



“THEY DID NOT TREAT US LIKE PEOPLE”

RACE AND MIGRATION-RELATED TORTURE AND OTHER
ILL-TREATMENT OF HAITIANS SEEKING SAFETY IN THE USA

AMNESTY
INTERNATIONAL



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GLOSSARY

WORD	DESCRIPTION
ASYLUM SEEKER	An asylum seeker is someone who has left their country seeking protection but has yet to be recognized as a refugee.
CBP	Customs and Border Protection (CBP) is a law enforcement agency of DHS, operating in the border area and ports-of-entry of the United States. The US Border Patrol is part of CBP.
CRCL	The Office for Civil Rights and Civil Liberties (CRCL) is an Office under DHS. According to its website, “CRCL builds in civil rights and civil liberties practices into all the Department’s activities.”
DHS	US Department of Homeland Security.
ICE	US Immigrations and Customs Enforcement (ICE) is an agency of the US Department of Homeland Security (DHS) in charge of enforcing immigration laws at the border as well as in the interior of the USA. Its Enforcement and Removal Operations (ERO) branch manages all aspects of the immigration enforcement process, including identification and arrest, domestic transportation, detention, bond management, removals, and supervised release, including alternatives to detention.
INTERSECTIONAL DISCRIMINATION	When discrimination on different grounds operates together to produce a compounded or distinct disadvantage. For example, if a woman with disabilities experiences forced sterilization because of a state policy to control reproduction of women with disabilities, the discrimination and violation of sexual and reproductive rights she experiences is due to a combination of her gender and her disability. This constitutes intersectional discrimination because neither a woman without disabilities, nor a man with disabilities would experience the same impact.
MASS EXPULSIONS	Summary expulsion of a group of non-nationals without due process. In this report, the term “collective expulsion” is used as an alternative to “mass expulsions.”
MIGRANTS	Migrants are people who move from one country to another, either temporarily or permanently, usually to find work, study or join family. Many migrants move for a combination of reasons.
MIGRATION-RELATED DETENTION	Migration-related detention refers to the deprivation of an individual’s liberty for an alleged breach of the conditions of entry, stay, or residence in the receiving country. Detention for migration-related purposes can take many forms, including detaining people in penal institutions, specialized detention centres, restricted movement arrangements, as well as in closed camp settings.

WORD	DESCRIPTION
NON-CUSTODIAL MEASURES	Sometimes called alternatives to detention, these are measures short of detention restricting the rights of migrants and asylum seekers (often the rights to freedom of movement or the right to privacy). They vary in levels of intrusiveness and can range from registration requirements to bond/bail, designated residence, community release/supervision, reporting conditions, electronic tagging, biometric surveillance, and home curfew.
REFOULEMENT	Forcible return of an individual to a country where they would be at risk of serious human rights violations (such as persecution or torture). It is prohibited by international law to return refugees and asylum seekers to the country they fled without appropriate evaluation of the risk of return– this is known as the principle of <i>non-refoulement</i> . Chain <i>refoulement</i> occurs when one country forcibly sends someone to another country that subsequently sends them to a third country where they risk serious harm; this is also prohibited under international law.
REFUGEE	Refugees are defined in the Convention Relating to the Status of Refugees as people who cannot return to their own country because they have a well-founded fear of human rights abuses or persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Their own government cannot or will not protect them and so they are forced to seek international protection.
SYSTEMIC RACISM	According to the United Nations High Commissioner for Human Rights, “systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.” (Report of the United Nations High Commissioner for Human Rights, Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, 1 June 2021, UN Doc: A/HRC/47/53, para: 9)
TITLE 42 ORDER	Public health policy issued by the US Centers for Disease Control and Prevention (CDC) under Title 42 (public health code) originally on March 2020 (later replaced by similar orders on October 2020 and August 2021) that allows the USA to immediately expel migrants and asylum seekers crossing its borders during the Covid-19 pandemic to their home country or most recent transit country, without granting them access to the US asylum system. Despite a decision by CDC in April 2022 to terminate the order, the policy has been kept in place by a court decision.
RACIAL DISCRIMINATION	According to the International Convention on the Elimination of All Forms of Racial Discrimination, is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

EXECUTIVE SUMMARY

“I’m heartbroken by the treatment of Haitian migrants at our border - and I acknowledge it is only the latest of many historic indignities that Haitians have faced. We will continue to offer assistance and investigate wrongdoing. I remain committed, as ever, to Haiti’s future.”

President Joseph Biden published on Twitter 24 September 2021

This report is intentionally published on the one-year anniversary of the events that took place in Del Rio, Texas, in September 2021, when Border Patrol officers on horseback charged into crowds of Black Haitian asylum seekers, captured in images that, for many people across the world, were reminiscent of slavery.

In the aftermath, the Biden administration committed to an investigation, which, when published by CBP in July 2022, concluded none of the Haitians were intentionally struck by Border Patrol agents with their reins, or otherwise, but failed to interview any of the Haitians present, significantly undermining its credibility.

These shameful events in Del Rio took place as global conversations around systemic racial discrimination, and especially anti-Black racism, continued in the wake of the unlawful killing and torture of George Floyd by police officials in May 2020.

Since then, between September 2021 and May 2022, the USA expelled more than 25,000 Haitians, making significant use of Title 42, an order implemented under the Trump administration and thinly disguised as a public health measure, which has always worked as an immigration and asylum deterrence policy, in express violation of national and international law.

Under the Biden administration, deportation flights to Haiti appear to have risen sharply. According to Witness at the Border - a group that tracks deportation flights - between September 2021 and May 2022 alone, at least 227 flights from the USA landed in Haiti, compared to a total of 37 flights in all of 2020, and 37 in the first eight months of 2021.

As Haitians have found the possibility of seeking asylum at the US-Mexico border significantly curtailed, desperate to find alternative routes to escape Haiti’s ongoing human rights and humanitarian crises, thousands have resorted to attempting the journey to the USA in dangerous and improvised boats, leading to reports of tragic drownings at sea.

This research is based on interviews with 24 Haitians expelled by US authorities between September 2021 and January 2022. It is complemented with testimony from psychologists, academic experts, and lawyers, as well as historical evidence - including from Amnesty International’s archives - and information provided by US authorities.

The report has two main findings:

Firstly, mass or collective expulsions by the US authorities of Haitian asylum seekers under Title 42 are just a new chapter in a long history of detention, exclusion, and deterrence of Haitians seeking safety in the USA, rooted in systemic anti-Black discrimination.

Secondly, with the acquiescence of US authorities, the Haitians interviewed for this research - and possibly many others - have faced arbitrary detention, and in some cases torture or other cruel, inhuman or degrading

treatment or punishment (henceforth “ill-treatment”) related to race and migration, in violation of international human rights law which explicitly prohibits torture in all circumstances and requires states to actively prevent torture for groups most vulnerable to it.

While previous research by Amnesty International has found that migrants and asylum seekers of all nationalities are often at risk for torture or other ill-treatment in US immigration detention - including LGBTI people and people racialized as Black - this research finds that Haitians experience particular harms rooted in a combination of anti-Black discrimination and nationality-based discrimination.

TITLE 42: A NEW CHAPTER IN A HISTORY OF ANTI-BLACK RACISM, DETENTION, EXCLUSION, AND A PRACTICE OF DETERRING HAITIANS

In March 2021, in an interview with ABC news, President Biden was asked what his message would be to migrants at the southern US border. His response was “I can say quite clearly. Don’t come over.”

In June, Vice President Harris sent a similar message to people seeking international protection in the USA. “I want to be clear to folks in this region who are thinking about making that dangerous trek to the United States-Mexico border: do not come, do not come... We, as one of our priorities, will discourage illegal migration and I believe if you come to our border you will be turned back.”

In July, Homeland Security Secretary Mayorkas sent a similar message more specifically for Haitians and Cubans. “Allow me to be clear: If you take to the sea, you will not come to the United States.”

Such language is explicitly intended to deter migrants and asylum seekers from seeking safety in the USA and implies that anyone who arrives through this route will not receive a fair evaluation of their protection needs, which is in violation of the USA’s obligations under international law. However, this is not anything new, especially for Haitian asylum seekers.

During this research Amnesty International reviewed sufficient evidence to suggest that successive US administrations have tried to deter Haitian migrants from claiming asylum in the USA through the application of various policies designed to intercept, detain, and remove Haitians from the USA, starting in the 1970s and continuing with Title 42.

The research and testimonies gathered for this report build on previous Amnesty International reports and Urgent Actions dating back to at least the 1990s that have highlighted US government actions and policies which were designed to deter and punish Haitians who attempt to seek safety in the USA through actions, including unlawful pushbacks at sea, mass detention of migrants and asylum seekers, combined with torture and other ill-treatment, and no effective access to due process or asylum procedures.

None of the 24 Haitians interviewed for this research reported being screened to determine the risks they might face upon return (credible fear screenings) before being sent back to Haiti. In this way, the USA has violated US and international human rights law that grants the right to seek asylum and prohibits states from returning individuals to countries where they would be at risk of irreparable harm on return, including persecution, torture or other ill-treatment (the principle of *non-refoulement*).

Based on descriptions of their expulsions and the lack of typical procedural safeguards, such as screenings, as well as the timing of their expulsions, it can reasonably be concluded that they were expelled under Title 42.

While in US immigration detention, most of the Haitian asylum seekers interviewed for this research reported that they were not allowed to make phone calls, and none of them had access to interpreters or legal representation. They also indicated that they received little to no information about their whereabouts and the reasons why they were being deprived of liberty, all of which amounts to arbitrary detention under international law.

The testimonies gathered by Amnesty International for this research also suggest that US authorities unlawfully detained at least five pregnant women without properly assessing their medical needs. US officials appear to have further detained children as young as 9 and 14-days-old and – in various cases – separated them from their parents in explicit violation of international law that protects children’s best interests.

Additionally, all of the Haitians interviewed for this report indicated that the US authorities had not tested them for Covid-19 or offered them vaccines at any point during their detention or prior to expulsion, nor for the most part had they provided them with prevention and infection control measures, such as physical distancing or face masks. This undermines claims that Title 42 expulsions are designed to prevent Covid-19 and strongly suggests that their deprivation of liberty was arbitrary, and in turn failed to meet the principles of necessity or proportionality required to justify a detention on public health grounds under international human rights law.

This research reiterates Amnesty International's previous recommendations to states across the Americas to stop all deportations to Haiti as the human rights and humanitarian crises continue and deepen. It also calls on states to urgently provide Haitians with access to systems of protection, without discrimination, including fair, individualized evaluations for refugee status, and other avenues for regularization of their status through legal residency with appropriate safeguards, in line with both the UN Refugee Convention and the Cartagena Declaration.

RACE AND MIGRATION-RELATED TORTURE OF HAITIANS IN US IMMIGRATION DETENTION

The findings in this research complement evidence presented in multiple previous reports by Amnesty International which have detailed how US authorities regularly detain migrants and asylum seekers, including children, and Black and LGBTI asylum seekers, in ways that can amount torture or other ill-treatment, and often coerce them to give up their claims or to deter other asylum seekers.

All the Haitians interviewed for this report recount having experienced treatment which amounts to ill-treatment under international law in US immigration detention facilities, and treatment which constitutes racial discrimination. Additionally, as evidence highlighted in this report suggests, practices of ill-treatment, sometimes rising to the level of torture, towards Haitians are widespread and have occurred historically at different times and in different places, pointing to a long-term, and perhaps even institutionalized tendency at the level of DHS and its sub-agencies to punish and in turn deter Haitian asylum seekers from seeking refuge in the USA.

Amnesty International believes that for many Haitians interviewed for this report, the treatment they experienced in US detention facilities – which included a harsh combination of lack of access to food, healthcare, information, interpreters, and lawyers – quickly reached the threshold of ill-treatment, including because on arriving in the USA they had already lived through a range of human rights violations, as well as anti-Black racism during their journey. This cumulation of harms meant they were particularly susceptible to further ill-treatment at the hands of the USA, particularly rooted in discrimination due to their race, nationality, and migration status.

In previous decades the US authorities have detained and expelled Haitian asylum seekers ostensibly on public health grounds. In the 1990s US authorities detained Haitian asylum seekers living with HIV in camps in Guantanamo Bay. By continuing to subject Haitians to removals without credible fear screenings under Title 42 – a public health order implemented by the Trump administration supposedly to prevent Covid-19 – the Biden administration has only reinforced harmful historical tendencies which have stereotyped Haitians as bearers of disease, standing to further stigmatize and discriminate Haitians based on their race and nationality.

All of the Haitian asylum seekers interviewed for this research reported that they were returned to Haiti by plane in handcuffs and shackles. Psychologists interviewed by Amnesty International, who between them spoke to hundreds of Haitians expelled from the USA, confirmed this was also the case for their clients. The testimonies gathered highlight the severe psychological pain and suffering this caused many Haitians due to its association with slavery and criminality. While it is unclear how widespread the practice of shackling and chaining migrants and asylum seekers during detentions and deportations is, and CBP does not collect data on the use of restraints, ICE's own policy limits the use of restraints to situations where other reasonable efforts to resolve a situation have failed. This research finds that the use of restraints on Haitian migrants and asylum seekers amounts to race and migrant-related torture under international human rights law.

In fact, all the Haitians interviewed for this report were expelled following the events in Del Rio in September, which at the time the Biden administration acknowledged as “horrible” because of their association with slavery. Despite this, the administration continued to allow ill-treatment of Haitians in immigration detention, and more specifically handcuffing and shackling. This suggests that the Biden administration knowingly and intentionally continued expulsions of Black Haitians in shackles and chains – generating further painful associations with slavery and severe psychological suffering, even after the events in Del Rio. Such treatment is in violation of international human rights law which requires states to protect people from torture based on their particular vulnerabilities, such as race, migratory status, gender, and nationality. Furthermore, according to the testimonies gathered, Haitians were often chained in front of their children, causing further humiliation, mental suffering - including for the children - and ill-treatment.

ADDRESSING ANTI-BLACK DISCRIMINATION FACED BY ASYLUM SEEKERS AND MIGRANTS IS RACIAL JUSTICE

During this research, many Black-led US-based NGOs working with Black asylum seekers and academics stressed to Amnesty International the importance of locating the issue of racial discrimination and xenophobia in immigration systems within the broader global contemporary movement for racial justice. This report aims to contribute to that effort.

The history of enslavement of people of African descent and contemporary systemic racism are a critical backdrop to this report. Drawing on testimony from advocates, lawyers, and academics, as well as historical material, this research finds strong indicators that systemic racial discrimination, and especially anti-Black racism, is embedded within the US immigration system. In fact, racial discrimination appears to be a driver of the torture and other ill treatment experienced by Haitians interviewed for this research. This research indicates a reasonable likelihood that many Haitians now, and in the past, have faced similarly unequal and discriminatory treatment.

According to international human rights law, to address systemic racial discrimination states must dismantle discriminatory structures and practices. Amnesty International calls on states to apply a race-conscious approach to this work, an approach that takes account of the fact that many such structures and practices emerged during colonialism and slavery, as the only way to fully comply with their international human rights obligations. In practice this means US authorities must take steps to reform all institutions, legislation, policies, and practices that may not be discriminatory on their face, but that in practice only reinforce harmful racial and nationality-based stereotypes.

The use of Title 42 is clearly an example of such a policy. Not only does it unlawfully by-pass laws which protect asylum seekers from being sent back to harm, but it also has the effect of enforcing harmful and racist stereotypes leading to human rights violations.

THE NEED FOR AN INVESTIGATION INTO ANTI-BLACK RACIAL DISCRIMINATION IN THE US IMMIGRATION SYSTEM

During this research, Amnesty International reviewed and summarized ample evidence that anti-Black racism is embedded within the US immigration system. Despite this, US authorities do not appear to proactively collect data on racial bias or discrimination, as required by international human rights standards.

The findings of this research point to the urgent need for an investigation into systemic anti-Black racism within the immigration system including a review of migration policies and their enforcement. Reiterating the calls made by more than 100 Congresspeople to the Biden administration in February 2022, Amnesty International calls on the US government to commit to reversing anti-Black policies, in line with Executive Order 13985 on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” and to conduct a full review of the disparate treatment of Black people seeking protection in the US immigration system.

1. METHODOLOGY

This report is part of a series of research outputs developed by Amnesty International since September 2021, when the organization began to monitor the movements of tens of thousands of Haitians who were travelling from Chile and Brazil to Mexico and the USA.

In October 2021, following a research trip to Tapachula in southern Mexico, Amnesty International and Haitian Bridge Alliance published a briefing, *Not Safe Anywhere: Haitians on the move need urgent international protection*, which details how states across the region were failing to shield Haitians from a range of human rights violations including detention and unlawful pushbacks, extortion, abuses including gender-based violence by armed groups, destitution, and anti-Black racism. It called on countries in Latin America and the Caribbean to provide Haitians with protection measures including asylum and other routes to legal residency and to take steps to address the anti-Black racial discrimination faced by Haitian migrants and asylum seekers.

Shortly afterwards, in December 2021, a coalition of NGOs – including Amnesty International, the Center for Gender & Refugee Studies, Haitian Bridge Alliance, the Global Justice Clinic at NYU School of Law, the Groupe d'Appui aux Rapatriés et Réfugiés (GARR), Refugees International, Rezo Fwotalye Jano Siksè and Service Jésuite aux Migrants Haiti – published a joint briefing, *Haiti: Stop US deportations and abuse against Haitians on the move: An urgent step towards creating just policies for Haitians*. It called on the US authorities to urgently stop collective expulsions to Haiti under Title 42.

This report built on this previous research. It aimed to understand the situation Haitians face in the USA when they seek safety there, and what happens after the US authorities expel them. Its starting point was an additional 24 in-depth interviews carried out by Amnesty International with people expelled by the US authorities to Haiti between December 2021 and March 2022. Due to significant safety concerns in Haiti, interviews were done mostly through voice calls in Haiti with the support of two Haitian Creole-speaking consultants. With their assistance, Amnesty International also interviewed representatives of different UN agencies working on Haiti and four human rights and humanitarian organizations responding in Haiti to the deportations, as well as multiple psychologists, three of whom provided psychological assistance to hundreds of people expelled by the USA. For their security, and/or at their request, these organizations and individuals are not named.

As part of this research, Amnesty International researchers also interviewed more than 10 US-based NGOs, lawyers, and academics. This included US-based human rights organizations and coalitions who have led advocacy for racial justice in the context of the US immigration system for years, including African Communities Together, the Black Alliance for Just Immigration, the UndocuBlack Network, Haitian Bridge Alliance, and the Leadership Conference on Civil and Human Rights.

The organization also met with a series of academics and lawyers who were able to provide a longer-term perspective and context to the current wave of expulsions by the US government. Additionally, researchers reviewed articles and books by leading academics, read past and current legal documents related to the treatment of Haitian migrants and asylum seekers in the USA, and reviewed Amnesty International's historic work on this issue.

Amnesty International formally requested to interview a series of US government agencies as part of its research, including DHS, ICE, CBP, and CRCL. While all authorities besides the Office of the Immigration Detention Ombudsman declined requests to meet virtually with Amnesty International, they asked the organization to provide written questions, to which they provided responses in writing. These were taken into account in the development of this research, as was the meeting with the Office of the Immigration Detention Ombudsman.

Amnesty International would like to offer special thanks to those expelled to Haiti who spoke to the organization as part of this research. Due to harsh conditions to which Haitians are returned, at the time of the interviews many were in precarious situations yet took the time to entrust their testimony to the organization. Amnesty International would also like to thank the two consultants who worked on this report for their commitment to the work despite security concerns, the ongoing human rights and humanitarian crisis facing Haiti, and the related communication challenges that regular internet and electricity interruptions generate.

Amnesty International would also like to acknowledge and value the important work of US-based Black and Haitian-led organizations that have advocated for some of the issues raised in this report for many years and whose work this report builds on.

Various organizations and individuals spoke to Amnesty International on the condition of anonymity and pseudonyms have been used to refer to some of those interviewed in this report, which is indicated using quotation marks (") around their name to indicate it is a pseudonym.

2. INTRODUCTION

This report is intentionally published on the one-year anniversary of the events that took place in Del Rio, Texas, during which Border Patrol officers on horseback charged into crowds of Haitian asylum seekers, violently dispersing them, taunting them, and forcing them away from safety.¹

Vice President Harris said of the incident, “As we all know it evoked images of some of the worst moments of our history where that kind of behavior has been used against the indigenous people of our country, has been used against African Americans during times of slavery.”²

In the aftermath, the Inter-American Commission on Human Rights and the United Nations Special Rapporteur on the human rights of migrants condemned the excessive use of force and subsequent deportations.³

In September 2021, the US Special Envoy to Haiti resigned over the Biden administration’s “inhumane” mass deportations of Haitians.⁴ In October, on resigning, a top legal advisor to the US Department of State condemned the collective expulsions of Haitian asylum seekers under Title 42 as “illegal.”⁵

A few months later, NGO Haitian Bridge Alliance sued the Biden government for its failure to respond adequately to Haitians who arrived at the US-Mexico border, a case which is ongoing.⁶

Following these events, the Biden administration committed to an investigation. However, the report of the investigation published by CBP in July 2022, despite recognizing the “unnecessary use of force against migrants who were attempting to re-enter the United States with food”,⁷ concluded none of the Haitians were intentionally struck by Border Patrol agents with their reins, but the investigation failed to interview any of the Haitians present, significantly undermining its credibility. In response to questions about investigations into the events in Del Rio, CRCL told Amnesty International it had also completed an investigation into: “1) allegations of disparate treatment of Black migrants; 2) allegations of discrimination against Haitian migrants; 3) CBP Horse Patrol Program policies and procedures; 4) conditions in the overflow area under the Del Río-Ciudad Acuña International Bridge.” According to information received from CRCL in June 2022, it was “drafting a memo with its findings and recommendations.”⁸

These shameful events in Del Rio took place as global conversations around race and systemic discrimination continued in the wake of the unlawful killing and torture of George Floyd in May 2020.⁹

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8. Response from the Office for Civil Rights and Civil Liberties (CRCL) to written questions submitted by Amnesty International, received 27 June 2022, on file with Amnesty International.

9. Amnesty International, “USA: Amnesty International delivers one million signatures calling for justice for George Floyd”, 6 October 2020, [amnesty.org/en/latest/news/2020/10/usa-amnesty-international-delivers-one-million-signatures-calling-for-justice-for-george-floyd/](https://www.amnesty.org/en/latest/news/2020/10/usa-amnesty-international-delivers-one-million-signatures-calling-for-justice-for-george-floyd/); Deborah Douglas, Angelique Chrisafis and Aamna Mohdin, “One year on, how George Floyd’s murder has changed the world”, 22 May 2021, [theguardian.com/us-news/2021/may/22/george-floyd-murder-change-across-world-blm](https://www.theguardian.com/us-news/2021/may/22/george-floyd-murder-change-across-world-blm)

Months prior, in January 2021, the Biden administration had also published Executive Order 13985, on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which among other things requires the US government to advance equality for “historically underserved” and “marginalized” groups, including Black people.¹⁰

Amnesty International has a body of research documenting systemic racial discrimination in the context of US policing dating back to at least the 1990s.¹¹ Furthermore, in 2020 the organization found that police forces across the USA had committed widespread human rights violations in response to largely peaceful assemblies protesting precisely this kind of systemic racism and police violence.¹² It has also documented for many decades racial discrimination in the use of the death penalty in the USA.¹³

Amnesty International also has a body of work documenting historical detention, exclusion, and expulsion of Haitians from the USA.¹⁴ In fact, during this research, many experts on Haitian migration to the USA agreed that there are clear parallels between the current wave of expulsions under Title 42 and the ways Haitian asylum seekers living with HIV were placed in quarantines in Guantanamo Bay in the 1990s. Many interviewed for this research argue the USA has historically used public health justifications, rooted in anti-Black and xenophobic sentiment to justify expulsions of Haitians.

In her academic work, E. Tendayi Achiume, Professor of Law at the University of California, Los Angeles (UCLA) and former Faculty Director of the Law Promise Institute for Human Rights, refers to current day border controls as “racial technology” – part of a system of “facially race neutral laws and policies” that she argues are a modern-day extension of racial discrimination, rooted in colonial approaches to migration. Achiume further argues that race itself should be seen as a border, where people racialized as white experience privileges in international migration, and people racialized as Black experience exclusion or inclusion on subordinate terms. In her work she invites human rights actors to interrogate and document the issue of racial discrimination in immigration more closely.¹⁵

In an interview with Amnesty International, she said: “The way that people who are moving experience borders, some of them are able to articulate in very concrete ways the ways that race has shaped the way they are moving. Others don’t even name the experiences they are having as ones that are impacted by race. But when you think about the structure that is doing the work to determine who gets put in one line and who gets put in another, race and racialization are definitely part of the problem.”

In this same way, during this research, many US-based NGOs working with Black asylum seekers stressed to Amnesty International the importance of locating the issue of racial discrimination and xenophobia in immigration systems within the broader global modern movement for racial justice.

This report aims precisely to contribute to that effort. The research, grounded in interviews with 24 Haitians expelled by US authorities, and drawing on academic experts, lawyers, historical evidence, as well as US government statements, highlights the history of slavery and systemic racial discrimination that both the USA and Haiti share, routine mass detention, expulsion, and deterrence of Haitian asylum seekers by successive US administrations, and documents race and migration-related torture of Haitians in current US immigration detention.

10. Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 20 January 2021, [whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/)

11. See for example: Amnesty International, *United States of America: Torture, ill-treatment and excessive force by police in Los Angeles, California* (AMR 51/076/1992), 31 May 1992, [amnesty.org/en/documents/amr51/076/1992/en/](https://www.amnesty.org/en/documents/amr51/076/1992/en/)

12. Amnesty International, *USA: The world is watching: Mass violations by U.S. police of Black Lives Matter protesters’ rights* (AMR 51/2807/2020), 4 August 2020, [amnesty.org/en/documents/amr51/2807/2020/en/](https://www.amnesty.org/en/documents/amr51/2807/2020/en/)

13. See for example: Amnesty International, *United States of America: Developments on the death penalty during 1993* (AMR 51/002/1994), 1 March 1994, [amnesty.org/en/documents/amr51/002/1994/en/](https://www.amnesty.org/en/documents/amr51/002/1994/en/), Amnesty International, *United States of America: The death penalty in Georgia: racist, arbitrary and unfair* (AMR 51/025/1996), 31 May 1996, [amnesty.org/en/documents/amr51/025/1996/en/](https://www.amnesty.org/en/documents/amr51/025/1996/en/)

14. Amnesty International, *USA: Haitian asylum seekers* (Index: AMR 51/71/91), 20 December 1991, [amnesty.org/es/wp-content/uploads/2021/06/amr510711991en.pdf](https://www.amnesty.org/es/wp-content/uploads/2021/06/amr510711991en.pdf), Amnesty International, *United States of America: Failure to protect Haitian refugees*, (Index: AMR 51/31/93), April 1993, [amnesty.org/ar/documents/amr51/031/1993/en/](https://www.amnesty.org/ar/documents/amr51/031/1993/en/), Amnesty International, *The price of rejection - Human rights consequences for rejected Haitian asylum-seekers* (AI Index: AMR 51/31/94), May 1994, [amnesty.org/en/documents/amr51/031/1994/en/](https://www.amnesty.org/en/documents/amr51/031/1994/en/), Amnesty International, “Haitian repatriation process questioned by Amnesty International delegation on return from Guantánamo”, 28 September 1994, [amnesty.org/es/wp-content/uploads/2021/06/nws112251994en.pdf](https://www.amnesty.org/es/wp-content/uploads/2021/06/nws112251994en.pdf), Amnesty International, *United States of America “I’m not an inmate. Why should I be treated as one?”: Women asylum-seekers punished for state’s failure to protect them* (AI Index: AMR 51/028/01), March 2001, [amnesty.org/en/documents/AMR51/028/2001/en/](https://www.amnesty.org/en/documents/AMR51/028/2001/en/), Amnesty International, “USA: Stop discriminating against Haitian asylum-seekers”, 29 April 2002, [amnesty.org/es/wp-content/uploads/2021/06/amr510662002en.pdf](https://www.amnesty.org/es/wp-content/uploads/2021/06/amr510662002en.pdf)

15. Tendayi Achiume, “Racial Borders,” 110 Georgetown Law Journal 445 (2022), UCLA School of Law, Public Law Research Paper No. 21-33, May 2022, papers.ssrn.com/sol3/papers.cfm?abstract_id=3962563

3. SYSTEMIC RACISM AGAINST PEOPLE OF AFRICAN DESCENT

“Systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.”

Report of the United Nations High Commissioner for Human Rights, Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, 1 June 2021, UN Doc: A/HRC/47/53, para. 9

3.1 THE LEGACY OF SLAVERY IN THE USA AND HAITI

To analyse contemporary forms of systemic racism, international human rights law recognizes that it is critical to look at historical grounds of discrimination.¹⁶ As such, the history of enslavement of people of African descent and contemporary forms of systemic racism are a critical backdrop to this report.

For the purposes of this research, Amnesty International will use the definition of systemic racism adopted by the United Nations High Commissioner for Human Rights (OHCHR). According to the OHCHR, “systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.”¹⁷

People of African descent in Haiti and the USA share a history of slavery. Between the 16th and 19th century, it is estimated that Americans and Europeans enslaved approximately 28 million Africans.¹⁸ Most were brought to the Americas in ships and treated as cargo. Many died during the journey. They endured the Atlantic crossing often shackled and chained in cramped spaces.¹⁹

Slavery is recognized in international law as a crime against humanity.²⁰ Imagery from the period of the transatlantic slave trade details massive human rights abuses, including systematic torture and other ill-treatment. Chains and shackles became synonymous with the enslavement of people of African descent.

Increasingly research in the field of psychology suggests that trauma such as that generated by slavery, or the Holocaust, does not end with its direct survivors but can be passed to subsequent generations creating multi-generational trauma. Such research demonstrates that historic harms continue to have modern-day impacts.²¹

Despite the brutal violence used to implement slavery, people of African descent historically resisted slavery in multiple ways. Haiti was famously the world’s first Black-led republic and the first independent Caribbean state.²² However, in exchange for recognition of its sovereignty, France forced Haiti, and descendants of enslaved people, to pay huge sums of debt over many generations. According to some calculations, this debt is equivalent to 560 million US dollars in today’s money, money which had it been invested in the country’s growth, some estimate amounts to a loss of 115 billion US dollars to Haiti.²³

16. UN General Assembly, *Contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 22 October 2021, UN Doc. A/76/434, para. 3 “Historically, the racial categorization of human beings was used during European colonialism to distribute rights and resources among peoples (A/HRC/41/54, paras. 22–26). The concept of race was used to naturalize inequality and monumental injustice on biological grounds. At the Conference, States Members of the United Nations reiterated their rejection of “any doctrine of racial superiority”, along with theories that “attempt to determine the existence of so-called distinct human races”.⁵ At the same time, throughout the Conference outcome document, the Durban Declaration and Programme of Action, Member States also sought to confront the reality that, as social constructions, race, ethnicity, national origin and other related categories continued to determine access to and enjoyment of fundamental rights. The blatantly disproportionate structural impacts of the COVID-19 pandemic on people of different racial, ethnic and national origins show the persistence of these and other categories as enforcing hierarchies among human beings and across borders.”

17. Report of the United Nations High Commissioner for Human Rights, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, 1 June 2021, UN Doc: A/HRC/47/53, para. 9.

18. UNESCO, *Healing the wounds of slave trade and slavery*, 21 January 2021, unesco.org/en/articles/launch-report-healing-wounds-trans-atlantic-slave-trade-and-slavery

19. UNESCO, *Healing the wounds of slave trade and slavery* (previously cited), Background.

20. Rome Statute of the International Criminal Court, Article 7 (c).

21. UNESCO, *Healing the wounds of slave trade and slavery* (previously cited).

22. Haitian Independence 1804–1805, library.brown.edu/haitihistory/11.html (accessed 26 June 2022).

23. New York Times, “How (and why) we calculated the value of Haiti’s payments to France”, 25 May 2022, nytimes.com/2022/05/25/reader-center/haiti-france-debt-payments.html; New York Times, “The ransom: a look under the hood”, 20 May 2022, nytimes.com/2022/05/20/world/americas/haiti-bibliography.html?referringSource=articleShare.

3.2 ANTI-BLACK RACISM IN THE USA

“Systemic racism persists, in large part, due to misconceptions that the abolition of slavery, the end of the transatlantic trade in enslaved Africans and colonialism, and measures taken by States to date, have removed the racially discriminatory structures built by those practices and created equal societies.”

Report of the United Nations High Commissioner for Human Rights, Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, 1 June 2021, UN Doc: A/HRC/47/53, Para: 10

A vast number of studies provide indicators of the way systemic racism manifests today in the USA in all aspects of life, leading to human rights violations for people and communities subjected to systemic racism.

According to the UN Special Rapporteur on extreme poverty and human rights in a 2017 report, “The United States remains a chronically segregated society. Blacks are 2.5 times more likely than Whites to be living in poverty, their infant mortality rate is 2.3 times that of Whites, their unemployment rate is more than double that for Whites, they typically earn only 82.5 cents for every dollar earned by a White counterpart, their household earnings are on average well under two thirds of those of their White equivalents, and their incarceration rates are 6.4 times higher than those of Whites. These shameful statistics can only be explained by long-standing structural discrimination on the basis of race, reflecting the enduring legacy of slavery.”²⁴

Amnesty International also has a body of research documenting systemic racial discrimination in the USA in a wide range of areas dating back many decades. Black people in the USA are more likely to face human rights violations in the context of policing,²⁵ are disproportionately impacted by the death penalty,²⁶ and in some neighbourhoods live with more CCTV surveillance.²⁷ Black women are also disproportionately targeted for violence and abuse online, and according to one study 84% more likely than white women to be mentioned in abusive tweets.²⁸

Other studies have confirmed just how embedded racial discrimination is in everyday life. According to a nationally representative survey conducted by National Public Radio, the Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health in 2017, Black Americans were four times more likely than whites to report racial discrimination related to equal pay or being considered for promotions.²⁹ Furthermore, half of Black Americans reported personally experiencing discrimination when interacting with police and were five times more likely than white Americans to report this experience.

Black Americans are also significantly more likely than any other groups to be arrested, convicted, and imprisoned. According to a study by NYU and the Black Alliance for Just Immigration, Black people are arrested 2.5 times the rate of white people, and more likely to be sentenced to prison.³⁰

24. UN Special Rapporteur on extreme poverty and human rights, *Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America*, 4 May 2018, UN Doc. A/HRC/38/33/Add.1, para. 54.

25. See for example: Amnesty International, *United States of America: Torture, ill-treatment and excessive force by police in Los Angeles, California* (previously cited), International, *USA: The world is watching: Mass violations by U.S. police of Black Lives Matter protesters' rights* (previously cited).

26. See for example: Amnesty International, *United States of America: Developments on the death penalty during 1993* (AMR 51/002/1994), 1 March 1994, [amnesty.org/en/documents/amr51/002/1994/en/](https://www.amnesty.org/en/documents/amr51/002/1994/en/), Amnesty International, *United States of America: The death penalty in Georgia: racist, arbitrary and unfair* (AMR 51/025/1996), 31 May 1996, [amnesty.org/en/documents/amr51/025/1996/en/](https://www.amnesty.org/en/documents/amr51/025/1996/en/), Amnesty International, *United States of America: Death by discrimination – the continuing role of race in capital cases* (AMR 51/046/2003), 23 April 2003, [amnesty.org/en/documents/amr51/046/2003/en/](https://www.amnesty.org/en/documents/amr51/046/2003/en/)

27. Amnesty International, “USA: Facial recognition technology reinforcing racist stop-and-frisk policing in New York”, 15 February 2022, [amnesty.org/en/latest/news/2022/02/usa-facial-recognition-technology-reinforcing-racist-stop-and-frisk-policing-in-new-york-new-research/](https://www.amnesty.org/en/latest/news/2022/02/usa-facial-recognition-technology-reinforcing-racist-stop-and-frisk-policing-in-new-york-new-research/)

28. Amnesty International, “Troll Patrol Findings: Using Crowdsourcing, Data Science & Machine Learning to Measure Violence and Abuse against Women on Twitter”, 2018, decoders.amnesty.org/projects/troll-patrol/findings#what-did-we-find-container

29. National Public Radio, the Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health, *Discrimination in America: Final survey*, January 2018, cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2018/01/NPR-RWJF-HSPH-Discrimination-Final-Summary.pdf

30. Morgan-Trostle, M., Zheng, K. & Lipscombe, C., *The State of Black Immigrants. Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic*, 2016, [oir.sccgov.org/sites/g/files/exjcpb1026/files/sobi-deprt-blk-immig-crim-sys.pdf](https://oirc.sccgov.org/sites/g/files/exjcpb1026/files/sobi-deprt-blk-immig-crim-sys.pdf)

International human rights law requires states to eliminate all forms of racial discrimination, including in immigration systems. According to the OHCHR, eliminating systemic racism and intersectional discrimination includes “reforming institutions, legislation, policies and practices that may not be discriminatory in purpose but that are discriminatory in outcome and effect.”³¹

THE PROHIBITION ON RACIAL DISCRIMINATION IN MIGRATION

The principles of equality and non-discrimination run throughout international human rights standards and law and aim to achieve formal equality in law and in practice.³²

However, increasingly there is recognition in international human rights law and scholarship that immigration laws, policies and practices are far from race-neutral, even if they appear to be. In practice, in many parts of the world, non-white migrants are more vulnerable to discrimination than white migrants, regardless of nationality.³³

As highlighted by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in her 2018 report, all humans should be entitled to human rights and dignity. The reality, however, is that states through a series of technical requirements – such as passports, proof of immigration status or citizenship – precondition the full enjoyment of human rights.³⁴ According to the Special Rapporteur, these policies and laws which confer access to citizenship, nationality and immigration status are often facially race-neutral, but in practice result in racialized exclusion.³⁵

Racial discrimination is explicitly prohibited in the context of deportations. The Committee on the Elimination of Racial Discrimination has indicated that states must ensure that: (1) domestic legislation concerning deportations does not discriminate in purpose or in practice among non-citizens based on race, colour or nationality, and that non-citizens have equal access to effective remedies, including the ability to challenge expulsion orders, and equal access to effective remedies (2) non-citizens are not subject to collective expulsions without taking into account the personal circumstances of each individual, (3) non-citizens are not returned to a country where they risk torture or ill-treatment and (4) that non-citizens, especially long-term residents, are not expelled if it would interfere with their family life.³⁶

31. International Convention on the Elimination of All Forms of Racial Discrimination, Human Rights Council, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, UN Doc. A/HRC/47/53, 1 June 2021, para. 17, [ohchr.org/en/documents/reports/ahrc4753-promotion-and-protection-human-rights-and-fundamental-freedoms-africans](https://www.ohchr.org/en/documents/reports/ahrc4753-promotion-and-protection-human-rights-and-fundamental-freedoms-africans)

32. Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 25 April 2018, UN Doc. A/HRC/38/52, para.18.

33. Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (previously cited) para. 30.

34. Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (previously cited) para. 7 states: “Under international human rights law and principles, all human beings are entitled to fundamental human rights on account of their inherent dignity. The preamble to the Universal Declaration of Human Rights begins with the proclamation that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. In reality, however, for all human beings, their capacity to enjoy full human rights depends on their citizenship, nationality or immigration status. Everywhere, States require passports, identification cards and other forms of proof of citizenship in order for residents to enjoy access to health care, education, financial services and to maintain formal employment. In short, citizenship, nationality and immigration status remain preconditions for full enjoyment of human rights for people everywhere.” Also see: Tendayi Achiume, “Racial Borders”, 110 Georgetown Law Journal 445 (2022), UCLA School of Law, Public Law Research Paper No. 21-33, May 2022, papers.ssrn.com/sol3/papers.cfm?abstract_id=3962563

35. Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (previously cited) para.14. “At the same time, the Special Rapporteur aims in the present report to highlight and condemn facially race-neutral policies or rhetoric that nonetheless result in racialized exclusion. This is because States regularly engage in racial discrimination in access to citizenship, nationality or immigration status through policies and rhetoric that make no reference to race, ethnicity or national origin, and that are wrongly presumed to apply equally to all.”

36. UN Committee on the Elimination of Racial Discrimination, General recommendation No. 30 on discrimination against non-citizens, Sixty-fifth session (2005), para. 25-28: “25. Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies; 26. Ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account; 27. Ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment; 28. Avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life.”

4. MASS EXPULSION OF HAITIANS IN VIOLATION OF INTERNATIONAL LAW



THE CASE OF “PHILLIPE”

“Philippe”³⁷ and his wife, “Edeline”, both in their 30s, told Amnesty International that they were expelled by US authorities with their 9-day-old daughter, “Sarita” after crossing the US-Mexico border. “Sarita” had just been born in Mexico, after a 4-month journey from Brazil.

According to his testimony, “Philippe” left Haiti for Brazil in 2014, after his 30-year-old cousin was killed by local gangs and was joined by his wife two years later. By working first as a delivery person and then in elderly care, he reported that he was struggling to financially support his family in Brazil, as well as his mother and three siblings still living in Haiti. In 2021, “Edeline” was 6 months pregnant when the couple decided to leave Brazil.

“Philippe” told Amnesty International that their journey to the south of Mexico took about a month and almost all of their savings. It also left them with terrible memories, including of the eight days they had to sleep in a jungle in Colombia with non-stop rain, while watching other migrants and asylum seekers die or drown in the river.

In December, they were in a bus heading to the north of Mexico, when “Edeline” started to feel labour pains. She gave birth at a local hospital and was released 24 hours later. That evening they left the hospital and slept in a hotel, resuming the journey in the morning with their new-born.

“I did not want to enter the USA... We were looking for a house to rent so that we could start working. We could see the border, but it was not our intention of crossing. We came across two police officers, they pulled their guns on us, so I showed them our papers. They continued to frisk us and saw our money in our pockets, and they took all our money. At that point, we had no money, so we decided to cross the border.”

Soon after crossing the border, “Philippe” told Amnesty International that they were apprehended and put in a detention centre in Arizona. Almost all their belongings were taken from them and thrown away, including all their clothes.

“They separated me from my wife and baby after photocopying passports. I was in a room with more than 150-200 men – Haitians, Venezuelans, Brazilians, Hondurans, Guatemalans. There were more Haitians. They treated us differently. Others they would talk to them, give them access to the phone.”

“There was very little space to sleep. They gave us a little mat for one person and an aluminium looking covering that was not enough. It was hard to sleep, there was very little space.”

“My wife told me she had cried because her 3 day old baby was cold, and they had thrown away all of our belongings. On the third day, I asked to see the baby. I really wanted to see her. They did not let me.”

Three days later, “Philippe” told Amnesty International that they were put on a bus and then on a plane to be transferred to a detention centre in Texas where they were kept an additional three days before being expelled to Haiti.

“They put handcuffs on us... They kept one of my wife’s hands free so she could hold the baby. On the bus, you didn’t know where you were going. There were no windows, and we could not see anything... It was night-time when we arrived... They separated us again. I didn’t get to see my baby until the day we were deported.”

37. Interviews by voice call with “Philippe”, 10 January 2022 and 28 March 2022.



THE CASE OF “PHILLIPE”

“There was no access to healthcare... If people were sick with fever, a cold – there was no treatment... This was the worst experience of my life. Imagine your first child, you don’t know if they are alive or dead. She was born and 3 days later, you can’t see her, no healthcare, don’t know if she is alive or dead.”

“The only time any official would speak to us was when they were deporting us... We were thirsty for freedom... There was a female officer who asked how many days old our baby was, and we told her ‘seven days old.’ She went to her boss and told him, and his response was ‘I don’t care’... We were all tense because we didn’t know what was happening... They shackled us again... They told me we were going to Florida for a judge to hear us.”

“There were a lot of police waiting for us on the airplane... If you had to use the bathroom, they would loosen one hand and then there would be one standing on guard by the toilet.”

“There was a woman by herself with three kids. She was crying and fell to the ground. They began to hit her. They put her on something like an ambulance dolly and carried her to the plane. They then chained her to her seat.”

“About four minutes before arrival, they took the cuffs off our feet. Before getting on the bus, the police on the plane would take off the handcuffs and chain around our waist.”

“From the plane, we could see out. It was then I knew we were being deported. I know my country. When we realized what was happening, a lot of people started to cry.”

Three months after being sent back to Haiti, “Philippe” reported that he has not been able to find work, and he has not been able to support his family.

“It’s like life is over for me and my mother. This affects seven to eight people for every person that is returned. My wife has no milk to feed the baby. We have to purchase milk. We have no life, no work.”

INTERNATIONAL PROTECTION AND THE RIGHT TO NON-REFOULEMENT

Under domestic³⁸ and international law, the USA is obligated to provide access to individualized and fair assessments of all requests for protection by asylum seekers seeking safety at the border. US obligations under both domestic and international law³⁹ also prohibit the return of individuals to countries where they could face persecution⁴⁰ and/or torture.⁴¹ This principle, known as *non-refoulement*, requires border and immigration authorities to receive and refer asylum seekers for a credible fear interview with an asylum officer, to conduct individual assessments of any risks of persecution or torture that they may face upon return.

The prohibition of *refoulement* not only requires states to refrain from returning asylum seekers to their country of origin, but to any other country where there is a risk to their life or liberty. In an authoritative advisory opinion on state obligations under refugee law, the UN Refugee Agency (UNHCR) held that: “States will be required to grant individuals seeking international protection access to the territory and to fair and efficient asylum procedures.”⁴²

International human rights law further requires states to ensure that delays or deficiencies in asylum processes do not deter asylum seekers from pursuing their claims. In an explanation of *non-refoulement* obligations under the Convention against Torture (CAT), the UN Committee Against Torture stressed that: “States parties should not adopt dissuasive measures or policies such as... refusing to process claims for asylum or prolonging them unduly.”⁴³

In the same guidance document, the Committee also stated that States should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of *non-refoulement*, including (1) individual examination of each case; (2) ensuring that each person is fully informed of the reasons why they might be deported and of their rights to appeal such decision; (3) providing access of the person concerned to a lawyer, to free legal aid when necessary, and access to representatives of relevant international organizations of protection; (4) the development of an administrative or judicial procedure concerning the person in question in a language that he/she understands, or with the assistance of interpreters and translators; (5) the right of appeal by the person concerned against a deportation order to an independent administrative and/or judicial body within a reasonable period of time; (6) an effective training of all officials who deal with persons under procedures of deportation in order to avoid decisions contrary to the principle of *non-refoulement*.⁴⁴

38. The US Code (a consolidation and codification of the general and permanent laws of the United States, prepared by the Office of the Law Revision Counsel of the United States House of Representatives) safeguards the right to seek asylum in the United States “whether or not at a designated port of arrival”. See 8 U.S.C. § 1158 and §1225.

39. Amnesty International, *Americas: Amnesty International Submission to the United Nations (UN) Special Rapporteur on the Human Rights of Migrants* (AMR 01/3658/2021), [amnesty.org/en/documents/amr01/3658/2021/en/](https://www.amnesty.org/en/documents/amr01/3658/2021/en/), Human Rights First, Haitian Bridge Alliance, et al., “Doubling Down on Deterrence: Access to Asylum under Biden,” September 2021, [womensrefugeecommission.org/wp-content/uploads/2021/09/Doubling-Down-on-Deterrence-Access-to-Asylum-Under-Biden-FACTSHEET-1-1.pdf](https://www.womensrefugeecommission.org/wp-content/uploads/2021/09/Doubling-Down-on-Deterrence-Access-to-Asylum-Under-Biden-FACTSHEET-1-1.pdf)

40. The principle of *non-refoulement* is grounded in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The 1951 Refugee Convention defines the prohibition on *refoulement* in Article 33(1), which states that no “Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group, or political opinion.” The 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.

41. The principle of *non-refoulement* has also been reinforced by the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), with no exceptions whatsoever. Article 3(1) of CAT states that “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Article 3 (2) states that “For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

42. UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, at para. 7, [unhcr.org/4d9486929.pdf](https://www.unhcr.org/4d9486929.pdf)

43. Committee Against Torture (CAT), General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22; UN Doc. CAT/C/GC/4, para.14.

44. Committee Against Torture (CAT), General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22; UN Doc. CAT/C/GC/4, para.18.

4.1 'WE ARE SEEKING REFUGE': DETAINED, SUMMARILY EXPELLED AND BLOCKED FROM INTERNATIONAL PROTECTION

TITLE 42 ORDER: A BAN ON ASYLUM UNDER THE GUISE OF PUBLIC HEALTH

In previous decades the US authorities detained and expelled Haitian asylum seekers ostensibly on public health grounds. In the 1990s US authorities detained Haitian asylum seekers living with HIV in camps in Guantanamo Bay.

Title 42 continues this tradition of exclusion of Haitian asylum seekers from the USA on public health grounds.

Originally issued in March 2020, at the start of the Covid-19 pandemic, the "Title 42 order" is a public health policy issued by the US Centers for Disease Control and Prevention (CDC) under Title 42 (a public health code).⁴⁵ Replaced by similar orders in October 2020 and August 2021, the US has made significant use of this policy to immediately expel migrants and asylum seekers crossing US borders during the Covid-19 pandemic to their home country or most recent transit country, without granting them access to the US asylum system. Despite a decision in April 2022 by CDC to terminate the order,⁴⁶ the policy has been kept in place by a court decision.⁴⁷

Migrants and asylum seekers expelled from the USA under Title 42 are returned to their home country or most recent transit country. Before Title 42, all non-nationals could seek asylum when crossing the US borders citing a credible fear of persecution and/or torture under another section of the US Code known as Title 8. Since Title 42 entered into force, US Border Patrol officers can turn away people attempting to seek asylum in the USA without any assessment of their fear of returning to the country they are being expelled to, in violation of US refugee law and US binding human rights obligations not to return anyone to persecution or torture. In November 2020, the UNHCR warned that "measures restricting access to asylum must not be allowed to become entrenched under the guise of public health."⁴⁸ Despite this, under Title 42, the USA has conducted more than two million automatic and summary expulsions at its borders since March 2020.⁴⁹ As previously documented by Amnesty International,⁵⁰ through its application of this policy, the USA has severely restricted access to asylum at the border, expelling people seeking safety to Mexico or their home countries, in violation of the USA's national and international legal obligations.⁵¹

45. US Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), "Order suspending the introduction of certain persons from countries where a quarantinable communicable disease exists", 20 March 2020, [cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf)

46. On April 2022, the CDC announced that the Title 42 order would be terminated on 23 May 2022. See CDC, "CDC Public Health Determination and Termination of Title 42 Order", 1 April 2022, [cdc.gov/media/releases/2022/s0401-title-42.html#:~:text=In%20consultation%20with%20the%20Department,resumption%20of%20regular%20migration%20under](https://www.cdc.gov/media/releases/2022/s0401-title-42.html#:~:text=In%20consultation%20with%20the%20Department,resumption%20of%20regular%20migration%20under)

47. After a suit filed by Republicans in Louisiana, a judge ruled on 20 May 2022 that the Title 42 order should remain in place until the CDC goes through a public notice-and-comment process before issuing another ruling to terminate it. See United States District Court Western District of Louisiana, Lafayette Division, State of Louisiana et al vs. Centers for Disease Control and Prevention, et al, Memorandum Ruling, 20 May 2022, [storage.courtlistener.com/recap/gov.uscourts.lawd.188754/gov.uscourts.lawd.188754.90.0_1.pdf](https://www.courtlistener.com/recap/gov.uscourts.lawd.188754/gov.uscourts.lawd.188754.90.0_1.pdf).

48. UNHCR, "Inclusion key to protecting refugees and their hosts amid COVID-19 pandemic", 04 November 2020, [unhcr.org/news/press/2020/11/5fa2f16b4/inclusion-key-protecting-refugees-hosts-amid-covid-19-pandemic.html](https://www.unhcr.org/news/press/2020/11/5fa2f16b4/inclusion-key-protecting-refugees-hosts-amid-covid-19-pandemic.html)

49. US Customs and Border Protection, "Nationwide encounters", [cbp.gov/newsroom/stats/nationwide-encounters](https://www.cbp.gov/newsroom/stats/nationwide-encounters) (accessed on 29 May 2022). Most of these expulsions correspond to multiple attempts of crossing by the same people. According to the American Immigration Council from May 2022, "1 in 3 apprehensions since Title 42 expulsions began have been of a person on at least their second attempt to cross the border": American Immigration Council, "A guide to Title 42 expulsions at the border", May 2022, [americanimmigrationcouncil.org/sites/default/files/research/title_42_expulsions_at_the_border_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/title_42_expulsions_at_the_border_0.pdf)

50. Amnesty International, *USA: Pushed into Harm's Way: forced returns of unaccompanied migrant children to danger by the USA and Mexico* (AMR 51/4200/2021), 11 June 2021, [amnesty.org/en/documents/amr51/4200/2021/en/](https://www.amnesty.org/en/documents/amr51/4200/2021/en/); Amnesty International et al, "Haiti: Stop US deportations and abuse against Haitians on the move: An urgent step towards creating just policies for Haitians" (AMR 36/5101/2021), 15 December 2021, [amnesty.org/en/documents/amr36/5101/2021/en/](https://www.amnesty.org/en/documents/amr36/5101/2021/en/); Amnesty International and Haitian Bridge Alliance, *Not Safe Anywhere: Haitians on the Move Need Urgent International Protection* (AMR 36/4920/2021), 28 October 2021, [amnesty.org/en/documents/amr36/4920/2021/en/](https://www.amnesty.org/en/documents/amr36/4920/2021/en/)

51. Amnesty International USA, et al., joint publication, *Explainer on U.S. Deportations and Expulsions During the COVID-19 Pandemic* (21 May 2020); [amnestyusa.org/wp-content/uploads/2020/05/Explainer-on-Deportations-and-Expulsions-During-the-COVID-19-Pandemic-1.pdf](https://www.amnestyusa.org/wp-content/uploads/2020/05/Explainer-on-Deportations-and-Expulsions-During-the-COVID-19-Pandemic-1.pdf)

Title 42 has been widely condemned by the UN,⁵² health experts,⁵³ US officials,⁵⁴ civil society organizations,⁵⁵ and Amnesty International.⁵⁶ In September 2021, “shocked” by the deplorable conditions in which Haitians were forced to gather under the Del Rio bridge, the UN High Commissioner for Refugees stated that “the summary, mass expulsions of individuals currently under way under the Title 42 authority, without screening for protection needs, is inconsistent with international norms and may constitute refoulement,” and urged the US government to “immediately and fully to lift its Title 42 restrictions.”⁵⁷

The US government’s own senior officials have also strongly critiqued expulsions under Title 42. In his resignation letter, former US State Department Legal Adviser, Harold Koh, concluded that Title 42 policies “violate [US] legal obligations not to expel or return (“refouler”) individuals” - “especially migrants fleeing from Haiti.”⁵⁸ Similarly, in a leaked document from 31 August 2021, the Department of Homeland Security’s Office for Civil Rights and Civil Liberties (CRCL) advised the US Immigration and Customs Enforcement (ICE) and the US Customs and Border Protection (CBP) that Haitian deportees were at risk of danger “due to perceived political opinion and/or individual demographic characteristics (e.g. a high risk of *refoulement*).”⁵⁹

The implementation of Title 42 was initially framed by CDC as a measure needed to avoid holding migrants and asylum seekers in crowded immigration detention centres, where they would be at risk of Covid-19.⁶⁰ It was later reported that CDC officials had initially refused to issue the order citing that there was no public health basis for it, but later reportedly changed position due to political pressure directly from then-Vice President Pence.⁶¹ However, since its implementation Amnesty International has documented that collective expulsions carried out under Title 42 only contribute to endangering migrants’ and asylum seekers’ health by denying them medical assistance at the border and by detaining thousands of people in congregate settings, before deporting them in crowded planes without providing Covid-19 tests.⁶²

Title 42 has also had a drastic impact on the lives of children seeking refuge. Before the Biden administration amended the Title 42 order to end the expulsion of unaccompanied children,⁶³ nearly 16,000 thousand unaccompanied children were expelled under Title 42.⁶⁴ After the amendment, and as a result of this exemption policy, families were faced with the impossible choice: either stay together as a family and be subjected to Title 42 or separate and allow children to access safety as an unaccompanied child. This exemption policy resulted in de-facto family separation.

52. UN experts, “USA: UN experts condemn collective expulsion of Haitian migrants and refugees”, 25 October 2021, ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27694&LangID=E, Special Rapporteur on the human rights of migrants, Report: *Human rights violations at international borders: trends, prevention and accountability*, 26 April 2022, A/HRC/50/31, para.41.

53. Public Health Experts, letter to CDC Director Walensky, HHS Secretary Becerra, and DHS Secretary Mayorkas on the August 2021 Title 42 Order, 1 September 2021, publichealth.columbia.edu/research/program-forced-migration-and-health/letter-cdc-director-walensky-hhs-secretary-becerra-and-dhs-secretary-mayorkas-august-2021-title-42-o

54. Daniel Foote, former US Envoy to Haiti, resignation letter to Antony Blinken, Secretary of State, 22 September 2021, drive.google.com/file/d/14LvnU91yCVAb3O5ujd39h-jhBuXN3FA2/view; Harold Hongju Koh, former senior legal adviser of the Department of State and former Dean of Yale Law School, memo, politico.com/f/f?id=0000017c-4c4a-dddc-a77e-4ddb3ae0000

55. Amnesty International, “Over a hundred national and international groups call on the Biden Administration to welcome Haitians seeking safety in the US”, 13 July 2021, amnestyusa.org/press-releases/over-a-hundred-national-and-international-groups-call-on-the-biden-administration-to-welcome-haitians-seeking-safety-in-the-u-s/

56. Amnesty International et al, “Haiti: Stop US deportations and abuse against Haitians on the move: An urgent step towards creating just policies for Haitians” (AMR 36/5101/2021), 15 December 2021, amnesty.org/en/documents/amr36/5101/2021/en/

57. UNHCR, “News Comment by UN High Commissioner for Refugees Filippo Grandi on conditions and expulsions at US border”, 21 September 2021, unhcr.org/news/press/2021/9/614a27324/news-comment-un-high-commissioner-refugees-filippo-grandi-conditions-expulsions.html

58. Harold Hongju Koh, former senior legal adviser of the Department of State and former Dean of Yale Law School, memo, October 2021, politico.com/f/f?id=0000017c-4c4a-dddc-a77e-4ddb3ae0000

59. BuzzFeed News, “An internal document shows DHS officials advised against Haitian deportations, fearing they could violate human rights obligations”, 6 December 2021, buzzfeednews.com/article/hamedaleaziz/haitian-deportations-dhs-memo

60. CDC, Order suspending the introduction of certain persons from countries where a quarantinable communicable disease exists (previously cited).

61. AP News, “Pence ordered borders closed after CDC experts refused”, 3 October 2020, apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae

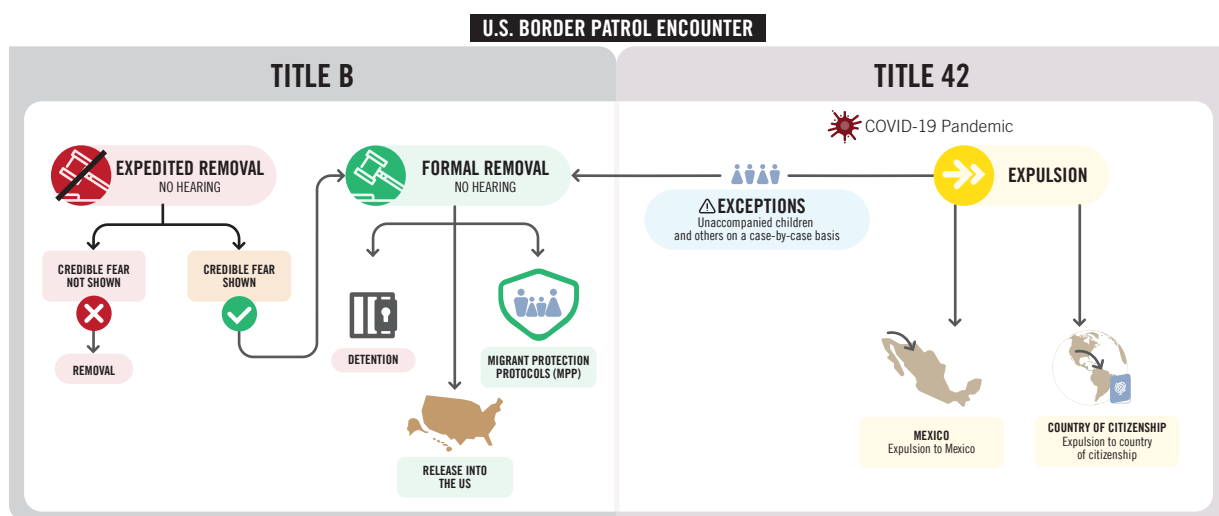
62. Amnesty International et al, “Haiti: Stop US deportations and abuse against Haitians on the move: An urgent step towards creating just policies for Haitians” (AMR 36/5101/2021), 15 December 2021, amnesty.org/en/documents/amr36/5101/2021/en/

63. CDC, “Title 42 Termination with respect to unaccompanied Noncitizen Children”, 12 March 2022, cdc.gov/media/releases/2022/s0311-title-42-termination.html#:~:text=Title%2042%20Termination%20with%20Respect%20to%20Unaccompanied%20Noncitizen%20Children,-Media%20Statement&text=Today%2C%20following%20a%20public%20health,persons%20into%20the%20United%20States

64. US Customs and Border Protection, “Southwest Land Border encounters”, cbp.gov/newsroom/stats/southwest-land-border-encounters (accessed on 29 May 2022).

In March 2022, a court decision considered it unlawful to expel asylum-seeking families under Title 42 to places where they would be persecuted or tortured.⁶⁵ To comply with this decision, as of 23 May 2022, DHS has applied “the shout test”, which requires families to affirmatively express fear of return, rather than placing the obligation on Border Patrol officers to ask individuals if they fear returning to the place they will be expelled to. This practice has been criticized by legal experts⁶⁶ and, according to information gathered by Human Rights First, “asylum-seeking families expelled to Mexico on and since 23 May reported (...) that when they tried to express their fears of return, Border Patrol agents ignored their statements or refused to allow them to speak and failed to refer any for screening.”⁶⁷

By implementing Title 42, the USA has been making use of routine or automatic migration-related detention which Amnesty International opposes as, by definition, arbitrary detention. Amnesty International also considers that, during a public health crisis such as Covid-19, detention solely for migration-related reasons cannot generally be considered a necessary or proportionate restriction on the right to liberty. Indeed, when detained migrants’ right to health cannot be protected, they should be released and state authorities must act to ensure people’s access – free from discrimination – to essential services, care and safety, including adequate accommodation and health care.



Source: US Congressional Research Service⁶⁸

In March 2021, in an interview with ABC news, President Joseph Biden was asked what his message would be to migrants at the southern US border. His response, “I can say quite clearly. Don’t come over.”⁶⁹

In June, Vice President Kamala Harris sent a similar message to people seeking international protection in the USA. “I want to be clear to folks in this region who are thinking about making that dangerous trek to the United States-Mexico border: do not come, do not come... We, as one of our priorities, will discourage illegal migration and I believe if you come to our border you will be turned back.”⁷⁰

In July, Homeland Security Secretary Alejandro Mayorkas sent a similar message, more specifically for Haitians and Cubans. “Allow me to be clear: If you take to the sea, you will not come to the United States.”⁷¹

Such language is explicitly intended to deter migrants and asylum seekers from seeking safety in the USA. However, it is not anything new, especially for Haitian asylum seekers.

65. Center for Gender and Refugee Studies, “Title 42 Challenges”, cgrs.uchastings.edu/our-work/title-42-challenges (Accessed on 29 May 2022).

66. Harold Hongju Koh, former senior legal adviser of the Department of State and former Dean of Yale Law School, memo, October 2021, politico.com/f/?id=0000017c-4c4a-dddc-a77e-4ddb3ae00000

67. Human Rights First, *The nightmare continues: Title 42 Court Order prolongs human rights abuses, extends disorder at U.S. borders*, June 2022, humanrightsfirst.org/sites/default/files/NightmareContinues.pdf, p. 13.

68. Congressional Research Service, “U.S. Border Patrol Encounters at the Southeast Border: Titles 8 and Title 42”, May 2022, crsreports.congress.gov/product/pdf/IG/IG10031

69. Ben Gittleman, “Biden tells migrants ‘don’t come over’ in ABC News exclusive interview”, 16 March 2021, abcnews.go.com/Politics/biden-tells-migrants-dont-abc-news-exclusive-interview/story?id=76490159

70. Guardian News, “Kamala Harris tells migrants ‘do not come’ during talks in Guatemala”, 7 June 2021, youtube.com/watch?v=bpGtFlzamQ

71. Sabrina Rodríguez, “Mayorkas to Cubans, Haitians: Do not come to the U.S.”, 13 July 2021, politico.com/news/2021/07/13/mayorkas-cubans-haitians-499531

Since the implementation of the Title 42 order in March 2020, more than 18,000⁷² Haitians have summarily been sent back to Haiti in collective expulsions without any individualized or fair assessments of their international protection needs. This order, created under the Trump administration, and thinly disguised as a public health measure,⁷³ has had the effect of immigration and asylum deterrence policy, in express violation of national and international law.⁷⁴

In running for office, President Biden committed to “modernize America’s immigration system” and undo the damage to the asylum system created under the previous administration.⁷⁵

Despite this, in a period of eight months, between 19 September 2021 and May 2022 alone, the USA has expelled 25,806 Haitians, according to the International Organization for Migration (IOM) ⁷⁶ - at least 14,531 of those under Title 42.⁷⁷ Additionally, according to Witness at the Border - a group that tracks deportation flights - between 19 September 2021 and May 2022, at least 227 flights from the USA have landed in Haiti, compared to a total of 37 flights in all of 2020, and 37 in the first eight months of 2021,⁷⁸ a significant increase.

As Haitians have found the possibility of seeking asylum at US ports of entry in the US-Mexico border significantly curtailed, Haitians desperate to find alternative routes have resorted to dangerous border crossings⁷⁹ and often deadly overcrowded trips in improvised boats, leading to media reports of drownings at sea.⁸⁰ From October 2021 to May 2022, approximately 5,390 Haitian migrants were interdicted at sea by the US Coast Guard, compared to 1,527 in the prior 12 months, and 418 in the 12 months preceding that.⁸¹

Collective expulsions of Haitians under Title 42 began to spike in September 2021, when thousands of Haitian families arrived in Del Rio expecting to find relief after long and dangerous journeys from Chile and Brazil and through Central America and Mexico. Instead, they were faced with a DHS strategy that stated irregular migrants would be “swiftly taken into custody, processed, and removed from the United States consistent with our laws and policy.” Furthermore, an explicit part of the strategy was “to accelerate the pace and increase the capacity of removal flights to Haiti and other destinations in the hemisphere within the next 72 hours.”⁸²

While the Biden administration has made an attempt to dismantle Title 42 after more than a year in office,⁸³ it has defended the policy in court⁸⁴ and the health order remains a centerpiece of the Trump administration’s

72. US Customs and Border Protection, “Nationwide Encounters”, cbp.gov/newsroom/stats/nationwide-encounters (accessed on 15 June 2022).

73. Amnesty International, “USA: Upholding dangerous immigration policy will harm people throughout the Americas”, 23 May 2022, [amnesty.org/en/latest/news/2022/05/usa-dangerous-immigration-policy-will-harm-people/](https://www.amnesty.org/en/latest/news/2022/05/usa-dangerous-immigration-policy-will-harm-people/)

74. When condemning this expedited and collective expulsion of Haitian migrants and refugees in October 2021, UN Experts said that “[a]ccording to the information received, US policies have also deterred Haitians from pursuing protection including asylum claims and forced them to return to other countries.” UN experts have also warned that these mass deportations “seemingly continue a history of racialized exclusion of Black Haitian migrants and refugees at US ports of entry.” See Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Working Group of Experts on People of African Descent, Statement, “USA: UN experts condemn collective expulsions of Haitian migrants and refugees”, 25 October 2021, [ohchr.org/en/press-releases/2021/10/usa-un-experts-condemn-collective-expulsion-haitian-migrants-and-refugees#:~:text=According%20to%20the%20information%20received,gender%20and%20xenophobic%20violence](https://www.ohchr.org/en/press-releases/2021/10/usa-un-experts-condemn-collective-expulsion-haitian-migrants-and-refugees#:~:text=According%20to%20the%20information%20received,gender%20and%20xenophobic%20violence).

75. See The Biden Plan for Securing our values as a nation of immigrants, <https://joebiden.com/immigration/> (accessed 25 June 2022)

76. International Organization for Migration, “Migrant returns and reception: assistance in Haiti”, May 2022, haiti.iom.int/sites/g/files/tmzbd11091/files/documents/iom-factsheet-migrant-returns-and-reception-assistance-in-haiti-may-2022.pdf

77. US Customs and Border Protection, “Nationwide encounters”, cbp.gov/newsroom/stats/nationwide-encounters (accessed on 15 June 2022).

78. Witness at the Borders, “ICE Air Flights: May 2022 and last 12 months”, 5 June 2022, static1.squarespace.com/static/5e221cacff87ba2d2833cf54/t/629d66f422e51c5598bb2bd5/1654482677232/ICE+Air+May+2022+vTHCPDF.pdf

79. According to Human Rights First, prior to restrictions at ports of entry like Title 42, many asylum seekers arrived through ports of entry to seek protection including 99 percent of Cubans and Haitians encountered by DHS at the southern border in FY 2017 (from October 2016 to September 2017). By comparison, since October 2021 through May 2022, just 0.2 percent of Cubans and 14 percent of Haitians arriving at the southern border presented themselves at a port of entry. See Human Rights First, *The nightmare continues: Title 42 Court Order prolongs human rights abuses, extends disorder at U.S. borders*, June 2022, [humanrightsfirst.org/sites/default/files/NightmareContinues.pdf](https://www.humanrightsfirst.org/sites/default/files/NightmareContinues.pdf), p.3.

80. The Washington Post, “As Haitian migration routes change, compassion is tested in Florida Keys”, 9 April 2022, [washingtonpost.com/nation/2022/04/09/florida-keys-haitian-immigration/?emci=a8ca2018-44a3b9-ec11-997e-281878b83d8a&emdi=ea000000-0000-0000-000000000001&ceid=BBC](https://www.washingtonpost.com/nation/2022/04/09/florida-keys-haitian-immigration/?emci=a8ca2018-44a3b9-ec11-997e-281878b83d8a&emdi=ea000000-0000-0000-000000000001&ceid=BBC), BBC, “Eleven migrants drown trying to reach US territory”, 13 May 2022, [bbc.com/news/world-us-canada-61417926](https://www.bbc.com/news/world-us-canada-61417926)

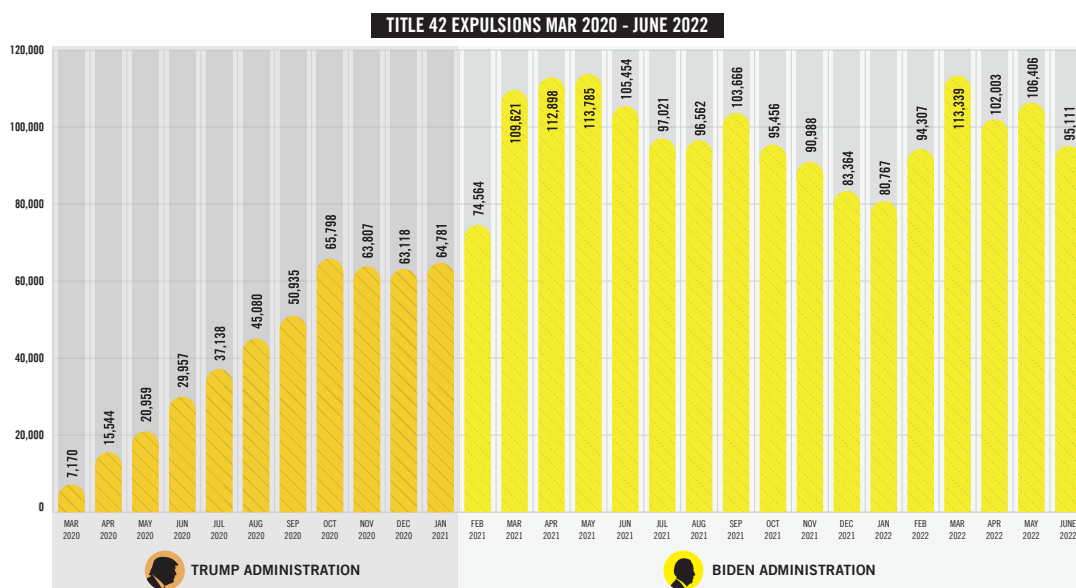
81. United States Coast Guard, “Coast Guard repatriates 124 people to Haiti”, 31 May 2022, content.govdelivery.com/accounts/USDHSCG/bulletins/31a1396

82. Department of Homeland Security, “DHS outlines strategy to address increase in migrants in Del Rio”, 18 September 2021, dhs.gov/news/2021/09/18/dhs-outlines-strategy-address-increase-migrants-del-rio

83. CDC, “CDC public health determination and termination of title 42 order”, 1 April 2022, [cdc.gov/media/releases/2022/s0401-title-42.html#:~:text=in%20consultation%20with%20the%20department,resumption%20of%20regular%20migration%20under](https://www.cdc.gov/media/releases/2022/s0401-title-42.html#:~:text=in%20consultation%20with%20the%20department,resumption%20of%20regular%20migration%20under)

84. In *Huisha-Huisha v. Mayorkas*, for instance, the D.C. District Court issued a preliminary injunction on 16 September 2021 prohibiting the government from continuing to expel families from the United States under the Title 42 order, but the government appealed and had its motion for a stay of the injunction granted on September 30, 2021, by the Court of Appeals for the D.C. Circuit. Finally, on 4 March 2022, the D.C. Circuit issued an opinion holding that the government cannot expel asylum-seeking families to places where they would be persecuted or tortured. See Center for Gender and Refugee Studies, “Title 42 Challenges”, cgrs.uchastings.edu/our-work/title-42-challenges (Accessed on 11 July 2022).

myriad of policies and practices that have in recent years denied access to asylum protection at the US-Mexico border.⁸⁵ In turn, these policies have created irreparable harm to thousands of individuals and families seeking sanctuary in the USA from persecution or serious human rights violations in their countries of origin.⁸⁶ Not only is Title 42 still in place, but it appears to have achieved historical records in the scale of deportations of Haitians.⁸⁷ Furthermore, the USA continues to criminalize irregular entry of individuals seeking protection, in contravention of international law.⁸⁸



Source: CBP.gov, "Nationwide Encounters" (accessed on 05 August 2022)

In practice, both ICE and CBP expel migrants and asylum seekers under Title 42. According to information received by Amnesty International from ICE, ICE assists CBP in "expelling noncitizens under Title 42," which entails "the rapid removal of illegal border crossers to Canada or Mexico if one of these countries was the last country of transit or otherwise to their respective countries of citizenship." According to ICE, following processing by CBP under Title 42, "return to their country of citizenship can take up to a week, depending on flight cadence and country acceptance requirements..." and migrants and asylum seekers may be kept in ICE's "vast network of detention facilities in which the agency houses noncitizens."⁸⁹

Amnesty International representatives interviewed 24 Haitians expelled by the USA back to Haiti between 25 September 2021 and 24 January 2022, including 17 men and seven women ranging from 25 to 42 years old. The majority of them had left Haiti between five to seven years before and nearly all of them had lived either in Brazil or Chile before travelling to the US-Mexico border. Most had travelled with their spouses and children, and among those interviewed and their families were five pregnant women and seven babies under two years old.

85. Amnesty International, *USA: 'You don't have any rights here': Illegal pushbacks, arbitrary detention & ill-treatment of asylum-seekers in the United States* (AMR 51/9101/2018), 11 October 2018, [amnesty.org/en/documents/amr51/9101/2018/en/](https://www.amnesty.org/en/documents/amr51/9101/2018/en/)

86. Amnesty International, *USA: Pushed into Harm's Way: forced returns of unaccompanied migrant children to danger by the USA and Mexico* (AMR 51/4200/2021), [amnesty.org/en/documents/amr51/4200/2021/en/](https://www.amnesty.org/en/documents/amr51/4200/2021/en/)

87. According to estimations based on reports issued by the US State and the UN International Organization for Migrations, the Quixote Center argued that President Biden has deported nearly as many Haitians in his first year as the Bush, Obama and Trump administrations combined. See Quixote Center, "Biden has deported nearly as many Haitians in his first year as the last three presidents – combined," 18 February 2022, quixote.org/biden-has-deported-nearly-as-many-haitians-in-his-first-year-as-the-last-three-presidents-combined/. Also, according to flights tracked by Witness at the Border, from 19 September 2021 to May 2022, 227 deportation flights from the US have landed in Haiti, compared to a total of 37 flights in 2020 and 37 in the first eight months of 2021. See Witness at the Borders, "ICE Air Flights: May 2022 and last 12 months," 5 June 2022, static1.squarespace.com/static/5e221cacff87ba2d2833cf54/t/629d66f422e51c5598bb2bd5/1654482677232/ICE+Air+May+2022+vTHCPDF.pdf

88. Convention Relating to the Status of Refugees, art. 31.

89. In response received from ICE on 30 June 2022 to the question "Can you describe the role of ICE in enforcing CDC's Title 42 Public Health Order at the border? Has it changed over time? If so, how?", ICE provided the following information: "U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) assists U.S. Customs and Border Protection (CBP) in expelling noncitizens under Title 42. The Title 42 expulsions entail the rapid removal of illegal border crossers to Canada or Mexico if one of these countries was the last country of transit and otherwise to their respective countries of citizenship. ICE ERO's role is limited to obtaining a foreign government's authorization to receive Title 42 expulsions, as well as coordinating such expulsions through informal agreements. 2. In which cases and at what point in Title 42 procedures are individuals under CBP custody transferred to ICE's custody? Generally, how long are they held? Response: After a noncitizen is fully processed by CBP under Title 42, return to their country of citizenship can take up to a week, depending on flight cadence and country acceptance requirements. 3. Are there specific detention centers where most Haitian nationals are held before being removed back to Haiti? Response: ICE maintains a vast network of detention facilities in which the agency houses noncitizens, and operational needs determine where the agency may detain noncitizens regardless of nationality."

The Haitians interviewed for this report initially left Haiti for a range of reasons, including fear of persecution due to previous experiences of violence and threats, widespread gang violence, devastation created by the earthquakes, and the inability to provide for their families. Since their departure, the situation in Haiti has only deteriorated further.

For instance, before approaching the US border with his wife and 2-year-old son, “Ti Jean” told Amnesty International he had fled Haiti to Chile in 2017 after receiving death threats due to an alleged association with a political organization in his neighborhood.⁹⁰ Similarly, “George” told Amnesty International that he had left Haiti also in 2017 after been heavily beaten up and threatened. All his nine sisters and five brothers were also forced to either flee the country or were internally displaced for similar reasons.⁹¹ Despite these clear risks in need of evaluation by asylum officers, neither “Ti Jean” or “George” - nor any of the 24 Haitians Amnesty International spoke to – reported that they had the opportunity to go through any kind of individual assessment by asylum officers (fear-based screenings)⁹² before being sent back to Haiti, and none of them reported that they had access to Haitian Creole interpreters or legal assistance, in violation of US and international human rights law.

90. Interview in person with “Ti Jean”, 07 October 2021.

91. Interview by voice call with “George”, 2 February 2022.

92. Human Rights First also interviewed more than 150 asylum seekers in March and April 2021 and stated that none of them “received a protection screening by US immigration officers before being expelled to Mexico.” See Human Rights First and others, *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger*, April 2021, humanrightsfirst.org/sites/default/files/FailuretoProtect.4.20.21.pdf; See also CBS News, “Few migrants processed under Title 42 border policy are screened for U.S. protection”, 15 October 2021, [cbsnews.com/news/immigration-title-42-border-policy-migrants-screened-us-protection/](https://www.cbsnews.com/news/immigration-title-42-border-policy-migrants-screened-us-protection/)

MIGRANT-RELATED DETENTION

According to international human rights law and standards, the right to liberty can only be restricted in specific and the most exceptional of circumstances.⁹³ Migrants, asylum seekers, and refugees, like anyone else, must benefit from a legal presumption of liberty and, consequently, if they are subject to any deprivation of liberty, this must be clearly prescribed by law, strictly justified by a legitimate purpose, necessary, proportionate and non-discriminatory.⁹⁴

To show that detention is necessary and proportionate, states must demonstrate that there are no less intrusive non-custodial measures available to achieve the same ends.⁹⁵ Detention solely for migration-related purposes is only allowed in the most exceptional of circumstances and there is a presumption against such detention.⁹⁶ Migration-related detention should never be used against certain groups of people, including recognized refugees, children,⁹⁷ families,⁹⁸ pregnant people,⁹⁹ people with disabilities¹⁰⁰ and survivors of trafficking.¹⁰¹

93. International Covenant on Civil and Political Rights (ICCPR), Art. 9(1); Human Rights Committee (HRC), General Comment 35: Article 9 (liberty and security of person), 16 December 2014, UN Doc. CCPR/C/GC/35; General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 2; Convention Relating to the Status of Refugees, Art. 31; Convention on the Protection of the Rights of Migrant Workers and Members of their Families, Art. 16(1); Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, Art. 5(1)(a); American Convention on Human Rights, Art. 7(1); American Declaration on the Rights and Duties of Man, Art. 1; Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Introduction.

94. International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, (Siracusa Principles), 1985, Principles 10-18; ICCPR, Article 15.

95. UNHCR Detention Guidelines, Guideline 4.2, para. 34: "The necessity and proportionality tests further require an assessment of whether there were less restrictive or coercive measures (that is, alternatives to detention) that could have been applied to the individual concerned and which would be effective in the individual case." See also the International Commission of Jurists, *Siracusa Principles* (previously cited), I(A)(11).

96. The burden of proof must rest on the detaining authorities to demonstrate that the presumption in favour of liberty should be displaced. Therefore, migration-related detention should not be used (1) solely on security grounds; (2) for the sole purpose of determining the elements on which an individual's claim to asylum is based, (3) where resorted to solely on the grounds of sovereignty, the state's power to control its borders and/or its deterrent power against irregular entry or stay.

97. The migration-related detention of children is strictly prohibited in international law as it can never be in their best interests. See UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), *Concluding Observations on the initial report of Nicaragua*, 11 October 2016, UN Doc. CMW/C/NIC/CO/1, paras 39-40; CMW, *Concluding observations on the initial report of Turkey*, 31 May 2016, UN Doc. CMW/C/TUR/CO/1, paras 47-48; CMW, *Concluding Observations on the initial report of the Niger*, 11 October 2016, UN Doc. CMW/C/NER/CO/1, para. 33. See also Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, para. 11; Inter-American Court of Human Rights, *Advisory Opinion OC-21-14: Rights and Guarantees of Children in the Context of Migration and/or in Need of International protection*, 19 August 2014, para. 154; UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, 28 April 2017, UN Doc. A/HRC/35/25, para.61; and UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017.

98. Committee on the Rights of the Child (CRC) and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) have underlined that "the detention of any child because of their or their parents' migration status constitutes a child rights violation and contravenes the principle of the best interests of the child" and have concluded that "any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice." See CMW and CRC, *Joint general comment No. 4, (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, UN Doc. CMW/C/GC/4-CRC/C/GC/23, para. 5. Furthermore, according to the Working Group on Arbitrary Detention, "children must not be separated from their parents and/or legal guardians. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit and alternatives to detention must be applied to the entire family instead." See Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, para. 40.

99. UN, Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), UN Doc. A/C.3/65/L.5, 6 October 2010, Rule 42; UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 9, UNHCR and International Detention Coalition, *Vulnerability Screening Tool*, 2016.

100. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the initial report of the European Union*, 2 October 2015, UN Doc. CRPD/C/EU/CO/1, para. 35. See also Committee on the Rights of Persons with Disabilities, *Considerations of Reports submitted by States under Article 35, Concluding Observations – Slovakia*, 13 May 2016, UN Doc. CRPD/C/SVK/CO/1.

101. Economic and Social Council, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, July 2002, UN Doc. E/2002/68/Add.1, Guideline 2, para. 6. See also, General Assembly, Resolution on Trafficking in women and girls, 30 January 2003, UN Doc. A/RES/57/176, para. 8; UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ukraine*, 24 September 2001, UN Doc. E/C.12/1/Add.65, para. 29; and General Assembly, Report of the Committee on the Elimination of Discrimination against Women, 18 March 2004, UN Doc. A/59/38 (Part I), para. 160.

The routine or automatic use of migration-related detention is, by definition, arbitrary.¹⁰² States must conduct individualized assessments of each migrant, asylum seeker, or refugee, taking into account their histories and specific needs, free from discrimination. Any migration-related decision restricting the right to liberty must always be based on a detailed case-by-case assessment of the personal circumstances of the individual, including factors such as their personal history, age, health condition and family situation.¹⁰³ Such assessments must be performed by professionals trained to work with survivors of trauma or trafficking and be specialized in working with specific groups of asylum seekers and migrants who are recognized as having specific needs, including, *inter alia*, children, survivors of torture or trauma, victims of trafficking, LGBTI people, pregnant people, people with disabilities and older people.¹⁰⁴

People seeking international protection must be informed of the reasons for their detention¹⁰⁵ and their rights.¹⁰⁶ To challenge the lawfulness of their detention, detained people should also have access to independent legal representation (if necessary free of charge)¹⁰⁷ and advice in a language that they understand.¹⁰⁸

According to CBP, families processed under Title 42 spend on average 3 to 5 days in custody, based on availability of flights and flight schedules.¹⁰⁹ However, based on the testimonies of the Haitian people interviewed for this research, those who were expelled under Title 42 between September 2021 and March 2022 were kept in US immigration detention for an average of seven days, but in some cases for up to 14 days.¹¹⁰

102. Article 9(1) of ICCPR provides that: “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” In other words, the right to liberty comprises a legal presumption against detention. The Working Group on Arbitrary Detention has emphasized that the “Arbitrary detention can never be justified, including for any reason related to national emergency, maintaining public security or the large movements of immigrants or asylum seekers.” See Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018, para. 8. According to the UN Human Rights Committee, “[t]he notion of ‘arbitrariness’ must not be equated with ‘against the law’ but be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law”: General Comment 35: Article 9 (liberty and security of person), UN Doc. CCPR/C/GC/35, 16 December 2014, para. 12; UN Human Rights Committee, *Van Alphan v. The Netherlands*, Communication No. 305/1988, 23 July 1990, para. 5.8.

103. Further reviews of the continued necessity, proportionality and lawfulness of the detention should be carried out at regular intervals or at the detainee’s request, by a judge or other officer authorized by law to exercise judicial power. See UN Committee against Torture: Conclusions and recommendations of the Committee against Torture: Hungary, 6 February 2007, UN Doc. CAT/HUN/CO/4, para. 9; UN Committee against Torture, Concluding Observations on the combined fourth and fifth periodic reports of Australia, 23 December 2014, UN Doc. CAT/AUS/CO/4-5, para. 16; UN Committee against Torture, Conclusions and recommendations of the Committee against Torture: Italy, 16 July 2007, UN Doc. CAT/C/ITA/CO/4, para. 9; and UN Committee against Torture, Concluding Observations on the fourth report of Cyprus, 16 June 2014, UN Doc. CAT/C/CYP/CO/4, para. 17. See also, UN Human Rights Committee, Concluding Observations on the second periodic report of Malta, 21 November 2014, UN Doc. CCPR/C/MLT/CO/2, para. 16; UN Human Rights Committee, Concluding Observations of the Human Rights Committee, 4 May 2004, UN Doc. CCPR/CO/80/LTU, para. 15; UN Human Rights Committee, Concluding Observations on the sixth periodic report of Finland, 22 August 2013, UN Doc. CCPR/C/FIN/CO/6, para. 10; UN Committee on the Rights of the Child, Concluding Observations: Australia, 20 October 2005, UN Doc. CRC/C/15/Add.268, para. 64; Committee on the Rights of the Child, Concluding Observations on the second periodic report of Malta, 18 June 2013, UN Doc. CRC/C/MLT/CO/2.

104. UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 9, UNHCR and International Detention Coalition, *Vulnerability Screening Tool*, 2016.

105. ICCPR, 9(2); Convention on the Protection of the Rights of Migrant Workers and Members of their Families, Art. 16(5).

106. CMW, Concluding Observations on the initial report of Uruguay, 2 May 2014, UN Doc. CMW/C/URY/CO/1, para. 26; Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations of the Committee on the Elimination of Racial Discrimination: Malta, 14 September 2011, UN Doc. CERD/C/MLT/CO/15-20, para. 13.

107. In terms of procedural safeguards, detained migrants, refugees and asylum-seekers have the right to take proceedings before a court in order that the court may decide, without delay, on the lawfulness of the detention and its continued necessity and proportionality, and order less coercive measures, if warranted, or unconditional release if the detention is not lawful. Such a review should be based on a case-by-case assessment of the personal circumstances of the individual, including factors such as age, health condition and family situation. The burden of proof must rest on the detaining authorities to demonstrate that the presumption in favour of liberty should be displaced.

108. Convention on the Protection of the Rights of Migrant Workers and Members of their Families, Art. 16(5); General Assembly Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 14; Economic and Social Council, Report of the Special Rapporteur, Ms Gabriela Rodríguez Pizarro, 30 December 2002, UN Doc. E/CN.4/2003/85, para. 28; Working Group on Arbitrary Detention, Legal Opinion on the situation regarding immigrants and asylum-seekers, UN Doc. E/CN.4/1999/63, para. 69; CMW, Concluding Observations on the initial report of Turkey, 31 May 2016, UN Doc. CMW/C/TUR/CO/1; CMW, Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 3 May 2011, UN Doc. CMW/C/MEX/CO/2, para. 42; UN Human Rights Committee, Concluding Observations of the Human Rights Committee, 15 November 2010, UN Doc. CCPR/C/POL/CO/6, para. 18; UN Committee against Torture, Conclusions and recommendations of the Committee against Torture: Belgium, 23 June 2003, UN Doc. CAT/C/CR/30/6, para. 7(g).

109. In response to written questions sent by Amnesty International, received on 22 July 2022, CBP told the organization that “in the event a person cannot be returned to the country of last transit, CBP works with interagency partners to secure an expulsion flight to the person’s country of origin and holds the person for the shortest time possible.” In the case of families processed under Title 42, CBP stated that “family units processed under Title 42 and manifested for expulsion flights spend on average 3-5 days in custody which is subject to variance based on the availability of flights and the schedule of flights allowed by foreign countries.”

110. Based on 15 testimonies the average period of detention was 6.7 days, however, at least two families were detained for 14 days.

Amnesty International has reason to believe, based on the descriptions given by interviewees of freezing conditions and cramped holding facilities, and information from NGOs and previous Amnesty International research which describes the conditions in both ICE and CBP facilities, that they were held at least initially in temporary CBP facilities. Many of those interviewed describe having been moved around different holding facilities, and in those cases, interviewees may have been under ICE custody. For this reason, for the purposes of this report, “immigration detention” is used to refer broadly to detention both under CBP and ICE custody.

The interviews carried out by Amnesty International show that US officials made no distinction when detaining children and pregnant people, in violation of international human rights standards. Testimonies noted that all the children travelling with the adult Haitians interviewed, as well as five pregnant women, were detained before being expelled. Furthermore, in some instances, families were separated.

“Michel” told Amnesty International that he had spent six days under the bridge in Del Rio with his wife and three-year-old child when they were apprehended and separated before being put on a bus and sent to an immigration detention facility.¹¹¹ Similarly, “Johnny” told Amnesty International that he, his pregnant wife, and two year old child were all detained for 14 days before being sent to Haiti, during which time they were separated for nine days.¹¹²

During the time they spent in detention, Haitian interviewees told Amnesty International that they were not allowed to make phone calls, had no access to legal representation or interpreters, and received little to no information about the reasons why they were being deprived of liberty or what they might expect to happen next. In fact, many deported Haitians told Amnesty International that they did not know they were being expelled to Haiti until they found themselves in the plane or on the tarmac in Port-au-Prince.¹¹³

Despite being detained and expelled under Title 42 - a measure initially implemented under the pretext of preventing Covid-19 – all of the Haitians interviewed for this report indicated that the US authorities had not tested them for Covid-19 or offered them vaccines at any point during their detention or prior to expulsion, nor for the most part had they provided them with prevention and infection control measures, such as physical distancing or face masks.¹¹⁴ This certainly undermines claims that Title 42 expulsions are designed to prevent Covid-19, and on the contrary, previous Amnesty International research suggests asylum seekers are at increased risk of contracting Covid-19 in ICE immigration detention facilities.¹¹⁵ This also strongly suggests that their deprivation of liberty was arbitrary,¹¹⁶ and in turn failed to meet the principles of necessity or proportionality required to justify a detention on public health grounds under international human rights law.¹¹⁷

111. Interview by voice call with “Michel”, 20 January 2022.

112. Interview by voice call with “Johnny”, 8 February 2022.

113. Similar experiences were reported by numerous Haitian nationals subject to Title 42 expulsions. See, for instance, Justice Action Center, “Federal Class Action lawsuit alleges racist and abusive treatment of Haitian migrants in Del Rio, Texas”, 20 December 2021, justiceactioncenter.org/federal-class-action-lawsuit-alleges-racist-and-abusive-treatment-of-haitian-migrants-in-del-rio-texas/ (accessed on 11 July 2022); Haitian Bridge Alliance, Quixote Center and UndocuBlack Network, *The Invisible Wall: Title 42 and Its Impact on Haitian Migrants*, 2021, quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf

114. One report found that ICE did not follow requirements to test migrants for Covid-19 before travel on domestic commercial flights. See: Office of the Inspector General, “ICE Did Not Follow Policies, Guidance, or Recommendations to Ensure Migrants Were Tested for COVID-19 before Transport on Domestic Commercial Flights,” 18 May 2022, oig.dhs.gov/sites/default/files/assets/2022-05/OIG-22-44-May22.pdf

115. Amnesty International has previously received credible and disturbing accounts that the conditions in ICE’s immigration detention facilities in fact put those detained at higher risk of contracting Covid-19. See Amnesty International, *USA: ‘We are adrift, about to sink’: The looming COVID-19 disaster in United States immigration detention facilities*, (AMR 51/2095/2020), 7 April 2020, amnesty.org/en/documents/amr51/2095/2020/en/

116. According to the UN Working Group on Arbitrary Detention deprivation of liberty is arbitrary when, among other things, there is no legal basis justifying it and when the detention is discriminatory. See: The Working Group on Arbitrary Detention, Revised Fact Sheet No. 26, ohchr.org/sites/default/files/Documents/Issues/Detention/FactSheet26.pdf

117. International human rights law allows for the restriction of some rights in limited circumstances, when necessary and proportionate to protect public health or other relevant legitimate purpose under international human rights law. However, there are clear boundaries on which rights can be restricted and to what extent. Any limitation must be for a legitimate aim (in this case, limiting the impact of the COVID-19 pandemic), necessary and proportionate to that aim. Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1984/4 (1984), International Covenant on Civil and Political Rights, Article 12 (3).

4.2 “WE WERE FACED WITH ALL KINDS OF SITUATIONS”: HUMAN RIGHTS VIOLATIONS ACROSS THE AMERICAS

The mass deportation of Haitians by the USA has caused a ripple effect in the increase of deportations and other violations of the international protection rights of Haitian nationals across the Americas.¹¹⁸

In September 2021, UN agencies jointly called on states to provide a “comprehensive regional approach” for Haitians on the move, and to provide them with protection measures including asylum “or other legal stay arrangements for more effective access to regular migration pathways,”¹¹⁹ a call that remains largely unattended.

In October 2021, Amnesty International and Haitian Bridge Alliance met with more than 60 Haitians in Tapachula, in the Mexican state of Chiapas, and found that states across the Americas, including Mexico, Chile and Brazil, were failing to protect Haitians on the move from a range of human rights violations, including detention and unlawful pushbacks, extortion, anti-Black racism, abuses including gender-based violence by armed groups, and destitution,¹²⁰ leaving them unsafe and unprotected in countries across the region.

The findings from this current research are no different. In interviews, Haitians told Amnesty International that one of the reasons they left Chile and Brazil is that they had regularly faced violence and threats from ordinary people, usually fueled by anti-Black discrimination, and other forms of intersecting discrimination based on race, migration and economic status.

“George” told Amnesty International that in Chile a man had pulled a gun on him saying, “What are you Black people doing in my country? Go back to where you came from” and threatened to kill him if he ever saw him again.¹²¹ Similarly, “Ti Rico” told researchers that he left Haiti after experiencing race-based violence and threats in Chile.¹²²

“When I first arrived, there was an appreciation for Haitians. That changed. Chile changed. The government became racist. They didn’t want to give us papers. On the streets people would say to me ‘go back to your country, you dirty person, you Black person.’”

“Ti Rico”¹²³, a Haitian man in his early 30s, who left Chile with his wife and one year old child, after living for five years in the country. They spent five days under the bridge in del Rio and were deported back to Haiti in September 2021.

118. In a report submitted to the Security Council in June 2022, the UN Secretary General estimates that some 40,000 Haitian nationals and persons of Haitian descent have been returned from countries in the Americas region from September 2021 to March 2022. See United Nations Integrated Office in Haiti, Report of the Secretary General, 13 June 2022, UN Doc. S/2022/481, para. 52. Also, according to IOM, from January to April 2022, 11,620 Haitians were returned to Haiti, 74% of which were sent back by the United States. The Bahamas was responsible for 13% of the returns in this period and Cuba for 9%. See International Organization for Migration, “Migrant returns and reception assistance in Haiti, Air and Sea, Brief: post-arrival survey,” February 2022, haiti.iom.int/sites/g/files/tmzbd11091/files/documents/final-brief-post-arrival-survey-with-recent-adult-returnees-in-haiti-sept-dec-2021-iom_0.pdf. See also Amnesty International et al., “Haiti: Stop US deportations and abuse against Haitians on the move: An urgent step towards creating just policies for Haitians” (AMR 36/5101/2021), 15 December 2021, [amnesty.org/en/documents/amr36/5101/2021/en/](https://www.amnesty.org/en/documents/amr36/5101/2021/en/).

119. IOM, “UN Agencies Call for Protection Measures and a Comprehensive Regional Approach for Haitians on the Move,” 30 September 2021, [iom.int/news/un-agencies-call-protection-measures-and-comprehensive-regional-approach-haitians-move](https://www.iom.int/news/un-agencies-call-protection-measures-and-comprehensive-regional-approach-haitians-move)

120.¹⁵ Amnesty International and Haitian Bridge Alliance, *Not Safe Anywhere: Haitians on the Move Need Urgent International Protection* (AMR 36/4920/2021), 28 October 2021, [amnesty.org/en/documents/amr36/4920/2021/en/](https://www.amnesty.org/en/documents/amr36/4920/2021/en/)

121. Interview by voice call with “George”, 2 February 2022.

122. Interview by voice call with “Ti Rico”, 20 February 2022.

123. Interview by voice call with “Ti Rico”, 20 February 2022.

Consistent with previous research by Amnesty International and others,¹²⁴ Haitians also said they left Chile and Brazil due to challenges in renewing their residency permits, which created additional barriers to finding work and accessing social and economic rights.

Almost all the Haitians interviewed by Amnesty International for this report were providing financial support to their relatives in Haiti while working overseas. In Brazil and Chile, they worked mainly in construction, gardening, engineering, delivery or harvesting. However, for many of the families, the Covid-19 pandemic – which only exacerbated inequality and caused dramatic job loss in Latin America¹²⁵ – made it much harder for them to make ends meet. Furthermore, it is well evidenced that Black people, as well as migrants and asylum seekers, were disproportionately affected by the pandemic.¹²⁶

Race and nationality-based discrimination, the inability to regularize their immigration status, and the harsh economic realities exacerbated by Covid-19 all help to explain why since at least January 2021,¹²⁷ tens of thousands of Haitians again left their lives behind after so many years of trying to establish them in new countries.

All of the Haitians interviewed for this report told Amnesty International that they had walked through the Darien Gap. As Amnesty International and Haitian Bridge Alliance previously documented,¹²⁸ the journey overland through Central America, and the Darien Gap especially – a jungle between Panama and Colombia which can take 10 days to walk – is notoriously punishing for migrants and asylum seekers. Heaving with armed groups, dangerous animals, and scattered with the bodies of those who do not make it up and down a large mountain, for many asylum seekers the Darien Gap is at best grueling, and at worst, for those who survive the journey, an incredibly traumatic experience.

Like others interviewed by Amnesty International in October 2021, Haitians interviewed for this research reported seeing migrants and asylum-seekers being robbed, raped, and even dying during their journey. “Johnny” said he saw young women and men being raped along the route, and that he and the group he was travelling with were robbed by both the police and thieves in Panama. “They held a gun to us and made us lay down (...) and took everything we had,” he told researchers.¹²⁹

“I was forced to take the baby and gallon and hurry, and I left my wife with the rest of the people to go up the mountain... to try and get water. When we arrived at the river in Colombia, we found a lot of dead people in the river, and (I was) forced to drink that water and give some to my child. The exhaustion was overwhelming.

“Fred”, Haitian man in his late 20s, who left Haiti in 2017 and tried to make a living first in Chile and then in Brazil, before deciding to take the journey to the US-Mexico border with his wife and one year old child.

124. Amnesty International and Haitian Bridge Alliance, *Not Safe Anywhere: Haitians on the Move Need Urgent International Protection* (previously cited), Refugees International, *Pushed into the shadows: Mexico's reception of Haitian Migrants*, 28 April 2022, refugeesinternational.org/reports/2022/4/25/pushed-into-the-shadows-mexicos-reception-of-haitian-migrants, Priya Morley et al., *A journey of hope: Haitian women's migration to Tapachula*, 2021, imumi.org/attachments/2020/A-Journey-of-Hope-Haitian-Womens-Migration-to-Tapachula.pdf, 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, imumi.org/attachments/2020/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf

125. Amnesty International, *Américas: Desigual y Letal: Cinco claves para recuperarse de la crisis de derechos humanos que desató la pandemia en América Latina y el Caribe* (AMR 01/5483/2022), amnesty.org/en/documents/amr01/5483/2022/es/

126. Amnesty International, *Américas: Desigual y Letal: Cinco claves para recuperarse de la crisis de derechos humanos que desató la pandemia en América Latina y el Caribe* (AMR 01/5483/2022). Also, research by Refugees International found that Haitians in Brazil, Chile and Mexico typically cannot access asylum or regular immigration status in these countries, have no prospects of finding dignified work, and find multiple barriers in accessing health and other social services. See Refugees International, *Pushed into the shadows: Mexico's reception of Haitian Migrants*, 28 April 2022, refugeesinternational.org/reports/2022/4/25/pushed-into-the-shadows-mexicos-reception-of-haitian-migrants

127. According to the IOM, Between January and October 2021, an estimated 100,000 migrants crossed the Darien Gap, of which 62 per cent were Haitians (up from 23 per cent in 2020) and an estimated average of 800 to 1,000 migrants are crossing every day, moving. See IOM, *Crisis Response Plan, Large Movements of highly vulnerable migrants in the Americas from the Caribbean, Latin America and other regions*, 8 October 2021, p. 1, reliefweb.int/sites/reliefweb.int/files/resources/Large%20Movements%20of%20Highly%20Vulnerable%20Migrants%20in%20the%20Americas_IOM%20Response%20Plan.pdf

128. Amnesty International and Haitian Bridge Alliance, *Not Safe Anywhere: Haitians on the Move Need Urgent International Protection* (previously cited).

129. Interview by voice call with “Johnny”, 8 February 2022.

On arriving in Mexico, like many thousands of other asylum seekers, the Haitians interviewed for this report had to wait for months in Tapachula whilst applying for asylum, facing anti-Black racism and often very limited opportunities for work.¹³⁰ According to information Amnesty International gathered during a trip to Tapachula in 2021, as of August 2021, the National Institute of Migration (INM) had been detaining migrants and asylum seekers who tried to leave Chiapas and returning them to Tapachula. The result was that all migrants and asylum seekers in Chiapas, including tens of thousands of Haitians, were trapped in Tapachula, essentially converting it into a roofless prison.¹³¹

For at least the past two years, Haitians have also had limited success in receiving international protection in Mexico. While more than 51,000 Haitians claimed asylum in Mexico in 2021, according to figures from COMAR (the Mexican Commission for Refugee Assistance) only 35% of the claims made by Haitians for international protection were successful that year, compared with a success rate of 97% for Venezuelans and 85% for Hondurans. Similarly, as of May 2022, of more than 7,000 Haitians who applied for international protection in Mexico in 2022, only 23% of the claims were successful, compared with 96% for Venezuelans and 91% for Hondurans.¹³²

In interviews with Amnesty International and Haitian Bridge Alliance in October 2021, COMAR officials said that Haitians are generally not considered for refugee status under the Cartagena Declaration because they previously had a chance to receive protection in other countries that they had lived in, such as Chile and Brazil. Since many of those interviewed had left Haiti, the security situation had deteriorated further, and while some may have left Haiti in search of a better life or due to chronic failings in healthcare and education, all those who spoke to Amnesty International and Haitian Bridge Alliance were more afraid than ever of returning to a country significantly worse than the one they left.¹³³

As Amnesty International has previously noted, by failing to consider the “sur place” principle – which enables individuals to meet the definition of refugee status based upon an inability to return to their country of origin no matter their initial reason for leaving – Mexican authorities are neglecting to uphold their international and regional commitments.¹³⁴

It is for all these reasons that the Haitians interviewed for this report continued on their journeys through Mexico to try and reach the USA. What the families reported they did not expect following such long and dangerous journeys was to be detained, suffer ill-treatment - in some cases amounting to torture – and be automatically expelled by the USA, without any recourse or the possibility to claim asylum, as required by US and international law.

130. Amnesty International, *Not Safe Anywhere: Haitians on the Move Need Urgent International Protection* (previously cited).

131. Carlos Mendoza, “Tapachula: sobrevivir en una ciudad cárcel, La Silla Rota, 26 October 2021, lasillarota.com/opinion/columnas/tapachula-sobrevivir-en-una-ciudad-carcel/575274

132. , Mexican Commission for Refugee Assistance (COMAR), *Datos de cierre de mayo 2022*, gob.mx/cms/uploads/attachment/file/729953/Cierre_Mayo-2022_1-Junio_.pdf

133. Amnesty International, *Not Safe Anywhere: Haitians on the move need urgent International protection* (previously cited), p. 10.

134. Amnesty International, *Not Safe Anywhere: Haitians on the move need urgent International protection* (previously cited) pp. 5 and 11.

4.3 “I CAN’T LIVE IN HAITI”: SENT BACK TO HARM AND WILLING TO LEAVE AGAIN

THE HUMAN RIGHTS AND HUMANITARIAN SITUATION IN HAITI

“ARMED VIOLENCE HAS REACHED UNIMAGINABLE AND INTOLERABLE LEVELS IN HAITI”

Michelle Bachelet, UN High Commissioner for Human Rights, May 2022¹³⁵

The conditions in Haiti have continued to deteriorate since the Haitians expelled under the Biden administration originally left their country. The country is facing an increasingly grave humanitarian and human rights crisis including generalized gang violence, political turmoil following assassination of Haiti’s President Jovenel Moïse,¹³⁶ widespread food insecurity, devastation following a recent earthquake,¹³⁷ a health system “on the brink of collapse,”¹³⁸ and risk for Covid-19 in a country with vaccination rates under 1.6%, as of May 2022.¹³⁹

Haiti’s humanitarian challenges and political unrest are still marked by the huge debt the country had to pay for decades to France in exchange of the recognition of the country’s sovereignty, equivalent to 560 million US dollars in today’s money. According to a recent investigation conducted by the New York Times, if this money had remained in Haiti, it would have added at least 21 billion US dollars to Haiti’s economy over the last two centuries.¹⁴⁰

The rampant insecurity and increasing gang violence have affected 1.5 million people, left an additional 19,000 internally displaced, 1.1 million in need of assistance,¹⁴¹ and have also created the worst kidnapping wave in Haiti’s history.¹⁴²

In April 2021, a report by the Observatoire Haïtien des Crimes contre l’humanité (OHCH) and Harvard Law School’s International Human Rights Clinic alleged complicity of the Haitian government in three massacres carried out by gangs between 2018 and 2020. The attacks targeted impoverished neighbourhoods and according to the report could amount to crimes against humanity.¹⁴³

135. OHCHR, “Haiti: Bachelet deeply disturbed by human rights impact of deteriorating security situation in Port-au-Prince”, 17 May 2022, ohchr.org/en/press-releases/2022/05/haiti-bachelet-deeply-disturbed-human-rights-impact-deteriorating-security

136. Amnesty International et al., “Haiti: Stop US deportations and abuse against Haitians on the move: An urgent step towards creating just policies for Haitians” (previously cited).

137. In 2021, a 7.2 magnitude earthquake hit Haiti, and two days later, tropical depression Grace added to further devastation, affecting at least 800,000 people and exacerbating pre-existing vulnerabilities, leaving more than 38,000 internally displaced, and 650,000 in need of emergency humanitarian assistance. This scenario is particularly concerning in a country with 4.3 million people (44% of the population) already facing acute food insecurity. See Amnesty International et al., “Haiti: Stop US deportations and abuse against Haitians on the move: An urgent step towards creating just policies for Haitians” (previously cited). See also United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Haiti: Earthquake Flash Update No. 3”, 18 August 2021, reliefweb.int/sites/reliefweb.int/files/resources/Haiti%20Earthquake%20-%20Flash%20Update%20No.%203%20%2818%20August%202021%29.pdf; United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Haiti: Earthquake Situation Report No. 7”, 7 October 2021, reliefweb.int/report/haiti/haiti-earthquake-situation-report-no-7-7-october-2021; United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Haiti: Earthquake Flash Update No. 3”, 18 August 2021 (previously cited); UN Migration Agency (IOM), “Earthquake 14 August 2021 – Sitrep 4: Displacement Tracking Matrix – Preliminary results”, 2 October 2021, reliefweb.int/report/haiti/dtm-haiti-earthquake-14-august-2021-sitrep-4; World Food Programme (WFP), “WFP Haiti – Country Brief”, September 2021, docs.wfp.org/api/documents/WFP-0000132981/download/?ga=2.268875313.1738883596.1637869689-1937873373.1637869689

138. Doctors Without Borders, “Haiti: 10 years after earthquake, health system on brink of collapse”, 10 January 2020, msf.org.uk/article/haiti-10-years-after-earthquake-health-system-brink-collapse

139. Our World in Data, Coronavirus (COVID-19) Vaccinations Statistics and Research, “Share of people vaccinated against Covid-19” ourworldindata.org/covid-vaccinations (accessed on 24 May 2022).

140. New York Times, “How (and why) we calculated the value of Haiti’s payments to France”, 25 May 2022, nytimes.com/2022/05/25/reader-center/haiti-france-debt-payments.html; New York Times, “The ransom: a look under the hood”, 20 May 2022, nytimes.com/2022/05/20/world/americas/haiti-bibliography.html?referringSource=articleShare

141. IOM Haiti, “IDP Assistance in urban areas”, 7 February 2022, reliefweb.int/report/haiti/iom-haiti-idp-assistance-urban-areas-7-february-2022

142. According to a report submitted by the UN Secretary General to the UN Security Council in June 2022, “despite underreporting of kidnappings and intentional homicides, the Haitian National Police nonetheless recorded 540 kidnappings from 1 January to 31 May 2022, an increase of 36.4 per cent, compared with 396 in the last five months of 2021, while the number of intentional homicides increased by 17 per cent, from 668 in the last five months of 2021 to 782 in the first five months of 2022.” See United Nations Integrated Office in Haiti, Report of the Secretary General, 13 June 2022, UN Doc. S/2022/481, para.9. See also United Nations Children’s Fund (UNICEF), “Alarming spike in abductions of women and children in Haiti”, 21 October 2021, unicef.org/press-releases/alarming-spike-abductions-women-and-children-haiti-unicef

143. As documented by the Observatoire Haïtien des Crimes contre l’humanité (OHCH) and Harvard Law School’s International Human Rights Clinic, massacres perpetrated by gangs with the complicity of state officials and police between 2018 and 2020 resulted in the killings of hundreds of people. The report details how the massacres were carried out with brutality, and perpetrators were raped and tortured residents based on their political associations. According to the report, the attacks appear to follow a widespread and systematic pattern that

Since the President's assassination, gangs have visibly acquired more power creating a pervasive sense of insecurity for the population.¹⁴⁴ From January to end of June 2022, the OHCHR has documented 934 killings, 684 injuries and 680 kidnappings across the Haitian capital. According to the OHCHR, "most of the victims were not directly involved in gangs and were directly targeted by gang elements."¹⁴⁵ In late April 2022, a territorial dispute between gangs started in the metropolitan area of Port-au-Prince and lasted at least two weeks, leaving 188 people dead.¹⁴⁶ According to the OHCHR, the battle involved horrific methods including "beheadings, chopping and burning of bodies, (and) the killing of minors accused of being informants for a rival gang", as well as the use of sexual violence, including gang rape of children as young as 10 to "terrorize and punish people living in areas controlled by rival gangs."¹⁴⁷ Additionally, according to the OHCHR, since June 2021, sexual violence involving gangs have left an average of 75 victims per month, mostly women and girls, including children as young as 2 years old.¹⁴⁸ According to the NGO Institute for Justice and Democracy in Haiti, lack of access to justice and chronic impunity, fuelled by the current political crisis, the dismantling of accountability mechanisms and a fragile judiciary, also work as drivers of generalized insecurity.¹⁴⁹

Since September 2021 alone, the USA has sent tens of thousands of Haitians back to a country even more deteriorated than the one they left many years ago. Chronic insecurity and extreme socio-economic conditions create huge barriers for those expelled to re-integrate and rebuild their lives.

The Haitian families and psychologists interviewed told Amnesty International that Haitians expelled by the USA arrived back in Haiti - a country they had left years before - sick, disorientated, exhausted and traumatized, with no resources at all and forced to depend on relatives that they previously financially supported.

The US government is well aware of the intensification of the humanitarian and human rights crisis in Haiti.

In March 2021, a leaked report from DHS suggested that US officials were aware that deported individuals "may face harm upon return to Haiti" given the country's pervasive political instability and violence.¹⁵⁰ The US State Department has also repeatedly categorized Haiti as a Level 4 "Do Not Travel" zone – the highest risk travel category – due to its high rates of kidnapping, crime, and civil unrest.¹⁵¹

In recognition of this human rights and humanitarian crisis, in May 2021, US authorities announced¹⁵² a new 18-month designation of Haiti for Temporary Protected Status (TPS) based on Haiti's "deteriorating political crisis, violence, and a staggering increase in human rights abuses" that "prevent its nationals from returning safely."¹⁵³ While it importantly provides relief from deportation for Haitians who were present in the USA as of 29 July 2021¹⁵⁴ it provided no protection for any of those interviewed for this report as they arrived in the USA after that date, and the collective expulsions of Haitians who arrived since July have continued.

"further state and organizational policies to control and repress communities at the forefront of government opposition." See Harvard Law School International Human Rights Clinic and Observatoire Haïtien des Crimes Contre l'Humanité, *Killing with Impunity: State-Sanctioned Massacres in Haiti*, 2021, http://law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf

144. Amnesty International et al., "Haiti: Stop US deportations and abuse against Haitians on the move: An urgent step towards creating just policies for Haitians" (previously cited).

145. OHCHR, "Comment by the UN Human Rights Office spokesperson Jeremy Laurence on Haiti gang violence and rise in human rights abuses", 16 July 2022, ohchr.org/en/statements/2022/07/comment-un-human-rights-office-spokesperson-jeremy-laurence-haiti-gang-violence

146. OCHA, "Violence in the Port-au-Prince metropolitan area: Situation report #3," 26 May 2022, reliefweb.int/report/haiti/haiti-violence-port-au-prince-metropolitan-area-situation-report-3-26-may-2022

147. OHCHR, "Haiti: Bachelet deeply disturbed by human rights impact of deteriorating security situation in Port-au-Prince," 17 May 2022, ohchr.org/en/press-releases/2022/05/haiti-bachelet-deeply-disturbed-human-rights-impact-deteriorating-security

148. Global Protection Cluster, "Haiti under gang control: the uprising of sexual violence", January 2022, globalprotectioncluster.org/wp-content/uploads/GPC_Article_Haiti-Under-Gang-Control-The-Uprising-of-Sexual-Violence_Final-1.pdf

149. Institute for Justice and Democracy in Haiti, "Human rights and the rule of law in Haiti - Key recent developments: December 2021 through May 2022", May 2022.

150. BuzzFeed News, "US officials are deporting Haitian immigrants despite knowing they may face danger", 2 March 2021, [buzzfeednews.com/article/hamedaleaziz/us-deporting-haitian-immigrants-despite-dangers](https://www.buzzfeednews.com/article/hamedaleaziz/us-deporting-haitian-immigrants-despite-dangers)

151. US Department of State - Bureau of Consular Affairs, Haiti Travel Advisory, travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html (accessed on 15 June 2022).

152. US Department of Homeland Security, "Secretary Mayorkas Designates Haiti for Temporary Protected Status for 18 Months", 22 May 2021, dhs.gov/news/2021/05/22/secretary-mayorkas-designates-haiti-temporary-protected-status-18-months

153. Federal Register, Designation of Haiti for Temporary Protected Status, [federalregister.gov/documents/2021/08/03/2021-16481/designation-of-haiti-for-temporary-protected-status](https://www.federalregister.gov/documents/2021/08/03/2021-16481/designation-of-haiti-for-temporary-protected-status) (accessed on 19 November 2021)

154. US Citizenship and Immigration Services, Temporary Protected Status, uscis.gov/humanitarian/temporary-protected-status (accessed on 01 December 2021).

In fact, in May 2022, just as extreme gang violence was intensifying in Haiti, and the Guardian newspaper reported on the “incredible cruelty” of gang battles that left 150 dead in Port-au-Prince,¹⁵⁵ Witness at the Borders estimates that in May alone the USA carried out approximately 36 deportation flights to Haiti, carrying some 3,850 Haitians.¹⁵⁶

In a report submitted to the UN Security Council in June 2022, the UN Secretary General expressed his concern about the vulnerable situation in which recently returned Haitians find themselves once they are sent back to Haiti. “The returnees, some of whom have never resided in Haiti, may be at risk of further internal or external displacement and of exploitation and violence owing to extreme vulnerability,” stated the UN Secretary General.¹⁵⁷

It is for all these reasons that many of the Haitians that spoke to Amnesty International either left Haiti shortly after being returned or said they would do so as soon as they had the means.

A recent survey by the IOM found similar trends after surveying 383 Haitians, most of whom were returned from the USA to Haiti between 19 September and 31 December 2021.¹⁵⁸ According to the survey, many individuals who had recently been sent back to Haiti had already left when the research was conducted, 84% said they intended to leave the country again, and at least 39% had already engaged in specific preparations to do so, especially Haitians that had previously lived in Brazil or Chile. In addition, 74% of those surveyed cited violence and insecurity as one of the main reasons that they intended to leave again. Sixty-nine percent also reported feeling unsafe in their localities of return. This data collectively suggests that, despite the harsh conditions that made Haitians initially leave their homes in South America and risk their lives and that of their families in a dangerous journey, they feel safer anywhere other than Haiti.

In an interview with Amnesty International, IOM staff confirmed that it was particularly painful for many expelled Haitians to return to a country significantly more deteriorated than the one they had left.¹⁵⁹

“I left Haiti because my life was threatened... I don’t live well because I am very afraid...our plan is to return to where we can ensure a better tomorrow for our kids.”

“Emmanuelle”¹⁶⁰, in her mid-30s, fled from Haiti to Brazil in 2016 and made the journey to the USA in 2021 with her husband and two children, before being expelled by the USA.

“Now in Haiti, we have a sentiment of fear. We are afraid to walk. Things are worse.”

“Frank”¹⁶¹, in his mid 20s, left Haiti in 2018 to Brazil because he did not feel safe

155. Guardian, “Incredible cruelty’: gang battles leave 150 dead in Haitian capital”, 13 May 2022, theguardian.com/global-development/2022/may/13/haiti-gang-battles-dead-wounded-displaced. See also OCHA, “Violence in the Port-au-Prince metropolitan area: Situation report #3”, 26 May 2022, reliefweb.int/report/haiti/haiti-violence-port-au-prince-metropolitan-area-situation-report-3-26-may-2022

156. Witness at the Borders, “ICE Air Flights: May 2022 and last 12 months”, 5 June 2022, OHCHR, “Haiti: Bachelet deeply disturbed by human rights impact of deteriorating security situation in Port-au-Prince”, 17 May 2022, <https://static1.squarespace.com/static/5e221cacff87ba2d2833cf54/t/629d66f422e51c5598bb2bd5/1654482677232/ICE+Air+May+2022+vTHCPDF.pdf>

157. United Nations Integrated Office in Haiti, Report of the Secretary General, 13 June 2022, UN Doc. S/2022/481, para. 52.

158. According to IOM, “the survey was collected from late January through early February 2022, targeted adult migrants returned to Haiti and assisted by IOM between 19 September - 31 December 2021, estimated at a total of 13,351 adult returnees in this period (76% repatriated from the United States; 24% from other countries and territories; 71% male; 29% female). A total of 383 surveys were collected, based on a simple random sampling methodology”. See International Organization for Migration, “Migrant returns and reception assistance in Haiti, Air and Sea, Brief: post-arrival survey”, February 2022, haiti.iom.int/sites/g/files/tmzbd11091/files/documents/final-brief-post-arrival-survey-with-recent-adult-returnees-in-haiti-sept-dec-2021-iom_0.pdf

159. Interview by video call with IOM Haiti staff, 27 January 2022.

160. Interview by voice call with “Emmanuelle”, 17 February 2022.

161. Interview by voice call with “Frank”, 27 January 2022.

4.4 A HISTORY OF INTERCEPTION, DETENTION, EXPULSION AND DETERRENCE OF HAITIAN ASYLUM SEEKERS

“Our country has a long history of inhumane treatment of Black migrants, which is particularly evident in the historic mistreatment of Haitians.”

Letter to President Biden by 100 Congresspeople, 16 February 2022 ¹⁶²

In February 2022, more than 100 US lawmakers sent a letter to President Biden calling on him to recognize the “historic mistreatment” of Haitian migrants by the USA, to end Title 42, to “conduct a wholistic review of the disparate treatment of Black migrants throughout the immigration system,” and to “take steps to address the systemic challenges Black migrants face to receiving equal treatment.”¹⁶³

In characterizing the mistreatment faced by Haitians, the lawmakers referred to the US interception policies of the 1980s, the detention camps created in Guantanamo Bay where Haitians living with HIV were held in the 1990s, and the deportations that continued even after earthquakes and a cholera epidemic.¹⁶⁴

As part of this research, and to contextualize current Title 42 expulsions in the wider and historical approach of US authorities to Haitian migration, Amnesty International interviewed academic experts, advocates, and reviewed its own archives on Haitian migration.

In interview with Amnesty International, Carl Lindskoog, a historian whose work focuses on Haitian immigration to the USA from the 1970s onwards, said that successive US governments have built up a system of racialized¹⁶⁵ mass incarceration designed largely out of a desire to control, restrict, and remove Haitians. He argues that this punitive and harsh model of immigration detention became a blueprint used in other parts of the world.

In his academic work, Lindskoog describes how as early as the 1970s, under the “Haitian Program” Haitian asylum seekers in the USA faced expedited immigration hearings, restricted legal representation, almost no translation, and detentions in very poor conditions.¹⁶⁶ Lindskoog also studied the detention of Haitian migrants and asylum seekers in US HIV detention centres in Guantanamo Bay in the 1990s - a misguided and abusive practice which allowed mass detention of Haitian asylum seekers living with HIV purportedly on public health grounds. Amnesty International also raised concerns about this at the time.¹⁶⁷

162. Cori Bush, “Cori Bush, Cory Booker lead 100 colleagues in calling on Biden to reverse Title 42 order and “anti-Black” immigration policies”, 16 February 2022, bush.house.gov/media/press-releases/cori-bush-cory-booker-lead-100-colleagues-calling-biden-reverse-title-42-order

163. Cori Bush, “Cori Bush, Cory Booker lead 100 colleagues in calling on Biden to reverse Title 42 order and “anti-Black” immigration policies” (previously cited).

164. Cori Bush, “Cori Bush, Cory Booker lead 100 colleagues in calling on Biden to reverse Title 42 order and “anti-Black” immigration policies” (previously cited).

165. Racialization is the process of social construction of ethnic and/or religious identities projected on individuals based on social structures and power relations. The person is not self-identifying as racialized but is externally defined. This process triggers systemic discriminatory practices by State institutions, private entities and individuals.

166. Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World’s Largest Immigration Detention System*, 2018, University of Florida Press, p. 27.

167. Amnesty International, Medical letter writing action: USA (Guantanamo) Haitian asylum seekers, (AMR 51/005/1993), 2 February 1993, amnesty.org/en/documents/amr51/005/1993/en/

In interview with Amnesty International, Lindskoog highlighted the historical similarities between the detention and exclusion of Haitians living with HIV in the 1990s and the way Haitians have been expelled under Title 42, another tool used to carry out mass expulsions ostensibly for public health reasons, and in violation of international human rights law. According to the historian:

“It shouldn’t be surprising that Haitians are among those - not the only ones - especially targeted for this because they have been so historically... It’s just another chapter in using concerns about public health to do what the United States has been doing in lots of ways over a long period of time, which is trying to exclude Haitians... incarcerate and remove them... It seems like just the latest chapter of using public health as pretext for what the larger agenda is, which is to try and eliminate them from American society.”

Carl Lindskoog, historian and professor, interviewed by video call, 5 May 2022

Jeffrey Kahn, an anthropologist and legal scholar who has also studied Haitian migration to the USA told Amnesty International that the trend of successive US administrations has been towards restricting procedural protections for Haitian asylum seekers.

“The whole arc of the history of US immigration policy towards Haiti has bent toward restricting procedural protections.” He adds, **“It’s not as if Haitians over the multi-decade history of their attempts to seek asylum in the US have never received due process... but certainly these denials are a recurrent feature... The goal of many administrations at the very least have been to maintain the possibility of lawfully denying procedural protection should they wish to do so.”**¹⁶⁸

Kahn also told Amnesty International that he sees the current restrictions to processing asylum claims at the US-Mexico border as an attempt by the US authorities to revert to the policies and practices of the past, particularly at the beginning of the 1970s, before the USA had an asylum system in place. Kahn says another key moment in US efforts to prevent Haitian migration was 1981, when Haitian Migrant Interdiction Operations (HMIO) - an offshore migrant interdiction program - came into operation. Kahn told Amnesty International that HMIO was “extremely effective” and “did exactly what the US government wanted it to do, which was to stop Haitians before they got to US soil so as to avoid any complicated entanglements in US courts, which up to that point had not been ruling in the US government’s favor to the extent that officials wanted them to.” He adds:

“If you look in a little bit more detail... there is a kind of a back and forth. There is often an extreme reaction: blanket denials of claims for protection... The Haitian case is unique in that it inaugurated new immigrants’ rights litigation paradigms and practices that we see developing over the course of the 1980s and into the present. But these were really some of the first cases where you had these complicated litigation and community organizing and activists’ networks who were putting... a significant amount of pressure on the government to provide due process for asylum seekers, in this case Haitian asylum seekers. So, you see this extreme reaction on the part of the government and then a slight walking back of that extreme reaction, and then a... return to the extreme posture.”¹⁶⁹

Like many others interviewed for this research, Kahn sees Title 42 as an attempt by US authorities to revert to these extreme positions of the past. “That’s what Title 42 is”, he says, “give no procedural protections, send people back, bypass the asylum system entirely through a legal technicality...”¹⁷⁰

168. Interview by video call with Dr Jeffrey Kahn, Associate Professor in the Department of Anthropology at the University of California, Davis, 13 June 2022.

169. Interview by video call with Dr Jeffrey Kahn, Associate Professor in the Department of Anthropology at the University of California, Davis, 13 June 2022.

170. Jeffrey S. Kahn, “Guantánamo’s Other History”, *Boston Review*, 15 October 2021, bostonreview.net/articles/guantanamos-other-history/

Kahn also told Amnesty International that the parallel between the current exclusion of Haitians under Title 42 and the way Haitian asylum seekers living with HIV were placed in quarantine in the 1990s is “unmistakable.” He told the organization that just as public health experts agreed in the 1990s there was no solid basis for detaining Haitian migrants living with HIV, so too have public health experts agreed today that Title 42 is unnecessary. Despite this, he says, “this fear of disease coming from elsewhere was weaponized in order to deny asylum seekers the protection that they ought to have received under US and international law.”¹⁷¹

4.5 RACIAL DISCRIMINATION IN THE ASYLUM AND IMMIGRATION SYSTEMS

Academics and advocates interviewed during this research consistently told Amnesty International they see systemic racial discrimination, and particularly anti-Black racism, as a key factor in the way the US authorities have designed immigration policy for Haitians over the decades.

Jeffrey Kahn says race and the construction of Haitians as “others” in the 1970s, 1980s and 1990s led to the urgency behind the migration policies created at the time. Kahn told Amnesty International that in previous decades the US Immigration and Naturalization Service – the agency at that time responsible for immigration and naturalization – clearly talked about “the Haitian threat” which stoked anxiety about Haitians arriving by boat. Kahn argues this helped instil a highly stigmatizing and stereotyping narrative about Haitian migrants in the US public imagination in the 1980s and 1990s.

“Haitians are not only perceived as Black... Haiti in the US public imagination at the time (as far back as the 1970s and 1990s) was seen as this chunk of Africa dropped out in the Caribbean. This perception of Haitians was not just about Blackness. It was an ethno-racially inflected Blackness. It's Haitian Blackness, which is something that is perceived as more potently Black, in terms of all the negative stereotypes associated with Black Africans...”¹⁷²

In October 2021, as thousands of Haitians were at the Del Rio border awaiting international protection, in interview with Fox News, former President Trump claimed Haitians “probably have AIDS” and described their arrival to the USA as a “death wish for our country.”¹⁷³ Jeffrey Kahn says such remarks only trigger the re-emergence of damaging stereotypes that have been potent in the public imagination since the 1980s.

For NGOs who are currently working with Haitian asylum seekers in the USA, this deeply embedded and systemic racial discrimination, which academics¹⁷⁴ described to Amnesty International, has only been exacerbated by Title 42. In interview, attorney Breanne Palmer says that while Title 42 may be facially race-neutral, in practice, it has disproportionately impacted Black and Haitian immigrants.

“(The) Title 42 expulsion model is just disgusting. It reinforces the racist stereotype that immigrants are bearers of disease. On top of that, you are expelling people to their home country, to Haiti, and to various types of harm, or to border communities in Mexico where they may stand out because they are Black. They are easy targets for discrimination... I don't know if Title 42 as it has been formulated is specifically meant to harm Black immigrants, but that is what is happening.”

Breanne J. Palmer, Attorney and First Immigration Policy Counsel at the Leadership Conference on Civil and Human Rights

171. See also: Jeffrey S. Kahn, “Biden Is Replaying a Forgotten U.S. Atrocity Against Haitian Refugees”, Slate, 2 November 2021, slate.com/news-and-politics/2021/11/biden-atrocity-against-haitian-refugees-gitmo.html

172. Interview by video call with Dr Jeffrey Kahn, Associate Professor in the Department of Anthropology at the University of California, Davis, 13 June 2022.

173. Matthew Loh, “Trump baselessly claims Haitian immigrants entering the US ‘probably have AIDS’ and letting them come in ‘is like a death wish’”, 8 October 2021, [businessinsider.com/trump-haitian-immigrants-entering-us-probably-have-aids-death-wish-2021-10](https://www.businessinsider.com/trump-haitian-immigrants-entering-us-probably-have-aids-death-wish-2021-10)

174. Interview by video call with Jeffrey Kahn, 13 June 2022 and Interview by video call with Carl Lindskoog, 5 May 2022.

Advocates also told Amnesty International that systemic anti-Black racial discrimination explains the muted public sympathy following collective expulsions of Haitians under Title 42, compared with the outcry generated by family separations carried out under the Trump administration. Haddy Gassama, Policy and Advocacy Director at UndocuBlack Network, told Amnesty International:

“We were aware of very small children and babies younger than one year old being put in these planes... There was not that immediate visceral reaction... I think it goes back to the humanity of those Black babies, it is just not fully seen in the same way that the humanity of other non-Black children or migrants is seen.”

Haddy Gassama, Policy and Advocacy Director, UndocuBlack Network, interviewed by voice call 23 March 2022

Not all asylum seekers reaching the USA are subject to Title 42, and US officials have discretion in how it is applied. In response to written questions on how this discretion works in practice, CBP confirmed that the Title 42 order “does not apply to those persons whom officers determine, with approval from a supervisor, should be excepted from the Order based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests.” CBP also added that “there are no exceptions for particular nationalities.”¹⁷⁵

However, in March 2022, according to a CBP memo¹⁷⁶ filtered to the press,¹⁷⁷ authorities at the US-Mexico border were instructed to consider exempting Ukrainians from Title 42, provoking allegations around racial discrimination and double standards, something the Biden administration denied.¹⁷⁸ In fact, organizations that work with Black asylum seekers say the discretionary application of Title 42 is just another clear indicator of how embedded anti-Black racial discrimination is in the US asylum system.

Advocates say this discretionary treatment is also reinforced in the contrasting imagery that has emerged of US authorities’ treatment towards Black asylum seekers compared with white Ukrainians.

“When you juxtapose the image of Biden holding a (white) Ukrainian child in his arms with the image of Border Patrol agents on horseback whipping (Black) Haitian migrants at El Rio, it speaks for itself. That experience is essentially how Black migrants are treated in the US and quite frankly in their journey.”

Ronald Claude, Director of Policy & Advocacy, Black Alliance for Just Immigration (BAJI)

While US authorities do not collect data disaggregated by race in US immigration records, in conducting this research Amnesty International reviewed ample evidence which, when put together, suggests that Haitians face routine discrimination in the US asylum system.

175. CBP’s response to written questions from Amnesty International received on 22 July 2022, on file with Amnesty International

176. Matthew S. Davies, Executive director of Admissibility and Passenger Programs, “Title 42 Exceptions for Ukrainian Nationals”, 11 March 2022, drive.google.com/file/d/1gIEe8MnsNWR15BsfQtiaSR75yKBrCuqe/view

177. CBS News, “Homeland Security chief denies double standard at the southern border after he says nearly 3,000 Ukrainians allowed to enter U.S.”, 6 April 2022, [cbsnews.com/news/ukraine-refugees-mayorkas-us-mexico-border-title-42/](https://www.cbsnews.com/news/ukraine-refugees-mayorkas-us-mexico-border-title-42/)

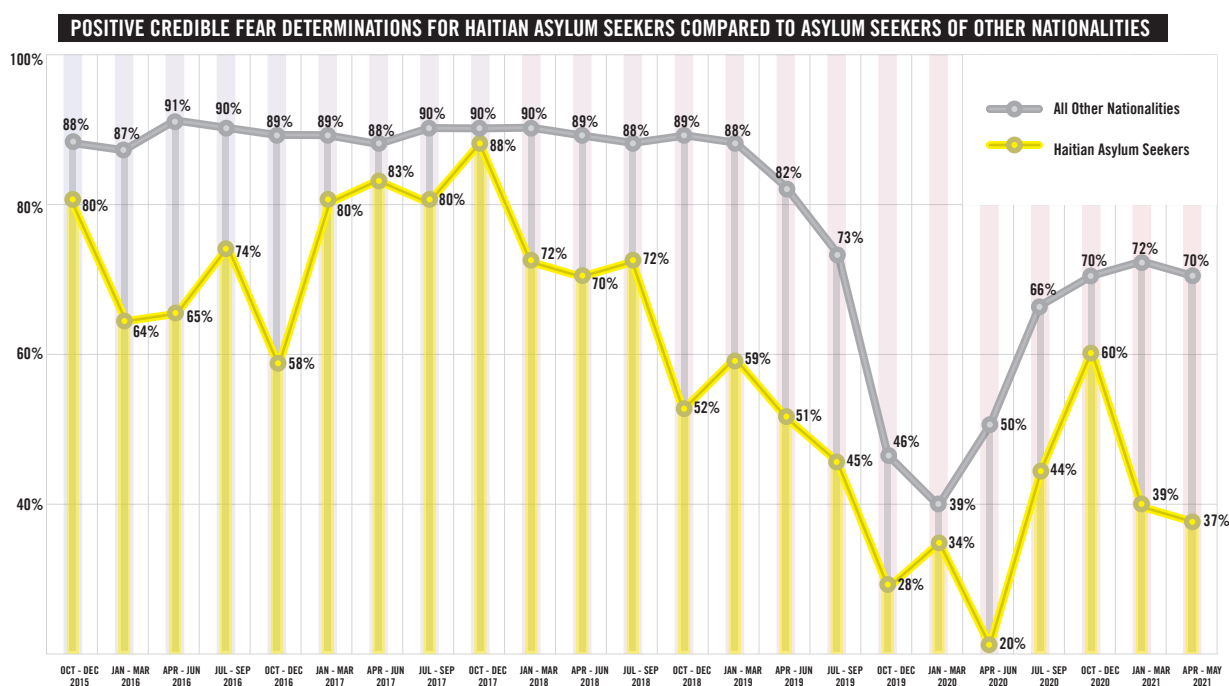
178. CBS News, “Homeland Security chief denies double standard at the southern border after he says nearly 3,000 Ukrainians allowed to enter U.S.” (previously cited).

For the past 20 years, Haitians have had one of the lowest asylum success rates in US Immigration Courts – an average of 18%.¹⁷⁹ Under the Trump administration, these rates plummeted to an average of 9%, the lowest in 20 years.¹⁸⁰

Similarly, in 2021, after the first eight months of the Biden administration,¹⁸¹ while overall asylum grant rates rose for most nationalities,¹⁸² the success rate for Haitians rose just 2.5% compared to the previous year and Haitians had one of the lowest asylum grant rates of all nationalities – an average of 14%.¹⁸³

While Amnesty International recognizes there are multiple factors that are considered when determining whether asylum claims are approved or denied, including country of origin contexts as well as the specific circumstances of individual claimants, testimony from immigration attorneys and asylum advocates that Amnesty International collected for this research, and research by advocacy organizations, indicate that conscious and unconscious, as well as direct and indirect racial bias and anti-Black discrimination permeate the entire functioning of the US immigration and asylum system.

By way of example, even before their asylum claims are considered, asylum seekers in the USA must go through an interview with an asylum officer in which they need to prove that they have a “credible fear” of persecution or torture if returned to their country of origin. According to data obtained by Human Rights First, the rate of positive credible fear determinations for Haitian asylum seekers dropped dramatically during the Trump administration and also suffered a significant drop in the first five months of the Biden administration (January to May 2021).¹⁸⁴ The official information gathered by the organization also shows that Haitians have been much less likely to be deemed credible in their claims of fear compared to other nationalities since 2016, despite escalating human rights abuses in Haiti.



Source: USCIS credible fear records received by Human Rights First through the Freedom of Information Act¹⁸⁵

179. Data obtained by Transactional Records Access Clearinghouse (TRAC) at Syracuse University through a series of Freedom of Information Act (FOIA) requests, covering the period from October 2000 - September 2021 (US Fiscal Year 2001 - US Fiscal Year 2021). See TRAC Immigration, The Impact of Nationality, Language, Gender and Age on Asylum Success, 7 December 2021, trac.syr.edu/immigration/reports/668/

180. The average asylum grant rate for Haitians by US Immigration Courts during the Trump Administration (Fiscal Years 2017-2020) represents a 60% drop compared to 2016, the last Fiscal Year of the Obama administration. According to information obtained by Human Rights First based on FOIA requests to U.S. Citizenship and Immigration Services (USCIS), an even higher drop was seen in cases decided by asylum officers (before being referred to Immigration courts): by Fiscal Year 2020 asylum office grant rates for Haitians dropped 70% compared to Fiscal Year 2016 (from 43% grant rate to 13% grant rate). See Human Rights First, USCIS Records Reveal Systemic Disparities in Asylum Decisions, May 2022, humanrightsfirst.org/resource/uscis-records-reveal-systemic-disparities-asylum-decisions

181. Corresponding to FY 2021. See TRAC Immigration, The Impact of Nationality, Language, Gender and Age on Asylum Success, (previously cited).

182. Corresponding to FY 2021. See TRAC Immigration, The Impact of Nationality, Language, Gender and Age on Asylum Success, (previously cited). Over this period, successful claims by asylum seekers from Venezuela and Cuba rose by 15%

183. See TRAC Immigration, The Impact of Nationality, Language, Gender and Age on Asylum Success, (previously cited).

184. Human Rights First, unpublished research based on USCIS credible fear records received through FOIA, 2022.

185. Human Rights First, *Pretense of Protection: Biden administration and Congress should avoid exacerbating expedited removal*

Attorney Breanne Palmer told Amnesty International¹⁸⁶ that a mixture of anti-immigrant and anti-Black sentiment, as well as unconscious enduring false stereotypes that paint Black people on the one hand as “dangerous”, and on the other hand as “incapable of feeling pain” are a big part of the problem, and part of the reason Black migrants are not seen as credible. “They (immigration officials and judges) don’t believe what the Black immigrant is saying” she said.¹⁸⁷

For Palmer,¹⁸⁸ as well as Haddy Gassama,¹⁸⁹ Policy and Advocacy Director at UndocuBlack Network, an additional challenge is that asylum officers and immigration judges frequently lack a good understanding of the context from which Haitians are fleeing, making them unable to make a fair determination.

Palmer also told Amnesty International that immigration officials often create a higher evidentiary burden for Black asylum seekers over other nationalities racialized as white. “In asylum proceedings, your testimony can stand alone if an immigration judge finds you credible... even if you have little documentary evidence... But for many Black immigrants, immigration judges or asylum officers, they demand more documentary evidence than they would for other asylum seekers.” “There are so many opportunities for subjective findings and subjective interpretations... and the law alone does not necessarily result in the right decision,” she told Amnesty International. She adds:

“Black immigrants... face some of the worst aspects of the immigration system... Black immigrants are more likely to be detained by ICE..., to stay in ICE detention longer... their bond amounts can be much higher... If you are able to be eligible for bond, an immigration judge has to... determine... whether you are a flight risk (will you show up to your immigration hearing) and are you a danger to the community... Those two analyses are very subjective, and they are very vulnerable to racial biases, racial prejudices... There are lots of pre-conceived notions about who Black immigrants are, what kinds of claims they bring and how meritorious those claims are.”

Breanne J. Palmer, Attorney and First Immigration Policy Counsel at the Leadership Conference on Civil and Human Rights

Ronald Claude, Director of Policy & Advocacy at the Black Alliance for Just Immigration, agrees that Black immigrants disproportionately suffer the worse parts of the US immigration system. He told Amnesty International:

“Overcriminalization, extended detention periods, increased deportation rates, you name it, wherever there is negativity in our immigration system - which is throughout - Black migrants face the brunt and the most excessive consequences of our system... This goes from detention, to seeking asylum, to TPS...”

Ronald Claude, Director of Policy & Advocacy, Black Alliance for Just Immigration (BAJI)

deficiencies, 3 August 2022, humanrightsfirst.org/resource/pretense-protection-biden-administration-and-congress-should-avoid-exacerbating-expedited

186. Interview by video call with Breanne Palmer, 6 April 2022.

187. Interview by video call with Breanne Palmer, 6 April 2022.

188. Interview by video call with Breanne Palmer, 6 April 2022.

189. Interview by video call with Haddy Gassama, 23 March 2022.

Data on the way bonds (one of the few ways to be released from immigration detention while a case is pending) are set for Haitians does indeed demonstrate that Haitians are less likely to be granted bonds in the first place - and when they are granted - they are required to pay higher amounts. Information gathered by Human Rights First shows that in nearly 80% of bond decisions for Haitian asylum seekers, immigration judges either denied bond, increased bond, or refused to reduce the bond amount set by ICE. When comparing to other nationalities, Haitian asylum seekers were 27% more likely to be denied bond and nearly twice as likely to have their bond increased beyond the amount set by ICE.¹⁹⁰

According to the same study, in 2021, the average bond set for Haitian asylum seekers was nearly double the average bond for other asylum seekers, making it more likely that they would be detained for longer, and less likely that they could avoid remaining in immigration detention. In fact, according to Human Rights First, Haitian asylum seekers also made up a disparate proportion of asylum seekers with bonds set at 20,000 US dollars or more, and while Haitian asylum seekers only accounted for 3% of total bond decisions for people with pending asylum claims, more than 14% of bonds set at or above 20,000 US dollars were imposed on Haitians.¹⁹¹

US-based NGOs and lawyers interviewed for this report say the treatment Haitians receive under the control of US immigration is deeply interconnected with the way Black people in the USA have been treated historically, including in the criminal justice system, where evidence demonstrates Black people are vastly overrepresented.¹⁹²

According to a study by NYU School of Law Immigrant Rights Clinic and the Black Alliance for Just Immigration, while Black migrants represent only 7.2% of the noncitizen population in the US, more than one out of every five people (20.3%) facing deportation on criminal grounds is Black.¹⁹³

In her article “Racial Borders” academic Tendayi Achiume describes current day systems of immigration not only as “racial technology” built on colonialism and racist foundations, but says “Blackness” itself is a border, where people racialized as white are afforded privileges as they migrate, and people racialized as Black are subjected to greater exclusion. Similarly, for many US advocates who spoke to Amnesty International for this report, systemic racism and white supremacy runs deeply in the history of US immigration systems.¹⁹⁴

190. The immigration court data was obtained by Human Rights First through FOIA corresponding to US Fiscal Year 2021 (from October 2020 through mid-August 2021, the cutoff for the data provided). Human Rights First, “*I am a prisoner here*: Biden Administration policies lock up Asylum seekers”, April 2022, humanrightsfirst.org/sites/default/files/1%27maPrisonerHere.pdf, p. 29.

191. Human Rights First, “*I am a prisoner here*: Biden Administration policies lock up Asylum seekers” (previously cited) p. 19.

192. See for example: UN Special Rapporteur on extreme poverty and human rights, *Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America*, 4 May 2018, A/HRC/38/33/Add.1, para: 54. Furthermore, a study conducted by the NYU School of Law Immigrant Rights Clinic and the Black Alliance for Just Immigration pointed out that the Obama’s administration immigration enforcement focus on individuals with criminal records disproportionately impacted Black migrants “who are more likely than immigrants from other regions to have criminal convictions, or at least to be identified through interactions with local law enforcement, because of rampant racial profiling.” See NY Morgan-Trostle, M., Zheng, K. & Lipscombe, C., *The State of Black Immigrants*. Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, 2016, oir.sccc.gov/sites/g/files/exjcpb1026/files/sobi-deprt-blk-immig-crim-sys.pdf

193. NY Morgan-Trostle, M., Zheng, K. & Lipscombe, C., *The State of Black Immigrants*. Black Alliance for Just Immigration and NYU School of Law Immigrant Rights Clinic, (previously cited), p. 20. In the same study, the authors add that “a person who is placed in immigration deportation proceedings does not have the right to free legal representation. As a result, immigrants often have no other choice but to represent themselves in court, and are left to navigate a notoriously complex and bureaucratic system on their own. Immigrants are afforded few procedural protections, and are often detained during these proceedings.”

194. Tendayi Achiume, “Racial Borders”, 110 *Georgetown Law Journal* 445 (2022), UCLA School of Law, Public Law Research Paper No. 21-33, May 2022, papers.ssrn.com/sol3/papers.cfm?abstract_id=3962563

“For Black migrants in particular - and for an organization like UndocuBlack - from our vantage point, the Department of Homeland Security, ICE, CBP are all policing systems. And in the US, we understand... all systems of policing are derivatives of slave patrols, who were the earliest forms of police in the US, who were deputized white vigilantes, who were given the right to hunt Black people who were escaping from chattel slavery... We conclude that white supremacy has always existed in these systems... In a country where white supremacy is so endemic... We understand that Black migrants will always experience the harshest and heaviest brunt of those systems.”

Haddy Gassama, lawyer and Policy and Advocacy Director, UndocuBlack Network, 23 March 2022

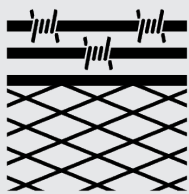
In response to written questions about how US authorities were addressing racial discrimination in the US immigration system, CRCL told Amnesty International that it was “working hard to implement the Administration’s agenda of racial equity and addressing systemic racism and xenophobia inside and outside of the federal government.”¹⁹⁵ It indicated that CRCL is leading on coordinating within DHS under Executive Order 13985¹⁹⁶ and conducting: “A careful and thorough review of the patchwork of policies governing the Department’s [DHS’s] use of race, ethnicity, national origin, religion, gender, and other individual characteristics...”¹⁹⁷

195. Response from the Office for Civil Rights and Civil Liberties (CRCL) to written questions submitted by Amnesty International, received 27 June 2022, on file with Amnesty International.

196. Executive Order 13985 on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” was signed by President Biden on his first day in office in January 2021. The policy has the aim to “pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”

197. Response from the Office for Civil Rights and Civil Liberties (CRCL) to written questions submitted by Amnesty International, received 27 June 2022, on file with Amnesty International.

5. TORTURE AND OTHER ILL-TREATMENT OF HAITIAN ASYLUM SEEKERS BY THE US AUTHORITIES



“YOLANDE” HEAVILY PREGNANT, ILL-TREATED IN US IMMIGRATION DETENTION

“Yolande”¹⁹⁸ was in her mid-20s and pregnant when she reached the US border in January 2022.

She told Amnesty International she was moved between two prisons over a period of seven days in the state of Texas. Like many of those interviewed by Amnesty International for this report, she describes lack of hygiene, and no access to phone calls or lawyers. She also describes having felt discriminated against compared with other migrants.

“After we finished crossing the border, they picked us up and put us in the first prison. In the first prison, everyone was with their families. We were together but the situation was not good at all. I was pregnant and had to vomit. I could not eat and could only hold down water and a bit of juice that they gave me to consume. I couldn’t even smell food. I don’t know if it was because I was pregnant, but I was really weak and I fainted.”

“In the second prison, they separated us. I was not with my husband. In this prison, you could see a doctor when you had a problem, but they did not treat us well. If you had a problem, you had to wait at least an hour or two before they would see you.”

“While in prison, they did not let us bathe. During seven days in prison, I never bathed nor had the chance to go the bathroom or brush my teeth. We were transferred to another prison in Texas where I fainted again. I was weak and I still could not eat.”

“In the prison, they put all of the Haitians in one place, separated from other migrants. There was a woman in the same cell that was almost nine months pregnant, and they deported her the same time as me. She could not get on the plane, so they shackled her, and they carried her onto the plane...”

“We did not have access to make calls. It marked me that all other people could make calls except us Haitians. We did not have access to talk to lawyers. Our families in the USA did not have news of us, and when we asked to make calls, they would not let us. When [our families] would try and call us and ask for us they were told there was no such a person.”

“I fainted at the airport [on arriving in Haiti] and then after I found the psychologist. I told them that I had not eaten well during the last seven days. They said that is probably why you fainted.”

198. Interview by voice call with “Yolande”, 2 February 2022.

THE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT IN INTERNATIONAL LAW

Under international human rights law, the intentional infliction of severe pain or suffering by a government official for any reason based on discrimination of any kind is recognized as torture. Torture is banned without exception under the Convention Against Torture, and the International Covenant on Civil and Political Rights (ICCPR), both of which the United States has ratified, as well as the American Convention on Human Rights (ACHR). The prohibition against torture is considered a *jus cogens* norm, from which no derogation is permitted.¹⁹⁹

The USA ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1994, but with various reservations,²⁰⁰ and has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to the Istanbul Protocol,²⁰¹ “The objective of the Optional Protocol is to prevent torture and ill-treatment by way of regular visits by independent international and national bodies to all places in which persons are or may be deprived of their liberty, including police stations, prisons, pretrial detention centres, immigration detention centres, juvenile justice establishments, military facilities, and mental health and social care institutions.”

To meet the definition of torture, an act must be: (1) intentional (2) carried out or accepted by a government official (3) inflict severe pain or suffering, including physical or psychological and (4) carried out for one of an exhaustive set of reasons,²⁰² which include any reason that is based on discrimination of any kind –including xenophobia or migration status and racial discrimination. To meet the definition, the relevant conduct need not have a discriminatory “purpose” only a discriminatory “nexus.”²⁰³

What constitutes torture, including psychological torture, varies for everyone. Factors such as “age, gender, health and vulnerability” as well as “contextual circumstances”²⁰⁴ all play a role in determining if a specific treatment amounts to torture, and individuals may react differently to different methods of torture depending on their particular vulnerabilities such as migration status or race.²⁰⁵ International law requires states to ensure protection of these vulnerable groups and to punish violence against them.²⁰⁶

In contrast to torture, “cruel, inhuman or degrading treatment or punishment” (“ill-treatment”) is not defined under international law. In line with the position of many international and regional human rights monitoring bodies, Amnesty International considers that cruel, inhuman or degrading treatment or punishment may be defined negatively in relation to torture in that it lacks one or more of the above-mentioned elements of the torture definition.²⁰⁷

199. International Court of Justice, Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal), Judgment of 20 July 2012, section 99, UN General Assembly resolution 66/150, third preambular paragraph; Prosecutor v Furundzija (IT-95-17/1), ICTY, (1998) section 153-157 ACHR, *African Americans, police use of force, and human rights in the United States*, OEA/Ser.L/V/II. Doc. 156, 26 November 2018, para. 225, [oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf](https://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf)

200. Amnesty International, United States of America: Submission to the UN Committee against Torture, 53rd Session of the Committee, November 2014, [amnestyusa.org/files/amr_510492014.pdf](https://www.amnestyusa.org/files/amr_510492014.pdf), pp.4-5.

201. Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2022, [ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf](https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf)

202. The exhaustive set of reasons provided by Article 1 of the UN Convention Against Torture are the infliction of severe pain or suffering “for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.”

203. According to the UN Special Rapporteur on Torture, “In order for discriminatory measures to amount to torture, it is sufficient that they intentionally inflict severe pain or suffering “for reasons related to discrimination of any kind.” It is therefore not required that the relevant conduct have a discriminatory “purpose”, but only a discriminatory “nexus.” (A/63/175, para. 48). See: UN Special Rapporteur on Torture, Torture and other cruel, inhuman or degrading treatment or punishment, 20 March 2020, A/HRC/43/49; para. 36.

204. UN Special Rapporteur on Torture, Torture and other cruel, inhuman or degrading treatment or punishment, 20 March 2020, A/HRC/43/49; para. 30.

205. According to the UN Special Rapporteur on Torture: “Each person may react differently to a particular method of torture. In practice, therefore, torture techniques must always be evaluated by reference to the targeted victim’s individual vulnerabilities (A/73/152), whether attributable to disability (A/63/175), migration status (A/HRC/37/50) or any other reason.” See: UN Special Rapporteur on Torture, Torture and other cruel, inhuman or degrading treatment or punishment, 20 March 2020, UN Doc. A/HRC/43/49, para. 69.

206. UN Committee against Torture, General Comment 2, Implementation of article 2 by States parties, 24 January 2008, UN Doc. CAT/C/GC/2, para. 21, Manfred Nowak, et al, *The United Nations Convention Against Torture and its Optional Protocol: A Commentary*, Second Edition, 2019, p. 456.

207. See Convention against Torture, Article 16. See also Committee against Torture, General Comment 2, Implementation of Article 2 by States Parties, 24 January 2008, UN Doc. CAT/C/GC/2, para. 10. For example, an act of ill-treatment would constitute cruel, inhuman or degrading treatment or punishment rather than torture if it lacks the required intention or the required purpose, or if the pain or suffering it causes is not “severe.”

Discrimination can drive torture and certain discriminated groups are at heightened risk of torture or other ill-treatment. All torture involves the dehumanization of the victim, and this can be easier if victims come from a disadvantaged social, political, or ethnic group. Discrimination paves the way for torture by allowing the victim to be seen as less human or even as an object that can, therefore, be treated inhumanely. As pointed out by the Association for the Prevention of Torture in a submission to the OHCHR on systemic racism in law enforcement, torture is facilitated when specific groups are otherized, or constructed as “they”, and de-humanized. As such in systemically racist police forces, individual officers are more likely to enact or perpetuate racist policies and practices, regardless of their individual beliefs.²⁰⁸ The Committee against Torture has stated that “discrimination of any kind can create a climate in which torture and other ill-treatment of the ‘other’ group subjected to intolerance and discriminatory treatment can more easily be accepted.”²⁰⁹

208. Association for the Prevention of Torture, APT input – Systemic Racism in Law Enforcement, para. 8-9, [apt.ch/en/resources/publications/appt-input-systemic-racism-law-enforcement](https://www.appt.ch/en/resources/publications/appt-input-systemic-racism-law-enforcement)

209. Contribution of the Committee against Torture to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, 26 February 2001, UN Doc. A/CONF.189/PC.2/17, p. 2.

RACE AND MIGRATION-RELATED TORTURE

People of African descent experience systemic discrimination globally.²¹⁰ According to the OHCHR, this is rooted in the historical context of enslavement and colonialism.²¹¹

Multiple human rights bodies have found people of African descent face heightened risk of experiencing harms at the hands of the police. For example, the Committee against Torture has expressed concern over excessive use of force by US law enforcement officials especially against certain racial and ethnic groups, as well as racial profiling by police and immigration officials, and it has called on the USA to take measures to address this.²¹² Similarly, the Committee on the Elimination of Racial Discrimination has called on states to take measures to prevent excessive use of force, torture, ill-treatment and discrimination against people of African descent in the contexts of detentions and arrests, and to prevent practices of racial profiling.²¹³

The Inter-American Commission on Human Rights in its jurisprudence has also found that racially discriminatory treatment by law enforcement officials can violate the prohibition against cruel, inhuman and degrading treatment,²¹⁴ and moreover that the treatment can be degrading when an individual is humiliated in front of others.²¹⁵ The Commission has also recognized that other factors such as the duration of the treatment and particular characteristics of the victim, such as race, colour and nationality, will impact whether the treatment reaches the minimal threshold for ill-treatment.²¹⁶

Multiple Special Rapporteurs on Torture have also identified that migrants and asylum seekers are at greater risk of torture. The UN Special Rapporteur on Torture has stated that the range of human rights violations to which migrants are subject to, including torture, is a result of “the growing tendency of States to base their official migration policies and practices on deterrence, criminalization and discrimination rather than on protection, human rights and non-discrimination.”²¹⁷

In considering migration-related torture and ill-treatment, the Special Rapporteur has also stated that specific laws, policies, and practices that expose migrants to torture or other ill-treatment are unlawful, regardless of who was directly responsible for the acts and including if the violations were carried out by private actors and the state failed to protect migrants.²¹⁸

210. UN High Commissioner for Human Rights, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, 1 June 2021, Un Doc. A/HRC/47/53; para. 15, Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth sessions*, 15 August 2019, Un Doc. A/HRC/42/59, Conclusion, Committee on the Elimination of Racial Discrimination, General recommendation No. 34 adopted by the Committee, Racial discrimination against people of African descent, 3 October 2011, Un Doc. CERD/C/GC/34, para. 6.

211. UN High Commissioner for Human Rights, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, 1 June 2021, Un Doc. A/HRC/47/53, The Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth sessions*, 15 August 2019, Un Doc. A/HRC/42/59, para. 82: “The Working Group calls on Member States to understand how institutional racism is situated within a particular historical context that links enslavement, colonialism and the modern global economy to the false beliefs and stereotypes used to justify the exploitation and abuse of people of African descent historically and which retain tremendous force even today.”

212. Committee against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, 19 December 2014, Un Doc. CAT/C/USA/CO/3-5, para. 26.

213. UN Committee on the Elimination of Racial Discrimination, General recommendation No. 34 adopted by the Committee, Racial discrimination against people of African descent, 3 October 2011, Un Doc. CERD/C/GC/34, para. 39.

214. IACHR, Merits, Benito Tide Méndez et al. (Dominican Republic), Report No. 64/12, Case 12.271, 29 March 2012, para. 209.

215. IACHR, Merits, Benito Tide Méndez et al. (Dominican Republic), Report No. 64/12, Case 12.271, 29 March 2012, para. 194.

216. IACHR, *African Americans, Police Use of Force, and Human Rights in the United States*, 2018, para. 234.

217. Special Rapporteur on Torture, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 23 November 2018, Un Doc. A/HRC/37/50, para. 66.

218. UN Special Rapporteur on Torture, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 23 November 2018, Un Doc. A/HRC/37/50, para. 67. “Migration laws, policies and practices that knowingly or deliberately subject or expose migrants to foreseeable acts or risks of torture or ill-treatment, or that knowingly or deliberately prevent them from exercising ancillary rights designed to protect them against such abuse, are conclusively unlawful and give rise to State responsibility for the ensuing harm, regardless of the direct attributability of the relevant acts of torture or ill-treatment. Moreover, whenever States fail to exercise due diligence to protect migrants from violations by private actors, to punish perpetrators or to provide remedies, they are acquiescent or complicit in torture or ill-treatment.”

In migration detention settings, inadequate detention conditions can also amount to torture or other ill-treatment, especially if they are designed to deter, intimidate, or punish migrants and their families.²¹⁹ Limiting access to information and personal items, including bedding, clothing, food or water, or proper heating or ventilation can also constitute a form of psychological torture or other ill-treatment, as it removes power or agency and control over aspects of a victim's life.²²⁰

Like any other discriminated groups, migrants may have particular vulnerabilities to torture and ill-treatment. For example, according to one study referenced by the Special Rapporteur on Torture in a thematic report, the average prevalence of torture victims among irregular migrants is 27%.²²¹

The Special Rapporteur on Torture has further highlighted that the longer migrants are detained in inadequate conditions, and the less control they have over their situation, the more likely they are to suffer more intense mental and emotional suffering. The Rapporteur has emphasized that for specific groups, including migrants and members of ethnic minorities and LGBTI people, with increased vulnerabilities such as medical conditions or torture trauma, the “threshold for ill-treatment can be reached very quickly, if not immediately.”²²² Similarly, international law has acknowledged studies that demonstrate that “chronic racial stress” can lead to increased “incidence of post-traumatic stress disorder, and other biological and psychological illness.”²²³ As such, people of African descent who experience constant racial discrimination may be at heightened risk for torture and other ill-treatment.

Amnesty International research on torture dating back to the 2000s and covering numerous countries²²⁴ has documented that migrants and asylum seekers, and Black people in the context of excessive use of force by the police, are consistently at risk of torture and other ill-treatment.²²⁵ International law requires states to protect these groups and prosecute violations against them.²²⁶

Historical and contemporary forms of systemic racism provide a critical backdrop to Amnesty International's findings in this section, as does the history of resistance in Haiti to colonisation, slavery, and white supremacy, as set out in previous chapters.

All the Haitians interviewed for this report were detained in US immigration detention for on average seven days prior to being expelled, but in some cases up to 14 days. The evidence gathered for this report finds that the treatment they describe - also corroborated by psychologists - amounts to ill-treatment and in some cases reaches the level of torture.

Regrettably, the findings in this chapter only build on evidence presented in multiple previous reports by Amnesty International which have detailed how US authorities regularly detain migrants and asylum seekers in ways that amount to ill-treatment and in some cases torture, either to coerce them to give up their claims or to deter other asylum seekers. Amnesty International has previously documented the impact of this on children, Black and LGBTI asylum seekers.²²⁷

219. UN Special Rapporteur on Torture, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 23 November 2018, A/HRC/37/50, Para: 19: “Moreover, ill-treatment or grossly inadequate detention conditions can even amount to torture if they are intentionally imposed, encouraged or tolerated by States for reasons based on discrimination of any kind, including based on immigration status, or for the purpose of deterring, intimidating or punishing migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to “voluntary” return, providing information or fingerprints, or with a view to extorting money or sexual acts from them.”

220. UN Special Rapporteur on Torture, Torture and other cruel, inhuman or degrading treatment or punishment, 20 March 2020, UN Doc. A/HRC/43/49, para. 49 and 49 (a): “Removing power or agency and control over many aspects of a victims’ lives, is an often applied method of psychological torture.” According to the Special Rapporteur, techniques used to achieve this can include: “Arbitrarily providing, withholding or withdrawing access to information, reading material, personal items, clothing, bedding, fresh air, light, food, water, heating or ventilation.”

221. Special Rapporteur on Torture, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 23 November 2018, UN Doc. A/HRC/37/50, para. 8.

222. UN Special Rapporteur on Torture, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 23 November 2018, UN Doc. A/HRC/37/50, para. 27.

223. Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth sessions*, 15 August 2019, UN Doc. A/HRC/42/59, para. 55.

224. Amnesty International, *Take a Step to Stamp out Torture*, (ACT 40/013/2000), 17 October 2020, [amnesty.org/en/documents/act40/013/2000/en/](https://www.amnesty.org/en/documents/act40/013/2000/en/)

225. Amnesty International, *Take a Step to Stamp out Torture*, (previously cited), pp. 25-26.

226. UN Committee against Torture, General Comment 2, Implementation of article 2 by States parties, 24 January 2008, UN Doc. CAT/C/GC/2, para. 21, Manfred Nowak, et al, *The United Nations Convention Against Torture and its Optional Protocol: A Commentary*, Second Edition, 2019, p. 456.

227. Amnesty International, *USA: ‘You don’t have any rights here’: Illegal pushbacks, arbitrary detention & ill-treatment of asylum-seekers in the United States* (previously cited), pp. 31 and 67, Amnesty International, *Americas: Amnesty International submission to the United Nations (UN) Special Rapporteur on the human rights of migrants* (AMR 01/3658/2021), 8 February 2021, [amnesty.org/en/documents/amr01/3658/2021/en/](https://www.amnesty.org/en/documents/amr01/3658/2021/en/), Amnesty International, *Pushed into Harm’s Way: forced returns of unaccompanied migrant children to danger by the USA and Mexico* (AMR 51/4200/2021), 11 June 2021, [amnesty.org/en/documents/amr51/4200/2021/en/](https://www.amnesty.org/en/documents/amr51/4200/2021/en/)

In a 2018 report, Amnesty International detailed how the US government's punitive and coercive policy of family separations – followed by the detention of parents separately from their children – violated multiple rights under international human rights law including the right to family unity, the right to liberty, and the right to freedom from torture and other ill-treatment.²²⁸ The report also documented three cases of African asylum-seekers who provided credible and consistent claims of discriminatory treatment they said they faced on the basis of race and nationality during detention in ICE facilities.²²⁹ Similarly, both Amnesty International and Human Rights Watch have found transgender women face particular harms, when detained in US immigration detention facilities, including sexual aggression and harassment.²³⁰

The research and testimonies gathered for this report are also consistent with Amnesty International reports and urgent actions dating back to at least the 1990s that have highlighted multiple cases of ill-treatment and discrimination faced by Haitians in US detention, as well as policies designed to deter Haitians, including mass detention, unlawful pushbacks at sea, and expedited removal proceedings with deficiencies in individualized screenings.²³¹

5.1 ILL-TREATMENT: “THE TREATMENT WAS INHUMANE”

In addition to the Haitians interviewed for this report, Amnesty International also interviewed four psychologists, three of whom between them provided support to hundreds of Haitians expelled between October 2021 and March 2022. All provided consistent and credible evidence that in that period, US immigration authorities detained Haitians in sub-standard conditions, without access to proper information about their immigration processes, interpreters, or to legal representation, and then - within one to two weeks on average – expelled them by plane back to Haiti in chains and shackles.

CBP's *National Standards on Transport, Escort, Detention, and Search*²³² and ICE's *National Detention Standards* both provide guidance on how asylum seekers under US detention should be treated. According to CBP's standards, migrants, and asylum seekers “should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities.”²³³ According to CBP's response to written questions from Amnesty International received on 22 July 2022, “CBP's language access plan provides CBP's policy related to access to language services.”²³⁴

ICE's standards specify, among other things, that detained people with limited English should have language access,²³⁵ permission to receive visits from an attorney,²³⁶ and “reasonable and equitable access to telephones.”²³⁷ According to the standards, authorities should also provide detained people with “nutritious, attractively presented meals,”²³⁸ “good hygiene” including “regular exchanges of suitable and clean clothing, linens, blankets, and towels,” bathing and toilet facilities, and “sufficient feminine hygiene items.”²³⁹ Migrants and asylum seekers should also receive access to “proper medication and medical treatment”

228. Amnesty International, *USA: 'You don't have any rights here': Illegal pushbacks, arbitrary detention & ill-treatment of asylum-seekers in the United States* (previously cited).

229. Amnesty International, *USA: 'You don't have any rights here': Illegal pushbacks, arbitrary detention & ill-treatment of asylum-seekers in the United States* (previously cited), p. 61.

230. Human Rights Watch, “Do You See How Much I'm Suffering Here?: Abuse against Transgender Women in US Immigration Detention”, 26 March 2016, [hrw.org/report/2016/03/24/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us](https://www.hrw.org/report/2016/03/24/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us), Amnesty International, *Americas: 'No safe place': Salvadorans, Guatemalans and Hondurans seeking asylum in Mexico based on their sexual orientation and/or gender identity* (AMR 01/7258/2017), 27 November 2017, [amnesty.org/en/documents/amr01/7258/2017/en/](https://www.amnesty.org/en/documents/amr01/7258/2017/en/)

231. Amnesty International, *USA: Haitian asylum seekers* (Index: AMR 51/71/91), 20 December 1991, [amnesty.org/es/wp-content/uploads/2021/06/amr510711991en.pdf](https://www.amnesty.org/es/wp-content/uploads/2021/06/amr510711991en.pdf), Amnesty International, *United States of America: Failure to protect Haitian refugees*, (Index: AMR 51/31/93), April 1993, [amnesty.org/en/wp-content/uploads/2021/06/amr510311993en.pdf](https://www.amnesty.org/en/wp-content/uploads/2021/06/amr510311993en.pdf), Amnesty International, *The price of rejection - Human rights consequences for rejected Haitian asylum-seekers* (AI Index: AMR 51/31/94), May 1994, [amnesty.org/en/documents/amr51/031/1994/en/](https://www.amnesty.org/en/documents/amr51/031/1994/en/), Amnesty International, “Haitian repatriation process questioned by Amnesty International delegation on return from Guantánamo”, 28 September 1994, [amnesty.org/es/wp-content/uploads/2021/06/nws112251994en.pdf](https://www.amnesty.org/es/wp-content/uploads/2021/06/nws112251994en.pdf), Amnesty International, *United States of America 'I'm not an inmate. Why should I be treated as one?': Women asylum-seekers punished for state's failure to protect them* (AI Index: AMR 51/028/01), March 2001, [amnesty.org/en/documents/AMR51/028/2001/en/](https://www.amnesty.org/en/documents/AMR51/028/2001/en/), Amnesty International, “USA: Stop discriminating against Haitian asylum-seekers”, 29 April 2002, [amnesty.org/es/wp-content/uploads/2021/06/amr510662002en.pdf](https://www.amnesty.org/es/wp-content/uploads/2021/06/amr510662002en.pdf)

232. US Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, October 2015, [cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search](https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search)

233. US Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search* (previously cited) p. 14

234. CBP's response to written questions from Amnesty International received on 22 July 2022, on file with Amnesty International

235. US Customs and Immigration Enforcement, *National Detention Standards*, 2019, [ice.gov/detain/detention-management/2019](https://www.ice.gov/detain/detention-management/2019), p.ii.

236. US Customs and Immigration Enforcement, *National Detention Standards*, 2019 (previously cited), p.166.

237. US Customs and Immigration Enforcement, *National Detention Standards*, 2019, (previously cited), Standard 5.4.

238. US Customs and Immigration Enforcement, *National Detention Standards*, 2019 (previously cited), Standard 4.1.

239. US Customs and Immigration Enforcement, *National Detention Standards*, 2019 (previously cited), Standard 4.4.

when necessary.²⁴⁰ Similarly, according to ICE's National Detainee Handbook - updated in 2021 - detained people who do not speak English should be provided an interpreter, "free of charge, for medical and ICE – or detention-related matters," the right to obtain a lawyer, and make phone calls, among other rights.²⁴¹

Despite these standards, few of those interviewed for this report were able to clearly identify where they had been held, as during their detention they were offered no access to interpreters or lawyers. In most interviews, Haitians simply described the detention centres as "prisons" (*prizon* in Creole), and some described them as open-air prisons with tents and multiple rooms.

Most Haitians interviewed for this report also indicated that they were not provided with appropriate healthcare, and many told Amnesty International researchers that their young children had diarrhoea and colds. To make matters worse, according to those interviewed, immigration officials threw out their belongings when they detained them, including medicines, and did not replace them for others. Several mothers with young babies also told Amnesty International that the US authorities either failed to provide them with diapers, or administered them only two per day, insufficient to keep their babies clean.

In interviews with Amnesty International, NGOs and humanitarian organizations based in Haiti that offered support at the airport in Port-au-Prince for those expelled corroborated these testimonies.²⁴² The organizations, who provided support - including ambulances, hygiene kits, and psychological assistance - indicated that on arrival Haitians often had not eaten well for days and had diarrhoea and dehydration. They also told Amnesty International that little provision had been made by US immigration authorities for pregnant women, that adults and children were given the same food, and that milk formula was rarely provided for babies in US immigration facilities. Organizations also confirmed that sometimes on landing Haitians had tested positive for Covid-19 and that people appeared to be severely psychologically impacted by the treatment they received in the USA.

"Emilio" who was travelling with his wife, as well as with his one year old and three year old, told Amnesty International there was barely space to lie down in the US detention centres, and that authorities only gave them an aluminum covering to keep warm and one bottle of water. "Emilio" said one of their children was sick with an infection and it was not until they arrived in Haiti that they were able to rush him to hospital.²⁴³

Similarly, "Joseph", who was travelling with his wife and child, told Amnesty International: "When we arrived in Mexico, we thanked God because we were still alive... things were really difficult. We spent 9 days under the bridge. The conditions were not good at all. People were gathering, gathering, gathering. There was no food or water. There was a lot of dust. In prison, again it was very hard. We could not go out, we did not know if it was night or day. A lot of people - people on top of people. Men and women in the same place."²⁴⁴

Amnesty International interviewed three Haitian psychologists who between them provided support to many hundreds of Haitians on their return to Haiti, after being expelled by the USA. All confirmed that the treatment in US immigration detention had a significant psychological impact on people who had been expelled.

"Psychologist 1" - who provided support to more than 64 families expelled from the USA starting in October 2021 - told Amnesty International that their clients had experienced inhumane conditions in US detention facilities and often had been unable to bathe for 10 days and were forced to sleep on the floor.²⁴⁵ According to "psychologist 1", women reported having insufficient access to toilet facilities and sanitary products when they were menstruating and indicated they had had to wear the same underwear for 10 or 12 days, which sometimes had caused infections.

"Psychologist 2" - who with a team of psychologists and social workers provided support to 500 Haitians expelled between January 2022 and the end of March - noted that the majority of those expelled arrived exhausted and with signs of depression, insomnia, distress, chronic headaches, and extreme fear.²⁴⁶ They told Amnesty International that these reactions were provoked by a combination of the difficult and dangerous journey Haitians had taken to reach the USA, as well as the treatment in US detention.

240. US Customs and Immigration Enforcement, National Detention Standards, 2019 (previously cited), p.138.

241. US Customs and Immigration Enforcement, National Detainee Handbook, 2021, [ice.gov/doclib/detention/ndHandbook/ndhEnglish.pdf](https://ice.dhs.gov/doclib/detention/ndHandbook/ndhEnglish.pdf)

242. Amnesty International interviewed various humanitarian organizations in Haiti most of whom asked to remain anonymous.

243. Interview by voice call with "Emilio", 14 December 2021.

244. Interview by voice call with "Joseph", 30 January 2022.

245. Interview by voice call with "psychologist 1", 2 February 2022 and 7 April 2022.

246. Interview by voice call with "psychologist 2", 31 May 2022.

“They told us that the treatment was inhumane. The way that women described it to us...they could go eight days (and) they did not use the bathroom or shower. The food that they were given was not food that was edible for humans – that was how they explained it to us... It was really the treatment in prison, especially (for) those who had children. They were traumatized. Frequently, there would be air conditioning and they would not give them sheets to cover themselves. They would give a little piece of aluminium in place of sheets in the prison.”

“Psychologist 2” interviewed by voice call, 31 May 2022

“Psychologist 3” - who worked with children who had been expelled with their families, including children with disabilities - told Amnesty International that on arrival in Haiti some of the children were “crying and panicked,” and others were “agitated and in a state”, and others were “unable to really speak, not comfortable, tired...”²⁴⁷

Previous research by Amnesty International has found that migrants and asylum seekers of all nationalities are often at risk for torture and other ill-treatment in US immigration detention - including LGBTI people and racialized people.²⁴⁸ This research finds that Haitians experience particular harms rooted in a combination of anti-Black discrimination and nationality-based discrimination.

All the Haitians interviewed for this report described treatment which amounts to ill-treatment under international law. However, some Haitians interviewed by Amnesty International described the treatment they faced during their detention in the USA as also discriminatory, based on their racialization as Black or based on their nationality. Overwhelmingly they described seeing other nationalities – particularly people of nationalities racialized as white or Brown - receive different treatment to them.

“People spoke about discrimination and racism. They said, (US authorities) didn’t ‘manage’ them well because they are Black. Not just when they were in prison (US immigration detention), but also Chile and Brazil. They were not treated well and felt obligated to cross borders. It was the cumulative experience of racism. They felt like they had to go to the US because in areas where they lived in Chile and Brazil they experienced racist treatment. Because they were Haitian, they would look at them badly. They were badly received.”

“Psychologist 3” interviewed by voice call, 1 June 2022

247. Interviewed by voice call with “Psychologist 3”, 1 June 2022.

248. Amnesty International, *USA: ‘You don’t have any rights here’: Illegal pushbacks, arbitrary detention & ill-treatment of asylum-seekers in the United States* (previously cited), pp. 31 and 67, Amnesty International, *Americas: Amnesty International submission to the United Nations (UN) Special Rapporteur on the human rights of migrants* (previously cited), Amnesty International, *Pushed into Harm’s Way: forced returns of unaccompanied migrant children to danger by the USA and Mexico* (previously cited).

“If I were to repeat the words that they would tell me: Americans do not like Haitians at all. They formed these feelings based on the way that others in the prison were treated compared to them. They would tell me: In a cell with 40 or so people that were Venezuelans and Cubans, and they would release the others and if there were two Haitians, they would send them away. They would constantly see this, and they would think it was racist because they were not white/were foreigners (*blan*),²⁴⁹ they would send the white people away, and the Black people they sent back. This is how they understood it.”

“Psychologist 2” interviewed by voice call, 31 May 2022

None of the Haitians interviewed for this report were given individualized asylum screenings, as required by international human rights law. The testimonies gathered for this report suggests that repeatedly Haitians saw other nationalities be given access to screenings or hearings, or phone calls, rights which they did not have access to.²⁵⁰

Furthermore, there seems to be no legitimate reason that Haitians were denied access to interpreters or phone calls, as indicated by some of those interviewed by Amnesty International. Certainly, many of those who spoke to the organization experienced this differentiated treatment as anti-Black racial discrimination. Given that Amnesty International and other organizations have previously documented the racial discrimination Haitians experience across the continent, ranging from constant microaggressions to direct racial discrimination by state officials,²⁵¹ it is understandable that Haitians would experience this treatment as race and nationality-based discrimination, which appears to be constant, systemic, and cumulatively causes harm.

Under international law, the USA is required not only to take steps to address systemic racial discrimination, and other intersecting forms of discrimination, but is required to take into account the particular vulnerabilities of asylum seekers, such as race, nationality and migration status, to ensure they do not face torture or other ill-treatment under their custody.²⁵²

Amnesty International inquired into what safeguards are in place in immigration detention facilities to prevent torture and other ill-treatment, and what mechanisms are available for individuals to raise complaints. ICE told Amnesty International that both ICE and DHS “employ a robust and multi-level oversight and compliance program,” which includes “daily on-site compliance reviews to identify deficiencies, areas of concern, contract and facility issues, and to facilitate corrective actions.” ICE also stated that, “inspections and audits are conducted by the DHS Office of Inspector General (OIG), by the DHS Office of the Immigration Detention Ombudsman, and by the ICE Office of Detention Oversight within ICE’s Office of Professional Responsibility (OPR). DHS Office for Civil Rights and Civil Liberties (CRCL) also conducts on-site investigations to address allegations made by detained noncitizens and other stakeholders.”²⁵³

249. The term *blan* used by Haitians usually means a foreigner when it is in Haiti but the word *blan* directly translated is actually “white.” In this situation, it would mean someone who is a foreigner and lighter skinned.

250. Research conducted by Human Rights First also demonstrates that Haitians and other Black asylum-seekers experience differentiated treatment in US immigration detention: “Asylum seekers from Black-majority countries who came to the United States to seek protection since President Biden took office and for whom Human Rights First researchers were able to track detention periods were detained on average for nearly 4.3 months - 27 percent longer than asylum seekers from non-Black majority countries tracked by Human Rights First. Black asylum seekers reported racist statements by ICE officers, including that Africans were not released because they are ‘inferior.’ Asylum seekers and attorneys also reported that ICE imposed harsher release requirements on Black asylum seekers, such as demanding additional documentation from sponsors, and targeted Haitians for detention over asylum seekers of other nationalities. In one instance, ICE officers explicitly stated that they had been instructed to release Cubans, Nicaraguans, and Venezuelans to create additional detention bed space while ICE was simultaneously detaining large numbers of Haitian asylum seekers and migrants at the same facility.” See Human Rights First, “I’m a Prisoner Here”: Biden Administration Policies Lock Up Asylum Seekers, April 2022, humanrightsfirst.org/sites/default/files/1%27maPrisonerHere.pdf, p.4.

251. Priya Morley et al., *A Journey of Hope: Haitian Women’s Migration to Tapachula*, Mexico, 2021, imumi.org/attachments/2020/A-Journey-of-Hope-Haitian-Womens-Migration-to%20Tapachula.pdf, 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, <https://imumi.org/attachments/2020/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>, Amnesty International, *Not safe anywhere: Haitians on the move need urgent international protection*, (previously cited).

252. UN Special Rapporteur on Torture, *Torture and other cruel, inhuman or degrading treatment or punishment*, 20 March 2020, Un Doc. A/HRC/43/49, para. 69, UN Committee against Torture, General Comment 2, Implementation of article 2 by States parties, 24 January 2008, Un Doc. CAT/C/GC/2, para. 21, Manfred Nowak, et al, *The United Nations Convention Against Torture and its Optional Protocol: A Commentary*, Second Edition, 2019, p. 456.

253. Response to written questions to ICE provided to Amnesty International on 30 June 2022, on file with Amnesty International.

“THEY DID NOT TREAT US LIKE PEOPLE”

RACE AND MIGRATION-RELATED TORTURE AND OTHER ILL-TREATMENT OF HAITIANS SEEKING SAFETY IN THE USA

Amnesty International

ICE also stated “if there is an allegation of ill-treatment or torture by an ICE employee or contractor, detainees should report the behaviour to the OPR Joint Intake Center where the matter will be evaluated by both DHS OIG and ICE OPR. If it is determined that misconduct has occurred, it will be investigated and referred to the jurisdictional prosecuting entity for legal action if criminal, or to ICE management if the behaviour was a violation of policy. These multiple channels of oversight allow ICE to provide a high standard of care for the detained population.”²⁵⁴

While these safeguards appear to provide oversight for treatment of migrants and asylum seekers under DHS custody on paper, in practice, none of the Haitians interviewed for this report expelled under Title 42 appeared to have access to interpreters or officials who spoke their language, information in Haitian Creole, or lawyers – all minimum safeguards against torture and other ill-treatment. This, in turn, restricted their access to raise complaints and made them further vulnerable to ill-treatment.

According to ICE, migrants and asylum seekers should obtain access to interpreters and to due process throughout their immigration proceedings. In response to Amnesty International’s written questions about the type of access Haitians have to interpreters and legal representation while under ICE custody, ICE responded that it adheres to Executive Order (EO) 13166, “Improving Access to Services for Persons with Limited English Proficiency,” issued on 16 August 2000, which among other things provides noncitizens with “meaningful access” to programs and activities provided by ICE through professional translators or interpreters. ICE also stated that: “All noncitizens encountered by ICE are provided with access to due process throughout the pendency of their immigration proceedings,” which they stated, includes, “the right to be represented by an attorney, to contest any charges of removal, and to present evidence and to examine any evidence against them.” ICE further stated, “While the government does not provide attorneys for administrative proceedings, all those arrested by ICE and placed into removal proceedings are provided with a list of free legal services and aid resources, including pro bono providers.”²⁵⁵

In response to the same questions about the type of access Haitians have to interpreters and legal representation when under CBP custody, CBP only responded that “CBP’s language access plan²⁵⁶ provides CBP’s policy related to access to language services.” When questioned about how, at what point and in what language people are informed they are being expelled under Title 42, CBP answered that “...those subject to expulsion under Title 42 are verbally explained the process in their native language and immediately expelled to their country of last transit. In the event a person cannot be returned to the country of last transit, CBP works with interagency partners to secure an expulsion flight to the person’s country of origin and holds the person for the shortest time possible.”²⁵⁷ Considering Haitians processed under Title 42 are typically expelled to Haiti and not to their country of last transit (Mexico, in most cases), it is not clear whether CBP does indeed provide the verbal explanation in Haitian Creole when Haitians have been expelled.

254. Response to written questions to ICE provided to Amnesty International on 30 June 2022, on file with Amnesty International.

255. Response to written questions to ICE provided to Amnesty International on 30 June 2022, on file with Amnesty International.

256. CBP, “Language Access in Customs and Border Protection”, cbp.gov/about/language-access?language_content_entity=en (accessed on 26 July 2022).

257. Response to written questions to CPB provided to Amnesty International on 22 July 2022, on file with Amnesty International.

5.2 TORTURE: “THEY CHAINED ME EVEN THOUGH I HAD A 4 MONTH OLD...”



“MARJORY”: SHACKLED WHILE BREASTFEEDING DURING THE DEPORTATION FLIGHT

“Marjory”²⁵⁸ is in her late 30s. According to her testimony, she left Haiti for the Dominican Republic at a very young age and was raised by a Dominican family. She does not speak Haitian Creole, but Spanish. Marjory told Amnesty International that she met her husband, also Haitian, in the Dominican Republic and together they went to Chile where they lived for several years before deciding to go to Mexico, and then the USA. She describes the treatment they faced by US officials.

“After crossing the border to enter the USA, we were immediately taken by immigration. They made us throw away all of our things, all of our clothes, food and milk for the kids. They made us believe that they were going to let us go find our families in the USA. We thought our suffering was over, and that we were going to live the American dream, but it was not that at all. We soon realized we were headed to prison. The kids were crying, hungry, thirsty for water, and we could not wash the kids after they soiled themselves. The situation was not good at all for Haitians. I cried a lot every day because of the situation where my child that was 2-3 months and the other that was 2 years old kept crying because they were hungry and thirsty.”

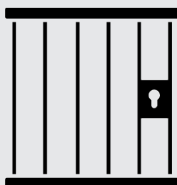
“They did not give us access to call anyone, not our family, nor a lawyer. They mistreated us in secret, where no one could see. They mistreated Haitians. Why all of this mistreatment?”

“They did not treat people from other countries in this way. People from other places were allowed to talk to their families, they were brought to the hospital when they were sick, and treated them with humility, but Haitians did not find this same treatment.”

“When they were deporting us, they cuffed us, all of us, men and women alike. The cuffs were linked by a chain. They chained me even though I had a 4 month old baby and had to try and manage to try to give the infant my breast while being shackled. My hands and feet were handcuffed and connected by a chain that went around my waist until we arrived in Haiti. The [Haitian] men on the flight wanted the world to see how the USA treated Haitians, they did not want to take off the chains when the plane landed, they wanted journalists to photograph them with the chain and cuffs.”

“On the plane, an American agent had hit a young man because he was stating his rights. He was asking why they were mistreating them this way. They threw cookies in the face of people who did not want to accept the cookies.”

258. Interview by voice call with “Marjory”, 22 February 2022.



“TI BEN” SHACKLED AND FRISKED REPEATEDLY IN US DETENTION

“Ti Ben”²⁵⁹ is in his early 30s and has a one year old son. After being deported from the USA to Haiti in December 2021, he told Amnesty International that he is now back in Chile and hoping to try and return to the USA again. He described to Amnesty International his experience in US immigration detention.

“In every room, there were about 40-60 people per room. People were moved in and out of the rooms. There were mats on the ground covered in plastic, and then they gave you a bag to cover yourself that resembles body bags (for dead people). In this first prison, you could move about - you would be able to go into other spaces and sit. We were at this detention centre for 4 days. Then, around 6 or 7 pm they called us, put shackles on us around 12 or 1 am. I watched them put shackles on my wife. They, then put us on a plane and sent us to Texas.”

“In Texas, they treated us even worse. They would give you bread and watch you. The second prison, there was no room to move about. You sometimes would not know when it was night or day. There was no space, people were fighting for space. They would open the doors and people would rush for space and if you didn’t find space, you might try and sleep on a bench. There were people from all over including Peruvians, a lot of Brazilians, and others.”

“Our family members were getting a room prepared for us in the USA. They had heard we would be called for interviews perhaps on the fourth day. On the fourth day, I thought they would call me for an interview. No interview ever happened.”

“After six days, we were put in a line - all of the Haitians.... On the bus, we were shackled again. They were put on too tightly, and I had asked them to loosen the ones around my ankles. Instead, I was pushed. It’s only in Haiti where the shackles were taken off.”

“They treated Haitians worse than others. Other foreigners would put in requests for different food. It was like there were two styles of food made. If another foreigner asked a question, they would get a response. When we (Haitians) did, the only response we would get is ‘I don’t know.’”

“They would frisk us when we were shackled. What were we going to do if we were shackled? They would spread our legs, but I would do so even before they asked. I felt really bad because I had never been shackled or even handcuffed before because I am someone who has a lot of respect. I didn’t understand what condition would require me to be handcuffed.”

“The worst part is I was with my child. All of the suffering, money spent, just to go through this experience. I’m not a thief, I haven’t taken anything from people. I do not fight with people. I do not break into people’s houses and steal. All of the suffering we went through, the pain of carrying a baby on your stomach, seven days in the jungle where the rain was falling, and I would gently sleep over my child to cover him from the rain...”

259. Interview by voice call with “Ti Ben”, 13 December 2022 and 29 March 2022.

Images published by the international press emerging from Del Rio, Texas in September 2021 were shocking because of their flagrant association with imagery that emerged during slavery.²⁶⁰

President Biden acknowledged this, calling the images “horrible” and “outrageous” and committed to an investigation.²⁶¹ Vice President Harris said, “As we all know it evoked images of some of the worst moments of our history where that kind of behavior has been used against the indigenous people of our country, has been used against African Americans during times of slavery.”²⁶²

In July 2022, in a 500-page report investigation, CPB concluded none of the Haitians were intentionally struck, but failed to interview any of the Haitians present, significantly undermining its credibility.²⁶³

Furthermore, in the months following the events in Del Rio in September 2021, according to the testimonies gathered by Amnesty International, Haitians continued to be expelled from the USA in handcuffs, chains, and shackles. Indeed, all the Haitians interviewed for this report told the organization they were expelled in this manner.

As the majority of those interviewed by Amnesty International said they were deported from Texas, the organization estimates that most would have been shackled this way for a minimum of 4 hours during the flight, and likely more time before the departure and arriving in Haiti.

As part of this research, Amnesty International tried to understand how widespread the use of shackles and chains are during deportations, however, such data is not available. Indeed, in a response to written questions from Amnesty International, CBP stated, “CBP does not maintain data on the use of restraints.”²⁶⁴ However, CBP’s standards do require that restraints during detention are used “in a manner that is safe, secure, humane, and professional.” Additionally, restraints cannot be used “in a punitive manner or in a manner than causes detainees undue pain.”²⁶⁵

In response to a question about how common the practice of handcuffing and shackling people under ICE custody is, ICE told Amnesty International the following: “ICE detention standards govern the use of force and the use of restraints when interacting with detained noncitizens. The detention standards authorize staff to use necessary and reasonable force after all reasonable efforts to otherwise resolve a situation have failed, for protection of all persons; to minimize injury to self, detained noncitizens, staff and others; to prevent escape or serious property damage; or to maintain the security and orderly operation of the facility.”²⁶⁶

Similarly, according to ICE’s National Detention Standards, the use of restraints on migrants and asylum seekers is permitted, but officers must exercise “sound correctional judgment when applying restraints.”²⁶⁷ Additionally, according to ICE’s National Detainee Handbook, officers may only use force “after all reasonable efforts to otherwise resolve a situation have failed.” The Handbook also states: “physical force or restraining devices will not be used as punishment.”²⁶⁸

International human rights law and standards explicitly calls on states to refrain from shackling and handcuffing of pregnant people or people immediately after childbirth.²⁶⁹ Indeed, the UN Bangkok Rules, paragraph 24 states: “Instruments of restraint shall never be used on women during labour, during birth and immediately after birth.”²⁷⁰

260. Al Jazeera, “US officials to probe whip-like cords used against migrants”, 21 September 2021, [aljazeera.com/news/2021/9/21/us-officials-to-probe-whip-like-cords-used-against-migrants](https://www.aljazeera.com/news/2021/9/21/us-officials-to-probe-whip-like-cords-used-against-migrants)

261. CNBC, POLITICS, “Biden condemns Border Patrol agents’ treatment of Haitian migrants, vows they will face consequences”, 24 September 2021, [cnbc.com/2021/09/24/biden-condemns-border-patrol-treatment-of-haitian-migrants-in-del-rio.html](https://www.cnbc.com/2021/09/24/biden-condemns-border-patrol-treatment-of-haitian-migrants-in-del-rio.html)

262. CNBC, POLITICS, “Biden condemns Border Patrol agents’ treatment of Haitian migrants, vows they will face consequences” (previously cited).

263. U.S. Customs and Border Protection Office of Professional Responsibility, Report of Investigation, 202112280, cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf

264. Response from CBP to written questions received by Amnesty International on 22 July 2022, on file with Amnesty International

265. US Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search, 2015, section 4.4.

266. Response from ICE to written questions received by Amnesty International on 30 June 2022, on file with Amnesty International.

267. US Customs and Immigration Enforcement, National Detention Standards, 2019 (previously cited), p.14.

268. US Customs and Immigration Enforcement, National Detainee Handbook (previously cited) p.26.

269. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report: Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 January 2016, UN Doc. A/HRC/31/57, para. 70 (h), Committee against Torture, Concluding observations on the combined third to fifth periodic reports of the United States of America, 19 December 2014, UN Doc. CAT/C/USA/CO/3-5, para. 21 (j).

270. UN General Assembly (UNGA), Resolution adopted by the General Assembly on 21 December 2010, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc. A/RES/65/229, Rule 24.

ICE's standards also have an explicit general prohibition on restraining pregnant women in the custody of ICE, both "during transport" or "in a detention facility." According to the standards, "pregnant women or women in post-delivery recuperation" may only be restrained in "extraordinary circumstances" and with oversight from a supervisor and onsite medics, such as in cases where "reasonable grounds exist to believe the detainee presents an immediate and serious threat of hurting herself, staff, or others" or if staff evaluate there is a risk of escape.²⁷¹

In a written response to questions from Amnesty International about the use of restraints, CRCL did confirm that, it "is currently investigating allegations involving alleged inappropriate uses of restraints during deportation," but indicated that the organization was unable to comment on specific on-going investigations.²⁷²

Despite these standards, which limit the use of restraints to situations where other reasonable efforts to resolve a situation have failed, according to the testimonies gathered by Amnesty International, Haitians were routinely restrained during expulsion, including pregnant women, and a breastfeeding woman. All three Haitian psychologists interviewed by Amnesty International concluded that the treatment Haitians had experienced at the hands of US officials, particularly the manner in which they were deported in restraints, caused severe mental suffering to their clients. As this treatment was often in the presence of their children, it caused even further harm.

Psychologists interviewed by Amnesty International pointed to two ways in which being hand-cuffed and shackled was particularly painful for Haitians. On the one hand because of the association of handcuffs with criminality. On the other, because of their strong association with slavery.

"Haitians see handcuffs in a certain way. They are a symbol of criminality. It's thieves that are handcuffed. It is criminals that are going to prison that are handcuffed," "psychologist 3" told Amnesty International.²⁷³

"Psychologist 2" said something similar: "An estimation of 50-60% talked about criminalization with handcuffs. They talked about the marks and how they are not criminals or thieves. They talked a lot about the marks on their hands... [They told me] They are not criminals or gang members. It is people that are criminals who did egregious acts that they should send back like this, and we did not."²⁷⁴

"Psychologist 1" - who interviewed 64 families returned by US authorities - told Amnesty International that the deportations and the way they were conducted had a huge impact on their clients,²⁷⁵ and estimated that 45 of the families they spoke to associated the experience of being shackled and chained with slavery.²⁷⁶

"Psychologist 3" confirmed to Amnesty International that their clients also related the experience to slavery, both because of Haiti's history of slavery and because of the way US authorities exercised their control over Haitians in their custody.²⁷⁷

Consistent with the testimonies gathered by Amnesty International, clients also told "psychologist 1" that during deportation flights everyone was handcuffed and shackled around the waist, including women with small children, and even when they were using the bathroom. Clients further told "psychologist 1" that sometimes US authorities hit people for expressing that they did not want to be returned to Haiti, or because they were speaking loudly. "Psychologist 1" told Amnesty International that most families talked about the deportation experience as something they would never forget, and in their professional opinion the psychological suffering this generated could amount to torture. Indeed, based on the testimonies provided by deported Haitians, as well as the psychological evaluations gathered, Amnesty International reached this same conclusion.

"This was the moment that really marked them... the biggest moments of suffering, because they felt their humanity was lost."

Interview by voice call with "psychologist 1", 2 February 2022 and 7 April 2022

271. US Customs and Immigration Enforcement, National Detention Standards, 2019 (previously cited), pp.14-15.

272. Response from the Office for Civil Rights and Civil Liberties (CRCL) to written questions submitted by Amnesty International received 27 June 2022, on file with Amnesty International.

273. Interview by voice call with "psychologist 3", 1 June 2022.

274. Interview by voice call with "psychologist 2", 31 May 2022.

275. Interview by voice call with "psychologist 1", 2 February 2022 and 7 April 2022.

276. Interview by voice call with "psychologist 1", 2 February 2022 and 7 April 2022.

277. Interview by voice call with "psychologist 3", 1 June 2022.

“The treatment is one thing. You can endure it – to not eat, not sleep. You can do so with a lot of courage. The part that was the hardest was when they put the shackles on us, like we had committed a crime. This shocked us the most.”

Interview with “George” by voice call, 2 February 2022

“They put us on the plane in handcuffs and my wife could not even breastfeed our youngest child.”

“Emilio”, 35 year old Haitian who travelled with his wife and two children, interviewed by voice call, 14 December 2022

“I ended up in four prisons. From the third to the fourth prison, they woke us up at 2 am, and put shackles on us. . . From the time they picked us up, [I] couldn’t touch the phone. From the time they picked us up – we had shackles. We had shackles to bathe – had to wait in a line.”

“Gilbert” who travelled to the USA with a group of friends, interviewed by voice call, 21 March 2022

“We are people with slave origins which means a history of extreme maltreatment. You have an owner; you have no opinion. It is like you are a bicycle and someone can do whatever they want with you. Some had said that the way the USA managed us resembles slavery.”

“Haitian psychologist 3” interviewed by voice call on 1 June 2022

Most of those interviewed by Amnesty International researchers were not aware they were going to be deported until they were placed on the plane back to Haiti. According to the testimonies gathered from Haitians who were expelled and their psychologists, this treatment generated further psychological pain and suffering.

“They did not say anything at all, only handcuffed us and then sent us on our way. It is true that I recognize that I entered the US illegally, but they should still talk to us. They did not say anything, just created a file and deported us.”

“Joseph” interviewed by voice call, 30 January 2022

“I didn’t realize we were being deported until I saw men and women all shackled (hands, waist, feet) being put on the flight.”

“Mica” interviewed by voice call, 20 January 2022

In interview, Haddy Gassama, a lawyer and Policy and Advocacy Director at the UndocuBlack Network, told Amnesty International that her organization had received information of similar treatment by US authorities towards Black Cameroonians, including asylum seekers being woken up in the middle of the night for deportation, chained and put onto a plane, and returned to a country where they faced danger. She emphasized the specific psychological harm this can cause for people of African descent.²⁷⁸

“For most Black people anywhere in the world, [mass expulsions in shackles] it very much invokes images of what slave ships looked like. It taps into the deepest levels of trauma and fear for Black people. Especially that not knowing part. . . . It happens very abruptly, [often] happens before they can reach out to attorney. . . . The historical context and racism, and to see these things replicated over and over again. . . . it’s enraging.”

Haddy Gassama, lawyer and Policy and Advocacy Director, UndocuBlack Network, 23 March 2022

“Psychologist 4” - a psychologist with 25 years of experience working with Haitians - also told Amnesty International they would characterize the treatment experienced by Haitian asylum seekers in the USA as torture.

“Leaving your country and coming to the next to find a better pathway for yourself and to be deprived of social services, to be chained, to be belittled in this manner is psychological torture –[an] attack - to break you down so by the time you are in chains, going back on the plane to your country... you will be so low that you will be compliant...”

According to “psychologist 4”, “the fact that US authorities use practices on Haitian asylum seekers that were intentionally employed historically for those perceived as subordinate people and racially inferior is another element that makes the treatment rise to the level of psychological torture.”

“These are tactics that were used during slavery. . . . these are tactics that were written about in terms of how to make slaves submissive, so they would be compliant, it’s a tactic of compliance with the goal that these people will not seek to return to the US borders. . . . To come back with [replicate] techniques that were used during slavery, to come back with techniques that were used with the most notorious criminals on asylum seekers not only creates personal trauma but retriggers massive trauma to others who survived similar abuses - personally and/or historically.”

“Psychologist 4” interviewed by voice call 7 June 2022

278. Interview by voice call with Haddy Gassama, lawyer and Policy and Advocacy Director, UndocuBlack, 23 March 2022.

Under international law, what constitutes torture, including psychological torture, varies for each individual. As such, states must take into account age, gender, health, race and migration status, as well as context.²⁷⁹

The testimonies set out in this sub-chapter highlight the severe psychological pain and suffering Haitians experienced at being shackled during expulsion because of its association with slavery and criminality.

To meet the definition of torture under international law, an act must be: (1) intentional (2) carried out or accepted by a government official (3) inflict severe pain or suffering, including physical or psychological and (4) carried out for one of an exhaustive set of reasons,²⁸⁰ which include any reason that is based on discrimination of any kind –including xenophobia or migration status and racial discrimination. Based on the evidence reviewed, Amnesty International concludes that for most Haitians interviewed for this report, expulsion in handcuffs and shackles meets this definition and amounts to race and migrant-related torture under international human rights law.

279. According to the UN Special Rapporteur on Torture: “Each person may react differently to a particular method of torture. In practice, therefore, torture techniques must always be evaluated by reference to the targeted victim’s individual vulnerabilities (A/73/152), whether attributable to disability (A/63/175), migration status (A/HRC/37/50) or any other reason.” See: UN Special Rapporteur on Torture, Torture and other cruel, inhuman or degrading treatment or punishment, 20 March 2020, Un Doc. A/HRC/43/49, para. 69.

280. The exhaustive set of reasons provided by Article 1 of the UN Convention Against Torture are the infliction of severe pain or suffering “for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.”

5.3 HISTORICAL AND ROUTINE RACE AND MIGRANT-RELATED TORTURE AND OTHER ILL-TREATMENT

During this research, Amnesty International reviewed sufficient evidence to suggest that successive US administrations have tried to deter Haitian migrants from claiming asylum in the USA through the application of various policies designed to intercept, detain, and remove Haitians from the USA, starting in the 1970s and continuing with Title 42. However, a second element of this practice of deterrence has been the intentional ill-treatment of Haitians in immigration detention, which in some cases amounts to torture related to race and migration status.

Complaints of torture and other ill-treatment against Haitians specifically date back decades.

In an Action Reference published in 2002 - some twenty years ago - Amnesty International expressed concerns that Haitian women asylum seekers were “being treated especially harshly and subject to verbal abuse and insults by guards” at a correctional centre in Miami. According to the Action, as part of a lawsuit being submitted at the time, Haitian women reported being locked in their cells for hours with only one hour of outside recreation per day, verbal abuse by the jail officers, non-contact during visits with family, strip-searches on their return from court hearings, inadequate medical care, and food which was inedible.²⁸¹

Historian and professor Carl Lindskoog, argues that over many decades Haitians particularly have been “singled out for extraordinarily harsh treatment.”²⁸² In interview with Amnesty International, he stated that he has seen sufficient information in his research to suggest that Haitians have been routinely subject to torture and other ill-treatment in different locations and over different times in history.²⁸³

“Generally, if you look at reports and research that people have done into the system... And what I have learned looking at the history of this... you come to the conclusion that these practices of mistreatment are carried out in many, many spaces, and consistently over a long period of time, including up until the present...”

You get recent and current reports of the experiences in immigration detention centres, of Haitians and others... people being brutalized, denied food... political activists that are protesting... the ice boxes... and the freezing conditions... Even being sent to other facilities, where [the] family doesn't know - you are basically disappeared, that is well documented today. As a historian, these practices were around since our modern system was re-built in the 1970s and 1980s.”

Carl Lindskoog, historian and professor, interviewed by video call, 5 May 2022

Anthropologist and legal scholar, Jeffrey Kahn, who has also studied Haitian migration to the USA since the 1970s with a particular focus on interceptions of Haitians at sea and detention in HIV camps in Guantanamo Bay during the 1990s, told Amnesty International that he has interviewed Haitians who have told him of military personnel subjecting them to violence, restraints, and poor detention conditions.

281. Amnesty International, *United States of America: Fears for Haitian Refugees* (previously cited), Amnesty International, “USA: Stop discriminating against Haitian asylum-seekers,” (previously cited), Amnesty International, *United States of America: Fears for Haitian refugees and other asylum seekers* (previously cited).

282. Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Immigration Detention System*, University Press Florida, 2018, p.3.

283. Interview by video call with Dr Carl Lindskoog, Associate Professor of History, Department of Humanities, Social Sciences, Social Work, and Education, Raritan Valley Community College, 5 May 2022.

Kahn told Amnesty International that Haitian migrants and asylum seekers often view the ill-treatment they receive at the hands of US authorities on the one hand as a deterrent to those who seek asylum, and on the other hand as a kind of punishment for being the first independent Black Republic born out of a successful slave revolution.

“Historically speaking, the symbolic power of being handcuffed and chained... is traumatic and interpreted by Haitians as intentionally inflicted to convey a message that you do not belong...”

“Very frequently, I hear Haitians articulating these historical narratives that connect US immigration policy and the US disdain for Haiti to this longer history of slavery and Haiti’s rejection of slavery and the price they have been made to pay for that ‘audacious act’ of rebellion.”

Jeffrey Kahn, anthropologist and legal scholar, interviewed by videocall on 13 June 2022

Amnesty International reviewed multiple other studies and complaints which suggest that race and nationality-based discrimination, and torture or other ill-treatment of Black migrants in US detention is widespread.

One study which analysed national patterns and practices of solitary confinement – a form of ill-treatment which may amount to torture - in US immigration detention facilities across the country between September 2013 and March 2017, found immigrants from Africa and the Caribbean were “vastly overrepresented” in comparison to other groups. In fact, the study found that almost 25% of solitary confinement cases involved people from Africa or the Caribbean, even though people from these regions collectively represent only 3.64% of all detained people. Additionally, these immigrants - likely for the most part to be racialized as Black - were overrepresented in solitary confinement cases lasting longer than 14 days by 680%, compared to their share of the detained population.²⁸⁴

More recently, in February 2022, Human Rights Watch documented abusive treatment by US authorities towards Black Cameroonian asylum seekers. In its report, *How Can You Throw Us Back?: Asylum Seekers Abused in the US and Deported to Harm in Cameroon*, the organization detailed excessive force and abuses by ICE and other government officials against 18 Cameroonians which included use of pepper spray, painful restraints such as the “wrap” (a full body restraint like a straitjacket), abusive solitary confinement, isolation and segregation.²⁸⁵

Similarly, in April 2022, Human Rights First published a report alleging that ICE had forcibly cut off the hair of Black people under their custody after indicating it was “procedure” for braided hair or locks. Indeed, an asylum seeker represented by the organization reported that while she was in detention, US authorities had chopped off her hair and that of multiple other Haitian women who she was detained with.²⁸⁶

In 2021 alone, US-based organizations working with Black migrants and asylum seekers submitted multiple complaints to the Office for Civil Rights and Civil Liberties (CRCL), which according to its own webpage “reviews and investigates civil rights and civil liberties allegations submitted by the public regarding U.S. Department of Homeland Security (DHS) policies, activities, and personnel.”²⁸⁷

In March 2021, a coalition of NGOs filed a CRCL complaint detailing discriminatory practices and failure to provide proper healthcare, including maternal care, for Black women and young children detained in the Karnes County Residential Center in Karnes City, Texas. Most of these women on behalf of whom the complaint was brought were Black women from Haiti or countries in Africa.²⁸⁸ Similarly, in October 2021, multiple NGOs submitted a CRCL complaint on behalf of seven Black immigrants, including five from Haiti, related to conditions at the Krome North Services Processing Center in Miami, Florida. The complaint alleges

284. Franco, K., Patler, C., & Reiter, K., “Punishing Status and the Punishment Status Quo: Solitary Confinement in U.S. Immigration Prisons”, 2013-2017. *Punishment & Society*. journals.sagepub.com/doi/10.1177/1462474520967804, p. 14 and 19.

285. Human Rights Watch, “How Can You Throw Us Back?: Asylum Seekers Abused in the US and Deported to Harm in Cameroon, 10 February 2022, hrw.org/report/2022/02/10/how-can-you-throw-us-back/asylum-seekers-abused-us-and-deported-harm-cameroon

286. Human Rights First, “I’m a Prisoner Here”: Biden Administration Policies Lock Up Asylum Seekers (previously cited), p.48.

287. Homeland Security, Make a Civil Rights Complaint, dhs.gov/file-civil-rights-complaint (accessed 28 May 2022).

288. RAICES, Haitian Bridge Alliance, the Cameroon American Council, and UndocuBlack Network, “Discriminatory Practices and Deliberate Indifference Related to the Prenatal, Maternal, Gynecological, and Pediatric Medical Needs of Detained Black Women and Young Children at the Karnes County Family Residential Center”, 3 March 2021, raicetexas.org/wp-content/uploads/2021/03/Redacted-Complaint-regarding-Inadequate-Medical-Care-of-Black-Pregnant-Women-and-Infants-at-Karnes.pdf

negligence in relation to Covid-19 prevention measures, sexual abuse, religious and racial discrimination, verbal abuse by guards and officers, and retaliation for peaceful protest.²⁸⁹

As set out above, complaints and studies demonstrating racial discrimination and ill-treatment of Black immigrants generally, and Haitians more specifically, date back decades and continue today. Despite this, an advocate told Amnesty International that when they have tried to raise complaints about the endemic nature of ill-treatment and racial discrimination, they are often told the complaints must be raised “detention centre by detention centre” rather than at a system wide level.²⁹⁰

It is within this historical context that the images of Border Patrol officials on horseback abusing Haitians seeking safety in the USA emerged from Del Rio in September 2021. The images provoked outrage around the world because of their clear associations with slavery and because for many advocates interviewed by Amnesty International during this research, they were emblematic of a long history of exclusion, detention, and treatment designed to deter Haitians from reaching the USA. Indeed, while experts told Amnesty International that the images were deeply sad, they did not find them surprising.

Anthropologist and legal scholar Jeffrey Kahn told Amnesty International:

“The photo taken in Del Rio condenses so much of the history of the US immigration policy and exclusion not just toward Haitians but to people of other nations extending back in to the late 1900 century and the violence that often accompanies those projects of exclusion and border policing... The general public sees this as an encapsulation of not only these longer histories of US immigration policies but also histories of enslavement and connections between the police regimes that emerged out of the US plantation economy and also the policing regimes that are used to solidify the borders of the US. That parallel and the connection with the history of Haiti is unmistakable.”²⁹¹

Historian Carl Lindscoog said something similar:

“Like so many people I was horrified to see those images. But I also immediately thought about how this is just the latest chapter in racist violence and anti-Haitian violence. And so, for some people who hadn’t thought about Haiti, Haitian migration... hadn’t been paying attention to this... it was eye opening. They might not have known much about how much history there is between the US government and Haitians seeking a place in this country... I thought of it as something that had a long history. But this didn’t make it any less terrible. Actually, it made it more so... all these years later, that the same sort of things are happening.”²⁹²

289. UndocuBlack Network, Haitian Bridge Alliance, Freedom for Immigrants, and the National Immigration Project of the National Lawyers Guild, “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, 6 October 2021, freedomforimmigrants.org/krome-detention-center

290. Interview by video call with Haddy Gassama, Policy and Advocacy Director UndocuBlack Network, 23 March 2022.

291. Interview by video call with Dr Jeffrey Kahn, anthropologist and legal scholar, 13 June 2022.

292. Interview by video call with Dr Carl Lindscoog, Associate Professor of History, Department of Humanities, Social Sciences, Social Work, and Education, Raritan Valley Community College, 5 May 2022.

6. LACK OF OFFICIAL DATA OR MONITORING TO ASSESS RACIAL DISCRIMINATION

DATA COLLECTION TO PREVENT DISCRIMINATION

To understand and address the way systemic racial discrimination and xenophobia manifest and intersect, international human rights standards require states to collect data.²⁹³

After the murder of George Floyd on May 2020 and the following mass protests around the world demanding a more comprehensive and effective human rights-based approach from governments in the fight against racism, the OHCHR published a report presenting an agenda towards transformative change for racial justice and equality. The report re-emphasized the “importance of data to unpack and understand the differentiated dynamics of systemic racism” and called on states to use it “consistently to inform effective policymaking.”²⁹⁴

In fact, multiple human rights bodies and mechanisms have emphasized the importance of data collection around race. The Durban Declaration and Program of Action called on states to “collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels and undertake all other related measures which are necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance.”²⁹⁵

In the design of data collection categories and methodologies, states must also guarantee the active participation of civil society and people of African descent who have been historically excluded and negatively impacted by existing policies. In the words of the Working Group of Experts on People of African Descent, in order to fulfill its human rights obligations on data collection, states must, “work with people of African descent rather than for people of African descent.”²⁹⁶

A human rights-based approach to data production also requires a participatory methodology at each stage of the process, including from “strategic planning through identification of data needs; selecting and testing an appropriate collection methodology; data collection (for instance, hiring interviewers from particular communities to improve response rates); and to data storage, dissemination, analysis and interpretation.”²⁹⁷ Additionally, when collecting and storing official data, governments should make sure to disaggregate it by race²⁹⁸ in a way that provides for “self-identification, transparency, privacy, participation and accountability.”²⁹⁹

293. UN Working Group of Experts on People of African Descent, Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth sessions, 15 August 2019, UN Doc. A/HRC/42/59, para. 99, UN High Commissioner for Human Rights, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, 1 June 2021, UN Doc. A/HRC/47/53, para. 20.

294. UN High Commissioner for Human Rights, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, 1 June 2021, UN Doc. A/HRC/47/53, para. 16.

295. The Durban Declaration and Programme of Action, Para. 92. See also: *The Human Rights Council, Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth sessions*, 15 August 2019, UN Doc. A/HRC/42/59, para. 81.

296. UN Working Group of Experts on People of African Descent, Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth sessions, 15 August 2019, UN Doc. A/HRC/42/59, para. 99.

297. United Nations Office of the High Commissioner of Human Rights, *A human rights-based approach to data: leaving no one behind in the 2030 Agenda for Sustainable Development*, 2018, ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf

298. UN Working Group of Experts on People of African Descent, *Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth sessions*, 15 August 2019, UN Doc. A/HRC/42/59, para. 87.

299. UN Working Group of Experts on People of African Descent, *Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth sessions*, 15 August 2019, UN Doc. A/HRC/42/59, para. 8.

Without data on race and racial bias, states cannot claim that their laws, policies, and approaches are not, in practice, racist.

Yet, despite significant evidence of the existence of racial bias and discrimination within the US immigration system, many expert organizations interviewed by Amnesty International said that finding consistent and system-wide data to understand the differentiated way racialized people experience the US immigration system is hard, if not impossible.

Based on the information currently publicly available, there are no official studies or mechanisms specifically designed to monitor or investigate allegations of racial bias in this system. Furthermore, both CBP and ICE confirmed to Amnesty International that they do not collect information regarding race or ethnicity of noncitizens.”³⁰⁰

Since federal immigration enforcement data is categorized by country of origin, one of the few ways of trying to understand racial discrimination in immigration processes is to use nationality as a proxy for race.

In interview with Amnesty International, Austin Kocher, a research assistant professor with the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, an institute that uses Freedom of Information Act requests to study the federal government, told the organization that from a research point of view, using nationality data to try and extrapolate information on race is problematic. But he emphasized that when the US government fails to collect data disaggregated by race, it is simultaneously unable to analyse how race impacts decision-making in the immigration system.

“There is just not race data... It’s not that they [the government] can disclose it [and don’t], they don’t have it. [But] without the data, the government cannot make an empirical claim that they are not racist.”

Austin Kocher,³⁰¹ research assistant professor with the Transactional Records Access Clearinghouse (TRAC)

An additional challenge Amnesty International identified during this research is that even when nationality-based data is collected by US authorities, it is not easily accessible to the public. Frequently, the only way for human rights organizations to access such data is through Freedom of Information Act (FOIA) requests, which the authorities can take months or years to respond to, and sometimes require time and resource-consuming litigation, something many organizations cannot afford.

In fact, in its 2020 Annual Report, the US Citizenship and Immigration Services Ombudsman acknowledged that a dearth of reliable information in the immigration system in general, combined with “lack of transparency into immigration processes and data to effectively determine and maintain compliance with applicable laws and regulations” was a problem.³⁰²

To address this issue and comply with international law and standards, US authorities must urgently begin working with experts to develop an ethical and rigorous methodology for collecting data that allows for understanding of the way immigrants racialized as Black experience the immigration system and helps to safeguard against race and migration related torture or other ill-treatment.

300. In a response to a question asking whether ICE collects data on migrants, refugees, and asylum seekers disaggregated by race or ethnicity, received from ICE on 30 June 2022, ICE stated: “ICE does not collect information regarding race or ethnicity of noncitizens encountered.”

301. Interview by video call with Austin Kocher, research assistant professor with the Transactional Records Access Clearinghouse (TRAC), 27 May 2022.

302. USCIS Ombudsman, Annual Report 2020, 30 June, 2020, dhs.gov/sites/default/files/publications/20_0630_cisomb-2020-annual-report-to-congress.pdf, p.57.

7. CONCLUSION

“The key to improving the system would require an honest assessment of the racist history of immigration laws and policies in the US... Until we do that... we are trying to mitigate harm... That feels like just stopping the bleeding... the big systemic change that needs to happen feels very difficult because we don’t have leaders with the political will and courage to overhaul the system.”

Breanne J. Palmer, Attorney and First Immigration Policy Counsel at the Leadership Conference on Civil and Human Rights

One year after painful and overtly racist images emerged from Del Rio, Texas, in which US Border Patrol officials mounted on horseback used excessive force against Black Haitians asylum seekers invoking associations with slavery, this research details the on-going arbitrary detention, collective expulsions and race and migration-related torture and other ill-treatment carried out by US authorities towards Haitians seeking international protection.

The starting point for this research was 24 testimonies from Haitian asylum seekers who reported that they were arbitrarily detained and then expelled from the US under Title 42, between September 2021 and January 2022. Amnesty International representatives also interviewed dozens of organizations, advocates, academics, lawyers, and psychologists, and additionally reviewed historical material on the treatment of Haitians by US immigration authorities, including from Amnesty International’s own archives.

Based on their testimonies, none of the 24 Haitians expelled under Title 42 had the opportunity to go through an individual assessment by asylum officers (credible fear screenings) before being sent back to Haiti, in violation of US and international human rights law that grants the right to seek asylum and prohibits states from returning individuals to countries where they would be at risk of irreparable harm on return, including persecutions, torture or other ill-treatment. This is despite the fact that some of the Haitians Amnesty International interviewed had left Haiti many years ago due to generalized and/or targeted violence, including threats to themselves or their families. As previously condemned by the UN, health experts, US officials and civil society organizations, mass expulsions of individuals under the Title 42 authority, without screening for protection needs, is inconsistent with international norms and may constitute refoulement.

Additionally, according to testimonies gathered for this research, under Title 42, the US government has been making routine and automatic use of detention of migrants and asylum seekers. None of the Haitians interviewed by Amnesty International for this research reported having received any type of individualized assessment of the necessity and proportionality of their detention. According to their testimony, none of them had access to interpreters or legal representation, and they received little to no information about their whereabouts and the reasons why they were being deprived of liberty, which amounts to arbitrary detention under international law.

Testimonies shared with Amnesty International also suggest that US immigration officers unlawfully detained at least five pregnant women without properly assessing their medical needs. US officials also appear to have detained children as young as 9 and 14 days old and – in various cases – separated them from their parents, in explicit violation of international law that protects children’s best interests.

This research reiterates Amnesty International’s numerous calls to end Title 42, which has unlawfully restricted the right of hundreds of thousands of people to access international protection since March 2020.

Previous documentation by Amnesty International has found that migrants and asylum seekers of all nationalities are often at risk for torture or other ill-treatment in US immigration detention - including LGBTI people and racialized people.

All the Haitians interviewed for this report recount having experienced treatment which amounts to ill-treatment under international law in US immigration detention facilities, and many reported racial discrimination. Additionally, as evidence highlighted in this report suggests, practices of ill-treatment towards Haitians are widespread and have occurred historically at different times and in different places, pointing to a long-term, and perhaps even institutionalized tendency at the level of DHS and its agencies to punish and in turn deter Haitian asylum seekers from seeking refuge in the USA.

Based on the evidence gathered by Amnesty International for this research, the ill-treatment Haitians experienced in US detention facilities – which included a combination of lack of access to sufficient food, healthcare, information, interpreters, and lawyers – had a cumulative impact on those interviewed, because on arriving in the USA they had already lived through a range of human rights violations, including anti-Black racism during their journey. This cumulation of harms faced by Haitians made them particularly vulnerable to further ill-treatment in US immigration detention.

The Biden Administration was well aware of this reality. Nevertheless, instead of providing the Haitians interviewed with this report with international protection, on arrival in the USA, they faced further de-humanizing treatment, consistent with the USA’s well-documented tendency to deter asylum seekers, particularly Haitians. Additionally, by continuing to subject Haitians to rapid expulsions without fear screenings under Title 42 – a public health policy ostensibly used to prevent Covid-19 – the Biden administration was reinforcing harmful historical tendencies which have stereotyped Haitians as bearers of disease, standing to further stigmatize and discriminate Haitians based on their race and nationality.

Under international law, what constitutes torture, including psychological torture, varies for each individual. As such, states must take into account age, gender, health, race and migration status, as well as context. Systemic racism faced by Haitians creates unique vulnerabilities for Haitians and in turn puts them at greater risk of torture and other ill-treatment. While some migration laws and policies may be facially race-neutral, international human rights law requires the US government not only to take steps to address systemic racial discrimination, but to take measures to protect groups vulnerable from race and migration-related torture and other ill-treatment.

The testimonies gathered by Amnesty International for this research highlight the severe psychological pain and suffering Haitians experienced at being shackled during deportation because of its association with slavery and criminality. While it is unclear how widespread the practice of shackling and chaining migrants and asylum seekers during deportations is, according to ICE’s and CBP’s own standards, restraints may not be used as punishment, and generally pregnant people or those who recently gave birth, should not be restrained.

Based on the testimonies gathered for this research, and given that: 1) the practice of handcuffing and shackling applied to all Haitians interviewed for this report was intentional 2) was carried out by US government officials or their agents 3) caused severe mental pain and suffering, and 4) has been carried out based on intersectional discrimination, Amnesty International concludes that the deportation of Haitians from the USA in handcuffs and shackles amounts to race and migration-related torture under international human rights law.

As evidenced by its public statements on the matter, the Biden Administration was fully informed of the pain that the photos that emerged from Del Rio, Texas, provoked for many people around the world, especially people racialized as Black. Nevertheless, even after the events in Del Rio, the administration continued to allow torture or other ill-treatment of Haitians in immigration detention.

In fact, all the Haitians interviewed by Amnesty International for this research were expelled by US authorities to Haiti between 25 September 2021 and 24 January 2022, following the events in Del Rio. This suggests that the Biden administration knowingly continued deportations of Black Haitians in shackles and chains – a

facially race- neutral practice but grounded in racial discrimination – generating further painful associations with slavery even after the events in Del Rio, treatment which amounts to torture. Furthermore, according to the testimonies gathered, Haitians were often chained in front of their children, causing further humiliation.

In carrying out this research, Amnesty International reviewed sufficient evidence that the current wave of collective expulsions of Haitians by the USA is nothing new, but instead a continuation of US policy which over many decades has often been characterized by interceptions, mass detentions, and summary expulsions, in violation of international human rights law.

This research concludes that Haitians experience particular harms rooted in a combination of anti-Black and nationality-based discrimination and provides sufficient indicators that anti-Black racism is embedded within the US immigration system. Despite this, there is no evidence that US authorities proactively collect data on racial bias or discrimination, as required by international human rights standards. This research, among other things, points to the urgent need for an investigation into systemic racism within the immigration system, reiterating the calls made by more than 100 Congresspeople to the Biden administration. The report also calls on the US government to actively take measures to protect asylum seekers from practices such as handcuffing and shackling which because of their association with slavery can cause severe pain and suffering, rising to the level of race-related torture.

8. RECOMMENDATIONS

TO THE STATES ACROSS THE AMERICAS:

- Stop all expulsions and deportations to Haiti as the human rights and humanitarian crisis continues there.
- Urgently provide Haitians with access to systems of protection, without discrimination, including fair, individualized evaluations for refugee status, and other routes to regularizing their status through legal residency with appropriate safeguards, in line with both the UN Refugee Convention and the Cartagena Declaration.

TO THE PRESIDENT OF THE UNITED STATES:

- Immediately stop expelling individuals and families under Title 42.
- Restore access to asylum and other forms of international protection at the US-Mexico border.
- Create a White House participatory task force, with adequate resources and robust mandates, aimed at dismantling anti-Black racism in the immigration system, including the assessment of the disproportionate impact of facially race-neutral immigration laws on Black asylum seekers and the development of methodologies for assessing anti-Black racial discrimination in judicial decision-making.
- Ensure that the implementation of Executive Order 13985 considers anti-Black discrimination within the US asylum system.
- End the reliance on mass immigration detention and instead default to a presumption of liberty in all immigration custody decisions and invest in community-based alternatives to detention outside the purview of DHS.
- Establish a right to counsel for people in immigration proceedings and ensure people are guaranteed legal counsel, as well as translation services, in all immigration court proceedings.

TO THE UNITED STATES CONGRESS:

- Establish a Congressional Commission of Inquiry into the treatment of Haitians in Del Rio, and other forms of anti-Black discrimination in the US asylum and immigration system, which will develop recommendations and long-term monitoring and remedies.
- Decriminalize irregular entry and re-entry into the United States, in line with the principle of non-penalization of irregular entry for refugees.
- Create long-term policies that support Haitian-led solutions based on the effective and genuine participation of Haitian civil society in the process of creating a more equitable Haiti where Haitians will feel less pressures to flee the country.
- Pass legislation to provide a right to counsel in immigration proceedings and subsequently fund the provision of public counsel.
- Pass legislation to end mandatory detention and the practice of expelling asylum seekers without access to individualized assessments of their claims and credible fear screenings.
- Withdraw the USA's reservations to the UN Convention against Torture and ratify the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Ratify the UN Convention on the Rights of the Child, which the United States signed in 1995 and is the only country in the world not to ratify.
- Ratify the UN Convention on the Elimination of All Forms of Discrimination Against Women, which the United States signed in 1980 and is one of the few countries in the world not to ratify.

TO THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY:

ACCESS TO ASYLUM AND NON-REFOULEMENT

- Immediately stop expelling individuals and families under Title 42.
- Stop all expulsions and deportations to Haiti.
- Ensure all Haitians unlawfully expelled have access to remedies for their expulsion, including access to US territory to request asylum.
- Extend the period of the current designation of Haiti for Temporary Protected Status (TPS), which went into effect on 3 August 2021 (and is announced to remain in effect for 18 months, through 3 February 2023), and re-designate Haiti for a new TPS, considering the human rights situation in the country has only deteriorated since the last designation.
- Ensure Haitians have access to high-quality Haitian Creole interpreters, including to execute credible fear screenings prior to deportation proceedings, and refer individuals as necessary to the appropriate services for determination of their asylum claims with interpreters as a key protection against refoulement.
- Establish a right to counsel for people in immigration proceedings and ensure people are guaranteed legal counsel in all immigration court proceedings.
- Provide anti-Blackness discrimination and country conditions training to asylum officers and immigration judges to address disproportionately low positive credible fear screenings rates and low asylum granting rates.

TO ADDRESS RACIAL DISCRIMINATION AND RACE-BASED TORTURE AND OTHER ILL-TREATMENT

- Continue the investigation into the events of Del Rio in September 2021, interview Haitian victims and witnesses, amend findings as necessary, and bring those responsible to justice.
- Use data to drive and assess responses to systemic racism and collect and make public comprehensive data disaggregated by race or ethnic origin, with strict safeguards and in accordance with international human rights law, aiming at analysing the effect of laws and policies on Black migrants and asylum seekers. In doing so, ensure effective and meaningful participation and/or representation of civil society - particularly Black migrants, asylum seekers and refugees, including women and youth, and their organizations.
- End the shackling and handcuffing of migrants and asylum seekers unless strictly necessary and taking into account their particular vulnerabilities, including their race, nationality, age, gender, and previous experience of torture or ill-treatment; and under no circumstances shackle or handcuff pregnant people or people who have recently given birth.
- Immediately stop turning away asylum seekers at the US–Mexico border and take into account the well-documented heightened risk for racially motivated violence and discrimination faced by Black asylum seekers in Mexico.
- Ensure consistently enforced rules for frontline officials, including law enforcement officials, immigration authorities and asylum officials, forbidding racial profiling, and ensure robust systems of monitoring and access to effective remedy for victims.
- Take steps to address racist and xenophobic attitudes and behaviour towards non-citizens, or stigmatization based on race, colour, descent or national origin by politicians, the media and wider society, as required by international law, for example, by implementing public anti-discrimination campaigns.
- Conduct official visits to ICE and CBP facilities and other locations detaining families, children, and individuals, such as hotels and any “reception” sites, to assess conditions and violations of domestic and international human rights obligations.
- Consider applying the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) for investigations in allegations of torture in US immigration detention facilities.

DETENTION OF MIGRANTS AND ASYLUM SEEKERS

- Allow immigrants and asylum seekers who have community ties and resources to navigate their cases in freedom and with their loved ones, not in detention or under surveillance. As such, end detention solely for immigration purposes and ensure that any migration-related decision restricting the right to liberty of migrants, refugees or asylum seekers, including surveillance-based alternatives to detention, adheres to the principles of necessity and proportionality, keeping in mind that during a public health crisis there is very little possibility that this bar can be reached.
- Urgently improve conditions in immigration detention including by providing proper hygiene, Covid-19 prevention and infection control measures, access to healthcare, adequate and nutritious food, and safeguards against ill-treatment and torture, including interpretation services, and access to legal representation.
- Refrain from detaining, under any circumstance, refugees, children, families and pregnant people, and from separating families in detention.
- Ensure that community-based, non-custodial measures are available in law and in practice for all asylum seekers, and particularly asylum-seeking families, and adhere to the principles of legality, necessity, proportionality, and non-discrimination.



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“THEY DID NOT TREAT US LIKE PEOPLE”

RACE AND MIGRATION-RELATED TORTURE AND OTHER ILL-TREATMENT OF HAITIANS SEEKING SAFETY IN THE USA

One year after painful and overtly racist images emerged from Del Rio, Texas, in which US Border Patrol officials mounted on horseback used excessive force against Black Haitians asylum seekers invoking associations with slavery, this report details the on-going arbitrary detention, mass expulsions and race and migration-related torture and other ill-treatment carried out by US authorities towards Haitians seeking international protection.

Drawing on interviews with some 24 Haitians expelled by the USA between September 2021 and March 2022, psychologists who supported hundreds of Haitians expelled in this manner, and academics and NGOs, this research points to the urgent need for an investigation into systemic racism, and specifically anti-Black discrimination within the immigration system, reiterating the calls made by more than 100 Congresspeople to the Biden administration.

The report also calls on the US government to actively take measures to protect asylum seekers from practices such as handcuffing and shackling which because of their association with slavery can cause severe pain and suffering and can amount to race-related torture. In addition, it reiterates numerous calls to end Title 42, which has unlawfully restricted access to tens of thousands of people seeking safety since March 2020.

