

Title 42 Exemptions

What is Title 42?

Title 42 is a section of U.S. health law that allows the government to stop entry into the U.S. to prevent the spread of disease. Title 42 was originally designed to allow health officials to "quarantine" everyone, including US citizens, arriving in the U.S. from a foreign country--not to expel people from the U.S. It was invoked by the Trump administration in 2020 to close the southern border to lessen the spread of COVID-19, but in actuality, it was an excuse to prevent people from applying for asylum. There is no scientific or public health rationale to supporting Title 42 expulsion of immigrants. Title 42 is still used by the Biden administration. On April 1, 2022, the Biden Administration announced the end of Title 42 effective May 23, 2022. This attempt to end Title 42 was blocked by a recent court decision on May 20, 2022, forcing the Biden Administration at present to continue using Title 42. While the Department of Justice has appealed this decision to a higher court, Title 42 remains in place for now as way to expel people.

What Are Title 42 Exemptions?

Title 42 does NOT apply to unaccompanied migrant children. Additionally, Title 42 allows "case-by-case" Exemptions. These exceptions are based on public safety considerations, humanitarian, or public health interests (medical emergencies, imminent risk of danger, members of "vulnerable populations," such as LGBT persons, etc.).

Further, DHS has acknowledged two categories of migrants that fall under the exemptions. First, on March 4, 2022, a federal judge in *Huisha-Huisha v. Mayorkas* ruled that the U.S. government was not allowed to use Title 42 to expel families seeking asylum. The court held that although families can be subject to Title 42, they cannot be deported to a country where they will face persecution or torture. This was considered a victory, but still limited as it only applied to families not individuals. Moreover, there are concerns that DHS is neglecting to give proper *Huisha-Huisha* screenings.

Second, on March 11, 2022, DHS created a specific exemption for Ukrainian Nationals arriving at land ports of entry due to the Russian invasion of Ukraine. DHS has since announced (effective April 25, 2022) that Ukrainian Nationals arriving at the U.S.-Mexico border would no longer be exempted from Title 42. Instead, Ukrainians get a new, streamlined process to enter the U.S. (and it is unclear that they are actually being denied at the border). Many advocates are calling on DHS to treat all immigrants in the same way they have treated the Ukrainians.

Huisha-Huisha Screenings

Following the *Huisha-Huisha* decision, border patrol officers should be screening family units for fear of persecution or torture if expelled. According to DHS guidance, if the family unit has "manifested a fear" of persecution or torture, the "family should not be expelled without an appropriate screening." Manifestations of fear include: Stating fear of returning to or being sent to the country to which you would be expelled; Stating previous harm by persons in the country to which you would be expelled; Stating future harm by persons in the country to which you would be expelled; Non-verbal actions such as hysteria, trembling, unusual behavior, incoherent speech patterns, self-inflicted harm, panic attacks, or an unusual level of silence.

HOWEVER, it seems border patrol is not properly screening and so it is a good idea for families to clearly express fear and even affirmatively request *Huisha-Huisha* screenings!

How to Request an Exemption

- Find an attorney or local organization!
 - It is very difficult for migrants to request an exemption without representation
 - Border patrol will often ignore requests made by migrants themselves.
- DHS has given specific instructions to organizations on how to submit these requests based on location

Organizations Currently Assisting with Requests

- The Sidewalk School (SWS) – Reynosa/Matamoros: +1 (956) 356-4948
- Las Americas – Juarez: +52 656 881 1210

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