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Immigration: Apprehensions and Expulsions at the Southwest Border

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SUMMARY

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Immigration: Apprehensions and Expulsions at the Southwest Border

In FY2021, the Department of Homeland Security's (DHS's) Customs and Border Protection (CBP) recorded 1,659,206 border enforcement encounters with foreign nationals (aliens), the highest number in the agency's history. About two-thirds (1,063,285; 64%) involved single adults. The remainder included individuals in family units (451,087; 27%) and unaccompanied children (144,834; 9%). Immigration observers continue to debate the many factors that explain current elevated migration levels and how they compare to previous levels.

Historically, migrants apprehended crossing the Southwest border illegally were motivated largely by the prospect of U.S. employment. More recently, migrants are also increasingly fleeing harsh conditions and seeking asylum, simultaneously hoping to reunite with family members. Often, multiple factors drive migrants' decisions to risk crossing the border unlawfully. The past decade has also seen a shift to many more migrants coming from the *Northern Triangle* countries (El Salvador, Guatemala, and Honduras). In FY2021, migrant origins expanded beyond Mexico and Central America to include South American countries and the Caribbean. Sizeable migrant flows also originated from countries as distant as Romania, India, and Turkey. The size and diverse origins of migrants have some questioning whether those seeking asylum are using false asylum claims to enter the United States.

Prior to the Coronavirus Disease 2019 (COVID-19) pandemic, CBP processed all apprehended migrants under *Title 8* of the U.S. code (immigration law). In FY2020, the Trump Administration responded to the global pandemic by invoking the emergency authority of *Title 42* (public health law). The Centers for Disease Control and Prevention (CDC) issued an order allowing CBP to *expel* arriving migrants promptly with limited recourse to immigration relief such as asylum. While apprehended and *removed* border crossers can face civil and criminal consequences for illegal U.S. reentry under Title 8, expelled border crossers face no such consequences under Title 42 should they attempt to reenter the United States; reportedly, many do attempt reentry. In FY2021, CBP expelled 85% of all single adult migrants, 28% of all family units, and 3% of all unaccompanied children.

Sizable migrant flows from countries other than Mexico pose considerable logistical challenges to removing migrants. In FY2021, Mexican migrants represented just 37% of all migrant encounters, and 92% of them were expelled under Title 42. Migrants from other countries represented the other 63% of encounters, and 46% of them faced expulsion under Title 42.

The Biden Administration has stated that continued adherence to the Title 42 order is necessary to limit the spread of COVID-19 in DHS facilities. Some contend Title 42 is being used more for immigration enforcement than for public health purposes. They argue that the right to seek humanitarian protection under international and U.S. law should continue even during a public health emergency. Those who support using Title 42 counter that it is necessary to protect public health and that current increased migration stems from the Administration's altered border enforcement regime that has motivated migrants with weak or nonexistent claims to opportunistically attempt U.S. entry.

The changes in both the volume and demographic characteristics of migrants, including origin-country composition, have led to logistical and resource challenges for federal agencies responsible for migrant apprehension, processing, and removal or expulsion. CBP also faces growing challenges from organized human smuggling operations in Mexico and elsewhere. A recent feature of contemporary migration is that migrants and their smuggling networks utilize digital media and smart phones. Readily accessible information (some accurate, some misleading) about opportunities to enter the United States can thereby spur greater migration.

For many migrants, Title 42 expulsion results in repatriation to Mexico. However, the Mexican government has stipulated that it will only accept Mexican migrants and those from Northern Triangle countries. Migration from outside that region has led CBP to apprehend and process greater numbers under Title 8. That, in turn, can involve asylum claims, immigration detention, release into the U.S. interior, asylum and immigration court proceedings, and work permits, among other legal and policy requirements.

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Introduction

In FY2021, the Department of Homeland Security's (DHS's) Customs and Border Protection (CBP) recorded the highest number of foreign national migrant (alien) encounters at the Southwest border since the agency began collecting statistics in 1960.[1] Immigration observers continue to debate why apprehensions are elevated and how the figures compare to past levels.[2] Migrants' countries of origin are also far more varied than in past years. Both trends have challenged the operational approaches of federal agencies that encounter and process migrants, especially in the context of COVID-19 pandemic protocols and procedures.

Border security has been an ongoing subject of congressional interest since the 1970s, when unauthorized immigration to the United States first registered as a national policy challenge. It received further attention following the terrorist attacks of September 11, 2001.

Securing the U.S. border while facilitating legitimate trade and travel to and from the United States is CBP's primary mission.[3] While CBP's responsibilities include monitoring the Southwest and Northern land borders, as well as the Atlantic and Pacific coasts, the Southwest border commands most of the agency's resources because of its attendant risks. The Southwest border runs for nearly 2,000 miles along the four Southwestern states of California, Arizona, New Mexico, and Texas. In addition to the smuggling of illicit drugs, counterfeit products, dangerous agricultural products, and trafficked children, the Southwest border is the locus of almost all illegal migration.[4]

In past years, migrants apprehended at the Southwest border were largely motivated to come to the United States to seek employment. Recent migrants are increasingly seeking asylum, and many have mixed motivations that bring them to the United States. These include fleeing harsh conditions in their home countries, reuniting with family members, and seeking greater economic opportunities in the United States.[5] The past decade has seen a substantial increase in migrants from the Northern Triangle countries of El Salvador, Guatemala, and Honduras.[6] In addition, the past few years have seen sizable numbers of migrants from the Caribbean, South America, Asia, Africa, and Europe. This rapid change in origin-country diversity has caused some to question

[1] See the textbox"Key Terms Used in this Report" for definitions of terminology used in this report.

[2] For two opposing perspectives, see Andrew R. Arthur, "All-Time Record for Southwest Border Apprehensions in FY 2021," Center for Immigration Studies, October 22, 2021; and Jessica Bolter, "It Is Too Simple to Call 2021 a Record Year for Migration at the U.S.-Mexico Border," Migration Policy Institute, October 2021.

[3] U.S. Customs and Border Protection, "About CBP," https://www.cbp.gov/about.

[4] For more information, see CRS In Focus IF11279, *Illicit Drug Flows and Seizures in the United States: In Focus*; CRS In Focus IF10400, *Trends in Mexican Opioid Trafficking and Implications for U.S.-Mexico Security Cooperation*; CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*; and CRS Report RL33200, *Trafficking in Persons in Latin America and the Caribbean*.

[5] Asylum seekers must be physically present in the United States. Although asylum-seeking illegal border crossers often seek out and turn themselves in to U.S. Border Patrol (USBP) agents, they are typically processed under Title 8 of the U.S. code (immigration law) and put into standard removal proceedings before an immigration judge. Therefore, they are still counted as apprehended migrants. For more information, see CRS Report R46755, *The Law of Asylum Procedure at the Border: Statutes and Agency Implementation*.

[6] DHS Secretary Alejandro Mayorkas maintains that increasing levels of violence, corruption, poverty, and deteriorating political, economic, and environmental conditions are key motivations for migration to the United States from Mexico and Central America. See U.S. Department of Homeland Security (DHS), *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border*, March 15, 2021.

whether such migrants are genuine asylum seekers or opportunistic individuals seeking to enter the United States using false asylum claims.[7]

In March 2020, in response to the COVID-19 pandemic, the Centers for Disease Control and Prevention (CDC) under the Trump Administration issued an order to restrict international travel across land borders to mitigate the potential spread of the virus.[8] The CDC directs CBP to implement the order by rapidly expelling back to Mexico certain migrants apprehended between land ports of entry (POEs) under public health law (*Title 42)* instead of processing them under immigration law (*Title 8*), including migrants intending to apply for asylum. Title 42 remains in effect under the Biden Administration.

The Title 42 order and its supporters maintain that it is necessary to limit the spread of COVID-19 in DHS holding facilities that are suboptimal for protecting employees and those in custody from contagious disease transmission.[9] Opponents of the order contend it violates due process and foreign nationals' right to seek asylum in the United States.[10] Many international humanitarian organizations oppose the policy because it expels migrants to places where some have become targets of violence and abuse.[11]

Measures of migration levels and border enforcement activity appear in publicly available statistics on migrants apprehended by CBP's U.S. Border Patrol (USBP).[12] This report reviews USBP data on enforcement actions with migrants at the Southwest border.[13] In past years, *apprehensions* under Title 8 represented all of USBP's enforcement activity. Since March 2020, CBP has been separately reporting both apprehensions under Title 8 and *expulsions* under Title 42, referring to them jointly as *encounters*.[14]

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[7] See, for example, Jenna Ellis, "The perfect crime: Claim asylum, say the magic words, and bring a child," *Washington Examiner*, April 9, 2019; and Nayla Rush, "This World Refugee Day, Let's Address Fraudulent Asylum Claims That Are Detrimental to Legitimate Asylum Seekers," Center for Immigration Studies, June 20, 2018.

[8] Centers for Disease Control and Prevention (CDC), "Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes," 85 *Federal Register* 16559-16567, March 20, 2020. The March 2020 order and a subsequent order in October 2020 were superseded by an August 5, 2021, order: CDC, "Public Health Reassessment and Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists," 86 *Federal Register* 42828-42841, August 5, 2021. (Hereinafter, "CDC Order, August 2021").

[9] CDC Order, August 2021.

[10] See, for example, Melissa Cedillo, "Immigration advocates criticize Biden administration for support of Title 42," *National Catholic Reporter*, September 23, 2021; and Joseph Choi, "Top State official quits post, calling Biden's use of Trump-era border policy 'inhumane'," *The Hill*, October 4, 2021.

[11] See, for example, Human Rights First et al., *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger*, April 20, 2021; and Physicians for Human Rights, *Neither Safety nor Health: How Title 42 Expulsions Harm Health and Violate Rights*, July 2021.

[12] The 2017 National Defense Authorization Act (NDAA) required DHS to develop and implement 43 border security metrics in four domains—between ports of entry, at ports of entry, the maritime border, and the air environment. DHS has issued annual reports that analyze data, currently, through 2019. The reports include other metrics that provide useful estimates of migrants who either "got away" or "turned back" from USBP. See DHS, *Border Security Metrics Report*, August 2020; and U.S. Government Accountability Office (GAO), *Border Security Metrics: Progress Made, but DHS Should Take Additional Steps to Improve Information Quality*, GAO-22-104651, November 16, 2021.

[13] This report does not present statistics on migrants deemed inadmissible at U.S. ports of entry by CBP's Office of Field Operations (OFO). In FY2021, OFO deemed 75,480 migrants inadmissible, representing 4.3% of all CBP enforcement actions for that year.

[14] Migrants arriving at the Northern U.S. border make up a relatively minute share of total border enforcement encounters and are not considered in this report. Migrants include individuals who are determined to be inadmissible at U.S. ports of entry along the Southwest border. Because of the limited number of years of publicly available data from

Encounter levels in FY2020 and FY2021 are not strictly comparable to previous years' apprehension levels. Expelled border crossers face no legal consequences under Title 42, providing little deterrence to repeatedly attempt to enter the United States illegally.[15] In contrast, apprehended border crossers can face criminal and civil consequences under Title 8.[16] In FY2021, for example, CBP reported that 27% of all encounters involved migrants who were expelled more than once under Title 42, a rate nearly two or more times the annual recidivism rates for migrants apprehended under Title 8 each year during FY2015-FY2019.[17]

In addition, many migrants who would have surreptitiously crossed the Southwest border now actively seek out USBP agents in order to request asylum.[18] Hence, increases or decreases in apprehension numbers may not reflect the effectiveness of recent border enforcement strategies, per se.

Key Terms Used in this Report

Alien/Foreign National: a person who is not a U.S. citizen or a U.S. national, as defined in 8 U.S.C. Section 1101(a)(3). The definition includes persons both legally and not legally present in the United States. In this report, the term *alien* is used to remain consistent with statutory language and is synonymous with *foreign national*.

Migrant: as used in this report, a person who has temporarily or permanently crossed an international border illegally and is no longer residing in his or her country of origin or habitual residence, and is not recognized as a refugee. Migrants may include asylum seekers. The term *migrant* is not defined in statute.

Asylum seeker: a person who seeks any humanitarian protection, including asylum under 8 U.S.C. Section 1158, withholding of removal under 8 U.S.C. Section 1231(b)(3), and withholding and deferral of removal under the Convention Against Torture.

Apprehension: a U.S. Border Patrol (USBP) enforcement action at the border under Title 8 of the U.S. code.

Expulsion: a USBP enforcement action at the border under Title 42 of the U.S. code.

Encounter: a CBP enforcement action that can include Title 8 apprehensions and Title 42 expulsions by CBP's USBP between U.S. ports of entry. This report excludes enforcement actions by CBP's Office of Field Operations (OFO), who staff ports of entry.

Single Adult: a migrant not traveling with an immediate family member.

Family Unit: an individual member of a migrant family that includes at least one parent or guardian migrating with at least one child. Each family member is counted separately in the number of encounters.

Unaccompanied Alien Child (UAC): a child who has no lawful immigration status in the United States, has not attained 18 years of age, and with respect to whom there is no parent or legal guardian in the United States, or there is no parent or legal guardian in the United States available to provide care and physical custody. *UAC* is defined in 6 U.S.C. Section 279(g)(2).

Current Border Enforcement Policies

Prior to the pandemic, CBP processed all apprehended migrants under Title 8. According to provisions in Title 8, DHS must remove (deport) migrants apprehended at the border or

CBP, inadmissible migrants are not discussed further in this report.

[15] A recent Southwest border analysis found that migrants who received less severe penalties were more likely to try to cross into the United States again. See Randy Capps, Faye Hipsman, and Doris Meissner, "Advances in U.S.-Mexico Border Enforcement: A Review of the Consequence Delivery System," Migration Policy Institute, May 2017.

[16] 8 U.S.C. §§1325-1326. For more information, see CRS In Focus IF11410, *Immigration-Related Criminal Offenses*.

[17] CBP, CBP Enforcement Statistics Fiscal Year 2021, "U.S. Border Patrol Recidivism Rates," https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.

[18] See, for example, Cedar Attanasio and Elliot Spagat, "US Border Patrol hires civilians to free up agents for field," *AP News*, September 18, 2021.

determined inadmissible at a POE.[19] However, Title 8 offers apprehended migrants the opportunity to seek humanitarian protection, even for those lacking entry documents or who entered the United States unlawfully.[20] This occurs while they are in formal removal proceedings.

Removal proceedings under Title 8 follow one of two processes. Many unauthorized migrants encountered by CBP at the border are placed into *expedited removal*, a streamlined process that allows DHS to promptly remove migrants without a formal court hearing.[21] If a migrant in expedited removal expresses an intent to apply for asylum because of fear of returning to his or her home country, he or she must be screened through a *credible fear interview* to determine whether this fear merits a more thorough review. If the DHS interviewer determines that the migrant has credible fear, the migrant is placed into *formal removal* proceedings, which allow individuals to present their cases before an immigration judge in standard, trial-type court proceedings.[22] Except for certain unauthorized migrants subject to mandatory detention, DHS has the discretion to release migrants during the pendency of their formal removal proceedings.[23]

In early 2019, the Trump Administration implemented the *Migrant Protection Protocols* (MPP), a border policy under Title 8 colloquially known as "Remain in Mexico."[24] This program returns many asylum seekers to Mexico, where they must remain for the duration of their immigration court proceedings. The Biden Administration terminated new MPP enrollments in June 2021, but following a lawsuit challenging the termination, a federal judge subsequently ordered a permanent nationwide injunction and ordered DHS to make a good faith effort to reinstate the program on August 13, 2021.[25] The U.S. Court of Appeals for the Fifth Circuit and the Supreme Court[26] denied the Biden Administration's request to stay the injunction pending its appeal August 24, 2021.[27] On December 2, 2021, the Biden Administration announced the reimplementation of MPP along with new guidance on implementation.[28] The policy resumed as of December 6, 2021, in the El Paso border patrol sector; it is expected that MPP will resume across the entire Southwest border.[29]

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[19] See CRS Report R46755, *The Law of Asylum Procedure at the Border: Statutes and Agency Implementation*.

[20] Ibid.

[21] For more information, see CRS In Focus IF11357, *Expedited Removal of Aliens: An Introduction*; and CRS Report R45314, *Expedited Removal of Aliens: Legal Framework*.

[22] The Executive Office of Immigration Review (EOIR) within the U.S. Department of Justice (DOJ) operates the immigration court system. For more information, see CRS Infographic IG10022, *Immigration Court Proceedings: Process and Data*.

[23] For more information, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*.

[24] For more information, see CRS Legal Sidebar LSB10251, *"Migrant Protection Protocols": Legal Issues Related to DHS's Plan to Require Arriving Asylum Seekers to Wait in Mexico*.

[25] Mica Rosenberg and Kristina Cooke, "U.S. prepares to resume Trump 'Remain in Mexico' asylum policy in November," *Reuters*, October 15, 2021.

[26] *Biden, President of U.S., et al. v. Texas, et al.*, 594 U.S. (2021).

[27] The Administration issued a second memorandum to terminate the MPP policy, along with an explanation for the decision, on October 29, 2021. Recognizing that the termination would not take effect until the injunction was lifted, the memo clarified that reimplementation was dependent on the Mexican government's cooperation and that the Administration would still "vigorously oppose" its reinstatement. DHS, Secretary Alejandro N. Mayorkas, "Memorandum: Termination of the Migrant Protection Protocols," October 29, 2021.

[28] Departments of Homeland Security, Justice and State, "DHS, Justice, and State Prepare for Court-Ordered Reimplementation of MPP," press release, December 2, 2021, https://www.dhs.gov/news/2021/12/02/dhs-justice-and-state-prepare-court-ordered-reimplementation-mpp.

[29] Pricilla Alvarez and Geneva Sands, "'Remain in Mexico' program restarts, fueling frustration among immigration advocates," *CNN*, December 6, 2021.

Title 42 remains in effect across all U.S. land and coastal borders,[30] although some of its protocols have changed.[31] Title 42 restricts the entry of certain foreign nationals, including those intending to apply for asylum and other humanitarian protections.[32] Issued by CDC and implemented by CBP, the August 2021 order suspends introducing into the United States certain persons from countries where a quarantinable communicable disease exists.[33] While Title 8 requires that unauthorized migrants be held in DHS facilities for immigration processing, Title 42 requires CBP to promptly expel single adults and family units back to Mexico.[34] The stated reasons for this policy include the risks of the transmission of COVID-19, and lack of adequate space in CBP facilities for social distancing and isolation. They also include standard CBP protocols required to keep certain migrants separate from each other (e.g., men from women, families from others).

Per the August 2021 CDC order, unaccompanied alien children (UAC) are not subject to Title 42. In addition, current statute treats children from contiguous countries (Mexico and Canada) differently than children from non-contiguous countries. UAC from Mexico can be repatriated promptly through a process known as *voluntary departure*. UAC from all other countries are placed in formal removal proceedings. From CBP custody, they are referred to the Department of Health and Human Services' (HHS's) Office of Refugee Resettlement (ORR), where they are initially sheltered and subsequently placed with family members or sponsors while they await their immigration hearings. The shift in UAC origin-country composition has significantly impacted agencies charged with their processing and care.[35]

The Mexican government has restricted the types of migrants it will accept through Title 42 expulsions. With limited exceptions, Mexico will only accept migrants from Mexico, El Salvador, Guatemala, and Honduras.[36] Along certain sections of the border, it will not accept family groups with children under age seven.[37] U.S. policy, on the other hand, restricts how long DHS can detain families with children (the *Flores Settlement Agreement*).[38] DHS therefore uses its discretionary authority under Title 8 to release many unauthorized migrant families into the

[30] For more information, see CRS Insight IN11741, *U.S. Customs and Border Protection (CBP) COVID-19 Policies and Protocols at the Southwest Border*.

[31] The CDC order from August 5, 2021, replaces earlier orders and explicitly excludes unaccompanied children from expulsion under Title 42. It also clarifies that restrictions imposed by Mexico and other conditions prevent certain nationals and family groups from being expelled. In a separate announcement on October 15, the White House announced that vaccines would be required for all international travelers coming into the United States, inclusive of all modes of travel, starting November 8, 2021. See The White House, *Fact Sheet: Biden Administration Releases Additional Detail for Implementing a Safer, More Stringent International Air Travel System*, October 25, 2021. Vaccines must be on the Food and Drug Administration (FDA) approved or authorized list, and the World Health Organization (WHO) Emergency Use Listing. Migrants apprehended at the border by CBP are still subject to Title 42. See the CDC website (https://www.cdc.gov) for information on international travel during the COVID-19 pandemic.

[32] For more information on asylum, the Convention Against Torture (CAT), and withholding of removal, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

[33] CDC Order, August 2021.

[34] Ibid. Migrants are to be processed promptly in an outdoor setting, with no asylum screening.

[35] For more information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

[36] Under Title 42, those encountered entering the United States unlawfully on the Southwest border are to be promptly expelled to Mexico. Expulsion may be delayed for adult and family migrants who are not accepted back by Mexico. Those migrants are generally held in short-term CBP facilities until Immigration and Customs Enforcement (ICE) Air Operations can schedule a flight to their home countries. Other migrants, such as UAC and those with significant criminal history records, are processed under Title 8. CRS correspondence with CBP, October 29, 2021.

[37] CDC Order, August 2021.

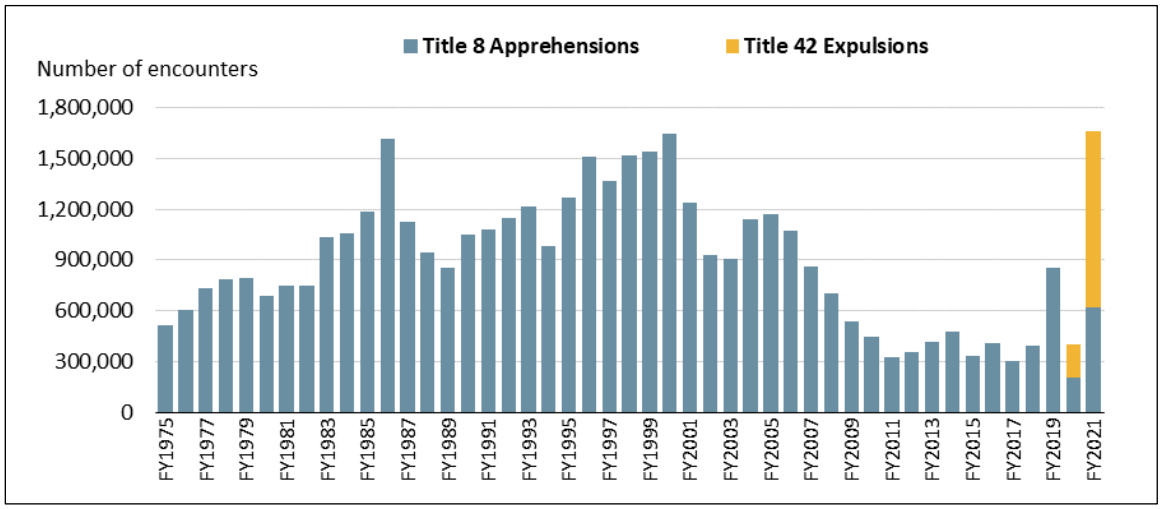
[38] For more information, see CRS Report R45297, *The "Flores Settlement" and Alien Families Apprehended at the U.S. Border: Frequently Asked Questions*.

United States to await formal immigration proceedings without being detained.[39] Generally, CBP retains discretion to exempt any individual adult or family unit from Title 42 on a case-by-case basis based on the totality of the circumstances.[40]

Total and Recent Encounters

Figure 1 provides historical context for the recent increase in migrant encounters by USBP at the Southwest border. From FY1975 to FY2000, unauthorized migration flows—measured in this report by the number of migrants apprehended by CBP—generally increased. In FY2000, apprehensions reached a record high at the time of 1,643,679 before generally decreasing through FY2011. Nevertheless, annual apprehensions exceeded 1 million in 19 of the 35 years between FY1975 and FY2010.

Figure 1. Total USBP Encounters at the Southwest Border, FY1975-FY2021



Source: U.S. Customs and Border Protection; FY1975-FY2017: "U.S. Border Patrol Fiscal Year Southwest Border Sector Apprehensions," https://www.cbp.gov/newsroom/media-resources/stats; FY2018-FY2021: "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.

Notes: Encounters consisted entirely of apprehensions from FY1975 to FY2019, and a mix of apprehensions and expulsions in FY2020 and FY2021.

In FY2011, apprehensions dropped to 327,577, and in FY2017 they fell to their lowest point (303,916) in more than four decades. Two years later, in FY2019, apprehensions rebounded to almost three times that level (851,508), the highest total in more than a decade.

In FY2020, the COVID-19 pandemic and previously implemented pre-pandemic border enforcement policies reduced total encounters to 400,651, less than half the FY2019 level.[41] After the first few months of the pandemic, when global migration was stalled, border enforcement encounters began to increase through the second half of FY2020 before rebounding substantially

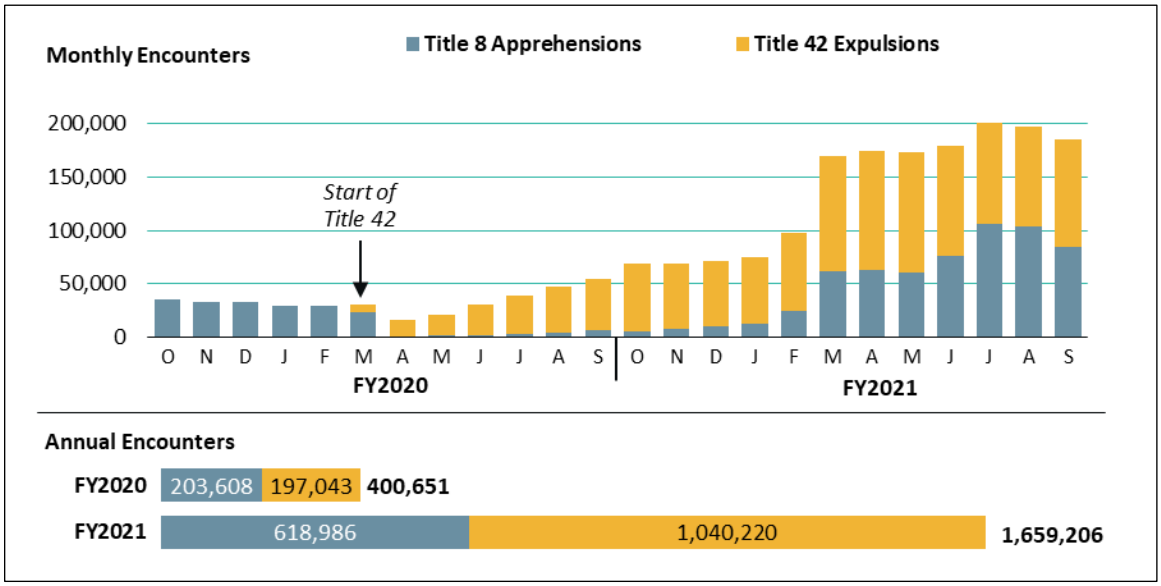
[39] For more information, see CRS Report R46755, *The Law of Asylum Procedure at the Border: Statutes and Agency Implementation*.

[40] See CDC Order, August 2021.

[41] See CRS Report R46755, *The Law of Asylum Procedure at the Border: Statutes and Agency Implementation* for a description of policies implemented prior to March 2020 by the Trump Administration that are now inactive due to litigation or administrative action by the Biden Administration.

in FY2021 (**Figure 1**). Beginning early in calendar year 2021, concurrent with the start of the Biden Administration, the number of migrant encounters at the Southwest border started to increase (**Figure 2**). Total encounters for FY2021 rose markedly to 1,659,206, the highest number of border enforcement actions ever recorded. Certain months in FY2021 reached record highs.[42]

Figure 2. Total Monthly USBP Encounters at the Southwest Border by Enforcement Title, FY2020 and FY2021



Source: U.S. Customs and Border Protection, "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.

During FY2020 and FY2021, the total number of USBP migrant encounters, as well as the ratio of Title 8 to Title 42 encounters, varied considerably. When Title 42 went into effect during the earliest part of the pandemic, migration and apprehensions levels were low. More than 90% of encounters ended in an expulsion. By the end of FY2020, and throughout FY2021, the percentage of migrants expelled generally decreased compared to those processed under Title 8—from 91% in October 2020, to 54% in September 2021. In large part, this was due to an increase in migrant families that CBP exempted from Title 42 and processed instead under Title 8.[43]

Encounters by Demographic Category

CBP classifies apprehended migrants into three categories: single adults, family units (at least one parent/guardian and at least one child), and unaccompanied alien children.[44] Family units and UAC represent growing shares of migrant encounters in recent years (**Figure 3**).

Single adult migrants have long dominated apprehensions at the Southwest border. As recently as FY2012, single adults made up 90% of these apprehensions. However, in FY2019 the demographic composition of the migrant flow shifted. In that year, CBP recorded a record

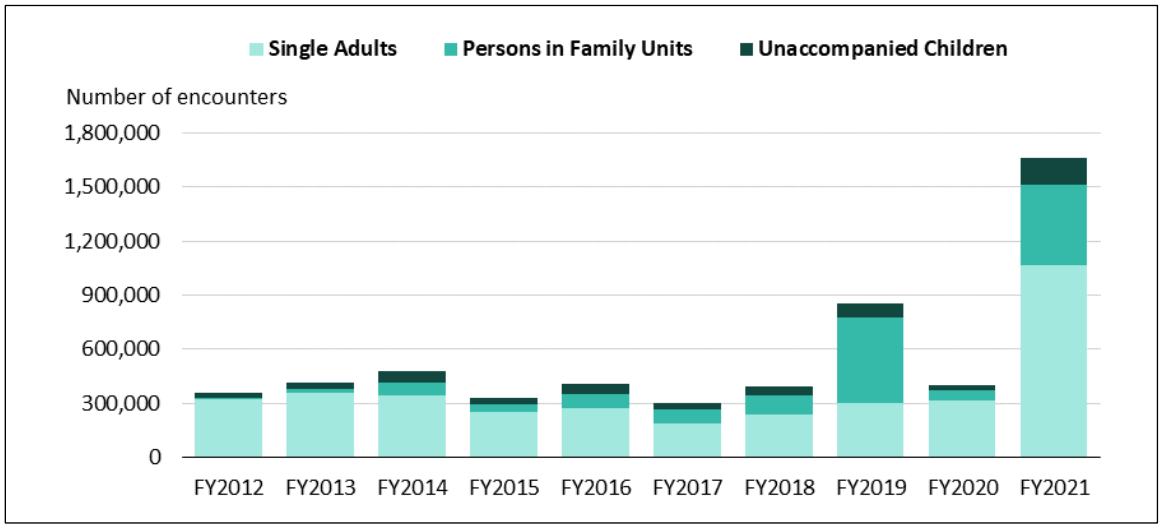
[42] Zolan Kanno-Youngs and Michael D. Shear, "Biden Faces Challenge From Surge of Migrants at the Border," *New York Times*, March 8, 2021.

[43] See "Immigration Processing With an Order Under 42 U.S.C. 265" in the CDC order, August 2021.

[44] For more information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*, by William A. Kandel.

number of family unit encounters (473,683, or 56% of total encounters) and a then-record number of UAC encounters (76,020 or 9% of total encounters). While single adult encounters were relatively large in absolute terms (301,806), their percentage of total encounters fell to 35%.

Figure 3. Total USBP Encounters at the Southwest Border, by Demographic Category, FY2012-FY2021



Source: U.S. Customs and Border Protection; FY2012-FY2016: "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, Statement by Secretary Johnson on Southwest Border Security," https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016; FY2017: "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2017," https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017; FY2018-FY2021: "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.

Notes: Encounters consisted entirely of apprehensions from FY1975 to FY2019, and a mix of apprehensions and expulsions in FY2020 and FY2021. Family unit apprehensions represent apprehended individuals in family units, not apprehended families.

In FY2020, when the COVID-19 pandemic emerged, encounters dropped, and single adults made up 79% of encounters at the Southwest border. During FY2021, over 1 million single adults were encountered, representing 64% of all encounters in that year, while a high level of family unit (451,087) encounters and a new record level of UAC (144,834) encounters made up 27% and 9%, respectively, of all encounters. Among the three categories, 85% of single adults were expelled per Title 42 in FY2021, compared to 28% of family units and just 3% of UAC.[45]

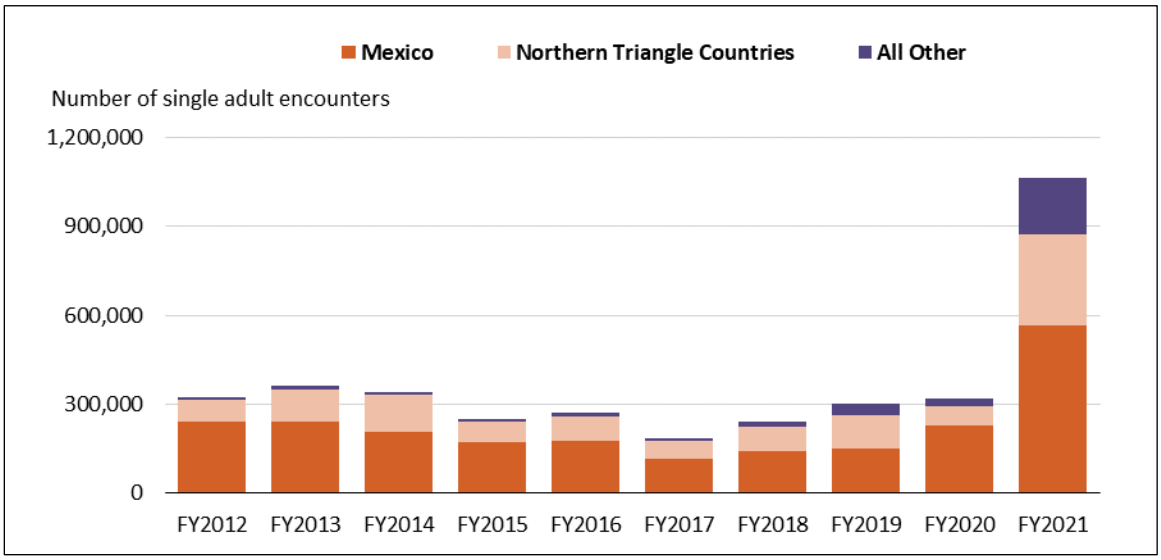
Single Adult Encounters

Historically, Mexican single adults dominated the migrant flow to the Southwest border. In the past decade, there has been an increase in adults from the Northern Triangle and countries other than Mexico, both in proportion and absolute numbers. In FY2012, for example, Mexican nationals made up 75% of the 321,276 single adult migrants apprehended at the Southwest border; in FY2021, they represented 53% of the 1,063,285 single adult migrants encountered (**Figure 4**). Migrants from the three Northern Triangle countries comprised 29% of single adult encounters in FY2021, with migrants from all other countries accounting for the remaining 18%

[45] Almost all FY2021 expulsions of UAC occurred in October and November 2020, before a federal judge ruled that such actions were not authorized by Title 42. For more information, see Suzanne Monyak, "DC Judge Blocks Policy To Expel Migrant Kids From Border," *Law360*, November 18, 2020.

in that year. Each of the three national origin groupings had more USBP encounters in FY2021 than in any fiscal year during the previous decade.

Figure 4. Single Adult Encounters at the Southwest Border, by Origin Country, FY2012-FY2021



Source: U.S. Customs and Border Protection. FY2012-FY2016: derived by CRS by subtracting family unit and UAC apprehensions from total apprehensions (by origin country). For total apprehensions by origin country, see "U.S. Border Patrol Nationwide Apprehensions by Citizenship and Sector"; for family unit and UAC apprehensions, see "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, Statement by Secretary Johnson on Southwest Border Security," https://www.cbp.gov/newsroom/stats/ southwest-border-unaccompanied-children/fy-2016. FY2017: "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2017," https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017. FY2018-FY2021: "Southwest Land Border Encounters," https://www.cbp.gov/ newsroom/stats/southwest-land-border-encounters.

Notes: Encounters consisted entirely of apprehensions from FY2012 to FY2019 and a mix of apprehensions and expulsions in FY2020 and FY2021.

In FY2021, most (89%) single adults encountered were expelled under Title 42.[46] Within this group, almost all (96%) Mexican and Northern Triangle single adult migrants were expelled compared to 46% of single adult migrants from "all other" countries. This divergence stems from restrictions the Mexican government set to accept only repatriated migrants from Mexico and Northern Triangle countries (see the "Current Border Enforcement Policies" section).

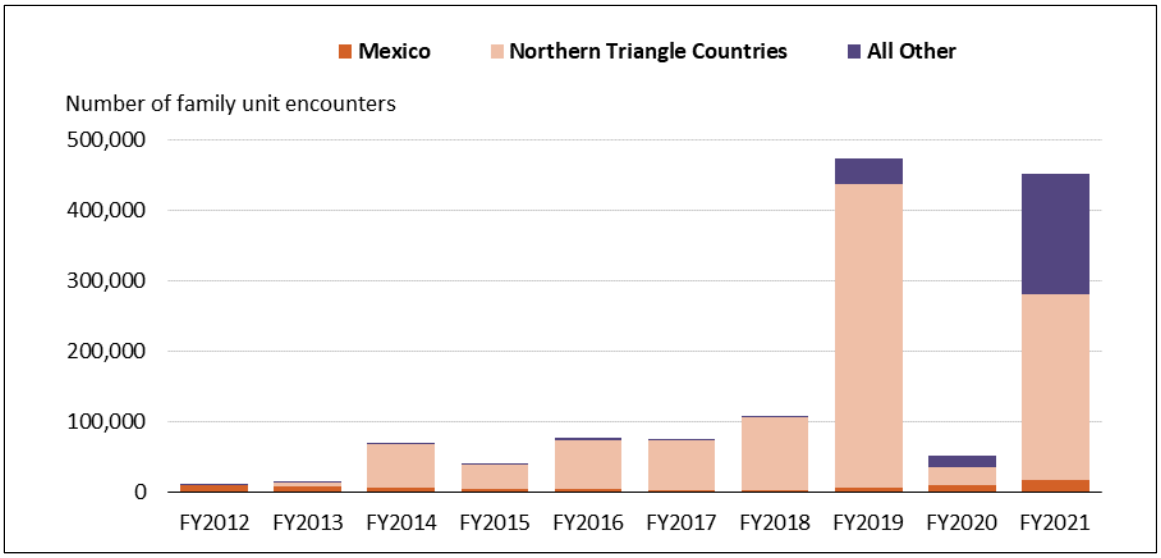
Family Unit Encounters

CBP began publishing apprehension statistics on individuals in family units in FY2012 following substantial increases in such apprehensions compared to previous years. In FY2012, family units represented 3.1% of total apprehensions. By FY2019, family units represented 55% of all apprehended migrants at the Southwest border (473,683), outnumbering single adults for the first time in a single year (see **Figure 3**).

[46] U.S. Customs and Border Protection, "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/ southwest-land-border-encounters. Unless otherwise indicated, encounter figures cited throughout this report come from this source.

In recent years, family unit migrants have originated from more countries (**Figure 5**). In FY2012, when the number of apprehended family migrants was a fraction of the current figure, most originated from Mexico (8,851, or 80% of the 11,116 total). Since FY2014, however, the number of family migrants from each Northern Triangle country has exceeded the number of Mexican family migrants. Together, migrants from these three countries have dominated family unit encounters. In FY2021, family units from Northern Triangle countries accounted for 58% of the 451,087 family unit encounters that year, while Mexico represented 4%.

Figure 5. Family Unit Encounters at the Southwest Border, by Origin Country, FY2012-FY2021



Source: U.S. Customs and Border Protection; FY2012-FY2016: "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, Statement by Secretary Johnson on Southwest Border Security," https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016; FY2017: "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2017," https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017; FY2018-FY2021: "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.

Notes: Encounters consisted entirely of apprehensions from FY1975 to FY2019, and a mix of apprehensions and expulsions in FY2020 and FY2021. Apprehended family units represent apprehended *individuals* in family units, not apprehended families. Data on pre-FY2012 family unit apprehensions are not publicly available.

From FY2012 to FY2019, less than 5% of all family unit encounters represented migrants originating from countries outside of Mexico and the Northern Triangle ("all other" countries).[47] In FY2020 and FY2021, however, that proportion increased to 32% and 38%, respectively. In FY2021, USBP encounters with family units from all other countries totaled 170,726, a number unmatched in the recorded data on apprehensions (see **Table 1** for more detail).

While most single adult migrants have been expelled under Title 42 since FY2020, most family units have been subject to enforcement of Title 8.[48] In FY2021, close to three-fourths (72%) of all

[47] In FY2019, the absolute number of family units apprehended from all other countries (37,132) was the highest to date, surpassing family migrants from Mexico six-fold. However, the sheer size of the number of apprehended family migrants from Northern Triangle origins dominated, at close to 475,000.

[48] CBP may use discretion when deciding whether to process family units under Title 8 or expel them under Title 42.

family units (451,087) were apprehended and processed under Title 8.[49] Sizable numbers have been released into the United States to await immigration court proceedings.[50] Among nationality groups, Mexican family units were most likely to be expelled under Title 42 (86%), followed by family units from Guatemala (45%), El Salvador (38%), and Honduras (34%). Family units from all other countries were the least likely to be expelled (7%) under Title 42 due in part to the constraints placed on these expulsions by the government of Mexico discussed above in "Current Border Enforcement Policies."

Unaccompanied Children Encounters

UAC apprehension figures have increased considerably since FY2012 (**Figure 6**).[51] In FY2014, UAC apprehensions reached a then-record level of 68,541 and garnered considerable public attention.[52] UAC apprehensions have since remained relatively high and fluctuated substantially each year, reaching a new then-record of 76,020 in FY2019.[53] In FY2020, the COVID-19 pandemic reduced UAC encounters at the Southwest border to 30,557. In November 2020, a federal judge halted the use of Title 42 for UAC, and the Biden Administration formally rescinded its use in February 2021. In FY2021, annual UAC encounters reached yet another new record of 144,834, almost double the previous high set in FY2019.[54]

[49] In FY2020, 81% of family unit encounters (42,180) were processed under Title 8.

[50] See, for example, Julia Ainsley, "ICE to begin processing migrant families to relieve overcrowded border patrol stations," *NBC News*, July 31, 2021; and Mica Rosenberg and Frank Jack Daniel, "U.S. releasing hundreds of Central American families from increasingly busy custody," *Reuters*, February 4, 2021.

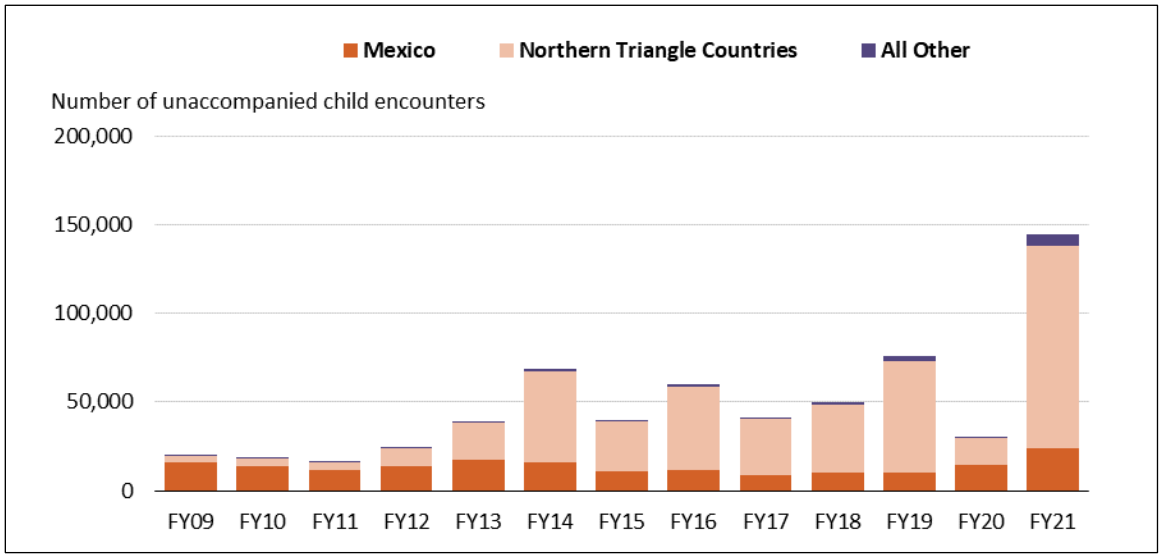
[51] U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR), *Office of Refugee Resettlement Year in Review—FY2013*, December 20, 2013; and HHS, Administration for Children and Families (ACF), *Fiscal Year 2020, Justification of Estimates for Appropriations Committees*, p. 38.

[52] For more background, see archived CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*.

[53] U.S. Customs and Border Protection, "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/sw-border-migration.

[54] Ibid.

Figure 6. Unaccompanied Children Encounters at the Southwest Border, by Origin Country, FY2010-FY2021



Source: U.S. Customs and Border Protection; FY2012-FY2016: "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, Statement by Secretary Johnson on Southwest Border Security," https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016; FY2017: "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2017," https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017; FY2018-FY2021: "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.

Notes: Encounters consisted entirely of apprehensions from FY1975 to FY2019, and a mix of apprehensions and expulsions in FY2020 and FY2021.

As it has with family units, the origin country composition of apprehended UAC has shifted from mostly Mexico to mostly Northern Triangle countries during the past decade.[55] In FY2009, for example, Mexican UAC made up 82% of all 19,668 UAC apprehensions in that year, while Northern Triangle UAC made up 17%.[56] By FY2021, those percentages had reversed: Mexican children made up 17% of the 144,834 total apprehensions, and Northern Triangle children accounted for 78%. The remaining 5% (6,930) of UAC were from all other countries. In FY2021, 31% of all apprehended UAC were female, and 13% were under age 13.[57]

Encounters by Country of Citizenship

In recent years, growing numbers of migrants at the Southwest border have originated from South America, the Caribbean, Europe, and Asia (**Table 1**).[58] In FY2012, for example, encounters of foreign nationals originating from outside of Mexico and the Northern Triangle represented 2% of all encounters; by FY2021, that figure had increased to 22%.

[55] For more information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*, Figure 1.

[56] See ibid.

[57] HHS, "Latest UAC Data—FY2021," October 9, 2021.

[58] CBP began reporting encounters with nationals from the 20 countries with the largest number of encounters in FY2021. In past years, encounters with nationals from Mexico, El Salvador, Guatemala, and Honduras were regularly reported, and the remainder were grouped together in an "all other countries" category.

The FY2021 data by country and migrant category provide several insights (**Table 1**). First, as in past years, single adult migrants from Mexico represented the largest group overall (566,868), as well as the largest percentage (93%) of all encounters among Mexicans. Of these migrants, 96% were expelled back to Mexico under Title 42. Second, the top four countries (Mexico, Honduras, Guatemala, and El Salvador) represented 78% of all encounters. Most single adults and family units from these countries were expelled under Title 42. Third, new Latin American countries became significant migrant source countries in the unauthorized flow at the Southwest border. Ecuador ranked fifth among all migrant-sending countries, followed by Brazil, Nicaragua, Venezuela, Haiti, and Cuba.[59]

Fourth, 43,734 (77%) encounters with Brazilian migrants were family units. This made Brazil the third highest-ranking country after Honduras and Guatemala for number of encountered family units at the Southwest border in FY2021.[60] The fact that Brazilian migrants typically speak Portuguese rather than Spanish, they originate from a non-contiguous country, and that sizable increases in family units require more resources to process suggests additional challenges for federal agencies. Fifth, Guatemala was the top source country of UAC; its 58,571 encounters represented 40% of total UAC encounters. Because Guatemala is a non-contiguous country, Guatemalan UAC must be referred to ORR. And sixth, the appearance at the Southwest border of sizable numbers of migrants from countries as diverse and distant as Romania, India, and Turkey indicates that unauthorized migration flows to the United States are originating from areas well beyond the Western Hemisphere.[61]

Table 1. Encounters at the Southwest Border, by Demographic Category and Country of Origin, FY2021

Country of Origin	Numbers of Encounters				Percent of Total Encounters			
	Total	Single Adults	Family Units	UAC	Total	Single Adults	Family Units	UAC
Mexico	608,037	566,868	17,040	24,129	100%	93%	3%	4%
Honduras	308,931	121,784	147,416	39,731	100%	39%	48%	13%
Guatemala	279,033	140,312	80,150	58,571	100%	50%	29%	21%
El Salvador	95,930	44,702	35,755	15,473	100%	47%	37%	16%
Ecuador	95,692	55,622	36,399	3,671	100%	58%	38%	4%

[59] Many of the Haitian migrants apprehended at the U.S.-Mexico border fled to Chile and Brazil after the 2010 earthquake in search of economic opportunity and fleeing from political turbulence, violence, and poverty in Haiti. See for example, Caitlyn Yates, *Haitian Migration through the Americas: A Decade in the Making*, Migration Policy Institute, September 30, 2021; Patrick J. McDonnell and Jorge Poblete, "Haitians in Chile: Rough going for many prompts large-scale migration toward U.S.," *Los Angeles Times*, October 1, 2021; and Pascale Bonnefoy, "Why Haitians in Chile Keep Heading North to the U.S.," *New York Times*, September 27, 2021. Cuban migrants have been attempting to gain asylum at the border in large numbers in recent years, many coming from different places in South America. See Cedar Attanasio, Elliot Spagat, and Michael Weissenstein, "Surge of Cubans trying to enter US at El Paso," *Associated Press*, May 13, 2019.

[60] See Gabriel Stargardter, "As Brazilians flock to the U.S. border, an alleged smuggler cashes in," *Reuters*, October 12, 2021.

[61] Some contend that U.S. border enforcement must expand beyond unilateral approaches to manage this broader array of migration source countries. See, for example, Andrew Selee and Ariel G. Ruiz Soto, *Building a New Regional Migration System*, Migration Policy Institute, November 2020. The Biden Administration has supported this perspective. See The White House, *Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*, February 2, 2021.

Country of Origin	Numbers of Encounters				Percent of Total Encounters			
	Total	Single Adults	Family Units	UAC	Total	Single Adults	Family Units	UAC
Brazil	56,735	12,813	43,734	188	100%	23%	77%	0%
Nicaragua	49,841	29,234	18,689	1,918	100%	59%	37%	4%
Venezuela	47,752	25,675	21,762	315	100%	54%	46%	1%
Haiti	45,532	20,901	24,543	88	100%	46%	54%	0%
Cuba	38,139	30,637	7,471	32	100%	80%	20%	0%
Colombia	5,838	3,121	2,638	79	100%	53%	45%	1%
Romania	4,029	545	3,405	79	100%	14%	85%	2%
India	2,555	1,321	1,000	234	100%	52%	39%	9%
Turkey	1,366	1,161	195	10	100%	85%	14%	1%
All Other	19,796	8,590	10,890	316	100%	43%	55%	2%
Total	**1,659,206**	**1,063,285**	**451,087**	**144,834**	**100%**	**64%**	**27%**	**9%**

Source: U.S. Customs and Border Protection, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters.

Notes: Figures are shown for countries whose total encounters (apprehensions and expulsions) exceeded 1,000.

Policy Discussion

Public health anxieties and high levels of border enforcement encounters have heightened concern and controversy about the Southwest border. At the start of the COVID-19 pandemic, the CDC used its public health authority to restrict temporarily the movement of certain foreign nationals across land borders to mitigate the spread of the virus. The policy requires CBP to expel unauthorized migrants apprehended at the Southwest border back to Mexico (or their home country) so they spend limited processing time in congregate settings. While the Biden Administration has halted the use of Title 42 expulsions for UAC, and curtailed it for family units, it has continued using it for most single adults.

Some contend that Title 42 is being used for immigration enforcement purposes rather than its public health purpose. They argue that a global pandemic should not prevent the Biden Administration from allowing migrants their legal right under U.S. and international law to seek asylum.[62] Those who support strong immigration enforcement at the border, as well as the use of Title 42, counter that the current migrant increase stems less from a genuine flight from dire circumstances than from a so-called *Biden Effect* that has spurred migrants with weak or nonexistent asylum claims to attempt U.S. entry due to a perception of more lenient policies.[63] The Administration maintains that CBP migrant holding facilities lack adequate space that would lessen the risk of spreading COVID-19, and that the policy is needed to protect the population in custody, CBP employees, and community healthcare systems.[64]

[62] See, for example, Human Rights Watch, "Over 100 Groups Urge Biden to Fully Rescind Title 42 Expulsions," press release, June 30, 2021.

[63] See, for example, Ken Cuccinelli, "Biden in Denial As Border Crisis Escalates Due to His Rhetoric and Immigration Policies," *Immigration Commentary*, The Heritage Foundation, March 17, 2021; and Mark Krikorian, "The Biden Effect Continues at the Border," *National Review*, February 26, 2021.

[64] CDC Order, August 2021

The elevated volume of migration and the Title 42 expulsion policy creates considerable obstacles to providing migrants access to the asylum adjudication process. Even under Title 8, the asylum adjudication process is lengthy. Criticism of the process begins with the initial asylum screening, which some argue favors outcomes that motivate migrants to file weak or nonexistent asylum claims. Others critique the post-screening processes that contribute to long adjudication times in immigration court proceedings and allow asylum seekers to remain in the United States for extended periods of time.[65] Observers from across the political spectrum have suggested reforming the asylum system as a critical step for effective border enforcement.[66]

Federal agencies face formidable logistical challenges to processing large numbers of migrants while pandemic protocols that limit migrant custody time remain in place. These challenges include dealing with large groups of migrants, some of which arrive at remote CBP outposts and overwhelm CBP personnel staffing them.[67] CBP also faces challenges from organized human smuggling operations in Mexico and elsewhere. Increasingly, migrants and smuggling networks utilize social media, digital communication, and mapping through smartphones. Readily accessible information can spur greater migration by broadcasting accurate as well as misleading information about opportunities and locations to enter the United States.[68] Misinformation has led many migrants to invest substantial sums of money for smuggling efforts that result in their expulsion or removal.[69] In April 2021, DHS announced Operation Sentinel, which aims to target and disrupt transnational criminal organizations affiliated with the smuggling of migrants.[70] This effort is intended to enhance the security of the Southwest border and protect migrants who often face violence and exploitation from smugglers.[71]

Sizable migrant flows from countries other than Mexico pose considerable logistical and resource challenges for the prompt expulsion or removal of migrants to their home countries. In FY2021, Mexican migrant encounters (608,037) outnumbered those of any other single country (**Table 1**) and 92% resulted in Title 42 expulsion, but they represented 37% of total migrant encounters in that year. Migrants from other countries represented the majority (63%); 46% of them faced expulsion to Mexico under Title 42.

At the Southwest border, Title 42 explicitly allows CBP to expel migrants back to Mexico. However, in practice, there are limitations that make Title 42 inapplicable for migrants from some

[65] For more information, see CRS Report R46755, *The Law of Asylum Procedure at the Border: Statutes and Agency Implementation*.

[66] Ibid., see section entitled "Reform Ideas."

[67] For recent examples, see National Public Radio, "Thousands Of Haitian Migrants Wait Under South Texas Bridge," September 17, 2021; Jose Torres, "Migrant caravan in Mexico presses on, meets growing resistance," *Reuters,* August 31, 2021; Kirk Semple and Nic Wirtz, "Migrant Caravan, Now in Guatemala, Tests Regional Resolve to Control Migration," *New York Times*, January 17, 2021; Simon Romero and Caitlin Dickerson, "'Desperation of Thousands' Pushes Migrants Into Ever Remote Terrain," *New York Times*, January 29, 2019; and Alicia Caldwell, "Illegal Migrant Crossings Surge in Remote New Mexico Desert," *Wall Street Journal*, January 29, 2019.

[68] See, for example, Julia Ainsley and Didi Martinez, "Human smugglers use Facebook to connect with migrants and spread false hope of reaching U.S.," *NBC News*, April 5, 2021.

[69] See, for example, see Laura Gottesdiener, "Biden tells migrants to stay put. Central Americans hear a different message," *Reuters*, March 31, 2021; and National Public Radio, "How brazen smugglers are fueling record numbers at the Southern border," *Consider This*, May 3, 2021, https://www.wgbh.org/podcast/consider-this-from-npr/how-brazen-smugglers-are-fueling-record-numbers-at-the-southern-border.

[70] Department of Homeland Security, "DHS Announces Operation to Target Criminal Smuggling Organizations," press release, April 27, 2021.

[71] See, for example, Christopher Brito, "Video shows alleged smugglers dropping 2 children over 14-foot border fence into U.S.," *CBS News*, April 2, 2021

countries. For example, the Mexican government has stipulated that it will only accept Mexican migrants and those from Northern Triangle countries expelled under Title 42.[72] Sizeable increases in migrants encountered, particularly in family units, from outside those countries have led CBP to apprehend and process greater numbers of migrants under Title 8. That, in turn, can involve asylum claims,[73] immigration detention,[74] release into the U.S. interior, asylum proceedings, work permits, and immigration court proceedings,[75] among other legal and policy requirements.

Overall, in FY2021 more than one-in-five migrants encountered at the Southwest border could not be expelled to Mexico because they originated from countries other than those whose nationals Mexico would accept. Operationally, migrants subject to Title 42 who are from such countries typically require more DHS resources to manage custody, logistics, and travel arrangements. For migrants who are expelled back to their home countries by air, CBP works in collaboration with Immigration and Customs Enforcement (ICE) to fly them back.[76]

Two prominent trends in recent years limit comparisons between current measures of encounters with apprehensions in previous years. First, many migrants now actively seek out USBP agents to request asylum, rather than trying to evade them while illegally crossing into the United States. Second, as noted above, expelled border crossers face no lasting legal consequences under Title 42, and may repeatedly attempt to enter the country illegally. In contrast, apprehended border crossers can face criminal and civil consequences under Title 8 that may discourage repeated attempts.

The recent high level of border encounters has created tensions between some state and local officials and the federal government, the latter of which is largely responsible for immigration enforcement.[77] Texas Governor Greg Abbott initiated Operation Lone Star, which uses state resources and personnel to arrest migrants who have crossed into Texas on trespassing and other charges.[78] Other states have joined Texas in criticizing the Biden Administration's border enforcement policies and in supporting legal action that would force DHS to increase enforcement along the Southwest border.[79]

Legal proceedings may curtail the use of Title 42. A federal court has ruled that the policy is most likely illegal due to violations of asylum law, and twice issued preliminary injunctions barring the

[72] Some other countries refuse to accept repatriated migrants unless DHS first secures a negative COVID-19 test result for each individual returned. As such, these individuals cannot be expelled under Title 42. See CDC Order, August 2021, footnote 82.

[73] For more information, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

[74] For more information, see CRS Report R45915, *Immigration Detention: A Legal Overview*.

[75] U.S. Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), "Executive Office for Immigration Review: An Agency Guide," fact sheet, December 2017.

[76] CBP, "Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions," see head note, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics. Perhaps the most visible example of Title 42 expulsions by air was the mass expulsion of approximately 8,000 Haitians from the Del Rio border patrol sector in September 2021.

[77] Section 287(g) of the Immigration and Nationality Act (8 U.S.C §1357(g)) permits certain immigration enforcement functions to be delegated to state and local law enforcement agencies under agreement with local ICE offices. See CRS In Focus IF11898, *The 287(g) Program: State and Local Immigration Enforcement*; and CRS Legal Sidebar LSB10362, *Immigration Arrests in the Interior of the United States: A Primer*.

[78] Office of the Texas Governor, "Governor Abbott Signs Border Security Funding Into Law," press release, September 17, 2021. See also Elizabeth Findell and Alicia A. Caldwell, "Texas Jails Fill With Migrants as Border Arrests Overwhelm Courts," *The Wall Street Journal*, November 8, 2021.

[79] Meghan Roos, "Texas DPS on Biden's Border Policy: 'We Don't Need Their Permission to Protect Texas'," *Newsweek*, October 6, 2021.

expulsion of UAC and family units during the litigation.[80] An appellate court has stayed both injunctions. While the Biden Administration still applies Title 42 to some family units without offering asylum screening, most are processed under Title 8, which allows for such screening.[81] UAC are explicitly excluded from the expulsion policy.[82] In addition to CBP's use of its discretion, case-by-case exceptions to Title 42 are also becoming more numerous due to constraints imposed by foreign governments. CDC acknowledges they expect "normal border operations" to resume gradually under Title 8, but that case-by-case exceptions will continue as the CDC continues to transition away from the order.[83]

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[80] See CRS Legal Sidebar LSB10659, *COVID-19: Restrictions on Noncitizen Travel*.

[81] Ibid.

[82] CDC order, August 2021.

[83] Ibid.