

April 16, 2020

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Washington, D.C. 20528
email: 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.¹ 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.² 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.³

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

¹ 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.

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

³ 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.

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.⁴

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.⁵ 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.⁶ DHS’ position is that asylum seekers are not considered to be engaged in essential travel.⁷ 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.⁸

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

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

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

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

⁷ [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).

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

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.⁹ 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.¹⁰ 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.¹¹ 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.¹²

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

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

¹¹ 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.

¹² 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.

In light of the guidance provided by WHO and UNHCR, we are particularly concerned that DHS in its new travel restrictions¹³ and the CDC in its Order¹⁴ and Interim Final Rule¹⁵ 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."¹⁶ 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.¹⁷ 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.¹⁸

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.

Respectfully,

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

¹³ [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).

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

¹⁵ [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).

¹⁶ *Id.* at 12.

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

¹⁸ *Id.*

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

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

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

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

Women's Refugee Commission
Young Democrats of America Hispanic Caucus