

Sending Children Back to Danger

Since March, thousands of unaccompanied children, and tens of thousands more asylum seekers, have been expelled from the border, denying them any opportunity to seek protection in the United States. These expulsions violate international and U.S. federal laws, create due process violations, and run contrary to child welfare principles and best interests standards. For unaccompanied children, the expulsions are a blatant disregard of the special legal protections guaranteed to them under a bipartisan law to protect trafficking victims and are putting children in grave danger.

CDC order closes the U.S.-Mexico border to children and asylum seekers

On March 20, 2020, the Centers for Disease Control and Prevention (CDC) issued an [order](#) suspending the entry of individuals into the United States “to protect the public health.” This order relied on a little-known, rarely-used provision of a [1944 public health law](#), which is now being referred to as “[Title 42](#).” While ostensibly about public health, the order creates no new safety measures, but rather explicitly targets unaccompanied children and asylum-seekers banning them from entry and effectively eliminating their ability to lawfully seek protection in the United States.

In the first months that the order went into effect, Customs and Border Protection (CBP) used the authority they claim under Title 42 to automatically [expel over 2,000 unaccompanied children](#), denying them any opportunity to make legal claims or to seek protection.

Health experts have stated there is [no public health rationale](#) for the order and legal experts have concluded that there is [no legal basis](#) for the expulsion of asylum seekers and unaccompanied children. The legality of the order and its implementation has also been challenged by over [one hundred NGOs](#) and members of Congress, including members of the [House Foreign Affairs Committee](#) and the [Senate Judiciary Committee](#). In June, the order was [challenged in court](#) by the [ACLU](#) and other organizations.

What does this mean for unaccompanied children?

The order places migrant and refugee children in grave danger and ignores laws that specifically require the U.S. government to screen and safeguard unaccompanied children. Most unaccompanied children at the U.S.-Mexico border are from El Salvador, Guatemala, and Honduras. They come to the U.S. often fleeing violence, including gang and gender-based violence. Under the [Trafficking Victims Protection Reauthorization Act](#) (TVPRA), when the U.S. government encounters a child seeking to enter the United States, it must conduct appropriate screenings to determine whether the child is accompanied by a parent or legal guardian, at risk of trafficking, or fears returning to their home country. The TVPRA requires that DHS transfer qualifying unaccompanied children, designated as “UACs,” into the care and custody of the Office of Refugee Resettlement (ORR) within three days.* All of the children in ORR custody must be placed into full immigration court proceedings, so they have an opportunity to be screened by a social worker and a lawyer and have their case heard before an immigration judge.

In a violation of the TVPRA and asylum law, CBP is no longer conducting these routine screenings. [Very few children](#) are being designated as “UACs” and transferred to ORR custody. Instead, children traveling

* The Homeland Security Act (HSA) defines “unaccompanied alien children” (“UAC”) as children who do not have lawful immigrant status, are under 18 years of age, and do not have a parent or legal guardian in the United States available to provide care and physical custody. Under the TVPRA, when CBP encounters children who meet the definition of “UAC” they must be transferred to ORR custody within 72 hours. While there is a different standard for children from contiguous countries (i.e., Mexico) the TVPRA still requires CBP to screen children from those countries for fear of persecution, risk of trafficking, or inability to make an independent decision about withdrawing their application for admission; children who meet the standards of the screening must also be transferred to ORR within 72 hours.

with any adult are being expelled back into Mexico without any screening to ensure that this adult is a safe person or even a family member. These children are at particularly high risk of harm, including human trafficking.

In cases when there is no adult to claim a child, children traveling alone are being turned back into Mexico by themselves, sometimes in the middle of the night and without any coordination with local officials. Along the Mexican border, children confront pervasive violence, including xenophobic attacks on migrants; rising homelessness as shelters close; and crowded, unsanitary conditions. Children from El Salvador, Guatemala, and Honduras who arrive at the border alone have been handed over to ICE and sent back to their countries on [crowded deportation flights](#). This has happened even in cases where there is no family member in that country to receive them or care for them.

What happens to children after they are expelled?

In Central American countries, reception centers have been overwhelmed and are [unable to receive children safely](#). Most countries do not test returned children for COVID-19 and reception centers lack space to isolate those with symptoms or to ensure social distancing. Child welfare agencies are unable to meaningfully screen returning children to identify those at risk of persecution or harm or provide follow-up services to children in need. Government restrictions on movement and widespread disruptions to public transportation have made it difficult and dangerous for parents to travel to the reception center to reunify with children.

Once children are back in their communities, they face new dangers. Children who were trying to reunite with family in the United States now face prolonged separation from their parents and may not have caregivers at home. The pandemic has created [extreme food shortages](#) and is pushing already [fragile health systems](#) to the brink of collapse. Soaring rates of [gender-based violence](#) and [child abuse](#) are serious threats at a time when access to protection is at its weakest. Repressive [government responses](#) to COVID-19, such as curfews, restrictions on movement, and excessive force by police and military, are all restricting the safety and well-being of children.

What can be done?

Though the U.S. government has discretion to exclude unaccompanied children and asylum seekers from the ban, [leaked operational guidance](#) makes it clear that neither of the vulnerable groups have been exempted from the restrictions and CBP is not properly screening children or [referring them](#) to ORR custody. The Administration must stop expelling unaccompanied children and allow them a meaningful opportunity to present their protection claims. Accordingly, immigration officials must comply with the law and ensure that children have an opportunity to ask for protection and are not in immediate danger of trafficking or persecution. While the Administration has used the pandemic as a pretext for turning children away, public health experts have detailed how this can and [should be done safely](#) during the COVID-19 pandemic. For ways you can take action to hold the administration accountable, visit KIND's website: www.supportkind.org/get-involved.

What can I do if I identify a child who was expelled from the border?

If an unaccompanied child was sent back to Mexico or Central America after March 20, it is likely that they were unlawfully expelled under Title 42. KIND works with partners in Central America and Mexico to offer return and reintegration services as well as other legal protection services to children and their families. If you identify a child who is interested in sharing their story or would like more information about assistance that may be available to them, please contact us at KINDMX@supportkind.org and KINDCA@supportkind.org.