

**NATIONAL
IMMIGRANT
JUSTICE CENTER**
A HEARTLAND ALLIANCE PROGRAM

Submitted via www.regulations.gov

April 23, 2020

Kyle McGowan
Office of the Chief of Staff
Centers for Disease Control and Prevention
1600 Clifton Road NE, MS H21-10
Atlanta, GA 30329
Telephone: 404-498-7000
cdreregulations@cdc.gov

HHS Docket No. [CDC-2020-0033](#); RIN 0920-AA76
85 FR 16559

To Whom It May Concern:

The National Immigrant Justice Center (NIJC) respectfully submits 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," DHS Docket No. CDC-2020-0033, in the Federal Register at 85 FR 16559, issued March 20, 2020 ("Rule").

The Centers for Disease Control and Prevention (CDC) and the Department of Health and Human Services (HHS), in coordination with the Department of Homeland Security (DHS) and Department of State (DOS), barred entry of the majority of travelers at the Southern and Northern border. NIJC calls for the rescission of this Rule because it violates international and domestic law and does not meaningfully address the public health emergency we face today. Specifically, this Rule overhauls U.S. and international protections for countless asylum seekers, torture survivors, and unaccompanied children subjected to immediate, extra-judicial expulsions at the border. Hastily promulgated, this Rule also unlawfully

circumvents the notice-and-comment period Congress required. Additionally, public health experts find “no logic” to the blanket exclusion of humanitarian applicants at the border.¹ Unlike the executive branch, the COVID-19 pandemic is indifferent to its victims’ citizenship status. There is simply no public health justification for the unlawful expulsions this Rule unleashed.

NIJC’s strong interest and opposition to proposed changes

NIJC is dedicated to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers. NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Since its founding more than three decades ago, NIJC uniquely blends individual client advocacy with broad-based systemic change. Headquartered in Chicago, NIJC provides legal services to more than 11,000 individuals each year, including a significant percentage of asylum seekers, torture survivors, and unaccompanied children who have entered the United States by crossing the U.S.-Mexico border. These individuals have overcome unimaginable horrors in their home countries and journeyed to the United States in hopes of finding a better future. With this interim final rule, the ability for many to seek safety is effectively destroyed.

NIJC is deeply concerned about the impact of this interim final 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. To date, Customs and Border Protection (CBP) officers have utilized this Rule and accompanying CDC Order² to expel over 7,000 individuals, including asylum seekers, torture survivors, and at least 400 unaccompanied children, without any screening for fear of return or trafficking.³ The exact toll of these policies is

¹ Joanna Maples-Mitchell, “There is No Public Health Rationale for a Categorical Ban on Asylum Seekers,” Just Security (April 17, 2020), <https://www.justsecurity.org/69747/there-is-no-public-health-rationale-for-a-categorical-ban-on-asylum-seekers/>.

² CDC, Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 FR 17060.

³ Dara Lind, “Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law,” ProPublica (April 2, 2020), <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>; Ted Hesson & Mica Rosenberg, “U.S. deports 400 migrant children under new coronavirus rules,” Reuters (April 7, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-deportations/u-s-deports-400-migrant-children-under-new-coronavirus-rules-idUSKBN21P354>.

unknown, but expelled migrants become easy prey for traffickers and/or the deadly virus as they relocate to overcrowded, unsafe encampments near the U.S. border.⁴ NIJC strongly condemns these unlawful expulsions which have already sent countless migrants back to certain harm or death and calls for immediate rescission of this Rule.

I. The interim final rule is unlawful.

Congress never authorized the executive branch to override statutes protecting refugees and unaccompanied children. Absent express statutory license, the CDC's Rule cannot exploit the rulemaking process to rewrite decades of immigration and child welfare laws. Furthermore, had this order been issued in compliance with normal rulemaking procedures, the notice-and-comment period would have revealed the gaping holes in the CDC's reasoning. The CDC's justification for bypassing minimal regulatory comment period cannot withstand scrutiny.

A. The Rule exceeds the authority given to the executive branch by Congress.

This Rule hinges on an insular and flawed statutory interpretation of the Public Health Service (PHS) Act of 1944.⁵ The PHS Act specifically enables the Surgeon General to impose a partial or complete restriction on the introduction of persons and property into the United States so as to avert the spread of communicable disease. Although the Rule points out various changes in the executive branch since the PHS Act,⁶ the Rule ignores the decades of legislation that followed. Importantly, the PHS Act preceded the end of World War II, which revealed the global failure to protect the most vulnerable in times of crisis. The CDC isolated this statute to permit a near-total shut-down of border entries, ignoring subsequent legal frameworks for the protection of refugees and children arriving at U.S. borders.⁷ In

⁴ Doctors without Borders, "The Devastating Role Toll of "Remain in Mexico" One Year Later," (Jan. 29, 2020), <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/devastating-toll-remain-mexico-one-year-later>.

⁵ 42 U.S.C. 265.

⁶ See 85 FR 16560 at n. 1 (noting that the Surgeon General's office is now integrated with the Department of Health and Human Services, making the Secretary of Health and Human Services the primary authority for this Rule) and 2 (noting that the President delegated by executive action his authority to the HHS Secretary).

⁷ While the Rule does not explicitly permit expulsions, the CDC created a legal vacuum by failing to address existing procedures to process humanitarian claims. An internal memorandum uncovered by an investigative journalist revealed that Customs and Border Protection understands the PHS Act to override subsequent U.S. law mandating processing procedures for asylum seekers, torture survivors, and children. See Dara Lind, "Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law," ProPublica (April 2, 2020).

fact, the Rule does not even mention these supervening laws and policies.

1. Unlawfully Shutting Out Asylum Seekers

Nearly 40 years after the enactment of the PHS Act, Congress enacted the Refugee Act of 1980, enshrining the “historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.”⁸ The Refugee Act amended existing law to provide that any noncitizen “who arrives in the United States...may apply for asylum.”⁹ The U.S. also signed and ratified the 1967 United Nations (U.N.) Protocol Relating to the Status of Refugees, which incorporates the 1951 U.N. Convention Relating to the Status of Refugees. Under the U.S. Constitution, this means that international principles of *non-refoulement* (included in the U.N. Refugee Convention) are the law of the land. CBP is thus prohibited under U.S. and binding international law from returning individuals to a country where they may face life-threatening harm on the basis of a protected ground.¹⁰

Nevertheless, this Rule effectively bans asylum seekers who have a lawful right to seek asylum at our borders. Shortly before this Rule and accompanying order, NIJC’s client Eddie,¹¹ an East African torture survivor, crossed into the U.S. at the Southern border. Eddie was a prominent member of an opposition political party and advocated to end human rights abuses and political corruption within his country. As a result of his activism, the military police arrested and detained Eddie. For months, officials beat, tortured, and threatened Eddie. Just a few months after his release, Eddie was detained again. Government officials took Eddie to a warehouse and tortured him there for over a month. During this time, military police went to Eddie’s home and killed his wife and children. When Eddie was finally able to escape, he immediately fled his home and crossed into the United States to seek asylum. Had Eddie attempted to cross after the border closure, he would have been forcibly expelled and returned to the life-threatening danger and torture that already killed his family.

⁸ Refugee Act of 1980, Pub. L. No. 96-212, § 208(a), 94 Stat. 102, 105 (1980).

⁹ 8 U.S.C. § 1158(a)(1).

¹⁰ UNHCR, the U.N. Refugee Agency, has clarified in guidance on COVID-19 that states cannot lawfully 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. See UN High Commissioner for Refugees (UNHCR), *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, 16 March 2020, available at: <https://www.refworld.org/docid/5e7132834.html> [accessed 21 April 2020].

¹¹ Name changed for client’s privacy and safety.

Though averted, Eddie’s expulsion would not be an anomaly. The administration’s implementation of the Rule sanctions daily violations of our domestic and international protections obligations, as asylum seekers are systemically and summarily expelled without immigration officials engaging in even minimal screening to assess fear of return.¹²

2. Torture Survivors Returned to Harm

The Rule also violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the United States has been a party for over two decades.¹³ 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 they would be in danger of being subjected to torture.” The UN Subcommittee on Prevention of Torture has explicitly stated that this protection cannot be forgone under the current pandemic.¹⁴

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, violating the principle of non-*refoulement* under CAT. The Rule does not carve out any procedure to uphold this binding principle. An internal CBP memorandum leaked to the media suggests referrals for torture screenings should a survivor make an “affirmative, spontaneous, and reasonably believable claim” they might be tortured.¹⁵ Such expectation is woefully misguided, as torture survivors rarely disclose their past torture in a spontaneous or affirmative fashion because of fear and the psychological impact of the trauma they carry.¹⁶ Given the CDC’s willful omission of the prevailing rights of torture survivors in this Rule, the CDC’s Rule has likely resulted in the death or irreparable harm of countless torture survivors.

¹² Associated Press, US Expels Thousands to Mexico After Largely Halting Asylum, N.Y. Times (April 9, 2020), <https://www.nytimes.com/aponline/2020/04/09/us/ap-us-virus-outbreak-border-enforcement.html>.

¹³ Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277; see 8 C.F.R. § 208.16(c).

¹⁴ Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (March 25, 2020), <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>.

¹⁵ See Lind, n. 3 (providing CBP memorandum at <https://www.documentcloud.org/documents/6824221-COVID-19-CAPIO.html>).

¹⁶ See Amanda C de C Williams & Jannie van der Merwe, “The psychological impact of torture,” British Journal of Pain (2013) (Under-recognition by generalist and specialist healthcare workers of torture survivors is the norm, and disclosure occurs in only a minority of cases, and rarely at first meeting.”).

3. Unaccompanied Children Turned Away, Alone and Vulnerable

Many decades subsequent to the enactment of the PHS Act, Congress unanimously recognized that immigrant children are children, first and foremost, and required special care when they approach our borders alone.¹⁷ In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), mandating protective procedures for unaccompanied children,¹⁸ given the high risk that they will be subject to exploitation, trafficking, or violence.¹⁹ These procedures include a strict 72-hour deadline for CBP officials to turn over unaccompanied children to HHS, HHS's best interest evaluation of the least restrictive setting for the child's care, and children's placement in removal proceedings rather than expedited processing.²⁰ The TVPRA *only* permits the return of children to their country of origin after three separate agencies (DHS, HHS, and the DOS) review and ensure a child's safe repatriation and reintegration with the child's family or an appropriate child welfare agency.²¹

By all accounts, CBP is unilaterally turning away hundreds of unaccompanied children without following any of the TVPRA-mandated procedures.²² NIJC client Caleb²³ is a young child who fled severe abuse at the hands of relatives and local gangs in his home country in Central America. When he arrived at the border alone,

¹⁷ Brian Resnick, "Why We Don't Immediately Send the Border Kids Back," *The Atlantic* (Jul. 8, 2014), <https://www.theatlantic.com/politics/archive/2014/07/why-we-dont-immediately-send-the-border-kids-back/453345/>.

¹⁸ For an overview of these protective procedures, see American Immigration Council, *A Guide to Children Arriving at the Border: Laws, Policies and Responses* (June 2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/a_guide_to_children_arriving_at_the_border_and_the_laws_and_policies_governing_our_response.pdf.

¹⁹ *See, e.g.*, Cong. Record (House), William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Dec. 10, 2008, at H10902, Statement of Rep. Smith (NJ) ("By protecting the victims and not sending them back to their home country where they are often exploited in a vicious cycle of exploitation, we say to the victims we will make every effort to make you safe and secure."); *id.* at 10903, Statement of Rep. Loretta Sanchez (CA) (The TVPRA "provides additional protections for trafficking survivors who are threatened by trafficking perpetrators, and for children who are at risk of being repatriated into the hands of traffickers or abusers.").

²⁰ *See* 8 U.S.C. § 1232(b)(3); *see also* Letter from Congressmembers DeLauro and Murray (April 2, 2020), https://delauro.house.gov/sites/delauro.house.gov/files/DeLauro_Murray_Letter_Protections_Unaccompanied_Children_COVID-19.pdf; Letter from Senate and House Judiciary Committee members (Mar. 30, 2020), https://judiciary.house.gov/uploadedfiles/3.30.2020_letter_to_dhs_re_tvpra.pdf.

²¹ 8 U.S.C. § 1232(a)(1).

²² Hamed Aleaziz, "The Trump Administration Is Now Deporting Unaccompanied Immigrant Kids Due To The Coronavirus," *Buzzfeed* (Mar. 30, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/coronavirus-unaccompanied-minors-deported>.

²³ Name changed for client's privacy and safety.

he was apprehended by CBP and transferred to the custody of HHS custody, where he finally felt safe enough to express his fear of return. It took months for Caleb to share his full story, but he recently won asylum thanks to the safe and secure procedures of the TVPRA. Caleb and his legal team are painfully aware that if he had made it to the United States border after March 20, 2020, CBP would have unlawfully returned him to the cycle of violence and exploitation he fled in the first place.

With this Rule, the executive branch is effectively exploiting a global crisis to accomplish its longstanding goal of eliminating protections for unaccompanied children like Caleb.²⁴

It is unclear where the CDC derived this sweeping authority. Congress did not permit the CDC to suspend existing legal obligations. As multiple lawmakers and a former DHS official have pointed out, this extrajudicial expulsion policy does not pass legal muster.²⁵ In one executive stroke, the administration has usurped Congress' legislative authority and struck out decades of binding obligations under domestic and international law.

B. The interim final rule also violates the Administrative Procedure Act (“APA”).

Under the APA, the CDC must not elude the minimum thirty-day comment period for administrative rulemaking unless it properly invokes statutory exceptions. Here, the CDC invokes two grounds for exception that are invalid on their face.

The CDC first invoked “good cause” under section 5 U.S.C. 553(d)(3) to dispense with standard regulatory procedure because it would be “impracticable, unnecessary, and contrary to the public health—and, by extension, the public interest—to delay these implementing regulations until a full public notice-and-comment process is completed.”²⁶ Courts have cautioned that the “good cause”

²⁴ KIND, What are TVPRA Protections for Unaccompanied Children? (April 1, 2019), <https://supportkind.org/wp-content/uploads/2019/04/KIND-TVPRAtalking-points-4.1.19-FINAL.pdf> (analyzing repeated mischaracterizations by executive branch that TVPRA protections are “loopholes”).

²⁵ Lucas Guttentag, “[Coronavirus Border Expulsions: CDC’s Assault on asylum-seekers and Unaccompanied Minors](#),” Just Security (April 13, 2020); Letter from Senator Leahy et al. to DHS Acting Secretary (April 7, 2020), <https://www.leahy.senate.gov/imo/media/doc/4.7.20%20FINAL%20Jud%20letter%20to%20DHS%20re%20Title%2042%20-%20SIGNED.pdf>.

²⁶ 85 FR 15565 (citing 5 U.S.C. 553(b)(3)(B)).

exception should be sparingly used.²⁷ While the COVID-19 pandemic caused a public health crisis, the APA’s “good cause” exception never authorized executive agencies to suspend legislation at will. What this rule effectively “suspends” is plenary Congressional power, which brought decades of humanitarian protections for asylum seekers, torture survivors, and unaccompanied children. Far from causing an unnecessary delay, the notice-and-comment period would have edified the CDC and HHS on the public and private interests this Rule steamrolled.²⁸

The Rule invokes a second basis to issue an interim final rule, citing “dialogue” with Mexican and Canadian governments to respond to this pandemic.²⁹ While DOS consulted with both governments prior to the border closure, Canada and Mexico do not hold equivalent roles in U.S. foreign affairs.³⁰ In 2002, the U.S. and Canada entered into a binding agreement that requires processing of refugees in the first country where they arrive.³¹ This treaty is binding on both countries and does not infringe on the U.S.’ international *non-refoulement* obligations. However, no such agreement or treaty has resulted from the brief “dialogue” between DOS and the Mexican government. Therefore, refugees at the Southern border are entitled to the full panoply of domestic and international protections from unlawful expulsions. Further, unaccompanied children—who are not subject to Safe Third Country agreements³²—are entitled to TVPRA processing on both the Northern and the Southern borders. The CDC’s invocation of the foreign affairs exemption does not comport with binding law, thus violating the APA.

II. Public Health Experts Have Denounced the Unsupported Assumptions Underlying this Rule.

We are obligated to question the implicit assumptions and motives of the executive branch in issuing this Rule, given its established pattern of anti-immigrant animus

²⁷ See, e.g., *Texaco v. FPC*, 412 F.2d 740, 744 (3d Cir. 1969); *Batterton v. Marshall*, 648 F.2d 694, 703-04 (D.C.C. 1980).

²⁸ S. Doc. No. 248, 79th Cong., 2d Sess. 19-20 (1946) (due to the unrepresentative nature of an administrative agency, “public participation . . . in the rulemaking process is essential in order to permit administrative agencies to inform themselves, and to afford safeguards to private interests.”).

²⁹ 85 FR 15565 (citing exception based on “foreign affairs function of the United States” 5 U.S.C. 553(a)(1)).

³⁰ Sabrina Rodriguez, “Trump to partially close U.S.-Mexico border,” Politico (Mar. 20, 2020), <https://www.politico.com/news/2020/03/20/us-mexico-ready-to-partially-close-border-138946>.

³¹ Agreement between the Government of Canada and the Government of the United States of America for cooperation in the examination of refugee status claims from nationals of third countries. Treaty Law Division. Global Affairs Canada.

³² 8 U.S. Code § 1158(a)(2)(E).

and policies.³³ But the Rule also makes two explicit assumptions: that the only alternative to border closure is mass detention and that this Rule serves public health interests. Public health experts have debunked both assumptions as false.

A. Detention or expulsions are not the only border responses to this public health crisis.

In its hasty appraisal of the border, the CDC relied on DHS's representation that mass detention of asylum seekers and children is the only alternative to their summary expulsion. CBP detention centers are infamously squalid and unsanitary, even failing to meet basic constitutional thresholds.³⁴ This Rule purports to suspend introduction of individuals who otherwise would be detained in congregate settings, as if detention was the only response to border apprehensions.

Detention centers are in fact tinderboxes for the virus to spread, and public health experts³⁵ and human rights organizations have called urgently on DHS to utilize the vast spectrum of release and community care options available as alternatives.³⁶ Specifically, allowing asylum seekers to be processed and paroled into the community to shelter at home safely with their loved ones and promptly reuniting children with their families are safe and viable avenues that will not further strain our public health system. DHS has "significant parole authority" to release all, including those subject to statutorily mandated detention.³⁷ For children, the TVPRA already mandates their placement in the least restrictive setting, including

³³ See Arelis R. Hernández & Nick Miroff, "Facing coronavirus pandemic, Trump suspends immigration laws and showcases vision for locked-down border," Wash. Post (April 3, 2020), https://www.washingtonpost.com/national/coronavirus-trump-immigration-border/2020/04/03/23cb025a-74f9-11ea-ae50-7148009252e3_story.html.

³⁴ Astrid Galvan, U.S. Judge sides with migrants in case against Border Patrol (Feb. 19, 2020), <https://apnews.com/c0a7e0d72e60d0c347877d46863514bf> (reviewing federal order finding conditions in CBP detention centers violated U.S. Constitution); Doe v. Nielsen, 4:15-cv-00250-DCB (ECF No. 494), (D.Az. 2020), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/doe_v_johnson_order_for_permanent_injunction.pdf (Order permanently enjoining Tucson Sector CBP centers).

³⁵ Catherine C. Shoichet, Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention, CNN (Mar. 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

³⁶ Human Rights Watch, Letter to CDC Director re: Border Closure (April 1, 2020), <https://www.hrw.org/news/2020/04/01/human-rights-watch-letter-centers-disease-control-and-prevention-and-department>; Vera Institute of Justice, Guidance for preventive and responsive measures to coronavirus for immigration system actors (Mar. 18, 2020), <https://www.vera.org/downloads/publications/coronavirus-guidance-immigration-system-actors.pdf>.

³⁷ See Democracy Now!, Former ICE Director: Release Immigrants from Detention or COVID-19 Will Spread Like Wildfire Inside (Mar. 23, 2020), https://www.democracynow.org/2020/3/23/ice_detention_centers_covid_19 (quoting John Sandweg).

reunification with family sponsors who can safely care for children outside of crowded detention settings.³⁸

In sum, DHS' representation that detention is the sole alternative to border expulsions misrepresents safe alternatives and betrays a rudimentary understanding of public health principles, which overwhelmingly recommend self-isolation in family or community settings.

B. This Rule does not protect public health.

Public health experts have called for immediate rescission of the border closure policy.³⁹ While health screenings are advised, there is no evidence that walling off asylum seekers and children will mitigate COVID-19's spread.⁴⁰ Importantly, public health measures only work "when they include everyone"⁴¹—including migrants fleeing violence and harm lawfully seeking protection at our borders.

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.

For example, the CDC permits the limited entry of U.S. citizens, lawful permanent residents, members of the armed forces, and their respective families.⁴² The CDC appears to recognize a humanitarian or public interest in exempting those individuals, despite its analysis that even introducing two individuals who may carry the virus would pose serious danger to the United States' sprawling

³⁸ See Letter from 79 organizations condemning children's border expulsions, <https://supportkind.org/wp-content/uploads/2020/04/Organizational-Sign-on-Letter-Regarding-UAC-Expulsions-4.16.20.pdf>.

³⁹ Amnesty International USA, Human Rights First, Physicians for Human Rights, Doctors Without Borders, et al., "Responding to the COVID-19 Crisis While Protecting Asylum-Seekers" (March 25, 2020), <https://www.amnestyusa.org/wp-content/uploads/2020/03/COVID-19-and-the-Border-UPDATED.pdf>.

⁴⁰ Natalia Banulescu-Bogdan, Meghan Benton, and Susan Fratzke, "Coronavirus Is Spreading across Borders, But It Is Not a Migration Problem," Migration Policy Institute (March 2020), <https://www.migrationpolicy.org/news/coronavirus-not-a-migration-problem>.

⁴¹ Doctors without Borders, "Mexico: Closing borders will endanger lives of asylum seekers and jeopardize public health" (Mar. 27, 2020), <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/mexico-closing-borders-will-endanger-lives-asylum-seekers-and>.

⁴² 85 FR 16564.

infections.⁴³ The CDC notes that “[d]etermining the appropriate protections for U.S. citizens and lawful permanent aliens requires a complex balancing of numerous interests and would benefit from additional consideration and public comment. HHS does not want such concerns to delay the issuance of this interim final rule.”⁴⁴ Nevertheless, the CDC readily disregards decades of legislation regarding the dangers and illegality of excluding refugees and children.

Simply put, there is no public health rationale for the summary expulsions this Rule authorized.⁴⁵ NIJC urges the CDC to follow the joint call of public health and human rights experts.

Conclusion

This Rule signals a dangerous intent to weaponize current and future public health crises to suppress lawful immigration.⁴⁶ Executive agencies lack such broad authority to rewrite immigration laws, much less expel large categories of individuals protected under domestic and international law. That’s why NIJC condemns the indefinite, illogical, and dangerous precedent set by this Rule and reiterates its request for its immediate rescission.

Thank you for your consideration and please do not hesitate to contact Azadeh Erfani or Heidi Altman for further information.

/s/ Azadeh Erfani
NIJC Senior Policy Analyst
aerfani@heartlandalliance.org

/s/ Heidi Altman
NIJC Director of Policy
haltman@heartlandalliance.org
(312) 718-5021

⁴³ 85 FR 16560 (“Suspension of the introduction of those two persons into the United States at the land border would mitigate the serious and increased danger of further introduction of COVID–19 in the United States.”).

⁴⁴ 85 FR 16564.

⁴⁵ *See supra* n. 1.

⁴⁶ 85 FR 16562-63.