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Submitted via Federal e-Rulemaking Portal
<http://www.regulations.gov>

Kyle McGowan
Office of the Chief of Staff
Centers for Disease Control and Prevention
1600 Clifton Road NE, MS H21-10
Atlanta, GA 30329

**Re: CDC-2020-0033, RIN 0920-AA76
Request for Comments for Control of Communicable Diseases; Foreign Quarantine:
Suspension of Introduction of Persons into United States from Designated Foreign
Countries or Places for Public Health Purposes**

Dear Mr. McGowan:

As the Latin America Working Group (LAWG), we very much appreciate the leadership of the Centers for Disease Control and Prevention (CDC) in responding to the COVID-19 pandemic in the United States. We write now to respectfully submit this comment to 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," Department of Homeland Security (DHS) Docket No. CDC-2020-0033, in the Federal Register at 85 FR 16559, issued March 20, 2020.

LAWG is deeply concerned about the impact of this interim final rule (Rule), which authorizes the Director of the 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. We are also troubled by the accompanying CDC issued order (Order), that has now been [extended](#) through May 20, 2020, and that invokes 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 Rule relies on an unprecedented interpretation of an obscure 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 via DHS expansive, unprecedented 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.

LAWG advocates for just and rights-based U.S. policies towards Latin America, working with a broad coalition of U.S. faith-based, humanitarian, immigration, immigrant-led, and other civil society organizations. As a part of our work to protect migrant and refugee rights, we monitor the root causes of forced migration from the northern countries of Central America and educate around the impacts of U.S. policies on immigrant communities in the United States, on asylum seekers and migrants along the U.S.-Mexico border and throughout the entire migrant route.

LAWG has monitored the negative impacts of the administration's policies on migrants and asylum seekers at the U.S.-Mexico border and throughout the region prior to the implementation of this Rule, including the so-called "Migrant Protection Protocols" (MPP) or [Remain in Mexico](#) policy, metering, and the [Asylum Cooperative Agreements](#) (ACAs). As such, we are deeply concerned that the administration's policies, including its response to the pandemic via this Rule and Order, are far from being appropriate measures to address the public health crisis and will only further fuel the refugee crisis in the region.

In the following text, LAWG presents examples of the unlawful and dangerous nature of the Rule and Order, as it relates to public health guidance and U.S. asylum and immigration law, including pertaining to unaccompanied children, as well as U.S. obligations under international refugee law. We provide information as to how the implementation of the Rule and Order has already resulted in the expulsions of asylum seekers that violate the right to non-refoulement, or right to not be returned to danger, and to their right to seek international protection, exposing them to precarious situations in Mexico and the northern countries of Central America.

1. The rule and order contradict public health concerns.

The Rule does not apply to individuals based on infection or exposure to the novel coronavirus, 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. Although purportedly based on public health concerns, the Rule fails to meaningfully address those concerns; instead, it appears tailored to prevent asylum-seekers and unaccompanied children from seeking protection in the United States.

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 most 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.

A. The rule and order fail to prevent the spread of the virus.

The Rule and Order have already resulted in the expulsion of [over 7,000](#) asylum seekers to Mexico or their home countries since the start of implementation on March 20, 2020.

Those who are returned to Mexico face violence from organized crime, Mexican migration and law enforcement, homelessness, sexual and gender-based violence and other human rights violations and are forced to remain alongside the over 60,000 asylum seekers stranded along Mexico's northern border due to the MPP/ Remain in Mexico policy and metering. Many of the asylum seekers live in overcrowded and makeshift refugee [camps](#) with little access to medical care or other basic services beyond a few small organizations providing support who remain on the ground assisting. The few U.S. humanitarian organizations that continue working face [increasing difficulties](#) in reaching and providing services to asylum seekers due to social distancing guidelines and travel restrictions within the United States, leaving asylum seekers waiting in Mexico even more exposed to organized crime and human rights violations. Some

migrant shelters on the Mexican side of the border have also had to curtail their services or [close](#) their doors to new migrants to prevent the spread of COVID-19 due to the challenges in maintaining social distancing and hygiene practices within their facilities.

The Rule and Order are not doing anything to prevent the spread of COVID-19 via these expulsions. Those apprehended at a port of entry or in between ports of entry receive no medical screening by CBP under the agency's [internal guidance](#) on the Order that was leaked to the media. It is therefore impossible to determine if individuals expelled have already been infected with COVID-19 or not. By forcing additional asylum seekers into this situation in Mexico via its implementation, the Rule and Order are driving asylum seekers into unsafe and unhygienic spaces such as these tent camps where there is no access to medical services or care. It is also driving asylum seekers to cross into the United States clandestinely, thereby increasing the movement and amount of interaction individuals need to have with other individuals, including Border Patrol agents, which runs counter to social distancing guidelines.

Additionally, some individuals are transferred directly from CBP custody along the U.S.-Mexico border to ICE and expelled to their home countries on ICE deportation flights. There have been regular ICE deportation [flights](#) returning adults and unaccompanied children to Guatemala, Honduras, El Salvador, and Haiti, countries that otherwise have their borders closed. ICE is reportedly only taking migrants' [temperature](#) prior to boarding deportation flights-- a wholly insufficient measure according to COVID-19 testing [guidelines](#) issued by the CDC itself. This is another example of the way in which the Rule and Order contradict public health concerns. By not issuing adequate COVID-19 testing of individuals prior to their boarding of these flights, there is no way to determine if individuals are carriers of the virus or not. To date, there have been an estimated 60 individuals who have tested positive for COVID-19 upon arrival in [Mexico, Guatemala, and Haiti](#) from the United States. As the United States has a much larger number of [confirmed cases](#) of COVID-19 than any of these countries combined, there is an ongoing risk of continuing to export the virus, by failing to test individuals for COVID-19 and expelling them to their home countries under this Rule and Order.

2. The rule and order abdicate U.S. responsibility to asylum seekers and lead to violations of non-refoulement throughout the region.

Through this Rule, CDC is granting the Trump administration expansive powers to expel individuals at the border and from the interior of the United States, including 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)).

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. 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.

The Rule also 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.

A. *The rule and order have extra-regional impacts on asylum seekers’ rights.*

In practice the Rule and Order have extra-regional impacts on asylum seekers’ rights by expelling asylum seekers to Mexico and countries such as Guatemala, Honduras, and El Salvador, where they are subject to violations of their rights to seek international protection and to not to be returned to danger (*non-refoulement*).

There have been several documented cases of asylum seekers who have been expelled from the United States to Mexico’s northern border who are then subject to Mexican migration enforcement there. Some of those asylum seekers have been detained and forcibly transferred to Mexico’s southern border, abandoned there or been forced to cross clandestinely into neighboring Guatemala despite border closures. A Mexican migrant shelter [documented](#) the case of a Honduran family expelled to Reynosa, Mexico shortly following the implementation of the rule and order on March 23rd, detained by Mexican migration enforcement, supposed to have been deported to their home country but because of border closures, was transferred to Mexico’s southern border and dropped off in Guatemala. There, the Guatemalan army arrested them and forced them to cross back into Mexico clandestinely. Since then, there have been several cases (see media reports from [April 8th](#) and [April 12th](#)) of individuals expelled by the United States to Mexico’s northern border, transferred by the Mexican government to its southern border with Guatemala and left there due to regional border closures. Those migrants, if they are not from Guatemala, then face the risk of apprehension and detention within Guatemala due to transiting during curfew hours or must try to cross back into Mexico on their own. In this way, the Rule and Order is leaving migrants in situations of extreme vulnerability amidst border closings and tightened enforcement across the region due to the pandemic.

The Rule and Order has also led to migrants’ facing danger and instability upon expulsions to their home countries, violating their right not to be returned to danger. Migrants deported back to Guatemala, Honduras, or El Salvador during the global pandemic have [faced](#) inadequate quarantine measures and fragile healthcare systems, deepening poverty, severe food insecurity, repressive policing of public health measures, and restrictions on public transportation, impacting the ability of families from meeting their relatives upon arrival, as well the ability to move to their communities before curfew.

Across the three countries, governments have taken ad hoc and insufficient measures to provide medical screening for deported migrants upon their arrival at reception centers in airports. In Guatemala, for example, there are [reports](#) that deported migrants were told to undertake “voluntary” quarantine in their homes after arrival without any sort of medical screening. While there have been several [cases](#) of deported migrants including [children](#) taken to the hospital to receive COVID-19 testing, testing only occurred after they demonstrated

possible symptoms upon arrival, and not as a part of any comprehensive or systematic medical screening provided by the government. In Honduras, some deported migrants were reportedly transferred from the reception center at the airport to a makeshift quarantine center by the military and police, where the adequacy of conditions and screenings are unknown. In El Salvador, individuals held in quarantine facilities [raised concerns](#) about the lack of information and [testing](#) being provided. Guatemalan, Honduran, and Salvadoran governments have also not provided public information on measures being taken to provide medical screening to deported migrants upon their arrival from the United States, much less information to migrants on specific measures they can take with their communities or families to prevent the spread of COVID-19. NGOs have faced difficulty in accessing reception centers where deported migrants arrive due to governmental measures restricting the movement of the population. This poses serious challenges to monitor the conditions and the risks deported migrants are exposed to upon their return.

Strict government curfews, business closings, and a lack of public transportation across the three countries also means that deported migrants will mostly have to find how to get to their home communities on their own and could be at risk for arrests due to transiting during curfew hours. These risks are exacerbated for unaccompanied children, whose families will face enormous difficulty in picking them up from airport reception centers, especially when coming from distant, rural communities. Deported women and girls are also at risk as public health crises often [deepen](#) existing gender inequalities and sexual and gender-based violence. Some deported migrants may not have anywhere to turn, especially if they were fleeing persecution in their homes in the first place. Civil society shelters, frequently the only organizations providing access to protection and basic services to deported migrants, have had to close to avoid spreading the risk of the virus within their facilities. Across the region, there is increasing violence directed towards deported migrants from communities due to fear that they will infect community members with COVID-19.

Food insecurity is a growing concern and secondary impact of the pandemic in a region that already [has severe income inequality](#). Migrants deported to their home countries face situations where local markets are either closed or do not have enough food, and food that is available is being sold for higher than normal prices. In countries where much of the population lives in poverty and works in the informal sector, households have no [reserves of cash](#) or food to survive even a short-term quarantine, and many are already desperate after several weeks of quarantine and curfew, and many will make the choice to risk violating restrictions to survive. Deported migrants are also returning to face increasingly repressive measures being taken by already corrupt governments in the region. Across all three countries, hundreds of people have been arrested for violating curfew or protesting the lack of food and water. Individuals, including deported migrants, face additional risks from non-state actors such as gangs, some of which have [imposed](#) their own curfews and threatened communities due to the pandemic in El Salvador. In Honduras, the government's response to the pandemic [has been](#) centralized, militarized, and devoid of oversight. As part of the mandatory lockdown, the Honduran government suspended constitutional guarantees, including freedom of expression and assembly. Over [6,000](#) people were detained by April 9 due to violating curfews and lockdown restrictions or for protesting over lack of food and layoffs.

All of these situations compound already fragile and ill-prepared health systems in many Central American countries. Latin America has fewer than [2 hospital beds](#) per 100,000 inhabitants (indeed, countries such as Guatemala, Haiti, Honduras, and Nicaragua have fewer than 1), compared to approximately 3 for Spain or Italy, which still found their hospitals overwhelmed. In Honduras, where a weak health care system has been undermined by massive governmental

corruption, health services are already struggling to address the current dengue epidemic in which some 200 people have died. Lack of clean water in poor neighborhoods throughout the region makes the admonition to wash hands impossible to follow. For communities controlled by gangs, individuals may face severe obstacles in accessing the few health clinics that do exist, should they become ill from the virus.

3. The rule and order violate U.S. government responsibility to 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.

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 Order also 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.

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. There have been close to 400 unaccompanied children expelled to date under this Rule and Order according to media reports.

Conclusion

The COVID-19 pandemic requires responses that ensure the public safety and health of communities across the United States and that are informed by the expertise of medical professionals and driven by data and science. A public health crisis should not be seen as an opportunity to implement unlawful policies against immigrants and asylum seekers who merit international protection. Nor should those policies inflict additional, unnecessary burdens on countries with dangerously fragile health systems. We urge the CDC to stay true to its mandate to save lives and protect individuals from health, safety, and security threats. Expelling asylum seekers, including women, families, and children who do not pose a threat to safety in the



United States runs contrary to public health guidance and to U.S. obligations under domestic and international law. U.S. policy responses should balance the public health needs of the U.S. population and our nation's obligations to implement procedures in line with due process and that uphold protections to asylum seekers. LAWG urges the CDC to rescind this dangerous Rule and Order 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniella Burgi-Palomino", with a long horizontal flourish extending to the right.

Daniella Burgi-Palomino
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Latin America Working Group (LAWG)
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