Explainer on U.S. Deportations and Expulsions During the COVID-19 Pandemic
May 21, 2020

U.S. deportation and expulsion practices are recklessly exposing an entire region to increased risk of COVID-19. Since the onset of the pandemic, even as it has suspended asylum processing, paused most immigration court proceedings, and issued broad travel restrictions, the Trump administration has continued deportations apace, reportedly operating hundreds of deportation flights, including many to countries whose already strained healthcare systems could collapse as a result of COVID-19. Over 100 people deported from the United States have been confirmed to have tested positive for COVID-19, often after being held in unsafe conditions in U.S. detention facilities without adequate testing or access to medical care.

The administration has unlawfully expelled tens of thousands of people under a new policy weaponizing the pandemic to deny people access to asylum and humanitarian protection, which violates domestic and international law and fails to further public health. While initially characterized as an emergency measure, the policy was just extended indefinitely.

The U.S. government must immediately adopt a temporary moratorium on all deportations in light of COVID-19 and stop unlawful expulsions of people seeking safety at the border.

Why are deportations problematic?

- **U.S. detention and deportation practices risk spreading COVID-19.**
  - **Detention:** Immigration and Customs Enforcement (ICE) detention centers, where many individuals are typically held prior to deportation, are tinderboxes for potential COVID-19 spread: experts estimate that between 72-100% of detained immigrants in many ICE facilities could contract the virus unless detention facilities are drastically depopulated, and approximately half of detained immigrants tested thus far have tested positive for the virus. Even though ICE has the authority to release detained individuals, it has generally refused to do so. Instead, it has persisted in transferring immigrants from one detention facility to another, increasing their exposure to the virus.
  - **Deportation:** Recognizing the risks of spread posed by international travel, the State Department and Centers for Disease Control and Prevention (CDC) have both strongly advised U.S. residents not to travel internationally, and CDC standards advise that transfers of detained individuals be restricted unless absolutely necessary as they increase risk of viral spread. The UN Network on Migration

recently [called] on all states to halt forced returns during the COVID-19 pandemic, citing public health and human rights concerns. Yet DHS has transferred and deported thousands of people in its custody to their countries of origin since the onset of the pandemic.

- **Common countries of deportation are ill-equipped to handle a COVID-19 outbreak.** Several of the countries which have received deported nationals already have struggling health systems. In Latin America, [one in three people] lack regular access to healthcare. Guatemala, where U.S. deportations currently make up over 15% of COVID-19 cases, only has [two large urban hospitals] and a patchwork of smaller medical facilities. Honduras' health system [ranks] as one of the worst in the world. In Haiti, 60% of the country lives in poverty and there are only [60 ventilators] and an almost non-existent health care system for 11 million people.

- **Deported nationals have been subject to stigmatization and rights-abusing quarantine regimes.** People deported from the U.S. have reported receiving threats and [facing stigma] because of fears that they may have contracted COVID in the United States. One Guatemalan deportee who tested positive for COVID-19 after being returned from the United States described [receiving threats] that others wanted to "set fire" to him, and others have described being forced to [quarantine] in facilities with inadequate medical conditions. In El Salvador, where hundreds of citizens are being arbitrarily detained in so-called "containment centers," people deported from the U.S. reported [being held] in overcrowded, unsanitary facilities for lengthy periods of time upon return. In Haiti, COVID-19 patients and health professionals [have reported] facing stigma and threats by neighbors who are fearful of contracting the virus, forcing some health care facilities to close their doors to COVID-19 patients.

- **Human rights are deteriorating in many common countries of deportation.**
  - **Repression:** Governments are taking increasingly [repressive] [measures] in response to COVID-19. More than [6,000 individuals] have been arrested in Honduras for violating curfews or for protesting over lack of food and layoffs, and one man was killed and another seriously injured by [military police]. In El Salvador, police have [arbitrarily arrested] hundreds of individuals in the name of enforcing the government's lockdown.
  - **Insecurity:** Growing [food insecurity and deepening poverty] due to COVID-19 in Latin America and the Caribbean will likely continue to worsen. Even before COVID, for example, 40% of [Haitians] required urgent humanitarian assistance. In countries where much of the population lives in poverty and works in the informal sector, households have no reserves of cash or food to survive even a short-term quarantine. Curfews and suspensions of public transportation make it difficult for families to pick up their relatives from airports or quarantine centers, which is especially concerning for the [numbers] of unaccompanied children who have been returned since the onset of the pandemic.

- **The U.S. government is wrongly engaging in strong-arm tactics to force neighboring countries to accept deportations.** Several governments have called on the U.S. to halt

deportations, including Guatemala and Haiti. However, the U.S. has threatened visa sanctions on nationals whose countries refuse to accept deportation flights. It has politicized humanitarian assistance, awarding ventilators to countries that cooperate with its migration policy while withholding them from Guatemala, which sought to pause deportations.

- **Unlawful policies are serving as the engine powering many deportations.** An architecture of unlawful policies restricting access to asylum are powering many deportations, including the third-country transit ban, which renders ineligible for asylum people who have transited through a third country on their way to the United States; numerous attempts to rewrite the asylum definition to prevent survivors of violence from seeking safety; and the forced return to Mexico policy, which places insurmountable barriers to asylum-seekers' ability to seek legal relief.

Why are expulsions at the border unlawful?

- **Under the guise of public health, the Trump administration has banned asylum at the border.** Under an order issued by the CDC in March, the U.S. is automatically expelling tens of thousands of people arriving at the border without any process to Mexico or their home countries, including asylum-seekers and unaccompanied children, in violation of U.S. legal obligations. The administration claims that it has the authority to do this under an obscure public health statute that was never meant to be used to regulate immigration. Trump adviser Stephen Miller had reportedly tried to use this authority to shut down asylum at the border even prior to the pandemic – demonstrating that this ban isn't about COVID but about the achievement of long-sought, restrictionist policy objectives to shut the border to people seeking safety.
- **Expulsions violate the right to seek asylum.** Under domestic and international law, the U.S. is obligated to provide access to an asylum process to people seeking safety at the border. The U.N. Refugee Agency has made clear that states can't enact "blanket measures" restricting asylum during COVID-19, yet this is exactly what the administration's new border policy is. Since the CDC order went into effect on March 20, only two people seeking asylum at the border have been allowed to make their claims and only 59 screened for fear of return, while over 20,000 have been summarily expelled, including asylum-seekers who have fled torture and other serious harm.
- **Expulsions violate protections for unaccompanied children.** Automatic expulsions also violate protections for unaccompanied immigrant children passed by a bipartisan Congress in the Trafficking Victims Protection Reauthorization Act. Over 900 unaccompanied children have reportedly been expelled since the order went into effect. Many are being summarily repatriated to their countries of origin, where they are unable to access basic services and exposed to extreme risks of trafficking and other serious harm.
- **Expulsions fail to protect public health.** Leading public health experts have stated that this policy will fail to protect public health. Already, policies restricting asylum access

have forced people into dangerous and precarious conditions along the Mexico/U.S. border. Mass expulsions threaten to further risk health and safety on both sides of the border.

What should the U.S. do instead?

- **Adopt an immediate, temporary moratorium on deportations from the U.S. to all countries during the COVID-19 pandemic.** Considering the grave health risks presented by continuing deportations, the United States must instate a temporary moratorium on deportations for the duration of COVID-19.
    - **While access to COVID-19 testing should be promoted, *testing alone is not sufficient to make deportations safe in this climate*.** Current rapid COVID-19 tests yield a [15% false negative](#) rate, and people are often tested several days before deportation. ICE officials have [expressed skepticism](#) that the agency can competently test for COVID-19: in Guatemala, even *after* the government conditioned continued deportations on testing, [ten people](#) on a single flight reportedly tested positive for COVID-19 upon deportation. Even with testing, continuing deportations at all in this climate will exacerbate risk of spread.
- **Provide for the safe release of individuals with removal orders who are currently in detention.** Neither deportation nor continued detention are safe options in this climate. People in detention with removal orders should be released (and detained families released together) on orders of supervision and allowed to shelter in place with family and loved ones during the COVID-19 pandemic. ICE [has discretion](#) to release people who have received a removal order, [including](#) in some circumstances where removal is no longer practicable or in the public interest. ICE has longstanding and effective [existing programs](#) that could provide supervision support for released individuals where deemed necessary.
- **Rescind the asylum ban and allow asylum-seekers and children to access a fair asylum process.** The administration should immediately revoke its automatic expulsions policy and follow the lead of countries which have [preserved](#) the right to seek asylum during the pandemic. The United States can put in place social distancing and safety [measures](#) during border processing and allow asylum-seekers to shelter in place with families and friends in the United States. In a [recent survey](#) of 607 asylum-seekers at the border, 92% reported having family and close friends in the United States with whom they could shelter in place. Allowing them to do so would preserve human rights and protect public health.
- **Provide necessary humanitarian aid and cease using aid as a tool to enact draconian migration policies.** Congress should provide much-needed [humanitarian assistance](#) to regional neighbors to address the potentially devastating effects of COVID-19. The administration must stop tethering humanitarian aid -- including provision of ventilators and protective equipment -- to countries' acquiescence to continued deportations and other harmful migration and asylum policies.