

5 Facts About Title 42: Why Congress Should Not Codify the Trump-Era Expulsion Policy

“Title 42” refers to [Section 265](#) of the Public Health Service Act, a statute last invoked in 1929 to bar the entrance of ships during a meningitis outbreak. In 2020, the Trump administration retooled this public health statute to permit the mass expulsion of virtually all non-citizen/residents arriving at U.S. borders. In April 2022, the Centers for Disease Control and Prevention (CDC) [announced](#) that it would end the use of Title 42 the following month. This followed two long years of expulsions as the U.S. government exploited the COVID-19 pandemic to ban migrants and asylum seekers. States with anti-immigrant leadership sued and kept Title 42 in place. As a result, the number of expulsions has reached [over 2 million](#). In July 2022, two spending bills passed out of the House Appropriations Committee with amendments proposing to keep Title 42 in place until and after the termination of the COVID-19 emergency declaration; more than [200](#) organizations condemned the amendment as a poison pill for these must-pass bills.

Now with a narrowed version of President Biden’s social spending bill nearing a vote, asylum seekers face the continued threat that Congress will betray its decades-old commitment to safe processing and codify Title 42 expulsions, making it a permanent fixture of U.S. border policy. **With so much at stake, it is more important than ever to understand what Title 42 is —and what it is not.**

Title 42 is NOT about public health.

Before March 2020, there was no such thing as Title 42 expulsions at the U.S. border. The policy took public health experts by surprise, as [Stephen Miller](#) weaponized COVID-19 to shut down the border entirely. There was no precedent for such exploitation of public health, though this was [not Miller’s first attempt](#). Senior experts at the CDC, epidemiologists, and over 1,300 medical experts [have emphatically denounced](#) the junk science undergirding this expulsion policy. Now with widespread access to vaccines, testing, and masks, it is even harder to see *any* public health rationale to Title 42.

Title 42 is NOT about border management.

Since Title 42 is indefensible from a public health standpoint, many seek its continuation for its unofficial purpose: deterring border arrivals by any means necessary. But Title 42 fails to serve even that purpose. Title 42 [fuels repeated crossings](#), as people are desperate to seek safety. According to U.S. Customs and Border Protection data, the percentage of people who have attempted to repeatedly cross the southern border has more than tripled from 2019 to 2022. In effect, Title 42 inflates and confounds border crossing data at the border, rather than deter people seeking refuge.

If Title 42 fails both as a public health tool and deterrent, then what is its purpose?

Title 42 IS an asylum ban.

NIJC tracked the Trump administration's [repeated ploys to end asylum](#). None were as successful as Title 42, which shut down ports of entry altogether to asylum seekers. Though it is lawful to seek asylum, under Title 42 people are routinely expelled to the same places they fled, or to border towns in Mexico where many were targeted for kidnapping and violence. [Current](#) and [former](#) Biden [senior officials](#) have called this policy inhumane and unlawful, as it upends decades of asylum law in violation of the 1980 Refugee Act and binding international obligations.

Title 42 IS racist.

Racism can be measured by the (1) *intent* and (2) *impact* of a policy:

(1) By design, Title 42 portrays migration as contagion, in line with a dark history of [eugenics](#) and anti-immigrant U.S. laws. Advocates for maintaining Title 42 advance rhetoric echoing the [Great Replacement Theory](#)—which views migrants and people of color as a threat to white supremacy. The rhetoric of ‘invasion’ (championed by Title 42 proponents) further advances this racist theory.

(2) Though intent alone should suffice to spell the end of this policy, its impact is even more damning. The Trump and Biden administrations have returned tens of thousands of [Haitians](#), as well as countless [Black](#), [Brown](#), and [Indigenous](#) people to danger. Further exposing the disparate impact of this policy, the Biden administration created a separate process for admitting [over 71,000 Ukrainians](#) seeking refuge — grace that has not been granted to refugees fleeing non-European countries. With Title 42, Biden’s promise of racial equity rings hollow to dozens of [civil rights leaders](#).

Title 42 IS deadly.

Title 42 contributes to the rising death toll at the border, as more than [1,000 people have died](#) since Biden took office. The ultimate death toll of this policy is hard to measure, but [10,318 documented incidents](#) against people expelled to Mexico under Title 42 include violent attacks, kidnapping and rape. Migrants seeking to escape these dangers have no choice but to turn to smugglers. In June 2022, this horror was on broad display as the bodies of [53 adults and children](#) were recovered in a sweltering truck in San Antonio, Texas. This predictable and preventable tragedy has not stopped U.S. authorities from conducting record numbers of expulsions at the U.S. border, all but ensuring more deaths of desperate people shut out under Title 42.

The U.S. government must end Title 42 once and for all — not legitimize it. Every vote in Congress that upholds this policy is a vote that defends a racist, deadly, and unlawful asylum ban. Members of Congress should defend, not irreparably taint, decades of U.S. commitment to protect refugees and asylum seekers.

Take Action: Tell Congress to End Title 42
immigrantjustice.org/EndTitle42