

## The National Immigration Law Center Opposes the Public Health and Border Security Act of 2022

The Public Health and Border Security Act of 2022 ([S. 4036/H.R. 7458](#)) hurts migrants and undermines public health. If signed into law, S. 4036/H.R. 7458 would:

1. Indefinitely block people in need of protection from seeking asylum at the border;
2. Override the independent, scientific [judgment](#) of the Centers for Disease Control and Prevention (CDC); and
3. Needlessly tie decisions about unrelated COVID-19 emergency declarations—which enable Medicaid coverage, SNAP benefits, moratorium on student loan repayments, and other programs for tens of millions of Americans during the COVID-19 pandemic—with an end to Title 42 expulsions.

### Background on Title 42 Expulsions

Title 42 is a World War II-era *public health* law weaponized by the Trump administration ([over CDC objections](#)) to deny families, children, and adults arriving at the U.S. border their legal right to seek asylum. Like family separation and the Muslim Ban, [Title 42 is a uniquely Trump policy and the brainchild of Stephen Miller](#), who [sought](#) to implement Title 42 even before COVID-19 emerged. Since Title 42 was implemented in March of 2020, the U.S. government has carried out a [breathhtaking 1.8+ million](#) expulsions, while doing [nothing](#) to stop the spread of COVID-19. NGOs have [tracked](#) at least 10,250 reports of violent attacks against migrants and asylum seekers stuck in Mexico due to Title 42 under the Biden administration.

### Recent polling confirms that the right to seek asylum is popular across the country

*Key Takeaways from [newly released polling](#) of likely voters in six key battleground states (Arizona, Colorado, Georgia, Nevada, Pennsylvania, and Wisconsin)*

- Voters say “by a margin of 58% to 32% that they would prefer a candidate who favors allowing people to legally request asylum at the southern border over a candidate who opposes doing so.”
- Two-thirds of battleground state voters support the idea that “people fleeing violence and oppression should have an opportunity to have their asylum cases heard and fairly considered.”
- A key finding from the polling suggests that a vote to keep Title 42, which would ultimately harm asylum-seekers, could *reduce* support from likely Democratic voters. It is “not a winning message” to “crack[] down on illegal immigration with stronger border enforcement” when contrasted with a candidate who prioritizes a “function[ing] immigration system that processes migrants at the border in a fair, orderly, and humane way.”

### The U.S. has the resources and capacity to welcome asylum-seekers.

- [Faith groups, lawyers, social services providers](#), law enforcement, and [elected officials](#) have emphasized their [readiness](#) to welcome asylum-seekers. A [sheriff at the Arizona-Mexico border called for an end to Title 42](#), calling it a “red herring” that has “exacerbated the chaos” of our immigration system.
- U.S. Department of Homeland Security (DHS) officials have stated that ending Title 42 will [decrease](#) border crossings and DHS has been [preparing for the end of Title 42 for months](#), having already deployed additional personnel, transportation, and medical resources. DHS also issued a

[20-page memo](#), outlining the administration’s strategy to surge resources to the border and bolster NGO capacity.

- The U.S. is [not pulling its weight](#). [Poland](#) took in 2 million Ukrainian refugees in less than 20 days. Turkey, a nation with [just 13% of our GDP](#) and [26% of our population](#), [leads the world](#) in hosting refugees. Even the highest predictions of border influxes would be a small percentage of the refugees taken in by nations with far less resources than the U.S.

### **The bill politicizes public health and undermines the CDC’s decision-making authority.**

- [42 U.S.C. 265](#), which authorizes Title 42, is a public health authority. Title 42 expulsions are not predicated on a declaration of a public health emergency or national emergency. Rather, whether Title 42 should end is a determination that rests with the public health experts and scientists at the CDC, who make decisions based on evidence and science. [Top medical and public health experts agree Title 42 must end](#).
- Tying the end of Title 42 to the termination of the public health emergency and national emergency declarations is at odds with good governance. If Congress wants to legislate on immigration policy, it can do so. It should not change border policy through public health laws.
- CBP Commissioner Chris Magnus has [said](#) the agency should be following Title 8 (“traditional immigration management authorities”), rather than Title 42 (“which is not a border management authority”). Congress should not insist immigration officials follow a public health law to carry out their duties.

### **Passing this legislation would entangle border policy with public benefits**

- The Public Health and Border Security Act of 2022 ties the end of the emergency declarations with an end to [Title 42 expulsions](#). Until now, these declarations have primarily protected [Medicaid coverage](#), expanded [SNAP benefits](#), been the basis for the moratorium on student loan repayments,<sup>1</sup> and authorized other programs for tens of millions of Americans during the COVID-19 pandemic. If this legislation passes, despite [opposition](#) from health groups, the fate of these social programs will be tied to decisions around asylum, setting an alarming precedent.
- Instead of making decisions around what is needed to ensure public health insurance and safety net programs provide for the country’s needs, including whether states are [prepared](#), the Secretary of the U.S. Department of Health and Human Services (HHS) would have to also factor in decisions about the border.
- Given the ongoing high numbers of COVID deaths and the recurrence of new variants expected over the course of this year, HHS is [unlikely to end](#) the emergency for the foreseeable future, and there is *no reason* to tie COVID-19 relief measures to the fate of the asylum system.

### **Title 42 will not end anytime soon due to litigation and legislative action on Title 42 is unnecessary**

- The Biden administration finally [announced](#) plans to end Title 42 on May 23 but this decision was quickly challenged by Republican Attorneys General seeking to keep Title 42 in place.
- On May 20, Trump-appointed Judge Robert R. Summerhays of the U.S. District Court for the Western District of Louisiana, [issued](#) a preliminary injunction keeping Title 42 in place.
- This politically driven decision will take several months to resolve in the courts and makes any legislative action on Title 42 unnecessary.

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<sup>1</sup> Note that the moratorium on student loan repayments is [tied](#) to Presidential Proclamation 9994, declaring COVID-19 a national emergency. The continuation of Title 42 is tied to Presidential Proclamation 9994 in the Senate bill, but not the House bill. Both bills do, however, tie Title 42 to the public health emergency.