From:		@state.gov>
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**Sent:** Friday, April 24, 2020 6:23 PM

To:

Cc: @state.gov;

**Subject:** Question re asylum laws and policy

**Follow Up Flag:** Flag for follow up

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Good evening,

As you know, your questions (to provide a detailed explanation of how the policy comports with domestic and international legal obligations towards asylum seekers) covers issues that have involved significant interagency coordination from the outset. After further interagency coordination on these questions, we understand that the Department of Homeland Security recently submitted to Congress the Administration's answers to these and other questions. Accordingly, we are forwarding the relevant information.

Stay well,

QUESTION: A detailed explanation of how this policy comports with domestic and international legal obligations towards asylum seekers.

## **RESPONSE:**

**Domestic Law Obligations**: 42 U.S.C. § 265 allows the Secretary of the Department of Health and Human Services ("HHS") to "prohibit, in whole or in part, the introduction of persons" into the United States to protect the public health of the United States. The Secretary of HHS has delegated this authority to the Director of CDC. Specifically, when introducing certain persons into the United States increases the risk of spreading communicable disease into and through the United States such that a suspension of their introduction "is required in the interest of the public health," the statute provides that the CDC Director may "prohibit, in whole or in part, the introduction of persons . . . from countries or places as he shall designate in order to avert [the spread of the disease within the United States], and for such period of time as he may deem necessary for such purpose."

Invoking this authority, the CDC Director suspended the introduction of all persons who would need to be held in congregate settings at land Ports of Entry ("POEs") or Border Patrol stations at or near the United States border with Canada or Mexico. The Director determined

that this order was necessary to protect against a COVID-19 outbreak in POEs and Border Patrol stations and also necessary to prevent further introduction of COVID-19 into the United States. The Director found that many individuals held in congregate settings by CBP are held in close proximity to one another for hours or days, and that CBP facilities are not equipped to quarantine or isolate these persons or allow them to practice social distancing, as required to limit transmission of COVID-19. The Director also found that POEs and Border Patrol stations are not designed to deliver the type and level of care that COVID-19 patients require. COVID-19 outbreaks in CBP custody would lead to transfers of persons to local health care organizations, which would exhaust already overburdened local resources at a time when ensuring the availability of healthcare resources is a critical component to the Federal government's public health response to COVID-19. Lastly, a COVID-19 outbreak among CBP personnel could lead to personnel shortages, which could slow CBP's ability to process shipments of much needed cargo and medical supplies into the United States and could present serious border security vulnerabilities.

When the CDC Director issues such a public health order, CBP is under a statutory obligation to assist the Director in carrying out the order. Specifically, 42 U.S.C. § 268 provides: "It shall be the duty of the customs officers [including CBP officers and agents] . . . to aid in the enforcement" of CDC orders and quarantine rules.

The CDC Order contains the following exceptions: (1) The Order does not apply to U.S. citizens and legal permanent residents and their spouses and children, members of the armed forces and their spouses and children, or persons from foreign countries who hold valid travel documents and are not otherwise subject to travel restrictions, or persons who otherwise would not be held in congregate settings in CBP custody; (2) The Order generally does not apply to persons entering the United States at airports or seaports; (3) The Order does not apply where a CBP officer determines, based on consideration of significant law enforcement, officer and public safety, humanitarian, or public health interests, that the order should not be applied to a particular person. Further, the order does not apply to persons that are likely to be tortured in the country to which they otherwise would have been sent.

**International Law Obligations**: Stopping the introduction of people and articles from COVID-19-risky locations is indispensable to protecting our public health and the national security of the United States. The Administration's policy comports with our domestic law obligations concerning asylum seekers. As for our international obligations, the Supreme Court has noted 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. *See Medellín v. Texas*, 552 U.S. 491, 504—06 (2008); *Whitney v. Robertson*, 124 U.S. 190, 194 (1888).

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