

What is Title 42? And why does Biden plan to end it? Your questions, answered

Title 42, which the Biden administration plans to end in May, allows the U.S. government to expel migrants before they have a chance to file for asylum. Here's why it matters

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A pair of migrant families from Brazil seeking asylum walk through a gap in the border wall to reach the United States after crossing from Mexico to Yuma, Ariz., June 10, 2021.

Eugene Garcia, Associated Press

Title 42, the controversial policy that allows Customs and Border Protection to turn migrants away without allowing them to file for asylum, is slated to end on May 23. But on Thursday, a [bipartisan group of senators introduced a bill that would block the lifting of the Title 42](#), throwing the Biden administration's plans into question.

Senators from both parties have expressed concern about ending the policy before the Department of Homeland Security, which oversees Customs and Border Protection, is ready to deal with the expected surge of migrants that will follow. Republicans strongly oppose the lifting of Title 42, with some characterizing the move as "[irresponsible](#)." Others have said it will turn what is already a [crisis on the border into a catastrophe](#). Earlier this week, the Republican governor of Texas, Greg Abbott — who is against the end of Title 42 — [announced his plans to bus migrants directly from the southern border to Washington, D.C.](#)

Other politicians, mostly Democrats, as well as human rights advocates, have applauded the plan to lift Title 42, calling the policy "[cruel and discriminatory](#)" and remarking that ending it was long overdue. Those who oppose Title 42 say it's a [violation of migrants' rights](#) that, in some circumstances, puts migrants' lives in danger. These critics also argue that [public health code shouldn't replace immigration policy](#).

As the debate surrounding it heats up, here's what you need to know about Title 42:

What is Title 42?

[Title 42 is a piece of public health law](#) that allows the Centers for Disease Control and Prevention to stop people and property from entering the United States "in the

interest of public health,” particularly when there “is the existence of any communicable disease in a foreign country” and “there is serious danger of the introduction of such disease into the United States.” Although it’s regularly discussed in the context of the COVID-19 pandemic, it has been on the books for decades. The government is using Title 42 on the U.S.-Mexico border to turn migrants away without allowing them to apply for asylum — regardless of their country of origin or reason for traveling. Many are being expelled just hours after being apprehended. Ordinarily “if a noncitizen came to the border, if they were seeking asylum, they would be put in normal immigration proceedings and have a chance to show that they fear returning to their home country,” said Stephen Kang, a detention attorney for the American Civil Liberties Union’s Immigrants’ Rights Project. “What Title 42 does is allow the government and Customs and Border Protection to bypass all that and immediately expel” undocumented migrants.

Though the policy was [implemented in March of 2020](#) in the early days of the pandemic, critics of Title 42 believe that the Trump administration enacted the code not to protect public health but, rather, to [crack down on migration](#). They point to the fact that former Trump adviser Stephen Miller suggested using public health as a justification to close the border back in 2018.

The Biden administration has faced criticism for continuing to use the policy to turn away migrants who might be seeking asylum.

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How has Title 42 impacted migration?

Critics of Title 42 say that policies of deterrence or punitive measures don’t serve their intended purpose when migrants are desperate and are fleeing dangerous circumstances.

“Title 42 has been in place for two years now and yet people are still coming,” said Kang. “If we really cared about addressing migration from certain countries, we would take measures to address root causes in those countries.”

Experts on migration talk about it as a “[push-pull](#)” phenomenon: that is, migration is something that occurs because of both a “push” out of one’s home country, as well as a “pull” from another country. Tackling problems in migrants’ home countries would eliminate the push factor.

Not only does Title 42 deprive migrants of their right to request asylum, as guaranteed by both international and U.S. law, the policy actually encourages “entering without inspection,” said Chelsea Sachau, managing attorney of the Florence Immigrant and Refugee Rights Project’s border action team.

“Title 42 actually incentivizes people to cross the border irregularly because you can’t walk up to a port of entry and claim asylum,” said Sachau. She added that while it’s often said that migrants “should do it the right way, they should get in line,” the use of Title 42 means there’s no line. “If you fundamentally deny them the process and there’s nowhere to go to start that process you force them into a corner of ‘Do I stay in this place, a dangerous border town? Or do I make another decision to try to cross?’”

The result is that migrants who fear for their safety or lives in their home countries are then backed into a corner of crossing irregularly, said Sachau, something that often entails “really dangerous journeys ... (through) desert, river, mountains because it’s literally their only way to seek safety.”

Why do immigration advocates believe it’s important to lift Title 42?

When migrants are apprehended at the southern border and Title 42 is used to expel them, some are sent back to Mexico, regardless of their country of origin, while others are put on planes and returned to their home countries. In either case, people affected by Title 42 could face grave danger.

Upon arriving in Mexico, Kang explained, the newly deported are easily identifiable to gangs and cartels who sometimes kidnap them. If the migrants fled danger in their home countries, they are returned to those circumstances. This, many experts believe, is a [violation of non-refoulement](#), a principle of international human rights law that says that people can’t be returned to places where they face persecution, violence, or death.

Non-refoulement is “exactly why we have an asylum process in the first place,” said Sachau, who explained that asylum-seekers go through “a credible fear interview ... to ensure that we’re not returning people to harm.”

Title 42 prevents that assessment from taking place.

Why do some politicians and others support Title 42?

Those who support Title 42 say that without it the southern border would be chaos. Though [health experts have said Title 42](#) doesn’t stop the spread of COVID-19, some Republicans, including [Abbott and Florida Gov. Ron DeSantis](#), have blamed migrants for spreading the virus and have claimed that the policy is, therefore, [important to public health](#).

Additionally, in a letter to the Department of Homeland Security, [Sen. John Cornyn, R-Texas, argued](#) this week that Title 42 is preventing communities in Texas from becoming “more overwhelmed than they already are” with migrants.

How might ending Title 42 impact the situation at the southern border?

[Title 42 is currently slated to end on May 23.](#)

If the Biden administration keeps this end date in place, it’s hard to predict what will happen. But it’s possible that those who have been waiting elsewhere, outside of

their home countries, could come to America to seek safety and asylum, Sachau said.

The Biden administration has a plan for dealing with the anticipated influx. “We have put in place a comprehensive, whole-of-government strategy to manage any potential increase in the number of migrants encountered at our border. We are increasing our capacity to process new arrivals, evaluate asylum requests, and quickly remove those who do not qualify for protection. We will increase personnel and resources as needed and have already redeployed more than 600 law enforcement officers to the border,” said DHS Secretary Alejandro Mayorkas [in an April 1 statement](#).

But Republicans are making dire predictions that the border will be completely overwhelmed. Abbott recently called the decision to end Title 42 “reckless” and said that the move will endanger “the safety and security” of Americans.

“Ending Title 42 expulsions will signal to cartels and migrants alike that our southern border is now wide open — inciting even more violence, more trafficking, and more lawlessness,” he said in a press release.

Some Democrats have also expressed concern about lifting Title 42 without adequate preparation for the anticipated influx. “We should be working to fix our immigration system by investing in border security and treating immigrant families with dignity. Instead, the administration is acting without a detailed plan,” Sen. Catherine Cortez Masto, D-Nev., told Politico.

And Rep. Vicente Gonzalez, a Democrat who represents the Texas border town of McAllen, called for the Biden administration to “re-think” its ending Title 42, [according to Border Report](#).

“Until the Department of Homeland Security (DHS) provides border communities and local Customs and Border Patrol sectors adequate resources and a plan, we will once again be wholly unprepared to handle a surge in irregular migration at our Southern Border in a humane, safe and orderly way,” Gonzalez said.

What should the U.S. government and nongovernmental organizations be doing to get ready for the end of Title 42?

Because much of the infrastructure relating to immigration was defunded and dismantled during the Trump administration, the current administration should concentrate on rebuilding the capacity to receive migrants and process their claims for asylum, advocates say.

And because nongovernmental organizations have been working on the ground on these issues for decades, the government should continue working closely with these groups and should respect their expertise on these issues, said Sachau.

In the meantime, lawmakers from both the Democratic and Republican parties are calling on the Biden administration to delay the lifting of Title 42 so the government

and other bodies have more time to prepare for a possible surge of migrants. Among them is Sen. Kyrsten Sinema, D-Ariz., who said that the government's current plans for ending Title 42 "aren't adequate," according to [Axios](#).

The Biden administration isn't ready to deal with the end of Title 42 "in a way that is both safe for our border communities and respects the humanitarian crisis that is coming," she said.

What will come of attempts to delay the end of Title 42?

Three red states — Arizona, Louisiana, and Missouri — are suing in hopes of stopping the government from ending Title 42. Asked what that might mean for the future of Title 42, Kang responded, "All I can say is that we're monitoring those cases and paying close attention as to how they're developing in the courts."