

From: [BLANCHARD-JR, KENNETH W](#)
To: [BP Field Chiefs](#); [BP Field Deputies](#)
Cc:

[Immigration](#)

Subject: [Prosecution & Custody OPS](#); [OPSCENTRALSECTORS](#)
Date: Guidance Regarding Family Units Moving Forward Under Title 42
Saturday, May 21, 2022 12:41:54 PM

Chiefs,

This guidance goes into effect at 1201 hours, May 23, 2022, EST

Manifestation of Fear of Expulsion

This guidance clarifies previous guidance implementing the Centers for Disease Control and Prevention's (CDC) *Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists* ("CDC Order") to ensure that it is consistent with the opinion of the U.S. Court of Appeals for the District of Columbia Circuit in *Huisha Huisha v. Mayorkas*, which found that the Government may expel family units (i.e., plaintiffs), but only to places where they are not likely to be persecuted or tortured.

Consistent with the DC Circuit's decision, covered noncitizens who are part of a family unit and who have manifested a fear of returning or being sent to the country to which they would be expelled should not be expelled without an appropriate screening by USCIS to determine whether they are more likely than not to be persecuted or tortured.

In determining whether a noncitizen has manifested a fear, CBP officers and agents should consider all available information within the scope of their operations. CBP personnel shall not make a qualitative evaluation of the noncitizen's fear or its basis. Once CBP officers and agents identify that a noncitizen manifests a fear, they should record the manifestation in CBP Form I-213. Noncitizens who manifest a fear of returning or being sent to the country to which they would be expelled will either be excepted from the CDC Order and processed under Title 8 or referred for appropriate exception screening by U.S. Citizenship and Immigration Services to determine whether the noncitizen is more likely than not to be persecuted or tortured in the country to which they would be expelled.

Covered noncitizens who are part of a family unit under the CDC Order may manifest a fear of returning to or being sent to the country to which they would be expelled in a number of ways, which may be verbal or non-verbal. Manifestations of fear may include, but are not limited to, the following:

1. A statement from the noncitizen that they have a fear of returning to or being sent to the country to which they would be expelled;
2. A statement from the noncitizen that they were previously harmed by persons in the country to which they would be expelled;
3. A statement from the noncitizen that they will be harmed by persons in the country to which they would be expelled;
4. Non-verbal actions such as hysteria, trembling, unusual behavior, incoherent speech patterns, self-inflicted harm, panic attacks, or an unusual level of silence.

If doubt or ambiguity exists as to whether a noncitizen's statement, actions, or behavior constitute a manifestation of fear, then CBP officers and agents should refer the matter to a supervisor. Note that a noncitizen can only manifest a fear for themselves or members of their family unit; they may not manifest fear on behalf of noncitizens outside their family unit.

If you have any questions regarding this guidance, please feel free to reach out to myself or the IPC.

Respectfully,

Kenny Blanchard
Acting Deputy, Operations Directorate





**U.S. Customs and
Border Protection**

May 21, 2022

MEMORANDUM FOR: Directors, Field Operations
Office of Field Operations

FROM: Executive Director [REDACTED]
Office of Field Operations
Admissibility and Passenger Programs

SUBJECT: Processing of Noncitizens Manifesting Fear of Expulsion Under
Title 42

U.S. Customs and Border Protection (CBP), Office of Field Operations (OFO) continues to assist the Centers for Disease Control and Prevention (CDC) in enforcing its *Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists* hereafter referred to as the "CDC Order." This memorandum clarifies previous guidance implementing the CDC Order to ensure that it is consistent with the opinion of the U.S. Court of Appeals for the District of Columbia (DC) Circuit in *Huisha Huisha v. Mayorkas*, which found that the Government may expel family units (i.e., plaintiffs), but only to places where they are not likely to be persecuted or tortured.

Consistent with the DC Circuit's decision, covered noncitizens who are part of a family unit and who have manifested a fear of returning or being sent to the country to which they would be expelled should not be expelled without an appropriate screening by United States Citizenship and Immigration Services (USCIS) to determine whether they are more likely than not to be persecuted or tortured.

In determining whether a noncitizen has manifested a fear, CBP officers should consider all available information within the scope of their operations. Noncitizens who manifest a fear of returning or being sent to the country to which they would be expelled will either be excepted from the CDC Order and processed under Title 8 or referred for appropriate exception screening by USCIS to determine whether the noncitizen is more likely than not to be persecuted or tortured in the country to which they would be expelled.

Covered noncitizens who are part of a family unit under the CDC Order may manifest a fear of returning to or being sent to the country to which they would be expelled in a number of ways, which may be verbal or non-verbal. Manifestation of fear may include but is not limited to:

- A statement from the noncitizen that they have a fear of returning to or being sent to the country to which they would be expelled;

- A statement from the noncitizen that they were previously harmed by persons in the country to which they would be expelled;
- A statement from the noncitizen that they will be harmed by persons in the country to which they would be expelled; or
- Non-verbal actions such as hysteria, trembling, unusual behavior, incoherent speech patterns, self-inflicted harm, panic attacks, or an unusual level of silence.

Beginning at 12:01 a.m. (EDT) on May 23, 2022, if a member of a family unit manifests a fear of expulsion, either for themselves, or on behalf of another member of the family unit, CBP officers should:

- Except all members of that family unit from expulsion under the CDC Order and instead process the family unit under an applicable disposition available under Title 8 **or**
- Refer all members of the family unit for appropriate exception screening by USCIS to determine whether the noncitizen is more likely than not to be persecuted or tortured in the country to which they would be expelled.

As a reminder, noncitizens may only manifest a fear for themselves or members of their family unit; they may not manifest fear on behalf of individuals outside of their family unit.

CBP officers shall not make a qualitative evaluation of the noncitizen's fear or its basis. Once CBP officers identify that a noncitizen manifests a fear, they should record the manifestation in CBP Form I-213, *Record of Reportable/Inadmissible Alien*. If a CBP officer is uncertain whether a noncitizen's statements, actions, or behaviors may be a manifestation of fear of expulsion from the U.S., they should consult their supervisor.

This guidance solely applies to noncitizens whose entry was not prevented at the limit line. Any noncitizen subject to the CDC Order whose entry is prevented at the limit line should continue to be processed as a covered noncitizen (including those as part of family units) under the CDC Order, per existing procedures. Processing and expulsion of single adults under Title 42 remains unchanged.

Please ensure that this memorandum is disseminated to all ports of entry within your jurisdiction. Should you have any questions or require additional information, please contact Luis Mejia, Deputy Executive Director, Admissibility and Passenger Programs (APP) [REDACTED]