

DECLARATION OF ERIKA PINHEIRO

I, Erika Pinheiro, declare under penalty of perjury, that the following is true and correct to the best of my knowledge:

Summary

1. In my expertise as an attorney with 18 years of experience in the immigration legal field who regularly works across the U.S.-Mexico border (principally in Southern California and corresponding areas of Mexico) and who has advised the Biden Administration on immigration policy, I have witnessed the failures and extraordinary harm of the Title 42 policy.
2. Although widespread testing and vaccination access is available in both Baja California, Mexico and San Diego to safely process migrant families seeking asylum, CBP has chosen to implement a policy that only exacerbates COVID-19 in the region. CBP is not taking basic mitigation measures to limit the spread of COVID-19 among migrants and in fact actively introduces COVID-19 into the region by flying migrants in crowded flights from other parts of the southwest border to San Diego and expelling them.
3. Title 42 expels families into extreme danger in Tijuana, where few have access to safe housing, or medical care, and face kidnapping, rape, extortion, and other violence on a regular basis. Since March 2021, three of AOL's clients have died after being denied the ability to seek medical care in the U.S.

Experience and Expertise

4. I am the Litigation and Policy Director at Al Otro Lado ("AOL"), a nonprofit advocacy and legal services organization based in Los Angeles, California, with offices in San Diego, California and Tijuana, Mexico. I have been the Litigation and Policy Director since April 2017. I am currently based primarily in Tijuana, Mexico, and oversee various programs and operations in all AOL locations.
5. I am an immigration attorney and have been working in the immigration legal field since 2003. I hold a JD from Georgetown University Law Center, a Masters of Public Policy from the Georgetown Public Policy Institute, and a Certificate in Refugee and Humanitarian Emergencies from Georgetown University Institute for the Study of International Migration. Throughout my legal career, I have specialized in high-volume legal representation and education for immigrants detained in immigration or criminal custody, as well as those seeking asylum at the US-Mexico border. In each position I have held, I have created, maintained, and analyzed extensive databases to identify the effects of policies governing the admission, detention, transfer, and release of immigrant adults and children at the border and in criminal and/or immigration custody. Prior to joining AOL, I administered federally funded legal access programs for immigrant adults in ICE custody and unaccompanied children in Office of Refugee Resettlement custody, serving thousands of individuals per year. Since 2010, I have personally observed and

tracked migration and detention trends, especially with respect to adults, unaccompanied children, and family units seeking asylum at the US-Mexico border.

6. AOL provides legal and humanitarian support to indigent refugees, deportees, and other migrants, including providing free direct legal services on both sides of the US-Mexico border and beyond.
7. As the Litigation and Policy Director, I supervise attorneys and other staff who work directly with migrants on both sides of the US-Mexican border. I also travel frequently across the US-Mexican border. I also engage with elected officials on immigration matters, educate policymakers about border issues, and provide technical assistance to Congressional committees and government agencies. From November 2020 through January 2021, I engaged with the Biden transition team and Secretary Mayorkas in numerous meetings concerning US border policy; since President Biden's inauguration, I meet frequently with officials at the White House, DHS, DOS, and other federal agencies to participate in immigration and border security policy discussions. I am also one of the leads of the California Welcoming Task Force, a coalition of around 100 nonprofit organizations working with the White House, federal agencies, California state government, local city and county governments, and Mexican government officials to plan and execute policies related to asylum processing at the US-Mexico border.
8. I help supervise AOL's work representing families, individuals, and children seeking a humanitarian exemption from the Title 42 expulsion process. Since April 2021, AOL has represented approximately 5,900 individuals, including 2,450 children in obtaining humanitarian exemptions.
9. This declaration is based on my personal experience working with noncitizens at the US-Mexico border as well as my experience supervising attorneys who provide legal services to them. I am also familiar with the Tijuana – San Diego border region as I work regularly on both sides of the border.

Vaccination and testing is widely available in Baja California

10. I have resided in Baja California since 2017, and have been on the ground providing humanitarian and legal support to refugees and other migrants residing in Tijuana and throughout Baja California since the start of the COVID pandemic. Generally, vaccines and testing are widely available in Baja California, and migrants have had relatively low COVID positivity rates as compared to the broader population due to intensive mitigation efforts, although those efforts have been frustrated by the expulsion of individuals DHS has brought to the region on lateral flights from other parts of the U.S., as explained below.
11. The Mexican government has been making a concerted effort to maximize COVID-19 vaccination in the northern border region as part of its push to more fully reopen the land border with the United States. As of August 5, 2021, more than half of adults in the five

Mexican states along the U.S. border had received at least one dose of a COVID vaccine.¹ The adult vaccination rate is 80% in Baja California, 60% in Sonora, 75% in Chihuahua, 56% in Coahuila, and 64% in Tamaulipas.² In the Mexican municipalities (the equivalent of U.S. counties) closest to the border, rates are even higher: as of July 27, 2021 at least 75% of those in border municipalities had received at least one vaccine dose in Baja California, Sonora, Chihuahua, Coahuila, and Nuevo Leon.³ As of August 1, 2021, more than 97% of adults between 18 and 39 had received at least one dose in Tamaulipas.⁴

12. Baja California is the first state in Mexico to have “fully” vaccinated its adult population (18+); approximately 80% of the adult population has been vaccinated with at least one shot. Vaccines continue to be regularly distributed at large-scale vaccination sites located in all of the state’s municipalities and are available to anyone over the age of 18, regardless of immigration status. Municipal and state departments of health also conduct specialized outreach campaigns to vulnerable and hard-to-reach populations, such as Indigenous communities residing in remote locations. In July and August 2021, local health authorities held a vaccination drive at the migrant camp located outside the Ped West Port of Entry and at seven migrant shelters, and other shelter providers have organized transportation to bring migrants to mass vaccination sites.⁵ The local departments of health continue to develop outreach strategies to vaccinate vulnerable populations, including migrants.

13. Although there has been a recent slight increase in positive COVID cases due to the spread of the Delta variant, numbers remain extremely low in Baja California. For example, on August 8, 2021, there were 69 new positive cases in Tijuana, a city of around 2 million residents. The seven-day average is 107 new positive COVID cases/day. The rate of new COVID cases in Tijuana is exponentially lower than in San Diego County, California, which saw 2,754 new positive cases on August 8, 2021, with a seven day average of 1,417 new positive cases per day for a population of around 3.3 million.⁶ This discrepancy is likely due to the relatively high vaccination rate in Baja California (80% adults vaccinated in Baja California vs. 73.2% in San Diego County), as well as the consistent use of masks in most indoor spaces in Mexico. Unlike the United States, Baja California never lifted its mask mandate, even for vaccinated individuals. I have observed

¹ Gobierno de Mexico, Secretaria de Salud, *COVID-19 Mexico Comunicado Tecnico Diario*, at 9 (Aug. 5, 2021), <https://tinyurl.com/w2enjmh3>.

² *Id.*

³ *Id.*

⁴ Miguel Dominguez, *Afirman Vacunar Casi al 100% de Jóvenes en Tamaulipas*, Reforma (Aug. 1, 2021), <https://tinyurl.com/y8d476kb>.

⁵ Alexandra Mendoza, *Migrants in Tijuana vaccinated at camp, shelters* (Aug. 4, 2021), <https://tinyurl.com/dmf2d9m>.

⁶ *COVID-19 Data Repository*, Center for Systems Science and Engineering (CSSE) at Johns Hopkins University, <https://github.com/CSSEGISandData/COVID-19>.

almost all individuals in Baja California consistently using masks in most public indoor spaces and crowded outdoor spaces, whereas in San Diego, I rarely, if ever, see individuals using masks outside, and have observed a rising percentage of individuals who do not use masks in public indoor spaces.

14. COVID-19 testing is readily available at pharmacies and health providers across Tijuana. Pricing for tests varies among providers, but generally starts around \$10-12 USD for an antigen test. Local and state Departments of Health also have free mobile testing programs, and have offered free COVID testing at the Chaparral migrant encampment and at various shelters. Several local medical nonprofits also offer free testing to migrants, and universities on both sides of the border have conducted numerous COVID-related studies through which they have administered free tests to thousands of individuals.⁷
15. Many asylum seekers have already been vaccinated before presenting at the port of entry. Dozens of our clients have sent photos of their vaccination records. Many of our clients have told our staff and volunteers that they are eager and willing to be vaccinated to protect themselves and others against COVID-19.
16. Beginning in March 2021, AOL began representing vulnerable families, children, and adults to seek humanitarian exemptions from the Title 42 expulsion process. Individuals approved for an exemption are tested for COVID-19 before presenting at a port of entry. A U.S.-based foundation has covered the cost of COVID testing for all of AOL's clients, as well as others being processed through the exemption process. CBP has required all children seven years or older to submit a negative COVID-19 test taken within 72 hours of presenting at a port of entry. Those who test positive are denied entry if they attempt to present.
17. Before the widespread availability of vaccines in Baja California, AOL worked with a network of nonprofits, international intergovernmental organizations (i.e. IOM and UNHCR), as well as with local, state, and federal government agencies to develop effective strategies that reduced the spread of COVID among migrant populations. AOL helped install hand washing stations and clean water access points at shelters and medical clinics, distributed masks and other PPE, conducted public health education, and provided funding to build capacity at local medical nonprofits serving the migrant population. IOM and the local government also established a COVID "filter" hotel, at which migrants would stay for 10-14 days before moving on to shelters. AOL also provided grocery cards, medication, PPE, quarantine housing, and other direct

⁷ See, e.g., City News Service, *COVID-19 Survey Finds Baja California Faring Better than Other Mexican States*, KPBS (June 16, 2021), <https://www.kpbs.org/news/2021/jun/16/covid-19-survey-finds-baja-california-faring-bette/>.

humanitarian support to help migrants residing outside of the shelter system to remain in quarantine during periods of high community spread.

CBP's policy of lateral flights has a negative effect on COVID-19 rates in the region

18. The mitigation efforts described above were extremely successful, and we saw very little COVID spread among migrants until March of 2021, when the US government began flying migrants who crossed in Texas on lateral flights to San Diego and expelling them there. Despite our regular engagement with the White House and DHS on border policy matters, we were given no notice, and nonprofits and government agencies working in Tijuana were ill-prepared to receive the 100 migrants being expelled each day from lateral flights, in addition to hundreds of others already being expelled or removed to Tijuana each day. Because migrants were placed in close proximity to one another on lateral flights and expelled to Tijuana, we saw a much higher COVID positivity rate among lateral flight migrants than among the local migrant population in general. Shelters receiving lateral flight expulsions began to see more COVID positive cases, but local health authorities and non-profits lacked the capacity and resources to quickly create a comprehensive public health strategy to address the problems posed by lateral flights.
19. DHS ceased the practice of lateral flight expulsions to Tijuana around June 21, 2021, which has enabled those of us working in Baja California to reassert control over the spread of COVID among the migrant population, especially in shelters, using the mitigation measures described above and by promoting vaccines. However, DHS resumed lateral flights to San Diego in the last week of July 2021, and resumed expulsions to Tijuana on Friday, August 6, 2021, when we received 135 migrants expelled from a flight that originated in Texas. Our shelter partners in San Diego, who work with San Diego County and the State of California to administer COVID tests to all migrants arriving in the region, have confirmed that the COVID positivity rate is highest among migrants who arrive via lateral flights (as compared to migrants processed at the Port of Entry or those who enter without inspection locally). Undoubtedly, the practice of lateral flight expulsions has a negative effect on COVID rates in the region and undermines the ability of government agencies and service providers on both sides of the border to control COVID spread among the migrant population.

CBP has additional capacity to process asylum seeking families at ports of entry in the San Diego region

20. CBP has consistently used "capacity" limitations as a pretext for reducing the number of asylum seekers processed at Ports of Entry, both before and during the pandemic. *Al Otro Lado* is the organizational plaintiff in *Al Otro Lado v. Mayorkas*, 3:17-cv-02366-BAS-KSC (S.D. Cal.), filed in July 2017, a class action lawsuit challenging CBP's practice of unlawfully turning away asylum seekers who seek to present at Ports of Entry, as well as "metering" policies that force asylum seekers to wait in Mexico on informal lists.

Evidence obtained through discovery in that case, including depositions of DHS officials, confirm that CBP has consistently understated its capacity to process asylum seekers at Ports of Entry in an effort to reduce access to the US asylum system. An October 2020 Office of Inspector General Report, citing in part evidence obtained from a CBP whistleblower, confirmed that CBP lied about capacity to reduce asylum seeker processing,⁸ and recently, the court in *AOL v. Mayorkas* sanctioned the government for destroying evidence protected by a court order. CBP officials also admitted in a deposition that the processing of asylum seekers is given low priority among other types of processing at ports in terms of officer and resource allocation, going so far to admit that livestock would be given processing priority over asylum seekers. Nothing in the recent past indicates that these policies and priorities have changed significantly.

21. In June 2021, CBP processed approximately 412,000 pedestrians at the San Ysidro Port of Entry. Notably, CBP is processing about 500,000 *less* pedestrians per month at the San Ysidro POE than they were before Title 42 was put into place; for example, in June 2019, CBP processed over 917,000 pedestrians at the San Ysidro Port of Entry. This discrepancy should give CBP plenty of capacity to safely process asylum seekers, even allowing for the fact that processing refugee families takes longer than processing most travelers.
22. Under Title 42, US citizens, Lawful Permanent Residents, and Mexicans with certain types of visas are able to cross the border freely. Throughout the pandemic, I have personally observed large numbers of U.S. citizens crossing the border into Tijuana, Rosarito, and Ensenada for tourism and other “non-essential” purposes. I have also crossed the border, on average, about once per week since June of 2020 to the present. Based on my personal experience, CBP does not employ any COVID screening protocol for travelers not subject to Title 42 restrictions. I have personally observed numerous CBP officers working without masks, or with their masks pulled down around their chins. CBP officers have never asked me any COVID or other health-related questions when entering the United States.

CBP is not taking adequate steps to limit the spread of COVID-19 among migrants who cross between ports of entry.

23. When CBP encounters asylum-seeking families who cross the border between ports of entry, it does not take meaningful steps to prevent the spread of COVID-19, aside from providing masks. Migrants are flown on full planes and ride together in busses to the border to be expelled. CBP does not provide COVID-19 testing and only coordinates with third parties to test migrants when they are released from CBP custody. Those who

⁸ *CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry*, Office of Inspector General (Oct. 27, 2020), <https://tinyurl.com/266bbcfm>.

exhibit COVID-19 symptoms are not separated from others in CBP/Border Patrol custody.

24. The state of California has provided funding for COVID testing of all migrants who come to the California border, whether through a Port of Entry, between ports of entry, or on lateral flights. California has established a testing, quarantine, treatment, and vaccination protocol for all migrants, and set up several hubs in the border region to create additional capacity. The federal government does not currently cover the costs of these regional hubs, nor do they currently cover the costs of shelter and transportation. California state and numerous counties have stepped in to create a robust migrant reception system that treats migrants with dignity while protecting public health.
25. Families that are exempt from Title 42 in Tijuana are released to a network of shelters in the San Diego area. There are two main shelter hubs in the San Diego area. Jewish Family Service provides testing, quarantine, and case management to any migrant being processed through the Port of Entry, including those who come on lateral flights. Catholic Charities serves those who cross between ports. The state, counties, and cities all work together to create local capacity for migrants as needed. For example, Long Beach, San Diego, and other cities provided convention centers and other facilities to meet the needs of unaccompanied children during a recent increase. The California Welcoming Task Force, a coalition of around 100 nonprofit organizations formed in February of 2021 working with governments on both sides of the border, coordinates to ensure that all migrants in the region receive legal, humanitarian, and other vital services upon arrival in California.
26. The biggest challenge over the past six months has not been the capacity to serve the number of migrants in the region, but rather the lack of processing at the ports of entry, and an overall lack of communication from DHS regarding its implementation of Title 42 expulsions, such as through lateral flights.

Title 42 places asylum-seeking families in extreme danger

27. Migrant families expelled under Title 42 to Tijuana face extreme danger and live in precarity. Few have access to safe housing, medical care, or work to support themselves. They face kidnapping, rape, extortion, and other violence on a regular basis. Clients frequently report to us that they are unable to afford food, medicine, and other basic necessities. Families travelling with minor children frequently report kidnapping attempts on their children. Families with children who identify as female frequently report sexual harassment and other sexual violence. Three of our clients have died since March 2021 because they were denied the ability to seek medical care in the U.S.
28. Thousands of migrants live in a makeshift tent encampment in El Chaparral next to the port of entry. They sleep under plastic tarps, without bathrooms, and are subject to extreme weather conditions. There is no running water or sanitation. Organized criminal

groups control the camp and AOL has received reports of kidnappings, assaults, and sexual abuse against migrants. Smugglers pressure migrants into hiring them through fraud and force. AOL has received multiple reports of migrants who were held for ransom by smugglers. Others have been kidnapped by traffickers and forced into prostitutions or other types of labor. The situation at the El Chaparral camp is so dangerous that AOL does not provide services there. Aid workers have received numerous threats from those controlling the camp. Few groups are willing to provide in-person services, so there is a lack of food and supplies for those living in the camp.

29. Families with family members who identify as LGBTQ are frequently subjected to violence and discrimination. One family that we represented in this process was forced to leave from three different housing situations after the owners of each property discovered that the mother was in a same-sex relationship. Another LGBTQ couple that we represented were both kidnapped and raped in Mexico and both subsequently contracted HIV. While in Tijuana, they were forced to leave a shelter because they were constantly receiving threats. Another client, a Haitian LGBTQ man who was unable to seek asylum due to Title 42, was living in a rented room in Tijuana when armed men broke into his dwelling, raped him, and stole all of his belongings and documents. He had to go into hiding because these same people continued to threaten him.
30. Migrants who are not from Mexico frequently struggle to access medical care. When they are able to be admitted to a hospital, they frequently report discrimination at the hands of medical staff. Multiple Haitian clients have reported to us that they refer to the hospitals in Tijuana as “where Haitians go to die.”
31. AOL staff members transported a Honduran man with an epidural hematoma between hospitals because the initial hospital refused to touch him without an upfront payment in full for the emergency neurosurgery he required. At this point, he was lying on a bed with a nosebleed and struggling to breathe. When staff members tried to call for an ambulance because of the delicate nature of his condition, the hospital said that they were unable to communicate with the receiving hospital and thus it would not be possible to send an ambulance. Staff members were left with no alternative but to transport him themselves or risk his death.
32. A Haitian woman who wanted to seek asylum along with her husband and young daughter suffered third degree burns while living in Tijuana. Her injuries were so severe that an external fixator had to be applied to hold the bone in her arm together. While she was able to access emergency treatment, she was unable to access any follow-up care or cleaning for her burn wounds. The family was living in the tent camp where she had no access to running water or sanitation.
33. Because of Title 42, at least 13 mothers who gave birth while in CBP custody have been expelled to Mexico along with their U.S. citizen babies. These infants were rendered

essentially stateless in Mexico because they were expelled without any kind of legal identity documents.

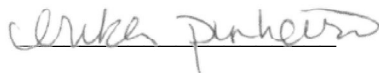
34. Title 42 has separated countless vulnerable families. A 19-year-old asylum seeker was turned away under Title 42 in Tijuana even though he was permanently disabled after falling off a train. He had lost both his right arm and leg and was thus forced to live at the mercy of strangers in a shelter. He had been trying to join his mother and siblings but Title 42 kept them separated for nearly a year.
35. Four siblings, two under 18, from Nicaragua were separated from their father due to Title 42. Their father was in the U.S. and had been granted immigration relief. When the siblings' mom was disappeared in Nicaragua, they fled to seek asylum and join their father. However, Title 42 left them living in a tent camp.
36. A Honduran woman with multiple gunshot injuries and diabetes was pursuing her asylum case in the United States in 2019. She returned to Mexico when she learned that her teenage daughter had been raped and kidnapped. She left her two younger children in the care of a friend in the U.S. Once she reunited with the daughter who had been raped and kidnapped in Mexico, she was not permitted to rejoin her two minor children in the U.S. and to continue her asylum case. Around the same time, her brother was kidnapped and almost certainly killed by cartel members as he attempted to cross the border with a smuggler because Title 42 closed all legal options to request asylum.
37. AOL's clients in other cities across the southwest border face similarly dangerous situations after being expelled through Title 42. In Reynosa, one of our clients who had previously tried to seek asylum at the border but who was expelled under Title 42 was kidnapped shortly thereafter with her young son. The mother and child were held for days without food until they finally escaped.
38. Another client in Reynosa, traveling with his wife and children, was kidnapped by a criminal group. He was tortured and left for dead, covered in blood with burn and stab wounds all over his body. He survived and the family fled to Tijuana, unable to seek asylum in the U.S. due to Title 42. They were then forced to live in the tent camp at Chaparral, where the client's wounds became infected due to lack of medical treatment and sanitation.
39. In Nuevo Laredo, a client was waiting to be able to cross with her U.S. citizen daughter when they were kidnapped by armed men while walking down the street. The men took them to a house, shaved their heads, and beat them severely. The U.S. citizen daughter's face was slashed with a knife on both sides. She lost so much blood from her injuries that she had to be hospitalized.
40. CBP expelled one asylum-seeking client in Nuevo Laredo in the middle of the night and he was immediately kidnapped by gang members. His family paid the ransom and he was

released. He was then immediately kidnapped by a cartel. His family has heard nothing from him since.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 11, 2021, in Mexico City, Mexico.

Signature:

A handwritten signature in cursive script, appearing to read "Erika Pinheiro", written over a horizontal line.

Erika Pinheiro