**Contribution of the Franciscan Network on Migration – USA team, Quixote Center and Hope Border Institute**

In response to the call for inputs of the Special Rapporteur on the human rights of migrants for his report on “how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants”

**February 2023**

An estimated 11 million undocumented people[[1]](#footnote-1) reside in the United States.[[2]](#footnote-2) As more people come to the U.S. fleeing violence and persecution, or in search of economic opportunity, we expect this number to increase.

**New Legal Pathways**

On January 5th 2023, the U.S. announced that it would begin expelling Haitian, Venezuelan, Cuban, and Nicaraguan nationals to Mexico under the public health order, Title 42. Title 42 references a chapter in the US legal code that gives authority to the Surgeon General to block immigration from countries where there has been an outbreak of a communicable disease. The Center for Disease Control and Prevention issued a directive in March of 2020, citing Title 42 authority, allowing the Department of Homeland Security to immediately expel any migrant encountered by border patrol without guaranteeing due process rights.

Title 42 is currently set to expire on May 11, 2023.[[3]](#footnote-3) As long as the Title 42 order remains in place, there are two major pathways for asylum seekers to enter the U.S. and regularize their status. However, both programs come with severe limitations that prevent the most vulnerable migrants, and those who lack resources or connections within the U.S., from accessing asylum.

Also on the 5th January 2023, President Biden created a humanitarian parole program that allows up to 30,000 people a month from Venezuela, Nicaragua, Haiti, and Cuba to fly at their own expense to the U.S. and remain for up to two years. Applicants must have a sponsor with legal status in the U.S. who must undergo a background check and prove that they can financially support them for two years.[[4]](#footnote-4)

This program allows migrants who qualify to avoid the perilous journey to the U.S.-Mexico border; however, the program comes with strict requirements that bar most migrants in transit from qualifying. Applicants must possess an unexpired passport, must not have been ordered to be removed from the U.S. in the past five years, and cannot have crossed irregularly into the U.S., Mexico, or Panama after the announcement of the program. For Venezuelans, this was in October 2022, and for Nicaraguans, Cubans, and Haitians in January 2023.[[5]](#footnote-5) This immediately disqualifies migrants who were already in transit to seek asylum, as well as those who lack financial resources or a potential sponsor in the U.S. The Biden administration has claimed that this program is modeled after a similar parole program for Ukrainian refugees; however, Ukrainians were not subject to any of these requirements, with the exception of possessing a valid passport.[[6]](#footnote-6) An underground market of scammers seeking money in exchange for sponsorship has emerged, leaving desperate migrants vulnerable to trafficking and exploitation.[[7]](#footnote-7)

In January 2023, The U.S. also launched a new method for vulnerable migrants to gain an exemption from Title 42 and schedule asylum appointments at U.S. ports of entry through a mobile app, referred to as CBP One. Previously, nonprofit organizations at the border had to submit referrals to Customs and Border Protection (CBP) for a limited number of Title 42 exemptions to be approved.[[8]](#footnote-8) Now, migrants whose nationalities are not exempt from Title 42 can submit the exemption process themselves, circumventing the need for assistance from a nonprofit; however, the app has been fraught with technical issues.

The CBP One app necessitates access to a smartphone and a stable internet connection, disqualifying migrants who possess neither. The app itself has made accessing asylum appointments difficult, as it is riddled with technical difficulties, connectivity issues, and a lack of robust language access.[[9]](#footnote-9) We have seen reports from nonprofits at the border according to which even with the application set to Spanish, error messages appear in English, confusing asylum seekers. The app was not available in Haitian Kreyol until February 2023, weeks after its launch.[[10]](#footnote-10) The CBP One app requires people to submit facial recognition and upload photographs of themselves in order to schedule an asylum appointment; however, the application is failing to register many people with darker skin tones.[[11]](#footnote-11) Immigration advocates found that shining bright construction lights helped capture adults’ images, but failed to work for children under the age of six.[[12]](#footnote-12) This bars many Black and brown asylum seekers, namely Africans and Haitians, from accessing asylum.

President Biden also announced a new regulation that would make those individuals who did not pursue asylum in a country through which they transited ineligible to apply for asylum in the U.S., with certain exceptions that they will specify later. Although U.S. law does allow for the denial of asylum to someone who passed through a third country without seeking asylum, the asylum seeker’s life or freedom must not be threatened on account of their identity or political opinion and the U.S. must have a formal agreement with the third country.[[13]](#footnote-13)

In many cases, it is more dangerous for migrants to remain in a third country before entering the United States. Since January 2020, over 10,000 migrants have been victims of violent attacks in Mexico.[[14]](#footnote-14)

In addition, in light of the extension of Title 42, as happened with those who were returned under Migration Protection Protocols (MPP), the Mexican government has not granted the possibility for regularization, which puts their human rights at risk, including legal security and due process. In some cases, a Visitor's Card for Humanitarian Reasons (*Tarjeta de Visitante por Razones Humanitarias- TVRH*) has been granted, and in others a Multiple Migration Form (*Forma Migratoria Múltiple*). However, these alternatives present serious problems in providing legal security to individuals and allowing effective access to rights. Given the possible termination of Title 42 in the coming months, we expect a massive deportation of people of various nationalities to Mexico and other countries, which raises concerns about the response of these countries and the legal limbo in which people may remain.

**Detention and Deportation**

Between January 2020 and 2023, the U.S. deported an estimated 4 million people; approximately half were expelled under Title 42.[[15]](#footnote-15) The possibility of detention and deportation remains an existential threat for undocumented migrants. As of February 6th, 2023, Immigration and Customs Enforcement (ICE) is detaining 25,793 people.[[16]](#footnote-16)

Civil society organizations have pressured the current administration to reduce funding for immigration detention. There has been some progress, as the Biden administration ended contracts for several ICE detention facilities.[[17]](#footnote-17) Unfortunately, these closures have not reduced the overall capacity of the immigration detention system; the U.S. government has continued to expand its recourse to private detention centers.[[18]](#footnote-18) Shelters that are notorious for poor conditions and human rights abuses, such as the Torrance County Detention Facility, remain open.[[19]](#footnote-19) Undocumented immigrants are more than twice as likely to be apprehended by immigration enforcement if they live in a county that has the capacity to detain more than 50 people in ICE custody, compared to a county with lower or no immigration detention capacity.[[20]](#footnote-20)

**Alternatives to Detention Program**

The name “Alternatives to Detention”[[21]](#footnote-21) (ATD) is misleading, as the program has not resulted in a substantial drop in detention and instead criminalizes immigrant communities. ATD includes ankle monitors, mobile phone apps, telephonic reporting, home confinement, and other forms of surveillance.[[22]](#footnote-22) The ATD program inflicts severe psychological harm on those enrolled, as the constant surveillance instills feelings of fear and anxiety.[[23]](#footnote-23) Many migrants feel that their ankle shackles are intrusive, stigmatizing, and disruptive to daily life as it leads to assumptions of criminality.[[24]](#footnote-24) Additionally, the devices often malfunction, inflicting burns, bruises, or shocks on the wearer. Such malfunctions could also place them at risk of being re-detained or deported.[[25]](#footnote-25) As of January 28, 2023, there are currently 324,554 people enrolled under ATD, for an average of 380 days.[[26]](#footnote-26)

**Societal Contributions**

Undocumented immigrants are a critical part of the U.S. economy. As of 2017, undocumented migrants collectively paid an estimated $11.74 billion in taxes a year, although they do not qualify for benefits such as Social Security or national health insurance.[[27]](#footnote-27) Granting legal status to all undocumented migrants through comprehensive reform would increase tax contributions by $2.18 billion a year, and would boost the U.S. gross domestic product by an estimated $1.7 trillion over a 10-year period.[[28]](#footnote-28)

Undocumented migrants are also inextricably woven into U.S. families and communities. Over 16.7 million people share a home with at least one family member, often a parent, who is undocumented; and in 2018, approximately 4.4 million U.S. citizens under the age of 18 lived with at least one undocumented parent.[[29]](#footnote-29) The fear of having a parent or family member detained or deported has a negative impact on mental health. Studies have found symptoms of toxic stress and increased risk of developing PTSD, anxiety, depression, and suicidal ideation amongst communities where children had either experienced family separation or had a significant fear of a family member being deported.[[30]](#footnote-30)

**Recommendations:**

* End Title 42 expulsions to Mexico and any country where an asylum seeker would face persecution, and restore full asylum processing in line with international standards.[[31]](#footnote-31)
* Adequately fund US Citizenship and Immigration Services (USCIS) and the Department of State to ensure sufficient hiring and training of asylum officers, as well as the CBP Office of Field Operations so that Ports of Entry are equipped to handle increased processing.[[32]](#footnote-32)
* Ensure that the faith-based groups, shelters, and nonprofit humanitarian organizations along the border and across the country that provide live-saving services and humanitarian welcoming are properly funded.
* The U.S. must acknowledge the inherent inequities in accessing the new humanitarian parole program and in utilizing the CBP One app:
  + Improve access to humanitarian parole, CBP One, and other safe migration pathways for people without financial resources, family ties, cellphones, or passports in order to protect Black, Indigenous, and other people who are disproportionately denied access.
  + Release online resources to enhance migrants’ understanding of how to access new programs and combat misinformation in order to prevent scams.
  + Address technical issues with the CBP One app and allow for an additional exemption process that doesn’t require a cellphone or internet access.
* The U.S. must expand legal pathways to immigration so that migrants are not forced to remain in a situation of irregularity:
  + Expand, speed up, and strengthen regional refugee resettlement, parole and other safe migration pathways without using them as a replacement for asylum.
  + Redesignate Temporary Protected Status for all countries for which it is currently designated, and expand to countries that are experiencing conditions that would endanger repatriated nationals, such as Mauritania and the Democratic Republic of Congo.
  + Grant pathways for all undocumented migrants to regularize their status, including those with a temporary status such as Deferred Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS), and humanitarian parole.
* The U.S. must work to divest from immigration detention, the ATD program, and other means of immigration incarceration and surveillance and reinvest in community-based solutions, for example:
  + Create a new model for non-punitive processing centers that is based in humanitarian protection instead of incarceration and respects the human right to liberty of movement.
  + End all contracts for ICE detention facilities and reinvest in community-based solutions and public services to increase compliance with the immigration process as well as social integration.
  + Divert funding from increased border militarization and surveillance to instead expand funding for humanitarian processing and nonprofit reception such as legal, housing, and social services.
* Asylum seekers and undocumented migrants must have the resources they need to participate and thrive in their communities:
  + The U.S. government should strengthen ties and communication between civil society and federal, State and local governments to help new arrivals reach their final destination, or a community with shelter and social services capacity to receive them.[[33]](#footnote-33)
  + Increase resources for USCIS to deliver asylum seekers with the documents they need in a timely manner and expedite work authorization so that asylum seekers are able to support themselves and their families.

1. For the sake of this report, we will refer to migrants that do not have current status within the United States immigration system as “undocumented.” [↑](#footnote-ref-1)
2. “Profile of the Unauthorized Population - US.,” Migration Policy Institute, 2023, https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US.. [↑](#footnote-ref-2)
3. Julia Ainsley and Carol E Lee, “The Title 42 Covid Ban at the Southern Border May End on May 11,” NBC News (NBC News, February 2023), https://www.nbcnews.com/politics/immigration/title-42-covid-ban-southern-border-may-end-may-11-rcna68502. [↑](#footnote-ref-3)
4. “FACT SHEET: Biden-Harris Administration Announces New Border Enforcement Actions,” The White House, January 3, 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/. [↑](#footnote-ref-4)
5. “Processes for Cubans, Haitians, Nicaraguans, and Venezuelans | USCIS,” USCIS, February 3, 2023, [↑](#footnote-ref-5)
6. “Uniting for Ukraine | USCIS.” 2023. USCIS. January 25, 2023. https://www.uscis.gov/ukraine. [↑](#footnote-ref-6)
7. Anita Snow, “Migrants Seeking US Sponsors Find Questionable Offers Online,” AP NEWS (Associated Press, February 11, 2023), https://apnews.com/article/united-states-government-fraud-cuba-business-immigration-5ec9a3451db3c08e51e9ae03ec26a83a [↑](#footnote-ref-7)
8. Rebecca Beitsch, “Biden Partners with Nonprofits to Screen Asylum-Seekers,” The Hill (The Hill, June 4, 2021), https://thehill.com/policy/national-security/556959-biden-partners-with-nonprofits-to-screen-asylum-seekers/. [↑](#footnote-ref-8)
9. Regina Yurrita, “Asylum Seekers Met with Issues from New CBP One App,” CBS8.com (KFMB, February 2023), https://www.cbs8.com/article/news/local/asylum-seekers-met-with-issues-from-cbp-one-app/509-5f69579c-05e1-4999-a7a9-720eab0cc680. [↑](#footnote-ref-9)
10. Cfr. Twitter, 2023, https://twitter.com/L\_Toczylowski/status/1622773449981857794?s=20&t=lLwvq7gDLpt1R0lVDk8J\_A. [↑](#footnote-ref-10)
11. Melissa del Bosque, “Facial Recognition Bias Frustrates Black Asylum Applicants to US, Advocates Say,” the Guardian (The Guardian, February 8, 2023), https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Musalo, Karen. “Biden’s Embrace of Trump’s Transit Ban Violates US Legal and Moral Refugee Obligations.” Just Security, February 8, 2023. https://www.justsecurity.org/84977/bidens-embrace-of-trumps-transit-ban-violates-us-legal-and-moral-refugee-obligations/. [↑](#footnote-ref-13)
14. “Extending Title 42 Would Escalate Dangers, Exacerbate Disorder, and Magnify Discrimination.” Human Rights First, 2023. <https://humanrightsfirst.org/wp-content/uploads/2022/09/ExtendingTitle42.pdf>; See also Annex 1 [↑](#footnote-ref-14)
15. “Biden Must Stop Deportations Now! - United We Dream,” United We Dream, January 25, 2023, https://unitedwedream.org/our-work/protect-immigrants-now/biden-stop-deportations-now/. [↑](#footnote-ref-15)
16. Ice.gov. “ICE Guidance on COVID-19,” Accessed February 15, 2023. https://www.ice.gov/coronavirus#citations. [↑](#footnote-ref-16)
17. “Wrong Direction: 2022 Biden Administration Progress Report,” Detention Watch Network, 2023,

    <https://www.detentionwatchnetwork.org/sites/default/files/Wrong%20Direction_2022%20Biden%20Progress%20Report_2.7.23.pdf> [↑](#footnote-ref-17)
18. “AILA Leads Partners in Calling for Review of DHS’s Reopening of Private Prisons,” AILA, 2022, <https://www.aila.org/advo-media/aila-correspondence/2022/letter-dhs-reopening-private-prisons> [↑](#footnote-ref-18)
19. “Wrong Direction: 2022 Biden Administration Progress Report,” Detention Watch Network, 2023,

    <https://www.detentionwatchnetwork.org/sites/default/files/Wrong%20Direction_2022%20Biden%20Progress%20Report_2.7.23.pdf> [↑](#footnote-ref-19)
20. “If You Build it, ICE Will Fill it: The Link Between Detention Capacity and ICE Arrests,” Detention Watch Network, 2023, https://www.detentionwatchnetwork.org/sites/default/files/reports/If%20You%20Build%20It%2C%20ICE%20Will%20Fill%20IT\_Report\_2022.pdf [↑](#footnote-ref-20)
21. *See* “ICE’s Alternatives to Detention (ATD)” <https://www.ice.gov/features/atd> [↑](#footnote-ref-21)
22. “The Case Against ‘Alternatives to Detention,” Detention Watch Network, December 1 2022,

    https://www.detentionwatchnetwork.org/sites/default/files/DWN\_The%20Case%20Against%20ATDs\_12.1.22.pdf [↑](#footnote-ref-22)
23. Ibid. [↑](#footnote-ref-23)
24. “Tracked and Trapped: Experiences from ICE Digital Prisons,” #NoTechForICE, 2022, https://notechforice.com/digitalprisons/ [↑](#footnote-ref-24)
25. “The Case Against ‘Alternatives to Detention,” Detention Watch Network, December 1 2022,

    <https://www.detentionwatchnetwork.org/sites/default/files/DWN_The%20Case%20Against%20ATDs_12.1.22.pdf>; *See also* Annex 2 [↑](#footnote-ref-25)
26. “Alternatives to Detention,” Syr.edu, Accessed February 15 2023, https://trac.syr.edu/immigration/detentionstats/atd\_pop\_table.html. [↑](#footnote-ref-26)
27. ITEP. “Undocumented Immigrants’ State & Local Tax Contributions,” 2017. https://itep.org/undocumented-immigrants-state-local-tax-contributions-2017/. [↑](#footnote-ref-27)
28. Giovanni Peri and Reem Zaiour, “Citizenship for Undocumented Immigrants Would Boost U.S. Economic Growth,” June 14, 2021. https://www.americanprogress.org/article/citizenship-undocumented-immigrants-boost-u-s-economic-growth/. [↑](#footnote-ref-28)
29. https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement [↑](#footnote-ref-29)
30. Ibid [↑](#footnote-ref-30)
31. *Cfr.* OHCHR, “New US border enforcement actions pose risk to fundamental human rights”, 11 January 2023, <https://www.ohchr.org/en/press-releases/2023/01/new-us-border-enforcement-actions-pose-risk-fundamental-human-rights-turk> [↑](#footnote-ref-31)
32. “AILA - ICYMI: Policy Brief: What Does a Secure Border Look Like?,” Aila.org, 2023, <https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-what-does-a-secure-border-look-like>. [↑](#footnote-ref-32)
33. “Solutions for a Humane Border Policy,” National Immigrant Justice Center, 2023, https://immigrantjustice.org/staff/blog/solutions-humane-border-policy. [↑](#footnote-ref-33)