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*In Memoriam (1935–2019)

The Honorable Robert R. Redfield, MD
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30333

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
1880 2nd Street SW
Washington, DC 20024

Sent via email

April 1, 2020

Re: CDC and DHS Orders Related to Suspending Travel Across US Borders

Dear Director Redfield and Acting Secretary Wolf:

On behalf of Human Rights Watch, I write to share our concerns regarding the Centers for Disease Control and Prevention's (CDC's) [Order dated March 20, 2020](#), "Suspending the Introduction of Certain Persons from Countries Where a Communicable Disease Exists" (hereinafter CDC Order), [and the Department of Homeland Security's \(DHS'\) Order](#) published in the Federal Register on March 24, 2020, "Temporary Travel Restrictions" (hereinafter DHS Order). These orders do not directly address the situation of asylum seekers. Under US law and the 1967 Protocol Relating to the Status of Refugees, to which the US is party, the United States may not return asylum seekers to face threats to their lives or freedom without affording them an opportunity to apply for asylum and conducting a full and fair examination of that claim. The Orders also do not address US legal obligations to unaccompanied children (hereinafter "UACs"), who are also often asylum seekers.

We believe the CDC Order failed to address the issue of asylum seekers, in part, because it was based on: insufficient and incorrect information provided by the DHS to the CDC regarding the categories of non-citizens (or "aliens" as the term is used in the Orders) who have a lawful reason to enter in the United States; incorrect information provided by DHS to the CDC regarding the opportunities for release of asylum seekers to families and communities of support inside the United States; lack of information provided by DHS to the CDC about DHS' discretion to release asylum seekers from custody after appropriate periods of quarantine and under appropriate conditions of supervision; and lack of information provided by DHS to the CDC about the enduring US obligations to asylum seekers under US and international law, even during an emergency.



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The CDC Order states that it applies to “covered aliens,” a definition the CDC adopted after receiving information from DHS (the CDC Order states “DHS has informed CDC . . .”). DHS apparently informed CDC that the noncitizens who are traveling from Canada or Mexico who must be held in Ports of Entry or Border Patrol stations are people, according to the CDC Order, “who do not have proper travel documents...whose entry is otherwise contrary to law...and who are apprehended near the border seeking to unlawfully enter the United States.” This definition includes a wide range of noncitizens and fails to specifically address the subcategory of noncitizens who may apply for asylum subject to 8 USC Sec. 1158, which states, “Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum.” The definition also fails to acknowledge Custom and Border Protection’s obligation, as a part of implementing this Section of US law, under 8 C.F.R. 235.3(b)(4), to register any claims of fear expressed by a non-citizen and refer him or her to a credible fear interview.

The CDC’s determination that “covered aliens” should not be allowed entry to the United States is based on information provided by DHS, that “many of the aliens covered by this order may lack homes or other places where they can self-isolate,” as stated in the Order, as well as detailed concerns regarding the presence of COVID-19 in Canada and Mexico; and the inadvisability of holding covered aliens in Ports of Entry or Border Patrol stations where medical care is limited and mandated social distancing and related public health precautions will be difficult to achieve.

We do not dispute the lack of medical care at Border Patrol stations and the crowded conditions in which migrants and asylum seekers are often held for lengthy periods of time. However, the CDC may not be aware of research completed in 2019 by the US Immigration Policy Center, finding that [91.9 percent of asylum seekers](#) have family or close friends in the United States. That means that many of them could likely be released to those friends and family members after a period of quarantine or other measures as necessary for public health and with appropriate safeguards to ensure their appearance for asylum proceedings. These findings are in keeping with our own extensive interviews with asylum seekers at the US-Mexico border in recent years.

The CDC may also be unaware that CBP is not required to hold migrants and asylum seekers in border detention facilities for long periods of time in crowded, unhygienic conditions. Indeed, CBP’s own standards suggest that adult noncitizens should not be held in these facilities for more than 72 hours. Most unaccompanied children must by law be transferred within 72 hours (though that limit is often ignored). Whether to release migrants and asylum seekers is a matter of prosecutorial discretion, and CBP has the authority to directly and swiftly release such persons, including after a period of quarantine and under possible conditions of supervision, if appropriate.

Even in [times of emergency](#), governments remain obliged to protect refugees from return to a threat of persecution, exposure to torture or inhuman and degrading conditions, or threats to life and physical security. Contrary to the DHS Order, travel by refugees fleeing threats to their life and safety constitutes essential travel, as it can mean the difference between life or death.

The United Nations refugee agency, UNHCR, released guidance on March 16, 2020 calling for [border measures relating to COVID-19](#) to be necessary, proportionate, and reasonable to the aim of protecting public health. Any “blanket measure” to preclude the admission of refugees and asylum seekers would not meet this standard, according to UNHCR.

The CDC and DHS Orders constitute such inappropriate “blanket measures.” Under the Orders, the United States is failing to provide asylum seekers with legal protections designed to ensure they are not returned to a threat of persecution, and CBP agents have been authorized to “[expeditiously expel](#)” to Mexico or to their country of origin migrants encountered between ports of entry, including unaccompanied children. Human Rights Watch has previously witnessed and documented CBP agents [performing illegal “turnbacks”](#) of migrants exercising their right to seek asylum, [including unaccompanied children](#). Human Rights Watch has also [found agents have failed](#) to refer for interviews with asylum officers people who have expressed a fear of return to their country of origin, and instead, rapidly deported them to potential danger. Giving CBP agents even greater power to unilaterally and summarily decide claims [under the travel restrictions](#) will very likely risk further wrongful return of people who may be refugees. To cite just one example of the serious consequences that can ensue from such “expeditious” expulsions, Human Rights Watch [reported](#) this year on some 200 cases of people killed, raped, or otherwise abused after the United States returned them to El Salvador.

Since we believe the CDC has issued its order in reliance on insufficient or incorrect information provided by DHS, that DHS has issued its Order based upon similarly insufficient information, and that neither adequately considered binding law, we recommend that both agencies revise their policies to allow them to comport with US and international law. We urge the CDC to amend its order relating to the entry of non-citizens to the United States during the COVID-19 pandemic to allow for the entry of asylum seekers; and we urge DHS to amend its order to define individuals who have been identified as expressing fear and requiring referral to a credible fear interview as persons engaged in “essential travel.”

We understand and appreciate the seriousness of the situation that your agencies are engaged in addressing, and that rational, evidence-based public health measures are warranted given the threat posed by the COVID-19 pandemic. However, returning refugees to persecution or other grave threats constitutes a serious human rights violation that is not permitted under international law even in times of emergency. And in light of the information we have shared above, we believe you can protect the health of immigrants and the public at large without turning away asylum seekers.

Please be in touch with Bill Frelick, refugee policy director, Human Rights Watch at frelicb@hrw.org should you have any questions regarding this letter or our recommendations. We have also enclosed a recent press release issued by our organization on related issues faced by people covered by the Migration Protection Protocols.

Sincerely yours,

Alison Leal Parker
Managing Director

Enc. Human Rights Watch press release on MPP program and COVID-19