

# United States Senate

WASHINGTON, DC 20510

November 30, 2018

President of the United States  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear President Trump:

We write to you out of grave concern regarding your recent Presidential Proclamation barring certain individuals from receiving asylum.<sup>1</sup> This cruel policy will undermine law and order in our immigration system, needlessly cause death and suffering to refugees seeking safety, and imperil our national security. A federal judge has already declared your Proclamation contrary to law and blocked it from going into effect.<sup>2</sup> Rather than litigating this matter further, you should immediately revoke this Presidential Proclamation.

There is overwhelming evidence that this Proclamation is plainly illegal. Our immigration statutes are clear that any individual who arrives in the United States “whether or not at a designated port of arrival” may apply for asylum.<sup>3</sup> Our courts have long recognized this principle, repeatedly emphasizing that asylum seekers cannot have their claims denied solely because of how they entered the country.<sup>4</sup> Your attempt to overrule clear Congressional statute through a Presidential Proclamation will not succeed, given at least a century of precedent that the legislative branch has plenary power in the area of immigration.<sup>5</sup> In addition, this Proclamation is contrary to international law. Both the Universal Declaration of Human Rights and the Refugee Convention – to which the United States is a party – make clear that legitimate asylum seekers cannot be punished based on their place of arrival.<sup>6</sup> Given the heavy weight of

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<sup>1</sup> Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States (Nov. 9 2018) <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-addressing-mass-migration-southern-border-united-states> [hereinafter “Presidential Proclamation”]

<sup>2</sup> *East Bay Sanctuary Covenant v. Trump*, Order Granting Temporary Restraining Order; Order to Show Cause Re Preliminary Injunction, No. 3:18-cv-06810-JST (N.D. Cal. Nov. 19 2018) <https://www.aclu.org/legal-document/tro-granted-ebsc-v-trump>.

<sup>3</sup> INA § 208(a)(1).

<sup>4</sup> See e.g., *Huang v. I.N.S.*, 436 F.3d 89, 100 (2d Cir. 2006); *U.S. v. Malenge*, 294 Fed.Appx. 642, 645 (2008); *Lin v. Gonzales*, 445 F.3d 127, 133-34 (2d. Cir 2006) (citing cases from the Board of Immigration Appeals and the First, Ninth, and Eleventh Circuits).

<sup>5</sup> See e.g., *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (“This Court has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” (internal quotations omitted)).

<sup>6</sup> See *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 at 71, Art. 14 (1948); *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 31.

legal precedent weighing against this Proclamation, it is no wonder that a federal judge issued a temporary restraining order against this Proclamation just ten days after it went into effect.<sup>7</sup>

Not only is this policy indefensible on legal grounds, but it is also indefensible on moral grounds. Like refugees, asylum seekers come to this country because they are fleeing for their lives. Our rigorous vetting process requires that asylum seekers demonstrate past persecution or a well-founded fear of persecution before receiving safe harbor.<sup>8</sup> Our existing laws carefully protect our national security by excluding anyone reasonably deemed a danger to the United States from receiving asylum.<sup>9</sup> Yet, your Presidential Proclamation throws out our carefully crafted asylum system in favor of a blanket rule that will force many asylum seekers to return home. There, they may face the real risk of rape, torture, or worse. Already, there are credible reports that your administration has deported asylum seekers to their death.<sup>10</sup> This Presidential Proclamation will only add to your shameful record of sending asylum seekers back to dangerous conditions in their home country.

Your administration has systematically sought to make it nearly impossible for anyone to gain asylum in our country. You have previously terminated programs that allowed some people fleeing persecution to apply for protections from within their home country.<sup>11</sup> Those asylum seekers now have no choice but to brave the long and dangerous journey to our borders in order to receive refuge. When they arrive, they are already faced with often insurmountable obstacles, such as a lack of legal information and representation. Your Proclamation will now force these asylum seekers, sometimes lost in the desert without water, to find a port of entry and have their claims evaluated.<sup>12</sup> But when asylum seekers arrive at ports of entry, they are rebuffed and told to wait – sometimes for days or weeks.<sup>13</sup> The Department of Homeland Security’s Inspector General recently found that Customs and Border Protection’s practice of forcing asylum seekers to wait at ports of entry for long periods before entering causes some individuals seeking protection to enter the United States between ports of entry.<sup>14</sup> If this continues, our asylum system will be one that no one can ever access or enter, no matter where along our southern border they arrive.

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<sup>7</sup> See *East Bay Sanctuary Covenant v. Trump*, Order Granting Temporary Restraining Order; Order to Show Cause Re Preliminary Injunction, No. 3:18-cv-06810-JST (N.D. Cal. Nov. 19 2018) <https://www.aclu.org/legal-document/tro-granted-ebsc-v-trump>.

<sup>8</sup> See INA § 208(b)(1)(B)(i).

<sup>9</sup> See INA § 208(b)(2)(A)(iv).

<sup>10</sup> See e.g., Sarah Stillman, *When Deportation is a Death Sentence* New Yorker (Jan. 15 2018) <https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>.

<sup>11</sup> Elise Foley and Roque Planas, *Trump Left Nearly 4,000 Applicants For Central American Refugee Program Stranded* Huff. Po. (Apr. 30 2018) [https://www.huffingtonpost.com/entry/central-american-minors\\_us\\_5ae1f199e4b055fd7fc9608a](https://www.huffingtonpost.com/entry/central-american-minors_us_5ae1f199e4b055fd7fc9608a).

<sup>12</sup> Presidential Proclamation § 2(b).

<sup>13</sup> See e.g., Robert Moore, *At the U.S. Border, Asylum Seekers Fleeing Violence Are Told to Come Back Later* Wa. Po. (June 13 2018) [https://www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe\\_story.html?utm\\_term=.9d15460fa096](https://www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe_story.html?utm_term=.9d15460fa096); Justin Glawe, *Immigrants Following Trump’s Asylum Order Turned Back by Border Patrol* Daily Beast (Nov. 12 2018) <https://www.thedailybeast.com/immigrants-following-trumps-asylum-order-turned-back-by-border-patrol>.

<sup>14</sup> Department of Homeland Security Office of Inspector General, *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Sept. 27 2018) at 7 <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>

Those asylum seekers who do not follow the procedures laid out in this Proclamation will be forced to choose between their own physical safety and that of their family. Many people fleeing persecution leave their families behind while they apply for asylum, with the intention of bringing them to safety in the United States once they win asylum. For this reason, the law enables people who receive asylum to bring their family members to live with them in peace in the United States.<sup>15</sup> But this Presidential Proclamation means that many asylum seekers who previously would have been eligible for asylum will now only be eligible for less robust legal protections with requirements that are harder to satisfy, like withholding of removal.<sup>16</sup>

An asylum seeker granted withholding of removal is generally barred from bringing to the United States family members he or she may have left back in their home country.<sup>17</sup> Going forward, asylum seekers eligible only for withholding of removal will have to decide whether to remain in the United States in safety while their loved ones face grave risks, or whether to brave persecution at home in order to reunite with their family. For those families who entered together, each member will have to file their claims individually, which could increase the overall volume of claims before the system. Relatedly, parents will not be able to claim status on behalf of their children, which can result in one family member being granted relief and others being deported.

Finally, your Presidential Proclamation will harm our national interests and weaken our country's security. For starters, this Proclamation will serve as proof to our allies and adversaries alike that our President is unable to distinguish between real and imagined threats. It is simply illogical to argue that a nation of over 300 million people faces a mortal threat from people fleeing for their lives, many of whom are women and children.<sup>18</sup> A President cowed by asylum seekers cannot effectively lead our nation on the world stage.

In the long term, America benefits from a more stable world. Many asylum seekers arrive at our borders because of instability in their home countries. Yet, you have repeatedly undercut programs that would address the root causes of immigration. For example, you proposed cutting funding for global humanitarian assistance for the upcoming fiscal year by one-third as compared to last year.<sup>19</sup> You have also proposed reducing the Migration and Refugee Assistance account by nearly one-fifth.<sup>20</sup> Not only are you failing to address the regional crisis causing people to come to our borders seeking asylum, but now your Presidential Proclamation will force thousands of asylum seekers to return home. This will only further destabilize these countries.

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<sup>15</sup> INA § 208 (b)(3)(A).

<sup>16</sup> See *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

<sup>17</sup> See *Arif v. Mukasey*, 509 F.3d 677, 681 (5<sup>th</sup> Cir. 2007) (discussing cases).

<sup>18</sup> See e.g. Andrew Buncombe, *These Are the Migrant Women and Children Donald Trump Is Sending the Army to Protect America From* The Independent (Oct. 25 2018)

<https://www.independent.co.uk/news/world/americas/migrant-caravan-trump-immigrant-us-army-mexico-children-midterms-2018-a8601736.html>.

<sup>19</sup> Rhoda Margesson, *Overview of the Global Humanitarian and Displacement Crisis* Congressional Research Service (Sept. 20 2018)

<http://www.crs.gov/Reports/IF10568?source=search&guid=0d79a1343d98406d8793c1e86a1908e9&index=3>.

<sup>20</sup> Susan B. Epstein, Marian L. Lawson and Cory R. Gill, *Department of State, Foreign Operations and Related Programs: FY2019 Budget and Appropriations* Congressional Research Service (Oct. 1 2018)

<http://www.crs.gov/Reports/R45168?source=search>.

Closer to home, just like the Executive Order targeting Muslims and refugees caused chaos at our nation's airports, this Proclamation is likely to cause chaos at our ports of entry when asylum seekers arrive. The Proclamation will only add to the number of asylum seekers waiting at our southern border for their chance to present their claims. Furthermore, it will add to backlogs and delays in immigration courts, not reduce them.

Your decision to bar asylum seekers from receiving safety in the United States recalls some of the darkest moments in our nation's history. It evinces a complete disregard for our values, our national security, and our laws. We urge you to reverse course immediately and revoke this Proclamation.

Sincerely,



RICHARD BLUMENTHAL  
United States Senate



THOMAS R. CARPER  
United States Senate



EDWARD J. MARKEY  
United States Senate



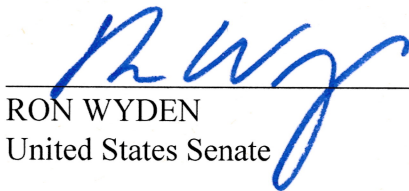
KIRSTEN GILLIBRAND  
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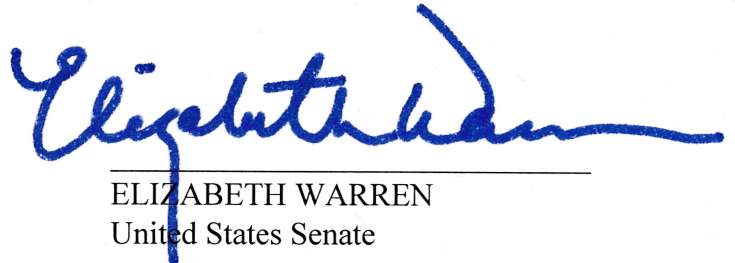
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*Jeffrey A. Merkley*

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