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The Honorable Representative Zoe Lofgren
Chair, House Subcommittee on
Immigration and Citizenship
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Subject: Union Statement on the Current State of the US Refugee Program

Dear Chairwoman Lofgren:

Thank you for affording us the opportunity to submit this statement for the record of the Subcommittee’s recent hearing on February 27, 2020, regarding the Current State of the US Refugee Program. We offer this statement in our capacity as the labor organization representing over fourteen thousand (14,000) employees of US Citizenship and Immigration Services (USCIS) within the Department of Homeland Security. Our statement represents the views of our members, and should not be construed as the position of USCIS or the personal view of any employee speaking in their official capacity.

This month marks the fortieth anniversary of the Refugee Act of 1980 -- the landmark legislation that codified our Country’s international treaty obligations under the 1951 International Refugee Convention relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees -- which laid the foundation for almost four decades of American leadership in the global refugee protection system. On this important occasion, we take the opportunity reflect upon the current state of the US Refugee Program from the unique perspective of the employees of the USCIS International and Refugee Affairs Division (IRAD) — formerly the Refugee Affairs Division, Our operational component — Refugee and International Operations (RIO) — houses the Refugee Officer Corps, which is made up of an elite cadre of highly trained Refugee Officers whose mission is to travel the globe to interview and vet refugee applicants to determine

whether they are eligible for admission to the United States. Refugee Officers have dedicated their careers and their lives to work towards protecting the world's most vulnerable populations of refugees worldwide and to safeguarding our homeland and its promise of safe haven from persecution. Today, with an historically-low Refugee Admissions Ceiling, and the subsequent diversion of resources from our primary mission, the very identity and purpose of the US Refugee Program is being called into question.

From Fiscal Year (FY) 2009 to FY 2016, the annual Refugee Admissions ceiling remained fairly steady, ranging from 70,000 to 85,000 refugees. The Refugee Corps was fully engaged in processing refugees, focusing its efforts on meeting the ceiling while upholding high standards of security and integrity. Under the previous administration, the refugee admissions ceiling for FY 2017 was set at 110,000 to address the urgent global crises occurring in locations like Syria and Latin America. To meet this ceiling, USCIS detailed qualified personnel from other operational units to augment the Refugee Corps. Officers were expected to travel overseas to conduct refugee interviews three quarters per fiscal year, while rotating back to Washington DC one quarter to work on domestic projects and workloads.

With the change of administration in January 2017, overseas refugee processing was virtually paused for an entire quarter and the ceiling reduced to 50,000, pursuant to Executive Order 13780. Without any rational justification, a travel ban was instituted on a number of major refugee-producing countries, including Iraq and Syria. Further, the Administration ordered a 120-day review of the entire US Refugee Admissions Program (USRAP), suspending travel of refugees and decisions on applications for refugee status¹. This situation called for another dramatic shift in Agency resources, marking the first time Refugee Officers were deployed in large numbers to the Asylum Division to adjudicate Asylum cases. Every fiscal year since then, the ceiling has been lowered even further. Finally, in FY 2020, the ceiling was set at an all-time low of just 18,000 refugees allowed to be admitted to the US.² No longer can we consider our nation the world's beacon of hope for refugee protection. For the first time since the adoption of the refugee act of 1980, the US no longer leads the world in refugee resettlement. Although Canada has just over 11% of the U.S. population, it has overtaken the United States as the number one resettlement country in the world.

In response to these dramatic changes, our Union filed an *Amicus Curiea* ("Friend of the Court") brief in support of respondents challenging EO 13780, arguing that the Administration's actions undermined the critical mission of the US Refugee Program and the refugee officers who are our members. We argued that these actions were wholly unwarranted given the already robust nature of the program's adjudications and vetting process.³

¹ <https://www.federalregister.gov/documents/2017/03/09/2017-04837/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states>

² https://www.wrapsnet.org/documents/Graph%20Refugee%20Admissions%20FY2020_01_31_.pdf; <https://www.nbcnews.com/politics/immigration/trump-administration-sets-lowest-cap-u-s-refugee-admissions-four-n1059366>

³ Ref. Nos. 16-1436 and 16-1540 in the Supreme Court of the United States: Donald J. Trump v. International Refugee Assistance Project and Donald J. Trump v. State of Hawaii; Brief of Amicus Curiea National CIS Council 119 in Support of Respondents. September 7, 2017

Today, the job our members were hired to do — conducting overseas refugee adjudications — has become one of the lowest priorities of USCIS. Since the beginning of this administration, we have watched this program’s demise: from the dramatic decrease in the number of refugee admissions, to the Division’s failure to retain quality officers, to the altering of the mission itself. At first this appeared to be the “normal” ebb and flow of workload and operational priorities with changing political leadership — as is the nature of the federal government. As career civil servants, many of us are familiar with the shift in priorities and resources that comes with a new administration. However, as increasingly restrictive policies were put into place, it became clear that the Agency’s objective was no longer to protect refugee and asylum seekers at home and abroad, but to deter them from coming to the United States in the first place.

With a constantly fluctuating workforce, the Refugee Corps currently includes about 140 refugee officers (not including supervisory, administrative and support staff) — down from a high of over 200 at the beginning of FY 2017. In the first quarter of FY2020 no refugee officers traveled overseas to conduct refugee adjudications. In the second quarter, about a third of the officers have been deployed on overseas refugee processing circuit rides, while almost half have been assigned to assist the USCIS Asylum Officer Corps with the screening of asylum seekers at the Southern border of the United States and the remainder either in training or handling tasks in the program’s home office in Washington DC. With the dramatically reduced overseas operations, and the assignment of many employees to domestic Asylum caseloads, only a small number of officers are available to work on resolving the tens of thousands of cases in the backlog of refugee applications that have already been interviewed but are awaiting security clearances and the issuance of final decisions.

Since 2017, the Refugee Corps has been tasked with assisting our counterparts in the Asylum Division to a much greater extent than ever before. The United States has an obligation to fairly and efficiently process the applications of asylum seekers whether they are seeking admission from a refugee camp abroad or at borders or ports of entry. However, the effective management of one humanitarian crisis should not come at the expense of the other. Arguably, our government should have the ability to respond to the domestic asylum crisis *without* diminishing our capacity to fulfill our international burden-sharing obligations with respect to the resettlement of refugees from abroad.

We are deeply concerned that institutional capacity of the Refugee Corps has been adversely affected — with our many of our members diverted from international refugee adjudications to support the Asylum Division in a mission that appears to have tragically shifted from one of refugee protection to deterrence.

Since July 2019, the Washington DC office of Refugee and International Operations (RIO) has, for all intents and purposes, become a call center where Refugee Officers conduct Asylum Pre-Screening (Credible Fear and Reasonable Fear) interviews. During this period, the Administration has implemented harmful and unlawful new programs aimed at deterring asylum seekers arriving at the Southern Border — such as the Interim Final Rule (IFR) that bars asylum to applicants who transited third countries en route to the United States. In September 2019, our Union filed an *Amicus Curiae* (“Friend of the Court”) brief in US District Court in Washington DC, in support of plaintiffs opposing the IFR Third Country Transit Bar on the grounds that the

policy violates US and international laws that afford the right of due process and humane treatment to asylum seekers.⁴

In recent weeks, Refugee Corps officers have been assigned to conduct interviews under the Administration's Migrant Protection Protocol (MPP) policy (also known as the "Remain in Mexico" policy). Under the MPP program, asylum seekers are made to remain in dangerous conditions across the border, with little or no means of support, while awaiting their hearings in US Immigration Courts. Only a small number of asylum seekers placed in MPP are permitted to await their hearings in the United States after meeting an exceptionally high standard of proof that they would be persecuted or tortured if returned to Mexico.

In June 2019, our Union filed an *Amicus Curiae* brief in the US Court of Appeals for the 9th Circuit, in support of plaintiffs opposing MPP on the grounds that the policy denies due process to asylum seekers and violates the "non-refoulement" provisions of US and international law that prohibit the return of refugees to territories where they might be persecuted or tortured.⁵

Refugee Corps officers may also be assigned to conduct interviews under the Administration's new Asylum Cooperative Agreement (ACA) with Guatemala whereby the United States may deport asylum seekers to Guatemala for the purpose of either applying for asylum in that country or requesting repatriation to the countries from which they fled. Individuals placed in the ACA proceedings are not afforded any opportunity to have their asylum claims heard by an asylum officer or an immigration judge. They are only screened to determine whether they might meet an exceptionally high standard of proof that they will be persecuted or harmed in Guatemala. It is anticipated that similar ACA programs will be implemented in the near future, for the deportation of asylum seekers to Honduras and El Salvador.

Our Union has publicly opposed the Administration's Asylum Cooperative Agreement with Guatemala policy as an unlawful and inhumane policy that flies in the face of US and international laws and humanitarian standards.⁶

Our members in the USCIS Refugee Officer Corps feel ethically and morally compromised by their assignment to administer the Administration's harmful and unlawful policies that are clearly intended to deter, not protect, asylum seekers. Moreover, they fear that as they take on these additional Asylum Program workloads on a long-term basis the capacity of the Refugee

⁴ Ref: Case: 19-16487, 10/15/2019 in the United States Court of Appeals for the Ninth Circuit. *East Bay Sanctuary Covenant v. William P. Barr*. Brief for Amicus Curiae National CIS Council 119 in Support of Appelles.

See also: BuzzFeed News: "Asylum Officers Are Urging A Court to Strike Down Trump's Asylum Ban and Saying it 'Rips at the Moral Fabric of our Country,'" by Hamed Aleaziz, October 15, 2019.

⁵ Ref. Case: 19-15716, 06/26/2019 in the United States Court of Appeals for the Ninth Circuit. *Innovation Law Lab v. Kevin McAleenan*. Brief of Amicus Curiae Local 1924 in Support of Plaintiffs-Appellees.

See also: Washington Post: "USCIS Asylum Officers: Trump's 'Remain in Mexico Policy' Threatens Lives," by Maria Sacchetti, June 27, 2019.

⁶ Ref. BuzzFeed News: "The Trump Administration Will Deport People Seeking Asylum in the US to Guatemala Without Them Seeing a Lawyer First," by Hamed Aleaziz, November 20, 2020

Corps to support the mission of the U.S. Refugee Admissions Program will be greatly diminished.

Having been sworn to uphold the Constitution and laws of the United States (including the Refugee Act of 1980, which we celebrate this month) our members strongly believe that harmful policies such as the MPP, the IFR on the Third Country Transit Bar and the ACA programs are incompatible with the legal and humanitarian traditions of our Country. While Refugee Officers entered on duty in this position with the intention of providing life-saving protections to those in need, we find ourselves implementing a policy in which refugees and asylum seekers are being placed in harms' way.

We are alarmed that the political leadership of USCIS leadership has been unable to answer honest questions raised by the Union and its members about the legal and moral basis for these policies and programs — perhaps because there is none. We are also alarmed by the lack of transparency and consistency as to how U.S. Customs and Border Protection (CBP) chooses to implement these programs in the first place.

Quite concerning is the fact that our members are now interviewing applicants who were initially returned to Mexico under MPP but are now referred to us after expressing fear of returning to Mexico during their court hearing. After individuals have spent several months in Mexico, they often qualify for protection from being returned to Mexico due to the severity of the harm they have either experienced or fear. Refugee and Asylum officers regularly see cases in which the harm applicants experienced at the hands of cartels and Mexican officials is so serious they merit protection under the Convention Against Torture — one of the forms of protection with the highest legal standard and burden of proof. These cases illustrate why the MPP program is unlawful and harmful and should never have been implemented in the first place.

While the media has given this topic extensive coverage, making the American public aware of the atrocities committed at the U.S.-Mexican border, refugee and asylum officers hear these stories on a daily basis. Yet, their hands are tied because they are not permitted to properly adjudicate asylum claims as intended by Congress in the laws it made. The crisis at the border is real, but it is largely a tragic consequence of the Administration's precipitous actions. Conducting asylum screenings under these conditions was not the job our members signed up for — but it is now their reality, and they feel compelled to speak out about it, through their Union.

Our members are conducting these interviews in an office building less than a mile from Capitol Hill. All day long, they must listen to stories of fear and desperation over the telephone, while telling asylum seekers that they no longer qualify under the new rules and must return to dangerous situations in neighboring countries. All the while, these dedicated civil servants ask why they aren't out in the world doing the work the government recruited them to do: offering protection, new life and hope to refugees for whom our country has been a beacon of hope since the Second World War. Tragically, tens of thousands of refugees who have already been interviewed, vetted and awaiting final approval for admission to the United States have been caught in a cruel legal limbo with no clear end in sight.

Last Friday, February 28, 2020, the US Court of Appeals for the 9th circuit court ruled that the MPP program “‘was invalid in its entirety’ due to inconsistencies in the law and should be

‘enjoined in its entirety.’⁷” Significantly, the Court cited to and quoted from our Union’s *Amicus Curiae* brief in the decision, at pages 47-8:

“Local 1924 of the American Federation of Government Employees, a labor organization representing “men and women who operate USCIS Asylum Pre-Screening Operation, which has been responsible for a large part of USCIS’s ‘credible fear’ and ‘reasonable fear’ screenings, and for implementing [the MPP],” also submitted an amicus brief. Local 1924 Amicus Brief at 1. Local 1924 writes in its brief:

Asylum officers are duty bound to protect vulnerable asylum seekers from persecution. However, under the MPP, they face a conflict between the directives of their departmental leaders to follow the MPP and adherence to our Nation’s legal commitment to not returning the persecuted to a territory where they will face persecution. They should not be forced to honor departmental directives that are fundamentally contrary to the moral fabric of our Nation and domestic legal obligations.

In its ruling the Court ordered the government to halt the program immediately. Later that evening, however, the Court granted the government a stay of the injunction, allowing the parties to submit further documentary evidence. The court’s decision highlights and validates the concerns that many of our members have regarding MPP.

Many refugee officers have left the Corps as a result of these dramatic changes and the resulting upheaval that has been visited upon the US Refugee Program — concluding that they could no longer be a part of what was once a world class refugee protection operation. Those who remained had hoped that the program would be renewed and adequately resourced after it was reviewed by the Administration and Congress — but those hopes appear to have been frustrated with the lowering of the refugee admissions ceiling for FY 2020 and the assignment of many refugee officers to support the domestic Asylum program.

With all of the changes made by the Administration to severely limit refugee admissions and restrict and deter asylum seekers from availing themselves of our country’s protection, our government’s capabilities to resume a generous refugee program may very well have been crippled. The Refugee Corps is losing important institutional knowledge and expertise that was built up over decades, and the Refugee Asylum and International Operations directorate (RAIO) is now recruiting less qualified individuals (see job announcements hiring asylum officers with much less experience and education at lower pay grades). Our program’s once extensive legal and technical trainings have been truncated and are far less comprehensive — with increasing emphasis on deterrence rather than protection. Our country’s historical refugee protection mission is no longer a priority — even though there are now more than 70 million refugees and forcibly displaced persons worldwide. These changes should be of concern for anyone who cares about the future of refugee resettlement and the ability of the US to play a role in this work of international collaboration and burden-sharing going forward.

⁷ [nbcnews.com/news/us-news/federal-appeals-court-rules-against-trump-two-major-immigration-cases-n1145141](https://www.nbcnews.com/news/us-news/federal-appeals-court-rules-against-trump-two-major-immigration-cases-n1145141); <https://www.nbcnews.com/news/us-news/court-reverses-own-decision-trump-s-policy-require-migrants-wait-n1145771>

On behalf of our dedicated members who serve in the USCIS Refugee and Asylum Officer Corps, our Union implores this committee and all members of the Congress of the United States to put an end to this Administration's harmful and unlawful asylum policies and enact measures to restore the integrity of the US Refugee Program and ensure the government's strict compliance with its domestic laws and international treaty obligations with respect to the protection of refugees and asylum seekers.

respectfully submitted,

[*signed* – Michael A. Knowles]

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