

Biden Administration's Dangerous Haitian Expulsion Strategy Escalates the U.S. History of Illegal and Discriminatory Mistreatment of Haitians Seeking Safety in the United States

On September 18, 2021, the Department of Homeland Security (DHS) announced a [“comprehensive strategy”](#) to expel thousands of Haitian and [other](#) asylum-seeking families and adults who had crossed into the United States near a bridge in Del Rio, Texas – blocking many from access to the U.S. asylum system and fear screenings despite the requirements of U.S. law. Highly disturbing images and accounts from Del Rio reveal U.S. immigration officers, including mounted U.S. Border Patrol agents [armed with cords used like whips](#), violently pushing Haitian adults and children back across the river into Mexico - many of whom were simply trying to return with food and water for their families. Already DHS has expelled hundreds of individuals by plane to Haiti, some in [shackles](#) and many without being [told](#) where they are being taken, while the country is amid twin humanitarian and political crises following a major earthquake in August 2021 and the assassination of the president in July 2021. The head of Haiti’s national migration office has [asked](#) the Biden administration for a “humanitarian moratorium” on the forced returns, citing “ongoing security issues” and warning that “the Haitian state is not really able to receive these deportees.”

These latest expulsions follow the expulsion of [1,400](#) Haitian migrants and asylum seekers to danger in Haiti carried out by the Biden administration in February 2021. *BuzzFeed News* [reported](#) in March 2021 that DHS officials internally acknowledged that deported Haitian immigrants “may face harm” upon return due to violent crime and political instability in Haiti. A March 2021 [report](#) by Haitian Bridge Alliance, UndocuBlack Network, and the Quixote Center noted that all of the individuals expelled to Haiti who were interviewed for the report were either in hiding or had fled the country again. **In designating Haitians in the United States for Temporary Protected Status (TPS) just in August 2021, DHS [noted](#) that “Haiti is grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses.”** Yet in mid-September 2021, DHS [resumed](#) expulsion flights to Haiti. Dozens of members of Congress [wrote](#) to the Biden administration to call for a halt to all deportations to Haiti. The U.N. Refugee Agency has expressed [“serious concern”](#) with expulsions to Haiti without “individual assessments.”

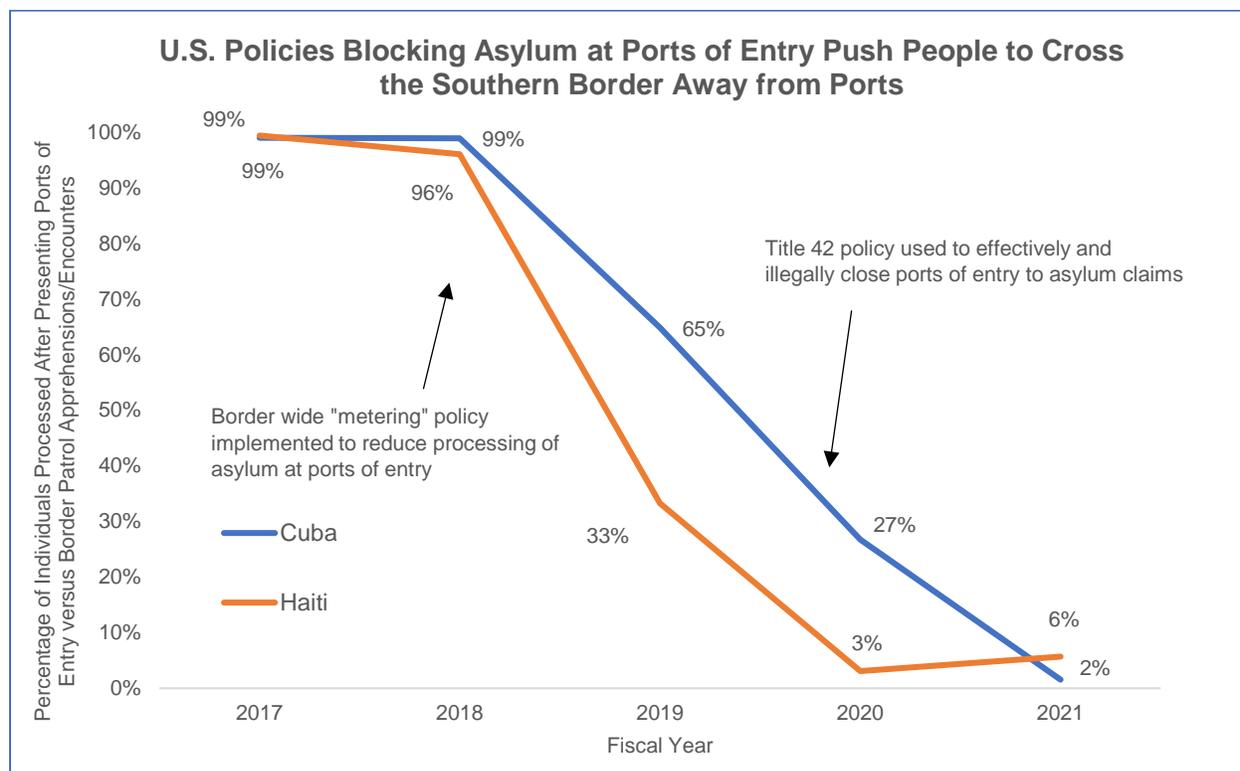
The Biden administration’s horrific and illegal actions to block Haitians from seeking protection in the United States and expel them to danger without access to the U.S. asylum system are the latest in a decades-long history of anti-Black immigration policies that have often targeted Haitian migrants for illegal and discriminatory turnbacks, expulsions, detention, and other mistreatment, as this factsheet explains.

Illegally Blocking Haitian and Other Asylum Seekers Pushes Them to Cross Between Ports of Entry to Attempt to Reach Safety

Since taking office in January 2021, the Biden administration has extended, embraced, and escalated the Trump administration’s policy of misusing Title 42 of the U.S. Code to [illegally](#) block asylum at ports of entry and expel families and adults who cross the border seeking protection, including many from Haiti. Epidemiologists and public health [experts](#) have [repeatedly](#) denounced the policy as lacking any public health justification and have [written](#) that the expulsion policy exacerbates the spread of COVID-19.

Wielding Title 42, DHS has expelled thousands of Haitians back to danger in [Mexico](#) as well as directly to the dangers they fled in Haiti - without providing required access to the U.S. asylum system or protection screenings in flagrant violation of U.S. asylum [laws](#) and [treaties](#), and the [constitution](#). In fiscal year (FY) 2021 (through August), DHS has subjected over [3,700](#) Haitians to Title 42 at the southern U.S. border. Haitian asylum seekers expelled to Haiti by the Biden administration without an opportunity to apply for U.S. asylum include a [mother](#) who was beaten, kidnapped, and raped for her involvement in a Haitian political opposition group and expelled with her husband and baby, and a [teacher](#) who received death threats due to her political views who was expelled with her family, including her four-year-old daughter.

U.S. policies (including Title 42 as well as the policy of “metering” – discussed in detail below) that block people from seeking asylum at ports of entry violate U.S. law, create disorder, thwart organized processing, and push people to undertake dangerous, and increasingly [deadly](#), crossings away from ports of entry, often at the mercy of criminal organizations that control much of the border. DHS Office of Inspector General [reports](#) have [confirmed](#) that policies like metering that block asylum at ports of entry push asylum seekers to cross the border away from official ports of entry. Government data shows that Haitian and Cuban asylum seekers, for instance, in the past have approached and sought asylum overwhelmingly at U.S. ports of entry on the southern border (see chart below). However, the percentage of asylum seekers from these countries crossing the border between ports of entry has dramatically shifted as successive administrations have deployed policies that restrict or block access to asylum at ports of entry. **In FY 2017, 99 percent of the total number of Cubans and Haitians encountered at the southern border (at ports of entry and by the U.S. Border Patrol away from ports of entry) had come through a port of entry.** In FY 2021 to date, with asylum access effectively shuttered at ports of entry, just 2 percent of Cubans and 6 percent of Haitians arriving at the southern border went through a port of entry.



Source: [2017](#), [2018](#), [2019](#), [2020](#), [2021](#); [U.S. Border Patrol 2017–2019](#)

Stranded in Danger in Mexico Due to Title 42 Blockade

Haitians blocked from seeking U.S. asylum at the southern border and/or expelled to Mexico face grave dangers in Mexico, where Haitian migrants are often subjected to pervasive anti-Black [discrimination](#) and bias-motivated violence. An April 2021 report by Al Otro Lado, Haitian Bridge Alliance, and Human Rights First noted that 61 percent of Haitian asylum seekers blocked from U.S. asylum protections [reported](#) being the victim of a crime while in Mexico, including kidnapping, rape, and robbery. Analysis of a survey of asylum seekers stranded in Mexico [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. Recent [attacks](#) against Black asylum seekers and migrants in Mexico include a Haitian LGBTQ man who was raped and robbed in Tijuana.

In southern Mexico, Mexican police and immigration officials have [turned](#) to increasingly aggressive and violent enforcement tactics at the [behest](#) of the U.S. government to block Haitian and other people fleeing persecution from seeking protection, including attacking a Haitian [man](#) holding his two-year-old daughter. The Mexican government's policy has trapped thousands of Haitians in Tapachula in southern Mexico, where they [face](#) horrendous living conditions and pervasive racial discrimination. Mexican authorities have also illegally forced many [Haitians](#) and [other](#) asylum seekers to cross into Guatemala without an opportunity to request asylum in Mexico.

“Political Crisis, Violence, and a Staggering Increase in Human Rights Abuses” in Haiti

Many Haitians arriving at the U.S. border have fears of return and may qualify for refugee protection as they would face persecution on account of a ground protected under U.S. asylum law, such as their political opinion, gender, or sexual orientation, if forced to return to Haiti. For instance:

- A Haitian radio journalist who was [trapped](#) in Tijuana told Human Rights First in spring 2021 he was terrified to ask for U.S. asylum for fear that the U.S. government would expel him back to Haiti, where he had survived an assassination attempt prompted by his criticism of the Haitian government after his mother was murdered.
- A Haitian [family](#) waiting in Tijuana was forced to flee Haiti after the mother, a teacher, received death threats for her political views and her father was disappeared. The family had been expelled to Haiti from the United States several months earlier and forced to flee again after neighbors in Haiti warned the woman that she was being searched for and remained in danger. She told Human Rights First that when she learned she and her family were being expelled to Haiti, “I was sick with fear . . . I wanted to call my family and explain what was happening, but [U.S. Customs and Border Protection (CBP) officers] didn’t let me call anyone. I was too sick to eat or comfort my child.”
- A Haitian man who was expelled to Haiti by the Biden administration last week told the [Associated Press](#) he was afraid to travel to his relatives because he and his family would need to pass through a gang-controlled region where killings are frequent. He said, “I’m scared . . . I don’t have a plan.”

Even those who may ultimately be determined not to be eligible for asylum would face severe dangers if returned to the deepening political and environmental crisis in Haiti. In August 2021, **DHS [acknowledged](#) in designating Haitians in the United States for TPS that “Haiti is grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses.”** The U.S. Department of State [posted](#) a Level 4 “Do Not Travel” advisory for Haiti—the highest threat level and the same threat level applied to warzones like Afghanistan, Iraq, and Syria—warning that “kidnapping is widespread,” “violent crime, such as armed robbery and carjacking, is common,” and that “local police generally lack

the resources to respond effectively to serious criminal incidents.” In its 2020 annual [report](#) on human rights in Haiti, the U.S. State Department identified significant human rights issues including “reports of unlawful and arbitrary killings by gangs allegedly supported and protected by unnamed officials; excessive use of force by police; . . . physical attacks on journalists; [and] . . . lack of investigation of and accountability for violence against women.” In 2021, [Human Rights Watch’s](#) annual report found that “Haiti is facing one of its worst outbreaks of violence since 1986” and that “[a]lleged complicity between politicians and gangs” “contribute[s] to a climate of insecurity.”

Blatant Violation of U.S. Asylum Law Protections

The Biden administration is blatantly [violating](#) U.S. law and Refugee Convention obligations by expelling asylum seekers without access to asylum or credible fear screenings required by Congress. The [Immigration and Nationality Act](#) safeguards the right to seek asylum in the United States “whether or not at a designated port of arrival.” Further, individuals subjected to the expedited removal process must be asked whether they intend to apply for asylum or fear return to their country and those who express a fear of return must be referred for [mandatory](#) fear screenings with an asylum officer prior to removal. Haitian asylum seekers expelled under Title 42 are not permitted to request asylum or screened for a fear of return in violation of U.S. law and treaty obligations. In September 2021, a federal district court issued an [order](#) finding that Title 42 expulsions likely violate U.S. asylum law and that asylum seekers face “real threats of violence and persecution if they [are] to be removed from the United States.” While that ruling applies only to families, the court’s analysis is clear that Title 42 does not authorize expulsions of asylum seekers.

Some have inaccurately [claimed](#) that asylum seekers who lived in other countries are not eligible for asylum. Under U.S. law, asylum seekers who have transited through or lived in third countries may qualify for asylum if they were not “[firmly resettled](#)” – *i.e.* had not received an offer of permanent residence in a safe country. Even a person who has permanent residence may actually not be protected in that country – and so would not be barred from asylum – if they establish that they would be subjected to [persecution](#) or substantially [restrictive](#) conditions of residence.

Many Haitians who left their country years ago have been unable to find safe residence in the countries they have passed through on their way to the United States. While some countries offered residence to Haitians, not all were granted permanent residence. They would not be considered “firmly resettled” under U.S. law. Further, because of pervasive anti-Black and anti-Haitian violence and discrimination, many Haitians offered residence in third countries may qualify for an exception to firm resettlement. In [Brazil](#) and [Chile](#) many Haitians have faced [xenophobic](#) and anti-Black [violence](#) and [discrimination](#) – including by [police](#) and other local authorities – forcing them to seek safety elsewhere. This discrimination has been exacerbated by the COVID-19 [pandemic](#), as Haitians have been scapegoated for the spread of coronavirus cases.

Discrimination, Abuse, and Mistreatment in U.S. Immigration Detention

Discrimination against Haitians also pervades the U.S. immigration detention system. **Haitian asylum seekers and migrants detained by Immigration and Customs Enforcement are 50 percent less likely to be granted bond by immigration judges than other immigrants.** For instance, according to government [data](#) analyzed by Syracuse University’s Transactional Records Access Clearinghouse (TRAC), in FY 2021 to date, only 15 percent of Haitians were granted bond by an immigration judge compared to the 30.5 percent of all other nationalities who were granted bond. TRAC’s analysis of government [data](#) also shows that Haitians who do receive bond are far more likely to be forced to pay

astronomically high bond amounts. In FY 2021 to date, **immigration court judges set bond amounts in excess of \$25,000 for 16 percent of Haitian nationals – nearly six and a half times the rate of other nationalities** who received bonds in that range in 2.5 percent of cases. Between June 2018 and June 2020, the Refugee and Immigrant Center for Education and Legal Services (RAICES) [reported](#) that **immigration bonds for Haitian immigrants were 54 percent higher than those for other immigrants.**

In immigration detention, DHS subjects Haitian migrants to mistreatment, abuse, and unlawful forced removal. Haitians have [reported](#) lack of access to Haitian Creole interpretation in detention, denial of access to attorneys through intimidation, medical neglect, and lack of access to sanitation. In February 2021, for instance, a [Haitian asylum seeker](#) was expelled after being detained, denied access to a shower for 11 days, and prevented from changing her baby into clean clothes after he had soiled his clothes. Even after [designating](#) Haiti for TPS in May 2021, DHS continued to intimidate and pressure detained Haitian asylum seekers eligible for TPS to sign removal orders until attorneys at Haitian Bridge Alliance intervened and obtained federal court orders blocking their removal.

DHS has continued to detain Haitian asylum seekers across the United States despite designating Haiti for TPS, subjecting asylum seekers to the flawed expedited removal process through which many Haitians have recently received negative credible fear interviews and been ordered deported despite likely facing a serious risk of harm if returned. In recent months, DHS has needlessly transferred Haitians between detention centers, increasing their risk of COVID-19 exposure, including to Virginia, Minnesota, Colorado, Louisiana, and Mississippi. Attorneys reported to Human Rights First that even after the TPS designation was announced DHS continued to detain many TPS-eligible Haitians and deny their release requests despite their eligibility for relief, subjecting them to weeks or months of cruel detention conditions.

Decades-long History of Discriminatory U.S. Immigration Policies and Laws

Through its inhumane and unlawful treatment of Haitian asylum seekers and migrants, the Biden administration is perpetuating a long and shameful history of discrimination against Haitians in the U.S. immigration system.¹ After the U.S. military [occupation](#) of Haiti from 1915 to 1934 created an “economically crippled and politically bankrupt nation,” the U.S. government provided ongoing support to the Duvalier regime, whose decades of rule became [known](#) as “the most oppressive regime in the hemisphere,” resulting in the deaths of over 30,000 people and forcing hundreds of thousands to flee Haiti. In response to these Haitian refugees – a crisis the United States had helped create – the U.S. government blocked and returned Haitians to harm and subjected them to discriminatory immigration policies.

- **Illegal rapid expulsion program.** In **1978**, the former Immigration and Naturalization Service (INS) established a [program](#) to “expel Haitian asylum applicants as rapidly as possible,” under which it expelled over 4,000 Haitians, many of whom upon being returned to Haiti were imprisoned, persecuted, and in many cases, killed. A federal court [held](#) that this policy violated due process.
- **Birth of current U.S. immigration detention regime.** As Haitian asylum seekers continued to flee to the United States President Reagan convened a special task force on immigration in 1981 that recommended that the United States return to a policy of detaining migrants until they established a prima facie claim for admission, rather than granting parole. In **1983**, the [Mass Immigration](#)

¹ This timeline draws on an amicus brief submitted by Haitian Bridge Alliance and the Institute for Justice & Democracy in Haiti with Ira Kurzban and Irwin Stotzky – leading practitioners on Haitian asylum claims – in *Al Otro Lado v. Mayorkas*, 17-cv-02366 (S.D. Cal), a lawsuit challenging the U.S. government’s policy of turning back asylum seekers at ports of entry.

[Emergency Plan](#) was formed, requiring the preparation of 10,000 immigration detention beds. Under this new migrant detention regime, Haitian asylum seekers were disproportionately incarcerated. In a challenge to the detention of Haitian nationals, a federal district [court](#) found that INS' use of parole was racially inconsistent, finding that "more Haitians are being detained and for longer periods of time than non-Haitians" and that "a larger percentage of non-Haitians are granted parole or deferred inspection than the percentage of Haitians." The Supreme Court did not directly address the district court's findings but [held](#) that U.S. law and regulations in question did not authorize race or national origin-based discrimination.

- **Asylum claims denied.** An eighteen-month study that concluded in 1988 [reported](#) that "although there existed extensive documentation of human rights abuses and high levels of politically motivated violence in Guatemala, Haiti, and El Salvador, [an] immigration court . . . granted asylum to no Guatemalans or Haitians and granted asylum to only one Salvadoran application." The study also found that immigration judges viewed asylum claims with "presumptive skepticism" and "appeared to be reluctant to grant asylum claims over the objections of the government's attorney."
- **Blocked from protection at sea.** From 1981 to 1991, the United States [interdicted](#) approximately 25,000 Haitians at sea and returned many to danger in Haiti without screening them for asylum. When many could not be processed by the Coast Guard, the Department of Defense began holding some Haitian migrants in temporary facilities at the U.S. Naval Station Guantánamo Bay and [interviewed](#) them without access to legal representation. Once the facilities were at capacity, President H.W. Bush [directed](#) the Coast Guard to turn away Haitians without protection screenings.
- **Congressional relief excludes Haitians.** In 1997, Congress [enacted](#) the Nicaraguan Adjustment and Central American Relief Act (NACARA), which enabled Nicaraguans and Cubans to become legal permanent residents and permitted certain unsuccessful Central Americans and Eastern European asylum applicants to seek other immigration relief, but deliberately excluded Haitian asylum seekers from this legislation due to concerns that including Haitians would "[kill the bill.](#)"
- **Limited Congressional relief for Haitians.** In 1998, Congress enacted the Haitian Refugee Immigration Fairness Act (HRIFA), which enabled Haitians who filed asylum claims or were paroled into the United States before December 31, 1995, to apply for legal permanent residence. Despite the fact that the bill was [motivated](#) by a desire to treat Haitian immigrants fairly and consistently with other immigrant populations—a major departure from historical U.S. policy—the legislation nevertheless was more [restrictive](#) than NACARA and excluded many vulnerable Haitian migrants.
- **Metering policy traps Haitian asylum seekers at the US-Mexico border.** In 2016, the Obama administration began illegally [turning back](#) asylum seekers at ports of entry, targeting Haitians in Tijuana and Mexicali, forcing them to wait in danger in Mexico. The Trump administration [expanded](#) this policy to all asylum seekers and implemented it border-wide in 2018, falsely citing capacity constraints at ports of entry to block asylum seekers from requesting protection. In [coordination](#) with CBP officers, Mexican government officials and civil society organizations created informal waitlists for U.S. processing of asylum seekers that often [discriminatorily](#) excluded Haitian and other Black asylum seekers leaving them stranded without any opportunity to approach ports of entry to request protection. An estimated [20,600](#) people currently remain on the waitlists. In September 2021, a federal district court [held](#) that this policy, referred to as "turnbacks" or "metering," is likely unlawful because the U.S. government is required to process asylum seekers at ports of entry under the Immigration and Nationality Act. In September 2021, a federal district court [ruled](#) that "metering" of asylum seekers is likely unlawful.

- **Termination of TPS designation for Haiti.** In 2017, the Trump administration terminated TPS for Haitians, many of whom were victims of the 2010 earthquake that reportedly killed more than 200,000 people and left over a million homeless. In 2010, the Obama administration had [designated](#) TPS for Haiti following the devastating earthquake, [redesignated](#) it in July 2011, and [extended](#) it multiple times through 2017. A federal district court issued a [preliminary injunction](#) in 2019 enjoining the termination of TPS, citing “political motivations” and the “White House’s grander ‘America First’ strategy” as the government’s underlying reasons for terminating TPS. The Biden administration restored TPS for Haiti in August 2021.
- **Haitians excluded from visa programs.** In 2018, the Trump administration abruptly and without justification [removed](#) Haiti from the list of nations whose citizens may participate in the H-2A and H-2B visa programs, [excluding](#) Haitians from entering the United States for temporary work.
- **Haitian family reunification program terminated.** In 2019, the Trump administration also [discontinued](#) the Haitian Family Reunification Parole Program (HFRP), a program the Obama administration had implemented in 2014 to allow U.S. citizens and lawful permanent residents to apply for parole for family members in Haiti. The administration’s animus toward Haitian and Black immigrants was evident in President Trump’s [statements](#): “Why are we having all these people from shithole countries come here?” and “Why do we need more Haitians? . . . Take them out.”
- **Haitian asylum seekers blocked and expelled under Title 42.** Since March 2020, thousands of Haitian and other asylum seekers have been unable to request asylum at the US-Mexico border due to public health restrictions implemented by the Trump administration under the guise of the pandemic. In FY 2020, the United States used Title 42 to expel over [4,500](#) Haitian migrants and asylum seekers who sought refuge at the southern U.S. border without access to the U.S. asylum system. Many were expelled to Mexico even though Mexico had only publicly [agreed](#) to accept nationals of certain Central American countries for expulsion.
- **Expulsion flights to Haiti expand.** In February 2021, the Biden administration [expanded](#) deportation and expulsion flights to Haiti, sending over a thousand Haitian asylum seekers and migrants to harm in Haiti amid escalating violence and political turmoil, as well as worsening humanitarian conditions in the wake of natural disasters. Despite acknowledging the grave danger that people face in Haiti and designating the country for TPS due to current conditions, DHS [resumed](#) expulsion flights to Haiti in September 2021 and plans to rapidly expel or deport the nearly [14,000](#) Haitians who have arrived to Del Rio, Texas.