

United States of America
Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD)
107th Session
(08 – 30 August 2022)

Anti-Black discrimination against non-citizens and ongoing violations of international protections for migrants, refugees, and asylum seekers of African descent

Submitted by:

Black Alliance for Just Immigration (BAJI)

Haitian Bridge Alliance (HBA)

Human Rights First (HRF)

The Refugee and Immigrant Center for Education and Legal Services (RAICES)

Robert F. Kennedy Human Rights (RFK Human Rights)

Endorsed by:

Communities United for Status and Protection (CUSP)

Institute for Justice & Democracy in Haiti (IJDH)

I. Introduction

This Shadow Report is submitted for the combined tenth, eleventh, and twelfth periodic review of the United States (“US”) by the Committee on the Elimination of Racial Discrimination (“Committee”). The Report provides selected research and analysis focusing on US immigration and refugee laws, regulations, policies, and practices that subject Black non-citizens to racially discriminatory treatment in violation of the International Convention on the Elimination of All Forms of Racial Discrimination (“Convention”). It is not a comprehensive account of all forms of discrimination in the United States against migrants, refugees, and asylum seekers. We thank the Committee for the opportunity to share this information and its consideration of the actions we recommend to address these serious violations.

II. Executive Summary

1. The United States government subjects Black non-citizens—migrants, refugees, and asylum seekers—to ongoing racist and xenophobic treatment under its laws, regulations, policies, and practices, in contravention of the Convention, which prohibits discrimination against all persons under its jurisdiction, including non-citizens on the basis of race and national origin.¹

2. Since the Committee last reviewed the US in 2014, the US government has implemented a series of policies at the border, including metering, the Migrant Protection Protocols, and Title 42 policies, with devastating and disparate impact on Black migrants, refugees, and asylum seekers. They have resulted in myriad human rights violations, have prevented many people eligible for refugee protection from seeking or receiving asylum in the US, and have been used to carry out summary pushbacks and expulsions of asylum seekers in direct violation of *non-refoulement jus cogens* obligations. Since 2020, thousands of Haitians, including asylum seekers, have been disparately targeted for expulsion under the Title 42 policy to a deepening security and humanitarian crisis in Haiti without an opportunity to apply for asylum protection.

3. The shocking, discriminatory, and excessive use of force by US immigration officers in September 2021 against Haitian migrants attempting to seek refuge in the United States near Del Rio, Texas, is another emblematic manifestation of the US’s attempts to deter Haitians from seeking asylum in the US and the systematic discrimination Black people, citizen or non-citizen, face in the US.

4. Unable to seek asylum in the United States due to these policies at the border, unable to return to their home countries due to persecution and other life-threatening conditions, and unable to firmly settle elsewhere in the Americas because of discriminatory policies and treatment, many Haitians have been stuck for years in the US-Mexico border region in dangerous, cartel-controlled territories in Mexico where they also face pervasive anti-Black discrimination. US policies have added to the dangers displaced people face as they are forced to undertake more dangerous migration routes, as formal and informal US agreements with countries in the Americas result in new restrictions, closed borders, and other measures that increasingly restrict access to asylum protection throughout the region.

5. Black migrants who manage to arrive in the US face disparate treatment and a racially discriminatory immigration system. This includes racial profiling in immigration enforcement actions; excessive force, medical neglect, and other discriminatory treatment by US personnel in immigration detention; prolonged and arbitrary detention, including the imposition of higher bonds on Black migrants; inadequate access to legal information, legal counsel or proper interpretation in detention; low rates of successful asylum screenings and approval rates for individuals from Black-majority countries from which many refugees are seeking international protection; and racially disparate rates of deportation.

6. The anti-Black animus behind policies adopted by the former Trump administration was made evident in statements reportedly made by President Donald Trump denigrating African and Haitian countries and their people. Some of these illegal practices from the prior administration—including Title 42 expulsions—continue. But discriminatory government policies and practices to deter Black refugees and

immigrants from coming to the US are not new.² Contemporary efforts to target, interdict, detain, and block Haitian refugees span back to at least the 1970s.³ As some commentators have remarked, “[w]e are in a moment that is strikingly reminiscent of the early 1980s, when fear and hatred of Haitians was used to justify the reinstatement and expansion of immigration detention.”⁴

7. This Shadow Report summarizes the US’s legal framework and details some of the myriad, recent violations of the rights of Black migrants, refugees, and asylum seekers in the US. The Report recommends steps the US should take to comply with its obligations under the CERD.

II. United States of America: International and Domestic Legal Framework and Practice

8. The US Constitution creates a three-part governmental system composed of an executive, legislative, and judicial branch. The executive and legislative branch are elected by a federated network of localities, and the judicial branch is composed of executive branch appointments who must be confirmed by the legislative branch.⁵ The executive branch is empowered to make and enter into treaties on behalf of the US; though under the Constitution, the legislative branch must also accede to treaties in order for them to take domestic effect.⁶ Courts and localities are bound by treaties once given effect.⁷

9. The legislative branch is responsible for creating laws regarding naturalization and citizenship; the executive branch is responsible for enforcement; and the judicial branch is responsible for adjudicating cases and controversies related to citizenship.⁸ The following set of international treaties and State legislation create the framework prohibiting discrimination against non-citizens on the basis of race or national origin.

A. International Convention on the Elimination of All Forms of Racial Discrimination

10. The United States signed the Convention on the Elimination of All Forms of Racial Discrimination in 1966, amid a mass movement for human rights for people of African descent, but the legislature did not accede to the treaty until 1994—and with significant reservations. The reservations contradict the Convention’s definition of racism by claiming that disparate impact is not enough to establish a claim of racial discrimination.⁹ The reservations deny the duty of the State to regulate hate speech and racist propaganda and deny the duty of the State to regulate private racist conduct. The reservations make the Convention non-self-executing—claiming that the provisions in US law already guarantee adequate protections against racism—and so no person, citizen or non-citizen, can assert a claim or access judicial remedies based on the Convention.

11. Further, as shown in its most recent report to the Committee, the US asserts that discrimination towards non-citizens is not regulated by the Convention, even though this Committee had made clear that, under the Convention, States have a duty to guarantee the human rights of all persons, either citizen or non; preserve their right to due process; and “[e]nsure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin.”¹⁰

B. Durban Declaration and Programme of Action (DDPA)

12. The United States has not endorsed or applied the Durban Declaration and Programme of Action, the global community’s most clear commitment to ending racism, because it objects to two sets of statements in the Declaration.¹¹ The DDPA aptly warned in 2001, however, that “racism is gaining ground” and that “contemporary forms and manifestations of racism and xenophobia are striving to regain political, moral, and even legal recognition, including through the platforms of some political parties and organizations and the dissemination through communication technologies of ideas based on the notion of racial superiority.”¹² It named “xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers” as “one of the main sources of contemporary racism.”¹³ Its substantive provisions regarding State’s duties to address these issues, along with its recommendations, remain essential to States’ compliance with CERD.

C. 1967 Protocol relating to the Status of Refugees

13. In 1968, the United States became a party to the 1967 Protocol relating to the Status of Refugees and thus the substantive framework of the 1951 Refugee Convention.¹⁴ The treaty prohibits governments from imposing penalties on refugees who entered without inspection in search of asylum if they present themselves to immigration authorities without delay.¹⁵

D. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

14. In 1994, the US acceded to the CAT,¹⁶ which prohibits States from returning any individual to a country where it is more likely than not that she would face torture.¹⁷

E. International Covenant on Civil and Political Rights (ICCPR)

15. The United States ratified the ICCPR in 1992,¹⁸ which confirms the right to liberty and security of persons and prohibits detention that is unreasonable, unnecessary, disproportionate, or otherwise arbitrary.¹⁹

F. US Domestic Framework

16. The original US naturalization laws restricted citizenship to “white persons”²⁰ and rendered people of African descent non-citizens, capable of being owned as property, forced into involuntary servitude, traded, separated from families, tortured, and unable to access the courts or seek justice for crimes perpetrated against them.²¹ Following a brutal civil war in the mid-19th Century, the United States amended its constitution to provide citizenship to all people born in the US—thus granting citizenship to all people of African descent born in the US who had previously been denied.²² Shortly thereafter, the legislative branch amended its original naturalization laws to allow for people of African descent to seek citizenship if they did not already have it, though people of Asian descent were still barred until 1952.²³

(1) Immigration and Nationality Act (INA)

17. In 1952, the United States synthesized its various provisions into one act entitled the Immigration and Nationality Act (INA). In 1965, amidst the Civil Rights Movement, the legislature amended the INA to lift a racial quota system that had in effect limited non-citizens of African descent from seeking US citizenship. Though the basic structure of US law towards non-citizens seeking legal status in the United States has remained unaltered since the 1965 INA, the US has since passed laws that dramatically expanded the State’s authority to deport non-citizens on the basis of contact with the State’s criminal justice system.²⁴

18. Under the INA, “any alien who is physically present in the United States or who arrives in the United States (whether or not it is at a port of arrival), irrespective of the alien’s status may apply for asylum.”²⁵

(2) 1980 Refugee Act

19. The US created domestic legislation on asylees and refugees following its accession to the 1967 Protocol with the 1980 Refugee Act, which included a provision barring the removal of individuals who meet the refugee definition under US law.²⁶

(3) Title 42 Policy

20. At the onset of the COVID-19 pandemic, the US executive branch in March 2020 invoked a little-known provision, 42 USC §§ 265, 268 in its Public Health Service Act, which allows for the suspension of the introduction of non-citizens where there is “the existence of any communicable disease in a foreign

country” and “there is serious danger of the introduction of such disease into the United States.”²⁷ The policy has been used even against non-citizens attempting to seek asylum who have no safe place where they could be returned and violates US immigration statutes, its international obligations of *non-refoulement*.²⁸ Public health experts—including US government experts—have consistently dismissed Title 42 as a public health measure.²⁹ Instead, the policy is better explained as part of an initiative by Trump administration officials with established white supremacist ties,³⁰ to limit immigration through every available tool,³¹ in order to preserve white racial hegemony in the United States.

III. Racist, anti-immigrant hate speech by officials informs US policies

21. Former President Trump’s overt racism towards African, Haitian and other immigrants was on full display when in January 2018, he reportedly asked, “Why are we having all these people from shithole countries come here?” in reference to Haiti and other countries designated for Temporary Protected Status (TPS), and remarked, “Why do we need more Haitians? . . . Take them out.”³² President Trump also reportedly expressed a preference for immigrants from European and Asian countries, underlying concerns that the prior administration’s immigration policies were animated by a racial hierarchy that sought to target and block Black migrants from the US.³³

22. A few weeks earlier, on November 20, 2017, the US Department of Homeland Security (“DHS”) had announced the termination of TPS for Haiti.³⁴ The termination decision was later enjoined by a federal court, which found the termination likely politically motivated and “based on race and/or national origin/ethnicity against non-white immigrants in general and Haitians in particular.”³⁵

23. In recent months, local, state, and federal elected officials have repeatedly used rhetoric associated with the white supremacist “great replacement” conspiracy theory to characterize refugees and migrants arriving at the border, including many Haitians, as an “invasion” of the US.³⁶ In response to these “invasion” claims, in July 2022, the state of Texas issued an order authorizing state police and National Guard troops to make warrantless arrests of individuals suspected of unauthorized entry or other federal offenses and “return” them to Customs and Border Protection (“CBP”) officials at border ports of entry.³⁷ Such arrests are likely to disparately impact Black and Brown communities in the US perceived by such officials as unauthorized migrants.³⁸ This “invasion” language also echoes statements used by extremists in the US to justify attacks on racial and religious minority communities, including the mass murder of ten Black people at a grocery store in Buffalo, NY in 2022.³⁹

24. Such statements and actions by government officials targeting Black migrants violate Article 4(c), which prohibits public authorities from promoting or inciting racial discrimination, including based on claims of racial superiority, and Articles 2(1)(a)-(c), which obligate States to eliminate policies that perpetuate racial discrimination, ensure all public authorities act consistently with this obligation, and prohibit government support or defense of racial discrimination by any persons or organizations.

IV. Situation of non-citizens, including migrants, refugees and asylum seekers (CERD arts. 2, 4, 5, and 6)

A. Excessive use of force by Customs and Border Protection (CBP) personnel and lack of accountability for violent, disparate and discriminatory mistreatment of Haitian migrants seeking asylum near Del Rio, Texas

25. From approximately September 9 to 25, 2021, at least 15,000 Haitians, along with hundreds of other nationals, were held in a makeshift CBP encampment near the Del Rio International Bridge in Texas after they crossed the US-Mexico border. Many had crossed there to seek asylum because US ports of entry remained closed due to the Title 42 policy (discussed below). The US government responded with militarized force,⁴⁰ imposing restrictions on movement within and out of the encampment that was blocked

off using shoulder-height fences constructed of chicken wire and abutted the Rio Grande River. Texas state police troopers were stationed across the river's northern bank, while Mexican state police and officers from Mexico's National Migration Institute (INM) lined the southern bank. Because the US government effectively prevented individuals from leaving the encampment, it rendered them unable to care for themselves and owed them a duty of care, including to provide basic human necessities, which it failed to adequately meet.⁴¹ As a result, people trapped within the encampment were subjected to hunger, dehydration, and other inhumane conditions as they awaited processing by CBP.

(1) Violence and threats by US immigration officers

26. As captured in part by photographs that shocked the national consciousness,⁴² heavily armed and mounted US Border Patrol agents subjected migrants in the Del Rio encampment, who were overwhelmingly Black Haitian people, to physical violence, verbal threats, and other acts of intimidation.

- One of those viral photographs depicted a Haitian asylum seeker, Mirard Joseph, being attacked by a CBP officer on horseback.⁴³ Like many Haitians at Del Rio, Mr. Joseph was crossing the Rio Grande to bring food back to his wife and child when he was surrounded by CBP officers on horseback, who used their split reins to lash at him and attempted to drag him back into the river. Mr. Joseph, a plaintiff in the class action lawsuit, *HBA v. Biden* described the encounter as “the most humiliating experience of my life.”⁴⁴
- Multiple people from the Del Rio encampment also experienced and witnessed CBP officers on horseback chasing down and trampling Haitian migrants attempting to cross the Rio Grande. One Haitian man brought his eight-year-old son to the riverbank to bathe when mounted officers chased down a group of migrants gathered by the river.⁴⁵ As his son attempted to run away from the CBP officers on horseback, he fell—was nearly trampled by the horse—and suffered cuts and bruises to his eye and legs. The man described the “moment of terror” when he saw his young son fall to the ground, “I thought my son would be killed, right there in front of me.”⁴⁶ Terrified and traumatized, they fled the encampment that night.
- Another Haitian couple, who was also shoved by CBP officers in Del Rio, said, “When we were crossing the river by the bridge, we were met by CBP agents. Some of them were on horses, some were on foot. As I was trying to cross with my pregnant girlfriend they shoved us. She was shoved and fell to the ground. I don't speak English well, but I tried to tell the agents that my girlfriend was pregnant. I tried to say it in Spanish. But they continued to abuse us and they kept shoving us across the river.”⁴⁷
- One Haitian man was attempting to cross the Rio Grande and return to the encampment with food for himself and others when a CBP officer dismounted from his horse and deliberately cut the rope the man was using to navigate the deep water and strong river current.⁴⁸ As the officer threw the severed rope into the river,, several other Haitians attempting to cross fell into the river and struggled to swim.⁴⁹ The officer shouted that they could not return to the American side of the border. This man also witnessed CBP personnel hit and push Haitians closer to the river bank back into the water.

27. CBP officers used racial slurs against the overwhelmingly Black migrants who were in the Del Rio encampment. One example, captured on video, includes a mounted officer shouting at a group of migrants: “This is why your country's shit, because you use your women for this.”⁵⁰ The officer then reared his horse and directed it towards a group of children. Among those who experienced or witnessed CBP officer's chasing migrants on horseback, the majority reported that those officers shouted threats to fleeing Haitian migrants, ordering them to “go back to Mexico.”⁵¹

28. This combination of physical violence, verbal threats and intimidation by CBP personnel created an overwhelming and constant state of terror for Haitians trapped by CBP in the Del Rio encampment, , as well as actual harm to their safety. Authorities also restricted legal service organizations from entering the encampment, resulting in the lack of access to legal resources in Haitian Kreyol for asylum seekers. DHS's refusal to allow attorneys to access the encampment also prevented them from interviewing survivors and

witnesses in order to document the misconduct of DHS personnel. Many witnesses crucial to an investigation of CBP's conduct at Del Rio were immediately expelled by DHS to Haiti under Title 42.⁵² To expel many of the nearly 15,000 Haitian migrants from the Del Rio camp, the US government authorized a first-of-its-kind "emergency" contract with a private prison company for deportation flights to Haiti. The contract was authorized to be entered into without full and fair competition and ultimately cost nearly 1900% more per flight than the average cost of a deportation flight.⁵³

29. The government should have taken measures to guarantee equal protection based on race for Black migrants under Articles 2 and 5 and to protect against violence or bodily harm under Article 5(b).

(2) Inhumane and degrading conditions, lack of medical attention

30. Haitian migrants trapped in the Del Rio encampment reported extremely limited access to food and water. Most reported being given one water bottle heated by the sun and a piece of bread daily. Food suitable for infants and small children was not provided, even though an estimated 40% of those in the encampment were children.⁵⁴ Some individuals were forced to drink from the Rio Grande, which is not potable. This lack of clean drinking water caused many in the encampment to get sick, including gastrointestinal illness, particularly children. Many individuals who did not receive food or water, especially pregnant women, fainted from lack of nutrition or dehydration. A majority of individuals interviewed in the migrant shelter in the Mexican city of Acuña on September 25, 2021, reported that they were forced to return to Mexico because they experienced extreme hunger after up to six days of being deprived access to food and water.⁵⁵

31. Haitians trapped in the encampment reported have to wait until nightfall to travel to Mexico for rations and supplies. As one Haitian asylum seeker described, "We were starving and they weren't giving us any food. People would give money to those who were willing to risk the journey across the river to Mexico. As more soldiers came to the river, people had to try to cross at night away from the soldiers to avoid being caught."⁵⁶ Those who attempted to cross into Mexico in search of food and water faced a variety of risks: drowning in the dangerous Rio Grande,⁵⁷ being stopped by CBP officers, and being prevented from returning to the encampment by Mexican and US border officials, which could lead to separation from their families and other loved ones.

32. CBP did not provide those trapped in the encampment access to showers or running water. Instead, people had to bathe in the Rio Grande, where they were exposed to disease-causing bacteria. CBP installed only about 50 portable toilets within the camp for over 15,000 people.⁵⁸ CBP personnel failed to meet the basic shelter needs of migrants and refused to provide beds, cots, blankets, tents, or shelter of any kind. Those trapped in Del Rio were exposed to the elements, including triple digit temperatures, dirt, and dust.⁵⁹

33. CBP also failed to attend to the medical needs of migrants in the encampment, including the many infants, children, and pregnant and otherwise vulnerable people.⁶⁰ Many reported that CBP personnel denied their requests for medical care, telling them to "go back to Mexico." For example, a Haitian man traveling with his wife and two-year-old daughter described how his daughter became very sick with gastrointestinal and respiratory issues from the dust.⁶¹ She was vomiting frequently, had a high fever, and visible difficulty breathing. Despite the man's pleading and repeated requests for help, CBP personnel denied the child's medical treatment.

34. One newborn infant almost died after being held in the encampment for several days. He survived only after Haitian Bridge Alliance advocated for him to be airlifted to a hospital in San Antonio, Texas, where specialists provided life-saving medical treatment.⁶² One Haitian woman described, "I witnessed pregnant women going into labor taken in to give birth and then sent back under the bridge without further access to healthcare. And that was really heartbreaking for me."⁶³ An individual reported that after a pregnant Haitian asylum seeker went into labor, US officials took the woman out of the encampment, but returned her and her newborn to the encampment hours after delivery.⁶⁴

35. These inhumane conditions in CBP custody and lack of access to food, water, housing, and medical care in order to deter Haitian migrants from seeking asylum violated Article 5(b), and (e)(iii) and (iv).

(3) Lack of Accountability

36. Since the events of September 2021, calls for accountability for the actions of DHS at Del Rio have come from: members of Congress;⁶⁵ the Inter-American Commission on Human Rights;⁶⁶ joint United Nations agencies⁶⁷ and experts,⁶⁸ including UNHCR.⁶⁹ President Biden condemned CBP's treatment of Haitian migrants as "outrageous"⁷⁰ and DHS Secretary Alejandro Mayorkas stated that the images from Del Rio "painfully conjured up the worst elements of our nation's ongoing battle against systemic racism."⁷¹ On September 22, 2021, Secretary Mayorkas pledged that an internal investigation of the events at Del Rio would "be completed in days, not weeks."⁷²

37. After *ten months*, on July 8, 2022, CBP released the findings of its investigation on the treatment of Haitian and other Black migrants at Del Rio. In a report of 511 pages, CBP focused on only *30 minutes* of the events in Del Rio,⁷³ Instead of comprehensively investigating the humanitarian crisis that occurred over the span of at least 16 days.⁷⁴ The report's authors interviewed journalists and law enforcement, but not a single Haitian migrant, though counsel for several Haitians offered their testimony.

38. The CBP investigation concluded that CBP officers took commands from Texas state police to "use[] force or the threat of force" to drive Haitians seeking asylum into the Rio Grande.⁷⁵ The report also found that one CBP officer "acted in an unprofessional manner" by yelling comments related to a migrant's national origin and sex.⁷⁶ Ultimately, the report concluded that "despite the actions taken by the [CBP officers] during this incident, there was no evidence found during this investigation to suggest any migrant was ultimately forced to return to Mexico or denied entry into the United States."⁷⁷ As a result of the investigation, four CBP officers are facing discipline and have been moved to administrative positions. But DHS has announced no policy changes or findings related to its treatment of Black migrants as a group.

39. Haitian Bridge Alliance and counsel to *HBA v. Biden* had offered to provide Haitian migrants for testimony. The failure to interview them and include their testimony undermines the credibility of the report as it consequently fails to some of the mistreatment and abuse inflicted on Black asylum seekers and migrants at Del Rio. To seek accountability and lasting change, advocates have filed a class action lawsuit in federal court,⁷⁸ a civil rights complaint with the DHS Office for Civil Rights and Civil Liberties (CRCL),⁷⁹ and 32 information requests through the US Freedom of Information Act and the Texas Public Information Act.⁸⁰ All remain pending.

40. In June 2022, news media reported that CBP officers were trading a commemorative coin celebrating the terrorizing of Black migrants at Del Rio by agents on horseback.⁸¹ The coin showed an image of a Haitian migrant being grabbed at by a CBP agent wielding horse reigns as a whip. It was emblazoned with the words "You will be returned."

41. The violent response of the US government to 15,000 Haitian and other Black asylum seekers contrasts with the welcome reception to white Ukrainians only months later. As of June 2022, the US government was on track to welcome 100,000 Ukrainians since authorizing their entry into the US through a specialized program in March 2022.⁸²

42. The US government's extraordinary use of militarized force, exceptional expulsion flights, and denial of food, water, and medical care to Black asylum seekers, especially when contrasted with its accommodating behavior toward white asylum seekers months later, violates Articles 2(1)(a), prohibiting the State from engaging in any act or practice of racial discrimination against persons or groups, and 2(1)(b), by which States agree to engage in no act or practice for racial discrimination. against persons or groups of persons and not to sponsor, defend or support racial discrimination by any persons or organizations. Such actions also violate Article 4(c), which prohibit national public authorities (CBP and DHS, which oversees CBP) from promoting or inciting racial discrimination. CBP's self-serving, deficient investigation findings,

and the lack of access to justice through various administration and other complaints demonstrate lack of equal treatment before the “tribunals and other organs of administrative justice” by CBP and DHS under Article 5(a), as well as “just and adequate reparation or satisfaction for a damage suffered as a result of discrimination” under Article 6.

B. Deportation of undocumented non-citizens under Title 42 policies, particularly Haitians *en masse*, without access to fair and efficient asylum procedures, legal representation, language, knowledge, and non-refoulement

43. Since March 2020, DHS has used the Title 42 policy⁸³ to block asylum at US ports of entry and to expel migrants and asylum seekers to Mexico or their countries of persecution without access to the US asylum system or refugee protection screenings.⁸⁴ US Department of State top legal expert, Harold Koh, resigned in October 2021, after concluding that the use of Title 42 to expel people seeking protection, “especially migrants fleeing from Haiti,” is “illegal and inhumane.”⁸⁵ In May 2022, the Biden administration terminated the order implementing the Title 42 policy, but it remains in place under court order pending appeal in the case.⁸⁶

44. DHS has disproportionately targeted Haitians for expulsion to their home country under Title 42, blocking Haitian asylum seekers from exercising their right to seek protection in the US and returning families and individuals to a deepening security crisis and life-threatening humanitarian conditions in Haiti.⁸⁷ In May 2022, the UN High Commissioner for Human Rights observed that “armed violence has reached unimaginable and intolerable levels in Haiti.”⁸⁸ Yet, DHS has continued to target Haitian migrants for expulsions. In May 2022, for example, “Haitians represented about 6% of the migrants crossing the border with Mexico but occupied 60% of expulsion flights.”⁸⁹ US government data shows that Title 42 has been employed to expel at least 22,000 Haitians from the US.⁹⁰ These expulsions have resulted in family separations with some family members expelled to Haiti while others are permitted to apply for protection under the US asylum system.⁹¹

45. DHS has also detained for days or weeks prior to expulsion many of those expelled to Haiti in inhumane conditions, where they have been subjected to racist abuse,⁹² and transported expelled people in shackles on flights to Haiti.⁹³ DHS officers frequently refuse to tell those being expelled where they are being taken and, in some cases, lie that flights are destined for elsewhere in the United States.⁹⁴

46. Haiti is not able to safely receive or protect people expelled through Title 42. As expelled Haitians disembark US deportation flights sick, handcuffed, hungry, traumatized, and disoriented, they find themselves in a “humanitarian nightmare,” including widespread gang violence, an ongoing political crisis following assassination of Haiti’s President Jovenel Moïse, food insecurity, a health system “on the brink of collapse,” and devastation following a recent earthquake.⁹⁵ As Human Rights Watch concluded in a recent report, “Returns to Haiti are life-threatening now, and will continue to be so, until security conditions in Haiti improve...Haiti is experiencing a dire security situation, including loss of government control over strategic areas to the hands of dangerous armed gangs, widely believed to be financed by politicians and to have police officers on their payroll. Violence has worsened an already severe humanitarian crisis.”⁹⁶

47. In stark contrast to the treatment of Haitian and other Black, Brown and Indigenous asylum seekers under Title 42, who continue to be largely blocked from seeking asylum at land border ports of entry, DHS provided near universal exceptions to Title 42 for Ukrainians. Between March and May 2022, DHS processed more than 98.9 % of the more than 23,000 Ukrainians who arrived at the southern US border at ports of entry - nearly all were granted parole and not placed in removal proceedings⁹⁷ and only 0.6% subjected to Title 42.⁹⁸ In comparison, with ports of entry largely blocked to other asylum seekers, only 23.5% of the 18,000 Haitians encountered along the southern border in that same period were able to present at ports of entry and 26.3% were subjected to Title 42,⁹⁹ a rate more than 40 times higher than Ukrainians.

48. In addition, Black migrants and asylum seekers, including thousands of Haitians, blocked in and returned to Mexico face grave violence, discrimination, and life-threatening denials of access to medical care and other vital services.¹⁰⁰ Surveys in 2021 of Haitians blocked from US asylum protection due to Title 42 found that 61% reported being the victim of a crime while in Mexico, including kidnapping, rape, and robbery.¹⁰¹ Researchers have tracked more than 10,000¹⁰² reports of rape, torture, kidnapping and other violent attacks on asylum seekers and migrants blocked in or expelled to Mexico due to Title 42, including the May 2022 murder of Jocelyn Anselme, a 34-year-old Haitian asylum seeker, who was killed in Tijuana while blocked from seeking asylum due to Title 42.¹⁰³ In addition, Mexican authorities have targeted Black migrants for abuse with nearly 20% of Haitian asylum seekers in the northern Mexican border region reporting that Mexican police subjected them to beatings, extortion, and other threats.¹⁰⁴ Cartels and gangs also target Black migrants for various crimes such as kidnapping because they stand out as migrants based on their skin color. Black LGBTQ asylum seekers from Jamaica and other countries who have been stranded in Mexico due to Title 42 face dual racist and homophobic violence and discrimination.¹⁰⁵

49. In general, because CBP does not consistently record information on the race of individuals subjected to the Title 42 policy, the racially disparate impact of policy is not fully known.¹⁰⁶

50. The targeted application and expulsion of Haitians under Title 42 violates *inter alia* Article 2(1)(I), requiring that the State rescind policies that perpetuate racial discrimination, and the right guaranteed by Article 5(b) to security of person and protection from violence or bodily harm.

C. Other policies with a disparate and discriminatory impact on Black undocumented non-citizens that block them from entering US or result in their deportation without access to fair and efficient asylum procedures, legal representation, language, knowledge, and non-refoulement

(1) Metering & “Remain in Mexico”

51. A 2016 policy known as “metering” was implemented under the Obama administration in response to an increase in Haitians seeking asylum at US ports of entry.¹⁰⁷ Under the metering policy, which the Trump administration expanded along the entire southern US border in 2018,¹⁰⁸ CBP officers intentionally reduced processing of asylum claims at ports of entry, returning most asylum seekers back to Mexico without processing their asylum claims. Those turned away were forced to wait in dangerous Mexican border cities, many under the control of cartels, for an opportunity to request protection.

52. Black asylum seekers forced to wait in Mexico faced particular risks because of their race and nationality, and were particularly targeted for violence, including kidnappings.¹⁰⁹ Black asylum seekers also frequently reported that anti-Black discrimination and lack of interpretation services blocked or delayed them from placing their names on informal lists of asylum seekers in Mexico that developed as a result of metering at many ports of entry.¹¹⁰ In 2020, a US federal court found the metering policy violates US law.¹¹¹ In November 2021, the Biden administration rescinded the Trump administration’s metering directives but did not prohibit the use of metering in future.¹¹²

53. Beginning in 2019, the Trump administration used the Migrant Protection Protocols,¹¹³ commonly referred to as Remain in Mexico (RMX), to force asylum seekers and migrants to await US immigration court proceedings in dangerous border regions of Mexico. Families, children and individuals returned to Mexico were targeted for grave violence, including murder, torture, rape, kidnapping and other attacks.¹¹⁴ Afro-descendent asylum seekers from Central and South America¹¹⁵ faced targeted anti-Black violence and discrimination upon their forced return to Mexico.¹¹⁶ Subjected to these dangers, stranded in deplorable living conditions, and largely cut off from US immigration attorneys, RMX also created nearly insurmountable obstacles to the fair adjudication of asylum cases.¹¹⁷ In June 2022, the US Supreme Court ruled that the Biden administration did not violate US procedural law in terminating the RMX policy.¹¹⁸

54. Blocking and returning Black asylum seekers to targeted violence in Mexico violates *inter alia* Article 2(1)(c), requiring that the State rescind policies that perpetuate racial discrimination, and the right guaranteed by Article 5(b) to security of person and protection from violence or bodily harm.

(2) Expedited removal, removal proceedings, and third country transit ban

55. Under the expedited removal process,¹¹⁹ US immigration officers may order the deportation of certain non-citizens charged with inadmissibility without an immigration court hearing. Credible fear screenings, which Congress intended to apply “a low screening standard,”¹²⁰ are supposed to ensure that people seeking refugee protection in the US have an opportunity to apply for asylum and are not summarily deported to persecution or torture. However, these screenings are inherently flawed,¹²¹ resulting in erroneous negative determinations and deportations of refugees without access to the asylum process¹²² with a disparate impact on Black asylum seekers.¹²³ DHS’s failure to provide adequate interpretation to asylum seekers who speak so-called “rare” languages disparately impacts many people from African countries seeking refugee protection in the US. Asylum officers and immigration judges push these asylum seekers to proceed in languages they do not speak fluently resulting in an inability to express themselves and erroneous negative fear findings.¹²⁴ In addition, information about the credible fear process is often provided to detained asylum seekers only in English and Spanish, leaving many African and Haitian asylum seekers who speak other languages unable to understand the purpose and nature of the screening interview.¹²⁵

56. Following attempts by the Trump administration to alter the credible fear standard including heightening credibility requirements,¹²⁶ DHS increasingly found asylum seekers lacked credibility and therefore could not establish a credible fear of persecution. This trend had a disproportionate impact on many asylum seekers from Black-majority countries (see Table 1 below).¹²⁷ In Fiscal Year (FY) 2020, asylum seekers from Sub-Saharan Africa were deemed not credible in 8.5% of credible fear interviews, over 37% more often than on average for all nationalities that year. Asylum seekers from Black-majority countries including Burkina Faso, Cameroon, the Dominican Republic, Ghana, Mauritania, and Senegal had some of the highest negative credibility finding rates. This data further confirms concerns raised about implicit racial and other bias in credibility determinations in US asylum adjudications.¹²⁸

Table 1: Asylum Seekers from Black-Majority Countries Saw a Significant, Disproportionate Rise in Negative Credibility Findings as a Percentage of Credible Fear Determinations

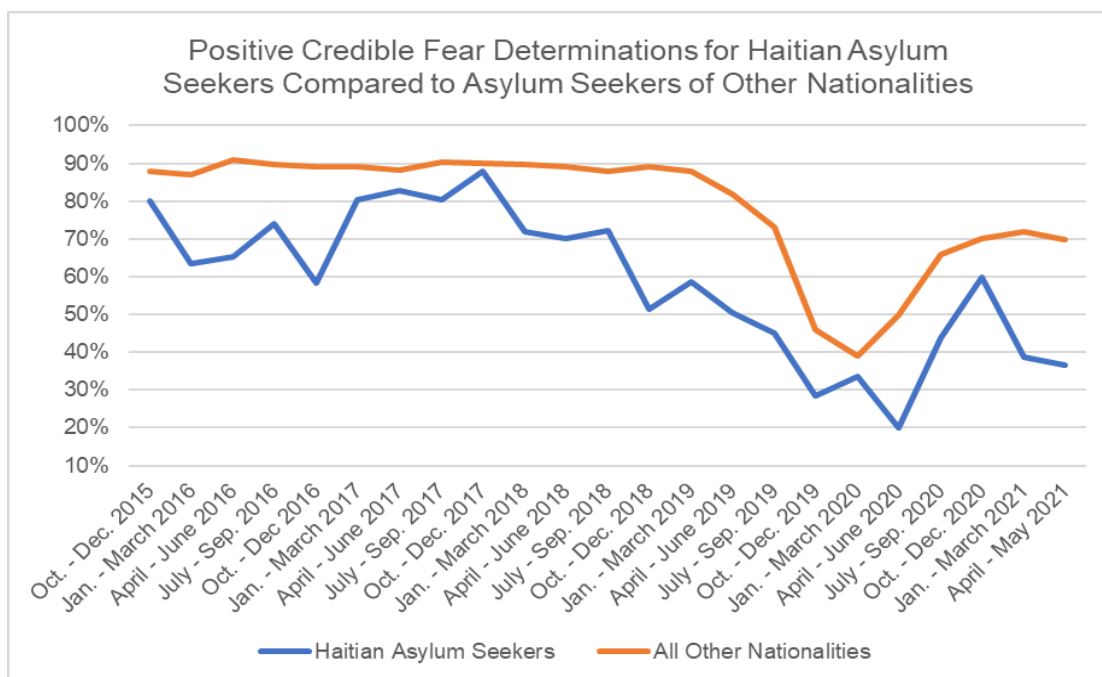
Country	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Average All Countries	0.4%	0.5%	1.1%	2.8%	6.2%
Burkina Faso	0.0%	0.0%	0.0%	7.7%	16.7%
Cameroon	0.5%	0.8%	0.0%	2.9%	9.9%
Dominican Republic	0.6%	0.0%	0.0%	1.0%	11.6%
Ghana	0.7%	0.7%	6.3%	4.3%	11.4%
Mauritania	0.0%	0.0%	0.0%	0.0%	13.2%

Senegal	1.2%	2.9%	0.0%	0.0%	28.6%
----------------	-------------	-------------	-------------	-------------	--------------

57. As a result of inadequate interpretation, lack of access to counsel, and limited understanding of country conditions by officers carrying out credible fear interviews, many Haitian asylum seekers subjected to expedited removal have long been unfairly determined not to have credible fears of persecution. Recent government data¹²⁹ shows that positive credible fear determination rates for Haitian asylum seekers have remained significantly below average since at least FY 2016 (see table and chart below), Between mid-January 2021 and May 2021, during the first months of the Biden administration, positive credible fear determination rates for Haitian asylum seekers fell further to 36.5%, nearly half the average 70% positive rate for all other asylum seekers in that period.¹³⁰ These low rates have persisted despite the US government’s acknowledgment in 2021 that Haiti is experiencing “a deteriorating political crisis, violence, and a staggering increase in human rights abuses.”¹³¹

Table 2: Positive Credible Fear Rates for Haitian Asylum Seekers Have Declined Significantly Since Fiscal Year 2016 But Have Been Persistently Lower Than for Asylum Seekers from Other Countries

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021 (through May)
Haiti	65.2%	71.4%	75.5%	48.2%	33.8%	44.6%
Average – Other Nationalities	88.8%	88.0%	89.0%	82.3%	44.4%	69.9%



58. Black asylum seekers also face disparate treatment in immigration court removal proceedings, including denials of adequate interpretation, lack of access to counsel, intentionally rushed proceedings, and adjudicator bias, which result in wrongful denials of asylum and, in some cases, deportation to persecution and torture. Many Black asylum seekers, particularly those subjected to detention, have been denied fair asylum proceedings and wrongly ordered deported as a result of apparent adjudicator bias, cherry-picking of evidence, adverse credibility determinations, factual and other errors.¹³² Asylum seekers subjected to detention are not provided translation services to fill out asylum applications; yet, immigration judges have ordered detained Black asylum seekers removed due to their inability to complete the asylum application in English or minor inconsistencies from relying on other detained persons to translate the application.¹³³

59. ICE's efforts, in some instances, to block attorney access to detention centers and general lack of access to legal services, have also resulted in wrongful denials of asylum, including misunderstanding by Haitians about the right to seek "asylum" due to government failures to provide legal information in Kreyol.¹³⁴ In November 2021, at least 45 Haitians detained at Tarrant County Detention Facility in New Mexico were prevented from exercising basic legal rights such as retaining or communicating with legal counsel; obtaining basic information about their rights through group legal presentations; or gathering evidence and preparing to present their claims for relief in removal proceedings.¹³⁵

60. Between FY 2001 and FY 2021, Haitian asylum seekers had the second highest asylum denial rate of any nationality at 82%.¹³⁶ In 2021, DHS pushed detained Haitian asylum seekers through removal proceedings on an even more expedited and unfair timeline while other asylum seekers languished in the same detention center.¹³⁷ Many Black asylum seekers, particularly those subjected to detention, have been denied fair asylum proceedings and wrongly ordered deported as a result of apparent adjudicator bias, cherry-picking of evidence, adverse credibility determinations, factual and other errors.¹³⁸

61. During the Trump administration, while security situation declined in Cameroon, Cameroonian asylum seekers were increasingly subjected to immigration detention, where, as a result, they were far less likely to obtain counsel and to receive asylum than non-detained Cameroonian asylum seekers.¹³⁹ The US asylum grant rate for Cameroonians decreased by 24% from FY 2019 to FY 2020, followed by a surge of deportations to Cameroon in late 2020.¹⁴⁰ Human Rights Watch documented persecution and serious human rights violations against Cameroonians after their forced return including arbitrary arrest and detention,¹⁴¹ rape, torture and other physical abuse,¹⁴² extortion, unfair prosecutions, confiscation of national identity documents, and abuses against family members. Perpetrators included members of the police and armed forces; prison wardens and guards; and other unidentified officials. State agents targeted many deportees for harm, persecution, or threats because of their deportation, their known or assumed act of seeking asylum in the US, and their actual or imputed opposition to the government.

62. In addition, the Trump administration used the third-country transit asylum ban¹⁴³ to deny—with very limited exceptions—asylum to refugees. The ban disproportionately impacted Black asylum seekers from the Caribbean and Africa, who had passed through several a third-countries *en route* to the United States. As intended, the ban left refugees in legal limbo with only limited protection afforded by "withholding of removal" and cut off from family stranded abroad.¹⁴⁴ This illegal provision, which was vacated by court order in June 2020 and then enjoined in February 2021 after the Trump administration resurrected the rule, resulted in steep declines in both positive credible fear determinations and asylum grants for many asylum seekers, including individuals from Cameroon, the Democratic Republic of Congo, and Eritrea, who had sought protection at the southern US border.¹⁴⁵

63. The discriminatory treatment and disparate outcomes Black asylum seekers continue to face under the US expedited and regular removal processes and suffered due to the third-country transit ban violate the right under Article 5(a) to equal treatment before tribunals and all other organs administering justice and the obligation under Article 2(1)(c) to amend or rescind laws and regulations that perpetuate racial discrimination.

D. Criminalization of Black immigrants

64. On January 20, 2021, President Biden promised 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.” However, eighteen months later, the Biden administration has failed to keep its promise to uphold racial equity as its enforcement priorities fail to disentangle the systemic racism of the criminal and immigration enforcement systems that have resulted in disproportionate deportation rates of Black immigrants.¹⁴⁶ An estimated 76% of Black immigrants who were deported were deported because of prior contact with the US criminal enforcement system, whereas only half of all non-Black immigrants are deported because of such prior contact.¹⁴⁷ This disparity in immigration enforcement is due in part to the often negative disparate outcomes Black immigrants face within various social and economic structures in the US, including the country’s mass criminalization of African Americans.¹⁴⁸

65. Black immigrants account for nearly 12% of the US’s Black population¹⁴⁹ and 7.2% of the 22 million foreign-born individuals in the US who are non-citizens.¹⁵⁰ However, more than one out of every five non-citizens facing deportation on criminal grounds before US immigration courts is Black. Violence and racism pervade US policing and court systems with disparate impact on Black immigrants, who – like Black people in America generally - are disproportionately stopped, searched, arrested, and killed by the police.

E. Black non-citizens are more likely to suffer prolonged and arbitrary immigration detention

66. Under Article 5(a) of CERD, the United States has an obligation to ensure “The right to equal treatment before the tribunals and all other organs administering justice” for all, without distinction as to race, color, or national or ethnic origin. Similarly, under Article 4(c), the US “[s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.” Data gathered by immigrant rights and human rights NGOs shows that Black migrants are detained for longer periods than non-Black migrants and are less likely to be released from detention on bond or parole than non-Black migrants.¹⁵¹ This disparate treatment faced by Black migrants and migrants from African countries both in immigration detention and when seeking release on bond demonstrates that the United States has not met these commitments in its immigration system.

67. In 2019, the average migrant in US Immigration and Customs Enforcement (ICE) custody spent 55 days in detention,¹⁵² though evidence suggests that Black migrants are held for significantly longer. For instance, Human Rights Watch interviewed 41 Cameroonian asylum seekers who had been deported between 2018 and 2020, and found that all but one were detained for prolonged periods ranging from one to three years.¹⁵³ The length of detention among the group averaged 17 months – much higher than the 55-day average.¹⁵⁴ In 2022, Human Rights First found that since President Biden took office, ICE detained asylum seekers from Black-majority countries on average 27% longer than asylum seekers from non-Black countries among those for whom Human Rights First was able to track detention length.¹⁵⁵

68. A study by Tulane Law School’s Immigration Clinic found that 57% of all detained immigrants who filed *habeas corpus* petitions in the Western District of Louisiana between January 1, 2010 and July 31, 2020 were Black.¹⁵⁶ At the time of filing their *habeas* petitions, the migrants had been detained on average for 13 months and faced continued detention if their petitions were unsuccessful.¹⁵⁷

69. Sylvester Owino, a Kenyan asylum seeker spent nearly ten years in immigration detention at Otay Mesa Detention Center in California before securing his release.¹⁵⁸ Similarly, three Rwandan men spent nearly a decade in immigration detention in Farmville, Virginia.¹⁵⁹ Although these cases may be outliers, they reflect the extended durations that Black asylum seekers spend in detention, in some cases simply because they continue to pursue immigration relief.¹⁶⁰

70. Immigration Judges and ICE disproportionately deny Black immigrants release on bond or parole and impose higher bond amounts. The Southern Poverty Law Center (“SPLC”) found that Cameroonians are two-and-a-half times more likely “to have their paroles denied by the New Orleans ICE Field Office than similarly situated applicants from non-African countries.”¹⁶¹ Similarly, when comparing hundreds of release requests made between September 2019 and May 2020, by detained Cubans, Venezuelans, Cameroonians, and Eritreans, SPLC found that “non-Africans had grant rates roughly twice as high.”¹⁶² Immigration court data received by Human Rights First reflects that immigration judges were over 27% more likely to deny bond to Haitian asylum seekers compared to other nationalities in Fiscal Year 2021 (through mid-August).¹⁶³

71. When Black migrants are offered bond, they often must pay higher rates. Based on data collected by Refugee and Immigrant Center for Education and Legal Studies (“RAICES”)’s bond fund, the average bond paid across all nationalities between June 2018 and June 2020, was \$10,500.¹⁶⁴ Haitian asylum seekers, however, were issued bonds at an average of \$16,700 (54% higher).¹⁶⁵ Data obtained by Human Rights First shows that the average immigration court bond for Haitian asylum seekers in Fiscal Year 2021 (through mid-August) was double the average bond for other asylum seekers.¹⁶⁶

72. Some ICE officers appear to intentionally facilitate release of non-Black migrants over the release of Black migrants. African asylum seekers detained at the Winn Correctional Center in Louisiana told Human Rights First that ICE disproportionately denied parole to detained migrants from African nations: “A Congolese asylum seeker who had been detained for months, reported that an ICE officer claimed that African asylum seekers were less likely to be released because they are ‘inferior.’ . . . A Senegalese asylum seeker imprisoned for five months at Winn said, “I see Africans detained eight, nine, ten months. I’ve never seen other nationalities detained that long.”¹⁶⁷ An African asylum seeker detained at Adelanto ICE Processing Center in California reported that ICE imposed discriminatory requirements for release on Black asylum seekers, demanding extensive documentation that non-Black asylum seekers were not asked to produce.¹⁶⁸ Similarly, in fall 2021, an ICE officer stated that ICE had been instructed to release Cubans, Nicaraguans, and Venezuelans to create additional detention bed space while ICE was detained large numbers of Haitians at the same facility.¹⁶⁹ This guidance appeared designed to enable and prioritize the detention of Black asylum seekers and migrants from Haiti.

F. Black migrants were over-represented in family detention

73. ICE has operated several family detention centers throughout the United States (as of July 2022 these facilities are not currently being used to detain families). During the Covid-19 pandemic, Black migrant families were disproportionately represented in these facilities.¹⁷⁰ In the three months prior to the pandemic, RAICES observed that 29% of the families detained at the Karnes County Family Residential Center in Texas were Haitian.¹⁷¹ As the pandemic progressed, ICE released a number of non-Black families from Karnes but kept the Haitian families, and the share of Haitian families detained there increased to 44% of the total population.¹⁷² RAICES noted, “The US has consistently detained more Haitian families in 2020 than any other nationality.”¹⁷³

74. RAICES found that 56% of all families held at Karnes in 2020 came from majority-Black countries, including 220 families from Haiti, 25 from Angola, 22 from the Democratic Republic of Congo, 6 from Ghana, 4 from Congo, 2 from Cameroon, 2 from Sierra Leone, 1 from Benin, 1 from Burkina Faso, and 1 from Nigeria.¹⁷⁴

75. At Berks Family Residential Center, another ICE detention center formerly used to jail families, the entire detained population in July 2020, came from Black-majority countries.¹⁷⁵ At that point, ICE had released most of the population due to the Covid-19 pandemic, but continued to detain four Haitian families and two families from other African nations – and no one else.¹⁷⁶ The majority of the children detained were infants.¹⁷⁷ No employee at the facility spoke Haitian Kreyol, creating a significant language barrier that

prevented many detainees from receiving necessary medical care.¹⁷⁸ The Haitian families had been detained upwards of 125 days, with their detention likely to continue.¹⁷⁹

76. At the South Texas Family Residential Center in Dilley, Texas, the detained population comprised 66 families in July 2020.¹⁸⁰ On average, the families had spent 244 days in detention.¹⁸¹ Black migrants made up 15 percent of the detained population at the Dilley, a lower, but still significant, percentage than at the other two family detention centers (from Haiti, the DRC, Angola, and Ghana).¹⁸²

G. Racist excessive force, abuse, and retaliation against Cameroonian and other Black migrants in US immigration detention centers

77. Cameroonians in ICE custody have been organizing for years to protest mistreatment and inhumane conditions in detention facilities, particularly those under the jurisdiction of the New Orleans, Louisiana ICE Field Office Area of Responsibility.¹⁸³ In response, ICE and its contractors retaliated against Cameroonian protestors with solitary confinement, physical abuse, separating and transferring organizers to different facilities, and unlawful deportation of organizers and participants to Cameroon. From 2020 to 2022, at least nine complaints were filed with DHS's Office for Civil Rights and Civil Liberties and at least three lawsuits filed in US courts on behalf of Cameroonians and other Africans who reported abuse and excessive force, anti-Black discrimination, and other mistreatment in ICE detention and during deportation.

- An August 2020 complaint filed against Pine Prairie ICE Processing Center in Louisiana by a group of Black, majority Cameroonian, asylum seekers details how ICE officers deployed excessive force against 45 peaceful protestors participating in a hunger strike and subjected them to retaliatory, punitive solitary confinement without access to medical treatment and with limited access to hygiene and potable water.¹⁸⁴
- An October 2020 a complaint filed against Adams County Correctional Center in Mississippi alleges that ICE officers coerced and tortured eight Cameroonian men into signing stipulated orders of removal.¹⁸⁵ One individual testified that ICE official "pressed my neck into the floor. I said, 'Please, I can't breathe.' I lost my blood circulation. Then they took me inside with my hands at my back where there were no cameras."¹⁸⁶ Another individual described that "when they [ICE officers] arrived, they pepper sprayed me in the eyes and [an ICE official] strangled me almost to the point of death. I kept telling him, 'I can't breathe.' I almost died. I was coughing so much after and my throat still hurts a lot. I can't see well still from the pepper spray. As a result of the physical violence, they were able to forcibly obtain my fingerprint on the document."¹⁸⁷ Despite public outcry¹⁸⁸ and demands for accountability from members of Congress,¹⁸⁹ at least five of the Adams County complainants were deported to Cameroon.
- In November 2020, a complaint filed against Jackson Parish Correctional Center in Louisiana on behalf of six Cameroonians alleges ICE officials tortured Cameroonians and forced their fingerprinting to obtain their assent to be deported.¹⁹⁰ At least four of the Jackson Parish complainants were subsequently deported to Cameroon. Similarly, a February 2021 complaint against Winn Correction Center in Louisiana also documented the use of torture to force Cameroonians to sign deportation documents.¹⁹¹
- A July 2021 complaint filed against Pine Prairie ICE Processing Center and Allen Parish Public Safety Complex in Louisiana on behalf of four Black, African complainants. details a pattern of inhumane, criminal, and racially discriminatory practices at the facilities including: the denial of basic necessities including potable water to Black immigrants; threatened lethal force against Black immigrants in ICE custody; threatened Black immigrants with punitive solitary confinement in retaliation for peacefully expressing their rights and for their support of the Black Lives Matter movement; and ignored written grievances related to racial tensions between detention officials and detained immigrants.¹⁹²

78. Although the vast majority of abuses against Cameroonians in detention are concentrated in NOLA ICE AOR facilities, this pattern of anti-Black violence is also evident in other facilities:

- A December 2020 a CRCL complaint¹⁹³ and federal lawsuit¹⁹⁴ were filed against Butler County Jail in Ohio on behalf of a Cameroonian man who was threatened and brutally beaten in detention. The plaintiff in that lawsuit was deported to Cameroon.
- In October 2021, advocates filed a complaint against ICE on behalf of three Cameroonians and two other Africans subjected to painful and prolonged placement in the full-body restraint device known as the “WRAP” before and during deportation flights to Cameroon in October and November 2020.¹⁹⁵ According to the complaint, ICE agents immobilized the men with the WRAP, applying it on top of five-point shackles, binding their legs together, and cinching them up at a 45-degree angle, in some cases for hours, which left them screaming in pain. The tremendous physical and psychological harm inflicted by the WRAP was amplified by underlying medical conditions. To date, CRCL has not released results from the investigations of the abuses committed against Cameroonians.

79. Black detained non-citizens have suffered similarly horrendous anti-Black abuses and disparate treatment in immigration detention. An asylum seeker from an African country reported to Human Rights First that staff at the Adelanto ICE Processing Center chopped off her long, braided hair in July 2021 and cut off the braided hair of multiple Haitian women with whom she was detained, claiming that it was standard “procedure” for hair worn in braids or locks.¹⁹⁶

80. An attorney reported in May 2021 that she heard a guard at the Winn Correctional Center state “Fuck Black people” and violently shoved a Cameroonian man to the ground after he and another Cameroonian man asked facility guards to wear masks during the pandemic, according to a complaint filed with CRCL.¹⁹⁷ As a result of his injuries, the man needed to use a wheelchair for mobility.¹⁹⁸ The attorney witnessed an ICE supervisory officer at Winn comment “now we can’t lynch them” while watching detained men cut down trees.¹⁹⁹

81. In April 2021, an officer told a Black immigrant who was folding laundry while detained under ICE custody at the Baker County Sheriff’s Office in Florida that the way he was shaking out the laundry was like how “you and your family got whipped back in the day, according to a report published by Human Rights First.”²⁰⁰

82. Black immigrants are six times more likely to be sent to solitary confinement than other detained populations, according to a study that analyzed the use of solitary confinement in immigration detention from 2013 to 2017.²⁰¹ An asylum seeker from an African country reported to Human Rights First that in May 2021 he suffered abuse in solitary confinement in the medical unit at the Winn Correctional Center, including being held naked in a cold cell without a bed for five days.²⁰² He only received a medical gown to wear during limited outdoor recreation periods. He had to sleep on the floor of the cell for five days and only received a sheet to place on the ground on the second day.²⁰³

83. Pine Prairie Correctional Facility in Louisiana has used solitary confinement as retaliation to punish non-citizens who speak out against the conditions of their confinement and for exercising their fundamental rights, including the right to protest and free speech.²⁰⁴ In August of 2020, a group of Black asylum seekers participated in a peaceful hunger strike in protest of the conditions of their confinement, their indefinite detention, their racist treatment, blanket parole denials, and Pine Prairie’s inadequate response to the Covid-19 pandemic.²⁰⁵ ICE officers in full riot gear then rounded up all 45 hunger strikers and took them to the solitary confinement unit, “Echo,” where they reportedly faced punitive conditions including little to no recreational time, no access to tablets, no access to television or recreational reading materials, limited access to showers and hygiene materials, limited access to potable drinking water, no access to the law library, and limited legal call access.²⁰⁶

84. Prolonged use of solitary confinement is recognized as a form of torture under international law,²⁰⁷ yet in June 2021, a complaint was filed against Pine Prairie alleging a systemic pattern of the implementation of punitive solitary confinement against Black immigrants in detention.²⁰⁸

85. The disparate and discriminatory violence, abuse, and retaliation by ICE officers against Cameroonian and other Black immigrants subjected to immigration detention violates Article 5(b)'s guarantee of the "right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution."

H. Medical neglect, life-threatening conditions in immigration detention centers

86. Black detained non-citizens suffer from substantial medical neglect while in immigration detention, particularly Black women. For example, the treatment of Black women and young children from Haiti and African countries detained at Karnes County Family Residential Center in Texas reflected a pattern of discriminatory practices and deliberate indifference related to prenatal, maternal, gynecological, and pediatric medical needs, prompting a CRCL complaint in March 2021,²⁰⁹ which continues to go unanswered.

87. Only months before, reports about ICE prisons in Georgia unveiled a pattern of criminal medical negligence including subjecting women, many of them Black, to forced hysterectomies.²¹⁰ Black non-citizens detained at Krome Detention Center in Florida reported in October 2021 that their medical illnesses were not being treated.²¹¹

88. On February 24, 2020, about 80 Cameroonian women staged a sit-in inside the T. Don Hutto detention center in Taylor, Texas to protest medical neglect, including the refusal to provide critical surgeries, medical treatment, and their indefinite confinement as they waited on their asylum cases.²¹² In response to the protest, ICE suspended visitation and blocked access to legal representation and community members who could help bring attention to the medical abuses.²¹³

89. The Covid-19 pandemic has exacerbated systematic deficits in medical care in immigration detention and disproportionately impacted Black migrants. For example, as of this submission, ICE reports that the Stewart Detention Center (SDC) has surpassed 1,695 confirmed cases of Covid-19 since February 2020,²¹⁴ and four people who were detained at SDC died due to related complications.²¹⁵ As highlighted by a CRCL complaint in August 2021, medically vulnerable individuals denied release at SDC are disproportionately Black.²¹⁶ The finding mirrors the overrepresentation of Black non-citizens facing deportation in immigration court based on criminal grounds. It also mirrors the disproportionate impact of Covid-19 on Black immigrant communities across the US.

90. This medical neglect results in a hostile and dangerous environment and makes it significantly more difficult to find legal representation and resources, and have a fair chance of presenting an asylum claim. Providing disparate and inadequate access to medical care for Black immigrants subjected to immigration detention violates Article 5(e)(iv), which guarantees the right to public health care services.

I. Intersectionality and regionality: effects of systematic targeting of some racial and ethnic groups of non-citizens: history of anti-Haitian immigration policies

91. The horrifying events at Del Rio, targeted use of Title 42 expulsions, the imposition of metering, among other illegal practices, are part of a longstanding history of racist, exclusionary US policies that have often targeted Haitians.²¹⁷ This sordid history lends context to the events of Del Rio in September 2021, and other policies and practices explained in this Report that have resulted in injustice, pain and suffering, and loss of life of Black immigrants, refugees, and asylum seekers.

92. In 1978, the US created a policy dubbed the "Haitian Program," which jailed arriving Haitians and universally denied their asylum claims despite the known atrocities being committed by the Duvalier regime at the time.²¹⁸ The Haitian Program was struck down by a Florida federal court, which held the US government systematically discriminated against Haitian asylum seekers.²¹⁹ The US quickly implemented a new policy requiring detention without an opportunity to post bail. While appearing facially neutral on its face, statistics confirmed the policy's selective application to Haitians and discovery sought in a legal challenge to the policy showed that the government was using the policy to continue its "Haitian

Program”²²⁰ and deter Haitian asylum seekers. At the time, a then-Deputy Attorney General acknowledged the policy could create an appearance of “concentration camps” filled with Black people. A federal court of appeals held that the selective application of the policy to Haitians violated equal protection, particularly in light of the government’s history of discriminatory policies against Haitians.²²¹

93. During the 1980s and 1990s, the US began an aggressive interdiction policy to intercept Haitians at sea and return them to Haiti.²²² The policy was designed to prevent Haitian migrants from reaching US soil, where they could request access to the US asylum process and to evade US *non-refoulement* obligations.²²³ From 1981 to 1991, only *twenty-eight* out of over 25,000 interdicted Haitians were allowed to enter the United States to seek relief.²²⁴ While the Haitian interdiction policy was in place, the US singled out Haitian migrants for detention at Guantanamo Bay. At the height of this policy, at least 12,000 Haitians were held at the US base.²²⁵

94. More recently, the Biden administration has continued to return Haitians interdicted at sea to Haiti, despite escalating violence and political instability, with over 6,100 Haitians returned in FY 2021.²²⁶

J. Externalization of US border control exposes migrants to harm and rights violations

95. The efforts of the US and other countries to impose and press for policies and practices that prevent people from crossing borders and reaching the US to seek asylum, undermine the right to seek asylum, put refugees at risk of *refoulement*, and have pushed displaced Black migrants from Africa and the Caribbean to increasingly dangerous migration routes.²²⁷ As the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance observed, “the racist and xenophobic politics of the United States are enforced even beyond the territories of that country because they are outsourced for enforcement by Mexican and other officials long before refugees and migrants even approach the US border.”²²⁸

96. In 2019, the Trump administration pressured Mexico into an agreement to prevent migrants from reaching the US border.²²⁹ The Biden administration has continued to push the Mexican government to heavily regulate travel to and within Mexico to prevent migrants from reaching the US.²³⁰ Black migrants trapped in Mexico as a result of enforcement actions by Mexican migration officials have faced the brunt of the country’s hardline approach, including serious human rights abuses by Mexican authorities and months-long waits in inhumane conditions in southern Mexico.²³¹ In one shocking case, four Mexican police officers were arrested for the murder of a Haitian woman, who had been detained by the officers in southern Mexico in October 2021.²³² Haitian and other Black asylum seekers are also at risk of *refoulement*. Mexican migration authorities have deported Haitian asylum-seeking to Haiti.²³³ In addition, Mexican authorities have racially profiled and illegally deported Afro-descendent Mexican citizens.²³⁴

97. With increased migration controls imposed in Mexico at the behest of the US, more migrants have been pushed to cross through Panama.²³⁵ As Haitian Bridge Alliance recently document Black migrant women and girls transiting the country have been subjected to a sharp uptick in sexual assaults, in addition to reported killings and other serious human rights abuses.²³⁶

98. Due to racism and xenophobia, Black migrants are often unable to find refuge throughout the region. A 2021 Amnesty International briefing on Haitian migrants found that countries in the Americas are “limiting access to international protection and failing to shield Haitians from a range of human rights violations in host countries, including detention and unlawful pushbacks, extortion, anti-black racism, abuses including gender-based violence by armed groups, and destitution.”²³⁷

99. Whereas the Durban Declaration and Programme of Action recognizes that “that interregional and intraregional migration has increased as a result of globalization, in particular from the South to the North, and stress that policies towards migration should not be based on racism, racial discrimination, xenophobia and related intolerance”²³⁸ and calls on States to collaborate “at the national, regional and international levels to prevent, combat and eliminate all forms of trafficking in women and children, in particular girls,”²³⁹ the

US continues to externalize its border controls to deter migrants, refugees, and asylum seekers from reaching its borders rather than ensure the enjoyment of their rights under the Convention and other international human rights treaties and instruments.²⁴⁰

100. The resulting disparate and discriminatory treatment of Black migrants in the Americas contravenes Article 2(1)(c), which requires states to amend or rescind policies that perpetuate racial discrimination.

V. Recommendations

CERD Article 2(2) requires that State Parties, “when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.” This report demonstrates that the circumstances “so warrant” the US to take the following measures regarding Black migrants, refugees, and asylum seekers:

Measures on racist and anti-immigrant hate speech and propaganda:

1. Condemn racist “invasion” and “replacement” rhetoric publicly, forcefully, and across State institutions and offices, particularly when deployed by elected and other public authorities.

Measures on US refugee law and immigration policy:

2. Undertake a systemic review of asylum and immigration policies, including all detention, interdiction, and interception policies implemented during this and prior administrations, to ensure that policies that are perpetuating racial discrimination towards Black people are identified and fully and permanently rescinded.
3. Take all available steps to restore access to asylum at the southern border, including at ports of entry, and halt all expulsions under Title 42, including to Haiti. Allow migrants crossing the border to make their claims for asylum and other protections in non-adversarial interview settings while retaining the guarantee of a hearing before an immigration judge, and ensure access to effective legal representation, language-accessible information, interpretation in their primary language, timely access to supporting evidentiary documents, and time to prepare.
4. Reject any attempt to codify the Title 42 policy, Remain in Mexico, metering, or any other policy that blocks access to refugee and refoulement protections guaranteed under international law.
5. Review and reconsider its use of expedited removal, particularly in light of the racially disparate outcomes faced by African, Haitian, and other asylum seekers from Black-majority countries.
6. Fully rescind the third-country transit asylum ban and issue/rely on credible fear lesson plans that comply with US law, regulations, and treaty obligations.
7. Stop all expulsions and deportations to Haiti, Cameroon, and other countries facing extraordinary circumstances of violence, where return would put their nationals at serious risk of harm.

Measures on immigration detention:

8. Stop criminalization and mass detention of asylum seekers and migrants. Avoid/end unnecessary, disproportionate or otherwise arbitrary detention, with detention only employed as a measure of last resort and not in a discriminatory manner or as a penalty for unlawful entry or presence. End all prosecutions for 'illegal entry' and 'illegal re-entry.'

9. Conduct a systematic review of health care provision in immigration detention, including disparate racial treatment and outcomes, and to take remedial steps to ensure adequate and equitable care for all persons subjected to detention.
10. Provide the Committee information on the status of, and outcomes to any investigations into, complaints and other allegations of violence and abuse, medical neglect, and other mistreatment of Black migrants in US immigration detention.

Measures on equitable access to justice:

11. Provide access to legal remedies to migrants for hate crimes and other civil rights violations against them, including investigation and prosecution.
12. Establish an independent commission of inquiry, such as the US House Select Committee on the January 6 Attack, to thoroughly review the actions of CBP and its officers at Del Rio in September 2021, including through interviews with Haitians who experienced or witnessed abuse and mistreatment.
13. Swiftly coordinate with civil society groups to create an expeditious and organized process by which all individuals subjected to RMX have a meaningful opportunity to pursue their asylum claims from the safety of the US, including those issued removal orders under the flawed policy.
14. Provide access to competent Haitian Kreyol interpretation in all interviews and proceedings with Haitian asylum seekers, including CBP and Border Patrol interviews, credible fear, asylum adjudications, and any interactions in Coast Guard or other US custody. Also provide competent interpretation for “rare” African and Indigenous languages, as appropriate. Stop pushing asylum seekers to proceed in languages other than their primary language.

Measures on data, analysis, and dissemination:

15. Provide the Committee and the public with data on US immigration detention of asylum seekers and other migrants for the period under consideration, disaggregated by nationality, race, gender, age, family-status, and other demographic factors, including the average length of detention, whether release was authorized on parole, and whether a bond was imposed and its amount. Currently, agencies record and release data only disaggregated by nationality and not by race, resulting in systematic undercounting of Black individuals from non-majority Black countries. This undercounting obfuscates the full extent to which the U.S. government engages in policies and practices that disproportionately harm Black immigrants and frustrates CERD review efforts.
16. Systematically study the impact of implicit and other racial bias in immigration adjudications, including credible fear interviews, and provide appropriate training to all adjudicators, including asylum officers and immigration judges.
17. Record and disclose necessary statistics to determine the full extent of the racially disparate impact of Title 42 and other policies implemented to block asylum at the border.

Regional and international measures:

18. Ensure that US bilateral and regional policies, agreements, arrangements, requests and engagements uphold the right to seek asylum, human rights treaties, the Refugee Convention, and their non-discrimination provisions. The US should halt any efforts to press Mexico and other countries to force migrants to apply for asylum in countries they travel through to reach the US, as opposed to providing the opportunity to access asylum and respecting their choices. Effort to require refugees to apply for asylum in a transit country will endanger those who will not be safe in such countries, and subverts US and international refugee law to the extent aimed at preventing people from seeking US asylum.

19. Publicly adopt and implement the Durban Declaration and Programme of Action (DDPA).
20. Reengage US executive, legislative, and judicial processes to provide transitional justice regarding slavery, colonialism and neocolonial imperialism to address root causes of displacement, as called for by the DDPA and recently affirmed by the High Commissioner for Human rights.
21. Use US leverage in multilateral financial institutions to accelerate the menu of options to promote economic and social development listed at paragraph 158 of the DDPA, to satisfy the right to development and address root causes of displacement.

¹ International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “CERD”), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, art 1(3).

² *See, e.g.*, Kat Murdza and Walter Ewing, Ph.D., *The Legacy of Racism within the US Border Patrol*, American Immigration Council (2021), <https://www.americanimmigrationcouncil.org/research/legacy-racism-within-us-border-patrol>.

³ *See, e.g.*, Fabiola Cineas, *Why America Keeps Turning Its Back on Haitian Migrants*, Vox (Sept. 24, 2021, 2:40 PM), <https://www.vox.com/22689472/haitian-migrants-asylum-history-violence> (describing how “every presidential administration since the 1970s has treated Haitians differently than other migrant groups, rejecting asylum claims, holding them longer in detention, and making it harder for them to settle down in safety.”).

⁴ Ibram X. Kendi, *The Day Shithole Entered the Presidential Lexicon* (Jan. 13, 2019), <https://www.theatlantic.com/politics/archive/2019/01/shithole-countries/580054/>.

⁵ U.S. Const. art. I, § 1, § 2, cl. 1; U.S. Const. art. II, § 1, cl. 1-2, § 2, cl. 2; U.S. Const. art. III, § 1.

⁶ U.S. Const. art. II, § 2, cl. 2.

⁷ U.S. Const. art. III, § 2, cl. 1; U.S. Const. art. VI, cl. 2.

⁸ U.S. Const. art. I, § 8, cl. 4; U.S. Const. art. II, § 3; U.S. Const. art. III, § 2, cl. 1.

⁹ *See* Maya K. Watson, *The United States’ Hollow Commitment to Eradicating Global Racial Discrimination*, American Bar Association’s Human Rights Magazine (Jan. 6, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future-part-ii/the-united-states--hollow-commitment-to-eradicating-global-racial/.

¹⁰ CERD et al., *General recommendation XXX on discrimination against non-citizens*, UN Doc. CERD/GEC/7502/E (2005),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7502&Lang=en, at ¶ 1-5, 9.

¹¹ CERD et al., *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, UN Doc. CERD/C/USA/10-12 (Dec. 20, 2021),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUSA%2f10-12&Lang=en, at ¶ 138-140.

¹² United Nations, *Durban Declaration and Plan of Action, Adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence* (Sept. 8, 2001), <https://www.un.org/WCAR/durban.pdf> [DDPA] *supra* note 2, at 8, ¶ 27.

¹³ *Id.* at 7, ¶ 16.

¹⁴ The Refugee Convention by virtue of the Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, *entered into force* 4 October 1967.

¹⁵ Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S 137.

¹⁶ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Convention”), 10 Dec. 1984, General Assembly resolution 39/46 *entered into force* 26 June 1987.

¹⁷ Implementation of the Convention Against Torture, 8 CFR § 208.18.

¹⁸ International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) (December 16, 1966).

¹⁹ U.N. Human Rights Committee, “General comment No. 35 on Article 9, Liberty and security of person,” CCPR/C/GC/35, (October 2014), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-35-article-9-liberty-and-security>.

²⁰ Immigration and Naturalization Act of 1795

-
- ²¹ See, e.g., Ariela Gross & Alejandro de la Fuente, Citizenship once meant whiteness. Here's how that changed., Washington Post (July 18, 2019), <https://www.washingtonpost.com/outlook/2019/07/18/citizenship-once-meant-whiteness-heres-how-that-changed/>.
- ²² Martha Jones, *How the 14th Amendment's Promise of Birthright Citizenship Redefined America*, TIME (July 9, 2018), <https://time.com/5324440/14th-amendment-meaning-150-anniversary/>.
- ²³ Immigration and Nationality Act of 1870; Immigration and Nationality Act of 1952; see also, *id.*
- ²⁴ See, e.g., Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 U.C. Davis L. Rev. (2018), https://lawreview.law.ucdavis.edu/issues/52/1/Symposium/52-1_Das.pdf.
- ²⁵ Immigration and Nationality Act of 1965, § 101(a)(42); 8 USC. § 1101(a)(42)(A) (defining “Refugee,” “Immigration,” and “Nationality.”)
- ²⁶ INA § 241(b)(3); 8 USC. § 1231(b)(3).
- ²⁷ See Order Suspending the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists, 85 Fed. Reg. 65,806 (Oct. 13, 2020).
- ²⁸ See, e.g., Lucas Guttentag, *Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors*, Just Security (Apr. 13, 2020), <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>.
- ²⁹ See, e.g., Anne G. Beckett, et al., *Misusing Public Health as a Pretext to End Asylum — Title 42*, New England Journal of Medicine (Apr. 21, 2022), <https://www.nejm.org/doi/full/10.1056/NEJMp2200274>.
- ³⁰ Southern Poverty Law Center, *Stephen Miller's Affinity for White Nationalism Revealed in Leaked Emails*, November 12, 2019), <https://www.splcenter.org/hatewatch/2019/11/12/stephen-millers-affinity-white-nationalism-revealed-leaked-emails>
- ³¹ Brian Concannon, *Why is Biden preserving Miller's racist immigration policy?*, Al-Jazeera (October 21, 2021), <https://www.aljazeera.com/opinions/2021/10/26/why-is-biden-preserving-millers-racist-immigration-policy>
- ³² See Kendi *supra* note 4.
- ³³ *Id.*
- ³⁴ US Dep't of Homeland Security, “Termination of the Designation of Haiti for Temporary Protected Status,” 83 FR 2648 (Jan. 18, 2018).
- ³⁵ *Saget v. Trump*, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018); *Saget v. Trump*, 375 F. Supp. 3d 280, 374 (E.D.N.Y. 2019) (holding that “[b]ased on the facts on this record...there is both direct and circumstantial evidence a discriminatory purpose of removing non-white immigrants from the United States was a motivating factor behind the decision to terminate TPS for Haiti.”).
- ³⁶ See, e.g., Adam Shaw, *House Republicans back Texas counties' 'invasion' declaration in response to border crisis*, Fox News (July 6, 2022), <https://www.foxnews.com/politics/house-republicans-back-texas-counties-invasion-declaration-response-border-crisis>.
- ³⁷ Governor of the State of Texas, Executive Order, GA 1, “Relating to returning illegal immigrants to the border,” (July 7, 2022), <https://gov.texas.gov/uploads/files/press/EO-GA-41.pdf>.
- ³⁸ Adrian Carrasquillo, *Abbott Border Order Sparks Fears of 'Invasion' Rhetoric, Racial Profiling*, Newsweek (July 13, 2022), <https://www.newsweek.com/abbott-border-order-sparks-fears-invasion-rhetoric-racial-profiling-1724037>.
- ³⁹ See, e.g., Benjamin Wermund, *Ted Cruz doubles down on 'invasion' rhetoric espoused by accused Buffalo shooter*, Houston Chronicle (May 18, 2022), <https://www.houstonchronicle.com/politics/texas/article/Ted-Cruz-doubles-down-on-invasion-rhetoric-17181675.php>.
- ⁴⁰ CBP closed the Del Rio International Bridge and immediately blockaded the surrounding areas overnight, on September 17th, 2021. In addition to CBP, the overwhelming law enforcement presence included units of Texas State Troopers, the Texas National Guard, the Texas Department of Public Safety (DPS), at the direction of Governor Greg Abbott. The National Guard blockaded two encampment entrances. These military and law enforcement agencies jointly maintained a shift schedule. Dozens of state trooper vans entered and exited the camp at different points in the day. Military-grade, armored Humvees and other vehicles waited poised at approximately every 100 feet along the US-Mexico border for at least two miles surrounding the encampment, reinforcing a razor wire-topped chain-linked fence along its perimeter. On Saturday, September 18th, construction workers added additional barriers on the roads surrounding the encampment. Likewise, droves of law enforcement vehicles patrolled the city of Del Rio down N Main Street and Veterans Boulevard. See Sarah Decker et. al, *Beyond the Bridge: Documented Human Rights Abuses and Civil Rights Violations against Haitian Migrants in the Del Rio, Texas Encampment* (2022), <https://rfkhr.imgix.net/asset/Del-Rio-Report.pdf> [hereinafter “*Beyond the Bridge*”].

⁴¹ The US government has an affirmative duty to provide for an individual's basic human needs when they "take[] that person into [their] custody and hold[] him there against his will," thereby creating a "special relationship" with that individual. *DeShaney v. Winnebago Cnty. Svcs.*, 489 US 189, 199-200 (1989). When the government "so restrains an individual's liberty that it renders him unable to care for himself," it assumes responsibility for that individual's safety and well-being. *Id.* at 200. As one Haitian woman explained, "After a few days of us being there... [the water] became very dangerous to cross. There were soldiers on horses standing in front of the river telling people they were not allowed to go back and forth. I couldn't leave the camp, especially not with my son because he was only four years old. To try to get past the water and the soldiers was impossible." *Id.* (citing phone interview by RFK Human Rights lawyer with Haitian individual (March 18, 2022)).

⁴² Eileen Sullivan & Zolan Kanno-Youngs, *Images of Border Patrol's Treatment of Haitian Migrants Prompt Outrage*, *The New York Times* (Sept. 21, 2021), <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrolphotos.html> (capturing US CBP agents on horseback using whips against unarmed Haitian asylum seekers to force them back to Mexico).

⁴³ Jasmine Aguilera & Harold Isaac, *A Haitian Man's Brutal Experience With US Border Agents Sparked Outrage. Now He's Telling His Story*, *TIME* (March 16, 2022), <https://time.com/6144970/mirard-joseph-haitian-migrants-del-rio-border/>.

⁴⁴ See Complaint at ¶ 4, *Haitian Bridge Alliance v. Biden*, No. 1:21-CV-03317 (D.D.C.) (filed Dec. 20, 2021), available at <https://int.nyt.com/data/documenttools/hba-v-biden/a8106eacd7c45afe/full.pdf>.

⁴⁵ See *Beyond the Bridge supra* note 40 (citing in-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021)).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Footage reported by Al Jazeera, *Haitian migrants undeterred as US begins removal flights* (Sept. 20, 2021), <https://www.youtube.com/watch?v=UTFnKJqcPk8>.

⁵¹ *Beyond the Bridge supra* note 40 at 32.

⁵² On or around September 23, DHS dismantled the encampment while individuals were still inside, using demolition vehicles to bulldoze entire sections of the camp. They forced groups of people onto buses for expulsion, often expelling them in shackles, causing grave harm during the deportation flight. In the resulting series of mass expulsion flights to Haiti, ICE officials expelled vulnerable Haitians, including at least one mother with a days-old infant *born in the United States*. By September 25th, DHS had emptied and cleared the camp, erasing all remaining evidence of the abusive conditions in which it had held thousands.

⁵³ U.S. Immigration and Customs Enforcement, Office of Acquisition Management, *Justification for Other than Full and Fair Competition* (Sept. 28, 2021), <https://www.quixote.org/wp-content/uploads/2021/10/HaitianEmergencyFlightsJA-21-00378-Final9-27-2021.pdf>. This "emergency" contract was to provide 88 expulsion flights to Haiti for a total cost of \$15,758,960.00. That is approximately \$179,079.09 per flight. In 2015, the Department of Homeland Security's Office of the Inspector General reported that "ICE Air pays, on average, \$8,419 per flight hour for charter flights regardless of the number of passengers on the plane." University of Washington Center for Human Rights, *Hidden in Plain Sight: ICE Air and the Machinery of Mass Deportation*, (Apr. 23, 2019), <https://jsis.washington.edu/humanrights/2019/04/23/ice-air/#:~:text=In%202015%2C%20the%20Department%20of,companies%20to%20run%20the%20flights.> Accounting for inflation, an average ICE Air flight would cost \$9,625.04 in 2021.

⁵⁴ See Complaint at ¶ 76, *Haitian Bridge Alliance v. Biden, supra* note 44. As alleged in *Haitian Bridge Alliance v. Biden*, the under-resourced intake site at Del Rio reflected the White House and DHS's steadfast refusal to organize any appropriate infrastructure to address the anticipated arrival of thousands of Haitian migrants, even as Del Rio Sector personnel continued to report a lack of processing capacity.

⁵⁵ In the final days of the encampment, CBP permitted the World Central Kitchen Relief Team, a non-governmental organization, to access the camp and to begin coordinating the distribution of hot meals, baby food, and diapers in partnership with local restaurants in the Del Rio area. Despite the presence of World Central Kitchen, several migrants described a continuing lack of access to food and water, indicating problems with food distribution within the encampment. By the time World Central Kitchen was able to scale its operations to provide adequate food, DHS had already started clearing the encampment.

⁵⁶ See *Beyond the Bridge* supra note 40 (citing phone interview by RFK Human Rights lawyer with Haitian individual (March 15, 2022)).

⁵⁷ The unpredictable, rising water level of the Rio Grande made crossing the river extremely dangerous. Many individuals from the Del Rio encampment reported that they believed that the US government was responsible for the sudden changes in water level in the Rio Grande and that the US was “somehow controlling the water level” and “releasing the water on migrants attempting to cross back into the US” The bi-national International Boundary and Water Commission (IBWC) manages the water in the Rio Grande and executes water releases from the Amistad Dam upstream from Del Rio as requested by the Texas Water Master and the Mexican counterpart in the Del Rio sector. Efforts to confirm whether US authorities requested water releases in response to the presence of migrants remains unconfirmed. Researchers are seeking to obtain this information via Freedom of Information Act and Texas Public Information Act requests.

⁵⁸ *Beyond the Bridge* supra note 40 at 29.

⁵⁹ Many were forced to attempt to create shelters using reeds from the riverbank, pieces of cardboard, clothing, and sheets brought on their journey. While very few individuals had their own tents, most were forced to sleep directly on the ground, often in the dirt. Those who were held adjacent to the Del Rio International Bridge rather than under it were exposed to direct sun and extreme heat throughout the day, with temperatures reaching over 100 degrees Fahrenheit. The weather conditions and helicopters hovering over the encampment repeatedly kicked up dirt and dust that resulted in widespread health conditions among those trapped in the camp, including skin rashes, severe respiratory problems, and eye infections. See *Beyond the Bridge* supra note 40.

⁶⁰ As described above, many Haitians in Del Rio were forced to bathe in and drink from the Rio Grande. This in turn caused severe gastrointestinal issues, as migrants were exposed to disease-causing bacteria in the river’s water supply. In addition, the CBP helicopters circling low adjacent to the bridge kicked up dust and dirt, causing migrants, including infants and young children, to develop severe respiratory problems, skin rashes, and eye infections. The lack of shelter in the encampment also left individuals exposed to extreme temperature changes, including blazing heat during the day and steep temperature drops at night, contributing to illness. Because CBP failed to provide adequate food and water—and blocked migrants from securing food and water in Acuña—many individuals reported fainting in the camp or suffering other medical consequences from severe malnutrition and dehydration. See *Beyond the Bridge* supra note 40.

⁶¹ Another Haitian asylum seeker described how when his one-year-old daughter developed a high fever and respiratory issues, he begged US personnel to provide medical care. When US personnel refused, he carried his daughter across the Rio Grande at night, in order to avoid detection by CBP patrolling the river, where she was urgently admitted to a hospital in Acuña and provided life-saving medical treatment, including IV antibiotics. See *Beyond the Bridge* supra note 40 (citing in-person interview by RFK Human Rights lawyer with Haitian individual in Acuña, Mexico (Sept. 25, 2021)).

⁶² *Id.* (citing in-person interview and observation by HBA caseworker with Haitian individual in Del Rio, Texas (Sept. 19-25, 2021)).

⁶³ *Id.* (citing in-person interview by HBA case worker with Haitian individual in Del Rio, Texas (Sept. 23, 2021)).

⁶⁴ *Id.*

⁶⁵ Rafael Bernal, *Exclusive: Two Black Caucus members call on DHS to stop expulsions to Haiti*, The Hill (Mar. 16, 2022), <https://thehill.com/latino/598462-exclusive-two-black-caucus-members-call-on-dhs-to-stop-expulsions-to-haiti>; Eileen Sullivan, *Congressional Democrats Ask Biden to Review Treatment of Black Migrants*, The New York Times, (Feb. 16, 2022), <https://www.nytimes.com/2022/02/16/us/politics/biden-immigration-haiti.html>; Rep. Ayanna Pressley & Rep. Nydia Velazquez, *Congressional letter calling for end of Haitian Deportations* (Sept. 16, 2021), <https://pressley.house.gov/sites/pressley.house.gov/files/Pressley-Velazquez%20Halt%20Haitian%20Deportation%20Letter.pdf>.

⁶⁶ See IACHR, Resolution No.2/2021, Protection of Haitians in Human Mobility: Inter-American Solidarity (Oct. 24, 2021), <https://www.oas.org/en/iachr/decisions/pdf/2021/Res-2-21-en.pdf> (urging “the States of the Americas to adopt an integral, immediate, effective, and lasting response to ensure the rights of Haitian persons in international human mobility”); OAS, *Press Release: IACHR Issues Resolution on the Protection of Haitians in Mobility Contexts* (Nov. 30, 2021), https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/319.asp (promoting the resolution).

⁶⁷ IOM, *UN Agencies Call for Protection Measures and a Comprehensive Regional Approach for Haitians on the Move* (Sept. 20, 2021), <https://www.iom.int/news/un-agencies-call-protection-measures-and-comprehensive->

regional-approach-haitians-move (calling on states “to refrain from expelling Haitians without proper assessment of their individual protection needs, to uphold the fundamental human rights of Haitians on the move, and to offer protection mechanisms or other legal stay arrangements for more effective access to regular migration pathways”).

⁶⁸ OAS, *IACHR and UN’s Special Rapporteur Condemn Excessive Use of Force and Deportations of Migrants from Haiti at the United States’ Southern Border* (Oct. 4, 2021),

https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/260.asp.

⁶⁹ Stephanie Nebehay, *US expulsions of Haitians may violate international law - UN refugee boss*, Reuters (Sept. 21, 2021), <https://www.reuters.com/world/americas/un-concerned-us-pushbacks-migrants-who-may-need-asylum-2021-09-21/>.

⁷⁰ Annika Kim Constantino, *Biden Condemns Border Patrol Agents’ Treatment Of Haitian Migrants, Vows They Will Face Consequences*, CNBC (Sept. 24, 2021), <https://www.cnbc.com/2021/09/24/biden-condemns-border-patrol-treatment-of-haitian-migrants-in-del-rio.html>.

⁷¹ Katie Rogers and Michael D. Shear, *Biden Condemns Border Patrol Treatment of Haitian Migrants as Expulsions Continue*, The New York Times (Sept. 24, 2021), <https://www.nytimes.com/2021/09/24/us/politics/biden-border-patrol-haitian-migrants.html>.

⁷² Kevin Johnson, *DHS vows to have findings within 'days' in investigation of Border Patrol's treatment of Haitian migrants*, USA Today (Sept. 22, 2021), <https://www.usatoday.com/story/news/politics/2021/09/22/photos-border-patrol-using-horse-reins-whips-prompts-dhs-probe/5812845001/>.

⁷³ Customs and Border Protection, Office of Professional Responsibility, *Report of Investigation 202112280 2* (2022), <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf> [hereinafter “CBP Report”].

⁷⁴ *Id.* (qualifying that “[t]his report focuses on the investigation carried out by OPR into an incident that lasted approximately 30 minutes, and took place on Sunday, September 19, 2021.”).

⁷⁵ *Id.* at 5 (stating in part, “Hey! You use your women? This is why your country’s shit, you use your women for this.”). Investigators found that this same agent “acted in an unsafe manner” by “pursuing the individual he had yelled at along the river’s edge forcing his horse to narrowly maneuver around a small child on a slanted concrete ramp.”

⁷⁶ *Id.* at 5 (reporting an agent that stated “Hey! You use your women? This is why your country’s shit, you use your women for this.”). Investigators found that this same agent “acted in an unsafe manner” by “pursuing the individual he had yelled at along the river’s edge forcing his horse to narrowly maneuver around a small child on a slanted concrete ramp.”

⁷⁷ *Id.* at 5.

⁷⁸ See Complaint, *Haitian Bridge Alliance v. Biden*, *supra* note 44.

⁷⁹ Haitian Bridge Alliance, et al., Civil Rights and Civil Liberties Complaint, *Re: DHS Rights Violations in Del Rio, Texas* (Sept. 24, 2021), available at https://www.hrw.org/sites/default/files/media_2021/10/CRCL%20Complaint%20on%20Del%20Rio%2009-24-21.pdf.

⁸⁰ See, e.g., Rafael Bernal, *Black immigrant groups file FOIA requests over treatment of Haitians*, The Hill (Oct. 1, 2021), <https://thehill.com/policy/national-security/574956-black-immigrant-groups-file-foia-requests-over-treatment-of-haitians>.

⁸¹ Jacqueline Charles and Michael Wilner, *Border Agents Circulate Coin Memorializing Treatment of Haitian Migrants in Del Rio, Texas*, Seattle Times (June 14, 2022), <https://www.seattletimes.com/nation-world/border-officers-circulate-coin-memorializing-treatment-of-haitian-migrants-in-del-rio-texas/>.

⁸² Washington Post Editorial Board, *The US Door Swings Open to Ukrainians*, Washington Post (June 22, 2022), <https://www.washingtonpost.com/opinions/2022/06/22/united-states-ukraine-refugee-program/>.

⁸³ See, e.g., US Department of Health and Human Services, Centers for Disease Control and Prevention, “Order Suspending the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists” (Aug. 2 2021), https://www.cdc.gov/coronavirus/2019-ncov/downloads/CDC-Order-Suspending-Right-to-Introduce-Final_8-2-21.pdf.

⁸⁴ See, e.g., Haitian Bridge Alliance, Human Rights First & Al Otro Lado, *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger* (Apr. 2021), <https://www.humanrightsfirst.org/resource/failure-protect-biden-administration-continues-illegal-trump-policy-block-and-expel-asylum>.

-
- ⁸⁵ Harold Koh, *Re: Ending Title 42 return flights to countries of origin, particularly Haiti* (Oct. 2, 2021), available at <https://www.politico.com/f/?id=0000017c-4c4a-dddc-a77e-4ddb3ae0000>.
- ⁸⁶ US Department of Health and Human Services, Centers for Disease Control and Prevention, *Public Health Determination and Order Regarding the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists*, Centers for Disease Control and Prevention (Apr 1, 2022) <https://www.cdc.gov/coronavirus/2019-ncov/cdcreponse/Final-CDC-Order-Prohibiting-Introduction-of-Pesons.pdf>; *Louisiana v. Centers for Disease Control and Prevention*, No. 22-CV-00885 (W.D. LA, May 5, 2022), <https://www.courthousenews.com/wpcontent/uploads/2022/05/order-granting-injunction-against-ending-use-of-title-42.pdf>.
- ⁸⁷ See Human Rights Watch, *Haitians Being Returned to a Country in Chaos* (Mar. 24, 2022), <https://www.hrw.org/news/2022/03/24/haitians-being-returned-country-chaos>.
- ⁸⁸ U.N. Office of the High Commissioner for Human Rights, *Haiti: Bachelet deeply disturbed by human rights impact of deteriorating security situation in Port-au-Prince* (May 17, 2022), <https://www.ohchr.org/en/press-releases/2022/05/haiti-bachelet-deeply-disturbed-human-rights-impact-deteriorating-security>.
- ⁸⁹ Eileen Sullivan, *US Accelerated Expulsions of Haitian Migrants in May*, The New York Times (June 9, 2022), <https://www.nytimes.com/2022/06/09/us/politics/haiti-migrants-biden.html>.
- ⁹⁰ US Customs and Border Protection, “Nationwide Encounters,” <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last accessed July 11, 2022). This data does not capture, however, the full number of expulsions of individuals to Haiti given children born to Haitian parents in third countries are likely not counted as Haitian for purposes of Title 42 expulsions; Nacho Vega, *Crisis migratoria: EE. UU. Deporta a 30 niños brasileños a Haití*, Noticias RGV (Sept. 28, 2021), <https://noticiasrtv.com/crisis-migratoria-ee-uu-deporta-a-30-ninos-brasilenos-a-haiti/> (noting at least 30 Brazilian children and 182 Chilean children were expelled with their parents to Haiti on expulsion flights in September 2021).
- ⁹¹ Human Rights First, *A Shameful Record: Biden Administration’s Use of Trump Policies Endangers People Seeking Asylum* (Jan 13., 2022), <https://www.humanrightsfirst.org/resource/shameful-record-biden-administration-s-use-trump-policies-endangers-people-seeking-asylum>.
- ⁹² Human Rights First, *‘Illegal and Inhumane’: Biden Administration Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount* (Oct. 21, 2021), <https://www.humanrightsfirst.org/resource/illegal-and-inhumane-biden-administration-continues-embrace-trump-title-42-policy-attacks>, p.7.
- ⁹³ Harold Isaac and Catherine Porter, *Haiti Protests Mass US Deportation of Migrants to Country in Crisis*, New York Times (Sept. 19, 2021), <https://www.nytimes.com/2021/09/19/world/americas/us-haitian-deportation.html>.
- ⁹⁴ Catherine Porter, *Deported by US, Haitians Are in Shock: ‘I Don’t Know This Country’*, New York Times (Sept. 20, 2021), <https://www.nytimes.com/2021/09/20/world/americas/deported-haitians-shocked.html>.
- ⁹⁵ See Amnesty International, Center for Gender & Refugee Crisis, Global Justice Clinic, Haitian Bridge Alliance, Refugees International, Fezo Fwontalye Jano Sikse, and Service Jesuite aux Migrants, *Stop US Deportations and Abuse Against Haitians On The Move: An Urgent Step Towards Created Just Policies for Haitians*, (Dec. 15, 2021), <https://cgrs.uchastings.edu/sites/default/files/Haiti%20T42%20Factsheet%20Dec.%202021.pdf>.
- ⁹⁶ Human Rights Watch, *Haitians Being Returned to a Country in Chaos* (Mar. 24, 2022), <https://www.hrw.org/news/2022/03/24/haitians-being-returned-country-chaos>.
- ⁹⁷ Syracuse University Transactional Records Access Clearing House, *Ukrainians at the US-Mexico Border: Seeking Admission at US Ports of Entry by Nationality*, (May 17, 2022), <https://trac.syr.edu/immigration/reports/683/>.
- ⁹⁸ US Customs and Border Protection, “Nationwide Encounters,” <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last accessed July 11, 2022).
- ⁹⁹ *Id.*
- ¹⁰⁰ See Hastings to Haiti Partnership, Haitian Bridge Alliance, Center for Gender & Refugee Studies, *Protection Delayed is Protection Denied: Factsheet on Title 42 Expulsions, Haitian Asylum Seekers in Tijuana, and the US Government’s Ongoing Evasion of Duty* (Apr. 7, 2022), https://cgrs.uchastings.edu/sites/default/files/Tijuana%20Factsheet_2022.04.07%20FINAL%20v2_0.pdf.
- ¹⁰¹ Haitian Bridge Alliance, Human Rights First & Al Otro Lado, *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger* (Apr. 2021),

<https://www.humanrightsfirst.org/resource/failure-protect-biden-administration-continues-illegal-trump-policy-block-and-expel-asylum>, p.8.

¹⁰² Human Rights First, *Reported Attacks Against Asylum Seekers and Migrants Who Are Stranded in and/or Expelled to Mexico Due to Title 42 Since January 2021* (June 16, 2022),

<https://www.humanrightsfirst.org/sites/default/files/AttacksonAsylumSeekersBlockedExpelledReturnedtoMexicoSinceJanuary2021.6.16.2022.pdf>.

¹⁰³ Kate Morissey, *For Haitian Migrants Waiting in Tijuana Brings Fear, Discrimination, Even Death*, Los Angeles Times (June 12, 2022), <https://www.latimes.com/world-nation/story/2022-06-12/haitian-migrants-tijuana>.

¹⁰⁴ Human Rights First, *Human Rights Travesty: Biden Administration Embrace of Trump Asylum Expulsion Policy Endangers Lives, Wreaks Havoc* (Aug. 2021), <https://www.humanrightsfirst.org/resource/human-rights-travesty-biden-administration-embrace-trump-asylum-expulsion-policy-endangers>, p.8.

¹⁰⁵ Kate Morisey, *Jamaican asylum seekers in Tijuana facing racism, homophobia while they wait*, San Diego Union Tribune, (Jan. 3, 2022), <https://www.sandiegouniontribune.com/news/immigration/story/2022-01-03/jamaican-asylum-seekers-tijuana-racism-homophobia>.

¹⁰⁶ See, e.g., US Border Patrol, “Nationwide Title 42 Encounters, January 21, 2021 through May 12, 2021” obtained through Freedom of Information Act Request by Human Rights First, <https://www.humanrightsfirst.org/file/2021-090728usbpspreadsheetxlsx> (showing that officials failed to record the race of the individual in over 99.3 percent of more than 361,000 recorded encounters where Border Patrol used Title 42 to expel migrants and asylum seekers).

¹⁰⁷ Human Rights First and Haitian Bridge Alliance, *Biden Administration’s Dangerous Haitian Expulsion Strategy Escalates the US History of Illegal and Discriminatory Mistreatment of Haitians Seeking Safety in the United States*, (Sept. 2021),

<https://www.humanrightsfirst.org/sites/default/files/BidenAdministrationDangerousHaitianExpulsionStrategy.pdf>.

¹⁰⁸ US Dep’t of Homeland Security, Office of Inspector General, *OIG-21-22, CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry*, (Oct. 27, 2020),

<https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf>.

¹⁰⁹ Julia Neusner, *‘We Need Someone to See Us’: To Save Lives, the Biden Administration Should Quickly Restore Refugee Protection* (Jan. 13, 2021), <https://www.humanrightsfirst.org/blog/we-need-someone-see-us-save-lives-biden-administration-should-quickly-restore-refugee>.

¹¹⁰ See, e.g., Black Alliance for Just Immigration (BAJI) & Instituto para las Mujeres en la Migración (IMUMI) , *‘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>, p.35 (herein after “*There is a Target on Us*”).

¹¹¹ See, *Al Otro Lado, Inc. v. Wolf*, Case No.: 17-cv-02366-BAS-KSC (S.D. Cal. Aug. 6, 2020).

¹¹² US Customs and Border Protection, *Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry* (Nov. 1, 2021),

<https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoesigned-Memo-11.1.2021-508.pdf>.

¹¹³ US Department of Homeland Security, *Policy Guidance for Implementation of the Migrant Protection Protocols* (Jan 25, 2019), https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf.

¹¹⁴ Human Rights First, *Publicly reported cases of violent attacks on individuals returned to Mexico under the “Migrant Protection Protocols”* (Feb. 19, 2021),

<https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks2.19.2021.pdf> (documenting 1544 reports of attacks on individuals returned to Mexico under RMX).

¹¹⁵ Julia Neusner, *‘We Need Someone to See Us’: To Save Lives, the Biden Administration Should Quickly Restore Refugee Protection* (Jan. 13, 2021), <https://www.humanrightsfirst.org/blog/we-need-someone-see-us-save-lives-biden-administration-should-quickly-restore-refugee>.

¹¹⁶ See *‘There is a Target on Us’ supra* note 110.

¹¹⁷ See Brief of NGOs and Law School Clinics, *Mayorkas v. Innovation Law Lab*, No. 19-1212 (Jan. 22, 2021),

[https://www.supremecourt.gov/DocketPDF/19/19-1212/166993/20210122134915608_19-](https://www.supremecourt.gov/DocketPDF/19/19-1212/166993/20210122134915608_19-1212%20HRF%20NILC%20Amicus%20Brief%20Final.pdf)

[1212%20HRF%20NILC%20Amicus%20Brief%20Final.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1212/166993/20210122134915608_19-1212%20HRF%20NILC%20Amicus%20Brief%20Final.pdf) (noting that “[n]inety-seven percent of individuals in [RMX] whose cases have been decided did not have an attorney” and that “[a] mere 4.1 percent of [RMX] cases completed with an in-person decision (i.e., excluding in absentia decisions) were successful.”).

¹¹⁸ *Biden v. Texas*, No. 21–954 (June 30, 2022), https://www.supremecourt.gov/opinions/21pdf/21-954_7148.pdf.

¹¹⁹ 8 USC § 1225.

¹²⁰ 142 Cong. Rec. 136, at S11491-S11492 (Sept. 27, 1996).

¹²¹ See, e.g., US Commission on International Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* (2016), <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.

¹²² See, e.g., Frances Madeson, *A Persecuted Father Deported to Haiti Fights to Reunite With His Family in US*, Truthout (Feb. 18, 2022), <https://truthout.org/articles/a-persecuted-father-deported-to-haiti-fights-to-reunite-with-his-family-in-us/> (documenting Haitian political activist deported after flawed expedited removal to Haiti where he suffered further brutal violence).

¹²³ Records from the USCIS Asylum Office, which also adjudicates affirmative asylum applications, also reveal disproportionate drops in asylum grant rates for individuals from Sub-Saharan Africa and the Caribbean as well as South Asia and Central/South America during the Trump administration. Human Rights First, *USCIS Records Reveal Systemic Disparities in Asylum Decisions*, (May 18, 2022), <https://www.humanrightsfirst.org/resource/uscis-records-reveal-systemic-disparities-asylum-decisions>.

¹²⁴ See *Grievance Letter to USCIS, ICE, EOIR Re: "Detained Asylum Seekers Deprived of Due Process in Expedited Removal Process"* (June 30, 2021),

https://www.splcenter.org/sites/default/files/detained_asylum_seeker_grievance_letter_30_june_2021.pdf; Human Rights First, *'I'm a Prisoner Here': Biden Administration Policies Lock Up Asylum Seekers* (April 2022), <https://www.humanrightsfirst.org/sites/default/files/1%27maPrisonerHere.pdf>, pp. 35, 37 - 38 (herein after *'I'm a Prisoner Here'*)(documenting flawed credible fear interviews with inadequate interpretation resulting in negative determinations for Angolan, Guinean, Ivorian, and Somali asylum seekers); Frances Madeson, *US Officials Outrageously Claim Black Men Fleeing Slavery Lack "Credible Fear,"* Truthout (Nov. 17, 2021), <https://truthout.org/articles/us-officials-outrageously-claim-black-men-fleeing-slavery-lack-credible-fear/>; see also Human Rights Watch, *'How Can You Throw Us Back?' Asylum Seekers Abused in the US and Deported to Harm in Cameroon*, (Feb. 2022), https://www.hrw.org/sites/default/files/media_2022/03/us_cameroon0222_web.pdf, pp.103 - 07 (herein after *'How Can You Throw Us Back?'*)(identifying lack of interpretation as contributing to erroneous negative fear determinations and deportations of Cameroonian asylum seekers).

¹²⁵ Haitian Bridge Alliance, UndocuBlack Network, & Quixote Center, *The Invisible Wall: Title 42 and its Impact on Haitian Migrants* (March 2021), <https://www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf>; Human Rights First, *'I'm a Prisoner Here': Biden Administration Policies Lock Up Asylum Seekers* (April 2022), <https://www.humanrightsfirst.org/sites/default/files/1%27maPrisonerHere.pdf>, p. 39.

¹²⁶ US Citizenship & Immigration Services (USCIS), *2019 Asylum Officer Lesson Plan* (Apr. 30, 2019), https://www.uscis.gov/sites/default/files/document/lesson-plans/Credible_Fear_of_Persecution_and_Torture_Determinations.pdf; USCIS, *2019 Asylum Officer Lesson Plan* (Sep. 24, 2019), <https://refugeerights.org/wp-content/uploads/2021/08/Sept.-2019-Lesson-Plan.pdf>.

¹²⁷ USCIS credible and reasonable fear determinations - FY 2016 to FY 2021 (through May 2021) received via Freedom of Information Act Request by Human Rights First, <https://www.humanrightsfirst.org/file/cow2021001887-cfandrfdataslsx>.

¹²⁸ *Brief of Public Justice Center et al., B.C. v Attorney General, Nos. 19-1408 and 20-2078* (Aug. 31, 2020), <http://www.publicjustice.org/wp-content/uploads/2021/11/AS-FILED-B.C.-v.-Barr-PJC-BAJI-CAIR-Dolores-Street-Amicus-Curiae-Brief-8.31.2020-FINAL.pdf> (discussing implicit bias in immigration judge adjudication in case of Cameroonian asylum seeker denied relief based on adverse credibility finding).

¹²⁹ USCIS credible and reasonable fear determinations - FY 2016 to FY 2021 (through May 2021) received via Freedom of Information Act Request by Human Rights First, <https://www.humanrightsfirst.org/file/cow2021001887-cfandrfdataslsx>.

¹³⁰ *Id.*

¹³¹ US Dep't of Homeland Security, "Designation of Haiti for Temporary Protected Status," 86 FR 41863 (Aug 3, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-08-03/pdf/2021-16481.pdf>.

¹³² *'How Can You Throw Us Back?'* *supra* note 124, at pp.114-43.

¹³³ *'I'm a Prisoner Here'* *supra* note 124, at pp. 31-32.

¹³⁴ ACLU of New Mexico et al., *Complaint Re: "Severe Violations of Due Process and Inhumane Conditions at Torrance County Detention Facility"* (Nov. 23, 2021), <https://www.americanimmigrationcouncil.org/sites/default/files/research/compla1.pdf>; Innovation Law Lab et al., *Complaint Re: "Re: Access to legal services for Haitian immigrants at Torrance County Detention Facility"* (Nov. 5, 2021), https://innovationlawlab.org/media/TorranceLetter_11.5.21.pdf.

¹³⁵ See CRCL Complaint Letter from Innovation Law Lab et al. to Juan Acosta, Field Office Dir., ICE et al. (Nov. 5, 2021), https://innovationlawlab.org/media/TorranceLetter_11.5.21.pdf.

¹³⁶ Syracuse University, Transactional Records Access Clearinghouse, *The Impact of Nationality, Language, Gender and Age on Asylum Success* (Dec. 7, 2021), <https://trac.syr.edu/immigration/reports/668/>.

¹³⁷ Innovation Law Lab et al., *Complaint Re: “Re: Access to legal services for Haitian immigrants at Torrance County Detention Facility”* (Nov. 5, 2021), https://innovationlawlab.org/media/TorranceLetter_11.5.21.pdf.

¹³⁸ *How Can You Throw Us Back?*’ *supra* note 124 at pp.114-43.

¹³⁹ *How Can You Throw Us Back?*’ *supra* note 124 at pp.69-96, 111-12; Human Rights First, *Cameroonian Asylum Seekers Increasingly Detained, Denied Asylum Under Trump Administration* (Nov. 6, 2020), <https://www.humanrightsfirst.org/resource/cameroonian-asylum-seekers-increasingly-detained-denied-asylum-under-trump-administration>.

¹⁴⁰ According to Transactional Records Access Clearinghouse (TRAC) data immigration courts granted asylum or other relief to 273 out of 334 Cameroonians (82%) in FY21, 997 out of 1,605 (62%) in FY20, and 706 out of 862 (82%) in FY19. However, these statistics also show the number of asylum decisions was far fewer in FY21 than FY20, potentially reflecting reduced access to asylum at the US southern border (where many Cameroonians in recent years have requested asylum) due to the Title 42 policy. See TRAC, “Asylum Decisions,” <https://trac.syr.edu/phptools/immigration/asylum/>. See also UNHCR, *UNHCR chief calls on US to end COVID-19 asylum restrictions at the Mexico border* (May 20, 2021), <https://news.un.org/en/story/2021/05/1092352>.

¹⁴¹ Human Rights Watch found that government forces detained or imprisoned at least 39 Cameroonians after their US deportation, though the true number may be higher. This includes 31 people deported in October or November 2020 and eight people deported in 2019. *How Can You Throw Us Back?*’ *supra* note 124.

¹⁴² Human Rights Watch documented 13 cases of torture, rape, or other abuse or assault by Cameroonian state agents (police, gendarmes, military, or prison staff) of people deported from the United States. See *How Can You Throw Us Back?*’ *supra* note 124.

¹⁴³ US Dep’t of Homeland Security & Executive Office for Immigration Review, “Asylum Eligibility and Procedural Modifications,” 84 FR 33829 (July 16, 2019).

¹⁴⁴ Human Rights First, *Asylum Denied, Families Divided: Trump Administration’s Illegal Third-Country Transit Ban* (July 2020), <https://www.humanrightsfirst.org/sites/default/files/AsylumDeniedFamiliesDivided.pdf>.

¹⁴⁵ *Id.*; *How Can You Throw Us Back?*’ *supra* note 124 at pp.109-11

¹⁴⁶ See BAJI, *The State of Black Immigrants* (2020), <http://baji.org/wp-content/uploads/2020/03/sobi-fullreport-jan22.pdf>.

¹⁴⁷ See BAJI & NYU Law Immigrant Rights Clinic, *The State of Black Immigrants Pt. II: Black Immigrants in The Mass Criminalization System* (2020), <https://baji.org/wp-content/uploads/2020/03/sobi-fullreport-jan22.pdf>, at 21 (describing how “[b]lack immigrants are more likely than immigrants overall to be deported on criminal versus immigration grounds of removability” and how, for example “[i]n FY 2013, more than three quarters of Black immigrants were removed on criminal grounds, in contrast to less than half of immigrants overall.”).

¹⁴⁸ See The Georgetown University Law Center Federal Legislation Clinic & The UndocuBlack Network, *Life on Hold: Black Immigrations & the Promise of Liberation Refugee Immigration Fairness* (June 2021), <https://trayinc.cld.bz/Georgetown-Law-UBN-Life-on-Hold>.

¹⁴⁹ IRC Analysis of US Census Bureau, *American Community Survey, 2014 ACS 1-Year PUMS*. Data available for download at http://factfinder.census.gov/bkmk/navigation/1.0/en/d_dataset:ACS_14_1YR/d_product_type:PUMS.

¹⁵⁰ US Census Bureau, *American Community Survey, 2014 1-Year Estimates, Tables S0201 and B05003B*.

¹⁵¹ As noted by BAJI, “federal immigration origin data is categorized by country of origin rather than by race.” BAJI & NYU Law Immigrant Rights Clinic, *The State of Black Immigrants Pt. II: Black Immigrants in The Mass Criminalization System* (2020), <https://baji.org/wp-content/uploads/2020/03/sobi-fullreport-jan22.pdf>. As a result, complete data on race in immigration detention is unavailable. Thus, this section refers to nationality rather than race and considers Black immigrants to be those from majority-Black countries in Africa and the Caribbean. This is both over-inclusive because “not every immigrant in the United States from a country in Africa or the Caribbean is of African heritage, nor does every individual of African heritage self-identify as Black,” and under-inclusive “because it fails to include Black immigrants . . . from countries outside of Africa and the Caribbean.” *Id.*

¹⁵² American Immigration Council, *Immigration Detention in The United States By Agency* (Jan. 2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detention_in_the_united_states_by_agency.pdf.

¹⁵³ *How Can You Throw Us Back?* *supra* note 124 at 69. The one interviewed asylum seeker who was detained for a shorter period of time (five months) was released for medical reasons and was subsequently deported. *Id.* at 74.

¹⁵⁴ *Id.* at 69.

¹⁵⁵ *I'm a Prisoner Here* *supra* note 124 at 20.

¹⁵⁶ Tulane University Law School Immigration Rights Clinic, *No End in Sight: Prolonged And Punitive Detention Of Immigrants In Louisiana* (May 2021), <https://law.tulane.edu/sites/law.tulane.edu/files/TLS%20No%20End%20In%20Sight%20Single%20Pages%20FINAL.pdf>, p. 9.

¹⁵⁷ *Id.* at 8.

¹⁵⁸ Andrea Castillo, *With or without criminal records, some immigrants spend many years in detention*, Los Angeles Times (Nov. 12, 2018), <https://www.latimes.com/local/lanow/la-me-immigrant-detainees-20181112-story.html>.

¹⁵⁹ Josh Gerstein, *'That's Just Insane': Australia's Secret Deal to Take in Rwandan Guerrillas From the US*, POLITICO (May 15, 2019), <https://www.politico.com/magazine/story/2019/05/15/australia-elections-rwanda-prisoners-refugee-swap-us-226875/>.

¹⁶⁰ *See* Castillo, *supra* note 158.

¹⁶¹ *Letter from Cameroon American Council, Freedom for Immigrants, ISLA, and Southern Poverty Law Center, to Joseph V. Cuffari, Inspector General, US Dep't Homeland Sec., and Cameron Quinn, Officer, Civ. Rts. & Civ. Lib., US Dep't Homeland Sec.* (Aug. 26, 2020), https://www.splcenter.org/sites/default/files/8.26.20_crcl_letter.pdf.

¹⁶² Molly O'Toole & Andrea Castillo, *'Betrayed' Black asylum seekers say Trump administration is ramping up deportations by force and fraud*, Los Angeles Times (Nov. 27, 2020), <https://www.latimes.com/politics/story/2020-11-27/black-asylum-seekers-trump-officials-push-deportations>.

¹⁶³ Human Rights First, *supra* at 29.

¹⁶⁴ RAICES, *Black Immigrant Lives are Under Attack* (July 22, 2020), https://www.raicestexas.org/2020/07/22/black-immigrant-lives-are-under-attack/?ms=em20220426_rollout_video_bidenvtx&emci=254fb2d4-a0c5-ec11-997e-281878b83d8a&emdi=8325dfb9-a2c5-ec11-997e-281878b83d8a.

¹⁶⁵ *Id.*

¹⁶⁶ *See* *I'm a Prisoner Here* *supra* note 124, at 29.

¹⁶⁷ *Id.* at 22.

¹⁶⁸ *Id.* at 22-23.

¹⁶⁹ *Id.* at 22.

¹⁷⁰ U.S. Immigrations and Customs Enforcement (ICE), "Detention Management," <https://www.ice.gov/detain/detention-management>.

¹⁷¹ *Black Immigrant Lives are Under Attack*, *supra* note 164.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ RAICES, *Black, Pregnant, Detained* (Mar. 4, 2021), https://www.raicestexas.org/2021/03/04/pregnant-and-detained/?ms=em20220426_rollout_video_bidenvtx&emci=254fb2d4-a0c5-ec11-997e-281878b83d8a&emdi=8325dfb9-a2c5-ec11-997e-281878b83d8a. RAICES also notes, disturbingly, "[a]t the same time that Karnes' demographics shifted to majority-black, RAICES noted that ICE ended its policy against detaining pregnant women and infants under one year of age. As a result, multiple pregnant women and babies suffered from incarceration at Karnes during the COVID-19 pandemic." *Id.*

¹⁷⁵ RAICES & Haitian Bridge Alliance, *Black Immigrants in Family Detention - Live Stream* (July 23, 2020), <https://www.facebook.com/100064456043882/videos/1711275342385292>.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

-
- ¹⁸³ ACLU of Louisiana Foundation et al., *Complaint Re: Unchecked Human Rights and Civil Rights Abuses Systemic within the New Orleans ICE Field Office Area of Responsibility* (Dec. 20, 2021), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/61c0b47c15319f67d4045ca3/1640019069450/12%3A20%3A21+DHS+NOLA+ICE+Investigation+Follow-Up+Letter+%282%29.pdf> (detailing the unchecked human rights and civil rights abuses systemic within the the NOLA ICE AOR, including an “abusive and racially discriminatory pattern of treatment, unlawful conduct, and lack of oversight and accountability.”).
- ¹⁸⁴ *Letter from Cameroon American Council et al. supra* note 161
https://www.splcenter.org/sites/default/files/8.26.20_crcl_letter.pdf.
- ¹⁸⁵ Southern Poverty Law Center et. al, *Complaint Re: Immigration and Customs Enforcement Officers’ Use of Torture to Coerce Immigrants Into Signing Immigration Documents at Adams County Correctional Facility* (Oct. 7, 2020),
<https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5f7f17f39e044f47175204fb/1602164723244/Re+CRCL+Complaint+ICE%27s+Use+of+Torture+to+Coerce+Immigrants+to+Sign+Immigration+Documents+at+Adams+County+Correctional+Facility.pdf>.
- ¹⁸⁶ *Id.* (detailing testimony of D.F. interviewed on Oct. 2, 2020).
- ¹⁸⁷ *Id.* (detailing testimony of B.J. interviewed on Sept. 30, 2020).
- ¹⁸⁸ Lauren Seibert, *A Cry for Cameroon: How the United States Failed Refugees*, *The Progressive Magazine* (Mar. 26, 2022), <https://progressive.org/latest/cry-for-cameroon-seibert-220326/>; Kate Morrissey, *Despite public outcry, many Cameroonians and Congolese deported on a flight*, *San Diego Union-Tribune* (Oct. 15, 2020), <https://www.sandiegouniontribune.com/news/immigration/story/2020-10-15/cameroon-congolese-deported>.
- ¹⁸⁹ Joquin Castro, Twitter (Oct. 13, 2020), <https://twitter.com/JoaquinCastro/status/1316117172708691969>.
- ¹⁹⁰ Freedom for Immigrants et al., *Complaint Re: U.S. Immigration and Customs Enforcement (ICE) ’s Pattern of Torture in Signing of Deportation Documents for Cameroonian Migrants* (Nov. 5, 2020), https://www.splcenter.org/sites/default/files/crcl_complaint_ice_s_pattern_of_torture_in_signing_of_deportation_documents_for_cameroonian_migrants.pdf.
- ¹⁹¹ Freedom for Immigrants et al., *Complaint Re: U.S. Immigration and Customs Enforcement Torture in Signing of Deportation Documents for Cameroonian Migrants at Winn Correctional Center, Louisiana* (Feb. 1, 2021), https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/6019dd452f75af0a17bec824/1612307782021/Redacted_CRCL_Complaint_Winn.pdf.
- ¹⁹² Southern Poverty Law Center, *Letter Re: Call for U.S. Immigration and Customs Enforcement (ICE) to End Contracts due to Abusive, Inhumane, Criminal, and Racially Discriminatory Practices at Pine Prairie ICE Processing Center and Allen Parish Public Safety Complex, Louisiana* (July 28, 2021), https://www.splcenter.org/sites/default/files/28_july_2021_complaint_and_call_to_close_pine_prairie_and_allen_prairie.pdf.
- ¹⁹³ Zachary Sanders, Esq. et al., *Complaint Re: Call for an Immediate Halt to and Investigation of Detention, Violence, Repression and Racism Against Somali and All Immigrant Detainees and Asylum Seekers at Butler County Jail in Hamilton, Ohio* (Dec. 14, 2020), <http://ohioimmigrant.org/wp-content/uploads/2020/12/CRCL-Complaint-Dec-2020-REDACTED.pdf>.
- ¹⁹⁴ *Bayong and Adem v. County of Butler, Ohio et al.*, Case No. 1:20-cv-989 (Dec. 8, 2020), available at <http://ohioimmigrant.org/wp-content/uploads/2020/12/Butler-County-Jail-Complaint-With-Exhibits-12-8-20.pdf>.
- ¹⁹⁵ African Communities Together et al., *RE: Complaint Regarding ICE’s Use of The WRAP as a Restraint Device* (Oct. 13, 2021),
https://static1.squarespace.com/static/5701c3253c44d887e796b6e2/t/6166d47647aa3a692d4b1be0/1634129028823/CRCL+Complaint+Regarding+The+WRAP_Final.pdf.
- ¹⁹⁶ See *‘I’m a Prisoner Here’ supra* note 124, at 48.
- ¹⁹⁷ Southern Poverty Law Center, *Letter Re: Call for Cancellation of Winn Correctional Center Contract and Investigation into the New Orleans ICE Field Office* (June 2021), available at <https://drive.google.com/file/d/1NMWCXhOwUDE2e15RXfQ2ep9F69ZI-rva/view>.
- ¹⁹⁸ *Id.*
- ¹⁹⁹ *Id.*
- ²⁰⁰ See *‘I’m a Prisoner Here’ supra* note 124, at 46.
- ²⁰¹ Konrad Franco, Caitlin Patler, & Keramet Reiter, *Punishing Status and the Punishment Status Quo: Solitary Confinement in US Immigration Prisons, 2013-2017*, SocArXiv (April 2020), <https://osf.io/preprints/socarxiv/zdy7f/>.

²⁰² See ‘I’m a Prisoner Here’ *supra* note 124, at 47.

²⁰³ *Id.*

²⁰⁴ Robert F. Kennedy Human Rights et al., *Complaint Re: Call for Immediate Investigation into Immigration and Customs Enforcement Officers’ Use of Punitive Solitary Confinement as a Response to the COVID-19 Pandemic and Other Public Health Crises* at 12–13, 21 (June 21, 2021), <https://rfkhumanrights.org/assets/documents/RFK-Human-Rights-Pine-Prairie-DHS-Complaint.pdf>.

²⁰⁵ *Id.* at 2.

²⁰⁶ *Id.*

²⁰⁷ Specifically, the United Nations Revised Standard Minimum Rules for the Treatment of Incarcerated People, known as the “Mandela Rules,” identify the use of solitary confinement beyond 15 days as a form of cruel, inhumane, and degrading treatment that rises to the level of torture. Thus, when solitary confinement is used as a punitive measure by way of segregating and targeting particular individuals, due to their identity, their challenge of authority, or other arbitrary reason, in violation of the domestic minimum standards, then that State-sponsored conduct may rise to the level of torture. See *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), adopted by the General Assembly on 17 December 2015.

²⁰⁸ See Robert F. Kennedy Human Rights et al. *supra* at note 200.

²⁰⁹ See RAICES et al., *Complaint RE: 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* (Mar. 3, 2021), <https://www.raicetexas.org/wp-content/uploads/2021/03/Redacted-Complaint-regarding-Inadequate-Medical-Care-of-Black-Pregnant-Women-and-Infants-at-Karnes.pdf>, at 2.

²¹⁰ Project South et al., *Complaint Re: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center* (Sept. 14, 2020), <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>, at 2.

²¹¹ UndocuBlack Network et al., *Complaint Re: COVID-19 Negligence, Sexual Assault, Retaliation, Verbal Abuse, Religious Discrimination, Anti-Blackness, and Deplorable Conditions at Krome North Services Processing Center in Miami, Florida* (Oct. 6, 2021), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/615defe5e76a986c1af29d7a/1633546214397/Multi-Individual+CRCL+Anti-Blackness+and+Other+Abuse+of+Black+immigrants+at+Krome+Oct+2021.pdf>, at 8.

²¹² *A cry for help: a letter from Cameroonian women detained at T. Don Hutto*, Grassroots Leadership (March 6 2020), <https://grassrootsleadership.org/blog/2020/03/cry-help-letter-cameroonian-women-detained-t-don-hutto>.

²¹³ *Id.*

²¹⁴ See “COVID-19 ICE Detainee Statistics by Facility,” <https://www.ice.gov/coronavirus#citations>.

²¹⁵ See Jeremy Redmon & Alan Judd, *A week after warning, ICE detainee dies from COVID-19*, *The Atlanta Journal-Constitution* (Sept. 21, 2020), <https://www.ajc.com/news/third-ice-detainee-dies-from-covid-19-in-southwest-georgia/LE3CHB24HFDWBBHADYHZEB5EMY/>.

²¹⁶ Southern Poverty Law Center et al., *Complaint Re: Complaint for violations of civil, constitutional, and disability rights of medically vulnerable individuals at Stewart Detention Center* (Aug. 30, 2021), https://www.splcenter.org/sites/default/files/august_crcl_complaint.pdf, at 4.

²¹⁷ See *Cineas supra* note 3.

²¹⁸ See Carl Lindskoog, *Violence and Racism Against Haitian Migrants Was Never Limited to Agents on Horseback*, *Washington Post* (Sept. 30, 2021), <https://www.washingtonpost.com/outlook/2021/10/02/violence-racism-against-haitian-migrants-was-never-limited-horseback-riders/>.

²¹⁹ See *Haitian Refugee Center v. Civiletti*, 503 F. Supp. 442, 450 (S.D. Fla. 1980) (“This case involves thousands of [B]lack Haitian nationals, the brutality of their government, and the prejudice of ours.”).

²²⁰ *Jean v. Nelson*, 711 F.2d 1455, 1493 (11th Cir. 1983), *on reh’g*, 727 F.2d 957 (11th Cir. 1984), *aff’d*, 472 US 846 (1985).

²²¹ *Id.*

²²² See *Pushing Back Protection: How Offshoring and Externalization Imperil the Right to Asylum*, National Immigrant Justice Center and FWD.us, 6 (2021), https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2021-09/Offshoring%20Asylum%20Report_Chapter4.pdf.

²²³ See Complaint at ¶ 47, *Haitian Bridge Alliance v. Biden*, No. 1:21-CV-03317 (D.D.C.) (filed Dec. 20, 2021), <https://int.nyt.com/data/documenttools/hba-v-biden/a8106eacd7c45afe/full.pdf>.

²²⁴ *Id.*

²²⁵ *Id.* at 48

²²⁶ US Coast Guard, *Multimedia Release: Coast Guard repatriates 98 people to Haiti*, (June 29, 2022), <https://content.govdelivery.com/accounts/USDHSCG/bulletins/31e0c18>.

²²⁷ See S. Priya Morley et al., *A Journey of Hope: Haitian Women's Migration to Tapachula, Mexico* (2021), <https://imumi.org/attachments/2020/A-Journey-of-Hope-Haitian-Womens-Migration-to%20-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); see also Caitlyn Yates, *A Case Study in the Outsourcing of US Border Control*, *Lawfare* (Apr. 11, 2019), <https://www.lawfareblog.com/case-study-outsourcing-us-border-control>.

²²⁸ E. Tendayi Achiume, *Foreward* in S. Priya Morely et al., *A Journey of Hope: Haitian Women's Migration to Tapachula, Mexico* (2021), <https://imumi.org/attachments/2020/A-Journey-of-Hope-Haitian-Womens-Migration-to%20-Tapachula.pdf>.

²²⁹ *Joint Declaration and Supplementary Agreement Between the UNITED STATES OF AMERICA and MEXICO*, (June 7, 2019), <https://www.state.gov/wp-content/uploads/2019/09/19-607-Mexico-Migration-and-Refugees.pdf>; see *International Organizations Denounce that Proposed National Guard Model in Mexico Violates International Law*, WOLA (February 21, 2019), <https://www.wola.org/2019/02/mexico-national-guard-violates-international-law/>; Maureen Meyer & Adan Isacson, *The “Wall” Before the Wall: Mexico's Crackdown on Migration at its Southern Border*, WOLA (Dec. 17, 2019), <https://www.wola.org/analysis/mexico-southern-border-report/>; Ribando Seelke, Clare, *Mexico's Immigration Control Efforts*, *Congressional Research Service*, (3 January 2022.), <https://sgp.fas.org/crs/row/IF10215.pdf>.

²³⁰ Tyler Mattiace, *Mexico Cannot Solve the US Border Crisis*, *Dallas Morning News* (May 24, 2022), <https://www.dallasnews.com/opinion/commentary/2021/05/23/mexico-cannot-solve-the-us-border-crisis/>; *US Vice President Calls for Immigration Effort With Mexico*, *VOA News* (May 7, 2021), https://www.voanews.com/a/usa_us-vice-president-calls-immigration-effort-mexico/6205565.html.

²³¹ Human Rights Watch, *Mexico: Asylum Seekers Face Abuses at Southern Border*, (June 6, 2022), <https://www.hrw.org/news/2022/06/06/mexico-asylum-seekers-face-abuses-southern-border>; see *supra* note 227.

²³² *Detuvieron a cuatro policías por la muerte de una migrante haitiana en Chiapas*, *InfoBae* (Nov. 26, 2021), <https://www.infobae.com/america/mexico/2021/11/26/detuvieron-a-cuatro-policias-por-la-muerte-de-una-migrante-haitiana-en-chiapas/>.

²³³ See Refugees International, *Pushed into the Shadows: Mexico's Reception of Haitian Migrants*, (Apr. 28, 2022), <https://www.refugeesinternational.org/reports/2022/4/25/pushed-into-the-shadows-mexicos-reception-of-haitian-migrants>.

²³⁴ Tanya Duarte, et al., *‘Because of the Color of My Skin and the Way I Speak Spanish’: The INM's Detention and Deportation of Indigenous and Afro-Descendant Mexicans*, (July 2020), <https://imumi.org/wp-content/uploads/2020/11/The-INMs-Detention-and-Deportation-of-Indigenous-and-AfroDescendant-Mexicans.pdf>.

²³⁵ Lizabelt Avila and Maureen Meyer, *Beyond the US-Mexico Border: Migration Trends in the Americas, Explained*, (May 26, 2022), <https://www.wola.org/analysis/beyond-the-u-s-mexico-border-migration-trends-in-the-americas-explained/>.

²³⁶ See Haitian Bridge Alliance, *Violence against Black Migrant Women in the Darién Gap (CEDAW Articles 1, 2, 3, 5, 6, 12, 15)* (Jan. 12, 2022), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCSS%2fPAN%2f47481&Lang=en; See CEDAW, *Concluding observations on the eighth periodic report of Panama*, UN Doc. CEDAW/C/PAN/CO/8 (Feb. 24, 2022), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPAN%2fCO%2f8&Lang=en.

²³⁷ See Amnesty International, *Not Safe Anywhere: Haitians on the move need urgent international protection* (Oct. 2021), <https://www.amnestyusa.org/wp-content/uploads/2021/10/Not-Safe-Anywhere-Haitians-need-urgent-international-protection-READY-FOR-PUBLISHING1.pdf>.

²³⁸ DDPa, at ¶ 12.

²³⁹ DDPa, at ¶ 64.

²⁴⁰ See Erik Crew & Nicole Phillips, *Report on 20th anniversary of the Durban Declaration and Programme of Action: Response to call for input issued by the UN's Special Rapporteur on contemporary forms of racism, racial*

discrimination, xenophobia and related intolerance, Haitian Bridge Alliance (Aug. 16, 2021), <http://www.ijdh.org/wp-content/uploads/2021/10/Haitian-Bridge-Alliance-IJDH-Bertha-Submission-to-the-UN-Rapporteur-August-2021-1.pdf>.