



TESTIMONY OF

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For a Hearing

BEFORE

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Committee on Homeland Security  
Subcommittee on Border Security and Enforcement

ON

“Examining DHS’ Failure to Prepare for the Termination of Title 42”

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## **Introduction**

Chairman Higgins, Ranking Member Correa, and Members of the Subcommittee, thank you for the opportunity to discuss the conditions along the Southwest Border and U.S. Customs and Border Protection's (CBP) critical role in securing our borders and facilitating lawful trade and travel. I am 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, commonly referred to as Title 42,<sup>1</sup> transformed the Southwest Border environment and significantly altered CBP's operations. From March 2020 until the order terminated at 11:59 p.m. ET on May 11, 2023, CBP assisted in enforcing Title 42, which suspended the right to introduce into the United States certain noncitizens arriving at the land and adjacent coastal borders to protect against the spread of COVID-19.

Throughout the pandemic, CBP and our partners responded to high levels of migrant encounters, simultaneously upholding civil and human rights, securing our borders, and protecting the health and safety of surrounding communities, our personnel, and the noncitizens we encounter. The COVID-19 outbreak in early 2020 and the resulting worldwide pandemic was particularly hard on the men and women of CBP. While many people retreated to the safety of their homes and telework, CBP remained on the front line directly confronting this deadly virus in continuance of our border security mission and keeping the nation's economic engine running and viable. This was at extreme cost to the agency with tens of thousands of employees contracting the virus — resulting in 55 deaths directly attributed to contracting the virus in the line of duty.

While the Title 42 order was effective in helping CBP quickly expel certain covered noncitizens as part of our national efforts to prevent the spread of the virus, the order carried no legal consequences for attempts at unlawfully crossing the United States border and, as a result, repeat encounters increased significantly.<sup>2</sup>

As a critical component of the Department of Homeland Security (DHS) planning effort, CBP made numerous preparations for the end of the Title 42 order. Our response focused on the application and enforcement of immigration authorities and regulations and was supported by the deployment of technology and infrastructure; increased levels of personnel; improved processing efficiencies and security; and coordination with our partners.

Leveraging experience and expertise gained during previous migration surges, CBP, together with our partners, prepared a response plan, now implemented, to ensure we can continue to scale our operations and effectively respond to areas of the greatest need, impose consequences on those who break the law, and process noncitizens safely and humanely.

## **Current Post-Title 42 Processing and Security Operations**

As anticipated, in the days leading up to the termination of the Title 42 order, daily CBP encounters with noncitizens between the ports of entry (POEs) reached historic highs of approximately 10,000

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<sup>1</sup> March 20, 2020, CDC Order under Sections 362 and 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>.

per day. Since the CDC’s Title 42 public health order terminated and DHS and the Department of Justice (DOJ) began implementing a new regulation on May 12, 2023, CBP has experienced a significant reduction in encounters at the Southwest Border. Following the termination of the Title 42 order, CBP has been encountering approximately 3,400 noncitizens between POEs per day. At the POEs, CBP has been encountering approximately 1,000 noncitizens per day, predominately with an appointment scheduled through the CBP One mobile application. The level of encounters between the POEs represents a decrease of approximately 70 percent compared to the 48 hours preceding the termination of the Title 42 order.

Together with our partners across DHS and throughout the federal government, CBP’s response has been focused on the resources and capabilities needed to enforce the law and regulations to mitigate potential increases in migration and keep our frontline personnel where it belongs: on the frontline.

### ***Enforcement of Immigration Authorities and Regulations***

With the termination of the CDC’s Title 42 public health order, CBP has resumed using its full range of immigration authorities under Title 8 of the U.S. Code to process migrants encountered at the border without documentation for lawful admission, as we have done throughout our agency’s history. These authorities provide for meaningful consequences that include placing individuals in expedited removal or other immigration removal proceedings. Under Title 8, an individual who is removed is subject to at least a five-year ban on admission to the United States and can face criminal prosecution for any subsequent attempt to cross the border illegally.

Coupled with these consequences, DHS and DOJ implemented a final rule,<sup>3</sup> “Circumvention of Lawful Pathways,” that establishes 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 travel on their way to the United States, and who fail to take advantage of the existing and expanded lawful pathways to enter the United States, including the opportunity to schedule a time and place to present at a POE via the CBP One mobile application.

Those who attempt to cross the Southwest Border without utilizing these processes are, with some exceptions, subject to a rebuttable presumption of asylum ineligibility. To maintain our border security posture and ensure this process is conducted fairly, efficiently, and safely, CBP has deployed technology, increased personnel, expanded facilities and transportation, improved processing efficiencies, and strengthened coordination with our partners.

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

Accelerating efforts to provide significant enhancements to its domain awareness capabilities between the POEs, CBP made substantial investments in advanced technologies that improve our agent and officer efficacy and safety, including improved communications solutions, body-worn cameras, and additional autonomous surveillance towers. Additionally, CBP’s large- and small-scale non-intrusive inspection (NII) systems are critical tools used at and in between the 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,

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<sup>3</sup> 88 FR 31314 (published May 16, 2023).

passenger belongings, cargo containers, commercial trucks, railcars, and privately owned vehicles, quickly signaling to officers and agents where further inspection is needed.

CBP has also closed 55 gates and gaps in the border barrier to date, and we are working to close an additional 74 gates and gaps along with life, safety, environmental and other remediation activities at incomplete border barrier projects.

Surveillance and detection technology is critical to our border security operations but serves only limited purpose without our greatest asset: our skilled and professional workforce. CBP has approximately 24,000 agents and officers along the Southwest Border. We have been 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.

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

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 the Yuma and El Paso soft-sided facilities and maintained additional soft-sided facilities located in priority locations. These facilities include wrap around service contracts that provide sanitation, food, and medical services necessary to ensure appropriate conditions for migrants in custody and frontline personnel. 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 until they are transferred out of CBP custody.

We are also maximizing the use of air and ground transportation contracts to move noncitizens from U.S. Border Patrol Sectors that are over capacity to other less impacted CBP locations.

### ***Improved Processing Efficiencies and Security***

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

For example, noncitizens are able to use the CBP One mobile application to schedule an appointment at one of seven Southwest Border POEs and present themselves for inspection to a CBP officer. The ability to use the app cuts out the smugglers, decreases migrant exploitation, and makes processing more efficient upon arrival at the POE. The CBP One scheduling process is available to all noncitizens who are located in Central and Northern Mexico.

CBP collects biometric and biographic information and screens and vets all noncitizens encountered at the border against multiple public safety databases. Noncitizens who may pose a threat to national security or public safety are detained. Noncitizens who are provisionally released must abide by the requirements of their release, including contact with U.S. Immigration and Customs Enforcement (ICE) for further processing once they reach their destination. CBP coordinates with

nongovernmental organizations and local governments to identify locations where noncitizens can safely access services, transportation, or accommodations.

### ***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 in response to migration increases at the Southwest Border. CBP is the primary supported component of the SBCC and is also utilizing our operational coordination capability to provide expertise and resources in response to the irregular migration flows across the Southwest Border. 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 public health order, we surged resources, technology, and personnel to manage challenges safely and orderly along the Southwest Border – while at the same time maintaining a persistent focus on our other missions 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 the movement of noncitizens. We are more effectively tracking movements of various migrant groups who may be headed 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 cruel and profit-driven 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,” which translates to “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 promotes binational unity and encourages the public to anonymously report information about known smugglers. CBP has also taken the lead on Operation Sentinel, a major U.S. interagency effort supported by 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, leading to a dramatic rise in the number of rescues CBP performs. In FY 2022, CBP conducted nearly 22,500 rescues nationwide, which was 69 percent higher than the total number of rescues in all of FY 2021. These humanitarian lifesaving acts are often lost in the border debate, but these acts are clear examples of the bravery, selflessness, and humanity our CBP agents and officers display each and every day.

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

In addition to migrant smuggling, illicit drugs are another major source of revenue for TCOs. CBP remains focused on our efforts to combat the flow of illicit drugs and disrupt TCO activity 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.

Fentanyl and its analogs are synthetic opioids that continue to be some of the most dangerous illegal drugs flowing through, and damaging, communities across the nation and are involved in more overdose deaths than any other illicit drug trafficked into the United States. CBP seizures of fentanyl have been escalating for several years.<sup>4</sup> In FY 2022, CBP seized approximately 14,700 pounds of fentanyl nationwide, with most of it — 12,500 pounds — seized at POEs, and we already exceeded those amounts just seven months into this fiscal year.

Our partnerships are also invaluable to our enforcement efforts. For example, through Operation Blue Lotus, CBP and our ICE Homeland Security Investigation (HSI) partners surged our intelligence, analysis, and enforcement capabilities to not only target and seize illicit fentanyl, but also pursue investigations and take down criminal networks. In just two months, the operation resulted in 108 arrests and the seizure of nearly 4,800 pounds of fentanyl. Through a concurrent operation between the POEs, the U.S. Border Patrol seized an additional 2,260 pounds of fentanyl.<sup>5</sup>

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

In addition to its border security mandate, one of CBP's core mission objectives is to enhance the nation's economic prosperity through the 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 Southwest Border associated with the termination of the Title 42 public health order were also established to limit disruption to the critical and lawful traffic that flows through our POEs and supports our economic security responsibilities.

Commercial vehicle traffic at both the Northern and Southwest Border land POEs fully rebounded to levels experienced before the COVID-19 pandemic, and since COVID-19 travel restrictions were lifted, CBP continues to process increasing numbers of arriving travelers without any significant delays.<sup>6</sup> CBP will continue to track POE traffic and wait times and adjust resources as needed to ensure travelers and goods move safely and efficiently across the Southwest Border.

## **Conclusion**

Planning and preparedness efforts are critical to managing irregular migration. As we approached the end of Title 42, CBP was prepared to ensure we could continue to fulfill our border security

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<sup>4</sup> <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

<sup>5</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.

<sup>6</sup> As of May 12, 2023, COVID-19 travel restrictions have been fully terminated. *See* 88 FR 30033 (May 10, 2023) (terminating restrictions at land POEs and ferry terminals along the United States-Canada border); 88 FR 30035 (May 10, 2023) (terminating restrictions at land POEs and ferry terminals the United States-Mexico border).

mission. In anticipation of potential challenges, we deployed resources, streamlined processes, and put 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 the American people and our CBP workforce safe. We remain vigilant and responsive to the full range of our responsibilities including interdicting illicit drugs crossing into the United States, preventing dangerous people and goods from crossing 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. I look forward to your questions.