stripped of their clothes and steamed with chemicals such as kerosene (Ong 2020). Migrants were also forced to have their bodies inspected, including their genitals, for the presence of lice. However, even after typhus cases had gone down, this process remained until the end of the 1920s. Public health officials justified this by alienating Mexicans, leading the public to understand this disease as exclusively Mexican.

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<sup>1</sup> It was the first significant law restricting immigration into the United States. In the spring of 1882, the Chinese Exclusion Act was passed by Congress and signed by President Chester A. Arthur. This act provided an absolute 10-year ban on Chinese laborers immigrating to the United States.

This process of excluding specific ethnic groups as disease-carriers paved the way for using public health as a means of controlling immigration.

### **Public Health Measures as Immigration Tools**

Prior to the arrival of COVID-19 in the US, the federal government depicted the virus as solely Chinese, promoting racialized perception of the disease. The persistence of assigning names to diseases on the basis of its perceived transmission pathway has been a tradition for decades (Hoppe 2018). The examples include the influenza pandemic, better known as the Spanish flu. Sociologist Trevor Hoppe identifies that casting an epidemic as foreign serves as a rhetorical strategy for promoting fear or for reassuring the public of safety. According to health communication scholars, media coverage of emerging infectious diseases plays a significant role in containment efforts. To do so, reports portray certain diseases as specific to foreigners. With COVID-19, Trump referred to the disease as the “Kung flu” and “Chinese virus,” creating the narrative that people of Asian heritage are the cause of the problem (Itkowitz 2020). By scaring the American public into believing that the virus is exclusive to the Chinese, conversations aimed to keep disease carriers out began taking place. Eventually, this opened the way for the announcement of Title 42.

Title 42 stems from the 1944 Public Health Service Act. This piece of legislation was created to bring together into a single and consistent enactment virtually all of the statutes relating to the Public Health Service, which was given full responsibility for preventing the introduction, transmission and spread of communicable diseases from foreign countries into the United States. The full act is codified in Title 42 of the United States Code (The Public Health and Welfare), Chapter 6A:

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger...and that this danger is so increased by the introduction of persons or property from such country...shall have the power to prohibit...the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary. (Cornell Law School 2022)

This provision justifies the barring of individuals trying to enter the country under any circumstance if there is reason to believe they would increase the spread of disease. However, it fails to describe how the Surgeon General would determine when this is deemed an appropriate public health response. According to legal scholar Lucas Guttentag, research has not identified any instances of the executive branch invoking authority under the Title 42 public health provision, much less with respect to the power to bar entry of people into the country (Guttentag 2020). In a 2018 study by the Commission on Migration and Health, experts did not find any evidence to show that migrants are spreading disease and that in fact, migration poses much more benefits to economies than it does a threat (Abubakar 2018). The two-year study found that international migrants are less likely than people in their host countries to die of heart disease, cancer, respiratory diseases and other illnesses. It also found these infections are generally only spread within the affected immigrant communities and not to the wider population. Therefore, there is no evidence proving that barring entry into the US actually solves a national public health issue.

According to health policy scholars, imposing travel bans does not eliminate the risk of disease crossing borders in the long term. In a study led by Nicole Erret of the University of Washington, researchers looked at the consequences of travel bans while also suggesting

alternatives that would be effective in addressing the COVID-19 pandemic. One of the study's findings was that "the stigma associated with travel bans sparks xenophobia and racism" (University of Washington 2022). With COVID-19, imposing travel bans on China portrayed the country as disease-ridden and unsafe. Instead, Erret suggested countries focus on measures they know are effective - vaccine development, domestic travel screening, patient monitoring, clear risk communication and investing in public health systems that work and are ready to respond to emergencies. It is important that public health responses be based on scientific data and research in order to protect groups from the stereotypes associated with disease and its origins.

Using public health as means of controlling immigration perpetuates inequality at a larger scale. The COVID-19 virus has a social effect besides its biological component, one which "reproduces and amplifies the scale and intensity of existing structural and intersectional inequalities in public health, thus differentially impacting the most vulnerable groups" (Dona 2020). These vulnerable groups refer to the immigrant populations arriving at the border, including migrants and asylum seekers. Monette Zard, Professor at Columbia University, says "Applying a public health policy to justify the expulsion of vulnerable people into harm's way runs counter to the public health tenets of preventing disease, prolonging life, and promoting health" (Columbia University 2020). In doing so, it undermines the credibility of American public health institutions, and in the process, makes everyone all the less safe.

The history of the relationship between public health measures and exclusionary immigration policies was rooted in xenophobia. The racialization of disease that paints non-western populations as disease-carriers made it so the American government could begin identifying which immigrant groups were supposedly bringing illnesses with them, and eventually used these false understandings to make public health a part of immigration control.

The announcement of Title 42 in light of the COVID-19 pandemic is an example of how anti-immigrant sentiment has shaped the US immigration system. The following chapter will explore how Title 42 has affected those arriving at the southern border by looking at the context in which it was introduced, what it led to, and most importantly how its politicization enforced its use as a way of controlling immigration.

### **Chapter 3: The Introduction of Title 42 Under the Trump Administration**

This chapter contextualizes the introduction of Title 42 in response to COVID-19 and shows how the Trump administration implemented the policy as a public health measure. The chapter begins by reviewing the asylum-seeking process under pre-pandemic times in order to understand how Title 42 changed it. Next, the chapter will examine international responses to rising COVID-19 outbreaks in comparison to the US. After pressure from the White House to implement Title 42, seeking asylum in the US was nearly impossible as a result of immediate migrant expulsions. Initial reactions to the measure were supportive, especially from political officials who had a history of trying to create stricter border control policies. Yet, these same officials, including Trump himself, did not follow the recommendations of public health experts who were pushing for mask wearing and social distancing protocols. The politicization of Title 42 coincides with the historic desire to control mass migration at the southern border. Thus, even though the Trump administration implemented this measure as a supposed way of easing the impact of the pandemic, Title 42 has since been used as a restrictive immigration tool.

#### **The Asylum-Seeking Process Before COVID-19**

The United Nations High Commissioner for Refugees (UNHCR) describes an asylum seeker as a person who has left their country and is seeking protection from persecution and serious human rights violations in another country but who has not been granted legal recognition as a refugee. Successful asylees are granted refugee status, meaning they are legally allowed to remain in the country of protection without fear of deportation. They are persons who are outside their country of origin for reasons of feared persecution, conflict, generalized violence, or other circumstances that have seriously disturbed public order and, as a result,

require international protection (UNHCR). The right to seek asylum is a protected human right according to international law. Article 14 of the *Universal Declaration of Human Rights* (UDHR) “grants the right to seek and enjoy asylum from persecution; this right, in addition to the right to leave one’s own country (Article 13), and the right to nationality (Article 15)” (UDHR 1948). Article 14 is fully articulated in the 1951 Refugee Convention, which was updated in its 1967 Protocol. The core principle of the document is non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. Additionally, states are prohibited from rejecting or denying migrants arriving at their borders (UNHCR 1951). In its 1967 Protocol, the Convention’s protections were extended to all refugees regardless of geographical location and the time in which someone was displaced. Although the US signed onto the initial Convention, they did not ratify the 1967 Protocol and therefore have no international legal rationale to protect asylum seekers. However, the US did later establish the Refugee Act of 1980. In alignment with international human rights, the US has a moral obligation to protect those seeking safety in their borders, as well as to provide these groups the necessary resources to be able to succeed in a new country.

The traditional manner in which migrants encountered<sup>2</sup> at the southern border were processed and screened for asylum in the US before the pandemic adhered to legislation that protected the rights of refugees and asylum seekers. The Refugee Act of 1980 established the contemporary US refugee resettlement program and asylum system. This raised the annual refugee admission number from 17,400 to 50,000 individuals. This also created a process for reviewing and adjusting the refugee ceiling to meet emergencies and required annual consultation between Congress and the President (S.643). This process adhered to the larger

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<sup>2</sup> Encounters are the sum of USBP Title 8 apprehensions, OFO Title 8 inadmissibles, and noncitizens processed for expulsions under Title 42 authority by USBP or OFO.

international human rights laws regarding refugees. At the same time, Title 8 of the US Code allowed for migrants to claim asylum, or to be processed for removal if they did not qualify. This law also issued misdemeanors and penalties for those crossing the border unauthorized and increased the punishment for repeat crossings. The average initial processing time upon arrival took approximately 90 minutes; while individuals waited for updates on their case they were either held in custody or released into the US while their case was waiting to be seen by immigration court (Pillal and Artiga 2022). To make an asylum claim and be granted refugee status, migrants had to prove they had a credible fear.<sup>3</sup> CBP was legally required to conduct non-refoulement screenings in order to guarantee the safety of those looking for refuge in the US (Human Rights Watch). These screenings aligned with existing laws that ensured migrants are not at risk of serious harm in their country of origin. If one initially failed to prove credible fear, individuals were allowed to appeal their decision before facing removal proceedings.

There were two traditional ways of seeking asylum in the United States: affirmative and defensive asylum (see Figure 1). Affirmative asylum processing involved being physically present in the US. Individuals could apply regardless of how they entered the country within one year after arrival. They could also do so at ports of entry. In this process, a USCIS officer decided whether a person would be granted asylum; if they are denied, they are referred for removal but can utilize the defensive asylum process to renew their asylum request. However, Title 42 took away this opportunity since asylum screenings would no longer be conducted under the policy. This is especially important because most successful asylum claims before Title 42 were made under the affirmative process.

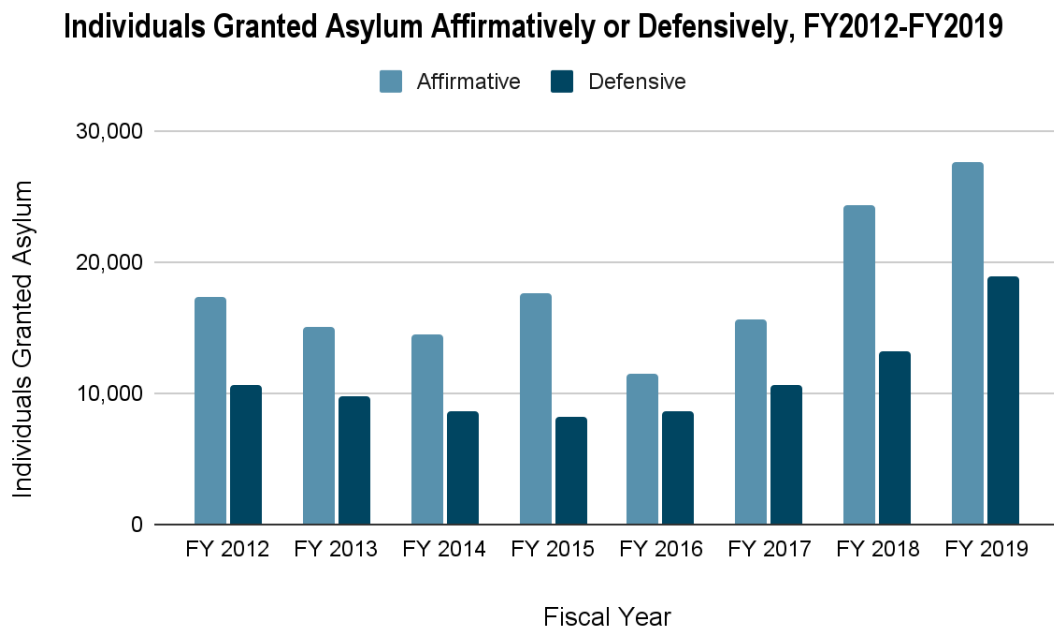
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<sup>3</sup> A credible fear of persecution is a “significant possibility” that you can establish in an Asylum Merits Interview...that you have been persecuted or have a well-founded fear of persecution on account of your race, religion, nationality, membership in a particular social group, or political opinion if returned to your country.



The defensive asylum process happens when an individual requests asylum in order to avoid removal from the US. They request asylum in immigration court where a judge will determine if the applicant is granted asylum status (National Immigration Forum). Under US law, asylum seekers have the right to remain in the country while their claim for protection is pending. In contrast, Title 42 immediately expels them to their country of origin.

**Figure 1**



Source: U.S. Department of Homeland Security; FY2004-FY2019: “Table 16. Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2019,” <https://www.dhs.gov/immigration-statistics/yearbook/2019/table16>

Even within normal asylum-seeking law, there are difficulties when processing encounters and new legislation is needed to provide additional protection. One of the most vulnerable migrant populations arriving are unaccompanied children (UACs). Under the Trafficking Victims Protection Reauthorization Act of 2013 (TVPRA), minors are legally required to be screened for signs of human trafficking if authorities see them trying to enter to the US. Immigration officials are required to transfer these individuals to the custody of the Office of Refugee Resettlement (ORR) within 72 hours. The ORR is also capable of providing

housing and shelter for them. This eliminated the one-year asylum filing deadline for UACs and gave them the opportunity to have their cases heard before USCIS. This interview process is more appropriate for children and is conducted by Asylum Officers who have received training on child interviewing and the adjudication of children's cases (Kids In Need of Defense). In following these measures, the asylum-seeking process adheres to a fair process that protects the needs of migrant children.

In contrast to the aforementioned legislation, the Trump administration implemented new measures that were more restrictive in response to the influx of arrivals. In 2018, the Migrant Protection Protocols (MPP)<sup>4</sup> forced migrants to wait in Mexico while waiting to hear from an immigration judge. This policy allowed US border officers to return non-Mexican asylum seekers back to Mexico as their claims were adjudicated in US immigration courts, a majority of them without legal assistance (Human Rights Watch 2020). By the end of 2019, over 56,000 individuals were sent back to Mexico; only 4% succeeded in being represented by an attorney and less than 1% have been granted US protection (Human Rights Watch 2020). This was the administration's first successful attempt to push migrants out of the southern border.

### **COVID-19 and the Implementation of Title 42**

The rapid spread of COVID-19 across the globe was met with a variety of government responses. In March 2020, world leaders were utilizing public health recommendations to institute national lockdowns as a measure to curb the spread. Countries imposed travel restrictions for travelers from China or required quarantining for those coming from highly

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<sup>4</sup> Under MPP, certain migrants seeking asylum in the U.S.-Mexico border were returned to Mexico after making an asylum claim in the U.S. and expected to wait near the border for the duration of their immigration proceedings. Asylum seekers under MPP were sent back with instructions to return to a specific port of entry at a specific date and time to receive a notice to appear in court.

infected areas. The EU blocked all non-essential travels from outside of the Schengen free-travel zone (BBC News 2020). In addition, countries like China, Spain, France, and Italy imposed immediate national lockdowns to limit the impact of COVID-19's spread within their borders. Similarly, countries in South America, such as Peru and Uruguay, instituted national lockdowns days after identifying the first case within their countries (BBC News 2020). For some countries, lockdowns were imposed in combination with travel restrictions. Meanwhile, US President Trump continued hosting campaign rallies in preparation for the 2020 presidential elections. Downplaying the severity of the pandemic, he also made false claims about the availability of testing sites and resources across the nation and said he was not responsible for testing shortages (Goodman and Schulkin 2020). In doing this, the majority of other countries besides the US were taking public health precautions to protect their citizens.

In contrast, the Trump administration did not use its executive authority to institute measures as encouraged by public health experts and as modeled in other parts of the world. Experts encouraged mask mandates, advised people to avoid non-essential in-person interactions, and enforced maintenance of at least a six-foot distance from individuals when in shared spaces. Instead, states were given the responsibility to address the pandemic. According to the former president, "Governors are supposed to be doing a lot of this work...the federal government is not supposed to be out there buying vast amounts of items and then shipping...we're not a shipping clerk" (C-SPAN 2020). For example, New York's Governor Cuomo issued an executive order requiring all people in the state to wear face masks in public; if they failed to do so, the state would issue civil penalties (Ferre-Sadurini and Cramer 2020). On the other hand, Texas Governor Greg Abbott "strongly recommended that everyone wear a mask," however, no jurisdiction had a right to impose any fines on those who did not (Sparber 2020). Trump believed

that governors had the capacity to protect their residents on their own, which allowed for residents to choose what safety measures, if any, they were willing to take. By leaving COVID-19 health measures and the acquisition of supplies up to the states, the Trump administration failed to use their federal authority to protect the health of all Americans.

On March 20, 2020, the Department of Health and Human Services (HHS) issued Title 42 as an emergency regulation in response to COVID-19. Vice President Mike Pence, alongside his Chief of Staff Marc Short, Homeland Security Secretary Chad Wolf, and Trump's Senior Advisor Stephen Miller called the Director of the CDC, Dr. Robert R. Redfield and urged him to use the agency's special legal authority to deal with the pandemic. In response, Dr. Redfield applied Title 42 to anyone who is not an American citizen who has been in "Coronavirus Impacted Areas," specifically targeting people who entered the US from Canada or Mexico; this was to be reviewed after 30 days. As a result, Border patrol agents immediately expelled asylum seekers, unaccompanied children, families and others trying to enter the US without the opportunity to seek asylum. On this day the total number of US COVID-19 cases had just surpassed 16,000, and President Trump stated that the "nation's top healthcare officials are concerned about the great public health consequences of mass, uncontrolled cross-border movement" (Cathey 2020). This implies that there is a relationship between immigration and the introduction of disease. Thus, even though Title 42 intended to curb the spread of disease, it is evident its implementation during COVID-19 was also an attempt to advance the Trump administration's border control priorities.

For the remainder of the Trump presidency, Title 42 was used to turn away migrants while the president simultaneously undermined public health authority. By May 2020, the CDC indefinitely extended the order which was supposed to undergo review every thirty days. It was

decided that the policy would be terminated only when the CDC determined COVID-19 was no longer a threat to US public health (American Immigration Council 2021). On September 11, the HHS published the final version of the original Title 42 March order where the CDC acknowledged it had firm reason to believe that turning away refugees and asylum seekers was legal under the policy,

This final rule provides a procedure for the CDC Director to suspend the right to introduce and prohibit introduction,...of persons from such foreign countries or places as the Director shall designate in order to avert the danger of the introduction of a quarantinable communicable disease...for such period of time as the Director may deem necessary for such purpose. (DHS 2020)

In October, the CDC replaced the initial order, clarifying COVID-19 as a “quarantinable communicable disease.” This was never used in previous orders. Even with all of these modifications, the administration did not prioritize mask wearing or social distancing. Instead, Trump continued to ignore the dangers of the pandemic on all other fronts. For example, on October 12, he held a presidential campaign rally in Sanford, Florida in his first public appearance after being hospitalized; here, he declared he was immune to the virus and felt powerful (Goodman and Schulkin 2020). Similarly, he criticized his then opponent, Joe Biden, for wearing a mask: “When needed, I wear masks. I don’t wear masks like him. Every time you see him, he’s got a mask. He could be speaking 200 feet away from them, and he shows up with the biggest mask I’ve ever seen” (Victor, Serviss, Paybarah 2020). The administration’s ignorance of the pandemic purposely allowed the ongoing expulsions of migrants and asylum seekers seeking humanitarian aid.

## **Asylum Seeking Under Title 42**

The asylum-seeking process drastically changed from the moment Title 42 was introduced. Despite being a public health policy, Title 42 does not require CBP officers to conduct health screenings upon arrival for asylum seekers. Given that Title 42 is supposed to aid in public health concerns, there should have been an emphasis on checking migrant health. Additionally, the processing time dropped from what was an average of 90 minutes to only 15 minutes. This shortened processing time means migrants cannot make an asylum claim to try and demonstrate their credible fear and are instead expelled to perilous living conditions. For an alleged public health measure, Title 42 did not demonstrate the epidemiological processes that would protect the livelihood of migrants.

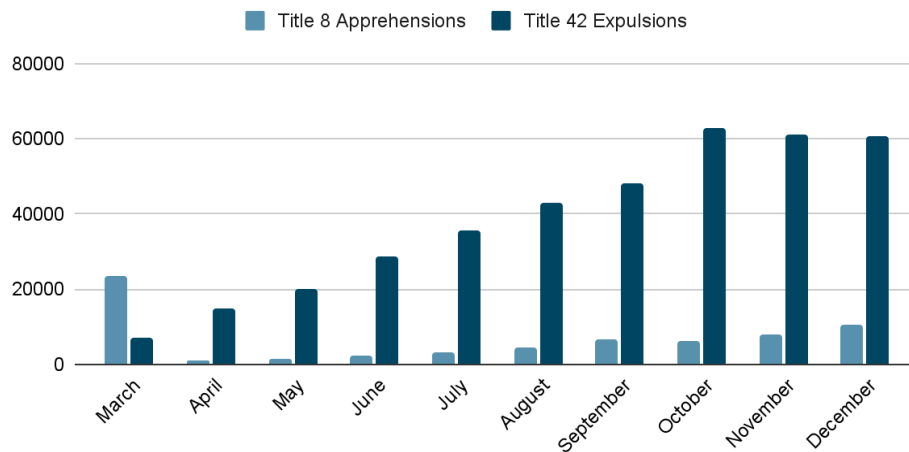
Furthermore, the consequences of Title 42 at processing facilities endangered migrant health. Overcrowding made it difficult to follow social distancing measures, which means illness and death rates were increasing (Pillal and Artiga 2022). Aside from physical health, interviews conducted by Physicians for Human Rights found negative mental health impacts such as depression and anxiety in individuals being expelled. Before Title 42 was implemented, concerns about the sanitation, standards and conditions at border processing were common, but the pandemic only exacerbated these challenges and, ultimately, led to more reports of illness and death (Pillal and Artiga 2022). CBP officers were not trying to create a physically safe environment for these individuals; rather, they only focused on turning people away without any consideration on how this would impact them. Overall, Title 42 completely stopped the asylum-seeking process and, instead, put individuals in greater danger.

Between March and December of 2020, the number of people being processed under Title 8 drastically dropped. According to data gathered by CBP, the number of individuals

expelled by Title 42 was significantly higher than those being processed under Title 8 (see Figure 2). Those unable to be expelled because of restrictions imposed by Mexico, or due to other discretionary exceptions, were processed under Title 8 (Congressional Research Service 2021). Demographically, the majority of Title 42 expulsions were of single adults whereas mostly families were processed under Title 8. In addition, those who were not expelled or granted asylum were sent to ICE detention centers for long periods of time or were deported under normal immigration law. Obtaining exact numbers of asylum seekers placed in detention is difficult since ICE has historically failed to produce timely data despite being required to do so by law (Devereaux 2022). This means that there can be thousands of lives unaccounted for in these processes. Therefore, the magnitude of the harm caused by Title 42 is much greater than what the data shows.

**Figure 2**

**U.S. Border Patrol Monthly Enforcement Encounters 2020:  
Title 42 Expulsions and Title 8 Apprehensions**



Source: U.S. Customs and Border Protection, FY 2020: “U.S. Border Patrol Monthly Enforcement Encounters 2020: Title 42 Expulsions and Title 8 Apprehensions”  
<https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2020>

## **The Political Motivations of Title 42**

Based on reports that became public in 2022, it was revealed that the CDC was not in favor of implementing Title 42. Although Dr. Redfield approved the measure, the CDC's own doctors found the decision to halt asylum processes to have no basis in public health (Sawyer 2020). In a report by the Select Committee on the Coronavirus Crisis, Dr. Martin Cetron referred to Title 42 as a "wholesale border closure" (Reznick 2022). He refused to sign the order because there was a lack of evidence supporting the policy proposal. Many doctors also felt it was morally wrong to use a public authority, Title 42, to keep people out of the country, especially because it has never been used to do so in the past. However, the White House was persistent in getting this implemented. After turning to lawyers at the Department of Health and Human Services and CBP, these attorneys called the CDC's senior leadership and urged them to use their public health authority to turn people back at the borders (Dearen and Burke 2020). According to reports, CDC and other health officials felt forced to support Title 42. If they did not, they knew they would have been fired. Therefore, the implementation of Title 42 was not done on recommendation from public health experts.

Trump administration officials used their political authority over the Department of Homeland Security (DHS) and the CDC to promote the narrative of immigrants as disease carriers. Before COVID-19, Stephen Miller had expressed openly that immigrants endanger public health. In 2019, Miller tried to invoke Trump's limited public health powers when a mumps outbreak spread through immigration facilities in six states, and this happened again when the flu spread throughout border patrol stations (Dickerson and Shear 2020). With an entirely Republican cabinet, Trump's staff were in favor of restrictive immigration policies. Miller and others have supported and pushed for Trump's zero-tolerance policy, also known as



family separation, the Muslim ban, and ending the Deferred Action for Childhood Arrivals (DACA) program (Southern Poverty Law Center). When it came to Title 42 these same officials were prepared to justify the need for the border measure even though public health experts argued otherwise.

Many Republican senators viewed Title 42 as a tool to curb immigration, and they actively worked to achieve that. Historically, Republicans have actively tried to increase security at the southern border and proposed legislation to lower immigration as much as possible. For example, Senator Cotton with other Republican Senator David Perdue introduced the Reforming American Immigration for a Strong Economy (RAISE) Act in 2017 hoping to see immigration levels drop by fifty percent. Although this bill did not pass, Republicans had since been trying to find ways to control immigration. Following the shutdown of certain businesses and less need for labor due to COVID-19, many workers faced unemployment. Senators Tom Cotton, Ted Cruz, Chuck Grassley, and Josh Hawley wrote a letter in May 2020 to the President asking that he extend Title 42 to target guest workers<sup>5</sup> in the US by placing new visas on hold for 60 days (Alvarez 2020). They also encouraged that “certain categories” of new guest worker visas be put on hold for at least a year as means of protecting American workers’ employment opportunities. They wrote, “The United States admits more than one million nonimmigrant guest workers every year, and there is no reason to admit most such workers when our unemployment is so high” (Hawley 2020). The senators presumed Title 42 could aid in employment efforts for Americans, and used that argument to suggest that the policy serves an additional purpose outside of public health.

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<sup>5</sup> Guest worker programs allow employers to obtain permission to hire foreign workers on temporary visas after engaging in recruitment in the U.S. and promising to meet certain requirements regarding recruitment, wages and/or working conditions.

Contrastingly, Democrats questioned the administration's decision to bypass asylum law and expel migrants. The senators noticed the Trump administration was hesitant about sharing the legal rationale and background that led to the implementation of Title 42 and took it upon themselves to investigate why. In a letter, Senator Patrick Leahy, in collaboration with nine other democratic senators, gave the DHS until April 15 to explain why the administration "believed it could use one section of US law — which gives emergency powers to the CDC to prohibit the entry of people or things that might "introduce" infectious disease — to preempt the government's obligation under another section of federal law protecting migrants fearing persecution in their home countries" (Lind 2020). The letter also demanded that Chad Wolf submit weekly reports detailing how many people were being expelled and their demographics. The senators believed the DHS was abusing its powers by proceeding with a scientifically baseless policy and wanted to prove this to the American public.

Similarly, democratic senators like Kamala Harris and Jacky Rosen expressed their disapproval of Title 42 and questioned its legitimacy as a public health measure. In a letter written to the acting commissioner of CBP Mark Morgan, the senators asked if unaccompanied minors arriving at the border were being screened for human trafficking and other protection concerns. The senators referenced the TVPRA process that protects UACs: "Taken together, these TVPRA-mandated protocols are vital to uncovering, preventing, and combating the trafficking, persecution, and other forms of exploitation perpetrated upon children" (Bernal 2020). Morgan did not offer answers to their questions, and instead referred to Title 42 as a game changer as the number of immigrants in custody of CBP at any given time has plummeted under this policy (Bernal 2020). This came around the same time Morgan made the claim that his CBP agents were dying of COVID-19 while on duty after contracting the virus from ill migrants

(Bensman 2020). This served as an opportunity for CBP to encourage the need for Title 42, therefore making it more difficult for Democrats in opposition to successfully get the policy overturned.

Although Title 42 was implemented as a response to pandemic concerns, the policy has since served as an exclusionary immigration tool. Alternatively, Title 42 has violated the aforesaid rules of law and human rights obligations towards asylum seekers. The policy has been used to justify harsh border control policies that promoted anti-immigrant sentiments of the Trump administration and other political officials. The following chapter will look at Title 42 in the post-Trump United States. As Joe Biden took over the presidency and the country began grasping control over the pandemic, Americans found themselves slowly returning to normalcy. However, this normalcy did not take place at the southern border. Instead, the new president found new ways of utilizing this measure to manage immigration and keep people out of the country.

#### **Chapter 4: The Legitimacy of Title 42 in the Post-Pandemic State**

Despite Biden's campaign for a humane approach to immigration after criticizing Trump's exclusionary use of the policy, the Biden administration-maintained Title 42. While the Biden administration improved access to vaccines, masks, and testing which led to a loosening of pandemic-related restrictions, the southern border was still being managed by Title 42. For migrants and asylum seekers, the concept of the post-pandemic state does not exist. Instead, these groups continue to face the repercussions of the exclusionary nature of the administration's immigration approach. President Biden's lack of initiative to repeal Title 42 indicates that it is being used for purposes other than public health.

This chapter analyzes how and to what extent the Biden administration has adopted Title 42 from the previous administration. It will also explore to what extent the two administrations are similar as far as the use of Title 42 is concerned. First, it will look at policy modifications towards migrants and asylum seekers at the border using Title 42. Second, the chapter will explore the legal challenges to Title 42 and its continuation posed by Republican and Democratic officials. Because the administration failed to rescind the policy till recently, migrants and asylum seekers continued to face physical and psychological harm. This chapter will also focus on how President Biden ended up using Title 42 to expel Venezuelan migrants near the end of 2022. The Venezuelan case shows how both administrations relied on Title 42 to achieve their goals of restricting immigration for political contingencies. The chapter concludes with critiques and proposed alternatives of Title 42 by advocacy groups a.

#### **The Biden Administration Inherited and Continued Title 42**

The first weeks of the Biden presidency saw a significant change in addressing COVID-19. Besides encouraging the use of mask wearing and social distancing, he committed to ramping up vaccination supplies and required international travelers to provide proof of a negative test prior to entering the country. By March, he signed the \$1.9 trillion coronavirus relief package to support those facing the economic consequences of the pandemic (Chalfant 2022). All of this, in combination with the distribution of vaccines across the country, led to decreases in COVID-19 cases and deaths (Stone 2021). Eventually, a slow lifting of pandemic-time restrictions began to take place: masks were becoming optional, businesses were reopening, and indoor gatherings were taking place without capacity limits. There was an attempt in the US to return to normalcy.

The same could not be said for the southern border even though Biden reversed many Trump-era policies. In the last days of the campaign, Biden planned to establish an immediate path to citizenship for DACA and Temporary Protected Status (TPS) participants, develop border technology, and provide aid to Central America (Alvarez 2021). In his first day in office, he signed orders that removed the Muslim ban, halted the construction of the border wall, and prevented the expansion of immigration enforcement within the country (Klein 2021). However, he never mentioned any plans to lift Title 42.

Instead, Biden and his administration decided to modify Title 42. In February, the CDC announced the temporary exemption of UACs. A month later, a District Court of the Northern District of Texas found that the CDC had not adequately explained its decision to treat UACs differently than other noncitizens subject to the CDC orders. A media response by the CDC acknowledged the expulsion of UACs is not warranted to protect the public health and moved to make the exemption permanent by July: “CDC believes the COVID-19-related public health

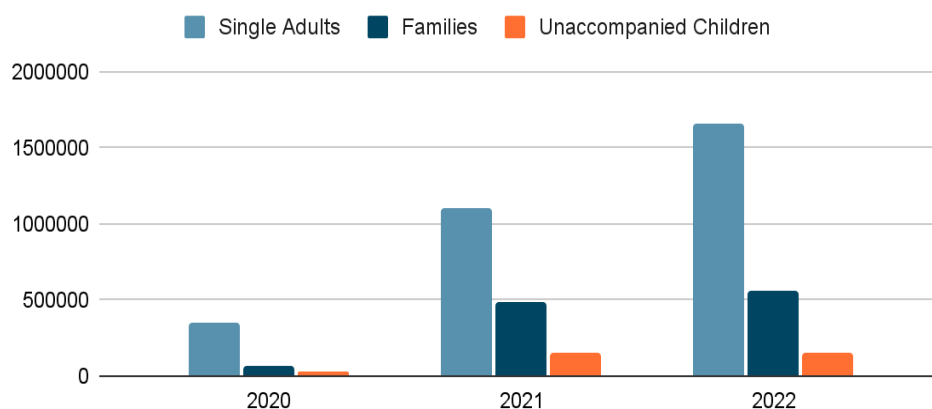
concerns associated with UC introduction can be adequately addressed without the UC being subject to the October 2020 Order, thereby permitting the government to better address the humanitarian challenges for these children” (CDC 2021). This particular group does not have any family members to support or protect them and often face a high risk of exploitation and abuse from human traffickers and smugglers; data has also found that these smugglers sell UACs into forced labor and prostitution (Zak 2020). Furthermore, children who do manage to obtain a court hearing are expected to represent themselves despite being unable to understand the complexity of the proceedings. The vulnerability of UACs makes it all the more important to protect them via the asylum-seeking process.

Unlike his predecessor, President Biden exempted unaccompanied children from Title 42. According to the Biden administration, it would be inhumane to turn away children fleeing violence and persecution (Morin 2021). This was the first and only group to be liberated from the consequences of immediate expulsion. However, this same concern did not apply to other migrant groups. In a White House press briefing, former Press Secretary Jen Psaki confirmed that families and single adults are being expelled under Title 42 and should not attempt to cross illegally (White House 2021). Not exempting these populations comes as a surprise considering single adults and families come in larger numbers than do UACs at the border (see Figure 3). According to the data, the number of single adults has skyrocketed since the beginning of the pandemic. Therefore, the practical decision would have been to prioritize single adults, especially considering the goal was to suppress immigration at the border. According to Jessica Bolter of the Migration Policy Institute, there is no particular criteria that determines which families or adults are allowed into the US; it is a matter of chance (Sullivan 2021). To omit the

population demonstrating the greatest need for protection undermines the vulnerability of single adults that are equally in need of US protection.

**Figure 3**

**Southwest Land Border Encounters By Demographic FY2020-2022**



Source: U.S. Customs and Border Protection, FY 2020-2022: “Southwest Land Border Encounters” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

Even though children were not being immediately expelled, they were still facing inhumane living conditions in detention facilities. In the previously mentioned White House briefing, Psaki was asked about the nature of border patrol facilities; journalists inquired about the concern for a potential super spreader event when 400 children were cramped into a space with capacity for only 260. In response, she stated “These kids are tested. If they need to be quarantined, they are quarantined. We also follow CDC guidelines to ensure that they are kept safe” (White House 2021). Strikingly enough, CDC guidelines would not allow that magnitude of people to gather in any other area of the country. For example, Gerber Construction Co. in Reed City was fined \$2,000 for violating COVID-19 workplace safety requirements. These violations included a lack of social distancing and a lack of face coverings when workers could not consistently maintain six feet of social distancing (Massmann 2021). Yet, in a holding facility in the Rio Grande Valley, children were put directly next to one another without any space (see

Figure 4). As a result, they began to test positive for COVID-19 (Lenthang 2021). So, although children were exempt from Title 42, they were still prone to the dangerous conditions while waiting for their cases to be processed.

**Figure 4**



Source: “COVID-19 cases among unaccompanied migrant children in facilities spark concerns over crowding”

<https://abcnews.go.com/Health/covid-19-cases-unaccompanied-migrant-children-facilities-spark/story?id=76788478>

The most dramatic example of the restrictive use of Title 42 was the Biden administration’s decision to expel Haitian migrants fleeing a humanitarian crisis. After the assassination of President Jovenel Moïse, Haiti was struck by a deadly 7.2 magnitude earthquake that affected over 800,000 people in its southwestern peninsula. This incident added to the poverty, hunger, and increasing violence rates already present in the country. Arriving in thousands at the southern US-Mexico border, President Biden announced that the administration would begin deporting migrants back to Haiti with intentions of alleviating the influx numbers immigration officers were seeing, as well as to deter more migrants from arriving. In fact, more Haitians were removed to Haiti under the Biden-Harris administration than there were in the 2020 fiscal year (Borger 2021). Furthermore, Haitian migrants struggled to realize that the



ending of the aforementioned Migrant Protection Protocol did not apply to them. This was because of racial, cultural and language barriers they faced whilst waiting in Mexico (Borger 2021). Similarly, a month before the crisis in Haiti, Vice President Harris told Guatemalan migrants to not come to the US or they would be turned away despite previous announcements from the administration that migrants should feel welcome to seek asylum in the US (Grant 2021). These are some of the first instances where the administration is openly denying the entry of migrants through brutal enforcement.

### **Legal Interventions to Continue Title 42**

After much debate amongst Republican and Democrat officials about the legality of the order, an attempt to strike down the policy was made by the Biden administration. Suggesting that the policy was no longer needed based on the public health situation in the country, in April, the official termination of Title 42 was announced and set to take effect on May 23, 2022. The two months leading up to the termination date were “to enable DHS time to implement appropriate COVID-19 mitigation protocols, such as scaling up a program to provide COVID-19 vaccinations to migrants and prepare for resumption of regular migration under Title 8” (CDC 2022). At this time, there were rising vaccination rates across the globe, a greater scientific understanding and preparedness to combat new variants, and increased availability of accessing effective remedies, testing, and masks. Lifting pandemic-time restrictions meant that the pandemic was no longer a significant public health threat requiring emergency measures such as Title 42.

The attempt to strike down Title 42, however, did not go unchallenged. Upon President Biden’s termination announcement, 20 Republican-controlled states filed a lawsuit against the

administration for trying to lift Title 42. The lawsuit led by Arizona claimed that lifting the measure would create chaos at the southern border and would force states to spend tax dollars to provide services for the migrants and asylum seekers (Garcia 2022). Similarly, Texas argued, “Biden administration’s disastrous open border policies and its confusing and haphazard COVID-19 response have combined to create a humanitarian and public safety crisis on our southern border” (Garcia 2022). Governor Abbot even referred to the border surge as “an invasion” (Garcia 2022). Based on the rhetoric used by Republican officials, it is clear Title 42 is an effective form of immigration control. With no regard to the human rights violations, they are committing by doing this, the lawsuit itself does not reference the policy as necessary for public health concerns but only as a means of reducing the number of migrants arriving at the border. For them, reducing immigration is a significant determinant of the safety of their constituencies and the proper allocation of state resources within their borders. These officials put their own political agendas over human rights obligations for asylum seekers.

On May 20, 2022, a federal district court blocked the Biden administration from lifting Title 42. According to Judge Robert R. Summerhays of Louisiana, a Trump appointee, lifting Title 42 would cause “irreparable harm” for southern states that would have to spend money on health care, law enforcement, education and other services for migrants (Garcia 2022). The court also argued that even though Title 42 was issued as an emergency order and did not undergo a formal implementation process, its lifting should be done according to the Administrative Procedures Act (APA) guidelines. This formal rulemaking process is not required according to the interim mandate the Trump administration published, which states it only required a notice of termination to end it (Garcia 2022). However, because these states were heavily concerned about immigration, they were able to exploit the court system to their advantage. In response, the Biden

administration filed an appeal with the 5th US Circuit Court of Appeals arguing that the decision to lift the measure was legal because the public health climate had improved, and Title 42 was not needed per the original intention behind its implementation. President Biden intended to return to the normal asylum-seeking process that would deal with asylum seekers under Title 8. However, this was not enough for the Republican-led states that wanted stricter border control, and Title 42 was an important means to achieve that.

Beyond this ruling, additional legal challenges hindered the administration's ability to lift Title 42. In Congress, the bipartisan Public Health and Border Security Act of 2022 was introduced by Republican Senator James Lankford to both the House of Representatives and Senate. Lankford argued that the Biden administration was hypocritical when they declared the pandemic to be over at the southern border, considering COVID-19 restrictions were still present for healthcare workers, military, and travelers (Lankford 2022). Lankford felt that if border restrictions could be lifted without a plan to address migrant arrivals, then American workers should also be alleviated of pandemic-time restrictions. The legislation "requires the Department of Health and Human Services to meet conditions related to notification and planning before terminating certain restrictions on imports and individuals entering the United States" (H.R.7458). This means that Title 42 restrictions cannot be lifted until Congress is notified that COVID-19 is no longer a public health emergency; Congress also wants a plan to address the arrival of migrants at the border when lifting the measure. This bill insinuates that the removal of Title 42 is equivalent to the end of the pandemic. In reality, ending Title 42 does not equate to the pandemic being over.

Republican elected officials and leaders were not the only ones trying to uphold Title 42. Even as a majority of Democrats opposed Title 42, a select few were in support of the policy to

continue it. Moderate Democrats such as Senator Catherine Cortez Masto argued that reversing the order would result in a surge at the border. She stated, “We should be working to fix our immigration system by investing in border security and treating immigrant families with dignity” (Solis 2022). Like the Republican leaders, Cortez Masto reaffirmed the notion of Title 42 as a border control policy. Similarly, Senator Mark Kelly, Democratic Senator from the state of Arizona, supported keeping Title 42 in place until the administration could develop a strong and secure long-term plan for monitoring the influx of migrants arriving (Monyak and Coudriet 2022). Even within his own political party, President Biden could not gain the support to rescind the policy. Without a restrictive, closed border plan, the lifting of Title 42 continued to face opposition from both the Left and the Right.

The Democratic support for Title 42 is best described as an election tactic. For Mark Kelly and Senator Maggie Hassan of New Hampshire, reelection races were to be held in just a few months. In addition, Senator Joe Manchin of West Virginia and Senator Jon Tester of Montana shared concerns that were reflective of the conservative states they represented (Monyak and Coudriet 2022). Recalling the presidential election results of 2020, President Biden defeated Trump by only 0.3 percentage points; similarly, Kelly beat his Republican opponent by a small margin. As aforementioned, Democrats who support Title 42 express concern over a potential border surge and the need for President Biden to implement stricter immigration policies at the southern border. In response, Democrats against Title 42 like Senator Bob Menendez of New Jersey, have denounced his colleagues for using immigration as a wedge issue. Menendez also condemned the hypocrisy of Title 42 supporters for not wanting to follow COVID-19 public health measures, yet, these same supporters are pushing for scientifically-baseless immigration policies as a pandemic response. If the Democratic party fails

to come to a consensus on Title 42, it can be expected that the split within the Democratic party grows in the future.

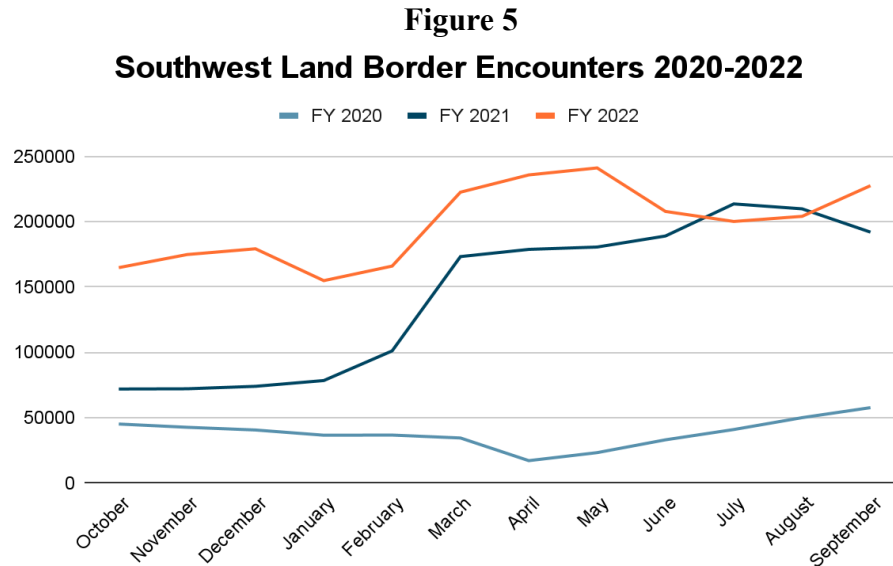
### **Consequences of Title 42**

Within his first year in office, President Biden documented a record high number of migrant encounters at the border. In the 2021 fiscal year, migrant encounters at the US-Mexico border reached 1,659,206 total encounters; over 1 million of those encounters<sup>6</sup> were from non-Mexican nationals (Pew Research Center 2021). A majority of migrants are arriving from the Northern Triangle<sup>7</sup> due to an alarming rate of homicides. According to a UNICEF survey, death threats, gang recruitment, extortion and other forms of targeted violence are driving more families in northern Central America to flee their homes and seek safety in other countries. In the 2022 fiscal year, these encounters surpassed 2 million people (see Figure 5). Yet, the Biden administration continues to deny these vulnerable communities the right to asylum, effectively sending them back to dangerous living conditions.

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<sup>6</sup> An encounter refers to two types of interactions at the border: apprehensions, in which migrants are taken into custody in the United States to await adjudication, and expulsions, in which migrants are immediately expelled to their home country or last country of transit without being held in U.S. custody.

<sup>7</sup> The Northern Triangle of Central America refers to the countries El Salvador, Guatemala, and Honduras.



Source: U.S. Customs and Border Protection, FY 2020-2023: “Southwest Land Border Encounters” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

Because Title 42 closed the ports of entry to asylum seekers, migrants are making additional attempts to enter the US, oftentimes more than once. Many individuals find themselves in even more desperation than their first attempt because they lost resources and belongings during the first Title 42 expulsion. Since many of them who crossed the border the first time were exempt from federal prosecution, some are willing to try again. In trying again, individuals are putting themselves in greater risk of harm, often by climbing the border fence or crossing the Rio Grande unauthorized. According to nearby hospitals, there has been an increase in deaths and injuries from border fence climbs and drownings in the border river are happening nearly every day (Isacson 2022). One horrific story is that of Hector Almeida of Cuba, who fractured his left leg after falling from a ladder as he tried to climb the wall. He also witnessed another woman fall and break both her legs and an older man receive a severe head injury (Miroff 2022). This desperation to leave their country of origin to the point of risking their own lives goes to show the urgency of creating an open border policy that not only adheres to public health guidelines as determined by experts, but also the importance of protecting migrant lives.

As individuals continue to wait at Mexican shelters along the southern border, new issues have developed for this population. Interviewees describe seeing children with blisters all over their faces and bodies as they lay on the dirt. Some are becoming ill from dehydration, malnutrition, and infectious diseases that are commonly spread in overcrowded spaces: diarrhea, fever, headaches, and rashes (Gonzalez 2022). Even worse, there are not enough doctors available on site, which means people are often forced to withstand these conditions and hope they recover quickly. Without the help of medical professionals advocating for the needs of these individuals, such as that of a man who was forced back into Mexico even after there was knowledge of his cancerous tumor, Title 42 poses a greater public health threat to migrant lives than the pandemic itself (Gonzalez 2022). For those whose illness was too much to handle, such as that of an HIV-positive man who died without his pills, the lack of treatment can lead to death (Gonzalez 2022). These stories are only a microscopic glimpse of what other dark realities people waiting for entry to the US have been experiencing for more than two years, and, unfortunately, do not account for the thousands of voices that have not been heard.

### **The Case of Venezuelan Migrants**

After the death of former President Hugo Chavez in 2013, corruption and inflation dominated Venezuela. The country is home to the largest oil reserves in the world, and when global oil prices plummeted in 2014, poverty and poor living conditions only worsened (Reuters 2022). There is active political opposition to his successor, Nicolas Maduro, who is often regarded as a dictator within the Latin American region. Under Maduro more than 6 million refugees have fled the country seeking food, work, and a better life (World Vision 2022). In 2019, the US cut diplomatic relations with the country making it harder for Venezuelans to be

deported back. In 2021, the US granted Temporary Protected Status to Venezuelans already on US soil. However, the Biden administration extended Title 42 expulsions to this population in October 2022. This has made it nearly impossible to seek humanitarian protection.

The decision to expel Venezuelan migrants under Title 42 comes in light of growing waves of migrants arriving at the southern border. In recent months, migrants arriving from Venezuela, Cuba, and Nicaragua have accounted for a third of southern border encounters (Beitsch and Bernal 2022). The administration introduced the new Venezuelan Parole Program allowing 24,000 Venezuelans to apply for entry to the US, as long as they have a passport, so they can legally fly into the country rather than arriving at the southern border (Erfani 2022). They must have someone in the US who can provide housing and shelter for them for at least two years. However, this does not account for the remaining thousands of Venezuelan migrants who cannot easily enter the country under formal circumstances and are in equal need of humanitarian protection. This undermines the complexity of forced migration.

Instead of offering the proper resources for those in need, expelling Venezuelans has become a political tool for President Biden in light of upcoming 2022 midterm elections. The more surprising decision was to expel Venezuelan asylum seekers using Title 42, a policy that the administration had actively tried to strike down only a few months earlier. According to a representative at the American Immigration Council, “We are weeks from an election and the numbers of Venezuelans arriving at the southern border is spiking. This is clearly an effort to try to drive those numbers down for the sake of creating some sort of political cover on issues relating to the border” (Beitsch and Bernal 2022). According to President Biden, the Title 42 extension to Venezuelans is part of the legal process as a result of the initial May court decision. These expulsions are representative of what experts like Liliana Rodriguez, a Venezuelan lawyer



and asylee in the US, call *aporophobia*, or the government fear of poor people. As discussed earlier, states are concerned about the cost it would take to provide services for migrants, and, therefore, the need to mitigate the arrival of unauthorized immigration remains an extremely important topic for congressional candidates.

The choice to use Title 42 against Venezuelans stands in stark contrast to Ukrainians fleeing the war with Russia. Since the Russian invasion of Ukraine in February 2022, thousands of Ukrainians have arrived at the US southern border with hopes of finding safety and opportunity. Volunteers have actively developed shelters and camps with food and bedding at the border to house these refugees, however, the same has not been done for Latin American asylum seekers (Democracy Now 2022). In addition, Ukrainians have been able to enter the US under the Uniting for Ukraine (U4U) program; there is no cap or timeline on the number of people who can benefit from this program, and it was created as a humanitarian response rather than a deterrence measure related to COVID-19 (Erfani 2022). People within the US have fundraised to fly them from Europe to Tijuana, Mexico as they await an asylum screening process. Yet, the Biden administration has used Title 42 to expel asylum seekers arriving from Latin America. The hypocrisy behind this decision highlights the double standard between European migrants and immigrants of color.

By comparing the different responses to Venezuelan and Ukrainian asylum seekers, it becomes clear Title 42 is a racialized immigration policy. The crisis in Ukraine has only existed for a few months, whereas the crises within Latin America have existed for decades. In both scenarios, the need to seek protection in the US is critical to the safety and prosperity of these populations. Yet, it is evident that, because Venezuelans and other Latin American migrants are not white Europeans like their Ukrainian counterparts, it has influenced how the US government

chooses to respond to arrivals at the southern border. Ukrainians are greeted with resources and care, whilst those from Latin America are pushed away through exclusionary policies. President Biden's decision to select which migrants are deserving of the opportunity to seek asylum highlights the discriminatory nature of Title 42.

### **Advocate Voices and Concerns**

In March 2020, the United Nations Refugee Agency (UNHCR) proscribed that the border measures that states enacted needed to be non-discriminatory and that measures needed to be specific in protecting public health. Despite this announcement, over 3 million people have arrived at the US-Mexico border and have been detained, turned away, or are waiting. With these numbers, the US is obviously violating asylum seeking rights as written in international law. The UNHCR has called on the Biden administration to end Title 42 and to restore access to asylum. The organization had also expressed support to stand by the US and Mexico to help safeguard public health while also protecting migrants and refugees.

Other organizations across the globe have also shared concerns about the impact of Title 42 on refugee rights and asylum seekers. Both the Trump and Biden administrations received lawsuits from international organizations. Oxfam America, alongside the ACLU, the Center for Gender & Refugee Studies, RAICES, and the Texas Civil Rights Project have all sued Trump and Biden due to expulsions of UACs and families seeking asylum in the US (Oxfam America 2021). However, these accusations have gone ignored and an increasing number of migrants continue to wait weeks or months for a case hearing. In June 2021, 105 human rights and immigrant rights organizations wrote and co-signed a letter to the Biden administration regarding the misuse of Title 42. In this letter, organizations pointed out that the Biden administration is

using the policy as a deterrence strategy and that it disproportionately affects asylum seekers who are mostly People of Color and LGBT+ (Oxfam America 2021). This was clearly seen in the case of the aforementioned Venezuelan migrant situation.

One organization that has expressed ongoing concern towards Title 42 is Human Rights First (HRF). HRF condemned the Biden administration's use of Title 42 and has actively advocated for alternative solutions that would aid in reducing COVID-19's impacts without harming asylum seekers. Nonetheless, President Biden adopted Title 42, which has led to and will continue to lead to greater numbers of people being harmed. According to HRF, "at least 7,647 kidnappings, sexual assaults, and other violent attacks against people blocked at ports of entry or expelled to Mexico under Title 42 since President Biden took office" (Human Rights First 2021). It is important to keep in mind that these statistics are based on known cases, and it is likely that a significantly higher number of migrants who suffered varying degrees of harm have gone unreported. This also does not account for those who have been attacked or died along the way to the US. HRF denounced President Biden's extension of this policy. In addition, he also opened travel back up to tourists, which reinforces that the public health implications of Title 42 are not valid. This is counterproductive and hypocritical.

Not all of President Biden's personnel agreed with the decision to uphold Title 42. Former legal advisor of the US Department of State, Harold Koh, stepped down from his position in October 2021 after criticizing the administration's violations of non-refoulement measures (Thompson and Ward 2021). He argued that more humane measures currently exist to address the COVID-19 pandemic that do not endanger the lives of asylum seekers and that those should be employed instead of Title 42. The former advisor suggested lawful, alternatives existed: suspending all Title 42 flights, especially to Haiti; clearly announcing to people aboard

such flights where they are going; instituting the standard of a “reasonable possibility of fear” test for deportation screenings; and to see if some of the Haitian immigrants may have legal status or family ties in other countries (Thompson and Ward 2021). With Koh’s suggestions, President Biden did have humane alternatives that adhered to asylum seeker standards. Yet he chose not to follow them.

The Biden administration has also received outside recommendations that uphold US refugee law and restore asylum. HRF has suggested that DHS should process people seeking refugee protection under specific public health measures at ports of entry and Border Patrol locations (Human Rights First 2021). These health measures would include social distancing, masks, outdoor areas and locations repurposed to maximize distancing and ventilation. This would aid in limiting the spread of the virus if everyone within an environment are given the resources to adequately follow health guidelines. Additionally, the organization suggested that the Biden administration invest in community reception—an initiative that includes faith-based organizations, legal non-profits, shelters, and refugee assistance agencies. By offering these kinds of services, asylum seekers will be better equipped to make the transition up north. This also protects public health concerns by not having mass groups of people waiting for long periods of time (Human Rights First 2021). Title 42 does not currently push for the humanitarian protection of asylum seekers and promotes detention over case support. It is important that the Biden administration acts on these accusations and responds by turning back Title 42 entirely.

Unlike the Trump administration, President Biden attempted to maintain his campaign promise to create a fair and inclusive immigration system by trying to rescind Title 42. However, after political opposition made it so this could not happen, the Biden administration took advantage of the COVID-19 policy to meet his own border control needs. The result is that he is

truly not that far from his predecessor. After failing to strike down the policy, President Biden adopted Title 42 opportunistically.

Both the Trump and Biden administrations have endangered migrant lives when the need for protection was at its most dire. Immigrant justice groups as well as public health experts and even members of the Biden cabinet have acknowledged the cruelty behind Title 42, yet the measure has remained in place almost three years since the pandemic started. Understanding the use of Title 42 is important in order to protect the legal rights asylum seekers have and in order to, ultimately, hold the US accountable for violating these protections.

## Chapter 5: Conclusion

The responses to COVID-19 varied across the globe. In the US, the Trump administration developed its own public health measures to deal with the pandemic including the use of Title 42 to control cross-border movement of migrants and asylum seekers. President Biden intended to strike down the policy after the pandemic's intensity lessened, but he eventually adopted Title 42 to meet the goals of his restrictive immigration agenda. This thesis analyzed the implementation of Title 42 under the Trump administration and its continuation under the Biden administration. The primary question posed by the thesis was the extent to which the policy became a tool for restricting immigration into the US.

A review of the history of the xenophobic relationship between immigration and public health suggests that public health measures have often worked to depict migrants, specifically those from non-western nations, as a disease-ridden threat. This Eurocentric way of thinking has since dominated the American immigration system and has contributed, at different points in history, to creating exclusionary border policies aimed at keeping asylum seekers out no matter how urgent their voyage to the US may be. History suggests that the aftermath of closing the border on vulnerable populations can be extremely harmful for the vulnerable populations seeking asylum. The larger implication of this thesis, therefore, is to call for humane immigration policies that do not endanger migrant life or force asylum seekers back into the dangerous living conditions they are fleeing.

The racialization of diseases has historically been a big part of how exclusionary policies are justified and immigrants of color are shown as threats to the nation's health and security. This racialization has historically been rooted in white-supremacist nativism and the western desire to create racially "superior" nations. Initially, immigration laws were dedicated to monitoring

public health under the notion that disease could only come from the outside. Eventually, public health laws began to search for linkages between nationality and disease and, ultimately, used this to determine which immigrant groups were healthy enough to enter the country. These ideas resulted in the application of policies like Title 42, which emphasizes the role of public health in carrying out aggressive border control policies even as it was questionable whether such measures helped in containing the pandemic.

The Trump administration's initial implementation of the policy was promoted as a public health necessity to curb the spread of COVID-19. Even before the pandemic, President Trump worked to keep asylum seekers outside the US borders through his aggressive rhetoric on "building the wall" and implementing policies such as the Remain in Mexico program. The support from his anti-immigrant colleagues and appointees, such as Stephen Miller, alongside the support of the Republican party allowed Title 42 to be presented as a legitimate response to pandemic. Despite a lack of support from the CDC, the Trump administration used Title 42 as a tool to expel asylum seekers entering through the southern border. The CDC argued against the implementation of Title 42, citing that migration was not a major factor in the spread of disease. The lack of support from public health experts suggested that the policy had no epidemiological justification. The CDC was pressured to support the implementation of Title 42, which also suggests that the Trump administration abused their executive authority without repercussion by taking advantage of a global health emergency.

The analysis of the Republican party's response to Title 42 highlights the magnitude of anti-immigrant sentiment. Before the COVID-19 pandemic, Republican officials actively tried to introduce and pass aggressive, closed border policies at the southern border. An example of this is highlighted by Senator Tom Cotton who previously attempted to pass the 2017 RAISE Act as

a means of reducing immigration levels; he has also been an active supporter of Title 42. On the contrary, Democratic officials have argued against the Trump-era measure and pushed for humanitarian alternatives that could address pandemic concerns without putting migrants' lives at risk. However, Democratic support for the policy became apparent under the Biden administration as discussed in Chapter 4. It is important to consider this shift because although Title 42 worked to polarize members of different political ideologies, it had the double sword effect of simultaneously serving as a potential compromise.

President Biden showed contradictory political impulses on the issue of Title 42. Although he did want to overturn the policy, he ended up using the policy aggressively to control immigration once the courts blocked him from doing so. Moreover, some Democratic senators like Mark Kelly expressed concerns over a possible border surge after lifting Title 42. These political choices suggest that policies that are meant to be emergency health measures never operate in a political vacuum but, rather, always work in combination with institutions, parties, and ideologies.

Through the analysis of the Biden administration's adoption of Title 42, it is evident that American immigration policies are rooted in xenophobia and both parties tap into such sentiments to enlarge their political support and legitimacy. A pertinent example discussed in the thesis is the case of Venezuelan asylum seekers fleeing political chaos and persecution in Venezuela. When they tried to enter into the US through the southern border, the Biden administration decided to invoke Title 42 to expel them summarily without the due process. This clearly demonstrates that President Biden and other political elites used the policy to achieve their political goal of demonstrating complete control over the border. This tactic has been seen throughout American history, such as after September 11 when the Bush administration



implemented a three-month moratorium on all refugee admissions. This decision was reflective of the larger Islamophobic climate during the War on Terror, which reflects the longer history of restrictive immigration policies in the US. The most detrimental consequences of these policies are experienced by migrants and asylum seekers. This thesis sheds light on the failure to protect the humanitarian rights of asylum seekers as outlined in human rights law.

A recent development in November 2022 led to a court judgment blocking the Biden administration from using Title 42. According to a Washington state federal judge, there is no COVID-19 justification that would suggest the need for the policy to continue. Presumably, Title 42 will be permanently lifted by the end of December 2022. However, this has been met without opposition from supporters of the immigration tool who argue that President Biden is not capable of developing a strong and closed border policy. Therefore, the administration can expect to face another legal battle regarding border control after Title 42 is removed.

This thesis argues that even when Title 42 is eventually lifted the harm done to the millions of asylum seekers cannot be undone. The reader is reminded of the importance of protecting the livelihoods of asylum seekers arriving at the border seeking refuge in the US. Already underrepresented in CBP data reporting's, many asylum seekers have likely been harmed or killed after returning to their country or on the additional attempt they made traveling to the US. The surge of migrants at the southern border has been a decades-long issue, which underlines the need to protect these groups through a just asylum-seeking process and other humane immigration policies. The COVID-19 pandemic exacerbated already difficult living conditions, including violence and poverty, and the increasing need to migrate north in search of a new beginning. It is clear that global powers like the US have adequate resources to protect the humanity of these populations. Rather than providing these resources, both the former Trump

administration and current Biden administration have put asylum seekers in harm's way. This decision to expel arrivals – depriving them of the proper asylum-seeking process – only works to fulfill the national interests of the destination country without being responsive to the needs of migrants fleeing instability and persecution in their countries of origin. The global norm to allow asylum seekers due process has been overlooked while creating harsher rules for dealing with asylum seekers.

The research conducted for this thesis raises important questions for future policies. Firstly, studying the forces of migration in Latin America should be carried out by listening to the stories of natives who have undergone the journey, rather than just using the observations from individuals who have never experienced the hardships first hand. It is important to include the voices of those being impacted by these policies in order to ensure that the asylum-seeking process is representative of the needs of this population. This will help steer away from the Trump-endorsed narrative of migrants as “job stealers” and “criminals” and replace it with a new narrative focused on compassion and empathy.

Secondly, hegemonic powers (i.e., US and most of western Europe) should acknowledge the responsibility they have to address forced migration given their more advanced economies and access to safety. They need to open their borders to aid the global refugee crisis as a part of a larger geopolitical framework. A comparative analysis of how other countries have responded to migrant populations can assist in the development of immigration laws that adhere to the moral and international obligations of the US. For example, in 2013 Sweden granted refugees permanent residence, as well as the immediate capacity to work and choose a place of residence. In addition, the country also ensured that their families would be reunified. The existing models

of other nations can set the framework for a US humanitarian-driven asylum-seeking process that guarantees those in need can achieve self-sufficiency.

Finally, the language used to develop public health policies should not be based on immigration and race. While waiting in line to be processed by CBP after returning from international travels earlier this year, I made note of a sign that read “AFRICAN SWINE FEVER - Don’t Pack a Disease.” To someone with no knowledge of the history of the racialization of diseases, one’s immediate thought may likely imagine African countries as potential public health threats. For Americans, this same issue arose after the US painted COVID 19 in the media as the “Chinese virus”. This rhetoric is ultimately what perpetuated the development of the aggressive immigration policy Title 42, which not only villainized Asian communities outside of the US but also Asian Americans. This thesis suggests the importance of ensuring that language describing public health be attentive to any preconceived biases towards certain groups. Public health should only be rooted in epidemiological research and science.

Title 42 served as a restrictive immigration tool during the onset of the pandemic and even now when there are signs of moving into the post-pandemic world. Although argued to be a matter of public health, this policy was never shown to have a role in slowing down the spread of COVID-19 in a country that has repeatedly failed to adhere to guidelines from public health experts since the beginning of the pandemic. The Trump and Biden administrations both violated the rights of asylum seekers through the enforcement of this policy without being held accountable. Overall, rejecting policies like Title 42 is a first step in acknowledging that immigrants are just as worthy of their humanity and safety as those of us who have not been forced to leave our homes.

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