

CENTER FOR  
**Gender & Refugee**  
STUDIES

*Protecting Refugees • Advancing Human Rights*

April 22, 2020

Via Federal e-Rulemaking Portal  
<http://www.regulations.gov>

Kyle McGowan  
Office of the Chief of Staff  
Centers for Disease Control and Prevention  
1600 Clifton Road NE, MS H21-10  
Atlanta, GA 30329

**RE: Request for Comments: Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries of Places for Public Health Purposes (March 24, 2020)**  
**HHS Docket No. CDC-2020-0033, RIN 0920-AA76.**

Dear Mr. McGowan:

The Center for Gender & Refugee Studies (CGRS) writes in response to HHS Docket No. CDC-2020-0033, RIN 0920-AA76, *Request for Comments: Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries of Places for Public Health Purposes* (March 24, 2020) (hereinafter, Interim Final Rule or IFR).

CGRS was founded in 1999 by Karen Musalo<sup>1</sup> following her groundbreaking legal victory in *Matter of Kasinga*<sup>2</sup> to meet the needs of asylum seekers fleeing gender-based violence. CGRS protects the fundamental human rights of refugee women, children, LGBTQ individuals, and others who flee persecution and torture in their home countries. CGRS is an internationally respected resource for gender asylum, renowned for our knowledge of the law and ability to combine sophisticated legal strategies with policy advocacy and human rights interventions. We take the lead on emerging issues, participate as counsel or *amicus curiae* in impact litigation to advance the rights of asylum seekers,<sup>3</sup> produce an extensive library of litigation support materials, maintain an unsurpassed database of asylum records and decisions, and work in coalitions with immigrant, refugee, LGBTQ, children's, and women's rights networks.<sup>4</sup> Since our founding, we have also engaged in international human rights work

---

<sup>1</sup> Bank of America Foundation Chair in International Law; Professor & Director, Center for Gender & Refugee Studies, University of California Hastings College of the Law.

<sup>2</sup> 21 I&N Dec. 357 (BIA 1996).

<sup>3</sup> See, e.g., *Innovation Law Lab v. Nielsen*, No.3:19-cv-00807-RS (N.D.Cal.), *prelim. inj. stayed pending petition for cert.*, *Wolf v. Innovation Law Lab*, -- S.Ct.--, 2020 WL 1161432 (Mar. 11, 2020)(Mem.); *Damus v. McAleenan*; No. 1:18-cv-00578-JEB (D.D.C.) (pending); see also *Damus v. Nielsen*, No. 18-578, 313 F.Supp.3d 317 (D.D.C. Jul. 2, 2018); *Grace v. Barr*, 344 F.Supp.3d 96 (D.D.C. Dec. 18, 2018) (gov't appealed), No. 195013 (D.C.Cir. Jan. 30, 2019)); and *Matter of A-B*, 27 I&N Dec. 316 (A.G. 2018).

<sup>4</sup> See, e.g., our [Immigrant Women Too](#) campaign.

with a strong emphasis on the Northern Triangle countries of El Salvador, Guatemala, and Honduras, to address the underlying causes of forced migration that produce refugees—namely, violence and persecution committed with impunity when governments fail to protect their citizens.<sup>5</sup>

As a critical part of our mission, CGRS serves as a resource to decision makers to promote laws and public policies that recognize the legitimate asylum claims of those fleeing persecution, with a special focus on women, children and LGBTQ refugees. Our goal is to create a U.S. framework of law and policy that responds to the rights of these groups and aligns with international law. It is in furtherance of our mission that we submit this comment. Our arguments proceed as follows.

**I. Introduction**

**II. The Interim Final Rule Fails to Ensure Compliance with U.S. International Legal Obligations Towards Asylum Seekers**

- A. The IFR must be read consistent with treaty provisions regarding *non-refoulement***
- B. A public health emergency does not justify *refoulement***
- C. The IFR does not provide adequate safeguards against *refoulement***

**III. The IFR Places Women and Children at Particular Risk for *Refoulement***

- A. In practice, the IFR has resulted in women and children being returned to persecution and torture**
- B. Nearly 200 organizations express concern over the lawfulness of the IFR and specific risk to women and children**

**IV. Conclusion**

**Annex I: Letter to DHS signed by 182 organizations**

**I. Introduction**

The present comment relates to the Interim Final Rule (IFR or Rule) which authorizes the Director of the Centers for Disease Control and Prevention (CDC) to “prohibit the introduction into the United States of persons from designated foreign countries ... or places, only for such period of time that the Director deems necessary for the public health,” through issuance of an order.<sup>6</sup>

On the same day the Rule was issued, CDC issued such an order (CDC Order) invoking its authority under the IFR to suspend the introduction of persons without documentation who seek to enter the United States from Mexico or Canada.<sup>7</sup> The Order was extended (CDC Order Extension) for an additional 30 days on April 19, 2020.<sup>8</sup>

---

<sup>5</sup> See, e.g., Karen Musalo, *El Salvador--A Peace Worse Than War: Violence, Gender and a Failed Legal Response*, 30 YALE J. LAW & FEMINISM 3 (2018); Karen Musalo and Blaine Bookey, *Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala*, 10 HASTINGS RACE & POVERTY L.J. 265 (2013).

<sup>6</sup> Interim Final Rule at 16563.

<sup>7</sup> *Order Suspending Introduction of Persons From a Country Where a Communicable Disease Exists*, 85 Fed. Reg. 16567 (March 24, 2020).

<sup>8</sup> [Extension of Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists](#) (April 19, 2020).

The IFR states that it will enable the CDC Director to “suspend the introduction of persons into the United States consistent with the [Public Health Service Act] and applicable law.”<sup>9</sup> The IFR also states that “[i]n issuing orders pursuant to this interim final rule, CDC would coordinate with the Secretary of State in order to ensure compliance with the international legal obligations of the United States.”<sup>10</sup> However, as detailed below, the CDC Order, the CDC Order Extension, and reports from the border during the first month of the IFR’s implementation make clear that the requirements of consistency with applicable law and compliance with international legal obligations are not being met.

As experts in asylum law, we focus our comment particularly on the IFR provision regarding compliance with the international legal obligations of the United States, which also form the applicable law referred to in the IFR. For the reasons set forth below, CGRS urges CDC to abandon the IFR unless and until it is fully consistent with such applicable law. It is our expert opinion that the IFR will lead to refugees, including women and children fleeing from domestic violence, being returned to extremely violent countries where they could be abused, sexually assaulted, or otherwise harmed, tortured, or killed.

## **II. The Interim Final Rule Fails to Ensure Compliance with U.S. International Legal Obligations Towards Asylum Seekers**

### **A. The IFR must be read consistent with treaty provisions regarding *non-refoulement***

The relevant international legal obligations with which the United States must comply are found in the 1967 Protocol Relating to the Status of Refugees (Refugee Protocol)<sup>11</sup> and the 1984 Convention Against Torture (CAT).<sup>12</sup> The United States acceded to the Refugee Protocol in 1968 with no relevant declarations or reservations, and ratified CAT in 1994 with no relevant reservations, declarations, or understandings. These treaties have been implemented in domestic law in the Refugee Act of 1980 and the Foreign Affairs Reform and Restructuring Act of 1998, respectively.

Under the Refugee Protocol, the United States is prohibited from returning persons to territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.<sup>13</sup> The corresponding provision in U.S. law incorporates the treaty obligation, stating that the Attorney General “may not remove” a person to a country if the Attorney General decides that the person’s “life or freedom would be threatened in that country because of the [person’s] race, religion, nationality, membership in a particular social group, or political opinion.”<sup>14</sup>

Under the Convention Against Torture, the U.S. shall not “expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.”<sup>15</sup> The corresponding regulation again incorporates the treaty obligation, providing that a person will be eligible for withholding of removal under CAT if he or she establishes

---

<sup>9</sup> Interim Final Rule at 16563.

<sup>10</sup> Interim Final Rule at 16562.

<sup>11</sup> 606 U.N.T.S. 267 (entry into force 4 Oct. 1967).

<sup>12</sup> 1465 U.N.T.S. 85 (entry into force 26 June 1987).

<sup>13</sup> 1951 Convention Relating to the Status of Refugees, art. 33, binding on the United States by means of U.S. accession to the Refugee Protocol, art. 1.

<sup>14</sup> 8 U.S. Code Sec. 1231 (b)(3)(4).

<sup>15</sup> CAT, art. 3.

“that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.”<sup>16</sup>

It is important to note that these are different expressions of *non-refoulement*, based on different treaties, with different legal definitions describing the category of persons to whom the obligation is owed, and differing standards of proof.

When Congress enacted expedited removal procedures in 1996 it ensured that the United States would continue to meet its treaty obligations by requiring a “credible fear” interview for anyone at the border who expresses a fear of return or desire to apply for asylum.<sup>17</sup> There is therefore no question that the U.S. is bound by these international legal obligations and has implemented them in domestic law. The IFR’s reference to consistency with applicable law and compliance with international legal obligations must be read in light of controlling U.S. statutes and international law.<sup>18</sup> However, as explained in greater detail in Section II.C. below, the well-established procedures for expedited removal are not being followed under the IFR.

We note that all Senate Judiciary Committee Democratic Members wrote to the Department of Homeland Security (DHS) on April 7, 2020 posing a number of inquiries concerning the legal justification for closing U.S. borders to asylum seekers and questioning the compliance of such actions with U.S. treaty obligations.<sup>19</sup> We incorporate all of the Senators’ inquiries into this comment and in particular request a full analysis of and response to their ninth question, as follows:

Does the Executive Branch take the position that its recent actions pursuant to Title 42 comply with the 1951 Refugee Convention, the Convention Against Torture, and all other relevant treaties to which the United States is a signatory? If so, please provide any legal opinion or memorandum supporting this position. If not, please provide all legal precedents or opinions (OLC [Department of Justice Office of Legal Counsel] opinions acceptable) which support the theory that the Executive Branch can, by proclamation or other agency action, nullify or preempt, either partially or in whole, an international treaty to which the U.S. was already a party, remains a signatory, and where Congress has approved the ratification of that treaty, absent the formal withdrawal from the treaty?<sup>20</sup>

The Senators’ concerns were echoed on April 10, 2020 by the Chairs of the House Committees on Foreign Affairs, Homeland Security, and the Judiciary, who called upon the Administration to explain the legality of the decision to suspend the rights of asylum seekers in the United States.<sup>21</sup> We urge you to provide a response to these Congressional inquiries immediately, while also incorporating your response into the administrative rulemaking process.

---

<sup>16</sup> 8 C.F.R. 208.16 (c) (2).

<sup>17</sup> 8 U.S. Code Sec. 1225 (b)(1)(a)(ii).

<sup>18</sup> See Lucas Guttentag, [Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors](#), Just Security, April 13, 2020.

<sup>19</sup> [Leahy Leads Judiciary Committee Democrats in Demanding Answers About DHS’ Newly Claimed Authorities to Override Federal Laws at Southern Border](#), April 7, 2020.

<sup>20</sup> *Id.*, question 9.

<sup>21</sup> [Engel, Thompson, Nadler Statement on Trump Administration’s Suspension of Asylum Processing](#), April 10, 2020.

### **B. A public health emergency does not justify *refoulement***

The obligations of *non-refoulement* to persecution or torture are absolute.<sup>22</sup> No reservations are allowed to the *non-refoulement* provision of the Convention Relating to the Status of Refugees nor has the U.S. ever purported to make any such reservation.<sup>23</sup> Similarly, a State Party to the Convention Against Torture may not be excused from its obligations due to exigent circumstances. The treaty specifically provides that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>24</sup>

Accordingly, the United Nations High Commissioner for Refugees (UNHCR), the World Health Organization (WHO), and the United Nations Office of the High Commissioner for Human Rights have stressed that border restrictions can be managed in a manner which protects public health while respecting international human rights and refugee protection standards, including the principle of *non-refoulement*.<sup>25</sup> The High Commissioner himself, Felippo Grandi, emphasizes that:

“Securing public health and protecting refugees are not mutually exclusive. This is not a dilemma. We have to do both. Long-recognized refugee laws can be respected even as governments adopt stringent measures to protect public health, including at borders.”<sup>26</sup>

With respect to the United States in particular, UNHCR is “very concerned about systemic and rapid expulsions of persons including asylum seekers crossing U.S. land borders.”<sup>27</sup> UNHCR stressed that while governments may take extraordinary measures at borders due to the current public health emergency, “expulsions of asylum seekers resulting in *refoulement* should not be among them.”<sup>28</sup>

Public health experts have explained that there is no public health rationale for a categorical ban on asylum seekers and have suggested numerous ways in which public health can be protected while the rights of asylum seekers are respected.<sup>29</sup>

### **C. The IFR does not provide adequate safeguards against *refoulement***

The IFR states that “[i]n issuing orders pursuant to this interim final rule, CDC would coordinate with the Secretary of State in order to ensure compliance with the international legal obligations of the United

---

<sup>22</sup> Article 33.2 of the Convention Relating to the Status of Refugees is not relevant in this context.

<sup>23</sup> Convention Relating to the Status of Refugees, art. 42.

<sup>24</sup> CAT, art. 2.2 (emphasis added).

<sup>25</sup> United Nations Office of the High Commissioner for Human Rights, International Organization for Migration, United Nations High Commissioner for Refugees (UNHCR), and World Health Organization, [Joint press release: The rights and health of refugees, migrants and stateless must be protected in COVID-19 response](#), March 31, 2020; UNHCR, [Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response](#), March 16, 2020.

<sup>26</sup> [Beware long-term damage to human rights and refugee rights from the coronavirus pandemic: UNHCR](#), UNCHR News, April 22, 2020.

<sup>27</sup> Tanvi Misra, [US border restrictions extended for another month](#), Roll Call, April 20, 2020.

<sup>28</sup> *Id.*

<sup>29</sup> See, Joanna Naples-Mitchell, [There is No Public Health Rationale for a Categorical Ban on Asylum Seekers](#), Just Security, April 17, 2020. See also Amnesty International USA, Doctors Without Borders/Médecins Sans Frontières USA, Human Rights First, Physicians for Human Rights, Refugees International, and Women’s Refugee Commission, [Responding to the COVID-19 Crisis While Protecting Asylum Seekers](#), March 25, 2020.

States.” It is therefore logical to assume that the contemporaneously issued CDC Order and the subsequent CDC Order Extension would include procedures for handling claims for asylum that would allow the United States to observe the obligations of *non-refoulement* while protecting public health, or would at a minimum set forth the process by which such procedures would be developed. It would also be logical to assume that any deviation from the applicable law providing for credible fear interviews in expedited removal, which was created precisely to ensure compliance with treaty obligations in summary procedures at the border, would be fully explained and justified.

However, there is no indication in the IFR of the means by which any coordination with the Secretary of State will or should take place, nor do CDC’s Order or Order Extension explain whether such coordination did occur or if any attempt was even made to comply with international legal obligations. The IFR, CDC Order and CDC Order Extension lack any legal analysis whatsoever that would reconcile public health imperatives with legal obligations to asylum seekers. Even more striking is CDC’s failure to mention asylum seekers in the IFR, CDC Order or CDC Order Extension. This is an astonishing omission considering that the Administration has had an intense focus on the issue of asylum seekers at the southern border for the last several years and bearing in mind that the terms of the IFR itself reference the relevant legal obligations. The failure to mention asylum seekers is particularly alarming because, as explained below, border officials acting pursuant to the IFR have abandoned the use of expedited removal procedures altogether.

A Border Patrol memo obtained by a journalist earlier this month indicates that, in direct violation of expedited removal requirements under U.S. law, border officials are not even inquiring why people without proper documentation are seeking to enter, nor are they asking whether they fear harm if they are refused entry.<sup>30</sup> According to the memo, border officials have been instructed to expel everyone immediately except those who spontaneously express a fear of torture. If an asylum seeker does spontaneously express a fear of torture, the frontline border patrol officer must determine if the fear is “reasonably believable,” a legal standard that does not exist in U.S. immigration law and on which border patrol officers have not been trained. If the officer determines that the asylum seeker’s fear is reasonably believable, they must then get the approval of a superior officer, the chief patrol agent for the sector. Only after these steps is the asylum seeker allowed to express their fear of torture to an asylum officer. All others are summarily turned back.

Based on this description it is clear that expedited removal procedures specifically designed to identify and protect asylum seekers are no longer in use as a result of the IFR. This means that the IFR has essentially nullified those portions of the Immigration and Nationality Act which implement our treaty obligations of *non-refoulement*, an action which is beyond the power of CDC to take.

Two aspects of current procedures pursuant to the IFR as described above violate the international legal obligations of the United States and demonstrate the failures of the IFR. First, the expedited removal procedure established by law to ascertain whether an asylum seeker has a credible fear of persecution under the Refugee Protocol is not being followed. There is no provision whatsoever in current practice for inquiring into a person’s fear of persecution even if she spontaneously asserts such a fear.

Second, the same expedited removal procedure established by law to ascertain whether an asylum seeker has a credible fear of torture under CAT is not being followed, since the steps outlined in the Border Patrol memo are inconsistent with that law and instead require the applicant to meet an

---

<sup>30</sup> Dara Lind, [Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately – Ignoring Asylum Law](#), ProPublica, April 2, 2020.

impossibly high, and nowhere explained or defined, legal standard. Such a procedure is wholly inadequate to ensure that the United States abides by its obligations under the Convention Against Torture.

As noted in Section II.A. above, protections under the Convention Against Torture and under the Refugee Protocol have different legal definitions and different standards of proof. Even if the IFR led to DHS adequately assessing the claims of people who fear torture (which we do not believe it does), this would be insufficient to protect those who fear persecution. We urge CDC in its Final Rule and any subsequent Orders or Order Extensions to provide for a robust inter-agency process, starting on the basis of the existing expedited removal procedures, to ensure that asylum seekers are not returned to persecution or torture, and are instead dealt with in a manner that protects their health as well as public health generally. It is unacceptable that the IFR correctly refers to ensuring compliance with international legal obligations, yet the IFR, CDC Order, and CDC Order Extension take no steps whatsoever to operationalize such compliance or even mention asylum seekers.

We note additionally that the IFR states that CDC will take due account of U.S. national and security interests. In that regard, we urge CDC to reflect that honoring treaty obligations is itself in the national interest of the United States, both as an integral part of our Constitutional structure<sup>31</sup> and as necessary element of membership in the international community.<sup>32</sup> In addition to the treaties to which the United States is a State Party, the United States is a founding member of the United Nations and has served on UNHCR's Executive Committee since its inception in 1959. Closing our borders to refugees imposes an incalculable but very real cost to our global reputation and damages our traditional bipartisan leadership position in humanitarian affairs.

### III. **The IFR Places Women and Children At Particular Risk for *Refoulement***

#### A. **In practice, the IFR has resulted in women and children being returned to persecution and torture**

As a result of the failure of the IFR and CDC Order to provide protection for asylum seekers, we are concerned that the United States will return refugees to persecution or torture. Press accounts indicate that this is indeed happening.<sup>33</sup> It has been reported that the vast majority of people summarily expelled pursuant to the IFR are from Mexico and the Northern Triangle countries.<sup>34</sup> Based on our expertise in both asylum law and human rights conditions in these countries, we are particularly concerned with the situation of women and children seeking asylum from domestic violence or sexual abuse.

It has been widely reported that in many countries around the world, women and children are facing an increased risk of domestic violence and sexual abuse due to shelter in place measures imposed to limit the spread of the coronavirus.<sup>35</sup> The United Nations Secretary General has spoken out on the "horrifying

---

<sup>31</sup> U.S. Constitution, art. VI ("all treaties made ... shall be the supreme law of the land").

<sup>32</sup> See Vienna Convention on the Law Of Treaties, art. 26 "'PACTA SUNT SERVANDA' Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

<sup>33</sup> Nina Lakhani, [US using coronavirus pandemic to unlawfully expel asylum seekers, says UN](#), The Guardian, April 17, 2020; Lind, n. 30.

<sup>34</sup> Lakhani, n. 33.

<sup>35</sup> Such countries include El Salvador (domestic violence cases increased by 70% in March), see Adriana Flores and Alejandra García, [Violencia doméstica ha aumentado un 70% durante la cuarentena](#), [elsalvador.com](#), April 3, 2020; and Mexico (calls reporting cases of gender-based violence increased by 60% since the implementation of

global surge in domestic violence” as fear of the virus has grown.<sup>36</sup> UNHCR reports that displaced women and girls are at an increased risk of violence during the pandemic.<sup>37</sup>

By neglecting to address the situation of asylum seekers, the IFR only compounds the barriers that survivors of domestic violence face seeking protection in the United States. Within the last few years, the Department of Justice has all but closed the door on women seeking asylum from their abusive partners.<sup>38</sup> In addition, a host of unlawful policies has made the asylum process more difficult and dangerous than ever before: separating families, increasing incarceration, slowing down processing of new asylum claims at the border through “metering,” and forcing people to wait in Mexico for their U.S. immigration court hearings under the Migrant Protection Protocols. More recently, the United States has further violated its legal obligations to refugees by simply deporting people to Guatemala under an Asylum Cooperative Agreement, employing a legal fiction that they can safely seek asylum there.

During this pandemic, it is highly unlikely that large numbers of women and children suffering from domestic violence will be able to make their way to the southern border, given that many countries are requiring residents to shelter at home, and international travel has become extremely difficult. However, we are alarmed that because the IFR is so deeply flawed, those seeking asylum in the United States are now being promptly expelled with no legal process whatsoever.<sup>39</sup>

Given the failure of the IFR to follow established mechanisms for compliance with international legal obligations, we are dismayed but not surprised to learn that some 10,000 people were summarily expelled in the first 18 days after the IFR and CDC Order were published.<sup>40</sup> There are no reports of anyone successfully convincing a border agent that they have a “reasonably believable” fear of torture. Based on our experience and expertise, we know that many women and children arriving at the U.S. southern border are fleeing extensively documented extreme violence in their home countries. That not one of these women or children has been found to have a “reasonably believable fear” since expulsions began last month is a clear illustration that the IFR fails to ensure compliance with international legal obligations.

We note an additional concern, that children traveling alone should benefit from the provisions of the Trafficking Victims Protection Reauthorization Act and are supposed to be exempt from the new policy barring asylum seekers. However, there are reliable reports that they, too, are being expelled, prompting congressional leaders to ask DHS to stop the practice immediately.<sup>41</sup> Since the IFR must be consistent with applicable law, we ask that you respond to this congressional request immediately, while also incorporating your analysis into the administrative rulemaking process.

---

measures to contain the virus), see Almudena Barragán and Darinka Rodríguez, [Las llamadas por violencia de género en México aumentan 60% durante la cuarentena](#), Verne en El País, April 3, 2020.

<sup>36</sup> Edith M. Lederer, [UN Chief Urges End to Domestic Violence, Citing Global Surge](#), AP, April 5, 2020.

<sup>37</sup> [Displaced and stateless women and girls face heightened risk of violence amid coronavirus pandemic](#), UN News, April 20, 2020.

<sup>38</sup> *Matter of A-B-*, 27 I&N Dec. 316 (A.G.2018).

<sup>39</sup> Lakhani, n. 33 and Lind, n. 30.

<sup>40</sup> Lakhani, n. 33.

<sup>41</sup> Feinstein, Nadler, Durbin, and Lofgren, [Letter to DHS regarding reports that unaccompanied children are being removed to countries where they fear violence](#), March 30, 2020; see also, [DeLauro, Murray Urge Trump Administration to Ensure Unaccompanied Minors are Properly Cared for During COVID-19 Pandemic](#), April 2, 2020.

**B. Nearly 200 organizations express concern over the lawfulness of the IFR and specific risk to women and children**

On April 16, 2020, we sent a letter to DHS, copied to the Department of Health and Human Services and the Department of State, expressing our concerns with the IFR and CDC Order, and related DHS notifications of travel restrictions. The letter was signed by 182 organizations from across the United States, representing advocates for refugees, survivors of domestic violence, and faith communities, among others. While not all organizations have the capacity to submit a comment on the IFR, particularly during a public health crisis, we incorporate the letter (attached as Annex I) into this comment. We ask that you analyze and assess the depth and breadth of opposition to the IFR and the desire of nearly 200 organizations in the United States that the border be managed in a way that protects public health as well as the rights of asylum seekers.

**IV. Conclusion**

For the reasons set forth above, it is CGRS's expert opinion that the IFR does not comply with the international legal obligations of the United States, and has already resulted in the *refoulement* of women and children seeking asylum from domestic violence, as well as all other refugees, at a time when domestic violence has spiked in many countries due to the pandemic. We urge CDC to refrain from promulgating a Final Rule and from further extending the initial Order until such time as a proper legal analysis is conducted and safeguards are put into place that will ensure respect for the right to seek asylum and the obligations of *non-refoulement*.

Thank you for your consideration of this comment.

Sincerely,

*Kate Jastram*

Kate Jastram  
Director of Policy & Advocacy  
[jastramkate@uchastings.edu](mailto:jastramkate@uchastings.edu)

## Annex I: Letter to DHS signed by 182 organizations

April 16, 2020

The Honorable Chad F. Wolf  
Acting Secretary of Homeland Security  
Washington, D.C. 20528  
email: [chad.wolf@hq.dhs.gov](mailto:chad.wolf@hq.dhs.gov)

cc: Alex M. Azar, Secretary of Health and Human Services  
Michael R. Pompeo, Secretary of State

### **Re: Restoring asylum protections for domestic violence survivors and all others seeking asylum during the global pandemic**

Dear Acting Secretary Wolf:

The 182 undersigned national, state, and local organizations that advocate on behalf of survivors of domestic violence and sexual assault, asylum seekers, immigrants and stateless people call on you to rescind the blanket policy of turning back refugees from our borders. We understand the urgency of the COVID-19 pandemic has required the Administration to take action to reduce the virus' transmission rate. However, closing our borders to asylum seekers flies in the face of public health principles, as well as our non-derogable treaty obligations. We are deeply concerned that this new policy will put survivors of domestic and sexual violence at particularly high risk of harm.

Domestic violence survivors and their advocates around the world have sounded the alarm in recent weeks about the rising danger for abused women and children sheltering at home when home is not safe.<sup>1</sup> The United Nations Secretary-General called attention on April 5, 2020 to a "horrifying global surge in domestic violence" as fear of the virus has grown, along with its social and economic consequences.<sup>2</sup> The U.S. National Domestic Violence Hotline has explained that when an abusive partner feels a loss of power and control, such as during a time of crisis, abuse often escalates in intensity and frequency. It is clear that pandemic-induced isolation measures, and health and economic stressors, can make survivors still more vulnerable. A number of countries have reported a spike in domestic violence related to COVID-19 restrictions on movement.<sup>3</sup>

Women and children in many countries cannot rely on local authorities to help them even during normal times, much less in this period of extreme social isolation. In a revealing glimpse of one government's

---

<sup>1</sup> Amanda Taub, [A New Covid-19 Crisis: Domestic Abuse Rises Worldwide](#), New York Times, April 6, 2020; Emma Graham-Harrison, Angela Giuffrida, Helena Smith and Liz Ford, [Lockdowns around the world bring rise in domestic violence](#), The Guardian, March 28, 2020. See also Tahirih Justice Center, [The Impact of COVID-19 on Immigrant Survivors of Gender-Based Violence](#), March 23, 2020.

<sup>2</sup> Edith M. Lederer, [UN Chief Urges End to Domestic Violence, Citing Global Surge](#), AP, April 5, 2020.

<sup>3</sup> Such countries include El Salvador (domestic violence cases increased by 70% in March), see Adriana Flores and Alejandra García, [Violencia doméstica ha aumentado un 70% durante la cuarentena](#), [elsalvador.com](#), April 3, 2020; and Mexico (calls reporting cases of gender-based violence increased by 60% since the implementation of measures to contain the virus), see Almudena Barragán and Darinka Rodríguez, [Las llamadas por violencia de género en México aumentan 60% durante la cuarentena](#), [Verne en El País](#), April 3, 2020.

## Annex I: Letter to DHS signed by 182 organizations

unhelpful response to the threat of rising domestic violence, Malaysian officials warned women not to be “sarcastic” to their husbands or “nag” them during that country’s lockdown, and apologized only after an international outcry.<sup>4</sup>

The current COVID-19 crisis only compounds the barriers that survivors of gender-based violence face seeking asylum in the United States. Within the last few years, the U.S. Department of Justice has all but closed the door on women seeking asylum from their abusive partners.<sup>5</sup> A host of unlawful policies has made the process more difficult and dangerous than ever: separating families, increasing incarceration, slowing down processing of new asylum claims at the border through the practice known as “metering,” and forcing people to wait in Mexico for their U.S. immigration court hearings under the Migrant Protection Protocols. More recently, the U.S. has further shirked its legal obligations to refugees by simply deporting people to Guatemala under an Asylum Cooperative Agreement, touting a legal fiction that they can safely seek asylum there.

The Department of Homeland Security (DHS) and the Centers for Disease Control and Prevention (CDC) have now cited the pandemic as justification to close our borders to asylum seekers entirely.<sup>6</sup> DHS’ position is that asylum seekers are not considered to be engaged in essential travel.<sup>7</sup> However, asylum seekers not only have compelling reasons to request entry but also have a right to seek protection that is guaranteed under U.S. law pursuant to U.S. treaty obligations under the 1967 Protocol Relating to the Status of Refugees and the 1984 Convention Against Torture.

During this pandemic, it is highly unlikely that large numbers of women and children suffering from domestic violence will be able to make their way to the southern border, given that many countries are requiring residents to shelter at home, and international travel has become extremely difficult. However, we are concerned that those seeking asylum in the United States are now being promptly expelled with no legal process whatsoever.<sup>8</sup>

In direct violation of U.S. law, border officials are not even inquiring why people without proper documentation are seeking to enter, nor are they asking whether they fear harm if they are refused entry. Instead, DHS officials have been instructed to expel everyone immediately except those who spontaneously express a fear of torture. If an asylum seeker does spontaneously express a fear of torture, the frontline border patrol officer must determine if the fear is “reasonably believable,” a legal standard that does not exist in U.S. immigration law and on which border patrol officers have not been trained. If the officer determines that the asylum seeker’s fear is reasonably believable, they must then get the approval of a superior officer, the chief patrol agent for the sector. Only after these steps is the asylum seeker allowed to express her fear of torture to an asylum officer. All others are summarily turned back. Reports as of early April indicate that some 7,000 people have been expelled in this manner since the new policy went into effect on March 20, 2020. There are no reports of anyone

---

<sup>4</sup> Morgan Gstalter, [Malaysia’s government apologizes for urging women not to be ‘sarcastic’ to husbands during coronavirus lockdown](#), The Hill, April 2, 2020.

<sup>5</sup> *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018).

<sup>6</sup> [Order Suspending Introduction of Persons From a Country Where a Communicable Disease Exists](#), 85 Fed. Reg. 16567 (March 24, 2020).

<sup>7</sup> [Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico](#), 85 Fed. Reg. 16547 (March 24, 2020).

<sup>8</sup> Dara Lind, [Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately – Ignoring Asylum Law](#), ProPublica, April 2, 2020.

## Annex I: Letter to DHS signed by 182 organizations

successfully convincing a border agent that she has a “reasonably believable” fear of torture. Many women arriving at the U.S. southern border are fleeing extensively documented extreme violence in their home countries. That not one of these women has been found to have a “reasonably believable fear” since expulsions began last month is a damning indication that this new procedure actually offers no exceptions.

The procedure described above is wholly inadequate to ensure that the United States abides by its obligations under the Convention Against Torture, implemented in U.S. law in the Foreign Affairs Reform and Restructuring Act of 1998. The procedure also fails entirely to meet U.S. obligations under the Refugee Protocol, implemented in U.S. law in the Refugee Act of 1980, as there is no provision for assessing an asylum seeker’s fear of persecution even if she spontaneously asserts such a fear. Protections under the Convention Against Torture and under the Refugee Protocol have different legal definitions and different standards of proof. Even if DHS was adequately assessing the claims of people who fear torture, this would be insufficient to protect those who fear persecution. We note that Senate Judiciary Committee Democratic Members wrote to you on April 7, 2020 posing a number of inquiries concerning the legal justification for closing U.S. borders to asylum seekers and questioning the compliance of such actions with U.S. treaty obligations.<sup>9</sup> Their concerns were echoed on April 10, 2020 by the Chairs of the House Committee on Foreign Affairs, the House Committee on Homeland Security, and the House Committee on the Judiciary.<sup>10</sup> We urge you to respond fully and completely to these inquiries.

An additional concern is that children traveling alone should benefit from the provisions of the Trafficking Victims Protection Act and are supposed to be exempt from the new policy barring asylum seekers. However, there are reliable reports that they, too, are being expelled, prompting congressional leaders to ask your Department to stop the practice immediately.<sup>11</sup> We ask that you respond swiftly to their requests.

As noted above, we fully support the adoption of all necessary measures to reduce the transmission rate of COVID-19. However, border restrictions can be managed in a manner which protects public health while respecting international human rights and refugee protection standards, including the principle of *non-refoulement*. Both the World Health Organization (WHO) and the United Nations High Commissioner for Refugees (UNHCR) have stressed that governments can put in place targeted, reasonable, and proportionate measures, such as screening or temporary limitations on movement, to protect both their own populations and those seeking asylum.<sup>12</sup>

---

<sup>9</sup> [Leahy Leads Judiciary Committee Democrats in Demanding Answers About DHS’ Newly Claimed Authorities to Override Federal Laws at Southern Border](#), April 7, 2020.

<sup>10</sup> [Engel, Thompson, Nadler Statement on Trump Administration’s Suspension of Asylum Processing](#), April 10, 2020.

<sup>11</sup> Feinstein, Nadler, Durbin, and Lofgren, [Letter to DHS regarding reports that unaccompanied children are being removed to countries where they fear violence](#), March 30, 2020; see also, [DeLauro, Murray Urge Trump Administration to Ensure Unaccompanied Minors are Properly Cared for During COVID-19 Pandemic](#), April 2, 2020.

<sup>12</sup> United Nations Office of the High Commissioner for Human Rights, International Organization for Migration, United Nations High Commissioner for Refugees (UNHCR), and World Health Organization, [Joint press release: The rights and health of refugees, migrants and stateless must be protected in COVID-19 response](#), March 31, 2020; UNHCR, [Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response](#), March 16, 2020.

## Annex I: Letter to DHS signed by 182 organizations

In light of the guidance provided by WHO and UNHCR, we are particularly concerned that DHS in its new travel restrictions<sup>13</sup> and the CDC in its Order<sup>14</sup> and Interim Final Rule<sup>15</sup> fail even to mention asylum seekers. This is an astonishing omission since, as noted above, the Administration has had an intense focus on the issue of asylum seekers at our southern border for the last several years. The failure to mention asylum seekers, much less take their legal rights into account, is also puzzling since the CDC's Interim Final Rule affirms that "In issuing orders pursuant to this interim final rule, CDC would coordinate with the Secretary of State in order to ensure compliance with the international legal obligations of the United States and to take due account of U.S. national and security interests."<sup>16</sup> There is no indication of any such coordination with the Secretary of State, nor does the action taken by DHS and the CDC even attempt to comply with the United States' international legal obligations.

The CDC Order lacks any legal analysis whatsoever that would reconcile public health imperatives with the United States' legal obligation to asylum seekers, resting instead on information about the situation at the border supplied by DHS. Unfortunately, this information is woefully insufficient or incorrect in a number of respects.<sup>17</sup> Particularly concerning is the CDC's assumption based on information provided by DHS that most asylum seekers would have nowhere to go except an immigration detention center if they were allowed to enter the United States. In fact, over 90% of asylum seekers presenting at the Southern border have family or close friends in this country.<sup>18</sup>

We know that the isolation necessary to slow the spread of this pandemic will result in countless more women and children suffering domestic violence. We also know that if we do not implement reasonable precautions at our border to ensure both public health and the protection of refugees, and instead continue to shut the door to the most vulnerable, we will fail those who turn to us for protection, as well as U.S. domestic and international law obligations, and our own best traditions. We urge you to rescind this flawed policy and replace it with targeted, reasonable, and proportionate measures to protect public health and ensure that women and children fleeing domestic violence and other refugees are not returned to persecution.

If you have any questions, please contact Kate Jastram, Director of Policy & Advocacy at the Center for Gender & Refugee Studies at [jastramkate@uchastings.edu](mailto:jastramkate@uchastings.edu).

Respectfully,

Asian Pacific Institute on Gender-Based Violence  
ASISTA  
Center for Gender & Refugee Studies  
Tahirih Justice Center

---

<sup>13</sup> [Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico](#), 85 Fed. Reg. 16547 (March 24, 2020).

<sup>14</sup> [Order Suspending Introduction of Persons From a Country Where a Communicable Disease Exists](#), 85 Fed. Reg. 16567 (March 24, 2020).

<sup>15</sup> [Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes](#), 85 Fed. Reg. 16559 (March 24, 2020).

<sup>16</sup> *Id.* at 12.

<sup>17</sup> Human Rights Watch, [Letter to CDC and DHS Regarding Orders Related to Suspending Travel Across US Borders](#), April 1, 2020.

<sup>18</sup> *Id.*

## **Annex I: Letter to DHS signed by 182 organizations**

ADL (Anti-Defamation League)  
Advocating Opportunity  
African Human Rights Coalition (African HRC)  
African Public Affairs Committee  
African Services Committee  
Al Otro Lado  
Alianza Americas  
America's Voice  
Americans for Immigrant Justice  
Arab Resource and Organizing Center (AROC)  
Arizona Coalition to End Sexual and Domestic Violence  
Association of Deportation Defense Attorneys  
Asylum Access  
Asylum Seeker Advocacy Project  
Asylum Sponsorship Project (ASP)  
Bay Area Asylum Support Coalition  
Bay Area Resource Generation  
California Partnership to End Domestic Violence  
Canal Alliance  
Capital Area Immigrants' Rights (CAIR) Coalition  
Catholic Charities of Orange County  
Catholic Charities of San Francisco  
Catholic Legal Services, Archdiocese of Miami  
Center for Human Rights & Constitutional Law  
Center for Justice and International Law (CEJIL)  
Center for Victims of Torture  
Central American Resource Center (CARECEN) Los Angeles  
Central American Resource Center (CARECEN) San Francisco  
Centro Legal de la Raza  
Christian Community Development Association  
Church World Service  
Columbia Law School Immigrants' Rights Clinic  
Community Legal Services in East Palo Alto  
Congregation of Our Lady of the Good Shepherd, U.S. Provinces  
Connecticut Shoreline Indivisible  
CRCNA Safe Church Ministry  
DC Coalition Against Domestic Violence  
DC Volunteer Lawyers Project  
Denver Justice and Peace Committee  
Domestic Violence/Sexual Assault Program at Newton-Wellesley Hospital  
East Bay Sanctuary Covenant  
Equal Access Legal Services  
Esperanza Immigrant Rights Project  
Evangelical Lutheran Church in America

## Annex I: Letter to DHS signed by 182 organizations

Family Violence Appellate Project (CA)  
Freedom Network USA  
Futures Without Violence  
Global Woman P.E.A.C.E. Foundation  
Haitian Bridge Alliance  
Hand in Hand: The Domestic Employers Network  
Her Justice  
HIAS  
Hispanic Federation  
Hope Border Institute  
Human Rights First  
Human Rights Initiative of North Texas  
Human Rights Watch  
Immigrant Allies of Marshalltown (Iowa)  
Immigrant Defenders Law Center  
Immigrant Defense Advocates  
Immigrant Family Legal Services  
Immigration Center for Women and Children  
Immigration Institute of the Bay Area  
Indivisible San Francisco  
International Action Network for Gender Equity & Law  
International Refugee Assistance Project  
International Rescue Committee  
Iowa Coalition Against Domestic Violence  
Jenesse Center, Inc.  
Jewish Council for Public Affairs  
Jewish Women International  
Just Neighbors  
Justice and Immigration Clinic, University of La Verne College of Law  
Justice for Our Neighbors Houston  
Justice in Motion  
Kansas Coalition Against Sexual and Domestic Violence  
Kehilla Community Synagogue  
Kentucky Coalition for Immigrant and Refugee Rights  
Khmer Anti-deportation Advocacy Group (KhAAG)  
Kids in Need of Defense  
La Raza Centro Legal – San Francisco  
Las Americas Immigrant Advocacy Center  
Last Mile4D  
Latin America Working Group (LAWG)  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
Legal Aid Society of Metropolitan Family Services  
Legal Momentum, the Women's Legal Defense and Education Fund  
Legal Services for Children

## **Annex I: Letter to DHS signed by 182 organizations**

Los Angeles Center for Law and Justice  
Lutheran Social Services of New York  
MADRE  
Maine Coalition to End Domestic Violence  
Make the Road New Jersey  
Migrant and Immigrant Community Action Project  
Migration Alliance at Yale (MAY), formerly Yale Refugee Project  
Mississippi Immigrants Rights Alliance  
Mujeres Unidas y Activas  
National Advocacy Center of the Sisters of the Good Shepherd  
National Coalition Against Domestic Violence  
National Council of Asian Pacific Americans (NCAPA)  
National Immigrant Justice Center  
National Immigration Law Center  
National Justice for Our Neighbors  
National Lawyers Guild Bay Area Chapter  
National Network for Immigrant & Refugee Rights  
National Network to End Domestic Violence  
National Organization for Women  
National Resource Center on Domestic Violence  
Nebraska Coalition to End Sexual and Domestic Violence  
Network in Solidarity with the People of Guatemala (NISGUA)  
New Hampshire-Vermont Guatemala Accompaniment Project  
New Jersey Coalition to End Domestic Violence  
New York State Coalition Against Domestic Violence  
Nicaragua Center for Community Action  
Northern Illinois Justice for Our Neighbors  
Office of Social Justice, Christian Reformed Church in North America  
Ohio Domestic Violence Network  
Ohio Immigrant Alliance  
Open Immigration Legal Services  
Oxfam America  
Peace Over Violence  
Physicians for Human Rights  
Project Blueprint  
Promundo-US  
Public Counsel  
Queer Detainee Empowerment Project  
Quinnipiac University School of Law Clinic  
Quixote Center  
Rian Immigrant Center  
Safe Horizon  
San Antonio Region Justice for Our Neighbors  
Sanctuary for Families

## **Annex I: Letter to DHS signed by 182 organizations**

Santa Clara University International Human Rights Clinic  
Santa Fe Dreamers Project  
Save the Children Action Network  
Seattle University School of Law Gender Violence Immigration Clinic  
Services, Immigrant Rights & Education Network (SIREN)  
Sojourners  
Solidarity  
South Texas Human Rights Center  
Southeast Asia Resource Action Center (SEARAC)  
Southern Border Communities Coalition  
Southern Poverty Law Center  
Southwestern Law School Removal Defense Clinic & Pro Bono Removal Defense  
Stand Together Contra Costa  
Street Level Health Project  
Sueños Sin Fronteras de Tejas (SSFTX)  
Tennessee Justice for Our Neighbors  
The Advocates for Human Rights  
The Black Alliance for Just Immigration (BAJI)  
The Door  
The Florence Immigrant & Refugee Rights Project  
The Human Trafficking Legal Center  
The Legal Aid Society (New York)  
The Legal Project  
The NW Network of Bisexual, Trans, Lesbian, and Gay Survivors of Abuse  
The Second Step  
The Welcome Project  
UCSF Human Rights Cooperative  
Ujima Inc: The National Center on Violence Against Women in the Black Community  
Union for Reform Judaism  
Unitarian Universalist Church of Arlington, VA  
Unitarian Universalist Service Committee  
United Stateless  
United We Dream  
University of Tulsa College of Law Legal Clinic  
Urban Justice Center Domestic Violence Project  
V-Day  
Vida Legal Assistance Inc.  
Voice of Witness  
Washington Defender Association  
Washington Office on Latin America (WOLA)  
Washington State Coalition Against Domestic Violence  
We Are All America  
Witness at the Border  
Women Graduates USA

**Annex I: Letter to DHS signed by 182 organizations**

Women's Refugee Commission

Young Democrats of America Hispanic Caucus