



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

November 18, 2020

MEMORANDUM FOR: Directors, Field Operations
Office of Field Operations

FROM: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
(A) Executive Director
Admissibility and Passenger Programs
Office of Field Operations

SUBJECT: Injunction Prohibiting DHS from Expelling Certain Minors from the
United States under Title 42

On November 18, 2020, Judge Sullivan issued a preliminary injunction, prohibiting DHS from expelling certain minors, defined as class members, from the United States under Title 42. *P.J.E.S. v. Wolf, et al.*, No. 1:20-cv-02245 (D.D.C. Aug. 14, 2020). As the order went into effect immediately, operational procedures must be amended to immediately prohibit the expulsion of class members under Title 42.

The court defined class members as “[a]ll unaccompanied noncitizen children who (1) are or will be detained in U.S. government custody in the United States, and (2) are or will be subjected to expulsion from the United States under the CDC Order Process.” In essence, a class member is any minor in the United States subject to the CDC Order who would otherwise be an Unaccompanied Alien Child (UAC) under Title 8. A UAC, as defined by the Homeland Security Act, is a child who: (a) has no legal status in the United States; (b) has not attained 18 years of age; and (c) does not have a parent or legal guardian in the United States or whose parent or legal guardian is not able to provide care and physical custody.

To be a class member, exempt from expulsion under Title 42, the UAC must have crossed the limit line/queue point and entered the United States. Thus, this injunction solely applies to UACs whose entry was not prevented at the limit line/queue point. Any alien subject to the CDC Order whose entry is prevented at the limit line/queue point should continue to be processed as covered aliens under the CDC Order, per existing procedures.

All UACs shall continue to be transferred to the custody of the Department of Health and Human Services (HHS) as expeditiously as possible, as required by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). UACs should *generally* be transferred to a licensed facility within 72 hours of determining they are UACs. However, this may not always be possible due to exceptional circumstances, including those posed by the COVID-19 pandemic.

Consistent with existing policy, all minors (accompanied and unaccompanied) must be prioritized for processing and transferred out of OFO custody as expeditiously as possible. Additionally, all minors in OFO custody must be afforded the amenities and treatment required by the *Flores* Settlement Agreement, the CBP’s National Standards on Transport, Escort, Detention, and Search (TEDS) policy, and the CBP Medical Directive.

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Headquarters POCs: Enforcement Programs Division (EPD)
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Office: Admissibility and Passenger Programs (APP)

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