



Responding to the COVID-19 Crisis While Protecting Asylum Seekers

(Updated March 25, 2020)

Amnesty International USA, Doctors Without Borders/Médecins Sans Frontières USA, Human Rights First, Physicians for Human Rights, Refugees International, and Women's Refugee Commission call on the Trump Administration to immediately rescind its policy of shutting the border to people seeking asylum in the United States. Turning back men, women and children seeking refuge violates U.S. refugee laws and treaty obligations and will only endanger more lives and will make all of us less safe. We also call upon Congress to deny the Administration's request for over \$800 million for facilities to detain asylum seekers and immigrants in conditions that contravene the recommendations of public health experts.

Banning Asylum Seekers Endangers Lives

Many unlawful and dangerous restrictions to seeking refuge along the southern border were in place before the COVID-19 pandemic. Through the Remain in Mexico policy, the administration has already sent tens of thousands of people seeking refuge to some of the most dangerous parts of Mexico, where they are currently forced to live in [unsafe](#), unsanitary, and inhumane conditions in open-air encampments and shelters that endanger their health and safety.

On March 20, the Trump administration [announced a rule](#) and accompanying order that purports to empower it to immediately turn back asylum-seekers without affording them any legal process whatsoever for an initial period of 30 days. While the administration cited risks of [rapid transmission](#) in the open-air encampments abutting the border as justification for this extreme new measure, those risks are a reason to parole people into the United States, not relegate even larger numbers of people to similarly dangerous conditions. This even broader ban on asylum will likely force even greater numbers of asylum-seekers into precarious conditions along the border, endangering their lives and further jeopardizing our collective public health.

Far from being rooted in genuine concerns for public health, this new policy is just another attempt to shut down access to asylum at the border. Though nominally issued by the Centers for Disease Control and Prevention (CDC), the order relies heavily on unsubstantiated assertions made by the Department of Homeland Security (DHS) and

Customs and Border Protection (CBP). It is predicated on the false assumption that the only possible alternative to turning away asylum-seekers is detaining them in unsafe, overcrowded border facilities for lengthy periods of time. In fact, CBP could instead expeditiously parole those seeking asylum into the United States, where the vast majority have ties to families, friends, or faith-based communities. An October 2019 study of 607 asylum-seekers subject to the Remain in Mexico program found that [nearly 92%](#) had family or close friends in the United States.

Instead of unlawfully curtailing access to asylum, the administration must uphold U.S. refugee laws and treaties while implementing measures – with the guidance and involvement of public health, refugee assistance and medical professionals – to protect our collective public health. All outbreak response measures should be based on data and known public health best practice.

U.S. border officials should continue to allow people to follow the legal process to request asylum, providing for non-discriminatory screening and referral to health facilities as necessary. Asylum seekers should then be released to homes and non-governmental shelters, through parole or other community-based [alternatives to detention](#), where they can appropriately socially distance and be permitted to continue their cases in immigration court. The [medical literature](#) has shown that community-based alternatives to detention support substantially improve health outcomes.

The administration cannot suspend U.S. obligations to people seeking safety. A blanket ban on asylum seekers violates the United States' domestic and international legal obligations. Legal [guidance](#) issued by the UNHCR, the U.N. Refugee Agency, on asylum protections in the COVID-19 pandemic makes clear that states may not put in place measures that categorically deny people seeking protection an effective opportunity to seek asylum. The authority cited by the administration as justification for the ban, 42 U.S.C. § 265, does not supersede the United States' domestic and international obligations. Nothing in this provision allows the government to derogate its legal obligations under U.S. refugee law and treaties, which allow anyone who enters the US, whether or not at an official port of entry, to [apply for asylum](#).

Scientific and medical research indicates that [social distancing and home isolation](#) are the measures most effective in limiting the spread of the outbreak; there is no evidence that a ban on asylum seekers would improve public health. Governments can respond to the pandemic with border policies that preserve the right to seek asylum and also

protect public health through non-discriminatory screening and self-isolation measures that avoid the use of detention.

Congress Must Deny Funding Request for CBP and ICE Detention Facilities

Our organizations are also alarmed by the administration's March 17 request for over \$800 million in additional DHS funding for "quarantine facilities" to be built at the southwest border. Medical professionals advise that to prevent transmission, individuals should not be congregated in enclosed or densely populated spaces. Such spaces include detention facilities and mass quarantine centers. Public health experts [universally agree](#) that limiting detention, not expanding it, is one of the most important steps authorities can take to combat the spread of COVID-19.

Under no circumstances should Immigration and Customs Enforcement (ICE) and CBP be in charge of facilities for medically vulnerable individuals, given their abysmal track record of protecting the most vulnerable. Rather, these agencies should use their more than ample funding to safely and expeditiously process and parole those in its custody to avoid potential rapid transmission of the virus in the midst of this pandemic.

Instead of resorting to tired, failed strategies of bans and jails that do nothing but stoke xenophobia and make us all less safe, the administration and Congress should follow the measures listed below:

- ❑ Apply to asylum seekers the same health screening processes currently used by CBP for other individuals crossing the land border - including referral to health officials for additional testing of any individuals with symptoms of illness and those who have recently traveled to high-prevalence areas - and provide them health information (in their own language) on prevention, isolation and treatment measures;
- ❑ Parole arriving asylum seekers at ports of entry as expeditiously as possible, release other asylum seekers on recognizance or using other community-based alternatives to detention, and avoid holding asylum seekers in enclosed or densely populated spaces;
- ❑ End Remain in Mexico and parole asylum seekers subjected to it - who have already been processed by CBP - into the United States, a step that would reduce the significant risks of returning asylum seekers to dangerous places where they will later be at risk of infection due to the existence of crowded encampments and shelters along the Mexico/U.S. border;

- ❑ End the Prompt Asylum Claim Review program (PACR) and the Humanitarian Asylum Review Process (HARP), which have led to lengthy detentions in CBP custody and which block asylum seekers from legal representation;
- ❑ Abandon permanently plans to pressure El Salvador, Honduras, and Guatemala into implementing or continuing to implement the so-called Asylum Cooperative Agreements (ACAs), which curtail asylum seekers' access to a fair process in the United States and forcibly transfer them to neighboring countries after prolonged detention in unsafe and overcrowded U.S. border facilities;
- ❑ Coordinate and communicate with local groups to ensure that housing and transportation can be arranged for asylum seekers upon their release; and
- ❑ Do not provide CBP and ICE funds to create "quarantine" detention facilities that contradict the recommendation of public health experts on how to prevent the spread of COVID-19.

Decisions relating to the COVID-19 pandemic should be driven by science and public health expertise, as well as respect for human rights. We urge Congress and the administration to urgently take the steps we have outlined above. Our organizations are prepared to discuss these recommendations in greater depth to find solutions that respect the right to seek asylum.

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