United States Government Accountability Office

Report to Congressional Committees

June 2021

BORDER SECURITY

CBP's Response to COVID-19

GAO@100
A Century of Non-Partisan Fact-Based Work

GAO-21-431

GAO@100 Highlights

Highlights of GAO-21-431, a report to congressional committees

June 2021

BORDER SECURITY

CBP's Response to COVID-19

Why GAO Did This Study

The COVID-19 pandemic impacted nearly all aspects of society, including travel to and from the U.S. In response to COVID-19, the administration issued executive actions with the intention of decreasing the number of individuals entering the U.S. and reducing transmission of the virus. Within CBP, OFO is responsible for implementing these actions at ports of entry through which travelers enter the U.S., and Border Patrol is responsible for patrolling the areas between ports of entry to prevent individuals and goods from entering the U.S. illegally. Based on their role in facilitating legitimate travel and trade and securing the borders, CBP employees risk exposure to COVID-19 in the line of duty.

GAO was asked to review how CBP managed its field operations in response to the COVID-19 pandemic. This report describes: (1) available data on the number of CBP employees diagnosed with COVID-19 and unable to work; (2) actions CBP has taken related to protecting its workforce and the public from COVID-19; and (3) the extent to which CBP adjusted operations in response to the pandemic and related travel restrictions. GAO reviewed key guidance documents and analyzed data on travel and trade at ports of entry, Border Patrol enforcement, and COVID-19 exposures among CBP employees. GAO also interviewed officials at CBP headquarters, employee unions' representatives, and 12 CBP field locations, selected for factors such as geographic diversity, traffic levels, and COVID-19 infection rates.

View GAO-21-431. For more information, contact Rebecca Gambler at (202) 512-8777 or GamblerR@gao.gov.

What GAO Found

According to data from the Department of Homeland Security's U.S. Customs and Border Protection (CBP), through February 2021, over 7,000 Office of Field Operations (OFO) and U.S. Border Patrol employees reported being infected with COVID-19, and 24 died due to COVID-19-related illnesses. In addition, over 20,000 OFO and Border Patrol employees were unable to work at some point due to COVID-19-related illnesses or quarantining in the same time period. OFO officials noted that employee absences due to COVID-19 did not generally have a significant impact on port operations, given relatively low travel volumes. In contrast, officials interviewed by GAO at three of four Border Patrol locations said that COVID-19 absences had impacted operations to some extent.

COVID-19 Cases within Customs and Border Protection, through February 2021

	Total number of employees	Confirmed COVID-19 cases	Quarantines	Hospitalizations	Deaths
Office of Field Operations	**32,682**	**3,730**	**8,394**	**119**	**20**
U.S. Border Patrol	**21,831**	**3,327**	**12,081**	**105**	**4**

Source: GAO analysis of Customs and Border Protection data. | GAO-21-431

CBP regularly updated guidance, used workplace flexibilities, and implemented safety precautions against COVID-19. Between January and December 2020, CBP updated guidance on COVID-19 precautions and how managers should address possible exposures. CBP also used a variety of workplace flexibilities, including telework and weather and safety leave to minimize the number of employees in the workplace, when appropriate. Meanwhile, CBP field locations moved some processing functions outdoors, encouraged social distancing, and provided protective equipment to employees and the public. In addition, some field locations took steps to modify infrastructure to prevent the spread of COVID-19, such as installing acrylic barriers or improving airflow in facilities. Challenges implementing operational changes included insufficient equipment for telework at three field locations, and shortages of respirators at a quarter of the ports of entry GAO contacted.

CBP adjusted operations in response to COVID-19 and executive actions. As travel and trade volumes declined, some ports of entry reallocated personnel to other operations, such as cargo processing. In contrast, starting in May 2020 Border Patrol encounters with noncitizens steadily increased. As a result, Border Patrol requested additional resources. It also shifted its deployment strategy to operate as closely to the border as practical to intercept individuals who could be infected with COVID-19. Accordingly, some Border Patrol sectors modified interior operations, such as limiting resources at immigration checkpoints. CBP also assisted in implementing a Centers for Disease Control order that provided the ability to quickly expel apprehended individuals.

Contents

Figures

Abbreviations

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CBP	U.S. Customs and Border Protection
CDC	Centers for Disease Control and Prevention
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
JFK	John F. Kennedy International Airport
OFO	Office of Field Operations
PPE	personal protective equipment
Sea-Tac	Seattle-Tacoma International Airport

441 G St. N.W.
Washington, DC 20548

June 14, 2021

Congressional Committees

The Coronavirus Disease 2019 (COVID-19) pandemic has impacted nearly all aspects of society, including sharply reducing travel to and from the United States due to constraints caused by rising infection rates and public health safety measures. In fiscal year 2020, the volume of international air travelers entering the U.S. decreased by about 54 percent, and travelers entering through all modes of transportation decreased by 42 percent from the previous year. Within the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) is the lead federal agency charged with the dual mission of facilitating the flow of legitimate travel and trade at our nation's borders while also keeping terrorists and their weapons, criminals and their contraband, and inadmissible noncitizens out of the country.[1] Within CBP, the Office of Field Operations (OFO) is responsible for operating ports of entry through which travelers enter the U.S., and the Border Patrol is responsible for securing the areas between ports of entry to prevent individuals and goods from entering the U.S. illegally.[2] Based on their role in processing international travelers and preventing illegal entries along the border, the more than 52,000 OFO and Border Patrol employees run the risk of being exposed to COVID-19 in the line of duty.

In response to COVID-19, in 2020 the Trump administration enacted executive actions with the intention of decreasing the number of individuals entering the U.S. and reducing transmission of the virus.[3] These actions apply to travel through land, sea, and air ports of entry as

[1]In this report, we generally use the term "noncitizen" to refer to individuals who would meet the definition of "alien". The Immigration and Nationality Act defines the term "alien" as "any person not a citizen or national of the United States." See 8 U.S.C. § 1101(a)(3).

[2]A port of entry is any officially designated location (seaport, airport, or land border location) where DHS officers or employees are assigned to clear passengers and merchandise, collect duties, and enforce customs laws, and where DHS officers inspect persons entering or applying for admission into, or departing, the U.S. pursuant to U.S. immigration law and travel controls.

[3]Executive actions include actions taken by the administration, such as presidential proclamations, as well as actions taken by executive agencies, such as Centers for Disease Control and Prevention (CDC) orders and DHS travel restrictions. See, e.g., 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020).

well as to apprehensions of individuals attempting to enter the country illegally between ports of entry. For example, OFO implemented presidential proclamations suspending entry into the U.S. by noncitizens.[4] OFO also implemented restrictions limiting entry from Canada and Mexico at land ports of entry and has ceased entry of cruise ships into U.S. ports.[5] These restrictions have affected OFO's day-to-day operations by significantly decreasing the number of people permitted to enter the U.S. at ports of entry. In addition, both OFO and Border Patrol have assisted the Centers for Disease Control and Prevention (CDC) in the enforcement of its March 2020 order, under Title 42 of the U.S. code, which temporarily suspends entry into the U.S. by certain individuals traveling from Canada or Mexico who would otherwise be detained in group settings, and generally remains in effect as of April 2021.[6] This CDC order under Title 42 does not apply to U.S. citizens or legal permanent residents, but to those who would be housed in detention facilities or otherwise detained by CBP. Instead, individuals subject to the order are to be immediately expelled to their country of last transit.

We were asked to review how CBP managed its field operations in response to the COVID-19 pandemic. In addition, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes a provision for GAO to monitor and oversee, offer regular briefings, and publish reports on activities and funding under the CARES Act or any other act to address the COVID-19 pandemic and its effects on the health, economy, and public and private institutions of the United States, including the

[4]Air travel has been restricted, with exceptions for individuals traveling on essential business, who were physically present in certain countries during the 14-day period preceding their entry or attempted entry into the U.S., from mainland China, Iran, Ireland, the United Kingdom, Europe's 26-country Schengen Area (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland), Brazil, and South Africa.

[5]No Sail Order and Suspension of Further Embarkation, 85 Fed. Reg. 16,628 (Mar. 24, 2020).

[6]Pursuant to the Centers of Disease Control and Prevention's March 2020 order and interim final rule, as amended and extended, the introduction of foreign nationals into the U.S. who are subject to the order is temporarily suspended, with limited exceptions, such as for lawful permanent residents and members of the armed forces and their spouses and children. See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020). This order and rulemaking are referred to as "Title 42" because they direct the processing of inadmissible noncitizens under the title of the U.S. Code that pertains to public health (Title 42) as opposed to the title of the U.S. Code that pertains to immigration and nationality (Title 8).

federal government's public health and homeland security efforts.[7] This report: (1) describes available data on the number of OFO and Border Patrol employees diagnosed with COVID-19 and unable to work; (2) describes actions CBP has taken related to protecting its workforce and the public from COVID-19; and (3) addresses the extent to which CBP adjusted operations in response to the COVID-19 pandemic and related travel restrictions.

To address each of our objectives, we conducted interviews with CBP personnel at the headquarters level, including OFO, Border Patrol, the OFO Coronavirus Coordination Cell, the Border Patrol Emergency Operations Center, and CBP's Occupational Safety and Health Division. To obtain information from field personnel, we interviewed managers and frontline staff at selected ports of entry and Border Patrol locations. We selected OFO and Border Patrol field locations for our interviews based on the following factors: geographic variation; a variety of operational environments including land, air, and sea ports of entry for OFO and stations with and without checkpoint operations for Border Patrol; high volumes of passenger traffic or encounters with individuals crossing the border illegally; high numbers of COVID-19 cases among personnel; and recommendations from agency and union officials. Specifically, within OFO, we conducted interviews with CBP officers and managers at a nonprobability sample of eight ports of entry, including three land ports, four airports, and one seaport.[8] For each of these locations, we interviewed officers and managers separately, to ensure that all parties could speak candidly. We also interviewed officials with the Laredo and Seattle OFO field offices, which oversee the ports of entry within their geographic areas of responsibility. Within Border Patrol, we conducted interviews with a nonprobability sample of four Border Patrol sectors on the northern and southern borders, including some stations with

[7]Pub. L. No. 116-136, § 19010(b), 134 Stat. 281, 580 (2020). We regularly issue government-wide reports on the federal response to COVID-19. For the latest report, see GAO, COVID-19: Sustained Federal Action Is Crucial as Pandemic Enters Its Second Year, GAO-21-387 (Washington, D.C.: Mar. 31, 2021). Our next government-wide report will be issued in July 2021 and will be available on GAO's website at https://www.gao.gov/coronavirus.

[8]We conducted interviews with OFO officials at Laredo, San Ysidro, and Detroit land ports of entry; John F. Kennedy International Airport, Chicago O'Hare International Airport, Seattle-Tacoma International Airport, and Toronto Pearson International Airport; and the Miami Seaport.

checkpoint operations.[9] For each Border Patrol sector, we conducted one interview with sector managers, as well as one interview with agents from two stations in the sector and one interview with managers from the same two stations, to gain a broader perspective of how COVID-19 affected their duties. While the views of CBP field officials are not generalizable to all locations, these views provided valuable insight into the impacts the COVID-19 pandemic has had on the OFO and Border Patrol workforce, as well as operational changes made during the pandemic.

To determine the extent to which CBP employees were diagnosed with COVID-19 and unable to work, we analyzed CBP data on employee COVID-19 cases from March 2020 through February 2021, including confirmed cases, hospitalizations, deaths due to COVID-19, and quarantined employees. These data are maintained in CBP's Workforce Incident Tracker, which was established in July 2020, according to CBP officials. To assess the reliability of the data, we conducted electronic testing, reviewed documentation such as guidance for entering data, and interviewed relevant CBP headquarters officials involved with establishing the Workforce Incident Tracker and verifying case data. We found the data are sufficiently reliable to provide approximate summary data of COVID-19 cases, hospitalizations, and deaths among CBP's workforce, as well as the approximate number of employees in quarantine status each month. We also interviewed CBP officials at headquarters and used information from field location interviews, as noted above, to gather perspectives on the extent to which employee illness and quarantine affected operations at ports of entry and Border Patrol stations.

To determine actions CBP took to protect its workforce and the public from COVID-19, we analyzed guidance on COVID-19 precautions and processes, including internal memos and each of seven iterations of the COVID-19 Job Hazard Analysis and each of five iterations of *Guidance for Leadership, Medical Officers, and Supervisors*. We reviewed how CBP's COVID-19 guidance had evolved between January and December 2020. We also examined key CBP policies and procedures enacted to reduce the spread of COVID-19, such as infrastructure modifications, social distancing measures, the use of protective equipment, the use of contact tracing and other precautions, and human capital policies and flexibilities. We conducted interviews with officials at CBP headquarters, union officials, and field locations, as described above, to learn about the

[9]We conducted interviews with Border Patrol officials from the Rio Grande Valley, San Diego, Swanton, and Tucson sectors.

actions CBP has taken to protect its workforce. We also used information from field location interviews to describe how selected locations implemented guidance on COVID-19 precautions and to gain their perspectives on the challenges frontline personnel faced during the pandemic.

For three of those CBP field locations—selected to include one airport, one land port of entry, and one Border Patrol sector with high levels of traffic—we reviewed monitoring camera footage for selected dates and times to provide insight into how the CBP workforce implemented guidance on COVID-19 precautions. Dates and times were selected to provide footage of the busiest time at each location on two separate dates as far apart as possible given the length of time each location maintained the footage. To do so, we recorded actions taken by CBP employees in the footage and assessed whether they were consistent with the guidance in effect at the time the footage was recorded. We then verified the observations through a second review, resolving any differences through discussion between the two reviewers.

To determine the extent to which CBP adjusted operations in response to the COVID-19 pandemic and related travel restrictions, we reviewed travel and trade data at ports of entry and Border Patrol enforcement encounter data to provide context for how CBP's workload changed during the COVID-19 pandemic. Specifically, we reviewed summary data compiled by the Department of Transportation's Bureau of Transportation Statistics, including data on pedestrian, personal vehicle, and commercial truck traffic through ports of entry for calendar years 2019 and 2020. This allowed us to compare OFO's workload at ports of entry during the COVID-19 pandemic to workloads in prior years. To assess the reliability of these data, we reviewed relevant documentation and conducted interviews with knowledgeable officials to understand how the data are processed and validated. We found these data sufficiently reliable for describing OFO's workload before and during the pandemic. We also analyzed Border Patrol enforcement encounter data collected by CBP from calendar year 2018 through 2020 to describe changes during the pandemic. To assess the reliability of these data, we reviewed system documentation, such as data input instructions, and interviewed Border Patrol officials that manage the data system. We found these data sufficiently reliable for describing changes in cross-border traffic.

We also reviewed CBP guidance for implementing executive actions intended to limit the spread of COVID-19, such as travel restrictions at ports of entry and CBP's assistance in implementing the CDC order under

Title 42. Finally, we conducted interviews with CBP headquarters officials in OFO and Border Patrol, including the CBP Occupational Safety and Health Division, the OFO Coronavirus Coordination Cell, and the Border Patrol Emergency Operations Center, to gather headquarters perspectives on operational changes.

We conducted this performance audit from June 2020 to June 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

CBP Roles and Responsibilities

CBP is the lead federal agency charged with a dual mission of facilitating the flow of legitimate travel and trade at our nation's borders while also keeping terrorists and their weapons, criminals and their contraband, and inadmissible noncitizens out of the country. Within CBP, OFO is responsible for operating ports of entry through which travelers enter the U.S., and the Border Patrol is responsible for patrolling the areas between ports of entry to prevent individuals and goods from entering the U.S. illegally.[10]

OFO operates 20 field offices overseeing 328 air, land, and sea ports of entry, and employs more than 32,000 employees. Upon arrival at a port of entry, CBP officers conduct a primary inspection to determine compliance with U.S. law and admissibility to the U.S. A CBP officer is to examine travel documents to ensure their validity and visually match the traveler to the photo identification to confirm the traveler's identity. If further information is required, CBP conducts a secondary inspection, which may include a CBP officer conducting further questioning of travelers or additional examination of the traveler, vehicle, or cargo. In fiscal year

[10]In addition to processing travelers and cargo, OFO enforces import and export laws and regulations of the U.S. and protects the U.S. from foreign animal and plant pests, diseases, and invasive species, among other things. These enforcement actions involve a targeting process in which OFO uses law enforcement, intelligence, and other enforcement data to identify higher-risk individuals, vehicles, or cargo for additional scrutiny upon their arrival at a U.S. port of entry.

2019, OFO processed over 410 million traveler arrivals into the U.S. and nearly 29 million cargo containers.

The Border Patrol has 20 sector offices that coordinate operations at 131 stations across the northern and southern borders of the U.S. It also operates immigration checkpoints within the U.S., in addition to patrolling the land and coastal borders. In fiscal year 2019, nearly 20,000 Border Patrol agents apprehended over 850,000 individuals along U.S. borders. Under its general authority under Title 8 of the U.S. Code, which governs immigration and nationality, Border Patrol has the authority to hold apprehended individuals for general processing prior to transferring them to the appropriate agency for continued custody or release.

At the outset of the COVID-19 pandemic, both OFO and Border Patrol established COVID-19 response teams. Specifically, in February 2020, OFO created the Coronavirus Coordination Cell and in January 2020, Border Patrol activated its Emergency Operations Center and Coronavirus Task Force. These response teams served as clearinghouses intended to ensure that information distributed to the field was consistent with the Department of Health and Human Services' CDC guidance and to provide subject matter experts to answer questions related to COVID-19 precautions and response for CBP employees.

Other CBP offices have also been involved in the response to COVID-19. The CBP Occupational Safety and Health Division, located within the Office of Human Resources Management, provides technical guidance to protect the workforce, including guidance on COVID-19. The CBP Medical Office worked in conjunction with the Occupational Safety and Health Division to provide expertise on the health aspect of the crisis. Outside of CBP, the CDC provided the public and government agencies, including CBP, with guidance on subjects such as infection control, personal protective equipment (PPE) use, and engineering controls.

CBP Implementation of Executive Actions related to COVID-19

In response to COVID-19, the Trump administration issued the following executive actions with the intention of decreasing the number of individuals entering the U.S. and reducing transmission of the virus. These actions apply to travel through land, sea, and air ports of entry as well as to apprehensions of individuals attempting to enter the country illegally between ports of entry.

- On March 20, 2020, the Secretary of Homeland Security temporarily limited travel from both Mexico and Canada into the U.S. via land border, ferry crossing, or rail for any travel that is not deemed

essential.[11] CBP limited entry to the U.S. to essential travel for medical or educational purposes, work in the U.S., emergency response or public health, or legal cross-border trade, for individuals who are not citizens or legal residents. Individuals engaged in official government or military travel and members of the U.S. Armed Forces and their families were also permitted to enter. The action did not restrict entry into the U.S. by citizens or legal residents.

- In March 2020, CDC published a No Sail Order directing cruise ships not voluntarily suspending operations to comply with safety measures as well as a health notice warning to all travelers to defer cruise ship travel.[12] In a revision and renewal to that order in April 2020, cruise lines were required to submit plans to prevent, mitigate, and respond to the spread of COVID-19 on board their ships to ensure a safe work environment for crew members.[13] In October 2020, the CDC began a phased approach to allowing cruise ship operations in U.S. waters, although as of January 2021, no U.S. cruise lines were operating cruises.[14]
- Beginning in January 2020, Presidential proclamations restricted air travel from certain countries, including mainland China, Iran, the United Kingdom, Europe's 26-country Schengen Area, Brazil, and South Africa, citing sustained person-to-person transmission of COVID-19.[15] Under the Presidential proclamations, travel from those countries was prohibited for noncitizens who had been present in these countries during the 14 days preceding entry into the U.S. In addition, travelers who had been in any of those countries within 2

[11]These restrictions do not apply to air, freight rail, or sea travel between the U.S. and Canada and/or Mexico.

[12]No Sail Order and Suspension of Further Embarkation, 85 Fed. Reg. 16,628 (Mar. 24, 2020).

[13]No Sail Order and Suspension of Further Embarkation; Notice of Modification and Extension and Other Measures Related to Operations, 85 Fed Reg. 21,004 (Apr. 15, 2020).

[14]No Sail Order and Suspension of Further Embarkation; Third Modification and Extension of No Sail Order and Other Measures Related to Operations, 85 Fed. Reg. 62,732 (Oct. 5, 2020).

[15]See Proclamation No. 9984, 85 Fed. Reg. 6709 (Jan. 31, 2020). The 26 Schengen Area countries are: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

weeks of their arrival in the U.S. were to be referred to the CDC for an enhanced entry health screening before departing the airport.[16] In September, the CDC ceased this screening, stating that it would instead dedicate resources to other mitigation strategies, including health education for travelers, voluntary collection of contact information from travelers using electronic means, potential testing, country-specific risk assessments, and enhancing training and education of partners in the transportation sector and at U.S. ports of entry.

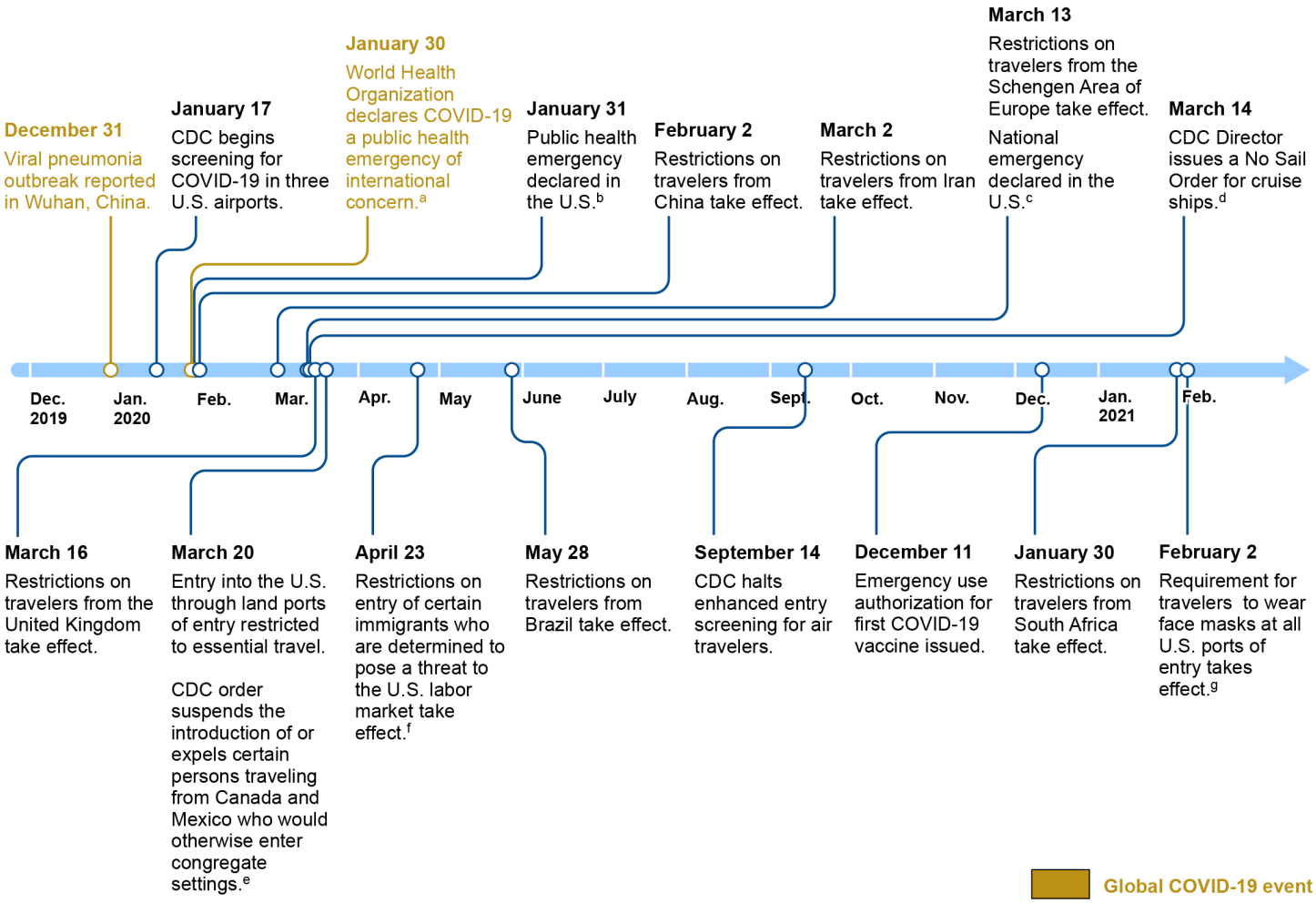
- Finally, a March 2020 CDC order and interim final rule under Title 42 of the U.S. Code allows the government to suspend the introduction of individuals from foreign countries to prevent the spread of communicable diseases.[17] CDC temporarily suspended the introduction of certain individuals who would be detained in congregate settings at land ports of entry traveling from Canada or Mexico to prevent the spread of COVID-19. Title 42 does not apply to U.S. citizens or legal residents, but to those who would be housed in processing centers or otherwise detained by CBP. Instead, these individuals are to be immediately expelled to their country of last transit.

Figure 1 provides an overview of the timing of executive actions in relation to developments in the COVID-19 pandemic.

[16]After being referred to CDC for enhanced screening, travelers were observed for signs of illness, had their temperature taken, completed a questionnaire about symptoms and exposure to persons with COVID-19 and provided contact information in the U.S. Ill travelers and those disclosing exposure to COVID-19 in the previous 14 days were referred for additional public health assessment by a medical officer or to a local health care facility.

[17]See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020). In assisting CDC with implementing the CDC Order under Title 42, CBP is operating pursuant to 42 U.S.C. § 268(b), aiding CDC in the enforcement of its authority pursuant to 42 U.S.C. § 265, 42 C.F.R. § 71.40.

Figure 1: Timeline of Key COVID-19 Pandemic Executive Actions Relevant to U.S. Customs and Border Protection Operations



Source: GAO analysis. | GAO-21-431

Notes:

[a]A Public Health Emergency of International Concern is an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease; and to potentially require a coordinated international response.

[b]Secretary of Health and Human Services Alex M. Azar, II, Determination that a Public Health Emergency Exists, https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx (Jan. 31, 2020).

[c]The Schengen Area of Europe includes 26 countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 Fed. Reg. 15,337 (Mar. 13, 2020).

[d]The No Sail Order stated that, among other things, for cruise ships not voluntarily suspending operations, cruise ships must disembark passengers and crew members only as directed by the U.S.

Coast Guard and not re-embark any passengers or crew or continue operations except as approved by the U.S. Coast Guard or other federal authorities as appropriate.

[e]Pursuant to the Centers of Disease Control and Prevention's March 2020 order and interim final rule, as amended and extended, the introduction of foreign nationals into the U.S. who are subject to the order is temporarily suspended, with limited exceptions, such as for lawful permanent residents and members of the armed forces and their spouses and children. See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020).

[f]This order exempts legal U.S. residents; medical professionals, members of the military, and their families; individuals applying for visas under the Immigrant Investor Program; noncitizens under 21 years of age who are the children or prospective adopted children of U.S. citizens; and other exceptions as approved by the Secretaries of State or Homeland Security.

[g]Executive Order on Promoting COVID-19 Safety in Domestic and International Travel and the CDC Order Regarding the Requirement for Persons to Wear Masks While on Public Conveyances and at Transportation Hubs, Exec. Order 13998, Promoting COVID-19 Safety in Domestic and International Travel, 86 Fed. Reg. 7205 (Jan. 21, 2021).

CBP Data Indicate Over 7,000 CBP Employees Tested Positive for COVID-19 and Over 20,000 Quarantined through February 2021

As frontline workers, CBP officers and Border Patrol agents continue to perform public-facing duties during the pandemic, and some have contracted COVID-19. As shown in figure 2, CBP data indicate that at least 3,730 OFO employees tested positive for COVID-19 and 8,394 were unable to work due to illness or quarantine between February 2020 and February 2021.[18] During the same period, 3,327 Border Patrol field employees tested positive for COVID-19 and 12,081 were unable to work due to quarantine.

[18]CBP counts presumed positive cases of COVID-19 along with positive test results. An individual may be presumed to be positive for COVID-19 if a medical professional determined they had COVID-19, based on symptoms, possible exposure, or other information, and the individual was not tested. We cannot determine whether CBP employees contracted COVID-19 on the job or in some other setting.

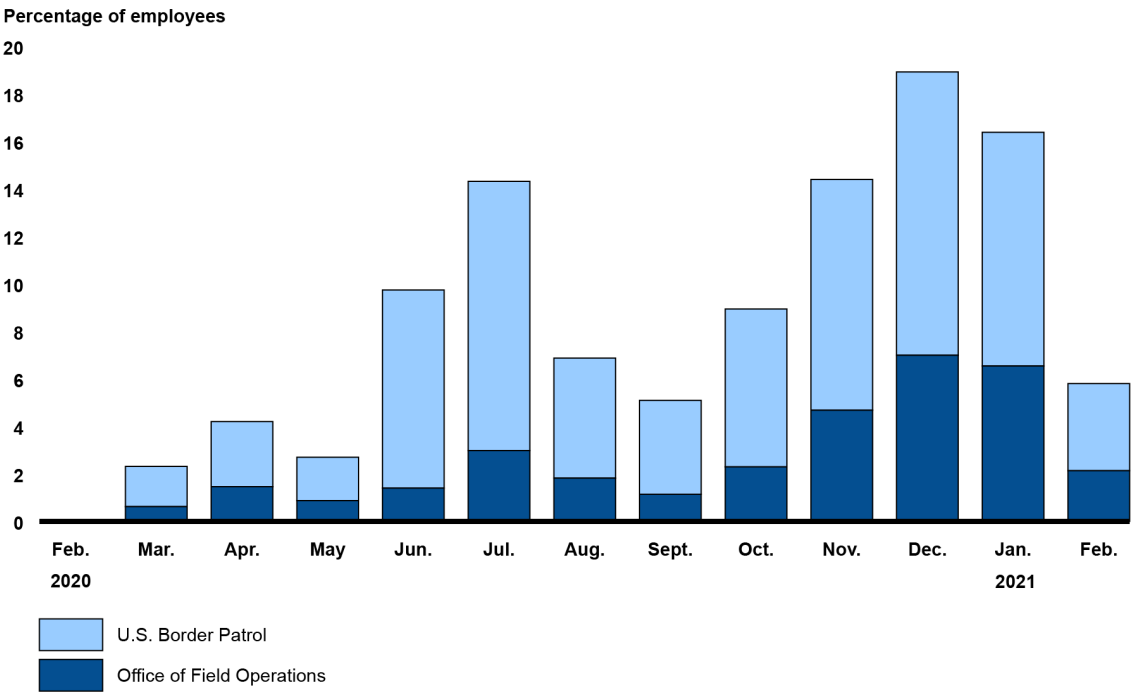
Figure 2: COVID-19 Cases within Offices of Field Operations and U.S. Border Patrol, February 2020 through February 2021

	Total number of employees	Confirmed COVID-19 cases	Quarantines	Hospitalizations	Deaths
Office of Field Operations	**32,682**	**3,730**	**8,394**	**119**	**20**
U.S. Border Patrol	**21,831**	**3,327**	**12,081**	**105**	**4**

Source: GAO analysis of Customs and Border Protection data. | GAO-21-431

According to CBP data, an average of approximately 2.5 percent of OFO employees and 5.9 percent of Border Patrol employees were unable to work for at least some time each month for COVID-related reasons between February 2020 and February 2021 (see figure 3). Officials in CBP's Occupational Safety and Health Division noted that infection rates among CBP employees generally followed the infection rates of the area in which they were located.

Figure 3: Percentage of Employees Unable to Work for at Least Some Period of Time Each Month, February 2020 through February 2021



Source: GAO analysis of CBP data. | GAO-21-431

Note: Averages are based on total employees in OFO as of October 2020 and in Border Patrol as of August 2020.

Officials at ports of entry told us that employee absences related to COVID-19 illness or quarantine did not generally have a significant impact on operations, and in cases where an impact was felt, they were able to adjust to meet staffing needs. For example, managers at three ports of entry we spoke with said that there were never more than a few employees out of work at the same time due to COVID-19, so impacts on operations were minimal. In addition, OFO managers at one airport noted that relatively low passenger volumes lessened the impact and challenges of absent officers. However, officials from one OFO field office said that the impact of officers quarantining was more significant for small- and medium-sized ports of entry because one or two officers in quarantine comprises a larger percentage of that port's workforce, making it difficult to fully staff each shift. To address these situations, CBP authorized overtime and temporarily detailed officers from larger ports of entry to ensure shifts were appropriately staffed. Officials in CBP

headquarters told us that no ports of entry had to close or modify their hours due to employee absences attributed to COVID-19.

In contrast, three of the four Border Patrol sectors we spoke with told us that COVID-19-related absences had impacted their operations to some extent. For instance, at one location, all agents in two specialized units were quarantined for 14 days. Managers told us that these agents' functions could not be performed while they were out because members of those units have certifications not common among other agents. In another instance, a group of training instructors was quarantined at the same time, so their station did not have training capabilities for the 14-day quarantine period. However, officials in headquarters told us that no stations had been unable to complete their missions or had to close due to COVID-19.

CBP Updated Guidance, Used Workplace Flexibilities, and Implemented Safety Precautions Related to COVID-19

CBP provided guidance to its workforce on COVID-19 precautions and contact tracing, updating the guidance as understanding of COVID-19 and effective precautions evolved. The agency also implemented flexibilities for its workforce intended to reduce exposure to co-workers and the public, including Weather and Safety Leave, telework for employees able to do so, and accommodations within the workplace for employees with risk factors for severe COVID-19. Finally, the agency implemented COVID-19 precautions at some field locations, such as moving processing outdoors, encouraging social distancing, and making changes to field location infrastructure. CBP field locations we met with generally reporting having sufficient PPE and cleaning supplies, but noted that there were some shortages early in the pandemic.

CBP Provided Guidance on Workplace Actions to Reduce the Spread of COVID-19

Since the onset of the pandemic, CBP has provided guidance to its employees on COVID-19 precautions and on how managers should address possible exposure, which is available on its internal website.[19] CBP's primary COVID-19 guidance document—the Job Hazard Analysis—identifies the protective measures CBP personnel should take according to the relative risk level of their occupation and work activities. The Job Hazard Analysis was developed by the Occupational Safety and

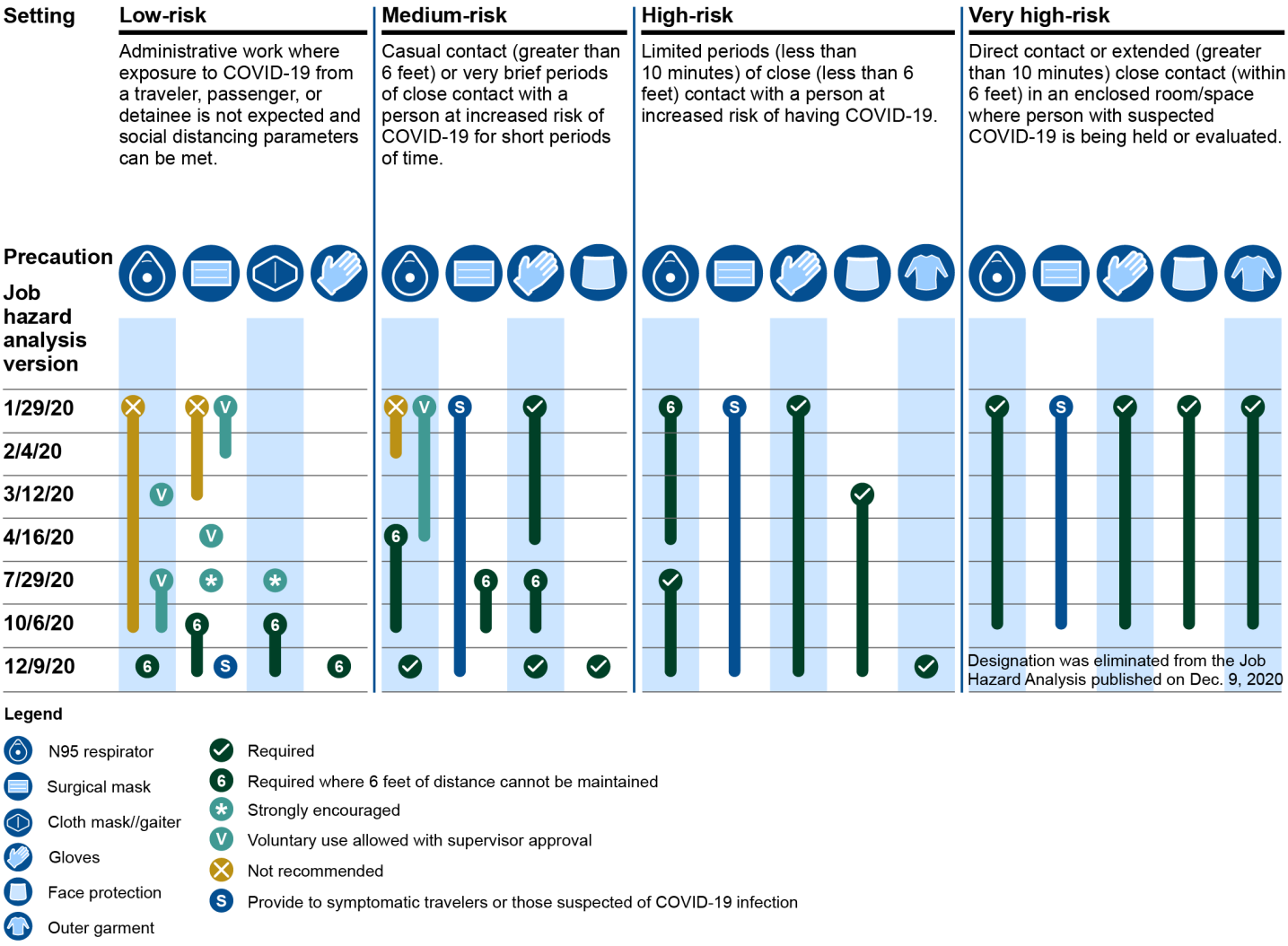
[19]CBP developed a COVID-19 Resource Portal for its internal website, which includes links to COVID-19 guidance.

Health Division with input from other CBP components to provide safe work practices and PPE requirements for each risk level.[20]

CBP released seven iterations of the Job Hazard Analysis between January and December 2020 as guidance evolved with increased understanding of the COVID-19 virus (see Figure 4 below). CBP officials told us that they developed each version to clarify questions they had received and to remain consistent with guidance from CDC and the Occupational Safety and Health Administration. For example, CBP's January 2020 guidance instructed personnel in low-risk environments to take minimal precautions and to wear surgical masks only with a supervisor's approval. In contrast, the guidance issued in October 2020 required the use of cloth face coverings or surgical masks in low-risk environments where social distancing could not be maintained. CBP's October guidance also instructed personnel to carry face coverings at all times in preparation for situations in which they could not maintain social distancing. Similarly, while the January 2020 version of the Job Hazard Analysis required employees to wear disposable gloves in medium-risk situations, by December 2020, requirements for the same situation required N95 respirators and face protection in addition to disposable gloves. Each iteration of the guidance also contains references to relevant guidance from CDC and the Occupational Safety and Health Administration.

[20]CBP develops a specific Job Hazard Analysis for pandemic strains or emerging infectious diseases, such as Ebola, Zika Virus, and COVID-19.

Figure 4: COVID-19 Protection Requirements for Customs and Border Protection Personnel, Per Agency Job Hazard Analysis Guidance



Source: GAO analysis of Customs and Border Protection guidance. | GAO-21-431

Notes:

COVID-19 precautions were referred to as recommendations rather than requirements in the January and February 2020 iterations of the Job Hazard Analysis.

As of October 2020, neck gaiters are not approved as face coverings for OFO employees.

In our review of video footage from three field locations, we observed that Border Patrol agents and CBP officers largely used PPE and surgical

masks in accordance with CBP guidance.[21] However, at one location, we observed that officers generally did not wear masks when interacting with one another, even in cases where they were not maintaining a distance of 6 feet between individuals. Although CBP guidance did not require them to do so at the time, local managers told us that this was not consistent with local guidelines, under which employees should be wearing masks when less than 6 feet apart. They further said they planned to work with officers to make sure they understood the guidance.

Contact tracing. In addition to the Job Hazard Analysis, CBP issued guidance on contact tracing to help agency managers determine the level of risk in an employee's exposure to a traveler, detainee, or fellow employee diagnosed with COVID-19. Managers were to use work schedules and detention logs to determine what individuals were in contact with the ill person and inform them of their exposure. Officials in field locations told us that some aspects of the contact tracing guidance were unclear early in the pandemic, but that the guidance has evolved over time due to updates in more recent iterations. For instance, managers at one OFO location reported that they were initially confused regarding whether contact tracing should be performed based on the date of a positive COVID-19 test or the date on which an employee began to show symptoms, although they were able to obtain clarification by contacting headquarters. Further, a November 2020 update of contact tracing guidance provided more detail, noting that managers should identify personnel exposed to the infected person beginning 2 days prior to the onset of COVID-19 symptoms or a COVID-19 test.

As part of the contact tracing guidance, CBP developed a decision tree with information on actions to take based on the level of exposure for each employee who had contact with the infected individual. Perspectives on the usefulness of contact tracing guidance varied between front-line personnel and managers. For instance, front-line personnel we spoke with at four of the 12 locations specifically commented that the decision tree was not applied consistently at the beginning of the pandemic. For example, one officer told us he was not asked to quarantine after exposure to a traveler who tested positive for COVID-19, while officers who were not directly exposed to that traveler were placed on Weather and Safety Leave for 14 days. A union representing CBP field employees expressed similar concerns in September 2020, noting that the decision

[21]To observe operations during the COVID-19 pandemic, we reviewed video footage recorded on selected dates from June through August 2020 at one Border Patrol facility and two ports of entry.

tree was applied inconsistently, and managers were not focused on understanding the procedures because they may not regularly deal with COVID-19 exposures. However, when asked about CBP guidance, managers at two locations we spoke with singled out the exposure decision tree as being helpful in determining when to send employees home to quarantine and when to keep them at work, and that it was easy to understand. Field officials also noted that the guidance has been updated and clarified over time, and a manager at one location noted that the guidance on the risk of COVID-19 exposures was expanded over time and the most recent iteration encompassed all necessary information.

Training. In addition to written guidance, CBP also provided two virtual training modules on COVID-19 precautions through its online training system. The first was intended for all employees, and provided information about the virus, such as symptoms and methods of transmission, hygiene, social distancing, and mask use. The second was specific to managers and focused on workforce management during the pandemic. None of the officials we spoke with expressed a need for additional training on COVID-19, and some noted that they have regular training on recognizing communicable illnesses and receive training on use of N95 respirators during fit-testing. Officials at one OFO field office told us they put together 8-hour monthly virtual trainings that included topics like the proper use of PPE, social distancing, how employees should conduct themselves outside of work to avoid large gatherings, and other precautions specific to the field office area of responsibility.

CBP Utilized Workplace Flexibilities Intended to Minimize Spread of COVID-19

To minimize the risk of exposure to COVID-19 for its employees, CBP utilized a variety of workplace flexibilities, including telework, Weather and Safety Leave, and modifying assignments to accommodate employees at a higher risk of developing severe COVID-19 illness.

Telework. CBP officers and Border Patrol agents are not generally eligible for telework because their duties are not portable and must be performed on-site, according to CBP officials. However, the agency has permitted administrative employees at both OFO and Border Patrol to telework during the COVID-19 pandemic to decrease transmission. For instance, OFO reported that around 8 percent of the OFO workforce was allowed to telework, comprising over 2,200 employees. In some cases, field locations employed strategies to further decrease the number of individuals at field locations and decrease officers' potential exposure to COVID-19. For instance, managers at one port of entry implemented monthly training days during which officers at ports of entry could complete required training from home, rather than at their work location.

Despite agency support, officials at several locations reported challenges implementing employee telework. At three locations we spoke with, managers told us they did not have sufficient numbers of laptops and other equipment to facilitate telework for all administrative employees. In one case, the location was able to obtain additional equipment to allow staff to telework, but in the others, managers told us that telework was limited by the lack of equipment. Headquarters officials attributed this shortage to aging computer equipment and an increased number of employees teleworking, and noted that they had not received additional funding in 2020 to meet the increased demand. In fiscal year 2021, they planned to replace desktop computers with laptop computers where possible to facilitate increased telework.

Weather and Safety Leave. OFO used regularly-scheduled Weather and Safety Leave, which allows executive agencies to approve paid leave if the employees are prevented from safely performing work at their approved location, to reduce the number of individuals in a location and therefore allow greater social distancing and less exposure to others.[22] In contrast, Border Patrol officials told us they did not grant regularly-scheduled Weather and Safety Leave because the workload for Border Patrol employees did not change, and doing so would cause a strain on accomplishing the component's mission. OFO told us that beginning in March 2020, it granted its officers up to two days of Weather and Safety Leave in each 2-week pay period, allowing for 3,800 CBP officers to be on leave every day. In April 2020, OFO ended regularly-scheduled Weather and Safety Leave to supply additional operational support to other CBP components, such as Border Patrol. According to managers at field locations we spoke with, the amount of regularly-scheduled Weather and Safety Leave provided to employees was dependent on workload and manager discretion. The use of regularly-scheduled Weather and Safety Leave was available for a longer period of time in some locations and was rescinded in some areas of ports of entry before others. For instance, officers working in the cargo inspection area of one port of entry were not eligible for regularly-scheduled Weather and Safety Leave, while those who inspected travelers were allowed to use this form of leave. Headquarters officials told us that field offices had discretion on when to initiate the phaseout of regularly-scheduled Weather and Safety Leave.

In addition, officials from OFO field offices and ports of entry told us that they had a small number of officers on long-term provisional Weather and

[22]See 5 U.S.C. § 6329c.

Safety Leave due to high-risk health concerns. For example, managers at one port of entry said that approximately 50 of their 800 officers have been granted ongoing Weather and Safety Leave because they have high-risk health conditions or are pregnant or lactating. No Border Patrol locations reported extending this flexibility to agents, instead implementing workplace accommodations that allowed agents to decrease contact with others to the extent possible. Both OFO and Border Patrol also used Weather and Safety Leave to allow personnel to quarantine if they were exposed to someone with COVID-19, which is consistent with CBP guidance. According to CBP guidance, if an employee has a medium- or high-risk exposure to COVID-19, they may be granted up to 14 days of Weather and Safety leave for quarantine.[23] In some cases, CBP personnel we interviewed reported confusion over the use of Weather and Safety Leave for quarantine due to changes in the policy over time. For instance, officers at one OFO location said that in the beginning of the pandemic, they were told that Weather and Safety Leave would be used to prevent officers with COVID-19 from reporting to work, but some visibly ill officers were not granted Weather and Safety Leave to quarantine.[24] CBP managers at each of the 12 locations we spoke with told us that the iteration of guidance on Weather and Safety Leave in effect at the time of our interviews was clear.

In addition, at some OFO locations, managers told us they had placed a small number of officers on provisional Weather and Safety Leave due to the officer having risk factors for severe COVID-19 symptoms. In November 2020, CBP provided guidance to managers on reintegration of the workforce, which recommended extending flexibilities such as telework for high-risk employees. Officials in CBP headquarters told us that as part of the reasonable accommodation evaluations, managers were asked to consider what tasks could be performed by officers in telework and remote environments. They further told us that employees who had been granted provisional Weather and Safety Leave were assigned duties that could be performed via telework, such as addressing backlogs of Freedom of Information Act requests or completing paperwork on penalties, fines, and forfeitures.

[23]If the employee develops symptoms of COVID-19, they are required to take sick leave for the rest of their time outside of the office.

[24]According to headquarters officials, CBP does not require employees to be tested for COVID-19 upon exposure or to return to work, nor does it provide COVID-19 tests for employees. Rather, managers are to encourage employees to go to their personal doctor or utilize public health entities if they wish to be tested.

Workplace accommodations. Managers in both OFO and Border Patrol told us that they make workplace accommodations for agents with risk factors for severe COVID-19 illness. For instance, managers at two ports of entry and one field office told us that they worked to find locations in which high-risk individuals would not be exposed to co-workers or travelers. Similarly, managers at one Border Patrol station identified agents who were not eligible for telework but were at higher risk or had high-risk family members, and placed those agents in lower-risk environments, such as monitoring field cameras. At the same sector, station managers told us that lower-risk individuals volunteered for long-term higher-risk assignments, such as transporting detainees or processing apprehensions to allow higher-risk colleagues to perform safer tasks. To protect agents in vehicles, officials at two Border Patrol sectors told us they modified the way in which station vehicles were used to accommodate agents at high risk of COVID-19 complications. For instance, one sector instructed stations to assign agents with risk factors to their own vehicles where possible, so they would not be exposed to another agent for several hours in close quarters. The other sector told us they had a designated pool of vehicles for higher-risk agents which undergo enhanced cleaning between uses.

Local officials told us that flexibility in work schedules had the added benefit of allowing for greater social distancing. Officials at one Border Patrol sector reported that stations had scheduled agents to begin and end work at different times so agents were not clustering upon arrival at the station. With this approach, two or three agents arrive for a shift at a time, receiving updated intelligence and assignments, before departing to work in the field. According to officials, doing this created additional work for managers, but had the benefit of providing more individualized attention for agents and improving morale. Border Patrol also allowed agent schedules to include one hour at the beginning or end of a shift for exercise at an off-site location, further decreasing the time agents spent in close contact with one another and discouraging use of station physical fitness centers.

CBP Implemented Precautions Intended to Decrease the Risk of COVID-19 Transmission at Field Locations

CBP field locations took a variety of actions intended to protect their workforce and the traveling public from contracting COVID-19, such as moving processing functions outdoors when possible, encouraging social distancing, and providing surgical masks to travelers upon request.

Outdoor processing. Although ports of entry are designed to process travelers indoors, in a few cases, OFO locations have moved processing outdoors to decrease the risk of COVID-19 transmission. For instance, at

the sea port in our review, CBP officials we spoke with said that as a COVID-19 precaution, they now examine crew members' documents in the facility while the crew remains on board the ship. As the crew disembarks, the officers confirm that photographs on the documents are consistent with each individual, then return the documents, all while remaining outdoors. Similarly, officials at one land port of entry told us they were able to conduct inspections of vehicle passengers outside—removing the traveler from their vehicle, inspecting the traveler, and then returning them directly to the vehicle. At this northern port of entry, supervisors noted that they intended to continue outdoor inspections even in winter conditions.

Border Patrol locations have also moved some processes outdoors. To prevent detainees from spending time in congregate settings, Border Patrol directed sectors to identify procedures to limit COVID-19 in their facilities, including processing apprehended individuals in the field when possible. In response, officials at each of the four Border Patrol stations we spoke with told us that they had moved processing outdoors to prevent having to bring detainees into Border Patrol station buildings whenever possible.

Outdoor processing areas pose some challenges, however. For instance, managers at two stations said that the equipment that was moved outdoors is not designed for outdoor use, and does not work most of the time. As a result, they must process apprehended individuals inside the station. Another sector we spoke with has been processing individuals where they are apprehended then transporting them directly to the nearest land port of entry for expulsion. However, managers in that sector said that processing individuals in the field is hampered by a lack of mobile connectivity in many areas where individuals cross the border illegally. CBP officials in headquarters reported that in response, they accelerated the procurement and deployment of devices that allow agents to collect information without internet connectivity, which facilitates identification when the devices are able to sync with the CBP network. Headquarters officials also told us that they provided additional devices to every station that requested them.

Social distancing. To reduce the spread of COVID-19 at ports of entry, OFO encourages its employees to maintain social distancing when possible, according to officials. For example, at one land port of entry, OFO officials told us that only one officer at a time is permitted in inspection booths, whereas there would normally be two officers working in one booth, and no more than 10 officers may gather in one place. For

travelers arriving at air and land ports, OFO officials told us they encourage travelers to social distance. For example, officials noted they installed signs and distance markers in the CBP inspection areas to provide visual cues for travelers to maintain social distance. OFO officials noted, however, that at airports they are not responsible for enforcing social distancing in the CBP inspection areas. Rather, OFO relies on airport operators to control the flow of passengers and ensure they remain distanced.

Border Patrol officials also told us they encourage social distancing among both agents and apprehended individuals. Officials at one station reported that it had installed social distancing markers in the break room to remind agents to maintain distance. Officials at three of the four sectors we spoke with noted that they moved meetings involving all agents working a particular shift to a larger space and required agents to remain at a 6-foot distance from one another. To protect both parties, officials also reported limiting contact between agents and individuals who have been apprehended. For instance, officials at one sector told us that the first agent to encounter a group or individual was responsible for all continuing contact with that party, whereas prior to the pandemic, several agents would have been involved in processing and transporting them.

Use of face masks for travelers. On February 2, 2021, CBP began enforcing a requirement that travelers wear face masks at all air, land, and sea ports of entry. This was in accordance with the Executive Order on Promoting COVID-19 Safety in Domestic and International Travel and the CDC Order Regarding the Requirement for Persons to Wear Masks While on Public Conveyances and at Transportation Hubs.[25] Prior to this order, CBP officers and agents told us they did not enforce the use of face masks for travelers, though they said they did provide surgical masks to members of the public who requested them. According to the CBP Job Hazard Analysis, employees are to provide a surgical mask to any member of the public suspected of being infected with COVID-19. Officers at one land port of entry said they offer travelers surgical masks when reviewing documents during secondary inspections. Similarly, managers at two Border Patrol stations told us that agents carry masks with them to provide to each person they apprehend when on patrol.

[25]Exec. Order 13998, Promoting COVID-19 Safety in Domestic and International Travel, 86 Fed. Reg. 7205 (Jan. 21, 2021).

CBP Field Locations Modified Infrastructure in Response to the COVID-19 Pandemic

OFO and Border Patrol locations have taken steps to modify their infrastructure to prevent the spread of COVID-19, such as installing acrylic barriers. CBP does not require field locations, such as ports of entry and Border Patrol stations and facilities, to modify infrastructure because each location is unique, which may affect their ability to make such modifications. However, CBP officials told us that field locations are encouraged to install acrylic barriers as much as possible, and CBP has provided specifications for local managers that choose to install them. CBP's Office of Occupational Safety and Health has also recommended modifications such as improved ventilation. Officials we spoke with at three of the Border Patrol sectors told us they use isolation cells to house detainees who may have COVID-19.

Regarding acrylic barriers, officials at we spoke with at three of the four airports said that their managers had worked with airport operators to install acrylic barriers between officers and arriving passengers at inspection booths. Officials we spoke with at Border Patrol locations told us they had installed acrylic barriers in armories, processing areas, and vehicles. Sector officials noted that installation of acrylic barriers in the stations is at the impetus of stations, not under the purview of the sector.

Officials at field locations also described additional infrastructure changes made to protect employees, including improving airflow and disinfection capabilities. For instance, managers at one airport said that the airport operator installed a state-of-the-art air purification system. Similarly, officials at two Border Patrol sectors said their stations had negative-pressure detention cells, in which potentially infectious individuals can be isolated from others. Managers at one of these sectors told us that at the beginning of the pandemic, the sector inspected each stations' negative pressure cells to verify that they were functioning properly. In addition, officials we spoke with at one Border Patrol sector purchased sprayer systems to disinfect vehicles and indoor spaces at each station.

CBP Field Locations Generally Reported Sufficient PPE and Cleaning Supplies, but Noted Some Shortages Early in the COVID-19 Pandemic

Officials at CBP field locations we interviewed told us that there were some shortages of PPE and cleaning supplies early in the pandemic, but that they generally had sufficient equipment and supplies, although there were some differences in views between front-line personnel and managers. More specifically, CBP officers we spoke with at a quarter of the ports of entry cited shortages of N95 respirators, which as of December 2020 were required in both medium- and high-risk settings. For example, officers at one location said N95 respirators have been scarce and it is rare to obtain a respirator that fits properly based on fit-

testing.[26] Officers at this location added they had been instructed by managers that surgical masks were a substitute for N95 respirators in all situations, which is not consistent with CBP's guidance. However, managers at that location told us that they had not experienced difficulty obtaining N95 respirators at any point during the pandemic. Officers at another location said they did not have access to the appropriate type of respirator because their location could not obtain the particular brand and sizes of N95 respirators officers were fit-tested on, despite OSHA requirements for N95 use. In contrast, managers at the same location said they always had N95 respirators available to employees, although they did not specify that they had the appropriate sizes and brands. OFO officials at headquarters told us that due to stressors on the supply of N95 respirators throughout the country, some models were not available to OFO locations after local supplies were depleted, but they were unaware of any locations with continuing shortages.

As with PPE, officials in OFO and Border Patrol field locations we spoke with told us that although there were some challenges acquiring cleaning materials at the beginning of the COVID-19 pandemic, shortages had been resolved. Officials at five of the twelve locations we interviewed noted that national shortages early in the pandemic led to difficulty purchasing supplies, such as disinfecting wipes or nitrile gloves. For example, agents at one Border Patrol station told us that when disinfectant spray was in short supply at the beginning of the pandemic, the safety and health coordinator at their station attempted to locate supplies at local stores, but had to compensate by making disinfectant from bleach and water when they were unable to locate ready-made disinfectant. However, the shortages were addressed as the supply chain recovered and cleaning supplies became more readily available throughout the U.S., according to officials.

To ensure that its field locations have sufficient supplies, CBP established a tracking system for PPE and cleaning supplies. The tracking system records total number of N95 respirators, ounces of hand sanitizer, pairs of latex gloves, and surgical masks and calculates how many days the supply will last for each location. However, CBP officials told us the tracking system does not record the models or sizes of N-95 respirators

[26]According to the U.S. Occupational Safety and Health Administration, N95 respirators must be fit-tested to determine the most acceptable fit from a selection of respirator models and sizes and to ensure a seal between the respirator and the user's face. Subsequently, the user is approved to use only the fit-tested model of respirator. See OSHA 1910.134.

available to each location. OFO officials in headquarters also noted that the agency is working to procure universal-fit N95 respirators, which have recently been developed.

According to officials in CBP headquarters, OFO field offices were able to utilize additional funding provided by the CARES Act to acquire supplies or make infrastructure changes to implement COVID-19 precautions.[27] Border Patrol sectors were not provided additional funds from the budget, according to officials, but were able to reallocate unused travel funds for expenses related to COVID-19. For instance, one Border Patrol sector purchased disinfectant sprayers for each station, and these costs were borne by the sector. Additionally, in January 2021, some Border Patrol sectors met the criteria for CARES funding, and have used it to provide medical care to detainees when necessary.

Overall, officers and agents we spoke with told us that they felt adequately protected from COVID-19, although they acknowledged the risks inherent in performing public-facing jobs. For instance, agents at one location noted that they have ample cleaning supplies, and it is up to individual employees to use them appropriately. Similarly, in one case, officers said that regardless of the protection provided by OFO, the nature of their job requires them to interact with individuals who do not wear masks or who are at high risk of contracting the virus, such as health-care workers who cross the border daily for work. In a few cases, officers and agents noted that CBP had provided adequate supplies and guidance, but that it was up to individual employees to use those resources appropriately to prevent the spread of COVID-19.

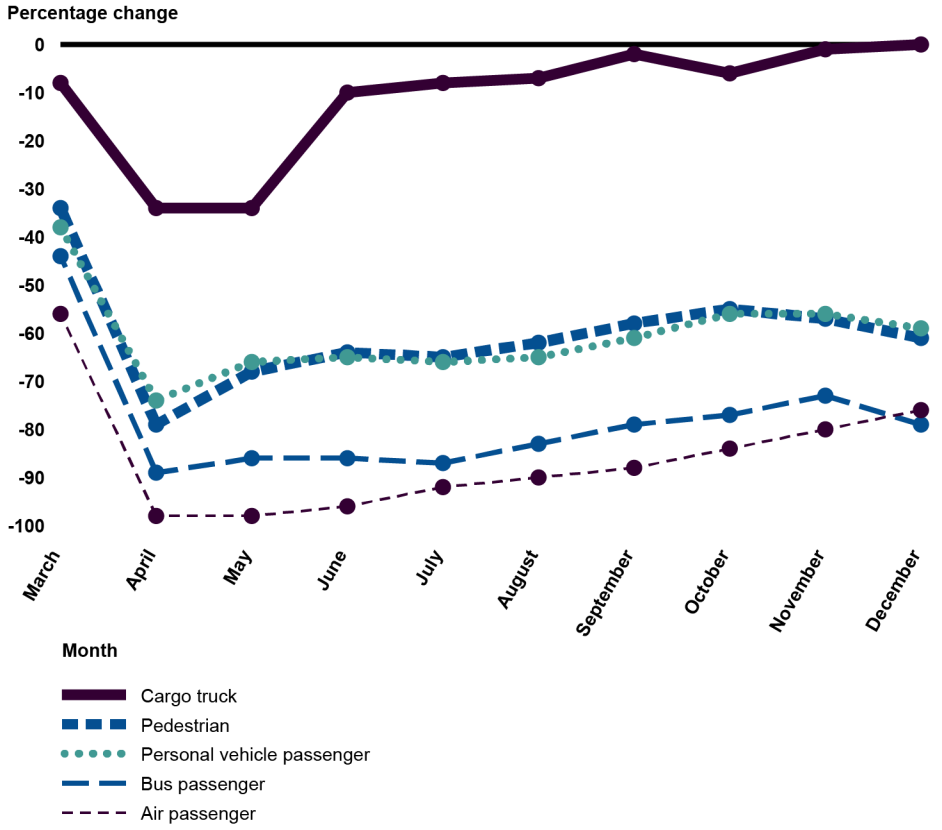
CBP Adjusted Operations in Response to Executive Actions Restricting Travel

[27]See Pub. L. No. 116–136, 134 Stat. 281 (2020).

As It Implemented Travel Restrictions, OFO Shifted Resources to Cargo Processing and Enforcement Activities

As travel and trade volumes declined due to travel restrictions intended to limit the spread of COVID-19, some ports of entry responded by reallocating personnel to other operations, such as cargo processing, and increasing enforcement efforts. Figure 5 shows how monthly traffic volumes entering the U.S. at ports of entry changed since the start of the COVID-19 pandemic in 2020, compared to that same month in 2019.

Figure 5: Monthly Percentage Change of Traffic through Ports of Entry from 2019 to 2020



Source: GAO analysis of Department of Transportation data. | GAO-21-431

Note: The graphic shows the percentage change of total travel volumes, by category, of 2020 monthly totals as compared to 2019 monthly totals. Cargo truck traffic refers to loaded truck containers.

After CBP implemented air travel restrictions in March 2020, the volume of international air travelers entering the U.S. declined sharply, and has

been slow to recover as of December 2020, as shown in figure 5 above.[28] Specifically, arrivals declined by 98 percent from more than 10 million travelers in April 2019 to fewer than 200,000 in April 2020. By December 2020, the most recent month for which data are available, 2.3 million international air travelers entered the U.S., a 76 percent decline from the 9.8 million arrivals in December 2019. In contrast, the volume of air cargo imports increased about 70 percent over the previous year in February and March 2020, the first two months after a public health emergency was declared in the U.S. In addition, after falling 20 percent below 2019 levels in June 2020, air cargo volumes stabilized to within 10 percent of 2019 levels from August through November 2020, and increased nearly 15 percent above 2019 levels in December 2020.

As a result of these developments, OFO officials we spoke with at each of the three U.S. airports said they reallocated officers from passenger processing to cargo operations. For example, OFO managers at John F. Kennedy International Airport (JFK Airport) told us that although their air cargo volumes declined, they received more individual parcels during the pandemic, including a large amount of PPE. They said it takes more time to process a large number of small parcels than it does to process a smaller number of large parcels, driving the decision to allocate additional officers to this effort. OFO officials from two of the three airports said they also shifted officers from passenger processing to mail processing, while the other increased enforcement on air cargo leaving the country.

Travel volumes at land ports of entry also declined significantly due to the COVID-19 pandemic, although less than at airports, while trade volumes declined early in the pandemic but recovered quickly. The number of personal vehicle passengers entering the U.S. in April 2020 declined by 74 percent compared to April 2019, from 14.3 million to 3.7 million. Similarly, the number of pedestrians entering the U.S. in April 2020 declined by 79 percent compared to April 2019, from 4.3 million to about 900,000. By December 2020, personal vehicle passenger and pedestrian volumes were 59 percent and 61 percent below 2019 levels, respectively. Compared to passenger volumes, cargo truck volumes declined less sharply and recovered more quickly. Specifically, the number of loaded cargo truck containers entering the U.S. declined 34 percent, from about 766,000 in April 2019 to 506,000 in April 2020. After similar declines in May, trade volumes increased over the summer, reaching 10 percent

[28]Air travel restrictions in place as of March 2020 included presidential proclamations limiting travel to the U.S. from China, the Schengen Area of Europe, the United Kingdom, and Iran.

below 2019 levels in June 2020 and surpassing 2019 levels in December 2020.

OFO managers at land and sea ports of entry said the lower traveler volumes allowed them to conduct additional inbound and outbound enforcement operations. For instance, managers we spoke with said that because additional personnel were available due to declines in traveler volumes, they were able to redeploy those personnel to outbound enforcement and mobile strike teams inspecting trucks and airplanes. OFO managers at one land port of entry said that early in the pandemic they increased outbound enforcement, resulting in an 80 percent increase in outbound seizures from February to March 2020. OFO managers at another land port of entry told us they were committing more resources to enforcement activity than before the pandemic, resulting in historic levels of marijuana, narcotics, and gun seizures. Similarly, after cruise ship travel was halted by CDC's No Sail Order in March 2020, officials at one seaport said they increased enforcement by performing more inspections of private vessels and low-risk cargo containers, among other things.

In addition to shifting officers to different tasks within their own ports of entry, OFO detailed officers to supplement Border Patrol operations. Specifically, in response to a request from Border Patrol for additional resources, OFO asked for volunteers from ports of entry around the country to deploy to the Laredo and Rio Grande Valley Border Patrol sectors in Texas, resulting in two deployments totaling about 1,200 officers and supervisors. Rio Grande Valley sector officials we spoke with said that CBP officers were detailed to the sector to backfill for Border Patrol agents unavailable due to COVID-19 quarantine protocols. The first deployment from August to October 2020 was comprised of CBP officers from airports, while the second deployment from October to December 2020 included officers from land and sea ports as well, according to Border Patrol field officials. The officials said that tasks conducted by deployed CBP officers included serving as spotters monitoring high-traffic areas along the border, and assisting Border Patrol immigration checkpoint operations by searching vehicles, operating x-ray machines, and reviewing travelers' documents. In addition, some Border Patrol sectors coordinated locally with ports of entry for officers to supplement their operations. For example, Swanton Border Patrol sector managers said they received officer detailees from nearby ports of entry that did not have traffic to process because the Canadian ports of entry had closed during the pandemic.

Local Airports Quickly Developed Plans to Implement Travel Restrictions

On March 11, 2020 the Trump administration announced presidential proclamations restricting air travel from Europe that went into effect on March 13, 2020.

Developing air travel screening procedures. OFO officials at all three U.S. airports we spoke with told us that they coordinated with airport operators to quickly develop plans to implement the presidential proclamations restricting travel from Europe. This was due to the short time between the issuance of the proclamations and the date they went into effect. All three airport operators we spoke with said they did not have sufficient guidance from CBP during the 2 days between the issuance and implementation of the travel restrictions. Specifically, one operator said that the day before the travel restrictions went into effect, local CBP and CDC officials had publicly available information about the travel restrictions but did not yet have guidance from CBP headquarters to use for planning purposes. As a result, the airport developed its own plan to implement the restrictions, including separating higher-risk and lower-risk travelers, and bringing in contracted staff to manage the flow of travelers. The operator said that the local CBP officials ultimately received guidance from CBP headquarters one hour before the restrictions took effect. OFO airport managers said they worked to keep travelers and OFO personnel safe, considering they received information on the travel restrictions at the same time as the general public.

At airports across the U.S., local CBP and CDC officials coordinated with airport operators to implement COVID-19 screening processes for travelers arriving from presidential proclamation countries based on the unique characteristics of each airport, according to airport operators and CBP officials we spoke with. For example, at Chicago O'Hare International Airport, local CBP officials and airport operators developed a method to separate travelers from presidential proclamation countries from travelers arriving from lower-risk countries. Specifically, CBP managers at O'Hare said that due to the design of the international arrivals terminal, operators were able to designate one side of the terminal for flights from presidential proclamation countries, and the other side for flights arriving from other countries. Each side of the terminal led to a separate screening area, reducing the risk of travelers from higher-risk countries potentially transmitting the virus to travelers from lower-risk countries.

At both JFK Airport and Seattle-Tacoma International Airport (Sea-Tac), local CBP and airport officials developed a different approach to screening international travelers, meeting flights from presidential

proclamation countries at the gate prior to CBP processing. Specifically, OFO officials at JFK airport told us that after learning about the travel restrictions from Europe at the same time as the general public, local OFO and CDC officials met all flights arriving directly from Europe at the gate. If these officials identified travelers exhibiting COVID-19 symptoms, they took these travelers to an alternate location for additional screening by CDC. These health screenings prevented travelers arriving from presidential proclamation countries from interacting with other international travelers during the screening process, and helped maintain normal wait times for screening, according to the officials. Similarly, OFO managers at Sea-Tac told us that CDC officials met higher-risk flights, as determined by CDC officials, at the gate for temperature checks before travelers interacted with CBP officers.

Local CBP and CDC officials also coordinated to identify individuals that required additional health screening, starting with the travel restrictions from China in January 2020. For example, they asked travelers questions about their travel history, and if they identified an issue they referred the traveler for secondary screening, according to airport operators and OFO officials. If a traveler appeared to be ill on a flight, CDC officials met them at the gate and escorted them to a screening area to determine the issue. In secondary screening, CDC officials in dedicated rooms took travelers' temperatures and asked them additional questions. Based on the results of the temperature screening and answers to these questions, a CDC official would then determine if the traveler needed to be quarantined, according to OFO officials.

Challenges implementing travel restrictions. Difficulty implementing travel restrictions and related health and safety measures resulted in major delays at one U.S. airport in March 2020. As it began implementing air travel restrictions following the presidential proclamations, CBP used its Automated Targeting System to assist the ports in identifying travelers who could potentially pose a public health risk based on recent travel in presidential proclamation countries.[29] Specifically, the Automated Targeting System placed an "alert" on travelers arriving in the U.S. from presidential proclamation countries. When an officer scanned a traveler's passport during primary processing, the system notified the officer if the traveler may have traveled in one of these countries, according to OFO

[29]CBP's Automated Targeting System is a web-based enforcement tool used to collect, analyze, and disseminate information to help identify potential terrorists, transnational criminals, and other travelers who may need additional scrutiny when attempting to enter the U.S.

officials. OFO officials at O'Hare said that on March 14, 2020—the first full day travel restrictions from Europe were in effect—there were significant delays in processing travelers because CBP required officers with special access to its Automated Targeting System to individually "clear" every traveler arriving from a presidential proclamation country. To clear these travelers, officers referred them to secondary processing for additional inspection before CDC screening. OFO managers at O'Hare said that because a limited number of officers had access to the system to clear travelers for entry, processing times increased from the typical 30-60 seconds to more than 5 minutes per traveler.[30] As a result of these delays, there were thousands of travelers waiting in the Federal Inspection Service area for hours without access to food, water, or bathrooms, according to airport and CBP officials.[31]

OFO managers at O'Hare told us they were not aware that every traveler arriving from a presidential proclamation country would have an alert in the Automated Targeting System. Following the delays in processing that occurred on March 14, OFO officials at O'Hare told us they worked with the National Targeting Center to get every airport officer access to the system. They also requested that the National Targeting Center not place alerts on travelers arriving directly from presidential proclamation countries because CDC was automatically screening all travelers on those flights. These fixes were in place on March 15, 2020, and although a greater number of travelers arrived from presidential proclamation countries on that day, wait times were significantly lower according to OFO managers at O'Hare. In a statement on March 15, 2020, the acting CBP Commissioner said that CBP increased staffing at all airports receiving travelers from presidential proclamation countries to help process travelers, and refined the screening process, which helped reduce wait times.

OFO headquarters officials told us that on March 14, 2020, while an insufficient number of officers at O'Hare were able to clear passengers for entry, leading to major delays, it was an isolated incident not experienced at other airports. In addition, they said that after initial implementation of

[30]In addition, OFO headquarters officials said that between August 2019 and May 2020, OFO introduced a new technology solution for processing travelers at airports, representing a change in the system officers used for managing referrals for secondary inspection. They said that there were not enough officers trained in that system working at O'Hare that day, contributing to delays.

[31]The Federal Inspection Service area is a secure area of the airport where CBP inspects travelers applying for admission to the U.S. See 8 U.S.C. § 1225(a); 19 C.F.R. § 122-181.

presidential proclamations at airports, OFO field offices identified and shared best practices. For example, they said that at JFK Airport, they paired CDC officials in booths with CBP officers to check temperatures and complete enhanced entry health screenings while officers asked questions about travel history and completed passport screening to facilitate faster screening of travelers.

Another challenge implementing the travel restrictions was identifying travelers who entered the U.S. on a flight from a non-presidential proclamation country but had recently traveled in a presidential proclamation country, according to OFO officials.[32] CBP made efforts to mitigate the potential health risk posed by these individuals interacting in the airport with other travelers. For example, OFO headquarters officials said that CBP attempted to identify these travelers using its Automated Targeting System.[33] OFO officials said that officers also attempted to identify these individuals by asking travelers about their travel history as part of the primary inspection process.

OFO headquarters officials told us that some airports were better equipped to separate travelers who recently traveled in a presidential proclamation country but arrived on a flight from a non-presidential proclamation country. They said this was due to local conditions, such as the layout and size of the airport. As a result, they said, some airports were able to screen these travelers plane-side for indications of COVID-19, while other airports were not able to. For example, OFO field officials said that at Sea-Tac CDC officials would meet the travelers plane-side to screen them for COVID-19 symptoms prior to allowing them to enter the Federal Inspection Service area. However, at other airports CBP officers would refer these travelers for CDC screening after primary inspection, according to OFO field officials.

After the CDC ended enhanced entry health screening in September 2020, OFO largely returned air traveler processing to pre-COVID-19 procedures, according to OFO officials. For example, while OFO and its

[32]For example, this would include an individual who traveled from Wuhan to Tokyo, and from Tokyo to Seattle within a few days.

[33]When the Automated Targeting System identified individuals who had recently traveled in a presidential proclamation country, CBP notified the airline and the airline denied the individual permission to board a flight to the U.S., unless they were a U.S. citizen or legal resident, or met another exception, such as international students, according to OFO headquarters officials.

airport partners had been separating travelers arriving from presidential proclamation countries from other travelers for CDC health screening, this practice stopped when enhanced entry health screenings ceased. OFO airport officials told us that, as was the case prior to the pandemic, CBP refers passengers to the CDC for an assessment if they appear to be ill.[34] According to CDC guidance, CBP officers are to provide written and verbal information to travelers about health precautions related to COVID-19.

Land Ports of Entry Implemented Essential Travel Restrictions

On March 20, 2020, OFO began to assist the CDC in implementing its order under Title 42 of the U.S. Code limiting entry at land ports of entry to essential travel.[35] While the restrictions do not apply to U.S. citizens or lawful permanent residents, other visitors must meet certain criteria as outlined in the guidance, such as those traveling for education, business, or medical reasons.[36]

Union officials representing OFO employees, and some OFO field officials we spoke with, told us that initially some officers found the guidance for essential travel to be confusing and loosely defined. For example, officers at one land port of entry told us that officers did not know how to define essential travel, and said officers were granting entry to travelers crossing to get fast food, as it could be considered travel to procure food, which is essential. As the pandemic continued, OFO issued updated guidance for defining essential travel. For example, updated guidance in May 2020 explained that mail pickup is only essential if it is for a necessary item, such as prescription medication. The updated guidance also explained that travel to the U.S. for food and fuel is not considered essential if it is readily available across the border in Canada or Mexico.

[34]Prior to the COVID-19 pandemic, CBP had processes in place for recognizing and responding to travelers potentially infected with an infectious disease. In addition, prior to the COVID-19 pandemic, CBP had guidance for responding to infectious diseases, such as job hazard analyses and PPE assessments, that it had previously developed for other emerging infectious diseases (such as Ebola, Pandemic Influenza, and Zika Virus).

[35]See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020).

[36]CBP guidance defines essential travel as U.S. citizens and lawful permanent residents returning to the U.S.; individuals traveling for medical purposes, to attend educational institutions, to work in the U.S., or for emergency response and public health purposes; individuals engaged in lawful cross-border trade; individuals engaged in official government travel or diplomatic travel; and members of the U.S. Armed Forces and their families, among other conditions.

Using the essential travel guidance, officers said they stopped individuals attempting to enter the country using fraudulent documents. For example, officers at one southern border land port of entry said they saw an increase in individuals using fraudulent medical documents to attempt to cross the border, since CBP guidance states that travel to the U.S. for medical procedures is considered essential. The officers said they examine the documents and try to confirm whether the story is credible, such as by following up with medical providers.

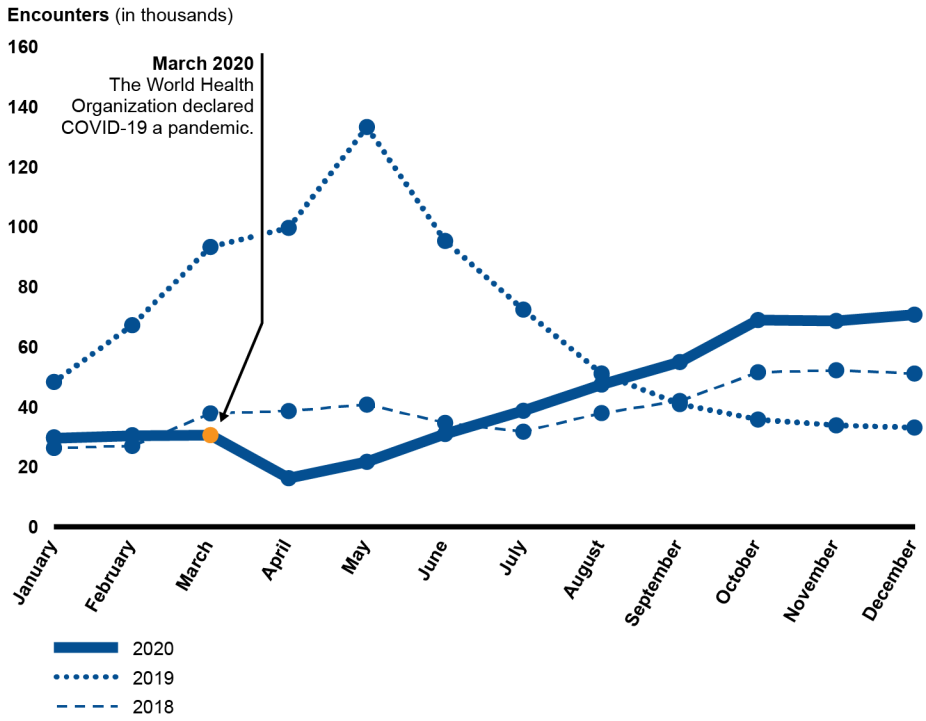
Border Patrol Shifted Its Deployment Strategy to Deploy Personnel Closer to the Border

Early in the COVID-19 pandemic, Border Patrol encounters declined slightly, and then increased above 2018 and 2019 levels as Border Patrol processed growing numbers of Title 42 expulsions under the CDC order, as shown in figure 6.[37] Overall, however, 2020 encounters increased 8 percent over 2018 levels,[38] after a 71 percent increase in 2019 driven by historic migration flows on the southwest border. In April 2020, the first full month after the World Health Organization declared COVID-19 a pandemic, Border Patrol encounters declined 47 percent, from nearly 31,000 the previous month to about 16,000. However, starting in May 2020, encounters increased steadily, reaching nearly 71,000 in December 2020, with expulsions under Title 42 authority making up the overwhelming majority of encounters. Specifically, from April to December 2020, 89 percent of all Border Patrol encounters resulted in expulsions under Title 42 authority, while 11 percent were apprehensions processed under CBP's Title 8 immigration authority.

[37]Border Patrol encounters include both Title 8 apprehensions and Title 42 expulsions. Title 8 apprehensions are immigration enforcement actions processed under CBP's immigration authority in Title 8 of the U.S. Code. Beginning in March 2020 pursuant to the Centers of Disease Control and Prevention's March 2020 order and interim final rule prohibiting the introduction of foreign nationals into the U.S. who are subject to the order. See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020). In assisting CDC with implementing the CDC Order, CBP is operating pursuant to 42 U.S.C. § 268(b), aiding CDC in the enforcement of its authority pursuant to 42 U.S.C. § 265, 42 C.F.R. § 71.40.

[38]Unprecedented migration flows on the southwest border in 2019 led to a 71 percent increase in enforcement actions. Apprehensions in fiscal year 2019 were the highest since fiscal year 2007, driven primarily by migrants from El Salvador, Guatemala, and Honduras and an increase in asylum seekers and those escaping violence and domestic insecurity.

Figure 6: Monthly Border Patrol Encounters, Northern and Southwest Borders, 2018-2020



Source: GAO analysis of U.S. Border Patrol data. | GAO-21-431

Note: Border Patrol encounters include both Title 8 apprehensions and expulsions under the CDC Order. Title 8 apprehensions are immigration enforcement actions processed under U.S. Customs and Border Protection's immigration authority. On March 13, 2020 the Trump administration declared the COVID-19 outbreak a national emergency. Beginning in March 2020, Border Patrol began expulsions to the country of last transit or home country in the interest of public health under Title 42 pursuant to the Centers of Disease Control and Prevention's March 2020 order and interim final rule prohibiting the introduction of foreign nationals into the U.S. who are subject to the order. See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020). In assisting CDC with implementing the CDC Order, CBP is operating pursuant to 42 U.S.C. § 268(b), aiding CDC in the enforcement of its authority pursuant to 42 U.S.C. § 265, 42 C.F.R. § 71.40

As part of its response to the COVID-19 pandemic, on March 13, 2020 Border Patrol issued guidance instructing sectors to operate as closely to the physical border as practical to intercept individuals who could be infected with COVID-19, before potentially exposing the U.S. public. As a result, some Border Patrol sectors modified their interior operations, such as limiting the resources at immigration checkpoints, and nonessential activities, such as community engagement programs, to focus resources on the border.

For example, in one sector we spoke with, managers at two different stations said that they suspended checkpoint operations because checkpoints were no longer a priority and they lacked the resources to operate them while focusing resources directly on the border. On the other hand, some sectors were able to leverage the reduced traffic at the start of the pandemic to both patrol the border and increase other operations. For instance, managers at one sector said the reduced vehicular traffic associated with stay-at-home orders enabled them to conduct 24/7 checkpoint operations for the first time in 10 years, resulting in them interdicting numerous human smuggling events. However, they said that as traffic later began to increase, they could no longer operate the checkpoint continuously.

Border Patrol also encountered a shifting operational environment during the pandemic. For example, the noncitizens crossing the border between ports of entry have shifted from primarily family units or unaccompanied children from Central America before the pandemic to primarily single adults from Mexico during the pandemic.[39] Furthermore, the groups primarily crossing the border before the pandemic actively sought out Border Patrol agents to request asylum, according to Border Patrol officials. However, they said the single adults crossing the border during the pandemic have placed additional strain on Border Patrol personnel because most have tried to evade Border Patrol so agents have had to chase them.

CBP Utilized Title 42 Authorities to Expedite Expulsion of Apprehended Individuals during the COVID-19 Pandemic

Assisting with the enforcement of the CDC order under Title 42 authority significantly impacted Border Patrol operations by allowing agents to quickly expel apprehended individuals at a nearby port of entry, sometimes in less than an hour, according to station managers that we

[39]CBP's October 2015 National Standards on Transport, Escort, Detention, and Search defines a "family unit" to include one or more non-U.S. citizen juvenile(s) accompanied by their parent(s) or legal guardian(s). The Homeland Security Act of 2002 defines an "unaccompanied alien child" (referred to as "unaccompanied children) as a child who (A) has no lawful immigration status in the U.S.; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the U.S.; or (ii) no parent or legal guardian in the U.S. is available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

spoke with.[40] Prior to the issuance of the CDC order allowing rapid expulsion under Title 42 due to the COVID-19 pandemic, agents brought apprehended individuals into the station for processing, including fingerprinting and interviews. Under Title 42, however, agents have processed apprehended individuals in the field when possible—specifically, collecting biometrics and biographical information and checking for criminal and immigration records—according to Border Patrol field officials. Managers at one Border Patrol sector we spoke with said expulsions under Title 42 have made agents' jobs easier because more agents can be on the front lines rather than spending time completing paperwork or otherwise processing apprehended individuals. Specifically, prior to the ability to quickly expel apprehended individuals under Title 42, they told us that up to 40 percent of frontline personnel would be processing and overseeing detention and transport of apprehended individuals at any given time. In contrast, they said expulsions under Title 42 have allowed for more capacity to focus on enforcement, which in turn increases the chances of interdicting anyone crossing the border illegally.

While Border Patrol expels the vast majority of apprehended individuals using Title 42 authority immediately through land ports of entry, they hold a small percentage for repatriation flights. According to Border Patrol headquarters officials, certain individuals are ineligible for immediate expulsion at a land port of entry based on their nationality, and therefore

[40]See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020). In assisting CDC with implementing the CDC Order, CBP is operating pursuant to 42 U.S.C. § 268(b), aiding CDC in the enforcement of its authority pursuant to 42 U.S.C. § 265, 42 C.F.R. § 71.40. According to Border Patrol guidance, an individual may not be expelled under Title 42 if they are present in the Terrorist Screening Database; have been convicted of a Crime Involving Moral Turpitude, an aggravated felony, or a non-immigration felony; or are injured. These individuals would instead generally by processed under Border Patrol's enforcement authorities under Title 8, which could include being placed into removal proceedings and referred for criminal prosecution, as appropriate.

may be expelled via a flight to their country of citizenship.[41] Generally, only citizens of Spanish-speaking countries are eligible for expulsion to Mexico at land ports of entry, according to Border Patrol headquarters officials.[42] About 8 percent of Title 42 expulsions have been through repatriation flights, as opposed to through land ports of entry, through December 2020. Border Patrol headquarters officials said they typically have multiple repatriation flights daily to different countries up to 6 days per week, but that they may need to hold individuals from certain countries up to 72 hours or longer until the next available flight to that country.

Border Patrol officials we spoke with had varied opinions on expulsions under Title 42 and the balance between enforcement and employee safety. For example, officials in each of the four sectors we spoke with said that expulsions under Title 42 resulted in less risk of exposure to COVID-19 for Border Patrol personnel because of the substantial decrease in the amount of time apprehended individuals were in custody. On the other hand, Border Patrol union officials acknowledged that Title 42 has been a helpful resource for agents and has saved lives by reducing exposure to COVID-19. However, they added that quickly expelling apprehended individuals limits Border Patrol's ability to conduct contact tracing and take preventive measures, such as by applying CBP guidance and quarantining as appropriate because they lose the ability to trace an outbreak back to an apprehended individual.

Border Patrol officials also indicated that expulsions under Title 42 have negatively affected enforcement by reducing opportunities to gather intelligence. For instance, field officials at two sectors we spoke with said that by processing apprehended individuals in the field and quickly

[41]While the U.S. has repatriation agreements allowing air expulsions under Title 42 authorities to 10 countries: Brazil, Columbia, Dominican Republic, Haiti, Ecuador, El Salvador, Guatemala, Honduras, Mexico, and Nicaragua, officials told us it is currently only conducting direct expulsions to Colombia, Dominican Republic, Haiti, Ecuador, and Mexico due to the Northern Triangle, Nicaraguan, and Brazilian governments' COVID-19 testing stipulations. According to CBP guidance, individuals on repatriation flights must be medically cleared for travel, must have made an affirmative claim to country of citizenship, and must not have made an affirmative, spontaneous and reasonably believable claim that they fear torture in the country they are being sent back to. The guidance also states that family units should not be separated.

[42]According to Border Patrol officials, there may be local agreements enabling expulsion of certain individuals to Mexico from non-Spanish-speaking countries from certain locations in the U.S. For example, they said Border Patrol has been able to expel some Haitians with legal status granted by the Mexican government through a land port of entry, but only from the San Diego sector.

expelling them, agents are unable to thoroughly interview individuals in custody about organizations and smugglers operating in the area. For example, one sector manager cited two instances in which agents apprehended groups of individuals and expelled them immediately under Title 42, limiting the opportunity to gather information on illegal activity. Prior to being able to expel individuals under Title 42, they said, each subject would have been interviewed and, if possible, prosecuted.

Officials in all four sectors we spoke with, as well as Border Patrol union officials, told us that they are unable to prosecute as many individuals as they did in the past due to reduced capacity in U.S. Attorneys' Offices, COVID-19 safety precautions, or CBP's assistance in enforcing the CDC order under Title 42. According to Border Patrol guidance, agents should only consider individuals who are not eligible for expulsion under Title 42, or would otherwise be considered a high risk for the population (including aggravated felons,[43] relations to terrorism, or agent assaults, among others) for prosecution.[44] Station managers we spoke with said that due to limited resources at the U.S. Attorney's Office, immigration courts, and U.S. Marshals, there are many cases in which individuals would normally be prosecuted, but during the pandemic the cases are not being pursued. Agents at those stations added that given limited prosecutorial resources, even if a case meets the criteria for prosecution, prosecutions must still be approved by senior management. Agents at another station we spoke with said that a significant decrease in prosecutions for illegal entry has been a side effect of safety precautions during the pandemic.[45] Specifically, they said that collecting the necessary information to support prosecution requires extended exposure to individuals potentially infected with COVID-19, which agents have been instructed to avoid.

Finally, both Border Patrol and OFO field officials told us that recidivism of apprehended individuals expelled under of Title 42 has increased, in part due to restrictions on the number of prosecutions. For example, the

[43]Aggravated circumstances could include endangerment to individuals being smuggled, for example, such as being confined in a truck or toolbox from which they are unable to escape, according to field officials.

[44]In accordance with Border Patrol guidance, for individuals who are ineligible be processed under Title 42, agents are to generally process those individuals under Border Patrol's enforcement authorities under Title 8, which could include being placed into removal proceedings and referred for criminal prosecution, as appropriate.

[45]The criminal offense of illegal entry, which is generally a misdemeanor offense, is codified at 8 U.S.C. § 1325.

recidivism rate along the Mexican border increased from 7 percent in fiscal year 2019 to 26 percent in fiscal year 2020, and 34 percent for the first quarter of fiscal year 2021.[46] Agents we spoke with said there was a lack of consequence or punishment for illegal entry beyond expulsions, resulting in some individuals trying to cross the border multiple times per day since they were not being prosecuted. Border Patrol officials in headquarters and the field said that repatriation flights under Title 42 effectively decrease recidivism. However, agents in one sector noted that resuming the flights during the pandemic resulted in prolonged contact between agents and detainees, and station officials said the flights sent a conflicting message to agents on health and safety.

In addition to Border Patrol, OFO assisted in enforcing the CDC's order under Title 42 at ports of entry, though to a more limited extent. Specifically, from March 2020 through December 2020, OFO expelled about 17,000 individuals under Title 42, while Border Patrol expelled about 381,000 during that time period. OFO officials said that expulsions under Title 42 brought public health benefits by helping to limit the spread of COVID-19 in CBP facilities. For example, they said when individuals attempt to illegally enter the U.S. at a port of entry, an officer could rapidly expel them back across the border under Title 42. The officials said that previously an officer would have had to take the apprehended individual to secondary processing, which could put OFO personnel at risk of exposure.

Agency Comments

We provided a draft of this report to DHS for review and comment. The department did not provide formal written comments, but did provide technical comments on the draft, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, and other interested parties. In addition, the report is available at no charge on the GAO website at www.gao.gov. If you or your staff have any questions, please contact me at (202) 512-8777 or gamblerr@gao.gov. Contact points for

[46]The recidivism rate refers to the percentage of individuals apprehended more than one time by the Border Patrol within a fiscal year.

our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix I.

Rebecca Gambler
Director,
Homeland Security and Justice

List of Committees

The Honorable Patrick Leahy
Chairman
The Honorable Richard Shelby
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Patty Murray
Chair
The Honorable Richard Burr
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Gary C. Peters
Chair
The Honorable Rob Portman
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Rosa L. DeLauro
Chairwoman
The Honorable Kay Granger
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce
House of Representatives

The Honorable Bennie G. Thompson
Chairman
The Honorable John Katko
Ranking Member
Committee on Homeland Security
House of Representatives

The Honorable Carolyn B. Maloney
Chairwoman
The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
House of Representatives

The Honorable Richard E. Neal
Chairman
The Honorable Kevin Brady
Republican Leader
Committee on Ways and Means
House of Representatives

Appendix I: GAO Contact and Staff Acknowledgments

GAO Contact

Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov

Staff Acknowledgments

In addition to the contact named above, Adam Hoffman (Assistant Director), Miriam Hill (Analyst-in-Charge), Kelsey Burdick, Kelsey Carpenter, Eric Hauswirth, Daniel Kuhn, Ron La Due Lake, Grant Mallie, and Heidi Nielson made key contributions to this report.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through our website. Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. You can also subscribe to GAO's email updates to receive notification of newly posted products.

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, https://www.gao.gov/ordering.htm.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on Facebook, Flickr, Twitter, and YouTube.
Subscribe to our RSS Feeds or Email Updates. Listen to our Podcasts.
Visit GAO on the web at https://www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact FraudNet:

Website: https://www.gao.gov/fraudnet/fraudnet.htm

Automated answering system: (800) 424-5454 or (202) 512-7700

Congressional Relations

Orice Williams Brown, Managing Director, WilliamsO@gao.gov, (202) 512-4400,
U.S. Government Accountability Office, 441 G Street NW, Room 7125,
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Strategic Planning and External Liaison

Stephen J. Sanford, Acting Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548

Please Print on Recycled Paper.