

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.

(b)(5); (b)(7)(E)

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(b)(5); (b)(7)(E)



DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists

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

ACTION: Notification of order.

SUMMARY: This document is to inform the public that the Director of the Centers for Disease Control and Prevention, an agency of the Department of Health and Human Services, has issued an Order suspending the introduction of persons into the United States.

DATES: *Effective* date: The Order referenced in this document is effective on 11:59 PM EDT on March 20th, 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 H21-10, Atlanta, GA 30329. Telephone: 404-498-7000; email: cdcregulations@cdc.gov.

SUPPLEMENTAL INFORMATION:

The CDC Director (Director) has issued an Order pursuant to section 362 of the Public Health Service Act, 42 U.S.C. 265. The Order suspends the introduction of certain persons into the United States because the Director has determined that the existence of Coronavirus Disease 2019 (COVID-19) in certain foreign countries creates a serious danger of the introduction of the disease into the United States, and the danger is so increased by the introduction of persons from the foreign countries that a temporary suspension of the introduction of such persons is necessary to protect the public health. The Order is posted on the website for the Centers for Disease Control and Prevention. It will be submitted to the Federal Register for publication.

The Order does not apply to U.S. citizens, lawful permanent residents, persons from foreign countries who hold valid travel documents, or persons from foreign countries in the visa waiver program who are not subject to travel restrictions.

The U.S. Department of Homeland Security (DHS) is implementing the Order. The Order also does not apply where a designated customs officer of DHS determines, based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests, that the Order should not be applied to a specific person otherwise subject to the order.

Finally, the Order does not apply to members of the armed forces of the United States and associated personnel for whom the Secretary of Defense provides assurance to the Director that the Secretary of Defense, through measures such as quarantine, isolation, or other measures for maintaining control over such individuals, is preventing the risk of transmission of COVID-19 to others in the United States.

Dated: March 20, 2020.

Alex M. Azar II,

Secretary,

Department of Health and Human Services.

[FR Doc. 2020-06241 Filed: 3/20/2020 4:15 pm; Publication Date: 3/24/2020]

U.S. BORDER PATROL
COVID-19 Response
May 1, 2020

Informational: USBP HQ's activities relevant to COVID-19.

Executive Summary:

World Health Organization (WHO) declared COVID-19 a pandemic on March 11, 2020. In response, USBP HQ's Specialty Programs and Planning (SPP) engaged in the development of pre-deployment strategies and predictive courses of action on probable impacts to the agency. On March 18, 2020, as concerns widened, SPP confirmed the acquisition and feasibility for implementation of e3 Mobile Units to support agents processing at remote locations. On March 20, 2020, the Center of Disease Control and Prevention (CDC) issues order granting USBP Title-42 (T-42) authorities.

T-42 Countries

The below listed countries are accepting aliens under T-42

- (b)(7)(E)
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Generally, (b)(7)(E) is accepting aliens from the following countries under Title 42:

- All (b)(7)(E) Citizens
- (b)(7)(E)
-
-

To date, USBP has expelled at the border or coordinated the expulsion of 20,773 aliens under Title 42. This accounts for 87.56% of all apprehensions/encounters since March 21, 2020.

Created by/ POC: Assistant Chief (b)(6); (b)(7)(C)

Office: LEOD-/Specialty Programs

Date Prepared: May 1, 2020

Approving Official: Acting Associate Chief (b)(6); (b)(7)(C)

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Ongoing Coordination Efforts:

- Communication and coordination with ERO are a daily function within SPP, i.e. pregnant females;
 - MVM, the contractor for ICE/ERO will not take custody of any (b)(7)(E) females.
 - (b)(7)(E) pregnancy is a hard **NO** for any flight activity.
 - USBP reserves MPP as reliable alternative for expelling (b)(7)(E) pregnant females.
- SPP is constantly assessing flight coordination efforts to determine if or when additional measures are needed, i.e. sometimes daily mitigation efforts for cases with extensive time-in-custody.
- Communication and coordination with ESD and SDI personnel on a daily basis to scrub all data while alien numbers in custody remain manageable with a purpose of ensuring data maintains high integrity.

Challenges/Concerns on the Horizon:

SPP recognizes USBP's in custody numbers are at a record low. However, SPP continues to monitor and leverage resources to address a variety of challenges that could have potential impacts to USBP, such as;

- (b)(7)(E) and or closes its borders.
- Legal scrutiny arises for USBP's application of T-42 authorities.
- Workforce decreases due to sickness and/or quarantine actions.
- Partner countries return to normal operations at a staggered rate.
- Priorities and budgets shift to different business operations due to USBP's low numbers.
- Recovery mode or resume normal operations is not carefully implemented.
- COVID-19 reemerges, second wave concerns
 - Monitor the flow by utilizing existing capabilities in the field in order to identify infected populations.
 - The U.S. remains vulnerable should a large infected population be incorrectly encountered.
 - Begin implementation of portions of 2020 CBP Pandemic Planning Solutions in order to prepare, address possible infected populations while protecting CBP's workforce.
 - Plan for protecting the U.S. while increasing resiliency of USBP's workforce.
 - What course of action is left if Coronavirus evolves rapidly and fatality rate increases, creating civil unrest?
 - What happens if USBP agents (b)(7)(E) ?
- In an attempt to limit the spread of COVID 19, (b)(7)(E) is not accepting any expulsion/removal flights. (b)(7)(E) implemented this policy on April 21, 2020.
- For other countries such as (b)(7)(E) expulsion flights are limited to (b)(7)(E)

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ICE Air Operations Coordination:

SPP has detailed a Casa Grande Watch Commander to ICE Air Operation located in Mesa, Arizona to serve as a liaison between ICE and USBP Sectors. WC (b)(6); [redacted] monitors all nationalities within USBP custody with special attention focused on those field locations with larger populations.

Several restrictions have been place by receiving countries who are accepting their citizens under T-42. Although current in custody numbers are very low and usually under 100 across the U.S., this action has increased time in custody for some populations.

• **Exceptions:**

- ERO IAO will not accept anyone with a temperature over (b)(7)(E)
- Flights schedules and restrictions are fluctuating with Northern Triangle countries at the moment and appear to be very fluid on a daily basis;

- (b)(7)(E)

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Future State:

Currently, while alien population numbers are low, SPP has been working with (b)(6) on a project to

(b)(5)

and (b)(6) are in the quality review stage with ESD. We are hoping to present recommendations to leadership for consideration as we begin to recover and resume USBP's new normal operational environment.

Additionally, SPP anticipates that consequence delivery initiatives such as the Asylum Cooperative Agreement, Prompt Asylum Claim Review and Humanitarian Asylum Review Process will commence again once the CDC Order expires. As a result, SPP continues to maintain liaison with other strategic partners such as CIS and the Executive Office of Immigration Review in order to ensure that those programs are activated expeditiously.

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The below provides a summary of events that have been undertaken by USBP HQ in support of Operation Capiro.

Key Events/USBP HQ Actions & Outcomes:

March 2020

- March 20, 2020, USBP HQ issues;
 - Pocket Guide; Outcome, each Agent has foldable guide describing steps for T-42 processing.
 - Interoperability Plan; Outcome, field leaders have all DHS partner contacts with numbers.
 - Concept of Operations; Outcome, CPAs receive Chief's vision with intent.
 - Air movement IOP; Outcome, field receives air coordination contacts with suggested courses of action based on Nationality, increasing efficiency.
 - T-42 explanation packet; Outcome, defines purpose for all USBP employees working under T-42, increasing morale and shares context of challenging circumstances we all are facing.
- **March 21, 2020; at 12:01 a.m. (EST), Operation Capiro goes live.**
 - T-42 U.S.C. 265 implemented in accordance with the CDC order. Subjects not immediately amenable to T-42 expulsion via ICE Air removal flights, may still be processed under Title 8 (T-8); (b)(7)(E)
 - (b)(7)(E) increasing speed of custody transfers and reducing alien populations within USBP facilities, ultimately limiting potential exposure to personnel and general public.
- March 23, 2020;
 - DHS/EOIR publish message that MPP court hearings scheduled through April 22, 2020, will be postponed due to COVID-19 concerns; Outcome, USBP assist OFO in rescheduling at IHF and major POEs on Southwest Border, reducing alien traffic at all POEs.
 - USBP HQ disseminates new guidance on single minors and family groups. Single minor under T-42: A minor 17 years of age or younger not traveling with any person with whom they have a familial relationship. Sectors are advised to use discretion on a case by case basis as far as who may or may not qualify; Outcome, USBP temporarily halts using current definitions while operating under T-42, making it easier for the field to adjudicate minors.
 - USBP's SPP team has a detailer located in Mesa, Arizona imbedded with ERO Ice Air Operations. Due to overwhelming needs to address the high volume of populations in USBP custody and circumstances surrounding COVID-19, additional staff is requested and approved to co-locate in Mesa, Arizona; Outcome, additional resources allow for redundancy and improved coordination efforts, reducing overall TIC times across all field locations.
- March 24, 2020, USBP HQ provides field guidance on Convention Against Torture (CAT) claims; Outcome, USBP educates workforce that while T-42 is in place, only CAT claims are recognized and requiring USCIS resolution. Positive determinations by CIS will result in a conversion to T-8
 - To date, of the 41 referrals to CIS, only one alien has received a positive determination
- March 25, 2020, USBP HQ informs field Honduran single minors can now be expelled via ICE Air; Outcome, reduces populations in field locations, while also reducing T-8 case load.
- March 26, 2020, USBP HQ suspends credible fear pilot program to mitigate exposures; Outcome, USBP is able to pull additional resources (agents) back to field locations, while also increasing faster transfer of aliens out of custody.

Created by/ POC: Assistant Chief (b)(6); (b)(7)(C)

Office: LEOD-/Specialty Programs

Date Prepared: May 1, 2020

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U.S. BORDER PATROL
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- (b)(7)(E)
 - March 27, 2020, USBP HQ informs field (b)(7)(E) may be expelled to (b)(7)(E) Outcome, USBP coordinates via Mesa team for (b)(7)(E) to be transferred to (b)(7)(E) for holding until their expulsion flight, reducing populations in field locations.
 - March 30, 2020, USBP HQ informs field (b)(7)(E) may be expelled to (b)(7)(E) Outcome, USBP coordinates via Mesa team for (b)(7)(E) to be transferred to alternate locations for holding until their expulsion flight, USBP HQ also reminds field that MPP is not viable path for this particular Nationality, this reduces populations in field locations and increases efficiency.
 - March 31, 2020, USBP HQ informs field (b)(7)(E) Single Minors can now be expelled. However, under the age of (b)(7)(E); Outcome, USBP coordinates via Mesa team for (b)(7)(E) to be transferred to alternate locations for holding until their expulsion flight, reducing populations in field locations and decreasing T-8 processing.

April 2020

- April 1, 2020;
 - USBP HQ provides the field with clarification on aliens previously processed in MPP and the preferred processing path moving forward; Outcome, field's efficiency is increased.
 - USBP HQ provides the field with updated T-42 definitions (Family Unit, Family Group, Single Minor); Outcome, USBP HQ realigns with DOJ reducing litigation liability risk.
 - USBP HQ provides the field with guidance regarding the USM-553 Medical Clearance Form and Medical Summary Form; Outcome, USBP HQ ensures field understands TVPRA does not apply under T-42 if aliens are not brought into facilities, reducing exposure to COVID-19.
- April 2, 2020, USBP HQ provides field with updated guidance regarding expulsions of (b)(7)(E) (b)(7)(E) based on new air movement requirements; Outcome, USBP's Mesa team increases effectiveness of transfers with enhanced communication.
- April 3, 2020;
 - USBP HQ informs field (b)(7)(E) will now accept FMUAs, SAs, and SMs; Outcome, reduces populations in field locations, while also reducing T-8 case load.
 - USBP HQ provides the field with updated Operation Canio Guidance V10, which specifies (b)(7)(E) under T-42 and marking aliens as (b)(7)(E) in e3 Mobile Intake; Outcome, increases efficiency of working under T-42 and ensuring USBP is limiting contact and exposure risk to employees while still tracking all encounters.

April 6, 2020;

- USBP HQ informs field (b)(7)(E) flights for the remainder of the week have been canceled and to process single minors from (b)(7)(E) and (b)(7)(E) under T-8 until April 10, 2020; Outcome, USBP HQ leverages INA contacts and ERO to push for as needed flights, increasing coordination efforts across all DHS.
- USBP HQ provides field with updated USBP Pocket Guide T-42 V9; Outcome, each Agent has updated foldable guide describing steps for T-42 processing.

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Office: LEOD-/Specialty Programs

Date Prepared: May 1, 2020

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- April 7, 2020;
 - USBP HQ directs field to (b)(7)(E) T-42 aliens previously encountered (b)(7)(E)
Outcome, USBP enhances ability (b)(7)(E)
 - USBP HQ notifies field to use T-42 Manifest Mailbox to assist in expulsion flight coordination; Outcome, increases coordination efforts for loop flights with Mesa team.
- April 8, 2020, USBP HQ provides field updated list of countries accepting T-42 Expulsions: (b)(7)(E)
(b)(7)(E) Outcome, Mesa team communicating in real time to facilitate faster transfer as countries change requirements.
- April 10, 2020, USBP HQ provides field with guidance for collecting biometrics on children under the age of 14, while under T-42. USBP will collect biometrics from all children under the age of 14; Outcome, reducing attempted family fraud, while also recording evidence in possible cases of human trafficking.
- April 15, 2020, USBP HQ provides field with guidance regarding aliens expelled to (b)(7)(E) without temporary detention in a USBP facility are exempt from the CBP Medical Directive; Outcome, reducing workload on contracted medical teams in all USBP facilities, as many contractors were pulled by state governors to local hospitals for COVID-19 surge.
- April 16, 2020, USBP HQ submits draft MOA to C1 which will allow BPAs assigned to a USCIS taskforce to be able to conduct CAT claim interviews under T-42; Outcome, USBP HQ increases collaboration efforts with USCIS partners.
- April 20, 2020, USBP HQ informs field that ERO will no longer accept anyone on their flights with a temperature over (b)(7)(E) Outcome, Mesa team communicates ERO IAO HQ's change in real time, preventing delay and informs field to modify process for transfer to flight lines, reducing impact and overall TIC.
- April 21, 2020, USBP HQ informs field that all flights/missions to (b)(7)(E) have been canceled for the week and ERO IAO will not schedule anymore until further notice; Outcome, Mesa team notices the Southwest Border, enabling field to change processing pathway to T-8 as needed to reduce alien populations.
- April 29, 2020, USBP HQ provides field with guidance regarding transfer of aliens under T-42. ERO HQ agrees to established timelines for accepting custody transfers; Outcome, USBP HQ increases collaboration with ERO through accountability measures, increasing faster transfer of aliens.

Created by/ POC: Assistant Chief (b)(6); (b)(7)(C)

Office: LEOD-/Specialty Programs

Date Prepared: May 1, 2020

Approving Official: Acting Associate Chief (b)(6); (b)(7)(C)



Homeland
Security

March 27, 2020

~~Attorney-Client Privileged Communication~~

MEMORANDUM FOR THE ACTING SECRETARY

THROUGH: Kenneth T. Cuccinelli II
SENIOR OFFICIAL PERFORMING
THE DUTIES OF THE DEPUTY SECRETARY

FROM: Chad R. Mizelle
Acting General Counsel

SUBJECT: Joint DHS-DOJ Temporary Final Rule: Asylum Ineligibility Due to
COVID-19

(b)(5)

Decision Document

Joint DHS-DOJ Temporary Final Rule: *Asylum Ineligibility due to COVID-19*

_____ Approve submission of the temporary final rule to OMB.

_____ Disapprove submission to OMB.

_____ Modify per further instructions.

_____ Needs discussion.

_____ Date