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The Border After Title 42: US Government is Illegal,

Not Migrants



A migrant speaks out for his rights from a shelter in Mexico City. The mural behind him depicts the moon and says, “From here, you can’t see borders.” Photo by Tamara Pearson.

Title 42 ends today at midnight, but the US-led war on refugees will continue, as the policies that are replacing Title 42 are in many ways, much worse.

For the past three years, the US has used the pandemic as a pretext to implement Title 42 and violate basic human rights. Under the measure, it has deported or detained 6.9 million mostly Latin American and Caribbean migrants at its southern border and denied refugees their right to claim asylum. Now, Title 8 will apply, and the US government will maintain its harmful relationship with Latin America, while also violating various federal and international laws.

As of Friday, the US will implement an Asylum Ban that breaks the law by limiting who can seek asylum. There will be fast screening of migrants, and those who have passed through

another country without first seeking protection there (inevitable for all land migrants except Mexicans) will not be eligible for asylum, even if the countries they pass through are not safe for them. All ineligible people will be deported.

Unlike Title 42, now people who try to enter the US irregularly will be punished with a five-year prohibition from the US. Irregularity includes anyone who doesn't go to the border at the time of their appointment, assigned to them by a bug-ridden CBP One app .

There are also plans to open processing centers, initially in Guatemala and Colombia, and to be run by the IOM and UNHCR. The centers should help people apply for visas, but they must then fly to the US – something most refugees and poor people can not do.

The US government has said it will double the number of refugees from Latin America that it accepts, but it was already admitting a very low number (a maximum of 15,000 a month), and it will only accept people who apply through the app, processing centers, or embassies, who have eligible sponsors in the US, and arrive by plane. Mexico, meanwhile, has to accept deportees.

Ultimately, the changes mean that the mass deportations will continue. The screening interviews, instead of facilitating due process, involve interviewing exhausted people, many of whom have faced torture or kidnappings, over the phone while they are detained. They don't typically know their legal rights, and if they fail to demonstrate that they fear persecution during these screenings, will be deported.

The Asylum Ban operates under a guilty unless proven innocent logic – applicants are assumed to be ineligible if they have traveled through other countries and if they didn't apply through the CBP One app. But, people without smartphones, those who can't read, those with a visual disability, those who speak other languages such as Indigenous languages, aren't able to use the app. The app is also very buggy, and error messages are in English. And while the US is planning to expand the times when people can use the app to make appointments, migrants often spend weeks trying to get an appointment, and fail due to technical errors and the very limited slots available.

Mexicans then spend weeks or months waiting in the dangerous country they are fleeing for an appointment, and most migrants of all origins are waiting while homeless in northern border cities, unable to work, and facing the dangers of kidnapping, rape, extortion, or worse from organized criminals.

For example, HRW narrates one story of a family that couldn't get an appointment with the app near where they were, and had to travel 1200 miles to their assigned port of entry. On the way they were kidnapped, tortured, and extorted by a gang. Their abductors blindfolded them

after 20 days and took them to the border, threatening to kill them if they didn't cross. Border Patrol captured the family and told them they had crossed illegally, as they didn't cross at the time and place of their app appointment, then expelled them back to the dangers of Mexico.

US migration policy is criminal

“Let me be clear, our border is not open and will not be open after May 11,” said Homeland Security Secretary Alejandro Mayorkas. His declaration and the Asylum Ban violate various US and international laws that stipulate that any person should be able to request asylum, no matter their identity, country of origin, or method for entering the country.

Specifically, prohibiting people from seeking asylum based on their access to the limited app appointments or the countries they have traveled through, violates Section 208 of the Immigration and Nationality Act, the Geneva Convention, and the 1951 Refugee Convention. The convention also prohibits penalties against people seeking refugee protection based on their manner of entering a country (ie the 5-year ban the US will now enforce), and Section 1158 of Title 8 of the United States Code stipulates that people can apply for asylum, no matter how they enter the US. Finally, the 1967 Protocol, which broadens the 1951 Convention, also prohibits placing conditions on access to asylum procedures.

Trump tried to implement similar asylum bans, and they were repeatedly struck down by US federal courts as unlawful. Further, effectively blocking most asylum requests to people migrating by land is race and class-based discrimination which particularly harms Latin Americans, people from the Caribbean, Indigenous people, and people of African descent.

The application app in of itself is illegal, because it functions as a type of metering. By having limited appointment slots, migrants, including Mexicans, are denied due process rights, and a US federal judge ruled such metering as illegal. International standards for protecting asylum seekers are also being violated, as Mexican refugees have to stay in the country they are fleeing while they wait.

Finally, the US government is also increasing the likelihood of refoulement (returning someone to likely danger), which is a serious human rights violation.

Borders are a plundering mechanism

Though unstated, the Biden administration, and those before it, have clear reasons for such policies. They send soldiers to the border and criminalize and deport migrants because a closed border serves to enforce inequality and poverty. It keeps Latin American wages down, maintains a supply of informal, undocumented, low-paid workers in the US, while also ensuring US companies have access to cheap labor they can use on the other side of the border.

From car manufacturers to clothing and parts manufacturers, there are thousands of US companies in Mexico and Central America taking advantage of cheaper rent, water, electricity, and labor, then sending the goods and profits to the US.

A closed border is a policy of regional segregation and economic imperialism. Globally, the US claims hero status, while in reality it is cowardly rebuffing its humane responsibility to help those in need, who are fleeing violence, climate disaster, and extreme poverty that was in a large part, caused by US interventionism, militarization (under the guise of the “War on Drugs”), exploitation and unfair trade agreements.

The US imposes a nonreciprocal and toxic relationship with its neighbors, where its citizens can come here to Mexico and Latin America freely, but not vice versa. Instead, we should demand and build a society with genuine freedom of movement and no discrimination, and that systemises care as a way of operating, rather than these delusional forts of fear.

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