



Submitted via <http://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, Georgia 30329

**Re: HHS Docket No. [CDC-2020-0033](#); 85 FR 16559; RIN 0920-AA76; Comments in Opposition to Closing the Border to Asylum Seekers**

Dear Ms. McGowan:

The Catholic Legal Immigration Network, Inc. (CLINIC)<sup>1</sup> submits these comments opposing the Department of Health and Human Services' (HHS) Interim Final Rule (IFR) outlining the procedure by which the Centers of Disease Control (CDC) may “suspend the introduction of persons from designated countries or places, if required, in the interest of public health.”

CLINIC opposes this sweeping IFR. While CLINIC acknowledges the seriousness of the current COVID-19 epidemic, this IFR is overbroad and conflicts with our legal and moral obligations to allow asylum seekers to apply for safety from harm in the United States.

On the same day the CDC issued this IFR it also issued a proclamation closing the Mexican and Canadian land borders to anyone seeking entry into the United States without a visa. Although it is the proclamation which is most directly responsible for the unprecedented end to asylum seekers' entry into the United States, CDC has not asked for, or provided a mechanism, for comments on the proclamation itself. CLINIC strongly objects to the CDC enacting policy through this sweeping agency action, without even giving the public an opportunity to provide commentary on its actions.<sup>2</sup>

---

<sup>1</sup> These comments were primarily authored by Victoria Neilson, Managing Attorney of CLINIC's Defending Vulnerable Populations (DVP) Program.

<sup>2</sup> See Lucas Guttentag, Just Security, *Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors*, Apr. 13, 2020, <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>. (Discussing the extraordinary procedure the administration employed to close the border and how it runs afoul of statutory protections for asylum seekers and children.)

## CLINIC's Interest in the Rule

Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of immigration legal services programs. This network includes approximately 370 programs operating in 49 states and the District of Columbia. CLINIC's network employs roughly 1,400 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. In addition to affirmative applications for benefits, CLINIC affiliates have increasingly begun to represent clients in removal proceedings.

In 2019, CLINIC launched a special project, *Estamos Unidos*, in Ciudad Juarez, Mexico to respond to the desperate need for counsel and legal information for asylum seekers subjected to the "Migrant Protection Protocols." Through this project, CLINIC has daily, firsthand contact with asylum seekers who see the United States as a world leader in providing safe haven to those facing persecution. The *Estamos Unidos* team has provided services to thousands of asylum seekers since its inception. The COVID-19 crisis has led to dangerous conditions near the border as asylum seekers are forced to seek shelter in congregate settings, and has made it nearly impossible for counsel to meet with asylum seekers and provide critical information about their cases in the United States.

## The Rule Is Both Over-Inclusive and Under-Inclusive

Expelling all asylum seekers means that the United States is sending thousands of people into harm's way without taking any steps to determine whether they have been exposed to COVID-19. The United States is currently the world epicenter of the COVID-19 virus, with more than 829,051 cases.<sup>3</sup> By way of contrast, Mexico has reported only 9,501 cases.<sup>4</sup> The countries from which the majority of asylum seekers at the southern border come also have very low incidence of COVID-19, with the current numbers being: Honduras, 510 cases; Guatemala 316 cases; and El Salvador 237 cases.<sup>5</sup> Indeed the greatest public health risk to these Northern Triangle countries may be presented by the United States' continuing deportation of Central American citizens who have been physically present in the United States and are carrying the virus.<sup>6</sup> This move to expel asylum seekers is, at best, an ill-conceived response to the pandemic, not based on sound public health grounds, and shifting blame to immigrants without a factual basis,<sup>7</sup> and at worst, another attempt to eviscerate U.S. asylum protections.

---

<sup>3</sup>See Worldometer, Coronavirus, Last updated Apr. 22, 2020, <https://www.worldometers.info/coronavirus/?fbclid=IwAR1-P0m-uWAtaHUNHLI2cLt9uyh4EWbKObU5lbQfeikgeCZ0KLF2t0Te4rI>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Caitlin Dickerson and Kirk Semple, *U.S. Deported Thousands Amid Covid-19 Outbreak. Some Proved to Be Sick*, THE NEW YORK TIMES, Apr. 18, 2020, <https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala.html>. See also *Guatemala Suspends Deportations From U.S. After 70 Test Positive For Coronavirus*, NPR, Apr. 17, 2020, <https://www.npr.org/2020/04/17/837511694/guatemala-suspends-deportations-from-u-s-after-70-test-positive-for-coronavirus>.

<sup>7</sup> See Tom K. Wong, US Immigration Policy Center, *COVID-19 and the Remaking of U.S. Immigration Policy? Empirically Evaluating the Myth of Immigration and Disease*, Apr. 22, 2020, <https://usipc.ucsd.edu/files/usipc-myth-immigration-disease-final.pdf>.

This IFR is based on the assumption that the law requires that all asylum seekers must be detained in congregate settings in the United States if permitted to enter and pursue asylum. However, the Department of Homeland Security has authority to parole asylum seekers into the United States.<sup>8</sup> The humane response to the need to protect public health, would be to implement testing for COVID-19 at the border, and, if necessary, temporary quarantine, before allowing asylum seekers to pursue their claims from within the United States. Instead, the federal government has seemingly opted to use the pandemic as an excuse to close the border and dispense with its asylum obligations.

### **The United States Must Not Prevent Asylum Seekers from Seeking Safety**

Under the Immigration and Nationality Act, (INA) § 208(1), “[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum . . .”). This law reflects Congress’s longstanding commitment to ensuring that asylum seekers be provided the opportunity to seek protection in the United States, without regard to how or where they arrive.

This IFR and proclamation, prevent asylum seekers from exercising this right, instead “expelling” them, even if they are physically present in the United States, with no procedural protections, *including* no inquiry into whether those expelled to Mexico have a fear of return there. Within the first 18 days of the IFR, the United States expelled 10,000 border crossers.<sup>9</sup> Closing the border to those without proper documentation, overwhelmingly asylum seekers, while allowing others to continue to cross the border, belies the actual motivation behind this rule—to eliminate asylum at the southern border. During the past three years, there have been extraordinary changes to the procedures and substance of seeking asylum in the United States,<sup>10</sup> but this rule, which completely prevents asylum seekers from accessing any protection in the United States and expels them, potentially to the exact harm they have fled, is both illegal and immoral.

In response to the COVID-19 crisis, Pope Francis has stated, “We cannot allow ourselves to write the present and future history by turning our backs on the suffering of so many people,” and instead called for a response guided by “hope, faith and charity.”<sup>11</sup> CLINIC calls upon the U.S. government to rescind this IFR and proclamation and end this unprecedented restriction on seeking asylum at the border.

---

<sup>8</sup> See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5.

<sup>9</sup> *US Using Coronavirus Pandemic to Unlawfully Expel Asylum Seekers, Says UN*, THE GUARDIAN, Apr. 17, 2020, <https://www.theguardian.com/world/2020/apr/17/us-asylum-seekers-coronavirus-law-un>.

<sup>10</sup> National Immigrant Justice Center, *A Timeline of the Trump Administration’s Efforts to End Asylum*, Mar. 2020, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2020-04/04-01-2020-asylumtimeline.pdf>.

<sup>11</sup> Gerard O’Connell, *Pope Francis Shares His Vision for Covid-19 Aftermath*, AMERICA, THE JESUIT REVIEW, Apr. 17, 2020, <https://www.americamagazine.org/faith/2020/04/17/pope-francis-shares-his-vision-covid-19-aftermath>.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, CLINIC's Advocacy Director, at [jbussey@cliniclegal.org](mailto:jbussey@cliniclegal.org) should you have any questions about our comments or require further information.

Sincerely,

A handwritten signature in blue ink that reads "Anna Marie Gallagher". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

Anna Marie Gallagher  
Executive Director