

Op-Ed: Continuing Trump's pretext to block asylum claims, Biden defies the law and good politics

The so-called Title 42 border closure, which uses the COVID-19 pandemic to justify immediate expulsion or deportation of people fleeing persecution and torture, has always been heartless and illegal. So why is the Biden administration indefinitely continuing this most egregious and unlawful of Trump's immigration policies? Recent reports confirm that it's in part because the White House doesn't want the political repercussions of ending it.

That craven position would be a flimsy defense in court. It's also simply bad politics.

Biden continues to be accused of advocating open borders. It is likely that nothing he can do will placate those who supported Trump's anti-immigrant policies. On the other hand, recent polling shows that a majority of Americans believe "immigration is a good thing" for the country, and American support for resettlement of Afghan refugees was at 81% in August. It is not necessarily true that harsh immigration policies are winning strategies.

Even if it were politically expedient to keep the border closed to those seeking safety, turning away these individuals without any opportunity to apply for protection is a violation of U.S. law, as well as of international treaties to which the U.S. is a party. The pretext of Title 42 does not make our actions any less a violation of law. This point was made quite clear by Harold Koh, a senior State Department legal advisor and former dean of Yale Law School, who has served in four presidential administrations. In a stern rebuke, Koh wrote that the use of Title 42 was "illegal" and "inhumane," inconsistent with American values and not worthy of the Biden administration.

Just as the Trump administration invoked it in March 2020, and the Centers for Disease Control and Prevention announced this summer that it would continue, the Biden administration could revoke Title 42 now, permitting asylum

applications again in compliance with our legal obligations.

This misuse of Title 42 authority, a public health law, was the brainchild of former President Trump's senior advisor Stephen Miller. Evidently not satisfied with the administration's brutal "Remain in Mexico" policy, which forced asylum seekers to await their hearings in Mexico, once COVID-19 struck Miller decided the pandemic could be used as a pretext to close the border, denying migrants the right to even seek asylum. Officials at the CDC maintained that this measure was not justified by public health considerations and only acceded as a result of sustained White House pressure.

The Title 42 policy has resulted in untold suffering. People refused entry are either expelled to Mexico, where they face kidnapping, rape and other brutal assaults, or they are forcibly returned to their home countries — regardless of the human rights violations they may encounter there. Since September, thousands of Haitians have been deported despite the U.S. government's acknowledgement that Haiti is "grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses." The kidnapping for ransom of American missionaries in October highlighted the acute dangers that persist in the island nation.

Biden's failure to roll back Title 42 policy has received sharp criticism from the U.N. High Commissioner for Refugees, members of Congress, faith-based communities, and refugee advocates. Through it all, the Biden administration has defended Title 42 as a necessary public health measure in a time of COVID-19. This is the same claim the Trump administration made, which has been roundly debunked, including by CDC officials. Leading public health experts have called for an end to the border closure and provided detailed guidance for measures the administration could undertake to ensure community health and safety while admitting asylum seekers.

President Biden has repeatedly articulated the centrality of human rights to his administration, and the importance of American values, including respecting the rule of law. Actions speak louder than words, and this stated commitment simply cannot be squared with a policy that denies protection to desperate individuals fleeing grave violence. It is past time to put an end to the use of Title 42, and to restore asylum as required by domestic and international law.

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