



DOUBLING DOWN ON DETERRENCE: ACCESS TO ASYLUM UNDER BIDEN

September 2021

In January 2021, the Biden-Harris administration committed to building a “safe, orderly and humane” immigration system. However, the administration, with the cooperation and collaboration of the Mexican government, instead continues to double down on cruel, unlawful, and ineffective deterrence-based policies that block and endanger those fleeing persecution and create chaos at the U.S.-Mexico border.

While the administration has taken positive steps, like suspending and later formally terminating Trump’s Migrant Protection Protocols (MPP, also known as “Remain in Mexico”) – now ordered reinstated by a federal district court – ports of entry remain all but inaccessible to those seeking protection, and the administration is summarily expelling individuals seeking asylum and migrants in violation of domestic and international law. In August 2021, the Biden administration began to expel individuals to the Mexican southern border where they were forced into Guatemala, fueling chain-refoulement. In addition, the administration also started sending expedited removal flights to Central America.

Insisting on a deterrence-based approach in a recent visit to the border, Secretary of Homeland Security Alejandro Mayorkas detailed a strategy to maximize expulsions through flights to southern Mexico, lateral flights, and prosecutions of those arriving at our border as a part of Customs and Border Protection (CBP)’s new Repeat Offender Initiative. Additionally, the Biden administration has pressured the Mexican government to step up its enforcement efforts, including by pushing it to “clear out refugee encampments that have sprung up along Mexico’s northern border as a result of the U.S. government’s failure to restart access to asylum. The administration also pressured the Mexican government to maintain 10,000 troops to “attend to migrants” at the southern border with Guatemala. .

This document summarizes how the U.S. and Mexican governments block and expel people seeking international protection and provides recommendations for the U.S. and Mexican governments to restore access to asylum.

Expulsions and Expedited Removal by the U.S. Government

The Biden administration has continued to use the COVID-19 pandemic as pretext to mis-use an obscure public health authority under Title 42 of the U.S. code to summarily block and expel families

and adults seeking protection at the U.S.-Mexico border.¹ Though the Trump administration originally began unlawfully blocking and expelling individuals at the border in March 2020, the Biden administration has not only continued this illegal policy but, on August 2, 2021, issued a [new order](#) that relied on much of the same flawed reasoning as the Trump administration's Title 42 orders. These expulsions [ridicule](#) public health and human rights by crowding people into planes and buses and preventing legal access to asylum in violation of domestic and international law.

Leading epidemiologists and public health experts have [repeatedly condemned](#) the policy for lacking a public health justification. Physicians for Human Rights issued [an extensive report](#) on how Title 42 expulsions actually harms public health, in direct contradiction to the Biden administration's insistence that the policy protects Americans from COVID-19. [The CDC's own doctors agree](#) that Title 42 does nothing to slow the spread of COVID-19. In fact, the then-top doctor at the CDC for these types of orders refused to comply with the Trump administration's directive to issue the Title 42 order, forcing Vice President Mike Pence to [order](#) then-head of the CDC, Dr. Robert Redfield, to put the order in place.

The Biden administration has carried out over [600,000 expulsions](#), including over 76,000 expulsions of parents and children. Since President Biden took office, individuals and families who have been expelled or blocked at ports have suffered more than [6,000 documented kidnappings, extortions, rapes, and other attacks](#) in Mexico, as tracked by Human Rights First and other organizations. Due to the expulsion policy, some parents have been forced to send their children alone to safety in the U.S. leading to increased family separation. In parallel, Mexico has also begun to expel individuals via flights and land across its southern border with Guatemala regardless of their immigration status in Mexico and without providing them the opportunity to request protection.

Where Expulsions Take Place

- **U.S.-Mexico Border via Land:** The majority of the expulsions take place via land at the U.S.-Mexico border where families and adults, mainly from Mexico, El Salvador, Honduras, and Guatemala, are expelled back to Mexican border cities within hours of their arrival to the U.S. In addition, Nicaraguans, Ecuadorians, Brazilians, Venezuelans, Cubans, Colombians, and Haitians are sometimes expelled to Mexico, despite Mexico only [agreeing](#) to accept expulsions of individuals from Honduras, Guatemala, and El Salvador. Some of these expulsions have occurred in the middle of the night and to remote parts of the border, such as Sasabe, Arizona and Sonoyta, Sonora, in violation of local [U.S.-Mexico repatriation agreements](#).

Mexico has a limited capacity in some border cities to receive expelled individuals and families.² To maximize expulsions, **the Biden administration has increasingly relied on expulsion flights to other U.S.-Mexico border cities and southern Mexico.**³

¹ Though expelled by the Trump administration, unaccompanied children were exempted from expulsions by the Biden administration earlier this year.

² In March 2020, the Mexican Foreign Ministry (SRE) initially stated that it would accept up to 100 expulsions of individuals from El Salvador, Guatemala and Honduras per day, and this number has since been exceeded. The Mexican government is concerned about the safety of migrants forced to wait in towns along the northern border, especially in Tamaulipas. Also, some of the state level governments are not aligned with the SRE, so they were pushing back on the expulsions. They have mainly argued that reforms prohibiting the detention of migrant children make it more difficult to receive Central American families.

³ The flight numbers in this section are based on [Witness at the Border](#) data tracking ICE flights through August 31.

- ***U.S.-Mexico Border via Lateral Expulsion Flights:*** The administration has ramped up lateral flights from Brownsville and Harlingen to [San Diego, Tucson](#) and El Paso, where up to 100 individuals from Honduras, Guatemala, and El Salvador are expelled from each city per day. Many believe and are misled by CBP officials that they will be allowed to stay in the U.S. to request protection, only to be sent back to an unfamiliar Mexican border city. Since lateral flights began in March 2021, there have been over 231 likely lateral flights and 74 lateral flights in August alone.
- ***U.S. Expulsion Flights to Southern Mexico:*** On August 5, the Biden administration began sending flights of Hondurans, Guatemalans, Salvadorans, and a small number of Nicaraguans to southern Mexico, adding a concerning new dimension in the implementation of Title 42 and increasing the risk of chain refoulement, [as noted by UNHCR](#). After being denied the right to request protection at the U.S.-Mexico border, these individuals and families are expelled via daily weekday flights to Villahermosa, Tabasco and Tapachula, Chiapas, denied the right to seek protection in Mexico, and after being bused to the border, forced by Mexico's immigration authorities and the National Guard on foot into rural parts of the Guatemalan border, including El Carmen and El Ciebo.⁴ Between August 5 and 31, there have been 35 of these flights. A flight operates to each city every weekday.
- ***U.S. Expulsion and Deportation Flights to Haiti:*** In most instances where Haitians were apprehended pursuant to Title 42, they were detained in CBP facilities or, in limited instances, Immigration and Customs Enforcement (ICE) detention centers and expelled directly to Haiti. These flights took place amid political turmoil and violence that led the Biden administration to [designate Haiti for Temporary Protected Status](#) and [included pregnant women, infants, and toddlers](#). While held in custody, sometimes for prolonged periods of time, Haitian migrants were generally unable to seek asylum or other protection, and did not have [access to legal counsel, interpreters](#), or even phones to call family members, sponsors, or potential legal representation. Many loved ones reported being unaware that someone had even crossed into the United States until they received a call from Haiti after the person had been expelled. Haitian migrant families complained of [poor treatment in ICE or CBP facilities](#), including not being allowed to bathe or access to medical care, and not being told they would be expelled until they boarded the flight to Haiti. From January to July 2021, there were [35 expulsion and deportation flights to Haiti](#) carrying over 2,000 asylum seekers, most of them detained under Title 42, back to life-threatening conditions.

In addition to expulsions, **the Biden administration placed some families apprehended at the southern border into expedited removal and began expedited removal flights to Central America.** Expedited removal is a [fundamentally unfair](#) process and has resulted in individuals being erroneously [deported](#) to harm or death. At the same time, the administration has also unconscionably:

- **Expedited Removal Flights:** At the end of July 2021, the Biden administration resumed [expedited removal flights](#) to Central America for certain parents and children arriving at the U.S.-Mexico border who cannot be expelled to Mexico and do not affirmatively express a fear of returning to their country of origin. However, this determination is left to the discretion of Border

⁴ In addition to daily expulsion flights of Central Americans to Villahermosa and Tapachula, Witness at the Border has also tracked regular U.S. removal flights of Mexicans each week to Mexico City, Morelia, and Guadalajara.

Patrol agents, and advocates have yet to receive confirmation that families have been [properly screened](#) for protection needs. From July 30 to August 31, there were an estimated 32 U.S. removal flights to Guatemala, Honduras, and El Salvador.

Deterrence and Expulsions by Mexico

According to [reports](#), in ongoing bilateral discussions the U.S. has pressured Mexico to step up immigration enforcement efforts. Ongoing increased enforcement along Mexico's southern border has trapped migrants, overwhelmed Mexico's refugee agency COMAR, and led to tragic consequences, such as [excessive use of force](#) by officers from the National Institute for Migration (INM), the Mexican National Guard (GN), and other Mexican enforcement agencies against migrants in the caravans that recently departed Tapachula in late August 2021, which included a large number of Haitian migrants, many with legal status for their stay in Mexico. [Forced to wait](#) in the state for a resolution of their asylum claims, which are taking months to process, and faced with lack of adequate housing, employment opportunities, and discrimination, these migrants were attempting to leave Tapachula in search of improved opportunities elsewhere in Mexico. Days before the incident, Mexico's Defense Minister [said](#) that the primary purpose of Mexican authorities' presence in southern Mexico was to "contain migration."

Since May 2021, Mexico has ramped up interior flights, expulsions at the southern border, and deportations to Central America.

- **Mexico's Interior Flights and Expulsions Across its Southern Border:** When possible, the INM detains expelled migrants along the U.S.-Mexico border and transports them by bus or [domestic flights](#) to southern Mexico,⁵ where it often transports migrants and people seeking asylum on INM charter buses and forcibly expels them over the border with Guatemala. Additionally, in southern Mexico, [Mexican authorities are detaining a large number of Haitians](#)—even those who have refugee status in Mexico—and expelling them by bus to Guatemala, according to monitoring by the *Colectivo de Observación y Monitoreo de Derechos Humanos en el Sureste Mexicano* (COMDHSEM).
- **Mexico's Deportation Flights to Central America and Haiti:** Mexico has also [stepped up deportations](#) directly to Central America. Since May, Mexico has sent over 50 deportation flights to Guatemala, Honduras, and El Salvador, and an additional number of flights to Haiti.

Are Any People Seeking Protection Being Processed at U.S. Ports of Entry?

Currently, U.S. ports of entry remain inaccessible to most individuals seeking protection, including unaccompanied children, who, despite being exempt from expulsions under Title 42, are blocked from requesting protection at ports of entry and forced to cross through dangerous terrain at the U.S.-Mexico border to request asylum. The lack of access to U.S. ports of entry for people seeking asylum combined with continued expulsions unnecessarily forces individuals seeking protection to cross the border between ports with tragic and preventable consequences.

⁵ Since May, the Mexican government has sent approximately [13,000 migrants on around 100 domestic flights](#) from its northern border cities to southern Mexico.

From late March to August 2021, two exemption processes supported the processing of 16,000 families and adults seeking protection into the U.S. through ports of entry on a case-by-case basis. One process was operated by a consortium of non-governmental organizations and [another process was managed by the American Civil Liberties Union](#) as part of the *Huisha-Huisha* litigation regarding the expulsion of families under Title 42. In a rare rebuke of the United States, the [UNHCR](#) called for an end to U.S. pandemic-related asylum restrictions and noted that a system that only admits small numbers of asylum seekers daily is insufficient and comes with great risks.

These non-public processes forced NGOs to act as virtual gatekeepers of access to asylum at the border, were inaccessible to the vast majority of individuals seeking protection, and [endangered](#) both asylum seekers and the legal and humanitarian groups assisting them. There is currently no exemption process available for people impacted by Title 42.

Additionally, after announcing the MPP wind down process in February 2021, the Biden administration collaborated with international organizations to process over 13,000 individuals placed into MPP proceedings under the Trump administration into the United States. These individuals have been allowed to continue their asylum claims in the interior of the United States. In August, after the Supreme Court allowed a lower court decision ordering the reinstatement of MPP to stand in *Biden v. Texas*, the Biden administration suspended the MPP wind down process and [announced](#) that it has begun “diplomatic discussions surrounding MPP” with the Mexican government. To date, there has been no additional information on how the Biden administration plans to interpret or comply with the court order. Even prior to the federal court order, the Biden administration was reportedly [discussing](#) re-implementing a “gentler version” of MPP. Mexico, whose cooperation is necessary for any reinstatement of MPP, has sent mixed messages about whether it would support a return to this policy.

STEPS THE BIDEN ADMINISTRATION SHOULD TAKE TO PROCESS THOSE SEEKING PROTECTION AT THE BORDER

- **Revoke the [order](#) purporting to authorize expulsions under Title 42 and halt unlawful expulsions at the border, lateral expulsion flights, and expulsion flights to southern Mexico.**
 - Public health experts have repeatedly provided [recommendations](#) for safe processing of individuals seeking asylum using public health measures.
- **Work to immediately restore access to asylum at ports of entry, while being transparent about capacity, staffing, and process so that no one is subjected to “queue management,” turned back, or metered at ports of entry.**
 - The Biden administration should commit to publicly communicating information regarding port reopening to rights holders, attorneys, and NGOs providing humanitarian services on both sides of the border. Practices of “queue management,” turnbacks, and metering are [unlawful](#), which a federal district court confirmed in a [ruling](#) on September 2, 2021.
- **Issue a new re-termination memo that provides a fuller explanation for terminating MPP and take all lawful and necessary steps to preserve the MPP wind down and continue processing individuals previously subjected to MPP into the United States.**

- **Avoid any return to MPP or a future iteration of a MPP-style policy which would return individuals to danger in Mexico to await their U.S. immigration hearings under INA section 235(b)(2)(C) and violate U.S. asylum law.**
 - There is no way to execute MPP or an MPP-style policy in a humanitarian way or to eliminate the serious human rights and due process concerns that are inherent to such a policy.
- **Oppose policies that aim to deter or punish people for crossing the U.S. southern border to seek protection, which violate the 1951 Refugee Convention.**
- **Center protection concerns and respect for human rights and the rule of law in high level negotiations with Mexico.**
- **End any pressure on or agreements with other countries to harden or close their borders to people seeking protection.**

STEPS THE MEXICAN GOVERNMENT SHOULD TAKE TO ENSURE ACCESS TO PROTECTION

- **Refuse to participate in MPP or any program that forces asylum seekers to wait in Mexico in order to access the U.S. asylum system as these programs violate due process and non-refoulement obligations.**
- **Discontinue the acceptance of migrants expelled from the U.S. back to Mexico.**
- **Eliminate participation in Title 42 expulsion flights that violate the right to asylum guaranteed in domestic and international law and place asylum seekers in vulnerable situations.**
- **Eliminate the participation of the Mexican National Guard, Army, and Navy in migration enforcement throughout the country.**
- **Refrain from any use of force or violence against migrants.**
- **Refrain from arbitrarily detaining and deporting migrants without the opportunity to seek asylum and other protection.**
- **Strengthen the protection system to expedite refugee documentation, facilitating access to housing, work, health services, and education.**
 - Open up additional *Comisión Mexicana de Ayuda a Refugiados* (COMAR) offices in Chiapas, Tabasco, Veracruz, Oaxaca, Jalisco, and in states along the northern border to improve access to asylum proceedings.
 - Place COMAR personnel at ports of entry to conduct protection screening.
 - Strengthen and expand the alternative to detention program (*Alternativa a Alojamiento*) to release asylum seekers from detention to continue with their legal procedures.

- Reform provisions in the Refugee Law that restrict access to asylum proceedings, such as the 30 day application limit and the restriction on mobility outside of the jurisdiction where the asylum application was presented.
 - Make Haitian Creole language interpreters available to Haitian asylum applicants in all COMAR proceedings.
 - Provide anti-Blackness bias and discrimination trainings to COMAR and INM agents.
- **Focus on programs that increase refugee integration in Mexico by strengthening shelter systems and humanitarian assistance in key states and expanding programs that relocate refugees to areas in Mexico with increased labor opportunities.**
- Refrain from establishing so-called “humanitarian camps” in Chiapas for migrants, including Haitian migrants, as was announced by INM on September 1, 2021.

U.S. and Mexican Expulsion and Deportation Flights

Type of flight (Start date)	Flight route	By the numbers (estimated)	Potential non-refoulement violations
U.S. lateral Title 42 expulsion flights (March)	Harlingen and McAllen, Texas → San Diego, CA, Tucson, AZ, and El Paso, TX	231 since March 74 In August alone	Individuals are often expelled by CBP to Tijuana, Nogales and Ciudad Juárez without the opportunity to request asylum.
U.S. Title 42 expulsion flights to southern Mexico (August 5)	McAllen, Texas → Villahermosa, Tabasco and Tapachula, Chiapas	34 flights August 5 - 31 Weekday daily flights to Villahermosa and Tapachula	Individuals are often expelled by CBP without the chance to request asylum to southern Mexico, subsequently denied the opportunity to request protection in Mexico, and forcibly expelled to Guatemala.
U.S. expedited removal flights (July 30)	Brownsville, Texas → Guatemala, Honduras, and El Salvador	32 removal flights July 30 - August 31	While CBP is required to screen families for protection needs, it <u>often fails to do so.</u>
<u>U.S. removal flights to Mexico (Ongoing)</u>	Flights U.S. cities → Mexico City, Guadalajara, Jalisco, Puebla, and Morelia, Michoacán	90 flights January - July	Mexican nationals, especially if subjected to expedited removal, may have been erroneously deported without the opportunity to request protection.
U.S. expulsion and deportation to Haiti (Ongoing)	Flights U.S. cities → Port-au-Prince, Haiti	<u>35 flights</u> <u>January - July</u>	Haitians are often expelled or deported without the opportunity to request protection.
Mexican interior flights (May)	Hermosillo, Sonora and Monterrey, Nuevo León → Villahermosa, Tabasco	<u>100+ flights</u> <u>May - mid-August</u>	These individuals are often first expelled by CBP without the opportunity to request protection to Mexican border cities (Eg. Nogales, Sonora) where they are detained by INM officials. Then flown to southern Mexico where they are denied the opportunity to request protection in Mexico and forcibly expelled to Guatemala.
Mexico's deportation flights to Central America and Haiti (April)	Reynosa, Tamaulipas and Monterrey, Nuevo León → Guatemala, Honduras, and El Salvador Other flights: Sent back to Haiti	21 flights to Guatemala 39 Honduras 3 to El Salvador May - end of August	

Source: [Witness at the Border's](#) tracking of likely ICE flights for U.S. lateral flights, expulsion flights to southern Mexico, and Mexican interior flights and deportation flights