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ON

“After Apprehension: Tracing DHS Responsibilities after Title 42”

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## Introduction

Chair Sinema, Ranking Member Lankford, and Members of the Subcommittee, thank you for the opportunity to discuss U.S. Customs and Border Protection's (CBP) role in processing migrants along the Southwest Border (SWB) as part of our critical mission to secure our borders and facilitate lawful trade and travel. We are honored to represent the dedicated men and women of CBP who operate on the frontlines to ensure our national and economic security.

The emergence of the COVID-19 pandemic and the March 2020 implementation of the Centers for Disease Control and Prevention's (CDC) public health Order,<sup>1</sup> commonly referred to as the Title 42 Order, transformed the SWB environment and significantly altered CBP's operations. From March 2020, until the order ended at 11:59 p.m. ET on May 11, 2023, with the expiration of the COVID-19 public health emergency, CBP carried out expulsions and other enforcement measures, required by the Title 42 Order, which suspended entry into United States of certain noncitizens arriving at land and adjacent coastal borders, to protect against the spread of COVID-19.

Throughout the pandemic, CBP and our partners responded to high numbers of migrant encounters while simultaneously upholding civil and human rights, securing our borders, and protecting the health and safety of surrounding communities, our personnel, and the noncitizens we encountered. The COVID-19 pandemic was particularly hard on the CBP workforce. CBP remained on the frontline carrying out our border security mission, keeping the nation's economic engine running and viable. This was at extreme cost to the agency with tens of thousands of CBP employees contracting the virus — resulting tragically in 55 line of duty deaths, directly attributed to COVID-19.

The Title 42 Order required CBP to quickly expel certain noncitizens as part of our national efforts to prevent spreading the virus. However, unlike Title 8 immigration authorities, the public health authorities under which the Title 42 Order was issued did not permit imposition of legal consequences on those attempting to unlawfully cross the United States border and, as a result, repeat encounters increased significantly.<sup>2</sup>

As a critical component of the whole-of-government planning effort led by the Department of Homeland Security (DHS) over 18 months, CBP made numerous preparations for the end of the Title 42 Order. These measures included, but were not limited to, a return to use of longstanding Title 8 immigration authorities; deployment and development of new technology and infrastructure; increased levels of personnel, including volunteers from across DHS; improved processing efficiencies and security; and coordination with our federal, state, local, international, and non-governmental partners. This comprehensive approach was outlined in the DHS Plan for Southwest Border Security and Preparedness issued in April 2022 and updated in December 2022.<sup>3</sup>

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<sup>1</sup> March 20, 2020, CDC Order under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists.

[https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons\\_Final\\_3-20-20\\_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf).

<sup>2</sup> See U.S. Border Patrol Recidivism Rates, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

<sup>3</sup> See Fact Sheet: Update on DHS Planning for Southwest Border Security Measures as the Title 42 Public Health Order Ends. <https://www.dhs.gov/news/2023/05/01/fact-sheet-update-dhs-planning-southwest-border-security-measures-title-42-public>

Leveraging expertise gained during previous migration surges as part of these preparations, CBP scaled its operations responding effectively to the areas with greatest need, imposing consequences on those who break the law, and processing noncitizens safely and humanely.

## **Current Processing and Security Operations**

Since the Title 42 Order ended on May 11, CBP has resumed applying its full range of immigration authorities under Title 8 of the U.S. Code to process all noncitizens encountered at the border, as we have done throughout our agency's history. These authorities provide for meaningful consequences for noncitizens without documentation for lawful admission, to include placing individuals in expedited removal or other immigration removal proceedings. Under Title 8, a noncitizen who is removed is subject to at least a five-year bar to reentry and can face criminal prosecution for any subsequent attempts to cross the border illegally.

### ***Migrant Processing Operations***

Well in advance of the end of the Title 42 Order, DHS implemented an approach to provide certain migrants with lawful, safe, orderly options for presenting themselves for inspection at a port of entry (POE), while imposing consequences on those who do not avail themselves to lawful processes. For example, in October 2022, DHS implemented a process to allow certain Venezuelan nationals and their qualifying family members to request advance authorization to travel to the United States to seek a discretionary grant of parole. Based on the successful process for Venezuelans, in January 2023, DHS established new parole processes for nationals of Cuba, Nicaragua, and Haiti.

To be eligible, Cuban, Haitian, Nicaraguan, and Venezuelan nationals and their immediate family members must have a supporter in the United States who can provide financial support; pass rigorous biometric and biographic screening; clear security vetting conducted by CBP; and comply with all additional requirements, including vaccination requirements and other public health guidelines. Only those who meet all specified criteria are eligible to receive advance authorization to travel to the United States by air, to be considered for parole, on a case-by-case basis, for a period of up to two years.

Building on this approach, in May 2023, DHS and the Department of Justice (DOJ) implemented a final rule,<sup>4</sup> "Circumvention of Lawful Pathways," establishing a rebuttable presumption of asylum ineligibility for certain noncitizens who fail to seek asylum or other protection in one of the countries through which they traveled on their way to the United States, and who fail to take advantage of the existing and expanded lawful, safe, and orderly pathways and processes created by this administration, including the opportunity to schedule a time and place to present at a POE via the CBP One mobile application.

Since January 12, 2023, the CBP One mobile application includes an appointment feature that provides noncitizens located in Central and Northern Mexico the ability to schedule an

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<sup>4</sup> 88 FR 31314 (published May 16, 2023).

appointment, to be processed at one of eight designated SWB POEs.<sup>5</sup> During processing at the POE, noncitizens will undergo additional screening and vetting, to include additional biometric vetting. Noncitizens who are determined to pose a national security or public safety threat, or who otherwise do not warrant parole as a matter of officer discretion at the POE, may be denied a grant of parole and placed in the appropriate processing disposition, as determined on a case-by-case basis.

The CBP One scheduling feature cuts out smugglers, decreases migrant exploitation, and makes processing more efficient upon arrival. Since CBP One's scheduling feature was introduced in January 2023, more than 260,000 noncitizens have successfully scheduled appointments to present themselves at a SWB POE.<sup>6</sup>

Noncitizens who present at a SWB POE without utilizing the existing and expanded lawful pathways and processes are, with some exceptions, subject to the rebuttable presumption of asylum ineligibility in the "Circumvention of Lawful Pathways" rule. Noncitizens who cross the border between POEs are also subject to the rebuttable presumption of asylum ineligibility. All noncitizens encountered between the POEs by U.S. Border Patrol (USBP) are transported to CBP facilities, processed in accordance with Title 8 authorities, and subjected to consequences, as appropriate, including expedited removal and transfer to U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) for detention. CBP coordinates closely with ERO on such transfers, which are contingent on available ERO capacity, and can include holding noncitizens in a custodial setting or enrollment in an alternative detention. If, at any time during processing for expedited removal, a noncitizen expresses a fear of return to their country, CBP arranges for U.S. Citizenship and Immigration Services (USCIS) to conduct a credible fear interview. In some cases, these interviews are conducted while the noncitizen is in CBP custody. In other cases, noncitizens may be transferred to ICE detention through the pendency of their credible fear decision if they are determined to be a national security or public safety threat.

Whether a noncitizen is encountered at or between POEs, CBP collects biometric and biographic information and vets all noncitizens against multiple national security and public safety databases. Noncitizens who may pose a threat to national security or public safety are referred for detention and removal, as appropriate, in coordination with ICE ERO. Noncitizens must abide by the requirements of their processing disposition, such as a Notice to Appear. Depending on the disposition, contact with ICE for further processing once they reach their destination may be required. Non-governmental organizations and local governments identify locations, where noncitizens who have been released from CBP custody can safely access services, transportation, or accommodations.

The health and safety of individuals in CBP custody, our workforce, and our communities is paramount. CBP has comprehensive policies and procedures in place to ensure that all individuals in custody receive appropriate medical support and care and continues to expand medical services contracts to improve care, especially for the most at-risk individuals. Since the

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<sup>5</sup> The eight POEs are Brownsville, Paso Del Norte in El Paso, Eagle Pass, Hidalgo, and Laredo in Texas; Calexico and San Ysidro in California; and Nogales in Arizona.

<sup>6</sup> As of August 31, 2023.

tragic in-custody death of a child this summer, CBP implemented multiple measures to address deficiencies identified by the ongoing investigation. These actions include reiterating the need to prioritize medically vulnerable individuals and family units to minimize time spent in CBP custody; mandating a medical contractor practice review and correction of deficiencies; partnering with the DHS Office of Health Security to provide medical oversight capability and also the U.S. Department of Health and Human Services, United States Public Health Service Commissioned Corps, one of the eight uniformed services, to provide medical services and guidance at multiple CBP sites; reviewing and repairing closed-circuit television systems in CBP processing facilities; and mandating frontline personnel review the National Standards on Transport, Escort, Detention, and Search. CBP continues to review our procedures, practices, and equipment to ensure we are protecting those in our care, especially those most vulnerable.

While encounters between POEs at the SWB remain below levels seen leading up to the end of the Title 42 Order, certain areas, such as USBP's Tucson Sector in Arizona, have not experienced a decrease. CBP remains vigilant and expects to see fluctuations, knowing that smugglers continue to deceive and prey on vulnerable individuals. As CBP continues to execute our plans – including delivering strengthened consequences for those who cross unlawfully while expanding access to lawful pathways and processes – we will continue to monitor changes in encounter trends and adjust our response as necessary.

To maintain our border security posture and ensure CBP's immigration processes are conducted fairly, efficiently, and safely, CBP, among other actions, deployed technology, increased personnel, expanded facilities, care, and medical services, improved processing efficiencies, and strengthened coordination with our partners.

### ***Deployed Technology, Infrastructure, and Personnel***

Maintaining situational awareness of what or who may be approaching our borders is paramount to CBP implementing an effective response to border activity. CBP continues to make substantial investments in advanced technologies that improve our agent and officer efficacy and safety, including improved communications, body-worn cameras, and autonomous surveillance towers. Additionally, CBP's large-and small-scale non-intrusive inspection (NII) systems are critical tools used at and between POEs to provide officers and agents with deeper insight into what is entering or traveling through the United States. The NII systems alert officers and agents to the presence of anomalies in shipments, traveler belongings, cargo containers, commercial trucks, railcars, and privately owned vehicles, signaling to officers and agents where further inspection is needed.

As of July 1, 2023, CBP has closed 68 gates and gaps in border barrier. We are working to close an additional 61 gates and gaps along with completing life, safety, environmental, and other remediation activities at incomplete border barrier construction sites.

Infrastructure and technology are critical to our border security operations but serves only limited purposes without our greatest asset: our skilled and professional workforce. CBP has approximately 24,000 agents and officers along the SWB. We are hiring more personnel, especially non-uniformed support personnel and contract personnel to assist in data entry and facility operations. These personnel investments allow our law enforcement agents and officers

to stay in the field and focus on their critical security mission. The Fiscal Year (FY) 24 Presidential Budget funds an additional 350 Border Patrol Agents, \$535 million for border security technology at and between POEs, and an additional 460 processing coordinators and assistants at CBP and ICE to ensure DHS can conduct essential border security missions.

### ***Expanded Facilities and Transportation and Improved Safety***

Higher numbers of migrant encounters require deliberate and coordinated actions to ensure individuals in CBP custody, are held in safe and sanitary conditions and unaccompanied children or other vulnerable populations are appropriately cared for while in CBP custody. To accommodate increases of noncitizens in CBP custody, we renovated and reopened the Rio Grande Valley Central Processing Center (CPC) in McAllen, Texas in March 2022; opened two new soft-sided facilities in the El Paso and San Diego Sectors in January 2023; recently expanded Yuma and El Paso facilities; and maintained additional soft-sided facilities located in priority locations. These facilities include wraparound service contracts that provide sanitation, food, and medical services necessary to ensure appropriate conditions for migrants in custody, frontline personnel, and contractors. We are also maximizing use of air and ground transportation contracts to transport noncitizens from USBP Sectors that are over capacity to less impacted CBP locations to prevent sustained overcrowding in our facilities.

Deployed in conjunction with expanded facilities, non-uniformed personnel, and contracted services, CBP's investments in virtual and mobile processing provided operational flexibility and streamlined operations to ensure safe and humane processing of migrants and relieve agents of non-enforcement duties.

### ***Coordination with Partners***

In February 2022, DHS stood up a Southwest Border Coordination Center (SBCC) to bring CBP together with other DHS and federal partners to coordinate planning, operations, engagement, and interagency support to prepare for anticipated migration increases at the SWB in light of the end of the Title 42 public health order. CBP is the primary supporting component of the SBCC and utilizes our operational coordination capability to provide expertise and resources in response to irregular migration flows across the SWB. This enhanced collaboration spans the entire scope of border security activities, including resources and capabilities related to infrastructure, facilities, transportation, medical care, and joint processing.

### **Maintaining Border Enforcement and Facilitation Efforts**

As part of our planning for the termination of the Title 42 Order, we surged resources, technology, and personnel to manage challenges safely and orderly along the SWB – while maintaining a persistent focus on our other missions, including, but not limited to combating human smuggling, countering illicit drugs, and facilitating the lawful flow of trade and travel, to ensure national and economic security.

### ***Combating Human Smuggling***

CBP's posture and response to migration events are informed by comprehensive analyses of information and intelligence on operations of smugglers and movement of noncitizens. We are more effectively tracking movements of various migrant groups moving towards the U.S. border,

and more aggressively pursuing investigation and prosecution of transnational criminal organizations (TCOs) and human smuggling networks responsible for illegal border crossings.

CBP's collaborative efforts with our partners help stop human smugglers and save lives at the border and beyond. For example, launched in 2016 as a joint effort between CBP and the Government of Mexico (GOM), "Se Busca Información" ("Information Wanted") identifies individuals associated with TCOs wanted for crimes associated with human and drug smuggling on both sides of the border. The "Se Busca Información" initiative encourages the public to anonymously report information about known smugglers. CBP also took the lead on Operation Sentinel, a major U.S. interagency effort supported by ICE Homeland Security Investigations (HSI) and the GOM that aims to cut off access to TCO profits from human smuggling by denying these criminals the ability to engage in travel, trade, and finance in the United States.

Migrant smugglers put vulnerable individuals and families in danger every single day. Smuggling organizations are abandoning migrants in remote and dangerous areas, and this summer's stretch of record-breaking heat compounded the dangers. For example, in southern Arizona, Tucson Sector agents responded to 151 calls for help between July 1 and July 2023, rescuing more than 1,100 border crossers. Nationwide, as of July 31, 2023, CBP conducted 28,537 rescues, exceeding in just the first 10 months of FY 2023 the 22,500 total rescues conducted in FY 2022. These humanitarian lifesaving acts are often lost in the border debate, but they are clear examples of the bravery, selflessness, and humanity our CBP agents and officers display each day.

### ***Interdicting Illicit Drugs***

Illicit drug smuggling is another major source of revenue for TCOs, but an activity that requires a much different CBP enforcement approach. While addressing the complexities of irregular migration, CBP continues to balance competing demands and remains focused on our efforts to combat the flow of illicit drugs and disrupt TCO activity.

For example, while CBP continues to address irregular migration, it also continues to combat the increasing threat of illicit synthetic drugs, especially fentanyl, being trafficked into the United States. CBP seizures of fentanyl have been escalating for several years.<sup>7</sup> In FY 2022, CBP seized approximately 14,700 pounds of fentanyl nationwide, with most of it — 12,500 pounds — seized at POEs. CBP combats TCO drug smuggling activities by collaborating and sharing information with other agencies and foreign partners; obtaining advance electronic information to identify and target suspect shipments; leveraging advanced scientific, laboratory, and canine capabilities; and deploying NII technology. CBP has also expanded and enhanced our outbound operations to stop the south-bound flow of weapons and cash that fuel these criminal networks. In FY 2022, CBP's outbound inspection operations at the SWB resulted in the seizure of more than \$7 million in undeclared currency and 415 weapons.

Our partnerships are also invaluable to our enforcement efforts. For example, through Operation Blue Lotus, CBP and our ICE-HSI partners surged intelligence, analysis, and enforcement capabilities to not only target and seize illicit fentanyl, but also pursue investigations and take

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<sup>7</sup> <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

down criminal networks. In just two months, the operation resulted in CBP making 109 arrests and seizing 4,781 pounds of fentanyl. Through a concurrent operation between the POEs, USBP seized an additional 1,063 pounds of fentanyl.<sup>8</sup>

Following the success of these enforcement efforts, on June 5, 2023, CBP launched Operation Artemis, the next phase in CBP's counter-synthetics strategy, leveraging intelligence derived from Operation Blue Lotus for targeted operations to counter the emerging fentanyl epidemic. The focus of Operation Artemis is to further disrupt and degrade the flow and supply chains that feed production of fentanyl and other synthetic drugs through coordinated enforcement, investigative, interdiction and scientific identification efforts. The operation's end goal is to stem the flow of fentanyl, its precursors, and enabling paraphernalia such as pill presses and dies through strategic enforcement actions not only at the SWB, but with expansion to express consignment, International Mail Facilities, and the air and sea cargo environments.

### ***Limiting Disruptions to Travel and Trade***

In addition to its border security mandate, CBP remains focused on its mission to enhance the nation's economic prosperity through facilitation of travel and trade. The nation's POEs are vital gateways for cross-border commerce and travel — critical sectors that drive economic growth and opportunities for American businesses and consumers. The scope and importance of CBP's role in protecting the economic security of the United States cannot be understated. Collecting almost \$112 billion in duties, taxes, and fees in FY 2022, CBP remains the second largest collector of revenue in the federal government.

The resources, technology, and processes put in place to manage anticipated challenges along the SWB associated with the termination of the Title 42 public health Order were also established to limit disruption to critical and lawful traffic that flows through our POEs and support our economic security responsibilities.

### **Conclusion**

Planning and preparedness efforts are critical to managing irregular migration. As we approached the end of the Title 42 Order, CBP was prepared to continue fulfilling our border security mission by deploying resources, streamlining processes, and putting measures in place to prevent disruptions to our critical border security and facilitation operations.

CBP remains committed to maintaining border security, properly caring for those in our custody, and keeping our communities and our workforce safe. We remain vigilant and responsive to the full range of our responsibilities including interdicting illicit drugs, preventing dangerous people and goods from crossing into our borders, enforcing hundreds of trade laws, and ensuring the efficient flow of lawful trade and travel that is so important to our economy.

Thank you for the opportunity to testify today. We look forward to your questions.

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<sup>8</sup> Operation Blue Lotus ran from March 13, 2023, to May 8, 2023. U.S. Border Patrol's Operation Four Horsemen ran from March 6, 2023, to May 6, 2023. <https://www.cbp.gov/newsroom/speeches-and-statements/statement-acting-commissioner-troy-miller-cbp-s-successful>.