

No. 22-592

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IN THE  
**Supreme Court of the United States**

ARIZONA, *et al.*,

*Petitioners,*

v.

ALEJANDRO MAYORKAS,

*Respondent.*

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**On a Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia  
Circuit**

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**BRIEF OF *AMICUS CURIAE* OF 60  
IMMIGRATION ADVOCACY, HUMAN RIGHTS,  
AND LEGAL SERVICES ORGANIZATIONS IN  
SUPPORT OF RESPONDENT**

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are sixty non-governmental non-profit organizations that serve non-citizens and advocate for their rights. *Amici* include national advocacy organizations, human rights organizations, and local direct services providers, many of which are based in states that seek to intervene in this case.

Human Rights First is a non-governmental organization established in 1978 that works to ensure the United States' leadership on human rights globally and compliance domestically with its human rights commitments. Human Rights First operates one of the largest programs for pro bono legal representation of refugees in the nation, working in partnership with volunteer lawyers at leading law firms to provide free representation to asylum applicants unable to afford counsel. Human Rights First has conducted research and advocacy around the impact of the Title 42 expulsion policy underlying the present case, publishing multiple reports on the subject, alone and in partnership with *amici* Al Otro Lado, Florence Immigrant and Refugee Rights Project, Haitian Bridge Alliance, Hope Border Institute, and Interfaith Welcome Coalition.

Justice Action Center ("JAC") is a nonprofit organization dedicated to advancing the civil and human rights of immigrants through a combination of impact litigation and storytelling. It provides support to select nonprofit organizations that have immigrant members or provide direct services to immigrant communities.

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no other entity or person made any monetary contribution toward the preparation and submission of this brief. Pursuant to Supreme Court Rule 37.2 and 37.3, all parties received notice of *amici curiae's* intent to file this brief.

JAC also litigates on behalf of immigrant communities in numerous jurisdictions nationwide. With active litigation challenging the application of the Title 42 expulsion policy to Haitian asylum seekers, JAC has a strong interest in the ability of asylum seekers to access legal process in safety.

### INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners’ post-judgment motion to intervene is untimely for myriad reasons; *amici* need not repeat those here. Resp’t Br. “Timeliness is to be determined from all the circumstances.” *NAACP v. New York*, 413 U.S. 345, 366 (1973). A critical fact underscoring the untimeliness of the States’ attempted intervention—yet unmentioned in their brief’s blanket denial of prejudice—is the devastating human cost of the States’ gambit: Each day the Title 42 expulsion policy (“Title 42”) persists, countless people including children, pregnant women, and people with disabilities, are trapped in deadly circumstances. See *Huisha-Huisha v. Mayorkas*, 27 F. 4th 718, 733 (D.C. Cir. 2022) (discussing the undisputed “horrific circumstances” for migrants harmed by Title 42, including voluminous evidence of “death, torture, and rape.”).

Permitting the States’ thirteenth-hour intervention here would indulge and reinforce particularly perverse incentives. Indeed, putative intervenors’ actions have already won them, for now, the very relief that they seek: indefinite extension of Title 42. As *amici* show in detail below, the cost of petitioners’ untimeliness is concrete, extensive, and borne by individuals already in genuine life-and-death circumstances who merely seek legal process, in the hope that it could bring them safety.

*Amicus* Human Rights First has documented over 13,000 reports of murder, kidnapping, rape, torture, and other violent attacks against migrants expelled to or blocked in Mexico because of Title 42 between January 2021 and December 2022. Title 42 is also responsible for the return of asylum seekers to their countries of persecution. As the stories below illustrate, Title 42 harms the most vulnerable among us, including children, Black and Indigenous migrants, LGBTQ asylum seekers, and individuals with disabilities. *Amici* urge this Court to affirm the D.C. Circuit’s well-reasoned decision denying the States’ intervention attempt as untimely. J.A. 3–7.

## ARGUMENT

### I. THE STATES’ UNTIMELINESS DELAYS RETURN TO AN IMMIGRATION POLICY ROOTED IN ESTABLISHED IMMIGRATION LAW, AT GREAT COST TO ASYLUM SEEKERS

On March 20, 2020, in the earliest days of the COVID-19 pandemic, the Centers for Disease Control (“CDC”) issued an order under 42 U.S.C. § 265 allowing the summary expulsion of noncitizens. Title 42 expulsions circumvent immigration law by permitting the summary expulsion of migrants without providing any opportunity to apply for asylum. Asylum seekers and other migrants are expelled either to their countries of origin or to Mexican border cities, some of which are so dangerous that the U.S. government advises against travel there. See U.S. Dep’t of State, Mexico Travel Advisory (Oct. 5, 2022), <https://bit.ly/3RLpZut> (advising against any travel to Tamaulipas State, noting “[o]rganized crime activity—including gun battles, murder, armed robbery, carjacking, kidnapping, forced disappearances, extortion, and sexual assault—is common along the northern

border and in Ciudad Victoria.”). At the same time, armed conflict and human rights violations in countries including but not limited to Ukraine, Afghanistan, Nicaragua, Cuba, Venezuela, Haiti, Iran, Syria, Honduras, El Salvador, Guatemala, China, and Myanmar, have forced an increased number of people to seek safety beyond their national borders. Figures at a Glance, UNHCR (June 16, 2022), <https://www.unhcr.org/en-us/figures-at-a-glance.html>.

Nearly three years after the CDC’s first order, no one—including petitioner States—argues that Title 42 is necessitated by the public health emergency that formed its legal and factual basis. The CDC sought to terminate the policy in April 2022 because the public health circumstances that had provided the sole legal authority for the expulsion order no longer existed. *Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists*, 87 Fed. Reg. 19941 (Apr. 6, 2022). Critically, the petitioning States’ account of the interests they seek to protect through their delayed attempt to intervene in this litigation is wholly focused on broader immigration policy. See Pet’rs Br. 43–46. While the Court considers petitioners’ latest bid to impose their preference for continued summary expulsions divorced from immigration law, asylum seekers continue to die because of a “public health” policy that is no longer justified by public health.

*Amici* write to emphasize the ongoing human cost of Title 42. Rewarding the States’ unjustified delay only exacerbates this cost. As described in *infra* Sections II–VI below, Title 42 continues to subject asylum seekers to extreme levels of violence in Mexico; condemns thousands to unsafe and unhealthy living conditions; returns refugees to their persecutors; threatens the

lives and safety of Black and Indigenous migrants and other particularly vulnerable groups; and separates families and harms children.

The States' untimely bid to intervene has indefinitely—and unnecessarily—prolonged harm to asylum seekers and other migrants described in this Brief. Denying the States' intervention would simply return the United States to the status quo of using of immigration laws to address immigration and public health laws to address public health.

## II. THE STATES' BELATED ATTEMPT TO INTERVENE PROLONGS HUMAN SUFFERING

As of December 2022, *amicus* Human Rights First had tracked 13,480 reports of murder, kidnapping, rape, torture, and other violent attacks committed against migrants expelled to or blocked in Mexico because of Title 42 since January 2021. *Human Rights Stain, Public Health Farce*, Human Rights First 2 (Dec. 2022), <https://bit.ly/3x4indc> (“HRF Rep., Dec. 2022”). This number likely represents only a fraction of such incidents, as many victims have not spoken with human rights investigators or journalists. These crimes include those frequently perpetrated by non-state armed groups as well as Mexican government officials. In addition to migrants stuck (and victimized) in Mexico because of Title 42, an untold number of others are summarily expelled directly to their countries of origin and the very dangers they sought to escape.<sup>2</sup>

Title 42 has proved especially dangerous to vulnerable populations, including women, children, people with disabilities, LGBTQ individuals, and Black and

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<sup>2</sup> Cong. Rsch. Serv., R47343, *U.S. Border Patrol Apprehensions and Title 42 Expulsions at the Southwest Border: Fact Sheet* (Dec. 19, 2022), <https://crsreports.congress.gov/product/pdf/R/R47343>.

Indigenous migrants who face high levels of racism and acute difficulties accessing basic necessities in Mexico. As the debate over the States' intervention continues before this Court, Title 42 strands more asylum seekers in dangerous conditions—delaying, but not deterring, their quest to seek safety through our legal process. The policy also separates families, multiplying the trauma it inflicts on untold numbers of parents, children, and loved ones.

**A. Title 42 Expulsions Continue to Subject Asylum Seekers to Murder, Rape, Kidnapping, and Other Violence in Mexico.**

As the U.S. State Department has repeatedly recognized, human rights conditions in Mexico remain marked by forced disappearances and arbitrary killings, including at the hands of government agents. Organized criminal groups have been “implicated in numerous killings, acting with impunity and at times in collusion with corrupt federal, state, local, and security officials.” U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *2021 Country Reports on Human Rights Practices: Mexico* 3 (2022), <https://bit.ly/3Ic4WhK>. Asylum seekers and other migrants are frequent victims of these attacks. See, e.g., *id.* at 2 (Tamaulipas State police officers charged with homicide in connection with the massacre and burning of the bodies of 16 Guatemalan migrants en route to the United States). Indeed, the United States has long acknowledged before this Court the “predatory violence” migrants face in Mexico. See, e.g., *Br. for Pet’r., Biden v. Texas*, No. 21-954, 2022 WL 815341, at \*28 (March 14, 2022).

By preventing asylum seekers from requesting protection at U.S. ports of entry, Title 42 also perversely incentivizes irregular border crossings. This makes asylum seekers vulnerable to trafficking, exploitation,

or attack by cartels and other organized criminal groups that control such border crossings. HRF Rep., Dec. 2022 at 15; U.S. Dep't of State, *2022 Trafficking in Persons Report: Mexico* (2022), <https://www.state.gov/reports/2022-trafficking-in-persons-report/mexico/>.

These conditions continue to expose asylum seekers and other migrants blocked or expelled from the United States under Title 42 to extreme and frequent violence in Mexico, as the following examples show:

*Title 42 Leads to Murders, Violent Assaults, and Rape*

Due to Title 42, DHS turned away a Mexican family from Michoacán who had traveled to the Calexico port of entry seeking protection in August 2022. The family included a husband, wife, their infant child, and the wife's young brothers, aged 10 and 13. After DHS turned the family away at the U.S. border, cartel members attacked them, shooting and killing the father in front of his family. When his widow reported the murder to the Mexican police, the cartel threatened her, too. She and the children fled to another city after receiving messages from neighbors warning them that the cartel knew they were in Mexicali. HRF Rep., Dec. 2022 at 12.

Expelled migrants are easily identifiable and thus vulnerable targets for cartels and other criminal groups on the Mexican side of the border. *Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger*, Human Rights First 8–9 (May 2020), <https://bit.ly/3YhvWC2> (“HRF Rep., May 2020”); *Humanitarian Disgrace: U.S. Continues to Illegally Block, Expel Refugees to Danger*, Human Rights First 12 (Dec. 2020), <https://bit.ly/3Xi8uTZ> (“HRF Rep., Dec.



2020”). DHS practices of expelling people, including, for example, in the middle of the night, or without shoelaces, leave them visually identifiable by organized criminal groups that see them as a business opportunity. *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger*, Human Rights First 28 (Apr. 2021), <https://bit.ly/3jCuGdH> (“HRF Rep., Apr. 2021”); HRF Rep., Dec. 2022 at 16. Many asylum seekers whose experiences are described in this Brief were targeted for kidnapping or other harm immediately upon being expelled from the United States.

In spring 2022, a Salvadoran asylum seeker and her nine-year-old daughter fleeing death threats in El Salvador were kidnapped a second time after DHS expelled them to Ciudad Juárez under Title 42. The family had crossed the border to seek protection and escape an organized criminal group that, with the assistance of municipal police officers, had abducted and held the family captive for ransom for more than a month. Immediately after expulsion, the family was kidnapped again by an organized criminal group that threatened to kill them. *The Nightmare Continues: Title 42 Court Order Prolongs Human Rights Abuses, Extends Disorder at U.S. Borders*, Human Rights First 8 (June 2022), <https://bit.ly/40IWCgo> (“HRF Rep., June 2022”).

A Guatemalan lesbian transgender woman sought protection at the Eagle Pass port of entry, fearing persecution based on her gender identity and sexual orientation. CBP turned her away because of the Title 42 order. Shortly after U.S. authorities denied her the opportunity to seek protection through established legal process and instead expelled her to Mexico, she was raped by Mexican police officers in the border town Piedras Negras. HRF Rep., Dec. 2022 at 11.

*Children Are Frequent Victims of the Violence Title 42 Facilitates*

Families with children are readily identifiable and obvious targets for those seeking to exploit and traffic migrants. Situated in unfamiliar surroundings, often without resources and support, the special vulnerabilities of families with children create immeasurable opportunities for abuse. See *Children on the Move, Smuggling and Trafficking*, UNODC (May 2019), <https://bit.ly/3Ib5HHA>.

For example, a Guatemalan woman and her four-year-old son sought protection in the United States after being threatened by the child's father. Instead of allowing them to access the asylum process, DHS expelled them to Mexico under Title 42. Unfamiliar with Nogales and lacking support, she accepted an offer of help from a man who approached her. Instead of providing the promised support, the man kidnapped her and her son, holding them captive for four days. HRF Rep., Dec. 2022 at 11.

A Central American asylum seeker and her six-year-old son had nowhere to sleep after DHS expelled them to Ciudad Juárez in April 2021. A man waiting near the port of entry offered them a ride and place to stay for the night. The man instead imprisoned them for two weeks in a house with other abducted women and attempted to rape the mother. They survived by escaping through a bathroom window. The trauma of this experience forced them into hiding. *Disorderly and Inhumane: Biden Administration Continues to Expel Asylum Seekers to Danger While U.S. Border Communities Stand Ready to Welcome*, Human Rights First 3 (July 2021), <https://bit.ly/3RMcbQk> ("HRF Rep., July 2021").

CBP turned away an Indigenous woman from Guatemala and her three young children at the Nogales port of entry. After the family was expelled, a woman approached them, offering to bring them to a free shelter. Instead, the woman led the family to a house where they were held captive for ransom. HRF Rep., Dec. 2022 at 11.

Title 42 inflicts both physical harm and severe psychological trauma on children, who suffer violence themselves and witness attacks on their families. For example, a Haitian man reported that he and his family, stranded in Mexico due to Title 42, were kidnapped, beaten, and robbed in Mexico, and his wife raped in front of their child.<sup>3</sup> *A Shameful Record: Biden Administration's Use of Trump Policies Endangers People Seeking Asylum*, Human Rights First (Jan. 2022), <https://bit.ly/3YiyO1n> (“HRF Rep., Jan. 2022”). Children affected by the policy have also been kidnapped, held at gunpoint, tortured, sexually assaulted, and forced to witness their mothers being raped and others being killed. HRF Rep., Dec. 2022; HRF Rep., Jan. 2022; *“Illegal and Inhumane”: Biden Administration Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount*, Human Rights First (Oct. 2021), <https://bit.ly/3lfmz73> (“HRF Rep., Oct. 2021”). Some children stranded in Mexico by Title 42 have been raped in tent encampments while awaiting the opportunity to seek protection at the U.S. border. *Id.* at 19.

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<sup>3</sup> This man provided his story in response to a survey conducted by *amicus* Al Otro Lado of migrants and asylum seekers stranded in Mexico as a result of U.S. border policies.

*Violence in Mexican Border Towns Separates Children from Parents*

The perilous conditions for vulnerable asylum seekers in Mexican border towns have also forced parent-child separation. In fiscal year 2021, more than 12,000 children reentered the United States as unaccompanied minors after having been expelled under Title 42, usually with their parents. Camilo Montoya-Galvez, *12,212 Migrant Children Reentered U.S. border Custody Alone in 2021 After Being Expelled*, CBS News (May 20, 2022), <https://cbsn.ws/3JTHKpQ>. These children, many of whom are taken into Office of Refugee Resettlement (“ORR”) custody, face not only the trauma of separation from their parents, but also concern about their parents and other relatives who remain in danger, and uncertainty and confusion about their own future.

The murder or abduction of a child’s parent while trapped in dangerous Mexican border towns is a common cause of such separations; when a parent is killed or abducted, their children often enter the United States unaccompanied. For example, a Guatemalan asylum-seeker was kidnapped soon after DHS expelled him and his seven-year-old daughter at night in the spring of 2021. When the man went to buy food for his daughter, four men covered his face, beat him, and held him captive for fifteen days. During his captivity, his young daughter was forced to enter the United States alone. *Border Restrictions Lift, But Biden Administration Blocks Protection for Asylum Seekers and Children*, Human Rights First (Nov. 2021), <https://bit.ly/3YAxFlF> (“HRF Fact Sheet, Nov. 2021”).

### **B. Mexican Government Officials are Perpetrating or are Complicit in Attacks Against Migrants.**

Far from providing reliable protection to migrants victimized by non-state actors in Mexico, Mexican immigration and police officers have themselves perpetrated many of these crimes, including kidnapping, rape, and extortion. Mexican authorities also collude with cartels, who further victimize the migrants in Mexico because of Title 42.

#### *Mexican Authorities Perpetrate and Exacerbate the Violence of Title 42*

Officers of the Mexican national immigration service, the *Instituto Nacional de Migración* (“INM”), kidnapped a Guatemalan family with two young children after DHS expelled them all to Nuevo Laredo, in Tamaulipas State. INM then turned the family over to a cartel. The cartel held the family hostage for three months, tortured them, and extorted their relatives. The mother said the family witnessed their captors kill other migrants who attempted to escape. HRF Rep., Dec. 2022 at 11.

Juárez police sexually assaulted a Honduran mother and her four-year-old daughter in Ciudad Juárez after Title 42 blocked the family from seeking protection in August 2022. Police then turned them over to cartel members who held the family captive for 22 days, raped the mother in front of the daughter, and physically attacked the daughter.<sup>4</sup>

In early 2021, Mexican police in Tijuana raped a Guatemalan Indigenous transgender woman who had been trafficked for sexual exploitation in Guatemala.

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<sup>4</sup> The mother reported the incident to *amicus* Al Otro Lado. HRF Rep., Dec. 2022 at 11–12.

Due to Title 42, she had been waiting nearly a year to request U.S. asylum. Julia Neusner & Emem Maurus, *To Protect the Lives of LGBTQ Asylum Seekers, The Biden Administration Must Fully End Title 42*, Human Rights First (July 21, 2021), <https://bit.ly/3xbShou>.

In February 2021, after a pregnant asylum seeker filed a complaint against a Mexican official for an immigration scam, he brutally beat her, causing her to suffer a miscarriage. HRF Rep., Apr. 2021 at 32.

Even those recognized as refugees by Mexico are exposed to these atrocities and risks, which are well-documented and undisputed even by the U.S. government. In March 2021, state police in the Mexican state of Quintana Roo broke the neck of a Salvadoran refugee woman. Authorities assert that the police killed her on account of her gender.<sup>5</sup>

*Survivors Trapped in Mexico Because of Title 42 Live in Fear*

An INM officer kidnapped and raped a Honduran asylum-seeking woman near the border in Ciudad Juárez. The same officer later sold her to a cartel that held her captive. After managing to escape, this woman has been unable to request U.S. asylum due to Title 42 and is stuck in Mexico. She remains terrified that cartel members will use the photos they have of her to find her again. HRF Rep., Oct. 2021 at 13.

An INM officer in Tijuana kidnapped a Honduran family of three who had made multiple attempts to request U.S. asylum only to be repeatedly expelled without a hearing. The officer had offered the family a ride and then held them at gunpoint, demanding money

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<sup>5</sup> U.S. Dep't of State, *2021 Country Reports on Human Rights Practices: Mexico* (2022) at 3.

and information about their U.S. family members. The officer then turned the family over to men who held them captive, sexually abused them, and beat them so severely that one family member lost consciousness. The family managed to escape but remain in danger in Mexico.<sup>6</sup>

### **C. Title 42 Expulsions Return Asylum Seekers to Persecution.**

For Mexican nationals seeking humanitarian protection, Title 42 expulsions invariably cause their forcible return to the very conditions they are seeking to flee. Many of these asylum seekers have been violently attacked and threatened, sometimes by the same actors whose threats or abuse had prompted them to seek safety in the United States. For non-Mexican asylum seekers, expulsion under Title 42 can also result in forced return to their countries of origin, either directly or by “chain refoulement,” whereby persons the United States expels to Mexico are then expelled by Mexico to the countries they had fled.

#### *Title 42 Traps Mexican Asylum Seekers in Mexico*

One young Mexican woman fled threats from cartels in southern Mexico and attempted to request protection at a U.S. port of entry. DHS turned her and her children away under Title 42. When she and her children were turned away, they could not find space in shelters in Tijuana. After spending several nights on the streets, they saw no choice but to return to their hometown, where members of the cartel decapitated the young mother. HRF Rep., Dec. 2022 at 12.

A Mexican woman fled the southern state of Guerrero with her family after cartel members tortured,

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<sup>6</sup> The family shared their story with Las Americas Immigrant Advocacy Center. HRF Rep., Oct. 2021 at 14.

shot, and killed her two brothers. While she was stuck in a northern border area due to Title 42, the cartel threatened the woman for assisting the police with an investigation into the murders. “I am terrified they will kill me and my family. In Mexico, even if you go to another part of the country, the cartels can still find you . . . Mexico is our home country. We don’t have anywhere else to go and we are risking our lives if we stay here.” HRF Rep., Oct. 2021 at 16 (statement in quotes given to attorney with *Al Otro Lado*)

*Title 42 Returns Other Asylum Seekers to the Countries they Fled in Fear*

Being turned away or expelled by DHS under Title 42 can also mean expulsion directly to an asylum seeker’s country of origin or expulsion to Mexico followed by deportation by Mexico back to their country of origin. In addition to expelling non-Mexicans to Mexico, DHS has carried out mass summary expulsions of thousands of Haitians directly to Haiti, as well as expulsions of other nationalities including Guatemalans, Hondurans, Salvadorans, and Nicaraguans directly to their countries of claimed persecution.<sup>7</sup>

A thirty-seven-year-old asylum seeker fled Haiti after being kidnapped, beaten, and raped because of her involvement with a political opposition group. After she arrived in the United States with her husband and baby, U.S. authorities detained them for nearly two weeks but denied them the ability to apply for asylum. In February 2021, DHS summarily returned her to Haiti along with her husband and baby. If the political

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<sup>7</sup> *Mexico: Mass Expulsion of Asylum Seekers to Guatemala*, Human Rights Watch (Sept. 8, 2021), <http://bit.ly/3YBtzJX>; HRF Rep., Dec. 2020 at 5; Julia Neusner, *A Year After Del Rio, Haitian Asylum Seekers Expelled Under Title 42 Are Still Suffering*, Human Rights First (Sept. 22, 2022), <http://bit.ly/3I8wBQn>.



group that attacked her in Haiti found them again, “they would just kill us this time around.” HRF Rep., Apr. 2021 at 6. DHS continued mass expulsions to Haiti even as the agency acknowledged that Haiti was “grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses” and the U.N. High Commissioner for Refugees condemned the summary expulsions under Title 42.<sup>8</sup>

One political activist and her family fled Nicaragua to avoid arrest after authorities searched their home following her participation in opposition protests. The family came to the U.S. border in search of safety, but CBP officers told the woman that “political asylum does not exist in this country.” HRF Rep., Apr. 2021 at 7. DHS expelled them and approximately 200 others directly to Nicaragua under Title 42. Upon their return, Nicaraguan authorities detained her, her husband, and their seven-year-old child for 11 days, interrogating and beating the couple. Continued death threats forced the family to flee again. They were then robbed in Tijuana while waiting for an opportunity to request protection.

### **III. TITLE 42 DISPROPORTIONATELY HARMS PARTICULARLY VULNERABLE ASYLUM SEEKERS AND MIGRANTS**

Asylum seekers blocked from accessing U.S. protection by Title 42 are predominantly people of color, as are those actually expelled. Among these populations, Black and Indigenous asylum seekers suffer disproportionate harm due to racial prejudice in Mexico and,

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<sup>8</sup> *Designation of Haiti for Temporary Protected Status*, Dep’t of Homeland Sec. (Aug. 3, 2021), <https://bit.ly/3lpVfDu>; Chris Boian, *News Comment by UN High Commissioner for Refugees Filippo Grandi on Conditions and Expulsions at US Border*, UNHCR (Sept. 21, 2021), <https://bit.ly/40DCn3P>

in many cases, a lack of Spanish proficiency, both of which make them particularly vulnerable to assault and exploitation, and impair their ability to meet their basic needs. HRF Reps., Apr. 2021, Oct. 2021 & June 2022; Haitian Bridge Alliance, et al., *Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD)*, Black Alliance for Just Immigration 8 (August 2022), [bit.ly/3x5HPPH](http://bit.ly/3x5HPPH).

*Under Title 42, Black Asylum Seekers Are Targeted*

Black asylum seekers and migrants blocked in and expelled to Mexico face pervasive anti-Black violence, harassment, and discrimination, including widespread abuse by Mexican authorities. A survey conducted by Al Otro Lado from mid-February through early April 2021 in Baja California, for example, found that 61 percent of Haitian asylum seekers blocked from seeking U.S. protection by Title 42 were victims of brutal harm while stranded in Mexico, including kidnapping, rape, and robbery. HRF Rep., Apr. 2021 at 3.

In February 2022, a Haitian man who was previously expelled with his teenage daughter under Title 42 was attacked with a bat in Tijuana. There, he and his daughter endured racist harassment in the streets, including being called “monkeys” and told to go back to their country. *Extending Title 42 Would Escalate Dangers, Exacerbate Disorder, and Magnify Discrimination*, Human Rights First 4 (Apr. 2022), <http://bit.ly/3lnQYjA> (“HRF Rep. Apr. 2022”). In another attack, a man with a baton severely beat a Haitian asylum seeker in Tijuana in front of Mexican police, who did not intervene. HRF Rep., Apr. 2021 at 32.

Many attacks against Black asylum seekers and migrants are perpetrated by Mexican authorities. Analysis of Al Otro Lado survey data from mid-June to mid-

August 2021 shows that nearly 20 percent of Haitian asylum seekers in the northern Mexican border region were victims of abuse by the police, including beatings, extortion, and threats. *Human Rights Travesty: Biden Administration Embrace of Trump Asylum Expulsion Policy Endangers Lives, Wreaks Havoc*, Human Rights First 8 (Aug. 2021), <http://bit.ly/3HHPIVH> (“HRF Rep. Aug. 2021”). Black asylum seekers and migrants who have suffered attacks and threats by Mexican government agents include: an Afro-Honduran asylum seeker who had been expelled by DHS and was beaten so severely by Coahuila state police that he was blinded in one eye; a Haitian migrant who was threatened at gunpoint, abused, and robbed by police; a Haitian couple that was robbed, extorted, and threatened with deportation multiple times by Mexican police and military; and a group of Jamaican LGBTQ asylum seekers who were attacked by police officers, thrown to the ground, and one of them tased. HRF Reps., June 2022 at 5; Jan. 2022 at 6; Oct. 2021 at 13 & Aug. 2021 at 4, 16. In another incident, police in Reynosa taunted a Black Honduran mother, who had been beaten and raped, and her seven-year-old son, who had been kidnapped, in spring 2021. HRF Rep., Aug. 2021 at 16. The police refused to help her and instead asked how much she would charge for sex. *Id.*

Widespread anti-Black discrimination in Mexico further threatens the survival of Black asylum seekers and migrants, often cutting off access to medical care. S. Priya Morley et al., “*There is a Target On Us*” – *The Impact of Anti-Black Racism on African Migrants at Mexico’s Southern Border*, Black Alliance for Just Immigration (2021), [bit.ly/40GGonZ](http://bit.ly/40GGonZ); HRF Rep., Oct. 2021 at 20–21.<sup>9</sup> Haitian Bridge Alliance has organized

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<sup>9</sup> Morley et al., “*There is a Target on Us.*”

at least a dozen funerals since December 2021 for Haitian migrants who have died or been killed in Mexico while stranded due to Title 42, including for Calory Archange, a 30-year-old Haitian man who died of a heart attack in Tijuana in May 2022, after receiving inadequate medical care.<sup>10</sup>

Felicia Rangel-Samponaro, director of the Reynosa-based Sidewalk School for Asylum Seekers, observed that anti-Black racism is so pervasive in Mexico that people have refused to sell Black people food and water or rent them apartments. HRF Rep., Oct. 2021 at 20. A Jamaican lesbian couple stranded in Tijuana under Title 42 reported that they were too terrified to leave their shelter because they faced danger due to their race and sexual orientation: “When we absolutely have to leave to get supplies like food and medicine, we have been yelled at and harassed in the street because we are Black and gay migrants . . . with our resources nearly gone, we now are desperate.” *Id.* at 21.

*Indigenous Asylum Seekers Face Disproportionate Harm under Title 42*

Indigenous asylum seekers and migrants blocked or expelled from the United States under Title 42 have also suffered brutal attacks in Mexico. According to humanitarian aid workers who assist migrants at the border, Indigenous women and others who do not speak Spanish are particularly susceptible to sexual abuse and trafficking. *Id.* at 23. The U.S. Department of State likewise identifies indigenous persons as one of several groups most at risk for trafficking in Mexico.

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<sup>10</sup> *Funerals Held for Haitians Who Died in Mexico While Waiting for U.S. to Hear Asylum Claims* (June 3, 2022), [bit.ly/3HDRTUw](http://bit.ly/3HDRTUw); Kate Morrissey, *For Haitian migrants, waiting in Tijuana brings fear, discrimination, even death*, L.A. Times (June 12, 2022), <http://bit.ly/40ESApq>.

U.S. Dep't of State, *2022 Trafficking in Persons Report: Mexico*.

For example, an Indigenous Triqui woman from Oaxaca and her three children attempted to seek asylum at the San Ysidro port of entry in September 2022 after she was beaten by Mexican police, threatened, and her family members murdered for her activism defending her indigenous community. Authorities turned them away due to Title 42. After the United States turned her family back to Mexico, Mexican police in Tijuana sexually assaulted her.<sup>11</sup>

In June 2021, an Indigenous Honduran asylum seeker and his six-year-old son were kidnapped immediately after DHS expelled them to Reynosa. HRF Rep., Aug. 2021 at 12. The kidnappers separated the father from his child and trafficked the father for labor. *Id.* When they were released, they sought U.S. protection again but DHS expelled them to Nuevo Laredo, where they narrowly escaped another kidnapping attempt. *Id.*

*Title 42 Compounds the Dangers Faced by LGBTQ Asylum Seekers*

Under Title 42, many asylum seekers face persecution and violence upon expulsion due to the same characteristics for which they were persecuted in their home countries. LGBTQ persons, women, children, and persons with disabilities suffer violent attacks and human rights violations in Mexico, with little to no accountability for these abuses, as documented extensively by the U.S. Department of State.<sup>12</sup> Although the pervasive dangers in Mexico for these and other

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<sup>11</sup> The mother shared her story with *amicus* Al Otro Lado. HRF Rep., Dec. 2022 at 13.

<sup>12</sup> U.S. Dep't of State, *supra* 7.

vulnerable migrants are well-known, they continue to be expelled and turned away at the border while the States' petition proceeds before this Court, precipitating further attacks on account of immutable characteristics, such as gender, sexual orientation, and disability.

LGBTQ asylum seekers stuck in Mexico because of Title 42 have been kidnapped, raped, and tortured due to their sexual orientation and gender identity. Since DHS implemented this policy, LGBTQ asylum seekers from Colombia, Cuba, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Russia, Ukraine, Venezuela, and other countries have been blocked or expelled under the policy.<sup>13</sup> Many faced a nightmare similar to the one they had fled.

For example, a transgender Honduran woman fled to the United States seeking safety after she was attacked by a gang in Honduras due to her sexual orientation; her brother was beheaded. *Update: Grave Dangers Continue for Asylum Seekers Blocked in, Expelled to Mexico by Biden Administration*, Human Rights First 2 (June 2021), <http://bit.ly/3loDpAs> (“HRF Rep., June 2021”). During her grueling journey, she was raped in Mexico. After she finally made it to the United States, DHS repeatedly expelled her to Mexico. In May 2021—following yet another expulsion to Mexico—she was kidnapped and raped again. *Id.* She ultimately escaped her rapists by jumping out of a window, resulting in further painful injuries. *Id.*

In October 2022, a Mexican lesbian woman was turned away from U.S. asylum protection, back to the very country where she had suffered multiple attacks

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<sup>13</sup> Teodoro Garcia, *LGBTQ Asylum Seekers Still Facing Grave Dangers Due to Title 42*, Human Rights First (Aug. 12, 2022), <http://bit.ly/3DUKQGe>

due to her sexual orientation, including being kidnapped, raped, and threatened with death by police officers. HRF Rep., Dec. 2022 at 12.

These are not isolated incidents. Attacks against LGBTQ asylum seekers in Mexico because of Title 42 are rampant. A survey conducted by Al Otro Lado from mid-June 2021 to mid-August 2021 reveals that a staggering 89 percent of LGBTQ asylum seekers in the northern Mexican border states who responded to the survey had been targeted in an attack or attempted attack or received threats in the prior month *alone*. HRF Rep., Aug. 2021 at 8.

*Women and Girls in Mexico because of Title 42 Face Extreme Dangers*

Violence against women and girls—including rape, sexual assault, and femicide—is pervasive in Mexico, with high rates of impunity.<sup>14</sup> Migrant women face a particularly high risk of sexual assault.<sup>15</sup>

Notwithstanding these severe and well-documented dangers, under Title 42, DHS has turned away countless women seeking safety to instead suffer kidnapping, rape, trafficking, and other violence. HRF Reps., Jan. 2022; June 2022 & Dec. 2022. A young Honduran woman who attempted to request asylum at a U.S. port of entry in July 2021 was kidnapped immediately after DHS turned her away under Title 42. For the three months that followed, members of a criminal organization repeatedly raped her and trafficked her for sexual exploitation. HRF Rep., Oct. 2021 at 12.

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<sup>14</sup> U.S. Dep't of State, *supra* 7.

<sup>15</sup> *Rising Gender-Based Violence in Mexico Puts Women on the Move at Higher Risk, IRC Warns*, ReliefWeb (Nov. 22, 2022), <https://bit.ly/3Yxv8bO>

In late May 2022, a Honduran woman was sexually assaulted in a Nuevo Laredo shelter after she and her children were turned away under Title 42 after attempting to seek asylum at the Laredo port of entry. HRF Rep., June 2022 at 9. She didn't sleep for the week following the attack, terrified the assailant would return. *Id.*

As described in Section I.B. above, Mexican police, migration officers, and other government agents perpetrate serious attacks against women and girls and traffic them to criminal groups. A 12-year-old Honduran girl and her family were blocked from seeking asylum at the border due to Title 42. *Id.* at 10. While the family was stranded in Mexico, a Coahuila state police officer in Ciudad Acuña assaulted the girl near the public plaza where her family sleeps. *Id.*

*Title 42 Renders People with Disabilities Vulnerable*

People with disabilities are targeted for violent crimes and threats in Mexico.<sup>16</sup> Nonetheless, disabled asylum seekers and migrants have been blocked from U.S. protection or expelled to Mexico under Title 42. As a result, many of these individuals have suffered attacks, discrimination, and lack of access to specialized medical care. For instance, a 28-year-old paraplegic Honduran asylum seeker fled Honduras after gang members killed his brother and shot at him, damaging his prosthetic legs. While stranded in Mexico waiting for an opportunity to seek U.S. asylum, he faced discrimination and was beaten and robbed by armed men. HRF Rep., June 2022 at 5–6.

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<sup>16</sup> U.S. Dep't of State, *supra* 7.



#### IV. TITLE 42 EXPULSIONS STRAND PARTICULARLY VULNERABLE PEOPLE WITHOUT ACCESS TO MEDICAL CARE

The humanitarian crisis caused by Title 42 is not limited to overt acts of violence—it also strands individuals and families without access to medical care, compounding asylum-seekers’ vulnerability, trauma, and injuries.

Since Title 42 began, families and children have been stranded without access to life-saving medical care, often due to widespread and persistent discrimination against migrants in Mexico. In Piedras Negras, a hospital turned away a three-year-old Honduran girl who was convulsing uncontrollably. The child’s asylum-seeking father reported that DHS had expelled the family under Title 42. HRF Rep., June 2022 at 15.

A 34-year-old Haitian migrant was blocked from seeking asylum due to Title 42. Trapped in Mexico, he was beaten and robbed in Tijuana in May 2022 on his way home.<sup>17</sup> Denied medical care at a Tijuana hospital, he died a few days later.

Some individuals and families are explicitly denied care because of their immigration status. For example, in the spring of 2021, a Honduran family who had been twice expelled after seeking U.S. asylum was denied emergency medical attention at a public Mexican hospital for their baby, who has Down Syndrome and a heart murmur and had stopped breathing. Hospital

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<sup>17</sup> This account was provided by Haitian Bridge Alliance, which organized a funeral for the man. *Id.* at 8.

staff told the family the facility would not treat their child because they were foreigners.<sup>18</sup>

Asylum-seeking families have suffered tragic outcomes, including late-term miscarriage and death, due to denial of emergency medical care at the border and in Mexico. A teenage Haitian girl died in Tijuana in March 2022 after a Tijuana public hospital initially turned her away and refused to treat her severe stomach pain. The hospital admitted her the next day when she returned with a legal advocate, by which time her condition had severely worsened. The hospital prohibited her father from visiting her. A few days later, hospital staff informed him that his daughter had died, providing only a death certificate with no record of treatment provided. The father told Human Rights First, “every time a Haitian goes to that hospital, they don’t come back.” HRF Rep., Apr. 2022 at 9.

An eight-and-a-half months pregnant Honduran woman sought protection with her husband and two-year-old son near Yuma, Arizona. The family had crossed the Arizona desert before surrendering to Border Patrol agents, who detained them for five hours in a freezing cold holding cell, ignored her pleas for medical treatment for unbearable pain in her abdomen, and failed to provide food or water. The officers told the family that “the United States [wa]s not accepting people from Honduras.” HRF Fact Sheet, Nov. 2021 at 8 (alternations in original); *Madre inmigrante pierde bebés tras ser deportada de EE.UU.*, Noticias Telemundo (July 8, 2021), <https://bit.ly/3jBbOfb>. After Border Patrol agents denied her medical attention and expelled her to Mexico in July 2021, she suffered a stillbirth.

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<sup>18</sup> The family reported their story to Taylor Levy, who assisted them. HRF Rep., Aug. 2021 at 32.

## V. TITLE 42 SEPARATES FAMILIES

The consequences of Title 42 have been devastating for families. DHS's policy has led to family separations, including the separations of parents from their young children, married couples, siblings, and elderly grandparents from their families.

In enforcing Title 42, DHS physically and forcibly separates family members. Without considering families' needs or vulnerabilities, these separations can happen when DHS permits some family members to enter and—cruelly and inexplicably—expels other members of the same family.<sup>19</sup> For example, in July 2021, DHS separated a Honduran woman from her 14-year-old daughter after her family entered the United States together near Reynosa. The United States held the 14-year-old girl in custody but expelled the mother and her two younger children to Mexico. When Human Rights First spoke to this mother in August 2021, she reported that her traumatized 14-year-old daughter had been in the custody of the U.S. government for over a month. HRF Rep., Aug. 2021 at 18.

One father asked U.S. immigration officials to let his baby go with his wife when they were separated because his son was still breastfeeding. “I told them I don’t want him suffering. But they did not take my baby [to his mother] and they expelled us.”<sup>20</sup>

Under Title 42, DHS expelled a blind grandmother to Reynosa by herself after separating her from her daughter and grandchildren with whom she had sought asylum in the United States. The family had

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<sup>19</sup> *Neither Safety Nor Health: How Title 42 Expulsions Harm Health and Violate Rights*, Physicians for Human Rights 22 (July 2021), <https://bit.ly/3JTcNIE>

<sup>20</sup> *Neither Safety Nor Health*, Physicians for Human Rights 22.

fled death threats by gangs in Honduras and had been kidnapped for fifteen days in Mexico. A pastor had to find another asylum seeker to assist the woman, who cannot navigate independently due to her disability. HRF Rep., Aug. 2021 at 18.

Separation from family members has profound psychological consequences. Physicians for Human Rights found that, of 28 asylum seekers expelled under Title 42 whom they interviewed in 2021, 11 had been forcibly separated from family members in the course of their expulsion. These asylum seekers reported that the children in their families suffered a range of symptoms including weight loss, disturbed sleep, excessive crying, and loss of developmental milestones, such as resumed bed-wetting, due to the stress of family separation. *Neither Safety nor Health*, *supra* note 26 at 4–5.

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These stories only begin to illustrate the devastating human consequences of Title 42 each day.

**CONCLUSION**

For these reasons, the Court should affirm the decision below.

Respectfully submitted,

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February 9, 2022

\*Counsel of Record

## **APPENDIX**

**TABLE OF APPENDICES**

APPENDIX A: List of *Amici* ..... 1a

**Appendix A: List of Amici**

African Communities Together (ACT)  
African Human Rights Coalition  
Al Otro Lado  
Aldea - The People's Justice Center  
American Immigration Lawyers Association  
Anti-Defamation League  
Black Alliance for Just Immigration (BAJI)  
Bridges Faith Initiative  
California Immigrant Policy Center  
Cameroon Advocacy Network (CAN)  
CASA  
Center for Popular Democracy Action  
Central American Resource Center of Northern CA -  
CARECEN SF  
Cleveland Jobs with Justice  
Coalition for Humane Immigrant Rights (CHIRLA)  
Columbia Law School Immigrants' Rights Clinic  
Communities United for Status & Protection (CUSP)  
First Focus on Children  
Florence Immigrant & Refugee Rights Project  
Freedom Network USA  
Harvard Immigration and Refugee Clinical Program  
Hope Border Institute  
Human Rights Initiative of North Texas  
Human Rights Watch



**2a**

Immigrant Defenders Law Center  
Immigration Equality  
Immigration Law & Justice Network  
Institute for Justice and Democracy in Haiti  
Instituto para las Mujeres en la Migración (IMUMI)  
International Mayan League  
International Refugee Assistance Project  
Jewish Family Service of San Diego  
Kids in Need of Defense (KIND)  
Kino Border Initiative  
Las Americas Immigrant Advocacy Center  
Latin American Working Group (LAWG)  
Louisiana Organization for Refugees and Immigrants  
Lutheran Immigration and Refugee Service  
National Council of Jewish Women  
NETWORK Lobby For Catholic Social Justice  
North Carolina Justice Center  
Oasis Legal Services  
Project ANAR  
Quixote Center  
Rainbow Railroad  
Refugee Health Alliance  
Refugees International  
Robert F. Kennedy Human Rights  
Rocky Mountain Immigrant Advocacy Network  
Sanctuary for Families

**3a**

Save the Children

Southern Poverty Law Center

Tahirih Justice Center

The Advocates for Human Rights

UndocuBlack Network

VECINA

Washington Office on Latin America

Witness at the Border

Women's Refugee Commission (WRC)

Young Center for Immigrant Children's Rights