



Title 42 and the Need for Better Border Solutions

The Centers for Disease Control and Prevention (CDC) [announced](#) on March 30, 2022, that the use of Title 42 at the border will be suspended starting on May 23. Originally put in place during the Trump administration, this pandemic-era policy allows Customs and Border Protection (CBP) to deny and immediately expel individuals trying to enter the U.S. at the border. Title 42 refers to a segment of [U.S. legal code](#) that permits the suspension of entries and imports from designated places to prevent the spread of communicable diseases. As a public health law, Title 42 supersedes federal law at the border. Instead of entering immigration proceedings after being encountered by CBP, under Title 42 migrants face immediate removal and are not able to apply for asylum or other legal protections, with limited exceptions.

[Title 42](#) has served as encouragement for migrants to attempt to cross the border into the United States. CBP migrant encounters have increased for 15 months in a row since Title 42 was implemented in March 2020. There are no penalties for unauthorized border crossings, nor are there for repeat crossings. Recidivism, therefore, has increased from an average of 7% of migrants being apprehended by CBP more than once to 27% in 2021 and 2022. Since its start, Title 42 has been used over 1.7 million times to expel migrants at the border. Sadly, cartels and smugglers have benefitted the most from this policy, profiting on repeat crossers and overall increase in migration to the border.

As Title 42 comes to an end, it is important to listen to the needs and concerns of border communities, as they will be the ones experiencing the most impact. Local law enforcement will have the responsibility of maintaining public safety during the aftermath of Title 42 and a potential migration increase at the border. As law enforcement leaders along the border, Chief Andy Harvey (Pharr, TX) and Sheriff David Hathaway (Santa Cruz County, AZ) are aware of the realities of migration and public safety at the border. In an [interview](#) with the LEITF last May, Chief Harvey and Sheriff Hathaway shared their thoughts and experiences.

Chief Harvey: I sometimes feel our elected officials on both sides of the aisle are not listening to local law enforcement to truly understand the reality of what is occurring in our local communities and how their actions or inactions are affecting all of us. We (local government and communities) are the ones that deal with these challenges. Listening to those of us that live, work, and protect communities, to truly understand and make more informed decisions, is vital. We can add value if they are willing to seek to understand our important perspectives. Place partisan agendas aside and work together for the best interest of all.

Sheriff Hathaway: People have been talking about [the border] for years. Federal officials don't even know the current status of our visa and asylum programs. The law is



unclear. We need industry leaders and local officials, law enforcement, chambers of commerce, to come together with immigration experts and elected officials to discuss. But it can't be all talk. Someone with decision-making power needs to move forward.

Unfortunately, not much has changed since last year to improve the situation at the border. Along with LEITF co-chair Chief Orlando Rolón (Orlando, FL), Chief Harvey and Sheriff Hathaway again reinforced the urgency for bipartisan border solutions in a recent [LEITF statement](#):

Chief Harvey: Title 42 and our current border management system have only benefitted smugglers and cartels. By providing additional resources and personnel, infrastructure modernization, and better border technology, Congress can create a more orderly and humane system that protects our nation and respects the dignity of those seeking refuge within our borders.

Sheriff Hathaway: We should not pretend that ending Title 42 is the resolution of long-existing immigration policy failures. Ending Title 42 needs to happen, but replacing it with a 'new plan' to put procedures in place to deal with the never-ending doom-and-gloom forecast of migration increases is just side-stepping the greater issue: the lack of any meaningful reform to immigration policies for years.

Chief Rolón: "Republicans and Democrats in Congress have a shared responsibility to address border security and management. Border communities, asylum-seekers and American taxpayers deserve an immigration system that properly addresses security and humanitarian concerns. With the Title 42 policy ending there is a renewed urgency to find a bipartisan path forward. Both parties must come to the table and work together to develop proper and fitting policies to address this historically ongoing, and unresolved, issue in our country."

As the Department of Homeland Security prepares for the end of Title 42, they have reached out to local law enforcement. In April, members of the LEITF participated in a conference call with DHS officials to discuss the agency's response to a potential increase in migration at the border and coordinated efforts to address it. In the lead up to and aftermath of Title 42's conclusion, law enforcement should be consulted with. But ultimately, Congress needs to propose permanent solutions to the disorder and mismanagement at the border.

Thank you to Chief Harvey, Sheriff Hathaway, and Chief Rolón for sharing their thoughts on this important topic. Andy Harvey is the police chief in Pharr, TX, which is directly across from Reynosa, Mexico. David Hathaway is the sheriff in Santa Cruz County, AZ, which includes the Nogales Port of Entry. Orlando Rolón is the police chief in Orlando, FL and co-chair of the Law Enforcement Immigration Task Force.