Congress of the United States
Washington, DC 20510

June 19, 2020

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Mr. Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Mr. Mark A. Morgan
Acting Commissioner
Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

The Honorable William P. Barr
Attorney General
Department of Justice
Robert F. Kennedy Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Michael Pompeo
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Mr. President, Acting Secretary Wolf, Acting Commissioner Morgan, Acting Director Albence, Secretary Pompeo, Attorney General Barr:

We write to urge you to reverse the litany of policies you have implemented that have effectively dismantled our nation's asylum system. Forty years ago, Congress enshrined in our laws the moral commitment to protect people who risk their lives to seek refuge from persecution. In the aftermath of World War II and the horrors of the Holocaust, the United States, along with other countries, resolved that people fleeing violence and persecution would never again be met with global indifference and that states were obligated not to return people to persecution. The bipartisan Refugee Act of 1980 codified that duty and created the modern asylum system.[1]

Your administration has done grievous harm to this noble tradition. For the past three years, administration officials have systematically disregarded the laws and implemented new rules governing asylum that have prevented tens of thousands of asylum seekers from accessing a fair and safe adjudication process. As a result, transgender people fleeing death threats in Central

[1] Refugee Act of 1980, Pub. L. No. 96-212, § 208(a), 94 Stat. 102, 105 (1980).

America, ethnic minorities fleeing conflict in Cameroon, families fleeing political persecution in Venezuela, and myriad other vulnerable people have been forced to remain in unsafe environments where their lives are at risk. As lawmakers, we are troubled by the blatant disregard for Congress' explicit directions for how the federal government should process and adjudicate the cases of asylum seekers. We oppose your efforts to dismantle the U.S. asylum system and call for immediate rescission of the following policies:

- Denying parole for asylum seekers: In 2017, this administration abandoned a decade-old policy[2] that favors the release from detention of asylum seekers who demonstrate a credible fear of persecution, allowing them to proceed with their immigration cases from home rather than from jail. Despite federal court orders,[3] the agency continues to deny parole to asylum seekers, which tips the scales against them: Data from the Transactional Records Access Clearinghouse at Syracuse University show that detained asylum seekers are far less likely to win relief than asylum seekers who were never detained or who were released from custody.[4] As of May 30, 2020, in the midst of a pandemic that is known to be more dangerous within detention settings, there were over 4,300 people in detention who have already made the required initial showing that they are eligible for asylum, [5] and parents seeking safety in detention were reportedly asked to choose between being indefinitely detained with their children or separated from them."[6]
- *Matter of A-B-* and *Matter of L-E-A-*: In 2018 and 2019, the Attorney General issued two decisions that drastically curbed asylum eligibility.[7] Ignoring well-established precedent, these decisions excluded refugees who had targets on their backs due to family ties and women fleeing physical and sexual violence—returning countless asylum seekers back to persecutors who are free to act with impunity.
- Metering: In mid-2018, CBP institutionalized the practice of "metering," which illegally delays asylum seekers from entering at formal ports of entry at the U.S.-Mexico border, returning them to dangerous conditions under the false pretense that the United States is

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[2] *See* IMMIGRATION & CUSTOMS ENF'T (ICE) MEMORANDUM, PAROLE OF ARRIVING ALIENS FOUND TO HAVE A CREDIBLE FEAR OF PERSECUTION OR TORTURE, Jan. 4, 2010, available at https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf.

[3] *See* Stephen Kang, *Judge Blocks Blanket Detention of Asylum Seekers*, AMERICAN CIVIL LIBERTIES UNION (ACLU), July 5, 2018, available at https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/judge-blocks-blanket-detention-asylum-seekers; ACLU OF LA., *.Heredia Mons v. McAleenan*, Mar. 31, 2020, available at https://www.laaclu.org/en/cases/heredia-mons-v-mcaleenan.

[4] TRAC IMMIGRATION, *Asylum Decisions*, available at https://trac.syr.edu/phptools/immigration/asylum/ (last visited June 8, 2020).

[5] ICE, *Detention Management*, June 3, 2020, available at https://www.ice.gov/detention-management.

[6] *See* AMNESTY INTERNATIONAL, FAMILY SEPARATION 2.0: '*You Aren't Going to Separate Me from My Only Child*," available at https://www.amnestyusa.org/wp-content/uploads/2020/04/Amnesty-International-USA-Family-Separation-2.0_May-21-2020-.pdf.

[7] *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018); *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019). *See also* Brief for Tahirih Justice Center et al. as Amici Curiae Supporting Appellees, Grace v. Barr, No. 19-5013 (D.C. Cir. 2019); AM. IMMIGRATION LAW ASS'N, *CLINIC Submits Brief Regarding "Particular Social Group" Membership*, Feb. 19, 2019, available at https://www.aila.org/infonet/clinic-brief-particular-social-group-membership.

"at capacity"—an excuse that is non-existent in our asylum laws. Almost 15,000 people were reported to be waiting on "metering" lists as of April 2020.[8]

- Asylum ban: In November 2018, the administration issued regulations that would make anyone who crossed the border between formal ports of entry ineligible for asylum, in clear contravention of the law. The courts blocked this ban.[9]
- Migrant Protection Protocols (MPP): Since January 2019, MPP has illegally forced asylum seekers and other migrants to wait for their court hearings in the U.S. in often-dangerous conditions on the Mexico side of the border. There are at least 1,114 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against people subject to MPP.[10] To date, nearly 65,000 people have been subject to MPP.[11]
- Transit ban: The transit ban, announced in July 2019, bans from asylum anyone at the southern border who traveled by land through a third country, with extremely limited exceptions.[12] The ban is opposed by the UN Refugee Agency[13], former national security officials[14], and the asylum officers' union[15], among many others. An untold number of people have been denied protection under this illegal policy.
- Prompt Asylum Case Review (PACR) and Humanitarian Asylum Review Program (HARP): In October 2019, the administration launched new expedited deportation programs known as PACR (which applies to people from countries other than Mexico) and HARP (which applies to people from Mexico). Under PACR/HARP, asylum seekers

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[8] Stephanie Leutert et al., *Asylum Processing and Waitlists at the U.S.-Mexico Border*, ROBERT STRAUSS CTR., Dec. 2018, available at https://www.strausscenter.org/wp-content/uploads/Asylum-Processing-and-Waitlists-at-the-U.S.-Mexico-Border-.pdf; Stephanie Leutert et al., *Metering and COVID-19*, ROBERT STRAUSS CTR., April 2020, available at https://www.strausscenter.org/wp-content/uploads/MeteringUpdate_200528.pdf.

[9] ACLU, *Federal Appeals Court Upholds Block on Port-of-Entry Asylum Ban*, Feb. 28, 2020, available at https://www.aclu.org/press-releases/federal-appeals-court-upholds-block-port-entry-asylum-ban-0.

[10] Muzaffar Chishti & Jessica Bolter, *Interlocking Set of Trump Administration Policies at the U.S.-Mexico Border Bars Virtually All from Asylum*, MIGRATION POLICY INST., Feb. 27, 2020, available at https://www.migrationpolicy.org/article/interlocking-set-policies-us-mexico-border-bars-virtually-all-asylum; HUMAN RIGHTS FIRST, *Delivered to Danger: Trump Administration Sending Asylum Seekers and Migrants to Danger*, available at https://deliveredtodanger.org (last visited June 8, 2020).

[11] TRAC IMMIGRATION, *Details on MPP (Remain in Mexico) Deportation Proceedings*, available at https://trac.syr.edu/phptools/immigration/mpp/ (last visited June 8, 2020).

[12] Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829, July 16, 2019, available at https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications.

[13] Brief for the United Nations High Commissioner for Refugees as Amicus Curiae Supporting Appellees, East Bay Sanctuary Covenant v. Barr, Nos. 19-16487, 19-16773 (9th Cir. 2019), available at https://www.aclu.org/legal-document/east-bay-v-barr-unhcr-amicus-brief.

[14] Brief for the former national security officials as Amici Curiae Supporting Appellees, East Bay Sanctuary Covenant v. Barr, Nos. 19-16487, 19-16773 (9th Cir. 2019), available at https://www.aclu.org/legal-document/east-bay-v-barr-amicus-brief-former-natl-security-officials

[15] Brief for National Cis Council 119 as Amicus Curiae Supporting Appellees, East Bay Sanctuary Covenant v. Barr, Nos. 19-16487, 19-16773 (9th Cir. 2019), available at https://www.aclu.org/legal-document/east-bay-v-barr-national-cis-council-amicus-brief.

receive the high-stakes credible fear interview, which determines whether they are deported or allowed to pursue their asylum case in immigration court, within 48 hours of arrival, while in CBP custody. They are effectively prevented from consulting with attorneys or other third parties, in a clear violation of the law. By February 2020, about 3,700 asylum seekers had been subject to PACR/HARP.[16]

- Asylum Cooperative Agreements (ACAs): The administration entered into "safe third country" agreements with Guatemala and Honduras, under which DHS will send people seeking safety in the U.S. to Guatemala and Honduras to apply for asylum in those countries instead. A third such agreement with El Salvador was signed but is not yet active. Tens of thousands of people *flee* those countries every year, and none has a fair and effective asylum system that could possibly handle the large volume of applications they will receive under this scheme.[17] All three countries signed the ACAs after President Trump cut off all U.S. foreign assistance citing the countries' inadequate efforts to stem irregular migration. Through these ACAs, CBP has already illegally diverted nearly 1,000 asylum seekers seeking U.S. protection to Guatemala—most of whom are women and children. The Department of State and the Department of Justice have still not provided responses to a February letter sent by 21 U.S. Senators raising concerns about the legality of the ACAs.

- Criminalization of asylum seekers: In December 2019, DHS and DOJ proposed new bars to asylum for people with minor criminal histories, attempting to limit asylum eligibility further than Congress intended.[18] The executive branch has also grossly misused federal criminal prosecutions to punish asylum seekers who enter between ports of entry, subverting U.S. treaty obligations.[19] In the first two years of the Trump administration,

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[16] Ruthie Epstein & Shaw Drake, *Ban on Attorney Access for Asylum Proceedings in Inhumane CBP Jails Key to Trump's Attack on Asylum*, ACLU: BLOG, Feb. 26, 2020, available at https://www.aclu.org/news/immigrants-rights/ban-on-attorney-access-for-asylum-proceedings-in-inhumane-cbp-jails-key-to-trumps-attack-on-asylum/; @priscialva, TWITTER, Feb. 27, 2020, 10:01 AM, available at https://twitter.com/priscialva/status/1233044442019487744?s=20.

[17] *See* Noah Lanard, *The Absurdity and Danger of Trump's Deal to Send Asylum Seekers to Guatemala*, MOTHER JONES, Feb. 28, 2020, available at https://www.motherjones.com/politics/2020/02/the-absurdity-and-danger-of-trumps-deal-to-send-asylum-seekers-to-guatemala/; Rachel Schmidtke et al., *Deportation with a Layover: Failure of Protection Under the U.S.-Guatemala Asylum Cooperative Agreement*, REFUGEES INT'L, May 19, 2020, available at https://www.refugeesinternational.org/reports/2020/5/8/deportation-with-a-layover-failure-of-protection-under-the-us-guatemala-asylum-cooperative-agreement; HUMAN RIGHTS FIRST, *Is Honduras Safe for Refugees and Asylum Seekers?*, May 1, 2020, available at https://www.humanrightsfirst.org/resource/honduras-safe-refugees-and-asylum-seekers.

[18] Procedures for Asylum and Bars to Asylum Eligibility, 84 Fed. Reg. 69,640 (proposed Dec. 19, 2019), available at https://www.federalregister.gov/documents/2019/12/19/2019-27055/procedures-for-asylum-and-bars-to-asylum-eligibility; Zolan Kanno-Youngs, *Trump Administration Proposes Adding Minor Crimes to List of Offenses that Bar Asylum*, N.Y. TIMES, Dec. 18, 2019, available at https://www.nytimes.com/2019/12/18/us/politics/trump-asylum-misdemeanors.html.

[19] HUMAN RIGHTS FIRST, *Punishing Refugees and Migrants: The Trump Administration's Misuse of Criminal Prosecutions*, Jan. 18, 2018, available at https://www.humanrightsfirst.org/resource/punishing-refugees-and-migrants-trump-administrations-misuse-criminal-prosecutions.

criminal prosecutions for border crossing comprised 57 percent of all federal criminal case filings nationwide.[20]

- CDC asylum ban: In March 2020, the Centers for Disease Control and Prevention (CDC) issued an order[21] that permits DHS to summarily expel asylum-seekers, upending decades of congressionally mandated procedures and further endangering populations at risk of harm. The CDC order appears designed to further an ongoing agenda to exclude asylum seekers, in violation of Congress' plain word and intent.[22] The UN Refugee Agency has stated clearly, in the context of COVID-19: "Denial of access to territory without safeguards to protect against refoulement cannot be justified on the grounds of any health risk."[23] Leading epidemiologists and public health experts have condemned the new policy, stating that it "is based on specious justifications and fails to protect public health."[24] Human rights and medical groups have developed measures for processing migrants at the border that both protect public health and preserve humanitarian protection.[25] Since March 20, more than 20,000 people, including more than 900 children, have been expelled under the CDC order.[26] Only two people have been

[20] Judy Greene & Bob Libal, *"Zero Tolerance" Policy Greatly Accelerates Immigrant Criminalization Through End of 2018*, JUSTICE STRATEGIES, Mar. 18, 2019, available at https://justicestrategies.org/sites/default/files/publications/Zero%20Tolerance%E2%80%9D%20accelerates%20immigrant%20criminalization%20through%202018.pdf.

[21] CTR. FOR DISEASE CONTROL & PREVENTION (CDC), *Order Suspending Introducing Certain Persons from Countries Where a Communicable Disease Exists*, Mar. 20, 2020, available at https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf. The original March 20 order was extended indefinitely on May 19. CDC, *Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists*, May 19, 2020, available at https://www.cdc.gov/quarantine/order-suspending-introduction-certain-persons.html.

[22] Lucas Guttentag, *Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors*, JUST SECURITY, Apr. 13, 2020, available at https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/.

[23] 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, available at https://www.refworld.org/docid/5e7132834.html.

[24] COLUMBIA MAILMAN SCH. OF PUB. HEALTH, *Public Health Experts Urge U.S. Officials to Withdraw Order Enabling Mass Expulsion of Asylum Seekers*, May 18, 2020, available at https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers.

[25] HUMAN RIGHTS FIRST, *Public Health Measures to Safely Manage Asylum Seekers and Children at the Border*, May 2020, available at https://www.humanrightsfirst.org/sites/default/files/PublicHealthMeasuresattheBorder.05.18.2020.pdf

[26] CUSTOMS & BORDER PROT., *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, May 7, 2020, available at https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics; Caitlin Dickerson, *10 Years Old, Tearful and Confused After a Sudden Deportation*, N.Y. TIMES, May 21, 2020, available at https://www.nytimes.com/2020/05/20/us/coronavirus-migrant-children-unaccompanied-minors.html?smid=tw-share.

permitted to stay in the U.S. to pursue asylum claims.[27]

- DHS/DOJ regulatory attack: In June 2020, the administration proposed a sweeping set of changes to the asylum regulations that would end asylum eligibility for nearly everyone seeking safety in the United States, in contravention of congressional intent and our international legal obligations.[28] The proposed regulations rewrite nearly every element of the refugee definition, including by ratcheting up the definition of persecution and explicitly foreclosing most common claims for asylum, including claims based on gender and persecution by non-state actors. The regulations also create a draconian set of new bars designed to short-circuit screenings and shatter due process for asylum seekers. Taken together, the regulations represent the most profound set of changes yet to the substance of our asylum laws.

This administration's anti-asylum policies have reversed 40 years of proud U.S. leadership in providing safe haven to people fleeing violence and persecution. Furthermore, the serious public health crisis we now face does not justify a suspension of the laws and policies that undergird our nation's asylum system; rather, we must respond to this crisis while protecting those most at risk of harm. Therefore, we urge you to terminate and rescind all the foregoing executive policies and regulations to restore the United States' historic commitment to asylum. The United States must lead, not trail behind, other nations in its treatment of refugees and asylum seekers.

Sincerely,

Richard Blumenthal
United States Senator

Edward J. Markey
United States Senator

Ron Wyden
United States Senator

/s/ Brian Schatz
Brian Schatz
United States Senator

[27] Nick Miroff, *Under Trump Border Rules, U.S. Has Granted Refuge to Just Two People Since Late March, Records Show*, WASH. POST, May 13, 2020, available at https://www.washingtonpost.com/immigration/border-refuge-trump-records/2020/05/13/93ea9ed6-951c-11ea-8107-acde2f7a8d6e_story.html.
[28] [insert citation upon publication in Federal Register]

/s/ Tom Udall
Tom Udall
United States Senator

/s/ Thomas R. Carper
Thomas R. Carper
United States Senator

/s/ Patty Murray
Patty Murray
United States Senator

Kamala D. Harris
United States Senator

/s/ Martin Heinrich
Martin Heinrich
United States Senator

Tammy Baldwin
United States Senator

Kirsten E. Gillibrand
United States Senator

/s/ Patrick Leahy
Patrick Leahy
United States Senator

Robert Menendez
United States Senator

Richard J. Durbin
United States Senator

/s/ Charles E. Schumer
Charles E. Schumer
United States Senator

/s/ Mazie K. Hirono
Mazie K. Hirono
United States Senator

Amy Klobuchar
United States Senator

/s/ Bernard Sanders
Bernard Sanders
United States Senator

Sherrod Brown
United States Senator

Benjamin L. Cardin
United States Senator

Christopher A. Coons
United States Senator

Elizabeth Warren
United States Senator

/s/ Jack Reed
Jack Reed
United States Senator

/s/ Catherine Cortez Masto
Catherine Cortez Masto
United States Senator

/s/ Sheldon Whitehouse
Sheldon Whitehouse
United States Senator

/s/ Michael F. Bennet
Michael F. Bennet
United States Senator

/s/ Robert P. Casey, Jr.
Robert P. Casey, Jr.
United States Senator

Dianne Feinstein
United States Senator

Jacky Rosen
United States Senator

/s/ Jeffrey A. Merkley
Jeffrey A. Merkley
United States Senator

Cory A. Booker
United States Senator

/s/ Tim Kaine
Tim Kaine
United States Senator

/s/ Tammy Duckworth
Tammy Duckworth
United States Senator

Christopher S. Murphy
United States Senator