

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
