



Restoring access to the border without the use of detention

Regardless of where someone is from or why they migrate to the United States, everyone deserves to be treated with dignity and respect. Detention is inhumane, morally and financially costly, and completely unnecessary. Despite efforts to roll back some of the previous administration's cruelest policies, the Biden administration has targeted and detained newly arriving migrants in record numbers. As of July 8, 2021, there are over 27,000 people in detention, up nearly 90 percent from the beginning of the year. The majority of those detained are newly arrived migrants and a significant portion are asylum seekers.¹ As the administration considers ramping down the Title 42 border closure,* which public health experts agree has no justification,² it must not trade one set of cruel policies for another. The administration can restore fair access to the border without the use of detention. Regardless of the conditions or justifications, any length of time in detention inflicts unnecessary trauma.³

Detention does not work as deterrence

Immigration detention as deterrence is illegal under both domestic and international law and is also ineffective.⁴ Various administrations over the last four decades have used the threat of immigration detention to deter migration without success.⁵ In 2014 when the Obama administration began using family detention to deter migration, studies showed that there was no drop in families migrating to the U.S.⁶ Later, as the Trump administration expanded its family separation policy, there was no resulting decline in the number of families apprehended at the border. And in the summer of 2019, when detention numbers reached their height under the Trump administration with over 50,000 people in detention, border apprehensions also reached a height.⁷ People migrate for many reasons, to reunite with family, to escape persecution, and to seek safety among them.⁸ Telling people not to come and threatening them with detention do not outweigh the factors that lead people to migrate.⁹ The administration must take a different approach to migration, one that treats people with respect and dignity, allowing migrants to pursue immigration relief at liberty with community support.

Trusted community-based organizations can provide shelter and services

A recent study showed that the overwhelming majority of those arriving at our borders have loved ones with whom they can stay in the United States.¹⁰ For those that do need temporary shelter or respite, jail-like detention settings are wholly inappropriate. True shelter is not compulsory or punitive. Rather, shelter and support services should operate as an opt-in model carried out by trusted community-based organizations. A vast network of shelters already exists along the border and throughout the country, ready and able to carry out this type of opt-in programming.¹¹ Rather than detaining people, the government can and should support trusted

* Title 42 is a law that gives the Centers for Disease Control and Prevention (CDC) authority to refuse entry of certain goods and people at the border when it determines that there is a threat of communicable disease transmission into the United States (42 USC 265). Despite the objections of CDC officials, the Trump administration pushed the agency to exercise this authority at the start of the COVID-19 pandemic. Public health experts widely agree that there continues to be no public health justification for its use. While travel to and from the United States has continued for many people, the Title 42 order has primarily been used to restrict entry of people at the border seeking humanitarian protection in the United States.

community-based organizations already providing these services (with funding from outside the Department of Homeland Security (DHS)). For example, a network of organizations in Texas and New Mexico, including Annunciation House, Project Amistad, and New Mexico Hospitality Coalition, coordinates shelter and transportation along the border. These and many other organizations are prepared and able to scale up their services as needed.

People who are free have extremely high rates of court appearance

DHS has the legal authority to quickly process people who arrive at the border and release them on parole without the use of detention or electronic surveillance.¹² There is no reason to detain people while their claims are adjudicated, and detention is not necessary to ensure that migrants follow through with their legal obligations. In fact, detention prevents people from obtaining community and legal support, impeding their ability to access immigration relief. Several studies have shown that the majority of those who are released attend their hearings.¹³ A recent study found that over the last 11 years, immigrants in removal proceedings have attended their court hearings 83 percent of the time. Of those that have filed a claim for relief, such as asylum, 95 percent attend their court hearings.¹⁴ Another study found that non-detained asylum seekers attend their court hearings 98.7 percent of the time.¹⁵ Appearance rates are even higher for those that have legal representation.¹⁶ With appearance rates this high, detaining people under the guise of ensuring compliance is not only disingenuous but also a complete waste of tax dollars.

Detention is a public health crisis

As detention numbers have risen exponentially over the last few months, confirmed cases of COVID-19 have also increased inside Immigration Customs Enforcement (ICE) detention with outbreaks at several facilities. Even before the COVID-19 pandemic, detention was detrimental for public health, with outbreaks of mumps and other infectious diseases in recent years.¹⁷ COVID-19 further exposed these problems and exacerbated already unacceptable conditions. Throughout the pandemic, ICE has refused to free people as recommended by public health experts. Instead, it evaded reporting, refused testing, failed to provide sufficient soap or personal protective equipment, inappropriately used harsh disinfectants, retaliated against those speaking up for themselves, and failed to provide adequate access to vaccines.¹⁸ ICE's actions have caused COVID-19 outbreaks at facilities throughout the detention system and contributed to community spread throughout the country.¹⁹ Since March, thousands of people in ICE detention have organized to bring attention to the conditions during the pandemic, including at least 50 hunger strikes. In retaliation, ICE has responded with physical abuse, transfers, deportation, force-feeding, solitary confinement, rubber bullets, and pepper spray.²⁰

End Title 42 without detention

At this critical turning point in the pandemic, the administration should be doing everything in its power to prevent another wave of outbreaks. Public health experts have repeatedly expressed that closing the border is not a necessary public health measure and that putting people in detention is harmful for public health. The administration should fully end the Title 42 border closure without the use of immigration detention. Rather than increasing the use of detention as it has been, the administration should adopt policies and procedures to safely process people at ports of entry, including social distancing, masks, quicker processing times, releasing people on parole at the border to shelter with their families, and supporting trusted community-based organizations to provide shelter and services to those that need it.²¹

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