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**Factsheet: The COVID-19 Pandemic and Title 42 Expulsions**  
(last updated December 29, 2020)

For four years, the Trump Administration has implemented a series of cruel and illegal policies limiting access to asylum for those who seek safety in the United States. The Administration has also used the COVID-19 pandemic as a pretext to effectively shut down asylum at the southern border entirely, in violation of both U.S. and international law. The policy of “expelling” asylum seekers has put countless lives at risk. This factsheet details why closing the border hurts asylum seekers and does not protect public health, and how advocates are responding.

**How is the Trump Administration using the COVID-19 pandemic to expel asylum seekers?**

On March 20, 2020, based on an unprecedented use of public health provisions in Title 42 of the U.S. Code, the Centers for Disease Control and Prevention (CDC) issued an [interim final rule](#) and [order](#), temporarily limiting the entry of certain persons into the United States for public health reasons. In October 2020, the CDC issued a [final rule](#) and a new [order](#) extending the policy indefinitely. The Department of Homeland Security (DHS) has issued simultaneous [restrictions](#) limiting non-essential travel across the border. While there is no mention of asylum seekers in any of these documents, it is DHS’s position that they are not engaged in essential travel. Furthermore, leaked Customs and Border Protection (CBP) [guidance](#) revealed that border officials have been instructed to return asylum seekers apprehended along the southern border to Mexico or other countries without providing any due process protections. According to the guidance, only when an asylum seeker spontaneously expresses a fear of torture will border officials then determine if such fear is “reasonably believable.” If the officer’s determination is positive, then they must get the approval of a superior officer before allowing the asylum seeker to enter the United States. This procedure makes it nearly impossible for asylum seekers to access protection in this country.

**Why is the policy illegal and what has been the result?**

Asylum seekers have a right to seek protection that is guaranteed by U.S. and international law. However, the procedure set forth in CBP’s guidance fails to ensure that the United States abides by its international and domestic obligations, particularly those contained in the 1967 Protocol Relating to the Status of Refugees, implemented in U.S. law in the Refugee Act of 1980, and the 1984 Convention Against Torture, implemented into U.S. law in the Foreign Affairs Reform and Restructuring Act of 1998. The policy violates existing law by not requiring border officials to inquire why people are seeking to enter the United States, or if they fear harm if returned. It also failed to make an exception for children traveling alone, which is a violation of the Trafficking Victims Protection Reauthorization Act. Within the first nine months of the launch of the policy, DHS summarily carried over 320,000 [expulsions](#), including over [13,000](#) unaccompanied children. Few people have been allowed even to request asylum, and even fewer have been permitted to enter the United States to pursue their claim for protection.

**Is this policy being challenged in Court?**

In June 2020, CGRS and co-counsel filed two lawsuits in the District Court for the District of Columbia, specifically challenging the application of the policy to unaccompanied minors. Both challenges argue that it is unlawful for the government to invoke Title 42 as grounds to violate well established immigration laws and dismantle protections for the most vulnerable.

- In [J.B.B.C v. Wolf](#), CGRS, ACLU, and Oxfam are represented a 16-year-old Honduran boy who fled to the U.S. after becoming the target of gangs. He arrived at the U.S. border hoping to seek asylum and be reunited with his father, an asylum seeker himself. U.S. District Judge Carl Nichols issued a [temporary restraining order](#) prohibiting the expulsion of J.B.B.C. while the lawsuit continues, finding that the CDC had likely exceeded its authority by ordering the expulsion of asylum seekers and unaccompanied minors under the pretext of public health laws.
- In [G.Y.J.P v. Wolf](#), CGRS, ACLU, Oxfam and Texas Civil Rights Project are representing a 13-year-old Salvadoran girl who was expelled back to her country in April 2020 without any inquiry into her need for protection. She fled after being targeted by the same gangs that persecuted her mother, a former police officer who refused to cooperate with organized crime and is now an asylee in the United States. After she reached the U.S. border, CBP refused to contact her mother, even though she told them that her mother lived in the United States and that she had her phone number.

If proper procedures had been followed, these two children, along with the thousands who have been similarly expelled, should have been promptly placed in a children's facility until they could be released to their parents, and afforded full and fair asylum proceedings.

Additionally, in August 2020, ACLU, Oxfam, TCRP, and CGRS filed [P.J.E.S. v. Wolf](#), seeking the certification of a class including all unaccompanied children that 1) are or will be detained by the U.S. government; and 2) are or will be subject to a Title 42 expulsion. On November 18, 2020 the District Court for the District of Columbia granted the plaintiffs' motion for class certification and provisionally granted a motion for a preliminary injunction, thus preventing the expulsion of unaccompanied children while the litigation continues.

#### **How else are advocates combating this policy and what can you do to help?**

CGRS supports the adoption of all necessary measures to reduce the spread of COVID-19. However, [medical experts](#) emphasize that closing the border to asylum seekers has no sound [public health rationale](#) and is unnecessarily endangering the lives of thousands fleeing countries where extreme levels of violence are well documented. This is confirmed by [reports](#) that the White House forced the CDC to issue its order despite the objection of several of the agency's top experts. The World Health Organization and the United Nations High Commissioner for Refugees have [stressed](#) that it is possible for governments to put in place targeted and reasonable measures, such as screening or temporary limitations on movement, to protect both their own populations and those seeking asylum, and advocates have issued [recommendations](#) to safely process asylum seekers safely that arrive at the border. Concerned Members of both the [Senate](#) and the [House](#) of Representatives have called upon DHS and CDC to explain the legal reasoning behind the decision to close the border, including the failure to abide by U.S. law protecting [children traveling alone](#). The Administration's response makes it clear not only that the [legal rationale](#) for the policy was crafted *after* it was implemented, but also that the government is unable or unwilling to explain how this action comports with existing law.

Joined by over 180 organizations from across the country, on April 16, 2020 CGRS sent a [letter](#) to DHS calling on the Administration to rescind the policy, highlighting the heightened risks it creates for survivors of gender-based violence, particularly given the worldwide surge in domestic violence that has resulted from pandemic-related isolation measures. We also submitted a [comment](#) in response to the CDC's interim final rule, setting forth legal and policy arguments against closing the border to asylum seekers. CGRS has compiled a bilingual [list of resources](#) for immigrants and asylum seekers, as well as action tools and opportunities for advocates to provide support. You can join us in calling on DHS to keep our doors open to those seeking refuge in the United States by signing CGRS's petition [here](#).