

Sending Children Back to Danger

Since March 2020, the U.S. government has turned away over 10,000 immigrant children at the border, denying them any opportunity to seek protection in the United States. These expulsions violate international and U.S laws and run contrary to child welfare principles and best interests standards. For unaccompanied children, the expulsions show a blatant disregard for the special legal protections guaranteed to them under a bipartisan federal law to protect trafficking victims. Most alarming, these ongoing expulsions put the lives of children in grave danger.

Using the pandemic as a pretext to close the borders to children and asylum seekers

On March 20, 2020, the Centers for Disease Control and Prevention (CDC) issued a now indefinite order that suspends the entry of certain immigrants into the United States.¹ This order relied on a little-known, rarely-used public health law under Title 42 of the U.S. Code.² Since March, the U.S. government has used Title 42 to expel over 150,000 people—including unaccompanied children and asylum seekers who were seeking protection in the United States. Court documents have revealed that in the first six months that the order went into effect, the U.S. government expelled over 8,800 unaccompanied children, denying them opportunities to make legal claims, seek medical attention, or be reunited with family members.³

“Sandra,” a 17-year-old girl from Guatemala fled her village after being raped. She made her way to the U.S. carrying her infant child, seeking refuge and a way to reunite with her parents, who were living in the U.S. Instead of finding safety, Sandra was held in a hotel for days and then put on a flight back to Guatemala, without having the opportunity to seek asylum.

The government claimed that these actions are necessary to protect public health amid the pandemic. However, the order creates no new safety measures and fails to address valid public health concerns. In fact, independent public health experts have determined that the order lacks any public health rationale and that the U.S. government is fully capable of receiving and placing unaccompanied children while protecting the health and safety of those children, government personnel, and the public at large.⁴ News reports indicate that the order was politically motivated and led by the White House over the objections of CDC scientists and doctors.⁵

Legal experts have pointed out that the order, masked as a public health measure, strategically targets immigrants in need of humanitarian protection.⁶ Academics, legal organizations, and members of Congress have all challenged the order’s legality and, since June, it has been the subject of ongoing litigation.⁷

¹ Centers for Disease Control and Prevention, [85 Fed. Reg. 17060](#) (March 20, 2020).

² [42 USC § 265](#).

³ CBS News, [Nearly 9,000 migrant children have been expelled under pandemic](#), Camilo Montoya-Galvez (September 11, 2020).

⁴ CNN, [Health experts slam Trump administration’s use of public health law to close border](#), Priscilla Alvarez (May 18, 2020); [Public Health Experts Urge U.S. Officials to Withdraw Order Enabling Mass Expulsion of Asylum Seekers](#) (May 18, 2020).

⁵ AP, [Pence ordered borders closed after CDC experts refused](#), Jason Dearen (October 3, 2020).

⁶ Just Security, [Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors](#), Lucas Guttentag (April 13, 2020).

⁷ See letters from over [125 nongovernmental organizations](#), the [House Foreign Affairs Committee](#), and [Senate Judiciary Committee](#) members; ProPublica, [Advocates Sue Trump Administration Over Mass Border Expulsions](#), Dara Lind (June 10, 2020).

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. Many come to the U.S. fleeing violence, particularly gang-related 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.⁸ 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.⁹ 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, U.S. Customs and Border Protection (CBP) is no longer conducting these routine screenings. Very few children are being designated as “UACs” and transferred to ORR custody.¹⁰ Instead, children traveling 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.¹¹ These children are being denied their due process rights under the TVPRA and, worse, are at particularly high risk of harms like exploitation, human trafficking, and kidnapping.¹²

In cases where there is no adult, some children are being turned back into Mexico by themselves, sometimes in the middle of the night and without any coordination with local officials.¹³ Along the Mexican border, children confront pervasive violence, including xenophobic attacks on migrants; rising homelessness as shelters close; and crowded, unsanitary conditions.

Children who arrive at the border alone have been handed over to Immigration and Customs Enforcement (ICE) and quickly sent back to their countries on crowded deportation flights.¹⁴ This has happened even in cases where there is no family member in that country to receive them or care for them.¹⁵ In other cases, hundreds of unaccompanied children have been held in private hotel rooms in the United States—sometimes for weeks—while immigration officials arrange for their expulsion.¹⁶ Instead of being transferred to the custody of child welfare staff in ORR, as required by law, these children are supervised by untrained staff from private companies that contract with ICE.¹⁷ This practice not only violates the TVPRA and the Flores agreement, which governs the care of immigrant children in U.S. custody, but also raises serious child welfare and safety concerns.¹⁸

⁸ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, [P.L. 110-4573](#).

⁹ 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.

¹⁰ CBS News, [Just 39 unaccompanied migrant children avoided Trump's border expulsions in May](#), Camilo Montoya-Galvez (June 18, 2020).

¹¹ ProPublica, [Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately – Ignoring Asylum Law](#), Dara Lind (April 2, 2020).

¹² KIND, [Border Closure Exposing Children to Heightened Risk of Trafficking and Exploitation](#) (April 29, 2020).

¹³ Id.; Albuquerque Journal, [Border crossings down dramatically since 2019](#), Scott Turner (August 15, 2020).

¹⁴ New York Times, [U.S. Deported Thousands Amid COVID-19 Outbreak](#), Caitlin Dickerson (April 18, 2020).

¹⁵ AP, [Seeking refuge in US, children fleeing danger are expelled](#), Nomaan Merchant (August 5, 2020).

¹⁶ CBS News, [ICE held 660 migrant kids set for expulsion in hotels](#), Camilo Montoya-Galvez (August 27, 2020).

¹⁷ Id.; New York Times, [A Private Security Company Is Detaining Migrant Children at Hotels](#), Caitlin Dickerson (August 16, 2020).

¹⁸ ProPublica, [ICE Is Making Sure Migrant Kids Don't Have COVID-19 — Then Expelling Them to “Prevent the Spread” of COVID-19](#), Dara Lind (August 10, 2020). As reported, the practice also completely undermines the government’s stated legal and public health rationales.

What happens to children after they are expelled?

In Central American countries, reception centers have been overwhelmed and are unable to receive children safely.¹⁹ Countries do not have the capacity to test all returning children for COVID, 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, in part due to lack of information from the U.S. government. Government restrictions on movement and widespread disruptions to public transportation have made it difficult and dangerous for relatives to travel to the reception center to reunify with children.²⁰

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 or family members and may not have caregivers at home.²¹ The pandemic has created extreme food shortages and is pushing already fragile health systems to the brink of collapse.²² Soaring rates of gender-based violence and child abuse are serious threats at a time when access to protection is at its weakest.²³ While northern Central American countries have begun to lift strict lockdown measures that were put in place in response to COVID, restrictions on movement in some areas and reduced functioning of government institutions continue to limit access to protection and support for children.

What can be done?

The Administration must stop expelling unaccompanied children and allow them a meaningful opportunity to present their protection claims. While the Administration has used the pandemic as a pretext for turning children away, public health experts have detailed how government officials can safely comply with the law during the COVID-19 pandemic.²⁴

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 facing expulsion or who was expelled from the border?

If an unaccompanied child was sent back to Mexico or Central America from the United States **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 legal protection services as well as reintegration services for children and their families. If you identify a child who would like more information about assistance that may be available to them, please contact us at KINDMX@supportkind.org and KINDCA@supportkind.org.

¹⁹ UN News, [Danger awaits migrant children returned to Mexico and Central America during pandemic](#) (May 21, 2020).

²⁰ Refugees Interantional, [Harmful Returns: The Compounded Vulnerabilities of Returned Guatemalans in the Time of Covid-19](#), Yael Schacher (June 23, 2020).

²¹ AP, [Seeking refuge in US, children fleeing danger are expelled](#), Nomaan Merchant (August 5, 2020).

²² UN News, [COVID-19: UN agencies warn against rising hunger in Latin America and the Caribbean](#) (June 16, 2020); Action Against Hunger, [Number of People Facing Hunger in Guatemala Doubled Due to COVID-19](#) (June 15, 2020).

²³ Reuters, [Rising violence against women in Latin America confirms fears of abuses in lockdowns](#), Christine Murray (June 9, 2020); SOS Children's Villages, [Children are the hidden victims of Latin America's Corona crisis](#), Alejandra Kaiser (May 28, 2020).

²⁴ Human Rights First, [Public Health Measures to Safely Manage Asylum Seekers and Children at the Border](#) (May 15, 2020).