Re: Illegal Expulsions by the Department of Homeland Security under the March 20, 2020 Order by the Centers for Disease Control and Prevention

Dear Acting Secretary Wolf and Director Redfield:

Our 125 legal, faith-based, humanitarian, human rights and community organizations write to vehemently object to the Department of Homeland Security’s (“DHS”) use of the COVID-19 pandemic and the March 20 order of the Centers for Disease Control and Prevention (“CDC”) to carry out the Trump administration’s long-held goal of closing the southern border to people seeking life-saving protection in the United States.

For more than a year the administration has been turning back many asylum seekers and other migrants to Mexico under the so-called “Migrant Protection Protocols” (“MPP”). But now border officers are blocking essentially all asylum seekers and vulnerable children from requesting protection and returning them to places where their lives are at risk without even the veneer of sham MPP hearings. These expulsions violate U.S. refugee, immigration and anti-trafficking laws passed by Congress, as well as due process and U.S. treaty obligations to protect people at risk of return to persecution and torture, and are completely contrary to child welfare standards. We urge DHS to immediately halt these illegal and immoral policies, restore the rule of law at our borders, protect unaccompanied children, and implement practices informed by public health principles to safely process those seeking refuge in the United States.

The March 20 CDC order, which appears to rely on misleading and unsubstantiated assertions by DHS, and an accompanying rule, purport to empower DHS to immediately turn back migrants at the border without affording any legal process whatsoever. An internal guidance document reportedly circulated by DHS to U.S. Border Patrol instructs agents to rapidly expel individuals encountered at the border, including unaccompanied children as well as Mexicans and other nationals who attempt to request asylum. Thousands of individuals including reportedly at least 400 children - from Cuba, Ecuador, El Salvador, Honduras, Guatemala, and Mexico - have already been expelled to Mexico. In some cases Border Patrol pushes unaccompanied children back into Mexico with adults whose relationship to the child has not been checked, placing children at risk of trafficking. The Border Patrol turns back some in the middle of the night in dangerous areas, putting them at even greater risk of kidnapping and assault. Border Patrol officers are also rapidly expelling some non-Mexican nationals to their home countries, including asylum seekers and hundreds of unaccompanied children, without any of the legal processes due to them under U.S. refugee, immigration and anti-trafficking laws. At U.S. ports of entry, Customs and Border Protection officers turn away and expel asylum seekers and are not processing those who have waited months to request protection.

The administration cannot suspend U.S. legal obligations to people seeking safety. U.S. refugee and immigration law allows people to request asylum at a port of entry or after crossing the
border. Legal guidance issued by the U.N. Refugee Agency ("UNHCR"), on asylum protections in the COVID-19 pandemic, makes clear that the United States may not put in place measures that categorically deny people seeking protection an effective opportunity to ask for asylum. Expelling refugees to countries where their lives or freedom are at risk, or transferring them to countries where they cannot find effective refugee protection, violates U.S. obligations under the Refugee Convention, its Protocol and the Convention Against Torture, which prohibit the United States from refouling individuals to persecution or torture. Already Central American asylum-seekers expelled by DHS under the CDC Order have reportedly been detained by Mexican migration officials, denied an opportunity to seek asylum in Mexico, and deported or left abandoned at the Mexico-Guatemala border, where they face growing xenophobia.

Nor can the administration suspend the anti-trafficking protections Congress specifically adopted for unaccompanied children. Yet the unpublished guidance reportedly issued by DHS unilaterally rewrites the statutory definition of an unaccompanied child and instructs Border Patrol agents to expel these children, many of whom are asylum-seekers, to their home countries or push them back into Mexico without any legal process and without screening to determine whether they are victims of trafficking.

The authority cited by the administration as justification to expel asylum-seekers and unaccompanied children, 42 U.S.C. § 265, does not supersede the United States’ domestic law and international obligations. As U.S. Senator Patrick Leahy and other senators wrote in expressing their grave concern about these expulsions to DHS, the agency “blatantly misinterpret[s] its limited authorities” under the CDC order in an attempt “to override existing federal statutes.” Indeed, nothing in the provision cited in the CDC order permits the administration to derogate its legal obligations under U.S. immigration law and treaties. The CDC order that DHS is relying upon as justification for these expulsions fails entirely to address the fact that it would lead to the expulsion of people seeking protection in the United States and is predicated on the false assumption that the only possible alternative to detaining asylum-seekers in unsafe, overcrowded border facilities for lengthy periods of time is to turn them away. In fact, CBP could expeditiously parole those seeking asylum into the United States, where the vast majority have ties to families, friends, or faith-based communities. Unaccompanied children can also be expeditiously processed for family reunification. An October 2019 study of 607 asylum-seekers subject to the Remain in Mexico program found that nearly 92 percent had family or close friends in the United States.

While many other categories of individuals are allowed to cross the border, people seeking protection from persecution and other harms are being returned to danger - heightened in some countries by repressive government responses to COVID-19. The laws that protect them - laws this administration has long worked to evade and tried to eliminate - are being violated. Far from being designed to protect public health, this new policy is just another attempt to shut down access to asylum at the border, endangering more lives.

We urgently call on DHS to immediately halt the expulsion of asylum-seekers and comply with U.S. refugee and immigration laws. We call on the CDC to amend its order to allow for the entry and processing of asylum-seekers and unaccompanied children with appropriate public health safeguards while respecting U.S. laws that protect people seeking safety.
As some of the undersigned groups have explained, U.S. agencies can effectively and safely respond to asylum-seekers at the border during the COVID-19 pandemic in ways that uphold U.S. law and treaty obligations. Decisions relating to the COVID-19 pandemic should be aimed at saving, not endangering lives, and should be driven by science, public health expertise, and respect for human rights.

Sincerely,

Al Otro Lado
Alianza Americas
Allard K. Lowenstein International Human Rights Clinic
Amnesty International USA
Asylum and Human Rights Clinic at the University of Connecticut School of Law
Asylum Seeker Advocacy Project
BakerRipley
Bellevue Program for Survivors of Torture
Black and Pink
Boston University International Human Rights Clinic
California Collaborative for Immigrant Justice (CCIJ)
Capital Area Immigrants’ Rights (CAIR) Coalition
Catholic Migration Services
Center for Gender & Refugee Studies
Center for Victims of Torture
Central American Resource Center - CARECEN - of California
Central Washington Justice For Our Neighbors
Centro Legal de la Raza
Children’s Rights
Church World Service
Columban Center for Advocacy and Outreach
Columbia Law School Immigrants’ Rights Clinic
Cooperative Baptist Fellowship
Cornell Asylum and Convention Against Torture Appellate Clinic
Cornell Law School International Human Rights Clinic: Litigation and Advocacy
Council for Global Equality
DC - MD Justice For Our Neighbors
Dolores Street Community Services
Equality North Carolina
Familia: Trans Queer Liberation Movement
Federation of Protestant Welfare Agencies (FPWA)
Fellowship Southwest
First Focus on Children
The Florence Immigrant & Refugee Rights Project
Global Justice Clinic, NYU School of Law
Harvard Immigration and Refugee Clinical Program
Haitian Bridge Alliance
HIAS
Hispanic Federation
Homies Unidos Inc.
Human Rights Advocates
Human Rights First
Human Rights Initiative of North Texas
Human Rights Watch
Humanitarian Immigration Law Clinic, Elon University School of Law
Immigrant Allies of Marshalltown (Iowa)
Immigrant Defenders Law Center
Immigrant Legal Resource Center
Immigration Counsel
Immigration Equality
Immigration Law Clinic, Detroit Mercy School of Law
Instituto Para las Mujeres en la Migración, A.C.
Interfaith Welcome Coalition
International Human Rights Clinic, Seattle University School of Law
International Human Rights Clinic, University of Chicago Law School
International Human Rights Clinic, Western New England University
International Refugee Assistance Project
International Rescue Committee
Just Neighbors
Justice for Migrant Women
Justice For Our Neighbors Houston
Justice in Motion
Kids in Need of Defense
Kino Border Initiative
Latin America Working Group (LAWG)
Legal Aid at Work
Legal Services for Children
Leitner Center for International Law and Justice
Los Angeles Center for Law and Justice
Lutheran Immigration and Refugee Service
MADRE
NAACP
National Center for Lesbian Rights
National Center for Transgender Equality
National Center for Youth Law
National Immigrant Justice Center
National Immigration Law Center
National Justice for Our Neighbors
National Lawyers Guild Bay Area Chapter
National Lawyers Guild of Los Angeles
National Partnership for Women & Families
Network in Solidarity with The People of Guatemala
New York Justice for Our Neighbors
New York Law School Asylum Clinic
NorCal Resist
Northern Illinois Justice for Our Neighbors
OCA-Asian Pacific American Advocates
Open Immigration Legal Services
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RAICES
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Safe Horizon
San Antonio Region Justice For Our Neighbors
Santa Clara County Wage Theft Coalition
Save the Children Action Network
South Texas Human Rights Center
Southern Border Communities Coalition
Southern Poverty Law Center
Southwest Asylum & Migration Institute
Southwestern Law School Community Lawyering Clinic
Southwestern Law School Removal Defense Clinic and Pro Bono Removal Defense Program
Tahirih Justice Center
TakeRoot Justice
Touro Law Center Immigration Law Clinic
Trans Wellness Center
Union for Reform Judaism
United We Dream
University of North Carolina School of Law, Immigration Clinic
UnLocal, Inc.
Urban Morgan Institute for Human Rights, University of Cincinnati College of Law
USC Keck School of Medicine Keck Human Rights Clinic
Volunteers of Legal Service
Washington Office on Latin America (WOLA)
Witness at the Border
Women’s Refugee Commission
YMCA of Greater Houston
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* Institutional affiliation provided for identification purposes only