

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)**

**ORDER UNDER SECTIONS 362 & 365 OF THE PUBLIC HEALTH SERVICE ACT
(42 U.S.C. §§ 265, 268):**

**NOTICE OF TEMPORARY EXCEPTION FROM EXPULSION OF
UNACCOMPANIED NONCITIZEN CHILDREN ENCOUNTERED IN THE UNITED
STATES PENDING FORTHCOMING PUBLIC HEALTH DETERMINATION**

Pursuant to its authority under 42 U.S.C. §§ 265, 268, and implementing regulations, and due to the COVID-19 pandemic, CDC issued an Order suspending the right to introduce and prohibiting the introduction of covered aliens travelling into the United States from Mexico and Canada.¹ On November 18, 2020, the United States District Court for the District of Columbia entered a preliminary injunction in *PJES v. Mayorkas* (“*PJES* injunction”),² enjoining the expulsion of unaccompanied noncitizen children pursuant to the Order. On Friday, January 29, 2021, the United States Court of Appeals for the District of Columbia Circuit granted a stay pending appeal of the District Court’s *PJES* preliminary injunction.³

The current COVID-19 pandemic continues to be a highly dynamic public health emergency. CDC is in the process of reassessing the overall public health risk at the United States’ borders and its “Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists” based on the most current information regarding the COVID-19 pandemic as well as the situation at the Nation’s borders.⁴ Although the D.C. Circuit’s stay pending appeal permits the CDC to enforce its order and immediately expel unaccompanied noncitizen children, CDC has exercised its discretion to temporarily except from expulsion unaccompanied noncitizen children⁵ encountered in the United States pending the

¹ See Notice of Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 85 Fed. Reg. 65,806, 65,812 (Oct. 16, 2020; eff. Oct. 13, 2020), replacing the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 26, 2020; eff. Mar. 20, 2020), as extended, 85 Fed. Reg. 22,424 (Apr. 22, 2020; eff. Apr. 20, 2020), and as amended and extended, 85 Fed. Reg. 31,503 (May 26, 2020; eff. May 21, 2020).

² No. 1:20-cv-02245 (D.D.C.), Dkt. Nos. 79-80.

³ No. 20-5357, Doc. No. 1882899.

⁴ Review of CDC’s 265 Order is also directed by Executive Order 14010, Sec. 4(a)(ii)(A), “Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,” Feb. 2, 2021, 86 Fed. Reg. 8267 (Feb. 5, 2021).

⁵ Unaccompanied noncitizen children are unaccompanied children who do not hold valid travel documents and who are encountered by the U.S. Department of Homeland Security (DHS) in the United States or otherwise upon introduction into the United States. CDC understands “unaccompanied noncitizen children” as the class of individuals subject to the *PJES* litigation (“all unaccompanied noncitizen children who (1) are or will be detained in U.S. government custody in the United States, and (2) are or will be subjected to expulsion from the United States under the CDC Order Process”). It is also CDC’s understanding that this class of individuals is similar to or the same as those individuals who would be considered “unaccompanied alien children” for purposes of HHS Office of Refugee Resettlement custody, were DHS to make the necessary immigration determinations under Title 8 of the United States Code.

outcome of its forthcoming public health reassessment of the Order. This temporary exception went into effect on or about Saturday, January 30, 2021, and will remain in effect until CDC has completed its public health assessment and published any notice or modified Order. All other terms of the Order, including its application to adults, remain in place until such time as any modified Order is issued.⁶

In testimony whereof, the Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, has hereunto set her hand at Atlanta, Georgia, this 11th day of February, 2021.

A handwritten signature in blue ink, appearing to read "Rochelle P. Walensky", with a horizontal line underneath.

Rochelle P. Walensky, MD, MPH
Director
Centers for Disease Control and Prevention

⁶ See 85 Fed. Reg. 65,806.