

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION.....1

I. SECTION 265 DOES NOT AUTHORIZE PLAINTIFF’S DEPORTATION. 1

A. Section 265 Provides No Implied Deportation Power..... 2

B. Section 265 Was Designed To Regulate Transportation. 3

C. No Deference Is Owed To The Government’s Claim To Deportation Power. 10

II. SECTION 265 DOES NOT OVERRIDE THE PROTECTIONS FOR UNACCOMPANIED CHILDREN AND ASYLUM SEEKERS..... 12

A. Section 265 Does Not Override The TVPRA And Protection Statutes. 13

B. The Assertion Of Power To Override Protections Is Not Entitled To Deference..... 16

C. J.B.B.C.’s Statutory Rights Were Unquestionably Violated..... 18

III. DEFENDANTS’ ACTIONS ARE ARBITRARY AND CAPRICIOUS..... 20

IV. THE BALANCE OF HARMS TIPS DECIDEDLY IN J.B.B.C.’S FAVOR. 23

CONCLUSION.....25

TABLE OF AUTHORITIES

Cases

<i>Am. Wild Horse Pres. Campaign v. Perdue</i> , 873 F.3d 914 (D.C. Cir. 2017)	23
<i>Ass’n of Reptile Keepers, Inc. v. Jewell</i> , 106 F. Supp. 3d 125 (D.D.C. 2015)	24
<i>Atl. City Elec. Co. v. FERC</i> , 295 F.3d 1 (D.C. Cir. 2002)	16
<i>Brown v. GSA</i> , 425 U.S. 820 (1976)	14
<i>Career College Ass’n v. Riley</i> , 74 F.3d 1265 (D.C. Cir. 1996)	17
<i>Cellular Phone Taskforce v. FCC</i> , 205 F.3d 82 (2d Cir. 2000)	23
<i>Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.</i> , 467 U.S. 837 (1984)	10, 11, 16, 18
<i>Christensen v. Harris Cty.</i> , 529 U.S. 576 (2000)	16
<i>Cisneros v. Alpine Ridge Group</i> , 508 U.S. 10 (1993)	13
<i>Citizens to Preserve Overton Park, Inc. v. Volpe</i> , 401 U.S. 402 (1971)	20
<i>Clark v. Martinez</i> , 543 U.S. 371 (2005)	2,3
<i>Demjanjuk v. Holder</i> , 563 F.3d 565 (6th Cir. 2009)	24
<i>Devitri v. Cronen</i> , 289 F. Supp. 3d 287(D. Mass. 2018)	24
<i>DHS v. Regents of the Univ. of Calif.</i> , __ S. Ct. __, 2020 WL 3271746 at *10 (2020)	18, 20, 22

<i>Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Newport News Shipbuilding & Dry Dock Co.,</i> 514 U.S. 122 (1995)	4, 10
<i>District of Columbia v. Dep't of Labor,</i> 819 F.3d 444 (D.C. Cir. 2016)	11, 12
<i>East Bay Sanctuary Covenant v. Trump,</i> 932 F.3d 742 (9th Cir. 2018).....	14, 15
<i>Epic Sys. Corp. v. Lewis,</i> 138 S. Ct. 1612 (2018)	16, 17
<i>FCC v. Fox Television Stations, Inc.,</i> 556 U.S. 502 (2009)	20
<i>FDA v. Brown & Williamson Tobacco Corp.,</i> 529 U.S. 120 (2000)	13, 14, 15, 19
<i>Fox v. Clinton,</i> 684 F.3d 67 (D.C. Cir. 2012)	11
<i>Gordon v. New York Stock Exchange, Inc.,</i> 422 U.S. 659 (1975)	17
<i>Grace v. Whitaker,</i> 344 F. Supp. 3d 96 (D.D.C. 2018)	11, 24
<i>Hampton v. Mow Sun Wong,</i> 426 U.S. 88 (1976)	16
<i>Indep. Ins. Agents of Am., Inc. v. Hawke,</i> 211 F.3d 638 (D.C. Cir. 2000)	14
<i>Judulang v. Holder,</i> 565 U.S. 42 (2011)	10, 16
<i>Kansas v. Garcia,</i> 140 S. Ct. 791 (2020)	13
<i>Kaufman v. Nielsen,</i> 896 F.3d 475 (D.C. Cir. 2018)	16, 17
<i>Kisor v. Wilkie,</i> 139 S. Ct. 2400 (2019)	10, 18

<i>Louisiana v. Mathews</i> , 427 F. Supp. 174 (E.D. La. 1977)	12
<i>Loving v. IRS</i> , 742 F.3d 1013 (D.C. Cir. 2014)	11, 14, 18
<i>Luis v. United States</i> , 136 S. Ct. 1083 (2016)	10
<i>Merck & Co. v. United States Dep’t of Health & Human Servs.</i> , ___ F.3d ___, 2020 WL 3244013 (D.C. Cir. June 16, 2020)	3, 4, 10
<i>Michigan v. EPA</i> , 268 F.3d 1075 (D.C. Cir. 2001)	16
<i>Michigan v. EPA</i> , 576 U.S. 743 (2015)	20
<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983)	20, 21
<i>Mylan Laboratories, Inc. v. Thompson</i> , 389 F.3d 1272 (D.C. Cir. 2004)	17
<i>Nasrallah v. Barr</i> , 140 S. Ct. 1683 (2020)	6
<i>Nat. Res. Def. Council, Inc. v. Daley</i> , 209 F.3d 747 (D.C. Cir. 2000)	10
<i>Nat’l Lifeline Ass’n v. FCC</i> , 921 F.3d 1102 (D.C. Cir. 2019)	21
<i>National Ass’n of Home Builders v. Defenders of Wildlife</i> , 551 U.S. 644 (2007)	17
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	24
<i>Osorio-Martinez v. Att’y Gen.</i> , 893 F.3d 153 (3d Cir. 2018)	25
<i>Pereira v. Sessions</i> , 138 S. Ct. 2105 (2018)	10

<i>Prof. Reactor Operator Soc. v. NRC</i> , 939 F.2d 1047 (D.C. Cir. 1991)	16
<i>Radzanower v. Touche Ross & Co.</i> , 426 U.S. 148 (1976)	14
<i>Ramirez v. ICE</i> , 310 F. Supp. 3d 7 (D.D.C. 2018)	25
<i>Scheduled Airlines Traffic Offices, Inc. v. Dep’t of Defense</i> , 87 F.3d 1356 (D.C. Cir. 1996)	16
<i>Scialabba v. Cuellar de Osorio</i> , 573 U.S. 41 (2014)	17
<i>Soeung v. Holder</i> , 677 F.3d 484 (1st Cir. 2012)	18, 19
<i>Strawberry v. Albright</i> , 111 F.3d 943 (D.C. Cir. 1997)	14
<i>Thatikonda v. USCIS</i> , No. CV 19-685 (RC), 2020 WL 2126716 (D.D.C. May 5, 2020)	24
<i>Trump v. Hawaii</i> , 138 S. Ct. 2392 (2018)	14
<i>Valentine v. United States ex rel. Neidecker</i> , 299 U.S. 5 (1936)	3
<i>W. Coal Traffic League v. Surface Transp. Bd.</i> , 216 F.3d 1168 (D.C. Cir. 2000)	17
<i>Walsh v. Preston</i> , 109 U.S. 297 (1883)	4, 5
<i>Wisc. Cent. Ltd. v. United States</i> , 138 S. Ct. 2067 (2018)	3, 15
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001)	5
Statutes	
42 U.S.C. § 264(c)	11, 12

42 U.S.C. § 265.....	passim
42 U.S.C. § 271.....	12
42 U.S.C. § 271(a)	6
8 U.S.C. § 1182(f).....	12, 14
8 U.S.C. § 1225(b)(1)	11, 12
8 U.S.C. § 1225(b)(1)(B)(iii)(III)	19
8 U.S.C. § 1229a.....	20
8 U.S.C. § 1232(a)(5)(D)	14
8 U.S.C. § 1232(b)(3)	25
8 U.S.C. § 1325.....	12
8 U.S.C. §1182(a)(1).....	11
8 U.S.C. §1222.....	11
8 U.S.C. §1232(c)(3)(A)	22
8 U.S.C. § 1225(b)(1)(B)(iii)(II).....	19
Act of Aug. 5, 1892, Pub. L. No. 52- 380, 27 Stat. 349, 366 (1892).....	13
Act of March 3, 1891, ch. 551, §§ 10, 11, 26 Stat. 1084, 1086.....	6
Act of March 3, 1903, chap. 1012, §§ 8, 9, 19, 20, 21, 32 Stat. 1213	6
Chinese Exclusion Act of May 6, 1882, ch. 126, §§ 2, 12, 22 Stat. 58, 59, 61	6
Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020)	12
Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. No. 116-123, 134 Stat. 146 (Mar. 6, 2020)	12
Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (Mar. 18, 2020)	12
Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (Apr. 24, 2020).....	12

Other Authorities

A. Scalia & B. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> 93 (2012)	10
COVID-19 Measures Related to Asylum and Migration Across Europe (Apr. 8, 2020), https://tinyurl.com/ybahhmro	22
<i>Introduce, Webster's Collegiate Dictionary</i> 453 (1st ed. 1898)	4
<i>Letter to HHS Secretary Azar and CDC Director Redfield Signed by Leaders of Public Health Schools, Medical Schools, Hospitals, and Other U.S. Institutions, Columbia Mailman School of Public Health</i> (May 18, 2020), https://tinyurl.com/y8q3asun	25
Minimizing the Risk of Exposure to COVID-19 in Canada Order, P.C. 2020-0161, § 4(2)(d) (Mar. 20, 2020), https://tinyurl.com/y888f7yh	22
<i>Twenty Days Quarantine</i> , N.Y Times, Sept. 2, 1892	10
U.S. Dep't of State, <i>2019 Country Reports on Human Rights Practices: Honduras</i> 16 (2020) ..	24
<i>Universal English Dictionary</i> 1067 (John Craig ed. 1861)	4

Regulations

70 Fed. Reg. 71,892 (Nov. 30, 2005)	8
8 C.F.R. § 208.30(e)	19
8 C.F.R. § 235.3(b)(7)	19
80 Fed. Reg. 16,400 (Mar. 27, 2015)	8
81 Fed. Reg. 54230 (Aug. 15, 2016)	8
85 Fed. Reg. 16,559 (Mar. 24, 2020)	11
85 Fed. Reg. 17,060 (Mar. 26, 2020)	11, 25
85 Fed. Reg. 7874 (Feb. 12, 2020)	8
85 Fed. Reg. at 17065	21
85 Fed. Reg. at 31503 (May 26, 2020)	22

Legislative History

24 Cong. Rec. 359 (1893) 7

24 Cong. Rec. 378 (1893)..... 6

24 Cong. Rec. 470 (1893)..... 8

98 Cong. Rec. 4423 (1952) 12

INTRODUCTION

The issue before the Court is whether to allow J.B.B.C. to be sent back to danger pending the outcome of this Court’s merits ruling (which can of course be placed on expedited schedule). Defendants do not, and could not, dispute that this boy can be safely kept in the United States. And while Defendants assert that Plaintiff’s proffered evidence of harm if he is returned is insufficient, Defendants have not presented any contrary evidence.

On the merits, Defendants do not grapple with the text, structure, and history of the relevant public health and immigration statutes. Instead, Defendants’ argument reduces to one proposition: Congress *must* have intended to authorize any action Defendants now believe is necessary. Congress has afforded the government extensive powers, but nowhere authorized deportations outside the immigration law framework. And that makes sense, because the statute on which Defendants rely has always operated as a regulation on transportation companies—meaning that Congress had no reason to authorize deportations. In any event, Congress’s careful and specific safeguards for unaccompanied children and those seeking protection cannot be disregarded. The new Title 42 Process is also arbitrary and capricious, particularly when it comes to children seeking protection, like J.B.B.C.

I. SECTION 265 DOES NOT AUTHORIZE PLAINTIFF’S DEPORTATION.

Defendants assert that 42 U.S.C. § 265 empowers them to deport Plaintiff. Yet they concede that Title 42 nowhere explicitly grants any deportation power—indeed, the concept is never mentioned in § 265. Although Defendants have *never*, in the 127 years since § 265 was first enacted, used the statute to deport anyone from the country, they claim to have discovered an *implied* deportation power in this long-dormant, nearly forgotten statute. But as already explained, Courts greet such claims of late-discovered authority with skepticism, and here all the tools of statutory construction underscore that deportations are not authorized. TRO Br. 7-10.

Congress’s choice not to pair § 265 with a deportation power makes sense. Section 7 of the Act of February 15, 1893, ch. 114, 27 Stat. 449, 452, which became § 265 without material change in the Public Health Service Act, Pub. L. 78-410, § 362, 58 Stat. 682, 704 (1944), was designed to regulate *transportation* entities that brought persons and goods to the United States,

and it imposed fines and imprisonment on such transportation entities if they violated a public health order. *See also* Decl. of Adrienne Harrold (“Harrold Decl.”), Ex. A (copy of 1893 Act). If an individual’s entry or presence was unlawful, the immigration system provided the sole mechanism for returning the individual to his home country. Past practice bears out this design: When § 265 was used in 1929 to combat meningitis, another deadly disease transmitted by asymptomatic carriers via airborne respiratory droplets, deportation was not authorized.

Defendants thus misapprehend Plaintiff’s position. Plaintiff does not argue that § 265 authorizes the deportation of an individual at a port of entry but not someone, like Plaintiff, who enters the country. Gov’t Br. 18-19. Section 265 authorizes no deportations at all. Rather, it provides authority to halt transportation companies from introducing people (noncitizen and citizen alike) from countries suffering an epidemic to the United States, by, for example, ship, train, and, in modern times, aircraft. And even if § 265 could be read also to operate against individuals seeking to come to the United States, it would still not authorize deportations, but only those penalties Congress has established, namely fines and imprisonment.

A. Section 265 Provides No Implied Deportation Power.

Nothing in § 265 can be read to grant Defendants any deportation power. To the contrary, Congress established specific penalties for violations of a § 265 order and has *explicitly* authorized deportations in the immigration laws when vesting the government with that extreme power. TRO Br. 7-9.

Defendants respond that the Court should nevertheless read an *implied* power of deportation into the statute. Gov’t Br. 17. The implications of Defendants’ implied-power argument are enormous. The statute refers only to “persons,” and in no way differentiates between citizens and noncitizens. Thus, if removal from the country could be implied as a power “necessarily included” in § 265 to “effectuate” its “purpose,” Gov’t Br. 17, that would be true for all “persons” covered by the statute—including citizens. Defendants shrink from that clear consequence of their position, suggesting that the statute might not even permit a “temporar[y] delay” for citizens, much less removal. Gov’t Br. at 20. But if the statute implicitly provides for removal as a means of enforcement, it does so for everyone, including citizens. *See Clark v.*

Martinez, 543 U.S. 371, 386 (2005) (rejecting “the dangerous principle that judges can give the same statutory text different meanings in different cases” even if only some applications raise constitutional concerns). Defendants also try to escape the implications of their position by noting that the regulation at issue here exempts U.S. citizens. Gov’t Br. 19. But that is irrelevant to determining what powers the *statute* authorizes. *Merck & Co. v. United States Dep’t of Health & Human Servs.*, ___ F.3d ___, 2020 WL 3244013, at *7 (D.C. Cir. June 16, 2020) (“[T]he breadth of the Secretary’s asserted authority is measured not only by the specific application at issue, but also by the implications of the authority claimed.”).

The extraordinary power of physically removing a person from the United States must be “affirmatively granted,” not divined by implication, and that is especially true when finding an implicit (and unconstitutional) power to remove a citizen. *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5, 12 (1936); TRO Br. 9. Defendants do not respond to *Valentine*. The public health statutes provide explicit penalties for § 265 violations, but make no mention of deportation—even though Congress has always provided any such authority in the immigration statutes *expressly*, including in immigration legislation authorizing exclusion on public health grounds passed contemporaneously with the 1893 Act. TRO Br. 8-9; Part I.B, *infra*. Courts “presume differences in language like this convey differences in meaning[,]” particularly where contemporaneous statutes address related issues. *See Wisc. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2071-72 (2018) (internal quotation marks omitted).¹

B. Section 265 Was Designed To Regulate Transportation.

The omission of deportation authority from § 265 was no mistake. To the contrary, it reflects Congress’s design of that statute—as a means to stop travel from countries experiencing an outbreak of disease by regulating the transportation companies that bring people to the United States. The text, context, structure, and history all make clear that § 265 was designed to operate

¹ Moreover, nothing in the text of § 265 would limit Defendants’ claim of an implied enforcement regime to *deportation*. In theory, the government could assert an implied power for even more extreme measures. *See Merck*, 2020 WL 3244013, at *7 (rejecting agency’s “construction of the statute [which] would seem to give it unbridled power”).

on transportation entities. It therefore makes sense that § 265 does not silently authorize a whole new deportation process, devoid of the procedural protections Congress created for noncitizens, including for those with communicable diseases.

Defendants’ core argument is that a power to deport would best effectuate Congress’s “purpose of preventing the transmission of a communicable disease.” Gov’t Br. 17. But as Defendants concede, “[e]very statute proposes, not only to achieve certain ends, but also to achieve them by particular means.” Gov’t Br. 27 (quoting *Dir., Office of Workers’ Comp. Programs, Dep’t of Labor v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 136 (1995)); see *Merck*, 2020 WL 3244013, at *3 (agencies are “bound” by Congress’s choice of “means”). And here, the “means” Congress granted to Defendants in § 265—prohibiting the “introduction” of persons—authorizes regulation only of *transportation* entities.

The 1893 Act was aimed squarely at travel to this country *by ship*—and operated as a regulation of the transportation companies that would bring potentially infected individuals to the United States. Congress believed that the regulation of transportation entities would be sufficient to keep out almost all of those with communicable diseases, and accordingly did not create a parallel deportation process on top of the quarantine laws and extensive immigration laws enacted just a few years before, which permitted the detention and removal of any individual with a communicable disease who might still find a way to come to the United States.

1. The text of the 1893 provision demonstrates that the “means” Congress chose was the regulation of *transportation*, not of individual travelers, and underscores that Congress never authorized deportations. Section 7 of the 1893 Act granted the “power to prohibit, in whole or in part, the *introduction* of persons and property” into the country. 27 Stat. 452 (emphasis added). As Defendants concede, that term—“introduction”—meant then, as now, “‘the act of bringing into a country.’” Gov’t Br. 17 n.11 (quoting *Universal English Dictionary* 1067 (John Craig ed. 1861)); see also *Introduce*, *Webster’s Collegiate Dictionary* 453 (1st ed. 1898) (“[t]o lead, bring, or usher in”). But Defendants fail to grapple with the implications of that textual choice. As a matter of ordinary language and usage, introducing a person into a country or place is an action taken by a *third party*—here, the shipping company. See, e.g., *Walsh v. Preston*, 109 U.S. 297,

298, 314, 315 (1883) (“colonization” contract requiring party to “introduce” immigrant families into Texas was unsatisfied, where there was no evidence individuals who came “were brought to Texas by [the party];” rather, “they came and settled of their own accord”). The plain text of § 265 is thus directed not at individuals seeking to *come to* the United States, but rather those proposing to *bring* such individuals here.²

To the extent Defendants address the meaning of “introduction,” they contend that the term “signals” that § 265 “is not limited to the Nation’s borders.” Gov’t Br. 17. But that does not help Defendants with the relevant distinction here: whether § 265’s use of the term “introduction” regulates individuals coming to the United States or only transportation entities who bring them into the country, *i.e.*, *who* the statute regulates.³

2. The statutory context reinforces the plain text. The 1893 Act was shot through with provisions specifically directed at the regulation of ships. *See* Act of Feb. 15, 1893, ch. 114, § 1 (unlawful for ships to enter U.S. ports from abroad except in accordance with public health regulations); § 2 (requiring ships abroad to obtain a bill of health); § 3 (authorizing, *inter alia*, regulation of “vessels sail[ing] from any foreign port or place”); § 4 (charging the Surgeon General with, *inter alia*, obtaining sanitary information about foreign ports); § 5 (issuance of regulations for, *inter alia*, “vessels in foreign ports,” and prohibition on vessels arriving without a bill of health); § 6 (providing for “an infected vessel” to be “remand[ed]” to quarantine station).

² The 1893 Act’s title was “An act granting additional quarantine powers and imposing additional duties upon the Marine-Hospital Service.” When recodified in 1944, § 265 was titled “Suspension of entries and imports from designated places.” That title is consistent with § 265’s text, in that suspending transportation companies’ right to “introduce” people has the effect of suspending those individuals’ entry. Regardless, the title cannot overcome the statute’s text and also sheds no light on what the term “introduction of persons” meant in 1893—which Defendants concede is the relevant question. *See* Gov’t Br. 17 & n.11.

³ Immigration law has long treated those who enter the country, even unlawfully, differently from those at ports of entry. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). If § 265 really *did* authorize an alternative deportation scheme, the Court would need to determine whether and how those immigration doctrines apply to § 265 (which, again, applies equally to citizens). But given the arguments Plaintiff has made, the Court need not reach that issue.

Critically, the 1893 Act imposed *only* penalties against ships—and set them high enough to deter those vessels from sailing to this country in violation of the Act. *See id.* § 1 (\$5000.00 fine for “vessel” violating the Act); *id.* § 2 (same for “vessel” entering United States without bill of health); *see also id.* § 3 (conditioning penalties on “any vessel or owner or officer thereof” on posting of regulations in consular offices abroad); 24 Cong. Rec. 378 (raising penalties).⁴

Furthermore, an examination of immigration statutes in force in 1893 makes plain that Congress knew exactly how to regulate the removal of individuals. Those statutes covered those coming by ship and individually by land and *explicitly* authorized deportations, separate and apart from regulations they imposed on ships involved in transporting immigrants. *See, e.g.,* Chinese Exclusion Act of May 6, 1882, ch. 126, §§ 2, 12, 22 Stat. 58, 59, 61 (establishing penalties for vessels, and separately providing for unauthorized immigrants “to be removed . . . to the country whence [they] came”); Act of Mar. 3, 1891, ch. 551, §§ 10, 11, 26 Stat. 1084, 1086 (establishing penalties for “master, agent, consignee, or owner of” a “vessel” who violates the Act’s provisions, and separately providing for unauthorized immigrants to “be immediately sent back on the vessel by which they were brought in” and that “any alien who shall come into the United States in violation of law may be returned”); *id.* § 8 (providing “the Secretary of the Treasury may prescribe rules for inspection along the borders of Canada, British Columbia, and Mexico.”); Act of Mar. 3, 1903, ch. 1012, §§ 8, 9, 19, 20, 21, 32 Stat. 1213 1215-16, 1218-19, 1221 (providing for noncitizens to “be immediately sent back . . . on the vessels bringing them,” “deported,” or “taken into custody and returned to the country whence he came”).

It would have been “easy enough for Congress” to include the same kind of provisions in the 1893 Act. *Nasrallah v. Barr*, 140 S. Ct. 1683, 1692 (2020). Instead, Congress imposed penalties *only* on those involved in transportation, and used the term “introduction” to refer to the

⁴ Defendants say the current penalties provision in 42 U.S.C. § 271(a) has “no bearing” on § 265’s scope because it refers only to the violation of regulations under § 265, not the Act itself. Gov’t Br. 19. But § 265 requires any order issued under its authority to be “in accordance with regulations.” Besides, Defendants concede that what matters is what the language of § 265’s predecessor meant in 1893. Gov’t Br. 17 & n.11. In the original 1893 Act, the penalties put on ships applied to violations of the Act, including Section 7. Act of Feb. 15, 1893, ch. 114, § 1.

penalty-triggering conduct of such third parties. But Congress said nothing about any power to deport individuals who came to our shores. “[I]t is not the proper role of the courts to rewrite [a law] passed by Congress and signed by the President.” *Id.*

3. Defendants invoke the legislative history of the 1893 Act in arguing that the statute should be read more expansively to permit a deportation power. Gov’t Br. 20, 24-25. But the legislative history strongly confirms what is demonstrated by the text, context, and structure: Section 7 was a regulation of transportation entities and not a deportation power.

The 1893 Act responded to a specific public health threat—a cholera epidemic in Europe. *See, e.g.*, 24 Cong. Rec. 359 (1893) (letter from physician explaining the “considerable” danger of an imminent cholera outbreak from Europe). A principal proponent of the 1893 Act, Senator Chandler, explained that “90 or 95 percent of the immigration into the United States comes into the city of New York, and that the most danger of cholera is to be apprehended from vessels arriving at that port.” *Id.* at 360. He expressed confidence that controlling travel by ship would effectively protect the country. *Id.* at 363-64 (“there will be no great danger of the introduction of cholera this year unless it comes in the steerages,” a class of ship travel).

As one of the 1893 Act’s sponsors, Senator Harris, further explained, Section 7 therefore allowed the President “to prevent the coming at all” of “vessels, passengers, crews, and cargo, which are sailing to this country.” *Id.* at 392. Congress expected that an invocation of Section 7 would cause shipping companies to refuse boarding, halting travel from designated locations at the source, thereby addressing the public health risk.

Indeed, when Senator Harris was asked about individuals crossing at *land* borders, he explained that an *earlier* Act providing general authority to quarantine and inspect individuals—not the new 1893 legislation—“clothes the Marine Hospital Service with ample power to protect the Mexican and Canadian borders.” *Id.* at 370. The new authority to regulate transportation entities was simply part of the larger framework already in place that included not just the immigration laws but also the public health quarantine powers.

Defendants do not squarely address any of this legislative history. Instead, Defendants note that the original text of the bill would have authorized the President to “suspend

immigration” but was expanded to cover the “introduction” of “people and goods” generally. Gov’t. Br. 20. But that expansion had no relevance to whether the law applied only to transportation entities. It simply ensured the law would also apply to the introduction of U.S. citizens by transportation entities. *See* 24 Cong. Rec. at 470 (statements of Sens. Gray and Mills) (discussing application of Section 7 to U.S. citizens). Senator Chandler, who was heavily involved in debates on the bill, thus explained: “certainly there can be no objection” to amending Section 7 “to provide that . . . [the President] may, if the exigency demands, exclude all *other passenger travel* as well as immigration.” *Id.* at 471 (emphasis added).

4. The use of the statute since its enactment in 1893 reinforces the absence of any deportation power. To Plaintiff’s knowledge, the only time the statute has been invoked to prohibit the introduction of persons was in 1929, and it did not authorize deportations.⁵ President Hoover issued an Executive Order invoking Section 7 of the 1893 Act to restrict the “Transportation of Passengers” from China and the Philippines because of a meningitis outbreak. Exec. Order No. 5143 (June 21, 1929), Harrold Decl., Ex. B. The Order provided that “no persons may be introduced directly or indirectly by transshipment or otherwise into the United States” except as permitted by the Treasury Secretary. The use of passive voice—“may be introduced”—makes clear that the Order was directed to third parties, namely transportation companies. The Treasury Department also issued associated regulations “governing the embarkation of passengers and crew” at ports in those countries “and their transportation to

⁵ Most invocations of § 265 have involved regulation of goods or delegation of authority to particular officers or agencies. In addition to the 1929 use of § 265, the provision has been invoked, with additional statutory authorities, four other times to address persons. None of the four purported to authorize deportations. One addressed the Do Not Board list, a mechanism to control transportation access, and the Public Health Lookout, a means to refer individuals at ports to CDC for isolation. Criteria for Requesting Federal Travel Restrictions for Public Health Purposes, 80 Fed. Reg. 16,400 (Mar. 27, 2015). Another proposed, but unadopted, regulation repeated the language of § 265 without elaboration. Control of Communicable Diseases, 70 Fed. Reg. 71,892, 71,910 (Nov. 30, 2005). The two others addressed quarantine and information gathering. Control of Communicable Diseases, 81 Fed. Reg. 54230 (Aug. 15, 2016); Control of Communicable Diseases; Foreign Quarantine, 85 Fed. Reg. 7874 (Feb. 12, 2020).

United States ports.”⁶ The regulations further addressed how to handle vessels which arrived in the United States when a meningitis case had occurred during the voyage, but, notably, only authorized detention, quarantine, and testing—not deportation.

5. Defendants’ argument for an implied deportation power is thus predicated on a faulty assumption: that to effectuate the “purpose” of § 265, “the power to ‘prohibit’ a person’s ‘introduction’ necessarily includes the power to physically remove.” Gov’t Br. 17. But far from a “nullity,” Gov’t Br. 27, Congress vested the government with a significant power totally separate from any need to deport individuals from the country: shutting down all international transportation from a particular country by regulating those who made such travel possible, the transportation companies. And, despite the age of the statute, that tool remains powerful today: § 265 permits the government to halt the vast majority of international travel by barring ships, planes, trains, and other modes of transportation from bringing people from designated places to this country. But it does not explicitly or implicitly give authority to deport individuals outside of the extensive immigration system Congress has enacted and refined over the decades.

The efficacy of that approach was clear from the beginning. The statute was passed against the backdrop of an extraordinary Executive action taken just months before, in September 1892. *See* U.S. Dep’t of Treasury, Quarantine Restrictions Upon Immigration to Aid in the Prevention of the Introduction of Cholera into the United States (Sept. 1, 1892), Harrold Decl., Ex. D. The Surgeon General explained that “vessels conveying” immigrants from certain countries experiencing cholera outbreaks were a “direct menace to the public health,” and ordered that “no vessel from any foreign port carrying immigrants shall be admitted” to any U.S. port “until said vessel shall have undergone” 20 days of quarantine. *Id.* Contemporaneous media coverage explained this step would “practically put a stop to immigration, for no steamship company will continue to transport people to this country” given the costs of

⁶ Regulations Governing the Embarkation of Passengers and Crew at Ports in China and the Philippine Islands and Their Transportation to the United States Ports Prescribed in Accordance with Executive Order Approved June 21, 1929, Harrold Decl., Ex. C.

quarantine. *Twenty Days Quarantine*, N.Y Times (Sept. 2, 1892).⁷ The crisis triggered significant debate among the Cabinet as to the President’s authority to take such a drastic step without clear statutory authority. *See id.* Shortly afterward, Congress enacted the 1893 Act granting the authority to regulate vessels to prevent the spread of disease.

Defendants’ reliance on Justice Thomas’s opinion in *Luis v. United States*, 136 S. Ct. 1083, 1097 (2016), is thus misplaced. A deportation power is in no way “a necessary predicate” to prohibiting the introduction of persons into the country. *Id.* Nor does honoring Congress’s choice of means render § 265 “meaningless.” *Id.* Halting all flights from China, for example, would hardly be meaningless.

In short, Defendants are incorrect that because Congress’s *goal* was to keep out disease, it implicitly authorized any means to do so. But that is not how statutes are interpreted. *Merck*, 2020 WL 3244013, at *3 (“agencies are ‘bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes’) (internal quotation marks omitted). “The withholding of agency authority is as significant as the granting of it, and we have no right to play favorites between the two.” *Newport News*, 514 U.S. at 136; *see also* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 93 (2012) (an “absent provision cannot be supplied by the courts”).

C. No Deference Is Owed To The Government’s Claim To Deportation Power.

Defendants fall back on a claim for deference under *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). But *Chevron* is not a “rubber stamp,” *Nat. Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 755 (D.C. Cir. 2000), so courts must not embrace statutory interpretations with “reflexive” deference. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (quoting *Pereira v. Sessions*, 138 S. Ct. 2105, 2120 (2018) (Kennedy, J., concurring)).

Here, deference is unwarranted at the outset because, even assuming these agency pronouncements might otherwise be subject to *Chevron*, the CDC Order does not actually offer “an interpretation of any statutory language.” *Judulang v. Holder*, 565 U.S. 42, 52 n.7 (2011);

⁷ <https://www.nytimes.com/1892/09/02/archives/twenty-days-quarantine-the-government-takes-decisive-action-a.html>see

see also Grace v. Whitaker, 344 F. Supp. 3d 96, 130 (D.D.C. 2018). Rather, the Order merely states that the suspension of the introduction of “covered aliens . . . requires the movement of all such aliens” out of the country “as rapidly as possible.” CDC Order, 85 Fed. Reg. 17,060, 17,067 (Mar. 26, 2020). The regulation’s preamble is similarly conclusory. Control of Communicable Diseases, 85 Fed. Reg. 16,559, 16,563 (Mar. 24, 2020) (“moving” individuals “outside the United States constitutes preventing their ‘introduction’ into the United States for purposes” of regulation). But those are largely statements of Defendants’ perceived policy objectives, not an interpretation of statutory text. *See Fox v. Clinton*, 684 F.3d 67, 78 (D.C. Cir. 2012) (refusing deference, even where agency purported to interpret statutory text, because it offered “little more than uncited, conclusory assertions of law”).

In any event, deference fails at *Chevron*’s first step because Defendants’ asserted new deportation power is at odds with “the traditional tools of statutory interpretation—including the statute’s text, history, structure, and context.” *Loving v. IRS*, 742 F.3d 1013, 1021-22 (D.C. Cir. 2014) (rejecting interpretation as “foreclosed by the statute”); *see also District of Columbia v. Dep’t of Labor*, 819 F.3d 444, 454 (D.C. Cir. 2016) (rejecting “novel reading” of statute that would “significantly enlarge” its effect). And at *Chevron*’s second step, Defendants’ interpretation warrants no deference “because it is unreasonable in light of the statute’s text, history, structure, and context.” *Loving*, 742 F.3d at 1022.

In sum, § 265 is a powerful tool permitting the suspension of transportation to this country. But Defendants have numerous other tools at their disposal under both the public health and immigration laws. Individuals entering from a foreign country can be apprehended, detained, examined, and quarantined. 42 U.S.C. § 264(c). They can be deported under the immigration laws, subject to any applicable substantive and procedural protections. *See* 8 U.S.C. §§ 1182(a)(1), 1222. Adults without documentation can be put into a special system Congress set up to speed deportations while protecting certain vulnerable migrants. *See* 8 U.S.C. §

1225(b)(1) (“expedited removal” system). Defendants can prosecute and fine individuals who violate quarantines, or enter without inspection. 8 U.S.C. § 1325; 42 U.S.C. § 271.⁸

Further, the President has the power to “suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants” where such entry would be “detrimental to the interests of the United States.” 8 U.S.C. § 1182(f). Notably, Congress specifically contemplated this power might be used in the case of an epidemic abroad. *See* 98 Cong. Rec. 4423 (1952) (statement of Rep. Walter, bill sponsor) (calling provision “absolutely essential” to have such power “in case of . . . an outbreak of an epidemic in some country”). And the President has used his § 1182(f) authority to address COVID-19. *See* Gov’t Br. 4. But even the substantial power under § 1182(f) does not override the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and protection statutes. *See infra* Part II.A.

If Defendants believe these vast powers are insufficient, the Constitution prescribes the solution: “When a new situation arises outside the scope of an old statute, the proper approach under our system of separation of powers is for Congress to amend the statute, not for the Executive Branch and the courts to rewrite the statute beyond what the statute’s terms can reasonably bear.” *District of Columbia*, 819 F.3d at 450.⁹

II. SECTION 265 DOES NOT OVERRIDE THE PROTECTIONS FOR UNACCOMPANIED CHILDREN AND ASYLUM SEEKERS.

In the alternative, the Court can decide this emergency motion on narrower grounds, namely that the specific protections Congress enacted for unaccompanied children and those

⁸ Defendants cite *Louisiana v. Mathews*, 427 F. Supp. 174 (E.D. La. 1977), to suggest their § 264 powers are broad. Gov’t Br. 29. But that decision represents an application of the penalties Congress authorized to a violation of a public health measure regarding *turtles*; it offers no support for Defendants’ claim to a deportation power Congress never authorized. Plaintiff takes no issue with Defendants’ general point that they enjoy broad authority over the “apprehension, detention, examination, or conditional release of individuals” at the border under § 264(c).

⁹ Congress has responded to COVID-19 with extensive legislation. *See* Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. No. 116-123, 134 Stat. 146 (Mar. 6, 2020); Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (Mar. 18, 2020); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020); Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (Apr. 24, 2020).

fleeing persecution prohibit Plaintiff's deportation, regardless of whether § 265 authorizes deportation in general.

Defendants do not dispute that Congress has carefully and repeatedly enacted special safeguards for unaccompanied children and persons fleeing persecution. TRO Br. 11-14. These statutes contain specific exceptions from their coverage, but no exception for communicable diseases or public health crises. TRO Br. 13 & nn.2-3. Defendants incorrectly quibble with the scope of some of those protections, but do not dispute that (absent § 265) Plaintiff is entitled to special procedures by virtue of Congress's solicitude of children and asylum seekers, and in particular, to be transferred to ORR legal custody and get a full immigration hearing. Section 265 must be read in conjunction with the specific protections for those groups. Defendants' far-reaching argument that § 265 permits the Executive to override all such protections is unsupported by the ordinary tools of statutory construction, and not entitled to deference.

A. Section 265 Does Not Override The TVPRA And Protection Statutes.

Nothing in the text of § 265 authorizes the government to override the protections for juvenile asylum-seekers like Plaintiff. There is an established way for Congress to "override conflicting provisions" found elsewhere in the U.S. Code: to use a commonplace phrase like "notwithstanding any other provision of law." *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993). That formulation was well known to Congress in 1893, as such language was included in the Constitution itself, and similar "*non obstante*" clauses were regularly included in legislation. See *Kansas v. Garcia*, 140 S. Ct. 791, 807 (2020) (Thomas, J., concurring); see also, e.g., Act of Aug. 5, 1892, Pub. L. No. 52- 380, 27 Stat. 349, 366 (1892) (appropriations bill addressing immigration, quarantine, and prevention of epidemics, and separately providing for certain taxes "any other law to the contrary notwithstanding"). But Congress did *not* include such language in § 265 to indicate it was authorizing the Executive to override the procedural protections available under the immigration statutes.

Thus, as with all potential conflicts, the Court must read § 265 and the refugee and child protections statutes together, to make sense of all Congress's work without discarding any of it. See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) ("The classic judicial

task of reconciling many laws enacted over time, and getting them to make sense in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute.”) (internal quotation marks omitted). Thus, as Judge Bybee explained in another asylum case, “the President may not ‘override particular provisions of the INA’ through the power granted him in” 8 U.S.C. § 1182(f), despite the breadth of language in that emergency provision. *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 760 (9th Cir. 2018) (quoting *Trump v. Hawaii*, 138 S. Ct. 2392, 2411 (2018)). So too with § 265.

Defendants argue that § 265 *must* be read to conflict with the INA’s specific protections, and that § 265 prevails because it applies only in health emergencies. Gov’t Br. 24. But even if § 265 could be read to authorize some summary deportations (which it cannot), it must be read to accommodate Congress’s subsequent specific legislative protections and commands. *See Indep. Ins. Agents of Am., Inc. v. Hawke*, 211 F.3d 638, 643 (D.C. Cir. 2000) (“A broad statute when passed ‘may have a range of plausible meanings,’ but subsequent acts can narrow those meanings”) (quoting *Brown & Williamson*, 529 U.S. at 143); *Loving*, 742 F.3d at 1020-21.

Moreover, even if conflict were unavoidable, Defendants are wrong about which statutes are more specific. The TVPRA, for example, is “a precisely drawn, detailed statute,” *Brown v. GSA*, 425 U.S. 820, 834 (1976), that comprehensively delineates what the government must do before it seeks to remove an unaccompanied child. The TVPRA sets forth specific, mandatory obligations, including that Defendants must place Plaintiff in regular removal proceedings and provide access to counsel. 8 U.S.C. § 1232(a)(5)(D). And Congress did not create exceptions for public health or communicable diseases. It is therefore the more specific provision when it comes to removal of children from the United States. *See Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 152-54 (1976) (cited in Gov’t Br. 24) (holding that the “mandatory” provision that “focus[ed] on the particularized problems of national banks” controlled over “broad” provision of separate statute); *Strawberry v. Albright*, 111 F.3d 943, 947 (D.C. Cir. 1997) (per curiam) (holding that “general prohibition of age discrimination” did not supersede subsequently enacted “mandatory retirement provisions” for specific employees).

Defendants seek to remove Plaintiff from the country. Yet § 265 says nothing at all about removal; or children; or steps the government must take or may skip. That § 265 applies only in the case of disease does not mean it represents Congress’s most explicit regulation on the circumstances of this case. *See East Bay Sanctuary Covenant*, 932 F.3d at 760.

Defendants also repeat that giving effect to the precise and careful protections in the INA would “render Section 265 a nullity.” Gov’t Br. 27. But as already explained, Congress enacted § 265 as a regulation on transportation companies and understood it would operate by keeping those companies from “introduc[ing]” people into the United States from abroad. Indeed, that is precisely how it was used in 1929. The nullity canon does not apply because on *any* interpretation, § 265 would do *at least* that significant work. *See Wisc. Cent. Ltd.*, 138 S. Ct. at 2073 (provision not rendered superfluous even if it only does “modest work” compared to government’s interpretation). That § 265 does not authorize *this particular invocation*—an order singling out noncitizens, including children and asylum seekers, and overriding protections for those individuals—does not make the statute meaningless.

Defendants again invoke the legislative history of the 1893 Act to justify its claim that § 265 overrides all immigration law. Gov’t Br. 24-25. But nothing in the legislative history of § 265 discusses the specific statutory protections for children and asylum seekers, which would not be enacted until decades after both the 1893 and 1944 Acts. *See Brown & Williamson*, 529 U.S. at 143 (“[T]he implications of a statute may be altered by the implications of a later statute . . . particularly . . . where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand”). Indeed, it is notable that Congress has chosen *not* to permit concerns about disease to override legislative protections for children and noncitizens seeking protection. Although noncitizens who have certain diseases may be subject to removal on that basis, under the immigration laws, the protections for children and asylum seekers take precedence and bar removal without the required procedures. *See IRAP Amicus* at 6-7.

Paradoxically, Defendants invoke the broad powers of Congress over “the admission and exclusion of aliens.” Gov’t Br. 28. But Plaintiff does not attack what Congress has done—in fact, he relies on it. He challenges Defendants’ attempt to exercise power contrary to Congress’s

enactments. And invoking Congress’s *immigration* powers lays bare that the Title 42 Process is really an *immigration* regulation—but one that Congress never authorized.

B. The Assertion Of Power To Override Protections Is Not Entitled To Deference.

CDC also defends its newfound immigration powers by invoking *Chevron* and *Skidmore* deference to justify overriding the laws specific to juveniles and those seeking protection. Gov’t Br. 31-32. Yet “[a]gency authority may not be lightly presumed,” and there are multiple reasons why CDC’s resolution of the conflict between § 265 and the INA is owed no deference here. *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9, 13 (D.C. Cir. 2002) (quoting *Michigan v. EPA*, 268 F.3d 1075, 1082 (D.C. Cir. 2001)).

First, as with its assertion of § 265’s deportation power, *see supra*, CDC deserves no deference for its bald claim that its actions do not conflict with the INA. The CDC Order, which governs only this particular invocation of § 265, is not the type of formal interpretation entitled to deference. *See Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (“Interpretations such as those in opinion letters[,], . . . policy statements, agency manuals, and enforcement guidelines . . . do not warrant *Chevron*-style deference.”). And CDC did not even cite any immigration provisions, much less explain how its actions square with the INA’s mandatory requirements. There can be no deference where there has been no actual interpretation. *Judulang*, 565 U.S. at 53 n.8; *Kaufman v. Nielsen*, 896 F.3d 475, 485 (D.C. Cir. 2018) (*Skidmore* deference is owed only “proportional to its power to persuade”).

Second, CDC concedes its lack of expertise in administering the immigration statutes. Gov’t Br. 36. A court owes no deference to agency interpretations “outside the agency’s particular expertise and special charge to administer.” *Prof. Reactor Operator Soc. v. NRC*, 939 F.2d 1047, 1051 (D.C. Cir. 1991); *see also Scheduled Airlines Traffic Offices, Inc. v. Dep’t of Defense*, 87 F.3d 1356, 1361 (D.C. Cir. 1996) (similar). *Cf. Hampton v. Mow Sun Wong*, 426 U.S. 88, 105, 116 (1976) (holding federal interest in immigration could not justify specific agency acting “so far removed from [its] normal responsibilities”).

What is more, CDC purports to resolve a conflict between “distinct statutory regimes,” which “‘is a matter for the courts,’ not agencies.” *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612,

1629 (2018) (quoting *Gordon v. New York Stock Exchange, Inc.*, 422 U.S. 659, 686 (1975)). Non-deferential review “preserve[s] the balance Congress struck in its statutes,” and guards against “[a]n agency eager to advance its statutory mission, but without any particular interest in or expertise with a second statute.” *Id.* And because CDC ceded implementation of its Orders to DHS, 85 Fed. Reg. at 17067, “any claim to Chevron deference is weaker still,” *Kaufman*, 896 F.3d at 485; *see id.* (divided administration undercuts deference). While CDC claims it “did not contemplate that CBP would implement the immigration laws concurrently with [its] Order,” Gov’t Br. 33, CBP’s implementation memorandum envisions just that. The CBP memo shunts some noncitizens into the Title 42 Process, while applying the regular INA processes to others. *See* U.S. Customs and Border Protection, COVID-19 CAPIO 2-3 [hereinafter “CBP Memo”], Harrold Decl., Ex. E (describing noncitizens who are “not amenable to being expelled,” and allowing “agents . . . to process under existing statutory authorities found in Title 8”). CDC (and DHS, for that matter) have not explained how this dual system squares with the INA’s numerous mandatory requirements. CDC thus gets no deference on its supposed “interpretation.”

Most of Defendants’ cases regarding agency interpretations “in the face of perceived statutory conflicts,” Govt. Br. 31, concern provisions within the *same statutory scheme*—the scheme the agency was charged to administer. *See Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 64 (2014) (plurality) (conflict within same INA provision); *W. Coal Traffic League v. Surface Transp. Bd.*, 216 F.3d 1168 (D.C. Cir. 2000) (conflict within same statute); *Career College Ass’n v. Riley*, 74 F.3d 1265 (D.C. Cir. 1996) (same). Defendants’ other cases also provide them no help.¹⁰ For example, *National Ass’n of Home Builders v. Defenders of Wildlife*, deferred to a regulatory interpretation jointly issued by multiple agencies, following their concerted and reasoned attempt to reconcile inconsistencies. 551 U.S. 644, 665-68 (2007). Here, CDC conclusorily asserts § 265 overrides other statutes it concededly has no expertise overseeing.

¹⁰ *See Mylan Laboratories, Inc. v. Thompson*, 389 F.3d 1272, 1279 n.5 (D.C. Cir. 2004) (cited Gov’t Br. 32) (FDA gets no deference with patent statute it “is not charged with administering”).

Third, Defendants’ *Chevron* argument fails on its own terms. Gov’t Br. 32-33. As explained above, the tools of statutory construction at *Chevron*’s first step show that § 265 does not override all other mandatory INA provisions. CDC’s construction is also unreasonable at *Chevron*’s second step for the same reason. It also fails to even acknowledge—as explained below—numerous relevant factors, including the TVPRA and other mandatory obligations; the special protection needs of minors; and that ORR releases minors to the care of people who can ensure their safety. *See Loving*, 742 F.3d at 1022.

Finally, although Defendants’ counsel now offers its own explanation of how the agency’s actions reconcile with Title 8, Gov’t Br. 25-30, 32-33, positions advanced in litigation briefs are entitled to no deference. *See Kisor*, 139 S. Ct. at 2417 (refusing to defer to litigation position or post hoc rationalization, rather than agency’s “fair and considered judgment”); *DHS v. Regents of the Univ. of Cal.*, __ S. Ct. __, 2020 WL 3271746 at *10 (2020) (courts may only consider “contemporaneous explanations,” not “post hoc justifications . . . raised in court”).

C. J.B.B.C.’s Statutory Rights Were Unquestionably Violated.

Defendants half-heartedly claim they are complying with *some* conflicting immigration provisions, but notably do not claim compliance with all the provisions applicable here.

First, and most importantly here, Defendants do not claim that they are transferring minors to ORR or providing them with full removal proceedings, as they concede the TVPRA would require absent the Title 42 Process. Defendants’ sole TVPRA argument is that the statute purportedly allows them to take longer than 72 hours to transfer a minor to ORR in “exceptional circumstances.” Gov’t Br. 23 n.13. But Defendants are seeking to *deport* Plaintiff, not transfer him to ORR after a delay, so Defendants’ argument is beside the point.

Second, Defendants do not claim that they are complying with the asylum and withholding statute. Nor could they do so, as the CBP Implementation Memo does not instruct agents to screen for asylum or withholding.

Third, Defendants’ claim they are providing CAT screenings does not save the Title 42 Process, as they would still be in violation of the TVPRA, as well as the asylum and withholding statutes. *See, e.g., Soeung v. Holder*, 677 F.3d 484, 487 (1st Cir. 2012) (noting standard for

torture is more exacting than for asylum and withholding claims). In any event, Defendants' cursory CAT screenings are not being lawfully conducted, as children are entitled to have their CAT claims decided in full removal proceedings.¹¹

Notably, moreover, Defendants' claim that they are providing CAT screenings only undermines their own statutory arguments, as there is no reason why CAT should be viewed as somehow *more* mandatory than the INA's other obligations. And apparently complying with CAT creates no significant conflict with CDC's authorities.

* * *

For decades, Congress—fully aware that exigent circumstances might emerge—has enacted and reinforced unique protections for vulnerable children and asylum seekers, including those with communicable diseases, subject to narrow exceptions not applicable here. Congress has, moreover, specifically chosen *not* to erase those protections even for those with diseases, relying instead on quarantine as the proper way to balance health concerns and the safety of children and those fleeing danger. To permit Defendants to obliterate those protections would “contradict Congress’ clear intent as expressed in its more recent, [child and asylum seeker] specific legislation.” *Brown & Williamson*, 529 U.S. at 143. If there is to be a public health exception to those critical protections, Congress must be the Branch to enact it.

¹¹ Defendants' new Title 42 process does not satisfy CAT, as it requires anyone, including children, to “make an *affirmative, spontaneous*” claim of fear of torture. CBP Memo 4 (emphasis added). But traumatized individuals who lack any understanding of U.S. law, especially children, cannot be expected to know what they must “affirmatively” and “spontaneously” say. Thus, this procedure is not meaningfully available to many noncitizens going through the Title 42 Process.

As to Plaintiff himself, Defendants say only they made an “assessment” of his CAT claim after this case was filed, without describing what procedures they used, or what standard they applied. See ECF. No. 28-6 ¶ 6. Nor did Defendants provide a written summary of the interviews, 8 U.S.C. § 1225(b)(1)(B)(iii)(II), 8 C.F.R. § 208.30(e); any indication that a supervisor reviewed the negative determination, 8 C.F.R. § 235.3(b)(7); or note that J.B.B.C. was informed of his right to seek review before an immigration judge, see 8 U.S.C. § 1225(b)(1)(B)(iii)(III). In sum, this meager procedure, inappropriate for a child and undertaken only in response to this litigation, does not comply with CAT. Defendants also argue a CAT ruling is unreviewable. Gov’t Br. 22. But Plaintiff is not seeking review of an individual CAT ruling.

III. DEFENDANTS' ACTIONS ARE ARBITRARY AND CAPRICIOUS.

Defendants have failed to “engage in ‘reasoned decisionmaking’” as the APA requires. *Regents*, 2020 WL 3271746 at *7 (quoting *Michigan*, 576 U.S. at 50). The Court’s role here, contrary to Defendants’ assertions, is to “assess” not only “whether there has been a clear error of judgment” but also “whether the decision was based on a consideration of the relevant factors.” *Id.* (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)). The agency was required to “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). And where the agency’s logic has gaps—for example, where the agency “entirely failed to consider an important aspect of the problem”—a court cannot “supply a reasoned basis for the agency’s action that the agency itself has not given.” *Id.*

1. The APA required Defendants to offer a “reasoned explanation” for applying the Title 42 Process to unaccompanied children, particularly those seeking protection. *Regents*, 2020 WL 3271746, at *17; TRO Br. 15. Defendants admit they offered no explanation here. Gov’t Br. 34-35. That admission itself establishes an APA violation. *Regents*, 2020 WL 3271746 at *17.

Defendants’ omission of any rationale is particularly glaring, moreover, because it departs so starkly from Defendants’ prior treatment of unaccompanied children. Defendants have long recognized their mandatory obligations under the TVPRA to transfer unaccompanied minors into ORR custody and refer them to full removal proceedings under 8 U.S.C. § 1229a. The reasoned explanation requirement “ordinarily demand[s] that [an agency] display awareness that it is changing position. An agency may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). That did not happen here.

Defendants have also “entirely failed to consider . . . important aspect[s] of the problem.” *State Farm*, 463 U.S. at 43. In creating the Title 42 Process and applying it to minors like J.B.B.C., Defendants have failed to analyze the impact on unaccompanied children and those seeking protection. Defendants argue that they did not need to acknowledge or explain the

impact of their actions on vulnerable groups because the APA “does not require an agency to address *every imaginable scenario*.” Gov’t Br. 35 (emphasis added). It was hardly speculative, however, that unaccompanied children and asylum seekers would come to the border seeking protection from harm. Yet CDC’s reasoning does not address that it is keeping children from seeking protection and is returning them to danger, contrary to the TVPRA and protection statutes. *Nat’l Lifeline Ass’n v. FCC*, 921 F.3d 1102, 1112-13 (D.C. Cir. 2019) (finding action arbitrary and capricious where it “failed to address the problem that would be created as a result” of its conduct).

Defendants also contend that they were under no obligation to consider “statutes administered by other agencies that may be impacted by a section 265 order.” Gov’t Br. 36. Yet CDC’s actions have much more than a mere incidental effect on the immigration statutes—CDC seeks to cast those statutes aside, without any acknowledgment of the devastating impact on minors fleeing danger or, importantly, whether there was a way to safely process children, particularly given that under the TVPRA children spend less than 72 hours with CBP.

2. Defendants’ explanations for their decisions also “runs counter to the evidence before the agency.” *State Farm*, 463 U.S. at 43.¹² Defendants claim that processing those without travel documents takes “hours or days.” 85 Fed. Reg. at 17065. But Defendants’ own contingency plans for a migration increase show they can process any necessary immigration paperwork for unaccompanied children within mere hours. Appellees’ Supplemental Excerpts of Record, *Al Otro Lado v. Wolf*, No. 19-56417 (9th Cir. Dec. 23, 2019), ECF No. 33-5 at 149 (capacity for 1-2 hour processing time for unaccompanied children at Hidalgo); *id.* at 171 (2-4 hours for unaccompanied children at Progreso). CBP does not need to carefully screen unaccompanied children from noncontiguous countries, like J.B.B.C.; under the TVPRA that is done after transfer to ORR and placement in full removal proceedings.

Indeed, Defendants’ implementation of the Title 42 Process shows they can hold children while minimizing risks to DHS officers and other unaccompanied children. Defendants kept

¹² Defendants have not produced the administrative record in this emergency posture. Plaintiff reserves the right to further challenge the agency’s decisions after the record is disclosed.

J.B.B.C. in a hotel for *days* longer than the 72 hours permitted by the TVPRA, for the purpose of effectuating his deportation. ECF No. 2-3 ¶ 4 (Corchado Decl.). And if Defendants were complying with the TVPRA, there would be no need to hold children in CBP custody for prolonged periods at all—J.B.B.C. and other minors would be swiftly sent to ORR shelters.

Notably, Defendants say nothing about one of the CDC Orders’ chief justifications, which is the “significant uncertainty that covered aliens would be able to effectively self-quarantine, self-isolate, or otherwise comply with existing social distancing guidelines” if released. 85 Fed. Reg. at 31508. And for good reason, as CDC has not explained the factual basis for this assumption or cited any evidence for it. Indeed, this justification is particularly wanting with respect to unaccompanied children, who are sent to sponsors who assume responsibility for their care, rather than simply released into the interior without supervision. *See* 8 U.S.C. § 1232(c)(3)(A); ECF No. 18 ¶ 16 (public health experts). Here, for instance, J.B.B.C. can be released to his father. *See Regents*, 2020 WL 3271746, at *13 (finding failure to consider “alternative[s] . . . within the ambit of the existing [policy]” arbitrary and capricious).

Defendants also note that “children are not immune from [COVID-19]” as a justification for their failure to account for that population. Gov’t Br. 35. Yet their reasoning fails to even acknowledge that children may be differently situated with respect to the disease, ECF No. 18 (public health experts), and CDC was obliged, at minimum, to weigh that difference. Defendants’ argument also carries even less force when applied against a child, like J.B.B.C., who has exhibited no symptoms.¹³

3. Although Defendants disclaim any obligation to consider the effects of their actions on unaccompanied child asylum seekers, they also argue that CDC’s consultation with DHS, and

¹³ Defendants assert that other countries have issued similar travel restrictions. Gov’t Br. 34. But numerous countries have kept their doors open to asylum seekers. *See* European Council on Refugees and Exiles, COVID-19 Measures Related to Asylum and Migration Across Europe (Apr. 8, 2020), <https://tinyurl.com/ybahhmro> (listing countries that exempt persons seeking protection from bans, e.g., Denmark, Finland, France, Germany, and Italy). And Canada expressly exempts unaccompanied children from its restrictions on non-U.S.-nationals seeking asylum between ports. *See* Order in Council, Minimizing the Risk of Exposure to COVID-19 in Canada Order, P.C. 2020-0161, § 4(2)(d) (Mar. 20, 2020), <https://tinyurl.com/y888f7yh>.

the latter agency's implementation procedures, satisfy its APA obligations. Gov't Br. 36-37. But unlike in *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 90 (2d Cir. 2000), the face of the Orders shows no indication that CDC meaningfully consulted with DHS on the unique circumstances of unaccompanied children seeking humanitarian relief. *See Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 931 (D.C. Cir. 2017) (finding failure to consider "broader, real-world impact" arbitrary and capricious). If anything, the CDC Orders' silence only emphasizes the flaws in the decisionmaking process here, as DHS was surely aware that it regularly apprehends unaccompanied children and asylum seekers.

And in any event, DHS's own implementation of the Title 42 Process is also flawed. To start, DHS has offered no public justification for its implementation procedures, which depart drastically from normal immigration proceedings and ignore the special needs of children and asylum seekers. The mere "discretion" to exempt individuals "on a case-by-case basis, based on . . . individual circumstances" is also inadequate, especially where there is no clear process or standard for making such exemptions. Gov't Br. at 35.

Notably, CBP is perfectly willing to exempt individuals from the Title 42 Process when doing so suits its immigration objectives. CBP's Implementation Memo states that individuals with certain criminal histories must be removed from the Title 42 Process and placed into the immigration and criminal system. *See* CBP Memo at 3 (exempting those with certain criminal convictions as "[s]ubjects not amenable to being expelled"). Yet Defendants cannot claim that having a prior conviction makes one less likely to transmit COVID-19. Put simply, DHS—apparently with CDC's sanction—is implementing the immigration statute when it chooses to, and yet leaves itself free to ignore its statutory obligations under the TVPRA and the asylum, withholding, and CAT provisions. There is no health-related justification for that distinction.

IV. THE BALANCE OF HARMS TIPS DECIDEDLY IN J.B.B.C.'S FAVOR.

1. As set forth in Plaintiff's declarations, J.B.B.C. fled Honduras due to violent attacks, the murder of a relative, and direct threats to his life. If he is returned, he will likely be persecuted or even killed. ECF No. 2-3 ¶ 5 (Corchado Decl.); Declaration of Carlos Emilio Barrera Rodriguez ¶¶ 4-19; Supplemental Declaration of Linda Corchado ¶¶ 9-10. The State

Department acknowledges that Honduran children face horrendous dangers, including “death threats for failure to pay extortion, attempted recruitment by gangs, [and] witnessing criminal activity by gangs or organized crime.” Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, *2019 Country Reports on Human Rights Practices: Honduras* 16 (2020).¹⁴ Yet, although Defendants offer no facts to rebut Plaintiff’s declarations, they assert his fears are merely “unsubstantiated and speculative.” Gov’t Br. 39. Numerous courts have held that similar showings show irreparable injury. *See, e.g., Demjanjuk v. Holder*, 563 F.3d 565 (6th Cir. 2009) (granting stay for noncitizen who asserted removal would violate CAT); *Grace v. Whitaker*, 344 F. Supp. 3d 96, 146 (D.D.C. 2018) (finding fear of “domestic violence, beatings, shootings, and death in their countries of origin” constitute irreparable injury); *Devitri v. Cronen*, 289 F. Supp. 3d 287, 296–97 (D. Mass. 2018) (risk of persecution if removed is irreparable harm). And there is “a public interest in preventing aliens from being wrongfully removed . . . to countries where they are likely to face substantial harm.” *Nken v. Holder*, 556 U.S. 418, 436 (2009).

2. Defendants, in contrast, would incur comparatively little harm from a stay. A stay of this child’s removal “would effectively balance the equities at stake and serve the public interest.” *Thatikonda v. USCIS*, No. CV 19-685 (RC), 2020 WL 2126716, at *6 (D.D.C. May 5, 2020). Defendants offer no explanation as to why staying a single healthy child’s deportation would impinge significantly on their interests. But this one boy’s removal is all that is at stake in this emergency motion. *See Ass’n of Reptile Keepers, Inc. v. Jewell*, 106 F. Supp. 3d 125, 128–29 (D.D.C. 2015) (granting preliminary injunction barring defendants from giving effect to challenged regulation as to plaintiffs). Defendants’ attempt, therefore, to shift the focus beyond Plaintiff’s specific circumstances and balance broader systemic equities is misplaced. Accordingly, Plaintiff makes only a few brief points about that broader balance of harms.

First, unaccompanied children like J.B.B.C. are released to sponsors under the TVPRA, which in most cases will be a parent or close relative who can ensure the child will self-quarantine as needed and will be subject to local restrictions. Insofar as children must spend

¹⁴ <https://www.state.gov/wp-content/uploads/2020/02/HONDURAS-2019-HUMAN-RIGHTS-REPORT.pdf>

short periods in ORR’s network of juvenile facilities before release, that network can deal with communicable diseases.

Second, contrary to the CDC Orders’ stated justifications, this case shows the Title 42 Process does not make DHS officers safer, and in fact, likely increases any potential exposure. Under the TVPRA, juveniles like J.B.B.C. must be transferred to ORR or a sponsor within 72 hours. *See* 8 U.S.C. § 1232(b)(3). Yet deporting children under Title 42 almost invariably takes DHS longer than that, due to travel arrangements and confirming the sending country’s receipt.

Third, even for adults, public health officials have overwhelmingly noted there are numerous safety measures that can be taken, including quarantines.¹⁵ Defendants say that CDC has reached a different conclusion. Gov’t Br. 40-41. But read carefully, the CDC Orders do not conclude that it is *unworkable* to process asylum seekers safely, but rather that it is not worth the resources or not worth trying. *See, e.g.*, 85 Fed. Reg. at 17067 (speculating that brief detention of noncitizens in Border Patrol stations would “divert [healthcare] resources away from the domestic population”). Thus, the Administration has just chosen to de-prioritize those fleeing danger, even as it permits or even encourage large recreational activities (such as beach outings), air travel by tens of thousands of foreign visitors, and other events and activities.

Finally, although Defendants claim that an injunction here would prevent “a court from effectuating statutes enacted by . . . its people,” Gov’t Br. 41, J.B.B.C. seeks to vindicate rights Congress gave him. “And it is squarely in the public interest to enable [children] . . . to partake of statutory . . . rights,” especially “where, as here, it is consistent with the process prescribed by Congress.” *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 179 (3d Cir. 2018); *see Ramirez v. ICE*, 310 F. Supp. 3d 7, 33 (D.D.C. 2018) (“The public interest surely does not cut in favor of permitting an agency to fail to comply with a statutory mandate.”).

CONCLUSION

For these reasons, the Court should stay Plaintiff’s removal.

¹⁵ *Letter to HHS Secretary Azar and CDC Director Redfield Signed by Leaders of Public Health Schools, Medical Schools, Hospitals, and Other U.S. Institutions*, Columbia Mailman School of Public Health (May 18, 2020), <https://tinyurl.com/y8q3asun>.

Dated: June 22, 2020

Stephen B. Kang*
Cody Wofsy*
Morgan Russell*
Adrienne Harrold*
American Civil Liberties Union Foundation,
Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111
Tel: (415) 343-0770

Andre Segura**
Kathryn Huddleston**
Rochelle Garza
Brantley Shaw Drake
American Civil Liberties Union Foundation
of Texas, Inc.
5225 Katy Freeway, Suite 350
Houston, Texas 77007
Tel. (713) 942-8146

Jamie Crook (D.C. Bar No. 1002504)
Blaine Bookey
Karen Musalo
Center for Gender & Refugee Studies
200 McAllister St.
San Francisco, CA 94102
Tel: (415) 565-4877

Respectfully submitted,

/s/ Lee Gelernt

Lee Gelernt*
Daniel A. Galindo*
Celso J. Perez (D.C. Bar No. 1034959)
American Civil Liberties Union Foundation,
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2600

Robert Silverman**
Oxfam America
Boston, MA 02115, Suite 500
Tel: (617) 482-1211

Scott Michelman (D.C. Bar No. 1006945)
Arthur B. Spitzer (D.C. Bar No. 235960)
American Civil Liberties Union Foundation of
the District of Columbia
915 15th Street NW, Second Floor
Washington, D.C. 20005
Tel: (202) 457-0800

Attorneys for Plaintiffs

**Admitted pro hac vice*

***Pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. Counsel for Defendants in this case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

By: /s/ Lee Gelernt

LEE GELERNT

Prescribed in Accordance with Executive Order Approved June 21, 1929 (July 11, 1929), included in Conn. Dep't of Health, *Connecticut Health Bulletin*, vol. 43, no. 9, 324-326 (Sept. 1929), as downloaded from the HathiTrust database.

5. Attached as Exhibit D is a true and correct copy of the Treasury Department's circular from September 1, 1892, as contained in the *Abstract of Sanitary Reports* from September 2, 1892. See U.S. Dep't of Treasury, Quarantine Restrictions Upon Immigration to Aid in the Prevention of the Introduction of Cholera into the United States (Sept. 1, 1892) (circular), included in *Abstract of Sanitary Reports*, vol 7, no. 36, 445 (Sept. 2, 1892), <https://play.google.com/books/reader?id=3cQhjR-RhXUC&hl=en&pg=GBS.PA445>.

6. On Sunday, June 21, 2020, I downloaded from the ProPublica website (linking to the Document Cloud website) a Border Patrol memorandum obtained by ProPublica which contains information about the implementation of the Title 42 process. See Dara Lind, *Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law*, ProPublica (Apr. 2, 2020), <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law> (linking to <https://www.documentcloud.org/documents/6824221-COVID-19-CAPIO.html>). Attached as Exhibit E is a true and correct copy of this memorandum.

I, Adrienne Harrold, declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 22, 2020, in San Francisco, California.



ADRIENNE HARROLD, ESQ.

J.B.B.C. v. Wolf et al., Case No. 20-cv-01509-CJN**Index of Exhibits in Support of Plaintiff's Motion for Emergency Stay of Removal**

Exhibit #	Exhibit Name
A	Act of February 15, 1893, ch. 114, § 7, 27 Stat. 449
B	Executive Order No. 5143, Restricting for the Time Being the Transportation of Passengers from Certain Ports in the Orient to a United States Port (June 21, 1929)
C	Regulations Governing the Embarkation of Passengers and Crew at Ports in China and the Philippine Islands and Their Transportation to the United States Ports Prescribed in Accordance with Executive Order Approved June 21, 1929 (July 11, 1929), included in Conn. Dep't of Health, <i>Connecticut Health Bulletin</i> , vol. 43, no. 9, 324-326 (Sept. 1929)
D	U.S. Dep't of Treasury, Quarantine Restrictions Upon Immigration to Aid in the Prevention of the Introduction of Cholera into the United States (Sept. 1, 1892) (circular), included in <i>Abstract of Sanitary Reports</i> , vol 7, no. 36, 445 (Sept. 2, 1892)
E	U.S. Customs & Border Protection, COVID-19 CAPIO Memorandum

Exhibit A

kinds, for the transit of animals, foot passengers, and all kinds of commerce, travel, or communication, and said corporation may charge and receive reasonable tolls therefor, subject to the approval of the Secretary of War.

SEC. 3. That any bridge built under this act and subject to its limitations shall be a lawful structure, and shall be recognized and known as a post route, and it shall enjoy the rights and privileges of other post roads in the United States: *Provided*, That the United States may construct a postal telegraph over said bridge without charge therefor.

SEC. 4. That said bridge shall be built and located under and subject to such regulations for the security of navigation of said river as the Secretary of War shall prescribe; and to secure that object, the said corporation shall submit to the Secretary of War, for his examination and approval, a design and drawings of the said bridge and a map of the proposed location, giving, for the space of one mile above and one mile below the proposed location, the topography of the banks of the river and the shore lines at high and low water, the direction and strength of the current at all stages, and the soundings, accurately showing the bed of the stream, the location of any other bridge or bridges, and shall furnish such other information as may be required for a full and satisfactory understanding of the subject, and until the plan and location of said bridge have been approved by the Secretary of War, the bridge shall not be commenced or built.

SEC. 5. That all railroad companies desiring the use of any bridge constructed under this act shall have and be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto, upon payment of reasonable compensation for such use; and in case the owner or owners of said bridge and the several railroad companies, or any of them, desiring such use shall fail to agree upon the sum or sums to be paid, and upon rules and conditions to which each shall conform in using said bridge, all matters at issue between them shall be decided by the Secretary of War upon a hearing of the allegations and proof of the parties.

SEC. 6. That said bridge herein authorized to be constructed shall be so kept and managed at all times as to afford proper means and ways for the passage of vessels, barges, or rafts, both by day and by night, and there shall be displayed on said bridge by the owners thereof, from sunset to sunrise, such lights or other signals as the Light-House Board may prescribe; and such changes shall be made from time to time in the structure of said bridge as the Secretary of War may direct, at the expense of said bridge company, in order the more effectually to preserve the free navigation of said river.

SEC. 7. That the right to alter, amend, or repeal this act is hereby expressly reserved, and the right to require any changes in said structure or its entire removal at the expense of the owners thereof, or the corporation or persons controlling the same, whenever public interest requires it, is also reserved.

SEC. 8. That this act shall be null and void if actual construction of the bridge herein authorized be not commenced within one year and completed within three years from the date hereof.

Approved, February 14, 1893.

Tolls.

Lawful structure and post route.

Proviso.
Postal telegraph.

Secretary of War to approve plans, etc.

Use by railroad companies.

Compensation.

Aids to navigation.

Lights, etc.
Changes.

Amendment, etc.

Commencement and completion.

CHAP. 114.—An act granting additional quarantine powers and imposing additional duties upon the Marine-Hospital Service.

February 15, 1893.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any merchant ship or other vessel from any foreign port or place to enter any port of the United States except in accordance with the provisions of this act and with such rules and regulations of State and

Quarantine.

Entry of vessels violating health rules unlawful.

Penalty.	municipal health authorities as may be made in pursuance of, or consistent with, this act; and any such vessel which shall enter, or attempt to enter, a port of the United States in violation thereof shall forfeit to the United States a sum, to be awarded in the discretion of the court, not exceeding five thousand dollars, which shall be a lien upon said vessel, to be recovered by proceedings in the proper district court of the United States. In all such proceedings the United States district attorney for such district shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.
Proceedings.	
Consular bill of health required.	SEC. 2. That any vessel at any foreign port clearing for any port or place in the United States shall be required to obtain from the consul, vice-consul, or other consular officer of the United States at the port of departure, or from the medical officer where such officer has been detailed by the President for that purpose, a bill of health, in duplicate, in the form prescribed by the Secretary of the Treasury, setting forth the sanitary history and condition of said vessel, and that it has in all respects complied with the rules and regulations in such cases prescribed for securing the best sanitary condition of the said vessel, its cargo, passengers, and crew; and said consular or medical officer is required, before granting such duplicate bill of health, to be satisfied that the matters and things therein stated are true; and for his services in that behalf he shall be entitled to demand and receive such fees as shall by lawful regulation be allowed, to be accounted for as is required in other cases.
Contents.	
Fees.	
Detail of medical officer at consulate.	The President, in his discretion, is authorized to detail any medical officer of the Government to serve in the office of the consul at any foreign port for the purpose of furnishing information and making the inspection and giving the bills of health hereinbefore mentioned. Any vessel clearing and sailing from any such port without such bill of health, and entering any port of the United States, shall forfeit to the United States not more than five thousand dollars, the amount to be determined by the court, which shall be a lien on the same, to be recovered by proceedings in the proper district court of the United States. In all such proceedings the United States district attorney for such district shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.
Penalty for vessel violating.	
Proceedings.	
Marine-Hospital Service to assist local health boards to enforce rules, etc.	SEC. 3. That the Supervising Surgeon-General of the Marine Hospital Service shall, immediately after this act takes effect, examine the quarantine regulations of all State and municipal boards of health, and shall, under the direction of the Secretary of the Treasury, co-operate with and aid State and municipal boards of health in the execution and enforcement of the rules and regulations of such boards and in the execution and enforcement of the rules and regulations made by the Secretary of the Treasury to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, and into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia; and all rules and regulations made by the Secretary of the Treasury shall operate uniformly and in no manner discriminate against any port or place; and at such ports and places within the United States as have no quarantine regulations under State or municipal authority, where such regulations are, in the opinion of the Secretary of the Treasury, necessary to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and at such ports and places within the United States where quarantine regulations exist under the authority of the State or municipality which, in the opinion of the Secretary of the Treasury, are not
Rules to operate uniformly.	
Additional rules, etc., by Secretary of the Treasury where local regulations are inadequate.	

sufficient to prevent the introduction of such diseases into the United States, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, the Secretary of the Treasury shall, if in his judgment it is necessary and proper, make such additional rules and regulations as are necessary to prevent the introduction of such diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and when said rules and regulations have been made they shall be promulgated by the Secretary of the Treasury and enforced by the sanitary authorities of the States and municipalities, where the State or municipal health authorities will undertake to execute and enforce them; but if the State or municipal authorities shall fail or refuse to enforce said rules and regulations the President shall execute and enforce the same and adopt such measures as in his judgment shall be necessary to prevent the introduction or spread of such diseases, and may detail or appoint officers for that purpose. The Secretary of the Treasury shall make such rules and regulations as are necessary to be observed by vessels at the port of departure and on the voyage, where such vessels sail from any foreign port or place to any port or place in the United States, to secure the best sanitary condition of such vessel, her cargo, passengers, and crew; which shall be published and communicated to and enforced by the consular officers of the United States. None of the penalties herein imposed shall attach to any vessel or owner or officer thereof until a copy of this act, with the rules and regulations made in pursuance thereof, has been posted up in the office of the consul or other consular officer of the United States for ten days; in the port from which said vessel sailed; and the certificate of such consul or consular officer over his official signature shall be competent evidence of such posting in any court of the United States.

Enforcement.

Rules for vessels from foreign ports.

Rules to be posted in consulate.

Sec. 4. That it shall be the duty of the supervising Surgeon-General of the Marine Hospital Service, under the direction of the Secretary of the Treasury, to perform all the duties in respect to quarantine and quarantine regulations which are provided for by this act, and to obtain information of the sanitary condition of foreign ports and places from which contagious and infectious diseases are or may be imported into the United States, and to this end the consular officer of the United States at such ports and places as shall be designated by the Secretary of the Treasury shall make to the Secretary of the Treasury weekly reports of the sanitary condition of the ports and places at which they are respectively stationed, according to such forms as the Secretary of the Treasury shall prescribe; and the Secretary of the Treasury shall also obtain, through all sources accessible, including State and municipal sanitary authorities throughout the United States, weekly reports of the sanitary condition of ports and places within the United States, and shall prepare, publish, and transmit to collectors of customs and to State and municipal health officers and other sanitarians weekly abstracts of the consular sanitary reports and other pertinent information received by him, and shall also, as far as he may be able, by means of the voluntary co-operation of State and municipal authorities, of public associations, and private persons, procure information relating to the climatic and other conditions affecting the public health, and shall make an annual report of his operations to Congress, with such recommendations as he may deem important to the public interest.

Duties of Marine-Hospital Service.

Sanitary reports to be made by consuls.

Weekly domestic sanitary reports.

Publication and distribution.

Annual report.

SEC. 5. That the Secretary of the Treasury shall from time to time issue to the consular officers of the United States and to the medical officers serving at any foreign port, and otherwise make publicly known, the rules and regulations made by him, to be used and complied with by vessels in foreign ports, for securing the best sanitary conditions of such vessels, their cargoes, passengers, and crew, before their departure for any port in the United States, and in the course of

Rules to secure sanitary conditions of vessels, etc.

Inspection, etc., on arrival.

Vessels not to enter unless upon health officer's certificate.

Delivery of papers to customs officer.

Infected vessel to be sent to nearest quarantine station.

Certificate after treatment.

Local quarantine.

Suspension of immigration during existence of contagious diseases.

Compensation for use of State buildings, etc.

National board of health abolished.

Vol. 20, p. 484.

Disposition of property.

the voyage; and all such other rules and regulations as shall be observed in the inspection of the same on the arrival thereof at any quarantine station at the port of destination, and for the disinfection and isolation of the same, and the treatment of cargo and persons on board, so as to prevent the introduction of cholera, yellow fever, or other contagious or infectious diseases; and it shall not be lawful for any vessel to enter said port to discharge its cargo, or land its passengers, except upon a certificate of the health officer at such quarantine station certifying that said rules and regulations have in all respects been observed and complied with, as well on his part as on the part of the said vessel and its master, in respect to the same and to its cargo, passengers, and crew; and the master of every such vessel shall produce and deliver to the collector of customs at said port of entry, together with the other papers of the vessel, the said bills of health required to be obtained at the port of departure and the certificate herein required to be obtained from the health officer at the port of entry; and that the bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular or other officer of the United States, over his official signature and seal, shall be accepted as evidence of the statements therein contained in any court of the United States.

SEC. 6. That on the arrival of an infected vessel at any port not provided with proper facilities for treatment of the same, the Secretary of the Treasury may remand said vessel, at its own expense, to the nearest national or other quarantine station, where accommodations and appliances are provided for the necessary disinfection and treatment of the vessel, passengers, and cargo; and after treatment of any infected vessel at a national quarantine station, and after certificate shall have been given by the United States quarantine officer at said station that the vessel, cargo, and passengers are each and all free from infectious disease, or danger of conveying the same, said vessel shall be admitted to entry to any port of the United States named within the certificate. But at any ports where sufficient quarantine provision has been made by State or local authorities the Secretary of the Treasury may direct vessels bound for said ports to undergo quarantine at said State or local station

SEC. 7. That whenever it shall be shown to the satisfaction of the President that by reason of the existence of cholera or other infectious or contagious diseases in a foreign country there is serious danger of the introduction of the same into the United States, and that notwithstanding the quarantine defense this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce the same is demanded in the interest of the public health, the President shall have power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate and for such period of time as he may deem necessary.

SEC. 8. That whenever the proper authorities of a State shall surrender to the United States the use of the buildings and disinfecting apparatus at a State quarantine station, the Secretary of the Treasury shall be authorized to receive them and to pay a reasonable compensation to the State for their use, if, in his opinion, they are necessary to the United States.

SEC. 9. That the act entitled "An act to prevent the introduction of infectious or contagious diseases into the United States, and to establish a national board of health," approved March third, eighteen hundred and seventy-nine, be, and the same is hereby, repealed. And the Secretary of the Treasury is directed to obtain possession of any property, furniture, books, paper, or records belonging to the United States which are not in the possession of an officer of the United States under the Treasury Department which were formerly in the use of the National Board of Health or any officer or employee thereof.

Approved, February 15, 1893.

Exhibit B

EO 5143

Executive Orders

Executive Order 5143. June 21, 1929

Executive Order

Restricting for the time being the transportation of passengers from certain ports in the Orient to a United States port.

Whereas there have arrived periodically at Pacific Coast ports since November 1928, a total of 17 trans-pacific passenger-carrying vessels with epidemic cerebro-spinal meningitis infection existing on board among Oriental steerage passengers;

And Whereas the continued arrival of vessels having epidemic cerebrospinal meningitis infection on board has overtaxed the combined available quarantine facilities of federal and local health authorities and that notwithstanding the quarantine defense, there exists danger of introducing this disease into the United States;

Therefore in order to prevent the further introduction of epidemic cerebrospinal meningitis from foreign ports into the United States, by virtue of the authority vested in me by Section 7 of the Act of Congress approved February 15, 1893, entitled "An Act granting additional quarantine powers and imposing additional duties upon the Marine Hospital Service", it is ordered that no persons may be introduced directly or indirectly by transshipment or otherwise into the United States or any of its possessions or dependencies from any port in China (including Hong Kong) or the Philippine Islands for such period of time as may be deemed necessary, except under such conditions as may be prescribed by the Secretary of the Treasury.

This order shall take effect from and after this date.

HERBERT HOOVER

THE WHITE HOUSE

June 21, 1929.

[No. 5143]

Exhibit C

**PRESIDENT HOOVER'S ORDER FOR
CONTROL OF MENINGITIS
EXECUTIVE ORDER**

**Restricting for the Time Being the Transportation of Passengers From
Certain Ports in the Orient to a United States Port.**

Whereas, there have arrived periodically at Pacific Coast ports since November, 1928, a total of 17 trans-Pacific passenger-carrying vessels with epidemic cerebrospinal meningitis infection existing on board among Oriental steerage passengers; and

Whereas, the continued arrival of vessels having epidemic cerebrospinal meningitis infection on board has overtaxed the combined available quarantine facilities of federal and local health authorities, and that notwithstanding the quarantine defense, there exists danger of introducing this disease into the United States;

Therefore, in order to prevent the further introduction of epidemic cerebrospinal meningitis from foreign ports into the United States, by virtue of the authority vested in me by section 7 of the act of congress approved February 15, 1893, entitled "An act granting additional quarantine powers and imposing additional duties upon the Marine Hospital Service", it is ordered that no persons may be introduced directly or indirectly by transshipment or otherwise into the United States or any of its possessions or dependencies from any port in China (including Hongkong) or the Philippine Islands for such period of time as may be deemed necessary, except under such conditions as may be described by the Secretary of the Treasury.

This order shall take effect from and after this date.

HERBERT HOOVER

The White House,
June 21, 1929.

No. 5143

**REGULATIONS GOVERNING THE EMBARKATION OF PASSENGERS
AND CREW AT PORTS IN CHINA AND THE PHILIPPINE IS-
LANDS AND THEIR TRANSPORTATION TO UNITED STATES
PORTS PRESCRIBED IN ACCORDANCE WITH THE PROVISIONS
OF EXECUTIVE ORDER APPROVED JUNE 21, 1929.**

A. REGULATIONS GOVERNING EMBARKATION.

1. Persons will be permitted to embark for United States ports only under the supervision of a medical officer of the United States Public Health Service and only from the ports of Shanghai and Hongkong in China, and Manila in the Philippine Islands; provided that approved facilities for preembark-

324

ation detention and official observation, as prescribed herein, are available and are satisfactorily used.

2. Cabin passengers and ships' officers will be permitted to only embark from such ports upon presentation of acceptable evidence that:

(a) Official medical inspection determines such person to be without rise of temperature and free from communicable or quarantinable disease;

(b) The person has not lived within two weeks prior to embarkation in premises infected with epidemic cerebrospinal meningitis, nor in a district in which such disease is prevalent.

3. Steerage passengers and crew will be permitted to embark only in such ports following:

(a) Presentation of acceptable evidence that competent bacteriological examinations of nose and throat for meningococci has been made with negative results within three days of embarkation.

(b) Detention in small isolated groups in an approved quarantine camp or compound under conditions satisfactory to a medical officer of the United States Public Health Service for not less than fourteen days prior to embarkation, during which period medical inspections shall have been made twice daily and no case of cerebrospinal meningitis shall have been detected in the quarantined group under observation.

4. No persons other than the ships' officers and cabin passengers shall be allowed to go ashore in ports in China except for disembarkation, and intercommunication between those on board and persons from shore will not be permitted.

B. REGULATIONS GOVERNING TRANSPORTATION.

1. Cabin passengers may be transported in accordance with the provisions of the Navigation Act of 1882.

2. Steerage passengers may be transported in numbers not to exceed 25 per cent of the total number allowed under the provisions of the Navigation Act of 1882, provided that:

(a) Steerage passengers embarked at each port shall be maintaining respectively in noncommunicating groups;

(b) Separate mess gear shall be used for each group, and shall be sterilized in an approved manner after each use. The use of common drinking cups and common towels is prohibited.

Personal cleanliness of steerage passengers shall be enforced for the entire voyage, and adequate soap and bathing water shall be provided as approved;

(c) Medical inspection shall be made twice daily en route by the ship's doctor, who shall immediately isolate in the ship's hospital or other suitable quarters any persons suspected of having a communicable disease;

(d) All measures practicable shall be taken on board to reduce individual contacts to a minimum, and especially attention shall be given to avoiding chilling exposure and to providing ample ventilation.

C. REGULATIONS GOVERNING VESSELS ARRIVING AT UNITED STATES PORTS UPON WHICH CASES OF MENINGITIS HAVE OCCURRED EN ROUTE.

1. All cases of meningitis shall be removed from the vessel and detained in quarantine for a period of not less than three weeks from the beginning of the disease and may be discharged following such period only when bacteriological examination of the nose and throat is negative for meningococci.

2. The immediate contacts of cases occurring among the cabin passengers, ships' officers and crew shall be removed from the vessel and detained in quarantine for not less than 14 days, and may be discharged following such period only when bacteriological examination of the nose and throat is negative for meningococci.

3. When any case occurs among the steerage passengers, all the steerage passengers shall be considered contacts and shall be removed from the vessel and held in quarantine detention for a period of not less than 14 days and may be discharged following such period only when bacteriological examination of the nose and throat is negative for meningococci; provided that in the discretion of the quarantine officer only the steerage passengers comprising the group in which the case occurs may be treated as contacts, and the other separate groups of steerage passengers may be released without detention.

Approved: July 11, 1929.

OGDEN L. MILLS,
Acting Secretary of the Treasury.

Exhibit D

ABSTRACT OF SANITARY REPORTS.

VOL. VII. WASHINGTON, D. C., SEPTEMBER 2, 1892. No. 36.

Published at the Marine-Hospital Bureau in accordance with act of Congress of April 29, 1878.]

UNITED STATES.

CIRCULAR.

Quarantine restrictions upon immigration to aid in the prevention of the introduction of cholera into the United States.

TREASURY DEPARTMENT,
*Office of the Supervising Surgeon-General,
U. S. Marine-Hospital Service,
Washington, D. C., September 1, 1892.*

*To Collectors of Customs, Medical Officers of the Marine-Hospital Service,
Foreign Steamship Companies, State and local Boards of Health:*

It having been officially declared that cholera is prevailing in various portions of Russia, Germany and France, and at certain ports in Great Britain, as well as in Asia, and it having been made to appear that immigrants in large numbers are coming into the United States from the infected districts aforesaid, and that they and their personal effects are liable to introduce cholera into the United States, and that vessels conveying them are thereby a direct menace to the public health, and it having been further shown that under the laws of the several States quarantine detentions may be imposed upon these vessels a sufficient length of time to insure against the introduction of contagious diseases, it is hereby ordered that no vessel from any foreign port carrying immigrants shall be admitted to enter at any port of the United States until said vessel shall have undergone a quarantine detention of twenty days (unless such detention is forbidden by the laws of the State or the regulations made thereunder) and of such greater number of days as may be fixed in each special case by the State authorities.

This circular to take immediate effect except in cases of vessels afloat at this date, which will be made the subject of special consideration upon due application to the Department.

WALTER WYMAN,
Supervising Surgeon-General, U. S. Marine-Hospital Service.

Approved:

CHARLES FOSTER,
Secretary of the Treasury.

Approved:

BENJ. HARRISON.

Exhibit E

COVID-19 CAPIO

U.S. Customs and Border Protection (CBP) and specifically the United States Border Patrol (USBP) is supporting the U.S. Government's response to the coronavirus disease (abbreviated "COVID-19")

The Director of the Centers for Disease Control and Prevention (CDC) under the Authority of the Public Health Service Act has directed CBP to prohibit the introduction of certain persons into the United States who, due to the existence of COVID-19 in countries or places from which persons are traveling, create a serious danger of the introduction of such disease into the United States.

When implementing the order, USBP is not operating pursuant to its authorities under Titles 8 or 19. However, Border Patrol agents may rely on their training and experience in detecting, apprehending and determining whether persons are subject to the CDC order, including but not limited to the following considerations: physical observation, use of sensors and technology, physical indicators and tracking techniques, information from third-parties, and deductive techniques.

Encounter

- Enforcement efforts on the SWB and NB will be conducted as close to the physical border as practical with the objective to intercept aliens that are potentially infected with COVID-19 before further exposing or contaminating the U.S. public.
- Determine if individual encountered is a U.S. Citizen or an alien.
- U.S. Citizens and Lawful Permanent Residents are not subject to the CDC order and will be processed under existing CBP authorities.

Determine whether an alien is subject to the CDC order

- Based on training, experience, physical observation, technology, questioning and other considerations, if an agent believes that it is more likely than not that a person is an alien seeking to enter the United States, without proper travel documentation or otherwise subject to travel restrictions at or between a POE, coming from or transiting through Canada or Mexico (regardless of their country of origin), and if such a person was encountered within the area of operation of a Border Patrol station or POE operated by CBP, the CBP officer or agent shall apply the CDC order to the person in accordance with the procedures below.
- Domiciled aliens encountered within the US will be processed under existing Title 8 authorities and processes. To the extent practical, USBP will leverage field deployed mobile biometric devices to perform immigration and criminal history checks in real-time for officer safety.

Processing

- To the maximum extent possible all processing will be done in the field. Only in exigent circumstances will aliens be taken into permanent CBP facilities.
- Once USBP determines an alien is subject to the CDC order, in the field and to the extent practical, USBP will capture a subject's biographical information and archive data appropriately.

- Agents are not to place subjects in assigned vehicles
- Property is not to be taken into custody

The following recommendation will apply for guidance to the field:

At any time a subject is determined to no longer be amenable under Title 42 CDC Order agents will process under existing statutory authorities found in Title 8 of the US code. The authority to make this determination resides with the Chief Patrol Agent and cannot be delegated below the Watch Commander position. Subjects taken into custody under Title 8 must be processed under normal Title 8 guidelines (e.g., ER, NTA, etc...)

- Agents are to consider officer safety and safety to the general public at all times.
- The appropriate PPE will be utilized
- Subjects will only be placed in a designated transport vehicle and/or a designated staging area

Upon initial encounter the agent will determine if subject is amenable to expulsion under Title 42 CDC Order

- Contact TOC/Radio Room or utilize **e3 Mobile device** to create a **TSM Event #** under **‘Operation Capio’** and initiate **e3 Event** from TSM
- Include the number of subjects encountered and verify that **‘Operation Capio’** is associated with designated **e3 Event** and obtain both **TSM/e3 Event #’s**
- Record both **TSM/e3 #’s** on **Field Intake Form** and fill in the necessary information required
- Utilize **e3 Mobile device** to enter biographical information and role fingerprints for **Search Only**
- Based on results, should subject still be amenable to being expelled, subject will be transported to the designated Port of Entry – Should an agent determine a subject is not amenable to expulsion refer to **NON DEPORTABLE/IN CUSTODY**
- **Field Intake Forms** will be required to be brought back to station or designated processing areas for data entry into **TSM/e3 Intake (Note: Ensure that ALL required information is entered on the Field Intake Form)**

Data Entry of **Field Intake Form** information

- Designated processing personnel will input information from the **Field Intake Form** into the appropriate **e3 Event #**
- Generate an **I-44** under the appropriate **e3 Event #** in accordance to provided information below (Note: Efforts to keep Family Units together should be considered at all times)
- For the purpose of Title 42 the following definitions will apply in regard to Family Units and Unaccompanied Juveniles:
 - **Family Units:** A person or persons accompanied by **ANY** relative
 - **Unaccompanied Juvenile:** A minor under the age of 18 and **NOT** accompanied by a relative
 - Dispositions for all subjects amenable to immediate expulsion

NON DEPORTABLE/NOT IN CUSTODY

I-44 Narrative Required Information:

Subject is **one of total number in group**, encountered in **CITY, STATE**. Subject appeared to have no illness or injuries. Subject was removed through the **POE Name** under "Operation CAPIO", in accordance with Title 42 U.S.C Section 265.

Subject is member of a Family Unit:

FAMILY MEMBER 1: Subjects Name

FAMILY MEMBER 2:

FAMILY MEMBER 3

NON DEPORTABLE/IN CUSTODY

The following disposition of **NON DEPORTABLE/IN CUSTODY** will apply to all subjects who cannot be expelled in an expeditious manner and are required to be transferred to a facility. This is necessary in order to comply with Transport, Escort, Detention, Search (TEDS) & e3 Detention Module (e3 DM).

- Subjects not amenable to being expelled: TSDB, CIMENT, Aggravated Felon, Injured Alien, Non-Immigration Felony Convictions, etc.... or otherwise determined by the Sector Chief Patrol Agent or designated official
- Subjects expelled via flights as appropriate or sent to designated Quarantine Facility
- Subjects non amenable to being expelled via a POE – agents will request an **ICAD Ticket #** and record on Field Intake Form and subjects will be transferred via local guidelines
- Based on available evidence and only for extenuating circumstances, agents may determine to process under existing statutory authorities found in Title 8 of the US code. The authority to make this determination resides with the Chief Patrol Agent and cannot be delegated below the Watch Commander position. Subjects taken into custody under Title 8 must be processed under normal Title 8 guidelines (e.g., ER, NTA, etc...)

Transportation

USBP will have dedicated transportation vehicles with separation between agents and subjects encountered to minimize your exposure. At no time shall subjects be transported in USBP vehicles not designated as COVID-19 transportation vehicles unless exigent circumstances exist.

- Subjects will be transported to the nearest POE and immediately returned to Mexico or Canada, depending on their point of transit.
- Subjects encountered that are not amenable to immediate expulsion to Mexico or Canada, will be transported to a dedicated facility for limited holding prior to expulsion to the alien's country of citizenship. This varies by sector but should be a tent, soft-sided facility or pre-designated CBP/USBP facility with dedicated space.
- ICE/ERO will take custody of any subject cleared by HHS or appropriate medical personnel and follow established procedures under Title 8 or Title 42 as applicable.

Vehicles utilized to temporarily hold subjects will undergo the appropriate sanitation procedures in place to minimize exposure and possible spread of virus

Convention Against Torture Claim

Aliens that make an affirmative, spontaneous and reasonably believable claim that they fear being tortured in the country they are being sent back to, will be taken to the designated station and referred to USCIS. **Agents should seek Supervisory Guidance.**

- Notify USCIS
 - USCIS determines positive, converted to Title 8, turn over to ERO and entered into 240 proceedings for an Asylum hearing based on Torture.
 - Interview by Asylum Officer while in our custody
 - Secondary review Supervisory Asylum Officer
 - USCIS determines negative, continue under Title 42, expel to Mexico or Other.

**SUPPLEMENTAL DECLARATION OF LINDA CORCHADO, ESQ., IN SUPPORT OF
PLAINTIFF'S EMERGENCY MOTION FOR STAY OF REMOVAL**

1. I am Linda Corchado, Esq., the Legal Director of Las Americas Immigrant Advocacy Center. I am counsel to J.B.B.C. in his administrative immigration matters, and previously submitted a declaration in support of his emergency motion for a stay of removal.
2. I submit this declaration to address the screening J.B.B.C. purportedly received for his claims under the Convention Against Torture ("CAT"), which occurred after the submission of my initial declaration.
3. On the afternoon of June 8, 2020, upon learning of J.B.B.C.'s case, I promptly notified the El Paso ICE Field Office and Office of Chief Counsel that my client fears persecution and torture should he be expelled to Honduras. I requested that my client receive a screening for his claims. In an e-mail on June 9, I further informed both the Field Office and Office of Chief Counsel that "[i]t is clear my client has an asylum and withholding/CAT claim," and that "I ask that you transfer my client to ORR."
4. Although I had put both offices on notice that I was the attorney of record, I was never notified by USCIS, DHS or ICE that my client had been scheduled for a CAT screening.
5. I first made contact with J.B.B.C. midday on June 9, 2020. We had a conversation while he was in transit from the El Paso International Airport to an undisclosed hotel in El Paso. I made our conversation brief since he was within earshot of the people who were accompanying J.B.B.C.
6. Late afternoon on June 9, 2020, after J.B.B.C. had been returned to the El Paso hotel, he and I spoke via phone. On that call, I learned for the first time that he had spoken with someone who asked him about his fears of returning to Honduras. From his description of the conversation, it seemed to have been a type of screening for CAT.
7. J.B.B.C. told me that shortly after arriving at the hotel, an officer handed him a phone. He asked who was on the phone, and he was told an officer wants to talk to him about his claim. My client was not given any advance warning that this call would take place, he was not given the opportunity to reschedule the interview, nor the opportunity to have his attorney present.
8. I was not notified in advance that this screening was to take place, even though I had repeatedly made clear with DHS officers that I am his lawyer.
9. My client informed me that at the start of the interview the officer stressed that he could only speak about the harms he himself had directly experienced. My client understood this to mean that he could only discuss the harm that he personally had suffered. As a result, he did not discuss the harm and murders that others suffered, including his family members, even though the threats to his life are the result of his having knowledge of

such harms. For example, my client did not discuss the fact that his uncle is a well-known politician in his town who has been persecuted for refusing to go along with corruption, nor that his immediate family members suffered violence for reasons that are recognized as a basis for asylum, such as based on their sexuality.

10. My client has also directly witnessed harm to others, such as his neighbor who was murdered right outside his aunt's store, which also served as their home. Since his father is an asylum seeker in the United States, his aunt and uncle are his de facto parents in Honduras. The gangs were aware that he saw the murder, which is highly relevant to his claims of persecution.
11. Preparing for a client's screening interview can be an extensive process, because asylum seekers have no knowledge of the U.S. immigration system and do not know how to respond to an asylum officer's questions.
12. Such preparation is especially critical for minors, for several reasons. Minors are frequently less likely to understand their rights and often have greater difficulty conveying a coherent factual narrative. As importantly, minors will also not know the full story because adults will often shield them from the harrowing aspects of their situation. In this case, for example, after my client heard the gunshots and saw the body of a man murdered in front of his aunt's store, men came to threaten him and his family, since the family were potential witnesses. My client was not home at the time that the men made these threats, and his aunt chose not to inform him. Instead, she informed my client's father of the threat to his son, explaining that his son was now in grave danger if he remained in Honduras. Had my client been able to even minimally prepare for his screening, he would have been informed of this threat and known to inform the screening officer.
13. Las Americas has an entire program dedicated to helping asylum seekers with similar screening interviews, including a know your rights portion and a lengthy intake to better understand the persecution claims. In addition, our office screens for trauma and post-traumatic stress disorder, as we have noticed an uptick in clients suffering from exceptional trauma and anxiety, which can impact their ability to accurately represent themselves before an officer. My client was denied the opportunity to receive these services.
14. On June 11, 2020, the day after the screening interview, J.B.B.C. was informed that he had not passed his CAT screening. I have requested any paperwork or documentation concerning the screening process, including the notes of the officer and any written memorialization of the decision. I have thus far received only a short notice, titled "42 U.S.C. § 265 Convention Against Torture Assessment Notice," that provides only an "x" mark on a check box that says "you did not establish it is more likely than not that you will be tortured in **Honduras**." That notice, redacted only to shield my client's full name, is attached to this declaration.

15. I have not received any further documentation of any kind, including interview notes or any further analysis or explanation of the decision; or any indication the decision was reviewed by a supervisor; or any indication that my client was advised of any right to review by an immigration judge.
16. My client is feeling high levels of stress, depression and anxiety. His voice often breaks when he talks about his fear of returning to Honduras and how desperate he is to see his father. He continues to remark on his sense of hopelessness and isolation.

I declare under the penalty of perjury, under the laws of the United States and Texas, that the foregoing is true and correct to the best of my knowledge.

Date: June 21, 2020



Linda Corchado
Attorney for J.B.B.C.