

US immigration

Ruling on US pandemic border restrictions leaves thousands in limbo

Biden administration had sought to revoke Trump-era Title 42 despite fears of further surge in Mexico border crossings



A border patrol agent checks passports from immigrants in Yuma, Arizona. The Biden administration had hoped to lift Title 42, which allows for fast expulsion of asylum seekers at the US border, on Monday © Mario Tama/Getty Images

Christine Murray in Mexico City MAY 21 2022

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After fleeing Cameroon in 2018, Joy worked and travelled across Latin America. She has now been waiting for two years in northern Mexico for a chance to seek US asylum, and a decision by a Louisiana judge on Friday means she may be waiting months more.

“I lost everything, but they never received me, they never considered my case,” Joy, who works as a community organiser at a non-profit, said of the US. “Here in Tijuana, it’s not a secure place.”

Joy is one of thousands of migrants at the border left in limbo this week after a US judge blocked President Joe Biden's attempt to reopen much of the country's asylum system by lifting a measure known as Title 42, which allows for the expulsion of migrants as a pandemic health precaution.

The judge granted a request from a group of Republican-led states to block the Biden administration from lifting Title 42, implemented by the Trump administration in response to the Covid-19 pandemic. The Biden administration had wanted to lift it as soon as Monday. It has said it will appeal against the decision.

The administration has said that lifting the order is necessary, although it has acknowledged that a spike in migration will probably follow — the ruling cited Department of Homeland Security estimates that attempted crossings will increase from 7,000 to 18,000 a day.

There were almost 1.7mn attempts to cross the US southern border in the past fiscal year to September, the highest in at least 22 years, and this year is on track to break that record again, according to US Customs and Border Patrol data.

But activists have also pointed out that the emergency removals, which have no legal consequences, have already contributed to a spike in illegal crossings by incentivising multiple attempts.

Since he took office almost 18 months ago, Biden has struggled to articulate a comprehensive strategy for immigration, an issue that polarises the electorate and which former President Donald Trump capitalised on to win in 2016.

Biden faces a conundrum over how far to undo measures that activists say are inhumane and ineffective but that have support in some states where Democrats are vulnerable in November's midterm elections. Republicans are eager to paint Biden and his party as throwing open the borders to a flood of immigration.

The fight over Title 42 has only added to the confusion and dysfunction on immigration policy, activists said.

"The border continues to be essentially a confusing patchwork of policies with little rhyme or reason behind them," said Aaron Reichlin-Melnick, senior policy counsel at the American Immigration Council. "Has it made the border less chaotic? No, quite obviously not, we had two years of Title 42 in place and the border is still enormously chaotic."

At least 27,000 people are currently on informal lists waiting in Mexican border cities to request asylum in the US, according to the University of Texas's Strauss Center for International Security and Law. Those lists popped up after the Trump administration allowed border patrol officers to limit the number of asylum seekers who can cross each day.

A separate policy known as "Remain in Mexico", where asylum seekers await their hearings south of the border, is currently being reviewed by the Supreme Court.

In Mexican cities along the border, some migrant shelters are near capacity with people from across Central and South America, and also many from farther afield such as West Africa. New migrants arrive all the time, but others have now been there for years in difficult and dangerous conditions.

The homicide rate in Mexico is near a record high — border city Tijuana has one of the highest rates of killings in the world. The violence imperils the migrants and those who provide essential services for them. A priest who ran a migrant shelter in Tecate, Baja California, was found dead [this week](#).

"I get text messages every day from people telling me about the dangers that they are continuing to face and about their fear," said Savi Arvey, policy adviser on the migrant rights and justice team at the Women's Refugee Commission. "I've spoken to Central Americans who have crossed the border with their families multiple times for the opportunity to seek asylum."

The dangers in Mexico and lack of legal consequences for expulsion under Title 42 mean many migrants are attempting multiple crossings. More than one-third of the border patrol encounters in April were with people who had already been caught crossing in that same month, CBP data show.

Organised crime has also adapted to the new policies, with human smugglers offering packages of multiple crossing attempts rather than one, advocates said.

US Congress looks unlikely to provide the comprehensive long-term solution activists say is needed. The fate of Title 42 has divided some Democrats, with some saying they might back Republican attempts to write it into law.

"Over the last decade we have tried increasingly draconian policies to turn away asylum seekers or impose harsher and harsher consequences on them," Reichlin-Melnick said. "Absolutely none of them have worked in the long run."

Marisa Limón Garza, senior director for advocacy and programming at rights group

Hope Border Institute, said the extension of Title 42 would mean more need for mental health services for those who have been kept waiting. “So much is out of your control that you really have to accompany people from that standpoint, the very human reality,” she said.

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