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Submitted via 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

Ban on Asylum Seekers at the Border Is Illegal and Lacks Basis in Public Health

Re: Comment on 42 CFR 71 [Docket No. CDC-2020-0033] RIN 0920-AA76 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,

I am writing on behalf of Physicians for Human Rights (PHR) to express our strong objections to the proposed rule 42 CFR 71 [Docket No. CDC-2020-0033] RIN 0920-AA76 Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes. We also wish to express our objection to the order (Order) issued by the Centers for Disease Control and Prevention (CDC) invoking its authority under the rule (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.

PHR is an international non-governmental organization that for more than 30 years has used science and the uniquely credible voices of medical professionals to document and call attention to severe human rights violations around the world.

In this Public Comment, PHR argues that **the Rule – coupled with the CDC Order – violates U.S. legal obligations toward asylum seekers and unaccompanied children seeking protection at U.S. borders and lacks any basis in public health.**

Physicians for Human Rights is deeply concerned about the impact of this interim final Rule, which authorizes the director of the Centers for Disease Control and Prevention 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, the CDC issued an 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 erode protections for asylum seekers, including unaccompanied children and other migrants, while failing to further the public health needs on which it is purportedly based.

Rule Lacks Basis in Public Health

PHR interviewed six renowned experts in infectious disease epidemiology to review and analyze the CDC Order that relies on the new Rule. All six experts [found](#) that the Order lacked a basis in public health, as these measures do not apply to all individuals who have been exposed to COVID-19 and target a group solely based on their immigration status. For example, the Rule does not bar travel by people arriving by plane or ship, even though these modes of transportation have a higher risk of disease transmission, as the Rule itself notes.¹

The six public health experts [agreed](#) that asylum seekers are no more likely to transmit COVID-19 than any of the groups – including students, temporary workers, and truck drivers – that are exempt from the new border restrictions. There is no public health justification for a categorical ban on asylum seekers or unaccompanied children.²

Dr. Ronald Waldman, physician and professor of global health at George Washington University, told PHR, “There is no reason why asylum seekers would be more likely to be at risk of contracting or transmitting the virus than any other group of people.”

Professor Lawrence Gostin, director of the O’Neill Institute for National and Global Health Law at Georgetown University, agreed: “There is no scientific evidence for it.”

Dr. Monik Jiménez, assistant professor at Harvard Medical School and Harvard T.H. Chan School of Public Health, said that the Order’s classifications were “not based on sound epidemiological evidence of groups that may be at higher or lower risk.”

Laurie Garrett, Pulitzer-prize winning journalist and pandemic expert, said of asylum seekers, “There is no particular reason to single them out. And there is no particular

¹ The Rule states, “The risk increases when travelers are in congregate settings, such as carriers (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.”

² See also a [study](#) published on April 22, 2020 by a UC San Diego professor, which analyzed federal data from October 2008 through March 2020 and found that there is no statistically significant relationship between persons requesting asylum and the prevalence of a similar illness – the flu – including during the H1N1 pandemic and the current coronavirus pandemic.



reason to believe that closing the border has any effect whatsoever on the spread of disease. The disease is already here.”

Sanjana Ravi, senior analyst at the Johns Hopkins Center for Health Security, said, “By refusing to let asylum seekers enter the U.S. – thereby condemning them to live in dangerous and unsanitary conditions in Mexico, where social distancing measures may be impossible to implement – the Trump administration ... is actively undermining public health.”

Dr. Gregg Gonsalves, assistant professor in the epidemiology of microbial diseases at Yale School of Medicine, said there was no logical consistency to excluding an asylum seeker but not a truck driver, since both could be asymptomatic carriers. “If somebody is at risk of persecution and/or death,” he said, “and you’re worried about the potential for them to transmit coronavirus, test them for the virus rather than leaving them to die a more certain death from the political conditions at home.”

Moreover, the CDC Order is premised on the false notion that individuals seeking protection must be detained in congregate settings upon entry to the United States. In actuality, an October 2019 [study](#) of 607 asylum seekers waiting in Mexico found that almost 92 percent had family or close friends in the United States with whom they could quarantine, and therefore would not need to isolate in detention.

The six experts agreed that the vast majority of asylum seekers could therefore be screened for COVID-19 symptoms, referred to health services for additional testing if necessary, and then released to family or friends in the United States with whom they could safely self-quarantine. The experts [outlined](#) safe paths for asylum seekers’ travel to their final destinations. For individuals without family or friends in the United States, the experts agreed that the U.S. government can work with religious and community organizations to facilitate their safe transport to shelters, vacant motels, hotels, YMCAs, or school dormitories, where they can safely shelter in place and practice necessary social distancing.

Rule Violates U.S. Legal Obligations

The Rule acknowledges that the CDC’s orders must “ensure compliance with ... international legal obligations,” but it violates U.S. legal obligations to asylum seekers and unaccompanied children under U.S. and international law.

U.S. refugee and immigration [laws](#) guarantee individuals the opportunity to request protection at ports of entry or after crossing into the United States (8 U.S.C. § 1158(a)(1)). Moreover, the United States is bound to multiple international treaties that bar the return of individuals to places where they may face persecution or torture, namely the Refugee Convention and Refugee Protocol (Refugee Act of 1980, Pub. L. No. 96-212) and the Convention against Torture and Other Cruel, Inhuman or Degrading



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

The Office of the United Nations High Commissioner for Refugees (UNHCR) has [clearly stated](#) that countries must not deny entry to asylum seekers in the midst of the COVID-19 pandemic. Likewise, the UN Subcommittee on Prevention of Torture has [stated](#) that CAT protections may not be forgone under the current pandemic.

In conclusion, PHR affirms that it is a human right for those fleeing persecution to seek asylum, a right that the United States is obligated to guarantee under international treaties to which it is a party and under U.S law. For decades, the United States has provided due process for those applying for asylum who have escaped torture, killings, and persecution, regardless of how they arrived in the United States. The new Rule clearly violates U.S. obligations under both domestic and international human rights law and lacks a substantive public health justification.

We urge you to rescind this dangerous Rule immediately and restore protections at the U.S. borders for individual fleeing persecution. The CDC must ensure that any future Rules and Orders are consistent with both U.S. legal obligations and evidence-driven public health guidance.

Sincerely,

Donna McKay
Executive Director
Physicians for Human Rights