



January 4, 2019

Lauren Alder Reid
Assistant Director, Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2616
Falls Church, VA 22041

Re: 83 FR 55934, EOIR Docket No. 18-0501, Entitled “Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims”

Dear Ms. Alder Reid:

I write on behalf of the Unitarian Universalist Service Committee (UUSC) to urge rescission of the interim final rule, “Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims” (the “rule”), which went into effect on November 9, 2018. This rule – along with an accompanying presidential proclamation – is in fundamental contradiction of our nation’s legal and moral obligations and the human rights owed to all members of the global community.

UUSC is a U.S.-based human rights organization with over 40,000 members and supporters across the country. For several years, we have partnered with human rights defenders and community service providers throughout the Americas, many of whom accompany and assist individuals seeking asylum within U.S. borders. Through these partnerships, we have witnessed first-hand the reality of the violence and persecution forcing people to flee their homes in Central America, as well as the urgency of the need for international protection.

As people of faith and conscience, we ask that you immediately withdraw this unlawful and potentially life-threatening challenge to our nation’s established asylum law and that you work to uphold the universal human right to seek refuge from persecution.

1. The Rule Weakens Critical Asylum Protections in the United States

In a 2016 report for UUSC, parents of children who had applied for the former Central American Minors In-Country Refugee Processing Program (CAM) shared details of the violent persecution they and their families faced from organized criminal networks in Central America and which drove them to flee their homes. They emphasized that there was little recourse from the state, noting that criminal networks effectively controlled the territories in which they lived. “What happens is that in our countries police cannot protect people or children because the truth is that even they are afraid of gangsters,” one parent reported, continuing: “The truth is that gang members are already positioned in the country—they are the bosses in the country.”¹

Another parent explained that in some cases, police and organized crime work hand in glove: “No, you cannot trust police because there are many policemen who are with gang members. You cannot trust them . . . they are allies. If you [complain], you have to hide . . . If you stay there and submit a complaint, they will kill you.”²

Additionally, in the past year, UUSC has received multiple credible reports from our partners in Honduras of death threats directed against themselves, along with other journalists and human rights defenders. The circumstances around these threats point to a nexus between the political opinions, human rights advocacy, and criticism of public figures expressed by the persons who are targeted and the persecution they face.³

UN experts warned as recently as 2016 that Honduras is at risk of “turning into a lawless killing zone,”⁴ after assassinations of human rights defenders and journalists spiked dramatically following a 2009 military coup against the elected government.⁵ Some of these assassinations are linked to high-ranking officials in the Honduran government, police, and military, and, as such, have been treated with impunity.⁶ In this context, death threats against human rights defenders, including UUSC’s partners, must be regarded with the utmost seriousness.

When people face persecution that is effectively sanctioned by the state, whether through the deliberate complicity of officials or through the state’s unwillingness or incapacity to provide redress, they have little recourse but to exercise their internationally protected right to seek asylum across borders. This is one of the primary factors driving people to enter and request protection in U.S. territory, whether at a designated port of entry (POE) or elsewhere.

The rule claims that it is not intended to restrict wholesale the right of non-citizens to seek asylum in the United States. Instead, the rule and its accompanying proclamation would deny asylum eligibility only to those who cross the border outside designated POEs. The rule implements this restriction, it claims, for the purpose of “channel[ing] inadmissible aliens to ports of entry, where such aliens could seek to enter and would be processed in an orderly and controlled manner.”⁷

This restriction, however, contradicts the plain meaning of U.S. asylum law and the UN Refugee Convention, both of which guarantee the right of non-citizens to seek asylum regardless of how they enter U.S. territory. It also fails to acknowledge the many ways in which U.S. immigration policy has made it dangerous or impossible for many individuals to seek asylum through designated POEs, effectively forcing them to make unauthorized crossings and, under the rule, effectively lose their ability to claim protection.

It is because of asylum-seekers’ unique situation that the international community has long recognized they should not be treated under the same laws that ordinarily govern unauthorized border crossings. When people are fleeing persecution, they are not in a position to choose when, where, and in what manner they cross a border to seek protection. For this reason, the UN Refugee Convention— to which the United States has acceded through the 1967 Protocol Relating to the Status of Refugees – forbids the imposition of “penalties, on account of their illegal entry or presence,” on people fleeing persecution.⁸

In fact, recent reports from human rights experts and observers have documented cases of U.S. officials unlawfully turning asylum-seekers away from POEs, as well as unnecessarily slowing

down or “metering” the processing of asylum-seekers at the port,⁹ delaying their ability to enter the United States and leaving them stranded in places where they are at risk. With the sudden announcement of the Department of Homeland Security’s new “Migration Protection Protocols” on December 20, 2018,¹⁰ it seems likely that even more asylum-seekers will be forced to remain in Mexico before they can seek protection in the United States.

Human rights experts have extensively documented the dangers of forcing asylum-seekers to wait outside the borders of safe countries.¹¹ The reality of these dangers was tragically underlined last month by the reported torture and murder of two Honduran children in Tijuana. Both children had traveled as part of an exodus of asylum-seekers from Central America, in hopes of reaching safety in the United States.¹²

Congress enacted the 1980 Refugee Act to bring our immigration law into compliance with U.S. treaty obligations under the 1967 Protocol.¹³ For this reason, legislators were careful to state that “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 [...]), irrespective of such alien’s status, may apply for asylum in accordance with this section[.]”¹⁴ The rule acknowledges this statutory protection, yet seeks to carve an exception for precisely one of the groups Congress explicitly designated as eligible – namely, unauthorized border crossers seeking asylum.

For this reason and others, a U.S. federal court has already wisely placed this rule under a preliminary injunction.¹⁵ UUSC welcomes this decision, and urges that the rule be rescinded, in light of its blatantly illegal character.

2. The Rule Violates Internationally and Domestically Recognized Human Rights Values

UUSC’s objections to the rule go beyond legal concerns, however. As an organization with partners, colleagues, and friends in Central America who have reason to fear for their safety, we confront each day the potentially life-threatening consequences of administrative efforts to restrict access to asylum in the United States.

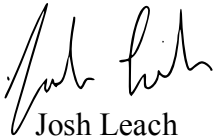
As a human rights organization, moreover, we remember the unambiguous words of the Universal Declaration of Human Rights, which states, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”¹⁶ Moreover, as an organization inspired by the principles of the Unitarian Universalist faith tradition, we recognize and affirm the inherent worth and dignity of every person – a principle that is directly jeopardized by policies that make it harder for survivors of persecution to reach safety.

Finally, as an organization based in the United States, we are committed to our nation’s highest aspirations to be a haven for the persecuted. In its best moments, the U.S. government has worked to honor and uphold these aspirations, which are implied in words inscribed on the base of our Statue of Liberty, calling upon our nation to be a “Mother of Exiles,” and to welcome the “homeless” and “tempest-tost.” These words hearken back not only to the United States’ history as a multicultural nation, but to one of the oldest moral inheritances of all humankind, found in religious texts and codes of honor throughout the world: the principle of offering refuge to a stranger in distress.

UUSC was founded in 1939, at a moment when our nation tragically failed to live up to these ideals. At that time, our government refused to provide safety to Jewish people and other victims of fascist persecution in Nazi-occupied Europe, and the work of rescuing refugees was left largely to the hands of private service organizations, including UUSC (at that time the Unitarian Service Committee).

We are committed to ensuring that this history is never repeated and that the United States will never again turn its back on vulnerable humanity seeking protection from violence and injustice. For this reason, we urgently ask that you rescind the rule and commit to bringing your agency's policies in line with the principles and values of human rights.

Sincerely,



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¹ Amber Moulton et al., "Waiting for Refuge: Benefits and Challenges of the Central American Minors In-Country Refugee Processing Program (CAM)," UUSC, December 2016. <https://www.uusc.org/wp-content/uploads/2016/12/Waiting-for-Refuge-December-2016.pdf>.

² Ibid.

³ Josh Leach, "Honduran Human Rights Defenders and UUSC Partners at Risk," UUSC, September 5, 2018. <https://www.uusc.org/honduran-human-rights-defenders-and-uusc-partners-at-risk/>; and UUSC, Public Facebook post, December 21, 2018 at 12:33 PM. <https://bit.ly/2RtcKly>.

⁴ UN Office of the High Commissioner for Human Rights, "Action needed to stop Honduras turning into a lawless killing zone for human rights defenders," March 18, 2108. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18481&LangID=E>.

⁵ Human Rights Watch, "After the Coup: Ongoing Violence, Intimidation, and Impunity in Honduras," December 20, 2010. <https://www.hrw.org/report/2010/12/20/after-coup/ongoing-violence-intimidation-and-impunity-honduras#>.

⁶ Global Witness, "Honduras: The Deadliest Country in the World for Environmental Activism," January 31, 2017. <https://www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>.

⁷ 83 FR 55934.

⁸ UNHCR, "Convention and Protocol Relating to the Status of Refugees," Article 31.

⁹ See, e.g., American Immigration Council, "New Court Filing Highlights the Government's Official 'Turnback Policy' for Asylum Seekers," October 16, 2018.

¹⁰ DHS, "Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration," December 20, 2018. <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

¹¹ See, e.g. Human Rights First, "Mexico: Still Not Safe for Refugees and Migrants," March 23, 2018. <https://www.humanrightsfirst.org/resource/mexico-still-not-safe-refugees-and-migrants>.

¹² Emily Green, "Two migrant teens brutally executed in Tijuana as asylum cases pile up," Vice News, January 3, 2019. https://news.vice.com/en_us/article/8xpp9z/two-migrant-teens-brutally-executed-in-tijuana-as-asylum-cases-pile-up.

¹³ Order Granting Temporary Restraining Order; Order to Show Cause Re Preliminary Injunction, *East Bay Sanctuary Covenant v. Trump*, Case No. 18-cv-06810-JST.

¹⁴ 8 U.S.C. § 1158(a)(1)

¹⁵ Adam Liptak, "Supreme Court Won't Revive Trump Policy Limiting Asylum," *New York Times*, December 21, 2018. <https://www.nytimes.com/2018/12/21/us/politics/supreme-court-asylum-trump.html>.

¹⁶ United Nations, "Universal Declaration of Human Rights," accessed January 4, 2019. <http://www.un.org/en/universal-declaration-human-rights/>.