

From: (b) (6), (b) (7)(C)
To: (b) (7)(E); (b) (7)(E)
Cc: SCOTT, RODNEY S; ORTIZ, RAUL L; (b) (7)(E); (b) (6), (b) (7)(C)
Subject: 42 U.S. Code Title 42 - The Public Health and Welfare Memo
Date: Friday, March 20, 2020 8:01:30 PM
Attachments: [42 U.S. Code Title 42 - The Public Health and Welfare Memo.pdf](#)
[COVID-19 -- HHS-CDC 42 USC 265 -- CBP CONOP 3-20-20.pdf](#)
[Annex Op Capiro Title 42 \(V5\) .pdf](#)
[Air Movement IOP Title 42 v3 \(004\).pdf](#)
[Field Guidance v8.pdf](#)
[Op_Capiro_Guidance V5.pptx](#)
[CBP Communications Plan - Implementation of Title 42 USC 265.pdf](#)

Chiefs,

The following documents are attached regarding the CBP response to the COVID-19 pandemic.

- 42 U.S. Code Title 42 - The Public Health and Welfare Memo (B1 signed memo)
- COVID-19—HHS-CDC 42 USC 265 – CBP CONOP (overarching CBP CONOP)
- Annex Op Capiro Title 42 (detailed instructions from encounter onward)
- Air Movement IOP Title 42 v3 (instructions on air movement)
- Field Guidance v8 (Visual Flowchart that can be printed and kept in agent’s pockets)
- Op_Capiro_Guidance V5 (Documentation Guidance – includes the required Operation Capiro Field Intake Sheet)
- CBP Communications Plan – Implementation of Title 42 USC 265 (Guidance for your Strategic Communications Shop)
- USBP HQ COVID-19 Response CONOP_v3 (USBP CONOP)
- OPORD- Operation Capiro_V13 (USBP OPORD)

We expect Sectors to coordinate with local ERO FODs on implementation of this. Please remember, you have two hours to resolve implementation issues encountered before elevating them to the CBP EOC.

Thank you for your leadership and watch your six.

(b) (6), (b) (7)(C)

[Redacted]

Acting Chief
USBP/HQ/LEOD
(b) (6), (b) (7)(C) (desk)
[Redacted] (cell)

Guidelines for Air Movement and Removals under Title 42 U.S.C. 265

Subjects encountered that are not amenable to immediate expulsion to Mexico or Canada will be transported to a dedicated facility for temporary holding prior to being expelled to the alien's country of citizenship.

Locations will vary by sector but should be a tent, soft-sided facility or pre-designated Customs and Border Protection (CBP) / United States Border Patrol (USBP) facility with dedicated space. Populations must be prepared for air transfer to the Rio Grande Valley Sector (RGV) (**Expulsion Hub**) for consolidation and final expulsion under Title 42.

Upon arrival at a facility, subjects must be recorded as NON-Deportable and In-custody within e3. The Medical Directive, TEDS Policy and Property Controls will then need to be followed.

Possession of an Identity Document (ID) is not required but any unique identification number if available must be recorded in the I-216.

This program requires that subjects referred for Air expulsion meet the below conditions.

- ALL subjects encountered that are not amenable to immediate expulsion to Mexico or Canada
- Have made an affirmative claim to country of citizenship
- Have **no medical concerns** and must be medically cleared for travel
- Must not make an affirmative, spontaneous and reasonably believable claim that they fear being tortured in the country they are being sent back to, will be referred to USCIS, see below regarding Convention Against Torture Claim (CAT).
- FMUAs should **not** be separated

Transferring Sector - USBP location that processes eligible subjects and is responsible to coordinate ICE Air transfer to RGV.

- Sector must coordinate with local Enforcement Removal Offices (ERO) offices while maintaining constant communication with Immigration and Customs Enforcement (ICE) Air Operations and USBP HQ representatives
- Create an I-216 manifest and submit to ERO and USBP HQ representative for loop flight to RGV
- FMUA must be recorded as such in the I-216
- Unique I-216 will be generated for each country; do not combine nationalities on one document
- Completed electronic transfer I-216 must be emailed in advance to RGV Removal Hub POC and a hard copy transferred with the subjects
- It is critical that the information contained in the I-216 is accurate and complete.
- The alien's temperature must be taken and documented on the top right corner of the medical summary conducted by LSGS along with the time and date that it was recorded.
- Two copies of the medical summary must accompany the alien's other documents once turned over to ICE in preparation of flight.

RGV- Removal Hub Procedures – USBP location that serves as the transfer recipient, holding facility and main expulsion hub. RGV is responsible for coordinating transportation to flight location for all enrollees to include transferred bodies.

- Sector must coordinate with local ERO and other sectors while maintaining constant communication with ICE Air Operations and USBP HQ representatives.
- Receive and hold all USBP subjects from other sectors.
- Consolidate and create I-216 manifests and submit to ERO and USBP HQ representative for Expulsion flights.
- FMUA must be recorded as such in the I-216.
- Unique I-216 will be generated for each country; do not combine nationalities on one document.
- Completed electronic transfer I-216 must be emailed in advance to POCs and a hard copy transferred with the subjects.
- The alien's temperature must be taken and documented on the top right corner of the medical summary conducted by LSGS along with the time and date that it was recorded.
- The medical summary must accompany the alien's other documents once turned over to ICE in preparation of flight.

***It is critical that all information contained in the I-216 is accurate and complete.**

Any issues encountered Sectors are encouraged to reach out to USBP HQ immediately.

Using the e3 Family Panel Under Title 42

Title 42 – public health

Family Unit – A group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s)

Family Group – Related detainees (e.g., brother and sister, aunt and nephew) that need to travel together who are non-U.S. citizens and do not meet the definition of a Family Unit

Single Minor – An alien who is 17 years of age or younger and who is not traveling with a related adult

*****Under Title 42, an e3 Family Group that includes at least one adult relative and minor child(ren) should be treated for detention / expulsion as if the adult is the guardian of the child(ren).**

Examples under Title 42

Scenario 1 – a 16 year old and his mother

Title 42 – The subjects should be associated as a Family Unit via the e3 Family Panel – detained and expelled together.

Scenario 2 – a 12 year old and his 14 year old brother

Title 42 – The subjects should be associated as a Family Group via the e3 Family Panel - detained and remain together for expulsion

Examples under Title 42

Scenario 3 – a 15 year old traveling with unrelated subjects

Title 42 – The juvenile should be treated as a Single Minor and processed for expulsion

Scenario 4 – a 15 year old traveling with his adult cousin

Title 42 – The subjects should be associated as a Family Group via the e3 Family Panel – detained and expelled together

Send any questions to the (b) (7)(E) [@cbp.dhs.gov](mailto:_____@cbp.dhs.gov)



BILLING CODE: 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces an extension of an Order issued March 20, 2020, under Sections 362 and 365 of the Public Health Service Act, and associated implementing regulations, that suspends the introduction of certain persons from countries where an outbreak of a communicable disease exists. The Order was issued on April 20, 2020 and shall remain in effect until 11:59 p.m. EDT on May 20,

2020. This Order may be amended or rescinded prior to that time at the discretion of the Director.

DATES: This action took effect April 20, 2020.

FOR FURTHER INFORMATION CONTACT: Kyle McGowan, Office of the Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E., MS V18-2, Atlanta, GA 30329. Phone: 404-639-7000. Email: cdcregulations@cdc.gov.

SUPPLEMENTARY INFORMATION: On March 20, 2020, the Director of the Centers for Disease Control and Prevention issued an Order prohibiting the introduction of certain persons from countries where an outbreak of a communicable disease exists (85 FR 17060; March 26, 2020). The Order was scheduled to expire April 20, 2020.¹

Unfortunately, COVID-19 has continued to spread since the March 20 Order. Canada and Mexico continue to see large numbers of COVID-19 infections and deaths. In addition, the United States has seen many states enter the

¹ See 1 CFR 18.17. When a date falls on a weekend or holiday, the next Federal business day is used.

acceleration phase of the COVID-19 pandemic, which has strained the healthcare system and prompted dramatic public health responses at the local, state, and Federal levels. Millions of Americans are now complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread of, and protect others from, COVID-19. At the Federal level, HHS and the Department of Homeland Security (DHS) are working with public and private stakeholders to rapidly procure, distribute, and increase the supply of scarce medical and healthcare resources such as personal protective equipment (PPE), ventilators, and therapeutics for the American public. The entire country has mobilized to save lives by limiting face-to-face contact and reserving medical and healthcare resources for those who need them most. The determinations made in support of the March 20 Order remain correct and should continue in place until 11:59 p.m. EDT on May 20.

A copy of the order is provided below and a copy of the signed order can be found at

<https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html>.

U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)

ORDER UNDER SECTIONS 362 & 365 OF THE PUBLIC HEALTH SERVICE

ACT

(42 U.S.C. 265, 268):

**EXTENSION OF ORDER SUSPENDING INTRODUCTION OF CERTAIN
PERSONS FROM COUNTRIES WHERE A COMMUNICABLE DISEASE EXISTS**

I am extending the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists issued on March 20, 2020 until 11:59 p.m. EDT on May 20 or until I determine that the danger of further introduction of COVID-19 into the United States has ceased to be a serious danger to the public health, whichever is sooner. I may further amend or extend the March 20, 2020 Order as needed to protect the public health.

I issued the March 20, 2020 Order pursuant to §§ 362 and 365 of the Public Health Service (PHS) Act, 42 U.S.C. §§ 265, 268, and the Act's implementing regulations, which authorize the Director of the Centers for Disease Control and Prevention (CDC) to suspend the introduction of persons into the United States when the Director determines that the existence of a communicable disease in a foreign

country or place creates a serious danger of the introduction of such disease into the United States, and the danger is so increased by the introduction of persons from the foreign country or place that a temporary suspension of such introduction is necessary to protect the public health.

The March 20, 2020 Order suspended introduction of certain "covered aliens" into the United States for a period of 30 days. The March 20, 2020 Order defined "covered aliens" as follows:

Persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land Port of Entry ("POE") or Border Patrol station at or near the United States border with Canada or Mexico, subject to exceptions. This order does not apply to U.S. citizens, lawful permanent residents, and their spouses and children; members of the armed forces of the United States, and associated

personnel, and their spouses and children; persons from foreign countries who hold valid travel documents and arrive at a POE; or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE.

In addition, the March 20, 2020 Order did not apply to "persons whom customs officers of DHS determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests."

The March 20, 2020 Order was based on the following determinations:

- COVID-19 is a communicable disease that poses a danger to the public health;
- COVID-19 is present in numerous foreign countries, including Canada and Mexico;

- There is a serious danger of the introduction of COVID-19 into the land POEs and Border Patrol stations at or near the United States borders with Canada and Mexico, and into the interior of the country as a whole, because COVID-19 exists in Canada, Mexico, and the other countries of origin of persons who migrate to the United States across the land borders with Canada and Mexico;
- But for a suspension-of-entry order under 42 U.S.C. § 265, covered aliens would be subject to immigration processing at the land POEs and Border Patrol stations, and during that processing many of them (typically aliens who lack valid travel documents and are therefore inadmissible) would be held in the common areas of the facilities, in close proximity to one another, for hours or days; and
- Such introduction into congregate settings of persons from Canada or Mexico would increase the already serious danger to the public health to the point of

requiring a temporary suspension of the introduction of covered aliens into the United States.

COVID-19 has continued to spread since the March 20, 2020 Order. Canada and Mexico continue to see increasing numbers of COVID-19 infections and deaths. In addition, the United States has seen many states experience exponential growth in the number of confirmed COVID-19 cases, which has strained the healthcare system and prompted dramatic public health responses at the local, state, and Federal levels. Millions of Americans are now complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread of, and protect others from, COVID-19. At the Federal level, the U.S. Departments of Health and Human Services (HHS) and Homeland Security (DHS) are working with public and private stakeholders to rapidly procure, distribute, and increase the supply of scarce medical and healthcare resources such as personal protective equipment (PPE), ventilators, and therapeutics for the American public. The entire country has mobilized to save lives by limiting face-to-face contact and reserving medical and healthcare resources for those who need them most. At a time when these domestic efforts are

ongoing and effective, it would be counterproductive and dangerous to undermine those efforts by permitting the introduction of persons from outside the United States who pose a risk of transmission of COVID-19 within DHS facilities or the U.S. interior.

Further, the determinations made in support of the March 20, 2020 Order remain correct. If anything, they have become more compelling. I therefore conclude that the March 20, 2020 Order should remain in effect until 11:59 p.m. EDT on May 20.

COVID-19 is Continuing to Spread in Canada, Mexico, and the United States

Since the March 20, 2020 Order, the number of COVID-19 cases globally, including in Canada, Mexico, and the United States, has continued to increase.

Canada

As of April 13, 2020, Canada has reported 24,804 confirmed cases of COVID-19, and a total of 734 deaths.

Canada has tested 422,200 people for COVID-19.² The Public Health Agency of Canada estimates that 72% of infections are the result of community transmission. Canadian modeling indicates that, with the use of strong epidemic controls resulting in a 2.5% infection rate, Canada could see 940,000 people with infections, 73,000 hospitalizations, and 23,000 people requiring intensive care over the course of the COVID-19 pandemic.³

Canada has implemented and maintained robust public health measures to slow the spread of COVID-19, including closures of public schools and cancelation of public events.⁴ Non-essential businesses have been closed across the country.

Mexico

² Government of Canada, Coronavirus disease (COVID-19): Outbreak Update (Apr. 13, 2020), <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink#a2>.

³ Public Health Agency of Canada, COVID-19 in Canada: Using Data and Modeling to Inform Public Health Action (Apr. 9, 2020), available at <https://www.canada.ca/content/dam/phac-aspc/documents/services/diseases/2019-novel-coronavirus-infection/using-data-modelling-inform-eng.pdf>.

⁴ See generally Kristin Rushowy, The Star, Ontario Schools Will Remain Closed Until at Least May 4. But Kids Can Expect Marks (Mar. 31, 2020), <https://www.thestar.com/politics/provincial/2020/03/31/ontario-schools-wont-open-until-at-least-may.html>; Ryan Rocca, Global News, Coronavirus: City of Toronto Cancels Events Through June 30, including Pride Parade (updated Apr. 1, 2020), <https://globalnews.ca/news/6758350/coronavirus-toronto-cancels-events-pride-parade/>.

As of April 12, 2020, Mexico has reported 3,844 confirmed cases of COVID-19 and 233 deaths.⁵ Nevertheless, based on public health surveillance, Mexico estimates that its current case count is 26,519. Mexico's modeling, based on World Health Organization (WHO) reporting from China, assumes a 0.2% infection rate with 250,656 infected people during the acceleration phase of the pandemic.⁶ Of those people, 70% (175,459) are anticipated to seek medical care.⁷ Among people seeking medical care, it is projected that 80% (140,367) will be ambulatory patients, 14% (25,564) will need to be hospitalized without intensive care, and 6% (10,528) will require intensive care.⁸

On March 30, 2020, Mexico's General Health Council declared a "State of Health Emergency" and suspended all non-essential activities in the public and private sectors

⁵ World Health Organization, Coronavirus Disease 2019 (COVID-19) Situation Report – 83 (Apr. 12, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200412-sitrep-83-covid-19.pdf?sfvrsn=697ce98d_4.

⁶ Secretaria De Salud, COVID-19: Comunicado Tecnico Diario (Mar. 17, 2020), available at https://www.gob.mx/cms/uploads/attachment/file/541879/COVID-19_-_Presentacion_Comunicado_Tecnico_Diario_2020.03.17.pdf.pdf.

⁷ *Id.*

⁸ *Id.*

until April 30, 2020.⁹ The order granted full authority to the Secretariat of Health to take action to address the pandemic across Mexico. The central guidance of the Mexican health authorities is to maximize social distancing and that people should only leave their homes for essential activities, such as to procure food or medical care.¹⁰ State and local authorities in several Mexican states also are enforcing non-essential business closures and self-quarantine measures.

United States

As of April 13, 2020, the United States has reported 554,849 confirmed cases of COVID-19 across the United States and 21,942 deaths.¹¹ Community transmission of COVID-19 is occurring in many locations across the United States. Several cities and states have experienced widespread, sustained community transmission to the extent that their healthcare and public health systems are at risk

⁹ U.S. Department of State, U.S. Embassy and Consulates in Mexico, Health Alert – Mexico COVID-19 Update (Apr. 10, 2020), <https://mx.usembassy.gov/health-alert-mexico-covid-19-update-04-10-2020/>.

¹⁰ *Id.*

¹¹ CDC, Cases in U.S. (updated Apr. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

of being overwhelmed. This includes parts of states and territories at or near borders of the United States which are reporting large increases in new COVID-19 cases since the March 20, 2020 Order.¹²

In addition to practicing rigorous hygiene and social distancing and limiting non-essential travel,¹³ CDC's guidance to the general public has expanded to include the recommendation that individuals wear face coverings when out in public.¹⁴ CDC expects widespread transmission of COVID-19 in the United States will occur and, in the coming months, most of the U.S. will be exposed to COVID-19.¹⁵ Nevertheless, not all areas of the United States are currently experiencing high rates of infection or numbers of confirmed cases. Generally speaking, COVID-19 is currently concentrated along the East, West, and Gulf

¹² The New York Times, Coronavirus in the U.S.: Latest Map and Case Count (Apr. 13, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states>; *see also* CDC, Coronavirus Disease 2019 (COVID-19): Cases in U.S.: States Reporting Cases of COVID-19 to CDC (Apr. 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#cumulative>.

¹³ CDC, COVID-19: How to Protect Yourself and Others (last reviewed Apr. 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹⁴ CDC, COVID-19: How to Wear a Cloth Face Covering (last reviewed Apr. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

¹⁵ CDC, Testing for COVID-19 (Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html>.

Coasts and in the Great Lakes region; there are significantly fewer cases in the interior of the United States.¹⁶ Limiting the spread of COVID-19 in these less affected areas is a critical component of the overall U.S. strategy to “flatten the curve,” which requires limiting the number of foci, or infected individuals, who may enter these areas.

Joint Efforts

On March 20, 2020, the United States and Canada jointly decided to restrict all non-essential travel across the U.S.-Canadian border for 30 days, with limited exceptions for U.S. citizens and others entering Canada for essential business, provided these individuals have not been outside Canada or the United States in the 14 days prior to requesting entry into Canada. Foreign nationals, excluding those arriving from the U.S., will not be allowed into Canada, subject to certain exceptions.¹⁷ The Canadian government is requiring individuals returning home to

¹⁶ See Johns Hopkins University, COVID-19 United States Cases by County, <https://coronavirus.jhu.edu/us-map>.

¹⁷ See Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada, 85 Fed. Reg. 16548 (Mar. 24, 2020).

Canada to self-isolate for 14 days upon their return.¹⁸ Individuals exhibiting symptoms of COVID-19 are not permitted to enter Canada, except for Canadian citizens or permanent residents.¹⁹

Similarly, on March 20, 2020, the United States and Mexico announced a joint initiative temporarily restricting all non-essential travel across their border in an effort to combat the spread of COVID-19.²⁰

Availability of Rapid COVID-19 Testing

Since the March 20, 2020 Order, rapid testing for COVID-19 has been developed that can provide results in approximately 15 minutes and manufacturers are currently ramping up production and distribution of rapid COVID-19 testing.²¹ Although rapid COVID-19 testing could ameliorate

¹⁸ Government of Canada, Coronavirus disease (COVID-19): Canada's Response, <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/canadas-reponse.html?topic=tilelink>

¹⁹ *Id.*

²⁰ U.S. Department of Homeland Security, Joint Statement on U.S.-Mexico Joint Initiative to Combat the COVID-19 Pandemic (Mar. 20, 2020), available at <https://www.dhs.gov/news/2020/03/20/joint-statement-us-mexico-joint-initiative-combat-covid-19-pandemic>.

²¹ For instance, on March 27, 2020, Abbott received emergency use authorization from the U.S. Food and Drug Administration ("FDA") for the fastest available point-of-care test for COVID-19.

some of the public health concerns associated with congregate detention in DHS border facilities, rapid COVID-19 testing is not yet widely available, and demand outstrips supply. Moreover, once it is available, rapid COVID-19 testing should be prioritized to certain key locations, such as hospitals treating high numbers of COVID-19 patients, where the ability to quickly determine whether doctors and nurses have been infected with COVID-19 could increase the availability of care providers by eliminating the need for these individuals to self-isolate while awaiting test results.

Determination and Implementation

Abbott, “Detect COVID-19 in as Little as 5 Minutes” (Mar. 27, 2020), <https://www.abbott.com/corpnewsroom/product-and-innovation/detect-covid-19-in-as-little-as-5-minutes.html>; *see generally* U.S. Food and Drug Administration, Emergency Use Authorizations, <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations#covid19ivd>. Rapid COVID-19 testing will significantly reduce the time needed to confirm a suspected diagnosis of COVID-19, which currently may take as long as three to four days. *See* CDC, Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists (Mar. 20, 2020), available at https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf; *see also* CDC, Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Persons for Coronavirus Disease 2019 (COVID-19) (updated Apr. 8, 2020), <https://www.cdc.gov/coronavirus/2019-nCoV/lab/guidelines-clinical-specimens.html>. When a case of COVID-19 is suspected, the sooner that confirmatory test results are available, the more quickly treatment and isolation and quarantine measures can be implemented, lowering the risk of infecting others. *See* CDC, Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19) (updated Mar. 24, 2020), <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>.

Based on the foregoing, I find that the global presence of COVID-19, including in Canada, Mexico, still presents a danger of further introduction of COVID-19 into the United States. This is true notwithstanding the community transmission of COVID-19 in many locations across the United States. There are many locations in the United States near our borders with Canada and Mexico that have not yet experienced widespread community transmission. The on-going COVID-19 pandemic, including in Canada and Mexico, remains a serious danger to such locations.

In the March 20, 2020 Order, I found the risks troubling partly because outbreaks of COVID-19 in POEs or Border Patrol stations would lead U.S. Customs and Border Protection to transfer persons with acute presentations of illness to local or regional healthcare providers for treatment, which would exhaust the local or regional healthcare resources or at least reduce the availability of such resources to the domestic population, and further expose local or regional healthcare workers to COVID-19. Millions of Americans are complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread, protect others, and relieve the strain on the healthcare

system. Their efforts would be significantly undermined if outbreaks of COVID-19 in land POEs or Border Patrol stations crippled the DHS workforce and local or regional healthcare systems.

I consulted with DHS before issuing this Order and requested that DHS continue to implement the March 20, 2020 Order because CDC does not have the capability, resources, or personnel needed to alternatively issue quarantine or isolation orders.²²

The March 20, 2020 Order shall remain in effect until 11:59 p.m. EDT on May 20, or until I determine that the danger of further introduction of COVID-19 into the United States has ceased to be a serious danger to the public health, whichever is sooner. I may further amend or extend the March 20, 2020 Order as needed to protect the public health.

²² As previously discussed in the March 20, 2020 Order, CDC relies on the Department of Defense, other federal agencies, and state and local governments to provide both logistical support and facilities for federal quarantines. *See* 42 U.S.C. § 268(b) (requiring customs officers to aid in the enforcement of quarantine regulations). CDC lacks the resources, staffing, and facilities to quarantine covered aliens. Similarly, DHS has informed CDC that in the near term, it is not financially or logistically practicable for DHS to build additional facilities at POEs and Border Patrol stations for purposes of quarantine or isolation.

This Order is not a rule subject to notice and comment under the Administrative Procedure Act (APA). In the event this order qualifies as a rule subject to notice and comment, a delay in effective date are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this order and a delay in effective date.²³ Given the public health emergency caused by COVID-19, it would be impracticable and contrary to the public health—and, by extension, the public interest—to delay the issuing and effective date of this order. In addition, because this order concerns ongoing discussions with Canada and Mexico on how to best control COVID-19 transmission over our shared borders, it directly “involve[s] . . . a . . . foreign affairs function of the United States.” 5 U.S.C. 553(a)(1). Notice and comment and a delay in effective date would not be required for that reason as well.

The March 20, 2020 Order shall remain in effect until 11:59 p.m. EDT on May 20, 2020.

Authority

²³ See 5 U.S.C. 553(b)(B) and (d)(3).

The authority for these orders is Sections 362 and 365 of the Public Health Service Act (42 USC 265, 268) and 42 CFR 71.40.

Dated: April 19, 2020.

Robert K. McGowan

Chief of Staff,

Centers for Disease Control and Prevention

[FR Doc. 2020-08605 Filed: 4/20/2020 9:00 am; Publication Date: 4/22/2020]

**CBP COVID-19 Response: Suspension of Entries and Imports
Concept of Operations
March 20, 2020**

INTRODUCTION

U.S. Customs and Border Protection (CBP) is supporting the U.S. Government's response to SARS-CoV-2 and the disease it causes, named "coronavirus disease 2019" (abbreviated "COVID-19"), which has since spread to 118 countries and regions worldwide. The Director of the Centers for Disease Control and Prevention (CDC) has determined to use his authority under Section 362 of the Public Health Service Act, 42 U.S.C. § 265, to prohibit the introduction of certain persons into the United States who, due to the existence of COVID-19 in countries or places from which persons are traveling, create an increase in the serious danger of the introduction of such disease into the United States. The CDC Director has further asked, in CDC's *Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists* (March 20, 2020), scheduled to be published in the Federal Register on March 24, 2020 (the CDC Order), that CBP aid in the enforcement of this order, pursuant to 42 U.S.C. § 268(b).

SCOPE

The CDC order applies to all persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land port of entry (POE) or Border Patrol station at or near the United States border with Canada or Mexico, subject to exceptions detailed in the order. The order does not apply to U.S. citizens and lawful permanent residents, members of the armed forces of the United States and associated personnel (including their spouses and children), persons from foreign countries who hold valid travel documents and arrive at a POE, or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE. Additionally, the order does not apply to persons who customs officers of DHS determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests. DHS will consult with CDC concerning how these types of case-by-case, individualized exceptions will be made to help ensure consistency with current CDC guidance and public health assessments.

Implementation of the CDC order requires expeditious expulsion of persons subject to the order, which means the return of all such aliens to the country from which they came, or their country of origin, or another country as practicable, as rapidly as possible, with as little time spent in Border Patrol stations, POEs, and other congregate settings as practicable under the circumstances.

The CDC order applies for 30 days and may be extended by the CDC director in the interest of the public health. The CDC order does not apply to lawful permanent residents of the United States and aliens with valid visas or travel documents who are not otherwise subject to COVID-19 proclamations.

In assisting CDC with implementing the order, CBP is operating pursuant to 42 U.S.C. § 268(b), aiding CDC in the enforcement of its authority pursuant to 42 U.S.C. § 265, 42 C.F.R. § 71.40, and the Interim Final Rule *Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes*, scheduled to be published in the Federal Register on March 24, 2020. In connection with expelling an alien in the course of enforcing the CDC order, CBP is not operating according to the authorities and procedures ordinarily applicable under Titles 8 or 19. However, CBP officers and agents may rely on their training and experience in detecting, apprehending and determining whether persons are subject to the CDC order, including but not limited to the following considerations: physical observation, use of sensors and technology, physical indicators and tracking techniques, information from third-parties, and deductive techniques.

IMPLEMENTATION

The following outlines CBP's anticipated execution of the CDC Order. The proposal distinguishes between encounters made at ports of entry by Office of Field Operations (OFO) and those made between POEs by the United States Border Patrol (USBP), includes different courses of action based on unknown factors, and notes inter-agency requirements to execute the implementation. CBP may revise this implementation plan from time to time, in consultation with CDC, to ensure that the CDC Order is being effectively implemented.

Determining whether a person is subject to the CDC order

- The CDC order applies to all aliens seeking to enter the United States, on or after the date of the order, without proper travel documents or otherwise subject to travel restrictions at land POEs, or between the POEs, coming from or transiting through Canada or Mexico (regardless of their country of origin), who are encountered at or approaching a POE or near the border in the area of operation of a Border Patrol station operated by CBP. For the purposes of the CDC order, Border Patrol shall apply this to any alien subject to the order who is apprehended within its normal area of operations along or adjacent to the border in each Border Patrol sector.
 - Based on training, experience, physical observation, technology, questioning and other considerations, if a CBP officer or agent believes that it is more likely than not that a person is an alien seeking to enter the United States without a proper visa or travel document, is otherwise subject to travel restrictions, or is seeking to enter or has entered between POEs, coming from or transiting through Canada or Mexico (regardless of their country of origin), and if such an alien was encountered near the border within the area of operation of a Border Patrol station or at a land POE operated by CBP, the CBP officer or agent shall apply the CDC order to the alien in accordance with the procedures below.
- Exceptions:
 - The CDC order does not apply to individual aliens who a CBP officer or Border Patrol agent determines, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, or public health interests. If

this exception is applied, then CBP will process the person in accordance with ordinary procedures but with sufficient safeguards for personnel.

- Aliens who affirmatively and plausibly claim a reasonable fear of torture in the country to which they will be sent will be segregated and referred to U.S. Citizenship and Immigration Services for assessment.
- DHS shall consult with CDC staff concerning how these exceptions will be applied.

Implementation Between Ports of Entry

Processing

- Once CBP determines an alien is subject to the CDC Order, agents in the field, to the extent practical, will manually capture a subject's biographical information on Search Only enrollments and archive that data in the appropriate CBP database for future recall/inquiries.
- To the extent practical, CBP will leverage mobile biometric devices while performing immigration and criminal history checks in real-time prior to making a field disposition for officer safety reasons.

Temporary Holding

- Current CBP facilities are not able to provide isolation or quarantine requirements that would prevent the transfer of COVID-19 and protect the U.S. public.
- In spite of CBP facilities not being able to provide isolation or quarantine requirements, CBP will separate and isolate to the greatest extent possible, if temporary holding is required prior to expulsion.
- CBP will leverage existing medical contracts for health interview purposes, upon consultation with CDC and contract medical experts. Migrants exhibiting signs of overt illness will be referred to a local medical facility for appropriate treatment.
- CBP will follow existing protocols and coordinate with CDC to have personnel or officers of the United States Public Health Service onsite or available telephonically to answer questions and provide information.

Transportation

- Aliens covered by the order who are amenable to immediate expulsion to Mexico or Canada will be transported to the nearest POE and immediately returned to Mexico or Canada.
- Aliens covered by the order who are not amenable to immediate expulsion to Mexico or Canada will be transferred to available temporary processing locations at or near flight locations to be returned to their country of citizenship.
- CBP will have dedicated transportation vehicles with separation between agents and subjects encountered to minimize employee exposure to subjects with potential COVID-19 infection.

Expulsions

- CBP relies on interagency partners, as defined in the COAs below, to effect expulsions under HHS authorities.

- Key to preserving the objective of protecting public health and limiting individual exposure is the need to effect immediate expulsions. The implementation plan accounts for uncertain cooperation from neighboring countries to accept returns of aliens and the additional resources and interagency coordination required to execute.
- Within the proposal are two primary courses of action (COAs) to return aliens to their country of citizenship in an expedited manner to decrease the risk of COVID-19 transmission to the public, workforce, or other individuals detained under DHS or HHS authorities.
- Under both COA 1 and 2, DHS and Department of State would need to negotiate terms of returns with Mexico and Canada, and possibly other migrant source countries.

Implementation at Ports of Entry

In General

- POEs will, consistent with applicable restrictions, continue to accept aliens with proper travel documents and otherwise admissible for cross border traffic and trade/travel.
- Aliens covered by the order who are amenable to immediate expulsion to Mexico or Canada will be immediately returned to Mexico or Canada.
- Aliens covered by the order who are not amenable to immediate expulsion to Mexico or Canada will be transferred to ICE/ERO. ICE/ERO will take custody of any alien and follow established procedures with assistance from Department of State to negotiate returns to include waived manifest and travel documents requirements.
- Officers at POEs will utilize appropriate force protection and minimize potential exposure during operations involving national interest trade/travel.
- At ports that currently utilize queue management, CBP will suspend or reduce routine queue management procedures at the limit line for those who appear to lack proper travel documents, given the CDC order, as well as those subject to Presidential Proclamations pursuant to INA 212(f). CBP will also significantly curtail non-criminal enforcement activities due to the risks to individuals in custody associated with the spread of COVID-19.
- CBP will follow existing protocols and coordinate with CDC to have personnel or officers of the United States Public Health Service onsite or available telephonically to answer questions and provide information.
- CBP personnel will actively deter and prevent, as authorized under the use of force policy or temporary amendment of the use of force policy, the illegal entry of any subject into the United States.

Southern Border Ports of Entry

- CBP personnel working at southern border ports of entry will take the following actions:
 - Coordinate with the Government of Mexico to control flow of travelers approaching U.S. border and streamline the return of aliens.
 - Lift restrictions to current repatriation agreements to allow for 24/7 return of aliens.
 - Suspend or reduce routine queue management procedures at the limit line for those who appear to lack proper travel documents, as well as those subject to Presidential Proclamations pursuant to INA 212(f).

- Screen individuals at pre-primary when operationally feasible.
- Permit entry into POEs by travelers who appear to have proper travel documents and who are not otherwise subject to travel restrictions.
- Limit the number of open vehicle primary lanes, as appropriate, to maintain operational control of all travelers seeking entry to the United States.
- CBP officers will actively deter and prevent, as authorized under the use of force policy or temporary amendment of the use of force policy, the illegal entry of any subject into the United States.
 - CBP will utilize appropriate force protection and minimize potential exposure during operations involving national interest trade/travel.
- Leverage health interview procedures for CBP apprehensions to expedite repatriation of aliens subject to the CDC Order.
- With regard to aliens governed by the CDC order who enter a POE notwithstanding the above security measures, such as bypassing pedestrian lanes and entering the United States in a vehicle, the CDC order expulsion procedures apply consistent with guidance.
- If an alien enrolled in MPP has a case reset by EOIR, the alien appearing at the POE for their scheduled hearing will be provided an updated Notice of Hearing and a tear sheet with instructions detailing the date and time to appear for their new hearing. ICE will furnish these updated notices to OFO for delivery to the aliens at the port, and with respect to aliens who do not appear, OFO will annotate the notice to indicate that the alien did not appear, and sign and return each of those notices to ICE for next steps in immigration court.

Northern Border Ports of Entry

- CBP personnel working at Northern border ports of entry will take the following actions:
 - Coordinate with Government of Canada to control flow of travelers approaching U.S. border and streamline the return of aliens to Canada.
 - Lift restrictions to current repatriation agreements to allow for 24/7 return of aliens.
 - Screen individuals at pre-primary when operationally feasible.
 - Permit entry into POEs by travelers who appear to have proper travel documents and who are not otherwise subject to travel restrictions.
 - Limit the number of open vehicle primary lanes, as needed to maintain operational control of all travelers seeking entry to the United States
 - CBP Directors of Field Operations (DFOs) reserve the right, based on local operational constraints, to limit the flow of traffic via queue management, in accordance with existing CBP guidance and as explained above.
 - May close or further limit hours at Class B locations (i.e. Nighthawk and Ferry Washington)
 - CBP officers will actively deter and prevent, as authorized under the use of force policy or temporary amendment of the use of force policy, the illegal entry of any subject into the United States.
 - CBP will utilize appropriate force protection and minimize potential exposure during operations involving national interest trade/travel.

- Leverage health interview procedures for CBP apprehensions to expedite repatriation of aliens subject to the CDC Order.
- With regard to aliens governed by CDC order who enter a POE notwithstanding the above security measures, such as bypassing pedestrian lanes and entering the United States in a vehicle, the CDC order expulsion procedures apply consistent with guidance.

(b) (5)

[REDACTED]

(b) (5)

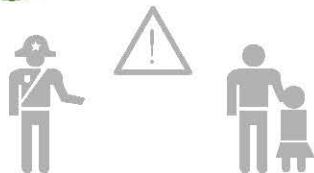
[REDACTED]

(b) (5)



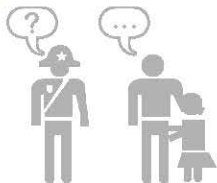


1 Encounter



- Use Proper Personal Protective Equipment (PPE)
- Detain subjects at initial encounter location
- Perform officer safety search
- Minimize contact/exposure as much as possible
- Keep subjects out of units not designated for COVID transport
- If necessary, distribute PPE to subjects
- Notify dispatch:
 - Location
 - Number of subjects in group
 - Obtain TSM number

2 Field Interview



- Complete Field Intake Form (FIF) / Record TSM number on the form
- Do not inventory subject's property
 - Utilize third party towing for suspected load vehicles, if applicable

3 Biometrics



- Follow sector guidelines to collect biometrics
- Complete "Search Only" query in e3 biometric
- Confirm amenability for expulsion under Title 42
- Aliens that make an affirmative, spontaneous and reasonably believable claim that they fear being tortured in the country to which they are being expelled will be referred to USCIS (*see CAT guidance*)
- If subjects not amenable under Title 42, agents will enforce their authorities under Title 8 and process according to local protocols

4 Transfer Subjects Utilizing Sector Protocol



- Only designated transport units will be used for transportation
- Ensure transport units are equipped with appropriate PPE and water
- Transfer Title 42 amenable subjects to nearest POE (notify dispatch of number of subjects expelled)
- Transfer other subjects to designated location according to per sector protocol (Notify dispatch)
- Sanitize all vehicles according to sector protocol

5 Document Encounter via I-44



- Associate TSM event with an event number
- Complete I-44 utilizing FIF
- Discard FIF once all data is recorded in e3

Convention Against Torture Claim (CAT) Guidance

Agents should seek supervisory guidance

- Notify USCIS
 - USCIS determines positive, converted to Title 8, turn over to ERO and entered into 240 proceedings for Asylum hearing based on Torture
 - Interview by Asylum Officer while in our custody
 - Secondary review Supervisory Asylum Officer
 - USCIS determines negative, continue under Title 42, expel to Mexico or Other

Field Guidance 42 U.S.C 265

Encounter

- Use Proper Personal Protective Equipment (PPE)
- Detain subjects at initial encounter location
- Perform officer safety search
- Minimize contact/exposure as much as possible
- Keep subjects out of units not designated for COVID transport
- If necessary, distribute PPE to subjects
- Notify dispatch: (Location/Number of subjects in group/Obtain TSM number)

Field Interview

- Complete Field Intake Form (FIF) / Record TSM number on the form
- Do not inventory subject's property
 - Use 3rd party towing for suspected load vehicles, if applicable

Biometrics

- Follow sector guidelines to collect biometrics
- Complete "Search Only" query in e3 biometric
- Confirm amenability for expulsion under Title 42
- Aliens that make an affirmative, spontaneous and reasonably believable claim that they fear being tortured in the country to which they are being expelled will be referred to USCIS (**see CAT guidance**)
- If subjects not amenable under Title 42, agents will exercise discretion and enforce their authorities under Title 8 and process according to local protocols and guidelines

Transfer Subjects Utilizing Sector Protocol

- Only designated transport units will be used for transportation
- Ensure transport units are equipped with appropriate PPE and water
- Transfer Title 42 amenable subjects to nearest POE (notify dispatch of number of subjects expelled)
- Transfer other subjects to designated location per sector protocol (Notify dispatch)
- Sanitize all vehicles according to sector protocol

Complete I-44

- Associate TSM event with an event number
- Complete I-44 utilizing FIF
- Discard FIF once all data is recorder in e3

See Convention Against Torture Claim
(CAT) Guidance on back



U.S. Customs and
Border Protection

U.S. Border Patrol

Convention Against Torture Claim (CAT) Guidance

Agents should seek supervisory guidance

- Notify USCIS with basic biographical information (e.g., I-213)
- USCIS determines positive, converted to Title 8, turn over to ERO and entered into 240 proceedings for Asylum hearing based on Torture
 - Interview by Asylum Officer while in our custody
 - Secondary review Supervisory Asylum Officer
- USCIS determines negative, continue under Title 42, expel to Mexico or Other



U.S. Customs and
Border Protection

U.S. Border Patrol

From: (b) (6), (b) (7)(C)
To: (b) (6), (b) (7)(C)
Subject: FW: Title 42 Definitions and Evidence of Trafficking
Date: Tuesday, May 5, 2020 11:52:30 AM
Attachments: CAPIO Family Info V2.pptx

Previous guidance.

Respectfully,

(b) (6), (b) (7)(C) | Assistant Chief | U.S. Border Patrol Headquarters | Cell: (b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Wednesday, April 1, 2020 5:24 PM
To: (b) (7)(E) @cbp.dhs.gov; (b) (7)(E) @cbp.dhs.gov; (b) (7)(E) @cbp.dhs.gov
Cc: (b) (7)(E) @cbp.dhs.gov; (b) (6), (b) (7)(C) @cbp.dhs.gov
Subject: Title 42 Definitions and Evidence of Trafficking

Corridors,

Please forward to your sector POCs.

Updated Title 42 Definitions

Processing guidance for Title 42 encounters and expulsions is being slightly modified in order to better capture reporting requirements. However, it is important to first reiterate and update the definitions that we are currently using under Title 42. Most of these definitions are very similar to what we have been using previous to Operation Capio.

- **Family Unit** – A group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s)
- **Family Group** – Related detainees (e.g., brother and sister, aunt and nephew) that need to travel together who are non-U.S. citizens and do not meet the definition of a Family Unit
- **Single Minor** – An alien who is 17 years of age or younger and who is **not traveling with a related adult**

Using these definitions, aliens processed under Title 42 should be linked together in e3 consistent with standard protocol. As an example, a mother and daughter should be linked in e3 as a **Family Unit**. An uncle and nephew should be linked in e3 as a Family Group. A Single minor that is encountered and is not traveling with any relative should be processed accordingly. Under Title 42, an e3 Family Group that includes at least one adult relative and minor child(ren) should be treated as if the adult is the guardian of the child(ren). Additionally, two single minors that are related and travelling together need to be linked in e3 as a Family Group.

Attached is a short presentation that field agents can use for guidance.

Evidence of Trafficking

Under Title 42, USBP is applying a specific authority to expel people from the country as outlined in the CDC order. As a reminder, the threat of trafficking in persons remains a very real concern. As law enforcement officers, agents should remain vigilant for evidence that would suggest that an alien that is encountered and subject to expulsion is being trafficked. Instances where human trafficking is suspected should be processed consistent with USBP policy and referred to Homeland Security Investigations for further investigation.

Questions may be referred to the (b) (7)(E) @cbp.dhs.gov mailbox

(b) (6), (b) (7)(C)

Assistant Chief

U.S. Border Patrol

(b) (6), (b) (7)(C)

@cbp.dhs.gov

From: (b) (6), (b) (7)(C)
To: (b) (7)(E)
Cc: (b) (7)(E)
Subject: Guatemala Age Restriction Lifted for T-42
Date: Tuesday, March 31, 2020 2:14:05 PM

Corridors,

Please relay the following to your sector POCs.

Beginning immediately, the Guatemalan government has agreed to accept single minors younger than 14 for expulsion flights under Title 42. Guatemala will consider each request independently and the alien has to be of an age where they are self-sufficient and do not require a chaperone or any special accommodations. Sectors should continue to refer and manifest in accordance with current procedures to USBP's ICE Air Liaison for expulsion flights under Title 42. Manifests should be routed to the (b) (6), (b) (7)(C) @cbp.dhs.gov mailbox.

Separately, in preparation for Easter week, El Salvador has cancelled all flights for the week of April 6 through April 10 and the next scheduled flight is April 14. Guatemala and El Salvador have cancelled flights scheduled for April 9-10.

(b) (6), (b) (7)(C)
Assistant Chief
U.S. Border Patrol
(b) (6), (b) (7)(C)
@cbp.dhs.gov

Operation Capio:

COVID-19 Field Processing / Documentation Guidance



e3 Mobile Workflow

(b) (7)(E)

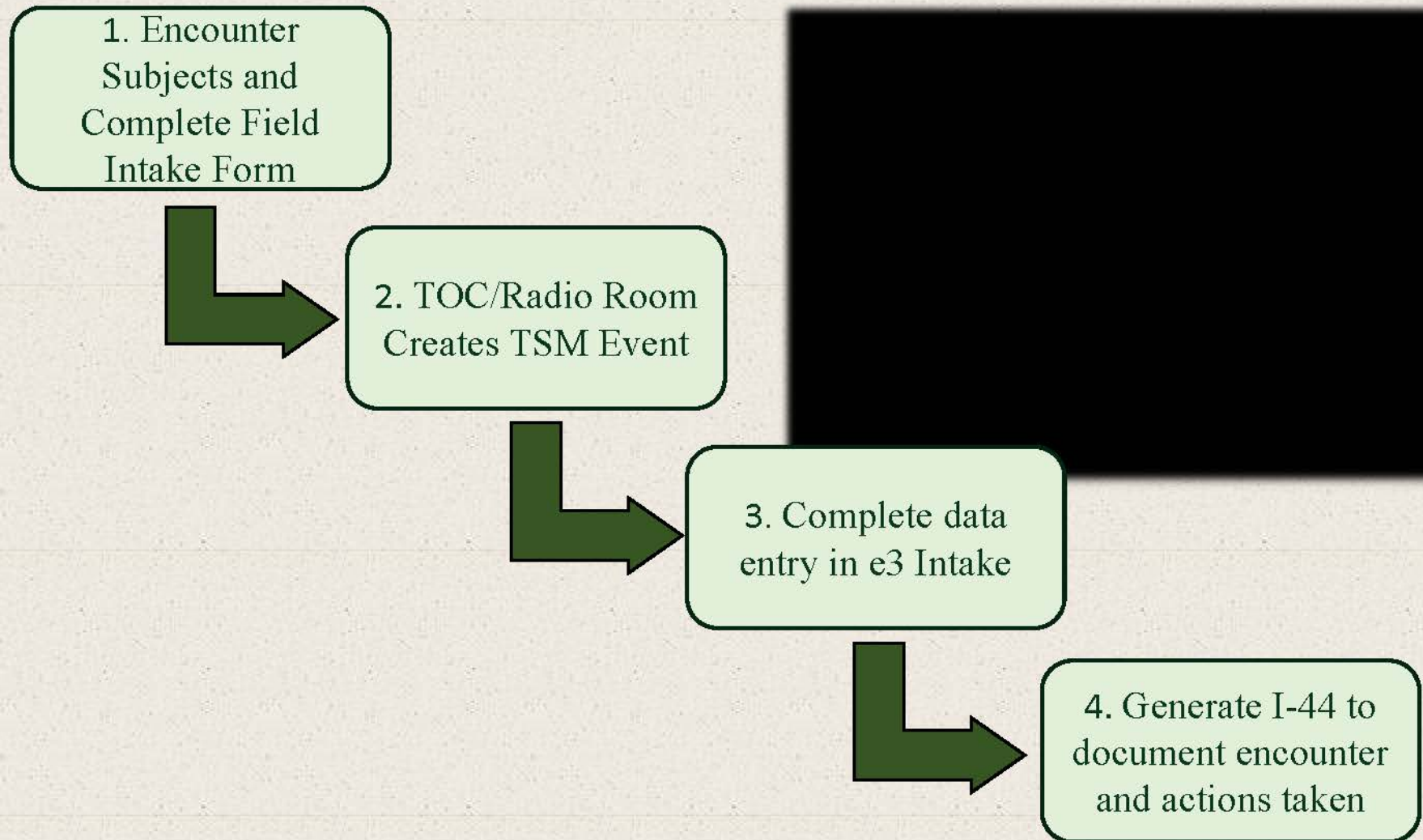
Only

Search

(b) (7)(E)

(b) (7)(E)

Field Processing and Removal Workflow



TSM Data Entry



(b) (7) (E)

Non Deportable/Not in Custody, Expelled

(b) (7)(E)

Non Deportable/In Custody

(b) (7)(E), (b) (6), (b) (7)(C)

Non Deportable/In Custody

(b) (7)(E)