

# BEYOND THE BRIDGE

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HUMAN  
RIGHTS



**DOCUMENTED HUMAN RIGHTS ABUSES AND CIVIL RIGHTS VIOLATIONS  
AGAINST HAITIAN MIGRANTS IN THE DEL RIO, TEXAS ENCAMPMENT**



**ART BY BOUSIKO**



The cover art for this report was created by Haitian artist [Bousiko](#) (alias Jerry Boursiquoit). The image evokes the disturbing photos of Del Rio Border Patrol who while on horseback violently confronted Haitian immigrants trying to bring food to their families. His art reminds us all that that single incident of brutality is a microcosm of the violence and anti-Black racism embedded within the U.S. immigration system as a whole. His inclusion of the plane and cage in the background symbolizes the abuses through deportation and detention that immigrants suffered after being removed from the encampment at Del Rio, and that Haitian immigrants more broadly continue to face to this day. Bousiko's inclusion of the Haitian child in the foreground comes from an account documented by the report where a father described how his child was injured in their attempt to flee the Border Patrol officers chasing after them on horseback.

# Dedication

I honor you—to the men, women, children fleeing persecution, abuse, violence, war—I honor you. To that young girl that I met in Tijuana, who made the journey from Haiti to Brazil, from Brazil to the Darien, barely surviving, arriving broken, with her mother who was abused, raped, violated, at home, on the journey, at the US Mexico border—I honor you. To the men and women who died on the way, lost, never to be heard again, forgotten, erased, I honor you. To each and everyone who made their way and survived, to find themselves under the bridge in Del Rio—I honor you.

I honor your strength, your courage, your resilience, your resistance. I honor your life. I honor you. We saw you, we heard you, we felt you, we were you. I was you, under the bridge. I am you, shackled. I am you, on the plane. I am you, deported. I honor you.

I promise to continue to fight with and for you—to push for a change to welcome you, to value you, to acknowledge your humanity.

We dedicate this report to you, to the lives lost, those still with us, to those still fighting, still pushing. We pray that you will not only survive, but you will thrive. We pray that the sun will kiss your face, even in the dark days. We honor you, we see you, we feel you, we will fight with and for you.

I am you. Every single one of you. Therefore, I dedicate this to you, to me, to us. You will not be forgotten. You will not be erased. Justice will be yours.

Ochan pou nou. Pou tout fanm, gason, ak timoun kap sove kouri kite zak vyòlans, pèsekisyon, lagè, ak enjistis. Ochan pou nou. Ochan pou jenn fi sa a m te kontre Tijuana, ki soti depi Ayiti, pase plizyè peyi pou tonbe Brezil. Soti Brezil tonbe nan forè Darien kote yo vyole manman'l devan'l. Fizikman, mantalman yo te about lè yo te resi rive sou fontyè Etazini Meksik. Ochan pou nou. Pou tout jenn gason, jenn fanm ki pèdi lavi yo nan wout sa. Lanmò yo pa fè okenn bri, tankou lavi yo pat vo anyen. Ochan pou nou. Pou tout sila yo ki te rive sivis trajè modi sa, epi ki vinn tonbe anba pon nan Del Rio. Ochan pou nou.

Map salye kouraj, pèseverans ak rezistans nou. Ochan pou lavi nou. Ochan pou nou. Nou wè w, nou tandè w, nou santi soufrans ak imilyason w, nou se wou. Ou menm ki te anba pon an, vle di mwen te la tou, anchene, depòte. Ochan pou nou.

M pwomèt pou m kontinye batay pou nou. Pou m pa bouke mande chanjman pou yo resevwa nou ak diyite, pou lavi nou jwenn valè, pou nou jwenn konsiderasyon tout kretyen vivan merite.

Rapò sa se pou ou. Pou lavi ki pèdi yo, e pou sila ki la avè nou yo, sa kap kontinye batay yo. N ap priye pou non sèlman pou sivis, men pou viv na kè kontan. N ap priye pou solèy la pote limyè sou vizaj ou, menm nan jou difisil yo. Ochan pou ou, nou wè w, nou temwen soufrans ou, N ap kontinye batay avè w. N ap kontinye batay pou nou. Mwen se ou. Chak grenn nan nou. Se pou sa map dedikase rapò sa a pou mwen tou.

Guerline Jozef  
*Co-founder and Executive Director*  
*Haitian Bridge Alliance*

*“I witnessed my compatriots trying to cross the border to get some food for their families. There was a group of soldiers on horseback chasing us, dragging us, and running us over with horses. I experienced all these things. You understand? We were subjected to all of this because we crossed over to get some food to bring to our children. Some people were washed away by the water, a lot of soldiers on horseback were running people down with their horses, shoving people, all of that. What everyone saw on social media is what happened. It is what was allowed to happen.”*

**Haitian man held in the Del Rio encampment, September 2021<sup>1</sup>**

*“I wasn’t treated with dignity at the border [in Del Rio]. I was treated worse than animals. I experienced racism and abuse in Brazil, but what I experienced at the border was much worse.”*

**Haitian man held in the Del Rio encampment, September 2021<sup>2</sup>**

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1 In-person interview by Haitian Bridge Alliance (“HBA”) lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

2 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

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# INTRODUCTION

From approximately September 9th to September 25th, 2021, more than 15,000 Black Haitian migrants, desperate to save their lives and the lives of their families, waited under the Del Rio International Bridge. Under triple digit Texas heat, thousands of asylum seekers sought protection in the United States from persecution and torture. Instead, they were met with shocking brutality. This report presents first-hand testimony of 43 Haitian and other survivors<sup>3</sup> who were trapped by U.S. immigration officials in a makeshift encampment and denied access to sufficient food, water, and medical care. Many were also subjected to physical violence and intimidation.

The Del Rio crisis is a moment of national reckoning. It surfaced images reminiscent of 19th century slave patrols: Black people herded into open fields encircled by fences, chased by horsebacked patrol officers holding reins high overhead, and shackled while awaiting forceful transfer by law enforcement. Centuries later, those images continue to horrify. But this time, the international community watched Black families crossing breaks in the Rio Grande river only to be forced on deportation flights to Haiti, a country where many faced imminent risk of violence and death.

The U.S. government’s actions at Del Rio were part of a “comprehensive strategy”<sup>4</sup> to expel thousands of Haitian asylum seekers, announced by the Department of Homeland Security (DHS) on September 18th. That strategy deprived thousands

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<sup>3</sup> While the vast majority of migrants in the Del Rio encampment were Haitian, researchers also identified individuals from other countries including Cuba, Venezuela, and Honduras from the Del Rio encampment.

<sup>4</sup> Department of Homeland Security, *DHS Outlines Strategy to Address Increase in Migrants in Del Rio* (Sept. 18, 2021), <https://www.dhs.gov/news/2021/09/18/dhs-outlines-strategy-address-increase-migrants-del-rio>.

of people of the opportunity to apply for asylum and other humanitarian protection, in violation of international and U.S. law.<sup>5</sup> *Haitian Bridge Alliance v. Biden*, a pending federal class action lawsuit, asserts that the strategy was intentionally designed to send a message of deterrence to other Black immigrants: the United States will not protect you and will deport you back to danger.<sup>6</sup>

The Del Rio encampment began as a site of hope. Desperate for safety and security, Haitian families believed that after years of increasing restrictions on the right to apply for asylum, the United States might comply with international and domestic law requiring screening for protection. As the first families gathered in early September, they received small rations of food and water, barebones medical care after grueling journeys to the United States, and orders from U.S. officials to await “processing.” They assumed they were awaiting the chance to tell their stories to an asylum officer.

But as more families gathered and the processing lines became longer, the truth emerged: the U.S. government had trapped Haitian migrants in an encampment. The “processing” most of them were awaiting was for summary mass expulsion to Haiti. The meager rations initially offered to the smaller number of families were inadequate to begin with. The larger number now held in the encampment had been cut off from sufficient food, water, medical care, and shelter. People, including small children, became malnourished, dehydrated, and ill from exposure to the sun and dust. Humvees<sup>7</sup>, other armored vehicles, and troops were installed overnight and surrounded the encampment at all hours. And at other times when those trapped attempted to leave, they were physically and verbally assaulted by border patrol officers.

To perpetrate these human rights abuses, the U.S. used the COVID-19 pandemic as a pretext. Invoking an obscure public health statute called Title 42,<sup>8</sup> the Biden Administration fully embraced a Trump Era policy that claimed the unprecedented authority to prevent the entry into the country of people seeking humanitarian protection. The Title 42 policy flies in the face of humanitarian obligations enshrined in domestic and international law. U.S. law requires that individuals at the border who express a credible fear of persecution or torture in their home country have access to a fear screening prior to deportation.<sup>9</sup> U.S. law also safeguards the right to seek asylum in the United States “whether or not at a designated port of arrival.”<sup>10</sup> Further, by expelling people without access to asylum or credible fear screenings, the U.S. violates its international obligations to ensure that individuals are not returned to persecution or torture, a foundational principle of international human rights and international refugee law called *non-refoulement*.<sup>11</sup> According to the United Nations High Commissioner for Refugees (UNHCR), states cannot turn back asylum seekers “en masse” at the border as was done at Del

5 See 8 U.S.C. § 1158 (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . . irrespective of such alien’s status, may apply for asylum”); see also Oona Hathaway, Mark Stevens & Preston Lim, *COVID-19 and International Law: Refugee Law—The Principle of Non-Refoulement*, JUST SECURITY (Nov. 30, 2020), <https://www.justsecurity.org/73593/covid-19-and-international-law-refugee-law-the-principle-of-non-refoulement/> (explaining how “COVID-19 has been used by governments around the world to roll back key protections guaranteed under international law”); 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/> (concluding that summary expulsion of asylum seekers “attempts to erect a shadow immigration system devoid of constitutional protections that erases fundamental statutory safeguards implementing refugee protection obligations”).

6 For a description of the U.S. government’s alleged Haitian Deterrence Policy and systemic efforts to discourage Haitian migrants from attempting to find refuge in the United States, see Complaint at ¶ 60-120, *Haitian Bridge Alliance v. Biden*, No. 1:21-CV-03317 (D.D.C.) (filed Dec. 20, 2021), <https://int.nyt.com/data/documenttools/hba-v-biden/a8106eacd7c45afe/full.pdf>.

7 The high-mobility multipurpose wheeled vehicle (HMMWV or Humvee) is a tactical vehicle produced for the US Army.

8 42 U.S.C. § 265 (authorizing the Surgeon General “to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert” the introduction of a communicable disease into the United States).

9 See 8 U.S. Code § 1225 (requiring officials to refer an individual for a “credible fear interview” by a trained asylum officer when she indicates an intention to apply for asylum or expresses a fear of persecution and/or torture).

10 8 U.S.C. § 1158.

11 Returning Haitians to likely persecution or torture violates the U.S.’s non-refoulement obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) and the 1967 Protocol relating to the Status of Refugees (“Refugee Protocol”), which modifies and incorporates the terms of the 1951 Convention relating to the Status of Refugees (“Refugee Convention”). Article 3 of the CAT categorically prohibits State Parties from expelling, returning, or extraditing any person, without exception, to any State where there are “substantial grounds for believing he would be in danger of being subjected to torture.” Article 33 of the Refugee Convention, subject to certain narrow exceptions, flatly prohibits State Parties from expelling or returning (“refouler”) refugees in any manner whatsoever to “the frontiers of territories” where their life or freedom would be threatened on one of [the designated grounds. The Refugee Protocol extends the Convention’s protections to all refugees irrespective of the location or date of their displacement and requires its 146 States Parties (among them the United States) to abide by the Convention regardless of whether they are separately party to it.

Rio.<sup>12</sup> And because of its particularly harmful impact on Haitian and other Black asylum seekers,<sup>15</sup> the Title 42 policy also violates international obligations to eradicate discriminatory immigration practices<sup>14</sup> and the international principles of equality and non-discrimination.<sup>15</sup>

Since the events of September 2021, a number of domestic and multilateral organizations and governing bodies have repeatedly called for accountability for the actions of DHS at Del Rio: members of Congress;<sup>16</sup> the Inter-American Commission on Human Rights;<sup>17</sup> joint United Nations agencies<sup>18</sup> and experts,<sup>19</sup> including UNHCR;<sup>20</sup> the National Bar Association;<sup>21</sup> the National Association for the Advancement of Colored People (NAACP);<sup>22</sup> and a broad range of immigrants’

12 See United Nations High Commissioner for Refugees, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol ¶ 6 (Jan. 26, 2007), <https://www.unhcr.org/4d9486929.pdf> (“The principle of non-refoulement is of particular relevance to asylum-seekers. As such persons may be refugees, it is an established principle of international refugee law that they should not be returned or expelled pending a final determination of their status.”).

13 ICE and CBP track deportations and expulsions under Title 42 by country of origin, not by race or ethnicity. As a result, researchers relying on public data to track racial impacts of immigration enforcement must use data from majority Black countries as a proxy for data on “Black” immigrants. This methodology likely understates the true racial impact of immigration enforcement policies, as it is underinclusive of Black people from non-majority Black countries. See also Haitian Bridge Alliance, et al., *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (Mar. 2021), <https://www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf> (describing the particular harms of Title 42 policy to Haitian and other Black asylum seekers due to challenges including linguistic isolation, systemic racism in Mexican institutions and local communities, and the high security risks that migrants face when they are expelled to Haiti or Mexico); Human Rights First, *Marking Two Years of Illegal, Inhumane Title 42 Expulsions: Nearly 10,000 Violent Attacks on Asylum Seekers and Migrants*, (Mar. 17, 2022), <https://www.humanrightsfirst.org/sites/default/files/TwoYearsofSuffering.pdf> (referencing a letter from “more than 100 members of Congress [that] expressed concern over the Biden administration’s treatment of Black migrants and asylum seekers, noting ‘Black migrants continue to face disparate and often inhumane treatment at every stage of the immigration enforcement process’”).

14 International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, T.I.A.S. No. 94-1120, 660 U.N.T.S. 195.

15 See, e.g., Universal Declaration of Human Rights (UDHR), Article II, G.A. Res 217A (III) (1948) (“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); UN Human Rights Committee (HRC), General Comment No.18, Non-discrimination (1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. No. HRI/GEN/1/Rev.6 (2003), p. 146.

16 Rafael Bernal, *Exclusive: Two Black Caucus members call on DHS to stop expulsions to Haiti*, THE HILL (Mar. 16, 2022), <https://thehill.com/latino/598462-exclusive-two-black-caucus-members-call-on-dhs-to-stop-expulsions-to-haiti>; Eileen Sullivan, *Congressional Democrats Ask Biden to Review Treatment of Black Migrants*, THE NEW YORK TIMES, (Feb. 16, 2022), <https://www.nytimes.com/2022/02/16/us/politics/biden-immigration-haiti.html>; Rep. Ayanna Pressley and Rep. Nydia Velazquez, Congressional letter calling for end of Haitian Deportations (Sept. 16, 2021), <https://pressley.house.gov/sites/pressley.house.gov/files/Pressley-Velazquez%20Halt%20Haitian%20Deportation%20Letter.pdf>.

17 See IACHR, Resolution No.2/2021, Protection of Haitians in Human Mobility: Inter-American Solidarity (Oct. 24, 2021) (urging “the States of the Americas to adopt an integral, immediate, effective, and lasting response to ensure the rights of Haitian persons in international human mobility”), <https://www.oas.org/en/iachr/decisions/pdf/2021/Res-2-21-en.pdf>; OAS, Press Release: IACHR Issues Resolution on the Protection of Haitians in Mobility Contexts (Nov. 30, 2021), [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/319.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/319.asp) (promoting the resolution).

18 IOM, *UN Agencies Call for Protection Measures and a Comprehensive Regional Approach for Haitians on the Move* (Sept. 20, 2021), (calling on states “to refrain from expelling Haitians without proper assessment of their individual protection needs, to uphold the fundamental human rights of Haitians on the move, and to offer protection mechanisms or other legal stay arrangements for more effective access to regular migration pathways”), <https://www.iom.int/news/un-agencies-call-protection-measures-and-comprehensive-regional-approach-haitians-move>.

19 OAS, *IACHR and UN’s Special Rapporteur Condemn Excessive Use of Force and Deportations of Migrants from Haiti at the United States’ Southern Border* (Oct. 4, 2021), [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2021/260.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/260.asp).

20 Stephanie Nebehay, *U.S. expulsions of Haitians may violate international law - UN refugee boss*, REUTERS (Sept. 21, 2021), <https://www.reuters.com/world/americas/un-concerned-us-pushbacks-migrants-who-may-need-asylum-2021-09-21/>.

21 See Brief of the National Haitian American Elected Officials Network, The National Bar Association, And Clyde Vanel, The Assemblymember For The Thirty-Third District Of New York as Amicus Curiae In Support Of Appellees And Affirmance, *Huisha Huisha v. Mayorkas*, No. 1:2021cv00100 (D.D.C.) (filed Jan.12, 2021) (arguing that “continued enforcement of Title 42 to expel migrants without an asylum hearing will cause irreparable harm to [Haitians] because many face political persecution and may face death and an abridgment of their rights simply due to their political beliefs and their exercising of their rights”), [https://mcusercontent.com/b493e6c4d31beda32daf8e2d/files/2b27a912-bfc2-8da4-cf96-41633d673e2c5/Huisha\\_Huisha\\_Amicus\\_Brief.pdf](https://mcusercontent.com/b493e6c4d31beda32daf8e2d/files/2b27a912-bfc2-8da4-cf96-41633d673e2c5/Huisha_Huisha_Amicus_Brief.pdf).

22 NAACP, *Press Statement: NAACP President and CEO, Derrick Johnson Releases Statement on U.S. Border Patrol Attacking Haitian Refugees* (Sept. 20, 2021), <https://naacp.org/articles/naacp-president-and-ceo-derrick-johnson-releases-statement-us-border-patrol-attacking>; NAACP Twitter Post (Sept. 21, 2021) <https://twitter.com/NAACP/status/1440433080477519872> (urging the President to tear down “a foundation of oppressive practices”).

rights and human rights advocates.<sup>23</sup>

On September 22, 2021, DHS Secretary Alejandro Mayorkas pledged that an internal investigation of the events at Del Rio would “be completed in days, not weeks.”<sup>24</sup> But *six months* have passed and no investigation results have been released. Instead, to seek accountability and lasting change to DHS policy, advocates have been forced to resort to a class action lawsuit in federal court,<sup>25</sup> a civil rights complaint with the DHS Office for Civil Rights and Civil Liberties,<sup>26</sup> and 32 information requests through the Freedom of Information Act (FOIA) and the Texas Public Information Act.<sup>27</sup> All of these remain pending. And in the interim, the victims at Del Rio continue to be denied justice for the harms they suffered.

**The international outcry against U.S. actions at Del Rio is justified, but the deeply disturbing mass human rights abuses and violence committed at Del Rio are not an anomaly in U.S. immigration enforcement: they are a feature.**

The international outcry against U.S. actions at Del Rio is justified, but the deeply disturbing mass human rights abuses and violence committed at Del Rio are not an anomaly in U.S. immigration enforcement: they are a feature. Del Rio is part of an ongoing legacy of racism, including anti-Black racism, that continues today in the U.S. immigration system.<sup>28</sup> Evidence of anti-Black bias, in the form of statistically significant disparate impact, is present throughout the immigration system. For example, Black people made up just 4% of the ICE detention population, but 24% of all those subjected to solitary confinement.<sup>29</sup> Black immigrants have a 76% chance of being deported because of a criminal conviction compared to 45% for the immigrant population overall.<sup>30</sup> This disparity exists despite the fact that there is no evidence that Black immigrants engage in more criminalized activities in comparison to any other racial group. Similarly, Haitians have the highest rate of

23 See, e.g., Letter to President Biden from Executive Directors of Civil Rights and Human Rights Organizations (Sept. 21, 2021), [https://immigrant-justice.org/sites/default/files/content-type/press-release/documents/2021-09/Civil\\_Rights\\_Leaders\\_Letter\\_to\\_President\\_9-21-21.pdf](https://immigrant-justice.org/sites/default/files/content-type/press-release/documents/2021-09/Civil_Rights_Leaders_Letter_to_President_9-21-21.pdf) (noting that “[y]our Administration has promised to uphold tenets of racial equity, but is unleashing immigration policies infused with anti-Black racism”); ACLU, *Press Release: ACLU Condemns Biden Administration’s Deplorable Treatment Of Haitian Migrants And Reiterates Call To Immediately End Title 42 And Overhaul CBP* (Sept. 22, 2021), <https://www.aclu.org/press-releases/aclu-condemns-biden-administrations-deplorable-treatment-haitian-migrants-and>; Statement from PIH CEO Dr. Sheila Davis on Expulsion and Inhumane Treatment of Migrants (Sept. 21, 2021), <https://www.pih.org/press/statement-pih-ceo-dr-sheila-davis-expulsion-and-inhumane-treatment-migrants>; <https://www.hrw.org/news/2021/09/21/us-treatment-haitian-migrants-discriminatory>; American Immigration Lawyers Association, *AILA urges Biden Administration to Immediately Course Correct on Rapid Expulsion of Haitians* (Sept. 20, 2021), <https://www.aila.org/advo-media/press-releases/2021/aila-urges-the-biden-administration-to-immediately>; Haitian Bride Alliance et al., *U.S.-Based Organizations Denounce Mass Deportations to Haiti as Anti-Black Racism* (Sept. 21, 2021), <https://chrgj.org/wp-content/uploads/2021/09/Joint-Statement-about-Mass-Expulsions-of-Haitians-210921.pdf>.

24 Kevin Johnson, *DHS vows to have findings within ‘days’ in investigation of Border Patrol’s treatment of Haitian migrants*, USA Today (Sept. 22, 2021), <https://www.usatoday.com/story/news/politics/2021/09/22/photos-border-patrol-using-horse-reins-whips-prompts-dhs-probe/5812845001/>.

25 *Supra* n.6.

26 Haitian Bridge Alliance, et al., *Civil Rights and Civil Liberties Complaint, Re: DHS Rights Violations in Del Rio, Texas* (Sept. 24, 2021), [https://www.hrw.org/sites/default/files/media\\_2021/10/CRCL%20Complaint%20on%20Del%20Rio%2009-24-21.pdf](https://www.hrw.org/sites/default/files/media_2021/10/CRCL%20Complaint%20on%20Del%20Rio%2009-24-21.pdf).

27 E.g., Rafael Bernal, *Black immigrant groups file FOIA requests over treatment of Haitians*, The Hill (Oct. 1, 2021), <https://thehill.com/policy/national-security/574956-black-immigrant-groups-file-foia-requests-over-treatment-of-haitians>.

28 See *infra* Part One: Del Rio in Context, A Living Legacy of Anti-Haitian Discrimination in the U.S. Immigration System (describing history of anti-Haitian immigration policies and current human rights abuses of Haitian in immigration detention).

29 Spencer Woodman, *U.S. isolates detained immigrants from majority-black countries at high rate*, International Consortium of Investigative Journalists (Apr. 21, 2020), <https://www.icij.org/investigations/solitary-voices/u-s-isolates-detained-immigrants-from-majority-black-countries-at-high-rate-study-finds/>.

30 Black Alliance for Just Immigration and New York University School of Law Immigrant Rights Clinic, *The State of Black Immigrants 21* (Jan. 2022), <https://www.immigrationresearch.org/system/files/sobi-fullreport-jan22.pdf> (presenting statistical disparities in immigration enforcement between Black immigrants and the general immigrant population).

asylum denial of any nationality.<sup>31</sup>

Since the Del Rio mass expulsion in September 2021, thousands of witnesses and survivors have been deported back to Haiti, a nation embroiled in political and humanitarian crises, where they live in hiding. Many individuals from the Del Rio encampment were transferred to Immigration and Customs Enforcement (ICE) facilities across the country, subject to inhumane conditions and separated from their families and loved ones. To this day, the U.S. continues to use Title 42 to expel Haitian asylum seekers and to deter Haitians from seeking the protection they are entitled to under U.S. and international law.

True accountability for U.S. actions at Del Rio requires a hard look at how the abuses there mirror the violence and anti-Black racism of the U.S. immigration system as a whole that plays out at ports of entry, in detention centers, and on deportation flights every single day. This report tells the stories of Black people<sup>32</sup> and others caught in the crosshairs of the U.S. immigration system. It includes testimonies and information obtained by Haitian Bridge Alliance (HBA) and Robert F. Kennedy Human Rights (RFK Human Rights) through in-person and phone interviews from September 2021 through March 2022, with survivors and witnesses to human rights and civil rights abuses committed by DHS against Haitian migrants in the Del Rio encampment.<sup>33</sup> The report proceeds in two parts.

First, the report catalogs violations of human and civil rights committed by U.S. officials against Haitian and other migrants inside the Del Rio encampment. It details examples of deprivation of basic human necessities like food and water; life-threatening deprivation of medical resources; physical violence, verbal threats and other acts of racial intimidation; violations of U.S. and international law, including a complete failure to screen for credible fear of persecution or torture and to process asylum claims; and separations of family members.

Second, the report documents continued abuses faced by Black immigrants throughout the U.S. immigration system, even after the U.S. government hastened to clear the Del Rio encampment and to erase all evidence of wrongdoing. Those abuses include continued mass expulsions of Haitians fleeing persecution and torture; continued abuses in ICE detention; and continued separation of family members.<sup>34</sup>

The report ends with a series of recommendations that the U.S. should adopt to begin to rectify the harm it caused at Del Rio. True accountability for Del Rio must ensure respect for the human rights of Haitian and other Black immigrants moving forward.

31 Rebecca Klapper, *Haitian Migrants Have Lowest Rate of U.S. Asylum Approvals Since 2018*, NEWSWEEK (Sept. 24, 2021), <https://www.newsweek.com/haitian-migrants-have-lowest-rate-us-asylum-approvals-since-2018-1632520>.

32 This report adopts the definitions for “migrant,” “asylum seeker,” and “Black,” used by S. Priya Morley et al. in *A Journey of Hope: Haitian Women’s Migration to Tapachula, Mexico* 11 (2021), <https://imumi.org/attachments/2020/A-Journey-of-Hope-Haitian-Womens-Migration-to%20Tapachula.pdf>. The Authors use the umbrella term “migrant” to mean “a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.” “Asylum seeker” describes someone who is applying for refugee status but has not yet been determined to be a refugee. The Authors use the term “Black” to describe all peoples of African descent who are in Mexico (or in the Americas) as migrants, except where specifically referring to Haitians or Africans.

33 In addition to the testimonies of 43 survivors, the Authors include factual descriptions and assessments informed by legal screenings and presentations provided to approximately 300 Haitian individuals in migrant shelters in Acuña, Mexico and approximately 800 migrants released to the Val Verde Border Humanitarian Coalition respite center in September 2021.

34 The Authors use the term “separation of family members” to refer to the separation of extended family members (i.e. children, parents, siblings, aunts, uncles, cousins, and grandparents) by the actions of the U.S. government through its agencies including USCIS, DHS, CBP, and ICE. This separation occurs by virtue of an individual’s expulsion, deportation, detention and transfer by the U.S. government and its agencies. Note that although DHS defines “family unit” as minor children under 18 years old and their parents or legal guardians, this report advocates for the adoption of a broader definition by which the harms of family separation are understood to also occur when extended family members who made the journey together or have the same underlying persecution claim from their country of origin are separated. This report also highlights the particular harms that occur when an individual is separated from a pregnant partner, resulting in a separation between parent and minor child to be born.

# Part One

## DEL RIO IN CONTEXT: A LIVING LEGACY OF ANTI-HAITIAN DISCRIMINATION IN THE U.S. IMMIGRATION SYSTEM

The U.S. government's abuse of Haitian immigrants in Del Rio was not an isolated incident involving rogue Customs and Border Patrol (CBP) officers. Instead, it was but one example of anti-Haitian and anti-Black bias throughout the U.S. immigration system. Haitians are among many groups that have been historically targeted by immigration policy rooted in white supremacy.<sup>35</sup> However, because of Haiti's geopolitical positioning and the threat that a free Black society posed to white hegemony in the U.S., people from Haiti have borne the brunt of especially brutal immigration policies.<sup>36</sup> This anti-Black racism undergirds the U.S. immigration system, affecting not just Haitians but also other people of African descent at the Southern Border.<sup>37</sup>

The following section documents this systemic bias by examining 1) the ongoing humanitarian crises in Haiti; 2) the legacy of racist U.S. immigration policy towards Haitian migrants; 3) recent policies that eliminate Black immigrants' access to asylum like Title 42 and the Migrant Protection Protocols (MPP); and 4) abuse and mistreatment of Black people in immigration detention. The section begins with a description of the ongoing humanitarian crisis occurring in Haiti that has forced Haitian families to flee their homes in search of safety from persecution, torture, and other imminent harm.

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<sup>35</sup> See Katy Murdza, M.A. and Walter Ewing, Ph.D., *The Legacy of Racism Within the U.S. Border Patrol* (Feb. 2021), [https://www.americanimmigrationcouncil.org/sites/default/files/research/the\\_legacy\\_of\\_racism\\_within\\_the\\_u.s.\\_border\\_patrol.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/the_legacy_of_racism_within_the_u.s._border_patrol.pdf) (describing historical roots of racial exclusion in immigration enforcement, beginning with animus against Chinese immigrants before shifting to other Asian populations, southern and eastern Europeans, and then Latin American and Caribbean immigrants).

<sup>36</sup> See Sarah E. Baranik de Alarcón, David H. Secor & Norma Fuentes-Mayorga, "*We Are Asking Why You Treat Us This Way. Is It Because We Are Negroes?*" *A Reparations-Based Approach to Remediating the Trump Administration's Cancellation of TPS Protections for Haitians*, 26 MICH. J. RACE & L. 1 (2020), <https://repository.law.umich.edu/mjrl/vol26/iss1/10> (describing how exclusionary, race-based immigration laws and anti-Black ideologies in the United States directly impacted Haitians and Haitian immigrants); see also Brief of Haitian Bridge Alliance, Institute for Justice & Democracy in Haiti, Ira Kurzban, and Irwin Stotzky as Amici Curiae in Support Of Plaintiffs' Motion For Summary Judgment, *Al Otro Lado, Inc. v. Wolf*, Case No. 3:17 cv02366, available at [https://www.americanimmigrationcouncil.org/sites/default/files/litigation\\_documents/challenging\\_custom\\_and\\_border\\_protections\\_unlawful\\_practice\\_of\\_turning\\_away\\_asylum\\_seekers\\_amicus\\_brief\\_hba.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/challenging_custom_and_border_protections_unlawful_practice_of_turning_away_asylum_seekers_amicus_brief_hba.pdf) (contrasting preferential U.S. treatment of Cuban immigrants with U.S. portrayal of Haitians as economic migrants).

<sup>37</sup> See Karla McKanders, *Immigration and Blackness: What's Race Got to Do With It?*, 44 HUMAN RIGHTS MAGAZINE 1 (May 16, 2019), [https://www.americanbar.org/groups/crsi/publications/human\\_rights\\_magazine\\_home/black-to-the-future/immigration-and-blackness/](https://www.americanbar.org/groups/crsi/publications/human_rights_magazine_home/black-to-the-future/immigration-and-blackness/) ("Statistics from the Department of Homeland Security demonstrate that at the intersection of immigration and race, immigrants of African descent are more likely to be detained and deported than other immigrants. The increase in detention of immigrants of African descent is, in part, a result of racial profiling, which mirrors the overrepresentation of African Americans in the criminal justice system due to mass incarceration.").

# I. THE ONGOING HUMANITARIAN CRISES IN HAITI

Haiti is currently experiencing an ongoing humanitarian crisis with multiple causes: political turmoil worsened by the assassination of President Jovenel Moïse;<sup>38</sup> gang violence operating with impunity because of weakened political structures;<sup>39</sup> devastation to infrastructure following a recent earthquake;<sup>40</sup> widespread food insecurity;<sup>41</sup> and a surge of COVID-19 cases in a country where vaccination rates are among the lowest in the world, around 1.4%.<sup>42</sup>

On August 14, 2021, Haiti was hit by a 7.2 magnitude earthquake. Just two days later, the impacted area was further devastated by tropical depression Grace.<sup>43</sup> According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the UN Migration Agency (IOM), the disasters affected at least 800,000 people<sup>44</sup> and exacerbated pre-existing vulnerabilities,<sup>45</sup> leaving more than 38,000 internally displaced<sup>46</sup> and 650,000 in need of emergency humanitarian assistance.<sup>47</sup> Frequent natural disasters and mass internal displacement have left 44% of the country in acute food insecurity.<sup>48</sup>

In the wake of these disasters, armed gang members throughout the capital operate with impunity, often aligned with or controlled by Haitian state officials and police. In 2021, Human Rights Watch's annual report found that "Haiti is facing one of its worst outbreaks of violence since 1986" and that "[a]lleged complicity between politicians and gangs . . . contribute[s] to a climate of insecurity."<sup>49</sup> Armed gang members target women and girls with sexual and other gender-based violence.<sup>50</sup> Gangs also target communities associated with opposing political parties and movements, and subject them to rape and torture on the basis of their political association.<sup>51</sup> Researchers have documented collusion between Haitian state officials

38 Amnesty International, *Haiti: Investigation Urged Into Killing Of Haitian President And Grave Human Rights Violations Under His Watch*, (July 7, 2021), <https://www.amnesty.org/en/latest/news/2021/07/haiti-investigation-urged-into-killing-of-haitian-president-and-grave-human-rights-violations-under-his-watch/>.

39 Harvard Law School International Human Rights Clinic and Observatoire Haïtien des Crimes Contre l'Humanité, *Killing with Impunity: State-Sanctioned Massacres in Haiti* (2021), [https://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing\\_With\\_Impunity-1.pdf](https://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf); AP News, *Desperate Haitians Suffocate Under Growing Power Of Gangs* (Oct. 21, 2021) <https://apnews.com/article/business-caribbean-port-au-prince-haiti-gangs-8793b917718e5f67f27317e765c410aa>.

40 UN Office for the Coordination of Humanitarian Affairs (OCHA), *Haiti: Flash Appeal—Earthquake*, Aug. 2021, <https://reliefweb.int/report/haiti/haiti-flash-appeal-earthquake-august-2021-february-2022>.

41 Food and Agriculture Organization of the United Nations (FAO), *Haiti: Response Overview*, July 2021, <https://www.fao.org/emergencies/resources/documents/resources-detail/en/c/1415806/>.

42 Our World in Data, *Coronavirus (COVID-19) Vaccinations Statistics and Research*, <https://ourworldindata.org/covid-vaccinations> (last visited Mar. 25, 2022).

43 OCHA, *Haiti: Earthquake Flash Update No. 3*, (Aug. 18, 2021), <https://reliefweb.int/sites/reliefweb.int/files/resources/Haiti%20Earthquake%20-%20Flash%20Update%20No.%203%20%2818%20August%202021%29.pdf>.

44 OCHA, *Haiti: Earthquake Situation Report No. 7*, (Oct. 7, 2021) <https://reliefweb.int/report/haiti/haiti-earthquake-situation-report-no-7-7-october-2021>.

45 OCHA, *Haiti: Earthquake Flash Update No. 3*, (Aug. 18, 2021), <https://reliefweb.int/report/haiti/haiti-earthquake-flash-update-no-3-18-august-2021>.

46 UN Migration Agency (IOM), *Earthquake 14 August 2021—Sitrep 4: Displacement Tracking Matrix—Preliminary results*, (Oct. 2, 2021), <https://reliefweb.int/report/haiti/dtm-haiti-earthquake-14-august-2021-sitrep-4>.

47 OCHA, *Haiti: Earthquake Situation Report No. 7*, (Oct. 7, 2021), <https://reliefweb.int/report/haiti/haiti-earthquake-situation-report-no-7-7-october-2021>.

48 World Food Programme (WFP), "WFP Haiti—Country Brief," Sept. 2021, <https://docs.wfp.org/api/documents/WFP-0000132981/download/?ga=2.268875313.1738883596.1637869689-1937873373.1637869689>.

49 Human Rights Watch, *World Report 2021: Haiti*, <https://www.hrw.org/world-report/2021/country-chapters/haiti>.

50 United Nations Population Fund (UNFPA), *Crises In Haiti Leave Women And Girls Ever More Vulnerable* (July 29, 2021), <https://www.unfpa.org/news/crises-haiti-leave-women-and-girls-ever-more-vulnerable>.

51 United Nations Mission for Justice Support in Haiti (MINUJUSTH), *La Saline: Justice pour les Victimes: L'Etat a l'obligation de protéger tous les citoyens* (June 2019), <https://minujsth.unmissions.org/en/minujsth-and-ohchr-release-report-violent-events-13-and-14-november-la-saline>; AP News, *Desperate Haitians Suffocate Under Growing Power Of Gangs* (Oct. 21, 2021), <https://apnews.com/article/business-caribbean-port-au-prince-haiti-gangs-8793b917718e5f67f27317e765c410aa>.

and police in massacres perpetrated by gangs.<sup>52</sup> The rampant insecurity and increasing gang violence have terrified the country as a whole—and have directly affected 1.5 million people, left an additional 19,000 internally displaced,<sup>53</sup> and created the worst kidnapping wave in Haiti’s history.<sup>54</sup>

The U.S. government acknowledges the security threats posed by this ongoing crisis. In its 2020 annual report on human

*“I will not be associated with the United States’ inhumane, counterproductive decision to deport thousands of Haitian refugees and illegal immigrants to Haiti, a country where American officials are confined to secure compounds because of the danger posed by armed gangs in control of daily life.”*

### **Former U.S. Special Envoy to Haiti Daniel Foote, in his resignation letter**

rights in Haiti, the State Department identified “reports of unlawful and arbitrary killings by gangs allegedly supported and protected by unnamed officials; excessive use of force by police; . . . physical attacks on journalists; [and] . . . lack of investigation of and accountability for violence against women.”<sup>55</sup> In March 2021, a leaked report from DHS showed that the U.S. government was aware that deported individuals “may face harm upon return to Haiti” given pervasive political instability and violence.<sup>56</sup> In May 2021, after tireless advocacy by immigrant rights groups,<sup>57</sup> U.S. authorities announced a new 18-month designation of Haiti for Temporary Protected Status (TPS),<sup>58</sup> which provides protection from deportation to Haitians present in the United States as of July 29, 2021.<sup>59</sup> In designating TPS, DHS cited Haiti’s “deteriorating political crisis, violence, and a staggering increase in human rights abuses” that “prevent its nationals from returning safely,” as well as “rising food insecurity and malnutrition, . . . waterborne disease epidemics, and high vulnerability of natural hazards, all of which have been further exacerbated by the [COVID-19] pandemic.”<sup>60</sup> Days later, the State Department categorized Haiti as a Level 4 “Do Not Travel” zone—the highest risk travel category—due to its high rates of kidnapping, crime, civil

52 Harvard Law School International Human Rights Clinic and Observatoire Haïtien des Crimes Contre l’Humanité, *Killing with Impunity: State-Sanctioned Massacres in Haiti* (2021), [https://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing\\_With\\_Impunity-1.pdf](https://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf);\.

53 IOM Haiti, *IDP Assistance In Urban Areas* (Dec. 1, 2021), <https://reliefweb.int/report/haiti/iom-haiti-idp-assistance-urban-areas-1-december-2021>.

54 United Nations Children’s Fund (UNICEF), *Alarming spike in abductions of women and children in Haiti*, (Oct. 21, 2021), <https://www.unicef.org/lac/en/press-releases/alarming-spike-in-abductions-of-women-and-children-in-haiti-unicef>.

55 U.S. Dep’t of State, *2020 Country Reports on Human Rights Practices: Haiti* (Mar. 30, 2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/haiti/>.

56 BuzzFeed News, *Us Officials Are Deporting Haitian Immigrants Despite Knowing They May Face Danger*, (Mar. 2, 2021), <https://www.buzzfeednews.com/article/hamedaleaziz/us-deporting-haitian-immigrants-despite-dangers>

57 Rafael Bernal, *More Than 500 Advocates Call On Biden To Renew TPS For Haiti*, THE HILL (Apr. 27, 2021), <https://thehill.com/latino/550490-more-than-500-advocates-call-on-biden-to-renew-tps-for-haiti>.

58 U.S. Dep’t of Homeland Sec., *Secretary Mayorkas Designates Haiti for Temporary Protected Status for 18 Months* (May 22, 2021), <https://www.dhs.gov/news/2021/05/22/secretary-mayorkas-designates-haiti-temporary-protected-status-18-months>.

59 See 86 FR 41863 (Aug. 3, 2021) (designating TPS for Haiti).

60 *Id.* at 41864.

unrest, and COVID-19.<sup>61</sup>

A month later, in September 2021, and following the mass expulsion of Haitian migrants from Del Rio, the U.S. Special Envoy to Haiti Daniel Foote resigned. In his resignation letter, Foote wrote that he “will not be associated with the United States’ inhumane, counterproductive decision to deport thousands of Haitian refugees and illegal immigrants to Haiti, a country where American officials are confined to secure compounds because of the danger posed by armed gangs in control of daily life.”<sup>62</sup> In October 2021, the State Department’s Senior Legal Advisor Harold Koh also left his official post. In an outgoing memo, Koh concluded that the continued use of Title 42 to expel people seeking protection was “illegal and inhumane,” and described the situation in Haiti as a “humanitarian nightmare.”<sup>63</sup>

After the U.S. forcibly repatriated Haitians from the Del Rio encampment, the State Department issued security alerts on November 10th, urging all U.S. citizens to leave Haiti “in light of the current security situation and infrastructure challenges,”<sup>64</sup> and on December 10, citing reports of “protests in the capital due to surging fuel prices.”<sup>65</sup> Despite the U.S. government’s repeated acknowledgment of the severity of Haiti’s ongoing humanitarian crisis, it continues to forcibly expel Haitians at the U.S. border seeking protection from persecution, torture, and imminent harm, enforcing a discriminatory and unlawful policy of exclusion towards Haitian migrants.<sup>66</sup>

61 U.S. Dep’t of State, *Haiti Travel Advisory* (last visited Mar. 21, 2022), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html>

62 Letter from Special Envoy to Haiti Daniel Foote to Secretary Anthony Blinken, (Sept. 23, 2021), <https://www.washingtonpost.com/context/read-resignation-letter-from-u-s-special-envoy-for-haiti-daniel-foote/3136ae0e-96e5-448e-9d12-0e0cabfb-3c0b/>.

63 Letter from Senior Legal Advisor Harold Koh to the Biden Administration (Oct. 2, 2021) <https://www.politico.com/f/?id=0000017c-4c4a-dddc-a77e-4ddb3ae0000>.

64 U.S. Dep’t of State, *Security Alert: U.S. Embassy Port-au-Prince, Haiti* (Nov. 10, 2021), <https://ht.usembassy.gov/security-alert-us-embassy-port-au-prince-haiti-1102021/>.

65 U.S. Dep’t of State, *Security Alert: U.S. Embassy Port-au-Prince, Haiti* (Dec. 10, 2021), <https://ht.usembassy.gov/security-alert-u-s-embassy-port-au-prince-haiti-65/>.

66 See Complaint, *Haitian Bridge Alliance v. Biden*, No. 1:21-CV-03317 (D.D.C.) (filed Dec. 20, 2021), <https://int.nyt.com/data/documenttools/hba-v-biden/a8106eacd7c45afe/full.pdf> (asserting that the U.S. government’s treatment of migrants at Del Rio was a distinct departure from the treatment of other similarly situated arriving migrant groups).

## II. THE INFLUENCE OF RACISM ON U.S. IMMIGRATION POLICY TOWARDS HAITIANS

The treatment of Haitian migrants at Del Rio is a continuation of a long, bipartisan history of discriminatory immigration policies designed to keep Haitian migrants out of the U.S.<sup>67</sup> For over two centuries, the U.S. has pursued a policy of Haitian containment, detention, and expulsion through militaristic intervention and immigration enforcement practices, indiscriminate incarceration, and pseudo-scientific medical policymaking portraying Haitians as carriers of life-threatening diseases.

The history of discriminatory treatment begins with U.S. efforts to cripple the Haitian economy and foment political instability in order to contain the spread of Haitian social movements for Black liberation and enfranchisement. In 1804, after an uprising to overthrow the richest colony in the Americas, Haiti declared its independence from France and became the first country to abolish slavery.<sup>68</sup> The Haitian Revolution marked the creation of the first free Black nation in the Western Hemisphere, and the only nation to gain independence through the uprising of enslaved people. Because this threatened the U.S. racial hierarchy maintained by slavery, the U.S. refused to recognize the new Haitian state. France imposed “reparations” on the new nation for former French slaveholders for their lost slave labor, complete with crippling interest rates designed to devastate Haiti’s economy.<sup>69</sup>

Fearing that European interests might reduce American commercial and political influence in Haiti, President Woodrow Wilson ordered the U.S. Marines to invade and occupy Haiti in July 1915.<sup>70</sup> One of the first actions carried out by the U.S. at the start of the occupation was to move Haiti’s financial reserves to the U.S. and then rewrite its Constitution to give foreigners land-owning rights.<sup>71</sup> During the U.S. military occupation of Haiti from 1915 to 1934, U.S. soldiers massacred over 11,500 Haitians with impunity, in addition to eroding local governance and destabilizing Haitian economic and political geographies.<sup>72</sup> During the next decades, the U.S. government upheld successive authoritarian regimes in Haiti, including the Duvalier father-son dictatorship from 1957 to 1986. The Duvalier regime has been called “the most oppressive regime in the hemisphere” and resulted in the death of over 30,000 Haitians and forced displacement of hundreds of thousands more.<sup>73</sup>

At the same time that the U.S. strategically fomented the economic and political instability at the root of the Haitian refugee crisis, it also blocked and returned Haitians arriving to U.S. territory through a rapid expulsion program. Dubbed the “Haitian Program,” the 1978 policy jailed arriving Haitians and universally denied their asylum claims despite the known atrocities being committed by the Duvalier regime at the time. The policy was designed to “expel Haitian asylum applicants as rapidly as possible.”<sup>74</sup> From 1981 to 1991, the U.S. interdicted approximately 22,000 Haitians at sea, returning migrants

67 See, e.g., Fabiola Cineas, “Why America Keeps Turning Its Back on Haitian Migrants,” VOX (Sept. 24, 2021), <https://www.vox.com/22689472/haitian-migrants-asylum-history-violence> (“[E]very presidential administration since the 1970s has treated Haitians differently than other migrant groups, rejecting asylum claims, holding them longer in detention, and making it harder for them to settle down in safety.”); Edwidge Danticat, *The U.S.’s Long History of Mistreating Haitian Migrants*, THE NEW YORKER (Sept. 24, 2021), <https://www.newyorker.com/news/news-desk/the-uss-long-history-of-mistreating-haitian-migrants> (describing history of U.S. interdiction of Haitian immigrants); Charlotte Wiener, *Why the Haitian Struggle Matters for Anti-Racism Activism*, MEDIUM (Jan. 17, 2022) <https://medium.com/@charlottewiener/why-the-haitian-struggle-matters-for-anti-racism-activism-e97f55726adf> (same).

68 Malissia Lennox, *Refugees, Racism, and Reparations: A Critique of the United States’ Haitian Immigration Policy*, 45 Stan. L. Rev. 687 (1993).

69 Dan Sperling, *In 1825, Haiti Paid France \$21 Billion To Preserve Its Independence—Time for France To Pay It Back*, FORBES (Dec. 6, 2017), <https://www.forbes.com/sites/realspin/2017/12/06/in-1825-haiti-gained-independence-from-france-for-21-billion-its-time-for-france-to-pay-it-back/?sh=5ed0c04f312b>.

70 Edwidge Danticat, *The Long Legacy of the Occupation in Haiti*, THE NEW YORKER (July 28, 2015), [https://www.newyorker.com/news/news-desk/haiti-us-occupation-hundred-year-anniversary?utm\\_source=npr\\_newsletter&utm\\_medium=email&utm\\_content=20211001&utm\\_term=5819359&utm\\_campaign=money&utm\\_id=46765242&orgid=305&utm\\_attl=money](https://www.newyorker.com/news/news-desk/haiti-us-occupation-hundred-year-anniversary?utm_source=npr_newsletter&utm_medium=email&utm_content=20211001&utm_term=5819359&utm_campaign=money&utm_id=46765242&orgid=305&utm_attl=money).

71 *Id.*

72 Mary A. Renda, *Taking Haiti: Military Occupation and the Culture of U.S. Imperialism, 1915-1940*, Chapel Hill: University of North Carolina Press (2001).

73 *Supra* n.60.

74 *Haitian Refugee Ctr. v. Civiletti*, 503 F. Supp. 442, 513 (SD Fla. 1980); see also *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1029 (5th Cir. 1982) (describing “accelerated processing” that resulted in blanket denials of Haitian asylum applications).

to Haiti without screening them for asylum.<sup>75</sup> In this ten-year time period, U.S. government statistics indicate that of the approximately 22,000 people interdicted, *only 28* Haitian migrants were allowed into the United States to pursue their asylum claims.<sup>76</sup>

U.S. efforts during this period to single out Haitian immigrants for interdiction and expulsion also laid the groundwork for the modern-day U.S. immigration detention regime. When the number of arriving Haitians exceeded the U.S. Coast Guard's capacity to rapidly process and expel, the U.S. began to detain them at off-shore prison camps in Guantanamo Bay, Cuba, cutting off access to legal representation.<sup>77</sup> Guantanamo was geographically isolated from the U.S. and legally out of Cuba's jurisdiction, strategically enabling its use for indefinite detention with minimal oversight. At the height of this policy, at least 12,000 Haitians were held at the U.S. military prison, packed into tents and surrounded by rows of razor wire. There, the former Immigration and Naturalization Services (INS) rapidly conducted asylum interviews, arbitrarily classified the vast majority of individuals in Guantanamo as "economic migrants," and forcibly expelled them to Haiti. At the time, the U.S. government itself acknowledged that detention centers rife with racial disparities "created the appearance of concentration camps filled largely by blacks."<sup>78</sup> Today, an expanded immigration detention system continues to disproportionately detain Haitian and other Black immigrants.<sup>79</sup>

At the same time, in 1987, the U.S. government imposed a further barrier to Haitian migration by invoking a discriminatory law preventing those with HIV/AIDS from entering the U.S. The Centers for Disease Control (CDC) declared Haitian migrants to be a group that could be "considered at increased risk of HIV/AIDS."<sup>80</sup> And because the U.S. government considered HIV to be a "communicable disease" that could justify refusal to permit entry to the country under immigration laws, it held Haitian immigrants suspected of seropositivity in segregated detention camps at Guantanamo Bay. By 1992, approximately 277 *bona fide* Haitian refugees, including children and family units, remained at a facility at Guantanamo, known as "Camp Bulkeley." The camp became known as the "world's first and only detention camp for refugees with HIV" and was characterized by abhorrent conditions including medical neglect, inedible food, often infested with maggots, and indefinite detention.<sup>81</sup> Under Title 42, the U.S. continues to weaponize public health laws to enact discriminatory immigration bans and detain Haitians in unsanitary and abusive conditions.<sup>82</sup>

75 UNHCR, *The State of the World's Refugees*, 176 (2000), <https://www.unhcr.org/3ebf9bb10.pdf>.

76 *Id.*

77 See *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 163, 166-67 (1993) (describing history of right to counsel litigation by Haitians detained at Guantanamo); The Haiti Paradigm in United States Human Rights Policy at 2392-93; Congressional Research Service, *U.S. Immigration Policy on Haitian Migrants*, 4-5 (2011) (describing use of Guantanamo detention in both the George H.W. Bush and Clinton Administrations).

78 Smita Ghosh, *How Migrant Detention became American Policy*, WASHINGTON POST (July 19, 2019), <https://www.washingtonpost.com/outlook/2019/07/19/how-migrant-detention-became-american-policy/>.

79 See Carl Lindskoog, *How The Haitian Refugee Crisis Led To The Detention Of Immigrants*, WASHINGTON POST (Apr. 9, 2018) (tracing growth of immigration detention to initial efforts to detain Haitians), <https://www.washingtonpost.com/news/made-by-history/wp/2018/04/09/how-the-haitian-refugee-crisis-led-to-theindefinite-detention-of-immigrants/>.

80 See, e.g. Linda G. Marc et al., *HIV among Haitian-born Persons in the United States, 1985-2007*, 24 AIDS 2089-2097 (2010) (describing history of stigmatization of Haitian-born persons over false accusations for introducing HIV to North America), <https://doi.org/10.1097/QAD.0b013e32833bedff>.

81 Michael Ratner, *How We Closed the Guantanamo HIV Camp: The Intersection of Politics and Litigation*, 11 HARV. HUM. RTS. J. 187, 201, n.56 (1998) (describing "abominable conditions").

82 See *infra* Part One: Section III-IV (describing current attempts to ban asylum and abusive conditions of immigration detention).

# III. CURRENT ATTEMPTS TO BAN ASYLUM FOR HAITIAN MIGRANTS

Inhumane treatment of Haitian immigrants remains a prominent feature of today’s U.S. immigration system. Two Trump-era programs, Title 42 and the Migration Protection Protocols (“MPP”), were designed to eliminate access to asylum. The Biden Administration has prolonged and expanded both, with disastrous consequences for Haitians fleeing persecution and other grave harms.

The mass expulsions of Haitians from the Del Rio encampment in mid-September were facilitated using the weaponization of an obscure public health statute, “Title 42.”<sup>83</sup> On March 24, 2020, the CDC hurriedly issued an expedited rule purporting to implement the statute. In it, the CDC claimed the authority to “suspend the introduction of persons from designated countries or places, if required, in the interest of public health.”<sup>84</sup> The CDC then directed U.S. border officials to expel individuals seeking entry to the country from which they arrive or to their home country.<sup>85</sup> Since March 2020, the CDC has progressively relaxed pandemic public health measures like mask mandates.<sup>86</sup> And as evidenced by recent policy shifts, U.S. officials seem to believe that Title 42 is no longer necessary to safeguard public health. On March 12, 2022, the CDC terminated Title 42 with respect to unaccompanied children, noting that “there is no longer a serious danger of the introduction, transmission, and spread of COVID-19 into the United States as a result of entry of UC [Unaccompanied Noncitizen Children] and that a suspension of the introduction of UC is not required in the interest of public health.”<sup>87</sup> In its termination order, the CDC asserts that changing public health conditions, including “widespread vaccination,” “variant actions plans,” and the “widespread availability of tests for the general public,” support the use of less restrictive measures for UCs. The same logic supports the termination of Title 42 for all populations.<sup>88</sup>

But the U.S. has continued to use Title 42 to close the country to other asylum seekers and to forcibly expel migrants to Mexico, Haiti, and other countries where they face imminent risk of persecution, torture, and other harm.<sup>89</sup> And while the Title 42 expulsion policy was created and implemented by the the Trump Administration, the Biden Administration has

83 42 U.S.C. § 265.

84 85 Fed. Reg. 16559 (Mar. 24, 2020).

85 85 Fed. Reg. 17060 (Mar. 26, 2020).

86 See, e.g., Adam Cancryn, “Cdc Relaunching Covid Tracker With An Eye On Eased Mandates,” POLITICO (Feb. 24, 2022) (noting “a significant drop in the percentage of the country that the CDC recommends enact stringent masking”), <https://www.politico.com/news/2022/02/24/cdc-relaunching-covid-tracker-eased-mandates-00011680>.

87 CDC, *Public Health Reassessment and Immediate Termination of Order Suspending the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists with Respect to Unaccompanied Noncitizen Children* (Mar. 11, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren-update.pdf>.

88 *Id.* at 9.

89 See, e.g., CBS News, *U.S. Reports Record Number of Migrant Apprehensions Along Mexican Border* (Oct. 22, 2021) (reporting record numbers of expulsions under Title 42), <https://www.cbsnews.com/news/immigration-border-migrant-apprehensions/>; Physicians for Human Rights, *Title 42 Border Expulsions: How Biden and the CDC’s Misuse of Public Health Authority Expels Asylum Seekers to Danger* (May 20, 2021) (reporting “violent attacks, including kidnappings, rapes, torture, physical assaults, and verbal threats, against asylum seekers turned away or stranded in Mexico”) <https://phr.org/our-work/resources/title-42-border-expulsions-how-biden-and-the-cdcs-misuse-of-public-health-authority-expels-asylum-seekers-to-danger/>; Human Rights Watch, *Q&A: US Title 42 Policy to Expel Migrants at the Border* (Apr. 8, 2021) (reporting “at least 1,544 reports of murder, torture, rape, kidnapping and other violent attacks against asylum seekers and migrants sent from the US to Mexico”), <https://www.hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border#>.

embraced and escalated its misuse, against the objections of the UNHCR<sup>90</sup> and epidemiologists and public health experts.<sup>91</sup> Since the Biden Administration took office in January 2021, expulsions under Title 42 have reached record highs. By September 2021, the U.S. had expelled more than 1.7 million migrants at the southwest border.<sup>92</sup> Since the Del Rio incident in September 2021, expulsions have continued in the form of near-daily flights to Haiti: 204 flights to date.<sup>93</sup> Between October 2021 and January 2022, the U.S. expelled a total of over half a million individuals under Title 42.<sup>94</sup>

All the while, commentators and courts have agreed that Title 42 violates domestic and international law.<sup>95</sup> The existing implementation of the Title 42 expulsion policy does not provide migrants with an opportunity to contest the expulsion decision on persecution grounds and does not require CBP officers to screen asylum seekers for risk of torture.<sup>96</sup> An August 2021 memorandum from DHS's Office for Civil Rights and Civil Liberties advised against expulsions of migrants to Haiti and emphasized a "strong risk" that such expulsions would violate *non-refoulement* obligations under U.S. and international law.<sup>97</sup> And in *Huisha-Huisha v. Mayorkas*, the D.C. Circuit Court of Appeals affirmed a lower court holding that the use of Title 42 to expel people to places where they would face persecution or torture is unlawful because it violates U.S. laws that implement binding international conventions mandating humanitarian protection for non-citizens.<sup>98</sup> The Court of Appeals also remanded for further proceedings the question of whether Title 42 violates the U.S. Constitution.<sup>99</sup>

Those Haitians not immediately expelled under Title 42 face an additional barrier to applying for asylum: the latest iteration of the "Remain in Mexico Program," inaptly named the "Migrant Protection Protocols" ("MPP").<sup>100</sup> Under MPP, the U.S. government refuses entry to people seeking asylum, instead returning them to Mexico to await a remote hearing on their application, *de facto* forcing many to live in dangerous, squalid, makeshift camps close to the border.<sup>101</sup> Since January 2019, when the Trump Administration first implemented MPP, tens of thousands of migrants and asylum seekers have

90 In a comment to press on September 21, 2021, the UN High Commissioner for Refugees Filippo Grandi stated that "mass expulsions of individuals currently underway under the Title 42 authority, without screening for protection needs, is inconsistent with international norms and may constitute refoulement," <https://www.unhcr.org/news/press/2021/9/614a27324/news-comment-un-high-commissioner-refugees-filippo-grandi-conditions-expulsions.html>

91 See Letter from Public Health Experts to CDC Director Walensky, HHS Secretary Becerra, and DHS Secretary Mayorkas on the August 2021 Title 42 Order (Sept. 1, 2021) (objecting "to the specious public health grounds that underpin the order"), <https://www.publichealth.columbia.edu/node/76271>; Press Release, Epidemiologists and Public Health Experts Reiterate Urgent Call to End Title 42 (Jan. 14, 2022) (reiterating "urgent call for the administration to end its use of the scientifically-baseless Title 42 policy that illegally and inhumanely expels asylum seekers at the southern U.S. border without due process"), <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/epidemiologists-and-public-health-experts-reiterate-urgent-call-end-title-42>; Letter To HHS Secretary Azar And CDC Director Redfield Signed By Leaders Of Public Health Schools, Medical Schools, Hospitals, And Other U.S. Institutions (May 18, 2020) (objecting "that the current administration is using the imprimatur of the Centers for Disease Control and Prevention (CDC) to circumvent laws and treaty protections designed to save lives and enable the mass expulsion of asylum seekers and unaccompanied children"), <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>.

92 U.S. Customs and Border Protection, Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

93 See *infra* n.219 (assembling data set for flight tracking).

94 *Supra* n. 92.

95 *Huisha-Huisha v. Mayorkas*, No. 21-5200 (D.C. Cir. Mar. 4, 2022) (affirming injunction against expulsion of individuals to countries where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion or where they will likely face torture); see also *supra* n.5 (citing scholars' objections to Title 42 under domestic and international law).

96 Yael Shacher, *MPP as a Microcosm: What's Wrong with Asylum at the Border and How to Fix It*, *Refugees International* (Feb. 11, 2022) (countering the government's claim that CBP officials are providing an opportunity for possible relief to those who express a fear of torture if expelled by noting that "only a handful of people have passed the government's discretionarily accorded torture screenings"), <https://www.refugeesinternational.org/reports/2022/2/10/mpp-as-a-microcosm-whats-wrong-with-asylum-at-the-border-and-how-to-fix-it>.

97 Hamed Aleaziz, *An Internal Document Shows DHS Officials Advised Against Haitian Deportations, Fearing They Could Violate Human Rights Obligations*, BUZZFEED NEWS (Dec. 6, 2021), <https://www.buzzfeednews.com/article/hamedaleaziz/haitian-deportations-dhs-memo>.

98 *Huisha-Huisha* at 23-25.

99 *Id.* at 21.

100 U.S. Dep't of Homeland Sec., *Migrant Protection Protocols* (Jan. 24, 2019) <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

101 See Human Rights Watch, *New Hypocrisy in US Immigration Policy: Administration Ends One Abusive Program, Keeps Title 42 Expulsions in Place* (Nov. 3, 2021), (reporting that as a result of MPP, asylum seekers have been "targeted for kidnapping, extortion, rape, and other violence, and have lacked access to food, water, and shelter") <https://www.hrw.org/news/2021/11/03/new-hypocrisy-us-immigration-policy>.

been turned away.<sup>102</sup> In MPP’s initial iteration, Haiti and other countries outside of Central and South America were not included.

In June 2021, DHS Secretary Alejandro Mayorkas announced the termination of the MPP program, acknowledging that “conditions faced by some MPP enrollees in Mexico, including the lack of stable access to housing, income, and safety, resulted in the abandonment of potentially meritorious protection claims.”<sup>105</sup> He also noted that “there were pervasive and widespread reports of MPP enrollees being exposed to extreme violence and insecurity at the hands of transnational criminal organizations that prey on vulnerable migrants as they waited in Mexico for their immigration court hearings in the United States.”<sup>104</sup> However, efforts to terminate MPP were halted in August 2021 when a federal district court judge issued an injunction requiring reinstatement of the program.<sup>105</sup> The U.S. Supreme Court declined to stay the injunction.<sup>106</sup> And in December 2021, the DHS took the policy further,<sup>107</sup> *expanding* its scope to include nationals from all countries within the Western Hemisphere, including Haiti.<sup>108</sup> While MPP has yet to be applied to Haitians, this expansion will particularly harm Haitian and other Black people seeking protection because the majority do not come from Spanish-speaking countries and therefore face language and even racism barriers to accessing legal and other supportive services in Mexico.<sup>109</sup>

Since the adoption of MPP, over 71,000 asylum seekers forced to wait in Mexico<sup>110</sup> have suffered extreme violence.<sup>111</sup> Between January 2021 and March 2022, there were over 9,886 reports of rapes, kidnappings, and violent assaults against individuals expelled to or blocked from seeking asylum in the United States due to the Title 42 policy.<sup>112</sup> In December 2021, DHS reported that 267 individuals were enrolled in MPP<sup>113</sup> while more than 80,000 individuals were expelled—without access to asylum—under Title 42.<sup>114</sup>

Title 42 and expanded MPP are only the latest of recent asylum restriction programs that have grievously impacted

102 See Human Rights First, *Delivered to Danger: U.S. Government Sending Asylum Seekers and Migrants to Danger* (Feb. 19, 2021) (reporting that the U.S. has “forced tens of thousands of asylum seekers and migrants, including at least 16,000 children and nearly 500 infants under the age of one, to return to Mexico under the ‘Migrant Protection Protocols’”), <https://www.humanrightsfirst.org/campaign/remain-mexico>.

103 Dep’t of Homeland Sec., “Explanation of the Decision to Terminate the Migrant Protection Protocols” (Oct. 29, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1029\\_mpp-termination-justification-memo.pdf](https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-justification-memo.pdf)

104 *Id.* at 14.

105 *Texas v. Biden*, No. 4:21-cv-0579-P (N.D. Tex. Aug. 13, 2021).

106 *Biden v. Texas*, 594 U.S. \_\_ (Aug. 24, 2021).

107 On December 2, 2021, the U.S. government reached an agreement with Mexico to renew MPP under “better and humane safeguards,” despite the fact that the Biden Administration was under no court-imposed deadline to reinstate the program. DHS, “Court-Ordered Reimplementation of MPP Policy Guidance” (Dec. 12, 2021), <https://www.dhs.gov/publication/court-ordered-reimplementation-mpp-policy-guidance>.

108 See American Civil Liberties Union, *Q&A: What You Need to Know About MPP, The Trump-Era Migrant Policy Re-Initiated by Biden* (Dec. 13, 2021) (“Under Biden they’ve taken a step further in terms of expanding the nationalities that MPP applies to, to say it applies to people from all across the Western Hemisphere.”), <https://www.aclu-nm.org/en/news/qa-what-you-need-know-about-mpp-trump-era-migrant-policy-re-initiated-biden>; see also Nicole Narea, “Biden’s Bewildering Decision to Expand a Trump-era Immigration Policy” VOX (Dec. 4, 2021), <https://www.vox.com/policy-and-politics/2021/12/4/22815657/biden-remain-in-mexico-mpp-border-migrant> (highlighting the racial discriminatory effects of the new MPP and criticizing the decision to expand the number of migrants now forced to remain in Mexico).

109 See S. Priya Morley et al., *supra* n. 32.

110 Transactional Records Access Clearinghouse (TRAC), *Immigration Project Dataset* (as of Nov. 2021), <https://trac.syr.edu/phptools/immigration/mpp/>.

111 See Human Rights Watch, *New Hypocrisy in US Immigration Policy: Administration Ends One Abusive Program, Keeps Title 42 Expulsions in Place* (Nov. 3, 2021), <https://www.hrw.org/news/2021/11/03/new-hypocrisy-us-immigration-policy> (reporting that as a result of MPP, asylum seekers have been “targeted for kidnapping, extortion, rape, and other violence, and have lacked access to food, water, and shelter”).

112 Human Rights First, *Tracker of Reported Attacks During the Biden Administration Against Asylum Seekers and Migrants Who Are Stranded in and/or Expelled to Mexico* (updated Mar. 14, 2022), <https://www.humanrightsfirst.org/sites/default/files/AttacksonAsylumSeekersStrandedinMexicoDuringBidenAdministration.3.15.2022.pdf>.

113 U.S. Dep’t of Homeland Sec. Office of Immigration Status, *Migrant Protection Protocols (MPP) Report on December Cohort* (Jan. 2022) [https://www.dhs.gov/sites/default/files/2022-01/migrant\\_protection\\_protocols\\_mpp\\_report\\_on\\_december\\_cohort.pdf](https://www.dhs.gov/sites/default/files/2022-01/migrant_protection_protocols_mpp_report_on_december_cohort.pdf)

114 *Supra* n. 92.

Black migrants and asylum-seekers. Previously implemented under the Trump Administration, the “third country rule”<sup>115</sup> and “metering,”<sup>116</sup> have also resulted in particular harm to Black individuals.<sup>117</sup> Under “metering,” CBP officers, Mexican government officials, and civil society organizations created informal waitlists for the processing of asylum seekers in the U.S.<sup>118</sup> These waitlists often discriminatorily exclude Haitian and other Black asylum seekers,<sup>119</sup> blocking them from accessing protection at ports of entry and leaving them stranded in Mexico, where they are targeted by Mexican officials and gangs.<sup>120</sup> An April 2021 report by Haitian Bridge Alliance, Al Otro Lado, and Human Rights First noted that 61% of Haitian asylum seekers blocked from U.S. asylum protections reported being the victim of a crime while in Mexico, including kidnapping, rape, and robbery.<sup>121</sup> Nearly 20% of Haitian asylum seekers stranded in the northern Mexican border region were victims of abuse by the police, including beatings, extortion, and threats.<sup>122</sup> In September 2021, a federal district court enjoined “metering,” as likely unlawful.<sup>123</sup> The legality of Title 42 and MPP is currently being challenged in federal court.<sup>124</sup> But the harm to excluded and expelled Black immigrants remains unaddressed.

115 The implementation of the “third country rule” has added an asylum bar for those who enter or attempt to enter across the southern border and who did not apply for asylum in Mexico or another third country through which they traveled. In effect, this categorically denied asylum to all non-Mexicans, including Haitians, who travel through Mexico and other countries to pursue protection.

116 CBP has used “metering” to limit the number of migrants allowed to present themselves at U.S. ports of entry, forcing asylum seekers to wait—often for months—before they were permitted to present themselves at ports of entry to initiate the asylum process. Through “Asylum Cooperative Agreements,” this policy includes countries throughout the Northern Triangle such as Guatemala, El Salvador, and Honduras, allowing for the forcible transfer of asylum seekers from the US-Mexico border to any of those countries through which the asylum seeker traveled—without an individualized harm assessment. See Senate Foreign Relations Democratic Committee, *Cruelty, Coercion, and Legal Contortions: The Trump Administration’s Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador* (January 18, 2021) (describing objections to Third Country Agreements entered into by the Trump Administration), <https://www.foreign.senate.gov/imo/media/doc/Cruelty,%20Coercion,%20and%20Legal%20Contortions%20--%20SFRC%20Democratic%20Staff%20Report.pdf>.

117 See Azadeh Erfani, “Biden Admin Leaves Behind BIPOC Migrants and Asylum Seekers as Government Reopens Borders to Non-essential Travel,” Nat’l Imm. Just. Ctr. (November 16, 2021), <https://immigrantjustice.org/staff/blog/biden-admin-leaves-behind-bipoc-migrants-and-asylum-seekers-government-reopens-borders>; See also Human Rights Watch, *Texas Targeting Migrants: Justice Department Should Move Against Abusive, Discriminatory ‘Operation Lone Star’* (November 22, 2021), <https://www.hrw.org/news/2021/11/22/us-texas-targeting-migrants> (reporting on the xenophobic narrative pushed forth by Texas Governor Greg Abbott to justify the inhumane and unlawful treatment of asylum seekers apprehended by Texas law enforcement officials).

118 In 2016, the Obama Administration also initiated a metering policy that was started in response to an uptick in Haitian asylum seekers seeking entry at the border. See Daniella Silva, “Trapped in Tijuana: Migrants Face a Long, Dangerous Wait to Claim Asylum,” *NBC News* (Mar. 18, 2019) (“Metering of migrants at the Mexican border was first used by the Obama administration in 2016 in response to thousands of Haitians coming to Tijuana to enter the U.S.”), <https://www.nbcnews.com/news/latino/trapped-tijuana-migrants-face-longdangerous-wait-claim-asylum-n981721>.

119 “Metering” has 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. See Maya Averbuch, *Stranded in Tijuana: A Forgotten Community of Haitians with No Place to Go*, THE PROGRESSIVE (Apr. 1, 2018), <https://progressive.org/magazine/stranded-in-tijuana-immigration-haiti/>.

120 See S. Priya Morley et al., “There is a Target on Us”—The Impact of Anti-Black Racism on African Migrants at Mexico’s Southern Border (2021) (describing targeting of Black migrants by gangs in Mexico), <https://imumi.org/attachments/2020/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>.

121 Al Otro Lado et al., *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger* 3 (Apr. 2021), <https://www.humanrightsfirst.org/sites/default/files/FailuretoProtect.4.20.21.pdf>.

122 Human Rights First, *Human Rights Travesty: Biden Administration Embrace of Trump Asylum Expulsion Policy Endangers Lives, Wreaks Havoc* 8 (Aug. 2021), [https://www.humanrightsfirst.org/sites/default/files/HumanRightsTravesty\\_FINAL.pdf](https://www.humanrightsfirst.org/sites/default/files/HumanRightsTravesty_FINAL.pdf); see also León Krauze, *Opinion: There’s A Crisis Of Violence And Racism In Southern Mexico. It Needs Urgent Attention*, WASHINGTON POST (Aug. 31, 2021), <https://www.washingtonpost.com/opinions/2021/08/31/tapachula-crisis-chiapas-mexico-migrants-racism-violence/> (describing violence committed against migrants in Tapachula, demonstrating the Mexican government’s turn into “full-on immigration deterrence at the behest of the U.S. government”).

123 See *Al Otro Lado v. Wolf*, 2021 U.S. Dist. LEXIS 30450 (S.D. Cal. Feb. 18, 2021) (issuing a preliminary injunction to halt the metering policy pending litigation, based on allegations that the policy is discriminatory and in violation of the Immigration and Nationality Act’s legal protections for asylum seekers).

124 The U.S. Supreme Court will hear oral arguments in *Texas v. Biden* in mid-April 2022. See 595 U.S. 21-954 (order filed February 18, 2022) [https://www.supremecourt.gov/orders/courtorders/021822zr\\_o758.pdf](https://www.supremecourt.gov/orders/courtorders/021822zr_o758.pdf).

# IV. ABUSE AND MISTREATMENT OF HAITIAN IMMIGRANTS IN ICE DETENTION

The comparatively few Haitians who are not turned away by asylum restriction policies face inhumane and discriminatory treatment in detention facilities operated by ICE, including anti-Black violence.<sup>125</sup> The ICE detention regime comprises over 200 facilities that, as of March 2022, detain 20,146 individuals and surveil over 191,988 through ICE Alternative Detention programs that rely on electronic ankle shackles and severely restrict freedom of movement.<sup>126</sup> Since 2017, ICE has concentrated the growth of its jail network in rural areas far from cities and regions where immigrants are initially detained, isolating them from families, communities, and legal counsel that can help them prepare defenses to deportation and prolonged detention.<sup>127</sup>

Discrimination against Haitians is pervasive in the immigrant detention regime. Because U.S. immigration law often relies on criminal arrests and convictions to determine immigration penalties, it incorporates the racial disparities and biases of the U.S. criminal legal system.<sup>128</sup> Over-policing and surveillance of Black communities, rooted in institutionalized racial biases, leave Black people more likely than other racial and ethnic groups to be punished for the same conduct by the criminal legal system and through the detention-deportation pipeline.<sup>129</sup> As a result, although only 7% of undocumented immigrants are Black, they make up 20% of those facing deportation on criminal grounds.<sup>130</sup>

The same anti-Black racial disparities present in the criminal legal system are a defining feature of immigration detention. In 2020, Haitians constituted the largest nationality group in family detention. While accounting for only 1% of asylum decisions adjudicated in 2020, Haitians represented more than 44% of all families locked in Karnes County Residential Center during summer 2020.<sup>131</sup> ICE cages Black people in solitary confinement as punishment at a rate six times greater than the general population.<sup>132</sup> Haitians detained by ICE and CBP have frequently reported lack of access to sanitation, running water, and cleaning supplies, severe medical neglect, lack of access to Kreyol language interpretation, and denial of access to legal representation through intimidation.<sup>133</sup> For example, a Haitian man detained at the Glades County Detention Center was subjected to a pattern of abusive and unlawful conduct by ICE officials and county correctional officers, including targeted harassment and intimidation; racialized threats of death; and arbitrary and retributive imposition of administrative sanctions including solitary confinement. Of greatest concern, the facility's director repeatedly made veiled

125 See, e.g., CRCL complaint, Re: COVID-19 Negligence, Sexual Assault, Retaliation, Verbal Abuse, Religious Discrimination, Anti-Blackness, and Deplorable Conditions at Krome North Services Processing Center in Miami, Florida (filed Oct. 6, 2021) <https://www.freedomforimmigrants.org/news/2021/10/6/takes-the-human-out-of-a-person-black-immigrants-in-detention-describe-anti-blackness-egregious-abuses-in-new-civil-rights-complaint>; CRCL complaint, Re: Unchecked Human Rights and Civil Rights Abuses Systemic within the New Orleans ICE Field Office Area of Responsibility (filed Dec. 20, 2021) <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/61c0b47c15319f67d4045ca3/1640019069450/12%3A20%3A21+DHS+NOLA+ICE+Investigation+Follow-Up+Letter+%282%29.pdf>; CRCL complaint, Re: Call for U.S. Immigration and Customs Enforcement (ICE) to End Contracts due to Abusive, Inhumane, Criminal, and Racially Discriminatory Practices at Pine Prairie ICE Processing Center and Allen Parish Public Safety Complex, Louisiana (filed July 28, 2021) [https://www.splcenter.org/sites/default/files/28\\_july\\_2021\\_complaint\\_and\\_call\\_to\\_close\\_pine\\_prairie\\_and\\_allen\\_parish.pdf](https://www.splcenter.org/sites/default/files/28_july_2021_complaint_and_call_to_close_pine_prairie_and_allen_parish.pdf).

126 TRAC Immigration, Immigration Detention Quick Facts (updated Mar. 12, 2022), <https://trac.syr.edu/immigration/quickfacts/>.

127 See ACLU, Justice Free Zones: U.S. Immigration Detention Under the Trump Administration (Apr. 2020), [https://www.aclu.org/sites/default/files/field\\_document/justice-free\\_zones\\_immigrant\\_detention\\_report\\_aclu\\_hrw\\_nijc\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/justice-free_zones_immigrant_detention_report_aclu_hrw_nijc_0.pdf).

128 In 2017, almost 74% of people arrested by ICE had a criminal conviction. See Jeremy Raff, *The 'Double Punishment' for Black Undocumented Immigrants*, ATLANTIC (Dec. 30, 2017), <https://www.theatlantic.com/politics/archive/2017/12/the-double-punishment-for-black-immigrants/549425/>.

129 *Id.*; see also Nayna Gupta & Heidi Altman, *Disentangling Local Law Enforcement From Federal Immigration Enforcement*, Nat'l Immigr. Justice Ctr. (Jan. 15, 2021), <https://immigrantjustice.org/research-items/policy-brief-disentangling-local-law-enforcement-federal-immigration-enforcement>; *supra* n.30.

130 *Supra* n.128.

131 RAICES, *Black Immigrant Lives are Under Attack* (July 2020), <https://www.raicestexas.org/2020/07/22/black-immigrant-lives-are-under-attack/>.

132 Spencer Woodman, *U.S. Isolates Detained Immigrants From Majority-Black Countries At High Rate*, International Consortium of Investigative Journalists (Apr. 21, 2020), <https://www.icij.org/investigations/solitary-voices/u-s-isolates-detained-immigrants-from-majority-black-countries-at-high-rate-study-finds/>.

133 See *supra* n.13, Haitian Bridge Alliance, et al. at 25-29 (describing abusive detention conditions).

and racialized death threats, suggesting that he would leave a noose in the Haitian individual's cell.<sup>134</sup>

Once confined to detention, Black immigrants are also less likely than others to be released. Haitians detained by ICE are 50% less likely to be granted bond by immigration judges than other immigrants. In FY 2021, less than 15% of Haitians were granted bond by an immigration judge, whereas non-Haitian immigrants were granted bond 32% of the time.<sup>135</sup> Those bond amounts are significantly more likely to be higher than bonds set for other nationalities. Immigration court judges set bond amounts in excess of \$25,000 for 16% of Haitian nationals, nearly 6.5 times the rate of all immigrants, who received bonds

## **ICE cages Black people in solitary confinement as punishment at a rate six times greater than the general population.**

in that range in 2.3 % of cases.<sup>136</sup> Between June 2018 and June 2020, immigration bonds for Haitians were 54% higher than those for other immigrants.<sup>137</sup> Increased bond denial rates and higher bond costs result in prolonged detention, leaving Haitians and other Black immigrants isolated from legal representation and more likely to be deported.<sup>138</sup> Even those who qualify for a defense to deportation experience arbitrary barriers to release. For example, although Haiti has been designated for Temporary Protected Status (TPS) since May 2021, DHS continues to detain many TPS-eligible Haitians and deny their applications.<sup>139</sup>

Together, the U.S. government's history of crippling interference with Haitian political and economic dynamics, decades of discriminatory policies, current attempts to ban asylum, and abusive and prolonged detention in ICE facilities have led to the long-term exclusion of Haitians from protections required under U.S. and international law. The human rights and civil rights abuses committed by the U.S. government against Haitians in the Del Rio encampment are the most recent manifestation of this ongoing legacy of anti-Haitian discrimination in the U.S. immigration system.

134 Letter to DHS, Re: Racism at Glades County Detention Center (Nov. 18, 2021) [https://www.aclufl.org/sites/default/files/field\\_documents/memo\\_to\\_dhs\\_re\\_racism\\_at\\_glades\\_detention\\_center\\_11.18.21.pdf](https://www.aclufl.org/sites/default/files/field_documents/memo_to_dhs_re_racism_at_glades_detention_center_11.18.21.pdf); CRCL complaint, Re: Ernst Francoius, violations of civil rights and civil liberties at Glades County Detention Center (Sept. 16, 2021). <https://www.scribd.com/document/525750282/CRCL-Complaint-Re-Ernest-Francois-Glades-County-Detention-Center>

135 TRAC Immigration, Immigration Court Bond Hearings and Related Case Decisions (October 2000-February 2002), <https://trac.syr.edu/phptools/immigration/bond/>.

136 *Id.*

137 *Supra* n.131.

138 TRAC Immigration, Asylum Denial Rates Continue to Climb (Oct. 28, 2020), <https://trac.syr.edu/immigration/reports/630/> (reporting that “the odds of being successful if unrepresented was much lower (17.7%) than for represented asylum seekers (31.1%) in FY 2020”).

139 See Human Rights First & Haitian Bridge Alliance, *Biden Administration's Dangerous Haitian Expulsion Strategy Escalates the U.S. History of Illegal and Discriminatory Mistreatment of Haitians Seeking Safety in the United States*, (Sept. 2021), <https://www.humanrightsfirst.org/sites/default/files/BidenAdministrationDangerousHaitianExpulsionStrategy.pdf>.

# *Part Two*

## **DOCUMENTED ABUSES IN THE DEL RIO ENCAMPMENT**

Around September 9th, 2021, hundreds of Haitian families began to cross the Rio Grande into Del Rio, Texas to seek asylum in the United States. Over the course of the next week, at least 15,000 Haitian migrants, along with several hundred other nationals, gathered and were subsequently trapped in a makeshift encampment set up by U.S. Customs and Border Protection near the Del Rio International Bridge (the “Del Rio encampment”). Inside, the U.S. government subjected them to rampant human rights and civil rights violations. By September 25th, DHS had emptied and cleared the camp using bulldozers, erasing all remaining evidence of the abusive conditions in which it had held thousands.

In response, attorneys and advocates from Haitian Bridge Alliance (HBA) and Robert F. Kennedy Human Rights (RFK Human Rights) arrived in Del Rio on September 18th. Following several failed attempts to access asylum seekers trapped in the Del Rio encampment, advocates provided humanitarian aid and access to legal resources through the services of a local respite center on the U.S. side of the border—the only site of relief for the relatively few vulnerable migrants released from the Del Rio encampment. On September 25th and 26th, advocates and attorneys from HBA and RFK Human Rights traveled across the Mexican border to Ciudad Acuña to conduct know your rights trainings and legal screenings at two migrant shelters that housed Haitians who were forcefully removed from the Del Rio encampment. The following abuses were documented during interviews conducted on those days and subsequently from September 2021 through March 2022. They include information pertaining to: 1) the nature of the Del Rio encampment; 2) the denial of outside access to the encampment; 3) the deprivation of basic human necessities; 4) life-threatening medical neglect; 5) physical and verbal violence and other acts of intimidation; 6) due process violations; and 7) separations of family members.

# I. AN OPEN AIR PRISON: THE NATURE OF THE DEL RIO ENCAMPMENT

From approximately September 9th to September 25th, 2021, at least 15,000 Haitians, along with hundreds of other nationals, were held in a makeshift CBP encampment for field processing near the Del Rio International Bridge. Del Rio, a small bicultural city in southwestern Texas, has a population of just over 35,000 people. Although the majority of individuals in the Del Rio encampment were of Haitian descent, the group also included asylum seekers from Central and South America and Africa, including Cameroonians, Venezuelans, Cubans, and Hondurans. An estimated 40% of those who arrived at the Del Rio port of entry in September 2021 were children, traveling with family units.<sup>140</sup> The majority of Haitian asylum seekers in the Del Rio encampment had been living in South America—mainly Chile and Brazil—for three to seven years, waiting to request asylum at the U.S. border.

The Del Rio “temporary intake site” had been constructed by CBP just one month prior in August 2021 as a temporary detention site for migrants prior to their expulsion under Title 42.<sup>141</sup> Initially, movement within the site was possible. Limited rations, consisting of bread rolls and warm water bottles, were distributed to people awaiting processing. Where rations were insufficient, people were able to cross back into Mexico for food and supplies and return to the encampment. The encampment was blocked off using shoulder-height fences constructed of chicken wire, surrounding three sides of the area. The Rio Grande river formed a barrier along the fourth side.

But as days passed, several hundred asylum seekers multiplied to several thousand. The U.S. responded with military force, imposing restrictions on movement within and out of the camp and subjecting those trapped within to hunger, dehydration, and other inhumane conditions. Because the U.S. government prevented individuals from leaving the camp, it rendered them unable to care for themselves and owed them a duty of care, including the duty to provide basic human necessities.<sup>142</sup>

One Haitian woman reported that, “When I first got there [September 10, 2021], it was more or less that you could move around. But then shortly after they brought soldiers. . . . The water current was really strong. At some point, you could no longer cross the river and there were armed soldiers on all sides. People could no longer cross to the other side to get food in Mexico. We were hungry. We were starving.”<sup>143</sup> Another Haitian woman explained, “After a few days of us being there. . . [the water] became very dangerous to cross. There were soldiers on horses standing in front of the river telling people they were not allowed to go back and forth. I couldn’t leave the camp, especially not with my son because he was only four years old. To try to get past the water and the soldiers was impossible.”<sup>144</sup>

**“WE WERE HUNGRY. WE WERE STARVING.”**

140 See *supra* n.6 ¶ 76.

141 As alleged in *Haitian Bridge Alliance v. Biden*, the under-resourced intake site at Del Rio reflected the White House and DHS’s steadfast refusal to organize any appropriate infrastructure to address the anticipated arrival of thousands of Haitian migrants, even as Del Rio Sector personnel continued to report a lack of processing capacity.

142 The U.S. government has an affirmative duty to provide for an individual’s basic human needs when they “take[] that person into [their] custody and hold[] him there against his will,” thereby creating a “special relationship” with that individual. *DeShaney v. Winnebago Cnty. Svcs.*, 489 U.S. 189, 199-200 (1989). When the government “so restrains an individual’s liberty that it renders him unable to care for himself,” it assumes responsibility for that individual’s safety and well-being. *Id.* at 200.

143 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 15, 2022).

144 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 18, 2022).

In some parts of the encampment, fencing was used to section off migrants according to their vulnerability-based classifications for onsite processing.<sup>145</sup> Migrants were issued color-coded, raffle-style tickets and told to wait in these sectioned off areas to be called by number for “processing.” Parents traveling with minor children were instructed to receive a blue ticket; pregnant people were instructed to receive a yellow ticket; non-pregnant adult women without a minor child were instructed to receive a green ticket; and adult men without a minor child were instructed to receive a red ticket. Waiting individuals were packed shoulder-to-shoulder in these fenced areas.

In the days after the arrival of the first Haitian families, CBP installed a small number of toilets within the encampment, a temporary medic station to provide basic emergency care, and tented areas to distribute food, water, and other limited supplies. CBP had not constructed sleeping shelters for the individuals it planned to hold prior to Title 42 expulsion, so people slept on the ground, using pieces of cardboard, clothing, and thin sheets in an attempt to shelter themselves from the extreme conditions.<sup>146</sup> From the start, food quantities were inadequate for the number of people held. Individuals reported waiting until nightfall to travel back into Mexico for rations and supplies before traveling back to rejoin their waiting families.

“We were starving and they weren’t giving us any food. People would give money to those who were willing to risk the journey across the river to Mexico. As more soldiers came to the river, people had to try to cross at night away from the soldiers to avoid being caught.”<sup>147</sup>

In the days following the initial arrival of Haitian migrants, when increasing numbers of individuals sought the chance to apply for protection, the U.S. government further militarized the Del Rio encampment. CBP closed the Del Rio International Bridge and immediately blockaded the surrounding areas overnight, on September 17th, 2021. In addition to CBP, the overwhelming law enforcement presence included units of Texas State Troopers, the Texas National Guard, and the Texas Department of Public Safety (DPS), at the direction of Governor Greg Abbott. The National Guard blockaded two encampment entrances. These military and law enforcement agencies jointly maintained a shift schedule. Dozens of state trooper vans entered and exited the camp at different points in the day. Military-grade, armored Humvees and other vehicles waited poised at approximately every 100 feet along the U.S.-Mexico border for at least two miles surrounding the encampment, reinforcing a razor wire-topped chain-linked fence along its perimeter. On Saturday, September 18th, construction workers added additional barriers on the roads surrounding the encampment. Likewise, droves of law enforcement vehicles patrolled the city of Del Rio down N Main Street and Veterans Boulevard.

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145 *Supra* Part Two: Section VI, “Due Process Violations & Denial of the Right to Seek Asylum.”

146 *See infra* Part Two: Section III, “Deprivation of Basic Human Necessities” (describing harsh conditions).

147 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 15, 2022).

## II. DENIAL OF OUTSIDE ACCESS TO THE ENCAMPMENT

Authorities also systematically restricted press and advocate access to the camp, limiting documentation of the humanitarian crisis. On September 16th, the Federal Aviation Administration (FAA) implemented a flight restriction over the encampment, prohibiting the taking of aerial images. HBA and RFK Human Rights spoke with several journalists from media outlets, including the Associated Press, Politico, and the Washington Post, who were repeatedly denied access to the camp.

During this time, however, Texas DPS did escort representatives of FOX News and Brietbart into the camp. Eventually, after complaints were made public of the lack of journalists' access, Texas DPS began escorting other outlets inside the outer security perimeter to get a closer view of the camp, but still denied them access to the camp itself.<sup>148</sup> All the while, DPS allowed FOX News to have a permanent post inside the security perimeter, reporting for days with exclusive access.

One journalist told HBA and RFK Human Rights that U.S. border officials threatened to charge them with illegal entry should they attempt to enter the encampment by crossing over the Rio Grande from Mexico. Others reported witnessing journalists who were reporting from and near the encampment running away from CBP officers who were threatening them directly. U.S. citizens convicted under 19 U.S.C. § 1459, which criminalizes arriving to the U.S. border by foot without reporting to a customs officer for inspection, could face up to a \$5,000 fine and 1 year imprisonment.<sup>149</sup>

Likewise, CBP repeatedly refused to allow attorneys and advocates to enter the encampment and to speak with any immigrants. DHS refused specific requests to allow materials to be distributed in the camp to inform immigrants of their rights under U.S. and international law. Advocates even printed thousands of "know your rights" leaflets in English and Kreyol so the government would bear no cost, yet the request was still denied. A few limited outside groups were ultimately allowed to access the area near the encampment the day before the camp was ultimately cleared. By then the most egregious violations and humanitarian deprivations had been hidden from view.

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148 See Melissa del Bosque, *Selling Chaos at the Border: In Del Rio, the Border Patrol and Right-Wing Media Stoke White Panic, Yet Again, at the Border*, *The Border Chronicle* (Sept. 28, 2021) (describing collaboration between Fox News and law enforcement at Del Rio), <https://www.theborderchronicle.com/p/selling-chaos-at-the-border?s=r>.

149 19 U.S.C. § 1459.

### III. DEPRIVATION OF BASIC HUMAN NECESSITIES

The Haitian migrants in the Del Rio encampment were denied access to basic human necessities such as adequate food, drinking water, running water, sanitation supplies, and shelter. From at least September 9th through September 20th, Haitian migrants from the encampment reported extremely limited access to food and water. In the initial days of the crisis, CBP personnel arranged a minimal number of service stations in the encampment and began providing a small bread roll and one bottle of water per person, per day. Individuals were required to wait in line, often for over an hour. These service stations were only accessible from one side of the camp, on the American side of the border, limiting many people from accessing the stations while food and water were being distributed. Further, many explained that because only one serving was provided per person, and because family members such as pregnant women and young children were unable to wait in long lines, individuals had to wait in line multiple times—sometimes to no avail when supplies were depleted.

As U.S. officials began handing out food and water, one Haitian man waited in line with hundreds of others to receive a bottle of water and a piece of bread. As he waited for food, he observed that the rations were not enough to sustain him and his family. He also saw how officials distributing the food taunted the asylum seekers by throwing water bottles at them. He described the experience:

“It was humiliating. It felt like at home how you would throw food for chickens on the floor. That’s how they treated us. It felt like they did enough so we wouldn’t die but no more than that. It felt like a nightmare.”<sup>150</sup>

One Haitian woman reported that while she was under the international bridge “there were no places to purchase food where we were so I witnessed a lot of people who went days without food or eating proper meals. We had no access to water under the bridge.”<sup>151</sup> Some individuals described receiving two pieces of bread with a piece of cheese: “we were given one bottle of water per day, a piece of bread with one slice of cheese in it per day, to eat for the whole day.”<sup>152</sup> Another individual noted that “they only gave us bread and a bottle of water. And the water was hot. No one wanted to drink that hot water. It wasn’t possible for us to eat anything during the entire day. Bread isn’t enough to sustain someone for an entire day.”<sup>153</sup>

CBP also failed to provide food suitable for infants and small children, despite the fact that nearly half the population in the camp consisted of children traveling with family units. The majority of individuals reported that the bottle of water they received was hot and not potable. Some individuals in the encampment were forced to drink from the Rio Grande, which is not potable. This lack of clean drinking water caused many Haitians in Del Rio to get sick, including the common development of gastrointestinal illness, particularly among young children.

Many individuals who could not receive food or water fainted from lack of nutrition or dehydration. One migrant described that he got a headache from such little food and witnessed a woman pass out due to apparent malnutrition.<sup>154</sup> A majority of individuals interviewed in the migrant shelter in Acuña reported that they were forced to flee the camp because after up to six days of being deprived access to food and water, they experienced extreme hunger.

“To this day, I still don’t really have a way of explaining this experience to myself. It feels surreal. Just living in the dust. There were women who were pregnant and kids, under the sun with the dust all over the place. At some point, because we were hungry, they weren’t really providing us with any food, so we had to go to Mexico to get some food and come back. It was an awful experience.”<sup>155</sup>

150 See *supra* n.6 ¶ 249.

151 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

152 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

153 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

154 In-person interview by RFK lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

155 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 15, 2022).

Many starving and severely dehydrated asylum seekers were forced to cross the Rio Grande in order to purchase food and water across the river in Acuña. Those who attempted to cross into Mexico in search of food and water faced a variety of risks: drowning in the dangerous Rio Grande,<sup>156</sup> being stopped by CBP officers while attempting to leave the Del Rio encampment, and being prevented from returning to the encampment by Mexican or U.S. border officials, which could lead to separation from their families and loved ones.

After spending four days under the bridge with limited access to food or water, one Haitian man was forced to cross the Rio Grande into Mexico.

“When I arrived [at the Del Rio encampment] on September 15th there was nothing. No food or water. That’s why people were forced to go to Acuña to try to find food to survive. We were extremely hungry, people were literally dying of hunger and thirst. On about September 19th, I was trying to go back to Acuña to get food for my partner . . . . When I went to go get food for my partner and came back, the water level was low on the Mexican side. Suddenly, when I was walking through the water and approached the U.S. side, the water started rising and I almost drowned. The current was suddenly very strong and I couldn’t stand. I tried to hold onto the rope we were using to guide us, but the water took me away. Two people [other Haitians in the encampment] came for me and almost died trying to save me. They dove under the water to grab me and somehow dragged me out of the river.

The reality is that there was no food or water for us. The only choice I had to get food and water for my partner was to go to Mexico and find something to bring back. Otherwise we would have died of hunger or thirst.”<sup>157</sup>

After his near-drowning experience, this individual injured his leg on the rocks in the Rio Grande but was unable to access medical care. “Afterwards, there was no way for me to get any type of medical help. The situation was ‘If you live, you live. If you die, you die.’ I thank God I survived.”<sup>158</sup> He reported that to this day, he suffers with extreme psychological issues from the trauma of his near-death experience in Del Rio:

“Most of the issues I have are psychological. I wake up in the middle of the night sweating because I feel like I am back under the water. When I was under the water, swallowing mouthfuls of water, unable to breathe. . . . I was sure I was going to die.

After this I went back under the bridge and was terrified. I was in the camp for three days after almost drowning. I ended up buying a little food from people who were able to cross back and forth between Mexico and the United States. But this was not enough food to sustain me and my partner. It was just enough to keep us from dying.”

When the camp was cleared by DHS, this man was pushed back into Acuña. He is now living in a migrant shelter in Tijuana, desperate for a chance to seek asylum in the U.S.<sup>159</sup>

As some migrants made the crossing to gather the resources needed to save themselves and their family members, they were also met with extreme violence from CBP officers patrolling on horseback.<sup>160</sup> One individual reported:

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156 The unpredictable, rising water level of the Rio Grande made crossing the river extremely dangerous. Many individuals from the Del Rio encampment reported that they believed that the U.S. government was responsible for the sudden changes in water level in the Rio Grande and that the U.S. was “somehow controlling the water level” and “releasing the water on migrants attempting to cross back into the U.S.” The bi-national International Boundary and Water Commission (IBWC) manages the water in the Rio Grande and executes water releases from the Amistad Dam upstream from Del Rio as requested by the Texas Water Master and the Mexican counterpart in the Del Rio sector. Efforts to confirm whether U.S. authorities requested water releases in response to the presence of migrants remains unconfirmed. Researchers are seeking this obtain information via Freedom of Information Act and Texas Public Information Act requests.

157 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 21, 2022).

158 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 21, 2022).

159 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 21, 2022).

160 *Infra* Part Two: Section V, “Physical Violence, Verbal Threats, and other Acts of Racial Intimidation” (further describing use of violence by U.S. officials in Del Rio).

“I witnessed people who had crossed the river back to Mexico to get water for pregnant women and children and families who could not journey back. However, some who were returning were met by horsemen and couldn’t get to their families or to the people they were trying to help.”<sup>161</sup>

Using physical violence and other acts of intimidation described further below, CBP personnel blocked many individuals from leaving the encampment to obtain their own food and water in Mexico.<sup>162</sup> In order to escape the encampment and access food and water in Acuña, many individuals were forced to cross the river in the middle of the night, where they were able to avoid detection by CBP personnel.

In the final days of the encampment, CBP permitted the World Central Kitchen Relief Team, a non-governmental organization, to access the camp and to begin coordinating the distribution of hot meals, baby food, and diapers in partnership with local restaurants in the Del Rio area. Despite the presence of World Central Kitchen, several migrants described a continuing lack of access to food and water, indicating problems with food distribution within the encampment. By the time World Central Kitchen was able to scale its operations to provide adequate food, DHS had already started clearing the encampment. While one individual who had been given access to the camp on Wednesday, September 22nd reported that there was “too much food,” several migrants interviewed in Acuña recalled that during that time, they were forced to flee the camp at night because they were starving.

Those trapped in the encampment also had no access to showers or running water. Instead, people were forced to bathe in the Rio Grande, where they were exposed to disease-causing bacteria that resulted in many developing chronic gastrointestinal issues. While CBP installed approximately 50 portable toilets within the camp, this was insufficient to provide access to sanitation for over 15,000 people. CBP personnel also failed to meet the basic shelter needs of migrants in the encampment and refused to provide beds, cots, blankets, tents, or shelter of any kind.

“When we crossed the border into Del Rio we thought we would be welcomed by the agents at the border. But this wasn’t the case. We had to lay bare on the gravel. I asked others around me if my pregnant girlfriend could sleep in one of their tents. That’s how we spent the night.”<sup>163</sup>

Those trapped in Del Rio were left completely exposed to the elements, including triple-digit temperatures, dirt, and dust. Many were forced to attempt to create shelters using reeds from the riverbank, pieces of cardboard, clothing, and sheets brought on their journey. While very few individuals had their own tents, most were forced to sleep directly on the ground, often in the dirt. One individual, a Haitian woman traveling with her eight-year-old son and three-year-old daughter, described:

“It was a living nightmare and very traumatizing. When my children and I got to the bridge, I couldn’t believe the amount of people there. It took hours of walking to find a place to rest. My children and I slept on a sheet for seven days without a blanket. There were cold nights and I had nothing to keep my children warm.”<sup>164</sup>

Those who were held adjacent to the Del Rio International Bridge rather than under it were exposed to direct sun and extreme heat throughout the day, with temperatures reaching over 100 degrees Fahrenheit. As one migrant described, “We suffer so much under the blazing sun. They haven’t put out anything for us. We’re suffering.”<sup>165</sup> The weather conditions and helicopters hovering over the encampment repeatedly kicked up dirt and dust that resulted in widespread health conditions among those trapped in the camp, including skin rashes, severe respiratory problems, and eye infections.

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161 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

162 *Supra* Part Two: Section V, “Physical Violence, Verbal Threats, and other Acts of Racial Intimidation.”

163 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar, 14, 2022).

164 In-person interview by HBA case worker with Haitian individual in Del Rio, Texas (Sept. 23, 2021).

165 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

## IV. LIFE-THREATENING MEDICAL NEGLIGENCE

The Haitian migrants in the Del Rio encampment were subjected to life-threatening medical neglect, including, at times, the outright denial of medical care. The U.S. government failed to provide the adequate infrastructure needed for the anticipated medical needs of migrants, including the large number of infants, children, and pregnant and otherwise vulnerable people in the Del Rio encampment. The severe medical issues reported by Haitian migrants were caused by CBP's denial of infrastructure and basic human necessities for individuals held in the Del Rio encampment. Many Haitians in Del Rio were forced to bathe in and drink from the Rio Grande. This in turn caused severe gastrointestinal issues, as migrants were exposed to disease-causing bacteria in the river's water supply. In addition, the CBP helicopters circling low adjacent to the bridge kicked up dust and dirt, causing migrants, including infants and young children, to develop severe respiratory problems, skin rashes, and eye infections. The lack of shelter in the encampment also left individuals exposed to extreme temperature changes, including blazing heat during the day and steep temperature drops at night, contributing to illness. Because CBP failed to provide adequate food and water—and blocked migrants from securing food and water in Acuña—many individuals reported fainting in the camp or suffering other medical consequences from severe malnutrition and dehydration.

Many individuals reported that CBP personnel outright denied their requests for medical care, telling them to “go back to Mexico.” Multiple individuals reported that when they requested medical assistance from personnel, instead of medication or medical assistance, they were given a single piece of bread and a hot water bottle. For example, a Haitian man traveling with his wife and two-year-old daughter described how his daughter became very sick with gastrointestinal issues and respiratory issues from the dust.<sup>166</sup> She was vomiting frequently, had a high fever, and visible difficulty breathing. Despite the man's pleading and repeated requests for help, CBP personnel denied this man's child medical treatment on September 18th.

A Haitian woman's son had constant diarrhea and developed a high fever. Eventually her son was so ill that she twice sought help at a medical tent where there were personnel who appeared to be doctors.<sup>167</sup> The woman recalled that the medical personnel treated her baby “like he was nothing.” Instead of paying attention to and treating her son, they kept taunting her by asking her “when her number would be called so that she would be put in jail and then deported.” Eventually they gave her some liquid drops and some ice gel packs for his fever, but those treatments did not appear to help her son's condition. One couple described that when their nine-month-old child developed a severe rash from the dust, they went to the medic tent on September 21st to request medical assistance.<sup>168</sup> The personnel at the medic tent gave the couple a hot bottle of water and refused to provide the infant with further medication or medical care.

**Many individuals reported that CBP outright denied their requests for medical care, telling them to “go back to Mexico.”**

Many were forced to cross the Rio Grande to secure medical treatment in Mexico. For example, after sleeping in the dust under the bridge in the cold at night, one couple's young son developed flu-like symptoms, including congestion and a severe cough. Not trusting the U.S. authorities to provide medical care, the couple crossed the Rio Grande and took their son to a hospital in Mexico. “The health of my son was the most important thing.”<sup>169</sup> Another Haitian asylum seeker

166 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

167 See *supra* n.6 ¶ 243.

168 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

169 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

described how when his one-year-old daughter developed a high fever and respiratory issues, he begged U.S. personnel to provide medical care.<sup>170</sup> When U.S. personnel refused, he carried his daughter across the Rio Grande at night, in order to avoid detection by CBP patrolling the river, where she was urgently admitted to a hospital in Acuña and provided life-saving medical treatment, including IV antibiotics.

One newborn infant almost died after being held in the encampment for several days. He survived only after HBA intervened and advocated for his admission to a hospital in Del Rio. The newborn's condition had grown so precarious that, after he was finally removed from the Del Rio encampment, he had to be airlifted to a hospital in San Antonio, Texas where specialists were able to intervene and provide life-saving medical treatment.<sup>171</sup> One Haitian woman described, "I witnessed pregnant women going into labor taken in to give birth and then sent back under the bridge without further access to healthcare. And that was really heartbreaking for me. I'll never forget that."<sup>172</sup> An individual reported that after a pregnant Haitian asylum seeker went into labor, U.S. officials eventually took the woman out of the encampment, but then returned her and her newborn to the encampment mere hours after delivery.<sup>173</sup>

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170 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

171 In-person interview and observation by HBA caseworker with Haitian individual in Del Rio, Texas (Sept. 19-25, 2021).

172 In-person interview by HBA case worker with Haitian individual in Del Rio, Texas (Sept. 23, 2021).

173 *See supra* n.6 ¶ 105.

# V. PHYSICAL VIOLENCE, VERBAL THREATS AND OTHER ACTS OF RACIAL INTIMIDATION

As captured in part by photographs that shocked the national consciousness,<sup>174</sup> CBP officers and heavily armed border guards subjected Haitian migrants in the Del Rio encampment to physical violence, verbal threats, and other acts of intimidation. One of those viral photographs depicted a Haitian asylum seeker, later identified as Mirard Joseph, being attacked by a CBP officer on horseback.<sup>175</sup> Like many Haitians at Del Rio, Mr. Joseph was crossing the Rio Grande to bring food back to his wife and child when he was surrounded by CBP officers, who used their split reins to lash at him and attempted to drag him back into the river. Mr. Joseph, a plaintiff in the class action lawsuit, *Haitian Bridge Alliance v. Biden* described the encounter as “the most humiliating experience of my life.”<sup>176</sup>

Multiple people from the Del Rio encampment also experienced and witnessed CBP officers on horseback chasing down and trampling Haitian migrants attempting to cross the Rio Grande. In the words of one Haitian asylum seeker:

“I saw my compatriots trying to cross the border to get some food for their families. There was a group of soldiers on horseback chasing them, dragging them, and running them over with horses—I saw all these things. . . You understand? We were subjected to all of this because we crossed over to get some food to bring to our children. Some people were washed away by the water, a lot of soldiers on horseback were running people down with their horses, shoving people, all of that. What everyone saw on social media is what happened, it is what was allowed to happen.”<sup>177</sup>

As another migrant described, “Some of the people left [the Del Rio encampment] to cross into Mexico to buy food. And then there were several, several officers [border patrol agents] on horseback who were using ropes to get them out of the water.”<sup>178</sup> One individual reported that “the horses were very aggressive, they were patrolling along the water, stopping people from entering Del Rio.”<sup>179</sup> Another migrant stated, “We saw they were chasing people down with horses so they didn’t cross over to buy food. Those people couldn’t come back in.”<sup>180</sup>

A Haitian woman, traveling with her husband, aunt, and infant son, went to Acuña to find food for her family.<sup>181</sup> When she returned and attempted to cross the river, she was surrounded by several CBP officers on horseback. When she tried to explain that she had to get back to the encampment to reunite with her child, the CBP officers screamed at her to “get back” and “go back to Mexico.” She witnessed two men fall into the river and disappear below the current. She also witnessed one man tear his leg open after being chased and trampled by a CBP officer on horseback. One Haitian man brought his eight-year-old son to the riverbank to bathe when mounted officers appeared and began chasing down a group of migrants gathered by the Rio Grande.<sup>182</sup> As his son attempted to run away from the CBP officers on horseback, he fell—was nearly trampled by the horse—and suffered cuts and bruises to his legs. He injured his eye, which then became painfully inflamed. The man described the “moment of terror” when he saw his young son fall to the ground. “I thought my son would be killed,

174 Eileen Sullivan & Zolan Kanno-Youngs, *Images of Border Patrol’s Treatment of Haitian Migrants Prompt Outrage*, THE NEW YORK TIMES (Sept. 21, 2021), (capturing U.S. CBP agents on horseback using whips against unarmed Haitian asylum seekers to force them back to Mexico) <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.

175 Jasmine Aguilera & Harold Isaac, “A Haitian Man’s Brutal Experience With U.S. Border Agents Sparked Outrage. Now He’s Telling His Story.” *TIME* (Mar 16, 2022), <https://time.com/6144970/mirard-joseph-haitian-migrants-del-rio-border/>.

176 See *supra* n.6 ¶ 4.

177 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

178 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

179 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

180 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

181 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

182 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

right there in front of me.”<sup>185</sup> Terrified and traumatized, they fled the Del Rio encampment that night.

Another Haitian man and his pregnant girlfriend were both shoved and pushed by CBP officers in Del Rio when they attempted to cross the Rio Grande with food they purchased in Acuña:

“When we were crossing the river by the bridge, we were met by the CBP agents. Some of them were on horses, some were on foot. As I was trying to cross with my pregnant girlfriend they shoved us. She [my girlfriend] was also shoved and fell to the ground. I don’t speak English well, but I tried to tell the agents that my girlfriend was pregnant. I tried to say it in Spanish. But they continued to abuse us and they kept shoving us across the river.”<sup>184</sup>

In summarizing his experience under the bridge, the man explained, “I wasn’t treated with dignity at the border [in Del Rio]. I was treated worse than animals. I experienced racism and abuse in Brazil, but what I experienced at the border was much worse.”<sup>185</sup>

CBP officers deliberately endangered the safety of individuals crossing the Rio Grande in an attempt to prevent them from reentering the Del Rio encampment and reuniting with their families and loved ones. One Haitian migrant described how as he was attempting to cross the Rio Grande and return to the encampment with food for himself and others, a CBP officer dismounted from his horse and deliberately cut the rope the migrant was using to navigate the deep water and strong current of the river.<sup>186</sup> He was in the middle of the river when the officer cut the rope and watched as the officer threw the severed rope into the Rio Grande and shouted that they could not return to the American side of the border. When the rope was cut, several other Haitians attempting to cross fell into the river and struggled to swim. He noted that “I thought I was going to die. I went through a lot of misery.”<sup>187</sup> This individual also saw CBP personnel hit and push Haitians closer to the river bank back into the water.

**“I THOUGHT MY SON WOULD BE KILLED, RIGHT THERE IN FRONT OF ME.”**

CBP officers also used xenophobic slurs against the migrants who were in the encampment. One example, captured on video, includes a mounted officer shouting at a group of migrants: “This is why your country’s shit, because you use your women for this.”<sup>188</sup> The officer then reared his horse and directed it towards a group of children. Among those who experienced or witnessed CBP officer’s chasing migrants on horseback, the majority reported that those officers shouted threats to fleeing Haitian migrants, ordering them to “go back to Mexico.”

This combination of physical violence, verbal threats and intimidation created an overwhelming and constant state of

185 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

184 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

185 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

186 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

187 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

188 Footage reported by Al Jazeera (Sept. 20, 2021), <https://www.youtube.com/watch?v=UTFnKJqcPks>.

terror for Haitian migrants. Texas State Troopers were stationed across the northern bank of the Rio Grande while Mexican State Police and officers from Mexico’s National Migration Institute (INM) lined the southern bank of the river—effectively trapping migrants in the encampment. CBP personnel simultaneously used helicopters, motorcycles, and other official vehicles that frequently stirred up dust in areas of the encampment where Haitians were gathered and sleeping. One migrant described:

“I didn’t know what the Americans were going to do to me after what happened. Because they showed they were truly angry because of the fact that we left, the fact that we were coming back in again, made it so the horse was, you know—I was really afraid that they might hit me, because I didn’t know what could happen to me, since they’re the great power, you don’t know what they might have decided to do to me in that moment.”<sup>189</sup>

Another individual explained:

“I was also afraid of being abused in that way. This is the reason why I said to myself, ‘The way things are unraveling, I must get away from the bridge, to run back because I don’t want to endure these acts of violence.’ I have always said to myself that life should go on. If I don’t make it here today, I’ll make it any other day. I don’t want my family and me to suffer these types of cruelties.”<sup>190</sup>

A third Haitian stated, “I’d never seen anything like it. For an immigrant to come to a country and be treated like that. That really hurt me. And after that I crossed again. . . I went to Mexico. I couldn’t see a way to live if I remained under the bridge.”<sup>191</sup>

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189 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

190 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

191 In-person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

# VI. DUE PROCESS VIOLATIONS AND DENIAL OF THE RIGHT TO SEEK ASYLUM

Those held in the Del Rio encampment were subjected to a myriad of due process and other rights violations including a denial of the the right to apply for asylum; a violation of the *non-refoulement* principle; a total absence of fear-based screenings, including for the limited affirmative Convention Against Torture claims as required even under Title 42 restrictions; lack of access to Haitian Kreyol interpreters for communication with DHS officials; and an outright denial of access to attorneys available to provide know your rights trainings and identify witnesses to CBP abuses.

In the encampment, CBP implemented a ticketing system to process arriving migrants, separating them into four groups that were identifiable by a numbered, color-coded ticket: parents with minor children (blue), pregnant adult people without minor children (yellow), single adult men without minor children (red), and single adult women without minor children (green). Officials in the encampment instructed individuals to wait until their number was called to identify themselves for “processing.” Migrants were also directed to different sections of the Del Rio encampment, separated by fencing, based on the color of their tickets. Individuals in the encampment assumed that when their number was called, they would have an opportunity to request asylum.

Haitians who were subject to mass expulsions in mid-September reported that DHS made no attempt to fingerprint, record individuals’ presence, conduct credible fear interviews, or gather any additional information prior to being identified for expulsion. In the encampment, individuals were only given color-coded tickets based on their apparent categorization into one of the four identified groupings, with no further questioning or documentation beyond whether they were pregnant and whether they were a parent traveling with a minor child. Several individuals reported that CBP erroneously classified them into the incorrect grouping. For example, multiple pregnant women at a migrant shelter in Acuña reported that CBP issued them a green ticket (“single adult woman”) instead of a yellow ticket (“pregnant adult woman”), despite the fact that they disclosed their pregnancy to CBP personnel. Individuals reported that there appeared to be no mechanism or organized process regarding where or when tickets were distributed. Migrants described that CBP called out ticket numbers “at all hours of the night,” causing many individuals to miss their opportunity for processing. At times, a CBP official would walk through the camp making announcements about the ticketing process. One woman described an incident where U.S. officials rounded up a group of single Haitian men in the middle of the night:

“Around midnight on Friday night [September 10, 2021] they started calling numbers. Every time they called a number and it wasn’t a Haitian male, they told them to go back to the camp. If it was someone from a different country that wasn’t Haiti, they didn’t take them. They only took numbers from single Haitian males and they all went in a bus and they didn’t come back. We didn’t see any of them again.”<sup>192</sup>

When individuals’ numbers were called, they were taken to various processing centers by bus, some of which were semi-outdoor structures located along the border fence road. Migrants reported that men had their hands zip-tied together while women were permitted to carry small children. The details of the apparent daily processing of migrants out of the Del Rio encampment remain unknown; it is unclear which buses were routed towards processing centers where individuals were then released by CBP and taken to a local respite center and which buses were routed for expulsion flights or immigration detention centers. On September 17th, DHS released approximately 30 Haitian migrants from the encampment and brought them to the Val Verde Border Humanitarian Coalition respite center, where volunteers provided temporary humanitarian aid and assisted them in purchasing tickets to their final destination. The following day, DHS released an additional 40 people. As DHS worked to rapidly “decompress” the Del Rio encampment, they began releasing individuals twice a day, typically in two groups of 30 to 60 people, and bringing them to the respite center. The vast majority of these individuals were pregnant women and family units with small children. An estimated 780 to 800 people total were processed and released from the Del Rio encampment to the Val Verde respite center.

Those who were not released to the respite center in Del Rio or elsewhere appear to have been taken into custody and/or summarily expelled from the United States. Many of these individuals were expelled in shackles and experienced grave

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<sup>192</sup> Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 15, 2022).

harm during their deportation flight.<sup>193</sup> After one initial flight on September 15th, daily flights began on September 19th, increasing from three flights per day on September 19th to five flights per day on September 23rd, and then seven flights per day on September 30th.<sup>194</sup> Each flight typically carried at least 100 people. The number of Haitian asylum seekers in the Del Rio encampment rapidly decreased as migrants were processed and sent to detention centers to be staged for expulsion flights at an unprecedented speed.

DHS personnel began dismantling the encampment while individuals were still inside, using demolition vehicles to kick up dust and dirt and bulldoze entire sections of the camp. As they rushed to clear the encampment as quickly as possible, DHS officials began to force groups of people onto buses for expulsion, often by tying their hands with plastic zip ties and boarding them in indiscriminate groups instead of reading their ticket numbers one by one.

In the resulting series of mass expulsion flights to Haiti, ICE officials expelled vulnerable Haitians, including at least one mother with a days-old-infant *born in the United States*.<sup>195</sup> A significant number of foreign-born children of Haitian nationals in the Del Rio encampment, including many children born in Chile and Brazil, were also expelled to Haiti, despite the fact that they did not have Haitian passports. One woman who was deported back to Haiti with her four-year-old son explained, “My son was not born in Haiti, he was born in Chile. He doesn’t have any passport or identification. He is not able to go to school. We are living in hiding in the country.”<sup>196</sup>

The vulnerability screening process used in the encampment by DHS was flawed and routinely failed to identify vulnerable individuals with legitimate asylum claims. A substantial number of family units with small children, including infants, were expelled to Haiti or pushed back into Mexico. For example, one woman, traveling with her infant daughter, spent five days in Del Rio.<sup>197</sup> She left Haiti after her father was murdered by members of an opposing political party, who then made threats to her life. Despite having a credible asylum claim, this woman and her infant were denied entry into the U.S. and were forced back into Mexico, where they were living in a migrant shelter in Acuña, desperate for legal and humanitarian assistance. Another man described how members of a political party in Haiti shot him in the stomach and beat his wife and children.<sup>198</sup> They escaped Haiti in 2018 to request asylum in the U.S.—and were still receiving threats. Despite their credible fear of persecution, this family was also pushed back into Mexico by DHS officials at the Del Rio encampment.

A Haitian man described his desire to seek asylum at the Del Rio port of entry. After experiencing violence and abuse in the encampment he was pushed back to Acuña, detained by Mexican immigration authorities, and expelled to Tapachula:

“The main reason we wanted to cross was to seek political asylum. There is a lot of insecurity and safety concerns in my country. Personally, I have been a victim of an attempt on my life when I was in Haiti. Armed gang members came to my house and set my house on fire. I made a police report to go on record. I don’t feel safe being in Haiti or returning back.”<sup>199</sup>

In the process of these expulsions, DHS officials reportedly made misleading statements to migrants, telling them that they were being flown to other locations within the United States for processing when, in reality, they were being expelled to Haiti. Because officers lied about where asylum seekers were being taken, some expelled individuals did not realize they

193 See *infra* Part Three: Section I, “Continued, Violent Mass Expulsions of Haitian Asylum Seekers” (describing continued expulsions after the Del Rio encampment was razed).

194 The move to rapidly expel Haitians from the Del Rio Encampment was likely prompted by a district court decision issued on September 16, 2021, which found that the Title 42 policy was likely unlawful and enjoined the process from being enforced against families with minor children, but temporarily stayed the injunction until September 30. See *Huisha-Huisha v. Mayorkas*, --F. Supp. 3d--, 2021WL 4206688 (D.D.C. Sept. 16, 2021). If the preliminary injunction went into effect, it would take away DHS’s authority to expel Haitian families.

195 See *supra* n. 6 ¶61.

196 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 16, 2022).

197 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

198 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

199 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

had been sent to Haiti until they got off the plane. By the end of September 2021, ICE had chartered close to 40 expulsion flights to Haiti in one of the largest mass expulsions in recent American history, and approximately 8,000 Haitian asylum seekers had fled to Mexico to avoid being abused and returned to Haiti. The expulsion flights continued after the Del Rio encampment was emptied and cleared. In the initial month of the Del Rio crisis, between September 19th and October 19th, 2021, DHS expelled approximately 10,831 migrants to Haiti, including about 2,500 women and 1,800 children.<sup>200</sup>

Other migrants, already suffering from the conditions in the Del Rio encampment, feared for their lives and wellbeing upon learning that fellow asylum seekers were being denied their right to seek asylum and were being unlawfully expelled to Haiti. In the words of one asylum seeker:

“I could see that our lives were in danger. If they sent me back to Haiti, because I heard they were deporting people, I could see clearly that my life and the lives of my children would be in peril. That’s why I was afraid, afraid to go back home and that’s also why I ran back here [to Ciudad Acuña, Mexico]. I was also afraid of the way they were mistreating us back there [at the border]. There was no food, we were suffering, we were mistreated. I came back to try and figure out another way.”<sup>201</sup>

Many Haitians in the Del Rio encampment also had not been to Haiti in years. As another migrant described, “My life was threatened in my country. Since I left my country, I haven’t returned. It’s been seven years since I left my country, I haven’t yet returned. That’s one of the things that [forced me to leave Del Rio] I didn’t want to go to Haiti.”<sup>202</sup> Throughout the entire existence of the Del Rio encampment and the following mass expulsions, arriving migrants were never given a reasonable opportunity to present themselves to a U.S. immigration officer and exercise their right to request access to the asylum process. They also were not screened for a fear of return to their home country or vulnerability to persecution or torture upon return, as required under U.S. and international law. Summary expulsions documented in this report under Title 42 offer none of the procedural protections mandated by the Immigration and Nationality Act (INA) for noncitizens who fear removal.<sup>203</sup>

As these abuses in the Del Rio encampment occurred, DHS personnel deliberately restricted humanitarian aid and legal service organizations from entering the encampment. For example, when HBA and RFK Human Rights attempted to provide language access, Know Your Rights information (including Haitian Kreyol flyers explaining the legal process of expressing fear of return under Title 42), and humanitarian assistance, DHS officials repeatedly denied their entry. This resulted in the complete lack of access to culturally competent legal resources in Haitian Kreyol for those Haitian migrants trapped in the Del Rio encampment.

DHS’s refusal to allow HBA and RFK Human Rights attorneys to access the camp also prevented them from interviewing survivors and witnesses in order to document the misconduct of DHS personnel. As a result of this blocked access, many witnesses crucial to an investigation of DHS’s conduct were summarily expelled, in violation of ICE directives, including the consideration of prosecutorial discretion<sup>204</sup> for survivors and witnesses of crime and civil rights violations like those that occurred in Del Rio. By conducting immediate expulsions and removals, preventing those Haitian migrants from

200 *Infra* Part Three: Section I, “Continued, Violent Mass Expulsions of Haitian Asylum Seekers.”

201 In person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

202 In person interview by HBA lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021).

203 The INA provides that “[a]ny [noncitizen] who is physically present in the United States or who arrives in the United States”—regardless of their place of entry, interdiction, or status—“may apply for asylum[.]” 8 U.S.C. § 1158(a)(1). The INA also sets forth the duty of non-refoulement, an international law principle providing that a country may not expel or return an individual to a country where they have a well-founded fear of persecution or serious harm. Consistent with the U.S.’s obligations under the 1951 Convention on the Rights of Refugees and the 1967 Protocol, the INA’s withholding of removal provision prohibits the U.S. from removing any individual to a country where it is more likely than not that the individual’s “life or freedom would be threatened in that country because of [their] race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A). The Foreign Affairs Reform and Restructuring Act (FARRA) implements the United States’ non-refoulement duties set forth in Article 3 of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. FARRA prohibits the United States from expelling an individual to a country where it is more likely than not that they will be tortured. 8 U.S.C. § 1231.

204 In a 2011 directive, ICE officials were instructed to “minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.” *See* ICE Directive No. 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>

participating in the investigations of harm against them at Del Rio, DHS also failed to comply with the victim-centered approach purportedly embraced by the Biden Administration,<sup>205</sup> and the recent ICE Directive titled Using a Victim-Centered Approach with Noncitizen Crime Victims.<sup>206</sup> The directive instructs ICE to withhold civil immigration enforcement action against victims or witnesses participating in criminal investigations, including qualifying crimes potentially committed in Del Rio, such as felonious assault and obstruction of justice.<sup>207</sup>

Those Haitian migrants who were transferred from the Del Rio encampment to CBP or ICE detention under Title 42 were still not provided access to legal assistance before being deported. Nor were they given an alien number, a unique identifying number that tracks location in ICE detention, or made otherwise traceable in the U.S. Citizen and Immigration Services (USCIS) system. Family members frantically tried to locate their loved ones who had essentially disappeared after being transferred from the Del Rio encampment. While many family members consulted with immigration lawyers, neither they nor their lawyers were able to make contact with the asylum seekers, or, if they did, it was almost always too late. As one Haitian migrant told Human Rights Watch, when he told the guard at the U.S. detention center where he was held that he wanted to request asylum, the guard replied: “Here, you have no rights.”<sup>208</sup>

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205 On July 30, 2021, ICE Acting Director Tae Johnson issued a statement affirming ICE’s “duty to protect and assist victims of crime,” noting that “[t]his is true regardless of whether victims are noncitizens encountered through civil immigration enforcement activities or victims of crimes that are directly under ICE’s jurisdiction.” Statement from Acting ICE Director Tae D. Johnson on the agency’s victim-centered approach, <https://www.ice.gov/statements/victim-centered-approach>

206 ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims § 2.2, (Aug. 10, 2021), <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>. (“Assisting law enforcement partners. Absent exceptional circumstances, during the pendency of any known criminal investigation or prosecution, ICE will not take civil immigration enforcement action against victims and witnesses without approval from Headquarters Responsible Officials and may, where applicable and appropriate, issue deferred action or a stay of removal to victims and witnesses. Where available information indicates a noncitizen may be a noncitizen crime victim or witness, ICE should identify victim status as soon as practicable when victim status is unknown or unclear.”)

207 8 U.S.C. §1101(a)(15)(U)(iii) (listing qualifying crimes including felonious assault, obstruction of justice, witness tampering, unlawful criminal restraint, false imprisonment, and attempts to commit such offenses, as well as any similar offenses).

208 Human Rights Watch, *Haitians Being Returned to a Country in Chaos* (Mar. 24, 2022), <https://www.hrw.org/news/2022/03/24/haitians-being-returned-country-chaos>.

## VII. SEPARATIONS OF FAMILY MEMBERS

Many of the asylum seekers arriving in Del Rio in September 2021 were part of family units and approximately 40% were children. CBP defines a “family unit” as “the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member.”<sup>209</sup> Haitian migrants from the Del Rio encampment were subjected to separations from family members<sup>210</sup> by DHS personnel and prevented from contacting one another. For example, on September 14th, officers took one Haitian man and his family to a detention facility, where they remained for approximately five days.<sup>211</sup> The man and his sixteen-year-old son were separated from each other and from the rest of the family. When the man tried to see anyone in his family, the guards yelled at him and prevent him from doing so. At one point, an officer screamed at him, “No one told you to come to the U.S.”<sup>212</sup>

Another Haitian asylum seeker traveled to Del Rio with her husband and their three-year-old son.<sup>213</sup> The woman’s husband had adopted the child and they had been living as a family since his birth. After spending five days in the encampment, the husband was separated from his wife and child and was deported back to Haiti. A significant number of Haitian migrants also reported being separated from their spouses. For example, after spending seven days in the encampment, a Haitian woman reported that she was separated from her husband during CBP processing and was unable to contact him.<sup>214</sup> She suspected that he was deported to Haiti.

In addition to the separation of minor children from parents and legal guardians, Haitian and other migrants from the encampment also reported DHS forcibly separating them from the extended family members they were traveling with, including grandparents, aunts, uncles, and siblings. For example, one Haitian asylum seeker who had been traveling with her twin sister reported that when they were issued tickets and processed by CBP personnel in the encampment, while she was allowed to enter the United States and was taken to the local respite center, her twin was taken into custody and deported back to Haiti—despite the fact that they had virtually identical asylum claims and circumstances.<sup>215</sup> A Haitian woman who was traveling with her husband, infant child, and sister reported that in the Del Rio encampment, her sister was separated from the couple and deported to Haiti.<sup>216</sup> A Venezuelan woman and her three-year-old child were separated from her elderly mother in the Del Rio encampment.<sup>217</sup> The woman was unable to communicate with her mother and had no knowledge of what happened to her.

209 Customs and Border Patrol, U.S. Border Patrol Southwest Border Apprehensions by Sector (accessed Mar. 20, 2022), [https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters/usbp-sw-border-apprehensions#:~:text=\\*Note%3A%20Family%20Unit%20represents%20the,by%20the%20U.S.%20Border%20Patrol](https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters/usbp-sw-border-apprehensions#:~:text=*Note%3A%20Family%20Unit%20represents%20the,by%20the%20U.S.%20Border%20Patrol).

210 See *supra* n.34. (describing how DHS defines “family separation” as “ separations of [non-citizen] parents or legal guardians from their minor alien children, under the age of 18, following their arrival at the border as a family unit”).

211 See *supra* n6 ¶ 133.

212 *Id.*

213 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 24, 2021).

214 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 24, 2021).

215 In-person interview by HBA case worker with Haitian individual in Del Rio, Texas (Sept. 21, 2021).

216 In-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 24, 2021).

217 In-person interview by RFK Human Rights lawyer with Venezuela individual in Del Rio, Texas (Sept. 22, 2021).

# *Part Three*

## **DOCUMENTED ABUSES POST-DEL RIO**

Two weeks after the first Haitian family arrived at the Del Rio encampment, the U.S. government had dismantled it and begun to disappear the vast majority of witnesses and survivors. Six months later, DHS continues to subject Haitian asylum seekers to human and civil rights violations. This section documents those continued abuses, including: 1) the continued, violent mass expulsions of Haitian asylum seekers, including deportations to Haiti and pushbacks to Mexico; 2) continued abuses in ICE detention; and 3) continued separations of family members.

# I. CONTINUED, VIOLENT MASS EXPULSIONS OF HAITIAN ASYLUM

Since initially expelling thousands of Haitians from the Del Rio encampment, the U.S. has continued to conduct mass expulsions of Haitian asylum seekers from both the U.S.-Mexico border and detention centers throughout the country. U.S. officials often use deceit and violence to carry out expulsions. These tactics deny people notice that they will be deported, deprive them of the ability to adequately plan for their basic needs post-expulsion, and return battered and injured individuals to life-threatening conditions. In expelling individuals to Haiti or Mexico, the U.S. places them at high risk of homelessness, destitution, and the persecution they initially fled.

Recent immigration enforcement data reveals targeting of Haitians. In its first year in office, the Biden Administration has deported as many Haitians as the last three Administrations *combined*,<sup>218</sup> expelling 20,377 Haitians on a total of 204 expulsion flights since February 1, 2021.<sup>219</sup> One out of every 575 people in Haiti is now an individual who has been deported from the United States by the Biden Administration.<sup>220</sup> While Haitians made up just 2.5% of all Border Patrol encounters during 2021,<sup>221</sup> according to data collected by Witness at the Border, during this same time period, 15% of all deportation flights were to Haiti.<sup>222</sup>

Between September 19th, 2021 and March 3rd, 2022, the U.S. government expelled approximately 18,278 Haitians.<sup>223</sup> At least 45% of those expelled were women and children, including hundreds of infants and children under the age of two.<sup>224</sup> The majority of the expulsion flights of Haitians (69 of the last 78 flights until March 3, 2022) depart from Laredo, Texas. Those expelled report being detained in inhumane conditions and that they did not receive credible fear interviews or screenings prior to their expulsion.

To carry out expulsions, the government places unreasonable and inhumane restrictions on movement. Common practices include shackling people at the wrists and waist for the duration of overseas flights; denying use of bathrooms; and preventing handcuffed parents from soothing terrified children.

“During the deportation flight we were handcuffed at our ankles, waist and hands. We were prohibited from using the bathroom during the flight.”<sup>225</sup>

218 Tom Ricker, *Biden Has Deported Nearly As Many Haitians In His First Year As The Last Three Presidents—Combined*, Quixote Center (Feb. 18, 2022), <https://www.quixote.org/biden-has-deported-nearly-as-many-haitians-in-his-first-year-as-the-last-three-presidents-combined/>.

219 Tracking data collected by Witness at the Border available here: [https://docs.google.com/spreadsheets/d/1mvPiOvISRYTNEg7Mzk7nmZsk3PG0\\_jw4y8XVJ3oDMms/edit?urp=gmail\\_link#gid=0](https://docs.google.com/spreadsheets/d/1mvPiOvISRYTNEg7Mzk7nmZsk3PG0_jw4y8XVJ3oDMms/edit?urp=gmail_link#gid=0).

220 *Id.* (calculation by Witness at the Border comparing total number individuals deported and expelled to Haiti to the current population of Haiti FY 2021 (11.54 million people); see also Adam Isacson, *A Tragic Milestone: 20,000th Migrant Deported To Haiti Since Biden Inauguration*, WOLA (Fe. 17, 2022), <https://www.wola.org/analysis/a-tragic-milestone-20000th-migrant-deported-to-haiti-since-biden-inauguration/> (“At this point, about 1 in every 575 people living in Haiti today was on a Biden administration expulsion or deportation plane during the past 15 months.”).

221 U.S. Customs and Border Protection, *Nationwide Encounters FY 2020-2022* (accessed on Mar. 22, 2022), <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

222 See Witness at the Border, *ICE Air Flights December 2021 and Last 12 Months*, data set available here: [https://static1.squarespace.com/static/5e221cacf87ba2d2833cf54/t/61d39007020a5d713c988e78/1641254920060/ICE+Air+Dec+2021F\\_THCPDF.pdf](https://static1.squarespace.com/static/5e221cacf87ba2d2833cf54/t/61d39007020a5d713c988e78/1641254920060/ICE+Air+Dec+2021F_THCPDF.pdf) (Methodology: “ICE Air does not disclose information or data about their flights. Our information is based on securing all flight information from the publicly available FlightAware application for World Atlantic and Swift. We then filter the flights to the likely ICE Air removal and destination locations to identify, within a small margin of error, the removal flights. To do this we use the knowledge and experience we gained through tracking ICE Air for almost 2 years and 10,000 ICE Air flights legs. Any errors in our estimations we believe are small and certainly immaterial to the analysis that follows.”).

223 Tracking data collected by Witness at the Border has tracked 162 US expulsion flights to Haiti since 9/19/21, including 46 so far this year and 71 since December 13, 2021. Data is available at: [https://docs.google.com/spreadsheets/d/1mvPiOvISRYTNEg7Mzk7nmZsk3PG0\\_jw4y8XVJ3oDMms/edit?urp=gmail\\_link#gid=0](https://docs.google.com/spreadsheets/d/1mvPiOvISRYTNEg7Mzk7nmZsk3PG0_jw4y8XVJ3oDMms/edit?urp=gmail_link#gid=0); see also IOM, “Migrant Returns And Reception Assistance, Air & Sea” (January 2022), <https://haiti.iom.int/sites/g/files/tmzbd11091/files/documents/final-factsheet-migrant-returns-and-reception-assistance-january-2022-iom.pdf> (tracking return flights and number of individuals returned to Haiti in 2022).

224 Infants under two include 23 of the 44 children scheduled on the March 2, 2022 flights, 19 of the 43 children scheduled on March 1, 2022 flights, 31 scheduled on February 17 flights, and 24 among 51 children on February 11 flights).

225 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

“When the plane landed, before we were released to walk on the tarmac, the ICE officials removed the chains from us so they wouldn’t be seen by the Haitian police.”<sup>226</sup>

One woman reported that while being transferred by bus to the airport, she was holding her two-year-old daughter on her lap.<sup>227</sup> At one point, her daughter fell off her lap and became stuck under the seat. The woman was unable to pick up her child because she was handcuffed. In tears, the woman and her husband pleaded with the officers for help, saying: “Our baby is under there, we need to get the baby out. Please help us.” The officers ignored her. Only when others began to shout that a baby was stuck under the seat did one officer release one of the mother’s hands from cuffs so she was able to reach down and pull her child back into her lap.

U.S. officials also commonly lie to individuals they are expelling. Typical ruses include telling people that they are being taken to see an immigration judge, to see a priest that will help them, or to be placed in another facility within the country. Only as the bus approaches an airport do people become aware that they are being boarded directly onto deportation flights. By denying people notice of their imminent deportation, the government deprives them of the ability to contact family in the country of origin or to otherwise make preparations for a safer return.

One man reported that U.S. officials suddenly roused him and his family in detention cells in the middle of the night and placed them on a bus with other individuals.<sup>228</sup> When he asked where they were going, officers said they were transferring him and his family to “another prison in Florida.” But after the bus drove for approximately two hours, they realized that they were arriving at an airport.

Another man explained:

“We were transferred from Arizona to Texas at night so we wouldn’t be seen. I asked the agent what would be the next step and where we were being taken. He told me that that evening we would be seen by an immigration judge. The next day, after resting for a while, we were woken up around midnight and told we were going to be taken to see the immigration judge. Little did I know that we were being taken to the airport.”<sup>229</sup>

Another individual recalled:

“I had no idea I was being sent back to Haiti. I got a hint when I boarded the plane and two hours into the flight, I asked again ‘Where are you taking me?’ They had told us we were being taken to see a judge. The officer on the plane told me that he is an agent with ICE and that we are being deported to Haiti.”<sup>230</sup>

A man described his experience being transferred from a detention facility in Arizona to Laredo airport:

“When I got off the bus, I was chained at my hands and wrists to my feet. I was roughly searched and abused by officers. While they searched me, they hit me across my body. They acted as if they suspected I was carrying drugs or something like that. I came from one detention center to another and they acted as if I was transferring something with me. They did the same exact thing when I was boarding the plane. While I was boarding the plane, I asked the officers ‘where are you taking me?’ I begged them to tell me how my pregnant girlfriend was doing. They just told me over and over that I was being taken to immigration court. That’s all they would tell me.”<sup>231</sup>

226 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

227 *See supra* n.6 ¶ 143.

228 *See supra* n.6 ¶ 136.

229 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

230 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 15, 2022).

231 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 15, 2022).

A woman stated:

“They came and gathered us in the late afternoon and put us in a waiting room in the detention center. I asked one of the officers what was going on. He told me that we have to wait there because there is a bus coming that is going to get us and take us to a priest’s place. And when we get to the priest’s place, some kind of shelter, we will be able to contact and reunite with our families in the United States. The bus didn’t come until 2am. We felt like it was a long ride so we asked again, “What’s going on? When will we get to the priest’s place?” They told us we just have to wait. Finally, the bus stopped but we realized we were at the airport.”

The woman continued:

“During the flight everyone was in shock. We did not expect to be deported. We were realizing what was happening to us during the flight. Me personally, I was listening to people screaming and hearing people’s anger. I was just sitting there and thinking about why I left Haiti. The safety issues in Haiti and all that we survived to flee over six years ago, the journey through Chile and Mexico, all that we went through under the bridge, the things we went through in detention for so many days—all just to be sent back to Haiti. I was speechless and in shock. I went numb.”<sup>232</sup>

U.S. officials also use violent force when expelling Haitians, including battering people until they are bloody and using body holds to cut off the ability to breathe. In one reported instance, officers boarded a bus parked at an airport awaiting a deportation flight. Several people stated that they did not want to leave the U.S. and get on the plane without knowing where they were going. In response, officers beat them.

Officers beat one man, in front of his wife and children, so aggressively that they ripped his clothes off and he lost his shoes. They then forced him off the bus. When he got to the steps to board the plane, he said he would not board the plane without knowing where it was going. The officers then beat him again.

An officer placed a foot on the man’s neck and pinned his arms against his back. As the man struggled under the officer’s weight, he tried to say, “I can’t breathe.”<sup>233</sup>

Officers then handcuffed the man so tightly that the cuffs cut into his wrists and drew blood. While his wife and children sobbed, they threatened to place him in detention if the entire family did not board the plane. The man sat the entire flight to Haiti without a shirt or shoes, in bloody cuffs. To this day, his wrists are scarred.<sup>234</sup>

In another instance, a witness described how her cousin was brutalized by U.S. officials while they expelled him:

“We realized we were getting deported and we all started to panic. My cousin did not want to get off of the bus to get on the plane. Officers started to hit and beat him on his body and head. He got out of their grip and tried to run away [to protect himself]. They chased him and tackled him to the ground, pinning him and put handcuffs on him. He was injured, bleeding and screaming in pain. His wife and two small children watched the whole thing. We were all terrified after that. We realized we didn’t have a choice.”<sup>235</sup>

When the U.S. expels Haitians, it returns them to life-threatening danger, extreme hardship, and ongoing persecution. Those expelled to Haiti are given one-time subsistence support upon arrival at Port-au-Prince airport. From there, they are left on their own to find shelter and safety in a country that continues to grapple with ongoing humanitarian crises.

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232 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 16, 2022).

233 See *supra* n. 6 ¶ 138.

234 See *id.* ¶ 136-145.

235 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 16, 2022).

One woman described:

“When we arrived they took us to an agency, IOM [the International Organization for Migration], that’s at the airport. They gave me \$95 american dollars total for me and my son to get transportation to get wherever we needed to go. We were told that we would be receiving other financial support. But me and everyone else I know who was deported never received anything else.”<sup>236</sup>

Another individual reported, “When we landed in Haiti we were met by Haitian officials who handed me a pouch with change for a cab fare, a bar of soap, shampoo, toothpaste and a toothbrush. But these items were quickly stolen from me at the airport.”<sup>237</sup>

Expelled individuals “arrive to Haiti in highly vulnerable situations with few if any resources,” according to a post-arrival survey of individuals conducted by the IOM from September 19th to December 31st, 2021. Their ranks “include individuals with chronic illnesses and disabilities, pregnant and nursing women and young children . . .”<sup>238</sup> Seventy percent of recent adult returnees reported not feeling safe in transit to and upon returning to their localities of destination after repatriation.<sup>239</sup> And after spending weeks or even months in overcrowded U.S. detention facilities, many individuals expelled to Haiti arrive sick with COVID-19. Haiti currently has approximately 124 ICU beds<sup>240</sup> and only 1.1% of its population of 11 million people are vaccinated against COVID-19.<sup>241</sup>

Forcibly returned Haitians struggle to find food, shelter, and jobs in a country many fled years prior and no longer recognize. A majority of the Haitian migrants from the Del Rio encampment screened by HBA and RFK Human Rights in Acuña reported that they hadn’t been back to Haiti in five to eight years and had no family members, housing, or network of community support there.

One man expelled to Haiti explained:

“I am now living in a country that I escaped over eight years ago. A country I feared returning to. I missed the birth of my child. This past week my girlfriend was with my child in the hospital alone [in the United States] and I couldn’t be there to help them. Whenever my girlfriend calls she is crying in fear for my safety in Haiti. I am not settled anywhere. I have to move from city to city to stay safe. I live in hiding. I fear that someone will tell my whereabouts to the gang member that is trying to kill me.”<sup>242</sup>

Under Title 42 and other immigration laws used to target Haitians, the U.S. continues to expel many individuals, like this man, who have *prima facie* cases for asylum and other humanitarian protection because they are at imminent risk of torture, persecution, and death in Haiti. As one man explains, “Once we landed in the capital, the fear became more real because I knew that the gang members that had set my house on fire were released from prison by the time I landed. This terrified

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236 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 16, 2022).

237 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 15, 2022).

238 The IOM survey, collected from late January through early February 2022, targeted adult migrants returned to Haiti and assisted by IOM between 19 September and 31 December 2021, estimated at a total of 13,351 adult returnees in this period (76% repatriated from the United States). IOM, “Migrant Returns and Reception Assistance in Haiti, Brief: Post Arrival Survey” (September 19-December 31, 2021), [https://reliefweb.int/sites/reliefweb.int/files/resources/final-brief-post-arrival-survey-with-recent-adult-returnees-in-haiti-sept-dec-2021-iom\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/final-brief-post-arrival-survey-with-recent-adult-returnees-in-haiti-sept-dec-2021-iom_0.pdf).

239 *Id.*

240 Lia I. Losonczy et al., Critical care capacity in Haiti: A nationwide cross-sectional survey. 14 *PLoS one* 6 (2019), <https://doi.org/10.1371/journal.pone.0218141>.

241 Reuters, COVID-19 Tracker, Haiti (accessed Mar. 23, 2022), <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/haiti/>; see also Emmanuel Möise Yves, *The Setbacks of the Management of COVID-19 in Haiti*, *Centro de Periodismo Investigativo* (Dec. 13, 2021) (describing lack of adequate medical resources in Haiti to manage the COVID-19 pandemic), <https://periodismoinvestigativo.com/2021/12/the-setbacks-of-the-management-of-covid-19-in-haiti/>.

242 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

me.”<sup>243</sup>

Another individual immediately went into hiding in Port-au-Prince upon his forcible return in late December 2021.<sup>244</sup> He had initially fled Haiti years earlier after being kidnapped and tortured due to his political opposition to the *Pitit Desalin* political party. After his return, members of the party sought him out, threatened his life, and beat him with metal batons and wooden sticks. He subsequently hid at a friend’s home. On January 25th, while in the bathroom, he overheard men demanding to know where he was. He then heard piercing screams and fled. The next day he learned that members of the *Pitit Desalin* political party had set the owner of the house on fire.

Human Rights Watch noted in a report released on March 24, 2022, that “Given the security conditions in Haiti, civil society groups and organizations assisting refugees expressed concern that people expelled or deported to Haiti are at risk of kidnapping and extortion by criminal gangs, which may believe returnees have money for travel or relatives abroad who can pay ransoms. However, there is currently no system in place to track and support returnees.”<sup>245</sup> In a phone survey conducted by IOM, 69 percent of the 383 returnees interviewed in January and February reported not feeling safe in Haiti, and 84 percent wanted to leave the country again.<sup>246</sup> Indeed, all of the plaintiffs in *Haitian Bridge Alliance v. Biden* who were expelled to Haiti have either fled Haiti already or have expressed fear and intent to leave as soon as possible.

Those forcibly pushed back into Mexico face pervasive anti-Black racism and life-threatening danger. Approximately 10,000 Black migrants currently reside in Tijuana, including individuals fleeing Haiti, Jamaica, Cameroon, and Mauritania.<sup>247</sup> Haitian migrants in Mexico report regular denial of medical care, housing, and employment due to anti-Black prejudice.<sup>248</sup> HBA has received reports that migrant shelters are overflowing with individuals unable to find housing elsewhere. And since September 2021, HBA has arranged funerals for five Haitian community members who were killed in Mexico while waiting to request asylum in the United States. On January 1, 2021, a Haitian father was shot in the head and killed by Mexican immigration authorities in Tijuana. His pregnant wife was then deported back to Haiti by Mexican immigration authorities.<sup>249</sup>

243 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022). Interviewee was deported to Port au-Prince, Haiti on Dec. 14, 2021.

244 Testimony of Southern Poverty Law Center Southeast Immigrant Freedom Initiative (SPLC SIFI) client (Jan. 20, 2022).

245 Human Rights Watch, *Haitians Being Returned to a Country in Chaos* (Mar. 24, 2022), <https://www.hrw.org/news/2022/03/24/haitians-being-returned-country-chaos>.

246 *Id.*

247 Jasmine Aguilera, *Caught Between U.S. Policies and Instability at Home, Haitian Migrants in Tijuana Are in a State of Limbo*, TIME (July 22, 2021), <https://time.com/6080579/haitian-migrants-tijuana-us-policy/>.

248 See S. Priya Morley et al., *supra* n.120, 40-45, <https://imumi.org/attachments/2020/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf> (featuring testimony of Cameroonian and Angolan migrant describing anti-Black discrimination in Mexico).

249 In-person interview and ongoing phone conversations by HBA case worker with Haitian individual in Tijuana (Jan. 2022).

## II. CONTINUED ABUSES IN ICE DETENTION

Prior to deporting Haitians, the U.S. government detains them for processing under the custody of Immigration and Customs Enforcement (ICE) at various jails, prisons, and detention centers across the country. Human rights abuses in ICE detention are endemic, occurring in facilities throughout the U.S. HBA and RFK have received testimony from people who, while detained in ICE custody, experienced physical abuse and verbal threats; retaliation for engaging in peaceful protest; solitary confinement; anti-Black discrimination and harassment; deprivation of food and water; denial of medical care; and prolonged detention without the opportunity to speak to a judge.<sup>250</sup> The following reports come from people held in detention in Arizona, Texas, New Mexico, New Jersey, Louisiana, Georgia, and Florida, in facilities run by federal and local governments and by private prison companies. Some people experienced these abuses prior to an expulsion under Title 42; others suffered the same inhumane treatment during a prolonged detention while awaiting a hearing on an application for asylum in immigration court.

Many individuals from the Del Rio encampment were forcibly transferred to detention centers in Arizona and Texas and then detained in inhumane conditions prior to their expulsions. They reported lack of access to food, drinking water, and sanitation.

One man reported:

“When I was detained in Arizona, for ten days I had no running water. I couldn’t shower. I couldn’t brush my teeth. I was only given a piece of bread in the afternoon and some biscuits in the evening. In the cell, it was freezing temperatures. I wasn’t given any coverings or warm clothing. Only an aluminum sheet that did not help.”<sup>251</sup>

Another individual detained in Arizona reported that “We had no running water, no way to shower or clean ourselves. We were taking a bottle of water and using it to try and clean our private parts, and then we’d just put back on our dirty clothes.”<sup>252</sup>

A woman who was detained with her four-year-old son described the lack of sanitation:

“As a woman, I feel like the way we were treated was horrible. There was no access to any running water to shower, after I spent a week there. I had my period and every time I would have to go and ask for a pad, they would refuse or tell me that I could only have one for the whole day. I would have to wait for the next day to go and get another one. I only received a plastic sheet to sleep on. Either you sleep on the plastic on the cold floor or you sit on the bench and put the plastic on your legs to try to stay warm. It was just horrible.”<sup>253</sup>

She was denied access to running water and unable to shower or brush her teeth for eight days.

Individuals detained in these facilities in Arizona and Texas also reported medical neglect. One woman described how officials in a Texas detention center took her medication and refused to provide her with medical care:

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250 *Supra* Part One: Section IV, “Abuse and Mistreatment of Haitian Immigrants in ICE detention” For a description of Human and civil rights abuses against Haitians in ICE detention centers in Florida, see CRCL Complaint, Re: COVID-19 Negligence, Sexual Assault, Retaliation, Verbal Abuse, Religious Discrimination, Anti-Blackness, and Deplorable Conditions at Krome North Services Processing Center in Miami, Florida (Oct. 6, 2021), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/615defe5e76a986claf29d7a/1633546214397/Multi-Individual+CRCL+Anti-Blackness+and+Other+Abuse+of+Black+immigrants+at+Krome+Oct+2021.pdf> and Letter to DHS, Shutdown Glades Coalition, Re: Racism at Glades County Detention Center (Nov. 18, 2021), [https://www.acluf.org/sites/default/files/field\\_documents/memo\\_to\\_dhs\\_re\\_racism\\_at\\_glades\\_detention\\_center\\_11.18.21.pdf](https://www.acluf.org/sites/default/files/field_documents/memo_to_dhs_re_racism_at_glades_detention_center_11.18.21.pdf).

251 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

252 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 15, 2022).

253 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar 16, 2022).

“When I was taken to the detention center, they took all of my personal belongings, including my medications. I was taking antibiotics for a urinary tract infection. I could not wash myself and I already had this infection. I had this intense pain in my lower abdomen. I was in so much pain, I told them and pleaded with them, and still they wouldn’t give me my medication.”<sup>254</sup>

The woman continued:

“The way that we were treated. When I think of the fact that we left Haiti because of the situation there, the journey that we made to go from Chile to Mexico, where so many people died. I could have easily lost my life. And risking all of that to get here, hoping that a country like the United States is going to give us a chance for protection. And I have to say we were so disappointed to see that we were treated this way.”

Individuals also reported verbal abuse and racist hostility from U.S. officials in detention centers, including from nurses and medical professionals. One Haitian man explained:

“When I was detained in Laredo, Texas, we were not given filtered water to drink. When we asked the agent to provide us with drinking water so we didn’t get sick the agent said ‘Just drink the water from the toilet since you are accustomed to that back in your country.’”<sup>255</sup>

A woman who was detained in Texas described:

“While we were in detention, my son was sick and had diarrhea from being under the bridge. He is four years old and was having accidents because he was so sick. The officers in the detention center were giving me a hard time when I asked for diapers for my son. One officer said to me ‘He should be potty trained. He shouldn’t have to wear diapers.’ When I tried to explain that he was only having accidents because he was sick, the officer became very angry and said ‘Go back to Haiti.’”<sup>256</sup>

The officers in the detention center refused to provide the woman with diapers or any sanitation supplies to clean her son, who was covered in his own feces from his illness. She was forced to try to clean her child using scraps of toilet paper from the portable toilet.

Another individual reported that in a Texas facility: “One of the nurses at the detention center made a comment regarding the children. Many of the children were dragging things on the floor or messing things up a bit. She said ‘I guess this is clean compared to where you come from.’”<sup>257</sup>

A Haitian man and his family experienced similarly abusive conditions. When his family arrived, officers told him and others that they smelled because they were Haitian.<sup>258</sup> The man and his wife were detained separately, with each keeping one of their two children with them. When the man requested milk for his child, he was handcuffed, told to “shut up,” and separated from his child for an hour. The experience brought the father and his family to tears. No one in his family was provided access to running water while detained.

Those who were not immediately expelled under Title 42 were held in ICE facilities in the interior of the U.S. for longer time periods while they awaited a hearing before an immigration judge related to a claim for humanitarian protection. At least 80 people from the Del Rio encampment were brought to Torrance County Detention Facility, an ICE detention

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254 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar 15, 2022).

255 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar 14, 2022).

256 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar 16, 2022).

257 Phone interview by RFK Human Rights lawyer with Haitian individual (Mar 15, 2022).

258 See *supra* n.6 ¶ 134.

center in New Mexico operated by the private prison company, CoreCivic.<sup>259</sup> At Torrance, individuals reported deprivation of human necessities and severe medical neglect.

Multiple individuals reported a lack of access to sufficient food and potable drinking water. One Haitian immigrant reported, “I’m allergic to the water. It makes my skin itch.”<sup>260</sup> Another individual stated, “The water looks like bleach and has pieces of unknown crumbles in them.”<sup>261</sup> Likewise, individuals reported insufficient food: “The food here is not fully cooked. You also do not get enough food to fill your stomach. Most times, I only drink water to be able to feel somewhat full so I can go to sleep.”<sup>262</sup> “I want to hurt myself. Seeing how I can’t eat, drink, nor sleep has put me into a great deal of suffering.”<sup>263</sup>

In addition, individuals at Torrance reported severe medical neglect, including conditions that exacerbated mental health struggles. One woman explained:

“I’ve had three surgeries on my eyes; two in my left eye and one in my right eye. When I go to the hospital here in the detention center, they do not give me the proper care. I lost my prescribed eyeglasses under the bridge in Del Rio, and now I can’t see well at all. . . . When I go to the hospital here in the detention center, they do not give me the proper care. I need to see an eye care specialist.”<sup>264</sup>

Another individual surveyed stated “I’m afraid I will die in the detention center.”<sup>265</sup> One person reported, “Sometimes, I want to do harm to myself, especially since I am in a room all by myself.”<sup>266</sup>

Haitian people detained at the Torrance facility also reported significant barriers to the fair adjudication of their immigration court proceedings. As a group, they were denied meaningful access to counsel or *pro se* legal resources in a language they understood, rushed through fast-tracked immigration court proceedings, and universally denied requests for release from custody so that they could prepare evidence for their hearings. ICE also blocked Haitians access to Kreyol interpreters.<sup>267</sup> During hearings before an immigration judge, Haitians at Torrance reported that instead of being advised that they could proceed *pro se*, the judge told them that they needed an attorney present in order to proceed with seeking asylum. As a result, individuals with asylum claims were ordered removed at their first or second hearings.<sup>268</sup>

Additionally, legal service providers reported that Haitians detained at Torrance were subjected to harsh policies that did not apply to immigrants from other countries. These included expedited case scheduling and court orders to submit completed asylum applications in *weeks*, while immigrants of other nationalities had hearings scheduled months later, allowing them time to secure legal representation and to prepare their cases.<sup>269</sup> Direct service attorneys also described

259 CRCL Complaint, Re: Severe Violations of Due Process and Inhumane Conditions at Torrance County Detention Facility (Nov. 23, 2021), <https://www.americanimmigrationcouncil.org/sites/default/files/research/compl1.pdf>.

260 Survey Data collected by HBA from Haitian individuals at Torrance County Detention Center (Nov. 2021).

261 *Id.*

262 *Id.*

263 *Id.*

264 *Id.*

265 *Id.*

266 *Id.*

267 *See supra* n. 259 (describing lack of “consistent way for speakers of Haitian Creole to communicate with Torrance staff or ICE”).

268 *Supra* n. 259.

269 *Id.*; American Immigration Council, Re: FOIA Request for Records Related to U.S. Immigration and Customs Enforcement (ICE) Treatment of Individuals Held at Torrance County Detention Facility (Dec. 21, 2021), [https://www.americanimmigrationcouncil.org/sites/default/files/foia\\_documents/seeking\\_records\\_due\\_process\\_violations\\_detainees\\_torrance\\_detention\\_facility\\_ice\\_request.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/seeking_records_due_process_violations_detainees_torrance_detention_facility_ice_request.pdf).

“across the board denials” of Haitian requests for release from detention, with no individualized reasoning for denial.<sup>270</sup>

After weeks of advocacy from direct service providers, including the filing of a formal civil rights complaint, DHS released all of the Haitians detained in Torrance. On March 16, 2022, the DHS Office of Inspector General (OIG) issued a rare “urgent alert” report, finding that investigators documented “egregious” problems at the New Mexico detention facility, including issues that “exposed staff and detainees to excessive and avoidable unsanitary conditions.”<sup>271</sup> After its three-day unannounced inspection in February, OIG issued a recommendation for “the immediate relocation of all detainees from the facility unless and until the facility ensures adequate staffing and appropriate living conditions.”

But recent reports from Haitians who remain detained in other ICE detention facilities across the country demonstrate continued inhumane conditions and mistreatment. In February 2022, a Haitian individual detained in Baker County Detention Center in Florida reported that he was pepper sprayed by an officer after asking to use the bathroom. The officers “grabbed him, pepper sprayed him and put him in the SHU [solitary confinement cell].”<sup>272</sup> Another Haitian individual currently detained at Baker reported, “The only shoes we have are slippers. We each get two left slippers so we can’t run away.” A Haitian man stated that he had been transferred to seven different facilities and that as a result “it has been hard for his family to locate and keep track of him.” While detained, ICE has failed to issue him the unique identifier known as an A-number that it uses to track locations of individuals it detains. As a result, his family has had great difficulty locating him.<sup>273</sup>

A Haitian woman currently detained at Stewart Detention Center in Georgia reported that in the two months she has been detained, she has been experiencing intense muscle cramps around her waist, chest and shoulder. She has repeatedly asked for medical attention and has only received Tylenol. She reported that because of the pain, she is “unable to get up from bed.”<sup>274</sup>

A Haitian man reported that in November 2021, an officer at Bergen County Jail in New Jersey pepper sprayed him and put him in solitary after another detained individual put a knee on his neck.<sup>275</sup> The officer put him in a choke-hold and hit his face against the wall, knocking his front tooth out. His foot was fractured when he was dragged into the solitary confinement cell. The officers repeatedly threatened to beat him and he was repeatedly harassed by medical staff while being treated for his injuries. He was then held in solitary confinement for 30 days where he received no further medical attention for his fractured foot, except for a pill for his pain. His foot is now infected, the pain pill is giving him chest pain, and he fears he may have a heart attack. He also reported that an official at Bergen referred to the Black people in the detention center as “runaway slaves” and “child molesters.” He described how every week detained individuals are forcibly

270 *Supra* n.259; see also RFK interview with attorney March 2022 (“ICE sent the first denial less than an hour after the request was submitted, in the form of a very short email stating that the request had been denied because there was “NO humanitarian” basis for parole (emphasis in original) and suggesting that the client seek bond. ICE followed this email denial with a parole denial form that had “flight risk” and “danger to community” marked as justification for the decision, contradicting the justification the agency provided in the original email. This is a misapplication of the spirit of parole directives. For some requests for release, there was no formal adjudication or individualized determination at all, just an email saying that ICE was declining to parole the respondent and that there was no humanitarian basis for parole.”).

271 Office of Inspector General, U.S. Department of Homeland Security, “Management Alert—Immediate Removal of All Detainees from the Torrance County Detention Facility,” OIG-22-31 (Mar. 16, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2022-03/OIG-22-31-Mar22-mgmtalert.pdf>; Torrance also failed a Nakamoto Inspection (PBNDS) on July 29, 2021. See The Nakamoto Group, Annual Inspection of the Torrance County Detention Facility (July 29, 2021), <https://www.ice.gov/doclib/facilityInspections/TOORANM21-TorranceCoDetFac-CL-07-29-2021.pdf> (finding that the facility does not comply with ICE’s own PBNDS [Performance-Based National Detention Standards] 2011 due to understaffing, unsanitary food, and visitation rules that were inaccessible to people with no money, among other conditions violations); see also Ryan Devereaux, “*Theater of Compliance: How ICE Escapes Detention Center Oversight*,” THE INTERCEPT (Jan. 5, 2021), <https://theintercept.com/2021/01/05/ice-detention-center-oversight-report/>.

272 Freedom for Immigrants Hotline Data (Feb. 25, 2022).

273 Freedom for Immigrants Hotline Data (Feb. 16, 2022).

274 Freedom for Immigrants Hotline Data (Nov. 22, 2021).

275 Freedom for Immigrants Hotline Data (Nov. 1, 2021).

strip searched and “touched inappropriately for no reason.”<sup>276</sup>

Hundreds of Haitian migrants from the Del Rio encampment have since been transferred to ICE detention centers in the rural South, including those in the New Orleans ICE Field Office Area of Responsibility (“NOLA ICE AOR”), which includes Alabama, Arkansas, Louisiana, Mississippi, and Tennessee. In November 2021, Louisiana Advocates for Immigrants in Detention (LA-AID) reported that it encountered 601 recently arrived Haitian migrants destined in the NOLA ICE AOR—73% of their total intake detention population at that time.

The facilities under the NOLA ICE AOR are notorious for systemic human rights and civil rights abuses, including rampant anti-Black violence.<sup>277</sup> One Haitian asylum seeker from Del Rio who was taken into ICE custody was transferred to Adams County Correctional in Mississippi. There, he was forced to work for \$1 a day and was provided a legally deficient CFI by the Houston Asylum Office due to insufficient Kreyol interpretation.<sup>278</sup> He was later transferred to River Correctional Center in Louisiana where he was subjected to prolonged solitary confinement, isolated in a freezing cold cell with no sink or shower and nothing but a gown to cover himself. For three days, he was unable to clean himself and did not have consistent access to potable water.

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276 Following prolonged protests from activists, Hudson County, NJ ended its contract with ICE in September 2021. On November 12, 2021, the remaining 15 individuals detained by ICE were removed from Bergen County, taken into ICE custody, and transferred to other facilities. The location of the 15 individuals now in ICE custody is not known. Mary Ann Koruth, *Last 15 ICE detainees removed from Bergen County Jail*, *NorthJersey.com* (Nov. 12, 2021), <https://www.northjersey.com/story/news/2021/11/12/last-ice-detainees-removed-bergen-county-nj-jail/8592962002/>

277 See Coalition Letter to DHS, Re: Unchecked Human Rights and Civil Rights Abuses Systemic within the New Orleans ICE Field Office Area of Responsibility (Dec. 20, 2021) (describing unchecked human and civil rights violations), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/61c0b47c15319f67d4045ca3/1640019069450/12%3A20%3A21+DHS+NOLA+ICE+Investigation+Follow-Up+Letter+%282%29.pdf>.

278 Testimony of Southern Poverty Law Center Southeast Immigrant Freedom Initiative (SPLC SIFI) client (Jan. 20, 2022). According to his attorney, during the credible fear interview this individual felt disoriented and confused and was not provided a fair opportunity to provide and develop critical information related to his experiences, including relevant, outcome determinative information about the nexus of his political opinion and the harms he experienced in Haiti. New facts were not previously disclosed because the interpreter frequently cut off the individual and instructed him to “answer the question straight,” pressuring him to provide short answers without elaboration; and failed to ask follow-up questions to fully develop his testimony, preventing the individual from providing critical evidence.

# III. CONTINUED SEPARATIONS OF FAMILY MEMBERS

Common to many Haitians trapped within the U.S. immigration system is the traumatic experience of separation from family and loved ones. The U.S. government uses several vehicles to tear Haitian families apart, including criminal prosecutions for illegal entry into the United States, the Migration Protection Protocols, Title 42, and routine detention and interior enforcement policies.

After being turned back to Mexico by CBP officers on horseback in Del Rio, one Haitian man and his partner attempted to seek asylum at the port of entry at Port Andrade, California in December 2021.<sup>279</sup> His partner was seven months pregnant and experiencing severe health complications. During their processing, the couple asked U.S. officials if they could be kept together. The officials refused and the couple was separated. The man was deeply concerned for his partner’s health and begged the officers for an update on her condition multiple times a day. The officers at the facility repeatedly refused to provide any information. “I felt terrible because after everything we’ve been through together, they refused to give me any information or update on how her health was.”<sup>280</sup>

The couple spent four days in a detention facility in Arizona in separate cells before the pregnant woman was released to their sponsor in New York. U.S. officials told the man that instead of being released alongside his pregnant partner, he would be transferred to a different detention facility. Nine days later, he was transferred from Arizona to Laredo, Texas. On December 12th, he was deported back to Haiti. The separation from his pregnant partner was “emotionally devastating” and they both “cried every single day.” He missed the birth of his child, who has since suffered from health consequences:

“What hurts me the most is that I am unable to care for my girlfriend and our newborn child. She has been in and out of the hospital with our newborn who is still having severe health issues. He needs to be fed through a tube. It devastates me that I can’t be with them.”<sup>281</sup>

Another Haitian man was separated from his wife and two small children after enduring the abuses at the Del Rio encampment in mid-September.<sup>282</sup> His pregnant wife and five-year-old daughter had preceded him in requesting asylum at the port of entry at Del Rio in June 2021. After explaining their family’s fear of persecution from members of a violent political party in Haiti, the man’s wife and daughter were released on recognizance and given a hearing date for an application for asylum in immigration court. In early September 2021, the man followed his family and also attempted to request asylum at the Del Rio port of entry. But armed CBP agents on horseback chased him across the Rio Grande, attempting to drive him back into Mexico. The man persisted in his efforts to seek asylum in the U.S., eventually securing a ticket for processing at the Del Rio encampment. On September 12th, 2021, the man’s issued number was called and he was detained by ICE and transferred to Adams County Correctional in Mississippi. At Adams, he received a negative determination in a credible fear interview conducted remotely by the Houston Asylum Office, without legal representation. He was then transferred to the River Correctional Center in Louisiana.

While he was detained in Louisiana, the man learned that his wife had given birth to their son. He pleaded to be reunited with his family but during the three months he was detained ICE refused his requests. Separated from his wife and children, the man fell into a severe depression and had difficulty getting out of bed and eating. In response, River Correctional staff put him in solitary confinement against his will. He was held in a small cell, alone with no access to a sink, shower, or potable water for three days. On December 14th, 2021, Southern Poverty Law Center Southeast Immigrant Freedom Initiative (SIFI) staff learned of this man’s case and entered their appearance as his counsel with the Houston Asylum Office and NOLA ICE. Two days later, the Houston Asylum Office acknowledged SIFI’s legal representation in a filed Request for Reconsideration (RFR) of his negative CFI and confirmed that ICE had been informed that the man was not to be removed

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<sup>279</sup> Phone interview by RFK Human Rights lawyer with Haitian individual (Mar. 14, 2022).

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> Testimony of Southern Poverty Law Center Southeast Immigrant Freedom Initiative (SPLC SIFI) client (Jan. 20, 2022).

while he had a pending RFR.

On December 21st, 2021, without notice to his counsel or his family, this man was unlawfully deported back to Haiti. The man's counsel at SIFI reported that when they contacted their client and his wife after this unlawful removal and separation, they were both despondent and suicidal. As of March 2022, despite his attorney's attempts to return this man to his family through a request for humanitarian parole, a temporary permission to enter the United States for a humanitarian reason, he remains in hiding in Haiti, terrified of being maimed, tortured, or killed by his persecutors. His wife, newborn, and five-year-old daughter remain in a shelter in Cypress, Texas, desperate to be reunited with him and struggling for basic necessities.

# CONCLUSIONS AND RECOMMENDATIONS

The U.S. government's actions at the Del Rio encampment and its aftermath have prevented refugees and migrants — primarily Black asylum seekers— from lawfully requesting the protection they are entitled to under U.S. and international law. The human rights abuses that occurred at Del Rio, including violent mass expulsions of Haitians, were the predictable result of immigration laws and policies built on a foundation of white supremacy. Those same laws and policies systematically continue to unfairly and violently detain and deport Black migrants.

President Biden condemned CBP's treatment of Haitian migrants as “outrageous”<sup>283</sup> and DHS Secretary Mayorkas stated that the images from Del Rio “painfully conjured up the worst elements of our nation's ongoing battle against systemic racism.”<sup>284</sup> But in the six months that have passed since Del Rio, nothing has been done to address the abuses and systemic anti-Blackness in the U.S. immigration system. Instead, the Administration has continued to expel Haitian asylum seekers *en masse* without due process, subjecting them to abusive ICE detention, and separating families indefinitely.

Internal investigation of the Del Rio expulsions has been punted to CBP's Office of Professional Responsibility, indicating the government's view of the matter as an isolated event involving “alleged misconduct of [individual] CBP employees.”<sup>285</sup> The investigation has yet to conclude. But the experiences of Haitian individuals throughout the U.S. immigration system show that Del Rio was not a one-off, isolated disaster. The abuses documented at Del Rio, including CBP officers' violent treatment of migrants and the deprivation of vital necessities for those trapped and detained by DHS, are an every-day aspect of the immigration experience for Black migrants. The President of the local National Border Patrol Council chapter in Del Rio confirmed as much when he stated that he didn't believe there was any violation of policy in the Del Rio encampment because “the incident is just one example of the regular job of horse patrol.”<sup>286</sup>

In order to meaningfully address the abuses that occurred at Del Rio and its aftermath, the Biden Administration must work to dismantle immigration policies that harm Haitians and other Black migrants. They can begin to do so by adopting the below recommendations.

283 Annika Kim Constantino, *Biden Condemns Border Patrol Agents' Treatment Of Haitian Migrants, Vows They Will Face Consequences*, CNBC (Sept. 24, 2021), <https://www.cnbc.com/2021/09/24/biden-condemns-border-patrol-treatment-of-haitian-migrants-in-del-rio.html>.

284 Katie Rogers and Michael D. Shear, *Biden Condemns Border Patrol Treatment of Haitian Migrants as Expulsions Continue*, THE NEW YORK TIMES (Sept. 24, 2021), <https://www.nytimes.com/2021/09/24/us/politics/biden-border-patrol-haitian-migrants.html>.

285 U.S. Dep't of Homeland Sec., “DHS Update Regarding the Investigation of Horse Patrol Activity in Del Rio, Texas on September 19, 2021” (Nov. 16, 2021), <https://www.dhs.gov/news/2021/11/16/dhs-update-regarding-investigation-horse-patrol-activity-del-rio-texas-september-19#wcm-survey-target-id>

286 Jennie Taer, *Nobody's Happy With The Biden Administration's Nearly Five Months-Delayed Border Patrol 'Whipping' Report*, THE DAILY CALLER (Feb. 19, 2022), <https://dailycaller.com/2022/02/19/haitian-migrants-alleged-whipping-report-border-patrol/> (““Out in the brush, if a horse patrol unit is facing a group of 20 people, they will sometimes use the horses to encircle the group to try to contain them so that people aren't able to abscond.” Jon Anfinssen explained. “So, the fact that there are horses running quickly near people, it's not shocking to us, the people who are on the ground doing it everyday, or working around it everyday.””).

# RECOMMENDATIONS

1. **Immediately Rescind Title 42 and End MPP:** U.S. policies that block Haitian migrants from seeking asylum at ports of entry violate U.S. and international law, create panic and disorder, and force people to undergo dangerous and increasingly deadly crossings away from ports of entry. The Biden Administration must immediately end the use of Title 42 and open the capacity of ports of entry to process asylum seekers. As demonstrated by the nationwide trend of loosening COVID-19 restrictions, including relaxed tourism restrictions at the U.S. border, Title 42 does not advance public health interests.

The Biden Administration must also immediately end MPP. It should cancel informal third country agreements and end negotiations with countries that have not been proven safe to accept removals of asylum seekers from the U.S. border. The determination that an asylum seeker is ineligible for asylum in the United States because of firm resettlement in a third country should not be assumed, but should instead be assessed individually through adjudication in the United States.

2. **Provide Increased Funding and Support for Civil Society Organizations at the US-Mexico Border:** Once CBP processes asylum seekers safely, they should be immediately transferred to the care of non-profit shelters to help arrange travel to communities where they can pursue their asylum cases with the support of their families, case managers, and attorneys. The Administration should request funding for increased staff at ports of entry, for the non-profit shelters near the border, and for legal counsel and community-support programs for asylum seekers. Civil society organizations that deliver legal and humanitarian services to assist migrants at the border should be given unrestricted access to those individuals during field processing to ensure the protection of human and civil rights.
3. **End All Expulsions and Deportations to Haiti:** The Biden Administration should stop all expulsions and deportations to Haiti during the current political and humanitarian crises.
4. **Investigate the Human Rights and Civil Rights Abuses Committed Against Haitian Migrants in the Del Rio Encampment:** The Biden Administration should fulfill its promise to fully investigate the documented human rights abuses that occurred in the Del Rio encampment, including the accounts of deprivation of basic human necessities, life-threatening medical neglect, physical violence, verbal threats, acts of racial intimidation, violations of due process rights, and separation of family members. The Administration must hold DHS—as an agency—accountable for these abuses. Placing individual CBP agents on administrative leave or applying other disciplinary actions on an individual basis is insufficient. Instead, the Administration must conduct a robust investigation, including interviews with affected individuals, survivors, witnesses, and members of civil society organizations, and provide publicly available and comprehensive findings. These findings should then be used to offer a set of concrete, policy-based recommendations to eliminate anti-Black violence in the U.S. immigration system.

5. **Provide Humanitarian Parole to Those Harmed in the Del Rio Encampment:** The Biden Administration should provide humanitarian parole<sup>287</sup> to individuals harmed by DHS in the Del Rio encampment and subsequently expelled to Haiti or forced to flee to Mexico so that they may affirmatively pursue their asylum claims in the U.S.
  
6. **Release Individuals in ICE Custody to Community Care:** The Biden Administration should end all ICE contracts with for-profit prison companies, close abusive detention centers, and release immigrants from detention, without implementing equally harmful alternatives to detention, including electronic monitoring devices. The Administration should also restore the practice of parole without bond for detained immigrants and reduce inflated immigration bond requirements that have fueled predatory for-profit bond companies. Haitian asylum seekers and all migrants should be free to navigate their immigration cases in community, with access to family members and loved ones, community-based programs and resources, and unrestrained access to legal assistance.
  
7. **Extend and Redesignate Haiti for Temporary Protected Status:** In May 2021, the Biden Administration redesignated Haiti for Temporary Protected Status (“TPS”) for 18 months, protecting Haitians currently in the U.S. from deportation and allowing them to secure work authorization. However, the designation does not apply to those who arrived in the United States after July 29, 2021.<sup>288</sup> Therefore, given the continuing exceptional circumstances in Haiti, the Administration should broaden protection by redesignating Haiti for TPS to extend the eligibility date to include those subjected to mistreatment and abuse by DHS in mid-September.

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 287 The DHS Secretary has discretionary authority to parole into the United States temporarily “under conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any individual applying for admission to the United States,” regardless of whether the noncitizen is inadmissible. 8 U.S.C. § 1182(d)(5)(A).

288 86 FR 41863.

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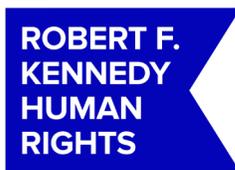
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# ABOUT



## Haitian Bridge Alliance

We are 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.



## Robert F. Kennedy Human Rights

We are a nonpartisan, not-for-profit organization that has worked to realize Robert F. Kennedy’s dream of a more just and peaceful world since 1968. In partnership with local activists, we advocate for key human rights issues—championing change makers and pursuing strategic litigation at home and around the world. And to ensure change that lasts, we foster a social-good approach to business and investment and educate millions of students about human rights and social justice.

## “Bousiko,” Jerry Boursiquot



Jerry Boursiquot, “Bousiko,” is a self-taught illustrator and graphic designer from Haiti. He studied administration and started his career as a freelance illustrator. Bousiko has collaborated in the production of several educational manuals and advertising campaigns and also campaigns for the defense of children’s rights with different NGOs. Passionate about current affairs, his caricatures have been published on the front page of the daily newspapers “Le Matin” and “Le Nouvelliste.” He is member of “Cartooning for Peace,” an international network of committed press cartoonists who fight, with humor, for the respect of cultures and freedoms. Bousiko is the co-owner of Artwork.ht which is a firm specializing in communication, image, and creativity. As a visual communication agency, Artwork.ht offers services of graphic design, illustration, marketing, and branding.

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