

Message

**From:** (b)(6), (b)(7)(C)  
**Sent:** 2/8/2023 10:24:33 PM  
**To:** (b)(6), (b)(7)(C)  
**CC:** (b)(6), (b)(7)(C)  
**Subject:** RE: CBP One App Engagements

Understood but it was asked during that meeting. I'll ask INA to make that ask or I can ask directly.

Also, the embassy had a question on whether the CBP One appointments are counted as an encounter if the individual is in fact processed for T42 exception. i.e. if the individual shows up for the appointment and is processed by CBP-would that be considered an encounter.

**From:** (b)(6), (b)(7)(C)  
**Sent:** Monday, February 6, 2023 8:37 AM  
**To:** (b)(6), (b)(7)(C)  
**Cc:** (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
**Subject:** RE: CBP One App Engagements

Good morning all,

(b)(6), (b)(7)(C) since this question regarding the statistic is related to appointments in CBP One using the Advance Land Traveler Submission for T42 exceptions, I am not able to speak to the release of that information. I would have to defer to Director (b)(6), (b)(7)(C) or DXD (b)(6), (b)(7)(C).

The get backs, as I recall, were also related to current T42 exception functionality (b)(5)

(b)(5) Sharing from my notes below:

- Requested app enhancements

(b)(5)

Respectfully,

(b)(6), (b)(7)(C)  
U.S. Customs and Border Protection Officer  
Branch Chief, Enforcement Programs Division

Office of Field Operations

(b)(6), (b)(7)(C)

---

**From:** (b)(6), (b)(7)(C)

**Sent:** Saturday, February 4, 2023 3:29 PM

**To:** (b)(6), (b)(7)(C)

**Cc:** (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

**Subject:** RE: CBP One App Engagements

Good afternoon,

I am copying APP as I am not sure if we are sharing those statistics. I defer to them on whether it is appropriate. Do you recall the get backs that would be in the short term, not related to the longer term effort?

Thank you,

(b)(6), (b)(7)(C)

Strategic Transformation Office  
Planning, Program Analysis and Evaluation  
Office of Field Operations

(b)(6), (b)(7)(C)

---

**From:** (b)(6), (b)(7)(C)

**Sent:** Saturday, February 4, 2023 12:25 AM

**To:** (b)(6), (b)(7)(C)

**Cc:** (b)(6), (b)(7)(C)

**Subject:** RE: CBP One App Engagements

(b)(6), (b)(7)(C)

Thanks for the help the other day. Mexican migration has asked if we can share with them the statistics in terms of appointments scheduled since the inception of the program (1/18) and on a daily basis broken down by nationality. They asked for this info during the presentation if you recall. Also, they're were a couple of suggestions they recommended during the call and was looking to get a status on that front.

Thanks.

---

**From:** (b)(6), (b)(7)(C)

**Sent:** Friday, January 20, 2023 3:28 PM

**To:** (b)(6), (b)(7)(C)

**Cc:** (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (NCO) (b)(6), (b)(7)(C)

**Subject:** RE: CBP One App Engagements

Also, instructions for the use of CBP One to verify appointments. Only those with cbpp.dhs.gov verified email domains can access it.

Thank you,

(b)(6), (b)(7)(C)

Strategic Transformation Office  
Planning, Program Analysis and Evaluation  
Office of Field Operations

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)

Sent: Friday, January 20, 2023 1:55 PM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (NCO) (b)(6), (b)(7)(C)

Subject: RE: CBP One App Engagements

We're good at 2pm. Send the invite.

(b)(6), (b)(7)(C)

Director-North America Division  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (Office)

(b)(6), (b)(7)(C) (Cell)

From: (b)(6), (b)(7)(C)

Sent: Friday, January 20, 2023 1:53 PM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (NCO) (b)(6), (b)(7)(C)

Subject: RE: CBP One App Engagements

INM is asking if we can do 2:00 pm-can we make this work?

From: (b)(6), (b)(7)(C)

Sent: Friday, January 20, 2023 12:43 PM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (NCO) (b)(6), (b)(7)(C)

Subject: RE: CBP One App Engagements

10-4

Send us the invite and we'll dial in.

(b)(6), (b)(7)(C)

Director-North America Division  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (Office)

(b)(6), (b)(7)(C) (Cell)

From: (b)(6), (b)(7)(C)

Sent: Friday, January 20, 2023 1:29 PM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (NCO) (b)(6), (b)(7)(C)  
Subject: RE: CBP One App Engagements

The call with INM will be at 3:00 pm

From: (b)(6), (b)(7)(C)  
Sent: Friday, January 20, 2023 11:02 AM  
To: (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
Subject: RE: CBP One App Engagements

(b)(6), (b)(7)(C)

I spoke with (b)(6), (b)(7)(C) and he's asking (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) to join the call. For the internal call, they're available at 1400 (EST) and the call with INM could be after 1500 (EST).

Please advise.

(b)(6), (b)(7)(C)  
Director-North America Division  
U.S. Customs and Border Protection  
(b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (Office)  
(b)(6), (b)(7)(C) (Cell)

From: (b)(6), (b)(7)(C)  
Sent: Friday, January 20, 2023 10:54 AM  
To: (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
Subject: RE: CBP One App Engagements

Thanks you available for a quick call?

From: (b)(6), (b)(7)(C)  
Sent: Friday, January 20, 2023 9:49 AM  
To: (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
Subject: RE: CBP One App Engagements

Yes, we can have SME participate.

(b)(6), (b)(7)(C)  
Deputy Executive Director  
Admissibility and Passenger Programs  
Office of Field Operations  
U.S. Customs and Border Protection

From: (b)(6), (b)(7)(C)

Sent: Friday, January 20, 2023 10:44 AM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: RE: CBP One App Engagements

(b)(6), (b)(7)(C) I will look at these shortly but it would be a good idea to at least have someone with technical knowledge of the app join to answer any technical questions that may arise.

(b)(6), (b)(7)(C) is that possible?

From: (b)(6), (b)(7)(C)

Sent: Friday, January 20, 2023 7:32 AM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: FW: CBP One App Engagements

(b)(6), (b)(7)(C)

Attached are the materials OFO provided. I think this is all that's needed for the presentation to INM but let me know if you need a little more or if you need us to join the discussion.

(b)(6), (b)(7)(C)

Director-North America Division  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (Office)

(b)(6), (b)(7)(C) (Cell)

From: (b)(6), (b)(7)(C)

Sent: Friday, January 20, 2023 8:16 AM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: RE: CBP One App Engagements

Good morning (b)(6), (b)(7)(C)

Please see attached PPT which we have modified to include materials related to CBP One Advance Land Traveler submissions in the current state and also incorporates the additional notional process details, as discussed. We have also included the more lengthy CBP One user guides in case they are helpful in addressing questions that are being fielded from the migrants attempting use this functionality.

Respectfully,

(b)(6), (b)(7)(C)

U.S. Customs and Border Protection Officer  
Branch Chief, Enforcement Programs Division

Office of Field Operations

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 4:16 PM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: FW: CBP One App Engagements

Importance: High

Hey (b)(6), (b)(7)(C).

I wanted to follow up with you on this effort. Below is what I was forwarded by DAC Lamm but in speaking with (b)(6), (b)(7)(C) about it briefly this morning, I might be a little confused as to what we need to do on this one aside from socialize it with GoM. Perhaps we can get on a quick call tomorrow to discuss the finer points.

I'm free after 11 tomorrow. Please advise.

(b)(6), (b)(7)(C)

Director-North America Division  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (Office)

(b)(6), (b)(7)(C) (Cell)

From: LAMM, CLINT (b)(6), (b)(7)(C)

Sent: Friday, January 13, 2023 9:00 AM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

Subject: CBP One App Engagements

Importance: High

IOD,

Following the call with OFO yesterday, they are ready to start deployment of CBP One now. They ask INA's support in the coordination efforts with GOM/INM, (b)(5)

(b)(5)

In addition to asking OFO to get materials made in Spanish, AC asked us to reach out to GOM counterparts to socialize and seek support asap. Invites should include DHS/MX and Post to support. Please get at least an initial discussion set up OFO and INM and advise.

Thank you

Clint Lamm  
Deputy Assistant Commissioner  
Office of International Affairs  
U.S. Customs and Border Protection  
M: (b)(6), (b)(7)(C)



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Follow us on Instagram

Message

From:

(b)(6), (b)(7)(C)

Sent:

1/17/2023 7:24:14 PM

To:

(b)(6), (b)(7)(C)

OFO Ops ERD Mgmt

**(b)(6), (b)(7)(C), (b)(7)(E)**

Subject:

Re: CBP One App Scheduling

(b)(6), (b)(7)(C)

Concur. Similar to

(b)(5)

(b)(6), (b)(7)(C)

*Director, Incident Response Branch  
Office of Field Operations  
U.S. Customs and Border Protection*

(b)(6), (b)(7)(C) mobile

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From:

(b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 14:22

To: OFO Ops ERD Mgmt:

(b)(6), (b)(7)(C), (b)(7)(E)

Subject: FW: CBP One App Scheduling

Without OCC – I recommend

(b)(5)

Operationally, (b)(5)

**(b)(5)**

Thoughts?

(b)(6), (b)(7)(C)

Director, Planning and Preparedness  
Operations Directorate, Emergency Response Division  
Office of Field Operations  
U.S. Customs and Border Protection



(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) office

(b)(6), (b)(7)(C) cell

From: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 2:18 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

Subject: RE: CBP One App Scheduling

OFO,

Thank you for the clarification. (b)(5)

(b)(5)

(b)(5) We defer to OFO on the policy decision on (b)(5) and we are happy to review/coordinate after that decision is made. We're happy to discuss if that would be helpful.

Thank you,

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Attorney, Enforcement and Operations

Office of Chief Counsel

U.S. Customs and Border Protection

Cell: (b)(6), (b)(7)(C)

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From: (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 1:34 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

Subject: RE: CBP One App Scheduling

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Director, Planning and Preparedness

Operations Directorate, Emergency Response Division

Office of Field Operations  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) office  
(b)(6), (b)(7)(C) cell

From: (b)(6), (b)(7)(C)  
Sent: Tuesday, January 17, 2023 1:30 PM  
To: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Subject: RE: CBP One App Scheduling

Hi all,

For what it is worth, I feel (b)(5)  
(b)(5)

Respectfully,

(b)(6), (b)(7)(C)  
U.S. Customs and Border Protection Officer  
Branch Chief, Enforcement Programs Division  
Office of Field Operations  
(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)  
Sent: Tuesday, January 17, 2023 1:27 PM  
To: (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Subject: RE: CBP One App Scheduling

(b)(5)

Thank you,

(b)(6), (b)(7)(C)  
Strategic Transformation Office  
Planning, Program Analysis and Evaluation  
Office of Field Operations  
(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)  
Sent: Tuesday, January 17, 2023 1:00 PM  
To: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
(OCC) (b)(6), (b)(7)(C)  
Subject: Re: CBP One App Scheduling

Thanks (b)(6), (b)(7)(C)

I think our question is more to the point that (b)(5)  
(b)(5)

(b)(6), (b)(7)(C)  
*Director, Incident Response Branch*  
*Office of Field Operations*  
*U.S. Customs and Border Protection*  
(b)(6), (b)(7)(C) mobile

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From: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Sent: Tuesday, January 17, 2023 12:56  
To: (b)(6), (b)(7)(C)  
(OCC) (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(OCC) (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C)  
Subject: RE: CBP One App Scheduling

OFO,

Thank you for reaching out. (b)(5)  
(b)(5)

We're happy to discuss if that would be helpful.

Thank you,

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Attorney, Enforcement and Operations  
Office of Chief Counsel  
U.S. Customs and Border Protection  
Cell: (b)(6), (b)(7)(C)

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From: (b)(6), (b)(7)(C)  
Sent: Tuesday, January 17, 2023 12:40 PM  
To: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
Subject: RE: CBP One App Scheduling

This needs discussion. (b)(5)

Thank you,

(b)(6), (b)(7)(C)

Deputy Executive Director, Operations  
Office of Field Operations  
U.S. Customs and Border Protection  
(b)(6), (b)(7)(C) office  
(b)(6), (b)(7)(C) mobile  
(b)(6), (b)(7)(C)

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VIGILANCE ★ SERVICE TO COUNTRY ★ INTEGRITY

From: (b)(6), (b)(7)(C)  
Sent: Tuesday, January 17, 2023 12:36 PM  
To: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

**Subject:** CBP One App Scheduling

OCC,

Right now, if unaccompanied children come to the port, they cannot be turned away

(b)(5)

(b)(5)

(b)(5)

Respectfully,

(b)(6), (b)(7)(C) NREMT, MEP

(A)Deputy Director, Incident Response Branch

Office of Field Operations

U.S. Customs and Border Protection

(b)(6), (b)(7)(C) mobile

(b)(6), (b)(7)(C)

Message

**From:** (b)(6), (b)(7)(C)

**Sent:** 1/25/2023 10:16:32 PM

**To:** (b)(6), (b)(7)(C) (OCC); (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)

**CC:** (b)(6), (b)(7)(C)  
(OCC); (b)(6), (b)(7)(C)

**(b)(6), (b)(7)(C)**

(b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C)

(OCC); (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(OCC); (b)(6), (b)(7)(C)

**Subject:** Re: CBP One App Scheduling

(b)(6), (b)(7)(C)

OFO will continue to allow minors to register and schedule an appointment.

(b)(6), (b)(7)(C)  
Director, Incident Response  
Office of Field Operations  
(b)(6), (b)(7)(C) mobile  
Sent from my iPhone

On Jan 25, 2023, at 16:30, (b)(6), (b)(7)(C) (OCC); (b)(6), (b)(7)(C) wrote:

Good afternoon,  
We wanted to ask about the discussion below. Was there a decision made (b)(5)  
(b)(5), (b)(6), (b)(7)(C)

Thank you,  
(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)  
Senior Attorney (Enforcement and Operations)  
Office of Chief Counsel

U.S. Customs and Border Protection

Desk: (b)(6), (b)(7)(C)

Cell: (b)(6), (b)(7)(C)

\*\*\*

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From: (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 2:19 PM

To: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C)

Subject: RE: CBP One App Scheduling

Thank you very much.

(b)(6), (b)(7)(C)

Director, Planning and Preparedness  
Operations Directorate, Emergency Response Division  
Office of Field Operations  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) office

(b)(6), (b)(7)(C) cell

From: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 2:18 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C)

Subject: RE: CBP One App Scheduling

OFO,

Thank you for the clarification.

(b)(5)

(b)(5)

(b)(5)

We defer to OFO on the policy decision on

(b)(5)

and we are happy to review/coordinate after that decision is made. We're happy to discuss if that would be helpful.

Thank you,

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Attorney, Enforcement and Operations  
Office of Chief Counsel  
U.S. Customs and Border Protection  
Cell: (b)(6), (b)(7)(C)

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From: (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 1:34 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(OCC)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(OCC)

(b)(6), (b)(7)(C)

(OCC)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(OCC)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(OCC)

(b)(6), (b)(7)(C)

Subject: RE: CBP One App Scheduling

+ (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Director, Planning and Preparedness  
Operations Directorate, Emergency Response Division  
Office of Field Operations  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) office

(b)(6), (b)(7)(C) cell

From: (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 1:30 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(OCC)

(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
**Subject:** RE: CBP One App Scheduling

Hi all,

For what it is worth, I feel that (b)(5)  
**(b)(5)**

Respectfully,

(b)(6), (b)(7)(C)  
U.S. Customs and Border Protection Officer  
Branch Chief, Enforcement Programs Division  
Office of Field Operations  
(b)(6), (b)(7)(C)

**From:** (b)(6), (b)(7)(C)  
**Sent:** Tuesday, January 17, 2023 1:27 PM  
**To:** (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C)  
**Cc:** (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
(OCC) (b)(6), (b)(7)(C)  
**Subject:** RE: CBP One App Scheduling

**(b)(5)**

Thank you,

(b)(6), (b)(7)(C)  
Strategic Transformation Office  
Planning, Program Analysis and Evaluation  
Office of Field Operations  
(b)(6), (b)(7)(C)

**From:** (b)(6), (b)(7)(C)  
**Sent:** Tuesday, January 17, 2023 1:00 PM  
**To:** (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

Subject: Re: CBP One App Scheduling

Thanks (b)(6), (b)(7)(C)!

I think our question is more to the point that (b)(5)

(b)(5)

(b)(6), (b)(7)(C)

*Director, Incident Response Branch*

*Office of Field Operations*

*U.S. Customs and Border Protection*

(b)(6), (b)(7)(C) mobile

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From: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Sent: Tuesday, January 17, 2023 12:56  
To: (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

Subject: RE: CBP One App Scheduling

OFO,

Thank you for reaching out.

(b)(5)

(b)(5)

We're happy to discuss if that would be helpful.

Thank you,

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Attorney, Enforcement and Operations

Office of Chief Counsel

U.S. Customs and Border Protection

Cell: (b)(6), (b)(7)(C)

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From: (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 12:40 PM

To: (b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)

(b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: RE: CBP One App Scheduling

This needs discussion. I am not understanding that all need to be in CBP One to apply.

Thank you,

(b)(6), (b)(7)(C)

Deputy Executive Director, Operations

Office of Field Operations

U.S. Customs and Border Protection

(b)(6), (b)(7)(C) office

(b)(6), (b)(7)(C) mobile

(b)(6), (b)(7)(C)

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<image001.png>

From: (b)(6), (b)(7)(C)

Sent: Tuesday, January 17, 2023 12:36 PM

To: (b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C) (OCC)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (OCC) (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

**(b)(6), (b)(7)(C)**

Subject: CBP One App Scheduling

OCC,

Right now, if unaccompanied children come to the port, they cannot be turned away. (b)(5)

**(b)(5)**

Respectfully,

(b)(6), (b)(7)(C) NREMT, MEP  
(A)Deputy Director, Incident Response Branch  
Office of Field Operations  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C) mobile  
(b)(6), (b)(7)(C)

Message

**From:** OFO OPS SBOC (b)(7)(E)  
(b)(7)(E)  
**Sent:** 12/15/2022 6:29:18 PM  
**To:**  
**(b)(6), (b)(7)(C)**  
**CC:** OFO OPS SBOC (b)(7)(E)  
(b)(7)(E)  
**Subject:** Post-Title 42 Reporting Requirements Meeting Notes 1100 20221215  
**Attachments:** Post-T42 Reporting Requirements 1100 20221215.docx

**Post-Title 42 Reporting Requirements  
1100 December 15, 2022**

**(A)DXD** (b)(6), (b)(7)(C) :

**(b)(5)**

**PPAE** (b)(6), (b)(7)(C) :

**(b)(5), (b)(6), (b)(7)(C)**

**Dir** (b)(6), (b)(7)(C) :

**(b)(5)**

**(A)DXD** (b)(6), (b)(7)(C):

(b)(5)

(b)(6), (b)(7)(C)

**(b)(5)**

**(A)DXD** (b)(6), (b)(7)(C):

**(b)(5), (b)(6), (b)(7)(C)**

**Group:**

**(b)(5)**

(b)(6), (b)(7)(C):

(b)(5)

(b)(5)

**Dir.** (b)(6), (b)(7)(C):

**(b)(5)**

**Non-Assisted Release Group Discussion:**

**(b)(5), (b)(6), (b)(7)(C)**

**Follow up:**

**(b)(5), (b)(6), (b)(7)(C)**

**(b)(5), (b)(6), (b)(7)(C)**

Respectfully,

**(b)(6), (b)(7)(C)**

Southwest Border Operations Cell (SBOC)

Operations Directorate

Office of Field Operations

U.S. Customs and Border Protection

Office: **(b)(6), (b)(7)(C)**

Mobile: **(b)(6), (b)(7)(C)**

Post-Title 42 Reporting Requirements

1100 December 15, 2022

**(A)DXD** (b)(6), (b)(7)(C):

**(b)(5)**

**PPAE** (b)(6), (b)(7)(C):

**(b)(5), (b)(6), (b)(7)(C)**

**Dir** (b)(6), (b)(7)(C):

**(b)(5)**

**(A)DXD** (b)(6), (b)(7)(C):

(b)(5)

**(b)(6), (b)(7)(C)**

**(b)(5)**

**(A)DXD** (b)(6), (b)(7)(C):



**(b)(5), (b)(6), (b)(7)(C)**

**Group:**

**(b)(5)**

**(b)(6), (b)(7)(C)**

**(b)(5)**

**Dir.** **(b)(6), (b)(7)(C)**

**(b)(5)**

**Non-Assisted Release Group Discussion:**

**(b)(5), (b)(6), (b)(7)(C)**

**Follow up:**

**(b)(5), (b)(6), (b)(7)(C)**

Message

**From:** (b)(6), (b)(7)(C), (b)(7)(E)  
**Sent:** 12/15/2022 6:37:03 PM  
**To:** OFO-OPS-IRB-TEAM; (b)(7)(E)  
**Subject:** FW: Post-Title 42 Reporting Requirements Meeting Notes 1100 20221215  
**Attachments:** Post-T42 Reporting Requirements 1100 20221215.docx

For awareness – also as discussed on the call.

Thank you,

(b)(6), (b)(7)(C)  
Branch Chief, Incident Response  
Operations Directorate, Emergency Response Division  
Office of Field Operations  
U.S. Customs and Border Protection  
Cell: (b)(6), (b)(7)(C)

**From:** OFO OPS SBOC; (b)(7)(E)  
**Sent:** Thursday, December 15, 2022 1:29 PM  
**To:** (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
**Cc:** OFO OPS SBOC; (b)(7)(E)  
**Subject:** Post-Title 42 Reporting Requirements Meeting Notes 1100 20221215

**Post-Title 42 Reporting Requirements  
1100 December 15, 2022**

(A)DXD (b)(6), (b)(7)(C)

(b)(5)

PPAE (b)(6), (b)(7)(C) :

(b)(5), (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

Dir. (b)(6), (b)(7)(C)

**(b)(5)**

(A)DXD (b)(6), (b)(7)(C)

(b)(5)

(b)(6), (b)(7)(C)

**(b)(5)**

(A)DXD (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

Group:

**(b)(5)**

(b)(6), (b)(7)(C)

**(b)(5)**

Dir. (b)(6), (b)(7)(C)

**(b)(5)**

Non-Assisted Release Group Discussion:

**(b)(5)**

**(b)(5)**

**Follow up:**

**(b)(5), (b)(6), (b)(7)(C)**

Respectfully,

**(b)(6), (b)(7)(C)**

Southwest Border Operations Cell (SBOC)

Operations Directorate

Office of Field Operations

U.S. Customs and Border Protection

Office: **(b)(6), (b)(7)(C)**

Mobile: **(b)(6), (b)(7)(C)**

Message

**From:** (b)(6), (b)(7)(C)  
**Sent:** 4/12/2023 8:14:39 PM  
**To:** (b)(6), (b)(7)(C)  
**CC:** (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) SYS AEU SUPERVISORS  
(b)(7)(E)  
**Subject:** RE: T42 Exceptions Ped West 0700 intake on 04/03/2023

Thank you so much (b)(6), (b)(7)(C) for the quick response back.

(b)(6), (b)(7)(C)  
Branch Chief, Admissibility Enforcement Unit  
Customs and Border Protection  
Department of Homeland Security  
San Ysidro Port of Entry  
(b)(6), (b)(7)(C) (Office)  
(b)(6), (b)(7)(C) (Gov Cell)

**From:** (b)(6), (b)(7)(C)  
**Sent:** Wednesday, April 12, 2023 1:08 PM  
**To:** (b)(6), (b)(7)(C)  
**Cc:** (b)(6), (b)(7)(C) SYS AEU SUPERVISORS  
(b)(7)(E)  
**Subject:** RE: T42 Exceptions Ped West 0700 intake on 04/03/2023

Good afternoon,

The family canceled their appointment on (b)(6), (b)(7)(C)

The single individual has no appointment.

Thank you,

(b)(6), (b)(7)(C)  
Strategic Transformation Office  
Planning, Program Analysis and Evaluation  
Office of Field Operations  
(b)(6), (b)(7)(C)

**From:** (b)(6), (b)(7)(C)  
**Sent:** Wednesday, April 12, 2023 3:55 PM  
**To:** (b)(6), (b)(7)(C)

Cc: [redacted] (b)(6), (b)(7)(C) SYS AEU

SUPERVISORS: [redacted] (b)(7)(E)

Subject: RE: T42 Exceptions Ped West 0700 intake on 04/03/2023

Afternoon [redacted] (b)(6), (b)(7)(C)

We have encountered CBPO Confirmation docs: [redacted] (b)(7)(E)

[redacted] (b)(7)(E)  
[redacted] (b)(6), (b)(7)(C), (b)(7)(E)

Would you be able to assist with some guidance.

[redacted] (b)(6), (b)(7)(C)

Branch Chief, Admissibility Enforcement Unit  
Customs and Border Protection  
Department of Homeland Security  
San Ysidro Port of Entry

[redacted] (b)(6), (b)(7)(C) (Office)

[redacted] (b)(6), (b)(7)(C) (Gov Cell)

From: [redacted] (b)(6), (b)(7)(C)

Sent: Monday, April 3, 2023 3:56 PM

To: [redacted] (b)(6), (b)(7)(C)

Cc: [redacted] (b)(6), (b)(7)(C)

Subject: FW: T42 Exceptions Ped West 0700 intake on 04/03/2023

Hello [redacted] (b)(6), (b)(7)(C)

Today we were scheduled to receive [redacted] (b)(7)(E) appointments ([redacted] (b)(7)(E) at 0700 and [redacted] (b)(7)(E) at 1200). I'm not sure if there was a glitch in the system but I wanted to bring this up to your attention. Thank you.

Respectfully,

[redacted] (b)(6), (b)(7)(C)

Watch Commander  
Admissibility Enforcement Unit  
San Ysidro Port of Entry



Customs and Border Protection  
U.S. Department of Homeland Security  
cbp.gov

From: [redacted] (b)(6), (b)(7)(C)

Sent: Monday, April 3, 2023 2:05 PM

To: SDOC-SAN DIEGO OPERATIONS CENTER [redacted] (b)(7)(E)

SYS AEU SUPERVISORS

[redacted] (b)(7)(E)

Cc: [redacted] (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: T42 Exceptions Ped West 0700 intake on 04/03/2023

Good afternoon,

List of 121 names we received for T42 Exceptions processing for today, April 3, 2023, at 0700 hours through Pedestrian West.

	Name	A#	Citizenship	Date Of Birth	Family Group # (USEC)	Status	Custody	Additional Details/Notes/Operational Challenges from Field Office
1	<b>(b)(6), (b)(7)(C), (b)(7)(E)</b>					NTA	RELEASED	<b>(b)(7)(E)</b>
2						NTA	RELEASED	
3						NTA	RELEASED	
4						NTA	RELEASED	
5						NTA	RELEASED	
6						NTA	RELEASED	
7						NTA	RELEASED	
8						NTA	RELEASED	
9						NTA	RELEASED	
10						NTA	RELEASED	
11						NTA	RELEASED	
12						NTA	RELEASED	
13						NTA	RELEASED	
14						NTA	RELEASED	
15						NTA	RELEASED	
16						NTA	RELEASED	
17						NTA	RELEASED	
18						NTA	RELEASED	
19						NTA	RELEASED	
20						NTA	RELEASED	
21						NTA	RELEASED	

22		NTA	RELEASED
23		NTA	RELEASED
24		NTA	RELEASED
25		NTA	RELEASED
26		NTA	RELEASED
27		NTA	RELEASED
28		NTA	RELEASED
29		NTA	RELEASED
30		NTA	RELEASED
31		NTA	RELEASED
32		NTA	RELEASED
33	<b>(b)(6), (b)(7)(C), (b)(7)(E)</b>	NTA	RELEASED
34		NTA	RELEASED
35		NTA	RELEASED
36		NTA	RELEASED
37		NTA	RELEASED
38		NTA	RELEASED
39		NTA	RELEASED
40		NTA	RELEASED
41		NTA	RELEASED
42		NTA	RELEASED
43		NTA	RELEASED
44		NTA	RELEASED
45		NTA	RELEASED
46		NTA	RELEASED
47		NTA	RELEASED



48		NTA	RELEASED
49		NTA	RELEASED
50		NTA	RELEASED
51		NTA	RELEASED
52		NTA	RELEASED
53		NTA	RELEASED
54		NTA	RELEASED
55		NTA	RELEASED
56		NTA	RELEASED
57		NTA	RELEASED
58		NTA	RELEASED
59		NTA	RELEASED
60		NTA	RELEASED
61	<b>(b)(6), (b)(7)(C), (b)(7)(E)</b>	NTA	RELEASED
62		NTA	RELEASED
63		NTA	RELEASED
64		NTA	RELEASED
65		NTA	RELEASED
66		NTA	RELEASED
67		NTA	RELEASED
68		NTA	RELEASED
69		NTA	RELEASED
70		NTA	RELEASED
71		NTA	RELEASED
72		NTA	RELEASED
73		NTA	RELEASED
74		NTA	RELEASED
75		NTA	RELEASED
76		NTA	RELEASED
77		NTA	RELEASED
78		NTA	RELEASED



	Name	A#	Citizenship	Date Of Birth	Family Group # (USEC)	Status	Custody
1	<b>(b)(6), (b)(7)(C), (b)(7)(E)</b>					T42 return to Mexico	TOT > AEU
2						T42 return to Mexico	TOT > AEU
3						EXPEDITED REMOVAL-CREDIBLE FEAR (ERCF)	TOT > AEU
4						NTA	TOT > AEU
5						NTA	TOT > AEU
6						NUC	TOT > AEU
7						NTA	TOT > AEU
8						NTA	TOT > AEU
9						ATD	TOT > AEU
10						ATD	TOT > AEU
11						Unable to communicate	Ped West
12						Unable to communicate	Ped West

Respectfully,

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

**Supervisory Customs and Border Protection Officer**  
**Admissibility Enforcement Unit TDY**  
**San Diego Field Office**  
**Ped West T42 Processing**  
**720 E San Ysidro Blvd.**  
**San Ysidro, CA 92173**



Message

**From:** MILLER, TROY A [REDACTED] (b)(6), (b)(7)(C)  
**Sent:** 6/4/2021 3:04:46 PM  
**To:** MCLAUGHLIN, JIM E [REDACTED] (b)(6), (b)(7)(C)  
**Subject:** Fwd: The List  
**Attachments:** The List.xlsx

Note I do not see, CBPone or the automated afile initiative. Taking off now but it looks like Monday/Tuesday is the deadline.

Sent from my iPhone

Begin forwarded message:

**From:** "HUFFMAN, BENJAMINE C" [REDACTED] (b)(6), (b)(7)(C)  
**Date:** June 4, 2021 at 7:46:03 AM MST  
**To:** "MILLER, TROY A" [REDACTED] (b)(6), (b)(7)(C)  
**Subject:** FW: The List

Per our conversation yesterday, below and attached is the list. The attachment breaks it down to specific projects. At your convenience we can go over pull of specific projects you want to send over, or just prioritize it and see how far down the list they might go.  
Carry

**From:** CAINE, JEFFREY [REDACTED] (b)(6), (b)(7)(C)  
**Sent:** Thursday, June 3, 2021 9:38 PM  
**To:** HUFFMAN, BENJAMINE C [REDACTED] (b)(6), (b)(7)(C)  
**Cc:** HOOVER, CRINLEY S [REDACTED] (b)(6), (b)(7)(C)  
**Subject:** The List

Chief,

Attached is our 70% draft for your review. We used the items in the Passback appeals as a starting point, although not as all inclusive. It also adds a few things folks are interested in. It totals

[REDACTED] (b)(7)(E) We have bucketized into 4 categories:

[REDACTED] (b)(7)(E)

We are ready discuss with you and finalize it as you see necessary before flipping to C1/C2.

VR  
Jeff

Jeffrey Caine  
Assistant Commissioner  
Office of Finance  
U.S. Customs and Border Protection

[REDACTED] (b)(6), (b)(7)(C)

Message

**From:** (b)(6), (b)(7)(C)

**on behalf of** OFO-FIELD LIAISON (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)

**Sent:** 5/21/2021 10:40:03 PM

**To:** (b)(6), (b)(7)(C) EXECUTIVE  
DIRECTORS HQ (b)(7)(E)  
(b)(6), (b)(7)(C) FERRARA, WILLIAM  
(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) MILLER, TROY A  
(b)(6), (b)(7)(C) Operations Directors  
(b)(7)(E) PEREZ, ROBERT E

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) SABATINO, DIANE J

(b)(6), (b)(7)(C)

**CC:** OFO-FIELD LIAISON (b)(7)(E)  
(b)(7)(E) FLD Laredo Field Office  
(b)(7)(E) FLD Branch Chiefs

**Subject:** Significant Meeting Summary - NGO Engagements- Laredo, TX



**U.S. Customs and Border Protection  
Field Operations  
Operations - Field Liaison Division**



**Significant Meeting Summary**

**Who:** (b)(6) Director Hebrew Immigrant Aid Society  
**Date of Event:** May 21, 2021  
**Location of Event:** Laredo, TX  
**Field Office:** Laredo  
**Field Office POC:** (b)(6), (b)(7)(C)

**Details:**

On May 21, the Laredo Port of Entry (POE) participated in a meeting with Hebrew Immigration Aid Society (HIAS) via Microsoft Teams to discuss the expansion of T42 exception processing scheduled to commence at the Laredo, Texas POE. Meeting was organized by HIAS Director, (b)(6)

The following was addressed:

- CBPOne will be in place for Laredo cases.
- CBP asked HIAS if they can upload the photos to CBPOne and to remove the accents, and hyphens when they input the migrant's names because it makes a big difference in processing time.
- HIAS responded that they will work on uploading the photos and will ask the staff to remove the accents and hyphens.
- Director (b)(6) stated that they only have (b)(6) staff member but are in the recruitment process and have recruited (b)(6) other staff member thus far.
- HIAS is currently looking for a location in Nuevo Laredo, tamps., Mexico.
- CBP advised HIAS Director (b)(6) that when UNHCR invited INAMI, they assisted them with finding a location situated immediately next to the bridge.
- HIAS stated that the Mexican Government does not want to be involved.
- (b)(6) HIAS Program Manager, will travel to Nuevo Laredo, tamps., Mexico on May 27 and will be in Nuevo Laredo on Thursday and Friday for the purpose of negotiating with local labs and to meet with the U.S. Consulate.
- CBP extended an invitation to (b)(6) to provide him with a walk through of our processing location to include showing him the Queue, where HIAS will be turning migrants over to CBP.
- (b)(6) HIAS Program Manager stated that she has been getting calls from Attorney's inquiring about CBP obtaining DNA from the migrants. She asked why CBP is doing this. She added that they are not comfortable with this process.
- CBP explained that this is a final ruling in the Federal Register where the Department of Justice requires DNA sample collection of non-citizens who are detained under the authority of the United States. This ruling went into effect on April 8, 2020.

**CBP Participants:**

- (b)(6), (b)(7)(C) Assistant Port Director, Laredo
- (b)(6), (b)(7)(C) Watch Commander
- (b)(6), (b)(7)(C) Supervisory CBP Officer

**Non-CBP Participants:**

- (b)(6) Director HIAS
- (b)(6) HIAS
- (b)(6) HIAS Program Manager, Mexico
- (b)(6) HIAS Program Manager, Mexico

Submitted by: (b)(6), (b)(7)(C) / Field Liaison Division

Date / Time: May 21, 2021 / 1630 hours

Message

**From:** (b)(6), (b)(7)(C)  
**on behalf of** OFO-FIELD LIAISON (b)(7)(E)  
**Sent:** 5/12/2021 3:14:18 PM  
**To:** OFO-EAC-BULLETS (b)(7)(E)  
**CC:** FLD Laredo Field Office (b)(7)(E)  
**Subject:** Significant Virtual Meeting Summary - Stakeholder Virtual Meeting – Title 42 Exception Processing Expansion - Laredo, TX



**U.S. Customs and Border Protection  
Field Operations  
Operations - Field Liaison Division**



**Significant Virtual Meeting Summary**

**Who:** Stakeholder Virtual Meeting – Title 42 Exception Processing Expansion

**Date of Event:** May 11, 2021

**Location of Event:** Laredo, TX

**Field Office:** Laredo

**Field Office POC:** (b)(6), (b)(7)(C) Supervisory Program Manager

**Details:**

On May 11, 2021, the Laredo, TX Port of Entry (POE) participated in a meeting with Hebrew Immigration Aid Society (HIAS) via Microsoft Teams to discuss the expansion of Title 42 (T-42) exception processing scheduled to commence at the Laredo POE. Meeting was organized by HIAS Director (b)(6)

The following topics were discussed and addressed:

- HIAS stated that CBPOne application will be in place for use on all Expansion T-42 Exception and Laredo cases.
- HIAS stated that they report to DHS the number of migrants on the list.
- HIAS is not on the U.S. side, only on the Mexican side.
- HIAS stated that they will provide a manifest to CBP Office of Field Operations (OFO) a day prior, by email.
- HIAS stated that Hidalgo will not start before Laredo because the HIAS will not be working and coordinating with the Hidalgo POE. As per HIAS, a separate, different organization will be supporting the Hidalgo POE.
- HIAS stated that they do not anticipate starting in Laredo this week, or next week because they only have (b)(7)(E) employee on the Mexican side and will be hiring another employee next week. HIAS stated that they do not have the help from other organizations, like United Nations High Commissioner for Refugees United Nations High Commissioner for Refugees has from International Organization for Migration hence they are not ready and prepared for Laredo.
- HIAS stated that they will start working on the accompany piece – they have meetings scheduled with the U.S. Consulate to discuss accompaniment i.e., security, transporting of migrants to the queue.
- HIAS asked for the contact information for the non-government organizations (NGOs) that pick-up Migration Protection Protocol Wind Down migrants.

- CBP advised HIAS that we would not be holding migrants for pick up by local NGOs for the Expansion of T-42 Exception cases, we informed HIAS that we would be releasing them once their cases are completed so that they can make their way to the bus station.
- HIAS stated that they will provide the migrants with a map to the local downtown bus stations
- HIAS stated that they will advise CBP OFO once they have been given a start date so that we can coordinate.
- CBP advised HIAS that we will receive the first group of migrants at 0900 hours and the second group at 1200 hours if the group is over 25.
- HIAS stated that they will advise CBP OFO once they hear of a start date.

**CBP Participants:**

(b)(6), (b)(7)(C) Assistant Port Director, Laredo  
(b)(6), (b)(7)(C) Watch Commander  
(b)(6), (b)(7)(C) Supervisory CBP Officer  
(b)(6), (b)(7)(C) Acting Chief CBP Officer

**Non-CBP Participants:**

(b)(6) Director HIAS  
(b)(6) HIAS  
(b)(6) HIAS Program Manager, Mexico

**Submitted by:** (b)(6), (b)(7)(C) / Field Liaison Division

**Date / Time:** May 12, 2021 / 1114 hours



Message

**From:** MILLER, TROY A (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)

**Sent:** 4/28/2021 4:59:05 PM

**To:** FERRARA, WILLIAM (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)

**CC:** PEREZ, ROBERT E (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) NUNEZ-NETO, BLAS  
(b)(6), (b)(7)(C) SABATINO, DIANE J  
(b)(6), (b)(7)(C) DAVIES, MATTHEW S  
(b)(6), (b)(7)(C) DURST, CASEY OWEN  
(b)(6), (b)(7)(C) CLAVEL, LISE  
(b)(6), (b)(7)(C)

**Subject:** Re: RFI follow-up

Thx. Bill.

Sent from my iPhone

On Apr 28, 2021, at 12:55 PM, FERRARA, WILLIAM (b)(6), (b)(7)(C) wrote:

Sir,

Based on my understanding of yesterday's meeting, the below three topics are areas where engaging others will help our efforts to meet DHS objectives:

(b)(5), (b)(7)(E)

Other topics of discussion that may not warrant immediate follow-up, but reporting when updates become available are:

(b)(5), (b)(7)(E)

We stand ready to provide further detail if desired.

Thanks,

William A. Ferrara

Executive Assistant Commissioner

Office of Field Operations

U.S. Customs and Border Protection

Message

**From:** MILLER, TROY A (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
**Sent:** 4/29/2021 9:40:45 PM  
**To:** HUFFMAN, BENJAMINE C (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
**CC:** GRABLE, SAMUEL D (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
**Subject:** Re:

Thx Carry.

Sent from my iPhone

On Apr 29, 2021, at 5:35 PM, HUFFMAN, BENJAMINE C (b)(6), (b)(7)(C) wrote:

Sir,  
Just got this from XD Davies. We will work with OIT to move left to 5/7 if possible.  
Carry

From iPhone

Begin forwarded message:

**From:** "DAVIES, MATTHEW S" (b)(6), (b)(7)(C)  
**Date:** April 29, 2021 at 5:28:33 PM EDT  
**To:** "HUFFMAN, BENJAMINE C" (b)(6), (b)(7)(C)  
**Cc:** "FERRARA, WILLIAM" (b)(6), (b)(7)(C) "GRABLE, SAMUEL D"  
(b)(6), (b)(7)(C)  
**Subject:** RE:

EAC,  
I just saw your other message back to AC1.  
Yes, my understanding is we will be set for the OMB approval tomorrow (b)(5), (b)(7)(E)

**(b)(5), (b)(7)(E)**

We do need support to ensure that the CBPOne desktop application is prepared for use by the NGOs by May 7.  
OIT has been targeting May 14, but we think it is critical to move forward as quickly as possible with the new process, and that date will be consistent with the availability of all other system enhancements to support the automated collection of data from this population.

Thanks,  
Matt  
Matthew S. Davies  
Executive Director  
Admissibility and Passenger Programs  
Office of Field Operations  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

RRB Office (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (office)

**From:** HUFFMAN, BENJAMINE C (b)(6), (b)(7)(C)

**Sent:** Thursday, April 29, 2021 5:07 PM

**To:** DAVIES, MATTHEW S (b)(6), (b)(7)(C)

**Cc:** FERRARA, WILLIAM (b)(6), (b)(7)(C) GRABLE, SAMUEL D

(b)(6), (b)(7)(C)

**Subject:** FW:

XD Davies,

Do you need any engagement from ES on this? I can call and discuss with CIO (b)(6) if you think it will help.

Viva CBP,

Carry

---

**From:** MILLER, TROY A (b)(6), (b)(7)(C)

**Sent:** Wednesday, April 28, 2021 5:16 PM

**To:** HUFFMAN, BENJAMINE C (b)(6), (b)(7)(C)

**Subject:** Fwd:

Sent from my iPhone

Begin forwarded message:

**From:** "DAVIES, MATTHEW S" (b)(6), (b)(7)(C)

**Date:** April 28, 2021 at 5:12:54 PM EDT

**To:** "MILLER, TROY A" (b)(6), (b)(7)(C)

**Cc:** "FERRARA, WILLIAM" (b)(6), (b)(7)(C)

**Subject:** RE:

The meeting was just moved to Friday at 1030.

DHS will be represented by (b)(6) (OGC-OCIO) and a handful of others from the CIO (b)(6) office.

For a little more clarity, the issue relates to the emergency PRA (b)(6)

**(b)(5), (b)(7)(E)**

From ORR:

**(b)(5), (b)(7)(E)**

From the updated meeting invite:

**(b)(5), (b)(7)(E)**

**(b)(5), (b)(7)(E)**

Looks like it might be a long hill to climb up with OMB, but at least worth the ask given the accommodations we are providing. In the absence of any change to this posture, we will move forward to keep on track for CBPOne implementation by May 7.

Matthew S. Davies  
Executive Director  
Admissibility and Passenger Programs  
Office of Field Operations  
U.S. Customs and Border Protection

**(b)(6), (b)(7)(C)**

RRB Office **(b)(6), (b)(7)(C)**

**(b)(6), (b)(7)(C)** (office)

-----Original Message-----

From: MILLER, TROY A **(b)(6), (b)(7)(C)**

Sent: Wednesday, April 28, 2021 5:02 PM

To: DAVIES, MATTHEW S **(b)(6), (b)(7)(C)**

Cc: FERRARA, WILLIAM **(b)(6), (b)(7)(C)**

Subject:

I talked to DHS do you happen to know who is in the meeting tomorrow from dhs. Who is on first, cluster.

Message

**From:** FERRARA, WILLIAM (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)

**Sent:** 4/28/2021 4:55:19 PM

**To:** MILLER, TROY A (b)(6), (b)(7)(C)  
**(b)(6), (b)(7)(C)** PEREZ, ROBERT E  
NUNEZ-NETO, BLAS

**CC:** SABATINO, DIANE J (b)(6), (b)(7)(C)  
**(b)(6), (b)(7)(C)** DAVIES, MATTHEW S  
**(b)(6), (b)(7)(C)** DURST, CASEY OWEN  
**(b)(6), (b)(7)(C)** CLAVEL, LISE  
(b)(6), (b)(7)(C)

**Subject:** RFI follow-up

Sir,

Based on my understanding of yesterday's meeting, the below three topics are areas where engaging others will help our efforts to meet DHS objectives:

**(b)(5), (b)(7)(E)**

Other topics of discussion that may not warrant immediate follow-up, but reporting when updates become available are:

**(b)(5), (b)(7)(E)**

We stand ready to provide further detail if desired.

Thanks,

William A. Ferrara  
Executive Assistant Commissioner  
Office of Field Operations  
U.S. Customs and Border Protection

Message

From: NUNEZ-NETO, BLAS (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
Sent: 4/29/2021 3:21:13 PM  
To: MILLER, TROY A (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
Subject: RE:

Reached out to (b)(6), (b)(7)(C) Let's see where she is on this.

-----Original Message-----  
From: MILLER, TROY A (b)(6), (b)(7)(C)  
Sent: Thursday, April 29, 2021 8:18 AM  
To: NUNEZ-NETO, BLAS (b)(6), (b)(7)(C)  
Subject: FW:

-----Original Message-----  
From: DAVIES, MATTHEW S (b)(6), (b)(7)(C)  
Sent: Wednesday, April 28, 2021 5:13 PM  
To: MILLER, TROY A (b)(6), (b)(7)(C)  
Cc: FERRARA, WILLIAM (b)(6), (b)(7)(C)  
Subject: RE:

The meeting was just moved to Friday at 1030.

DHS will be represented by (b)(6) (OGC-OCIO) and a handful of others from the CIO (b)(6) (b)(6) office.

For a little more clarity, the issue relates to the emergency PRA - (b)(5), (b)(7)(E)  
(b)(5), (b)(7)(E)

From ORR:

(b)(5), (b)(7)(E)

From the updated meeting invite:

(b)(5), (b)(7)(E)

(b)(5), (b)(7)(E) but at least worth the ask given the accommodations we are providing. In the absence of any change to this posture, we will move forward to keep on track for CBPOne implementation by May 7.

Matthew S. Davies  
Executive Director  
Admissibility and Passenger Programs  
Office of Field Operations  
U.S. Customs and Border Protection  
(b)(6), (b)(7)(C)  
RRB Office (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (office)

-----Original Message-----  
From: MILLER, TROY A (b)(6), (b)(7)(C)  
Sent: Wednesday, April 28, 2021 5:02 PM  
To: DAVIES, MATTHEW S (b)(6), (b)(7)(C)  
Cc: FERRARA, WILLIAM (b)(6), (b)(7)(C)  
Subject:

I talked to DHS do you happen to know who is in the meeting tomorrow from dhs. who is on first, cluster.

Message

**From:** (b)(6), (b)(7)(C)  
**Sent:** 10/3/2023 11:11:25 PM  
**To:** (b)(6), (b)(7)(C)  
**Subject:** I-134A travel authorization Redress Control Number. Please help!  
**Attachments:** (b)(6), (b)(7)(C).jpg; Screenshot (b)(6), (b)(7)(C) Acrobat for Samsung.jpg

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. If you feel this is a suspicious-looking email, please report by using the Report Phish button option.

Hello, I apologize for reaching out like this. Unfortunately we are desperate for help since our uncle who has had a very long journey in trying to get a travel authorization, issues like from a mistaken identity from DHS which was corrected after months of seeking help, to an incorrect alien# that was finally fixed by USCIS after 3 weeks of reaching out to them.

His wife's last extended travel authorization expires in (b)(6), (b)(7)(C) she will not leave until my uncle receives his travel authorization. Please see attached the CBPONE advance travel authorization request submission that my uncle submitted on (b)(6), (b)(7)(C) and the TRIP redress control # from DHS.

Please help!  
God Bless.

(b)(6), (b)(7)(C)

11:01

45%



## Confirmation



# SUBMITTED

Your information has been successfully submitted to CBP. Your advance travel authorization request is being reviewed.

Visit <https://my.uscis.gov> to check for status updates on your advance travel authorization request. Please be aware that response times vary and can take up to 3 weeks.

### REQUEST SUMMARY

Date of Submission

(b)(6), (b)(7)(C)

A-Number

(b)(6), (b)(7)(C)

SAVE





Message

**From:** (b)(6), (b)(7)(C)  
**Sent:** 5/9/2023 9:53:31 PM  
**To:** (b)(6), (b)(7)(C)  
**Subject:** Please help me  
**Attachments:** Screenshot (b)(6), (b)(7)(C) Acrobat for Samsung.jpg; Screenshot (b)(6), (b)(7)(C) Acrobat for Samsung.jpg; Screenshot (b)(6), (b)(7)(C) Acrobat for Samsung.jpg

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. If you feel this is a suspicious-looking email, please report by using the Report Phish button option.

Good afternoon Mr. Commissioner, I sincerely apologize for reaching out but I cant seem to get the help we so desperately need. I'm praying you can provide us with some guidance.

Both my [redacted] year old uncle and aunt were approved by USCIS for I-134A [redacted] on [redacted] from a [redacted] application that my wife submitted. On [redacted] they received the travel authorization decision from CBP, my aunt was approved but my uncle was denied. My aunt will not leave [redacted] without my uncle.

My uncle has no criminal record, no deportations, he has no dual citizenship or residency in any other country, he has even visited the USA 2 times in the past with a tourist visa, he has never worked directly with [redacted] nor does he have any affiliations or rank status. He meets all the requirements of the parole program. I feel it has to be some sort of error on CBP.

[redacted]

Currently closed: Receipt application approved by USCIS on [redacted]

Alien# [redacted]

Passport# [redacted]

With all the confusion when this process rolled out, I had also created an I-134A application for our uncle on [redacted] which is still pending & hasn't been worked on by USCIS, it is receipt # [redacted] I am hoping that this application can be approved by USCIS as well so my uncle can redo the attestations & CBPONE process in hopes that this time there is no error and he is given travel authorization. Our concern is that CBP will continue to deny his travel authorization since he was already denied by them once.

As you can imagine we are all devastated by this ordeal. We would like to please have this corrected before my aunts travel authorization expires. It has taken a huge mental toll on them and I feel it will cause them great harm if we can't resolve this travel authorization for my uncle.

Again I apologize for reaching out but we are desperate to get our elderly family members that are all alone over here with us.

God Bless,

[redacted]

Message

**From:** (b)(6), (b)(7)(C)  
**Sent:** 5/10/2023 2:23:37 PM  
**To:** (b)(6), (b)(7)(C)  
**Subject:** Fwd: DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways  
**Attachments:** 2023-10146 2023-05-10 14\_09\_13.pdf

Here is the rule that is set to publish.

Respectfully,

(b)(6), (b)(7)(C)  
U.S. Customs and Border Protection  
Office of Field Operations  
(b)(6), (b)(7)(C)

**From:** U.S. Department of Homeland Security (b)(6)  
**Sent:** Wednesday, May 10, 2023 6:16:57 AM  
**To:** (b)(6), (b)(7)(C)  
**Subject:** DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways

U.S. DEPARTMENT OF HOMELAND SECURITY  
Office of Public Affairs

**DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways**  
*Rule places a condition on asylum eligibility for those who circumvent lawful pathways*

WASHINGTON – Today, after receiving and considering over 50,000 public comments in response to a Notice of Proposed Rulemaking issued earlier this year, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) finalized a new rule to further incentivize individuals to use lawful, safe, and orderly pathways to enter the United States. The rule builds upon efforts to combine lawful pathways with consequences for failure to use them, by placing certain limiting conditions on asylum eligibility for those who fail to use those pathways. This rule goes into effect once the Title 42 public health Order terminates, on Thursday at 11:59pm ET.

“This Administration has led the largest expansion of legal pathways for protection in decades, and this regulation will encourage migrants to seek access to those pathways instead of arriving unlawfully in the grip of smugglers at the southern border,” said **Secretary of Homeland Security Alejandro N. Mayorkas**. “At the same time, we continue to urge Congress to act on President Biden’s immigration reform proposal, bipartisan legislation to protect Dreamers and farm workers, and repeated requests for additional resources to hire more asylum officers and immigration judges so we can finally fix our long-broken immigration system.”

The rule presumes those who do not use lawful pathways to enter the United States are ineligible for asylum and allows the United States to remove individuals who do not establish a reasonable fear of persecution or torture in the country of removal. Noncitizens can rebut this presumption based only on exceptionally compelling circumstances.

The presumption will not apply to a noncitizen if they, or a family member traveling with them, received appropriate authorization to travel to the United States to seek parole; presented at a port of entry, pursuant to a pre-scheduled time and place using the CBP One app; established that it was not possible to access or use the CBP One app due to a language barrier, illiteracy, significant technical failure, or other applicable exception; or sought and were denied asylum or other protection in at least one other country. Individuals may also rebut the presumption by demonstrating exceptionally compelling circumstances. Unaccompanied children are exempted from this presumption.

Last week, the Government of Mexico announced that they will continue to accept returns, on humanitarian grounds, of migrants from Cuba, Haiti, Nicaragua, and Venezuela who are processed under Title 8 authorities at the U.S. border. Individuals removed under Title 8 are subject to a five-year bar on admission and potential criminal prosecution should they seek to reenter unlawfully.

In January, DHS announced new border enforcement measures to improve border security, limit irregular migration, and create additional safe and orderly processes for people fleeing humanitarian crises to lawfully come to the United States. This included a new parole process for Cubans, Haitians, and Nicaraguans, scheduling an appointment to present at a port of entry through the CBP One app, and efforts to surge personnel and other resources to the southwest border.

DHS has been preparing for the end of the Title 42 public health Order for nearly two years. In February 2022, DHS formally stood up the Southwest Border Coordination Center, which leads the planning and coordinating of a whole-of-government response to the anticipated increase in border encounters. In April 2022, Secretary Mayorkas issued the [DHS Plan for Southwest Border Security and Preparedness](#), laying out a six-pillar plan to manage an increase in encounters once the Title 42 public health Order is no longer in effect. DHS [updated the plan](#) this past December and shared additional details regarding preparations [last week](#).

###

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U.S. Department of Homeland Security

[www.dhs.gov](http://www.dhs.gov)

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This email was sent to [katrina.e.deyo@cbp.dhs.gov](mailto:katrina.e.deyo@cbp.dhs.gov) on behalf of the U.S. Department of Homeland Security | [DHS.gov](http://DHS.gov)

Message

**From:** (b)(6), (b)(7)(C)  
**Sent:** 5/10/2023 2:10:39 PM  
**To:** (b)(6), (b)(7)(C)  
**Subject:** Fwd: DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways  
**Attachments:** 2023-10146 2023-05-10 14\_09\_13.pdf

Here is the rule that is set to publish.

Respectfully,

(b)(6), (b)(7)(C)

U.S. Customs and Border Protection Officer  
Branch Chief, Enforcement Programs Division  
Office of Field Operations

(b)(6), (b)(7)(C)

---

**From:** U.S. Department of Homeland Security (b)(6)  
**Sent:** Wednesday, May 10, 2023 6:16:57 AM  
**To:** (b)(6), (b)(7)(C)  
**Subject:** DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways

U.S. DEPARTMENT OF HOMELAND SECURITY  
Office of Public Affairs

---

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###

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U.S. Department of Homeland Security  
[www.dhs.gov](http://www.dhs.gov)

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This email was sent to [katriua.e.deyo@cbp.dhs.gov](mailto:katriua.e.deyo@cbp.dhs.gov) on behalf of the U.S. Department of Homeland Security | [DHS.gov](http://DHS.gov)

Message

**From:** DAVIES, MATTHEW S (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C)  
**Sent:** 5/10/2023 3:06:09 PM  
**To:** (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) FLORES, PETE  
ROMERO (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) SABATINO, DIANE J  
(b)(6), (b)(7)(C)  
**CC:** DURST, CASEY OWEN (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

**Subject:** RE: DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways  
**Attachments:** 2023 05 10 - Memo - Rule, Circumvention of Lawful Pathways.pdf; 2023-10146.pdf

EAC,

Attached is the corresponding memo APP (b)(5), cleared by OCC and OGC. (b)(5)

The added length of the rule was to provide responses to the comments received, (b)(5)  
(b)(5)

Thanks,

Matthew S. Davies  
Executive Director  
Admissibility and Passenger Programs  
Office of Field Operations  
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)  
RRB Office (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) (office)  
(b)(6), (b)(7)(C) (cell)

**From:** (b)(6), (b)(7)(C)  
**Sent:** Wednesday, May 10, 2023 9:39 AM  
**To:** FLORES, PETE ROMERO (b)(6), (b)(7)(C) SABATINO, DIANE J  
(b)(6), (b)(7)(C)  
**Cc:** DAVIES, MATTHEW S (b)(6), (b)(7)(C) DURST, CASEY OWEN  
(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

**Subject:** FW: DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways

EAC,

As discussed.

DHS release below on the final rule to incentivize lawful pathways.

Thank you,

(b)(6), (b)(7)(C)

Director

OFO Communications

Public Affairs Liaison

Office of Field Operations

(C) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

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**From:** U.S. Department of Homeland Security (b)(6)

**Sent:** Wednesday, May 10, 2023 9:17 AM

**To:** (b)(6), (b)(7)(C)

**Subject:** DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways

U.S. DEPARTMENT OF HOMELAND SECURITY

Office of Public Affairs

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**DHS and DOJ Finalize Rule to Incentivize Use of Lawful Immigration Pathways**

*Rule places a condition on asylum eligibility for those who circumvent lawful pathways*

WASHINGTON – Today, after receiving and considering over 50,000 public comments in response to a Notice of Proposed Rulemaking issued earlier this year, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) finalized a new rule to further incentivize individuals to use lawful, safe, and orderly pathways to enter the United States. The rule builds upon efforts to combine lawful pathways with consequences for failure to use them, by placing certain limiting conditions on asylum eligibility for those who fail to use those pathways. This rule goes into effect once the Title 42 public health Order terminates, on Thursday at 11:59pm ET.

“This Administration has led the largest expansion of legal pathways for protection in decades, and this regulation will encourage migrants to seek access to those pathways instead of arriving unlawfully in the grip of smugglers at the southern border,” **said Secretary of Homeland Security Alejandro N. Mayorkas.** “At the same time, we continue to urge Congress to act on President Biden’s immigration reform proposal, bipartisan legislation to protect Dreamers and farm workers, and repeated requests for additional

resources to hire more asylum officers and immigration judges so we can finally fix our long-broken immigration system.”

The rule presumes those who do not use lawful pathways to enter the United States are ineligible for asylum and allows the United States to remove individuals who do not establish a reasonable fear of persecution or torture in the country of removal. Noncitizens can rebut this presumption based only on exceptionally compelling circumstances.

The presumption will not apply to a noncitizen if they, or a family member traveling with them, received appropriate authorization to travel to the United States to seek parole; presented at a port of entry, pursuant to a pre-scheduled time and place using the CBP One app; established that it was not possible to access or use the CBP One app due to a language barrier, illiteracy, significant technical failure, or other applicable exception; or sought and were denied asylum or other protection in at least one other country. Individuals may also rebut the presumption by demonstrating exceptionally compelling circumstances. Unaccompanied children are exempted from this presumption.

Last week, the Government of Mexico announced that they will continue to accept returns, on humanitarian grounds, of migrants from Cuba, Haiti, Nicaragua, and Venezuela who are processed under Title 8 authorities at the U.S. border. Individuals removed under Title 8 are subject to a five-year bar on admission and potential criminal prosecution should they seek to reenter unlawfully.

In January, DHS announced new border enforcement measures to improve border security, limit irregular migration, and create additional safe and orderly processes for people fleeing humanitarian crises to lawfully come to the United States. This included a new parole process for Cubans, Haitians, and Nicaraguans, scheduling an appointment to present at a port of entry through the CBP One app, and efforts to surge personnel and other resources to the southwest border.

DHS has been preparing for the end of the Title 42 public health Order for nearly two years. In February 2022, DHS formally stood up the Southwest Border Coordination Center, which leads the planning and coordinating of a whole-of-government response to the anticipated increase in border encounters. In April 2022, Secretary Mayorkas issued the [DHS Plan for Southwest Border Security and Preparedness](#), laying out a six-pillar plan to manage an increase in encounters once the Title 42 public health Order is no longer in effect. DHS [updated the plan](#) this past December and shared additional details regarding preparations [last week](#).

###

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This email was sent to **(b)(6), (b)(7)(C)** on behalf of the U.S. Department of Homeland Security | [DHS.gov](https://www.dhs.gov)

**(b)(5)**

**(b)(5), (b)(6), (b)(7)(C)**



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[CIS No. 2744-23; Docket No: USCIS 2022-0016]

RIN 1615-AC83

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003 and 1208

[A.G. Order No. 5660-2023]

RIN 1125-AB26

Circumvention of Lawful Pathways

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

**ACTION:** Final rule; request for comments on expanded applicability in maritime context.

**SUMMARY:** The Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”) are issuing a final rule in anticipation of a potential surge of migration at the southwest border (“SWB”) of the United States following the termination of the Centers for Disease Control and Prevention’s (“CDC”) public health Order. The rule encourages migrants to avail themselves of lawful, safe, and orderly pathways into the United States, or otherwise to seek asylum or other protection in another country through which they travel, thereby reducing reliance on human smuggling networks that exploit migrants for financial gain. The rule does so by introducing a rebuttable presumption of asylum ineligibility for certain noncitizens who neither avail themselves of a lawful, safe, and orderly pathway to the United States nor seek asylum or other protection in a country through which they travel. In the absence of such a measure, which would apply only to those who enter at the southwest land border or adjacent coastal borders during a limited, specified date range, the number of migrants expected to travel

without authorization to the United States would be expected to increase significantly, to a level that risks undermining the Departments' continued ability to safely, effectively, and humanely enforce and administer U.S. immigration law, including the asylum system, in the face of exceptionally challenging circumstances. Coupled with an expansion of lawful, safe, and orderly pathways into the United States, the Departments expect the rule to lead to a reduction in the number of migrants who seek to cross the SWB without authorization to enter, thereby reducing the reliance by migrants on dangerous human smuggling networks, protecting against extreme overcrowding in border facilities, and helping to ensure that the processing of migrants seeking protection in the United States is done in an effective, humane, and efficient manner. In addition, the Departments are requesting comment on whether applicability of the rebuttable presumption should be extended to noncitizens who enter the United States without documents sufficient for lawful admission during the same temporary time period at a maritime border.

**DATES:** *Effective date:* This rule is effective on May 11, 2023.

*Comment period for solicited comments:* Comments on expanded applicability in maritime context identified in Section V of this preamble must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The electronic Federal Docket Management System will accept comments before midnight eastern time at the end of that day.

**ADDRESSES:**

*Docket:* To view comments on the proposed rule that preceded this rule, search for docket number USCIS 2022-0016 on the Federal eRulemaking Portal at <https://www.regulations.gov>.

*Comment period for solicited additional comments:* You may submit comments on the specific issue identified in Section V of this preamble via the electronic Federal Docket Management System at <https://www.regulations.gov>, to DHS Docket Number USCIS 2022-0016. Follow the website instructions for submitting comments. Comments submitted in a

manner other than the one listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rulemaking and may not receive a response from the Departments. Please note that the Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs or USB drives. The Departments are not accepting mailed comments at this time. If you cannot submit your comment by using <https://www.regulations.gov>, please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721-3000 (not a toll-free call) for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:**

For DHS: Daniel Delgado, Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; telephone (202) 447-3459 (not a toll-free call).

For Executive Office for Immigration Review ("EOIR"): Lauren Alder Reid, Assistant Director, Office of Policy, EOIR, Department of Justice, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305-0289 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

Interested persons are invited to submit comments on the specific issue identified in Section V of this preamble by submitting relevant written data, views, or arguments. To provide the most assistance to the Departments, comments should explain the reason for any recommendation and include data, information, or authority that supports the recommended course of action. Comments must be submitted in English, or an English translation must be provided. Comments submitted in a manner other than those listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rulemaking and may not receive a response from the Departments.

*Instructions:* If you submit a comment, you must submit it to DHS Docket Number USCIS 2022-0016. All submissions may be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at <https://www.regulations.gov>.

## **II. Executive Summary**

### *A. Purpose of Action*

Economic and political instability around the world is fueling the highest levels of migration since World War II, including in the Western Hemisphere. Analysis by the DHS Office of Immigration Statistics (“OIS”) found that even while CDC’s Title 42 public health Order<sup>1</sup> has been in place, encounters at our SWB<sup>2</sup>—referring to the number of times U.S. officials encounter noncitizens<sup>3</sup> attempting to cross the SWB of the United States without authorization to do so—reached an all-time high in 2022, driven in large part by an

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<sup>1</sup> See Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 87 FR 19941, 19941–42 (Apr. 6, 2022) (describing the CDC’s recent Title 42 public health Orders, which “suspend[] the right to introduce certain persons into the United States from countries or places where the quarantinable communicable disease exists in order to protect the public health from an increased risk of the introduction of COVID-19”).

<sup>2</sup> United States Government sources refer to the U.S. border with Mexico by various terms, including “SWB,” “the southern border,” “U.S.-Mexico border,” or “the land border with Mexico.” In some instances, these differences can be substantive, referring only to portions of the border, while in others they simply reflect different word choices. The “southern border” is both a land and maritime border extending from beyond California to the west to beyond Florida to the east. This rule applies along the entirety of the U.S. land border with Mexico, referred to in the regulatory text as the “southwest land border,” but the Departments use different terms in the preamble to describe the border. This is in large part to reflect the source material supporting the rule, but the Departments believe that the factual circumstances described in the preamble call for applying the rule across the entirety of the U.S. land border with Mexico, referred to throughout as the “SWB.” As discussed in greater detail below, the Departments believe that the factual circumstances described in this preamble call for applying the rule to coastal borders adjacent to that land border as well; accordingly, this final rule applies to those who enter the United States from Mexico, whether at the southwest land border or adjacent coastal borders.

<sup>3</sup> For purposes of this discussion, the Departments use the term “noncitizen” to be synonymous with the term “alien” as it is used in the Immigration and Nationality Act. See INA 101(a)(3), 8 U.S.C. 1101(a)(3); *Barton v. Barr*, 140 S. Ct. 1442, 1446 n.2 (2020).

unprecedented exodus of migrants at different times from countries such as Brazil, Colombia, Cuba, Ecuador, Haiti, Nicaragua, Peru, and Venezuela.<sup>4</sup> The U.S. Border Patrol (“USBP”) completed 221,710 encounters between ports of entry in December 2022, second only to May 2022 (224,371 encounters) for the most monthly encounters since at least Fiscal Year (“FY”) 2000 (the period for which detailed records are available), and very likely the most ever.<sup>5</sup> Daily encounters between Ports of Entry (“POEs”) averaged 7,152 for December 2022 and exceeded 8,000 per day 11 times during the month, as compared to average daily encounters of 1,977 for all of 2000-2019 and average daily encounters of 1,265 in the immediate pre-pandemic period, 2014–2019.<sup>6</sup> Smuggling networks enable and exploit this unprecedented movement of people, putting migrants’ lives at risk for smugglers’ financial gain.<sup>7</sup> Meanwhile, the current asylum system—in which a high number of migrants are initially determined eligible to pursue their claims, even though most ultimately are not granted asylum in the subsequent EOIR removal proceedings<sup>8</sup>—has contributed to a growing backlog of cases awaiting review by asylum officers (“AOs”) and immigration judges (“IJs”). The practical result of this growing backlog is that those with meritorious claims may have to wait years for their claims to be granted, while individuals who are ultimately denied protection may spend years in the United States before being issued a final order of removal.<sup>9</sup> As the demographics of border encounters have shifted in recent years to include larger numbers of non-Mexicans—who are far more likely to assert

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<sup>4</sup> OIS analysis of OIS Persist Dataset based on data through March 31, 2023; OIS analysis of historic U.S. Border Patrol data.

<sup>5</sup> OIS analysis of OIS Production data based on data through March 31, 2023.

<sup>6</sup> OIS analysis of OIS Production data for fiscal year (“FY”) 2000–March 2023 and OIS Yearbook data for FY 1925–FY 1999. As discussed further below, daily encounters between ports of entry fell sharply in January 2023 following the launch of the Cuba, Haiti, and Nicaragua parole processes, and daily encounters between ports of entry at the SWB averaged just over 5,200 a day the 30 days ending April 10, 2023. OIS analysis of Unified Immigration Portal (UIP) data pulled on April 13, 2023.

<sup>7</sup> Miriam Jordan, *Smuggling Migrants at the Border Now a Billion-Dollar Business*, N.Y. Times, July 25, 2022, <https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html>.

<sup>8</sup> See EOIR, Executive Office for Immigration Review Adjudication Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim (Jan. 16, 2023), <https://www.justice.gov/eoir/page/file/1062976/download>. The EOIR adjudication outcome statistics report on the total number of cases originating with credible fear claims resolved on any ground in a FY, without regard to whether an asylum claim was adjudicated. The asylum grant rate is a percentage of that total number of cases.

<sup>9</sup> OIS analysis of EOIR data as of March 31, 2023.



asylum claims—and as the time required to process and remove noncitizens ineligible for protection has grown (during which individuals may become eligible to apply for employment authorization), the deterrent effect of apprehending noncitizens at the SWB has become more limited.<sup>10</sup>

While the CDC’s Title 42 public health Order has been in effect, migrants who do not have proper travel documents have generally not been processed into the United States; they instead have been expelled to Mexico or to their home countries under the Order’s authority without being processed under the authorities set forth in Title 8 of the United States Code, which includes the Immigration and Nationality Act (“INA” or “the Act”). When the Order is lifted, however, the United States Government will process all migrants into the United States under Title 8 authorities, as required by statute. At that time, the number of migrants seeking to cross the SWB without authorization is expected to increase significantly, unless other policy changes are made. Such challenges were evident in the days following the November 15, 2022, court decision that, had it not been stayed on December 19, 2022, would have resulted in the lifting of the Title 42 public health Order effective December 21, 2022.<sup>11</sup> Leading up to the expected termination date, migrants gathered in various parts of Mexico, including along the SWB, waiting to cross the border once the Title 42 public health Order was lifted.<sup>12</sup> According to internal Government sources, smugglers were also expanding their messaging and recruitment efforts, using the expected lifting of the Title 42 public health Order to claim that the border was

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<sup>10</sup> For noncitizens encountered at the SWB in FY 2014–FY 2019 who were placed in expedited removal, nearly 6 percent of Mexican nationals made fear claims that were referred to U.S. Citizenship and Immigration Services for adjudication, compared to nearly 57 percent of people from Northern Central America (*i.e.*, El Salvador, Guatemala, and Honduras), and just over 90 percent of all other nationalities. OIS analysis of Enforcement Lifecycle data as of December 31, 2022. Of note, according to OIS analysis of historic EOIR and CBP data, there is a clear correlation since FY 2000 between the increasing time it takes to complete immigration proceedings, which results in a lower share of noncitizens being removed, and the growth in non-Mexican encounters at the SWB. Both trends accelerated in the 2010s, as non-Mexicans became the majority of border encounters, and they have accelerated further since FY 2021, as people from countries other than Mexico and Northern Central America now account for the largest numbers of border encounters.

<sup>11</sup> See *Huisha-Huisha v. Mayorkas*, No. 21-100, 2022 WL 16948610 (D.D.C. Nov. 15, 2022), *cert. and stay granted*, *Arizona v. Mayorkas*, 143 S. Ct. 478 (2022).

<sup>12</sup> See, *e.g.*, Leila Miller, *Asylum Seekers Are Gathering at the U.S.-Mexico Border. This Is Why*, L.A. Times, Dec. 23, 2022, <https://www.latimes.com/world-nation/story/2022-12-23/la-fg-mexico-title-42-confusion>.

open, thereby seeking to persuade would-be migrants to participate in expensive and dangerous human smuggling schemes. In the weeks between the November 2022 announcement that the Title 42 public health Order would be lifted, and the December 19, 2022, stay order that kept the Title 42 public health Order in place, encounter rates jumped from an average of just under 7,700 per week (early November) to nearly 8,800 per week (mid-December), a change not predicted by normal seasonal effects.<sup>13</sup>

While a number of factors make it particularly difficult to precisely project the numbers of migrants who would seek to cross the SWB without authorization or present at a U.S. POE without documents sufficient for admission after the lifting of the Title 42 public health Order, DHS encounter projections and planning models from early April suggest that encounters could rise to 11,000 per day, absent policy changes and absent a viable mechanism for removing Cuban, Haitian, Nicaraguan, and Venezuelan (“CHNV”) nationals who do not have a valid protection claim.<sup>14</sup> As discussed in greater detail below, data indicate that recently announced enforcement processes, as applied to CHNV nationals, which couple new parole processes with prompt returns of those who attempt to cross the SWB without utilizing these processes, are

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<sup>13</sup> Month over month change from November to December for all of FY 2013–FY2022 averaged negative 2 percent. OIS analysis of OIS Persist Dataset based on data through March 31, 2023.

<sup>14</sup> OIS analysis of DHS SWB Encounter Planning Model generated April 18, 2023. The complexity of international migration limits the Department’s ability to precisely project border encounters under the best of circumstances. The current period is characterized by greater than usual uncertainty due to ongoing changes in the major migration source countries (i.e., the shift from Mexico and Northern Central America to new countries of origin, discussed further below), the growing impact of climate change on migration, political instability in several source countries, the evolving recovery from the COVID-19 pandemic, and uncertainty generated by border-related litigation, among other factors.

OIS leads an interagency SWB Encounter Projections Working Group that generates encounter projections every two to four weeks, with ongoing refinements to the model based on feedback from the working group and model diagnostics. The enterprise encounter projection utilizes a mixed method blended model that combines a Bayesian structural time series statistical model produced by OIS with subject matter expert input to account for real-time policy developments and pending litigation, among other factors, that are not captured by the statistical model. The blended model is run through a standard statistical process (Monte Carlo simulations) to generate 68 percent and 95 percent confidence intervals for each of 33 separate demographic groupings. In light of the greater-than-usual uncertainty at the current time, the Departments’ planning models are designed to prepare the Departments for all reasonably likely eventualities, and therefore focus on the upper bounds of the blended model’s 68 and 95 percent confidence intervals. As noted in Section IV.B.2 of this preamble, in the current context, the Departments must focus their planning efforts on the high and moderately high planning models rather than plan to an optimistic scenario that could leave enforcement efforts badly under-resourced and harm efforts to provide a safe and orderly process.

effectively deterring irregular migration<sup>15</sup> from those countries to the United States, thus yielding a substantial decrease in encounter numbers for nationals of CHNV countries.<sup>16</sup>

However, DHS will no longer have a means to promptly expel migrants without a legal basis to stay in the United States following the termination of the Title 42 public health Order, which means that an important disincentive associated with the parole processes would no longer be present. In addition, there are a number of factors that could contribute to these gains being erased after the lifting of the Title 42 public health Order, including the presence of several large diaspora populations in Mexico and elsewhere in the hemisphere, the unprecedented recent growth in migration from countries of origin not previously typical, the already large number of migrants in proximity to the SWB, and the general uncertainty surrounding the expected impact of the termination of the Title 42 public health Order on the movement of migrants. Thus, the high end of the estimated encounter rate remains a possibility for which the Departments need to prepare. In the absence of the policy changes included in the rule, most non-Mexicans processed for expedited removal under Title 8 would likely establish credible fear and remain in the United States for the foreseeable future despite the fact that many of them will not ultimately be granted asylum,<sup>17</sup> a scenario that would likely incentivize an increasing number of migrants to the United States and further increase the likelihood of sustained, high encounter rates.

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<sup>15</sup> In this preamble, “irregular migration” refers to the movement of people into another country without authorization.

<sup>16</sup> In the week prior to the announcement of the parole processes (ending October 12, 2022, for Venezuela and January 6, 2023, for Cuba, Haiti, and Nicaragua), the daily average of CHNV encounters was nearly 2,000 between POEs. A month after the parole announcements, daily encounters of CHNV nationals averaged just under 300 encounters. In the most recent seven days ending April 10, 2023, CHNV daily encounters averaged 195. OIS analysis of OIS Persist dataset based on data through March 31, 2023, and OIS analysis of CBP UIP data downloaded April 13, 2023.

<sup>17</sup> See Section III.C of the preamble to the notice of proposed rulemaking, *Circumvention of Lawful Pathways*, 88 FR 11704, at 11715–11716 (Feb. 23, 2023). Overall, 63 percent of non-Mexicans placed in expedited removal from 2014-2019 made fear claims, and 85 percent of those claiming fear (54 percent of all those placed in expedited removal) established fear or were otherwise placed in section 240 removal proceedings as a result of their fear claim. These rates are likely to be higher after May 11, 2023, because of the growing prevalence of extra-regional nationals (*i.e.*, noncitizens not from Mexico or Northern Central America), who are more likely than those from Northern Central American countries to make fear claims and to establish fear. OIS analysis of OIS Enforcement Lifecycle data based on data through February 28, 2023.

A sustained, high encounter rate risks overwhelming the Departments' ability to effectively process, detain, and remove, as appropriate, the migrants encountered. This would put an enormous strain on already strained resources, risk overcrowding in already crowded USBP stations and border POEs in ways that pose significant health and safety concerns, and create a situation in which large numbers of migrants—only a small proportion of whom are likely to be granted asylum—are subject to exploitation and risks to their lives by the networks that support their movements north.

In response to this urgent and extreme situation, the Departments are issuing a rule that—

- incentivizes migrants to use lawful, safe, and orderly means for noncitizens to enter the United States to seek asylum and other forms of protection;
- provides core protections for noncitizens who would be threatened with persecution or torture in other countries; and
- builds upon ongoing efforts to share the responsibility of providing asylum and other forms of protection to eligible migrants with the United States' regional partners.

At the same time, the rule addresses the reality of unprecedented migratory flows, the systemic costs those flows impose on the immigration system, and the ways in which increasingly sophisticated smuggling networks cruelly exploit the system for financial gain. Specifically, this rule establishes a presumptive condition on asylum eligibility for certain noncitizens who fail to take advantage of the existing and expanded lawful pathways<sup>18</sup> to enter the United States, including the opportunity to schedule a time and place to present at a POE, and thus seek asylum or other forms of protection in a lawful, safe, and orderly manner, or to seek asylum or other protection in one of the countries through which they travel on their way to the United States.

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<sup>18</sup> The terms “lawful pathways” and “lawful, safe, and orderly pathways,” as used in this preamble, refer to the range of pathways and processes by which migrants are able to enter the United States or other countries in a lawful, safe, and orderly manner and seek asylum and other forms of protection as described in this rule.

This effort draws, in part, on lessons learned from the successful Venezuela parole process,<sup>19</sup> as well as the similar processes for Cubans, Haitians, and Nicaraguans,<sup>20</sup> under which DHS coupled a mechanism for noncitizens from these countries to seek entry into the United States in a lawful, safe, and orderly manner, with the imposition of new consequences for those who cross the border without authorization to do so—namely returns to Mexico.<sup>21</sup> Prior to the implementation of these processes, the Government of Mexico had not been willing to accept the return of such nationals; the Government of Mexico’s independent decision to allow such returns was predicated, in primary part, on the implementation of these processes.

A week before the announcement of the Venezuela parole process on October 12, 2022, Venezuelan encounters between POEs at the SWB averaged over 1,100 a day from October 5–11. About two weeks after the announcement, Venezuelan encounters averaged under 200 per day between October 18 and 24.<sup>22</sup> U.S. Customs and Border Protection (“CBP”) encountered an average of 106 Venezuelans between POEs per day in March 2023, about one-tenth the number of encounters prior to the announcement of the parole process.<sup>23</sup> Similarly, the number of Cuban, Haitian, and Nicaraguan (“CHN”) nationals encountered between POEs dropped significantly in the wake of the introduction of the new processes, which coupled a lawful, safe, and orderly way for such nationals to seek parole in the United States with consequences (in the form of prompt returns to Mexico) for those who crossed the SWB without authorization.

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<sup>19</sup> See DHS, Press Release, *DHS Announces New Migration Enforcement Process for Venezuelans* (Oct. 12, 2022), <https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans>; see also DHS, *Implementation of a Parole Process for Venezuelans*, 87 FR 63507 (Oct. 19, 2022).

<sup>20</sup> See DHS, Press Release, *DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes* (Jan. 5, 2023), <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

<sup>21</sup> While the Title 42 public health Order has been in place, those returns have been made under Title 42. As noted below, after the Title 42 public health Order is lifted, affected noncitizens may instead be subject to return or removal to Mexico under Title 8. See The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/> [hereinafter *The White House, Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023)]; Government of Mexico, *México y Estados Unidos fortalecen Plan Humanitario Conjunto sobre Migración* (May 2, 2023), <https://www.gob.mx/presidencia/prensa/mexico-y-estados-unidos-fortalecen-plan-humanitario-conjunto-sobre-migracion?state=published>.

<sup>22</sup> OIS analysis of OIS Persist Dataset based on data through March 31, 2023.

<sup>23</sup> OIS analysis of OIS Persist Dataset based on data through March 31, 2023.

Between the announcement of these processes on January 5, 2023, and January 21, 2023, the number of daily encounters between POEs of CHN nationals dropped from 928 to 73, a 92 percent decline.<sup>24</sup> CHN encounters between POEs continued to decline to an average of fewer than 17 per day in March 2023.<sup>25</sup> DHS estimates that the drop in CHNV encounters in January through March was almost four times as large as the number of people permitted entry under the parole processes.<sup>26</sup>

This rule, which draws on these successful processes, and which will apply only to those who enter during a limited, specified date range at the southwest land border or adjacent coastal borders, will discourage irregular migration by encouraging migrants to use lawful, safe, and orderly pathways and allowing for swift returns of migrants who bypass such pathways, even after the termination of the Title 42 public health Order. It responds to the expected increase of migrants seeking to cross the SWB following the termination of the Title 42 public health Order that would occur in the absence of a policy shift by encouraging reliance on lawful, safe, and orderly pathways, thereby shifting the incentives that otherwise encourage migrants to make a dangerous journey to the SWB. It is also responsive to the requests of foreign partners that have lauded the sharp reductions in irregular migration associated with the aforementioned process for Venezuelans and have urged that the United States continue and build on this kind of approach, which couples processes for individuals to travel directly to the United States with consequences at the land border for those who do not avail themselves of these processes. The United States has, as noted above, already extended this model to Cuba, Haiti, and Nicaragua, and the Government of Mexico and the United States recently announced a set of additional measures on

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<sup>24</sup> OIS analysis of OIS Persist Dataset based on data through March 31, 2023.

<sup>25</sup> OIS analysis of OIS Persist Dataset based on data through March 31, 2023.

<sup>26</sup> In December 2022, prior to the announcement of the CHN parole processes, the OIS Enterprise Encounter Projection predicted 273,000 total encounters of CHNV nationals in January through March 2023, a projection equivalent to 265,000 unique encounters given CHNV repeat encounter rates. During that same period, following the enactment of the CHN parole processes, unique SWB encounters (excluding scheduled arrivals via the CBP One app) of CHNV nationals was 20,204–245,000 fewer unique encounters than had been predicted. By comparison, a total of 61,967 CHNV nationals entered the United States pursuant to the CHNV parole processes during the same period. OIS analysis of OIS Persist Dataset based on data through March 31, 2023, and of CBP OFO CHNV Advance Travel Authorization reports.

migration, including the United States' continued commitment to welcoming CHNV nationals under these parole processes and Mexico's commitment to continue to accept back migrants on humanitarian grounds after May 11, 2023.<sup>27</sup> The Departments assess that continuing to implement and build on this approach is critical to the United States' ongoing engagements with regional partners, in particular the Government of Mexico, regarding migration management in the region.<sup>28</sup>

Consonant with these efforts, over the past two years, the United States has taken significant steps to expand safe and orderly options for migrants to lawfully enter the United States. The United States has, for example, increased and will continue to increase—

- refugee processing in the Western Hemisphere;
- country-specific and other available processes for individuals seeking parole for urgent humanitarian reasons or significant public benefit on a case-by-case basis; and
- opportunities to lawfully enter the United States for the purpose of seasonal employment.

In addition, once the Title 42 public health Order is terminated, the United States will expand implementation of the CBP One™ mobile application (“CBP One app”),<sup>29</sup> an innovative mechanism for noncitizens to schedule a time to arrive at POEs along the SWB, to allow an increasing number of migrants who may wish to claim asylum to request an available time and location to present and be inspected and processed at certain POEs, in accordance with operational limitations at each POE.<sup>30</sup> Use of this app keeps migrants from having to wait in

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<sup>27</sup> The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023).

<sup>28</sup> See also The White House, *Joint Statement by President Biden and Prime Minister Trudeau* (Mar. 24, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/24/joint-statement-by-president-biden-and-prime-minister-trudeau/> (reaffirming commitment of United States and Canada to a collaborative regional approach to migration centered on expanding legal pathways and humane border management, including deterrence of irregular migration).

<sup>29</sup> The Departments note that unless otherwise specified, references to the CBP One app refer to usage of the CBP One tool, which can be accessed via the smartphone application. Although there is a desktop version of the CBP One app, it does not currently allow users to submit their information in advance. CBP is developing the capability to use the desktop version for this purpose.

<sup>30</sup> As of January 12, 2023, this mechanism is currently available for noncitizens seeking to cross SWB land POEs to request a humanitarian exception from the Title 42 public health Order. See CBP, *Fact Sheet: Using CBP One™ to Schedule an Appointment* (last modified Jan. 12, 2023), <https://www.cbp.gov/document/fact-sheets/cbp-one-fact-sheet-english>. Once the Title 42 public health Order is terminated, and the POEs open to all migrants who wish to

long lines of unknown duration at the POEs, and enables the POEs to manage the flows in a safe and efficient manner, consistent with their footprint and operational capacity, which vary substantially across the SWB. Once present in the United States, those who use this mechanism can make claims for asylum and other forms of protection and are exempted from this rule's rebuttable presumption on asylum eligibility. They are vetted and screened, and assuming no public safety or national security concerns, may be eligible to apply for employment authorization as they await resolution of their cases.<sup>31</sup>

Moreover, on April 27, 2023, DHS and the Department of State announced several new measures to further reduce irregular migration across the Western Hemisphere, significantly expand lawful pathways for protection, and facilitate the safe, orderly, and humane processing of migrants.<sup>32</sup> These new measures include—

- creating family reunification parole processes for El Salvador, Guatemala, Honduras, and Colombia, as well as modernizing the longstanding Haitian Family Reunification Parole process and the Cuban Family Reunification Parole process;
- committing to referring for resettlement thousands of additional refugees per month from the Western Hemisphere, with the goal of doubling the number of refugees the United States committed to welcome as part of the Los Angeles Declaration on Migration and Protection (“L.A. Declaration”);
- establishing regional processing centers in key locations throughout the Western Hemisphere to reduce irregular migration;

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seek entry into the United States, this mechanism will be broadly available to migrants in central and northern Mexico, allowing them to request an available time and location to present and be inspected and processed at certain POEs.

<sup>31</sup> Under current employment authorization regulations, there is no waiting period before a noncitizen parolee in this circumstance may apply for employment authorization, except where the noncitizen is in expedited removal proceedings, including after a positive credible fear determination, and paroled from custody. See 8 CFR 274a.12(c)(11), 235.3(b)(2)(iii), (b)(4)(ii).

<sup>32</sup> See DHS, Fact Sheet, *U.S. Government Announces Sweeping New Actions to Manage Regional Migration* (Apr. 27, 2023), <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration> [hereinafter DHS, *New Actions to Manage Regional Migration* (Apr. 27, 2023)].



- launching an aggressive anti-smuggling campaign targeting criminal networks in the Darién Gap and combating smuggler misinformation;
- surging AOs to complete credible fear interviews at the SWB more quickly; and
- ramping up coordination between state and local officials and other federal agencies to provide resources, technical assistance, and support.<sup>33</sup>

These measures will be implemented in close coordination with regional partners, including the governments of Mexico, Canada, Colombia, and Guatemala, as well as the government of Spain.<sup>34</sup>

Available pathways provide lawful, safe, and orderly mechanisms for migrants to enter the United States and make their protection claims. Consistent with the CHNV processes, this rule also imposes consequences on certain noncitizens who fail to avail themselves of the range of lawful, safe, and orderly means for entering the United States and seeking protection in the United States or elsewhere. Specifically, this rule establishes a rebuttable presumption that certain noncitizens who enter the United States without documents sufficient for lawful admission are ineligible for asylum, if they traveled through a country other than their country of citizenship, nationality, or, if stateless, last habitual residence, unless they were provided appropriate authorization to travel to the United States to seek parole pursuant to a DHS-approved parole process; presented at a POE at a pre-scheduled time or demonstrate that the mechanism for scheduling was not possible to access or use due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; or sought asylum or other protection in a country through which they traveled and received a final decision denying that application. Unaccompanied children (“UC”) are excepted from this presumption.<sup>35</sup> This

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<sup>33</sup> *See id.*

<sup>34</sup> *See id.*; *see also* The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023) (committing to increase joint actions to counter human smugglers and traffickers, address root causes of migration, and continue to combine expanded lawful pathways with consequences for irregular migration).

<sup>35</sup> The term “unaccompanied child” as used in this rule is the same as “unaccompanied alien child,” which is defined at 6 U.S.C. 279(g)(2) to mean “a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”

presumption may be rebutted, and would necessarily be rebutted if, at the time of entry, the noncitizen or a member of the noncitizen's family with whom they are travelling had an acute medical emergency, faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder,<sup>36</sup> or satisfied the definition of "victim of a severe form of trafficking in persons" provided in 8 CFR 214.11(a). The presumption also may be rebutted in other exceptionally compelling circumstances.

The rebuttable presumption is a "condition[]" on asylum eligibility, INA 208(b)(2)(C) and (d)(5)(B), 8 U.S.C. 1158(b)(2)(C) and (d)(5)(B), that applies in affirmative and defensive asylum application merits adjudications, as well as during credible fear screenings. Individuals who are subject to and do not rebut the presumption remain eligible for statutory withholding of removal and protection under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").<sup>37</sup>

With the ability to schedule a time and place to arrive at POEs and the availability of other orderly and lawful pathways, this system is designed to (1) protect against an unmanageable flow of migrants arriving at the SWB; (2) further ongoing efforts to share the responsibility of providing asylum and other forms of protection with the United States' regional partners; (3) ensure that those with valid asylum claims have an opportunity to seek protection, whether in the United States or elsewhere; (4) enable the Departments to continue administering the immigration laws fairly and effectively; and (5) reduce the role of exploitative transnational criminal organizations and smugglers.

The rule applies to noncitizens who enter the United States without authorization from Mexico at the southwest land border or adjacent coastal borders on or after the date of

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<sup>36</sup> The term "imminent" refers to the immediacy of the threat; it makes clear that the threat cannot be speculative, based on generalized concerns about safety, or based on a prior threat that no longer poses an immediate threat. The term "extreme" refers to the seriousness of the threat; the threat needs to be sufficiently grave, such as a threat of rape, kidnapping, torture, or murder, to trigger this ground for rebuttal.

<sup>37</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85, 114.

termination of the Title 42 public health Order and before a specified date, 24 months from the rule's effective date. However, the rule will continue to apply to such noncitizens who entered the United States during the 24-month time frame in their Title 8 proceedings and in any subsequent asylum applications, except for those applications filed after the two-year period by those who entered the United States as minors and who apply as principal applicants. The Departments intend that the rule will be subject to review to determine whether the entry dates provided in 8 CFR 208.33(a)(1)(i) and 1208.33(a)(1)(i) should be extended, modified, or remain as provided in the rule.

*B. Effective Date*

Issuance of this rule is justified in light of the migration patterns witnessed in recent months, and the concern about the possibility of a surge in irregular migration upon, or in anticipation of, the lifting of the Title 42 public health Order. The Departments seek to underscore that migrants will not be able to cross the border without authorization to enter without consequence upon the eventual lifting of the Order. Under this rule, the Departments will use their Title 8 authorities to process, detain, and remove, as appropriate, those who enter the United States from Mexico at the southwest land border or adjacent coastal borders without authorization and do not have a valid protection claim.

The Departments are issuing this rule without the 30-day delayed effective date typically required by the Administrative Procedure Act (“APA”)<sup>38</sup> because the Departments have determined that it is necessary to implement the rule when the Title 42 public health Order is lifted. The lifting of the Order could occur as a result of several different litigation and policy developments, including the vacatur of the preliminary injunction entered in *Louisiana v. CDC*, 603 F. Supp. 3d 406 (W.D. La. 2022), *appeal pending*, No. 22-30303 (5th Cir. June 15, 2022); the lifting of the stay entered by the Supreme Court in *Arizona v. Mayorkas*, 143 S. Ct. 478 (2022); or “the expiration of the Secretary of HHS’ declaration that COVID-19 constitutes a

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<sup>38</sup> See 5 U.S.C. 553(d). The Departments further address this requirement in Section VI.A of this preamble.

public health emergency,” Public Health Reassessment and Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 86 FR 42828, 42829 (Aug. 5, 2021). The expiration of the declaration by the Secretary of Health and Human Services (“HHS”) that COVID-19 constitutes a public health emergency is expected to occur on May 11, 2023, in light of the recent announcement that “[a]t present, the Administration’s plan is to extend” the public health emergency to May 11 and then allow it to expire “on that date.”<sup>39</sup> The Departments have thus sought to move as expeditiously as possible, while also allowing sufficient time for public comment.

### *C. Changes from Proposed Rule to Final Rule*

On February 23, 2023, the Departments issued a notice of proposed rulemaking (“NPRM” or “proposed rule”)<sup>40</sup> in anticipation of a potential surge of migration at the SWB following the eventual termination of the CDC’s public health Order. Following careful consideration of public comments received, the Departments have made modifications to the regulatory text proposed in the NPRM, as described below. The rationale for the proposed rule and the reasoning provided in the proposed rule preamble remain valid, except as distinguished in this regulatory preamble.

#### 1. Removing Provisions Implementing the Proclamation Bar IFR and the TCT Bar Final Rule

Consistent with the proposed rule, Circumvention of Lawful Pathways, 88 FR 11704, 11727–28 (Feb. 23, 2023), the Departments have added amendatory instructions to remove provisions enacted to implement the bars to asylum eligibility established in an interim final rule (“IFR”) entitled, Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 FR 55934 (Nov. 9, 2018) (“Proclamation Bar IFR”), and a

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<sup>39</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statement of Administration Policy (Jan. 30, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>; see also HHS, *Fact Sheet: COVID-19 Public Health Emergency Transition Roadmap* (Feb. 9, 2023), <https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html> (“Based on current COVID-19 trends, the Department of Health and Human Services (HHS) is planning for the federal Public Health Emergency (PHE) for COVID-19, declared under Section 319 of the Public Health Service (PHS) Act, to expire at the end of the day on May 11, 2023.”).

<sup>40</sup> 88 FR 11704.

final rule entitled, Asylum Eligibility and Procedural Modifications, 85 FR 82260 (Dec. 17, 2020) (“TCT Bar Final Rule”).<sup>41</sup>

To remove the provisions enacted to implement the Proclamation Bar IFR and TCT Bar Final Rule, the Departments have made the following changes:

- removed and reserved paragraphs 8 CFR 208.13(c)(3) and 1208.13(c)(3), which previously included the requirements for the Proclamation Bar IFR’s applicability;
- removed and reserved paragraphs 8 CFR 208.13(c)(4) and 1208.13(c)(4), which previously included the requirements for the TCT Bar Final Rule’s applicability;
- removed and reserved paragraphs 8 CFR 208.13(c)(5) and 1208.13(c)(5), which provided that determinations made with regard to whether an applicant met one of the exceptions to the TCT Bar Final Rule would not bind Federal departments or agencies with respect to certain later adjudications;
- amended 8 CFR 208.30(e)(5) to remove paragraphs (ii) and (iii), which regard application during credible fear of the Proclamation Bar IFR and TCT Bar Final Rule, respectively;
- removed reference to 8 CFR 208.30(e)(5)(ii) through (iv) from what was previously (i) and redesignated (i) as (e)(5);
- amended 8 CFR 1003.42(d) to remove paragraphs (1) and (2) and redesignated paragraph (3) as (d) because paragraphs (d)(1) and (2) provided the standard of review for Proclamation Bar and TCT Bar determinations made during credible fear screenings; and
- removed and reserved 8 CFR 1208.30(g)(1), which provided instructions to IJs regarding the application of the Proclamation Bar and the TCT Bar during credible fear reviews.

## 2. Applicability of Rebuttable Presumption after the Two-Year Period

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<sup>41</sup> The TCT Bar Final Rule amended an earlier IFR on the same topic. *See* Asylum Eligibility and Procedural Modifications, 84 FR 33829 (July 16, 2019). The IFR was vacated prior to the issuance of the TCT Bar Final Rule. Additionally, where the Departments refer to the “Proclamation Bar” or “TCT Bar” without including “IFR” or “Final Rule,” the Departments are referring to the bars as applied and not to the rulemaking documents that implemented them.

The rule applies to certain noncitizens who enter during the two-year period in any asylum application they submit, regardless of when the application is filed or if the noncitizen makes subsequent entries. *See* 8 CFR 208.13(f) (“For applications filed by aliens who entered the United States between May 11, 2023, and May 11, 2025, also refer to the provisions on asylum eligibility described in § 208.33.”); 8 CFR 1208.13(f) (same); 8 CFR 208.33(a)(1), 1208.33(a)(1) (providing that the rebuttable presumption applies to noncitizens who enter the United States from Mexico at the southwest land border or adjacent coastal borders without documents sufficient for lawful admission between the effective date and a date 24-months later and after the end of implementation of the Title 42 public health Order with certain exceptions). To remove any potential ambiguity regarding the ongoing applicability of the lawful pathways rebuttable presumption, the final rule makes the presumption’s ongoing applicability explicit in 8 CFR 208.33(c)(1) and 1208.33(d)(1) by stating that the lawful pathways condition on eligibility shall apply to “any asylum application” that is filed by a covered noncitizen “regardless of when the application is filed and adjudicated.”

The Departments have exempted from this ongoing application of the rebuttable presumption certain noncitizens who enter the United States during the two-year period while under the age of 18 and who later seek asylum as principal applicants after the two-year period. In the NPRM, the Departments requested comment on “[w]hether any further regulatory provisions should be added or amended to address the application of the rebuttable presumption in adjudications that take place after the rule’s sunset date.” 88 FR at 11708. After reviewing comments raising concerns about the impact of the rule on children who arrive as part of a family unit and who are thus subject to the decision-making of their parents, the Departments have decided to adopt a provision excepting such children from the rule in certain circumstances after the two-year period ends. *See* 8 CFR 208.33(c)(2), 1208.33(d)(2). The Departments recognize that children who enter with their families are generally traveling due to their parents’ decision-making. Exempting children from the rebuttable presumption entirely would mean,

under the rule, that all family units that include minor children would also be exempted, which could incentivize families who otherwise would not make the dangerous journey to do so. And if the rule were amended to only exempt the child, it could inadvertently lead to the separation of a family in many cases because every child would have to be treated separately from their family during the credible fear screening as they would not be subject to the rebuttable presumption but their parents could be.

Although accompanied children remain subject to the rebuttable presumption generally, the Departments have determined that the presumption should not apply to them in any application for asylum they file after the two-year period, but only if they apply as a principal (as opposed to a derivative) applicant. The Departments believe this exception to the general applicability provision balances the interest in ensuring the rebuttable presumption has an impact on behavior, while at the same time recognizing the special circumstance of children who enter in a manner that triggers the rebuttable presumption, likely without intending to do so or being able to form an understanding of the consequences. Specifically, if the Departments were to extend this exception to all children after the two-year period, even if they applied only as a derivative, the Departments would risk incentivizing families to seek to prolong their proceedings to file their asylum applications after the two-year period expires, undermining the Departments' interest in efficient adjudications. In addition, any family that did so would be able to avoid the applicability of the presumption entirely, by virtue of the rule's family unity provision. The Departments have decided not to include such a broad exemption, in light of the urgent need to disincentivize a further surge in irregular migration.

### 3. Expansion of Applicability to Adjacent Coastal Borders

As proposed in the NPRM, the rule would apply to certain noncitizens who enter the United States at the SWB—that is, “along the entirety of the U.S. land border with Mexico.” 88 FR at 11704 n.1. The Departments received comments that applying the rule only to those who enter the United States from Mexico across the U.S.-Mexico land border would inadvertently

incentivize noncitizens without documents sufficient for lawful admission to circumvent the land border by making a hazardous attempt to reach the United States by sea. In this final rule, the Departments have decided to modify 8 CFR 208.33(a)(1) and 8 CFR 1208.33(a)(1) to provide that the rule's rebuttable presumption of ineligibility for asylum applies to noncitizens who enter the United States from Mexico at "adjacent coastal borders." The term "adjacent coastal borders" refers to any coastal border at or near the U.S.-Mexico border. This modification therefore means that the rule's rebuttable presumption of ineligibility for asylum applies to noncitizens who enter the United States at such a border after traveling from Mexico and who have circumvented the U.S.-Mexico land border.

This modification mirrors the geographic reach of the CDC's Title 42 public health Order, which likewise applied—as relevant here—to certain covered noncitizens traveling from Mexico who would otherwise be introduced into a congregate setting "at or near the U.S. land and adjacent coastal borders." *See* 86 FR at 42841. Because the Title 42 public health Order did not define the phrase "adjacent coastal borders," its meaning was developed during the public health Order's implementation. Specifically, as implemented by CBP, the term "adjacent coastal borders" was interpreted to apply to the same population as the Amended CDC Order issued in May 2020, which first introduced the concept of "coastal" application. The Amended Order applied to "persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land or coastal POE or Border Patrol station at or near the U.S. border with Canada or Mexico, subject to exceptions."<sup>42</sup> With regard to persons traveling from Mexico, in line with the interpretation above, CBP implemented the Title 42 public health Order as covering any coastal border adjacent to the U.S.-Mexico border reached by an individual traveling from Mexico and landing within the United States

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<sup>42</sup> *See* Amendment and Extension of Order Under Sections 362 and 365 of the Public Service Act; Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 31503 (May 26, 2020); CBP, CBP COVID-19 Response: Suspension of Entries and Imports Concept of Operations 1-3 (May 20, 2020), <https://www.cbp.gov/document/foia-record/title-42>.



having circumvented the U.S.-Mexico land border. Applying the same geographic reach that has been applied by CBP for the past three years to this rule will avoid the risk that smugglers would exploit what could be perceived as a new “loophole” following the lifting of the Title 42 public health Order to persuade migrants to make a perilous crossing to the United States from Mexico by sea. In DHS’s experience, that risk may well materialize, as smugglers routinely prey on migrants using perceived changes in U.S. immigration law.<sup>43</sup> Any such campaign by smugglers to persuade more migrants to circumvent the land border would result in life-threatening risks for migrants and DHS personnel, given the elevated danger associated with maritime crossings. As just one example of how dangerous such attempts can be, the Departments note that in March 2023, two suspected human smuggling boats from Mexico capsized and eight people died off the coast near San Diego, California.<sup>44</sup> This incident, as well as the increases in maritime migration over the past few years, as discussed further in Section V of this preamble, and commenters’ concerns that the NPRM would have encouraged migration by sea, as discussed further in Section IV.B.8.i of this preamble, have led the Departments to extend the rebuttable presumption to the adjacent coastal borders. Specifically, in the interest of ensuring that this rule is not used to encourage intending migrants to undertake attempts that could end in similar tragedies, the Departments believe it is important that the text of 8 CFR 208.33(a)(1) and 8 CFR 1208.33(a)(1) make clear that the rule’s presumption applies equally to noncitizens who arrive from Mexico on coasts adjacent to the southwest land border.

#### 4. Clarification of Meaning of “Final Decision”

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<sup>43</sup> See Tech Transparency Project, *Inside the World of Misinformation Targeting Migrants on Social Media* (July 26, 2022), <https://www.techtransparencyproject.org/articles/inside-world-misinformation-targeting-migrants-social-media> (“A review of social media groups and pages identified by migrants showed . . . dubious offers of coyote or legal services, false claims about conditions along the route, misinformation about points of entry at which officials waive the rules, and baseless rumors about changes to immigration law.”).

<sup>44</sup> See Karen Kucher et al., *8 Reported Dead After 2 Suspected Smuggling Boats Crash at Black’s Beach in San Diego*, L.A. Times, Mar. 12, 2023, <https://www.latimes.com/california/story/2023-03-12/8-reported-dead-after-2-suspected-smuggling-boats-crash-at-blacks-beach-in-san-diego>; Wendy Fry, *An Endless Fight: As Border Infrastructure on Land Improves, Smugglers Take to the Water*, San Diego Tribune, Nov. 6, 2019, <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-11-06/an-endless-fight-as-border-infrastructure-on-land-improves-smugglers-take-to-the-water>.

As was proposed in the NPRM, the rule excepts from the rebuttable presumption noncitizens who sought asylum or other protection in another country through which they traveled and received a “final decision” denying that application. *See* 8 CFR 208.33(a)(2)(ii)(C), 1208.33(a)(2)(ii)(C). The Departments have amended this paragraph to further define what constitutes a “final decision” for the purposes of this exception. With this change, the final rule specifies that a “final decision includes any denial by a foreign government of the applicant’s claim for asylum or other protection through one or more of that government’s pathways for that claim.” *Id.* The provision further states that a “final decision does not include a determination by a foreign government that the noncitizen abandoned the claim.” *Id.* The Departments have made this change in response to comments, as discussed below, and to provide clarity that a noncitizen must in fact pursue the claim since a denial based on abandonment would be insufficient.

#### 5. Exception for Unaccompanied Children

The NPRM provided that “[u]naccompanied alien children, as defined in 6 U.S.C. 279(g)(2), are not subject to paragraph (a)(1) of this section.” *See* 88 FR at 11750–51 (proposed 8 CFR 208.33(b), 1208.33(b)). The Departments have modified the proposed language to explicitly state that this exception applies to noncitizens who were UCs at the time of entry.<sup>45</sup> 8 CFR 208.33(a)(2)(i), 1208.33(a)(2)(i).

This added language makes clear that the UC exception aligns with other exceptions in this rule, which are based upon conditions at the time of a noncitizen’s presentation at a POE, *see* 8 CFR 208.33(a)(2), 1208.33(a)(2), and more closely aligns the regulatory text with the Departments’ stated purpose in the NPRM that “unaccompanied children would be categorically excepted from the rebuttable presumption,” 88 FR at 11724.

#### 6. Expansion of Family Unity Provision

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<sup>45</sup> Numerous commenters recognized that the NPRM proposed an exception for UCs, but did not indicate a clear understanding of whether this exception applied to those who were UCs at the time of entry or at the time of adjudication.

The NPRM provided that where a principal applicant is eligible for statutory withholding of removal or CAT withholding and would be granted asylum but for the presumption, and where an accompanying spouse or child does not independently qualify for asylum or other protection from removal, the presumption shall be deemed rebutted as an exceptionally compelling circumstance. *See* 88 FR at 11752 (proposed 8 CFR 1208.33(d)). Commenters raised concerns that excluding asylum applicants who travel without their families may inadvertently incentivize families to engage in irregular migration together so as not to risk that the principal applicant would be prevented from later applying for their family members to join them. This could involve making a dangerous journey with vulnerable family members, such as children. Accordingly, as discussed in Section IV.E.7.ii of this preamble, in response to these comments, the Departments have expanded the provision to also cover principal asylum applicants who have a spouse or child who would be eligible to follow to join that applicant as described in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A). *See* 8 CFR 1208.33(c).

#### 7. Other Changes

In addition to the changes this final rule makes to the NPRM detailed above, this final rule also makes other changes to the regulatory text set out in the NPRM.

First, the Departments have reorganized and made other edits to proposed 8 CFR 208.33(a) and 1208.33(a) to improve clarity for noncitizens, counsel appearing before the Departments, other members of the public, and adjudicators. For example, the Departments added the exception for unaccompanied children to 8 CFR 208.33(a)(2)(i) and 1208.33(a)(2)(i) rather than maintaining it as a standalone paragraph at 8 CFR 208.33(b) and 1208.33(b). Similarly, the Departments added headings and additional guideposts within 8 CFR 208.33(a) and 1208.33(a). Second, the Departments revised 8 CFR 208.33 and 1208.33 to move instructions from 8 CFR 208.33 to 8 CFR 1208.33 regarding IJ review that are better placed in EOIR's regulations. For example, the Departments removed the sentence at proposed 8 CFR 208.33(c)(2)(ii) stating that noncitizens may apply for asylum, withholding of removal, and

protection under the CAT in removal proceedings and included that at new 8 CFR 1208.33(b)(4).

These revisions do not change the meaning of those provisions.

#### *D. Rule Provisions*

The rule contains the following key provisions:

- The rule imposes a rebuttable presumption of ineligibility for asylum upon certain noncitizens who enter the United States from Mexico at the southwest land border or adjacent coastal borders without documents sufficient for lawful admission as described in INA 212(a)(7), 8 U.S.C. 1182(a)(7). *See* 8 CFR 208.33(a)(1), 1208.33(a)(1). The rebuttable presumption applies to only those noncitizens whose entry was (1) between May 11, 2023 and May 11, 2025; (2) subsequent to the end of implementation of the Title 42 public health Order; and (3) after the noncitizen traveled through a country other than the noncitizen's country of citizenship, nationality, or, if stateless, last habitual residence, that is a party to the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 ("Refugee Convention") or 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 268 ("Refugee Protocol"). *See* 8 CFR 208.33(a)(1)(i) through (iii), 1208.33(a)(1)(i) through (iii).
- The rule excepts from the rebuttable presumption any noncitizen who is an unaccompanied child as defined in 6 U.S.C. 279(g)(2). *See* 8 CFR 208.33(a)(2)(i), 1208.33(a)(2)(i).
- The rule also excepts from the rebuttable presumption a noncitizen if the noncitizen or a member of the noncitizen's family with whom the noncitizen is traveling (1) was provided appropriate authorization to travel to the United States to seek parole, pursuant to a DHS-approved parole process; (2) presented at a POE, pursuant to a pre-scheduled time and place, or presented at a POE without a pre-scheduled time and place, if the noncitizen demonstrates by a preponderance of the evidence that it was not possible to access or use the DHS scheduling system due to language barrier, illiteracy, significant

technical failure, or other ongoing and serious obstacle; or (3) sought asylum or other protection in a country through which the noncitizen traveled and received a final decision denying that application. *See id.* 208.33(a)(2)(ii), 1208.33(a)(2)(ii).

- The rule allows a noncitizen to rebut the presumption by demonstrating by a preponderance of the evidence that exceptionally compelling circumstances exist. A noncitizen necessarily rebuts the presumption if they demonstrate by a preponderance of the evidence that the noncitizen, or a member of the noncitizen's family with whom the noncitizen is traveling, (1) faced an acute medical emergency; (2) faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or (3) satisfied the definition of "victim of a severe form of trafficking in persons" provided in 8 CFR 214.11(a). *See id.* 208.33(a)(3), 1208.33(a)(3). In addition, as a measure to ensure family unity, the rule provides that in removal proceedings pursuant to section 240 of the INA, 8 U.S.C. 1229a ("section 240 removal proceedings"), where a principal asylum applicant is eligible for statutory withholding of removal or CAT withholding and would be granted asylum but for the rebuttable presumption, and where an accompanying spouse or child does not independently qualify for asylum or other protection from removal or where the principal asylum applicant has a spouse or child who would be eligible to follow to join them if they are granted asylum, as described in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A), the presumption is deemed rebutted as an exceptionally compelling circumstance. *See* 8 CFR 1208.33(c).
- The rule establishes procedures, applicable in the expedited removal context, under which AOs will determine whether the noncitizen has made a sufficient showing that the rebuttable presumption does not apply or that they meet an exception to or can rebut the presumption. *See id.* 208.33(b). If the AO determines that the rebuttable presumption does not apply or the noncitizen falls within an exception or has rebutted the presumption, the general procedures in 8 CFR 208.30 apply. *See id.* 208.33(b)(1)(ii). On

the other hand, if the AO determines that the rebuttable presumption does apply and no exception or rebuttal ground applies, the AO will consider whether the noncitizen has established a reasonable possibility of persecution or torture with respect to the identified country or countries of removal. *See id.* 208.33(b)(1)(i), 208.33(b)(2).

- The rule provides that an AO's adverse determination as to the applicability of the rebuttable presumption, whether an exception applies or the presumption has been rebutted, and whether the noncitizen has established a reasonable possibility of persecution or torture, are all subject to de novo IJ review. *See id.* 208.33(b)(2)(iii) through (v), 1208.33(b). The noncitizen must request such review by so indicating on a Record of Negative Fear Finding and Request for Review by Immigration Judge. *See id.* 208.33(b)(2)(iv) and (v), 1208.33(b)(1).
- The rule establishes procedures for such IJ review. Specifically, if the IJ determines that the noncitizen has made a sufficient showing that the rebuttable presumption does not apply to them or that they meet an exception to or can rebut the presumption, and that the noncitizen has established a significant possibility of eligibility for asylum, statutory withholding of removal, or CAT withholding, the IJ issues a positive credible fear finding and the case proceeds under existing procedures at 8 CFR 1208.30(g)(2)(iv)(B). *See id.* 208.33(b)(2)(v)(A), 1208.33(b)(2)(i). If the IJ determines that the rebuttable presumption applies and has not been rebutted and no exception is applicable, but the noncitizen has established a reasonable possibility of persecution or torture with respect to the identified country or countries of removal, the IJ will issue a positive credible fear finding and DHS will issue a Form I-862, Notice to Appear, to commence section 240 removal proceedings. *See id.* 208.33(b)(2)(v)(B), 1208.33(b)(2)(ii). And finally, if the IJ issues a negative credible fear determination, the case is returned to DHS for removal of the noncitizen. *See id.* 208.33(b)(2)(v)(C), 1208.33(b)(2)(ii). In such a circumstance, the noncitizen may not appeal the IJ's decision or request that U.S. Citizenship and

Immigration Services (“USCIS”) reconsider the AO’s negative determination, although USCIS may, in its sole discretion, reconsider a negative determination. *See id.* 208.33(b)(2)(v)(C).

- The rule provides that a noncitizen who is found to be subject to the lawful pathways condition during expedited removal proceedings may, if placed in section 240 removal proceedings, apply for asylum, statutory withholding of removal, or CAT protection, or any other form of relief or protection for which the noncitizen is eligible during those removal proceedings. *See id.* 1208.33(b)(4).
- The rule declines to adopt the Proclamation Bar IFR on a permanent basis and removes the language effectuating the Proclamation Bar. Specifically, the rule removes and reserves paragraphs 8 CFR 208.13(c)(3) and 1208.13(c)(3), which previously included the requirements for the bar’s applicability.
- The rule removes regulatory provisions implementing the TCT Bar Final Rule. The rule removes and reserves paragraphs 8 CFR 208.13(c)(4) and 1208.13(c)(4), which previously included the requirements for the TCT Bar Final Rule’s applicability. The rule also removes and reserves paragraphs 8 CFR 208.13(c)(5) and 1208.13(c)(5), which provided that determinations made with regard to whether an applicant met one of the exceptions to the TCT Bar Final Rule would not bind Federal departments or agencies with respect to certain later adjudications. Given the removal of the TCT Bar Final Rule and its implementing provisions, these provisions are no longer necessary.
- The rule also amends the CFR to remove provisions implementing the Proclamation Bar IFR and TCT Bar Final Rule during the credible fear process. The rule removes 8 CFR 208.30(e)(5)(ii) and (iii), which implemented the Proclamation Bar IFR and TCT Bar Final Rule, respectively. The rule also removes reference to (ii) though (iv) from what was previously (i) and redesignates (i) as (e)(5). Similarly, the rule also amends provisions relating to IJ standard of review for Proclamation Bar and TCT Bar

determinations by removing 8 CFR 1003.42(d)(2) and (3), and redesignates 8 CFR 1003.42(d)(1) as paragraph (d). Finally, the rule removes and reserves 8 CFR 1208.30(g)(1), which provided instructions to IJs regarding the application of the Proclamation Bar and the TCT Bar during credible fear reviews.

- The rule contains a special provision providing that the rebuttable presumption does not apply to an asylum application filed after May 11, 2025, if the noncitizen was under the age of 18 at the time of entry, and the noncitizen is applying for asylum as a principal applicant. *See id.* 208.33(c)(2), 1208.33(d)(2).
- The rule contains a severability clause reflecting the Departments' intention that the rule's provisions be severable from each other in the event that any aspect of the new provisions governing the rebuttable presumption is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance. *See id.* 208.33(d), 1208.33(e).

### **III. Legal Authority**

The Secretary and the Attorney General jointly issue this rule pursuant to their shared and respective authorities concerning asylum, statutory withholding of removal, and CAT determinations. The Homeland Security Act of 2002 (“HSA”), Public Law 107–296, 116 Stat. 2135, as amended, created DHS and transferred to it many functions related to the administration and enforcement of Federal immigration law while maintaining many functions and authorities with the Attorney General, including concurrently with the Secretary.

The INA, as amended by the HSA, charges the Secretary “with the administration and enforcement of [the INA] and all other laws relating to the immigration and naturalization of aliens,” except insofar as those laws assign functions to other agencies. INA 103(a)(1), 8 U.S.C. 1103(a)(1). The INA also grants the Secretary the authority to establish regulations and take other actions “necessary for carrying out” the Secretary’s authority under the immigration laws, INA 103(a)(1) and (3), 8 U.S.C. 1103(a)(1) and (3); *see also* 6 U.S.C. 202.



The HSA charges the Attorney General with “such authorities and functions under [the INA] and all other laws relating to the immigration and naturalization of aliens as were [previously] exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to [EOIR].” INA 103(g)(1), 8 U.S.C. 1103(g)(1); *see also* 6 U.S.C. 521. In addition, under the HSA, the Attorney General retains authority to “establish such regulations, . . . issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out” his authorities under the INA. INA 103(g)(2), 8 U.S.C. 1103(g)(2).

Under the HSA, the Attorney General retains authority over the conduct of section 240 removal proceedings. These adjudications are conducted by IJs within DOJ’s EOIR. *See* 6 U.S.C. 521; INA 103(g), 8 U.S.C. 1103(g). With limited exceptions, IJs within DOJ adjudicate asylum, statutory withholding of removal, and CAT protection applications filed by noncitizens during the pendency of section 240 removal proceedings, including asylum applications referred by USCIS to the immigration court. INA 101(b)(4), 8 U.S.C. 1101(b)(4); INA 240(a)(1), 8 U.S.C. 1229a(a)(1); INA 241(b)(3), 8 U.S.C. 1231(b)(3); 8 CFR 1208.2(b), 1240.1(a); *see also Dhakal v. Sessions*, 895 F.3d 532, 536–37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals (“BIA”), also within DOJ, in turn hears appeals from IJ decisions. *See* 8 CFR 1003.1(a)(1) and (b)(3); *see also Garland v. Ming Dai*, 141 S. Ct. 1669, 1677–78 (2021) (describing appeals from IJ to BIA). In addition, the INA provides that the “determination and ruling by the Attorney General with respect to all questions of law shall be controlling.” INA 103(a)(1), 8 U.S.C. 1103(a)(1).

In addition to the separate authorities discussed above, the Attorney General and the Secretary share some authorities. Section 208 of the INA, 8 U.S.C. 1158, authorizes the “Secretary of Homeland Security or the Attorney General” to “grant asylum” to a noncitizen “who has applied for asylum in accordance with the requirements and procedures established by” the Secretary or the Attorney General under section 208 if the Secretary or the Attorney General

determines that the noncitizen is a refugee. INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A). Section 208 thereby authorizes the Secretary and the Attorney General to “establish[]” “requirements and procedures” to govern asylum applications. *Id.* The statute further authorizes them to “establish,” “by regulation,” “additional limitations and conditions, consistent with” section 208, under which a noncitizen “shall be ineligible for asylum.” INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C); *see also* INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B) (authorizing the Secretary and the Attorney General to “provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with [the INA]”).<sup>46</sup> The INA also provides the Secretary and Attorney General authority to publish regulatory amendments governing their respective roles regarding apprehension, inspection and admission, detention and removal, withholding of removal, deferral of removal, and release of noncitizens encountered in the interior of the United States or at or between POEs. *See* INA 235, 236, 241, 8 U.S.C. 1225, 1226, 1231.

The HSA granted DHS the authority to adjudicate asylum applications and to conduct credible fear interviews, make credible fear determinations in the context of expedited removal, and to establish procedures for further consideration of asylum applications after an individual is found to have a credible fear. INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B); *see also* 6 U.S.C. 271(b) (providing for the transfer of adjudication of asylum and refugee applications from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services, now USCIS). Within DHS, the Secretary has delegated some of those authorities to the Director of USCIS, and USCIS AOs conduct credible fear interviews, make credible fear determinations, and determine whether a noncitizen’s asylum application should be granted. *See* DHS, Delegation to the Bureau of Citizenship and Immigration Services, No. 0150.1 (June 5, 2003); 8 CFR 208.2(a), 208.9, 208.30.

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<sup>46</sup> Under the HSA, the references to the “Attorney General” in the INA also encompass the Secretary, either solely or additionally, with respect to statutory authorities vested in the Secretary in the HSA or subsequent legislation, including in relation to immigration proceedings before DHS. 6 U.S.C. 557.

The United States is a party to the Refugee Protocol, which incorporates Articles 2 through 34 of the Refugee Convention. Article 33 of the Refugee Convention generally prohibits parties to the Convention from expelling or returning (“refouler”) “a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” 120%

Congress codified these obligations in the Refugee Act of 1980, creating the precursor to what is now known as statutory withholding of removal.<sup>47</sup> The Supreme Court has long recognized that the United States implements its non-refoulement obligations under Article 33 of the Refugee Convention (via the Refugee Protocol) through the statutory withholding of removal provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), which provides that a noncitizen may not be removed to a country where their life or freedom would be threatened on account of one of the protected grounds listed in Article 33 of the Refugee Convention.<sup>48</sup> See INA 241(b)(3), 8 U.S.C. 1231(b)(3); see also 8 CFR 208.16, 1208.16. The INA also authorizes the Secretary and the Attorney General to implement statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). See INA 103(a)(1) and (3), (g)(1) and (2), 8 U.S.C. 1103(a)(1) and (3), (g)(1) and (2).

The Departments also have authority to implement Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). The Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”) provides the Departments with the authority to “prescribe regulations to implement the

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<sup>47</sup> Public Law 96–212, 94 Stat. 102 (“Refugee Act”).

<sup>48</sup> See *INS v. Aguirre-Aguirre*, 526 U.S. 415, 426–27 (1999); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440–41 (1987) (distinguishing between Article 33’s non-refoulement prohibition, which aligns with what was then called withholding of deportation and Article 34’s call to “facilitate the assimilation and naturalization of refugees,” which the Court found aligned with the discretionary provisions in section 208 of the INA, 8 U.S.C. 1158). The Refugee Convention and Protocol are not self-executing. *E.g.*, *Al-Fara v. Gonzales*, 404 F.3d 733, 743 (3d Cir. 2005) (“The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation.”).

obligations of the United States under Article 3 of the [CAT], subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.” Public Law 105–277, div. G, sec. 2242(b), 112 Stat. 2681, 2681–822 (8 U.S.C. 1231 note). DHS and DOJ have implemented the United States’ obligations under Article 3 of the CAT in the CFR, consistent with FARRA. *See, e.g.*, 8 CFR 208.16(c) through 208.18, 1208.16(c) through 1208.18; Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999), as corrected by 64 FR 13881 (Mar. 23, 1999).

This rule does not change the eligibility requirements for statutory withholding of removal or CAT protection. As further discussed below, the rule applies a “reasonable possibility” standard in screenings for statutory withholding of removal and CAT protection in cases where the presumption of asylum ineligibility is applied and not rebutted. While the application of this standard is a change from the prior practice in the expedited removal context, it is the same standard used in protection screenings in other contexts and is consistent with both domestic and international law. *See* 8 CFR 208.31.

#### **IV. Public Comments and Responses**

The Departments received 51,952 comments on the proposed rule, the majority of which expressed opposition to the proposal. A range of governmental and non-governmental entities, public officials, and private persons submitted comments. The Departments summarize and respond to the public comments below.

##### *A. General Support*

###### 1. General support

*Comment:* Many commenters stated their support for the rule overall. Commenters emphasized the importance of border security, stating that the Government must do what is necessary to both manage workloads at the border and stop migrants from entering the United States without permission.

*Response:* Promulgation of this rule is needed because, once the Title 42 public health Order is lifted, the number of migrants traveling to the United States without authorization is expected to increase significantly, to a level that risks undermining the Departments' ability to safely, effectively, and humanely enforce and administer U.S. immigration law, including the asylum system. Such a surge would also place additional pressure on States, local communities, and non-governmental organization ("NGO") partners both along the border and in the interior of the United States.

To address these issues, the rule imposes a rebuttable presumption of asylum ineligibility for certain migrants who enter the United States outside of safe, orderly, and lawful pathways and without first seeking protection in a third country they have traveled through en route to the SWB, during a designated period of time. The rule (1) incentivizes the use of multiple existing lawful, safe, and orderly means for noncitizens to enter the United States to seek asylum and other forms of protection; (2) continues to provide core protections for noncitizens who would be threatened with persecution or torture in other countries; and (3) builds upon ongoing efforts to share the responsibility of providing asylum and other forms of protection to deserving migrants with the United States' regional partners.

The successful implementation of the CHNV parole processes has demonstrated that an increase in lawful pathways, when paired with consequences for migrants who do not avail themselves of such pathways, can incentivize the use of such pathways and undermine transnational criminal organizations, such as smuggling operations. The rule, which is fully consistent with domestic and international legal obligations, provides the necessary consequences to maintain this incentive under Title 8 authorities. In short, the Departments expect the rule, coupled with an expansion of lawful, safe, and orderly pathways, to reduce the number of noncitizens seeking to cross the SWB without authorization to enter the United States.

The benefits of reducing the number of encounters include protecting against overcrowding in border facilities; allowing for the continued effective, humane, and efficient

processing of noncitizens at and between ports of entry; and helping to reduce reliance on dangerous human smuggling networks that exploit migrants for financial gain. Even where the rule applies, the presumption against asylum eligibility may be rebutted in certain circumstances, such as where, at the time of the noncitizen's entry into the United States, they or a family member with whom they are traveling are experiencing an acute medical emergency or an extreme and imminent threat to life or safety, or are a victim of a severe form of trafficking. Moreover, DHS will still screen migrants who cannot overcome the rebuttable presumption to determine if the migrant has established a reasonable possibility of persecution for the purposes of statutory withholding of removal or a reasonable possibility of torture for the purposes of protection under the regulations implementing the CAT. *See* 8 CFR 208.33(b)(2)(i). Should a migrant receive a negative credible fear determination, they can also seek review of the determination by an IJ. *See* 8 CFR 208.33(b)(2)(iii) through (v). Those who are found to have credible fear due to a reasonable possibility of persecution or torture will then have the opportunity for further consideration of their protection claims via a section 240 removal proceeding. *See* 8 CFR 208.33(b)(2)(ii).

## 2. Need, Effectiveness, and Rationale for the Rule

*Comment:* Commenters described the rule as a common-sense approach to managing migration at the border and discouraging illegal migration, while others stated that the rule would contribute to the "rule of law" at the border. Other commenters noted that a change such as that made by this rule is necessary, as it is simply impossible to admit all migrants who want to enter the United States. Some commenters stated that the rule is a reasonable solution until Congress can take legislative action to address the issue. Other commenters supported the rule's encouragement for migrants to first seek protection in third countries they pass through before requesting asylum at the SWB and asserted that such a requirement is standard in international law; commenters further stated that the rule would discourage "asylum shoppers." Commenters stated that allowing migrants to cross multiple countries en route to the United States before

claiming asylum defeats the true purpose of asylum. Some commenters stated that migrants know that claiming asylum allows them entry into the United States, and thus take advantage of the process.

*Response:* As noted above, the Departments have designed this rule in response to the number of migrants expected to travel without authorization to the United States after the lifting of the Title 42 public health Order, absent a policy change such as this one. In that case, the circumstances likely to occur include the following: an additional number of migrants anticipated to arrive at the border; the severe strain on resources that this influx of migrants would cause DHS; and a substantial resulting impact on U.S. Government operations, as well as local communities. DHS's successful Uniting for Ukraine ("U4U") and CHNV parole processes—under which DHS coupled a mechanism for noncitizens from these countries to seek entry to the United States in a lawful, safe, and orderly manner with the imposition of new consequences for those who cross the SWB without authorization—have demonstrated that an increase in the availability of lawful pathways paired with consequences for migrants who do not avail themselves of such pathways can incentivize the use of lawful pathways and undermine transnational criminal organizations, such as smuggling operations. The Departments expect similar benefits from this rule, especially a reduced number of encounters at the border, which will help to protect against overcrowding in border facilities; allow for the continued effective, humane, and efficient processing of noncitizens at and between ports of entry; and reduce reliance on dangerous human smuggling networks that exploit migrants for financial gain.

The Departments designed the rule to strike a balance that maintains safe and humane processing of migrants while also including safeguards to protect especially vulnerable individuals. The rule provides exceptions to the rebuttable presumption and allows migrants to rebut the presumption in exceptionally compelling circumstances. These exceptions and opportunities for rebuttal are meant to ensure that migrants who are particularly vulnerable, who are in imminent danger, or who could not access the lawful pathways provided are not made

ineligible for asylum by operation of the rebuttable presumption. Those who are not excepted from and are unable to rebut the presumption of ineligibility may still pursue statutory withholding of removal and protection under the CAT. In addition, to further aid migrants, the Departments plan to continue to work with foreign partners to expand lawful pathways for migration, as well as expand the Departments' mechanisms for lawful processing. Thus, the rule will disincentivize irregular migration and instead incentivize migrants—including those intending to seek asylum—to use lawful, safe, and orderly pathways to enter the United States, or seek asylum or other protection in another country through which they travel.

### 3. Mitigate Irregular Migration and the Associated Impacts

*Comment:* Many commenters expressed support for the rule for a variety of reasons. Commenters supported the change in policy, noting that this rule would result in a more efficient use of government resources at the border. Commenters also supported the proposed rule's use of a formal process for asylum applicants. Some commenters stated their support for the rule because the journey to the SWB is dangerous due to harsh conditions and smugglers, and this rule would weaken smugglers and transnational criminal enterprises and reduce their exploitation of migrants. Commenters also stated that incentivizing migrants to present themselves at POEs would reduce their risk of exploitation by human traffickers or other harm when attempting to cross between POEs. Commenters commended the Departments for prioritizing safe and orderly processing methods for those seeking refuge. Some commenters indicated that border security is critical and expressed concerns that malicious actors could enter the United States more easily during a surge in migration.

*Response:* The Departments recognize these commenters' support for the rule and agree that maintaining border security is critical. The Departments agree that irregular migration is dangerous and can lead to increased strain on SWB operations and resources, increased illegal smuggling activity, and increased pressure on communities along the SWB. The United States



has taken several measures to meet the influx of migrants crossing the SWB and is taking new steps to address increased flows throughout the Western Hemisphere.<sup>49</sup>

However, the anticipated increase in the number of migrants following the lifting of the Title 42 public health Order threatens to exceed the Departments' capacity to safely and humanely process migrants. By coupling the rule with additional lawful pathways and allowing migrants to schedule their arrival at a SWB POE, currently via the CBP One app, the rule will reduce the number of noncitizens seeking to cross the SWB without authorization to enter the United States. This reduction will protect against overcrowding in border facilities; allow for the continued effective, humane, and efficient processing of noncitizens at and between ports of entry; and help to reduce reliance on dangerous human smuggling networks that exploit migrants for financial gain. The Departments expect that this rule will result in decreased strain on border states, local communities, and NGOs and, accordingly, allow them to better absorb releases from CBP border facilities and provide support to the migrant community. Ultimately, this rule will disincentivize irregular migration and instead incentivize migrants to use safe, orderly, and lawful pathways to the United States or to seek protection in third countries.

#### 4. Positive Impacts on Operations and Resources

*Comment:* Commenters supported the rule, stating that allowing migrants to remain in the United States at the government's expense while waiting for their asylum claim to be adjudicated is a waste of government resources. Commenters said that the rule—specifically when coupled with the expanded use of the CBP One app and the ability for migrants to schedule appointments—would allow for more efficient processing at the SWB. Commenters stated that, by decreasing the number of migrants seeking asylum, the Departments would adjudicate asylum claims much faster and decrease the amount of time migrants must wait in the United States before receiving a final decision in their case.

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<sup>49</sup> See DHS, *New Actions to Manage Regional Migration* (Apr. 27, 2023).

*Response:* The Departments recognize these commenters' support and agree that the rule will have benefits for both those granted asylum and the U.S. immigration system. The rule encourages noncitizens to use lawful, safe, and orderly pathways to enter the United States, or seek asylum or other protection in another country through which they travel. The rule is designed to channel the high numbers of migrants expected to seek protection in the United States following the termination of the Title 42 public health Order into lawful, safe, and orderly pathways and ensure they can be processed in an effective, humane, and efficient manner. In addition, the Departments anticipate that the use of the CBP One app—the current scheduling mechanism that provides migrants with a means to schedule a time and place to present themselves at a SWB POE—will allow CBP to streamline the processing of noncitizens at POEs on the SWB and process significantly more individuals in a safe and orderly manner.

Adjudication on the merits of an asylum claim for those who establish credible fear and are placed into removal proceedings can be a long process. Thirty-eight percent of all noncitizens who entered along the SWB, received a positive credible fear determination, and were placed into proceedings before EOIR between FY 2014 and FY 2019 remained in EOIR proceedings as of December 31, 2022.<sup>50</sup> Further, almost half (47 percent) of those in EOIR cases who received positive credible fear determinations resulting from FY 2019 encounters (referrals to EOIR) remained in proceedings as of December 31, 2022.<sup>51</sup> Excluding *in absentia* orders, the mean completion time for EOIR cases in FY 2022 was 3.7 years.<sup>52</sup> Thus, those who have a valid claim to asylum in the United States often wait years for a final relief or protection decision; likewise, noncitizens who will ultimately be found ineligible for asylum or other protection—which occurs in the majority of cases—often have spent many years in the United States prior to being ordered removed.

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<sup>50</sup> See OIS analysis of OIS Enforcement Lifecycle data based on data through December 31, 2022.

<sup>51</sup> *Id.*

<sup>52</sup> See OIS analysis of DOJ EOIR data based on data through March 31, 2023.

This lengthy adjudications process means that migrants who can establish credible fear can expect to remain in the United States for an extended period regardless of whether they will ultimately obtain asylum status at an EOIR hearing on the merits. Allowing a migrant to remain in the United States for years before ultimately determining the migrant is ineligible for asylum or other protection is inefficient, risks creating a pull factor for other intending migrants, and runs counter to principles of judicial fairness, including the swift adjudication of claims. As discussed in the NPRM, *see* 88 FR at 11737, and below at Section IV.B.2 of this preamble, the Departments have determined that this rule will lead to increased efficiencies in the asylum adjudications process so that claims can be adjudicated without a lengthy delay.

## 5. Other Support

*Comment:* Commenters agreed that the Departments have the legal authority to restrict asylum eligibility based on a migrant's failure to seek protection in a third country that they have traveled through on route to the SWB and that such a policy is consistent with both domestic and international law. Commenters stated that the rule was necessary because most migrants do not have legitimate asylum claims, noting low grant rates by EOIR, and are instead seeking economic opportunities in the United States. Other commenters expressed general support for the rule and stated a belief that asylum seekers do not have legitimate claims because they may be coached by NGOs or other organizations. At least one commenter stated that if a migrant traveled through a third country with a legitimate asylum process on their way to the United States, DHS should assume that the migrant is not really in fear for their life; otherwise, the U.S. asylum system would be used for economic migration, the demand for which should be addressed by other means. Another commenter said that the proposed rule encourages asylum-seekers to use the "front door" by presenting at POEs and fulfills domestic and international legal obligations by removing eligibility for asylum for those who fail to do so while maintaining access to statutory withholding of removal and protection under the CAT. The commenter noted that countries are within their rights to limit access to asylum. The commenter also stated that

many individuals are barred from asylum eligibility for reasons such as fraud, criminal convictions, and illegal reentry, and that the proposed rule would add those who do not avail themselves of asylum in the nearest country and do not apply at a POE to this list, which should limit further unlawful entries and use of government resources. Some commenters supported the rule and suggested that the Government disseminate information about the rule in other countries to ensure migrants planning to seek asylum are aware of both the asylum process and the consequences of non-compliance.

*Response:* As discussed further below in Section IV.B.D, the Departments agree that the rule is consistent with U.S. obligations under both domestic and international law, including the INA; the Refugee Convention; the Refugee Protocol, which incorporates Articles 2 through 34 of the Refugee Convention; and the CAT. While the Departments appreciate these commenters' support for the rule, the Departments emphasize that this rule is necessary to prevent the expected increase in the number of migrants who would otherwise seek to travel without authorization to the United States after the termination of the Title 42 public health Order, which would risk undermining the Departments' ability to safely, effectively, and humanely enforce and administer U.S. immigration law, including the asylum system. In other words, the Departments do not rely on the alternative goals or bases of support for the rule expressed in the comments summarized above.

The Departments appreciate the importance of disseminating information about the rule to the public, including intending migrants, and are planning a robust communication effort in conjunction with and immediately following the publication of this rule.

## *B. General Opposition*

### 1. General Opposition

*Comment:* The Departments received many comments expressing general opposition to the rule. Some commenters expressed opposition to the rule and encouraged the Administration to withdraw it, without further explanation. Commenters also stated, without explanation, that

the rule would allow future administrations the ability to decide which nationalities are afforded protections, instead of making protections available for everyone in need. Other commenters stated the rule creates barriers, not pathways, for asylum seekers.

*Response:* The Departments take seriously the concerns expressed by commenters who generally oppose the rule. Because some of these comments failed to articulate specific reasoning underlying the general opposition, the Departments are unable to provide a more detailed response to those comments. In general, the Departments emphasize that this rule is necessary to ensure that, after the lifting of the Title 42 public health Order, protection claims made by noncitizens encountered at the SWB can be processed in a manner that is effective, humane, and efficient. The rule is also designed to reduce overcrowding at DHS facilities and reduce migrants' reliance on exploitive smuggling networks. The Departments intend this rule to work in conjunction with other initiatives that expand lawful pathways to enter the United States, and thereby incentivize safe, orderly, lawful migration over dangerous, irregular forms of migration. Although some lawful pathways, which exist separate from this rule, are available only to particular nationalities, this rule does not deny protection on the basis of nationality. A noncitizen of any nationality may avoid the rebuttable presumption by, for instance, presenting at a POE pursuant to a pre-scheduled time and place. As discussed in the NPRM and further below, the rule's presumption against asylum eligibility only applies to those who enter during a 2-year period, is rebuttable, and contains multiple exceptions to prevent undue harm to noncitizens with meritorious protection claims.

## 2. Need, Effectiveness, and Rationale for the Rule

*Comment:* Commenters asserted that the Departments' concerns about a future surge of migration after the end of the Title 42 public health Order are speculative and unsupported. One commenter said that the surge numbers were unreliable at best, that entries between POEs were higher two decades ago, and that the surge could in part be the result of attempted suppression of normal migration. Some commenters questioned the Departments' planning projection of the

number of border encounters it expects when the Title 42 public health Order is lifted as a valid justification of the NPRM. Another commenter stated that the numbers of unauthorized unique individuals detained at the border are far from an all-time high or a record, and that attempts to enter the country undetected have plummeted. One commenter stated that the Title 42 public health Order increased the percentage of individuals attempting repeated crossings at the border, which has artificially inflated CBP's border apprehension statistics, and thereby overstated the scale of the problem at the border. Some commenters stated that the public is unable to properly evaluate the Departments' data used to justify the rule because the "DHS SWB Encounter Planning Model generated January 6, 2023" cited in the NPRM, *e.g.*, 88 FR at 11705 n.11, does not have a link to the model and it does not provide information on methodology, data sources, and alternative figures.

*Response:* The Departments strongly disagree that the concerns stated in the NPRM regarding an ongoing and potential further surge of migration are speculative or unsupported. As noted in the NPRM, for the 30 days ending December 24, 2022, total daily encounters along the SWB consistently fluctuated between approximately 7,100 and 9,700 per day, averaging approximately 8,500 per day, with encounters exceeding 9,000 per day on 12 different occasions during this 30-day stretch.<sup>53</sup> 88 FR at 11704–05. While commenters are correct that the Title 42 public health Order has increased the percentage of repeat crossing attempts relative to the 2010s, since 2022 over 97 percent of extra-regional migrants (*i.e.*, migrants not from Mexico or Northern Central America<sup>54</sup>)—the people representing the greatest processing challenge—are unique encounters.<sup>55</sup> Encounter totals reached an all-time high in FY 2022, and they remain at historically high levels even as encounters of CHNV nationals have fallen in recent months.<sup>56</sup>

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<sup>53</sup> OIS analysis of OIS Persist Dataset based on data through March 31, 2023.

<sup>54</sup> Northern Central America refers to El Salvador, Guatemala, and Honduras.

<sup>55</sup> OIS analysis of OIS Persist Dataset based on data through March 31, 2023.

<sup>56</sup> Concrete data on unique versus repeat encounters are only available since 2010. During that period, for the years prior to the implementation of Title 42 expulsions, the percentage of encounters that were unique increased each year from 2010–2019. OIS analysis of OIS Persist Dataset based on data through March 31, 2023. While specific data on numbers of unique encounters are not available prior to 2010, it is widely accepted that the years before the

OIS leads an interagency working group that produces a roughly bi-weekly SWB encounter projection used for operational planning, policy development, and short-term budget planning. The model used to produce encounter projections every two to four weeks is a mixed-method approach that combines a statistical predictive model with subject matter expertise intended to provide informed estimates of future migration flow and trends. The mixed methods approach blends multiple types of models through an ensemble approach of model averaging.<sup>57</sup> The model includes encounter data disaggregated by country and demographic characteristics going back to FY 2013, data on apprehensions of third country nationals by Mexican enforcement agencies, and economic data. DHS uses the encounter projection to generate a range of planning models, including “moderately-high” planning models that are based on the 68 percent upper bound of the forecast interval and “high” planning models based on the 95 percent upper bound of the forecast interval.

Encounter projections are, of course, subject to some degree of uncertainty. International migration is an exceedingly complex process shaped by family and community networks, labor markets, environmental and security-related push factors, and rapidly evolving criminal smuggling networks, among other factors. Recent unprecedented changes in migration flows have further complicated the task of predicting future migration flows with precision. As recently as the 2000s, unauthorized migration to the SWB consisted almost entirely of single adults from Mexico.<sup>58</sup> Families and UCs accounted for increasing shares of unauthorized

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2010, and particularly the years before 2000, were characterized by much larger numbers of repeat encounters, as most encounters were of Mexican nationals who were permitted to return to Mexico without being subject to formal removal proceedings or other enforcement consequences. See also DHS, *FY 2021 Border Security Metrics Report* (Apr. 27, 2022), <https://www.dhs.gov/immigration-statistics/border-security/border-security-metrics-report>.

<sup>57</sup> Blending multiple models and basing predictions on prior data has been understood to improve modeling accuracy. See, e.g., Spyros Makridakis et al., *Forecasting in Social Settings: The State of the Art*, 36 *Int'l J. Forecasting* 15, 16 (2020) (noting that it has “stood the test of time [that] combining forecasts improves [forecast] accuracy”); The Forecasting Collaborative, *Insights into the Accuracy of Social Scientists’ Forecasts of Societal Change*, *Nat. Hum. Behaviour*, Feb. 9, 2023, <https://doi.org/10.1038/s41562-022-01517-1> (comparing forecasting methods and suggesting that forecasting teams may materially improve accuracy by, for instance, basing predictions on prior data and including scientific experts and multidisciplinary team members).

<sup>58</sup> According to historic OIS Yearbooks of Immigration Statistics, Mexican nationals accounted for 97 percent of all administrative arrests by the legacy Immigration and Nationality Service from 1981–1999. According to OIS Production data, Mexican nationals also accounted for 97 percent of SWB encounters from 2000–2003. Mexico’s

migrants in the 2010s, as did migrants from Northern Central America; and “extra-regional” migrants have driven increased flows in the 2020s, accounting for an absolute majority of encounters in FY 2023 YTD.<sup>59</sup> The OIS working group takes these recent changes in migration flows into account in preparing its roughly bi-weekly encounter projection models.

Demographic changes in migration flows have introduced new challenges in the field of border enforcement. For decades the challenge was to detect and interdict Mexican nationals seeking to evade detection and to return them to Mexico, which generally was cooperative in accepting back its nationals across the land border. Today’s set of challenges is broader; the United States Government must humanely process family units and UCs and consider tens of thousands of asylum claims, granting relief or protection where appropriate and imposing enforcement consequences (such as removal or return, and in some cases criminal charges), all with limited processing resources and challenges relating to barriers to repatriations for nationals from certain countries. These changes have significant implications, requiring substantial resources from CBP, ICE, USCIS, EOIR, and HHS.

An additional consideration in how the Departments utilize encounter projections for operational planning and budgeting is that it takes weeks or months to put new enforcement resources in place, while removing such resources takes much less time. For this reason, DHS generally must be conservative in its enforcement planning because the failure to have adequate resources in place at the start of a migration surge risks vicious cycles in which inadequate capacity to implement critically needed tools to disincentivize irregular migration, coupled with

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share of SWB border encounters fell to 94 percent in 2004, an all-time low, then averaged 91 percent for the remainder of the 2000s. OIS analysis of OIS Yearbook on Immigration Statistics, 1981–1999; OIS Production Data, 2000–2009.

<sup>59</sup> Families and unaccompanied children accounted for an estimated 11 percent of SWB encounters in 2013, rising to 62 percent in 2019, and have averaged 30 percent from 2020 through March 2023. Data on unaccompanied children were first collected in 2008 and data on other family statuses were first collected in 2013, but not universally collected until 2016. Mexican nationals accounted for an average of 57 percent of SWB encounters from 2013–2015, fell to an all-time low of 24 percent in 2019 (when Northern Central Americans accounted for 64 percent of the total), and have averaged 35 percent of encounters from 2021 through March 2023. Extra regional nationals accounted for an average of 9 percent of SWB encounters from 2013–2018, 12 percent from 2019–2020, and account for 52 percent in the first six months of FY 2023. OIS analysis of OIS Persist Dataset based on data through March 31, 2023.



persistent and strong “push factors,” contribute to cascading adverse effects as the enforcement system becomes overwhelmed. Such effects include overcrowding in DHS facilities (which can endanger both migrants and DHS personnel), more noncitizens being released into the interior pending immigration proceedings, and additional flows of migrants. In the current context of added uncertainty in the encounter projection and evolving enforcement challenges, DHS focuses its operational planning efforts on the high and moderately-high planning models rather than planning for an optimistic scenario that could leave enforcement efforts badly under-resourced. As for this policymaking effort, the Departments believe the policies in this rule are justified “in light of the migration patterns witnessed in late November and December of 2022, and the concern about the possibility of a surge in irregular migration upon, or in anticipation of, the eventual lifting of the Title 42 public health Order.” 88 FR at 11708.

With respect to the suggestion that the Departments should have subjected the OIS planning model to more detailed review by commenters, the Departments respectfully disagree. In addition to the Departments’ description of the planning model in the NPRM, *see* 88 FR at 11705 n.11, the Departments presented a range of the underlying data clearly demonstrating the scope of the problem the Departments face. *See, e.g.*, 88 FR at 11704–05 (“For the 30 days ending December 24, 2022, total daily encounters along the SWB consistently fluctuated between approximately 7,100 and 9,700 per day, averaging approximately 8,500 per day, with encounters exceeding 9,000 per day on 12 different occasions during this 30-day stretch”); *id.* at 11708–14 (describing the historically unique nature of current migratory trends and the role of shifting demographics and other factors on these trends). Although the Departments did not describe the planning models in minute detail, the data make clear the basis for the proposed rule and no commenters submitted data suggesting that the Departments do not currently face, and will not imminently face, an urgent circumstance requiring a policy response.

*Comment:* One commenter stated that concerns that NGOs and shelter networks have or are close to reaching their “outer limit” of capacity are unfounded, because according to the

commenter, none of the \$800 million newly allocated for humanitarian reception had been distributed as of the NPRM's publication in late February of this year. The commenter wrote that there are numerous ways that the Administration can work with Congress and NGO partners to continue to build shelter capacity and effectively respond to the needs of arriving migrants and asylum seekers. Similarly, a commenter noted that the Government pays private, for-profit detention facilities \$320/day to detain noncitizens, but only pays shelters \$25 for a single bed. The commenter wrote that they had been asking the Government for more than two years to provide more funding to shelters and increase cooperation with NGOs, to no avail.

*Response:* The Departments acknowledge commenters' concerns about funds dedicated for NGOs and shelter networks as they work to respond to migratory flows and note that one expected effect of this rule is to disincentivize irregular migration, which may in turn result in reduced demand for certain NGO and shelter services. With respect to grant funding generally, as noted in the NPRM, the Federal Emergency Management Agency ("FEMA") spent \$260 million in FYs 2021 and 2022 on grants to non-governmental and state and local entities through the Emergency Food and Shelter Program—Humanitarian ("EFSP-H") to assist migrants arriving at the SWB with shelter and transportation. *See* 88 FR at 11714. In November 2022, FEMA released \$75 million through the program, consistent with the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023.<sup>60</sup> In addition, the Bipartisan Year-End Omnibus, which was enacted on December 29, 2022, directed CBP to transfer \$800 million in funding to FEMA to support sheltering and related activities for noncitizens encountered by DHS. The Omnibus authorized FEMA to utilize this funding to establish a new Shelter and Services Program and to use a portion of the funding for the existing EFSP-H, until the Shelter and Services Program is established.<sup>61</sup> On February 28, 2023, DHS announced a \$350 million

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<sup>60</sup> Pub. L. No. 117-180, Division A, Sec. 101(6), Continuing Appropriations Act, 2023.

<sup>61</sup> Pub. L. No. 117-328, Division F, Title II, Security Enforcement, and Investigations, U.S. Customs and Border Protection, Operations and Support.

funding opportunity for EFSP-H.<sup>62</sup> This is the first major portion of funding that is being allocated for humanitarian assistance under the Omnibus funding approved in December.<sup>63</sup> For the new Shelter and Services Program, FEMA and CBP have held several public listening sessions and are developing plans to release a Notice of Funding Opportunity prior to September 2023 for the second major portion of funding allocated by Omnibus to assist migrants encountered by DHS.

The Departments emphasize that the reference to an “outer limit” in the NPRM was a prediction that the expected increase in migration at the border following the end of the Title 42 public health Order, without any other policy changes, could exceed the capacity of the Department of State, local governments, and NGOs to provide assistance to migrants. 88 FR at 11715. While commenters are correct that the \$800 million in funding approved in the recent Omnibus is still being distributed and allocated, the Departments disagree that this ongoing funding conflicts with the statement in the NPRM. In other words, funding allocated to date, and funding slated for further allocation under the Omnibus funding approved in December, is insufficient to address the impending further surge of migration expected after the termination of the Title 42 public health Order.

*Comment:* Multiple commenters stated their opposition to “deterrence-oriented” rules. At least one commenter stated the NPRM makes clear the Administration wants to make the asylum system “cumbersome and difficult to navigate” to deter potential asylum seekers from coming to the United States, stating Vice President Harris’ comment of “do not come” in 2021 was a message that those fleeing danger should not seek protection in the United States. Another

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<sup>62</sup> See DHS, Press Release, *The Department of Homeland Security Awards \$350 Million for Humanitarian Assistance Through the Emergency Food and Shelter Program* (Feb. 28, 2023), <https://www.dhs.gov/news/2023/02/28/department-homeland-security-awards-350-million-humanitarian-assistance-through>; DHS Grant Opportunity DHS-23-DAD-024-00-03, Fiscal Year 2023 Emergency Food and Shelter National Board Program - Humanitarian (EFSP) (\$350M) (Feb. 28, 2023), <https://www.grants.gov/web/grants/view-opportunity.html?oppld=346460>.

<sup>63</sup> DHS, Press Release, *The Department of Homeland Security Awards \$350 Million for Humanitarian Assistance Through the Emergency Food and Shelter Program* (Feb. 28, 2023), <https://www.dhs.gov/news/2023/02/28/department-homeland-security-awards-350-million-humanitarian-assistance-through>.

commenter stated the proposed rule would not be an effective deterrent because of its similarity to the Migrant Protection Protocols (“MPP”) and the Title 42 public health Order in the past, which the commenter claimed “outsourced and exacerbated the situation” by leaving thousands of individuals in dangerous conditions in Mexican border cities waiting to see if, or when, they will get into the United States. Another commenter stated the rule does not serve as a deterrent, as evidenced by the growing numbers of asylum seekers at the border.

Some commenters disagreed that the rule would reduce arrivals at the SWB.

Commenters disagreed with the premise underlying the proposed rule—that the rebuttable presumption would disincentivize migrants from entering the United States except through a lawful and orderly pathway and lead to a reduction in encounters at the SWB. Another commenter argued that the rule is providing an opportunity to smuggling organizations and also providing an additional tool for extortion for noncitizens seeking to enter the United States. Another commenter stated that there is no evidence that the NPRM will deter asylum seekers from crossing the border and suggested that arrivals at the border would increase due to suppression of entries at POEs.

*Response:* The Departments disagree that the rule generally seeks to discourage asylum seekers from coming to the United States. Rather, the rule seeks to strike a balance: It is intended to reduce the level of irregular migration to the United States, but also to preserve sufficient avenues for migrants with valid claims to apply for asylum or other protection, either in the United States or in third countries through which they travel. This rule is also intended to disincentivize the use of smugglers. To those ends, the rule encourages those with meritorious claims to either apply for asylum or other protection in the first safe country they reach or pursue available lawful pathways to the United States as set forth in the rule.

The Departments also disagree with the comparison some commenters made between this rule and certain past policies, including MPP and application of the Title 42 public health Order. The rule’s operation as a rebuttable presumption, and the rule’s operation in conjunction with

multiple available lawful pathways, are two of the multiple ways in which this rule differs from certain past policies, including MPP or expulsions under the Title 42 public health Order. As it relates to MPP in particular, the purpose and effect of this rule is not to return noncitizens to Mexico pending their removal proceedings. *See* INA 235(b)(2)(C), 8 U.S.C. 1225(b)(2)(C). Instead, it is to incentivize migrants, including those intending to seek asylum, to use lawful, safe, and orderly pathways to enter the United States, or seek asylum or other protection in another country through which they travel. Although some migrants may wait for some period of time in Mexico before obtaining a CBP One app appointment and before attending that appointment, the purpose and duration of such a stay would be different than under MPP. Absent this rule, DHS anticipates that its ability to process noncitizens at POEs, as well as continue to facilitate regular travel and trade, would be adversely impacted by the shifting of resources and personnel from POEs to help process individuals encountered between POEs.

The Departments disagree with commenters' claim that this rule will not reduce entries and that it will incentivize irregular migration. The Departments have shown that an increase in the availability of lawful pathways, paired with immediate consequences for irregular migration, can incentivize the use of lawful pathways and thus reduce irregular migration. *See* 88 FR at 11705–06. Furthermore, the Departments disagree with commenters' assertion that the rule will push individuals away from POEs to cross between POEs. The rule incentivizes noncitizens who might otherwise attempt to enter without inspection between POEs to take advantage of expanded lawful pathways. The availability of lawful pathways, such as the ability to schedule an appointment through the CBP One app and the DHS-approved parole processes, and the rule's operation as a rebuttable presumption are two of the multiple ways in which this rule differs from certain efforts of the past Administration.

*Comment:* Commenters raised concerns with Departmental data cited in the NPRM. For example, commenters referred to two of the Departments' statements in the NPRM: (1) that 83 percent of the people who were subject to expedited removal and claimed to have a credible fear

of persecution or torture from 2014 to 2019 were referred to an IJ for section 240 proceedings, but only 15 percent of those cases that were completed were granted asylum or some other form of protection, *see* 88 FR at 11716; and (2) while only 15 percent of all case completions result in relief or protection, OIS estimates that 28 percent of cases decided on their merits are grants of relief, 88 FR at 11716 n.97. Commenters stated that the 15 percent figure is misleading, because it is based on the total percentage of completed removal cases, and not the total percentage of cases decided on the merits of the asylum claim. Commenters claim that this method artificially deflates the asylum grant rate and creates the false impression that many asylum seekers were ineligible for asylum even where there was no decision on their asylum claim. Commenters also stated that the 28 percent figure itself was too low because, as described by the Departments, this figure excludes withholding of removal, deferral of removal, cancellation of removal, and claimed status reviews.

Commenters also claimed that asylum policies of the previous Administration artificially deflated asylum grant rates. Other commenters stated that it is logical that the percentage of cases passing the credible fear interview stage is far higher than the cases that eventually qualify for asylum, given that the credible fear process is supposed to have a low bar for passage. Another commenter stated that, by the Departments' logic, no asylum applicant should be entitled to an initial credible fear determination and full asylum merits hearing because their claims will probably be denied given the low approval rating of asylum.

*Response:* The Departments cited relevant Departmental statistics—which date back to 2014, prior to the implementation of any policies of the prior Administration—to demonstrate the general point that there is a significant disparity between positive credible fear determinations and ultimate relief in section 240 removal proceedings. *See* 88 FR at 11716. Whether one uses the 15-percent figure or the 28-percent figure, ultimately, the number of individuals who are referred to an IJ at the beginning of the expedited removal process greatly exceeds the number who are granted asylum or some other form of relief or protection.

*Comment:* A commenter stated that numerous factors beyond merit impact whether an asylum seeker's case is ultimately granted (e.g., access to counsel, availability of experts, changing regulations and procedures, and backlogs that affect the availability of evidence). Another commenter noted that many who seek asylum in the United States ultimately lose their cases not due to a lack of merit but instead because of "our convoluted and dysfunctional" immigration system, which the commenter claimed is difficult for asylum seekers to navigate and results in denial of many asylum claims on bases unrelated to the merits of the claim. One commenter asserted that modifying the legal requirements for asylum will not stop migrants from fleeing armed conflict, poverty or other dangers, because many are unaware of their right to apply for asylum. Another commenter stated that the number of migrants arriving is irrelevant to the merits of their asylum claims; the commenter also argued that the rule would screen out asylum seekers regardless of the merit of their case.

*Response:* The Departments acknowledge commenters' concerns that factors unrelated to the merits of the claim, such as access to counsel and unfamiliarity with the asylum process, could affect the ultimate determination of an asylum claim, but disagree that these potential issues are exacerbated by the rule. As discussed in more detail later in Section IV.B.5 of this preamble, this rule does not deprive noncitizens of access to counsel during credible fear proceedings. Additionally, all AOs are trained to conduct interviews in a non-adversarial manner and elicit relevant testimony from noncitizens. Specific training for implementation of this rule will include training on eliciting testimony related to whether a noncitizen can establish an exception or rebut the presumption of asylum ineligibility; therefore, noncitizens are not required to be familiar with the rule to remain eligible for asylum. The Departments emphasize that in all credible fear determinations, a noncitizen's credible testimony may be sufficient to overcome or establish an exception to the presumption against asylum ineligibility in this rule. INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii). As discussed later in Section IV.D.1.iii of this preamble, the Departments note that the overall standard of proof for rebutting or establishing an

exception to the presumption of asylum ineligibility during credible fear proceedings remains the “significant possibility” standard; that standard must be applied in conjunction with the standard of proof required for the ultimate determination (i.e., preponderance of the evidence that an exception applies or that the presumption has been rebutted).

As discussed throughout the NPRM, the lawful pathways condition, and the related modification of the withholding and CAT screening standard applied to noncitizens subject to the condition, would improve overall asylum processing efficiency by increasing the speed with which asylum claims are considered. *See* 88 FR at 11737. By encouraging noncitizens seeking to travel to the United States, including those seeking asylum, to pursue lawful pathways and processes, the rule promotes orderly processing and reduces the number of individuals who would be placed in lengthy section 240 removal proceedings and released into the United States pending such proceedings. *Id.* at 11736. Moreover, by reducing the number of noncitizens permitted to remain in the United States despite failing to avail themselves of a safe and lawful pathway to seek protection, the rule reduces incentives for noncitizens to cross the SWB, thus reducing the anticipated further surge that is expected to strain DHS resources. The Departments reiterate that the rule is not being promulgated to generally prevent noncitizens from seeking asylum in the United States but to strike a balance—reducing the level of irregular migration to the United States while providing sufficient avenues for migrants with valid claims to apply for asylum or other protection. The rule is needed because, absent this rule, after the termination of the Title 42 public health Order, the number of migrants expected to travel without authorization to the United States is expected to increase significantly, to a level that risks undermining the Departments’ ability to safely, effectively, and humanely enforce and administer U.S. immigration law, including the asylum system.

*Comment:* One commenter asserted that the real purpose of the rule is to incentivize an increasing number of migrants to use the CBP One app to make fraudulent asylum claims. The same commenter also stated “that the proposed rule and the CBP One app will incentivize



increased rates of illegal immigration into the United States.” The commenter further stated that because there is insufficient capacity to process all of the asylum claims of those using the CBP One app, the rule will simply increase the number of individuals who are paroled into the United States, incentivizing further illegal immigration. Another commenter argued that current migration levels result from the current Administration’s actions to “weaken border security, promote the influx of illegal immigration, and to remove integrity from the administration of both the legal immigration process (including asylum and credible fear measures) and overall enforcement of the laws.” Similarly, another commenter stated that the root cause of this crisis was “the Administration’s reckless open borders policies.”

*Response:* While the Departments acknowledge the commenters’ concerns about increased rates of unauthorized immigration into the United States, the Departments disagree that the rule and use of the CBP One app will incentivize noncitizens to enter the United States to make fraudulent asylum claims. If anything, by adding a rebuttable presumption of ineligibility, this rule creates a strong disincentive for irregular migration relative to the status quo. The Departments note that no commenter submitted data suggesting that the rule will result in an increase in fraud or misrepresentation. As explained in Section IV.B.5.iii of this preamble, the Departments are confident that AOs have the training, skills, and experience needed to assess credibility and appropriately determine whether a noncitizen has met an exception to or rebutted the presumption of ineligibility for asylum codified in the rule. Regarding commenters’ concerns that use of the CBP One app will increase the number of individuals who are paroled into the United States and thus incentivize irregular migration, the Departments note that the rule does not provide for, prohibit, or otherwise set any policy regarding DHS’s discretionary authority to make parole determinations for those who use the CBP One app. Even so, as outlined in the NPRM and later in Section IV.E.3.ii of this preamble, the expanded use of the CBP One app is expected to create efficiencies that will enable CBP to safely and humanely expand its ability to process noncitizens at POEs, including those who may be seeking asylum.

*See* 88 FR at 11719. Notably, the rule, coupled with an expansion of lawful, safe, and orderly pathways, is expected to reduce the number of noncitizens seeking to cross the SWB without authorization to enter the United States. Additionally, the United States is undertaking a range of efforts to address irregular migration, including, for instance, working with partner countries to address the causes of migration, significantly increasing the availability of H-2 temporary worker visas and refugee processing in the Western Hemisphere, successfully implementing the CHNV parole processes, and addressing the pernicious role of human smugglers. *See* 88 FR at 11718–21.

The Departments strongly disagree with commenters who assert that the current migration levels are a result of any action by the Departments to “weaken” security at the border. Rather, as noted in the NPRM, economic and political instability around the world is fueling the highest levels of migration since World War II, including in the Western Hemisphere. *See* 88 FR 11704. Additionally, even while the Title 42 public health Order has been in place, the total number of encounters at the SWB reached an all-time high in FY 2022, and they remain at historically high levels even as encounters of CHNV nationals have fallen in recent months.<sup>64</sup> *See id.* at 11704–05. During this time, the United States has been working to build on a multi-pronged, long-term strategy with countries throughout the region to support conditions that would decrease irregular migration while continuing efforts to increase immigration enforcement capacity and streamline processing of asylum seekers and other migrants. *See* 88 FR at 11720–23. This rule ensures that the United States meets its obligations under both U.S. and international law while ensuring that vulnerable populations are able to seek asylum or other protection through lawful, safe, and orderly pathways.

*Comment:* Commenters stated that the rule is unnecessary because the goals of discouraging migrants from seeking asylum and swiftly removing migrants are invalid. These commenters further stated that immigration is good; there is no need to quickly remove asylum

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<sup>64</sup> OIS analysis of OIS Persist Dataset based on data through March 31, 2023; OIS analysis of historic USBP data.

seekers, regardless of backlogs; and that overwhelmed immigration facilities are problems created by the Government that would be solved by welcoming migrants rather than treating them as a problem or as dangerous. A few commenters critiqued the need for the rule, writing that the proposed rule is unnecessary and the Administration should take responsibility for actions that have created an overloaded immigration system. Other commenters questioned whether restrictive border measures and quickly removing individuals actually reduce migratory flows. At least one commenter did not understand how this rule was a “good thing” that would change immigration policy in the United States, which the commenter described as a “disaster.” A commenter stated that the proposed rule is not needed and instead recommended implementing practical and humane solutions, including funding and coordinating with civil society organizations on the border and throughout the country. Another commenter stated that she lives within 100 miles of the border and does not feel threatened by the influx of migrants to her community, and thus the rule is unnecessary.

One commenter stated that the U.S. immigration system is not broken but the current laws need to be strictly enforced, while another commenter stated that DHS should be strengthened so it can address each case instead of lumping people into categories. At least one commenter stated that there is no reason why DHS cannot process applicants more quickly, noting that the United States received a significant number of migrants in the early 1900s with far less technology, so the government should be able to do so much more efficiently now with the sophisticated technology, medical equipment, fingerprinting, and other means available now. Another commenter stated that the rule would not fix backlogs in immigration court, while a number of commenters suggested that it would actually increase the backlogs.

A commenter questioned the need for the rule because the Departments had not demonstrated that they had considered other options. Another commenter requested that the Departments expressly consider a range of factors, such as the U.S. economic outlook and the role of other external variables (such as climate change) in driving migration. The commenter

suggested that such factors may influence migration patterns to such a degree that the rule is unnecessary or likely to be ineffective.

*Response:* The Departments disagree that the rule is unnecessary. The Departments reiterate that the goal of the rule is not to generally discourage migrants with valid claims from applying for asylum or other protection, but rather to encourage the use of lawful, safe, and orderly pathways into the United States. The Departments agree that the United States' historical openness to immigration has enriched our culture, expanded economic opportunities, and enhanced our influence in the world. However, the U.S. immigration system has experienced extreme strain with a dramatic increase of noncitizens attempting to cross the SWB in between POEs without authorization, reaching an all-time high of 2.2 million encounters in FY 2022.<sup>65</sup> The Departments believe that without a meaningful policy change, border encounters could dramatically rise to as high as 11,000 per day after the Title 42 public health Order is lifted.<sup>66</sup> As described in the NPRM, DHS does not currently have the resources to manage and sustain the processing of migratory flows of this scale in a safe and orderly manner, even with the assistance of modern technology. *See* 88 FR at 11712–13. In response to this urgent situation, the rule will establish a rebuttable presumption of asylum ineligibility for certain noncitizens 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 SWB POE, where they may seek asylum or other forms of protection, in a lawful, safe, and orderly manner, or to seek asylum or other protection in one of the countries through which they travel on their way to the United States. *See id* at 11706. The Departments believe that this rule is necessary to address the anticipated surge in irregular migration.

The Departments also believe the rule is necessary to improve the overall functioning and efficiency of the immigration system. *See* INA 208(b)(2)(C) and (d)(5)(B),

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<sup>65</sup> OIS analysis of historic USBP data.

<sup>66</sup> OIS analysis of DHS SWB Encounter Planning Model generated April 18, 2023.

8 U.S.C. 1158(b)(2)(C) and (d)(5)(B). Specifically, the rule would efficiently and fairly provide relief to noncitizens who are in the United States and are eligible for relief, while also efficiently denying relief and ultimately removing those noncitizens who are determined to be ineligible for asylum and do not qualify for statutory withholding of removal or protection under the regulations implementing the CAT. The Departments acknowledge that despite the protections preserved by the rule and the availability of lawful pathways, the rebuttable presumption adopted in the rule will result in the denial of some asylum claims that otherwise may have been granted, but the Departments believe that the rule will generally offer opportunities for those with valid claims to seek protection. Moreover, the Departments have determined that the benefits to the overall functioning of the system, including deterrence of dangerous irregular migration and smuggling, justify the rule. In sum, the rule permissibly pursues efficient asylum processing while preserving core protections, which is within the Departments' authority conferred by section 208 of the INA, 8 U.S.C. 1158.

The Departments acknowledge commenters' support for enforcing existing immigration laws. However, the Departments do not believe that current laws and regulations are sufficient to address the current levels of migratory flows and the anticipated increase in the number of migrants who will attempt to enter the United States following the lifting of the Title 42 public health Order. Likewise, a policy is necessary to ensure lawful, safe, and orderly processing of those migrants. Absent further action, POEs will be congested, migrants will be forced to wait in long lines for unknown periods of time, and once processed they will be released into local communities that are already at or near their capacity to absorb them. *See* 88 FR at 11715. By incentivizing noncitizens to use lawful pathways, this rule aims to encourage migrants to either pursue options that would allow them to avoid making the journey to the SWB, or to schedule in advance a time for arrival at a POE, which will alleviate additional strain on DHS resources. The Departments believe it would be inappropriate to elect inaction on the basis of conjecture

regarding U.S. economic outlook and similar factors and the potential effects of such factors on the impending surge of irregular migration.

In response to comments asserting that the Departments did not consider other options before promulgating this final rule, the Departments note that alternative approaches for managing the expected surge in migration were discussed in the NPRM and the Departments ultimately assessed, and continue to assess, that the rule is the best option for responding to the current situation at the border and the expected surge in migration after the lifting of the Title 42 public health Order. *See* 88 FR at 11730–32. Concerns regarding backlogs, government resources and funding are addressed in Sections IV.B.5.iv and IV.C.2 of this preamble.

The Departments acknowledge commenters’ suggestion that DHS “strengthen” its resources to respond to the anticipated surge in migrants to the SWB. The Departments note that they have already deployed additional personnel, technology, infrastructure, and resources to the SWB and that continuing this “strengthening” of the SWB would require additional congressional actions, including significant additional appropriations, which are outside of the scope of this rulemaking.

i. Concerns Regarding the Sufficiency of the Lawful Pathways

*Comment:* Commenters stated that in general, the available lawful pathways are insufficient to meet the significant demand for migration to the United States. Commenters stated that increasing legal pathways for some should not come at the expense of restricting access for asylum seekers seeking protection. Commenters stated that the existing lawful pathways are “extremely narrow and unavailable to many people,” and that it is fundamentally unjust to fault individuals for seeking safety and stability in the only way possible. Commenters stated that migrants who seek asylum in the United States rather than another country are doing so rationally and intentionally and they would seek asylum in a closer country if it was truly safe.

Multiple commenters stated that H-2 temporary worker visas are insufficient substitutes for asylum. One commenter stated that the Administration is “misguided” in touting its efforts in

the proposed rule to expand two of the most “exploitative and troubled U.S. work visa programs—H-2A and H-2B” because these programs are “deeply flawed and in desperate need of reform.” The same commenter stated that expanding temporary work visa programs like H-2B and H-2A makes little sense for those seeking asylum because they do not provide a permanent pathway to remain in the United States and would put migrants in danger by returning them to dangerous situations after the visa certification expires. Similarly, other commenters stated that the H-2 programs do not provide or guarantee safety for migrants because they are not permanent or durable solutions and they do not allow for family unity in the United States.

*Response:* The United States is both a nation of immigrants and a nation of laws. The Departments are charged with enforcing those laws and endeavor to do so humanely. The rule is needed because, absent this rule, after the termination of the Title 42 public health Order, the number of migrants expected to travel without authorization to the United States is expected to increase significantly, to a level that risks undermining the Departments’ ability to safely, effectively, and humanely enforce and administer U.S. immigration law, including the asylum system. The rule, coupled with an expansion of lawful, safe, and orderly pathways, is expected to reduce the number of noncitizens seeking to cross the SWB without authorization to enter the United States.

Though the Departments acknowledge that existing lawful pathways may not be available to every migrant, the Departments disagree with comments stating that the existing lawful pathways are extremely narrow. The United States Government has been working to significantly expand access to lawful pathways and processes for migrants since January 2021. In addition to the new processes DHS has implemented for CHNV nationals, which are discussed at length in the NPRM, DHS has been working with other Federal departments and agencies to increase access to labor pathways; restart, streamline, and expand family

reunification parole programs; and significantly rebuild and expand refugee processing in the region. *See* 88 FR at 11718–23.<sup>67</sup>

For example, DHS has worked with the Department of State and the Department of Labor (“DOL”) to significantly expand access to the H-2A and H-2B temporary agricultural and nonagricultural worker visas in order to help address labor shortages and provide safe and orderly pathways for migrants seeking economic opportunity in the United States. On December 15, 2022, DHS and DOL jointly published a temporary final rule increasing the total number of noncitizens who may receive an H-2B nonimmigrant visa by up to 64,716 for the entirety of FY 2023. *See* Exercise of Time-Limited Authority to Increase the Numerical Limitation for FY 2023 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking to Change Employers, 87 FR 76816 (Dec. 15, 2022). In particular, the number of H-2 visas issued to nationals of El Salvador, Honduras, and Guatemala has increased by 250 percent between FYs 2020 and 2022: in FY 2022, the Department of State issued 19,295 H-2 visas to those three countries, compared to just 5,439 in FY 2020.<sup>68</sup> The Departments disagree that expanding use of these programs is misguided; although improvements are possible, these programs are established features of the immigration system and an appropriate mechanism to support lawful, safe, and orderly travel to the United States. Moreover, these programs represent two of several available lawful pathways, some of which provide protection that is not temporary and does allow for derivative protection for family members. For example, the United States Government has restarted the Central American Minors Refugee and Parole Program, which provides certain qualified children who are nationals of El Salvador, Guatemala, and Honduras, as well as certain family members of those children, an opportunity to apply for refugee status and possible resettlement in the United States.<sup>69</sup>

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<sup>67</sup> *See also* DHS, *New Actions to Manage Regional Migration* (Apr. 27, 2023).

<sup>68</sup> *See* Department of State, *H-2 Visa Data for El Salvador, Guatemala, and Honduras, FY 2015-FY2023 Mid-Year* (last reviewed Feb. 24, 2023).

<sup>69</sup> *See* USCIS, Central American Minors (CAM) Refugee and Parole Program, <https://www.uscis.gov/CAM> (last visited Apr. 5, 2023).



The United States Government also provides durable solutions for humanitarian protection through the U.S. Refugee Admissions Program for qualifying applicants. In 2022, concurrent with the announcement of the L.A. Declaration, the United States announced that it intends to refer for resettlement at least 20,000 refugees from Latin America and the Caribbean in FY 2023 and FY 2024, which would put the United States on pace to more than triple refugee admissions from the Western Hemisphere this fiscal year alone.<sup>70</sup> On April 27, 2023, DHS announced that it would commit to welcoming thousands of additional refugees per month from the Western Hemisphere—with the goal of doubling the number of refugees the United States committed to welcome as part of the L.A. Declaration.<sup>71</sup> The United States Government also continues to work with our partners to expand access to refugee resettlement more broadly throughout the Western Hemisphere. For instance, Canada recently announced that it will take significant steps to expand safe and orderly pathways for migrants from the Western Hemisphere to enter Canada lawfully. Building on prior commitments, Canada will provide an additional 15,000 migrants from Latin America and the Caribbean with access to legal pathways to Canada; and enter into arrangements with the United States and like-minded countries to promote lawful labor mobility pathways.<sup>72</sup>

Comments asserting insufficiencies associated with the CHNV parole processes and other lawful pathways identified in the rule are further addressed in Section IV.3 of this preamble.

The rule will not impact those who use these lawful pathways that the United States is offering for migrants to obtain entry into the United States. Additionally, the rule will not apply to noncitizens who enter the United States with documents sufficient for admission. Instead, the rule is meant to promote the use of these lawful pathways and disincentivize irregular migration.

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<sup>70</sup> See The White House, *Fact Sheet: The Los Angeles Declaration on Migration and Protection U.S. Government and Foreign Partner Deliverables* (June 10, 2022) (“L.A. Declaration Fact Sheet”), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/fact-sheet-the-los-angeles-declaration-on-migration-and-protection-u-s-government-and-foreign-partner-deliverables/>.

<sup>71</sup> See DHS, *New Actions to Manage Regional Migration* (Apr. 27, 2023).

<sup>72</sup> See DHS, Press Release, *United States and Canada Announce Efforts to Expand Lawful Migration Processes and Reduce Irregular Migration* (Mar. 24, 2023), <https://www.dhs.gov/news/2023/03/24/united-states-and-canada-announce-efforts-expand-lawful-migration-processes-and>.

## ii. Similarity to Actions of Past Administration

*Comment:* Many commenters stated that the proposed rule is functionally indistinguishable from prior asylum-related rules that were issued by the prior Administration, particularly the TCT Bar IFR and Final Rule, which have been enjoined, or would cause similar harm to asylum seekers. At least one commenter criticized that the addition of the “rebuttable presumption” in this rule is not enough to distinguish it from previous rules. For example, commenters described the rule as “resurrect[ing] Trump-era categorical bans on groups of asylum seekers.” Similarly, some commenters stated that this rule is similar to the “asylum bans” the past Administration attempted to advance. Another commenter asserted that this rule operates similarly to rules from the prior Administration because it would operate as a ban for asylum seekers based on factors that do not relate to their fear of return and would result in asylum denials for all who are unable to establish that they qualify for exceptions the commenter characterized as extremely limited. A commenter claimed that while the Departments repeatedly assert throughout the NPRM that the rebuttable presumption is distinguishable from the TCT Bar, the opportunity to rebut the presumption would occur only under the most extreme scenarios and in excess of what would ordinarily be sufficient to claim asylum. Another commenter predicted that the proposed rule would revive attempts to “rig the credible fear process.” While comparing the rebuttable presumption standards to the non-refoulement screening standard used under MPP, the commenter argued that the proposed rule would impose a “more likely than not” screening standard that far exceeds the standard for an asylum grant. The commenter further stated that the “deficient” non-refoulement screenings carried out during MPP foreshadow the dangers asylum seekers would face under the proposed rule if finalized.

In comparing this rule to those issued by the prior Administration, commenters stated that the previous rules led to asylum denials, prolonged detention for many with bona fide claims, and family separations. At least one commenter stated that a recent congressional investigation found that not one person sent to Guatemala under the prior Administration’s

Asylum Cooperative Agreements received asylum; instead, migrants were forced to return to their originating country. A commenter also stated that the rule attempts to differentiate itself from prior policies via exceptions and alternative pathways to asylum but that the exceptions are insufficient because they would fail to protect the most vulnerable. Several commenters stated that asylum bans have been proven to be ineffective at deterring noncitizens from seeking safety. One commenter stated that calling the rule a “rebuttable presumption” was merely a semantic difference from prior asylum bans, which had narrow exceptions.

*Response:* The Departments acknowledge these commenters’ concerns but disagree that the final rule is indistinguishable from asylum-related rulemakings and policies issued by the prior Administration. The TCT Bar IFR and Final Rule and the Proclamation Bar IFR, for instance, categorically barred covered individuals from certain types of relief. While the TCT Bar Final Rule only allowed limited exceptions to its eligibility bar, including for trafficking victims and other grounds, this rule includes a number of broader exceptions and means for rebutting the presumption. A noncitizen can rebut the presumption by, for example, demonstrating exceptionally compelling circumstances by a preponderance of the evidence during a full merits hearing. *See* 8 CFR 208.33(a)(3); 8 CFR 1208.33(a)(3). A noncitizen can rebut the presumption if they establish that they or a member of their family with whom the noncitizen is traveling meet any of the three per se grounds for rebuttal, which provide that, at the time of entry: (1) they faced an acute medical emergency; (2) they faced an imminent and extreme threat to their life or safety; or (3) they were a “victim of a severe form of trafficking in persons” as defined in 8 CFR 214.11. In addition to the per se grounds for rebuttal, a noncitizen could also rebut the presumption in other exceptionally compelling circumstances. One exceptionally compelling circumstance recognized by the rule is included specifically to avoid family separations. *See* 8 CFR 1208.33(c). Protecting against family separation is one example of how this rule includes appropriate safeguards for vulnerable populations. Depending on

individual circumstances, AOs and IJs may find that certain especially vulnerable individuals meet the exceptionally compelling circumstances standard.

The Departments acknowledge concerns about opportunities to rebut the presumption but disagree that the rule would impose a higher standard for rebutting the presumption than the standard to establish asylum eligibility. The “significant possibility” standard is the overall assessment applied during credible fear screenings; that standard must be applied in conjunction with the standard of proof required for the ultimate determination (i.e., preponderance of the evidence that the presumption has been rebutted or an exception established). As discussed below in Section IV.E.1 of this preamble, a noncitizen can satisfy their burden of proof through credible testimony alone; the rule does not require any particular evidence to rebut or establish an exception to the presumption under 8 CFR 208.33(a)(3), 1208.33(a)(3). *See* INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii); INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Accordingly, the Departments believe that the means of rebutting or establishing an exception to the presumption are not unduly burdensome.

The Departments have considered the approaches taken in multiple rulemaking efforts of the last few years and now believe that the more tailored, time-limited approach in this final rule is better suited to address the increased migrant flows into the United States expected after the Title 42 public health Order terminates. *See* 88 FR at 11728. This rule encourages use of lawful, safe, and orderly pathways to enter the United States and, unlike those prior rulemakings, retains a noncitizen’s ability to be found eligible for asylum should they enter through an enumerated lawful pathway or otherwise overcome the condition imposed by this rule. The Departments believe that the rule’s more balanced approach renders the TCT Bar Final Rule and the Proclamation Bar IFR unnecessary, and that those rules conflict with the approach taken in this

rule.<sup>73</sup> As proposed in the NPRM and discussed at Sections IV.E.9 and IV.E.10 of this preamble, the Departments have decided to remove those prior rules from the CFR. *See* 88 FR at 11728.

The Departments disagree with some commenters that this final rule will cause harms similar to those attributed to the TCT Bar Final Rule and the Proclamation Bar IFR, which commenters allege include asylum denials, prolonged detention, and family separation. This rule's scope and effect are significantly different from the TCT Bar Final Rule. Unlike the TCT Bar Final Rule, the presumption would not completely bar asylum eligibility based on the availability of protection in a third country. First, while this rule takes into account whether individuals sought asylum or other forms of protection in third countries while traveling to the United States, the rule would not require that all noncitizens make such an application to be eligible for asylum, unlike the TCT Bar Final Rule. For example, if the noncitizen received authorization to travel to the United States to seek parole or scheduled an appointment through the CBP One app to present themselves at a POE, then the condition on asylum eligibility would not apply to that noncitizen regardless of whether the noncitizen sought protection in a third country. Second, while the TCT Bar Final Rule only allowed limited exceptions to its eligibility bar, including for trafficking victims and other grounds, this rule includes a number of exceptions and means for rebutting the presumption, including an exception for trafficking victims. This rule encourages noncitizens to use orderly, lawful pathways to enter the United States, and it will only become relevant whether the noncitizens applied for protection in a third country through which they traveled in cases in which noncitizens do not avail themselves of one of the pathways.

The Departments acknowledge commenters' concerns with the effectiveness of Safe Third Country Agreements ("STCA") or asylum cooperative agreements. The Departments acknowledge that negotiating such agreements is a lengthy and complicated process that depends

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<sup>73</sup> Both the TCT Bar Final Rule and the Proclamation Bar IFR are discussed further in Sections IV.E.9 and IV.E.10 of this preamble.

on the agreement of other nations. *See* 88 FR at 11732. The Departments note that the only such agreement in effect is the Canada-U.S. STCA. *See generally* Implementation of the 2022 Additional Protocol to the 2002 U.S.-Canada Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries, 88 FR 18227 (Mar. 28, 2023). The rule does not implement or change the framework for negotiating STCAs, which involves extensive diplomatic negotiations. As discussed more in Section IV.E.3.iv of this preamble, the safe-third-country provision in section 208(a)(2)(A) of the INA, 8 U.S.C. 1158(a)(2)(A), indicates that a noncitizen may be removed, pursuant to “a safe-third-country agreement,” and the noncitizen may not apply for asylum “unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.” This rule operates differently. Under this rule, noncitizens may apply for asylum and other protection in the United States. While the rule would create a rebuttable presumption, it specifies circumstances in which that presumption is necessarily rebutted as well as other exceptions. By encouraging noncitizens seeking to travel to the United States, including those intending to seek asylum, to use lawful pathways and processes, the Departments expect the rule to promote orderly processing, reduce the anticipated surge that is expected to strain DHS resources, reduce the number of individuals who would be placed in lengthy removal proceedings pursuant to section 240 of the INA and released into the United States pending such proceedings, allow for the expeditious removal of noncitizens who failed to avail themselves of a safe and lawful pathway to seek protection, and reduce incentives for noncitizens to cross the border using dangerous smuggling networks. *See* 88 FR at 11736. Regarding comments about the ineffectiveness of the rule to deter migrants from seeking safety, the rule does not discourage migrants with valid claims from applying for asylum or other protection. The rule encourages those with meritorious claims to either apply for asylum or other protection in the first safe country they find or pursue available lawful pathways, such as the U4U and CHNV parole processes—which early data indicate are deterring irregular