



## COALITION ON HUMAN NEEDS

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To Kyle McGowan:

Thank you for the opportunity to comment on the Department of Health and Human Services' interim final rule, titled "Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes," DHS Docket No. CDC-2020-0033, in the Federal Register at 85 FR 16559, issued March 20, 2020. I am submitting these comments on behalf of the Coalition on Human Needs, an independent non-profit alliance made up of more than one hundred national organizations, including human service providers, faith-based groups, policy experts, and civil rights, labor, and other advocates concerned with meeting the needs of low-income and vulnerable people through effective federal policies and services.

Our members include people throughout the nation who provide services utilized by immigrants, work beside them in communities across the country, worship together in congregations, and live together in community after community. We know immigrants strengthen our communities through their work, creativity, and public service.

The Coalition on Human Needs wishes to express deep concerns about the impact of this interim final rule (Rule), which authorizes the Director of the Centers for Disease Control and Prevention (CDC) to "prohibit the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions and regions thereof), only for such period of time that the Director deems necessary for the public health," through issuance of an order.

On the same day the rule was issued, CDC issued an order (Order) invoking its authority under the rule to suspend the introduction of persons without documentation who seek to enter the United States via Mexico or Canada. The Order illustrates how the Rule is being used to eviscerate asylum protections and safeguards for unaccompanied children while failing to further the public health justifications on which it is purportedly based.

The Rule relies on an unprecedented interpretation of a statute to enact sweeping changes to existing laws, in violation of U.S. domestic and international obligations.

- Through this Rule, CDC has granted itself and the Trump administration unprecedented and over-broad power to expel individuals from the United States, including asylum-seekers and unaccompanied children seeking protection at the southern border, under the guise of public health measures allegedly aimed at preventing the introduction of COVID-19 into the United States.
- The Rule does not apply to individuals based on infection or exposure to COVID-19, but rather targets them based on their immigration status and is serving as a pretext to block these individuals from requesting protection in the United States. Turning away asylum-seekers and unaccompanied children from the U.S.-Mexico border or to their home countries would put their lives at risk, returning them to the persecution and abuse they are fleeing.
- CDC should rescind this ill-conceived and dangerous rule and ensure that any future regulations regarding border restrictions during the COVID-19 pandemic are informed by public health expertise and consistent with binding obligations under U.S. and international law.

Although the Rule claims to be based on public health concerns, it fails to meaningfully address those concerns; instead, its intent appears to be to prevent asylum-seekers and unaccompanied children from seeking protection in the United States.

- **The Rule applies its stated justification in an inconsistent fashion:** The Rule claims to be aimed at preventing the introduction of individuals for whom isolation or quarantine is not a practical solution and/or where individuals have been in congregate settings “(i.e., ships, aircraft, trains, and road vehicles) or terminals with shared sitting, sleeping, eating, or recreational areas, all of which are conducive to disease transmission,” but the Rule does not actually apply to such individuals universally.
  - The Rule exempts U.S. citizens and permanent residents, even if these individuals lack places to self-isolate and/or have been in congregate settings, like cruise ships, where significant outbreaks of COVID-19 have already occurred.
  - The Rule applies only to land borders, even though, as the rule itself notes, transportation hubs, like airports and cruise terminals, are congregate settings “conducive to disease transmission.” Thus, the Rule does not bar travel by tourists arriving by plane or ship, even though these modes of transportation are explicitly listed as congregate settings with higher risk of disease transmission.
  - A simultaneous travel [restriction](#) (85 FR 16547) issued by DHS on March 20 limits cross-border U.S.-Mexico traffic to “essential travel,” but provides broad exceptions for travel related to education, trade and commerce, as well as other non-essential travel at the discretion of the Commissioner of Customs and Border Protection.
- **The Rule relies on the false assumption that border detention is necessary:** The Rule applies only to non-citizens without permanent immigration status who arrive at a land port of entry or who have crossed into the United States, including asylum-seeking

individuals, families, and unaccompanied children, under the assumption these individuals lack places where they could isolate and that they must be held in congregate settings.

- Yet the vast majority of asylum-seekers have homes in the United States where they could safely practice self-isolation, when needed. For example, an October 2019 study of 607 asylum-seekers subject to the Remain in Mexico program found that [nearly 92 percent](#) had family or close friends in the United States.
- Further, DHS is not required to hold asylum-seekers in congregate settings, such as in the custody of Customs and Border Protection (CBP) or Immigration and Customs Enforcement (ICE), as DHS has legal [authority](#) (8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5) to expeditiously parole asylum-seekers into the United States to await their asylum proceedings in U.S. immigration courts.
- Instead of detention or expulsions, DHS could engage in non-discriminatory screening and self-isolation measures that would respond to public health concerns while preserving the right to seek asylum and protections for unaccompanied children.

The Rule seeks to permit the CDC, through DHS, to bar and expel individuals at the U.S. border, which would directly violate the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), a federal law designed to protect unaccompanied children from human trafficking and other harm. The Coalition on Human Needs has opposed the inhumane treatment of unaccompanied children as carried out by DHS, and believes the Rule would continue this inhumane treatment, contrary to law. Children should be reunited with their families in the United States, where they can follow isolation rules safely.

- **Unaccompanied children are at particular risk:** Unaccompanied children make up a small percentage -- [less than 10%](#) -- of people encountered at the southern border, but are among the most vulnerable groups seeking help and protection in the U.S. Prior to the passage of the TVPRA, unaccompanied children were summarily turned away at the U.S.-Mexico border, leading many to end up in the hands of smugglers and traffickers seeking to exploit or harm them. Neither the Rule nor the Order issued by the CDC under powers granted by the Rule provide any explanation or [legal justification](#) for the failure to comply with mandatory legal protections and obligations under the TVPRA.
- **TVPRA's legal requirements are not optional:** Under the TVPRA, CBP must determine whether children it encounters are unaccompanied, and if they are, to transfer them from CBP custody to the custody of the Office of Refugee Resettlement (ORR) within 72 hours. Once in ORR custody, the TVPRA then requires the government to make efforts to reunify these children with family members or other sponsors while their legal claims are decided. The TVPRA also requires the government to screen children to determine whether they were survivors of trafficking or at future risk of being trafficked or persecuted in the U.S. or their home countries. Finally, the TVPRA provides important [procedural protections](#) for unaccompanied children's legal claims, including the right to apply for asylum in a non-adversarial process and to have their cases heard before an immigration judge.
- **The Rule as applied is leading to mass expulsions of unaccompanied children:**

- Despite these requirements, [media reporting](#) and [government guidance](#) indicate that DHS is summarily expelling unaccompanied children without providing them proper screening, placing them into immigration court proceedings, or referring them to ORR.
- This is plainly contrary to the letter and spirit of the TVPRA which was passed into law with a large bipartisan majority to [prevent](#) the U.S. from summarily returning children to potentially dangerous situations - exactly what the Rule and accompanying CDC Order purports to permit DHS to do now.
- The Order issued by the CDC on the same day and under the powers granted by this Rule indeed fails to even reference federal obligations for the treatment of unaccompanied children. [Guidance](#) later reportedly provided to the U.S. Border Patrol instructing agents to expel individuals under the authority provided by this Rule also makes no reference to protections for unaccompanied children under the TVPRA.
- The failure of the Rule and accompanying CDC Order to comply with the TVPRA's legal protections places vulnerable unaccompanied children in [danger](#), leaving them vulnerable to human trafficking, or forcible return to countries where their lives or safety are at risk. Instead of endeavoring to protect some of the most vulnerable individuals arriving at the southern border, the Rule appears to be nothing more than the Administration exploiting a crisis to accomplish its [longstanding goal](#) of weakening or eliminating protections for unaccompanied children.

Through this Rule, CDC is granting the Trump Administration over-broad and unwarranted powers to expel individuals at the border and from the interior of the United States, including asylum-seekers.

- **The Rule as applied violates domestic legal obligations to asylum-seekers:** The Rule fails to offer or guarantee any legal process whatsoever to individuals subject to the rule, including asylum-seekers. But U.S. refugee and immigration [laws](#) explicitly guarantee individuals an opportunity to request protection at ports of entry or after crossing into the United States (8 U.S.C. § 1158(a)(1)).
- **The Rule as applied violates Refugee Convention/Protocol:** Expelling individuals under the rule without such legal process would contradict U.S. international treaty obligations under the Refugee Convention and Refugee Protocol (Refugee Act of 1980, Pub. L. No. 96-212), which require the United States not to send individuals to places where they may face serious harm amounting to persecution. UNHCR, the U.N. Refugee Agency, has clarified in [guidance on COVID-19](#) that states cannot impose “blanket measure[s] to preclude the admission of refugees or asylum-seekers” in response to the COVID-19 pandemic. Yet the CDC Order implementing the Rule is just that: a blanket measure that effectively bans all asylum-seekers from protection. [Guidance reportedly provided](#) to the U.S. Border Patrol instructing agents to expel individuals under the authority provided by this Rule also makes no reference to protections for asylum-seekers under the Refugee Protocol. Alarming, the guidance demonstrates that the administration is interpreting its authority under the Rule as superseding its *mandatory* duty of *non-refoulement* (the obligation not to send a person to a place where they may face serious harm). The guidance makes clear that in practice, this Rule will engender

potential mass *refoulement* of asylum-seekers.

- **The Rule as applied violates Convention Against Torture:** The rule violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the United States is a party (Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277; see 8 C.F.R. § 208.16(c)). Article 3 of the Convention states that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” The UN Subcommittee on Prevention of Torture [stated](#) this protection cannot be forgone under the current pandemic. The “expulsions” DHS has undertaken under the Rule and Order contemplate return of individuals to the countries they have fled as well as to dangerous Mexican border cities without appropriate screenings in violations of the principle of non-*refoulement* under CAT. Reports show that migrants have been tortured in these Mexican cities. While an internal [guidance](#) document [reportedly](#) circulated by DHS to U.S. Border Protection (CBP) indicates that asylum seekers might be referred to an asylum officer if the asylum seeker makes an “affirmative, spontaneous, and reasonably believable claim” they might be tortured, in practice, this quasi-screening effort will be ineffectual, as it’s extremely unlikely that someone who was tortured would communicate this effectively and without any prompting to a uniformed (and likely armed) officer.
- **The Rule’s mechanism for safeguarding asylum obligations is ineffectual:** Although the text accompanying the interim final rule states that CDC will consult with the Department of State regarding U.S. international legal obligations in fashioning orders based on the rule, the Rule itself does not explicitly reference any such relevant international obligations nor does it provide an exception for individuals seeking asylum protection in the United States. Furthermore, the Order issued by the CDC on the same day and under the powers granted by this Rule fails to even reference U.S. domestic and international obligations to asylum-seekers, demonstrating that the Rule is being applied in violation of those obligations.
  - By contrast, earlier COVID-19 related travel restrictions on [China](#) (Proclamation 9984), [Iran](#) (Proclamation 9992), the [Schengen zone](#) (Proclamation 9993), and the [United Kingdom](#) (Proclamation 9996) have all included explicit exceptions for those seeking protection in the United States.

Because the Rule relies on an unprecedented interpretation of a statute to enact sweeping changes to existing laws, in violation of U.S. domestic and international obligations, we strongly urge you to withdraw the Rule.

Sincerely yours,



Deborah Weinstein  
Executive Director