

# The Invisible Wall:

## Title 42 and its Impact on Haitian Migrants



The Bridge



Quixote Center

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## The Bridge

**Haitian Bridge Alliance** (“HBA”) is a nonprofit community organization that advocates for fair and humane immigration policies and connects migrants with humanitarian, legal, and social services, with a particular focus on Black migrants, the Haitian community, women, LGBTQIA+ individuals, and survivors of torture and other human rights abuses. Since 2015, HBA has provided services to asylum seekers and other migrants at the U.S.-Mexico border, in U.S. detention, and during U.S. immigration proceedings.



## Quixote Center

**The Quixote Center** is a multi-issue organization working in partnership with organizations in Haiti and Nicaragua on community development strategies and ecological sustainability. The Quixote Center is also member of, and fiscal sponsor for, the Franciscan Network on Migration, which supports migrant shelters in Mexico and Central America. For more information about our work visit [www.quixote.org](http://www.quixote.org).



**The UndocuBlack Network** (UBN), founded in 2016, is a multigenerational network of currently and formerly undocumented Black people that fosters community, facilitates access to resources, and contributes to transforming the realities of our people so we are thriving and living our fullest lives. UBN has chapters in New York City, the DC/MD/VA area, and Los Angeles, CA.

## Contents

ACKNOWLEDGEMENTS AND ABOUT THE AUTHORS	2
Introduction	6
<b>PART ONE: Title 42</b>	<b>10</b>
I. Border Patrol's Enforcement of the Order	11
II. Is Title 42 Medically Necessary or a Pretext for Deportations?	13
III. Dismantling of Legal Protections Under the Guise of Public Health	15
IV. Is Title 42 Legal?	16
A. Title 42 Conflicts with Existing Laws Enacted By Congress	16
B. Current Legal Challenges Against Title 42	17
C. Regulations Already Enacted by Congress to Prevent the Spread of Communicable Diseases Such as COVID-19	17
<b>PART TWO: Impacts of Title 42 Removals and Expulsions on Haitian Asylum Seekers</b>	<b>18</b>
I. Reasons for Leaving Haiti	19
II. Haitians Seek Refuge in Brazil and Chile	20
III. Obstacles to Getting Through the U.S.-Mexico Border	20
IV. Removal Flights to Haiti Soar as ICE Fails to Take Adequate Steps to Prevent, Treat or Test for COVID-19	22
V. Family Detention and Removals	25
A. Secret Detention	25
B. Limited Access to Lawyers or Legal Protections	26
C. Lack of Access to Language Interpretation	27
D. Lack of Access to Sanitation or Medical Care	28
E. People Not Informed of Whether or When They Will Be Removed	29
VI. Dangerous Conditions for Those Expelled to Haiti	31
VII. Expulsions of Haitians to Mexico	33

Recommendations	36
<b>ANNEXES: Profiles of Haitian Migrants</b>	<b>38</b>
Annex One	
“Now the country is in more turmoil so I’m even more afraid to leave [my home]. If these people find us, they would just kill us this time around.”	39
Annex Two	
“Everybody knows that Haiti is a very hard place to be in currently.”	40
Annex Three	
“This person knows where I am and I’m always very fearful that this person will come after me. The same person who persecuted me and caused me to leave Haiti.”	42
Annex Four	
“When I was deported back to Haiti, word got out to the political group that I was coming back to Haiti.”	43
Annex Five	45
Annex Six	47
Annex Seven	49
Annex Eight	56
Notes	58

# INTRODUCTION



*When we saw the airplane landing in the complex, everyone started crying. Because the officers had told us we were going to another immigration prison, seeing the airplane at the complex seemed like confirmation that we were not actually being transferred.*

*None of the officers ever confirmed that we were being deported. No one would even say the word deportation. None of them, through this whole process. All the families were crying on the bus, for over an hour. My husband and others kept asking what was going on, if they were deporting us. They would not tell us anything despite our desperation. It was all extremely emotional.<sup>1</sup>*

**O**n February 1, 2021, the first day of Black History Month, U.S. Immigration and Customs Enforcement (“ICE”) drastically expanded removals and expulsions to Haiti. These flights have continued into March, despite intense pushback from immigrants’ rights groups and the Haitian American community, as well as a flurry of media reports, including editorials from the *New York Times*,<sup>2</sup> the *Washington Post*<sup>3</sup> and the *Miami Herald*.<sup>4</sup> As of the release of this paper, over 1,200 people have been expelled to Haiti since February 1, 2021, including hundreds of children, and dozens of Haitians, possibly hundreds, more have been expelled to Mexico.<sup>5</sup>

Almost all of these expulsions are occurring under what is referred to as the “Title 42” policy enacted by the Centers for Disease Control (“CDC”), which authorizes the expulsion of noncitizens without any procedural protections guaranteed by Congress, such as the right to seek asylum and other related forms of humanitarian protection. The Trump Administration’s justification for adopting this policy that violates U.S. immigration statutes and its international obligations of *non-refoulement* was to protect Customs and Border Protection (“CBP”) officers from COVID-19 and to minimize the number of persons in congregate settings, such as immigration detention centers.<sup>6</sup>

Many health experts have opined that, notwithstanding the coronavirus pandemic, denying protection to migrants does little to protect public health.<sup>7</sup> The idea for the policy came not from public health officials, but from the Trump White House. President Donald Trump’s immigration adviser, Stephen Miller, proposed the idea to the CDC in February 2020. Initially, CDC officials resisted, but, under pressure from Vice President Mike Pence and other Administration officials, the CDC agreed to issue the order in March.<sup>8</sup>

The result has been catastrophic. Between March 20, 2020 and February 28, 2021, the United States has expelled 536,000<sup>9</sup> people under the Title 42 policy; 75,000 men, women and children in February 2021 alone.<sup>10</sup> As Rubén García, the founder of Annunciation House based in El Paso, one of the largest shelter networks in the United States, said to the *New York Times*, “Trump got his wall, it’s called Title 42.”<sup>11</sup>

*“Trump got his wall,  
it’s called Title 42”*

Rather than dismantle the Trump Administration’s invisible wall, the Biden-Harris Administration has doubled down. More Haitians have been removed per the Title 42 policy in the weeks since President Joe Biden and Vice President Kamala Harris took office than during all of Fiscal Year 2020.<sup>12</sup> In the year since the Title 42 policy was implemented, over one-third (38%) of all removal flights to Haiti have

happened on President Biden's watch.

The Biden-Harris Administration's 100-day moratorium<sup>13</sup> policy on deportations, which has been temporarily stayed by a Texas Federal Court,<sup>14</sup> does not include Title 42 expulsions. Though the Biden-Harris Administration has promised a review,<sup>15</sup> the Title 42 policy remains in place, with the result that 2,100 people are apprehended and expelled every day, including families with children.<sup>16</sup> Others, including most Haitian migrants, are detained for days or weeks before being put on a plane, practices that undermine the argument that the policy minimizes contact with CBP officials and avoids congregate settings.

The Haitian Bridge Alliance, the Quixote Center and UndocuBlack have written this Report to offer the voices and hardships of Haitian migrants, mostly families, who have been expelled under the Title 42 policy. The Report provides the narratives of seven Haitian families who were apprehended at the U.S. Mexico border within the last year and were subject to expulsion to Haiti or Mexico under the Title 42 policy. Two additional narratives are included of Haitians who entered the United States before March 2020, but who were recently removed. This Report shows how Haitian migrants flee violence, instability and persecution in Haiti, travel a long and treacherous journey to the U.S.-Mexico border seeking safety and security in the United States, only to be abused by ICE and CBP officers and - under the Title 42 policy - summarily expelled back to the country they fled without even access to a lawyer or the opportunity to seek asylum or other protection. As one Haitian woman stated:

More Haitians have been removed per the Title 42 policy in the weeks since President Joe Biden and Vice President Kamala Harris took office than during all of Fiscal Year 2020

*I begged [CBP agents] to be sent to Mexico, that my baby was from there, but they said no they were sending me to Haiti.<sup>17</sup>*

Part One of the Report discusses the history of the Title 42 policy and its implementation; summarizes conclusions from prestigious public health experts' that the policy is not medically necessary but instead a political decision to close the U.S.-Mexico border; and explains how the policy deprives migrants of their right to seek asylum or other forms of protection in the United States in violation of U.S. and international law, and the credible legal challenges to the policy currently pending in U.S. courts.

Part Two of the Report reviews the Title 42 policy's impact on Haitian migrants, in particular the invisible wall between the United State and Mexico that the policy has created. The paper discusses the reasons that Haitians flee Haiti; their arduous journey from Haiti through South and Central America to the U.S.-Mexico border; ICE's failure to properly screen, test or treat Haitians for COVID-19 before removing or expelling them to Haiti; and the lack of legal protections afforded Haitian migrants under the Title 42 policy – including the lack of access to lawyers, language interpreters, medical care, and even basic sanitation. The Report explains how migrants are expelled to Haiti under the Title 42 policy without being informed whether or when they will be expelled, and without the opportunity to seek asylum or other forms of protection. The Report also describes the high security risks that Haitian migrants face when they are expelled to Haiti or Mexico.

*Now the country is in more turmoil so I'm even more afraid to leave [my home]. If these people find us, they would just kill us this time around. – Haitian woman expelled under Title 42 in February 2021<sup>18</sup>*

The authors offer nine recommendations, first and foremost, that the Title 42 policy be revoked immediately. Other recommendations include that ICE and CBP follow public health experts' advice by adopting a wide range of safety measures to mitigate public health risks to border agents. Lastly, the authors recommend that asylum processing be resumed while releasing migrants to shelter in place with their loved ones in the United States rather than detaining them.



*Haitian migrant tents in Tijuana*

# **PART ONE:**

## Title 42



On March 20, 2020 the CDC issued the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists.<sup>19</sup> This order claimed authority given to the CDC under Title 42 of the U.S. Code (42 U.S.C. § 265, a public health provision) to block entry of people into the United States as a response to a public health crisis. The original order, which was issued for 30 days and then extended indefinitely on April 20, 2020, was replaced by the *Order Suspending the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists* on October 13, 2020.<sup>20</sup> These orders are nearly identical except that the October version includes summary evidence of the impact of the original March declaration.

Referred to as the Title 42 policy, these orders provide the basis for CBP to summarily expel anyone they encounter, with no access to asylum or other humanitarian relief, immigration courts, or legal counsel. The CDC order was issued with the goal of reducing the number of people held “in congregate settings” such as CPB stations and Ports of Entry (“POEs”). According to the CDC:<sup>21</sup>

*[t]here is a serious danger of the introduction of COVID-19 into the POEs and Border Patrol stations at or near the United States borders with Canada and Mexico, and into the interior of the country as a whole, because COVID-19 exists in Canada, Mexico, and the other countries of origin of persons who migrate to the United States across the United States land and coastal borders with Canada and Mexico. Those persons are subject to immigration processing in the POEs and Border Patrol stations. Many of those persons (typically aliens who lack valid travel documents and are therefore inadmissible) are held in the common areas of the facilities, in close proximity to one another, for hours or days, as they undergo immigration processing. The common areas of such facilities were not designed for, and are not equipped to, quarantine, isolate, or enable social distancing by persons who are or may be infected with COVID-19.*<sup>22</sup>

Given the supposed dangers of holding people in these congregate settings, plus the Border Patrol’s incapacity to provide medical services, CDC Director Dr. Robert Redfield declared that any, “aliens seeking to enter the United States at POEs who do not have proper travel documents, aliens whose entry is otherwise contrary to law, and aliens who are apprehended at or near the border seeking to unlawfully enter the United States between POEs,” may be denied entry to the United States.<sup>23</sup>

## I. Border Patrol’s Enforcement of the Order

To enforce this order, Dr. Redfield enlisted the Department of Homeland Security (“DHS”) to act as agents to remove people as quickly as possible from the United States. The CDC order states, “The faster a covered alien is returned to the country from which they entered the United States, to their country of origin, or another location as practicable, the lower the risk the alien poses of introducing, transmitting, or spreading COVID-19 into POEs, Border Patrol stations, other congregate settings, and the interior.”<sup>24</sup>

In response, CBP issued guidance to agents on how to implement this order. This guidance emphasizes speed of removal:

*To the maximum extent possible all processing will be done in the field. Only in exigent circumstances will aliens be taken into permanent CBP facilities. Once USBP [United States Border Patrol] determines an alien is subject to the CDC order, in the field and to the extent practical, USBP will capture a subject's biographical information and archive data appropriately.<sup>25</sup>*

Agents are to use their own “training, experience, physical observation, technology, questioning and other considerations” to decide whether someone they encounter is subject to removal under the CDC order. Once this determination is made, “[s]ubjects will be transported to the nearest POE and immediately returned to Mexico or Canada depending on their point of transit.”<sup>26</sup>

In other words, the Title 42 policy categorically denies entry to all migrants trying to cross the border without travel documents, whether by POE or apprehended after entering without authorization, and authorizes their immediate expulsion (to Mexico or their home country) without ever screening them for asylum or other humanitarian protection under the law.<sup>27</sup> (The only exception is a screening under the United Nations Convention Against Torture, known as a “CAT screening,” discussed below in Part Two, Section V(B))

There are two designations that border patrol agents can make when they encounter someone they believe is covered by Title 42: Non-Deportable/Not In Custody, and Non-Deportable/In Custody. People who must be flown out of the country and thus detained for some amount of time are counted as “in custody,” a designation that requires compliance with transportation and detention rules. For example, elsewhere in the guidance, CBP notes:

*Subjects encountered that are not amenable to immediate expulsion to Mexico or Canada will be transported to a dedicated facility for limited holding prior to expulsion to the alien's country of citizenship. This varies by sector but should be a tent, soft-sided facility or predesignated CBP/USBP facility with dedicated space.*

*ICE/ERO [Enforcement and Removal Operations] will take custody of any subject cleared by HHS [Health and Human Services] or appropriate medical personnel and follow established procedures under Title 8 or Title 42 as applicable.<sup>28</sup>*

This is very relevant for people from Haiti. By its own guidance, CBP is still taking people into custody and placing them in quarantine. In some cases, the detainees are transferred to ICE custody and put into a two-week quarantine and/or tested for COVID-19. The United States is then denying these people held in custody, who have already been detained and screened by health professionals, the right to seek asylum on the basis that the United States does *not* have the capacity to detain and screen them. Even worse, ICE often expels people even *after* receiving negative COVID tests and/or after the quarantine period, further undercutting the public health risk reasoning for the policy.

## II. *Is Title 42 Medically Necessary or a Pretext for Deportations?*

According to prominent public health experts from Harvard, Stanford, Columbia, Johns Hopkins and other medical schools and hospitals around the country, there is no sound public health rationale for the Title 42 ban on migrants.<sup>29</sup> In January 2021, public health experts pleaded with CDC Director Dr. Robert Redfield and Acting Secretary of HHS Norris Cochran to rescind the CDC policies, stating, “[t]he CDC order does not, nor was it ever intended to, protect public health. Exploiting public health to ban refugees and immigrants was a goal of the Trump administration long before the pandemic. The Trump administration furthered this anti-immigrant agenda when it strong-armed the CDC into authorizing the mass expulsion of asylum seekers.”<sup>30</sup>

The Trump Administration argued that Title 42 policies were necessary to protect CBP officers and to avoid bringing people into congregate settings such as immigration detention or CBP stations. They point out that when a person arrives at the border and lacks a visa, border agents must spend additional time screening the individual under immigration laws, thereby exposing officers to great danger.<sup>31</sup> But as public health experts have explained, a wide range of safety measures are available to mitigate public health risks to border agents, including paroling migrants to shelter in place with their loved ones in the United States rather than detaining them. It is also important to remember that despite travel restrictions along the border, 40 million border crossings, including students, business people and tourists along the southern border between March and December of 2020.<sup>32</sup> As Molly O’Toole writes in the *Los Angeles Times*, the Title 42 policy “in practice almost exclusively bars migrants and asylum seekers at the border with Mexico.”<sup>33</sup> Juxtaposing these figures, it is hard to reconcile Title 42 policies with a public health justification for the policies.

In May 2020, public health experts wrote to CDC Director Robert Redfield, stating that “[d]espite its public health pretext, the CDC order fails to further public health and disregards alternative measures that can protect public health while preserving access to asylum and other protection.”<sup>34</sup> Experts provided a list of recommended public health procedures that would provide sufficient protection against the spread of COVID-19 without needing to resort to the expulsions to the Biden-Harris transition team in December 2020. These included using masks; hand hygiene; distance demarcations and barriers; adapting protocols to minimize delays; avoid congregate and high-density situations; maximize ventilation; ramp up testing capacity; and place migrants with their families in the United States or other U.S. community contacts to shelter in place with case management rather than in congregate settings like detention facilities.<sup>35</sup> With the equipment that CBP facilities already have, DHS and the CDC could implement structural changes that would make rapid testing, quarantining, and social distancing all available at CBP facilities and POEs.

*“[t]he CDC order does not, nor was it ever intended to, protect public health. Exploiting public health to ban refugees and immigrants was a goal of the Trump administration long before the pandemic.”*

To say that migrants cannot cross the border because of the risk that they may carry a contagious dis-

ease overlooks that a core function of CBP officers' jobs is to screen individuals crossing the border for contagious diseases. The CBP Inspector's Field Manual states that CBP officers are responsible for observing all travelers for obvious signs and symptoms of quarantineable and communicable diseases, such as fever, jaundice, respiratory problems (severe cough or difficulty breathing), bleeding from the eyes, nose or other wounds, severe diarrhea, and unexplained weakness or paralysis.<sup>36</sup> CBP officers are trained and provided personal protective equipment such as masks and gloves, and "must use this equipment in dealing with travelers suspected of having communicable diseases or quarantine illness, as well as handling the individuals' documents and belongings."<sup>37</sup> Again, by adopting the suggested health procedures targeted at the coronavirus, CBP agents will be able to screen and process migrants with minimal risk of catching the virus.

Moreover, Title 42 policies do not prevent detention in congregate settings such as immigration detention for migrants such as Haitians, since they spend from several days to several weeks in detention before being removed to Haiti or expelled to Mexico.<sup>38</sup> In reality, DHS could process, test for COVID-19, quarantine, and release migrants on parole to shelter in place with family in a shorter amount of time than currently used to detain them with the intent of removal. Paradoxically, revoking Title 42 and adopting basic precautions, many of which are already being employed, might present *less* risk to border agents. The risk would be reduced further if immigrants were tested for COVID-19 and/or required to present evidence of a recent negative COVID test at a Port of Entry.

The science is clear, but the decision to safely open the border requires political will. The U.S. government has implemented and recommended numerous public health measures for the millions of travelers who have crossed U.S. air and land borders since the pandemic began.<sup>39</sup> As the situation has evolved, the CDC has updated requirements for travelers, and made international travel more open and feasible.<sup>40</sup> For example, effective January 26, 2021, all air passengers two years of age and over entering the United States must present a negative COVID-19 test, taken within three calendar days of departure, or proof of recovery from the virus within the last 90 days. If the United States is able to safely facilitate international travel of American citizens and noncitizens, they can and should design a program to allow immigrants to seek protection in the United States while protecting the safety of border agents and migrants.



### III. Dismantling of Legal Protections Under the Guise of Public Health

It has become clear that the Trump Administration used the coronavirus pandemic as a pretext for its larger racist, xenophobic and anti-immigrant plan to close the U.S.-Mexico border to migrants seeking humanitarian protection. As law professor and immigration expert Lucas Guttentag states, “The CDC order is designed to accomplish under the guise of public health a dismantling of legal protections governing border arrivals that the Trump administration has been unable to achieve under the immigration laws.”<sup>41</sup>

From the early days of the Trump Administration, Stephen Miller, the former President’s chief adviser on immigration, repeatedly tried to use this obscure section of the health and safety code designed to protect the nation from diseases overseas as a way to tighten the borders.<sup>42</sup> When caravans of migrants traveled to the border in 2018, Mr. Miller looked for evidence that they carried illnesses. He asked for updates on American communities that received migrants to see if new diseases were spreading there.<sup>43</sup> Mr. Miller pushed for invoking the president’s broad public health powers in 2019, when an outbreak of mumps spread through immigration detention facilities in six states. He tried again that year when CBP stations were hit with the flu.

As law professor and immigration expert Lucas Guttentag states, “The CDC order is designed to accomplish under the guise of public health a dismantling of legal protections governing border arrivals that the Trump administration has been unable to achieve under the immigration laws

The CDC initially opposed implementing an order shutting the border under Title 42, claiming the order lacked a public health justification. But after pressure from Mr. Miller, and ultimately Vice President Mike Pence, the CDC collapsed and was forced to issue the order.<sup>44</sup> As Dr. Anthony So, an international public health expert at Johns Hopkins Bloomberg School of Public Health, wrote in a letter to Dr. Redfield in April 2020, “The decision to halt asylum processes ‘to protect the public health’ is not based on evidence or science... This order directly endangers tens of thousands of lives and threatens to amplify dangerous anti-immigrant sentiment and xenophobia.”<sup>45</sup>

This use of Title 42 not only has unlawfully closed U.S. land borders, “it has also undermined the integrity and trustworthiness of future public health directives,” says Dr. Alexander Miamen from the Harvard Medical School Department of Global Health and Social Medicine. He adds, “The CDC as custodians of this much treasured ‘current of trust’ must in no way participate in a policy that erodes the public trust in public health recommendations. If the CDC continues to be seen as overly politicize, the effect could be irreparable.”

## IV. Is Title 42 Legal?

### A. Title 42 Conflicts with Existing Laws Enacted By Congress

On March 24, 2020, as the COVID-19 virus spread throughout the country, the CDC issued a set of policies, pursuant to Title 42 of the U.S. Code, aiming to:

*[P]rovide [] a procedure for CDC to suspend the introduction of persons from designated countries or places, if required, in the interest of public health whereby the reason of the existence of any communicable disease in a foreign country there is a serious danger of the introduction of such disease into the United States.<sup>46</sup>*

Though Title 42 had never been applied to immigration, the CDC has used this provision, without advance notice or comment, to authorize the summary expulsion of noncitizens without any of the procedural protections guaranteed by Congress. For example, the Immigration and Nationality Act (“INA”) stipulates that “any alien who is physically present in the United States or who arrives in the United States (whether or not it is at a port of arrival), irrespective of the alien’s status may apply for asylum.”<sup>47</sup> The Title 42 policy categorically denies this right of noncitizens at the border to apply for asylum.

In furtherance of protection under the INA, and consistent with the U.S. duties of *non-refoulement* under the 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees, Congress barred removal of an individual to a country where it is more likely than not that they would face persecution on a protected ground.<sup>48</sup> The treaty also prohibits governments from imposing penalties on refugees who entered without inspection in search of asylum if they present themselves to immigration authorities without delay.<sup>49</sup> Lastly, the Convention Against Torture, which the Senate ratified on October 27, 1990,<sup>50</sup> prohibits the government from returning a noncitizen to a country where it is more likely than not that she would face torture.<sup>51</sup>

The Title 42 policy categorically denies this right of noncitizens at the border to apply for asylum.

Prior to the Title 42 policy’s enactment, immigrants were entitled to assert claims for asylum, withholding of removal, and protection from torture under these protections. Through Title 42 policies, however, the Trump Administration usurped Congress’ role and bypassed the entire immigration statutory scheme. As stated in a complaint challenging Title 42 filed in federal court in January 2021 by three immigrant families seeking safety in the United States, “The Administration has sought to use numerous regulatory and policy mechanisms to prevent noncitizens from seeking protection in this country, but the Title 42 Process at issue here goes further than any of those efforts because where it applies it leaves almost no avenue open to seek protection.”<sup>52</sup> (emphasis added)

## B. Current Legal Challenges Against Title 42

At least five legal challenges against Title 42 have been filed in court by groups like the American Civil Liberties Union, Center for Gender & Refugee Studies, Refugee and Immigrant Center for Legal Education and Legal Services, Oxfam America, and the Texas Civil Rights Project. Four of the cases were filed on behalf of children who arrived at the border unaccompanied by an adult. The court in one of the cases, which requested class action relief on behalf of all unaccompanied children subject to Title 42 expulsions, *P.J.E.S. v. Wolf*,<sup>53</sup> issued a preliminary injunction in November 2020, which temporarily ordered the Trump Administration to stop deporting immigrant children on the ground that they are a coronavirus threat.<sup>54</sup> The D.C. Circuit Court stayed the preliminary injunction in January 2021, but the Biden-Harris Administration has [confirmed](#) that the government will not deport unaccompanied children under Title 42.<sup>55</sup>

The fifth case, [Huisha-Huisha v. Gaynor](#),<sup>56</sup> challenges the application of the Title 42 policies to deport families. The D.C. District Court in the *Huisha* case granted emergency orders that prohibit the government from deporting several families who were apprehended at the border and put into immigration detention to be expelled pursuant to Title 42.<sup>57</sup> This case could have a huge impact for Haitian migrants crossing the U.S.-Mexico border. As explained in Part 2, Section IV below, a significant portion of the passengers on the expulsion flights to Haiti are part of family units, including pregnant women and babies.<sup>58</sup> The trauma of capture, arrest, imprisonment, and deportations for these families seeking safety in the United States is immeasurable, especially for the children.

## C. Regulations Already Enacted by Congress to Prevent the Spread of Communicable Diseases Such as COVID-19

The immigration system has long had to deal with communicable diseases. Congress enacted specific provisions to address them, dating back to the late 1800s when Congress first began regulating the admissibility of immigrants. The Secretary of Health and Human Services has the legal authority to examine immigrants and asylum seekers before they may be admitted in the United States.<sup>59</sup> Noncitizens who present specified public health concerns, for example showing signs of “communicable diseases of public health significance,” can be medically screened and excluded from entering the United States.<sup>60</sup>

The appropriate legal way under the INA and Health and Safety Act to prevent the spread of COVID-19 would be to medically screen migrants at Ports of Entry with a temperature check and COVID-19 test, or to require proof of a negative test upon entry. A similar policy was put into place on January 26, 2021 by the Biden-Harris Administration, which now requires negative COVID-19 tests for the millions of passengers on international flights that arrive in the United States each month.<sup>61</sup> For migrants apprehended near the border, a temperature check and COVID-19 test could be administered on the spot before being put in detention.

## **PART TWO:**

# Impacts of Title 42 Removals and Expulsions on Haitian Asylum Seekers



Since issued, Title 42 has been the primary grounds by which migrants are expelled at the U.S. border. From March 20, 2020 through the end of February 2021, 536,000 people have been expelled under this policy.<sup>62</sup> The number of people expelled under Title 42 averaged 2,400 *per day* (60,000 a month) between October 2020 to January of 2021.<sup>63</sup> From March 20 to September 30, of 2020, the only period with official reporting, 17,000 people were expelled by plane under the Title 42 policy.<sup>64</sup> In total, ICE sent 1,008 removal flights to 36 countries in 2020, approximately 800 of which were during the coronavirus pandemic.<sup>65</sup>

Most people are apprehended at the border and expelled to Mexico immediately. One Border Patrol director bragged that 90 percent of Title 42 expulsions happened within two hours of first encounter.<sup>66</sup> However, most non-Spanish speaking individuals, such as Haitians, are taken into custody and transferred from CBP to ICE to be expelled to their home country. While no official numbers are available, there have been numerous accounts of Haitian migrants being expelled to Mexico.<sup>67</sup>

As Part Two explains, the increase in Title 42 expulsions to Haiti and Mexico have had a significant impact on Haitian migrants – especially children. With a quasi-dictator president who refuses to step down and daily massive protests, Haiti is undergoing a major uprising that harkens back to the fall of the Duvalier regime in 1986.<sup>68</sup> The political uprising and instability provide significant obstacles for deportees to safely resettle in Haiti. Expulsions to Mexico are also dangerous. Haitians face peril as Black, non-Spanish speaking migrants in border towns that are controlled by extremely violent drug cartels.

## *I. Reasons for Leaving Haiti*

There is no single story here. Some Haitians arriving at the border today started a journey from Haiti sometime after the January 10, 2010 earthquake that took over 200,000 lives and left over one million homeless. The 7.0 earthquake devastated Port-au-Prince and the surrounding areas and left Haiti vulnerable to other natural and manmade disasters. It also contributed to political and economic instability, as well as increased political violence, gang criminal activity, and widespread impunity – all factors that have forced Haitians to flee their country.<sup>69</sup>

The Haitian Gourde today holds about 55 percent of its January 2010 value,<sup>70</sup> which has sharply increased inflation. Greater than 60 percent of Haitians survive on less than US\$2 a day, and more than two and a half million fall below the extreme poverty line of US\$1.23 per day.<sup>71</sup> The unemployment rate in Haiti is 40 percent, and two out of three Haitians do not have consistent work.<sup>72</sup> One in three people is in need of food assistance.<sup>73</sup>

While the lack of economic opportunity may be a factor in the decision to flee, many Haitians often leave due to acts of violence associated with political party affiliation, elections, gangs, land disputes, gender, and LGBTQ+ identity.<sup>74</sup> The prolonged period of political instability since 2010 has impeded the government's ability to enact long-term policies to advance human rights and protections from politically-motivated violence, and has contributed to a dysfunctional justice system and high levels of impunity.<sup>75</sup> Women and other minority groups in Haiti are among the most vulnerable to economic and political instability. Various factors such as political instability and violence, the failing economy,

impunity, corruption, and threats of domestic and other forms of sexual and gender-based violence have pushed women to leave Haiti.<sup>76</sup>

## *II. Haitians Seek Refuge in Brazil and Chile*

In the years after the earthquake, tens of thousands of Haitians were admitted to Brazil. The impetus for Brazil's reception of Haitians was not simply humanitarian. Haitians became part of a massive temporary workforce mobilized for construction projects related to the World Cup and the Olympics.<sup>77</sup> Between 2010 to 2018, 128,968 Haitian nationals reportedly entered Brazil.<sup>78</sup> By 2017, as recession struck Brazil, the unemployment rate reached 13.1 percent, and nearly 30,000 Haitians had left.<sup>79</sup> Unemployment, xenophobia, and anti-Black racist attitudes, as well as new, stricter legal avenues to residency, forced many Haitians to either move on and seek shelter in Chile, or, for people just leaving Haiti, to bypass Brazil entirely.<sup>80</sup>

Permissive visa rules and jobs attracted Haitians to Chile starting in 2014. By 2019, the Chilean government estimated 185,865 Haitians were living in Chile.<sup>81</sup> Haitians residing in Chile complained of anti-Blackness discrimination and, relatedly, significant barriers to integration.<sup>82</sup> In one study from 2015, 48 percent of Haitians interviewed had experienced discrimination in Chile.<sup>83</sup> Elections in April of 2018 brought in a conservative government that implemented more restrictive visa rules. With the xenophobia and racism, as well as the change in immigration policies in both Brazil and Chile, Haitians moved on towards Mexico and the U.S.-Mexico border.<sup>84</sup>

Getting to Mexico involves a long and dangerous migration route across 11 countries, totaling 7,000 miles, including one hundred miles of tropical rainforest in the Darien Gap that migrants travel by foot. In a survey of Haitian women who had traveled by foot through the Darien Gap, the women reported that thieves in the rainforest took everything they had: their luggage, clothing, shoes, food, cell phones, and money.<sup>85</sup> The interviewees had to go without any food for between three to fifteen days, surviving on salt and river water.<sup>86</sup> Haitian migrants arrive in Mexico desperate for clothes, food, medical attention, housing, and security. By September of 2016, there were already an estimated 40,000 Haitians in transit along this route between Brazil and the United States.<sup>87</sup>

## *III. Obstacles to Getting Through the U.S.-Mexico Border*

As migration through Mexico increased, the Mexican government issued temporary visas to allow migrants to travel north to the U.S. border. But that changed in 2019, when President Trump threatened to impose tariffs on imported Mexican goods until undocumented migrants stopped entering the United States through Mexico.<sup>88</sup> As a result, the Mexican government cracked down on migrants by making it more difficult to obtain visas to travel through Mexico and by increasing apprehensions, detentions and deportations. Haitians and other Black migrants stood out in Mexico, a country where only 1.2

percent of the population is of African descent,<sup>89</sup> and were targeted by immigration law enforcement for both exploitation (e.g. bribes to stay in the country) and deportation.<sup>90</sup> As a result of more stringent visa requirements and an under-resourced asylum system that lacks Haitian Kreyol interpreters and rarely grants Haitians asylum, thousands of Haitian and other Black immigrants have been stuck at the Mexico-Guatemala border for months, even years.

For those who do make it to the U.S. border, both the Obama and Trump administrations have made it nearly impossible for Haitian and other Black migrants to apply for asylum. In 2016, the Obama Administration initiated a metering policy that was started in response to an uptick in Haitian asylum seekers seeking entry at the border.<sup>91</sup> Under the metering policy, which is technically still in place but has effectively been overridden by

Haitians and other Black migrants stood out in Mexico, a country where only 1.2 percent of the population is of African descent

Title 42, asylum seekers passing through Mexico to various Ports of Entry along the U.S.-Mexico border are turned back to Mexico in lieu of formal inspection and processing.<sup>92</sup> Migrants are then allowed to enter the applicable Port of Entry when it is their “turn.” The migrants themselves were the ones keeping track of the list of people and in which order they sought to enter the United States. The policy resulted in a growing community of thousands of Haitians in Tijuana and other border towns, alongside migrants from Mali, Cameroon, and other African and Caribbean countries.<sup>93</sup> In January 2021, a federal court in California issued a preliminary injunction to halt the metering policy pending litigation, based on allegations that the policy is discriminatory and in violation of the INA’s legal protections for asylum seekers.<sup>94</sup>

Haitians were generally not placed in the Migrant Protection Protocols (“MPP” or “Remain in Mexico”) proceedings. Initiated in 2019, MPP is a program whereby migrants from Spanish-speaking countries and Brazil were brought to immigration court hearings in the United States, frequently in “tent courts” along the border, and then returned to Mexico for the duration of their immigration proceedings. Effective February 19, 2021, the Biden-Harris Administration started to reverse MPP and slowly open the border to allow MPP participants to enter the United States to process their immigration claims. While a tremendous victory for those enrolled in MPP, the partial opening of the border has caused confusion and misinformation in Haitian communities stuck in Mexico under the Title 42 policy. Marginalized and isolated in Mexico by race, culture and language, Haitian migrants generally do not understand that MPP does not apply to them. Often misled by misinformation within the community or false rumors from coyotes, Haitian migrants optimistically hope with MPP they can now seek protection if they enter the United States outside of a Port of Entry.

The Trump Administration also adopted the Third-Country transit-ban rule, which barred all individuals who transited a third country *en route* to the U.S.-Mexico border from applying for asylum, with limited exceptions. In effect, this categorically denied asylum to all non-Mexicans, including Haitians, who travel through Mexico and other countries to pursue protection.<sup>95</sup> This policy was deemed illegal and struck down by multiple courts, including a Federal Court in D.C., the Fourth Circuit Court of Appeals and the Ninth Circuit Court of Appeals.<sup>96</sup> The U.S. Supreme Court ruled in favor of the Trump Administration and upheld the travel ban in 2018.<sup>97</sup> In July 2020, the D.C. Court again enjoined the ban.<sup>98</sup> However Title 42, issued a few months earlier, had already closed the border to migrants and proved to be a far more effective ban.

Starting in March 2020, border closures in the United States and throughout Central and South America due to COVID-19 contributed to lower flow of migration throughout the region, as well as a backlog of migrants who were stuck at various points along the journey to Mexico.<sup>99</sup> Panama for example issued a 50-day quarantine due to COVID-19 and held nearly 2,000 migrants in camps along the Panama and Colombia border for almost a year, many of them Haitian.<sup>100</sup> In June 2020, migrants complained of poor water and sanitation conditions, as well as the fear of catching COVID-19 in the crowded camps.<sup>101</sup> Some threatened to burn down the shelter if they were not allowed to continue their journey to Costa Rica and on to the United States. After almost one year of quarantine, Panama reopened<sup>102</sup> its border in late January 2021 to let the migrants continue their journey.

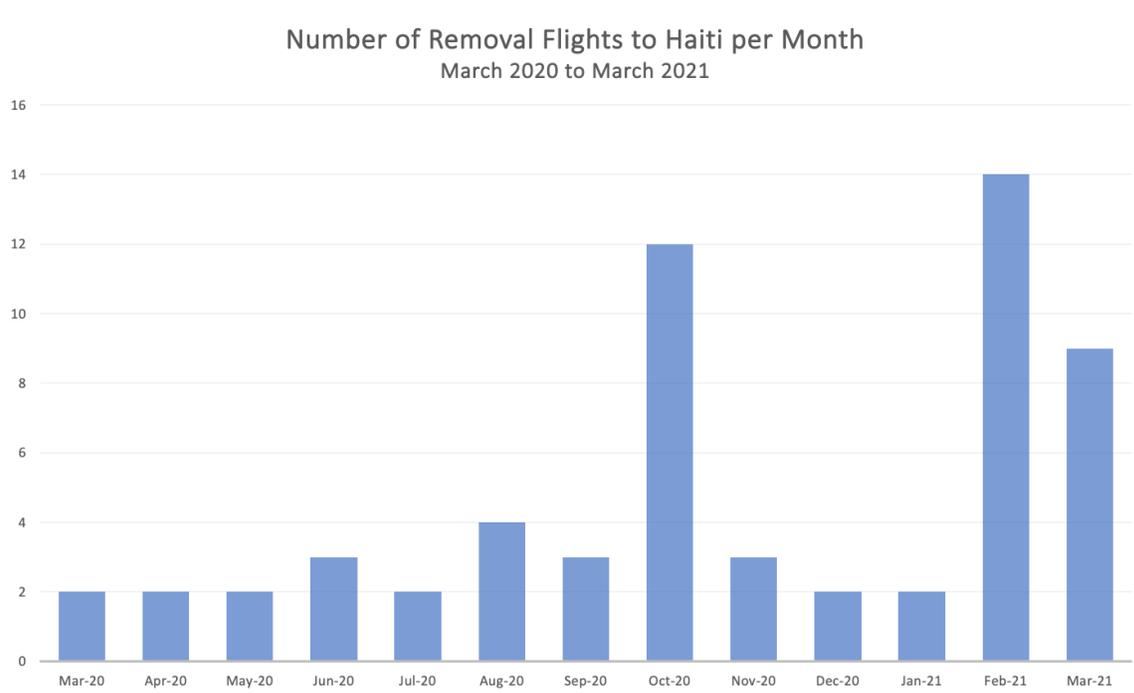
## *IV. Removal Flights to Haiti Soar as ICE Fails to Take Adequate Steps to Prevent, Treat or Test for COVID-19*

Since President Biden's inauguration on January 20, 2021, ICE has sent 23 flights to Haiti, with an estimated 1,200 people. ICE intended to deport over 1,800 people to Haiti in February 2021, which, with painful irony, the Biden-Harris Administration started on the first day of Black History Month.<sup>103</sup> More Haitians have been removed to Haiti in the weeks since President Joe Biden and Vice President Kamala Harris took office than during all of Fiscal Year 2020 (895 people in FY2020 vs. more than 1,200 people from January 20 – March 22, 2021).<sup>104</sup>

As ICE's detention system became a massive COVID-19 hotspot in 2020, removals posed a significant danger due to the potential spread of the virus both within immigration detention facilities and to receiving countries like Haiti.<sup>105</sup> Despite the danger, ICE failed to take adequate steps to prevent, treat or test for COVID-19. In June 2020, ICE reported that only 30 percent of detainees had been tested for COVID-19, and, of those tested, about 30 percent tested positive for the virus (2110 confirmed cases).<sup>106</sup> From mid-March to the end of May 2020, at least three deportees to Haiti tested positive for COVID-19.<sup>107</sup> It is unclear how many more deportees have tested positive for COVID-19 upon arrival because the Haitian government stopped reporting on cases in June 2020, and instructed deportees not to speak to the media or human rights groups like Haitian Bridge Alliance.

Even more concerning, ICE intended to deport at least six persons who had tested positive for COVID-19 on a May 11, 2020 Haitian deportation flight. Ultimately, after lawyers for the detainees notified the press, the six persons on the May 11 flight were not deported.<sup>108</sup> However, two weeks later, on May 26, 2020, ICE did deport eight persons to Haiti who had tested positive for COVID-19, including a man who had complained the night before and in prior days to difficulty breathing, fever, and pain in his chest and legs.<sup>109</sup>

ICE has also not been testing all deportees. ICE acknowledged in Senate testimony in mid-2020 that testing for COVID is not standard procedure; it tested deportees to Guatemala only because that nation refused otherwise to accept flights.<sup>110</sup> As a result, ICE has deported hundreds of detainees with COVID-19 to at least eleven countries,<sup>111</sup> including to Guatemala (186 as of July 10),<sup>112</sup> India (22 of 76



on one flight),<sup>113</sup> Colombia,<sup>114</sup> Romania,<sup>115</sup> El Salvador,<sup>116</sup> Haiti,<sup>117</sup> Mexico,<sup>118</sup> Jamaica,<sup>119</sup> Brazil, and elsewhere. As the *Boston Globe* editorial board wrote on April 29, 2011, “To continue to deport immigrants right now, sending them to vulnerable places like Guatemala, Haiti, and Ecuador, is unconscionable. Such deportations show complete disregard for the health of millions of people in nations whose health care systems are already struggling, and it risks boomeranging on Americans by seeding the contagion in neighboring countries.”<sup>120</sup>

With respect to Haiti, ICE tested only 16 of 30 persons deported to Haiti on May 26, 2021, per an ICE spokesperson, contradicting assurances from U.S. Ambassador to Haiti Michele Sison that all deportees would be tested within 72 hours of departure. Even when deportees were tested, the accuracy of the COVID-19 tests and temperature checks were called into question after reports that GEO guards contracted by ICE forced some migrants to eat ice to lower their temperature in order to be expelled. “Daniel”, who was detained by ICE in a hotel in Texas in July 2020 with child wife and child, stated:

*The COVID test was negative, and they put us at a hotel. I don’t know where it was—in Texas. We thought we were close to being released, but then they came and said there was someone positive at the hotel and we had to change places. And instead of going to a hotel, we found ourselves at the airport. If you had a high temperature you could not be deported. I had to eat ice, and the baby had to eat ice, my wife had to eat ice.*<sup>121</sup>

From the beginning of the COVID-19 pandemic, ICE has been under pressure to suspend removal flights:

- On April 20, 2020, 164 organizations signed a letter calling on the Trump Administration to stop deportations to Haiti during the coronavirus pandemic.<sup>122</sup>
- On May 9, 2020, Congresswoman Frederica Wilson (FL-24) introduced the Haiti Deportation Relief Act that would stop all deportations to Haiti.<sup>123</sup>
- On May 18, 2020, Senator Ed Markey (D-Mass) send a letter calling on the Trump Administration to halt all deportations to Haiti during the coronavirus pandemic.<sup>124</sup>
- On June 18, 2020, Senators Ed Markey (D-Mass), **Kamala Harris** (D-Calif), Bernie Sanders (I-VT), Richard Blumenthal (D-Conn.), and Elizabeth Warren (D-Mass) introduced the Immigration Enforcement Moratorium Act to halt deportations and harmful immigration enforcement actions during the coronavirus pandemic.<sup>125</sup>
- On July 9, 2020, Congresswoman Wilson and Congresswoman Veronica Escobar (TX-16) introduced the Immigration Enforcement Moratorium Act to halt the Trump Administration's harmful immigration enforcement activities during the COVID-19 pandemic, including all deportations during the pandemic.<sup>126</sup>
- On July 22, the Congressional Hispanic Caucus urged<sup>127</sup> the Department of Homeland Security and Immigration and Customs Enforcement to release families together.
- On June 19, 2020 (Juneteenth), 370 human rights, humanitarian and racial justice leaders, including Black Lives Matter co-founder Opal Tometi, Edwidge Danticat, Ibram X. Kendi, Rev. Jesse Jackson, Danny Glover, Guerline Jozef, Susan Sarandon, Jackson Browne, and Rainn Wilson, sent a letter<sup>128</sup> to U.S. Ambassador to Haiti, Michele Sison, as well as Secretary of State Mike Pompeo and Acting Secretary for DHS, Chad Wolf, calling for a moratorium on deportations to Haiti.

Despite the outcry, ICE continued to remove detainees by plane, usually after transferring them among multiple detention centers. On average, ICE sent removal flights to Haiti biweekly in 2020 (2-3 times per month), with the exception of October, which had 12 removal flights – for a total of 37 flights in 2020.<sup>129</sup> For the first several months, many of the deportees to Haiti were in immigration proceedings (many in ICE detention) and had removal orders, while others were removed subject to the Title 42 policy. The population of ICE detention centers declined (Fiscal Year 2019 Average Daily Population was 50,165, compared with 14,051 in March 2021)<sup>130</sup> through a combination of parole, deportations, and shutting the border. As a result, the planes to Haiti are now mostly filled with Title 42 deportees who were unable to seek protection in the United States.<sup>131</sup>

## V. Family Detention and Removals

While official statistics are not available, based on a partial review of flight manifests, families make up the majority of Haitians removed by plane.<sup>132</sup> ICE and CBP have been far from transparent about the numbers of families detained and where they are housed. The result has been to deprive these families of access to the outside world – their families, lawyers, language interpreters, and the media.

ICE used to administer a pregnancy test for all women in detention, and, if they were pregnant, they would be released. But this practice stopped at Karnes about a year ago, and families remain held in detention, even if a woman is pregnant.<sup>133</sup> Indeed, a review of flight manifests from some deportation flights revealed a number of pregnant women were slated for expulsion, including women who were 35 and 36 weeks pregnant.<sup>134</sup>

### A. Secret Detention

The Texas Civil Rights Project (“TCRP”) uncovered on July 22, 2020 that the Department of Homeland Security was using Title 42 to secretly detain and immediately deport unaccompanied minors and families at a number of hotels in McAllen, Texas.<sup>135</sup> Personnel from MVM, Inc., a private company that contracts with ICE, oversaw the detention of these families.<sup>136</sup> TCRP and the American Civil Liberties Union (“ACLU”) obtained an injunction to stop the deportation of many of those secretly detained,<sup>137</sup> but it is unclear how many more persons are covertly detained or disappeared. According to interviews with TCRP lawyers, most if not all of the families detained in McAllen were Haitian.

In October 2020, after the hotel scandal and with an influx of families crossing the U.S.-Mexico border that corresponded with a spike in removals, ICE designated Karnes County Residential Center in Texas to hold families detained under the Title 42 policy.<sup>138</sup> Karnes, one of three family detention centers in the United States, is run by the for-profit prison company GEO Group, Inc., which has been accused of violating “the basic human rights of its mainly asylum-seeking detainees through medical neglect and abuse, which has led to at least two deaths” in its facilities.<sup>139</sup> According to RAICES, which provides legal assistance to families detained at Karnes, one-third to one-half of the families held at Karnes are Haitian.<sup>140</sup> On average, families stay between two to four weeks at Karnes.<sup>141</sup>

As of February 2021, ICE and CBP have reverted to (or perhaps never stopped) the practice of holding families in secret. While official numbers are not available, an attorney at RAICES estimated that a small percentage of detained families intended for removal are sent to Karnes.<sup>142</sup> In interviews with multiple attorneys attempting to reach and represent families detained under the Title 42 policy, it is unclear why some families are sent to Karnes, while others are kept in CBP custody.<sup>143</sup> Moreover, no one knew where other families were being detained or for how long. The attorneys speculated that most families were being held in Border Patrol stations until their removal. As people are not processed in the immigration system or given “A” numbers under the Title 42 policy, it is nearly impossible to track or reach them once they are in custody.

## B. Limited Access to Lawyers or Legal Protections

Families in detention under Title 42 are generally denied access to an attorney and are not given a meaningful opportunity to state a claim of fear. By de-emphasizing the use of Karnes or other central locations, and by keeping families isolated in various CBP stations, it is difficult for these families to access legal services, which may be by design.

Even at Karnes, detainees are isolated and prohibited from accessing counsel. Over the last six years, RAICES has provided legal services to between 80-90 percent of the Karnes population. But since Title 42 was implemented, RAICES has only been able to serve 30-50 percent of the population.<sup>144</sup> RAICES attributes the decline to the set-up of the prison, where families are quarantined and not able to socialize with other families who might share RAICES' hotline. Detainees paint a picture that GEO guards do not want them to know about RAICES.

For example, "Paul," a Haitian man detained under the Title 42 policy with his wife and child at Karnes in February 2021, asked for a list of lawyers from three different guards at Karnes, but was denied each time.<sup>145</sup> He witnessed his cell mate ask to call RAICES the night he was expelled, but the guards told him no. He also witnessed a guard tear up a piece of paper with the phone number for RAICES that one detainee was attempting to give to another. This intimidated everyone who witnessed the incident and kept them from sharing the RAICES phone number with other detainees.

If detainees are able to contact an attorney, the attorney can request an interview under the Convention Against Torture (known as a "CAT screening").<sup>146</sup> Haitian migrants, who generally do not speak English or Spanish, need to proactively request one of these interviews from a CBP officer. At that time, they may be connected to an asylum officer, who will conduct a brief interview about the migrant's fear of any country to which they might be expelled. The process is similar to a truncated credible fear interview, the first step in a migrant's asylum proceedings. Except with the CAT screening, the migrant cannot have an attorney present during the interview, does not receive a transcript or other record of the interview, and the officer's decision cannot be appealed.

By comparison, in asylum proceedings, if an asylum officer finds that a migrant's fear of return to their home country is not "credible," then the migrant can appeal that decision and be heard by an immigration judge. Asylum seekers are also allowed to have an attorney present with them during their credible fear interview and receive a full transcript of the interview. The CAT screenings appear to be a mere formality. In conversations with multiple attorneys, no one had heard of a single person detained under the Title 42 policy who had passed the CAT screening. Attorney Andrea Meza from RAICES said, "We've requested CAT screens for dozens and dozens of families, but none of them have been granted. They aren't actually screening."<sup>147</sup>

As mentioned above in Part 1, Section IV(B) above, a lawsuit has been filed on behalf of several families detained at Karnes to challenge family removals under Title 42.<sup>148</sup> But meanwhile, families are being expelled without access to legal counsel or, for most Haitian migrants, the ability to request asylum or other protection. When asked whether he was able to speak with someone about his fear of returning to Haiti, "Daniel" replied, "No, we didn't go through any process like this. There were no questions or opportunity to present anything."<sup>149</sup>

### C. Lack of Access to Language Interpretation

Both ICE and CBP facilities lack Haitian Kreyol interpreters and materials translated into Kreyol. The most recent ICE detention standards state that facilities have an obligation to all limited-English proficient (“LEP”) individuals, extending “to all aspects of detention, including but not limited to intake, disciplinary proceedings, placement in segregation, sexual abuse and assault prevention and intervention, staff-detainee communication, mental health, and medical care.”<sup>150</sup> According to ICE, Haitian Kreyol was the seventh most commonly requested language in ICE detention in 2019.<sup>151</sup> However, no accommodation for Kreyol appears to be offered; Haitian detainees are routinely spoken to in English or Spanish, and forced to sign documents in English or Spanish.

The Haitian Constitution provides for two national languages – French and Haitian Kreyol.<sup>152</sup> An estimated five percent of Haitians speak French fluently, but 100 percent are fluent in Kreyol.<sup>153</sup> Some of them may speak some French, Spanish or Portuguese if they have spent time in the Dominican Republic, Brazil or Chile before arriving in the United States. Most Haitian migrants do not speak enough to express themselves or fully understand border officers or guards.

ICE has reportedly been attempting to provide better language access in its detention centers – including in Haitian Kreyol. The ICE Language Access Plan, Supplemental Update Covering Fiscal Years 2019 and 2020 (“ICE Language Access Plan”), is a self-assessment by ICE of their implementation of goals set forth in Executive Order No. 13,166, Improving Access to Services for Persons with Limited English Proficiency, (Aug. 11, 2000) (EO 13166). ICE claims to have translated “pertinent and vital materials” as well as a selection of flyers and posters into Kreyol, including the National Detainee Handbook.<sup>154</sup> However, based on interviews by Haitian Bridge Alliance with dozens of Haitian detainees across the country, all forms are provided to them in Spanish or English.

For example, “Jacques”, a Haitian man detained under the Title 42 policy with his wife and two children at Karnes in October 2020, was told to sign a document, otherwise, he would not receive his belongings. The document was in Spanish and GEO staff spoke to him in Spanish and English, which he did not understand well. Jacques was confused and asked to speak with his attorney at RAICES to understand what was happening, but the request was denied.

*The staff member informed me that I would not be receiving my belongings back if I did not sign the documents. I was very sad at this point, I also noticed that my children were very sad. I decided to sign the documents. Once I received all of my belongings, I realized that we were all about to be deported,” Jacques later recounted.*<sup>155</sup>

“Abigale”, a Haitian woman detained at Karnes in October 2020 under the Title 42 policy with her husband and children said, “The entire intake took place in Spanish although the man knew we were Haitian and Haitian Kreyol is our primary language. The officer never offered to connect us with a Haitian Kreyol interpreter. The officer was brutal.”<sup>156</sup>

The lack of Haitian Kreyol interpretation or translation leaves Haitian migrants feeling scared, isolated, unable to access medical care (see Section D below), unable to request asylum or protection, and uninformed of their process under the Title 42 policy – such as whether and when they will be expelled (see Section E below).

## D. Lack of Access to Sanitation or Medical Care

Several Haitian migrants have complained that they were not permitted to bathe while in custody under the Title 42 policy. One man, “Daniel,” said that during his 14 days in ICE/CBP detention, he was able to bathe twice.<sup>157</sup> “Roseline,” who was in ICE/CBP custody for 11 days, was unable to bathe at all:

*I was in prison, they kept me there and did not give me access to a shower or to brush my teeth or wash myself. I couldn't do anything and they put me on a plane back to Haiti.... Anywhere in the world it's known that a woman cannot go two days without bathing. I spent 11 days there without any access to clean myself with a 4-month-old baby. When I got wipes for the baby, I had to use the wipes to wash my private parts. The baby had pooped on the clothes. I asked if I could change the baby's clothes and I had to put the dirty clothes in a plastic bag, and they said they had no clothes for me. I wanted to get access to our stuff to get clean clothes but they didn't allow me so I had to put the clothes with the poop on the baby again, and those are the clothes the baby wore on the plane.... I had infection when I returned to Haiti because I spent the whole time without bathing.<sup>158</sup>*

Migrants also complained that they did not have access to medical assistance in ICE/CBP facilities. Roseline said, “When we asked to see a doctor because the baby had a cold they said they didn't have any doctors.”<sup>159</sup> Abigale's children became sick from the conditions in CBP custody when they were detained under the Title 42 policy. “I asked the officers for medical help, and they said they would bring us medicine. They never did.... Looking at your child suffering in front of you and not being able to provide medical care, it's sickening.”<sup>160</sup>

A week later, after being transferred to Karnes, Abigale and her family were driven to an airport to be expelled to Haiti. Weak from crying, she fainted and fell as she boarded the plane. She woke up several hours later in the hospital. Because no one spoke Kreyol, she didn't understand her diagnosis, or what exams and tests were performed on her:

*The doctors said my exams came back normal. I do not know what exams they did on me, this was not explained. I think they took some images of my head. I have not received any copies of any of the tests or any records at all from my time at the hospital.<sup>161</sup>*

Abigale was in extreme pain in her neck and head for several days but was not treated or given adequate pain medication. As a result, she and her children were unable to eat or sleep. Her baby stopped taking milk. Not being in the same room with her husband was a hardship, as she needed his support taking care of the children.

## E. People Not Informed of Whether or When They Will Be Removed

Based on interviews with Haitian migrants detained at Karnes and various CPB centers along the border, guards do not inform people about the status of their immigration process, whether they will be removed, or when they will be removed. In one case, a family at Karnes was told that they were forbidden to ask whether they will be removed:

*My husband asked the officer intaking us when we would be released. The officer responded that we must never ask about when we would be released while detained in Karnes. He repeated that we must never ever ask about when we would be released, that that was the one thing we must “never” ask him about.*<sup>162</sup>

The standard practice is for guards to tell a few Haitian families to pack up their belongings at night, and to then put them in a locked cell together for hours without telling them why they are there or what will happen to them. The families are put on a bus and driven for several hours in the middle of the night without knowing where they are going. Sometimes they are told they will be “sent home” or released or transferred to another detention facility. When the families realize that they are at an airport and that they might be returned to Haiti, they panic and start to cry because they fear being going back to Haiti. This common narrative is highlighted in the following stories.

This narrative is from “Jacques”:

*My family and I were placed into a room with about 2 other Haitian families. I was never told why we were waiting and going through this process. Everyone began crying because we realized we were going to be deported. I began thinking many bad thoughts because we were about to be returned to a country that we hoped to never return to again.*

*My wife was crying a lot. We were all very hurt. The whole time, we were being supervised by GEO staff members, even when we used the restroom, they would watch us. The GEO staff members also yelled at my children anytime they stood up and started walking. We were given dinner, but the whole time the GEO staff members were yelling at us saying, “Hurry up! Hurry up!” We didn’t end up eating anything because we were rushed. After about two hours of waiting, a GEO staff member came back to tell us that our flight was cancelled. My family and I were escorted back to our rooms after returning our personal belongings to the Karnes storage.*<sup>163</sup>

This narrative is from “Abigale”:

*Just a few days into our 14-day quarantine and without receiving our COVID-19 test results, my family and I were removed from quarantine without explanation and sent off to be deported... The officers locked us in an unfamiliar cell with about three other Haitian families and told us not to go anywhere...*

*When we saw the airplane landing in the complex, everyone started crying. Because the officers had told us we were going to another immigration prison, seeing the airplane at the complex seemed like confirmation that we were not actually being transferred.*

*None of the officers ever confirmed that we were being deported. No one would even say the word deportation. None of them, through this whole process. All the families were crying on the bus, for over an hour. My husband and others kept asking what was going on, if they were deporting us. They would not tell us anything despite our desperation. It was all extremely emotional.<sup>164</sup>*

This narrative is from “David”:

*From the little Spanish I did understand, I gathered that my family and I were going to be deported that same night. I was in shock and began thinking, “How will I survive if I go back to Haiti?” My wife began crying even more. We were then escorted to a room where 3 other Haitian families were staying. We were not told any other details. We were simply left there waiting. We were not given anything to drink and were not given any food despite the fact that my family and I were never fed dinner that evening. I felt very sad, like my life was over. My wife was crying non-stop. Later, a staff member came and told us that the deportation flight had been canceled.<sup>165</sup>*

The lack of information about whether, when or how these families will be removed, the efforts to block access to attorneys, and the insistence that they sign documents without Kreyol translation demonstrates a level of cruelty and lack of humanity by ICE and CPB guards against Haitian migrants.

## VI. Dangerous Conditions for Those Expelled to Haiti

Haitians expelled to Haiti over the last year have experienced political instability,<sup>166</sup> a crashing economy, constant lockdown from protests, street gang violence, and a 200 percent rise in kidnappings (often of school children). The U.S. State Department issued a level 4 travel advisory<sup>167</sup> for Haiti, labeling Haiti as dangerous as conflict zones such as Afghanistan, South Sudan and Somalia. On the World Freedom scale, Freedom House gives Haiti a score of 37 out of 100 in terms of political rights and civil liberties, down from a score of 41 in 2019.<sup>168</sup> Women and girls are particularly vulnerable to sexual and gender-based violence now, as increased political violence and a weak legal system foster widespread impunity.

The Haitian government is not able to meet even the most basic needs of its citizens. Since January 2020, President Jovenel Moïse has run the country unconstitutionally without legislative oversight (as the terms of most members of Parliament expired). While Constitutional scholars, the judicial oversight body, bar associations, and thousands of protestors in the streets contended that President Moïse's term ended on February 7, 2021, President Moïse refused to step down. An unconstitutional referendum scheduled for June 2021, which would eliminate the Senate and further concentrate executive power, as well as elections set for fall 2021, will significantly increase the risk of political and other violence throughout the country.<sup>169</sup>

For the average Haitian, the security situation is dire. Streets are often blocked unannounced for hours or days due to protests, gang wars and/or police raids of slum neighborhoods.<sup>170</sup> Witnesses or people in the area of the chaos are casualties of the increasing violence, which can be indiscriminate or targeted, such as kidnappings, armed robberies, intimate partner abuse, or political persecution. Human rights organizations such as the National Human Rights Defense Network (RNDDH) and Fondasyon Je Klere (FJKL) have documented numerous attacks carried out by armed gangs with the protection of government authorities.<sup>171</sup> The violence creates ancillary impacts. Sick people and doctors are unable to get to the hospital; mothers are too afraid to leave the house to buy food and water for their family; children cannot regularly attend school; and people in both the formal and informal economies are unable to get to work and earn their family's next meal.

Interviews with several migrants who have been expelled or removed to Haiti in the last four years (two of them under the Title 42 policy) reveal that due to the security situation, all interviewees have been in hiding since they returned to Haiti and/or left Haiti as soon as they were able to get enough money to buy a plane ticket. Many voiced concern that they were targets for kidnapping because deportees are considered to be financially supported by friends and family in the United States who could pay a ransom.

"Roseline," who was expelled with her family under the Title 42 policy on February 11, 2021, left Haiti after being assaulted and raped due to her affiliation with a political group. She and her family have been in hiding since they returned:

*I left Haiti because of political issues and now I came back here and I have to stay in hiding and I'm still in fear.*

*They had kidnapped me so I could give information about the political group I was a coordinator of. They beat me up, they raped me. . . I said I didn't know anything. They let me go and asked me to search for information to bring to them. . . I went to police with what had happened, the police just laughed. They act just like bandits and said I didn't get killed but I'm still complaining.*

*I fled to the Dominican Republic, then to Chile. Now I'm back here and have to stay in hiding so these people don't find me. Now the country is more turmoil so I'm even more afraid to leave. If these people find us, they would just kill us this time around.*

*I begged [CBP agents] to be sent to Mexico, that my baby was from there, but they said no they were sending me to Haiti.<sup>172</sup>*

“Daniel” was expelled to Haiti on July 21, 2020 with his wife and child under the Title 42 policy. He and his family returned to Mexico six months later out of fear for their safety:

*I'm from an area where gangs are breathing down your neck every day. They come out shooting and asking for money. That's why my parents had me leave. One day the gangs came in the neighborhood to collect money. And my household didn't have money to give so they shot at the house. After that event [my parents] had me leave. When I was deported to Haiti, I had to go to another area to hide.<sup>173</sup>*

“Emmanuel” was deported to Haiti on May 11, 2020. Emmanuel had worked for a major Haitian political party that opposed the current government led by President Moïse and participated as a candidate in the 2015 elections. Henchmen from several political parties plotted to have Emmanuel killed for trying to contest the election. He was severely beaten and fled Haiti in 2015. After he left, he and his sister received death threats and his son was killed by the political parties. Emmanuel said, “When I was deported back to Haiti, word got out to the political group that I was coming back to Haiti.” Shortly after arriving in Haiti, Emmanuel fled to the Dominican Republic and then to Brazil because he feared that he would be killed if he stayed in Haiti.<sup>174</sup>

“Justine” was recruited to join a political party by her neighbor, who was a security officer for a Haitian Senator. Justine refused and her neighbor and a group of gang members associated with the Senator tied her up and beat her with batons and threaten to kill her with a gun for not joining. Justine went to the police for protection but was told her they could do to protect her since the neighbor was a member of law enforcement. The neighbor returned to Justine's home with gang members, beat her up and threatened to kill her and to burn down her home if she did not leave the country. A few weeks later, the men burned down Justine's home, forcing Justine to flee Haiti without even knowing whether her parents survived the fire. ICE deported Justine to Haiti in August 2020. Justine continues to fear for her life and safety in Haiti, for the same reasons that caused her to flee and seek asylum in 2017. In her

short time back in Haiti, Justine's former neighbor has twice come to her friend's house where she is staying and threatened her life:

*He came with his gun and threatened to kill me. I left the area, but I'm still afraid. Very afraid.... This person knows where I am and I'm always very fearful that this person will come after me. The same person who persecuted me and caused me to leave Haiti.*<sup>175</sup>

These poignant narratives give a human context to the multiple reports from the United Nations, U.S. State Department, human rights organizations, and the media of the political turmoil, chaos and violence that have besieged Haiti the last few years under President Moïse. It is hazardous and unconscionable for the U.S. government to deport anyone to Haiti under these conditions, especially young families with children and pregnant women.

## VII. Expulsions of Haitians to Mexico

Mexico faced serious problems when the United States shut the border down and expelled anyone deemed removable under the Title 42 policy starting in March 2020. The border area was already the site of improvised camps of people awaiting hearings under MPP, those subject to the metering policy, and others simply waiting for the border to reopen.<sup>176</sup> Once COVID-19 hit, MPP hearings were suspended, the border was closed, and asylum seekers, some already waiting for years, were once again left in limbo.<sup>177</sup>

Expelling migrants back to Mexico under the Title 42 policy meant that Mexico would be facing even more crowded border areas that were already straining public resources. At the time the CDC order was announced, the Government of Mexico made it clear that it would only accept Mexican nationals and people from Honduras, Guatemala and El Salvador.<sup>178</sup> The agreement to limit removals to those countries is still in place, and was referenced by DHS Secretary Alejandro Mayorkas on March 16, 2021, in his most recent statement on the border situation:

*Pursuant to that authority under Title 42 of the United States Code, single adults from Mexico and the Northern Triangle countries of El Salvador, Guatemala, and Honduras are swiftly expelled to Mexico. Single adults from other countries are expelled by plane to their countries of origin if Mexico does not accept them.*<sup>179</sup>

Mexico had made the same agreement for families. However, Mexico ended the practice of detaining children in January 2021, including those with families, which has complicated removals from the United States.<sup>180</sup> Under pressure from the Biden Administration in mid-March, Mexico has offered to amend or delay further implementation of the law blocking detention of children.<sup>181</sup>

While Haitians are not supposed to be expelled into Mexico, there have been stories of expulsion to Mexico throughout the COVID-19 pandemic. In July 2020, a 23-year-old Haitian woman gave birth at a hospital in Chula Vista, California days after crossing into the United States from Mexico to seek

asylum.<sup>182</sup> Three days later, she and her child were discharged from the hospital and taken directly to the border. She was expelled under Title 42 policies into Tijuana, with no birth certificate for her child.<sup>183</sup> More recently, 86 Haitians were removed to Ciudad Juarez on February 3, 2021 under Title 42, without travel papers or, in some cases, their possessions.<sup>184</sup>

The expulsions seem to have taken the Mexican government by surprise. Luis Garcia, director at the Chihuahua state government agency COESPO (“State Population Council”) in Mexico, told reporters, “The situation seems somewhat extraordinary for us, because they don’t speak Spanish, and it puts them in a situation in which they are increasingly exposed to risk.”<sup>185</sup> Though national media reported on the February expulsions, the vast majority of Haitians expelled to Mexico have not garnered public attention. There is no official data publicly available about Haitians expelled to Mexico; it is unclear whether those numbers are even tracked at all.

Haitian Bridge Alliance spoke with one of the families returned to Ciudad Juarez on February 3, 2021. “Pierre” (name changed) had been expelled with his wife and two-year old child. The family spent four days in CBP custody after being apprehended. They were held in a room together and given masks but no COVID-19 test, only a temperature check. Pierre and his wife fled Haiti in 2017 after receiving threats from a political group that assassinated his sister and burned down both his family home and his wife’s family home. They lived and worked in Chile for almost three years, where they gave birth to their daughter, but left due to political turmoil in Chile. The family’s one-year visa to stay in Mexico expired in February 2021. Even with the visas, Pierre and his wife were unable to work because Mexican immigration officers confiscated their passports in immigration detention where they were held for a month when they entry the country. During the phone interview with Pierre, he said he was staying in a hotel in Ciudad Juarez with his family and other Haitian migrants. CBP took all of the family’s clothes, shoes and belongings, sending them into Mexico with only the clothes on their backs.

A highly transient community, Haitian migrants like Pierre tend to travel together in groups and live together in communities along the border. There is safety in numbers, as it allows them to share food and other resources such as access to information, particularly for this Kreyol-speaking population. Many non-profit organizations located in cities along the U.S.-Mexico border are providing critical legal and humanitarian support such as food and housing to migrants who are stuck in Mexico. However, based on discussions between Haitian Bridge Alliance and members of these organizations and Haitian migrants, few if any of them have Kreyol-speaking staff to connect with the Haitian community.<sup>186</sup> Haitian migrants who spent substantial time in the Dominican Republic or Chile and learned some Spanish will interpret for the community, but often their Spanish is limited. In a survey of 30 Haitian women interviewed in Tapachula, Mexico, only a few spoke conversational Spanish, which made them reliant on their male partners or friends to seek humanitarian services or understand the complicated immigration processes in Mexico or the United States.<sup>187</sup>

In addition to language, anti-Black discrimination by Mexican immigration officials, Mexican civil society and other mostly Hispanic migrants further marginalizes the Haitian migrant community.<sup>188</sup> The Black Alliance for Just Immigration’s report *The Impact of Anti-Black Racism on African Migrants in Mexico* details some of the horrific treatment that Black migrants are subjected to in Tapachula. In immigration detention, they are denied medical care except for generic pain pills and are the last to eat, served only rice, while others receive rice and chicken.<sup>189</sup> Outside of detention, many Black migrants in-

interviewed for the report detailed violence at the hands of Mexican police, who acted with impunity. One migrant was beaten so severely that he had internal bleeding.<sup>190</sup> The anti-Black discrimination serves as a significant barrier to Haitian migrants' protection and support. As one Haitian woman migrant said, "It's like the blood that runs through their veins is not the same as the blood in our veins. They look at you like you are nothing because you're Black. You have a profession, being ignored completely."<sup>191</sup>

Like all migrants living on the border, Haitian migrants are vulnerable to dangerous cartel violence. Human Rights First has tracked more than 1,300 reported cases of murder, rape, kidnapping, torture, and assault of people returned to Mexico under MPP.<sup>192</sup> In January 2021, the brutality that migrants face was highlighted by the discovery of 19 bodies that had been shot and then burned inside two vans in the state of Tamaulipas, Mexico.<sup>193</sup> DNA testing identified some of the victims as migrants from Guatemala, though all are presumed to be from the same community.<sup>194</sup> The vans were thought to have been part of a larger group of vehicles heading to the border. Twelve police officers were arrested for participating with the cartels in the murders.<sup>195</sup> Haitians, too, have become targets of violence, including kidnappings and extortion from cartels along the border. With limited access to shelters, most of whom are closed to new clients, Haitians expelled back into Mexico often end up on the street.<sup>196</sup>



# RECOMMENDATIONS



1. End Title 42 Expulsions: the CDC should immediately reevaluate and revoke the Title 42 policy, *Order Suspending the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists*. In the interim, the Biden-Harris Administration should stop all removals and expulsions pursuant to the Title 42 policies.
2. Implement Public Health Procedures Recommended By Medical Experts: Implement public health procedures that would provide sufficient protection against the spread of COVID-19 without needing to resort to the expulsions. These included using masks; hand hygiene; distance demarcations and barriers; adapting protocols to minimize delays; avoiding congregate and high-density situations; maximizing ventilation; ramping up testing capacity; and placing migrants with their families in the United States or other U.S. community contacts to shelter in place with case management rather than in congregate settings like detention facilities.<sup>197</sup>
3. Stop Deportations and Expulsions to Haiti: The Biden-Harris Administration should stop all deportations and expulsions to Haiti during the COVID-19 pandemic and during the current political turmoil and widespread insecurity there.
4. Release Detainees and Resume Asylum Processing: Asylum processing should resume and migrants should be released from custody to shelter in place with their loved ones or host families in the United States.
5. Support Civil Society Organizations at the Border: Provide resources to civil society organizations to deliver legal and humanitarian services to assist migrants as they seek protection at the U.S.-Mexico border.
6. Shut All Family Detention Centers: All family detention centers should be permanently closed, and families should be housed with their loved ones or host families in the United States.
7. Redesignate Haiti for TPS: The Biden-Harris Administration should re-designate Haiti for Temporary Protected Status (“TPS”) because extraordinary and temporary conditions exist that temporarily prevent its nationals from being returned there safely.<sup>198</sup>
8. Make Data on Migrants Expelled to Mexico under the Title 42 Policy Publicly Available: The Biden-Harris Administration, with assistance from DHS, ICE and CBP, should ensure that as part of an evaluation of this program, there is full transparency concerning the number of people expelled under the Title 42 policy, where they were from and to what countries they were removed to.
9. Make Data on Migrants Detained under the Title 42 Policy Publicly Available: The Biden-Harris Administration, through DHS, ICE and CBP, should immediately make public all data regarding the number of people who are currently in custody awaiting removal under the Title 42 policy, and provide details on who has been detained, and for how long.

# **ANNEXES:**

## Profiles of Haitian Migrants



Profiles from four interviews conducted by students at the UC Hastings College of the Law in partnership with the Hastings to Haiti Partnership and Haitian Bridge Alliance are included here to humanize the stories of Haitian migrants and portray the larger story of migration and return to Haiti. They are represented as Annexes 1-4. Each of their names has been changed to protect their identities.

Redacted declarations provided by RAICES' former and current clients are attached as Annexes 5-8.

## Annex One

**"Now the country is in more turmoil so I'm even more afraid to leave [my home]. If these people find us, they would just kill us this time around."**

"Roseline" is a 37-year-old wife and mother who fled Haiti after being kidnapped, beaten, and raped by a group because of her political affiliations. "They had kidnapped me so I could give information about the political group I was a coordinator of. They beat me up, they raped me... I said I didn't know anything. They let me go and asked me to search for information to bring to them." After the attack, Roseline tried to go to the Haitian police, but they refused to provide any form of protection. "I went to the police with what had happened, the police just laughed. They act just like bandits and said I didn't get killed but I'm still complaining."

Roseline and her husband fled Haiti in July of 2016. She gave birth to their first son while they were traveling through Mexico. After a long and grueling journey, Roseline entered the United States on February 1, 2021, and was expelled on February 11, 2021 under the Title 42 policy.

In the United States Roseline did not have a chance to speak to an immigration officer about her fear of returning to Haiti. She was never given a Haitian Creole interpreter nor were any of the documents she was given translated into Creole. Roseline did not get an opportunity to speak to a lawyer nor present her case to a judge. She was detained for 11 days without access to a shower or to brush her teeth:

*I was in prison, they kept me there and did not give me access to a shower or to brush my teeth or wash myself. I couldn't do anything and they put me on a plane back to Haiti... Anywhere in the world it's known that a woman cannot go two days without bathing. I spent 11 days there without any access to clean myself with a 4-month-old baby. When I got wipes for the baby, I had to use the wipes to wash my private parts. The baby had pooped on the clothes. I asked if I could change the baby's clothes and I had to put the dirty clothes in a plastic bag, and they said they had no clothes for me. I wanted to get access to our stuff to get clean clothes but they didn't allow me so I had to put the clothes with the poop on the baby again, and those are the clothes the baby wore on the plane... I had infection when I returned to Haiti because I spent the whole time without bathing.*

During those 11 days in detention, Roseline had begged to see a doctor because her baby had a cold, but officers told her they did not have access to any doctors. She feels that she and her family were severely mistreated but recalled that it was the norm for Haitian migrants in detention, describing those who were handcuffed and dragged onto the plane because they were afraid and crying for fear of returning to a place in which their lives were in certain danger. Roseline pleaded with officers to expel her to Mexico, where her son was a legal citizen, because she would be killed if returned to Haiti. “I begged [CBP agents] to be sent to Mexico, that my baby was from there, but they said no they were sending me to Haiti.”

Upon being returned, Roseline could not return to former home for fear that the political group who had raped her before would find and harm her again. She, her husband, and her child are hiding in a different part of Haiti with family whom they rely on for nearly everything because they cannot leave the house. “I fled to the Dominican Republic, then to Chile. Now I’m back here and have to stay in hiding so these people don’t find me. Now the country is in more turmoil so I’m even more afraid to leave. If these people find us, they would just kill us this time around.”

Desperate for a safe life for herself and her young family and despite lack of funds and resources, Roseline wishes to make the treacherous journey again to seek protection in the United States after the Title 42 policy is renounced. “I left Haiti because of political issues and now I came back here and I have to stay in hiding and I’m still in fear.”

## Annex Two

### “Everybody knows that Haiti is a very hard place to be in currently.”

“Daniel” is a 33-year-old Haitian man, husband, and father, who is trying to survive in Baja California, Mexico. Daniel is desperate for an opportunity to enter the United States with his wife and young child. He tried to cross the border to seek protection in June 2020, but the U.S. government expelled him under the Title 42 policy to Haiti without giving him the chance to request asylum. After returning to Haiti, Daniel and his family immediately began planning how to leave again.

Daniel fled Haiti for the first time in 2015 after armed bandits demanded money from his family. In Daniel’s words:

*I’m from an area where gangs are breathing down your neck every day. They come out shooting and asking for money. That’s why my parents had me leave. One day the gangs came in the neighborhood to collect money. And my household didn’t have money to give so they shot at the house. After that event [my parents] had me leave.*

Daniel first went to Brazil and on to Chile, where he stayed for nearly four years and had his first child. He and his wife then made the difficult decision to leave to reconnect with Daniel's family in the United States. After making the harrowing journey across South and Central America, Daniel and his family reached the U.S. southern border and crossed into Texas by foot. They were immediately apprehended.

Authorities tested Daniel and his wife for COVID-19 and placed them in a detention center. Daniel was isolated in one area of the facility for men, while his wife and child stayed with the women and children. The only food that Daniel ate in detention were tortillas and cookies, and he was only allowed to bathe twice in the two weeks that he was detained.

Officers moved Daniel and his family to a hotel room. Daniel knew other families were also staying in the hotel, but he, his wife and child were alone, except for an officer who watched over them the whole time. Authorities tested for COVID and made him and his family chew ice chips to [ensure that they would] pass a temperature test before expelling them to Haiti:

*The COVID test was negative, and they put us at a hotel. I don't know where it was—in Texas. We thought we were close to being released, but then they came and said there was someone positive at the hotel and we had to change places. And instead of going to a hotel, we found ourselves at the airport. If you had a high temperature you could not be deported. I had to eat ice, and the baby had to eat ice, my wife had to eat ice.*

When asked whether he was able to speak with someone about his fear of returning to Haiti, Daniel replied, "No, we didn't go through any process like this. There were no questions or opportunity to present anything." Daniel never spoke to a judge. He was never told he could call a lawyer or given access to a phone.

The news of Daniel's return to Haiti brought tears to his mother. Haitian authorities forced Daniel to quarantine in a hotel for two weeks, but did not provide any food or other assistance during this time. Family members had to bring milk for his hungry child. Afterwards, Daniel and his family stayed with his wife's sister in Port-au-Prince. His family could not return to where he had lived before he fled Haiti out of fear that the same gang would make due on their threats to kill him. He was devastated to find the country even more dangerous than he had left it. Protests and kidnappings were happening every day. His cousin, a judge, told Daniel that there was nothing to be done because everyone fears for their lives—even the police who are supposed to protect them. Daniel still had paperwork that gave him permission to travel to Mexico for another year, so he and his wife and child left again as soon as they gathered enough money.

Now, Daniel and his family are staying with a friend in Mexico. Daniel works several days a week, but acknowledges that they are barely surviving. His friend also has a family, and Daniel knows that they cannot stay with him forever. As soon as they have the chance, he says, he and his family will try to enter the United States again to seek protection.

## Annex Three

**“This person knows where I am and I’m always very fearful that this person will come after me. The same person who persecuted me and caused me to leave Haiti.”**

“Justine” is a 32-year-old Haitian woman from a small rural island in Haiti. She fled Haiti in 2017 due to violence and threats to her life. Along her journey for safety to the United States, Justine has continued to suffer more violence and loss.

Justine’s neighbor in Haiti was a security officer for a Haitian Senator, and on several occasions, attempted to recruit Justine to work for his political party. Justine refused as she disagreed with the way Haiti was being run and as a result, her neighbor and a group of gang members working for the Senator tied her up and beat her with batons threatening to kill her with a gun for not joining. Justine attempted to go to the police for protection but was told there was nothing they could do to protect her since the neighbor was a member of law enforcement. A few weeks later, the neighbor again brought gang members to Justine’s home, who slapped Justine and threatened to kill her and burn down her home if she did not leave the country. Around one month later when Justine did not follow their demands to leave the country, her neighbor fulfilled his promise and burned down the home she shared with her elderly parents. Justine narrowly escaped the country, not even knowing whether her parents survived the fire.

After leaving Haiti, Justine initially escaped to Chile where she met her husband, who also fled Haiti. Together they traveled to Tapachula, Mexico, after facing racism and discrimination in Chile. From there they spent 10 days in Tijuana before crossing the border into California on Christmas Day, December 25, 2019. As she crossed border, Justine was three months pregnant and experiencing pain and complications from her pregnancy. Justine and her husband were apprehended by Border Patrol and immediately separated. Justine was taken to a hospital in California where she underwent surgery. When she awoke from surgery, she learned that she miscarried and that one of her ovaries had been removed without her knowledge or consent. Since being separated from her husband at the border, Justine has not seen her husband, nor does she have any information on where he is being held or whether he has been deported.

Justine was transferred to several detention centers in the United States and suffered from severe physical and emotional pain from the miscarriage, partial hysterectomy, incarceration, separation from her husband, and prospect of being deported to Haiti. It was during this state of physical pain and depression that Justine was given a credible fear interview, and failed. After several requests for a new credible fear interview were denied, Justine was deported to Haiti in August 2020.

In Haiti, Justine continues to deal with the mental and physical pain from her terminated pregnancy and her long journey from Haiti to the United States. In her short time back in Haiti, her former neighbor has already come to her friend’s house where she is staying and threatened her life twice. “He came with his gun and threatened to kill me. I left the area, but I’m still afraid. Very afraid.”

Justine continues to fear for life and safety in Haiti, for the same reasons that caused her to flee and seek asylum in 2017. “This person knows where I am and I’m always very fearful that this person will come after me. The same person who persecuted me and caused me to leave Haiti.”

## *Annex Four*

### **“When I was deported back to Haiti, word got out to the political group that I was coming back to Haiti.”**

Emmanuel, now 31-years-old, worked for a major Haitian political party that opposed the current government led by President Jovenel Moïse and participated as a candidate in the 2015 elections. Henchmen from several political parties plotted to have Emmanuel killed for his work as a candidate. He was severely beaten and fled Haiti in 2015 for the Dominican Republic. After he left, he and his sister received death threats and his son was killed by the political parties.

Emmanuel knew he could not return to Haiti. He explained, “I left Haiti because I was a part of a political party that made it unsafe to stay.” In 2016, along with his wife, Emmanuel traveled from the Dominican Republic to Brazil and began making the journey up South and Central America, towards the United States. They arrived at the U.S.-Mexico border in San Ysidro/Tijuana in March 2016.

Both Emmanuel and his wife immediately requested asylum. Without explanation, the couple was separated at the border. Emmanuel spent two days in detention before being granted entry into the United States. He says, “I told them about my fear of being deported back to Haiti and showed them the scars on my body from the violence but... they never gave me a credible fear interview.” Emmanuel’s wife, who was pregnant, was given a credible fear interview for her asylum claim and was released from detention months later. The couple was reunited in May 2016, and they began making their life in the United States, believing they had landed on their feet.

In 2017, Emmanuel and his wife fled to Canada because they read in the news that, “the laws were being changed in 2016 and the United States was not allowing Haitians in, so we tried Canada.” However, in 2019, Emmanuel received a notice from the Canadian government that he had been denied Canadian asylum due to the Safe Third Country Agreement, which states that if an immigrant passes through the United States first, they cannot apply for asylum in Canada. Emmanuel’s pregnant wife was permitted to stay in Canada.

Emmanuel returned to the United States in 2019 and was detained at the U.S.-Canada border. At that time, he learned that he had missed his 2017 U.S. asylum hearings and, because of that, was ordered to be deported. Emmanuel was detained in New Hampshire state prison for 14 months and described the conditions of his detention as “incredibly difficult” as he was “treated like an animal.” The experience took a toll on his mental health as he struggled to find a lawyer, communicate with prison staff, and deal with the separation from his wife and son, who he has never met. Emmanuel explains, “I had never done

anything wrong and had never been to prison but had to go through all of this in the United States...I was put in a cage." His request to meet with a psychologist in the state prison was denied and there were no resources available in Haitian Creole.

At the dawn of the COVID-19 pandemic, Emmanuel saw his fellow inmates falling sick and being quarantined in solitary confinement. He reflected, "I am lucky that I did not get sick." In May 2020, he learned that he would be deported back to Haiti; the lawyers he had secured had exhausted the options. He was placed on a plane to Louisiana, where he spent one month in detention. There were no face masks provided and social-distancing was not enforced. He and other detainees were tested for COVID-19 and flown to Texas, where more migrants boarded the plane, until the full flight made its way to Haiti.

Back in Haiti, Emmanuel had no family left (they had either been killed or had fled Haiti), and knew he would not be safe. "When I was deported back to Haiti, word got out to the political group that I was coming back to Haiti... I was very scared and afraid to remain in Haiti."

But due to the pandemic, the Haiti-Dominican border were closed. As soon as the border re-opened, in November 2020, Emmanuel crossed into the Dominican Republic and traveled back to Brazil. He has been living in Brazil since early 2021, trying to find a way to be reunited with his family in Canada.

## Annex Five

### Declaration of Anonymous

I declare under penalty of perjury pursuant to 28 U.S.C § 1746 that the following is true and correct to the best of my knowledge and recollection.

1. I was born in [REDACTED]. I am currently detained in ICE custody at the Karnes County Family Residential Center (Karnes) with my wife and child.
2. I am afraid to return to [REDACTED] and came to the United States with my family to seek asylum.
3. When I arrived at Karnes in [REDACTED], I told a person who works at the detention center that I wanted a lawyer. That person was wearing a uniform with a blue shirt that said GEO on it. That person told me that he would give me a list of lawyers. I asked two more guards at the detention center about getting a list of lawyers. In total, I asked for a lawyer about three different times. To this day, I have not received a list of lawyers from the detention center. I think that if it was up to the guards here, I would have already been deported. Luckily, my family in the United States had heard of RAICES, so they called RAICES and had them contact me here at the detention center. My lawyer tells me that because I do not have an A-number, I am in Title 42 proceedings.
4. I think that the guards at Karnes are angry that I got RAICES's phone number. They have asked me about three or four times how I received the attorneys' phone number. The other day, I was in the courtyard; a person wearing a blue shirt with GEO written on it asked me how I had gotten the lawyers' phone number. Another time, it was a person who was not in uniform who asked me how I had been able to contact a lawyer. That person told me that immigration had sent them to gather this information. All these questions about how I got a lawyer make me feel like I don't have any rights and like getting a lawyer is wrong or even illegal, even though I know it's my right to have a lawyer. I know this is my right because I can read some Spanish and I have seen some signs in Spanish at the detention center that say that we have a right to an attorney.
5. Sometime last week, I was outside in the courtyard. I saw a [REDACTED] woman talking to a woman who works at the detention center; the woman who works here wasn't wearing a uniform. After they finished talking, the [REDACTED] woman came and talked to me. She told me that she was asking the woman who works at the detention center about how to find an attorney. The [REDACTED] woman told me that the woman who works at the detention center told her that she needed to pay \$45,000USD for an attorney. And that for an attorney to even listen to her, she would need to pay \$10,000USD. When the [REDACTED] woman told me this, I gave her RAICES's phone number. I told her that I thought that the woman who works at the detention center was mocking her. Unfortunately, I think this [REDACTED] woman and her family were deported a few days after I talked to her. I learned this because I was

sleeping in the same room as the woman's husband, so I saw when the guards came to get him. The dad asked the guards if he could call RAICES, but the guards told him no. I'm pretty sure that the family was deported because when the detention center deports people, officers call people with a list and they ask people to remove their bedsheets from their bed.

6. One time, when I was outside in the courtyard, I saw that another detained person here at the detention center gave a piece of paper to another family. A male guard wearing a blue shirt saw that person giving the number and took the piece of paper and tore it up. The guard confronted the person and asked her angrily whether she shared a phone number with that other family. The lady who shared the phone number got really scared. I got scared of sharing RAICES's number too, because I didn't want to get in trouble with the guards here at Karnes.
7. Usually, when people arrive at the detention center, they are separated from other families, so we can't tell them about the availability of attorneys, since we can't talk to them. About last [REDACTED], I saw that about three other families who I had met in Panama (and other families) arrived at Karnes. I saw those families when I was on my way to the courtyard. The families tried to talk to me, but the guards told us not to talk to each other. I didn't get a chance to have a conversation with these families and I didn't have access to them, so I couldn't tell them about the availability of lawyers. Unfortunately, these families were deported. I don't think they ever had a chance to speak to a lawyer. Over the last week, there have been a lot of deportations. I think that most of those deported people didn't have a chance to speak to a lawyer.
8. I have seen differences in the treatment of white and black people at the detention center. I have seen white people detained here, but they are not here for long. Many of them are given an A number and put in a different section of the detention center. I have not received an A number, even though I am afraid to return to [REDACTED]. Most people who are in the T-42 process like me are [REDACTED], with the exception of about three white families here. It seems to me like the system is very racist. It's mostly the [REDACTED] here who are not allowed to receive A numbers and not allowed to share their fear of return to their home countries.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: February 11, 2021

/s/ Anonymous

## Annex Six

### Declaration of [REDACTED] (SID# [REDACTED]) Threats of Deportation After Stay of Removal Granted

I, [REDACTED], hereby swear under penalty of perjury that the following declaration is true and correct to the best of my abilities and recollection:

1. My name is [REDACTED] and I was born on [REDACTED] in Haiti. I am currently detained at the Karnes County Residential Center (“Karnes”) with my wife, [REDACTED] (SID# [REDACTED]) who was born on [REDACTED] and my [REDACTED] old son, [REDACTED] (SID# [REDACTED]) who was born on [REDACTED] and my [REDACTED]-old daughter, [REDACTED] (SID# [REDACTED]). I fled Haiti in [REDACTED] due to being attacked by an Evangelical group for my different religious beliefs. My wife later fled in [REDACTED]. My family and I entered the United States on or around January 31, 2021 through Del Rio, Texas. Almost immediately after crossing the border, we were detained by Customs and Border Protection (“CBP”). We were taken to a facility where we were placed in a brick room where it was very cold. We had to sleep on the floor. We were there for about 2 days. My family and I were then transported to Karnes on Wednesday, [REDACTED].
2. On February 03, 2021, another Haitian who was detained at Karnes approached me in the courtyard and asked me if I had an attorney. After I answered “No” he provided me with a phone number to the Refugee and Immigrant Center for Education and Legal Services (“RAICES”). Everybody told us if we did not have an attorney, we would be deported. I called that day and left a voicemail with my information.
3. On February 04, 2021, my wife and I met with an attorney via telephone from RAICES for the first time. He explained to my wife and I that we were in Title 42 proceedings and did not have assigned “A” numbers. This was the first time I had ever had access to an attorney. My wife and I decided to hire RAICES as our legal representatives that night.
4. On February 04, 2021, at sometime after 5:00 PM, 2 male GEO staff members came to my dorm and instructed my roommate and I to collect all of our belongings. The GEO staff member escorted us to the Karnes storage. My wife and children were with me at this point. My ID was taken away and I was given a bag. I was asked to sign a document to receive all of my personal belongings from storage. I told them I was not going to sign and I needed to contact my attorney. My request for my attorney to be contacted was ignored. The documents were in English and the staff members spoke to me in English and Spanish. I was very confused and did not understand anything on the document I was made to sign. My preferred language is only Haitian Creole, an interpreter was never offered to me. The staff member informed me that I would not be receiving my

belongings back if I did not sign the documents. I was very sad at this point, I also noticed that my children were very sad. I decided to sign the documents. Once I received all of my belongings, I realized that we were all about to be deported.

5. My family and I were placed into a room with about 2 other Haitian families. I was never told why we were waiting and going through this process. Everyone began crying because we realized we were going to be deported. I began thinking many bad thoughts because we were about to be returned to a country that we hoped to never return to again. My wife was crying a lot. We were all very hurt. The whole time, we were being supervised by GEO staff members, even when we used the restroom, they would watch us. The GEO staff members also yelled at my children anytime they stood up and started walking. We were given dinner, but the whole time the GEO staff members were yelling at us saying, "Hurry up! Hurry up!" We didn't end up eating anything because we were rushed. After about two hours of waiting, a GEO staff member came back to tell us that our flight was cancelled. My family and I were escorted back to our rooms after returning our personal belongings to the Karnes storage. Ever since this incident on February 04, 2021, I get very scared anytime a GEO staff member comes to my door because I feel like I could be deported at any moment.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: February 05, 2021

/s/ [REDACTED]

## Annex Seven

### Declaration of [REDACTED]

I, [REDACTED], declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection.

1. My name is [REDACTED]. I was born on [REDACTED], in Thomasique, Haiti. I am [REDACTED], and I am currently detained in ICE custody at the Karnes County Family Residential Center (“Karnes”). I am detained with my husband, [REDACTED] our [REDACTED]  
[REDACTED]
2. I came to the U.S. with my family to seek asylum. My family and I were forced to flee Haiti because people killed our relatives and marked us for death.

- [REDACTED]
3. Around October 3, 2020, my family and I crossed into the United States. My husband and I crossed the river carrying our children along with a few other families, and we called out to border patrol as we crossed. The border patrol officers took my family’s and my information and then sent us to another prison. I do not know where the other place was or what it was called.
  4. On the next day, October 4, 2020, they sent me to yet another prison. I had to stay there for a week. It was very cold. People had thin little rugs with which to sleep on cold cement. Three times a day we were eating tortillas, and nothing more substantive. It was terrible.
  5. My children became sick from the conditions in this second prison. My [REDACTED] [REDACTED] had a cough, fever, and a congested nose. I asked the officers for medical help, and they said they would bring us medicine. They never did.
  6. I felt very uncomfortable. Looking at your child suffering in front of you and not being able to provide medical care, it’s sickening.
  7. Being in that border prison, I was cut off from information about what was happening to me and my family. I was separated from my husband and did not know when I would be able to be with him again. None of the officers in the border prison talked to me in my language of Haitian Creole. They would only speak to us in Spanish even though they knew that we are Haitian.
  8. A week later, around October 10, 2020, immigration transferred my family and me to the prison at Karnes.
- [REDACTED]

9. When we first arrived at Karnes, my family went through the intake process. A GEO officer took down our information and informed my husband and I that we would again be separated while detained at Karnes. We received COVID-19 tests but to this day we have not received the results.
10. The officer began to explain to my husband and I that we would be in quarantine for 14 days. He told us how we would have to remain inside our cells in quarantine for the whole 14 days, and only once it was over would we and our children be allowed to go outside for up to 30 minutes a day to get some air.
11. My husband asked the officer intaking us when we would be released. The officer responded that we must never ask about when we would be released while detained in Karnes. He repeated that we must never ever ask about when we would be released, that that was the one thing we must “never” ask him about.
12. The entire intake took place in Spanish although the man knew we were Haitian and Haitian Creole is our primary language. The officer never offered to connect us with a Haitian Creole interpreter.
13. The officer was brutal. He delivered the message telling us not to ask when we would be released with the same brutality that he treated us in the rest of the intake meeting. His brutality showed in how he would throw our papers around and how he would posture his arms. He had no patience. He was very abrupt with everything. I even told my husband at the time, “oh my god, this man is brutal.” I don’t know if he is only like that when he is with Haitians or if he is like this with everyone. It was unnerving, it really caught my attention that he was so off.
14. The officer was a black haired, dark eyed man. One of his eyes is visibly smaller than the other. He was of medium build, a little on the chubby side. He is neither tall nor short. He appeared to be white and he wore a blue polo shirt. I did not get his name. I knew he was a GEO officer because of the way he was dressed, wearing a GEO uniform.



15. On the evening of Wednesday, October 14th, just a few days into our 14 day quarantine and without receiving our COVID-19 test results, my family and I were removed from quarantine without explanation and sent off to be deported.
16. When the officers came to get us, I was not thinking at all about deportation. It was not even on my mind. At around 5:00 P.M. the officers said, “pick up all your clothing, pick up all your stuff.” Then they threw it all away. There was only enough time to do that, and then they sent us to another cell to wait. No one told us what was going on.
17. The officers locked us in an unfamiliar cell with about three other Haitian families and told us not to go anywhere. The door was locked, so there was no way we could go anywhere even if we tried. We sat with the other families, asking ourselves all sorts of questions. No one had been given any information as to what was going on. We waited there until about 11:00 P.M..

18. Finally, the officers told us that they were transferring us to another prison. They loaded us into a bus with about six other Haitian families. One of the officers handling our paperwork as we got onto the bus was the same man who had told us we could not ask when we would be released.
19. During the drive, the families continued to talk together. Everyone was giving their opinions on what was happening. My husband speculated that they were taking us very far away only to go to another prison, that maybe we were not being transferred like the officers said. The families began to suspect that we may be being deported, especially because the bus was composed entirely of Haitian families.
20. We drove for what felt like forever, until 3:00 or 4:00 A.M.. We arrived at a complex with some large lights, and we saw an airplane land. When we saw the airplane landing in the complex, everyone started crying. Because the officers had told us we were going to another immigration prison, seeing the airplane at the complex seemed like confirmation that we were not actually being transferred.
21. People were upset, wondering why the officers would tell us that we were being transferred and lie to us all this time only to deport us in the middle of the night. I began to cry nonstop at this point, continuing to cry for over an hour or so. My children also cried a lot.
22. None of the officers ever confirmed that we were being deported. No one would even say the word deportation. None of them, through this whole process. All the families were crying on the bus, for over an hour. My husband and others kept asking what was going on, if they were deporting us. They would not tell us anything despite our desperation. It was all extremely emotional.
23. At one point, one of the female officers on the bus made a slight nod and a clearly intentional facial gesture confirming that we were right. She seemed to feel sorry for us. This was the only confirmation that we got. It felt very clear, though. This woman nodded her head as if she wanted to tell us that yes, we were being deported, but could not.
24. While we were still sitting in the bus at the airport complex, my husband was asking the officers “are you deporting us? Are you deporting us and not telling us that you are?” My husband also pointed out to the officers that my documents, including my own and my children’s passports, had been taken away while in Karnes. Officers had told us they would be returned to us, and my husband explained to the officers that they had not been returned.
25. In response, one of the officers told my husband, “if you continue to disrupt in any way, we will handcuff and shackle you.” The officer was larger, and he seemed to be a policeman by his uniform. He was wearing a dark blue uniform and had the word “police” in white on the uniform. I do not know his name.
26. My husband responded, “I do not want something like that to happen to me in front of my children, I do not want to be shackled in front of them.” The officer responded, “well then, calm down and we won’t have a problem.”
27. My husband responded, “well, I don’t want to go into the plane without my papers. If you are sending us away, we need our documents.”

28. The officer repeated, “Don’t speak. I will bring it to you on the plane.”
29. This entire conversation took place in Spanish even though the officers knew we are Haitian and speak Haitian Creole as our primary language.
30. Finally, after making us sit for an hour and a half or so, the officers began to call the families to the plane one by one. After the fourth or fifth family was removed from the bus, the officers called our names and we began to walk to the plane. I was still crying as I was still shaken by what was going on.
31. As I got off the bus, I felt dizzy. After crying nonstop for over an hour and with the stress of not knowing what was happening, I felt extremely weak. I felt like I could not feel anything anymore from crying for so long.
32. I got up and began walking to the plane and I just felt so weak. I felt really desolate. I had been crying so much. I knew I might not make it to the plane, and I felt like I needed help because I might faint. As I was walking, it was getting worse.
33. As I was going up the plane, I was looking for the rail with my hand. My hand did not seem to be able to find the rail or grab it, and I fell.



34. I do not remember what happened after that. I woke up the next day in the hospital, around 6:00 or 7:00 A.M... When I woke up, many people were around me. There were tubes attached to me. I think the people around me were doctors. There were also two officers outside of my room who I think were police.
35. The doctors spoke to me in Spanish even though Spanish is not my first language. They asked me if I understood a little Spanish and I said yes. I do not understand everything in Spanish - far from that. If I could have spoken to them in Haitian Creole that would have been much more comfortable. I could not ask the questions I needed to ask, I could not express myself or advocate for myself in Spanish. I wanted to ask questions and know what was going on. There were so many things I wanted to say, but I could not say them without a Haitian Creole interpreter.
36. I was able to understand that the doctors were trying to give me a prescription for pain medicine, but I have not heard anything about accessing a prescription since being back at Karnes. I have not had a regular medication schedule since being back in Karnes, so if I was prescribed medication I have not been receiving it. If I was indeed prescribed pain medication, I would definitely want it because I have been in so much pain.
37. The doctors said my exams came back normal. I do not know what exams they did on me, this was not explained. I think they took some images of my head. I have not received any copies of any of the tests or any records at all from my time at the hospital.
38. My whole time in the hospital, I was very disoriented. I was just trying to determine whether or not I was dreaming, whether or not this was real. I began to feel how heavy my head was, and how unwell I felt.



pain I was in or confirmed where I was at in terms of pain, or whether or not I needed treatment for it. I had to advocate for myself through my daughter.

48. On Sunday, October 18th, I had to send my daughter for medication again. Except for the first time they checked on me after my return from the hospital, everytime I have gotten medication since being back in Karnes after my fall has been because I had to send my daughter to advocate for me.
49. It felt bad to have to ask my daughter to advocate for me. It made me feel very down, very discouraged. I was looking at myself with my children in that situation, being detained, and having to ask my daughter to get pills for me felt bad. As a mother, I should not have been put in this situation. This is part of what is wrong with detaining us in the first place.
50. Since returning to Karnes, I continue to struggle with the pain in general. Though not as bad as the first day after my fall, I am still in a lot of pain. Today, five days after the fall, I would rate my pain as a 6 out of 10.
51. My neck is extremely stiff, even now. Now, if I am laying down on the side, I cannot turn my head. I cannot turn my neck and head at this time. In order to turn it, I would have to completely turn my body. And the pain is not limited to solely my neck, though that is where it is the worst. I continue to struggle with headaches. My breast has also been swollen and painful. When I breathe it hurts. When I cough it hurts. I do not know if maybe my breast was impacted in the fall as well. It is more painful in the tissue itself than in the ribs. In the days immediately after my fall, my breast was swollen and red.
52. My health has continued to have difficulties beyond the pain as well. Since almost being deported on the night of the 14th and morning of the 15th, I have not been able to sleep or eat regularly. I have slept maybe an hour or so each night. I am exhausted, but I cannot sleep from the stress.
53. I am also struggling with the food in Karnes. Since nearly being deported, I have been unable to eat. I am sometimes able to force down a cookie, but when I do I feel a tightness in my chest and I cannot eat more. I feel very anxious, and my heart is beating so fast that I cannot eat. I do not feel this can be fixed by accessing different food, it is due to being detained and almost deported. I am so stressed and afraid, constantly.
54. Yesterday, Sunday October 18th, my children stopped eating. They have seen how unwell I am, and they are not eating because of their concern. They have not eaten in a full day. My [REDACTED] cries a lot. I do not think she is doing well seeing me like this. She is saddened and then has no appetite. And the [REDACTED] not want to eat, not even milk. She used to ask for food and prompt me all the time, like a normal hungry baby, but now she does not prompt me at all.
55. I am also struggling to take care of both of my children in my current state. Although I requested that my husband be allowed to care for our [REDACTED], the officers at the prison have said that this is not possible. I continue to be detained alone with my two children, with no help in taking care of them. The [REDACTED] has to take care of both the [REDACTED] and me.

56. I cannot take it anymore. If I were free, I could try to see a doctor. I need treatment, and I need to check that I am truly alright after all of this. If I were free, I would be with my family, as I have U.S. citizen relatives that are waiting to receive me in the U.S. All of this suffering that my family is going through in detention is unnecessary.
57. Please free me and my family.

## Annex Eight

### Declaration of [REDACTED] (SID# [REDACTED]) Threats of Deportation After Stay of Removal Granted

I, [REDACTED], hereby swear under penalty of perjury that the following declaration is true and correct to the best of my abilities and recollection:

1. My name is [REDACTED] and I was born on [REDACTED] in Haiti. I am currently detained at the Karnes County Residential Center (“Karnes”) with my wife, [REDACTED] [REDACTED] (SID# [REDACTED]) who was born on [REDACTED] and my four-year-old son, [REDACTED] (SID# [REDACTED]) who was born on [REDACTED]. I fled Haiti in 2014 due to being physically attacked by dissenting individuals. My wife later fled in 2015. My family and I entered the United States on or around January 25, 2021 through San Diego, California. Almost immediately after crossing the border, we were detained by Customs and Border Protection (“CBP”). We were taken to a facility where we were placed in a brick room where it was very cold. We were there for about 5 days. My family and I were then transported to Karnes on Saturday, January 30, 2021.
2. On February 3, 2021, another Haitian who was detained at Karnes approached me in the courtyard and asked me if I had an attorney. After I answered “No” he provided me with a phone number to the Refugee and Immigrant Center for Education and Legal Services (“RAICES”). I called that day and left a voicemail with my information.
3. On February 04, 2021, my wife and I met with an attorney via telephone from RAICES for the first time. He explained to my wife and I that we were in Title 42 proceedings and did not have assigned “A” numbers. This was the first time I had ever had access to an attorney. My wife and I decided to hire RAICES as our legal representatives that night.
4. After we met with RAICES, it was sometime after 7:00 PM, a GEO guard escorted my wife and I to a storage room where our personal belongings were kept. We were never taken to the dorms where we each slept. After we gathered our belongings, my family and I were escorted to an office on the Karnes campus. We were not given any details about where and why we were being taken. In the office we were taken to, I saw about 8 officers. The room was crammed. There were men and women in black jackets and khaki pants. Others were wearing jackets with “GEO” on them, while others were in plain clothes and not in uniform. At this moment, I felt very sad and confused. My wife began crying because we did not expect something like this to happen to us.
5. One of the female Immigration and Customs Enforcement (“ICE”) officers began speaking to us in Spanish even though our preferred language is Haitian Creole. From the little Spanish I did understand, I gathered that my family and I were going to be deported

that same night. I was in shock and began thinking, “How will I survive if I go back to Haiti?” My wife began crying even more.

6. We were then escorted to a room where 3 other Haitian families were staying. We were not told any other details. We were simply left there waiting. We were not given anything to drink and were not given any food despite the fact that my family and I were never fed dinner that evening. I felt very sad, like my life was over. My wife was crying non-stop. Later, a staff member came and told us that the deportation flight had been canceled. We were all escorted back to our separate dorms (my wife and son in one and I in another). I was given fruit and bread in place of a full meal. I asked a staff member for the time, and they told me it was midnight. I realized that we were left in the room for several hours, it felt like about five hours.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: February 05, 2021

/s/ [REDACTED]

# NOTES



- 1 Declaration provided by RAICES, Appendix 7.
- 2 New York Times Editorial Board, Opinion, *Haiti Needs Help. This Is What the U.S. Sends Instead*, N.Y. TIMES (Feb. 10, 2021), <https://www.nytimes.com/2021/02/10/opinion/haiti-us-deportations.html>.
- 3 Washington Post Editorial Board, Opinion, *Haitians are Fleeing Their Country. Their President is the Source of the Problem*, Washington Post (Feb. 10, 2021), [https://www.washingtonpost.com/opinions/global-opinions/haiti-jovenel-moise-dictator-immigration/2021/02/10/67fb4b06-6a53-11eb-9ead-673168d5b874\\_story.html](https://www.washingtonpost.com/opinions/global-opinions/haiti-jovenel-moise-dictator-immigration/2021/02/10/67fb4b06-6a53-11eb-9ead-673168d5b874_story.html).
- 4 Miami Herald Editorial Board, *Why is Biden Continuing a Cruel Trump Policy? He Should Stop Expelling Haitian Migrants Immediately* (Mar. 12, 2021), <https://www.miamiherald.com/opinion/editorials/article249879403.html>.
- 5 Based on sources in Haiti’s immigration authority, we were able to confirm 963 removals from February 1, 2021 to February 21, 2021. In March we estimate 500+ removals based on communications with people who have knowledge of these flights. ICE Air Operations refuses to confirm information about flights.
- 6 See Order Suspending the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists, 85 Fed. Reg. 65,806 (Oct. 13, 2020).
- 7 See e.g., *Letter to Acting HHS Secretary Cochran and CDC Director Walensky*, COLOMBIA PUBLIC HEALTH (Jan. 28, 2021) <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky>.
- 8 Associated Press, *Pence Ordered Borders Closed in March Over Objection of CDC Experts*, L.A. TIMES (Oct. 5, 2020), <https://www.latimes.com/world-nation/story/2020-10-05/mike-pence-close-borders-cdc-experts-refused>.
- 9 Total expulsions under Title 42 (Mar. 20, 2020 to Feb. 2021) are 536,702: T42 expulsions from March through September 30, 2020, total 197,371 by CBP and 9,412 by Office of Field Operations (“OFO”). See *FY 2020 Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, CUSTOMS AND BORDER PATROL (Nov. 20, 2020), <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2020>. Expulsions from October 1, 2020 through February 2021 were 317,741 by CBP officials and 12,178 by OFO. See *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, CUSTOMS AND BORDER PATROL (Mar. 10, 2021), [https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics?\\_ga=2.201687829.508026263.1610655763-361508628.1610655763](https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics?_ga=2.201687829.508026263.1610655763-361508628.1610655763).
- 10 See *U.S. Border Patrol Monthly Enforcement Encounters 2021: Title 42 Expulsions and Title 8 Apprehensions*, CUSTOMS AND BORDER PATROL (Mar. 10, 2021), <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.
- 11 Maria Abi-Habib, *On Mexico’s Border with U.S., Desperation as Migrant Traffic Piles Up*, N.Y. TIMES (Mar. 21, 2021), <https://www.nytimes.com/2021/03/14/world/americas/mexico-border-biden.html>.
- 12 ICE removed 895 people to Haiti during all of FY2020 (Oct 1, 2019 – Sept. 30, 2020). IMMIGRATION AND CUSTOMS ENF’T, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT FISCAL YEAR 2020 ENFORCEMENT AND REMOVAL OPERATIONS REPORT 29 (2021).
- 13 Memorandum from David Pekoske, Acting Sec’y, Dep’t of Homeland Sec. to Troy Miller, Senior Official Performing the Duties of the Comm’r U.S. Customs and Border Prot., Tae Johnson Acting Dir. U.S. Immigration and Customs Enf’t, and Tracey Renaud, Senior Official Performing the Duties of the Dir. U.S. Citizenship and Immigration Serv. (Jan. 20, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).
- 14 Associated Press, *Federal Judge Indefinitely Blocks Biden Administration’s 100-Day Moratorium on Most Deportations*, CBS NEWS (Feb. 24, 2021, 9:58 AM), <https://www.cbsnews.com/news/biden->

- [deportation-moratorium-judge-bans-enforcement/](#).
- 15 See e.g., Exec. Ord. No. 14,010, 86 Fed. Reg. 8,267 (Feb. 2, 2020).
- 16 Expulsions under Title 42 have averaged just over 64,000 people a month since October 1, 2020, or 2,108 a day. See [Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions](#), *supra* note 9.
- 17 Telephone Interview with Haitian Deportee (March 10, 2020), Appendix 1.
- 18 Telephone Interview with Haitian Deportee (March 10, 2020), Appendix 1.
- 19 Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 20, 2020).
- 20 Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 85 Fed. Reg. 65,806 (Oct. 13, 2020).
- 21 *Id.*
- 22 *Id.*
- 23 *Id.*
- 24 *Id.*
- 25 *COVID-19 CAPIO*, PROPUBLICA, <https://assets.documentcloud.org/documents/6824221/COVID-19-CAPIO.pdf> (guidance to Border Patrol on implementation of Title 42) (last visited Mar. 22, 2021).
- 26 *Id.*
- 27 *Id.*
- 28 *COVID-19 CAPIO*, *supra* note 25.
- 29 *Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border*, COLOMBIA PUBLIC HEALTH (Dec. 2020), <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/public-health-recommendations-processing-families-children-and-adults-seeking-asylum-or-other>.
- 30 *Letter to Acting HHS Secretary Cochran and CDC Director Walensky*, *supra* note 7.
- 31 Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 85 Fed. Reg. 65,806 (Oct. 13, 2020).
- 32 *Border Crossing Entry Data, Monthly Data*, U.S. DEP'T OF TRANSP., <https://explore.dot.gov/views/BorderCrossingData/Monthly?isGuestRedirectFromVizportal=y&embed=y> (last visited Mar. 22, 2021).
- 33 Molly O'Toole, *Biden Promised Change at the Border. He's Kept Trump's Title 42 Policy to Close It and Cut Off Asylum*, L.A. TIMES (Mar. 19, 2021), <https://www.latimes.com/politics/story/2021-03-19/a-year-of-title-42-both-trump-and-biden-have-kept-the-border-closed-and-cut-off-asylum-access>.
- 34 *Letter to HHS Secretary Azar and CDC Director Redfield Signed by Leaders of Public Health Schools, Medical Schools, Hospitals, and Other U.S. Institutions*, COLOMBIA MAILMAN PUBLIC HEALTH (May 18, 2020), <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>.
- 35 *Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border*, *supra* note 26.
- 36 U.S. DEP'T OF HOMELAND SEC., INSPECTOR'S FIELD MANUAL, ch.17, § 9 (2006).
- 37 RUTH ELLEN WASEM, CONG. RESEARCH SERV., IMMIGRATION POLICIES AND ISSUES ON HEALTH-RELATED GROUNDS FOR EXCLUSION 10 (Aug. 13, 2014), <https://fas.org/sgp/crs/homsec/R40570.pdf>.
- 38 Interview with Andrea Meza, Director of Family Detention Services, RAICES (Feb. 16, 2021).
- 39 *Use of Public Health as Pretext to Ban and Block Refugees*, HUM. RIGHTS FIRST (Dec. 2020), <https://www.humanrightsfirst.org/sites/default/files/BackgrounderPublicHealthPretext.12.20.pdf>.
- 40 *Communication Resources for Travelers*, CDC (Feb. 18, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/travelers/communication-resources.html>.

- 41 Lucas Guttentag, *Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors*, JUST SECURITY (Apr. 13, 2020), <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>.
- 42 Caitlin Dickerson and Michael D. Shear, *Before Covid-19, Trump Aide Sought to Use Disease to Close Borders*, N.Y. TIMES (May 3, 2020), <https://www.nytimes.com/2020/05/03/us/coronavirus-immigration-stephen-miller-public-health.html>.
- 43 *Id.*
- 44 Associated Press, *Pence Ordered Borders Closed in March Over Objection of CDC Experts*, L.A. TIMES (Oct. 5, 2020), <https://www.latimes.com/world-nation/story/2020-10-05/mike-pence-close-borders-cdc-experts-refused>.
- 45 *Id.*
- 46 42 U.S.C. § 265; Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 16559-01 (Mar. 24, 2020).
- 47 Immigration and Nationality Act of 1965, § 101(a)(42); 8 U.S.C. § 1101(a)(42)(A) (defining “Refugee,” “Immigration,” and “Nationality.”)
- 48 INA § 241(b)(3); 8 U.S.C. § 1231(b)(3).
- 49 Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137.
- 50 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984 1465 U.N.T.S. 85, 113.
- 51 Implementation of the Convention Against Torture, 8 CFR § 208.18.
- 52 *Title 42 Challenges*, CENTER FOR GENDER AND REFUGEE STUDIES, UC HASTINGS COLLEGE OF THE LAW, <https://cgrs.uchastings.edu/our-work/title-42-challenges> (last visited Mar. 22, 2021).
- 53 See P.J.E.S. v. Wolf, No. 20-2245(EGS), 2020 U.S. Dist. LEXIS 216974 (D.D.C. Nov. 18, 2020).
- 54 John Burnett, *Judge Says Coronavirus Can't Be Used As Reason To Quickly Deport Unaccompanied Minors*, NPR (Nov.18, 2020), <https://www.npr.org/2020/11/18/936312918/judge-says-coronavirus-cant-be-used-as-reason-to-deport-unaccompanied-minors>.
- 55 Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination, 86. Fed. Reg. 9942 (Feb. 10, 2021).
- 56 HUISHA-HUISHA et al v. GAYNOR et al, No. 1:2021cv00100 (D.D.C. filed Jan.12, 2021).
- 57 *Title 42 Challenges*, supra note 52.
- 58 Based on flight manifests confidentially obtained.
- 59 INA § 212(a)(1)(A); 8 U.S.C. § 1182(a)(1)(A); Public Health Service Act of 1944, 42 U.S.C. § 325.
- 60 See INA 212(a)(1)(A)(ii); 8 U.S.C. § 1182.
- 61 Dawn Gilbertson and Jayme Deerwester, *Travelers Boarding International Flights to the U.S. Will Need Proof of Negative Coronavirus Test, CDC Says*, USA TODAY (Jan. 13, 2021), <https://www.usatoday.com/story/travel/airline-news/2021/01/12/covid-test-required-international-passengers-flying-into-us/6640424002/>.
- 62 Total expulsions under Title 42 (March 20, 2020 to January 31, 2021) are 463,922: T42 expulsions from March through September 30, 2020, totaled 197,371 by Border Patrol and 9,412 by OFO. See *FY 2020 Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, supra note 8. Expulsions from October 1, 2020 through January 31, 2021 were 247,250 by Border Patrol and 9,959 by OFO. See *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, supra note 8.
- 63 Expulsions under Title 42 have averaged just over 64,000 people a month since October 1, 2020, or 2,108 a day. See *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, supra note 8.
- 64 IMMIGRATION AND CUSTOMS ENF'T, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT FISCAL YEAR

- 2020 ENFORCEMENT AND REMOVAL OPERATIONS REPORT 20-21, <https://www.ice.gov/doclib/news/library/reports/annual-report/eroReportFY2020.pdf> (last visited Mar. 23, 2021).
- 65 WITNESS AT THE BORDER, TITLE OF REPORT 29 (Mar. 5, 2021), <https://static1.squarespace.com/static/5e221cacff87ba2d2833cf54/t/603f9910daffbf1db1459abb/1614780692811/ICE+Air+Feb+2021+v1.THCPDF.pdf>.
- 66 Quinn Owen and Kiara Brantley-Jones, *CBP Chief Defends Rapid Border ‘Expulsions’ as Unauthorized Crossing Attempts Grow*, ABC NEWS (Aug. 6, 2020), <https://abcnews.go.com/US/cbp-chief-defends-rapid-border-expulsions-unauthorized-crossing/story?id=72223995>.
- 67 Jose Luis Gonzalez and Lizbeth Diaz, *U.S. Expels Dozens of Haitian Asylum Seekers to Mexico*, REUTERS (Feb. 3, 2021, 8:15 PM), <https://www.reuters.com/article/us-usa-immigration-border-idUSKBN2A40FM>.
- 68 Jacqueline Charles, *Biden Team Under Fire for Deportation Uptick, Backing Moise as Haiti Tensions Multiply*, MIAMI HERALD (Feb. 9, 2021), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article249046215.html>.
- 69 See NICOLE PHILLIPS ET AL., CENTER FOR GENDER AND REFUGEE STUDIES, UC HASTINGS COLLEGE OF THE LAW, A JOURNEY OF HOPE: EXECUTIVE SUMMARY 9-10 (Oct. 2020).
- 70 In January 2010, the exchange rate was US\$1 to 40.5 Gourdes, compared with 73 Gourdes to US\$1 in March 2021. Bank of Haiti Exchange Rate (last accessed Mar. 23, 2021), [https://www.brh.ht/wp-content/uploads/tauxdechange\\_chrono.pdf](https://www.brh.ht/wp-content/uploads/tauxdechange_chrono.pdf).
- 71 Tula Connell, *Haiti: Workers Still Struggle 10 Years After the Earthquake*, SOLIDARITY CENTER (Jan. 9, 2020) <https://www.solidaritycenter.org/haiti-workers-still-struggle-10-years-after-earthquake/>.
- 72 *The World Factbook: Haiti*, CIA (Jul. 27, 2017), <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> [<https://perma.cc/X78L-AYJT>].
- 73 Humanitarian Aid, *Haiti: Food Insecurity Expected to Rise Next Year*, U.N. Humanitarian Agency Reports, U.N. NEWS (Dec. 27, 2019), <https://news.un.org/en/story/2019/12/1054441>.
- 74 PHILLIPS ET AL., *supra* note 69.
- 75 *Id.*
- 76 *Id.*
- 77 See e.g., Lulu Garcia-Navarro, *Amid Construction Boom, Migrants Flow Into Brazil*, NPR (Jun. 26, 2013), <https://www.npr.org/sections/parallels/2013/06/27/191300066/with-brazils-economy-growing-illegal-migrants-flow-in>.
- 78 PHILLIPS ET AL., *supra* note 69, at 10.
- 79 *Id.*
- 80 *Id.*
- 81 *Id.*
- 82 *Id.*
- 83 *Id.*
- 84 Orlando Milesi, *Chile, an Oasis for Haitians that Has Begun to Run Dry*, INTER PRESS SERVICE (May 18, 2018), <http://www.ipsnews.net/2018/05/chile-oasis-haitians-begun-run-dry/>.
- 85 PHILLIPS ET AL., *supra* note 69, at 10.
- 86 *Id.*
- 87 Jacqueline Charles, *New migration: Haitians carve a dangerous 7,000-mile path to the U.S.*, MIAMI HERALD (Sept. 24, 2016), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article103920086.html#storylink=cpy>.
- 88 PHILLIPS ET AL., *supra* note 69, at 11.
- 89 United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Eighteenth to Twenty-First Periodic Reports of Mexico*, U.N. Doc. CERD/C/MEX/CO/18-21 (Sept 19, 2019), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download).

- [aspx?symbolno=CERD/C/MEX/CO/18-21&Lang=En.](#)
- 90 PHILLIPS ET AL., *supra* note 69, at 12.
- 91 Daniella Silva, *Trapped in Tijuana: Migrants Face a Long, Dangerous Wait to Claim Asylum*, NBC News (Mar. 18, 2019), <https://www.nbcnews.com/news/latino/trapped-tijuana-migrants-face-long-dangerous-wait-claim-asylum-n981721>.
- 92 Hillel R. Smith, *The Department of Homeland Security's Reported "Metering" Policy: Legal Issues*, 2-3 (Aug. 13, 2019) <https://fas.org/sgp/crs/homsec/LSB10295.pdf>.
- 93 Maya Averbuch, *Stranded in Tijuana: A Forgotten Community of Haitians with No Place to Go*, THE PROGRESSIVE (April 1, 2018), <https://progressive.org/magazine/stranded-in-tijuana-immigration-haiti/>. See *Al Otro Lado v. Wolf*, No. 3:17-cv-02366-BAS-KSC, 2021 U.S. Dist. LEXIS 30450 (S.D. Cal. Feb. 18, 2021).
- 94 See *Al Otro Lado v. Wolf*, No. 3:17-cv-02366-BAS-KSC, 2021 U.S. Dist. LEXIS 30450 (S.D. Cal. Feb. 18, 2021).
- 95 Ted Hesson, *Trump's Third-Party Asylum Ban Halted Temporarily by California Judge*, POLITICO (Jul. 24, 2021), <https://www.politico.com/story/2019/07/24/trump-third-country-asylum-ban-1428465>.
- 96 Miriam Jordan, *Appeals Court Strikes Down Trump Administration's Asylum Ban*, N.Y. TIMES (Jul. 6, 2020), <https://www.nytimes.com/2020/07/06/us/trump-asylum-ban-ninth-circuit.html>.
- 97 Shoba Sivaprasad Wadhia, *From the Travel Ban to the Border Wall, Restrictive Immigration Policies Thrive on the Shadow Docket*, SCOTUSblog, Symposium (Oct. 27, 2020), <https://www.scotusblog.com/2020/10/symposium-from-the-travel-ban-to-the-border-wall-restrictive-immigration-policies-thrive-on-the-shadow-docket/>.
- 98 Spencer S. Hsu, *Federal Judge Strikes Down Trump's Asylum Rule Targeting Central Americans*, Washington Post (Jul. 1, 2020), [https://www.washingtonpost.com/local/legal-issues/us-judge-strikes-down-trump-asylum-rule-targeting-central-americans/2020/07/01/96e57616-bb4a-11ea-bdaf-a129f921026f\\_story.html](https://www.washingtonpost.com/local/legal-issues/us-judge-strikes-down-trump-asylum-rule-targeting-central-americans/2020/07/01/96e57616-bb4a-11ea-bdaf-a129f921026f_story.html).
- 99 PHILLIPS ET AL., *supra* note 69, at 12.
- 100 *Quarantine Halts Migrants in Panama*, UNITED NATIONS, <https://www.un.org/en/coronavirus/quarantine-halts-migrants-panam%C3%A1>.
- 101 *Migrants stuck in Panama demand to continue journey to U.S.*, AP NEWS (Jun. 3, 2020), <https://apnews.com/article/14291a2958719496f44a77f8e6d6a61a>.
- 102 Juan Zamorano, *Migration Through Panama Resumes After Pandemic Lockdown*, BORDER REPORT (Feb. 10, 2021), <https://www.borderreport.com/hot-topics/immigration/migration-through-panama-resumes-after-pandemic-lockdown-is-lifted/>.
- 103 Charles, *supra* note 68.
- 104 ICE removed 895 people to Haiti during all of FY2020 (Oct 1, 2019 – Sept. 30, 2020). IMMIGRATION AND CUSTOMS ENF'T, *supra* note 64, at 29; the 1,200 figure is estimated based on a partial review of flight manifests.
- 105 On ICE detention as a public health threat, see e.g., *Hotbeds of Infection: How ICE Detention Contributed to the Spread of COVID-19 in the United States*, DETENTION WATCH NETWORK (Dec. 2020), [https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN\\_Hotbeds%20of%20Infection\\_2020\\_FOR%20WEB.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN_Hotbeds%20of%20Infection_2020_FOR%20WEB.pdf). On flights see, Jake Johnston, *Exporting COVID-19: ICE Air Conducted Deportation Flights to 11 LAC Countries, Flight Data Shows*, CEPR Blog (Apr. 27, 2020), <https://cepr.net/exporting-covid-19-ice-air-conducted-deportation-flights-to-11-lac-countries-flight-data-shows/>.
- 106 U.S. DEP'T OF HOMELAND SEC., ICE GUIDANCE ON COVID-19 (2020), <https://www.ice.gov/coronavirus>.
- 107 Reuters Staff, *Haitian Source Says Three Deportees from U.S. Have Coronavirus*, REUTERS (Apr. 20, 2020), <https://www.reuters.com/article/us-health-coronavirus-haiti-deportation/haitian-source->

- [says-three-deportees-from-u-s-have-coronavirus-idUSKBN222217](#). In addition to Haiti, 102 deportees to Guatemala and deportees to Mexico tested positive for COVID-19. *Guatemala Says More Deportees From U.S. Positive for COVID-19*, AP NEWS (May 11, 2020), <https://apnews.com/article/3fc1b1e71ea456f7a3aed1c1b2b9de66>. The Guatemalan government estimated that recently returned immigrants made up more than 20 percent of the country's confirmed COVID-19 cases. Johnston, supra note 103. In addition, 22 of 76 deportees to India, four to El Salvador and some to Romania tested positive for COVID-19 on arrival in their home countries from ICE detention facilities. *22 of 76 Haryana Natives Deported from U.S. Test Corona-Positive: Minister Anil Vij*, TIMES OF INDIA (May 23, 2020), <https://timesofindia.indiatimes.com/city/chandigarh/22-of-76-haryana-natives-deported-from-us-test-corona-positive-minister-anil-vij/articleshow/75918605.cms>.
- 108 Monique Madan and Jacqueline Charles, *ICE removes detainees with coronavirus from deportation flight to Haiti*, MIAMI HERALD (May 11, 2020), <https://www.miamiherald.com/news/local/immigration/article242645496.html>.
- 109 Monique Madan and Jacqueline Charles, *ICE Has Been Testing Migrants Before Deportation, But How It's Doing So is Problematic*, MIAMI HERALD (May 29, 2020), <https://www.miamiherald.com/news/local/immigration/article243054631.html>.
- 110 Max Siegelbaum, *ICE Does Not Test All Deportees for Coronavirus, Agency Head Says, Documented* (Jun. 3, 2020), <https://documentedny.com/2020/06/03/ice-does-not-test-all-deportees-for-coronavirus-agency-head-says/>.
- 111 Barbara Marcolini, Emily Kassie, Dmitriy Khavin and Drew Jordan, *How ICE Helped Spread the Coronavirus*, the NY Times (Jul. 20, 2020), <https://www.nytimes.com/video/us/100000007122997/ice-deportations-coronavirus-video.html?referringSource=articleShare>.
- 112 Kathleen Bergin, *The US Coronavirus Response: A Failure of Foreign Policy*, The Hill (May 25, 2020), <https://thehill.com/opinion/immigration/499407-the-us-coronavirus-response-a-failure-of-foreign-policy>.
- 113 *22 of 76 Haryana Natives Deported from US Test Corona-Virus-Positive: Minister Anil Vij*, Times of India (May 23, 2020), <https://timesofindia.indiatimes.com/city/chandigarh/22-of-76-haryana-natives-deported-from-us-test-corona-positive-minister-anil-vij/articleshow/75918605.cms>.
- 114 Arshad Mohammed, Julia Symmes Cobb, Frank Jack Daniel, *Two Dozen People Deported to Columbia on U.S. Flight Found to Have Coronavirus: Sources*, Reuters (Apr. 29, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-colombia-idUSKBN22B3DB>.
- 115 Diana Mesesan, *EXCLUSIV: 43 de români, dintre care unul confirmat cu COVID, deportați din SUA. Autoritățile americane au mințit că sunt doar doi. Expert de la Washington: „Sunt riscuri uriașe de a transmite boala”* (May 30, 2020), <https://www.libertatea.ro/stiri/romani-deportati-sua-3018436>.
- 116 Gabriela Caceres and Nelson Rauda, *Four Confirmed Cases of COVID-19 Among People Deported to El Salvador*, El Faro (Mar. 23, 2021), [https://elfaro.net/en/202005/el\\_salvador/24479/Four-Confirmed-Cases-of-Covid-19-among-People-Deported-to-El-Salvador.htm](https://elfaro.net/en/202005/el_salvador/24479/Four-Confirmed-Cases-of-Covid-19-among-People-Deported-to-El-Salvador.htm).
- 117 Andre Paultre, *Haiti Receives More Deportees from U.S. Despite Coronavirus Fears*, Reuters (Apr. 23, 2020), <https://www.reuters.com/article/us-health-coronavirus-haiti-deportation-idUSKCN22606Y>.
- 118 Diego Ore, Andre Paultre, *Exporting Coronavirus ? Infections Among U.S. Deportees Reach Haiti, Mexico*, Reuters (Apr. 20, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-deportees-idUSKBN22305K>.
- 119 Reuters Staff, *Jamaica Says One Migrant on U.S. Deportation Flight Had Coronavirus*, Reuters (Apr. 27, 2020), <https://www.reuters.com/article/us-health-coronavirus-jamaica-idUSKCN22A0DS>.
- 120 The Editorial Board, *Exporting the Coronavirus Is Reckless, The Trump Administration Continues to Deport Sick Immigrants to Their Home Countries, Potentially Spreading COVID-19*, the Boston Globe (Apr. 29, 2020), <https://www.bostonglobe.com/2020/04/29/opinion/exporting-coronavirus-is->

- reckless; see also, The *Washington Post* editorial board wrote on April 26, 2020, “It is callous and irresponsible that no systematic effort is underway to test those detainees. And it is despicable that the United States, the richest country in the hemisphere, would then blithely deport some of them to nations that are among the hemisphere’s poorest.” Editorial Board, *We’re Deporting People to Vulnerable Countries – And Sending the Virus with Them*, The Washington Post (Apr. 26, 2020), [https://www.washingtonpost.com/opinions/were-deporting-people-to-vulnerable-countries--and-sending-the-virus-with-them/2020/04/26/1be8f738-84d3-11ea-878a-86477a724bdb\\_story.html](https://www.washingtonpost.com/opinions/were-deporting-people-to-vulnerable-countries--and-sending-the-virus-with-them/2020/04/26/1be8f738-84d3-11ea-878a-86477a724bdb_story.html).
- The *Miami Herald* editorial board opined similarly in an editorial entitled, “Deportations despite coronavirus is Trump’s cruel, and usual, punishment of Haitians” The Editorial Board, *Deportations Despite Coronavirus is Trump’s Cruel, and Unusual, Punishment of Haitians*, The Miami Herald (Apr. 7, 2020), <https://www.miamiherald.com/opinion/editorials/article241819726.html>.
- 121 Name changed to protect his identify. Telephone Interview with Haitian Deportee (March 10, 2020), Appendix 2.
- 122 U.S. Must Stop Deportations to Haiti: Deportations Now During a Global Pandemic is Trump’s Cruel, and Usual, Punishment of Haitians (Apr. 20, 2020), <https://docs.google.com/document/d/1iv8t5R6Xc-T1OFbcfXoXxkCEVH8BKYGIXf2OXfr6t0g/edit?usp=sharing>.
- 123 Press Release, Congresswoman Frederica Wilson, Wilson Introduces Bill to Suspend Deportations to Haiti During Pandemic (May 11, 2020), <https://wilson.house.gov/media-center/press-releases/wilson-introduces-bill-to-suspend-deportations-to-haiti-during-pandemic>.
- 124 Press Release, Senator Markey, Senator Markey Calls For Halt to Deportations to Haiti During Coronavirus Pandemic (May 19, 2020), <https://www.markey.senate.gov/news/press-releases/senator-markey-calls-for-halt-to-deportations-to-haiti-during-coronavirus-pandemic>.
- 125 Press Release, Senator Markey Senator Markey Introduces Legislation to Halt Deportations, Harmful Immigration Enforcement Actions During Coronavirus (June 19, 2020), <https://www.markey.senate.gov/news/press-releases/senator-markey-introduces-legislation-to-halt-deportations-harmful-immigration-enforcement-actions-during-coronavirus-pandemic>.
- 126 Press Release, Congresswoman Veronica Escobar, Representatives Escobar and Wilson Introduce the Immigration Enforcement Moratorium Act (July 9, 2020), <https://escobar.house.gov/news/documentsingle.aspx?DocumentID=380>.
- 127 Press Release, Congressional Hispanic Caucus, CHC Chairman Castro, 84 Members of Congress Urge DHS and ICE to Release Families Together (Jul 22, 2020), Congressional Hispanic Caucus, <https://chc.house.gov/media-center/press-releases/chc-chairman-castro-84-members-of-congress-urge-dhs-and-ice-to-release>.
- 128 Letter from Haitian Bridge Alliance, Inc. to Michele Sison, Ambassador to Haiti and Mike Pompeo, U.S. Sec’y of State to Halt Deportations to Haiti (Jun. 19, 2020), [https://docs.google.com/document/d/1IEqnS\\_38UrESYBBot1zRLKr\\_pqSBRUj9SsqHqNihacY/edit?usp=sharing](https://docs.google.com/document/d/1IEqnS_38UrESYBBot1zRLKr_pqSBRUj9SsqHqNihacY/edit?usp=sharing).
- 129 WITNESS AT THE BORER, *supra* note 65, at 28.
- 130 “Total confirmed COVID-19 cases” is the cumulative total of detainees who have tested positive for COVID-19 while in ICE custody since testing began in February 2020. Some detainees may no longer be in ICE custody or may have since tested negative for the virus. ICE GUIDANCE ON COVID-19, *supra* note 104.
- 131 Based on flight manifests confidentially obtained.
- 132 Based on flight manifests confidentially obtained.
- 133 Interview with Andrea Meza, Director of Family Detention Services, RAICES (Feb.16, 2021).
- 134 Based on flight manifests confidentially obtained. The authors have been unable to confirm whether the pregnant women were, in fact, flown to Haiti.
- 135 Nomaan Merchant, *AP Exclusive: Migrant Kids Held in U.S. Hotels, Then Expelled*, AP NEWS (July 22, 2020), <https://apnews.com/article/u-s-news-arizona-only-on-ap-politics-immigration-c9b671b20>

- 6060f2e9654f0a4eacb6388; see also Press Release, Accountable.us, Hotels Must Answer For Their Broken Promises On ICE Detention (Aug. 4, 2020), <https://www.accountable.us/news/hotels-must-answer-for-their-broken-promises-on-ice-detention/>.
- 136 Camilo Montoya-Galvez, *ICE Held 660 Migrant Kids Set for Expulsion in Hotels, Independent Monitor Reveals*, CBS NEWS (Aug. 27, 2020, 11:04 AM), <https://www.cbsnews.com/news/migrant-children-hotels-expelled-ice-flores-agreement-monitor/>.
- 137 Adolfo Flores and Hamed Aleaziz, *The Trump Administration Said It's Not Expelling A Group of Immigrant Children Held in a Hotel*, BUZZFEED NEWS (July 27, 2020), <https://www.buzzfeednews.com/article/adolfoflores/trump-administration-immigrants-hotel>.
- 138 Interview with Andrea Meza, Director of Family Detention Services, RAICES (Feb.16, 2021).
- 139 Press Release, ACLU, ACLU Report Highlights Death, Abuse and Neglect at Aurora ICE Detention Facility, (Sept. 18, 2019), <https://www.aclu.org/press-releases/aclu-report-highlights-death-abuse-and-neglect-aurora-ice-detention-facility>.
- 140 Interview with Andrea Meza, Director of Family Detention Services, RAICES (Feb.16, 2021).
- 141 *Id.*
- 142 *Id.*
- 143 *Id.*
- 144 *Id.*
- 145 Declaration provided by RAICES, Appendix 5.
- 146 8 CFR § 206.16.
- 147 Interview with Andrea Meza, Director of Family Detention Services, RAICES (Feb.16, 2021).
- 148 P.J.E.S. v. Wolf, No. 20-2245(EGS), 2020 U.S. Dist. LEXIS 216974 (D.D.C. Nov. 18, 2020).
- 149 Telephone interview with Haitian Deportee (Mar. 10, 2020), Appendix 2.
- 150 U.S. IMMIGRATION AND CUSTOMS ENF'T, NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES (2019).
- 151 U.S. IMMIGRATION AND CUSTOMS ENF'T, ICE LANGUAGE ACCESS PLAN, SUPPLEMENTAL UPDATE COVERING FISCAL YEARS 2019 AND 2020 10 (July 21, 2020).
- 152 CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI, March 29, 1987, art. 5 (with amendments passed June 19, 2012).
- 153 See Cordelia Hebblethwaite, *Should Creole Replace French in Haiti's Schools?*, BBC NEWS (Aug. 24, 2011), available at <https://www.bbc.com/news/world-latin-america-14534703> (last visited Oct. 8, 2020).
- 154 ICE LANGUAGE ACCESS PLAN, SUPPLEMENTAL UPDATE COVERING FISCAL YEARS 2019 AND 2020, *supra* note 148, at 4.
- 155 Declaration provided by RAICES, Appendix 6.
- 156 Declaration provided by RAICES, Appendix 7.
- 157 Telephone Interview with Haitian Deportee (March 10, 2020), Appendix 2.
- 158 Telephone Interview with Haitian Deportee (March 10, 2020), Appendix 1.
- 159 *Id.*
- 160 Declaration provided by RAICES, Appendix 7.
- 161 *Id.*
- 162 *Id.*
- 163 Declaration provided by RAICES, Appendix 6.
- 164 Declaration provided by RAICES, Appendix 7.
- 165 Declaration provided by RAICES, Appendix 8.
- 166 Harold Isaac, Andre Paultre and Maria Abi-Habib, *Haiti Braces for Unrest as a Defiant President Refuses to Step Down*, N.Y.TIMES (Feb. 7, 2021), <https://www.nytimes.com/2021/02/07/world/americas/haiti-protests-President-Jovenel-Mois.html>.

- 167 *Haiti Travel Advisory*, U.S. DEP'T OF STATE (Aug. 6, 2020), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html>.
- 168 *Haiti*, FREEDOM HOUSE (2020), <https://freedomhouse.org/country/haiti/freedom-world/2020>; <https://freedomhouse.org/report/freedom-world> (last visited March 23, 2021).
- 169 Brian Concannon, *Is the White House Greenlighting Haiti's Descent Into Dictatorship?*, RESPONSIBLE STATECRAFT (March 9, 2021), <https://responsiblestatecraft.org/2021/03/09/the-biden-administration-is-greenlighting-haitis-descent-towards-dictatorship/>.
- 170 Jacqueline Charles, *As Haiti Plunges Deeper Into Turmoil, a Social Media Rallying Cry Emerges: #FreeHaiti*, MIAMI HERALD (March 16, 2021, 10:42 PM), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article249947864.html>.
- 171 *World Report 2021: Haiti*, HUM. RIGHTS WATCH, <https://www.hrw.org/world-report/2021/country-chapters/haiti> (last visited March 23, 2021).
- 172 Telephone Interview with Haitian Deportee (March 10, 2020), Appendix 1.
- 173 Telephone Interview with Haitian Deportee (March 10, 2020), Appendix 2.
- 174 Telephone Interview with Haitian Deportee (March 9, 2020), Appendix 4.
- 175 Telephone Interview with Haitian Deportee (March 9, 2020), Appendix 3.
- 176 *See e.g., US: COVID-19 Policies Risk Asylum Seekers' Lives*, HUM. RIGHTS WATCH, (Apr. 2, 2020), <https://www.hrw.org/news/2020/04/02/us-covid-19-policies-risk-asylum-seekers-lives#>.
- 177 Susan Sanchez, *Suspension of MPP Hearings is Extended Due to Coronavirus Pandemic*, BORDER REPORT (June 17, 2020), <https://www.borderreport.com/hot-topics/immigration/suspension-of-mpp-hearings-is-extended-due-to-coronavirus-pandemic/>.
- 178 Arelis R. Hernández and Nick Miroff, *Facing Coronavirus Pandemic, Trump Suspends Immigration Laws and Showcases Vision For a Locked Down Border*, WASHINGTON POST, [https://www.washingtonpost.com/national/coronavirus-trump-immigration-border/2020/04/03/23cb025a-74f9-11ea-ae50-7148009252e3\\_story.html](https://www.washingtonpost.com/national/coronavirus-trump-immigration-border/2020/04/03/23cb025a-74f9-11ea-ae50-7148009252e3_story.html).
- 179 Press Release, Dep't of Homeland Sec'y, Statement by Homeland Sec'y Sec. Alejandro N. Mayorkas Regarding the Situation at the Southwest Border (March 16, 2021), <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.
- 180 *See* “Decreto por el que se reforman diversos artículos de la Ley de Migración y de la Ley sobre Refugiados, Protección Complementaria y Asilo Político, en materia de Infancia Migrante, Diario Oficial de la Federación [DOF]11-9-2020 (Mex.), [http://www.diputados.gob.mx/LeyesBiblio/ref/lmigra/LMigra\\_ref11\\_11nov20.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lmigra/LMigra_ref11_11nov20.pdf).
- 181 Nick Miroff, Karen DeYoung, and Kevin Sieff, *Biden Will Send Mexico Surplus Vaccines, as U.S. Seeks Help on Immigration Enforcement*, WASHINGTON POST (March 18, 2021), [https://www.washingtonpost.com/national-security/biden-mexico-immigration-coronavirus-vaccine/2021/03/18/a63a3426-8791-11eb-8a67-f314e5fcf88d\\_story.html](https://www.washingtonpost.com/national-security/biden-mexico-immigration-coronavirus-vaccine/2021/03/18/a63a3426-8791-11eb-8a67-f314e5fcf88d_story.html).
- 182 Tanvi Misra, *Revealed: U.S. Citizen Newborns Sent to Mexico Under Trump-Era Border Ban*, THE GUARDIAN (Feb. 5, 2021), <https://www.theguardian.com/us-news/2021/feb/05/us-citizen-newborns-mexico-migrant-women-border-ban> (published jointly with the Fuller Project).
- 183 *Id.*
- 184 Jose Luis Gonzalez and Lizbeth Diaz, REUTERS, *U.S. Expels Dozens of Haitian Asylum Seekers to Mexico*, U.S. NEWS AND WORLD REPORT (Feb. 3, 2021), <https://www.usnews.com/news/world/articles/2021-02-03/us-expels-dozens-of-haitian-asylum-seekers-to-mexico>.
- 185 *Id.*
- 186 *See* Hebblethwaite, *supra* note 150.
- 187 PHILLIPS ET AL., *supra* note 69, at 12.
- 188 *Id.* at 13; *see also* S. PRIYA MORLEY ET AL., BLACK ALLIANCE FOR JUST IMMIGRATION, “THERE IS A TARGET ON US” – THE IMPACT OF ANTI-BLACK RACISM ON AFRICAN MIGRANTS AT MEXICO’S

- SOUTHERN BORDER 40 (2021), <https://imumi.org/attachments/2020/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>.
- 189 *Id.*
- 190 *Id.* at 41.
- 191 S. PRIYA MORLEY ET AL., CENTER FOR GENDER AND REFUGEE STUDIES, UC HASTINGS COLLEGE OF THE LAW, A JOURNEY OF HOPE: HAITIAN WOMEN’S MIGRATION TO TAPACHULA, MEXICO 70 (Oct. 2020).
- 192 *Humanitarian Disgrace: Human Rights First Blasts Ongoing Human Rights Abuses in U.S. Policies Targeting Asylum Seekers*, HUM. RIGHTS FIRST (Dec. 16, 2020), <https://www.humanrightsfirst.org/press-release/humanitarian-disgrace-human-rights-first-blasts-ongoing-human-rights-abuses-us>; see also *Publicly Reported Cases of Violent Attacks on Individuals Returned to Mexico Under the “Migrant Protection Protocols,”*, HUM. RIGHTS FIRST, <https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks12.15.2020FINAL.pdf> (Human Rights First Database of Attacks Through December 15, 2020) (last visited March 23, 2021).
- 193 Associated Press, *Mexico State Police Officers Arrested in Killings of 19 People Found Shot, Burned Near U.S. Border*, KTLA (Feb. 3, 2021), <https://ktla.com/news/nationworld/mexico-state-police-officers-arrested-in-killings-of-19-people-found-shot-burned-near-u-s-border/>.
- 194 *Id.*
- 195 *Id.*
- 196 Maya Srikrishnan, *Border Report: Surviving in Tijuana Has Gotten Even Harder for Haitian Migrants*, VOICE OF SAN DIEGO (July 20, 2020), <https://www.voiceofsandiego.org/topics/news/border-report-surviving-in-tijuana-has-gotten-even-harder-for-haitian-migrants/>.
- 197 *Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border*, *supra* note 29.
- 198 U.S. Citizen and Immigrations Services Website, *Temporary Protected Status and Enforced Departure*, <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/temporary-protected-status-and-deferred-enforced-departure>.