

## “Manifesting” Fear At the Border: Lessons from Title 42 Expulsions

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### Title 42 Expulsion Policy and Legal Challenge

In March 2020, under the pretext of the COVID-19 pandemic, the Trump administration began expelling people seeking asylum at the U.S. southern border pursuant to a policy known as Title 42. The U.S. government carried out the expulsions without screening individuals for fear of persecution or torture, in violation of its obligations under international and domestic law. Before the policy ended in May 2023, over two million expulsions were completed, putting many refugees directly in [harm’s way](#).

Advocates brought [litigation](#) successfully challenging the policy. But the Biden administration was permitted to continue effectuating expulsions with no screening whatsoever while the litigation wound its way through the appellate process. However, in March 2022, the U.S. Court of Appeals for the D.C. Circuit [upheld](#) a lower court ruling prohibiting the government from expelling families to places where they risked harm. Although the court concluded the administration had the authority to expel, it had to do so in compliance with the U.S. obligation of *non-refoulement*, which prohibits the return of refugees to countries where they face persecution or torture.

### Implementation of the Manifestation of Fear Guidance

While Title 42 was in place, the U.S. government could have required that border officers ask individuals apprehended near the border whether they had a fear of persecution or torture in Mexico or any other country of expulsion. If so, they would have been required to refer the individuals for a more complete interview with a trained Asylum Officer. This has in fact been the mandatory [process](#) at the border since 1996. Instead, the government adopted a “manifestation of fear” process. Also known as the “shout test,” it requires an individual to affirmatively raise their fear of return to receive any sort of screening for protection. The “shout test” was first designed by the United States to repel Haitians intercepted at sea in the 1980s and has [operated](#) as intended ever since, to keep refugees out and deny them safe haven.

To comply with the March 2022 order in the Title 42 litigation, U.S. Customs and Border Protection (CBP) issued [guidance](#) in May 2022 on the processing of individuals “manifesting a fear” of expulsion. Pursuant to that guidance, as with the “shout test” applied to migrants at sea, border officers were to “consider all available information within the scope of their operations.” A manifestation of fear could be either “verbal,” such as statements of fear or recounting of previous harms, or “non-verbal,” such as “panic attacks” or “an unusual level of silence.”

## Subjecting Refugees to the “Shout Test” Flouts U.S. Obligations

Following issuance of the guidance, the Center for Gender & Refugee Studies (CGRS) and other immigrant rights organizations based at the border monitored implementation of the injunction. From June-October 2022, advocates interviewed at least 97 families expelled to cities along the U.S.-Mexico border, including Ciudad Juárez, Reynosa, and Tijuana, Mexico. Of those interviewed, over half (51 families) reported that they had verbally expressed a fear of return, and nearly three-quarters (73 families) reported having non-verbally expressed a fear. Yet CBP did not refer a single family for a fear screening as required under the guidance. Instead, families disclosed that CBP officers verbally abused them, telling them to “shut up,” declaring they had “no right” to an interview, or completely ignoring their attempts to communicate.

The cases below illustrate CBP’s failure to follow its own guidance and the inadequacy of a “manifestation of fear” requirement to protect against *refoulement*. Each family feared return, but none received a screening to determine the viability of their protection claims.

- A Salvadoran mother with her seven-year-old child feared return because her brother-in-law, a gang member, had attempted to kill her. When she tried to express her fear, CBP did not allow her to speak before expelling her on June 8, 2022.
- A Honduran mother traveling with her 10-year-old child feared return because she had witnessed gang members killing her neighbor and received threats as a result. She was too afraid to speak because of how CBP officers treated her and other asylum seekers. She was expelled on June 11, 2022.
- A Salvadoran mother fled her home with her seven-year-old daughter after her husband threatened to kill her. As he had followed her when she escaped, she feared he would find her in Mexico. CBP did not allow her to speak before expelling her on June 11, 2022.
- A Honduran father fled with his nine-year-old child after his brother was killed, fearing the same fate. CBP officers did not allow him to speak before expelling him on June 11, 2022.
- A Honduran mother and her four-year-old child were kidnapped and held for 22 days in Mexico, before finally escaping and attempting to seek asylum in the United States. CBP did not permit her to speak before expelling her back to Mexico on August 9, 2022.
- An Indigenous Guatemalan woman traveling with her three-year-old child could not explain her fear. She did not speak Spanish well, and CBP did not provide an interpreter or permit her to speak. She was expelled on September 20, 2022.

These harrowing stories represent just the tip of the iceberg. Experience shows that relying on a “shout test” results in refugees being returned to danger. Any legislative proposal to revive this approach will make a mockery of our international commitments and must be rejected.