

The Weaponization of Title 42 at the U.S.-Mexico Border

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Elizabeth Hartt

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Dr. Sara Withers

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In March of 2020, the world froze as we faced the global Covid-19 Pandemic. Along with many other countries around the world, the United States government put in place a variety of orders and rules to keep its citizens safe from the deadly virus, like the National Emergency Order put in place on March 13th. This order gave the U.S. government the ability to flexibly amend many facets of our governmental proceedings, and also put in place a public health emergency order, which worked to combat the Covid-19 virus. During this time, everyone stayed home and kept their distance from others outside their bubble. School was being conducted from the homes of students and zoom meetings ran the workplace, as those who could work from home did. But what protects those who do not have a home or safe place to escape the virus? With the implementation of the national emergency by the Trump Administration, came the first time Title 42, also called the Public Health and Welfare Act, was ever used for its intended purpose. Title 42 intends to limit access for asylum seekers and other migrants in efforts to keep communicable diseases and sicknesses from its citizens (Gamboa, 2022). While the use of Title 42 during the Covid-19 Pandemic was intended to protect U.S. citizens from exposure to the virus from people entering the United States, it was really used as a means to justify the expulsion and rejection of asylum seekers pursuing entry into the United States, particularly at the southern U.S.-Mexican border, leaving our immigration system in the hands of xenophobia.

Up until the 1920s, border crossings into the United States was a non-issue for our governmental system. There were only a few select policies and laws when it came to the processes of coming to the United States for resettlement; immigrants had to enter the country through official entry points, like Ellis Island, which was the biggest and most operative immigration station in the late 1800s and early 1900s, among many other checkpoints like the

one most used by Mexican immigrants in El Paso, Texas. United States law stated that anyone who did not enter through these checkpoints would be deported, but “couldn’t be detained and prosecuted for a federal crime” (Little, 2020). Border patrol was established in 1924, and mostly concerned alcohol and drug trafficking into the U.S. during the Prohibition era, and to stop the flow of Asian immigrants, who were one of the first groups of people to be labeled “illegal” (Little, 2020).

In 1924, Nativist Politicians, those who seek to protect native-born citizens and rid the country of immigrants, “passed a new Immigration Act establishing country quotas that gave enormous preference to people from northern and western Europe over those from the southern and eastern parts of the continent, while still banning almost all immigration from Asia” (Little 2020). This also came with the restriction of Mexican immigration, as there was an influx of refugees crossing the southern border to escape the Mexican Revolution, which started in 1910. This was one of the first immigration policies put in place to create a sense of “othering”, where one ethnic group is viewed and treated as essentially inferior to another.

Continuing to demonize Mexican immigration, in 1929, Coleman Livingston Blease, a white supremacist politician from South Carolina set the groundwork for the immigration policies we currently function under today. Blease’s Law worked to criminalize those who crossed the border illegally, and not through one of the official entry points where migrants had to pay hefty entry fees and pay for many different kinds of testing (Little 2020). This law marks the first set of regulations that worked to discriminate against those specifically from Mexico, and even broader, those from Central and South America, who were seeking refuge or a new start in the so-called “melting pot” that is the United States.

While we no longer use Blease's name to identify this law, his policies are still embedded in the immigration policies and regulations we adhere to today. Blease's Law became Section 1325 of Title 8, which states it is a crime to enter the country unlawfully, and allowed for the prosecution and detainment of those who enter the United States through the Southern Border without registering themselves at an entry point. Title 8, which went into effect in 1940 and is the policy still in place today, deals with the handling of migrants at the southern border and specifically outlines deportation laws for the migrants who attempt to cross there. Title 8 states that any migrants who enter the United States illegally will be deported and will be banned from entry into the United States for a minimum of 5 years. If the migrant attempts to reenter the United States unlawfully, they could face federal charges and will be detained (Montoya-Galvez, 2023). This is the policy the United States has enforced since the policy's conception in 1940, with the aid of Blease's Law, right up until the Covid-19 Pandemic, which changed the landscape of immigration law in March of 2020. This is also just one example of the many policies put in place by the U.S. government over the course of our history that purposefully works to discriminate against a certain group of people who seek to enter this country, specifically black and brown skinned and non-European migrants.

On March 13th of 2020, President Donald Trump enacted a National Emergency Declaration in response to the growing number of cases around the world and in the United States. This one order triggered many different policies into action, like the ability for states to put 'stay-at-home' and 'social distancing' orders in place to reduce the spread of the virus. A national travel ban was also enforced, which banned any non-U.S. citizen from traveling to the United States from 26 different countries where Covid-19 was most rampant (Center, 2023). Along with the National Emergency Order and the Public Health Emergency, Title 42 was also

triggered into use as the acting immigration policy, replacing Title 8. Title 42 derives from a section of U.S. code that allows the federal government to enforce limits to the number of border crossings in the case of a public health emergency. This law had only been used once previously in 1929, to deter ships in Asia from coming to the United States during an outbreak of Meningitis (Isacson 2023). In action, Title 42 puts an almost total ban into place where no migrant can apply for asylum in the United States. Any migrant who attempts to cross any U.S. border will be, in theory, immediately deported. Title 42 also ramps up defenses of border control as well as other types of deterrents at the U.S.-Mexico border (Pérez-Bustillo, 2023). In practice, this policy is supposed to work to protect those living within the United States by mitigating the spread of diseases or sickness through limiting the number of people entering the country who may be carrying that certain illness. Supporters also argue that this policy helps reduce stress and strain on the United States healthcare system by limiting contact with those traveling from other countries.

While Title 42 may seem like a legitimate answer to stop the spread of Covid-19 across border lines, the implementation of this law was used as a justification and weapon for an anti-immigration agenda pushed by the Trump Administration. Title 42 was used to “override immigration law that allowed people to ask for asylum after entering illegally, and instead said we could send them back”, said Theresa Cardinal Brown, the immigration policy leader of the Bipartisan Policy Center (Kuhn, 2023).

Over the course of his presidential campaign and presidency, President Trump made immigration one of his top campaign issues, pushing xenophobic ideals to support his claims that migrants take away opportunities from law-abiding, citizenship-holding Americans. Previously, the Trump Administration used DACA and TPS to further xenophobic ideals upheld throughout

Donald Trump's time in office. DACA, which stands for Deferred Action for Childhood Arrivals, is a program that works to protect young adults who were brought into the United States as children from any sort of deportation, and also allows them to gain temporary work authorization. This program is renewable, allowing for these young adults to continue to work and live in the United States (KFF, 2023). TPS is another program that protects migrants whose country has been deemed unsafe to return to and to work and live in. Through the Temporary Protection Status program, they are granted the right to reside in the United States without having to become a citizen (Roy, 2023). Migrants who are a part of both of these programs have been targeted by the Trump Administration throughout his presidency. President Trump subjected over 1 million DACA recipients and TPS holders to deportation, despite the fact that these programs are supposed to offer protection for people who may be eligible (Schulte, 2020). Donald Trump has and continues to make xenophobic and anti-immigrant remarks as he continues on the campaign trail for re-election. At a campaign event in New Hampshire in December of 2023, Trump stated that "undocumented immigrants were 'poisoning the blood of our country', a remark he has made in the past and continues to stand by (Layne, 2023). In late February of this year, Trump made many xenophobic comments about foreign languages at the Conservative Political Action Conference in Washington D.C.: "We have languages coming into our country... These are languages — it's the craziest thing — they have languages that nobody in this country has ever heard of. It's a very horrible thing" (Hernández, 2024). It is not surprising to those who are critical of the Trump Administration that Title 42 was misapplied and misused during the Covid-19 Pandemic as this administration and the president have amended and abused other policies like DACA and TPS to continue to work against minority groups and those who are underprivileged in the United States. Also, the former president has and continues

to make prejudiced comments and accusations towards those unlike him, making others out to be inferior or less than the likes of President Trump. It is also important to note the United States does not have an official language, making no language foreign or from “outer-space” as Donald Trump has discriminately stated before.

With the onset of the Covid-19 pandemic, the Trump Administration pushed for the use of Title 42, and posed it as a protection for U.S. citizens against the virus, but the use of this immigration policy is just another instance of weaponizing U.S. policies against minority groups. Title 42 singles out migrants who are usually of a minority, including those who are seeking asylum at land borders, most coming from Central America, Africa, and Haiti. These migrants are disproportionately Black, Latino, or Indigenous. This policy “fulfills former President Trump’s expressed desire to stop providing protections for migrants from Haiti, El Salvador, and African countries, which he referred to as ‘shithole countries’” (Human, 2023). He also later expressed he wanted to bring more immigrants to the U.S. who were from Norway, a primarily “white” country (Human, 2023).

When looking at the ways in which other countries have handled immigration during the pandemic, it is clear the United States government actively sought out to discriminate against vulnerable groups seeking asylum. In contrast to the United States, Italy, one of most endangered countries due to Covid-19, a cap was put on the number of migrants able to seek asylum, but those who were granted asylum underwent a mandatory and supervised two-week quarantine, though they received little support or services when integrating into Italian civilization, due to the national shut-down (Yayboke, 2020). Similarly in Germany, they allowed for the travel of asylum seekers, on the basis that they had an essential need to travel and the pandemic should not be a blocker of that right. Travel restrictions were lifted for any non-E.U. citizen who

identified as an asylum seeker, looking for a place of refuge (Reches, 2022). By looking at the immigration response from other countries, it is clear the United States could have provided some assistance to asylum seekers, while continuing to keep U.S. citizens safe from exposure to the virus, while still offering protection to those who needed it. The use of Title 42 is not a policy of public safety, but of discrimination, seeking to oust those who do not fit the “American profile” sought out by the Trump Administration and continued into the Biden Administration.

The intended purpose of Title 42 is to ensure and protect the overall public health of U.S. citizens. But this begs the question of what protects those who are without a home or governmental system to support them during such crises like a global pandemic? Based on the effects of Title 42 in action, the United States government and its immigration policies only put asylum seekers into the deadly hands of the Covid-19 Pandemic. Title 42 states that its intended purpose is to deport migrants immediately to avoid detaining migrants where they might be most susceptible to coming in contact with the virus. Unfortunately, this did not work in practice, as most migrants were expelled after having spent long periods of time in large congregate spaces. According to the Department of Homeland Security, they have often detained groups of migrants in overcrowded and enclosed spaces for a number of days before they are deported (Human, 2021). Detainment centers were often hotspots for viruses and various illnesses prior to the pandemic. ICE (Immigration and Customs Enforcement) detention centers also are often holding immigrants exposed to dangerous health conditions, making them an already medically dangerous place to be (Miller, 2020). With the onset of Covid-19, these conditions are only exacerbated, with little medical supplies and necessities to protect those detained. Because of the systems and the physical space within a detention center, social distancing is almost impossible, and PPE (Personal Protection Equipment) is not readily accessible. Quick and easy prevention

measures, like hand-washing, are also not attainable within these conditions because of access, conditions, and supplies. Access to testing is also limited, and those who start to show symptoms usually have already been contagious and spreading the virus (Miller, 2020).

Migrants who are then deported still pose a risk of spreading or being given the communicable disease, as they are transported out of the country. Migrants are usually expelled en masse by airplanes with other deportees who have most likely come in contact with Covid at various detention centers, which have often fallen to major outbreaks of the virus. Once brought to various arrival countries, there is still a chance of a migrant being a carrier, bringing the extremely contagious disease to this country (Miller 2020). Through the enforcement of Title 42, the United States “actively exported” Covid-19 to other, more vulnerable countries who may not have the necessities to eradicate the disease (Miller 2020). Many of these deported and transported migrants are often infected with the virus and then return to their predominantly poor and unprotected home territories. These places often do not have the medical health care system sturdy enough to provide the necessary care to those who are sick; “In spring of 2020, the government of Guatemala reported that nearly one-fifth of their Covid-19 cases were linked to individuals deported from the United States” (Scheyett, 2021).

Unfortunately, Title 42 did not end at the close of Trump’s Presidency, and continued into the Biden Administration. While President Biden has claimed to have taken a more welcoming approach when it comes to immigration policy, few changes were made to reflect his ideals. The Biden Administration kept Title 42 in place, along with Trump’s interpretation of the policy. One of the very few changes Biden did make, however, dealt with unaccompanied minors. Unaccompanied minors who arrived at the U.S. border would not be expelled, and instead would be handed over to the U.S. Health and Human Services (Isacson, 2023). Also, under the Trump

Administration, Venezuelans were exempt from any participation in Title 42, allowing any Venezuelan person asylum when they arrived at the southern border. In October of 2022, the Biden Administration changed that policy, and started applying Title 42 to these people, although there was an exception that allowed 30,000 Venezuelans a month to enter the U.S. through humanitarian parole (Gamboa, 2022).

After many attempts from the Biden Administration to end the National Emergency Order, and consequently Title 42, May 11th, 2023 marked the expiration of this immigration policy. With this, Title 8 was reinstated, and thus, migrants would no longer be expelled without processing and screenings (Isacson, 2023). Also with the reinstatement of Title 8, penalties on re-entry are restored. Previously, under Title 42, there were no bans on re-entry, resulting in many migrants attempting to cross the border multiple times throughout the lifespan of this policy. With Title 8, those who enter the country illegally and are deported will be prohibited from re-entry for 5 years. If a migrant re-enters the country after having already been deported, they will face imprisonment, and even longer bans on re-entry into the United States (Gamboa, 2022).

Moving forward from Title 42, the Biden Administration has worked to improve the overall immigration system in the United States, but not without their own set of issues. CBPOne is a phone app in which migrants can make appointments with Customs and Border Protection to apply for asylum. The app seeks to allow migrants to apply for asylum immediately at an entry point instead of entering the country illegally. While this is an improvement in this difficult process, unfortunately this system has been a negative experience for most in practice, as only 1,000 appointments are available each day, creating an “asylum lottery”, in which the app concludes who is the most vulnerable and in need of protection (Isacson, 2023). These

appointments are increasingly hard to get, and usually only those who are technologically advanced are able to secure a meeting. The app has also been reported to be bugged and hard to use, as most migrants do not have a device that can handle the interface (Isacson, 2023). This app has since gone through various updates to hopefully address these major software issues in May of 2023.

The Biden Administration has also rolled out a new implementation called the Asylum Transit Ban in May of 2023. This allows the government to refuse asylum to migrants who fall under these two categories: Those who “crossed between ports of entry” and those who “passed through other countries on their way to the U.S.-Mexico border without first seeking and being denied” (Isacson, 2023). Those who fall into either of these categories will be ineligible for asylum and will be immediately detained and forced to undergo a trial under CBP’s custody (Isacson, 2023). This makes it increasingly more difficult than it already is to seek asylum, as the right to seek asylum once on U.S. soil is almost impossible. The Biden Administration has since taken on increased criticism for this policy and has faced a variety of lawsuits about this law.

While Title 42 has ended, and we have returned to our normal immigration policy of Title 8, the reflection on Title 42 and its impacts should be understood, remembered, and learned from. In Anna Scheyett’s article titled “Immigration and the World in 2021”, she states that “Covid-19 itself has become a justification for more stringent border policies, giving those who are xenophobic and nationalistic a rationale for keeping migrants, immigrants, and refugees out of their country” (Scheyett, 2021). The Trump Administration’s implementation of Title 42 was not one of public safety, but a pretext for the denial of migrants who did not represent what the president wanted the United States of America to be and look like. The policy did not do as it says it does, in that the policy does little to protect U.S. citizens from communicable diseases

like Covid-19, and does absolutely nothing to protect those who are seeking asylum against the deadly virus. Over 2.8 million people were denied humanitarian relief from the United States, because of the xenophobia and blatant racism that was and continues to be present in our governmental system and in our general population who may have supported this policy. The United States continuously and systematically uses policies and laws, like Title 42, to discriminate against vulnerable populations who only seek the humanitarian protections and freedoms we have and continue to have access to throughout the Covid-19 Pandemic. In order to address the ongoing and systemic racism present in United States federal and even local policies, reflection and dramatic transformations need to be done to our legislative, cultural and social processes, and only then, once we've reflected on harmful immigration policies like Title 42, can the United States begin to uphold its values of liberty and justice for all.

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