



Update on Southwest Border Security and Preparedness Ahead of Court-Ordered Lifting of Title 42

Under the Biden-Harris Administration, the Department of Homeland Security (DHS) has been executing a comprehensive strategy to continue to secure our borders and build a safe, orderly, and humane immigration process. After inheriting a broken and dismantled immigration system, since January 2021 DHS has effectively managed an unprecedented number of noncitizens seeking to enter the United States, interdicted more drugs, and disrupted more smuggling operations than ever before.

This update reviews the DHS-led whole-of-government framework guiding preparations for and management of increased encounters of noncitizens at our Southwest Border following the lifting of the Title 42 public health order, as was outlined in the April 26, 2022 memorandum [attached here](#). Multiple DHS agencies and offices and interagency partners, including the Departments of State and Justice, have already been executing plans guided by this framework. That work includes the largest anti-smuggler campaign in history, innovative approaches that pair increased access to lawful pathways with consequences for failing to use them, and additional personnel and processing improvements led by the Southwest Border Coordination Center (SBCC). Thanks to prudent planning and execution and the talent and unwavering dedication of the DHS workforce and our partners, we have maintained safe, orderly, and humane processes that are managing more than twice as many people than they were built for, while ensuring national security and public safety. We will provide additional updates as work continues to progress.

While we take the necessary steps to manage the border in a safe, orderly, and humane manner, we do so within the constraints of a decades-old immigration system that everyone agrees is broken. More can be done to reduce the inevitable strain an increased number of border encounters will put on the immigration system at federal, state, and local levels if Congress would pass the comprehensive immigration reform legislation President Biden proposed the day he took office. Until and unless Congress updates our outdated statutes and helps us create a fair, fast, and functioning asylum system, we will continue to face challenges on our Southwest Border. Given this, notwithstanding the efforts described herein, a significant increase will substantially strain our system even further. Addressing this challenge will take time and additional resources, as well as the partnership of Congress, state and local officials, NGOs, and communities to do so.

Title 42 or Not, Individuals without a Legal Basis to Remain Will Be Subject to Removal

In March 2020, the Centers for Disease Control and Prevention (CDC) invoked a section of Title 42 of the U.S. Code—a law addressing public health, not immigration—to issue an order that

required the immediate expulsion of certain noncitizens who crossed the border without authorization, in order to protect Americans from the spread of COVID-19. In November, the D.C. District Court issued a ruling that requires the lifting of the Title 42 public health order, effective December 21. As of that date, all noncitizens will be processed under the authorities laid out in Title 8 of the U.S. Code, which provides the long-standing authority for enforcing border security and immigration laws. Among other things, Title 8 provides that individuals who cross the border without legal authorization are processed for removal and, if unable to establish a legal basis to remain in the United States, promptly removed from the country. In Fiscal Year (FY) 2022, over 1.4 million noncitizens were removed under Title 8 or expelled under Title 42, more than any previous year.

Despite our continued enforcement of Title 8 authorities, including an increased reliance on Expedited Removal, we anticipate migration levels will increase as smugglers seek to take advantage of and profit from vulnerable migrants once the Title 42 public health order is lifted. This will likely include spreading false information about what the end of Title 42 will mean.

The increase in migration already experienced by the United States is consistent with larger global trends: economic and political instability around the world is fueling the highest levels of mass migration since World War II. That global migration is testing many nations' systems, including our own. The demographics of migrants encountered at our border is also shifting. In September 2022, for example, Venezuelans, Cubans, and Nicaraguans— noncitizens who are difficult to remove due to complicated diplomatic relations with their home countries— accounted for almost half of unique encounters at the Southwest Border. This is more than three times the amount encountered one year ago. Other countries in the hemisphere are also experiencing notable increases. One in four Venezuelans, approximately seven million people, have fled their homes, with more than a third of them settling in Colombia; Costa Rica, a country of only five million people, is hosting more than 200,000 Nicaraguans.

In response to changes in migration patterns, we have been developing and implementing innovative approaches, combining expanded legal pathways and clear consequences for those who fail to take advantage of these new opportunities. In October, for example, we announced a new parole process that coupled lawful pathways with consequences for those who sought to enter the United States without authorization. Venezuelans who entered the United States without authorization were returned to Mexico. At the same time, we initiated a new process for qualifying Venezuelans to fly directly to interior ports of entry lawfully and safely. As a result, encounters of Venezuelan nationals at the Southwest Border dropped precipitously, from 1,100 per day to just over 300 per day on average in the first couple of weeks, and more recently fewer than 100 per day.

Progress Continues on our Whole-of-Government Six Pillar Plan, Outlined in April

To prepare for the lifting of the Title 42 public health order, six key pillars have guided and will continue to guide our work:

Pillar 1: Surging resources, including personnel, transportation, medical support, and facilities to support border operations.

Customs and Border Protection (CBP) has 23,000 Agents and Officers working along the Southwest Border and requested another 300 Border Patrol Agents in the FY 2023 budget request, which would be the first such increase since 2011. We have hired nearly one thousand Border Patrol Processing Coordinators and added 2,500 contractors and personnel from other government agencies, which along with innovations below, are helping return agents to the field to perform their essential law enforcement and national security mission. We are installing effective technology like linear ground detection systems and automated surveillance towers (an increase of 32 percent more towers since the start of FY 2022) and have approved the closure of over 120 gaps and gates along the border. We are also increasing the security of Ports of Entry (POE) by installing and having at the ready equipment to harden entry points.

We have added 10 soft-sided facilities to increase our CBP holding capacity by over a third since early 2021, with additional facilities planned, and more than doubled our capacity to transport noncitizens. This includes hundreds of flights and bus routes per week to transport detained noncitizens to less crowded Border Patrol sectors for processing and to remove or return noncitizens to their home or third countries; we will continue to scale up our ground and air transportation capabilities in light of potential increases. We have also increased contracted medical personnel by 44 percent since the start of FY 2022 to support the health and safety of noncitizens in our care.

Pillar 2: Increasing CBP processing efficiency and moving with deliberate speed to mitigate potential overcrowding at Border Patrol stations and alleviate the burden on the surrounding border communities.

Through the addition of processing personnel, facilities improvements, and digitization efforts, we have reduced the time noncitizens spend in CBP custody by over 30 percent, from an average of 85 hours in March 2021 to 58 hours in October 2022. This has allowed us to mitigate overcrowding in CBP facilities and ensure the safety of CBP personnel and noncitizens in our care and move noncitizens on to the next stage of their immigration process with due haste. Among other things, our innovations have saved over 70,000 hours in data entry and processing work and reduced the amount of time it takes to complete passenger manifests for repatriation flights from an average of 5.5 hours to 15 minutes.

CBP also developed capability within the CBP One mobile application to support advanced information submission and appointment scheduling at Ports of Entry (POEs) by noncitizens. This lawful process will increase the capacity of CBP to process intending asylum seekers at POEs after the lifting of the Title 42 public health order.

Pillar 3: Administering consequences for unlawful entry, including removal, detention, and prosecution.

We will impose consequences on those who cross the border unlawfully by optimizing and speeding processing of those subject to Expedited Removal (which allows for the quick removal of those who do not claim fear or otherwise are thought to be eligible for protection), detaining single adults when appropriate, and referring for prosecution those whose conduct warrants it.

We also are increasingly leveraging our Alternatives to Detention (ATD) program and the Asylum Processing Rule for those individuals provisionally released from DHS custody pending their immigration proceedings. The ATD program allows us to track and improve the ability of noncitizens to check in regularly with ICE; results so far show that over 99 percent appear for their scheduled immigration court hearings as required. DHS and the Department of Justice began implementing a new rule on asylum processing in May that aims to more efficiently adjudicate claims; in early yet promising results since then, the median time from filing to completion is 45 days compared to several years.

For noncitizens seeking to evade apprehension, repeat offenders, and those engaging in smuggling efforts, we are increasing referrals for prosecutions. In FY 2023 to date, there has been a 237 percent increase in prosecutions as compared to the same period in FY 2022. This will continue to be an important lever as we ramp up prosecution for repeat offenders.

Finally, the pairing of expanded legal pathways and clear consequences for those who do not avail themselves of those pathways, as demonstrated by the effectiveness of the new Venezuela parole process announced in October, provides an important model that we intend to build on.

Pillar 4: Bolstering the capacity of NGOs to receive noncitizens after they have been processed by CBP and are awaiting the results of their immigration removal proceedings. And, we are ensuring appropriate coordination with and support for state, local, and community leaders to help mitigate increased impacts to their communities.

Appropriate coordination with and support for state, local, and tribal officials, as well as community leaders, helps mitigate any increased impacts to communities. This coordination has been an essential element of our work to manage increased encounter levels and is critical to ensuring the safety of noncitizens who, after being fully screened and vetted, may be provisionally released from DHS custody pending the outcome of their immigration court proceedings. In April, FEMA awarded \$150 million in humanitarian funding to the National Board for the Emergency Food and Shelter Program (EFSP), a grant program that supplements and expands ongoing work of local social service organizations to receive and assist noncitizens released from DHS custody; in November, an additional \$75 million was awarded. Communities on the Southwest Border and throughout the United States will need additional resources in FY 2023.

Through the SBCC, DHS is conducting extensive outreach to NGOs, states, cities, and other stakeholders to ensure they have insight into the whole-of-government planning underway and understand the federal resources available to receiving jurisdictions, including EFSP. This outreach will continue once the Title 42 public health order is lifted.

Pillar 5: Targeting and disrupting the transnational criminal organizations (TCOs) and smugglers who take advantage of and profit from vulnerable migrants, and who seek to traffic drugs into our country.

Throughout 2022, DHS and federal partners have intensified disruption efforts, marshaling the largest-ever surge of resources against human smuggling networks. The results so far have included over 100,000 disruption activities, including over 6,500 arrests and nearly 6,500 disruptions of smuggling infrastructure, which includes raiding smuggler stash houses, impounding tractor trailers that are used to smuggle migrants, and confiscating smugglers' information technology. Because of these increased law enforcement efforts, human smuggling organizations have been forced to change their tactics: some have shifted their routes; some have moved their stash houses—the locations where they hold people being smuggled or stash illicit weapons—further away from the border.

In October, we announced joint actions with Mexico, reinforcing our coordinated enforcement operations to target human smuggling organizations and bring them to justice. That campaign includes new migration checkpoints, additional resources and personnel, joint targeting of human smuggling organizations, and expanded information sharing related to transit nodes, hotels, stash houses, and staging locations. Further, we have made historic investments in non-intrusive inspection technology to be deployed at POEs to increase our interdiction of illicit drugs because we know that traffickers seek to smuggle drugs in cars and trucks. CBP seized 11,200 pounds of fentanyl in FY 2021 and stopped 14,700 pounds of fentanyl from coming into the country in FY 2022.

Pillar 6: Collaborating with international and federal partners to deter irregular migration south of our border to ensure that we are sharing responsibility throughout the Western Hemisphere.

Hemispheric challenges require hemispheric solutions. For this reason, we are in constant contact with our international partners to address irregular migration south of our border. We have and will continue to strengthen relationships with our partners in Mexico, Central, and South America, taking unprecedented actions as a result. We are working with regional partners to implement the U.S. Strategy for Addressing the Root Causes of Migration and the multinational Los Angeles Declaration on Migration and Protection with historic U.S. investments, totaling nearly \$1 billion in new assistance. We have concluded bilateral arrangements with Costa Rica and Panama, agreeing to humane border security measures and support with counter-smuggling as well as repatriation assistance. The United States is providing—and has offered to provide additional—security assistance to support our regional partners to address the migration challenges in the Darién Gap. As shown with the Venezuela program and through these efforts, when we work together, we can more effectively manage regional migration flows. We are also

working closely with the Department of State to deploy messaging in countries throughout the hemisphere and to engage with media in both source and transit countries to combat the misinformation smugglers use to spur irregular migration.

Looking Ahead to Increased Migration Levels, and What This Will Mean for Our Already Strained System

As described above and in the April 26 memorandum, DHS and its federal and community partners have been taking steps for months to prepare for the lifting of the Title 42 public health order, while operating within a broken, outdated system that is not designed to handle the current volume of migration nor the increased volume we expect over the coming weeks and months. These preparations and deliberate planning will enable us to better manage and mitigate known and unanticipated challenges more effectively, while protecting the safety and security of our communities. But they come at a time when our system is already under strain; this is true at the federal level, as well as for state, local, NGO, and community partners. Notwithstanding the efforts described herein, absent Congressional action to enact comprehensive immigration reform legislation and create a fair, fast, and functioning asylum system, a significant increase will substantially strain our system even further. Addressing this challenge will take time and additional resources, as well as the partnership of Congress, state and local officials, NGOs, and communities to do so.

In light of these limitations on our current system, we are especially mindful of the following challenges and potential developments at higher levels of encounters:

- Throughout 2022, CBP, ICE, NGOs, and other critical partners have been managing levels well beyond the capacity for which their infrastructure was designed and resourced, meaning additional increases will create further pressure and potential overcrowding in specific locations along the border.
- With NGOs strained, there is a potential for a higher number of single adults and families to be provisionally released from DHS custody into communities without NGO or other sponsor support, pending the outcome of their immigration court proceedings. These noncitizens will have been fully screened and vetted against law enforcement and national security databases. The federal government has few tools or authorities to support the related impacts of these provisional releases on local communities; ESFP is primary among them and limited in terms of available funding.
- Communication and coordination across state, local, and community leaders requires good faith engagement of all parties, to help ensure we can effectively manage these developments together. We are actively engaged in this communication and coordination with all our partners and call upon others to do the same.
- Depending on levels, land POEs could experience processing delays and disruptions at specific points in time.

The Only Real Solution Is for Congress to Fix Our Broken and Outdated Immigration System

The lifting of the Title 42 public health order comes at a time when there is universal agreement that the United States is operating under a fundamentally outdated and broken immigration system, with the last comprehensive immigration reform enacted in 1986. In the decades since, the demographics of the populations arriving at the Southwest Border have changed significantly, as more people flee repressive governments and hardships. Our outdated statutes are simply not designed to deal with the dramatic changes to the nature, scope, and demographics of the migratory flows that we are seeing today. A broken system and historic underfunding has meant that incentives are misaligned, asylum court backlogs stretch for years, and the border security challenge is exacerbated.

On his first day in office, President Biden delivered to Congress the U.S. Citizenship Act. Critical provisions of this comprehensive legislation include prioritizing border technology and infrastructure; enhancing the ability to prosecute the criminal organizations involved in smuggling and trafficking; addressing root causes of migration; expanding pathways for legal immigration; and providing a roadmap to citizenship for those who have been contributing members of our communities for years. These are all ideas that have had broad bipartisan support in the past and we strongly urge Congress to consider this legislation.

We also welcome bipartisan interest in creating a fair, fast, and functioning modern asylum system—one that respects due process but provides decisions in weeks, instead of years. And we welcome innovative thinking that would bring in noncitizens to help us meet critical labor shortages. We need to tackle the challenges at our border head on by improving our immigration system once and for all, for the sake of our communities, our workforce, and noncitizens alike.

We urgently need Congressional action to provide funding in any FY 2023 funding bill to help DHS manage the lifting of the Title 42 public health order. DHS will fund operational requirements to the best of its ability by prudently executing all available appropriations; reprioritizing and reallocating existing funding and transfers; and requesting support from other federal agencies, as necessary. However, DHS's ability to adequately respond to the lifting of the Title 42 public health order depends in part on Congress providing DHS with sufficient resources. The President's Budget makes historic investments in border security technology, fully funds the Asylum Processing rule to shorten the asylum adjudication process from several years to several months and delivers the first increase in Border Patrol Agents since 2011. These elements are directly responsive to calls from members of both parties and are needed to support our frontline personnel working to keep our border secure and will aid in our effort to responsibly manage the lifting of the Title 42 public health order. DHS also identified for Congress an additional \$3.4 billion in resources that are necessary to deliver on these six pillars and manage the Southwest border after the Title 42 public health order lifts and looks forward to continuing its work with Congress.