



FACT SHEET

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STOP US DEPORTATIONS AND ABUSE AGAINST HAITIANS ON THE MOVE: AN URGENT STEP TOWARDS CREATING JUST POLICIES FOR HAITIANS

Between 19 September and 10 November, the US government sent nearly 9.000¹ Haitian migrants and asylum seekers to Haiti, largely without providing access to the US asylum system or protection screenings.² These mass expulsions by the US government were followed by an increase in deportations of Haitians from across the Americas,³ exacerbating the crisis and leading to a joint call by UN agencies for states to provide international protection and alternative legal routes to regularization⁴ and a resolution adopted by the Inter-American Commission on Human Rights (IACHR) addressing the regional need to increase the protection of Haitians on the move.⁵

Many expelled Haitians have disembarked US deportation flights sick, handcuffed, hungry, traumatized, and disoriented⁶ only to find themselves in a “humanitarian nightmare,”⁷ including widespread gang violence,⁸ an ongoing political crisis following assassination of Haiti’s President Jovenel Moïse,⁹ food insecurity,¹⁰ a health system “on the brink of collapse,”¹¹ devastation following a recent earthquake,¹² and at risk for Covid-19 in a country where vaccination rates are reportedly around 0.4%.¹³

The US has made regular use of Title 42¹⁴ - an order under the guise of public health whose misuse to conduct mass expulsions has been widely condemned by the UN,¹⁵ health experts,¹⁶ US officials,¹⁷ and civil society organizations¹⁸ from all over the world - to block Haitians and other asylum seekers from seeking asylum. And most recently the US has announced that Haitians will be subject to the Migrant Protection Protocols (MPP)¹⁹, which will force Haitians not expelled to Haiti under Title 42 to await their immigration proceedings in Mexico where the US has already acknowledged migrants face severe risk of harm.²⁰

This recent escalation in deportations and the inhumane and discriminatory treatment based on intersecting factors, including race and nationality²¹ of Haitians before and during the expulsions “seemingly continue a history of racialized exclusion of Black Haitians migrants and refugees at US ports of entry.”²² The US is violating its international obligations to eradicate discriminatory immigration practices²³ and to screen²⁴ asylum seekers to ensure that individuals are not returned to persecution or torture.

1. HUMAN RIGHTS AND HUMANITARIAN CRISIS IN HAITI: SENT BACK TO A “HUMANITARIAN NIGHTMARE”

In March 2021, a leaked report from the Department of Homeland Security suggested that the US is aware that deported individuals “may face harm upon return to Haiti” given pervasive political instability and violence.²⁵ Furthermore, in May 2021, US authorities announced²⁶ a new 18-month designation of Haiti for Temporary Protected Status (TPS), which provides relief from deportation to Haitians present in the United States as of July 29, 2021²⁷ – citing Haiti’s “deteriorating political crisis, violence, and a staggering increase in human rights abuses” that “prevent its nationals from returning safely”.²⁸ In August, the US State Department also categorized Haiti as a Level 4 “Do Not Travel” zone – the highest risk travel category – due to its high rates of kidnapping, crime, and civil unrest.²⁹

In the past six months, the conditions in Haiti have only worsened. On 14 August, the country was hit by a 7.2 magnitude earthquake, and, two days later, tropical depression Grace further devastated the impacted area.³⁰ According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the UN Migration Agency (IOM), the disasters affected at least 800.000 people³¹ and exacerbated pre-existing vulnerabilities,³² leaving more than 38.000 internally displaced,³³ and 650.000 in need of emergency humanitarian assistance.³⁴ This scenario is particularly concerning in a country with 4.3 million people (44% of the population) already facing acute food insecurity.³⁵ Along with displacement, the UN³⁶ and local health

centers³⁷ report a sharp increase in reports of sexual and gender-based violence by armed gang members throughout the capital.

The rampant insecurity and increasing **gang violence**³⁸ have affected 1.5 million people, left an additional 19,000 internally displaced³⁹, and have also created the worst kidnapping wave in Haiti's history,⁴⁰ with more than 750 reported victims this year as of mid-October.⁴¹ Major and continuing **gas shortages** intensified in October when gangs blocked major ports cutting off fuel supplies intended to enter the country, attacking fuel delivery truck drivers,⁴² paralyzing the country⁴³ and intensifying the crisis especially for the most vulnerable Haitians.⁴⁴ The choked fuel supply has caused regular electricity blackouts, raised the price of food, transportation, and other services,⁴⁵ disrupted telecommunications infrastructure,⁴⁶ and caused hospitals to shut down.⁴⁷ As a result, journalists reported there has been a recent spike in the numbers of Haitians fleeing the country by the sea since they are unable to feed their families and fear for their lives.⁴⁸ On 10 November, the State Department urged all US citizens to leave Haiti "in light of the current security situation and infrastructure challenges."⁴⁹

Gangs have reportedly targeted certain communities or groups associated with political opposition, and there is alarming evidence that has shown a pattern of state involvement.⁵⁰ As documented by the *Observatoire Haïtien des Crimes contre l'humanité* (OHCH) and Harvard Law School's International Human Rights Clinic, massacres perpetrated by gangs with the complicity of state officials and police between 2018 and 2020 resulted in the killings of hundreds of people. The report details how the massacres were carried out with brutality, and perpetrators raped and tortured residents based on their political associations. According to the report, the attacks appear to follow a widespread and systematic pattern that "further state and organizational policies to control and repress communities at the forefront of government opposition."⁵¹ Since the president's assassination, the gangs have visibly acquired more power creating a pervasive sense of insecurity for the population.⁵²

Besides the inhumanity⁵³ of returning individuals to a country facing such dire humanitarian conditions, many Haitians have *bona fide* fears of persecution and torture,⁵⁴ for example where they fear being targeted by gangs, such that denying them access to asylum procedures constitutes a direct violation of US statutes and *non-refoulement* treaty obligations.

2. US HUMAN RIGHTS VIOLATIONS AGAINST HAITIANS ON THE MOVE

FLOUTING THE PRINCIPLE OF *NON-REFOULEMENT*

The mass expulsion of Haitians under Title 42 violates US asylum laws⁵⁵ and US obligations under both domestic and international law⁵⁶ that prohibit the return of individuals to persecution⁵⁷ and torture.⁵⁸ In September, the UN High Commissioner for Refugees stated: "mass expulsions of individuals currently under way under the Title 42 authority, without screening for protection needs, is inconsistent with international norms and may constitute refoulement."⁵⁹

US laws require that individuals at the border who express a fear of return to their home country or an intention to apply for asylum, must have access to a fear screening prior to removal.⁶⁰ Former US State Department Legal Adviser Harold Koh concluded in his resignation letter that Title 42 policies "violate [US] legal obligations not to expel or return ("refouler") individuals" - "especially migrants fleeing from Haiti."⁶¹ In a leaked document from 31 August 2021, the Department of Homeland Security's Office for Civil Rights and Civil Liberties (CRCL) communicated to the US Immigration and Customs Enforcement (ICE) and to the US Customs and Border Protection that Haitian deportees were in risk of danger "due to perceived political opinion and/or individual demographic characteristics (e.g., a high risk of refoulement)."⁶²

Despite this legal obligation, Haitians and others expelled under Title 42 are rarely asked if they intend to request asylum, nor are they screened for a fear of return to Haiti.⁶³ Fear screenings for return to Mexico under MPP are similarly deficient.⁶⁴ The US government is denying hundreds of thousands of people the right to seek asylum.⁶⁵

EXPOSED TO HEALTH RISKS AND RESTRICTED ACCESS TO MEDICAL ASSISTANCE

The UN Refugee Agency (UNHCR) has made clear that "measures restricting access to asylum must not be allowed to become entrenched under the guise of public health."⁶⁶ Public Health experts⁶⁷, civil society organizations⁶⁸ and even former officials from the Centers for Disease Control and Prevention (CDC)⁶⁹ have insisted that there is no legitimate scientific or public health rationale for the application of Title 42 to expel migrants and asylum seekers. Other effective mitigation measures exist, including testing, social distancing, and the use of masks, among others.⁷⁰

In addition to the misuse of Title 42 to expel hundreds of thousands⁷¹ of migrants and deny their right to seek asylum, the current implementation of this public health order could also spread Covid-19. Mass expulsions under Title 42 are exposing migrants and asylum seekers to health risks by denying them medical assistance at the border⁷² and by detaining thousands of people in congregate settings,⁷³ then deporting them in crowded planes without providing Covid-19 tests.⁷⁴

These measures not only affect deported individuals but according to the UNCHR also "heighten the risk of Covid-19 transmission across national borders"⁷⁵ especially in countries such as Haiti, where according to the Pan American Health Organization the

“intensifying socio-political crisis in Haiti is having a negative impact on the health of the Haitian population”⁷⁶ and where vaccination rates are among the lowest in the Americas.⁷⁷

SUBJECT TO ILL-TREATMENT AND DISCRIMINATION

By associating migrants and asylum seekers with Covid-19, the US stands to drive racism, xenophobia, stigma, and discrimination,⁷⁸ and risks perpetuating use of health policies to implement racist anti-immigration measures.⁷⁹ History has shown that punitive measures are rarely effective ways of responding to epidemics.⁸⁰ Additionally, under international law, states have a duty not only to ensure that law enforcement and public bodies refrain from racial discrimination but have an obligation to develop programs and campaigns to prevent discrimination in wider society.⁸¹

Despite this, Haitians have been subject to a series of shockingly abusive practices by US officials at the border and during deportation. In September, at the border in Del Rio, Texas, scenes of immigration officials on horseback using excessive force against Haitian migrants and asylum seekers,⁸² and wielding long reins to chase them and push them back across the river⁸³ provoked global condemnation as it triggered memories of systemic racism inherent in the policing system throughout the country.⁸⁴

Haitians held in custody after crossing the border remained in detention in freezing crowded cells without sufficient food and water,⁸⁵ and without knowing why and for how long.⁸⁶ They were then expelled often without a fear screening or access to lawyers, language interpreters, medical care, or even basic sanitation.⁸⁷ Some of the deported Haitians were loaded onto deportation flights in handcuffs and ankle shackles without being told where they were going.⁸⁸

3. RECOMMENDATIONS

- Immediately end all deportations to Haiti, including Title 42 expulsion flights that recurrently stand to put people at increased risk for COVID-19.
- Provide access to the asylum system with ensured access to high quality Haitian Creole interpreters, including as necessary fear screenings for all Haitians at risk of return as a key protection against refoulement.
- Refrain from placing asylum seekers in expedited removal or detaining immigrants and asylum seekers, and instead employ steps to process asylum seekers at ports of entry and quickly release them using proven community-based case support programs for those that need them.
- End discriminatory mistreatment of Haitian asylum seekers and migrants, investigate abuses and bring those responsible to justice.
- Ensure consistently enforced rules for frontline officials, including law enforcement officials, immigration authorities and asylum officials, forbidding racial profiling, and ensure robust systems of monitoring and access to effective remedy for victims.
- Take steps to address racist and xenophobic attitudes and behavior towards non-citizens, or stigmatization based on race, colour, descent or national origin by politicians, the media and wider society, as required by international law, for example, by implementing public anti-discrimination campaigns.
- Create long-term policies that support Haitian-led solutions based on the effective participation of Haitian civil society in the process of creating a more equitable Haiti where Haitians will feel less pressures to flee the country.

Signatories:

Amnesty International
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¹ According to the International Organization for Migration (IOM), between 19 September and 26 November, 12,015 Haitians have been repatriated from several countries, from which 8,898 have been returned by the US alone. See IOM, “Returns of migrants and reception assistance in Haiti”, 26 November 2021, reliefweb.int/sites/reliefweb.int/files/resources/iom_assistance_for_haitian_returnees_-_26_november_2021.pdf; Furthermore, according to the IOM, Between January and October 2021, an estimated 100,000 migrants crossed the Darien Gap, of which 62 per cent were Haitians (up from 23 per cent in 2020) and an estimated average of 800 to 1,000 migrants are crossing every day, moving north to join the approximately 20,000 to 25,000 Haitians currently in transit in Mexico. See IOM, Crisis Response Plan, Large Movements of highly vulnerable migrants in the Americas from the Caribbean, Latin America and other regions, 8 October 2021, Page 1, reliefweb.int/sites/reliefweb.int/files/resources/Large%20Movements%20of%20Highly%20Vulnerable%20Migrants%20in%20the%20Americas_IOM%20Response%20Plan.pdf

² Human Rights First and Haitian Bridge Alliance, “Biden Administration’s dangerous Haitian expulsion strategy escalates the U.S. history of illegal and discriminatory mistreatment of Haitians seeking safety in the United States”, September 2021, humanrightsfirst.org/sites/default/files/BidenAdministrationDangerousHaitianExpulsionStrategy.pdf

³ IOM Haiti, Twitter post, 10 November 2021 (previously cited); United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Haiti: Earthquake: Situation report No. 7”, 7 October 2021, reliefweb.int/sites/reliefweb.int/files/resources/2021-10-07_Haiti%20Earthquake%20SitRep%20No.%207.pdf: “Following the United States’ recent decision to forcibly return Haitian migrants, the Government of Mexico announced that it had reached a formal agreement with Haiti to restart deportation processes, while The Bahamas and Cuba indicated they had received several Haitians seeking to enter the United States, who will soon be returned to Haiti. With thousands of Haitians being returned to a country facing a multi-dimensional crisis, including women and children, many of whom were born outside Haiti, families sent back face increasing levels of violence, poverty and displacement, factors that originally drove them to flee the island”.

⁴ In response, UN entities issued a joint statement urging for a comprehensive regional approach in responding to Haitian migrants’ protection needs, calling on states to cease the forcible return of Haitians without adequate assessment of their specific protection needs. See IOM, “UN Agencies Call for Protection Measures and a Comprehensive Regional Approach for Haitians on the Move”, 30 September 2021, iom.int/news/un-agencies-call-protection-measures-and-comprehensive-regional-approach-haitians-move

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⁶ Amnesty International interview by videoconference with NGO in Haiti, 15 October 2021; Amnesty International and Haitian Bridge Alliance, *Not Safe Anywhere: Haitians on the Move Need Urgent International Protection* (AMR 36/4920/2021), 2021, amnesty.org/en/wp-content/uploads/2021/10/AMR3649202021ENGLISHH.pdf

⁷ These are the words of the former U.S. Department of State’s senior legal adviser and former Yale Law School Dean Harold Koh, who resigned from the Department in October 2021 after concluding that the continued use of Title 42 to expel people seeking protection was “illegal and inhumane”. See politico.com/f/?id=0000017c-4c4a-dddc-a77e-4ddb3ae0000

⁸ Harvard Law School International Human Rights Clinic and Observatoire Haïtien des Crimes Contre l’Humanité, *Killing with Impunity: State-Sanctioned Massacres in Haiti*, 2021, hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf; AP news, “Desperate Haitians suffocate under growing power of gangs” 21 October 2021, apnews.com/article/business-caribbean-port-au-prince-haiti-gangs-8793b917718e5f67f27317e765c410aa

⁹ Amnesty International, “Haiti: Investigation urged into killing of Haitian President and grave human rights violations under his watch”, 7 July 2021, amnesty.org/en/latest/press-release/2021/07/haiti-investigation-urged-into-killing-of-haitian-president-and-grave-human-rights-violations-under-his-watch/

¹⁰ Food and Agriculture Organization of the United Nations (FAO), “Haiti: Response overview”, July 2021, fao.org/emergencies/resources/documents/resources-detail/en/c/1415806/

¹¹ Doctors Without Borders, “Haiti: 10 years after earthquake, health system on brink of collapse”, 10 January 2020, msf.org.uk/article/haiti-10-years-after-earthquake-health-system-brink-collapse

¹² UN Office for the Coordination of Humanitarian Affairs (OCHA), “Haiti: Flash Appeal – Earthquake”, August 2021, reliefweb.int/report/haiti/haiti-flash-appeal-earthquake-august-2021

¹³ Our World in Data, Coronavirus (COVID-19) Vaccinations Statistics and Research, ourworldindata.org/covid-vaccinations (accessed on 19 November 2021), “Share of people vaccinated against Covid-19”.

¹⁴ Just Security, “Coronavirus border expulsions: CDC’s assault on asylum seekers and unaccompanied minors”, 12 April 2020, justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/

¹⁵ UN experts, “USA: UN experts condemn collective expulsion of Haitian migrants and refugees”, 25 October 2021, ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27694&LangID=E

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¹⁷ Daniel Foote, former US Envoy to Haiti, resignation letter to Antony Blinken, Secretary of State, 22 September 2021,

drive.google.com/file/d/14LVnU91yCVAb305ujd39h-jhBuXN3FA2/view; Harold Hongju Koh, former senior legal adviser of the Department of State and former Dean of Yale Law School, memo, politico.com/f/?id=0000017c-4c4a-dddc-a77e-4ddb3ae0000

¹⁸ Amnesty International, “Over a hundred national and international groups call on the Biden Administration to welcome Haitians seeking safety in the US”, 13 July 2021, [amnestyusa.org/press-releases/over-a-hundred-national-and-international-groups-call-on-the-biden-administration-to-welcome-haitians-seeking-safety-in-the-u-s/](https://www.amnestyusa.org/press-releases/over-a-hundred-national-and-international-groups-call-on-the-biden-administration-to-welcome-haitians-seeking-safety-in-the-u-s/)

¹⁹ Robert Silvers – Under Secretary at the Office of Strategy, Policy and Plans, Memorandum to U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, and Office of Operations Coordination, 2 December 2021, dhs.gov/sites/default/files/publications/21_1202_plcy_mpp-policy-guidance_508.pdf

²⁰ In a document where the Department of Homeland Security explains the reasons for terminating the Migrant Protection Protocol, it mentions: “[in] January 2019, the Department implemented MPP with the stated expectation that vulnerable populations would get the protection they needed while they waited in Mexico during the pendency of their removal proceedings. In practice, however, there were pervasive and widespread reports of MPP enrollees being exposed to extreme violence and insecurity at the hands of transnational criminal organizations that prey on vulnerable migrants as they waited in Mexico for their immigration court hearings in the United States. These security concerns, together with barriers many individuals faced in accessing stable and safe housing, health care and other services, and sufficient food, made it challenging for some to remain in Mexico for the duration of their proceedings”. See Department of Homeland Security, 29 October 2021, “Explanation of the Decision to Terminate the Migrant Protection Protocols”, dhs.gov/sites/default/files/publications/21_1029_mpp-termination-justification-memo-508.pdf, pp. 12-14.

²¹ Human Rights First and Haitian Bridge Alliance, “Biden Administration’s dangerous Haitian expulsion strategy escalates the U.S. history of illegal and discriminatory mistreatment of Haitians seeking safety in the United States” (previously cited); Human Rights Watch, “US; Treatment of Haitian Migrants Discriminatory”, 21 September 2021, [hrw.org/news/2021/09/21/us-treatment-haitian-migrants-discriminatory](https://www.hrw.org/news/2021/09/21/us-treatment-haitian-migrants-discriminatory) Research by Amnesty International and Haitian Bridge Alliance, based principally on interviews with more than 60 Haitians in southern Mexico also concluded that: “multiple countries (in the Americas) have taken insufficient measures to address anti-black racism from state officials, bodies, and wider society against Haitians who need safety and refuge.” See Amnesty International and Haitian Bridge Alliance, Not Safe Anywhere: Haitians on the Move Need Urgent International Protection (AMR 36/4920/2021), 2021, [amnesty.org/en/wp-content/uploads/2021/10/AMR3649202021ENGLISH.pdf](https://www.amnesty.org/en/wp-content/uploads/2021/10/AMR3649202021ENGLISH.pdf)

²² UN experts, “USA: UN experts condemn collective expulsion of Haitian migrants and refugees” (previously cited): “The experts warned that the mass deportations seemingly continue a history of racialized exclusion of Black Haitian migrants and refugees at US ports of entry”; See also Human Rights First and Haitian Bridge Alliance, “Biden Administration’s dangerous Haitian expulsion strategy escalates the U.S. history of illegal and discriminatory mistreatment of Haitians seeking safety in the United States” (previously cited); Fitzgerald, D. S., & Cook-Martin, D, Culling the masses: The democratic origins of racist immigration policy in the Americas, 2014; Open letter from Haitian organizations to President Biden, 27 October 2021, haitiwatch.org/home/cslettertobiden

²³ Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations: United States of America, 25 September 2014, UN Doc. CERD/C/USA/CO/7-9, par 8.

²⁴ Procedure applicable when a person subjected to expedited removal (a summary removal process) indicates an intention to apply for asylum or expresses a fear of persecution and/or torture. In this case, the immigration officer must refer such person for a “credible fear interview” by a trained asylum officer within U.S. Citizenship and Immigration Services (USCIS). See Human Rights First, “Credible fear: A screening mechanism in expedited removal”, February 2018, [humanrightsfirst.org/sites/default/files/Credible_Fear_Feb_2018.pdf](https://www.humanrightsfirst.org/sites/default/files/Credible_Fear_Feb_2018.pdf)

²⁵ BuzzFeed News, “US officials are deporting Haitian immigrants despite knowing they may face danger”, 2 March 2021, [buzzfeednews.com/article/hamedaleaziz/us-deporting-haitian-immigrants-despite-dangers](https://www.buzzfeednews.com/article/hamedaleaziz/us-deporting-haitian-immigrants-despite-dangers)

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²⁸ Federal Register, Designation of Haiti for Temporary Protected Status, [federalregister.gov/documents/2021/08/03/2021-16481/designation-of-haiti-for-temporary-protected-status](https://www.federalregister.gov/documents/2021/08/03/2021-16481/designation-of-haiti-for-temporary-protected-status) (accessed on 19 November 2021).

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³⁰ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Haiti: Earthquake Flash Update No. 3”, 18 August 2021, reliefweb.int/sites/reliefweb.int/files/resources/Haiti%20Earthquake%20-%20Flash%20Update%20No.%203%20%2818%20August%202021%29.pdf

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³² United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Haiti: Earthquake Flash Update No. 3”, 18 August 2021 (previously cited).

³³ UN Migration Agency (IOM), “Earthquake 14 August 2021 – Sitrep 4: Displacement Tracking Matrix – Preliminary results”, 2 October 2021,

reliefweb.int/report/haiti/dtm-haiti-earthquake-14-august-2021-sitrep-4

³⁴ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Haiti: Earthquake Situation Report No. 7”, 7 October 2021 (previously cited).

³⁵ World Food Programme (WFP), “WFP Haiti – Country Brief”, September 2021, docs.wfp.org/api/documents/WFP-0000132981/download/?_ga=2.268875313.1738883596.1637869689-1937873373.1637869689

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⁴⁰ United Nations Children’s Fund (UNICEF), “Alarming spike in abductions of women and children in Haiti”, 21 October 2021, unicef.org/press-releases/alarming-spike-abductions-women-and-children-haiti-unicef

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⁴³ CNBC, “Haiti crippled by fuel shortages as gang leader demands prime minister resign”, 26 October 2021, cnbc.com/2021/10/27/haiti-crippled-by-fuel-shortages-as-gang-leader-demands-pm-resign.html

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⁴⁶ Haiti Watch, “Gas Crisis”, 3 November 2021, haitiwatch.org/home/gas-crisis

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⁴⁹ U.S. Department of State, “Security Alert: U.S. Embassy Port-au-Prince, Haiti”, 10 November 10 2021, ht.usembassy.gov/security-alert-us-embassy-port-au-prince-haiti-11102021/

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⁵⁵ The US Code safeguards the right to seek asylum in the United States “whether or not at a designated port of arrival”. See 8 U.S.C. § 1158, uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim. See also Just Security, “Coronavirus border

expulsions: CDC's assault on asylum seekers and unaccompanied minors" (previously cited).

⁵⁶ Amnesty International, *Americas: Amnesty International Submission to the United Nations (UN) Special Rapporteur on the Human Rights of Migrants* (AMR 01/3658/2021), [amnesty.org/en/documents/amr01/3658/2021/en/](https://www.amnesty.org/en/documents/amr01/3658/2021/en/); Doubling Down on Deterrence: Access to Asylum under Biden, September 2021, [womensrefugeecommission.org/wp-content/uploads/2021/09/Doubling-Down-on-Deterrence-Access-to-Asylum-Under-Biden-FACTSHEET-1-1.pdf](https://www.womensrefugeecommission.org/wp-content/uploads/2021/09/Doubling-Down-on-Deterrence-Access-to-Asylum-Under-Biden-FACTSHEET-1-1.pdf)

⁵⁷ The principle of *non-refoulement* is grounded in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The 1951 Refugee Convention defines the prohibition on refoulement in Article 33(1), which states that no "Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group, or political opinion." The Protocol extends the Convention's protections to all refugees irrespective of the location or date of their displacement and requires its 146 States Parties (among them the United States) to abide by the Convention regardless of whether they are separately party to it. The 1951 Refugee Convention's *non-refoulement* obligation does allow exceptions for cases where a refugee poses a threat to the host country, but that exception requires an individualized determination. Also, according to the UN Refugee Agency (UNHCR), states cannot turn back asylum-seekers "en masse" at the border. See UNHCR, "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol", 2007, [unhcr.org/4d9486929.pdf](https://www.unhcr.org/4d9486929.pdf)

⁵⁸ The principle of *non-refoulement* has also been reinforced by the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), with no exceptions whatsoever. Article 3(1) of CAT states that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Article 3 (2) states that "For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights".

⁵⁹ UNHCR, "News Comment by UN High Commissioner for Refugees Filippo Grandi on conditions and expulsions at US border", 21 September 2021, [unhcr.org/news/press/2021/9/614a27324/news-comment-un-high-commissioner-refugees-filippo-grandi-conditions-expulsions.html](https://www.unhcr.org/news/press/2021/9/614a27324/news-comment-un-high-commissioner-refugees-filippo-grandi-conditions-expulsions.html)

⁶⁰ 8 U.S. Code § 1225 [uscode.house.gov/view.xhtml?req=\(title:8%20section:1225%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title8-section1225\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://www.uscode.house.gov/view.xhtml?req=(title:8%20section:1225%20edition:prelim)%20OR%20(granuleid:USC-prelim-title8-section1225)&f=treesort&edition=prelim&num=0&jumpTo=true)

⁶¹ Harold Hongju Koh, former senior legal adviser of the Department of State and former Dean of Yale Law School, memo (previously cited).

⁶² BuzzFeed News, "An internal document shows DHS officials advised against Haitian deportations, fearing they could violate human rights obligations", 6 December 2021, [buzzfeednews.com/article/hamedaleaziz/haitian-deportations-dhs-memo](https://www.buzzfeednews.com/article/hamedaleaziz/haitian-deportations-dhs-memo)

⁶³ When condemning collective expulsion of Haitian migrants and refugees, UN Experts said that "[a]ccording to the information received, US policies have also deterred Haitians from pursuing protection including asylum claims and forced them to return to other countries." See UN experts, "USA: UN experts condemn collective expulsion of Haitian migrants and refugees" (previously cited); Human Rights First also interviewed more than 150 asylum seekers in March and April 2021 and stated that none of them "received a protection screening by U.S. immigration officers before being expelled to Mexico." See Human Rights First and others, *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger*, April 2021, [humanrightsfirst.org/sites/default/files/FailuretoProtect.4.20.21.pdf](https://www.humanrightsfirst.org/sites/default/files/FailuretoProtect.4.20.21.pdf)

Also, according to Just Security, "[t]he Order also removes any doubt over whether it can be a tool for enforcing repatriation to a noncitizen's home country without screening for asylum, non-refoulement withholding, or CAT protection". See Just Security, "Coronavirus border expulsions: CDC's assault on asylum seekers and unaccompanied minors" (previously cited).

See also CBS News, "Few migrants processed under Title 42 border policy are screened for U.S. protection", 15 October 2021, [cbsnews.com/news/immigration-title-42-border-policy-migrants-screened-us-protection/](https://www.cbsnews.com/news/immigration-title-42-border-policy-migrants-screened-us-protection/)

⁶⁴ Human Rights First has documented that "[t]he fear screening process for MPP, which is supposedly intended to determine whether individuals returned to Mexico would face persecution or torture there, fails to protect the asylum seekers and migrants CBP forces to remain in Mexico under MPP. Families with children already traumatized from brutal kidnappings and women who fear being sexually assaulted again have been returned to Mexico after these faulty screenings." See Human Rights First, *Humanitarian Disgrace: U.S. Continues to Illegally Block, Expel Refugees to Danger*, December 2020, [humanrightsfirst.org/sites/default/files/HumanitarianDisgrace12.16.2020.pdf](https://www.humanrightsfirst.org/sites/default/files/HumanitarianDisgrace12.16.2020.pdf), p. 16

⁶⁵ Amnesty International, *Americas: Amnesty International submission to the United Nations (UN) Special Rapporteur on the human rights of migrants* (AMR 01/3658/2021), [amnesty.org/en/documents/amr01/3658/2021/en/](https://www.amnesty.org/en/documents/amr01/3658/2021/en/)

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⁶⁶ UNHCR, "Inclusion key to protecting refugees and their hosts amid COVID-19 pandemic", 04 November 2020, [unhcr.org/news/press/2020/11/5fa2f16b4/inclusion-key-protecting-refugees-hosts-amid-covid-19-pandemic.html](https://www.unhcr.org/news/press/2020/11/5fa2f16b4/inclusion-key-protecting-refugees-hosts-amid-covid-19-pandemic.html)

⁶⁷ Public Health Experts, letter to CDC Director Walensky, HHS Secretary Becerra, and DHS Secretary Mayorkas on the August 2021 Title 42 Order, 1 September 2021, [publichealth.columbia.edu/research/program-forced-migration-and-health/letter-cdc-director-walensky-hhs-secretary-becerra-and-dhs-secretary-mayorkas-august-2021-title-42-0](https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-cdc-director-walensky-hhs-secretary-becerra-and-dhs-secretary-mayorkas-august-2021-title-42-0); Public Health and Medical Experts, letter to Acting HHS Secretary Cochran and CDC Director Walensky, 28 January 2021, [publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky](https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky); Public Health Experts, letter to HHS Secretary Azar and CDC Director Redfield, 18 May 2020, [publichealth.columbia.edu/public-health-now/news/public-health-experts-ask-for-repeal-of-title-42](https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-ask-for-repeal-of-title-42)

[health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers](#); Forbes, “Fauci Says Immigrants Are ‘Absolutely Not’ Driving Covid-19 Surge: ‘Let’s Face Reality Here’”, 3 October 2021, [forbes.com/sites/alisondurkee/2021/10/03/fauci-says-immigrants-are-absolutely-not-driving-covid-19-surge-lets-face-reality-here/?sh=4e99e330173d](#)

⁶⁸ According to a research by Haitian Bridge Alliance and others, “ICE often expels people even after receiving negative COVID tests and/or after the quarantine period, further undercutting the public health risk reasoning for the policy”. See Haitian Bridge Alliance and others, *The Invisible Wall: Title 42 and its Impact on Haitian Migrants*, March 2021, [quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf](#), p. 12; According to Human Rights Watch, “[m]igrants being expelled are also transported in airplanes along with deportees who have been held in long-term detention facilities, many of which have had Covid-19 outbreaks”. See Human Rights Watch, “Q&A: US Title 42 Policy to Expel Migrants at the Border”, April 2021, [hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border](#)

⁶⁹ CBSNews, “Top CDC official told Congress migrant expulsion policy was not needed to contain COVID”, 12 November, 2021, [cbsnews.com/news/cdc-official-told-congress-migrant-expulsion-policy-not-needed-to-contain-covid/](#)

⁷⁰ Public Health Experts, letter to HHS Secretary Azar and CDC Director Redfield, 18 May 2020 (previously cited)

⁷¹ US Customs and Border Protection, “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions FY2021”, [https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2021#](#) (accessed on 19 November 2021)

⁷² Haitian Bridge Alliance and others, *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (previously cited).

⁷³ According to Haitian Bridge Alliance and others, “[o]thers, including most Haitian migrants, are detained for days or weeks before being put on a plane, practices that undermine the argument that the policy minimizes contact with CBP officials and avoids congregate settings.” See Haitian Bridge Alliance and others, *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (previously cited), p. 8. Also, according to Human Rights First, “DHS detained many of those expelled to Haiti for days in the United States prior to expulsion— undercutting the administration’s claims that the expulsions were being carried out to protect public health”. See Human Rights First, “*Illegal and Inhumane*”: *Biden Administration Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount*, October 2021, [humanrightsfirst.org/sites/default/files/IllegalandInhumane.pdf](#), p. 7.

⁷⁴ According to Human Rights First’s research, “in carrying out lateral expulsions, flights to southern Mexico, and direct flights to countries of persecution, DHS often holds people in congregate detention for days and forces them onto crowded planes without providing COVID-19 tests”. See Human Rights First, “*Illegal and Inhumane*” (previously cited), p. 5.

⁷⁵ UNHCR, “UNHCR concerned over U.S. expulsion flights under COVID-19 asylum restrictions”, 11 August 2021, [unhcr.org/news/press/2021/8/6113dfc14/unhcr-concerned-expulsion-flights-under-covid-19-asylum-restrictions.html](#)

⁷⁶ Pan American Health Organization, The Haiti Crisis: Health Risks, [paho.org/disasters/dmdocuments/SituationHaiti2004-healthrisks.pdf](#); PAHO, “PAHO Director reports on overwhelmed medical facilities in Haiti and calls for international support to meet “immense” need,” 18 August 2021, [paho.org/en/news/18-8-2021-paho-director-reports-overwhelmed-medical-facilities-haiti-and-calls-international](#)

⁷⁷ Our World in Data, Coronavirus (COVID-19) Vaccinations Statistics and Research, [ourworldindata.org/covid-vaccinations](#) (accessed on 19 November 2021), “Share of people vaccinated against Covid-19”.

⁷⁸ Public Health Experts, letter to CDC Director Walensky, HHS Secretary Becerra, and DHS Secretary Mayorkas on the August 2021 Title 42 Order (previously cited); See Human Rights Watch, “Q&A: US Title 42 Policy to Expel Migrants at the Border” (previously cited).

⁷⁹ Howard Markel and Alexandra Minna Stern, “The Foreignness of Germs: The Persistent Association of Immigrants and Disease in American Society”, 2002, [ncbi.nlm.nih.gov/pmc/articles/PMC2690128/](#); Southern Poverty Law Center, “Anti-Immigrant Movement Has History of Politicizing Disease”, 21 April 2020, [splcenter.org/hatewatch/2020/04/21/anti-immigrant-movement-has-history-politicizing-disease](#); Also see: Business Insider Mexico, “Trump baselessly claims Haitian immigrants entering the US ‘probably have AIDS’ and letting them come in ‘is like a death wish’”, 8 October 2021, [businessinsider.mx/trump-haitian-immigrants-entering-us-probably-have-aids-death-wish-2021-10/?r=US&IR=T](#)

⁸⁰ UNAIDS, *Rights in a Pandemic: Lockdowns, rights and lessons from HIV in the early response to COVID-19*, 2020, [unaids.org/sites/default/files/media_asset/rights-in-a-pandemic_en.pdf](#); UNAIDS, *Rights in the time of COVID-19, Lessons from HIV for an effective, community-led response*, 2020, [unaids.org/en/resources/documents/2020/human-rights-and-covid-19](#); Global Commission on HIV and the Law, *Risks, Rights & Health*, 2012, [hivlawcommission.org/report](#); Umberto Pellecchia and others, “Social Consequences of Ebola Containment Measures in Liberia”, 2015, [pubmed.ncbi.nlm.nih.gov/26650630/](#)

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⁸⁶ Haitian Bridge Alliance and others, *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (previously cited)

⁸⁷ Haitian Bridge Alliance and others, *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (previously cited); Human Rights First, *“Illegal and Inhumane”* (previously cited); The Boston Globe, “Haitians file civil complaint, demand investigation into ‘inhumane detention conditions’ at US border” (previously cited).

⁸⁸ Amnesty International interview by videoconference with NGO in Haiti, 15 October 2021; The New York Times, “Deported by U.S., Haitians Are in Shock: ‘I Don’t Know This Country’”, 20 September 2021, [nytimes.com/2021/09/20/world/americas/deported-haitians-shocked.html](https://www.nytimes.com/2021/09/20/world/americas/deported-haitians-shocked.html)