

*Submitted via Federal eRulemaking Portal*

April 23, 2020

Kyle McGowan, Office of the Chief of Staff  
Center for Disease Control and Prevention

**Re: Agency CDC, Docket No. CDC-2020-0033 Public Comment Opposing the Interim Final Rule on “Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes.” In the Federal Register at 85 F.R. 16559.**

Dear Mr. McGowan:

The Center for Victims of Torture (CVT) respectfully submits this comment to oppose the Interim Final Rule titled “Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes” issued by the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services, Docket No. CDC-2020-0033, on March 24, 2020.

The interim final rule, along with the Order invoking the rule’s authority, are extremely detrimental to survivors of torture, who are likely to comprise a high percentage of the asylum seekers looking for protection at our borders. It is yet another step by the administration to prevent asylum seekers from obtaining refuge in the United States. DHS has interpreted the rule, along with the accompanying Order, as granting permission to the agency to summarily expel all individuals who attempt to cross or have crossed the U.S. borders, including asylum seekers and survivors of torture. The rule is currently expelling torture survivors to places where there are substantial grounds for believing that they would be in danger of being tortured or persecuted, and exposes them to re-traumatization and re-victimization.

For the reasons detailed in the comments that follow, the CDC should immediately halt any action purportedly allowed under the interim final rule and dedicate its efforts to advancing policies and procedures to safeguard individuals fleeing persecution, including torture, while minimizing the spread of COVID-19 through legitimate public health measures, such as comprehensive screenings of asylum seekers.

Thank you for the opportunity to submit comments on this interim final rule. Please do not hesitate to contact us with any questions or for further information.

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**DETAILED COMMENTS opposing the department of Health and Human Services Interim Final Rule, Docket No. CDC-2020-0033 on “Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes.”**

The Center for Victims of Torture (CVT) welcomes the opportunity to comment on the “Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes,” CDC Docket No. CDC-2020-0033 (“the proposed rule,” or “the rule”).

Founded in 1985 as an independent non-governmental organization, CVT is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the U.S., the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives and restores the hope of more than 25,000 primary and secondary survivors of torture, other gross human rights violations, and severe war-related trauma. The vast majority of CVT’s clients in the United States are asylum seekers and refugees.

CVT helps organize a network of torture treatment programs focused on rebuilding the lives of survivors of torture across the nation. These programs serve primarily asylum seekers, asylees, and refugees.

CVT also conducts research, training and advocacy, with each of those programs rooted in CVT’s healing services. The organization’s policy advocacy leverages the expertise of five stakeholder groups: survivors, clinicians, human rights lawyers, operational/humanitarian aid providers, and foreign policy experts.

**I. Background**

On March 24, 2020, the Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services (HHS) published an interim final rule that allows for the creation of a “procedure for CDC to suspend the introduction of persons from designated countries or places, if required, in the interest of public health.” On the same day, the 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 on the grounds that they could be “vectors” for transmission of COVID-19. As of the drafting of this comment, the order is scheduled to be in effect until May 20, 2020, as it was extended 30 days on April 20, 2020. The Order can continue to be renewed for 30-day periods thereafter. Together, the rule and Order invoke baseless public health concerns to justify the violation of domestic and international law.

**II. This Rule, along with the Order, are part of a larger scheme by the administration to stop asylum seekers who come to the United States through the U.S. southern border from finding refuge, and to deter others from trying**

Through the establishment of policies, agreements, and dubious unilateral changes to well-settled asylum law, and now the Trump administration's reaction towards asylum seekers in the face of COVID-19, it is clear the administration seeks to prevent individuals—especially, but not only, those arriving at our southern border—from accessing the U.S. asylum process at all, much less actually obtaining asylum. These actions form the backdrop to the proposed rule and include the following:

**Changing asylum immigration law:** The attorney general certified to himself several immigration court cases and decided them in a way that upends longstanding law. In overruling *Matter of A-B-* and *Matter of L-E-A-*, the attorney general made it significantly more difficult for individuals from Central America to win their asylum cases, since they largely rely on these two cases.

**Zero Tolerance leading to Family Separation:** The administration adopted a policy of pursuing criminal charges against every individual who crossed the border outside of a port of entry, then forcibly separated children from the parents who were subjected to criminal proceedings. Family separation was a cruel practice that traumatized both children and parents. It will have long lasting consequences for asylum seekers and for the United States.<sup>1</sup>

**Asylum Ban 1.0:** In November 2018, the president issued a proclamation banning individuals who enter the United States between ports of entry from asylum.<sup>2</sup>

**Migrant Protection Protocols:** Established in January 2019, this policy forces asylum seekers to wait in dangerous Mexican border cities during the pendency of their cases. Besides placing asylum seekers in danger, it undermines their ability to obtain assistance of counsel, greatly diminishing their ability to win their case.<sup>3</sup>

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<sup>1</sup> Center for Victims of Torture. Asylum Fact 4. Available at <https://www.cvt.org/AsylumFact4> (last accessed on 12/30/2019).

<sup>2</sup> <https://www.federalregister.gov/documents/2018/11/09/2018-24594/aliens-subject-to-a-bar-on-entry-under-certain-presidential-proclamations-procedures-for-protection>.

<sup>3</sup> Human Rights First. Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process. Available at <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf> (last accessed on 12/30/2019).

**Asylum Ban 2.0:** In July 2019, the administration disqualified from asylum any individual who transited through a third country before arriving at the United States southern border. This disqualifies all but Mexican asylum seekers arriving at our southern border from asylum.<sup>4</sup>

**Agreements with other countries:** The Trump administration has bullied countries into agreeing to Asylum Cooperative Agreements to send asylum seekers to countries that are not safe—from which people are fleeing violence and persecution that these countries' governments cannot, or will not, effectively address—including El Salvador, Guatemala, and Honduras. These agreements essentially trap asylum seekers in the countries where they are being persecuted or are otherwise at significant risk of harm.

**Work Authorization Restrictions:** The administration is seeking to double the time an asylum seeker must wait before qualifying for a work permit (from 180 days to 365 days) and to impose additional restrictions on eligibility. A third proposed rule eliminates entirely the time limit previously imposed on USCIS to adjudicate work authorization applications, which implicitly authorizes the agency to delay any such adjudication indefinitely. The administration also proposed a rule that imposes a \$490 fee for the initial work permit, further restricting access to work authorizations.

**Fee for asylum applications:** The administration plans to impose a \$50 fee for asylum applications filed before the U.S. Citizenship and Immigration Services (USCIS) and with the Immigration Court, a fee that will prevent many from having the choice to apply for asylum.

### **III. As implemented, the Rule violates the Refugee Act of 1980**

The Refugee Act of 1980 amended the Immigration and Nationality Act (INA) by codifying the international human rights obligations conferred on the United States as a party to the 1951 Refugee Convention. United States 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)). As this rule, through the accompanying Order, allows for the expulsion of individuals without a screening for relief, the U.S. is eliminating their opportunity to request protection.

### **IV. The administration's actions allowed under the rule violate the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol**

The rule abrogates the United States' obligations under the 1951 Convention Relating to the Status of Refugees (the Refugee Convention). The United States, while not a party to the 1951

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<sup>4</sup> <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>

Refugee Convention itself, did ratify the 1967 Protocol. In ratifying the 1967 Protocol, the United States bound itself to the obligations of the 1951 Refugee Convention as well.<sup>5</sup> Under the Refugee Convention, any noncitizen in the U.S. can apply for asylum “whether or not at a designated port of arrival” and “irrespective of [their immigration] status.”<sup>6</sup> Contracting States shall not expel a refugee lawfully in their territories save on grounds of national security or public order.<sup>7</sup> The expulsion of such a refugee shall be only in “pursuance of a decision reached in accordance with due process of law.”<sup>8</sup> The rule has allowed the U.S. government to summarily remove (“expel”) individuals at the southern and northern borders without screening them for humanitarian protection, thereby taking away their ability to present a case to demonstrate they are refugees. Although the CDC might invoke the COVID-19 pandemic as a “national security or public order” justification, the expulsions are still not acceptable. 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.

The Refugee Convention also states that “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.”<sup>9</sup> [UNHCR has made clear](#) that this is “an essential and non-derogable component of international refugee protection.” Guidance [reportedly provided](#) to the U.S. Border Patrol instructing agents to expel individuals under the authority provided by this rule lacks reference to protections for asylum-seekers under the Refugee Convention and Protocol. These expulsions are returning Central Americans to dangerous Mexican border cities where asylum seekers are specifically targeted for extortion, sexual violence, kidnapping, and even torture. The administration is interpreting its authority under the rule as superseding its *mandatory* duty of *non-refoulement*. As of April 9, 2020 the Administration [had already expelled 10,000 migrants](#). This rule is allowing for the mass *refoulement* of asylum-seekers.

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<sup>5</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, Article 1, available at: <https://www.refworld.org/docid/3ae6b3ae4.html>.

<sup>6</sup> 8 USC §1158(a)(1).

<sup>7</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 32.1, available at: <https://www.refworld.org/docid/3be01b964.html>

<sup>8</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 32.2, available at: <https://www.refworld.org/docid/3be01b964.html>

<sup>9</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 33.1, available at: <https://www.refworld.org/docid/3be01b964.html>

V. **The administration’s actions violate the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The United States signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1988 and it was codified into U.S. law in 1998.<sup>10</sup> 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 Committee against Torture, which monitors implementation of CAT, has [interpreted](#) the *non-refoulement* obligation to be “similarly absolute” as the prohibition on torture itself; in other words, “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification” for any exception to the obligation.

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 violation of the principle of *non-refoulement* under CAT. [Reports](#) show that a significant number of migrants have been tortured in these Mexican cities. While internal [guidance reportedly](#) circulated by DHS to U.S. Border Protection (CBP) indicates that survivors of torture might be referred to an asylum officer if the survivor makes an “affirmative, spontaneous, and reasonably believable claim” that they might be tortured, in practice this quasi-screening effort will be ineffectual, as it is extremely unlikely that someone who was tortured would communicate this effectively and without any prompting to a uniformed (and likely armed) officer.

**Conclusion**

The administration must halt the implementation of the proposed rule, which will continue to harm the asylum system, asylum seekers generally, and survivors of torture specifically.

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<sup>10</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, 1988 U.S.T. 202, 1465 U.N.T.S. 85 (enacted into U.S. Law on October 21, 1998 by Fiscal Year 1999 Omnibus Consolidated and emergency Supplemental Appropriations Act, Pub. L. No. 104-277, Div. G, Sub. B, Title XXI S2242 of the foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681-822 (1998))