



May 2023 Key Detention & Enforcement Developments

1. **Title 42 lifted.** As of 11:59pm on May 11, Title 42 is no longer in effect. Title 42 was a policy that allowed the government to “expel” (or turn away or automatically deport) the vast majority of people arriving at our borders without the opportunity to seek protection. It was implemented by President Trump and continued by President Biden under the guise of public health despite the fact that there was [never a public health justification](#). Title 42 prevented many people from accessing asylum and other protections in the U.S. and resulted in many harms.
2. **Title 8 processing resumed and asylum ban implemented.** At the same time on May 11 at 11:59pm, the Biden administration resumed asylum processing under Title 8 (in other words, under traditional immigration laws) and also implemented [new policies](#) and [asylum rule](#). This is a significant blow: **Under the new asylum rule, people who arrive without authorization or appointments and don’t qualify for an exception will be assumed ineligible for asylum, detained, and placed in expedited removal (rapid deportation) proceedings, something provided for under Title 8 (traditional U.S immigration law).** People are largely ineligible for asylum in the United States unless they:
 - Have made an appointment before arriving at the border with the [troubled CBPone phone app](#);
 - Have already been authorized to enter through [limited parole and family reunification programs](#) applied for in a home country or at regional processing centers;
 - Have requested and been denied asylum in another country first (rare);
 - Qualify for one of a few other very narrow and extraordinary exceptions to the above; or
 - Are unaccompanied minors

The rule will be in place for the next two years (between May 11, 2023 and May 11, 2025) and applies to people who enter the U.S. by land at the southern border or by sea at adjacent coastal borders. The combination of the new rule plus Title 8 processing is different from Title 42 in that people will not be automatically expelled, but rather will be detained and put in rapid deportation proceedings.

3. **Enforcement operations ramped up.** In light of the return of Title 8 processing and the new asylum rule, the Biden administration is increasing detention capacity, ramping up deportation flights, increasing federal criminal prosecutions for crossing the border, and facilitating the militarization of migration pathways throughout the Americas. Specifically:

- The administration has surged federal law enforcement, including CBP and [military](#) personnel to the border and [doubled or tripled deportation flights](#) to some countries.
- Anyone deported under these new policies will be subject to a 5 year bar and criminal prosecution if they attempt to return within the 5 years.
- ICE has updated its COVID-19 policy and can now [detain thousands of additional people](#).
- CBP will expand capacity for detention in tent-like facilities along the border, including in Yuma, AZ and El Paso, TX
- The Office of Refugee Resettlement (ORR) is set to open a new massive child detention site in [North Carolina](#), with more in the works. This is amid news of the [deaths of two children in ORR custody](#) over the last few months.
- Families who arrive without authorization will be put into the new [Family Expedited Removal Management \(FERM\) program](#) which requires the “head of household” to be on a GPS tracking ankle monitor and subject them to curfew.
- The US has signed agreements with various governments across the Americas to facilitate the [ramp up of military presence along migration paths](#) and authorize the [deportation of non-Mexican nationals to Mexico](#).

Despite the massive amounts of funding already allocated for immigration enforcement (\$25 billion this fiscal year), the Biden administration revealed that it has shifted funds intended for other purposes by law to ramp up enforcement operations. Still, [the administration claims](#) to have insufficient resources and has been recklessly pleading for Congress to provide additional funding for this cruel and misguided approach. **The Senate has responded by introducing a [supplemental funding bill](#) that includes money for abusive enforcement agencies ICE and CBP, as well as increasing military presence and punitive law enforcement activities at our southern border across local, state, and federal agencies.**

4. **Anti-immigrant legislation in Congress and the states.**

In Congress: In addition to the supplemental funding bill, legislators in both [the House](#) and [the Senate](#) have recently introduced bipartisan bills that would extend the Title 42 expulsion policy for two years and require detention of people pending expulsion, including families and children. There are narrow humanitarian exceptions, but the passage of this legislation would effectively end the right to asylum at the border. **There are serious concerns that this bill could pass both chambers and potentially be signed into law by President Biden.**

Additionally, on May 11, the House passed another bill, [H.R. 2, the Secure the Border Act](#). **It is not expected to gain any traction in the Senate, but it signals concerning policy priorities of House leadership.** Among many alarming things, this bill would effectively end asylum, require detention of many people including families and children, resume the building of Trump’s border wall, and increase the number of border patrol agents.

In the states: We have seen several state governments initiate or pass harmful legislation as well, including Texas and Florida. On May 3, Florida Governor DeSantis signed [Senate Bill 1718](#) into law, which includes many anti-immigrant provisions such as criminalizing transporting an undocumented migrant across state lines and into Florida, and forcing employers with 25 or more employees to use the federal E-Verify system to check on a potential employee's immigration status.

On May 10, the Texas state House passed a bill that would create a "Border Protection Unit" with the power to racially profile, arrest, detain, "repel" and "return [to Mexico]" people crossing the border unauthorized. This essentially codifies Operation Lone Star, Texas Governor Abbott's deployment of thousands of law enforcement and military officers to the border. The bill, if implemented, would also create grant programs to fund the increased prosecution of border-related offenses and building of border barriers.