

EMPLOYMENT & IMMIGRATION

Biden administration preps for a rocky end to Trump-era immigration rule

The president had pushed for an end to Title 42. Now that it's nearing, some tough decisions must be made.



The termination of Title 42 will mark both the close of a contentious legal battle and the dawn of a new political one, in which the administration's migration policies will be tested once more. | Eugene Garcia/AP Photo

By **MYAH WARD**

11/25/2022 07:00 AM EST



The Biden administration has publicly stated it wants to see an end to Title 42, the much-maligned Trump-era health policy used to turn away more than a million migrants at the southern border.

In four weeks time, they will likely get their wish, and not everyone is sure they're ready for it.

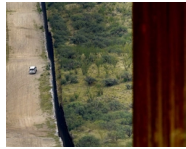
AD

Experts in the immigration field say they're expecting a stressful and chaotic transition when a court-ordered deadline to end the Trump directive is hit, one that could drive a new rush to the border and intensify GOP criticism.

"The view of most people who have looked at this is that whenever Title 42 is lifted, it will create a major operational challenge," said Doris Meissner, director of the Migration Policy Institute's U.S. immigration policy program. "The real question in my mind is, how quickly can the appropriate procedures be restored and put into place so that that challenge is minimized?"

The termination of Title 42 will mark both the close of a contentious legal battle and the dawn of a new political one, in which the administration's migration policies will be tested once more. It has been a vexing issue for the White House since the early days of the Biden presidency. But it could grow even more complicated fairly soon.

Earlier this month, a [Washington-based federal judge blocked](#) the use of Title 42, a public health authority that border officials have used more than 2 million times during the Covid pandemic to expel asylum-seeking migrants, though many of these were repeat crossings. The judge argued its use no longer aligns with the state of the pandemic, in which vaccines and treatments are widely available and travel in the U.S. has greatly increased. The Department of Justice asked for a five-week delay to "resolve resource and logistical issues," and the judge agreed to push his order's start date to Dec. 21.



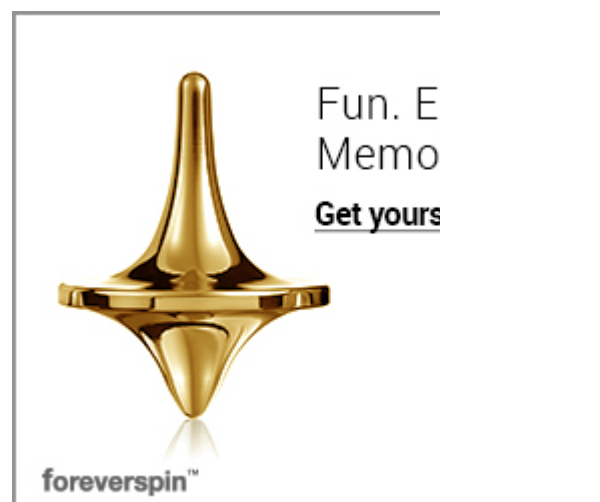
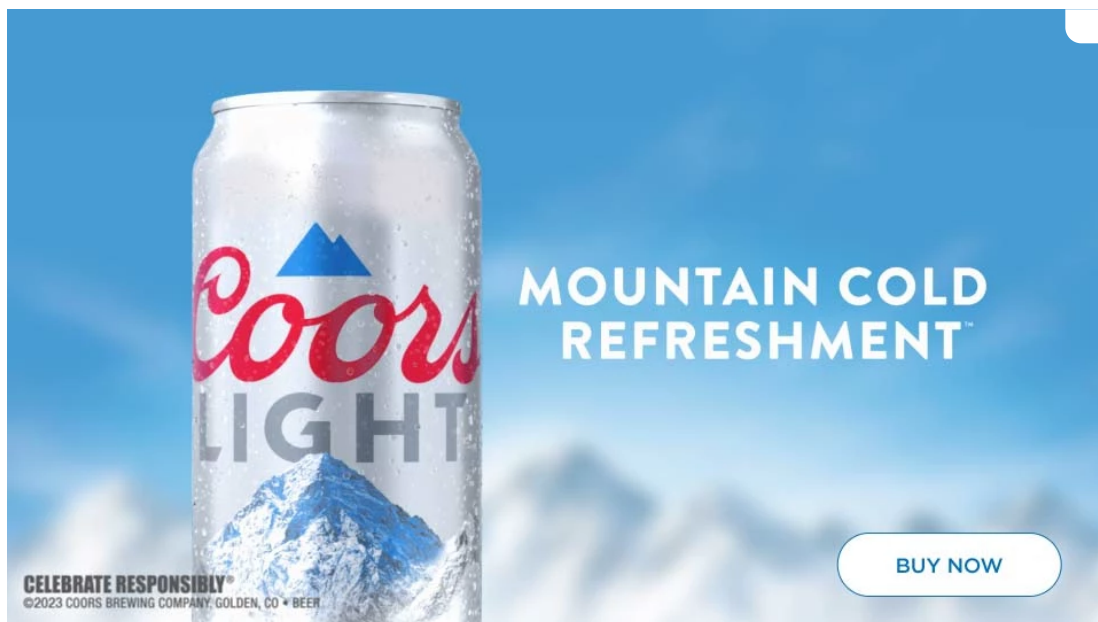
LEGAL

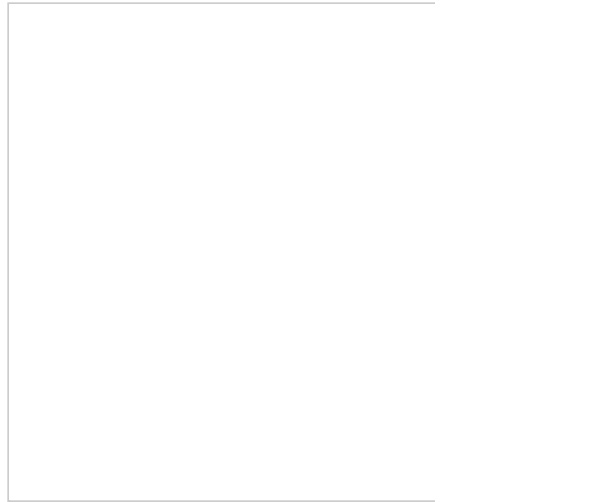
Judge blocks Title 42 limits at border

BY MYAH WARD AND JOSH GERSTEIN

An administration official, when asked about steps DHS is taking to prepare, directed POLITICO to its “[Six Pillars Plan](#)” announced earlier this year, as well as its efforts to counter cartels and human smuggling networks. The plan focuses on “surging resources” — like personnel, transportation, medical support and facilities to support border officials — strictly enforcing border laws, increasing Customs and Border Protection processing efficiency, and bolstering capacity of non-governmental organizations.

Advertisement





“As was the case before Title 42 went into effect and will remain the case after it, individuals encountered at the border and without a legal basis to remain in the United States will be subject to prompt removal,” another administration official said in a statement.

According to its court response, the administration plans to revert fully back to migrant processing procedures the country previously, and historically, outlined under Title 8. That would allow the government to remove from the country anyone unable to establish a legal basis — such as an approved asylum claim. Mayorkas told lawmakers during a hearing last week that his department plans to make “enhanced use” of these expedited removal processes at the southern border.

In requesting a five-week delay, the DOJ said the Department of Homeland Security needed the extra time to find resources to prepare for the transition from Title 42 to Title 8 processing.

The resource gaps likely have to do with the need for officers to screen and process the influx of asylum seekers, said Greg Chen, senior director of government relations for the American Immigration Lawyers Association. There’s also great concern about the immigration courts, which ended fiscal year 2022 with a 1.9-million-case backlog, [according to Transactional Records Access Clearinghouse](#), a nonpartisan research organization at Syracuse University.

And because of the unprecedented level of irregular migration ending up at the southern border, Chen said, the administration will need even more asylum officers, court staff and other resources to back the system than it would've two years ago.

Both the Trump and Biden administration appeared to rely on Title 42 to limit the flows of migrants to the U.S.-Mexico border for reasons having little to do with the spread of Covid.

But Republicans have fought to [keep the order in place](#), while the Biden White House tried to end the program earlier this year, only to be stymied by a Louisiana-based federal judge acting on a lawsuit brought by 24 Republican-led states.

Terminating the directive is expected to fuel GOP attacks, particularly in the House, where Republican leader Kevin McCarthy [has already called for](#) Homeland Security Secretary Alejandro Mayorkas to resign.

But Biden also faces pressure from within his own ideological tent. Advocates have long called for the end of Title 42, arguing that there was no rational basis for its usage once the pandemic fears receded.

Advertisement



The end of the policy is unlikely to lead to an end in the criticism. With an influx of people and a bogged-down system, migrants could spend months in

detention centers — another part of the system the administration is likely ramping up in preparation, Chen said. These facilities have been criticized for dangerous overcrowding, health and hygiene problems, as well as hampered legal access.

Expanding the use of detention on people arriving at the border is “highly contentious,” Chen said. “It is a system that is very much lacking in adequate oversight to ensure that people are treated humanely.”

Even with ample time, many of the resources being sought require legislative action, Chen said. But the prospects of Republicans and Democrats striking a deal are slim.

“We’re eyes wide open to the reality that, despite all the progress we’ve made, we’re continuing to work within the constraints of a decades-old broken immigration system that Republican officials refuse to allow us to fix,” an administration official told POLITICO.

Administration officials always knew Title 42 would come to end at some point, and preparations were underway, said Angela Kelley, who served as Mayorkas’ senior counselor on immigration until May and is now chief adviser for policy and partnerships at the American Immigration Lawyers Association. Some of this planning appears evident in the data.

“It really is like a Rubik’s cube. The day after Title 42 comes down, I think it’s going to scramble the different colors. And then over time, the different sides will be the same color.”

—Angela Kelley, who served as Mayorkas’ senior counselor on immigration until May and is now chief adviser for policy and partnerships at the American Immigration Lawyers Association.

Compared to 2021, fewer people this fiscal year were expelled under Title 42, while the number of migrants allowed to have their asylum claims be heard nearly doubled — possibly reflecting a transition to Title 8. In September, 72,472 migrants at the southern border were expelled under Title 42, while 135,125 were apprehended under Title 8, [according to U.S. Customs and Border Protection data](#).

The administration has also made an effort to speed up the asylum processing system. A new rule issued by the department this spring grants asylum officers — not just judges — the power to determine who qualifies and who must be turned away. In the long-term, this will lead to a faster and more fair asylum procedure, said Meissner, a former immigration commissioner. But this new process, too, is burdened by resource needs and has so far only been applied to process a small number of people.

Kelley foresees a rocky start come Dec. 21, but once processing is back up and running, she expects the strain on the system to level out. Still, she warns, problems will plague the southern border given the current state of the immigration system, one President Joe Biden has promised to overhaul.

“It really is like a Rubik’s cube. The day after Title 42 comes down, I think it’s going to scramble the different colors. And then over time, the different sides

” — Kelley, speaking to POLITICO on the sidelines of a news conference in Washington, D.C., on Tuesday.

FILED UNDER: EMPLOYMENT & IMMIGRATION, IMMIGRATION, JOE BIDEN, JOE BIDEN 2020, DONALD TRUMP

Breaking News Alerts

Sign up for POLITICO Breaking News Alerts to receive the latest updates in your inbox.

EMAIL

Your Email

INDUSTRY


Select Industry



SIGN UP

By signing up you agree to allow POLITICO to collect your user information and use it to better recommend content to you, send you email newsletters or updates from POLITICO, and share insights based on aggregated user information. You further agree to our privacy policy and terms of service. You can unsubscribe at any time and can contact us here. This site is protected by reCAPTCHA and the Google Privacy Policy and Terms of Service apply.

SPONSORED CONTENT

Recommended by  Outbrain

Massachusetts Will Cover the Cost to Install Solar if...

Energy Bill Program



The Actual Cost of a New Walk-In Shower May...

KohlerSafeShowers.com



Massachusetts Will Cover Cost to Install Solar Panel...

Find out if you qualify. Get your free quote today!

EasySolar



Cardiologists: How Older Women Are Losing Weight...

Healthy Guru



Why This Skin Tightening Cream Sold Out At Target (...)

brunchesnocrunches.com



Discover the Best King Crab You've Ever Tasted!

Crab BigSale



[Gallery] 27 Bonds Girls Ranked From Worst to Bes...

Definition



Gronk's Favorite "Dressy" Shoes Feel Like Walking O...

Wolf & Shepherd



Malden Dental Implants for Seniors Paid by Medicare

Dental Implants for Seniors
Dental Implants | Search ads



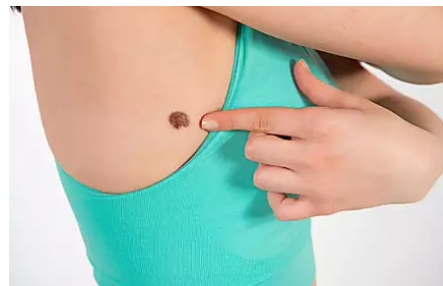
[Gallery] It's No Secret Why Melania Trump Isn't Aroun...

DailyChoices

Warning Signals of Bipolar Disorder Most People Are...

Find the Symptoms and Treatments

Bipolar Disorder



Malden: Moles And Skin Tags Can Be Removed Just...

Try It Tonight!

Life's Healthy Path

[About Us](#)

[Advertising](#)

[Breaking News Alerts](#)

[Careers](#)

[Credit Card Payments](#)

[Digital Edition](#)

[FAQ](#)

[Feedback](#)

[Headlines](#)

[Photos](#)

[POWERJobs](#)

[Press](#)

[Print Subscriptions](#)

[Request A Correction](#)

[Write For Us](#)

[RSS](#)

[Site Map](#)

[Terms of Service](#)

[Privacy Policy](#)

[Do not sell my info](#)

[Notice to California Residents](#)

© 2023 POLITICO LLC