

The Honorable Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

February 4, 2020

Dear Secretary Pompeo:

We, the undersigned 157 organizations, demand that you rescind the final regulation published Friday, January 24, 2020, in the Federal Register, Visas: Temporary Visas for Business or Pleasure, RIN: 1400-AE96. This regulation is an attack against pregnant people living in countries without access to the Visa Waiver Program and immigrant women, particularly those of color, and with low incomes. The Department of State (“Department”) justifies these changes to temporary visas in the name of national security, when in reality they are thinly veiled racist and xenophobic attacks on the health, dignity, and well-being of pregnant people in other, largely non-European countries and immigrant women of color and their families. The consequences of this regulation will not only restrict the freedom of movement of pregnant people globally, but also stoke fear and confusion in immigrant communities who are already subject to the brutal whims of an administration that embraces blatantly discriminatory policies against immigrants and people of color.

This country has a long history of undermining and controlling the agency and bodily autonomy of women of color. During slavery, Black women were separated from their families, subject to physical and sexual violence, even when pregnant, and were subjugated to forced pregnancy.¹ This country’s obsession with controlling the reproductive choices of women of color soon extended to women of color who immigrated to the United States. From the 1920s to the 1970s, government institutions subjected Mexican-American women,² Japanese American women,³ and countless other individuals who held marginalized identities to sterilization without consent.⁴ In our current day, Central American women seeking refuge in this country are detained,⁵ those who are pregnant are shackled and left to endure

¹ Pamela D. Bridgewater, *Ain’t I a Slave: Slavery Reproductive Abuse, and Reparations* 14 UCLA Women’s L.J. 89 (2005).

² Nicole L. Novak and Natalie Lira, *California Once Targeted Latinas for Sterilization* (March 22, 2018), <https://www.smithsonianmag.com/history/california-targeted-latinas-forced-sterilization-180968567/>.

³ Nancy Ordover, *American Eugenics: Race, Queer Anatomy, and the Science of Nationalism* Univ. of Minn. Press (2003).

⁴ Zakiya Luna and Kristin Luker, *Reproductive Justice*, 9 Ann. Rev. L. & Soc. Sci. 327 (2013).

(Though the intent of this letter is to focus on populations with a migration history to the U.S., we acknowledge that the U.S. government has also performed unauthorized sterilization on Native Americans, Puerto Rican women, people with disabilities, low-income individuals, and others who hold marginalized identities.)

⁵ Nora Ellman, *Immigration Detention is Dangerous for Women’s Health and Rights* (Oct. 21, 2019), <https://www.americanprogress.org/issues/women/reports/2019/10/21/475997/immigration-detention-dangerous-womens-health-rights/>.

pregnancy without adequate medical treatment,⁶ transgender women are sexually harassed and dehumanized,⁷ and survivors of violence seeking safety in the U.S. are denied asylum.⁸

This rule resembles other historical efforts to deny the mobility and autonomy of Asian women seeking to enter the United States. The Page Act of 1875, one of the first immigration laws of this country, explicitly aimed to limit the entry of women whom border officials deemed “immoral” and likely to engage in prostitution.⁹ In reality, it racially profiled Asian women seeking entry to the United States in an attempt to curtail the migration and growth of Asian families in the U.S. and undermined the dignity and autonomy of Asian women.¹⁰ At the border, Asian women were subject to severe interrogations about their true motives or potential “immoral purposes” for going to the U.S. and the means through which they would support themselves--questions with striking resemblance to those that would be asked of pregnant women seeking tourist visas under this final rule.¹¹ Just last week, a woman boarding a Hong Kong flight to Saipan was forced to take a pregnancy test before boarding the plane, a policy which the passenger states was explained to her as being requested by the Department of Homeland Security despite the lack of enumeration of such a policy on their website.¹² No person should be subject to such demeaning levels of scrutiny and coercion solely based on how they look and their perceived reasons for simply traveling to another country.

Similar to other regulations that this administration has promulgated, such as the expansion of public charge, this rule seeks to limit entry to this country to those who are white and wealthy. In giving consular officers the power to deny B nonimmigrant visas to those they “have reason to believe intends to travel for [the purpose of obtaining citizenship for their child],” this rule opens the door to racial and gender profiling as well as body shaming.¹³ The broad discretion given to consular offices may easily subject all women of reproductive age and pregnant persons to invasive and coercive questioning, procedures, and harassment. The burden is on the individual seeking the visa to rebut the consular officer’s presumption that the individual is pregnant, at which point the consular officer still has the power to deny a visa.¹⁴ In addition, the regulation would require individuals seeking these visas for the purpose of medical treatment to prove their ability to obtain medical needs and the finances to do so.¹⁵ Otherwise, they will be denied.¹⁶

⁶ Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 Calif. L. Rev. 1239Rights (2012).

⁷ Human Campaign, *Dismantling a Culture of Violence Understanding Anti-Transgender Violence and Ending the Crisis* (2019), https://assets2.hrc.org/files/assets/resources/2018AntiTransViolenceReportSHORTENED.pdf?_ga=2.104514304.1603303899.1580155785-1587892284.1580155785.

⁸ *Attorney General Denies Asylum to Victims of Domestic Abuse, Gang Violence* (Jun. 11, 2018), <https://www.npr.org/2018/06/11/618988483/attorney-general-denies-asylum-to-victims-of-domestic-abuse-gang-violence>.

⁹ Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 U.C. Davis L. Rev. 171 (2018).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Woman Forced to Take Pregnancy Test for Flight to Saipan* (Nov. 22, 2019), <https://www.saipantribune.com/index.php/woman-forced-to-take-pregnancy-test-for-flight-to-saipan/>.

¹³ Visas: Temporary Visitors for Business or Pleasure, 22 C.F.R. § 41 2020.

¹⁴ *Id.*

¹⁵ *Id.*

According to Foreign Affairs Manual guidance, pregnant applicants can receive a visa if they meet a high standard of evidence proving a medically complicated pregnancy and that appropriate medical treatment cannot be obtained where they live.¹⁷ In order to meet this higher burden, pregnant people may be subject to invasive and medically complicated questions by consular officers with no medical training, much less specific knowledge in obstetrics care. This is not the first time that we have seen government officials in this administration without any medical experience being required to ask intrusive questions about a person's reproductive health. Just last year, Scott Lloyd, the former director of the Office of Refugee Resettlement, [admitted](#) in public testimony to tracking and monitoring the menstrual cycles and pregnancies of young women in his custody in order to coerce them out of having abortions.¹⁸

Despite policy guidance that the Department issued in the Foreign Affairs Manual that attempts to give an impression of limited consular discretion, vague terms within this guidance still grant consular offices broad powers to interpret circumstances that may trigger enough presumption to deny B nonimmigrant visas.¹⁹ Additionally, decisions by consular officers are non-reviewable, preventing judges from reviewing such decisions. This not only could prevent a pregnant person from receiving life-saving medical treatment, but also sets a dangerous precedent for unchecked racial and gender profiling.

Under the current system for obtaining B nonimmigrant visas, consular offices can already deny these visas to individuals who demonstrate that their primary purpose to visit the United States is to give birth.²⁰ We find it disturbing that this rule would subject pregnant people and women of reproductive age from Africa, Central America, and the Middle East and most of South American and Asia to a level of scrutiny not imposed on men or immigrants visiting from generally wealthier and European countries. This regulation is unnecessary and only serves the administration's misogynistic, xenophobic, and racist policy agenda.

This rule will have numerous consequences on the ability of immigrant women to travel freely and to make the best decisions for themselves and their families. It will have a chilling effect on those choosing to come to the United States who simply want to visit their families. Already, immigrants and their communities in this country are subject to the fear and confusion created by this administration's numerous and cruel policy proposals. Due to fears of deportation, raids, and family separation, immigrants are foregoing needed health care, including reproductive health care. In one survey, nearly twenty-five percent of Latina/o respondents said they had a close family member or friend put off seeking health care due to fear of immigration issues and nearly twenty percent expressed the same fears seeking

¹⁶ *Id.*

¹⁷ U.S. Department of State, 9 Foreign Affairs Manual 402.2, <https://fam.state.gov/FAM/09FAM/09FAM040202.html>.

¹⁸ Nathaniel Wixel, *House Judiciary panel wants former Trump refugee director to clarify testimony* (Mar. 22, 2019), <https://thehill.com/policy/healthcare/435316-house-judiciary-panel-wants-former-trump-refugee-director-to-clarify>.

¹⁹ U.S. Department of State, 9 Foreign Affairs Manual 402.2, <https://fam.state.gov/FAM/09FAM/09FAM040202.html>

²⁰ Visas: Temporary Visitors for Business or Pleasure, 22 C.F.R. § 41 2020.

reproductive health care.²¹ In the same survey, thirty-seven percent of respondents stated that the political environment around immigration and race is having a negative impact on their health and wellbeing.²² One study found that Latinas experienced a significant increase in preterm births following the 2016 election.²³ Preterm births are linked to a wide range of negative health consequences.²⁴ This rule, in combination with other xenophobic policies, will certainly continue to cause stress and harm the health of immigrant women and their families in this country.

We demand that you rescind this regulation immediately. An administration that claims to value life and family would seek to affirm the autonomy and dignity of pregnant people instead of subjecting them to baseless scrutiny and profiling. An administration that values life and family must stop the separation of families at the border, refrain from interfering in the reproductive choices of pregnant unaccompanied minors, cease the denial of health care to those in detention, and withdraw proposals of public charge expansion that force immigrant families to make impossible choices about their health, immigration status, and ability to raise a family. Pregnancy is not, and never has been, a threat to national security. This rule is a violation of basic human rights and dignity for people of color and must be rescinded immediately.

Sincerely,

National Asian Pacific American Women's Forum (NAPAWF)
National Latina Institute for Reproductive Health
9to5, National Association of Working Women
A Better Balance
Abortion Access Force
ACCESS
Action Center on Race and the Economy
AIDS Alabama South, LLC
AIDS Foundation of Chicago
Alianza Nacional de Campesinas
All-Options
Allentown Women's Center
America's Voice
American Medical Student Association
Asian & Pacific Islander American Health Forum
Asian Americans Advancing Justice - Los Angeles
Asian Counseling and Referral Service
Asian Pacific American Labor Alliance, AFL-CIO

²¹ *Latino/a Voters' Views and Experiences Arounds Reproductive Health* (Oct. 4, 2018), https://www.latinainstitute.org/sites/default/files/NLIRH%20Survey%20Report_F_0.pdf.

²² *Id.*

²³ Barbara Benham, *Preterm births among U.S. Latinas increased after 2016 election* (July 22, 2019), <https://hub.jhu.edu/2019/07/22/donald-trump-election-increased-preterm-births-latinas/>.

²⁴ *Id.*

Association of Asian Pacific Community Health Organizations
Believers Bail Out
Black AIDS Institute
Black Women for Wellness
California Immigrant Policy Center
California Latinas for Reproductive Justice (CLRJ)
Casa San Jose
Cascade AIDS Project
Center for American Progress
Center for Constitutional Rights
Center for Law and Social Policy (CLASP)
Center for Reproductive Rights
CenterLink: The Community of LGBT Centers
Church World Service
Coalition of Labor Union Women
Colorado Organization for Latina Opportunity and Reproductive Rights
Community Catalyst
Community Midwives LLC
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
CORA- Colorado Organizations and Individuals Responding to HIV/AIDS
Disability Rights Education & Defense Fund
Dragonfly Birthworks
Education Justice Alliance
Empowering Pacific Islander Communities (EPIC)
End Domestic Abuse Wisconsin
Equal Rights Advocates
Equality California
Equality North Carolina
Equity Forward
Families Belong Together (FBT)
Families USA
Farmworker Association of Florida
FORGE, Inc.
Freedom for Immigrants
Freedom Fund, Inc.
Friends of Broward Detainees
Global Justice Center
Gutmacher Institute
Health Care for America Now (HCAN)
Healthy Kinder International
Hispanic Federation
Housing Works, Inc
Ibis Reproductive Health

If/When/How: Lawyering for Reproductive Justice
Immigrant Legal Resource Center
Immigration Hub
Impetus - Let's Get Started LLC
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Ipas
Jewish Women International
Justice in Aging
Keshet
Lakeshore Liberation
Lanai Community Health Center
Legal Voice
Maine Immigrants' Rights Coalition
Maine People's Alliance
MANA, A National Latina Organization
Marshallese Educational Initiative
Medical Students for Choice
Modern Military Association of America
MomsRising
Muslim Public Affairs Council (MPAC)
NAPAFASA
NARAL Pro-Choice America
National Abortion Federation
National Advocacy Center of the Sisters of the Good Shepherd
National Advocates for Pregnant Women
National Association of Social Workers (NASW)
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Asian Pacific Americans
National Council of Jewish Women
National Council on Independent Living
National Domestic Workers Alliance (NDWA)
National Equality Action Team
National Health Law Program
National Immigration Law Center
National Institute for Reproductive Health (NIRH)
National Korean American Service & Education Consortium (NAKASEC)
National Latinx Psychological Association
National LGBTQ Task Force
National Network for Immigrant and Refugee Rights
National Organization for Women
National Partnership for Women & Families
National WIC Association

National Women's Health Network
National Women's Law Center
National Working Positive Coalition
NETWORK Lobby for Catholic Social Justice
New York Immigration Coalition
Northwest Health Law Advocates (NoHLA)
Not Without Black Women
Oasis Legal Services
OCA - Asian Pacific American Advocates
Partnership for the Advancement of New Americans (PANA)
Physicians for Reproductive Health
Planned Parenthood Affiliates of California
Planned Parenthood Federation of America
Poder Latinx
Population Connection Action Fund
Positive Women's Network-USA
Pregnancy Options WI: Education, Resources & Support
Prevention Institute
Prism Health
Raising Women's Voices for the Health Care We Need
Reconstructing Judaism
Reconstructionist Rabbinical Association
Religious Coalition for Reproductive Choice
Reproductive Health Access Project
Sacred Beginnings
Services, Immigrant Rights & Education Network (SIREN)
Shriver Center on Poverty Law
Silver State Equality-Nevada
SisterLove Inc
SisterReach
South Carolina Appleseed Legal Justice Center
Southeast Asia Resource Action Center (SEARAC)
Southern Poverty Law Center
SYL Foundation
T'ruah: The Rabbinic Call for Human Rights
The Black Alliance for Just Immigration (BAJI)
The Children's Partnership
The Leadership Conference on Civil and Human Rights
The Praxis Project
The Women's Foundation of California
Treatment Action Group
U.S. People Living with HIV Caucus
UltraViolet

United We Dream
URGE: Unite for Reproductive & Gender Equity
Welcome Project Inc.
West Fund
Wisconsin Alliance for Women's Health
Womankind
Women Employed
Women's Law Project
Women's Medical Fund, Inc. (WI)
Worker Justice Center of New York

cc: Megan Herndon, Deputy Director for Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State