



Biden, Like Trump, Uses the Pandemic To Expel Migrants

Title 42 expulsions are a cruel and indiscriminate pandemic mitigation measure.

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As COVID-19 burst onto the scene in March 2020, then-President Donald Trump told the Centers for Disease Control and Prevention (CDC) to issue an order allowing Customs and Border Protection to expel migrants on public health grounds. Although immigration advocates have decried that measure as illegal and inhumane, President Joe Biden has kept it in place.

The Public Health Service Act, which Congress added to Title 42 of the U.S. Code in 1944, gives federal health authorities the power to issue orders aimed at controlling the interstate and international spread of communicable diseases. The CDC has used that authority to bar people seeking asylum from entering through Canada and Mexico. In practice, it has been used almost exclusively at the southern border. As of July 2021, more than 1 million migrants had been expelled under the CDC order.

The rate of repeat crossings also has sky-rocketed because a Title 42 expulsion, unlike a formal deportation, carries no reentry penalty. That rate "tended to hover around 10 percent" prior to the CDC order but hit 38 percent in May 2021, according to Danilo Zak of the National Immigration Forum.

Critics say the policy violates longstanding asylum legislation and international frameworks protecting the rights of migrants. U.S. asylum law "guarantees [migrants] the right to apply at any port of entry," says Cato Institute immigration analyst David J. Bier. Title 42's immediate expulsion authority means migrants can't present their cases.

In early March 2020, the Associated Press reported, Martin Cetron, head of the CDC's Division of Global Migration and Quarantine, refused to support the order, saying it was unlikely to slow the spread of COVID-19. The A.P. also reported that the idea of sealing the border originated with Trump adviser Stephen Miller, an anti-immigration hardliner.

The Biden administration nevertheless has maintained the policy under the guise of fighting COVID-19. "There are ways to protect public safety without turning away vulnerable families

fleeing unspeakable horror," insisted Paola Luisi of the National Domestic Workers Alliance in a statement. The United Nations High Commissioner for Refugees offered a rare public criticism of U.S. border policy, noting that many other countries had enacted policies "to simultaneously protect both public health and the right to seek asylum."

Title 42 expulsions are a cruel and indiscriminate pandemic mitigation measure. An administration avowedly committed to "following the science" and treating migrants humanely should not support such a policy.