

Submitted via www.regulations.gov

April 23, 2020

Kyle McGowan
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Re: Public Comment Filed Opposing Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes,” Docket No. CDC-2020-0033, 85 FR 16559.

Dear Mr. McGowan:

We write on behalf of Immigration Equality in response to the Department of Health and Human Services’ (“HHS”) 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 (the “Rule”). We strongly oppose the Rule as it will have grave effects on our client base of lesbian, gay, bisexual, transgender, queer (“LGBTQ”) and HIV-positive asylum seekers. We are profoundly concerned that the Rule, which authorizes the Director of the Centers for Disease Control and Prevention (“CDC”) to “prohibit the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions and regions thereof) ... for such period of time that the Director deems necessary for the public health,” will result in countless LGBTQ and HIV-positive people being denied their right to seek asylum in the United States and being returned to countries where they are at risk of grave harm.

On the same day the rule was issued, CDC issued an order (the “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 already being used to eviscerate asylum protections and safeguards while failing to further the public health justifications on which it is purportedly based. We, therefore, strongly urge that the Rule be withdrawn in its entirety.

Immigration Equality is a national organization that advocates for lesbian, gay, bisexual, transgender, queer and HIV-positive immigrants. For 25 years, we have worked to secure safe haven and equality for immigrants facing persecution based on their sexual orientation, gender identity, or HIV status. To this end, we provide free legal services and advocacy through our in-house attorneys and nationwide network of pro bono partners. Through this program, we currently represent over six hundred LGBTQ and HIV-positive individuals in affirmative and defensive asylum, withholding of removal, Convention Against Torture (“CAT”) and related applications and proceedings. As an organization that promotes safety and justice for LGBTQ and HIV-positive asylum seekers, we firmly oppose the Rule and urge HHS to promptly rescind it for the reasons stated herein.

Under the Rule, the CDC has granted itself and the administration expansive, unprecedented power to expel individuals from the United States, including asylum-seekers, under the guise of public health measures allegedly aimed at preventing the introduction of COVID-19 into the United States. However, the Rule does not apply to individuals based on infection or exposure to COVID-19, 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. We know from decades of experience that turning away LGBTQ asylum-seekers from the U.S.-Mexico border would put their lives at grave risk, returning them to the very persecution and abuse they are fleeing.

Moreover, the Rule relies on the false assumption that border detention is necessary. 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-seekers, under the assumption these individuals lack places where they could isolate and that they must be held in congregate settings. At Immigration Equality, we routinely assist LGBTQ asylum seekers secure release from detention through bond and parole applications. In addition to friends and family networks, we work with a host of community organizations that provide housing and community support to our clients. In short, our clients have homes where they could safely practice self-isolation when needed.

Further, DHS is not required to hold asylum-seekers in congregate settings, such as in the custody of Customs and Border Protection (“CBP”) or Immigration and Customs Enforcement (“ICE”), as DHS has legal authority (8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5) to expeditiously parole asylum-seekers into the United States to await their asylum proceedings in U.S. immigration courts. Instead of detention or expulsions, DHS could engage in non-discriminatory screening and self-isolation measures that would respond to public health concerns while preserving the right to seek asylum.



Through this Rule, CDC is granting the administration expansive powers to expel asylum seekers at the border, violating domestic legal obligations to asylum seekers. Namely, 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)).

Moreover, expelling individuals under the Rule without the required legal process would also contradict U.S. international treaty obligations under the 1951 United Nations Refugee Convention and 1964 Protocol Relating to the Status of Refugees, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which require the United States not to send individuals to places where they may face serious harm amounting to persecution or torture. Although the text accompanying the Rule states that CDC will consult with the Department of State regarding U.S. international legal obligations in fashioning orders based on the Rule, the Rule itself does not explicitly reference any such relevant international obligations nor does it provide an exception for individuals seeking asylum protection in the United States. Furthermore, the Order issued by the CDC on the same day and under the powers granted by this Rule fails to even reference U.S. domestic and international obligations to asylum-seekers, demonstrating that the Rule is being applied in violation of those obligations.

For the foregoing reasons, the CDC should rescind this ill-conceived and dangerous rule 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.

Thank you for the opportunity to submit comments on the proposed rule. Please do not hesitate to contact Bridget Crawford at bcrawford@immigrationequality.org to obtain further information.

Sincerely,

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