

Hon. Joseph R. Biden Jr.
President of the United States
1600 Pennsylvania Ave, N.W.
Washington, DC 20500

Hon. Alejandro N. Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528

Hon. Antony J. Blinken
United States Secretary of State
2201 C Street NW
Washington, DC 20520

Hon. Dr. Rochelle Walensky
Director, Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329

March 30, 2022

RE: Urgent request to end Title 42 expulsions

Dear President Biden, Secretary Mayorkas, Secretary Blinken, and Director Walensky:

As deans of Jesuit law schools and two other Jesuit institutions dedicated to the protection of refugees, the promotion of justice, and advancing the rule of law, we write to express our deep concern about your administration's continued use of the Title 42 Public Health Order to expel migrants seeking humanitarian protection at the U.S.-Mexico border. While we welcomed the decision¹ taken by the Biden Administration and the Centers for Disease Control and Prevention (CDC) on [March 11, 2022](#) to immediately terminate exempt unaccompanied children from the application of the Title 42 Public Health Order, the rationale for that decision clearly compels lifting the Order for all those seeking protection at our border. This policy is unlawful, dangerous, and inflicts profound suffering on extremely vulnerable people. We urge you to end it.

¹ U.S. Dep't Health & Human Servs. Centers for Disease Control and Prevention, *Order Under Sections 362 & 365 of the Public Health Act: Public Health Reassessment and Immediate Termination of Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists with Respect to Unaccompanied Noncitizen Children* (Mar. 11, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren-update.pdf> [hereinafter CDC March 11, 2022 Order].

The harms visited on vulnerable migrants by the Title 42 Order are extensive and well-documented. From March 2020 to February 2022, U.S. Customs and Border Protection (CBP) reported more than [1 million expulsions](#) at the U.S. Southwest land border under Title 42.² Migrants and asylum seekers are now being expelled to Haiti, Honduras, Guatemala, El Salvador, Brazil, and Colombia through direct Title 42 [expulsion flights](#). There is simply no question that this policy is sending people back to extreme danger. For example, the U.S. Department of State has concluded that the situation in Haiti is so dangerous that it is classified at a threat level akin to war zones like Afghanistan, Iraq, and Syria. Yet since September 2021 the Department of Homeland Security (DHS) has forced [14,000 Haitians, including at least 2,200 children](#), back to Haiti.

Migrants who are expelled under Title 42 are either sent back to the very countries they fled or to Mexican border towns where they are easy prey for organized criminals. Human rights organizations have documented horrendous violence against these migrants including kidnappings, [rape](#), torture, extortion, and human trafficking. From February 2021 to January 2022 Human Rights First documented [at least 8,705](#) such attacks. These violent acts are committed not only by organized crime groups on the Mexican side of the border but also by [Mexican government officials](#), including immigration officers. In the face of this violence, [hundreds of parents](#) make the traumatic decision to separate from their children and send them alone across the border, hoping they will find safety in the United States. Additionally, DHS often turns expelled migrants in to Mexican immigration authorities, who then subject them to [chain expulsions](#) to Guatemala and Honduras.

We are not alone in our concerns about the dangers this policy inflicts on vulnerable people and the conclusion that it violates U.S. and international law. Title 42 has been condemned by [medical and public health experts](#), human rights advocates, and numerous members of Congress. Most recently, Senators Menendez, Schumer, Booker, and Padilla [issued a statement](#) in response to the March 4, 2022 rulings, urging the Biden Administration “to restore access to asylum and end the usage of Title 42.” And on February 14, 2022, [36 members of Congress](#) urged the CDC “to immediately reverse course and discontinue the application of Title 42 expulsions along the US-Mexico border.”

The March 11, 2022 Order suspending the expulsion of unaccompanied immigrant children pursuant to Title 42 concluded that “the CDC Director finds that there is no longer a serious danger of the introduction, transmission, and spread of COVID-19 into the United States as a result of entry of [unaccompanied immigrant children] and that a suspension of the introduction

² This estimate takes into account a recidivism rate of 27% of CBP apprehensions and expulsions in Fiscal Year 2022. See U.S. Customs & Border Protection, CBP Enforcement Statistics Fiscal Year 2022, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

of [unaccompanied immigrant children] is not required in the interest of public health.”³ The Order sets out the agency’s justification in a detailed, 21-page explanation, replete with evidence that “less restrictive measures than those outlined in prior CDC Orders are now available with respect to [unaccompanied immigrant children] to mitigate the introduction, transmission, and spread of COVID-19.”⁴ The rationale underlying the CDC’s reassessment of the potential risks posed by the admission of unaccompanied children is exhaustive. This rationale applies as well to all other persons seeking humanitarian protection in the U.S.⁵

As the United States Court of Appeals for the District of Columbia Circuit recently observed in its March 4, 2022 decision in [Huisha-Huisha v. Mayorkas](#) affirming in part a preliminary injunction issued by the district court:

The evidence of the difference between then and now is considerable. We cannot blindly defer to the CDC in these circumstances. . . .

. . . .

We are not cavalier about the risks of COVID-19. And we would be sensitive to declarations in the record by CDC officials testifying to the efficacy of the [Title 42 Public Health order]. But there are none. . . . [F]rom a public-health perspective, based on the limited record before us, it’s far from clear that the CDC’s order serves any purpose.

[Huisha-Huisha v. Mayorkas](#), No. 21-5200, at 30-32 (D. C. Cir. Mar. 2022) (citations omitted).

From the moment Title 42 was invoked to expel migrants at the U.S.-Mexico border, officials from the CDC, including infectious disease specialist [Dr. Anthony Fauci](#), voiced their disagreement, arguing that the measure was neither required nor supported by public health considerations. Indeed, the restrictions directed towards asylum seekers and migrants at the U.S.-Mexico border [did not help contain](#) the spread of COVID-19. Nonetheless, in February 2022 the

³ CDC March 11, 2022 Order, at 4; *see also id.* at 13-14 (“CDC’s most recent reassessment of the status of the COVID-19 pandemic and associated public health risks makes clear that circumstances have now changed significantly. Case counts and hospitalization rates are decreasing, vaccination rates are increasing, and the availability of testing and treatments are also increasing. These changes and continuing trends in the public health conditions since the conclusion of CDC’s previous reassessment support the decision to terminate the Orders as to [unaccompanied immigrant children] immediately.”).

⁴ *Id.* at 9; *see also id.* at 1-2 (“Based on the public health landscape, the current status of the COVID-19 pandemic, the situation in congregate settings where [unaccompanied immigrant children] seeking to enter the United States are processed and held, and the procedures in place for the processing of [unaccompanied immigrant children] in such congregate settings, CDC has determined that a suspension of the right to introduce [unaccompanied immigrant children] is not necessary to protect U.S. citizens . . . at this time.”); *id.* at 5 (“Earlier phases of the pandemic required extraordinary actions by the U.S. Government and society at large. However, epidemiologic data, scientific knowledge, and the availability of public health mitigation measures, vaccines, and therapeutics have permitted many of those early actions to be pulled back in favor of more nuanced, target, and narrowly-tailored guidance that provides a less restrictive means to prevent and control the SARS-CoV-2 virus and COVID-19.”); *id.* at 6, 7, 9-10 (same, describing significantly improved U.S. public health conditions); *id.* at 8-9, 12 (detailing extensive comprehensive CBP and other government mitigation protocols).

⁵ *See id.* at 9 (“Due to operational and facility constraints, CBP reports that it is not able to replicate this robust COVID-19 testing and isolation programs for [single adults] and [family units] in its custody.”).

CDC renewed the use of Title 42, and next month the agency is set to decide whether to renew it again.

Whatever the initial justifications for its impositions, there is no question that we are better prepared today to contain the COVID-19 pandemic: COVID-19 mandates have ended in most states, and COVID-19 tests, vaccines, and therapeutics are widely available. Meanwhile, Title 42 continues to exact a tragic and preventable human toll. With no present public health justification for its continuation, we urge that the Title 42 Public Health Order be immediately revoked.

Thank you for your consideration.

Respectfully,

Border Justice Initiative at Gonzaga Law School*

Jesuit Refugee Service/USA**

Dean Annette E. Clark, Seattle University School of Law

Dean Matthew Diller, Fordham University School of Law

Dean Jelani Jefferson Exum, University of Detroit Mercy School of Law

Dean Joshua Fershée, Creighton University School of Law

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*Signing onto the statement as an initiative at a Jesuit law school

**Signing onto the statement as a Jesuit institution