



September 14, 2021

SENT VIA EMAIL

Secretary Alejandro Mayorkas
U.S Department of Homeland Security
301 7th Street, SW
Washington, D.C. 20528
c/o charanya.krishnaswami@hq.dhs.gov

Re: Continuation of the Misuse of Title 42 at the Southern Border

Secretary Mayorkas,

We write with concerns regarding the indefinite continuation of Title-42 expulsions. The ACLU of New Mexico (“ACLU-NM”), various Non-government Organizations, and the elected officials at the local and state level who have signed onto this letter, have a stake in ensuring that our state’s borders and communities reflect the law and our New Mexican values of treating people with kindness and dignity; denying the vast majority of people who are seeking protection in the United States from doing so, does neither.

We are encouraged that under your leadership, the U.S. Department of Homeland Security (“DHS”) has begun the critical work of rolling back harmful border policies. Decisions such as exempting unaccompanied children from Title-42 expulsions, as well as creating exceptions for a limited number families, are important initial steps in rebuilding the asylum process at the southern border. However, inhumane practices continue and there remains ample opportunity for improvement, to the ultimate benefit of relevant government agencies, local and international non-governmental agencies, and above all, people who are directly affected by the policy changes.

The ACLU strongly believes this policy flies in the face of international and United States' law. There is nothing ambiguous about our legal duty¹ to ensure that those seeking asylum at our borders are met with a fair and just process that reflects and upholds our moral obligations. Simply put, this provision of the law was not meant for this purpose. Every day that this misuse continues, the former Administration's anti-immigrant rhetoric is validated in the eyes of the world. As New Mexicans we wish to revoke this validation and ask that our government do better by those who need our solace the most.

We would also like to address the notion that people seeking asylum in the United States must be detained. The Title 42 Order argues that the immediate expulsion of migrants is justifiable given the risk that CBP "congregate settings" pose in the spread of COVID-19. There are humane, safe, and effective alternatives to detention that do not facilitate the spread of coronavirus, such as community-based case management programs. Recent research showed that 99 percent of asylum seekers who were not detained or who were previously released from immigration custody showed up for their hearings in 2019.² The government should direct its resources to humanitarian-focused programs that protect the health and safety of our communities, rather than summarily expelling migrants and fueling a different kind of public health crisis.

As numerous public health officials have already expressed to you, there is no public health rationale that supports the unlawful and discriminatory blocking and expulsion of people at our southern border³. In fact, the conditions in which many people forced into Mexico find themselves are contributing to a public health crisis all its own. Overcrowded and unsanitary camps increase the risk of COVID-19 outbreaks among people living there, potentially contributing to the further spread of variants. These poor conditions, in conjunction with extremely limited access to adequate healthcare services, and the threat of serious crime by violent gangs⁴, puts already vulnerable people in the worst of circumstances during a global pandemic.

Experts have provided extensive rational, science-based recommendations that uphold our values and commitment to those seeking asylum at our borders. Implementing measures

¹ **8 U.S.C. § 1158**

² Human Rights First. (2019, January 5). *Fact Check: Asylum Seekers Regularly Attend Immigration Court Hearings*. Humanrightsfirst.org. <https://www.humanrightsfirst.org/resource/fact-check-asylum-seekers-regularly-attend-immigration-court-hearing>

³ Columbia University Mailman School of Public Health. (2021, July 1). *July 2021 Letter to HHS Secretary Becerra and CDC Director Walensky on Title 42 Order*. Program on Forced Migration and Health. https://docs.google.com/document/d/117XTiqi3spri4H54EfCE3gULmgSYN4-d-al_7J8HLo/edit

⁴ Human Rights First, Haitian Bridge Alliance, & Al Otro Lado. (2021, April). *Failure To Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger*. Humanrightsfirst.org. <https://www.humanrightsfirst.org/sites/default/files/FailuretoProtect.4.20.21.pdf>

such as testing, masking, vaccinations, and investing in community-based alternatives to detention in the intake of asylum seekers will sufficiently mitigate any risk of viral spread. Non-government organizations across the country stand ready to work hand in hand and with the full support of our government, to receive people safely, with dignity and care.

In closing, we ask that you and other decision makers reflect on similar moments in our country's history. The right to seek asylum was, after all, born of a shameful history — our government's failure to shelter thousands of Jewish people fleeing state-sponsored persecution by the Nazi Regime. It was only after the fact that we were able to truly understand the grave impacts of policies that kept people out of our country, rather than letting them in. Decades later, when the AIDS epidemic swept across America, our government chose to ignore the desperation of people becoming ill and dying. Instead, decisions were made in haste and fear that ultimately lead to many more deaths, stigma, and hatred toward the already marginalized LGBTQ community and people of color.

Each time a humanitarian crisis occurs and we fail to meet our own moral obligations, we look back with regret and promise that we will get it right the next time. Right now, we have the opportunity to do right by our laws and our ideals by helping the people in dire need waiting at our borders. It is our sincere hope that you will hear our concerns and act swiftly to rescind the discriminatory and inhumane use of Title 42.

Sincerely,

Nayomi Valdez
Director of Public Policy
ACLU-NM

Rev. George Miller
El Calvario United Methodist Church
Las Cruces, NM

Joe Neri
Social Justice Committee Chair
Unitarian Universalist Fellowship of Silver City

Las Cruces City Councilor, Johana Bencomo

Las Cruces City Councilor, Gabe Vasquez

Alamogordo Mayor Pro Tem, Nadia Sikes

New Mexico State Representative, Brittany Barreras (NM-HD 12)

New Mexico State Representative, Gail Chassey (NM-HD 18)

New Mexico State Representative, Joanne Ferarry (NM-HD 37)

New Mexico State Representative, Pamelya Herndon (NM-HD 28)

New Mexico State Representative, Patricia Roybal Caballero (NM-HD 13)

New Mexico State Representative, Angelica Rubio (NM-HD 35)

New Mexico State Representative, Linda M. Serrato (NM-HD 45)

New Mexico State Senator, Carrie Hamblen (NM-SD 38)

New Mexico State Senator, Antoinette Sedillo Lopez (NM-SD 16)

New Mexico State Senator, Bill Soules (NM-SD 37)

New Mexico State Senator, Liz Stefanics (NM-SD 39)

CC:

Sen. Ben Ray Lujan

Sen. Martin Heinrich

Rep. Teresa Leger Fernandez

Rep. Yvette Herrell

Rep. Melanie Stansbury