

## What End of Title 42, COVID Vaccine Mandate Means for Travel to U.S.



By [Elizabeth M. Klarin](#)

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Wow, there have been some big moves in the immigration world in the past few weeks. The issues at the United States' southern border have been headlining pretty much every news outlet's homepage online, and we're fielding a lot of questions from clients, friends and colleagues about what the end of Title 42 means for U.S. immigration, and whether, in fact, people can finally travel to the U.S. without having received the COVID-19 vaccine.

### **Title 42: Is it really done?**

Title 42 expired at 11: 59 p.m. on May 11, following the official expiration of the national COVID-19 public health emergency in the U.S. But what is Title 42? In a nutshell, it is public health law dating back to the 1940s, which permits authorities to stop people from entering the U.S. from foreign countries where there is "the existence of any communicable disease" that could spread to Americans, on an emergency basis. This policy was reinstated during the COVID pandemic to deter travel across borders to the U.S., to prevent the spread of COVID-19.

The main reason that it has become so controversial is the historic surge of asylum seekers at the U.S. southern border since President Joe Biden took office - so much so, that the southern border states have been overwhelmed with asylum seekers. Title 42 appeared to have stemmed the tide of these intending immigrants, to some small effect, and considering how many people have been permitted in anyway, local governments and residents as well as federal agents are deeply concerned about what happens next.

While the Biden administration had planned, post-Title 42, to release migrants crossing into the U.S. without court dates, a federal judge blocked that move earlier this week. Judge T. Kent Wetherell II imposed a two-week, temporary restraining order on the policy, which was released in a U.S. Border Patrol Memo (also this week) saying that migrants can be released into the U.S. on something called "parole" if U.S. Customs and Border Protection faces overcrowding (meaning either sector capacity goes above 125 per cent, agents apprehend 7,000 migrants a day over 72 hours, or if average time in custody goes above 60 hours). If released under parole, according to the memo, migrants are rapidly released into the country, do not get an alien registration number and do not receive a court date.

According to the Immigration and Nationality Act, s. 235(b), the Department of Homeland Security is supposed to detain all migrants apprehended entering illegally and all aliens encountered seeking admission to the U.S. at its various ports who aren't "clearly and beyond a doubt entitled to be admitted." The agency is then tasked with detaining these individuals until they are either admitted, removed or granted some form of relief from removal (such as asylum). The only exception to this is where someone is granted "parole" - normally for humanitarian or "significant public benefit" reasons. Historically, parole has been granted sparingly.

A preliminary injunction hearing is set for May 19 to determine whether continued temporary relief should be approved, beyond the two-week window, to preserve the status quo until the courts decide on the merits of the case. It is widely expected that the Biden administration will appeal the ruling, but in the meantime, the temporary restraining order limits the number of asylum seekers that can be released into the U.S., and could marginally stem the flow of intending immigrants into the U.S.

### **COVID vaccination mandate is over, but only for nonimmigrants**

Unfortunately, there still is no word on whether intending immigrants to or already within the U.S. will continue to be required to obtain the COVID-19 vaccine (or a waiver of the requirement) in order to obtain permanent residence. However, nonimmigrant travellers to the U.S. are no longer required to have any form of the COVID-19 vaccine in order to be admitted to the U.S. This is welcome relief for many travellers, including those who have been hesitant to receive the vaccine or those who have suffered adverse effects from one or more of the COVID vaccine shots.

As of this date, any intending immigrant seeking an immigrant visa outside the U.S., or who seeks to adjust their legal status from within the U.S. to "permanent resident," is required to receive a COVID-19 vaccine. Both blanket waivers and individual waivers may be available, but no data has been published to date as to how many COVID-19 related waiver applications are specifically being approved or denied by U.S. Citizenship and Immigration Services.

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