

Congress of the United States
Washington, DC 20515

May 12, 2020

The Honorable Mike Pompeo
Secretary
U.S. Department of State
2201 C St. NW
Washington, DC 20520

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-0525

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Ave. SW
Washington, DC 20201

Dear Secretary Pompeo, Secretary Azar, and Acting Secretary Wolf:

As Committees of jurisdiction over refugee, asylum and national security laws, we write to express our concern over the Trump Administration’s deeply flawed legal “justification” of its March 20 decision to suspend asylum processing in response to the COVID-19 outbreak (the “Asylum Ban”).¹ Notably, the Committees received this justification from the State Department on the evening of April 24 (the “April 24 Opinion”), a month and a half after the Committees’ request, and over a month after the announcement of the Asylum Ban—suggesting that the Administration developed this justification *after* implementing the ban. Protecting public health and protecting individuals from persecution or torture are not mutually exclusive – the United States must do both. As such, we are deeply concerned that the Administration appears to be using the COVID-19 outbreak as a pretext to expel asylum seekers in clear violation of its obligations under domestic and international law to protect individuals fleeing persecution or torture.

The April 24 Opinion does not alleviate these concerns. Instead, the opinion raises serious questions about the accuracy of the Administration’s claims of protecting public health, the legality of the Asylum Ban, and the Administration’s respect for the rule of law. Therefore, we request that your agencies provide detailed answers to the following questions no later than 5:00 PM on Friday, May 22, 2020:

1. The April 24 Opinion fails to address the legality of the Asylum Ban with respect to numerous domestic laws regarding asylum seekers and unaccompanied children, including 8 USC §§ 1158, 1231(b)(3)(A), and 1232, as well as 6 USC § 279. Please

¹ See *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. 16,559 (Mar. 24, 2020), effective Mar. 20, 2020.

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provide a detailed explanation of how the Asylum Ban comports with domestic asylum-related legal obligations enshrined in *each* of these statutes.

2. The April 24 Opinion fails to provide any analysis regarding the United States' international obligations, stating that "neither the United States nor any State or municipality has any legal obligation to conform its conduct to international treaties that are not self-executing or otherwise implemented into domestic law by an Act of Congress." Even if this statement were true, it is irrelevant. The United States must adhere to the 1967 Protocol relating to the Status of Refugees, which Congress ratified and incorporated into domestic law through the Refugee Act of 1980.²
 - a. Is the Administration's position that it does not have any obligation to conform its conduct to the 1967 Refugee Protocol? If so, please explain.
 - b. If not, please provide a detailed explanation of how the Asylum Ban comports with such international obligations.
3. Several foreign governments have taken measures to adhere to international legal obligations with respect to refugees, even as they take measures to protect public health and reduce the spread of COVID-19. For example, Mexico has designated the registration of new asylum claims an essential activity, and 20 European countries have explicitly exempted asylum-seekers from entry bans and border closures.³ Did the Administration consider adopting best practices from other countries to meet our domestic and international legal obligations towards asylum seekers and unaccompanied children in a manner consistent with public health initiatives to stop the spread of COVID-19? Please provide any memoranda or other documents containing such analysis.

² See, e.g., *The Refugee Act of 1980*, Pub. L. No. 96-212 (Mar. 17, 1980); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987); Notice of Proposed Rulemaking, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 84 Fed. Reg. 62280, at n.158 (Nov. 14, 2019); *1951 Convention relating to the Status of Refugees*, opened for signature July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137; *1967 Protocol relating to the Status of Refugees*, open for signature Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

³ See, e.g., United Nations High Commissioner on Refugees ("UNHCR"), *Despite pandemic restrictions, people fleeing violence and persecution continue to seek asylum in Mexico*, <https://www.unhcr.org/news/briefing/2020/4/5ea7dc144/despite-pandemic-restrictions-people-fleeing-violence-persecution-continue.html> (Apr. 28, 2020); and UNHCR, *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*, <https://data2.unhcr.org/en/documents/download/75453> (Apr. 15, 2020).

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4. The Asylum Ban provides that its provisions do not apply to “persons whom customs officers of DHS determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including . . . humanitarian . . . interests.”
 - a. Has the administration developed guidance for Customs and Border Protection (“CBP”) officers to determine whether a person should be excepted from the Asylum Ban for humanitarian reasons? If so, please provide that guidance.
 - b. Has such discretionary relief been granted to any individuals since the Asylum Ban went into effect? If so, please identify the number of individuals to whom such relief has been granted; the location or port of entry; the nationality of each grantee; whether the grantee was a single adult, part of a family, or an unaccompanied minor; and the criteria for such discretionary relief.
5. Please cite all prior instances in which 42 USC § 265 has been invoked as a basis to regulate immigration entries, admissions, expulsions, or returns or repatriations of any kind. Please also cite any and all evidence in the legislative history of 42 USC § 265 indicating that it was intended to regulate immigration.
6. The April 24 Opinion states that the Asylum Ban stops the introduction of people from “COVID-19-risky locations.” The Ban itself, however, applies only to individuals who seek to enter the United States at land points of entry (“POEs”) or between POEs, without reference to the prevalence of COVID-19 in those individuals’ places of origin, and it does not apply to individuals entering at airports or seaports who might come from “COVID-19-risky locations.” Was the decision to apply the Asylum Ban to only those individuals seeking to enter the United States at land POEs or between POEs informed by any scientific and medical evidence? If so, please provide copies of such evidence.
7. The April 24 Opinion mentions that individuals fearing torture will not be expelled under the Asylum Ban.
 - a. How many individuals have received the screening under the Convention Against Torture?
 - b. How many individuals have been exempted from expulsion as a result of such screening?
 - c. Please describe, in detail, each step in the screening process, and provide copies of any guidance documents given to CBP personnel conducting the screening.
8. Since the enactment of the Asylum Ban on March 20, 2020, how many individuals have been expelled from the United States to Mexico or Canada pursuant to the Ban? How

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many individuals have been rapidly expelled, returned, or otherwise repatriated to their countries of origin pursuant to the Ban? How many of the individuals in each category were unaccompanied minors? How many were part of a family?

9. Please provide any other written guidance distributed to DHS personnel on how to carry out the Asylum Ban, including any reporting requirements to supervisors and any guidance on how supervisors are to decide when to overrule field personnel recommendations.
10. Since the enactment of the Asylum Ban on March 20, 2020, how many individuals presenting at POEs without documentation, or apprehended between POEs, were subject to the Migrant Protection Protocols, Prompt Asylum Claim Review, Humanitarian Asylum Review Process, or placed into regular 240 proceedings?

The Committees are prepared to engage directly and cooperatively with the Departments of State, Health and Human Services, and Homeland Security in the fulfillment of this request. Should the Departments not provide the requested responses by 5 PM on Friday, May 22, 2020, the Committees will consider additional measures to obtain this information.

Thank you for your prompt and thorough attention to this important matter.

Sincerely,



ELIOT L. ENGEL
Chairman
House Committee on Foreign Affairs



BENNIE G. THOMPSON
Chairman
House Committee on Homeland Security



JERROLD NADLER
Chairman
House Committee on the Judiciary



ROBERT MENENDEZ
Ranking Member
Senate Committee on Foreign Relations

Enclosure