

## Talking Points and Q&A for Implementation of Title 42 USC § 265

### Background

On March 20, 2020, the Director for the Centers for Disease Control (CDC) issued an Order pursuant to sections 362 and 365 of the Public Health Service (PHS) Act, 42 U.S.C. §§ 265, 268, and the Act's implementing regulations, which authorize the Director of CDC to suspend the introduction of persons into the United States when the Director determines that the existence of a communicable disease in a foreign country or place creates a serious danger of the introduction of such disease into the United States, and the danger is so increased by the introduction of persons from the foreign country or place that a temporary suspension of such introduction is necessary to protect the public health. To comply with this Order, DHS has temporarily suspended the introduction of persons subject to the Order into the United States and is expelling as expeditiously as possible all aliens who enter the United States illegally or without proper travel documents in violation of the Order. On May 20, the order was extended until the CDC Director determines that the danger of the further introduction of COVID-19 into the United States from covered aliens has ceased to be a serious danger to the public health.

### Talking Points

- Every week, CBP encounters thousands of un-screened, un-vetted and unauthorized migrants from countries affected by COVID-19 who have crossed our borders illegally.
- The Centers for Disease Control and Prevention determined that the introduction and spread of COVID-19 in CBP stations and temporary holding facilities presents a danger to illegal border crossers, our frontline agents and officers, doctors and nurses, and the American public.
- It would take just a small number of individuals with COVID-19 to infect a large number of detainees and CBP personnel and potentially overwhelm local healthcare systems along the border.
- On March 21, 2020, CBP began implementing legal authorities held by the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention to ensure that COVID-19 is not further introduced into the United States.
- Under Title 42 of the U.S. Code, illegal border crossers are, to the maximum extent possible, immediately expelled to their country of last transit (Canada or Mexico). These illegal border crossers are not held in congregate areas for processing.
- When immediate expulsion is not possible, the U.S. Government expeditiously returns illegal border crossers to their country of origin.
- By processing in the field and quickly expelling individuals who cross illegally, we protect them, our agents, and the American public from potential exposure to COVID-19.

- Since implementing these measures, the number of migrants in CBP custody has fallen to the lowest level since we began tracking this figure.
- These measures will remain in place until the CDC Director determines that the danger of the further introduction of COVID-19 into the United States has ceased to be a serious danger to the public health.

### Questions & Answers

**Q: Why is CBP implementing Title 42 USC § 265?**

A: The Title 42 CDC order has allowed our agents on the border to swiftly expel illegal aliens back to Mexico without bringing them into contact with other migrants and CBP personnel. The order is working just as it was intended: to keep Americans safe and stop the spread of COVID-19. CBP had more than 3,400 individuals in custody in early March and now averages around 100 at any given time because of this initiative and other travel restrictions. This is a significant change to normal border security operations. These policies must continue until there is no longer a threat to the American people.

**Q: Shouldn't the U.S. allow migrants from Mexico and elsewhere access to health care in the United States?**

A: COVID-19 now makes any individual arriving at our borders—with or without symptoms—a potential risk to frontline personnel, doctors and nurses, and the American public. We have no idea of their travel patterns, their human contact history, or their personal health status. We cannot expose our CBP employees and the American people to these risks until CDC determines the serious threat of the disease has ceased.

**Q: How is CBP processing Unaccompanied Alien Children under 42 USC § 265?**

A: All aliens that CBP encounters may be subject to the CDC's *Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists* (March 20, 2020), including minors. When minors are encountered without adult family members, CBP works closely with their home countries to transfer them to the custody of government officials and reunite them with their families quickly and safely, if possible. CBP also may, on a case-by-case basis, such as when return to the home country is not possible or an agent suspects trafficking or sees signs of illness, except any alien from the CDC order. Minors excepted from the CDC order who are encountered without a parent or legal guardian will be processed as unaccompanied alien children under Title 8 and will be turned over to HHS/ORR. During any time spent in CBP facilities, minors processed under either Title 42 or Title 8 will receive amenities and services consistent with applicable law and policy.

**Q: Are individuals claiming asylum sent back to the country they are claiming fear of returning to?**

A: These instances are handled on a case-by-case basis.

**Q: How many individuals has CBP expelled under Title 42?**

(b)(6);  
(b)(7)(C)

A: Information concerning Title 42 expulsions may be found on the CBP website.

**Q: How many migrants does CBP currently have in custody?**

A: CBP had more than 3,400 individuals in custody in early March and now averages around 100 at any given time because of this initiative and other travel restrictions. For comparison, the daily average number of migrants in CBP custody was 20,000 at the peak of the migration crisis in 2019.

**Q: Is CBP conducting health screenings at the land border?**

A: CBP is following normal protocols in collaboration with our partners at CDC and public health authorities. If CBP identifies an individual who exhibits symptoms of COVID-19 or who otherwise meets the CDC's COVID19 screening guidelines, then CBP will refer that individual to the CDC or local health officials for enhanced health screening. CBP also provides tear sheets to further educate the public about this public health threat.

Comment [DKL]: [redacted] will need to update this number periodically to ensure it is current.