



# Communications Plan

## **Implementation of Title 42 USC 265 at the Northern and Southern Land Borders**

*Updated March 20, 2020*

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## **I. BACKGROUND**

U.S. Customs and Border Protection (CBP) is supporting the U.S. Government's response to an outbreak of respiratory disease caused by a novel (new) coronavirus that was first detected in Wuhan City, Hubei Province, China and which subsequently spread to more than 100 countries and regions worldwide. The virus has been named "SARS-CoV-2" and the disease it causes has been named "coronavirus disease 2019" (abbreviated "COVID-19").

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern" (PHEIC). On January 31, 2020, Health and Human Services (HHS) Secretary, Alex M. Azar II, declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to COVID-19. On the same day, the President issued a proclamation suspending the entry of individuals (with certain exceptions) who were physically present in China during the 14-day period preceding their attempted entry to the United States. DHS issued supplemental guidance with instructions on implementation. On February 29, the President issued a second proclamation that suspended the entry of individuals (with certain exceptions) who were physically present in Iran during the 14-day period preceding their attempted entry to the United States.

On March 11, the World Health Organization declared the outbreak of COVID-19 a pandemic. On the same day, the president issued a third proclamation to suspend the entry of individuals (with certain exceptions) who were physically present in the 26 countries that comprise Europe's Schengen Area during the 14-day period preceding their attempted entry into the United States.

As of March 13, the Centers for Disease Control and Prevention (CDC) reported that for the majority of Americans, the risk of being exposed to COVID-19 remains LOW. However, the individual risk of exposure can vary based on location, occupation, and personal contacts. CBP continues to monitor the situation closely as part of a whole-of-government approach to protecting our workforce and the American people. CBP will update this guidance as the situation evolves.

On March 18, 2020, the Government of Canada banned most foreign nationals entering Canada to prevent the spread of the novel coronavirus (COVID-19). This measure does not apply to U.S. citizens and lawful permanent residents, air crews, travelers arriving in Canada in transit to a third country, Canadian permanent residents, diplomats or immediate family members of Canadian citizens. The Canadian Government redirected certain international flights carrying travelers who are exempt from the new travel restrictions to four airports (Vancouver, Toronto-Pearson, Montréal-Pierre Elliott Trudeau, and Calgary).

On March 21, the President in accordance with Title 42 of the United States Code Section 265 determined that by reason of existence of COVID-19 in Mexico and Canada, there is a serious danger of the further introduction of COVID-19 into the United States and that prohibition on the introduction of persons or property, in whole or in part, from Mexico and Canada is required in the interest of public health.

Ports of entry (POEs) will permit entry of legitimate documented travelers not subject to previously announced travel restrictions and who present proper documentation for essential travel only and may limit the number of open vehicle primary lanes to maintain operational control of all travelers seeking entry to the United States. Restricted travelers will be expelled to last point of origin (Mexico or Canada) and CBP will suspend case processing of inadmissible individuals, to include those subject to 212(f) INA. CBP will significantly curtail non-criminal enforcement activities due to the risks to individuals in custody associated with the spread of COVID-19. CBP will continue to control the flow of travelers approaching the U.S. border and streamline the immediate expulsion of inadmissible individuals.

Between ports of entry, any subjects encountered by the U.S. Border Patrol who have made illegal entry from Mexico or Canada have potentially been exposed to COVID-19 during travel from their country of origin. CBP's U.S. Border Patrol (USBP), Office of Field Operations (OFO), Air & Marine Operations (AMO) will take immediate actions to prevent the spread of COVID-19 into United States, including employing active deterrence measures to prevent the unlawful entry of any person into the United States and rapidly preparing certain individuals for immediate expulsion without detention.

CBP employees can find additional health and safety information on the CBP COVID-19 Resource Portal and the DHS Employee Resources page.

CBP Facilities Management & Engineering's map of U.S. coronavirus cases is available [here](#).

The CDC's latest coronavirus situation summary is available [here](#).

## **II. OBJECTIVES**

- Enhance employee and public awareness and understanding of CBP's roles and responsibilities in response to the implementation of HHS authorities under 42 U.S.C. § 265 to suspend the entry of persons from designated places to prevent spread of COVID-19.
- Ensure that employees are aware of and have access to resources and information that they may need to ensure the legal application of the authority.
- Emphasize protective measures that CBP is taking to ensure the safety of its employees, their families, their communities and the United States.
- Clarify the measures CBP is responsible for versus the role of HHS, CDC, ICE and other partner agencies.

## **III. STRATEGY**

As the lead office for agency communications, the CBP Office of Public Affairs (OPA) will work closely with the operational components to coordinate all internal and external communications related to the suspension of entries from designated places to prevent the spread of communicable

diseases. OPA will also coordinate closely with the Office of Information and Technology (OIT) to ensure 24/7 communications capability.

OPA will maintain a proactive communications posture and leverage all available communications platforms to provide timely, accurate and consistent information to the CBP workforce and the American public.

## INTERNAL COMMUNICATIONS PLATFORMS

### ➤ **CBPNet**

- Action: Provide information and resources to the CBP workforce via the COVID-19 Resource Portal. The Portal will include:
  - Frequently asked questions, to include mechanisms for employees to ask questions and receive responses;
  - A Job Hazard Analysis;
  - Exposure Risk Decision Guidance; and
  - Links to situation reports; leadership messages; health and safety information for employees and their families; incident reporting information; and human resources info.
- Lead Office: OPA in coordination with the operational components (OFO, USBP, AMO and Office of Trade [OT])
- Target Audience: CBP Workforce
- Messaging Frequency: Daily

### ➤ **myCBP App**

- Action: Upload leadership messages, video shorts, graphics and news to the myCBP App. Utilize push notifications to alert CBP employees to urgent updates and information.
- Lead Office: OPA in coordination with the operational components (OFO, USBP, AMO and OT)
- Target Audience: CBP Workforce
- Frequency: OPA uploads new content to the myCBP App daily and will include information CBP efforts to suspend entries from designated places to prevent the spread of prevent the spread of COVID-19.

### ➤ **CBP Postmaster (Employee E-mail)**

- Action: Develop and disseminate e-mail updates from the Acting Commissioner, the Deputy Commissioner, the Executive Assistant Commissioners, and the Border Patrol Chief.
- Lead Office: OPA in coordination with the operational components (OFO, USBP, AMO and OT)
- Target Audience: CBP Workforce
- Frequency: Weekly or as needed

### ➤ **CBPNow**

- Action: Prepare and broadcast videos and 265 Information Display System (IDS) slides to explain CBP efforts to suspend entries from designated places to prevent the spread of prevent the spread of COVID-19.

- Lead Office: OPA in coordination with the operational components (OFO, USBP, AMO and OT)
- Target Audience: CBP Workforce
- Frequency: Daily or as needed
  
- **Muster Modules**
  - Action: Develop and disseminate muster modules to provide operational guidance.
  - Lead Office: OPA in coordination with the operational components (OFO, USBP, AMO and OT)
  - Target Audience: CBP Workforce
  - Frequency: As needed
  
- **ENS Regional Crisis Messaging**
  - Action: Prepare and disseminate regional emergent notifications to ensure situational awareness.
  - Lead Office: OPA in coordination with the operational components (OFO, USBP, AMO and OT)
  - Target Audience: CBP Workforce
  - Frequency: Daily or as needed

## EXTERNAL COMMUNICATIONS PLATFORMS

- **CBP.gov**
  - Action: Publish the latest information about invoking 42 U.S.C. § 265 to CBP.gov, including an updated banner and slideshow.
  - Lead: OPA
  - Target Audience: American Public, International Travelers, Industry Stakeholders
  - Frequency: Daily or as needed
  
- **Social Media**
  - Action: Publish the latest information about invoking 42 U.S.C. § 265 to Twitter (@CBP, @CBPMarkMorgan and the field and leadership accounts) and Facebook. Messaging will be in both English and Spanish. To ensure consistency of messaging, OPA will provide a toolkit to field leadership social media account managers.
  - Lead Office: OPA
  - Target Audience: American Public (Primary), International Travelers (Primary),
  - Frequency: As needed
  
- **Traditional Media**
  - Action: Provide timely and accurate information about CBP efforts to prevent the spread of COVID-19 to television, radio, print, and web media outlets through the enforcement of 42 U.S.C. § 265. Information will be provided via OPA response to media inquiries or, when appropriate, through Commissioner, Deputy Commissioner, or Senior Medical Advisor media engagement.
  - Lead Office: OPA in coordination with the operational components (OFO, USBP, AMO and OT)

- Target Audience: American Public, International Travelers
- Frequency: Daily. Specific actions will be taken based on immediate agency needs and external requests for information.

## IV. INTERNAL COMMUNICATIONS

### GUIDANCE

During an emergency situation or pandemic impacting CBP operations, affected employees, the public and the news media will depend on both the CBP internal and public communications platforms for official and timely information. OPA will coordinate with OIT to ensure 24/7 internal communications capability.

There are several key elements that must be followed to ensure consistency and relevance of messaging.

#### *Internal Message Coordination*

To ensure the appropriate level of coordination and to ensure consistent, credible, comprehensive and accurate messaging, both internal and external information must be coordinated within a single CBP source, specifically OPA.

OPA will coordinate closely with the operational components to manage a process to ensure that all non-operational communications from CBP offices are coordinated and approved by the components before dissemination through OPA internal communication channels.

#### *Incoming Message Request*

- If a CBP office has non-operational communications that need to be disseminated to the CBP workforce related to the implementation of Title 42 USC 265, the requesting office will send their EAC/AC approved message or information to OPA for initial review and approval ((b) (7)(E) ██████████@cbp.dhs.gov). OPA will advise the requestor that the request is moving forward to the components or to the Acting Commissioner, if needed. Messages will be distributed using:
  - Acting Commissioner messages, CBP Postmaster (all employees), Ronald Reagan Building-only messages, Component-only messages, supervisor/manager messages, CBP Central (weekly message to all employees).
  - As this is directly related to COVID-19, all postings on CBPnet will be housed on the CBP COVID-19 Resource Portal
    - Employee safety/protection information
    - Latest updates from DHS, CBP components, State Department, other federal partners
    - Frequently Asked Questions
  - CBPNow screens
  - myCBP App – encourage employees to download the app
  - Muster modules
  - Short, topic-specific videos

- ENS Regional Crisis Messaging – the CBP SITROOM will manage distribution of regional emergent notifications to employees but will coordinate through OPA to ensure overall awareness and the need to message to the full CBP workforce.

***EOC Determination – if communication is directly related to the COVID-19 outbreak***

- The EOC will provide OPA with the final approved message or information along with approval for distribution to either (1) the whole workforce; or (2) specific segments thereof.
- Based on that determination, OPA will either (1) ensure that the message or information is distributed through the appropriate internal communication channel; or (2) advise the requesting component to convey the message/information directly to its staff.
- The EOC or Public Affairs Assistant Commissioner/Deputy Assistant Commissioner will determine if further approvals are required by the Commissioner’s Office or DHS Public Affairs.
- OPA will advise all parties after the message or information is distributed.

***Internal and External Communication Spokespersons***

- OPA recommends that key leadership and subject matter specialists be identified as the primary spokespersons during the pandemic crisis. Clear internal communication channels must be used to ensure CBP employees are notified first of any emergent situation.

**V. EXTERNAL COMMUNICATIONS**

**PRESS GUIDANCE**

- Media inquiries for information regarding the policy implementation of 42 USC 265 will be directed to CBP OPA Headquarters for coordination - CBP Media Inquiry: [cbpmediarelations@cbp.dhs.gov](mailto:cbpmediarelations@cbp.dhs.gov).
- Media inquiries for information regarding the operational implementation (how the Sector or Field Office is executing on the ground) of 42 USC 265 may be answered in the field from the NSC Public Affairs Guidance in Annex 1. All responses must be coordinated with the CBP OPA Public Affairs Specialist (1035).
- Requests for interviews of CBP leadership in the field will be directed to the component’s Public Affairs Specialist (1035). Requests for interviews of CBP headquarters leadership will be directed to CBP OPA Headquarters for coordination - CBP Media Inquiry: [cbpmediarelations@cbp.dhs.gov](mailto:cbpmediarelations@cbp.dhs.gov).
- Requests for on-camera interviews and filming related to CBP efforts to suspend entries from designated places to prevent the spread of COVID-19 should be deferred to DHS at this time.
- Requests regarding enhanced health screening or quarantine measures should be directed to CDC.

- CBP OPA will reach out to various media outlets for interviews with leadership:
  - TV – Cable and network outlets
    - Fox News, CNN, ABC, NBC, CBS, CSPAN, OANN
    - To include Hispanic TV – Univision, Telemundo
  - Online Shows
    - i.e., Daily Caller, CNSNews.com, NewsmaxTV, LifezetteTV
  - Radio – Nationally syndicated and local radio shows
    - To include Hispanic radio shows with high audience reach
  - Print – National, Capitol Hill publications
    - To include Hispanic publications with high audience readership
  - Press conference calls with media
    - To include Hispanic, Mexican, Central & South American Press
  - Enlist third-party surrogates to help promote message with DOS assistance
    - To include US Ambassadors in Central & South American Countries

## KEY MESSAGES

- For external messaging guidance, see **Annex 1** for the National Security Council Public Affairs Guide.
  - *EXECUTIVE ACTION TO SLOW THE SPREAD OF THE COVID-19 VIRUS, KEEP HEALTH THREATS OUT OF THE COUNTRY, AND PROTECT AMERICANS WHILE ENSURING OUR BORDERS OPEN FOR BUSINESS*

## STATEMENTS

### ***Proposed Acting Commissioner Statement:***

*U.S. Customs and Border Protection (CBP) is steadfastly committed to protecting our national and economic security which COVID-19 is threatening. As a result, CBP is assisting HHS to implement its authorities along our southern and northern land borders to prohibit the entry of certain individuals who potentially pose a health risk, either by virtue of being subject to previously announced travel restrictions or because they unlawfully entered the country. CBP officers will continue to process legitimate cargo, as there has been no identified threat as it relates to cargo shipments. CBP will continue to coordinate with the Governments of Mexico and Canada to control the flow of travelers who approach the U.S. border and to streamline the expulsion of travelers deemed a health risk. This large-scale containment event is totally unprecedented. However, the health and safety of the American people is of paramount importance, and CBP's officers and agents remain vigilant in safeguarding our Nation against this threat.*

### ***EAC Owen Statement:***

*"Based on the President's determination, as part of CBP's continued effort to combat the spread of COVID-19 via travel across our borders, we are assisting HHS in implementing their authority in accordance with Title 42 of the United States Code 265 and existing Title 8 authority to prohibit the entry of certain persons into the United States. Effective March 21, all northern and southern border land POEs will prohibit entry to the United States for all individuals who are deemed to pose a health risk except U.S. citizens, lawful permanent residents and certain other travelers.*



*During this restriction, CBP will continue to facilitate legitimate trade and cargo while ensuring the safety of our employees and the American public.”*

**Chief Scott Statement**

*“The United States Border Patrol is doing our part to assist HHS to limit the further introduction of COVID-19 by expelling certain individuals who enter the United States illegally as quickly as possible. We will help mitigate the threat posed by COVID-19 while continuing our important border security operations.”*

**Trade Statement**

*CBP continues to process cargo, international mail and express consignment packages. The CDC has not identified any threat as it relates to these shipments. Currently all CBP ports of entry are following the same operational guidance as issued by recent Presidential Proclamations and the Department of Homeland Security.*

*At this point, given this an ongoing and rapidly changing situation, we do not have national metrics compiled to analyze volume changes related the current worldwide COVID-19 response. CBP will work to compile and release that data when it is available and as appropriate. We do know that COVID-19 has had an effect on imports into the United States -especially from China; total imports from China in February 2020 decreased 31% from February 2019 (from \$33.5 billion to \$23.2 billion). CBP is working to expand efforts to monitor broader affects to import trade activity as the COVID-19 has rapidly become a global pandemic issue.*

*CBP has issued guidance to all employees that outlines the current comprehensive use of Personal Protective Equipment including guidance regarding wearing masks in the appropriate circumstances (using a risk-based approach).*

**SOCIAL MEDIA**

**@CBP Tweet:**

*“In order to safeguard against COVID-19, effective March 21 at 12:00 am ET, foreign travel into the US will be prohibited & port ops will be intermittently suspended at all ports of entry as needed under the HHS authority of Title 42 USC 265. The travel restrictions do not apply to US citizens, LPRs & certain other travelers.”*

*“CBP is suspending all intake of inadmissible individuals at our land border ports of entry. CBP will continue to coordinate with the Governments of Mexico and Canada to control the flow of travelers who approach the U.S. border and to streamline the expulsion of inadmissible individuals.”*

**@CBPMarkMorgan Retweet with Comment of @CBP Tweet:**

*“.@CBP is steadfastly committed to protecting the country. This large-scale containment event is unprecedented. However, the health and safety of the American people is of paramount importance. CBP officers and agents remain vigilant in safeguarding our Nation against this threat.”*

**Chief Scott (@USBPChief)**

*“USBP continues to interdict migrants from all over the world. Many have traveled in crowded conditions through countries with active COVID-19 outbreaks or with little to no testing. @CBP is taking necessary precautions to protect the safety and security of the American people.”*

**GENERAL FAQ**

- For General FAQ guidance, see **Annex 1** for the National Security Council Public Affairs Guide.
  - *EXECUTIVE ACTION TO SLOW THE SPREAD OF THE COVID-19 VIRUS, KEEP HEALTH THREATS OUT OF THE COUNTRY, AND PROTECT AMERICANS WHILE ENSURING OUR BORDERS OPEN FOR BUSINESS*

## ANNEX-1

### **EXECUTIVE ACTION TO SLOW THE SPREAD OF THE COVID-19 VIRUS, KEEP HEALTH THREATS OUT OF THE COUNTRY, AND PROTECT AMERICANS WHILE ENSURING OUR BORDERS OPEN FOR BUSINESS**

**BLUF:** The Trump administration is working with Canada and Mexico to ensure cross-border activities that support health security, trade, commerce, and other essential function continue. In order to protect Americans to the greatest extent possible from the threat of the novel coronavirus (COVID-19), it is imperative that the Administration implement the Department of Health and Human Services (HHS) and Centers for Disease Control and Prevention (CDC) authority to quickly prevent the entry of individuals who would otherwise be introduced into a congregate setting in a land port of entry or Border Patrol station—thereby reducing outbreak risk to other migrants, DHS personnel and the American public. President Trump and his Administration are working to protect the health and wellbeing of Americans and respond to the virus through early, decisive and frequent action.

#### **TOPLINE MESSAGES**

*Decisive action taken today will protect Americans, slow the spread of the virus, and help save lives:*

- The United States is cooperating closely with Canada and Mexico to ensure that North America has a coordinated approach to combating the pandemic caused by the coronavirus.
- The United States and Canada have agreed to restrict travel at our land border to essential travel only.
- Similarly, the United States and Mexico are finalizing an agreement that will facilitate only essential travel at our southern border.
- We are maintaining cross-border activities with Canada and Mexico that support health security, trade, commerce, supply security, and other essential activities while taking critical steps to protect our citizens and to curb spread of the virus.
- DHS will, as authorized, implement HHS and CDC authority to prohibit entry of persons who would 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. These are generally individuals seeking to enter the United States at POEs who do not have proper travel documents, individuals whose entry is otherwise contrary to law, and individuals who are apprehended seeking to unlawfully enter the United States between POEs.
  - Subject to certain exceptions, this order applies people traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be.
  - This order does not apply to U.S. citizens, lawful permanent residents, persons from foreign countries who hold valid travel documents, and persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions.

- This order does not apply to individual persons who should be excepted based on considerations of law enforcement, officer and public safety, humanitarian, or public health interests.
- CBP will no longer detain these individuals in our holding facilities and will immediately return these individuals to the country they entered from – Canada or Mexico. Where such a return is not possible, CBP will return these individuals to their country of origin.
- To help prevent the introduction of COVID-19 into our border facilities and into our country, individuals subject to the order will not be held in congregate areas for processing and instead will immediately be turned away from ports of entry. Those encountered between ports of entry after illegally crossing the border similarly will not be held in congregate areas for processing and instead, to the maximum extent feasible, will immediately be returned to their country of last transit.
- DHS will continue coordination with the Governments of Mexico and Canada to control the flow of individuals approaching the United States border and streamline the removal of inadmissible individuals.
- Forty-one (41) countries have closed their borders entirely to neighboring countries or the international community altogether.
- CBP officers will continue to process lawful cargo in order to sustain the supply of critical goods and because there has been no identified threat as it relates to cargo shipments.
- CBP is the first line of defense of our nation's borders. With this comes the responsibility of assisting HHS to apply its authorities to prevent the exacerbation of COVID-19 spread in the United States.

*Restrictions on travelers crossing the US-Canada land border for non-essential purposes will help the people of both countries remain safe and reduce spread of the virus, while preserving supply chains:*

- The United States-Canada land border represents a unique relationship between both countries and our people; the \$1.7 billion (U.S. dollars) in trade crosses the land border each day and that trade is essential to the economies and well-being of citizens of both countries.
  - Around 400,000 people travel back-and-forth across the United States-Canada land border on a daily basis, across multiple ports of entry.
  - The United States-Canada land border accounts for US \$1.7 billion (Canadian \$2.7 billion) in two-way cross-border movement of goods and services each and every day.
  - Restrictions to border traffic must balance public health objectives with the need to ensure a fluid economic relationship.
- Essential travel will continue unimpeded. The U.S. and Canadian governments recognize it is critical we preserve supply chains between both countries. These supply chains ensure that

food, fuel, and life-saving medicines reach people on both sides of the border.

- Supply chains, including trucking and that of medical products, will not be affected by this new measure. Americans and Canadians also cross the land border every day to do essential work or for other urgent or essential reasons; that will not be impacted.
- To safeguard our economic ties, travelers with essential purposes can continue to cross the land border and will be exempt from a self-isolation requirement.
- In addition, travelers with family care, educational or humanitarian reasons will continue to be affected.

*The virus poses a profound public health and national security threat to the American people we can help avert for today and tomorrow:*

- There is a significant public health threat at both our northern and southern land borders from the COVID-19 and the spread of the resulting pandemic to countries around the world.
- Every week, our Border Agents encounter nearly 10,000 un-screened, un-vetted and un-authorized migrants at the U.S. Southern border from dozens of countries who have crossed our borders illegally between ports of entry.
- This translates to one, every minute, of every day, for a month at the U.S. Southern border. In normal times, these massive flows can create an additional burden on our healthcare system in treating migrants who are ill– but during a global pandemic, they threaten to create a perfect storm that risk spreading the infection to other migrants, our border agents and the public at large.
- However, we are taking steps to address significant concerns within the federal government, national security and health care communities about the potentially dire public health and security threat that could develop if migrants, with confirmed COVID-19 cases, from Mexico, Central America, and other countries seek access to the United States health and economic systems.
- The United States must be prepared to protect Americans to the greatest extent possible when the pandemic manifests at our borders in large numbers. It is not a matter of “if,” but “when.” **The time to prepare is now.**
- Virtually overnight, a unique public health threat posed by any individuals infected with COVID-19 arriving at our borders both at ports of entry and illegally between ports puts at risk those arriving, law enforcement officials, frontline personnel, doctors and nurses, and the American public.
- Without additional steps to keep health threats out of the country and protect Americans, our frontline defenses and operations would be crippled, law enforcement facilities at or near the

border could become incubators of the illness, and intensive care (IC) units and hospital beds for Americans could be overwhelmed.

- As we have seen recently with the Diamond Princess and other cruise ships, the introduction of even a single infected individual into the detained alien community at DHS facilities threatens to spread the virus rapidly. Without proper precautions, which can only happen through decisive action to control orderly, lawful entry at the borders, the virus will pose greater harm to Americans.
- We already know that overcrowding at DHS facilities can lead to increased cases of easily communicable diseases other than COVID-19, such as measles, mumps, chicken pox, and the flu.
- The administration is actively working in conjunction with government health professionals and experts on ways to employ other existing legal authorities to help stop the spread of the virus across our land borders.
- The following factors play a contribution role in this clear and present threat of COVID at our borders:
  - Sheer volume of migrants;
  - Nationalities represented at the borders from countries with confirmed COVID cases spreading throughout the community;
  - Unique health dangers of journey to the United States;
  - Crowded conditions of DHS border facilities;
  - Strain on our health care system.
- Migrants should shelter-in-place in their homes and communities, rather than attempting a long and dangerous journey to the United States borders at the hands of traffickers and smugglers.

### **BACKGROUND SUMMARY**

While CDC action applies to both our northern and southern border, the extensive migrant flows at our southern border create the greater opportunity for expanding the health crisis.

Since the beginning of the FY20 fiscal year in October 2019 through the end of February 2020 (over the period of October 1, 2019 to February 29, 2020), foreign nationals from 122 separate countries have been apprehended or denied entry (inadmissible) at the U.S. Southwest border, for a total of over 190,000 apprehended or inadmissible migrants from countries currently with confirmed COVID cases, including but not limited the following:

<b>Country</b>	<b>Number of Individuals Apprehended or Inadmissible at SW Border in FY20 (10/1/2019 - 2/29/2020)</b>
Bangladesh	423
Brazil	6,400
Cameroon	1,045
Chile	362
China	1,657
Colombia	287
Ecuador	7,183
India	827
Iran	8
Italy	12
South Korea	13
Mexico	109,843
Peru	341
Romania	160
Russia	346
Sri Lanka	196
Vietnam	204
Honduras	20,836
Panama	15
Venezuela	2,462
Guatemala	28,245
El Salvador	9,580
Haiti	2,676
Nicaragua	1,405

- **Current Migration Measures:** It should be noted that if not for the tools already put in place by the administration, including the Migrant Protection Protocols (MPP), the outlook at the Southwest border would be much worse under a continuation of the crisis-level migrant flows witnessed in 2019.
- **Size and Scale of the Potential Population at Threat:** Every week, CBP apprehends between 7,000 – 9,000 individuals between ports of entry—the equivalent of 2.5 Diamond Princess cruise ships per week.
- **Lack of Proper Documents.** A lack of documents demonstrating identity, travel and/or medical history, and other key information makes it nearly impossible to conduct an informed medical assessment of illegal individuals during the detention process.

- **Increased Probability of Spread.** Many individuals traveling to the United States sleep in incredibly close, and unfortunately often unsanitary, quarters (such as “tent cities”), and often ride for hours or even days in crowded buses or vans.
- **Regional Flow.** While Mexican Nationals account for 61% of the traffic, we have 25% from Guatemala, Honduras, and El Salvador, 10% from other Latin American Countries, and 5% other Extra-Continental. In all, we see illegal crossings from individuals from over 120 countries.
- **Spread is Exacerbated by Human-to-Human Transmission and Need for Detention.** CBP law enforcement facilities are for short-term holding and do not provide for needed large-scale isolation, diagnosis, or treatment of such a novel disease.
- **Facilities Not Structured or Equipped to Effectively Quarantine.** CBP will be forced to rely on state and local hospitals to provide longer-term medical care for individuals who fall ill, further burdening our strained healthcare system and depriving Americans of key medical resources.
- **Unable to Enforce Immigration and Nationality Act (INA) 212(f) Restrictions Between POEs.** Even if an alien is sick or displaying symptoms, it is extraordinarily operationally challenging to enforce the President’s travel restrictions. In January and February 2020, CBP apprehended more than 400 individuals from the 30 countries that are currently subject to travel restrictions.
- **Keeping Threats Out of the County: Land Domain.** From February 2 to March 16, (253) foreign nationals were refused at Southern and Northern land ports of entry by CBP under the president’s 212(f) travel restrictions.
  - From January 1 to March 16, (352) Chinese nationals were apprehended along the U.S. southern border by U.S. Border Patrol.

## OPERATIONAL AND LEGAL SUMMARY

Ports of entry (POEs) will permit entry of legitimate documented travelers not subject to previously announced travel restrictions and who present proper documentation for essential travel only and may limit the number of open vehicle primary lanes to maintain operational control of all travelers seeking entry to the United States. Restricted travelers will be returned to their last point of origin (Mexico or Canada) and CBP will suspend case processing of inadmissible individuals, to include those subject to travel restrictions pursuant to Section 212(f) of the INA.

Between ports of entry, any subjects encountered by the U.S. Border Patrol who have made illegal entry from Mexico or Canada have potentially been exposed to COVID-19 during travel from their country of origin. CBP’s U.S. Border Patrol (USBP), Office of Field Operations (OFO), Air & Marine Operations (AMO) will take immediate actions to prevent the spread of COVID-19 into United States by preventing the unlawful entry of any person into the United States and rapidly preparing individuals for immediate expulsion without detention.



CBP and DHS have already taken significant steps to protect the American people and prevent the spread of COVID-19. CBP will now also prohibit the introduction of certain persons into the United States who, due to their required processing in congregate settings and the existence of widespread COVID-19 transmission in countries where such persons are coming from or traveling, create a serious danger of the further introduction of such disease into the United States.

Aviation Ports of Entry (Canada):

- On March 16, 2020, Canadian Prime Minister Justin Trudeau issued a proclamation closing Canada's borders to most foreign nationals in response to COVID-19. The new measures took effect on March 18, 2020.
- The Canadian proclamation only restricts entry into Canada. It does not affect entry into the United States.
  - United States citizens and lawful permanent residents may continue to enter the United States from Canada.
  - Canadian nationals may continue to enter the United States from Canada provided that they have not been physically present in China, Iran, Ireland, the United Kingdom, or the Schengen Area in the 14 days preceding their attempted entry to the United States.
- U.S. citizens are exempt from the Canadian proclamation. However, they will need to answer a questionnaire about their health when arriving in Canada and will need to acknowledge an obligation to self-isolate for 14 days.
- Air crews, diplomats, and immediate family members of Canadian citizens are also exempt from the Canadian proclamation.
- All international flights, with the exception of flights from Mexico, the Caribbean and the United States, will be funneled to four airports in Canada: Toronto, Montreal, Vancouver and Calgary.

Land Border Ports of Entry:

- CBP will continue to accept individuals at the POEs with proper travel documents and otherwise admissible for cross border traffic and trade/travel. Anyone who OFO determines to be subject to the CDC order will be returned to the country of last transit.
- CBP will utilize appropriate methods to maintain operational control of any individuals seeking entry to the United States and will prohibit the entry of any person who may pose a public health risk to the United States.
- 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 issued pursuant to INA section 212(f).

- CBP is assisting HHS to implement its authorities along our Southern and Northern land borders to prohibit the entry of certain individuals who pose a health risks.
  - CBP will continue to facilitate legitimate movement of cargo as there has been no identified threat as it relates to cargo shipments. FAST/SENTRI/Global Entry for trade and business travel will continue to operate with additional vetting and voluntary COVID-19 screening compliance.
  - CBP is prepared to support the full and expeditious implementation of the new travel prohibitions. Ports of entry plan to contain, mitigate, and limit the exposure and risk to OFO personnel, facilities and the traveling public to prevent the further introduction of COVID-19 in the United States.

Between the Ports of Entry:

- Individuals encountered along the Northern and Southern border by CBP will be returned to Mexico or Canada without delay through the nearest Port of Entry.
- In the event an alien cannot be returned to Mexico or Canada, CBP will work with interagency partners to secure return to the alien's country of origin and hold the alien for the shortest time possible. For those who remain in CBP custody, CBP will, to the extent possible, keep them separated. Symptomatic individuals will be referred to CDC and placed in isolation.
- CBP is taking steps to prevent the further introduction of COVID-19 by the individuals it encounters. Upon initial contact in the field, each encountered is observed for any signs or symptoms of any illness.

Discussion of CBP officers and agents' conducting medical screening:

- CBP is a law enforcement agency, which enforces hundreds of U.S. laws and regulations for more than 40 federal agencies, including the CDC and make referrals to those agencies when appropriate.
  - CBP Officers perform inspections of persons and cargo entering and leaving the United States in order to protect the nation from terrorists, narcotics and human smugglers, counterfeit goods, and other threats to our safety and security.
  - CBP agents conduct inspections and investigations as to violations of criminal statutes and administrative regulations in order to interdict or prevent the entry of terrorists, narcotics and human smugglers, counterfeit goods, and other threats to our safety and security.

**Q&A:**

**Q: Have cases of the Chinese virus been confirmed at the border?**

A: Consistent with existing CBP procedures, individuals apprehended by U.S. Border Patrol between the ports of entry with symptoms of illness are referred to CDC or local health officials for additional health screening. All persons in U.S. Border Patrol custody who meet the CDC's

coronavirus travel history and enhanced screening guidelines are being referred to CDC for additional screening. CBP and ICE have referred migrants to CDC if they were in China within 14 days of being apprehended by CBP.

**Q: Why adopt this strategy?**

A: This strategy will allow the U.S government to help slow the introduction of COVID-19 in the United States by expelling inadmissible individuals. This will reduce the risk of exposure during processing and exposure to the CBP workforce conducting operations. At the same time, we will devote resources to combating the criminal element that may try to take advantage of the crisis to further their illegal enterprises.

**Q: What is going to happen to the Border Patrol's normal processing pathways (PACR, MPP, Etc.)**

A: Border Patrol agents will be given tools necessary to identify individuals at the border and to adjudicate some cases in the field at initial encounter. This will enable our agents to rapidly make a decision whether to take someone into administrative custody, or to send them without any further Title 8 processing to the nearest Port of Entry to expel them to Mexico or Canada.

**Q: What does this mean for Americans in Mexico or Canada?**

A: This suspension of entry does not apply to U.S. citizens or Legal Permanent Residents entering the United States from Mexico or Canada. They will receive the same processing, evaluation, and potential CDC medical screening that all entrants currently undergo at U.S. Ports of Entry.

**Q: How will this affect cargo and trade between Mexico or Canada and the United States?**

A: CBP will continue to process cargo at its normal rate as there has been no identified threat as it relates to cargo shipments. FAST/SENTRI/Global Entry for trade and business travel will continue to operate with additional vetting and voluntary COVID-19 screening compliance. CBP is prepared to support the full and expeditious implementation of the new restrictions. Ports of entry plan to contain, mitigate, and limit the exposure and risk to OFO personnel, facilities and the traveling public to prevent the introduction of COVID-19 in the United States. Additional authorities will be conveyed to CBP officers and CBP agriculture specialists to prevent the introduction of COVID-19 into the United States.

**Q: How does this affect previous travel proclamations?**

A: The application of this order does not affect the previous Presidential Proclamations relating to travelers from China, Iran, United Kingdom, Ireland, and the countries within the Schengen zone. Individuals exempted from the restriction who have been in those regions will still be referred to CDC or DHS contract medical personnel for health screening

**Q. What measures is CBP taking to prevent an outbreak of COVID-19 in CBP temporary holding facilities?**

A: Consistent with longstanding CBP procedures, individuals apprehended by U.S. Border Patrol between ports of entry with symptoms of illness are referred to the CDC or local health officials for enhanced health screening. Additionally, all persons in CBP custody who meet the CDC's COVID-19 travel history and enhanced screening guidelines are being referred to the CDC for additional screening. CBP takes all necessary precautions to ensure that no communicable diseases are spread

across populations in custody. CBP has issued guidance to all employees that outlines the current comprehensive, risk-based use of Personal Protective Equipment including guidance regarding wearing masks in the appropriate circumstances. CBP has also issued comprehensive sanitary guidance to its facilities specifically to prevent the spread of COVID-19.

**Q: Are you increasing staffing at or between the ports of entry?**

A: At ports of entry, CBP will scale staffing based on anticipated workloads in an effort to expeditiously process travelers impacted by the restriction.

**Q: What happens to those that are currently in processing or custody at the time this takes affect?**

A: These restrictions will not apply to those being processed or in custody at the time this becomes effective.

**Q: Has the border ever been closed before?**

A: The border is not closed, but access is being limited to prevent the further introduction of COVID-19 into the United States. This is an unprecedented response due to an unprecedented situation.

Northern Border:

**Q: Do any of these measures affect Unites States Citizens coming back from Canada?**

A: No, these measures do not apply to Unites States Citizens.

**Q: What type of screening is taking place for travelers and truck drivers at the Land Ports?**

A: The Canadian measures do not affect legitimate trade.

**Q: Will the border be closed on the U.S. side as well?**

A: No.

**Q: Who will be allowed to cross?**

A: U.S. citizens and lawful permanent residents may continue to enter the United States from Canada.

**Q: How is cargo being screened coming in?**

A: CBP continues screening cargo as normal operations.

**Q: Does this effect any cargo coming into or exiting the country?**

A: The Canadian measures do not affect legitimate trade.

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

**INTRODUCTION**

U.S. Customs and Border Protection (CBP) is issuing this guidance to support 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 used his authority under Section 362 of the Public Health Service Act, 42 U.S.C. § 265, to temporarily suspend the introduction of certain persons traveling through Canada or Mexico into the United States who pose a serious danger of the introduction of COVID-19 into the United States. *See CDC's Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists* (March 20, 2020), 85 Fed. Reg. 17060 (Mar. 26, 2020). The CDC Director requested that CBP enforce this Order, pursuant to 42 U.S.C. § 268(b). On April 20, 2020, the CDC Director extended the March 20, 2020 Order until 11:59 p.m. EDT on May 20, 2020. On May 20, 2020, the CDC Director amended the March 20 Order and extended it until the CDC Director determines that the danger of further introduction of COVID-19 into the United States from covered aliens has ceased to be a serious danger to the public health. Every 30 days, CDC shall review the latest information regarding the status of the COVID-19 pandemic and associated public health risks to ensure that the Order remains necessary to protect the public health.

**SCOPE**

As amended, and subject to certain exceptions, 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 any land or coastal POE or Border Patrol station at or near the border with Canada or Mexico. The CDC Order does not apply to U.S. citizens, members of the armed forces of the United States and associated personnel, lawful permanent residents, persons from foreign countries who hold valid travel documents and arrive at a POE or other authorized location, or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE or other authorized location. Additionally, the CDC Order does not apply to persons whom customs officers determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of law enforcement, officer and public safety, humanitarian, and public health interests. DHS shall consult with CDC concerning how these types of case-by-case, individualized exceptions shall be made to help ensure consistency with current CDC guidance and public health assessments.

Implementation of the CDC Order requires expeditious expulsion of each person subject to the CDC Order, which means the return of each such alien to the country from which the alien 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 was extended until the CDC Director determines that the danger of further introduction of COVID-19 into the United States from covered aliens has ceased to be a serious danger to the public health. Every 30 days, CDC will review the latest information regarding the status of the COVID-19 pandemic and associated public health risks to ensure that the Order remains necessary to protect the public health.

In assisting CDC with implementing the CDC 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*, 85 Fed. Reg. 16559 (Mar. 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**

This guidance outlines CBP's anticipated execution of the CDC Order. This guidance distinguishes between encounters made at POEs by Office of Field Operations (OFO) and those made between POEs by the United States Border Patrol (USBP) or Air and Marine Operations (AMO) to the extent such aliens would be processed in DHS facilities 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.

With respect to all activities, all officers and agents will adhere to general and COVID-19 specific workforce safety guidance, including but not limited to those described in the *CBP Job Hazard Analysis and PPE Assessment*, regarding protective measures, personal protective equipment, exposure risk management, isolation and quarantine measures, and vehicle/facility disinfection to minimize infection to the CBP workforce and persons in CBP facilities.

### ***Determining whether a person is subject to the CDC Order***

- CBP interprets the CDC Order, as amended, to apply, subject to the exceptions noted below to aliens traveling from Canada or Mexico (regardless of their country of origin) who have entered or are seeking to enter the United States, on or after the effective date of the Amended CDC Order, without proper travel documents or otherwise subject to travel restrictions at land or coastal POEs, or between land or coastal POEs, who are encountered at or approaching a POE or near the United States' border with Canada and Mexico in the area of operation of a Border Patrol station. In the absence of the CDC Order, these persons would be held in congregate settings for an extended period of time to facilitate immigration processing. For the purposes of the CDC Order, USBP shall apply this to aliens who are apprehended within its normal area of operations along or adjacent to each Border Patrol sector at or near the United States' border with Mexico or Canada.

Additionally, CBP will apply this order to any alien subject to the CDC Order who is apprehended near the coastal border with Canada or Mexico between ports of entry.

- Based on training, experience, physical observation, technology, questioning and other considerations, if an officer or agent believes that it is more likely than not that a person is an alien traveling from Canada or Mexico who is 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, and if such an alien was encountered near the border within the area of operation of CBP, or at a land or coastal POE operated by CBP, at or near the border with Canada or Mexico, 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 whom a designated customs officer<sup>1</sup> (including a CBP officer, Border Patrol agent, Air and Marine interdiction agent, or any other official designated by CBP as a customs officer and authorized to perform such functions) 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.
  - Any alien 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 by USBP Between Ports of Entry*

#### *Processing*

- 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. This information will assist officers in making informed decisions when determining whether to exercise discretion under the CDC Order.
- Once CBP determines an alien is subject to the CDC Order, USBP agents in the field, to the extent practical, will manually capture the alien's biographical information by conducting a search in accordance with procedures, and archive that data in the appropriate CBP database for future recall/inquiries.

#### *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, as well as CBP personnel and persons in CBP custody. However, if temporary holding is required prior to expulsion, CBP will separate and isolate to the greatest extent possible.
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<sup>1</sup> In addition to CBP and U.S. Coast Guard officers, customs officers include any agent or other person, including foreign law enforcement officers, authorized by law or designated by the Secretary of Homeland Security to perform the duties of a customs officer. *See* 19 U.S.C. § 1401(i).

- CBP will leverage existing medical contracts for health interview purposes, upon consultation with CDC and contract medical experts. Aliens exhibiting signs of overt illness will be referred to a local medical facility for appropriate treatment. CBP will continue to consult with CDC to determine if an exception to the CDC Order is warranted.
- 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 CDC 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 CDC 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 separate and isolate to the greatest extent possible in transportation and holding such aliens.
- CBP will have dedicated transportation vehicles with separation between agents and covered aliens to minimize employee exposure to potential COVID-19 infection. CBP will regularly disinfect transportation vehicles, in accordance with current procedures.

#### *Expulsions*

- CBP relies on interagency and intra-agency partners, including ICE/ERO, to effect expulsions under HHS authorities.
- Key to 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.
- The intent is to return aliens to their country of citizenship in an expedited manner to decrease the serious risk of COVID-19 transmission to the U.S. public, workforce, or other individuals detained under DHS or HHS authorities.
- DHS and Department of State may need to negotiate terms of returns with migrant source countries.

#### *Implementation by AMO between Coastal Ports of Entry Near the Border With Canada or Mexico*

- AMO may follow local procedures to transfer migrants interdicted in the offshore coastal environment to other CBP offices, USCG, or other determined partner agency. The agency that assumes custody of the migrants will determine the best course of action consistent with the CDC Order.
- Foreign Vessels/Persons encountered by AMO, between the coastal POEs near the border with Canada or Mexico, with the intention of making a lawful entry at a coastal POE will be subject to OFO Port Director directed action. AMO Marine Units will coordinate with the local Port Director or his/her designee to determine the best course of action.



## *Implementation by OFO at Land and Coastal Ports of Entry*

### *In General*

- POEs will, subject to applicable restrictions, continue to accept aliens with proper travel documents who are otherwise admissible for cross border traffic and trade/travel.
- Aliens covered by the CDC Order who are amenable to immediate expulsion to Mexico or Canada will be immediately returned to Mexico or Canada.
- Aliens covered by the CDC 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 potential mass incursions.
  - At ports that currently utilize queue management, CBP will continue routine queue management procedures at the limit line for those who appear to lack proper travel documents, given the CDC Order, limitations on nonessential travel, as well as those subject to Presidential Proclamations pursuant to INA § 212(f).
  - CBP officer will follow existing protocols and coordinate with CDC telephonically to answer questions and provide relevant public health information.
  - 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.

### *Southern Border Land 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.
  - Continue routine queue management procedures at the limit line for those who appear to lack proper travel documents, are subject to nonessential travel restrictions, 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 potential mass incursions.
- Leverage health interview procedures for CBP apprehensions to expedite repatriation of aliens subject to the CDC Order.

- With regard to aliens covered 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 shall be applied consistent with this guidance.
- CBP will continue to coordinate with DHS and DOJ to ensure appropriate processing of aliens subject to immigration court hearings, including those enrolled in MPP, to the extent they are otherwise impacted by the CDC Order.

*Northern Border Land Ports of Entry*

- CBP personnel working at Northern border land 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.
  - 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.
  - Leverage health interview procedures for CBP apprehensions to expedite repatriation of aliens subject to the CDC Order.
- With regard to aliens covered 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 shall be applied consistent with this guidance.

*Aliens Encountered During Authorized Coastal Processing Between Ports of Entry*

- POEs that currently accept notice of arrival via remote processing (e.g., the ROAM app) for arrivals between the POEs will continue established procedures to process aliens who appear to lack proper travel documents, given the CDC Order and Presidential Proclamations pursuant to INA § 212(f).
- CBP officers will follow existing protocols and coordinate with CDC telephonically to answer questions and provide information.
- Aliens covered by the CDC Order who are amenable to immediate expulsion to Mexico or Canada will be immediately returned to Mexico or Canada.
- Aliens covered by the CDC Order who are not amenable to immediate expulsion to Mexico or Canada will be transferred to ICE/ERO when administratively practicable given the remote location of many private conveyance inspections. ICE/ERO will take custody of any alien and follow established procedures as indicated above.

- Officers will utilize appropriate force protection, personal protective equipment and minimize potential exposure during processing.
  - 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.

HQBOR 130-8.5-C



**U.S. Customs and  
Border Protection**

JAN 07 2020

MEMORANDUM FOR: All Chief Patrol Agents  
All Directorate Chiefs

FROM: *fa* Carla L. Provost  
Chief  
U.S. Border Patrol

SUBJECT: U.S. Border Patrol Family Unit Separation Guidance

This memorandum provides guidance to all Border Patrol Agents (BPAs) regarding the policies, conditions, authorities, and requirements necessary to effect a family unit separation for aliens that are in U.S. Border Patrol (USBP) custody. Additionally, this guidance provides instructions on how to properly document a family unit separation within e3, the system of record.

The following are USBP definitions of a family unit, family group, and fraudulent family unit:

- **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).<sup>1</sup>
- **Family Group**—Related detainees (e.g., brother and sister, aunt, and nephew) that need to travel together who are non-United States citizens and do not meet the definition of a Family Unit.
  - For the purpose of this memorandum, a parent/legal guardian who is under the age of 18, traveling with his/her minor child are to be recorded in e3 as a Family Group.
  - BPAs are reminded that all Unaccompanied Alien Children (UAC), even those part of a family group, must be transferred to the custody of the Department of Health and Human Services (HHS).
- **Fraudulent Family Unit**—A group of aliens that present themselves to meet the definition of a family unit to deceive the government, but through further investigation, it is revealed that the group does not meet one or more criteria of the family unit definition.

On June 27, 2018, then U.S. Customs and Border Protection (CBP) Commissioner Kevin K. McAleenan issued a memorandum titled *Interim Guidance on Preliminary Injunction in Ms. L. v. ICE*. The memorandum outlined the reasons under which USBP could separate a family unit consistent with the preliminary injunction issued by the court.

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<sup>1</sup> See 8 CFR 236.3(b)(7)

As outlined in this memorandum, parents/legal guardians may be separated from their child for the following reasons.

- Referral of a parent/legal guardian for prosecution of a felony:
  - This includes parents/legal guardians referred for prosecution by CBP, and also includes those parents/legal guardians who are transferred to another jurisdiction on an extraditable warrant.
- Parent/legal guardian presents a danger to the child.
- The parent/legal guardian has a criminal conviction(s) for violent misdemeanors or felonies.
  - Any questions about what constitutes a violent misdemeanor or felony should be referred to the local Office of Chief Counsel (OCC).
  - A parent/legal guardian who has been arrested, but not convicted, may not be separated based solely on that arrest.
  - A parent/legal guardian may not be separated based solely on the fact that he/she have had prior removals.
- The parent/legal guardian has a communicable disease.
  - Prior to separation, local OCC should be contacted and the communicable disease should be clearly documented in the system of record.

If a parent/legal guardian has an urgent medical need that requires hospitalization, it may be appropriate to refer the child to HHS pending the parent/legal guardian's medical treatment. All such separations should be thoroughly documented in e3 and the HHS portal. BPAs should work with HHS to attempt to facilitate local placement for the child, if possible.

Similarly, if a parent/legal guardian is being held as a material witness, it may be appropriate to refer the child to HHS pending the parent/legal guardian's time in criminal custody. All such separations should be thoroughly documented in e3 and the HHS portal, and BPAs should work with HHS to attempt to facilitate local placement for the child, if possible.

There may also be circumstances where U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations (ERO), consistent with their internal policies, will not accept a family unit for detention at a family residential center, due to a parent's criminal history or other public safety concerns (e.g., gang affiliation). In those instances, BPAs may separate a family unit based on the parent's gang affiliation, criminal history or other public safety concern, and should document all communications with ICE ERO.

The preliminary injunction applies to one and two-parent families. Accordingly, if at the time of apprehension, BPAs encounter a family unit where both parents are present, USBP may not separate the child from either parent, unless the specific criteria listed above is present and articulated in accordance with this directive.

If BPAs encounter a family unit consisting of an adult parent or a parent who is under the age of 18, and their minor child, the agents must refer the parent who is under the age of 18 to HHS as a UAC. Agents should exercise discretion, on a case by case basis and in consultation with OCC, to determine whether the minor child should remain with the adult parent or with the UAC parent.

Consistent with the Commissioner's memorandum, the sector Chief Patrol Agent has the authority to approve all separations. This authority may not be delegated below the Watch Commander position.

Data integrity in all reporting is of paramount importance. Accordingly, all family units and family groups must be properly linked in the e3 family panel. Further, it is imperative that all cases of family separations by USBP are documented in e3 and clearly articulated in the narrative for each family member. This documentation must include the reason for separation, the name and title of the official authorizing the separation, and a thorough description of the factors supporting this decision.

The e3 system has been updated to provide reasons for the separation that are consistent with the CBP Commissioner's June 27, 2018, guidance memo.

**Separations:**

- FMEW Family Member-Extraditable Warrant
- FMGA Family Member-Gang Affiliation
- FMH Family Member-Hospitalized
- FMCH Family Member-Criminal History
- FMPO Family Member-Prosecuted
- FMMW Family Member-Material Witness
- FMCD Family Member-Communicable Disease
- FMUP – Family Member-Presents danger to the child/Unfit Parent

In accordance with the Trafficking Victims Protection Reauthorization Act, all UAC must be transferred to the custody of HHS. In instances where a family separation results in a UAC, HHS will be notified that there has been a separation and the following information must be relayed to them at the time of placement:

- Name, A#, date of birth of parent/legal guardian
- Location and/or agency where the parent/legal guardian will be manifested to
- Reason for separation using only the above descriptions

Agents are reminded to adhere to the requirements outlined in the Memorandum of Agreement between HHS and the Department of Homeland Security, dated April 13, 2018.

Staff may direct all questions related to this directive to Assistant Chief (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C)

Attachments



# Cancelling a Family Unit Number

Updated: November 5, 2019

(b) (7)(E)



(b) (7)(E)

(b) (7)(E)

# Enforcement Systems Division





# Separating a Family Unit

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)



# Enforcement Systems Division



**From:** (b) (6), (b) (7)(C)  
**To:** (b) (7)(E)  
**Cc:** (b) (6), (b) (7)(C) (b) (7)(E)  
**Subject:** Title 42 Family Separations  
**Date:** Tuesday, July 14, 2020 10:16:41 PM  
**Attachments:** [FMUA Separation memo 19-36768.pdf](#)  
[CDC COVID 19 Order.pdf](#)  
[Annex Op Capio Title 42 \(V5\) \(OCC 032720\)-CLEAN.pdf](#)

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Chiefs and Deputies,

Recently, there have been some instances where dual parent family units processed under Title 42 have been separated. The majority of these instances have involved an alien requiring extended hospitalization (pregnancy, other emergency medical conditions). As outlined in the attached memorandum titled US Border Patrol Family Separation Guidance, family separation is permissible in limited situations and family units should be held and processed together. Pursuant to Title 42 guidance, efforts to keep family units together should be considered at all times.

Although these actions have been infrequent and within established policy regarding family separation, to the extent possible and barring operational factors that inhibit the possibility, sectors should hold the remaining family members until such time that the family can be reunited and processed accordingly. (b) (7)(E)

(b) (7)(E). USBP leadership will review and provide a concurrence/non-concurrence prior to execution of the separation.

Finally, US citizens are exempted from the CDC order (attached). In instances where an alien mother delivers a US citizen child while in USBP custody, the narrative for any processing disposition should include that the newborn is exempt from the CDC Order which authorizes the application of Title 42 and is travelling with the mother in accordance with CBP Policy. Staff may direct processing questions to the (b) (7)(E) @cbp.dhs.gov mailbox and/or to your LEOD Operations corridor representatives.

**Acting Deputy Chief** (b) (6), (b) (7)(C)

**United States Border Patrol**

Law Enforcement Operations

Operational Programs

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