



Joseph V. Cuffari, Department of Homeland Security Inspector General

Cameron Quinn, Officer, DHS Office for Civil Rights and Civil Liberties

via electronic mail

April 13, 2020

Dear Inspector General Cuffari and Officer Quinn:

We write on behalf of Human Rights Watch and the National Immigration Project of the National Lawyers Guild to register a formal complaint about DHS’s March 21, 2020 policy change to expel most individuals apprehended at the borders with Canada and Mexico. This announcement, based on a Centers for Disease Control and Prevention order from the previous day, is grounded in 42 U.S.C. §§ 265, 268, and purports to override protections in Titles 6 and 8 for unaccompanied children and asylum seekers. We incorporate by reference our unanswered letters to CDC and DHS (Human Rights Watch, April 1, 2020)¹ and DHS (National Immigration Project, March 23, 2020)² detailing concerns about the domestic and international illegality of these actions.

Human Rights Watch’s letter explains why the CDC order depends on “insufficient and incorrect information provided by the DHS to the CDC regarding the categories of non-citizens . . . 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.”

After our letters, ProPublica published Border Patrol guidance instructing agents that “[w]hen implementing the [CDC] order, USBP is not operating pursuant to its authorities under Titles 8 or 19.”³ The only reference to protection obligations in this guidance is a possibility that migrants could make “affirmative, spontaneous and reasonably believable claim[s] that they fear

being tortured in the country they are being sent back to.”⁴ Agents are told to seek supervisory guidance if such a “Convention Against Torture Claim” arises, although there is no indication of how or whether agents are trained to recognize such claims within the average 96-minute expulsion procedure.⁵ CBP Office of Field Operations personnel have also stopped processing asylum seekers,⁶ similarly without explaining why less restrictive action is not possible to harmonize statutory obligations.

CBP separately confirmed that unaccompanied children (UACs) are being expelled to Mexico and Central America under the CDC order despite protections they are due under the Trafficking Victims Protection Reauthorization Act.⁷ A congressional letter to DHS of March 30, 2020, emphasized: “Reports that DHS is not following the TVPRA are deeply troubling. We have an obligation to ensure the health and safety of these children.”⁸ Subsequently, the *Los Angeles Times* reported that from April 1 to April 3, 2020, 76 UACs were flown by DHS to Guatemala and “at least 8 minors deported . . . have arrived in Guatemala with fever.”⁹ Overall, latest statistics report 377 children expelled in a six-day period from March 27 to April 2, and more than 11,000 individuals overall expelled in the three-week period up to April 10.¹⁰

To be clear, these returns include children alone and people who are at heightened risk of severe illness from COVID19. While the Mexican government has stated it would not accept certain returned Central American migrants who are vulnerable, specifying the elderly and unaccompanied children (according to the Associated Press, a Mexican official stated this would include people who are over 65, pregnant, or sick),¹¹ DHS is expelling people in those categories. Indeed, DHS has redefined “family units” to enable more non-Mexican children to be expelled to Mexico.¹²

Also, despite the public health patina of CDC’s order, “migrants are not given medical exams while in U.S. custody.”¹³ The expulsions’ pretext of putting public health first is belied by CBP’s failure to screen and protect migrants while exposing its own agents to greater risk than alternative medically supervised procedures would. Organizations including Doctors Without Borders and Physicians for Human Rights have tried to educate DHS that “banning asylum seekers endangers lives.”¹⁴

DHS’s actions raise a plethora of domestic and international-law violations—many of which are detailed in a recent letter by 10 Senators¹⁵—that we urge you to investigate immediately. Already thousands of expelled migrants, including hundreds of unaccompanied children, have been deprived of their rights under Titles 6 and 8. Please contact Grace Meng, senior US researcher at Human Rights Watch, at mengg@hrw.org, and Sirine Shebaya, Executive Director, National Immigration Project of the National Lawyers Guild at sirine@nipnl.org for further information.

Yours sincerely,

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Human Rights Watch

Sirine Shebaya, Executive Director
National Immigration Project of the
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¹ <https://www.hrw.org/news/2020/04/01/human-rights-watch-letter-centers-disease-control-and-prevention-and-department>

² https://www.nationalimmigrationproject.org/pr/2020_23Mar_wolf-asylum.html

³ Dara Lind, “Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately — Ignoring Asylum Law.” ProPublica (Apr. 2, 2020), <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>. Border Patrol “COVID-19 CAPIO” guidance available at <https://www.documentcloud.org/documents/6824221-COVID-19-CAPIO.html>

⁴ USBP, “COVID-19 CAPIO,” 4.

⁵ Nick Miroff, “Under coronavirus immigration measures, U.S. is expelling border-crossers to Mexico in an average of 96 minutes.” Washington Post (Mar. 30, 2020), https://www.washingtonpost.com/immigration/coronavirus-immigration-border-96-minutes/2020/03/30/13af805c-72c5-11ea-ae50-7148009252e3_story.html.

⁶ Camilo Montoya-Galvez, “U.S. to rapidly turn away migrants, including those seeking asylum, over coronavirus.” CBS News (Mar. 21, 2020), <https://www.cbsnews.com/news/us-to-turn-way-migrants-including-those-seeking-asylum-without-delay-over-coronavirus/>

⁷ See generally Congressional Research Service, *Unaccompanied Alien Children: An Overview* (Oct. 9, 2019), <https://fas.org/sgp/crs/homsec/R43599.pdf>

⁸ https://judiciary.house.gov/uploadedfiles/3.30.2020_letter_to_dhs_re_tvpra.pdf; see also [Reps.] Thompson and Rice Demand CBP Protect Children at the Border (Apr. 9, 2020), <https://homeland.house.gov/news/correspondence/thompson-and-rice-demand-cbp-protect-unaccompanied-children-at-the-border->

⁹ Reporter Molly O’Toole (Apr. 6, 2020), <https://twitter.com/mollymotoole/status/1247246394450206721?s=20>; <https://twitter.com/mollymotoole/status/1247232298241720320?s=20>

¹⁰ Ted Hesson and Mica Rosenberg, “U.S. deports 400 migrant children under new coronavirus rules.” Reuters (Apr. 7, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-deportations/us-deports-400-migrant-children-under-new-coronavirus-rules-idUSKBN21P354>; CBP, “Title 8 Enforcement Actions and Title 42 Expulsions,” <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>; Acting CBP Commissioner Mark Morgan, (Apr. 10, 2020), <https://twitter.com/cbpmarkmorgan/status/1248780817020653570?s=11>

¹¹ Maria Verza, Elliot Spagat & Astrid Galvan, “Trump quietly shuts down asylum at US borders to fight virus.” Associated Press (Apr. 9, 2020), <https://apnews.com/7e9426532434bdda47f270a57d091c91>

¹² Michelle Hackman and Alicia A. Caldwell, “Border Agents Change Practice on Immigrant Child Separation Over Coronavirus.” Wall Street Journal (Mar. 31, 2020), <https://www.wsj.com/articles/u-s-stops-separating-immigrant-children-at-border-under-coronavirus-emergency-powers-11585701887>

¹³ Miroff, *supra*.

¹⁴ Statement of March 25, 2010, <https://docs.google.com/document/d/1hmQSRWR9xGEGlBy-6b2mstKvYgfGUPi0HQ9LDa42deY/edit> (“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.”); *see also* UN High Commissioner for Refugees (UNHCR), *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response* (Mar. 16, 2020), <https://www.refworld.org/docid/5e7132834.html> (border measures relating to COVID-19 should be necessary, proportionate, and reasonable to the aim of protecting public health).

¹⁵ Letter to Acting Secretary Wolf (Apr. 7, 2020), <https://www.leahy.senate.gov/imo/media/doc/4.7.20%20FINAL%20Jud%20letter%20to%20DHS%20re%20Title%2042%20-%20SIGNED.pdf>; *see also* Engel, Thompson, Nadler Statement on Trump Administration’s Suspension of Asylum Processing (Apr. 10, 2020), <https://foreignaffairs.house.gov/press-releases?ID=EFC20B26-534D-4BCB-9932-0188E4279BF9>