January 6, 2020

**Department of State**
The Honorable Michael R. Pompeo
Secretary of State
US Department of State
2201 C Street, NW
Washington, DC 20230

The Honorable Carol Thompson O'Connell
Principal Deputy Assistant Secretary
Bureau of Population, Refugees, and Migration
2201 C Street, NW
Washington, DC 20230

**Department of Health and Human Services**
The Honorable Alex M. Azar, II
Secretary of Health and Human Services
US Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Lynn Johnson
Assistant Secretary
Administration for Children and Families
Mary E. Switzer Building
330 C Street, SW
Washington, DC 20201

**Department of Homeland Security**
The Honorable Kevin K. McAleenan
Acting Secretary of Homeland Security
Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20016

To the Honorable Michael R. Pompeo, Carol Thompson O'Connell, Alex M. Azar II, Lynn Johnson, and Kevin K. McAleenan, Refugee Council USA (RCUSA) submits these comments in response to Executive Order 13888 (EO), issued September 26, 2019. As a threshold matter, we oppose the EO,
which, as we have said previously in a statement published on September 27, 2019, is contrary to the long-held American value of welcoming refugees because it is a potential catalyst for unfair and discriminatory actions against refugee families. We are also deeply concerned by the significant negative operational implications of granting state and local governments unprecedented power over refugee-related processes and responsibilities mandated to the federal government, placing refugee resettlement matters in a sensitive political arena rather than their proper framework of humanitarian crises. We strongly recommend suspending implementing the EO until clear procedures are put in place, including obtaining public comments, in accordance with the Administrative Procedure Act.

Recognizing, however, that the federal government is implementing the EO notwithstanding widespread objection, we offer these comments to the Secretaries of State, Health and Human Services, and Homeland Security (the “agencies”).

The US resettlement program is rooted in strong and active partnerships between local, state, and federal governments and private non-profit resettlement agencies to ensure the successful welcome and integration of refugees. Implementation of the EO—which has been disjointed and at times incomprehensible—is disrupting these partnerships, frustrating the statutorily mandated processes for refugee resettlement, and threatening resettlement capacity. We fear that refugees themselves will ultimately suffer the consequences.

Notwithstanding potential constitutional and statutory issues with the EO that are being raised elsewhere, the EO also raises major operational issues, disrupting and burdening the program and causing operational uncertainty and confusion. The federal government should not have begun implementing the EO absent an opportunity for public comment, a meaningful evaluation of those comments, and formal implementation procedures that account for them. RCUSA is deeply concerned both by our members’ experiences with implementation to date, and by the additional harms likely to flow if implementation continues in the same or similar fashion.

The Refugee Veto Executive Order and its Impact

Executive Order 13,888 was signed by President Trump on September 26, 2019. The order, entitled “Enhancing State and Local Involvement in Refugee Resettlement,” directs that within 90 days of signing, “the Secretary of State and the Secretary of Health and Human Services shall develop and implement a process by which, consistent with 8 U.S.C. § 1522(a)(2)(D), the State and the locality’s consent to the resettlement of refugees under the Program is taken into account to the maximum extent consistent with law.”

However, the statute to which the EO refers also requires the director of the Office of Refugee Resettlement (ORR) to “develop and implement, in consultation with representatives of voluntary agencies and State and local governments, policies and strategies for the placement and resettlement of refugees within the United States.” The statute further provides that:


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Such policies and strategies, to the extent practicable and except under such unusual circumstances as the Director may recognize, shall... insure that a refugee is not initially placed or resettled in an area highly impacted (as determined under regulations prescribed by the Director after consultation with such agencies and governments) by the presence of refugees or comparable populations unless the refugee has a spouse, parent, sibling, son, or daughter residing in that area.\(^2\)

As described in greater detail below, the EO substantially undercuts this framework, which is designed to foster (and traditionally has fostered) active and responsive coordination and communication between the federal government, state and local governments, and non-governmental resettlement agencies to best ensure success for those resettled.

*Strains on resettlement agencies:* The onus of obtaining consent in a very brief time period from 50 states and literally hundreds of localities has fallen to the resettlement agencies and their affiliate offices, without sufficient guidance from the Bureau of Population, Refugees, and Migration (PRM). Resettlement agencies have received little, and often contradictory and changing, guidance as to who needs to offer consent, what full consent entails and how the program will be anticipated to adjust.

*Negative impact on consultation process:* This EO was issued under the premise of enhancing the communication between localities, states, and resettlement agencies; however, resettlement is already rooted in established communication protocols. In fact, the written consent process, which is not only outside of existing communication protocols but lacking in clear guidance could be damaging to these statutory and longstanding processes and procedures. It could similarly potentially damage the resettlement agencies themselves, which ultimately, will result in significant harm to refugees.

Federal regulation 45 C.F.R. §400.5(h) sets forth the current consultation mandate. Consultations are an interagency effort led by ORR and PRM in coordination with the State Refugee Coordinators,

whereby representatives of local resettlement agencies, local community service agencies, and other agencies that serve refugees meet with representatives of State and local governments to plan and coordinate the appropriate placement of refugees in advance of the refugees’ arrival.\(^3\)

The goals of these consultations are to bolster the smooth and successful integration and self-sufficiency of newly resettled refugees. Consultations are active conversations, wherein stakeholders ensure that resettlement agencies, and the communities of which they are a part, have the necessary capacity and resources for resettlement and the long-term success of refugees.

*Harm to resettlement agencies and refugees:* This EO negatively impacts resettlement agencies, creating enormous confusion and uncertainty and likely forcing office closures and suspensions. Three

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consecutive years of historically low presidential determinations have already resulted in closures across the country, which we detailed in our report “Where are the Refugees.” The EO implementation, coupled with the NOFO, may skew timelines for resettling refugees, obfuscating the consultation process and thereby threatening the success of refugees and the communities that welcome them. The need to annually obtain advance consent from not only 50 state governors but literally hundreds of local officials prior to welcoming refugees makes it exceedingly difficult for offices to plan their staffing needs accordingly — particularly with funding linked to consent. Successful integration is dependent on creating the best possible match — achieved in our traditional resettlement program through well-resourced, stable offices across the county in diverse communities.

These closures mean a loss of necessary relationships between community members, law enforcement, churches, schools, employers and the business community, and others who help facilitate resettlement. With the potential of losing counties and cities for initial resettlement, those who do maintain their dedication to welcome will require additional support to ensure that they are able to appropriately meet the needs of refugees. Again, as explored in our report:

This uncertainty, coupled with the progressive reduction of refugee admissions numbers and reduced infrastructure, places a strain on the remaining resettlement network and has forced many agencies to close programs, reduce staff, and lose valuable expertise on issues important for successful resettlement such as refugee protection, trauma care, and multicultural awareness.

The shrinking of the program in some locales, due to reduced admissions and lack of consent, may force refugees with family in those areas to make the unbearable choice between reuniting with their families and loved ones, or seeking access to crucial resources such as ESOL courses and job training in a locale distant from their families. Both family unity and these crucial resources are key ingredients to integration, self-sufficiency, and healing. A refugee needs both.

Recommendations

RCUSA strongly recommends that the federal agencies suspend implementation of the EO until they have engaged meaningfully in developing clear implementation procedures informed by public comments, in accordance with the Administrative Procedure Act. Failure to do so risks further damaging interagency and community relationships, losing essential resettlement infrastructure, and ultimately putting refugees’ wellbeing at risk.

Conclusion

As we in the United States await the full implementation of the EO, refugee lives remain at risk. According to the UN High Commissioner for Refugees (UNHCR), there are nearly 26 million refugees around the world, with less than 1 percent to be resettled to a safe third country. We know that when we

5 “Where are the Refugees.” 20.

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admit fewer refugees or disrupt the admission process, the lives of those seeking safety are made more precarious, and families remain separated. This EO represents a new kind of annual disruption, with potentially long-lasting, detrimental effects on the ability of the US to efficiently and successfully welcome refugees.

Refugees are vital members of our communities, bringing with them their resilience, skills, and dreams. They have contributed significantly to local economies across the country. Refugees are entrepreneurs, business owners, students, our neighbors, family members, and community leaders.

Refugee Council USA

RCUSA was formed in 2000 to facilitate greater collaboration between and among the nine national US resettlement agencies. Today, RCUSA has grown into a coalition of 26 US-based nonprofit organizations which work to promote excellence in US refugee resettlement. RCUSA is the only organization of its kind in the US, bringing together diverse stakeholders advocating for just and humane refugee laws and policies, and the promotion of dialogue and communication among government, civil society, and those who need protection and welcome.

RCUSA works at the intersection of education, advocacy and service provision, and as such, offers a unique perspective on what policies are most effective for those seeking protection and those who offer support.

Signed,

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