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RE: Interim Final Rule, "Securing the Border", USCIS Docket No. USCIS-2024-0006, A.G. Order No. 5943-2024, 89 Fed. Reg. 48710

Dear Mr. Delgado and Ms. Alder Reid:

The United States Conference of Catholic Bishops (USCCB) appreciates the opportunity to provide public comment and share our concerns with the Department of Homeland Security (DHS) and the Department of Justice (DOJ) (collectively, "the Departments") regarding the above-referenced Interim Final Rule (IFR or "the Rule"), which was published in the *Federal Register* on June 7, 2024, and implements limits on asylum eligibility at the U.S.-Mexico border, based on the President's July 3, 2024, Proclamation.[1]

The USCCB welcomes many of the Administration's efforts to ensure the safety and protection of migrants. We are pleased that attention is being given to the humanitarian challenge at the U.S.-Mexico border, and we are encouraged by much of the international cooperation that the President and his Administration have undertaken with partners in the Western Hemisphere to address the root causes of migration.[2] We respectfully offer these comments in order to draw your attention to various concerns we have with the IFR, which, however well intentioned, will not solve the problems it is intended to address—that is, sustainably reducing migration to the U.S.-Mexico border.

The Catholic Church holds a strong and prevailing pastoral interest in the welfare of migrants, including asylum seekers, and embraces newcomers from around the world. For decades, the USCCB has collaborated with the U.S. government to welcome immigrants and manage the provision of services to refugees, asylees,

[1] Securing the Border, 89 Fed. Reg. 48,710 (June 7, 2024).
[2] *Id.* at 48,759–61.

unaccompanied migrant children, domestic and foreign-born victims of human trafficking, and others. The USCCB's Department of Migration and Refugee Services administers programs for and advocates on behalf of these and other vulnerable populations in accordance with the Gospel and Catholic social teaching.

The Church recognizes the right and responsibility of nations to uphold their borders as an exercise of their sovereignty and self-determination. At the same time, Catholic teaching maintains that those fleeing persecution, violence, and other affronts to human dignity should be protected and that the preservation of human life is paramount. The USCCB has repeatedly affirmed the right to seek asylum and has emphasized both the United States' legal obligations and the moral imperative to protect that right, including respect for the principle of *non-refoulement*. The USCCB is also motivated by its concern for family unity and situations that lead to children being separated from their adult family members.[3] As such, the USCCB is deeply troubled by recent policy changes that undermine the ability for families to seek humanitarian protection, including the changes made by this IFR.[4]

For these reasons and those articulated below, we urge the Departments to rescind the Rule in its entirety.

I. Thirty days is an insufficient amount of time to adequately review and respond to the IFR.

The USCCB joins others in arguing that a 30-day comment period on matters of such importance is too short.[5] This is an insufficient timeframe, considering the intricacies inherent in the IFR's implementation and the severity of its consequences. The Rule, while not excessive in length, is complex in substance. In addition, it comes on the heels of at least one other final action and one other Notice of Proposed Rule

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[3] *See* United States Conference of Catholic Bishops Comments in Response to Request for Public Input to Support the Work of the Interagency Task Force on the Reunification of Families (Jan. 21, 2022), https://www.usccb.org/sites/default/files/about/general-counsel/rulemaking/upload/2022.1.22.FINAL_.Comment%20on%20Family%20Separation.pdf.

[4] *See also* United States Conference of Catholic Bishops Comments in Response to Notice of Proposed Rulemaking on "Circumvention of Lawful Pathways" (Mar. 27, 2023), https://www.usccb.org/sites/default/files/about/general-counsel/rulemaking/upload/23-0327_Comments_PropAsylumRestrict.pdf.

[5] *Compare E. Bay Sanctuary Covenant v. Biden*, 683 F. Supp. 3d 1025, 1051–52 (N.D. Cal. 2023), appeal held in abeyance, 93 F.4th 1130 (9th Cir. 2024) (regarding a challenge to the Circumvention of Lawful Pathways Rule, deciding that a 33-day notice period was insufficient due to the complexity of the rule changes and other soon-to-be-released related policy changes), *Centro Legal de la Raza v. Exec. Office for Immigration Review*, 524 F. Supp. 3d 919, 954-962 (N.D. Cal. 2021) (finding a 30-day period inadequate), *and Pangea Legal Services v. U.S. Dep't of Homeland Sec.*, 501 F.Supp.3d 792 (N.D. Cal. 2020) (deciding that a 30-day notice period was too short while granting injunctive relief against Procedures for Asylum and Bars to Asylum Eligibility, 85 Fed. Reg. 67,202 (Oct. 21, 2020)), *with Ishtyaq v. Nelson*, 627 F. Supp. 13, 23 (E.D.N.Y. 1983) ("By proceeding as it did here, promulgating an immediately effective interim rule and following it with a 30 day notice and comment period and the adoption of a final rule, amended in light of the public comments received, the INS fully discharged its obligations under § 553 of the Act.").

Making that impact asylum and credible fear processes.[6] At a minimum, the comment period should be 90 days.[7] Thirty-day or shorter comment periods should be reserved for true emergencies and exigent circumstances that cannot be prepared for in advance. We ask that the Administration consider providing more reasonable comment periods for regulatory action with the potential to have major impacts on human life and dignity, including access to humanitarian protections.

II. The IFR is likely an abuse of discretion and issued without valid authority. The President and the Departments are attempting to reduce irregular migration by circumventing the asylum and expedited removal statutes.

While presidential action is not ordinarily "agency action" and is typically unreviewable by the courts,[8] the Proclamation and IFR together create an "operative rule of decision" for asylum eligibility that will be reviewable by the courts.[9] The Proclamation relies on sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) as its source of authority.[10] The Rule is already being challenged.[11]

a. Discussion of INA 212(f) and 215(a).

Section 212(f) applies with respect to certain kinds of people, rather than places. The President can invoke this power to suspend the entry of certain foreign nationals. Actions resulting from this authority apply nationwide. Meanwhile, section 215(a) provides the President with broad powers to place limitations on the manner of entry into the country by noncitizens.[12] Stated another way, while section 212(f) is concerned with preventing the entry of particular people, section 215(a) can be conceptualized as a restriction on how people may enter (or exit) the United States.[13]

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[6] *See* Application of Certain Mandatory Bars in Fear Screenings, 89 Fed. Reg. 41,347–61 (May 13, 2024) (with a 30-day comment period closing on June 12, 2024, which is during the pendency of the comment period for this IFR); Circumvention of Lawful Pathways, 88 Fed. Reg. 31314–52 (May 11, 2023).

[7] *Pangea Legal Services v. U.S. Dep't of Homeland Sec.*, 501 F. Supp. 3d 792, 819–20 (N.D. Cal. 2020).

[8] *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992).

[9] *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 669 (9th Cir. 2021).

[10] *See* 89 Fed. Reg. 48,711 ("On June 3, 2024, the President signed a Proclamation under sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), finding that because the border security and immigration systems of the United States are unduly strained at this time, the entry into the United States of certain categories of noncitizens is detrimental to the interests of the United States, and suspending and limiting the entry of such noncitizens.").

[11] *Las Americas Immigrant Advocacy Center, et al. v. U.S. Dep't of Homeland Sec., et al.*, 1:24-cv-01702 (D.D.C. June 12, 2024).

[12] Jonathan P. Riedel, *Closing the Border*, 95 NYU L. REV. ONLINE 27, 35–37 (2020) ("Section 215 would authorize a border closure only to the extent that the closure is meant to regulate the manner of people's entry. Section 215 is not an authorization to adopt isolationism or to substantively execute an administration's priorities regarding the entry of certain groups of people; instead, it is a procedural, 'regulatory' device to control how noncitizens may enter.").

[13] *Id.* at 35–38.

In *Trump v Hawaii,* the Supreme Court declined to construe the breadth of section 215 because it found that this provision substantially overlapped with section 212(f), and the Court did not need to resolve the precise relationship between the two statutes in evaluating the validity of the presidential proclamation at issue in that case.[14] As such, we discuss the limitations of section 212(f), but our arguments apply with the same force to section 215(a).

b. Section 212(f) is not a removal statute and does not authorize the President (or any executive agency) to override other provisions of the INA. Neither the President nor the Departments have the authority to override the statutory intent of Congress.

Federal law supplies the President and the Departments with some power to restrict the legal entry of goods and people at the U.S.-Mexico border.[15] However, the President is not imbued with "monarchical power in the immigration context,"[16] and utilizing existing authority to fully circumvent specific provisions of the INA will be considered an *ultra vires* action.[17] Broad action taken to categorically bar people from applying for asylum as a means of closing the border will give rise to meritorious constitutional and statutory challenges.

The geographical and temporal scope of a border closure are inversely related to the President's ability to enact that closure. Closing the entirety of the border to people implicates the separation of powers. This conception of an inverse relationship between scope and duration of a closure on the one hand and presidential authority on the other is consistent with the Supreme Court's prior analyses of section 212(f).[18]

The Supreme Court remarked in *Hawaii* that the exercise of the suspension power, in that case, was not inconsistent with other immigration statutes.[19] Congress

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[14] *Trump v. Hawaii*, 585 U.S. 667 (2018); *see also Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 614 (4th Cir. 2017) *vacated and remanded sub nom. Trump v. Int'l Refugee Assistance*, 583 U.S. 912 (2017) (Wynn, J. Concurring) ("The Government does not argue that Sections 1182(f) and 1185(a) confer meaningfully different powers on the President["] and concluding that the sections do not meaningfully differ.).

[15] *See generally* BEN HARRINGTON, CONG. RESEARCH SERV., LSB10283, CAN THE PRESIDENT CLOSE THE BORDER? RELEVANT LAWS AND CONSIDERATIONS 3 (2019), https://fas.org/sgp/crs/homesec/LSB10283.pdf.

[16] *Nat'l Ass'n of Manufacturers v. United States Dep't of Homeland Sec.*, 491 F. Supp. 3d 549, 563 (N.D. Cal. 2020).

[17] *Trump v. Hawaii*, 585 U.S. 667, 689 (2018) (assuming without deciding that 8 USC "§ 1182(f) does not allow the President to expressly override particular provisions of the INA.").

[18] *Trump v. Hawaii*, 585 U.S. 667 (2018); *Sale v. Haitian Centers Council, Inc.*, 509 US 155 (1993) (challenging validity of program issued under section 212 where Haitian noncitizens were interdicted at sea by the Coast Guard and held in Guantanamo Bay); *United States v. Laub*, 385 U.S. 475 (1967); *Zemel v. Rusk*, 381 US 1 (1965) (challenging President's and Department of State authority to cancel visas to Cubans under section 215(a)).

[19] *See Trump v. Hawaii*, *supra* note 14, at 690.

clearly intended for ways to regulate, and the immigration statutes provide, for cross-border travel and for people to be able to surrender inside or outside of the country to seek asylum. In addition, Congress only provided carveouts to the executive branch for national security purposes in specific circumstances. Meanwhile, a blanket and potentially indefinite closure limiting access to asylum and the expedited removal process at the U.S.-Mexico border contradicts numerous provisions in the INA. As a result, the attempted closure of the U.S.-Mexico border in the manner envisioned by the June 7 Proclamation is a very haphazard use of the President's section 212(f) authority, which contemplates person-based restrictions.[20]

c. The President does not have the authority to, *sua sponte*, create a new process that insulates people present within the United States or who surrender at the border from the congressionally-mandated expedited removal process.

In addition to the above, the Proclamation and IFR are likely *ultra vires* because the agencies are attempting to create, without congressional authority, a pre-screening process that will circumvent and funnel people into (or out of) the congressionally-mandated expedited removal process.

It is a bedrock principle of our constitutional system that Congress creates the law and that the executive branch executes it.[21] Congress designed the expedited removal process and the credible fear interview in such a way that those seeking protections at our shores would face "a low screening standard for admission into the usual full asylum process." [22] Where Congress itself has significantly limited executive discretion by establishing a detailed scheme that the executive branch must follow, the executive branch may not abandon that scheme because it thinks it is not working well.[23]

d. The Departments' attempt to change the underlying justification of the IFR from INA section 212(f) to sections 208(b)(1)(A) and 235(b)(1)(B) does not empower the Departments to disregard 208(a)(1).

The Departments, through the IFR, effectively concede that the above is true.[24] Even while acknowledging that the President cannot unilaterally nullify the asylum

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[20] Riedel, *supra* note 12, at 38.

[21] *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 774 (9th Cir. 2018) ("The power of executing the laws does not include a power to revise clear statutory terms that turn out not to work in practice and it is thus a core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.") (cleaned up).

[22] 142 Cong. Rec. S11,491 (Sept. 27, 1996) (statement of Sen. Hatch).

[23] *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 774 (9th Cir. 2018).

[24] Securing the Border, *supra* note 1, at 48,717 ("This rule is necessary because, while the Proclamation recognizes that the asylum system has contributed to the border emergency, the Proclamation itself

statutes, the Departments' attempt to limit a noncitizen's ability to apply for asylum based solely on the manner of entry. However, the Departments are ignoring that the power to execute the laws does not include the power to revise clear statutory terms.[25]

i. The expedited removal process.

The expedited removal process was created by Congress to allow noncitizens who lacked valid documentation to pursue asylum in the United States. The goal was to avoid returning individuals back to countries where they could face persecution in contravention of U.S. and international law. Under the INA, DHS may designate certain noncitizens for expedited removal[26] and the process for determining whether those individuals will be granted asylum or will be removed from the United States swiftly.[27] This process has two stages: (1) an initial screening to determine whether or not the noncitizen has a credible fear of persecution or torture in his or her home country and (2) full removal proceedings, during which the noncitizen bears the burden of establishing eligibility for asylum.[28] Thus, this first stage of the asylum eligibility process is intended to be a mere screening interview, and the applicant need not show that he or she is in fact eligible for asylum.[29] The applicant is only required to show that he or she possesses a "significant possibility" that the applicant would be eligible for asylum.[30] For those who are ineligible for expedited removal under section 235 due to criminal issues or previous orders of removal but who could still face persecution in their country of origin, these noncitizens would be subject to the withholding of removal proceedings found in section 8 U.S.C. 1231(b)(3) (INA section 241).

This is supplemented by Congress's command allowing people seeking asylum to apply for asylum irrespective of such noncitizen's status or method of entry into the United States. The only pre-requisite for a noncitizen to apply for asylum is that the noncitizen be physically present in the United States.[31]

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does not and cannot affect noncitizens' right to apply for asylum, eligibility for asylum, or asylum procedures. That has been the Executive Branch's consistent position for four decades.").

[25] *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 774 (9th Cir. 2018).

[26] *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I)–(II).

[27] *Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 38 (D.D.C. 2020).

[28] *Id.*; *see Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1082–89 (9th Cir. 2020), vacated and remanded sub nom. *Mayorkas v. Innovation Law Lab*, 141 S. Ct. 2842 (2021) (explaining the expedited removal process and the difference between section 235(b)(1) and (b)(2) applicants for admission).

[29] *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020); see also *Kiobumba v. Wolf*, *supra* note 27, at 12–14.

[30] *Dep't of Homeland Sec. v. Thuraissigiam*, *supra* note 29; *Kiobumba v. Wolf*, *supra* note 27, at 13; *Grace v. Whitaker*, 344 F. Supp. 3d 96, 127 (D.D.C. 2018), aff'd in part, rev'd in part and remanded sub nom. *Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020) (holding that "an alien's removal may not be expedited if there is a 'significant possibility' that the alien could establish eligibility for asylum" and "to prevail at a credible fear interview, the alien need only show a 'significant possibility' of a one in ten chance of persecution, i.e., a fraction of ten percent").

[31] 8 U.S.C. § 1158(a)(1).

ii. The IFR's confuses asylum eligibility on the merits with creating a categorical bar to asylum based on manner of entry.

The IFR explains that "[p]revious Attorneys General and Secretaries have []invoked their authorities under section 208 of the INA, 8 U.S.C. 1158, to establish eligibility bars beyond those required by the statute itself."[32] However, most of the examples provided in the IFR have been enjoined by the courts. While the Departments claim that these are limitations on *eligibility* for asylum, this IFR and the previous actions are actually examples of limitations on whether a noncitizen can *apply* for asylum.

Pre-deciding asylum cases based solely on manner of entry runs contrary to the plain language of the asylum statute.[33] In addition, the IFR does not address congressionally-mandated differences between arriving aliens based on whether they are defined under section 235(b)(1) or (b)(2).

The IFR is attempting to circumvent the asylum and expedited removal processes created by Congress. Per the IFR, "the Departments are adopting a limitation on asylum eligibility for noncitizens who (1) enter the United States across the southern border during emergency border circumstances; (2) are not described in section 3(b) of the Proclamation; and (3) do not establish exceptionally compelling circumstances."[34]

In essence, the IFR is creating, without congressional approval, a new subsection 235(b)(0): prior to deciding whether a noncitizen may even enter the expedited removal process, the Administration deciding whether the number of people encountered at the border meet the Rule's threshold requirements. If the Rule's limitations are met, noncitizens would fall within the purview of this rule and be ineligible to enter the expedited removal process under 235(b)(1), even if they express a credible fear of persecution or are otherwise statutorily eligible for asylum.

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[32] Securing the Border, *supra* note 1, at 48,734–35.

[33] 8 U.S.C. 1158(a)(1) ("Any alien who is physically present in the United States or who arrives in the United States (*whether or not at a designated port of arrival* and including an alien who is brought to the United States after having been interdicted in international or United States waters), *irrespective of such alien's status*, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.") (emphasis added). In addition, case law has developed around manner of entry when it comes to discretionary factors in the grant of asylum. There is a totality of the circumstances approach, where manner of entry is only either a neutral or negative factor in the equation. *See Matter of Pula*, 19 I&N Dec. 467 (BIA 1987); *Sathanthrasa v. Attorney Gen. United States,* 968 F.3d 285, 294–95 (3d Cir. 2020) (listing positive and negative discretionary factors for a grant of asylum and noting "that while violations of immigration laws are properly part of the inquiry, this factor itself involves a totality of the circumstances inquiry, including whether the violation stemmed from an imminent need to escape persecution") (cleaned up); *E. Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 858–59 (N.D. Cal. 2018) ("Numerous Circuits have approved of *Matter of Pula* and have further emphasized that illegal entry deserves little weight in the asylum inquiry.").

[34] Securing the Border, *supra* note 1, at 48,732.

Section 235(b)(0) would then transfer the noncitizen from section 235 expedited removal proceedings, where asylum is an option, to section 241(b)(3) withholding only proceedings based solely on manner of entry. This determination would essentially foreclose asylum *applications* to noncitizens, and these noncitizens in turn would then be lumped together in withholding only proceedings with those who have been previously ordered removed or with those who have committed felonies. Undoubtedly, this would increase the potential for *refoulement* to occur, contrary to U.S. and international law.

The application of this Rule creates disparate results where a South American who flies into the country may apply for asylum so long as he or she did not cross the U.S.-Mexico border, while someone who surrendered to the congressionally-mandated expedited removal process cannot.

For instance, if a noncitizen entered through the U.S.-Mexico border while the limitations of the Rule were in effect, this Rule would apply "irrespective of whether the noncitizen is encountered" at the time.[35] Meaning, if the noncitizen never ends up in removal proceedings and later applies for asylum affirmatively, this Rule will still apply and bar that person from asylum. Meanwhile, if a noncitizen entered via a flight or ship, he or she would still be eligible to apply for asylum affirmatively. In addition, for those encountered near the border or who surrender themselves at a port of entry, the Rule would make the bar to asylum apply at section 235(b)(0) instead of at the merits stage.[36]

The Administration has attempted to circumvent Congress' intended asylum system and the expedited removal process on multiple occasions.[37] The only attempt to survive is the Circumvention of Lawful Pathways rule. Even that was originally enjoined, with the injunction stayed pending appeal.[38] The appeal is in abeyance due to settlement negotiations, making its future applicability uncertain,[39] but this has not stopped the Administration from relying on it to justify this IFR in an attempt to further narrow a noncitizen's ability to apply for asylum under U.S. law.[40]

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[35] *Id.*

[36] *Id.* at 48,739 ("Under the rule, when screening for asylum eligibility, the AO and IJ must determine whether there is a significant possibility that the noncitizen would be able to establish by a preponderance of the evidence that they were not subject to the rule's limitation on asylum eligibility or that they will be able to establish by a preponderance of the evidence exceptionally compelling circumstances.").

[37] *See* Securing the Border, *supra* note 1, at 48,734–35.

[38] *E. Bay Sanctuary Covenant v. Biden*, 683 F. Supp. 3d 1025 (N.D. Cal. 2023), granting stay pending appeal, 23-16032, 2023 WL 11662094 (9th Cir. Aug. 3, 2023).

[39] *E. Bay Sanctuary Covenant v. Biden*, 93 F.4th 1130 (9th Cir. 2024) (holding appeal in abeyance.).

[40] *See* Securing the Border, *supra* note 1, at 48,712; Application of Certain Mandatory Bars in Fear Screenings, 89 Fed. Reg. 41,347, 41,354 (May 2024).

III. The IFR has the potential to increase instances of family separation.

Family unity and reunification are fundamental to our nation's immigration policies, as well as foundational principles of Catholic social teaching. Yet, in the last several years, the consequences of various deterrent actions taken at the border have undermined this principle. While we commend the Departments for excluding unaccompanied children from the implementation of the IFR, we are concerned that, in practice, this will have effects similar to the exemptions made for unaccompanied children under the Migrant Protection Protocols (MPP) and Title 42, which led families to "self-separate" at the border.

Self-separation is a phenomenon that was first reported in early 2020, a few months after the initial implementation of MPP. Under MPP, unaccompanied children were also exempt from having to remain in Mexico to await their day in immigration court. As a result, a number of children entered the United States as "unaccompanied" even though they had first arrived at the U.S.-Mexico border as part of a family unit. These "self-separations" often occurred because their adult relatives discerned that the conditions in Mexico were too dangerous for the children to continue to wait with them, or because the adult relative was injured or disappeared, most likely due to the harms inflicted on migrants waiting in Mexico.[41]

Separations of this nature continued to occur during the implementation of Title 42 but on a much larger scale. Initially, unaccompanied children were subject to the expulsion policy; however, when the Biden Administration halted this practice in early 2021, the Office of Refugee Resettlement (ORR) experienced a historic influx of unaccompanied children in its custody.[42] Since the end of Title 42 in May 2023, the encounters of unaccompanied children at the U.S.-Mexico border have fluctuated but have mostly trended downward.[43] Similarly, ORR has been able to discontinue use of its influx care facilities and has reported less than 7,500 unaccompanied children in its custody as of June 21, 2024,[44] a very sharp decline when compared to the tens of thousands of children in its care during the period of influx in the spring and summer

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[41] Priscilla Alvarez, *At Least 350 Children of Migrant Families Forced to Remain in Mexico Have Crossed Over Alone to U.S.*, CNN (Jan. 24, 2020), https://cnn.it/3Ko42hg.

[42] Camilo Montoya-Galvez, *12,212 Migrant Children Reentered U.S. Border Custody Alone in 2021 After Being Expelled*, CBS NEWS (May 20, 2022), https://www.cbsnews.com/news/immigration-migrant-children-us-border-custody-unaccompanied-minors-2021/; *see also* Brief for the United States Conference of Catholic Bishops & Catholic Legal Immigration Network, Inc., Supporting Respondents, Arizona v. Mayorkas (U.S. 2023), https://www.usccb.org/sites/default/files/about/general-counsel/amicus-briefs/upload/2023-0208_FINAL_Title_42_Brief_USCCB%20_CLINIC.pdf.

[43] U.S. CUSTOMS AND BORDER PROTECTION, SOUTHWEST LAND BORDER ENCOUNTERS, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters (last modified June 20, 2024).

[44] ADMINISTRATION FOR CHILDREN AND FAMILIES, ORR INFLUX CARE FACILITIES FOR UNACCOMPANIED CHILDREN FACT SHEET (June 21, 2024), https://www.acf.hhs.gov/orr/fact-sheet/programs/uc/influx-care-facilities-fact-sheet.

of 2021.[45] While the Departments argue that the changes implemented by the IFR are necessary in order to process noncitizens swiftly and effectively, it disregards the implications for ORR and the ultimate consequences for children and families. At the height of the mentioned influx, ORR created several unlicensed makeshift care facilities around the country known as "Emergency Intake Sites" that were meant to mitigate the overcrowding in Customs and Border Protection (CBP) facilities.[46] Children were often kept for months in these large facilities where they lived in ill-suited and distressing conditions, leading to severe safety and mental health concerns.[47]

The limitations proposed by the IFR threaten to create a similar set of circumstances for families. The exemption for unaccompanied children alone, without also exempting family units, will undoubtedly lead parents and other adult caregivers to make the difficult decision to self-separate as they desperately attempt to keep their children safe from harm. The unnecessary separation of families is traumatic, in direct conflict with child welfare principles, and causes long-term harm to children.[48]

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For the reasons discussed, the USCCB believes that the IFR was issued without valid authority and is illegally nullifying the congressionally-mandated expedited removal process and U.S. asylum law, increasing the potential for *refoulement* to occur. The IFR also furthers conditions likely to produce an increased number of unaccompanied children. We urge the Departments to rescind the Rule in its entirety. At a minimum, a longer public comment period is necessary, and the Departments should rescind and reissue the IFR with a 90-day comment period, while also providing an exemption for family units.

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[45] U.S. DEP'T OF HEALTH AND HUMAN SERV., HHS UNACCOMPANIED CHILDREN PROGRAM, https://healthdata.gov/National/HHS-Unaccompanied-Children-Program/ehpz-xc9n/data_preview.

[46] NEHA DESAI, DIANE DE GRAMONT, & ALLYSON MILLER, UNREGULATED & UNSAFE: THE USE OF EMERGENCY INTAKE SITES TO DETAIN IMMIGRANT CHILDREN (June 2021), https://youthlaw.org/sites/default/files/attachments/2022-06/EIS%20Briefing%20FINAL.pdf.

[47] *Id.* at 17–19.

[48] Jordan P. Davis, Tara M. Dumas & Brent W. Roberts, *Adverse Childhood Experiences and Development in Emerging Adulthood*, 6 EMERGING ADULTHOOD 223–234 (2017) (finding that the impact of trauma can be compounded and that children can experience the effects of trauma long-term, across various domains in their lives including education, physical health, mental health, relationally, and more).

Respectfully submitted,

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