

Norris Cochran
Acting Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dr. Rochelle Walensky, MD, MPH
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329

January 28, 2021

Dear Acting Secretary Cochran and Director Walensky,

As public health and medical experts at leading public health schools, medical schools, hospitals, and other U.S. institutions, we write to urge the Centers for Disease Control and Prevention (CDC), as recommended by the undersigned experts, to rescind – and not extend or re-adopt – xenophobic, cruel, and unlawful policies implemented by the Trump administration under the pretext of public health to expel, block, and return to danger asylum seekers and children seeking protection at the border.

Since March 2020, the Department of Homeland Security (DHS) has used the CDC’s imprimatur to expel thousands of asylum seekers and unaccompanied children seeking protection at the border after quashing objections from senior CDC medical experts¹ who warned that the CDC’s March 2020 order² lacked public health justification. Despite repeated condemnation from leading public health experts that the order would not protect public health and their recommendations of appropriate measures,³ the order was indefinitely extended in May 2020⁴ and reissued in October 2020 with minor modifications.⁵ Legal experts have described the order as an “act of medical gerrymandering” that is “crafted to override critical legal rights and safeguards in singling out only those arriving at the border.”⁶ In November 2020, a federal court enjoined the government from expelling unaccompanied children, finding that the government was unlikely to prevail on its claim that U.S. public health laws authorize these expulsions.⁷

The U.N. Refugee Agency (UNHCR) has made clear throughout the pandemic that it is possible to both safeguard public health and to ensure access to refugee protections.⁸ In November 2020, the UNHCR Assistant High Commissioner for Protection warned that “measures restricting access to asylum must not be allowed to become entrenched under the guise of public health.”⁹

On January 21, 2021, President Biden directed the Department of Health and Human Services (HHS) and the CDC Director in coordination with the Secretaries of State, Transportation, and Homeland Security to submit “a plan to implement appropriate public health measures at land ports of entry” within 14 days (*i.e.* by February 4, 2021).¹⁰ In addition, the next review of the CDC order, which occurs every 30 days, is set for February 10, 2021.

It is essential that the misuse of the CDC’s public health authority to implement immigration policy objectives cease. The agency must restore its position as a trusted source of objective, reliable, scientific information for the American public, particularly during the pandemic. We urge the CDC to replace the current bans with the rational, evidence-based measures outlined below. These measures can help to safeguard the lives of the American public, people seeking refugee protection, and border officers.

The CDC Order Uses Public Health as a Pretext to Ban Asylum Seekers and Others Seeking Protection at the Border

The CDC order does not, nor was it ever intended to, protect public health. Exploiting public health to ban refugees and immigrants was a goal of the Trump administration long before the pandemic.¹¹ The Trump administration furthered this anti-immigrant agenda when it strong-armed the CDC into authorizing the mass expulsion of asylum seekers.¹²

Imposing restrictions on asylum seekers and other migrants based on immigration status is discriminatory and has no scientific basis as a public health measure. The U.S. government has implemented and recommended various public health measures for the millions of travelers who have crossed U.S. land borders since the pandemic began.¹³ As the situation has evolved, the CDC has updated requirements for travelers,¹⁴ and Customs and Border Protection (CBP) facilities have used various safety measures including personal protective equipment, disinfectants, risk assessments, symptom monitoring, mask distribution, processing in outdoor environments, and consultation with local medical experts.¹⁵ But rather than employ additional measures outlined by public health experts for safe processing of asylum seekers and migrants,¹⁶ the Trump administration continued to expel them solely based on their immigration status.

The CDC order relies on the specious justification that the people who are subject to it would otherwise be held by CBP in “congregate settings” for prolonged periods of time. This is not the case. CBP has the discretion and legal authority to parole adults and families seeking asylum or other legal protection, and the government can facilitate the expeditious release of unaccompanied children from custody under U.S. anti-trafficking laws.¹⁷ A 2019 study found that of several hundred asylum seekers at the Mexico-U.S. border under the Migrant Protection Protocols, 92 percent had family or friends they could stay with in the United States.¹⁸ Allowing individuals to shelter in place with family or friends would reduce the need for quarantine facilities and facilitate the safe processing of asylum seekers and migrants.

The Trump administration’s implementation of this order has further made clear that its specious public health rationale was a pretext for circumventing the government’s obligations under U.S. laws and treaties. For example, DHS has routinely tested unaccompanied children and asylum seekers in its custody for COVID-19 and only expelled them to their home countries once they tested negative, belying any purported justification about reducing the spread of COVID-19.¹⁹

Nor did the Trump administration’s misuse of public health principles end with the CDC order. In December 2020, the Trump administration finalized a regulation banning asylum and other humanitarian protection on public health grounds despite overwhelming opposition from public health experts.²⁰ This regulation, like the CDC order, defies the science and core principles of public health and openly discriminates against asylum seekers.

Our Recommendations for an Alternative Approach

Rather than subverting public health principles to ban people seeking protection from harm, the CDC should rescind the October 2020 order and put in place effective, science-based measures to safely process asylum seekers and others seeking protection. Implementation of appropriate

public health measures at the border, as President Biden has ordered for ports of entry,²¹ should include input from epidemiologists and other public health experts. There continues to be no public health rationale for implementing discriminatory measures that target asylum seekers.

In December 2020, epidemiologists and other public health experts, including those with prior CDC experience, contributed to the development of recommendations for processing people seeking protection at the border.²² These recommendations were shared with President Biden's transition team in December 2020 and take into account the rapidly evolving situation of COVID-19 and can be scaled up or adjusted as necessary, including:

- Strengthen public health decision-making, contingency planning for increases or shifts in arrivals, and funding and support for public health and humanitarian entities on both sides of the border;
- Use masks, social distancing, hand hygiene, distancing demarcations, and barriers; adapt processing to minimize delays; avoid congregate and high-density situations; and maximize ventilation and use of outdoor areas at processing and shelters/other reception locations, using areas appropriate for non-congregate processing;
- Ramp up testing capacity, deploy mobile units, and scale up quarantine and isolation capacities – public health measures that should be directed and conducted by CDC, HHS, and/or other health professionals independent of CBP or Immigration and Customs Enforcement; and
- Do not hold families, adults or children in congregate detention which presents health risks; instead allow families and adults to shelter in place with their families or other U.S. community contacts using proven case management alternatives to detention, while ensuring immediate transfer of unaccompanied children to HHS/ORR custody. The massive spread of COVID-19 in immigration detention facilities has confirmed “the imperative to swiftly shift from a reliance on congregate detention to the use of case management.”²³

We respectfully request an opportunity to meet with the CDC Director, HHS Secretary and DHS officials charged with implementing public health measures to discuss our recommendations and currently available scientific guidance so that the United States can again welcome people seeking refugee protection at the border – in compliance with U.S. law and treaty obligations – while also protecting public health.

Respectfully,*

Joe Amon, PhD, MSPH, Clinical Professor, Community Health and Prevention, Director of Global Health, Dornsife School of Public Health, Drexel University

Miranda Aragón, MD, Assistant Professor and Faculty, University of New Mexico School of Medicine

Bonnie Arzuaga, MD, FAAP, MPH Candidate, University of Massachusetts - Amherst, Attending Neonatologist, Boston Children's Hospital / South Shore Hospital; Co-Founder, Doctors for Camp Closure

Anika Backster, MD, MSCR, Assistant Professor, Department of Emergency Medicine, Emory University School of Medicine

Jen Balkus, PhD, MPH, Assistant Professor, Department of Epidemiology, University of Washington School of Public Health

Michele Barry, MD, FACP, FASTMH, Drs. Ben and A. Jess Shenson Professor of Medicine and Tropical Diseases, Director of the Center for Innovation in Global Health, Senior Associate Dean for Global Health, Stanford University

Mary Bassett, MD, PhD, François-Xavier Bagnoud Professor of the Practice of Health and Human Rights, Director of the François-Xavier Bagnoud Center for Health and Human Rights, Harvard T.H. Chan School of Public Health

Nicole Battaglioli, MD, Assistant Professor, Emergency Medicine, Emory University School of Medicine

Daniel G. Bausch, MD, MPH&TM, FASTMH, President-Elect, American Society of Tropical Medicine & Hygiene

Stefano M. Bertozzi, MD, PhD, Professor of Health Policy and Management, Dean Emeritus, University of California Berkeley School of Public Health

Chris Beyrer, MD, MPH, Desmond M. Tutu Professor in Public Health and Human Rights, Professor of Epidemiology, Nursing and Medicine, Johns Hopkins Bloomberg School of Public Health, Associate Director, JHU Center for AIDS Research (CFAR), Senior Scientific Liaison, COVID Vaccine Prevention Network, Co-VPN

Jacqueline Bhabha, JD, MsC, Professor of the Practice of Health and Human Rights, Harvard T.H.Chan School of Public Health; Director of Research, FXB Center for Health and Human Rights

David H. Bor, MD, Chief Academic Officer, Cambridge Health Alliance, Professor of Medicine, Harvard Medical School

Joel G. Breman, MD, DTPH, FIDSA, FASTMH, Former President, American Society of Tropical Medicine & Hygiene

Scott Burris, JD, Professor, Director of the Center for Public Health Law Research, Temple University Beasley School of Law

Jose E. Campo Maldonado, MD, MSCI, FACP, Assistant Professor, Director of Infection Surveillance, University of Texas Rio Grande Valley School of Medicine

Sara Casey, DrPH, Assistant Professor, Heilbrunn Department of Population and Family Health, Columbia University Mailman School of Public Health

Rebeca Cázares-Adame, MD, MPH, Prevencasa AC

Avik Chatterjee, MD, MPH, Assistant Professor, Boston University School of Medicine/Boston Medical Center

Ted Cohen, MD, MPH, DPH, Professor, Epidemiology of Microbial Diseases, Yale School of Public Health

Cheryl Conner, MD, MPH, Assistant Professor of Clinical Medicine, University of Illinois at Chicago

Joanne Csete, PhD, MPH, Associate Professor, Columbia University Mailman School of Public Health

Patricia M. Davidson, PhD, MEd, RN, FAAN, Dean & Professor, Johns Hopkins School of Nursing

Paula J. Davis-Olwell, PhD, MA, Clinical Assistant Professor, Global Health Institute, Department of Epidemiology and Biostatistics, University of Georgia

Fiona Danaher, MD, MPH, Chelsea Pediatrics & Child Protection Team, Massachusetts General Hospital; Director, Massachusetts General Hospital Center for Immigrant Health

Wafaa El-Sadr, MD, MPH, MPA, Director, ICAP at Columbia University, University Professor of Epidemiology and Medicine, Mathilde Krim-amfAR Chair of Global Health, Columbia University Mailman School of Public Health

Eleanor Emery, MD, Program Officer, Center for Health Equity Education & Advocacy, Cambridge Health Alliance

Kacey Ernst, PhD, MPH, Professor & Program Director, Epidemiology, Epidemiology and Biostatistics Department, Mel and Enid Zuckerman College of Public Health, University of Arizona

Dabney P. Evans, PhD, MPH, Associate Professor, Emory University Rollins School of Public Health

Glenn J. Fennelly, MD, MPH, Professor and Chair, Department of Pediatrics, Texas Tech University Health Sciences Center El Paso

Hope Ferdowsian, MD, MPH, FACP, FACPM, Associate Professor of Medicine, University of New Mexico School of Medicine; Medical Expert, Physicians for Human Rights

Linda P. Fried, MD, MPH, Dean and DeLamar Professor of Public Health, Columbia University Mailman School of Public Health; Senior Vice President, Columbia University Medical School; Professor of Epidemiology and Medicine

Eric A. Friedman, JD, Global Health Justice Scholar, O'Neill Institute for National and Global Health Law, Georgetown University Law Center

Karen A. Goraleski, Chief Executive Officer, American Society of Tropical Medicine and Hygiene

M. Claire Greene, PhD, MPH, Program on Forced Migration and Health, Columbia University Mailman School of Public Health

Rohini J. Haar, MD, MPH, Adjunct Professor, Epidemiology, University of California, Berkeley School of Public Health

Michele Heisler, MD, MPA, Professor, Department of Internal Medicine, Health Behavior and Health Education, University of Michigan School of Public Health

Julie Jacobson, MD, DTM&H, Managing Partner, Bridges to Development; President, American Society of Tropical Medicine & Hygiene

Monik C. Jiménez, ScD, SM, FAHA, Assistant Professor, Harvard TH Chan School of Public Health, Harvard Medical School/Brigham and Women's Hospital

Elena Jiménez Gutiérrez, MD, Clinical Assistant Professor, Division of General and Hospital Medicine, Department of Medicine, The University of Texas Health Science Center at San Antonio

Rebecca Jones, PhD, Global Diabetes Research Center, Emory University

S. Patrick Kachur, MD, MPH, FACPM, FASTMH, Professor, Columbia University Mailman School of Public Health, Heilbrunn Department of Population and Family Health, Columbia University Irving Medical Center

Jennifer Kasper, MD, MPH, Assistant Professor of Pediatrics and Global Health & Social Medicine, Chair, Faculty Advisory Committee on Global Health, Harvard Medical School; Presidents' Council, Doctors for Global Health

Michael Khoury, MD, Assistant Professor, Department of Neurology, Emory University School of Medicine; Georgia Human Rights Clinic

Ling San Lau, MBBS, MPH, Senior Program Officer, Program on Forced Migration and Health, Care and Protection of Children (CPC) Learning Network, Heilbrunn Department of Population and Family Health, Columbia University Mailman School of Public Health

Marc Lipsitch, DPhil, Professor of Epidemiology, Harvard T.H. Chan School of Public Health

Danielle Loeb, MD, MPH, Associate Professor of Medicine, Division of General Internal Medicine, University of Colorado School of Medicine

Stuart L. Lustig, MD, MPH, Legal-Medical Advisor, Center for Refugee Studies, University of California Hastings College of the Law

Ana P. Martinez-Donate, PhD, Professor of Community Health & Prevention, Dornsife School of Public Health, Drexel University

Joseph B. McCormick, MD, MS, James Steele Professor of Epidemiology, University of Texas Health School of Public Health Brownsville; Adjunct Professor, UTH School of Biomedical Informatics; Adjunct Professor of Medicine, UTH McGovern Medical School

Terry McGovern, JD, Harriet and Robert H. Heilbrunn Professor and Chair, Heilbrunn Department of Population and Family Health Director, Global Health Justice and Governance Columbia University Mailman School of Public Health

Cecilia Menjivar, PhD, MA, MS, Professor and Dorothy L. Meier Endowed Chair in Social Equities, Department of Sociology, University of California, Los Angeles

Amy Cecilia Mogal, MD, PhD, Clinical Instructor, Department of Anesthesia, Stanford University; Attending Physician, Critical Care Unit, Washington Hospital Healthcare System, Fremont, California

Juliana E. Morris, MD, EdM, Harvard Medical School

Peter Navario, PhD, MPH, Clinical Assistant Professor, Department of Public Health Policy and Management, New York University School of Global Public Health & Executive Director, HealthRight International

Laura B. Nellums, PhD, MSc, Assistant Professor in Global Health, School of Medicine, University of Nottingham

Aliza Norwood, MD, Assistant Professor, Departments of Population Health and Internal Medicine, Co-Director, Primary Care, Family and Community Medicine Clerkship, Dell Medical School, The University of Texas at Austin

Barbara Ogur, MD, Associate Professor of Medicine, Harvard Medical School, Co-Director, Cambridge Health Alliance Asylum Clinic

Kathleen Page, MD, Associate Professor, Division of Infectious Diseases, Johns Hopkins University School of Medicine, Center for Humanitarian Health, Johns Hopkins University

Kathleen A. Parker, MA, MPH, CHES ret., Public Health Education Specialist, 1983-2004, Centers for Disease Control and Prevention

Parveen Parmar, MD, MPH, Associate Professor, Clinical Emergency Medicine, Chief, Division of Global Emergency Medicine, Keck School of Medicine, University of Southern California

Snehal Patel, MD, Assistant Professor, Department of Internal Medicine, Dell Medical School, The University of Texas at Austin

Helen Perry, ACNP-BC, Executive Director, Global Response Management

Paulina Rebolledo, MD, MSc, Assistant Professor of Medicine and Global Health, Division of Infectious Diseases, Emory University School of Medicine

Roger Rochat, MD, Professor, Global Health, Epidemiology, Rollins School of Public Health, Emory University

B. R. Simon Rosser, PhD, MPH, LP, Professor, Division of Epidemiology & Community Health University of Minnesota School of Public Health

Mia Stange, MPH, Terra Firma Medical-Legal Partnership for Unaccompanied Immigrant Youth, Montefiore Medical Center

Leonard Rubenstein, JD, LLM, Professor of the Practice, Johns Hopkins Bloomberg School of Public Health

Samantha Sabo, DrPH, MPH, Associate Professor, Department of Health Sciences, Center for Health Equity Research, Northern Arizona University

William M. Sage, MD, JD, Professor, School of Law and Dell Medical School, The University of Texas at Austin

Goleen Samari, PhD, MPH, MA, Assistant Professor of Population and Family Health, Program on Forced Migration and Health, Columbia University Mailman School of Public Health

John Santelli, MD, MPH, Professor, Population and Family Health and Pediatrics, Columbia University Mailman School of Public Health

Stacie Schmidt, MD, Associate Professor, Department of Medicine, Emory University School of Medicine

Joshua M. Sharfstein, MD, Professor of the Practice, Johns Hopkins Bloomberg School of Public Health

Josefa Simkin, MD, Chair, Family Practice Department, Watsonville Community Hospital

Neha Singh, MPH, PhD, Assistant Professor, London School of Hygiene and Tropical Medicine

Paul B. Spiegel, MD, MPH, Professor of the Practice, Johns Hopkins Bloomberg School of Public Health; Director of the Johns Hopkins Center for Humanitarian Health

Andrew Springer, DrPH, MPH, Associate Professor, Health Promotion and Behavioral Sciences, University of Texas Health Science Center, School of Public Health - Austin

Steffanie Strathdee, PhD, MSc, Associate Dean of Global Health Sciences and Harold Simon Professor in the Department of Medicine, Co-Director of the Center for Innovative Phage Applications and Therapeutics, UC San Diego School of Medicine

Til Stürmer, MD, PhD, MPH, Nancy A. Dreyer Distinguished Professor and Chair, Department of Epidemiology, Gillings School of Global Public Health, University of North Carolina at Chapel Hill

Parmi S. Suchdev, MD, MPH, FAAP, Associate Director, Emory Global Health Institute, Director, Global Health Office of Pediatrics, Professor, Department of Pediatrics and Hubert Department of Global Health, Emory University

Lisa M. Thompson, PhD, MSN, RN, FNP-BC, FAAN, Associate Professor, Director of Graduate Studies, Nell Hodgson Woodruff School of Nursing, Fellow, Global Health Institute, Emory University

Liza Vertinsky, PHD, JD, Associate Professor, Emory Law School

Ron Waldman, MD, MPH, Professor of Global Health, Milken Institute School of Public Health, George Washington University

Karen Wang, MD, MHS, Assistant Professor, Equity Research and Innovation Center, Yale School of Medicine

Rachel Wheeler, MD, COVID High Risk Management Team, Cambridge Health Alliance

Andrea L. Wirtz, PhD, MHS, Assistant Professor, Center for Public Health and Human Rights, Department of Epidemiology, Johns Hopkins Bloomberg School of Public Health

Monette Zard, MA, Allan Rosenfield Associate Professor of Forced Migration and Health, Director of the Forced Migration and Health Program, Heilbrunn Department of Population and Family Health, Columbia University Mailman School of Public Health

Amy J. Zeidan, MD, Assistant Professor of Emergency Medicine, Emory University School of Medicine, Co-Director Georgia Human Rights Clinic

** Institutional affiliation is provided for identification purposes only and does not constitute institutional endorsement.*

CC:

Hon. Antony Blinken
Secretary
U.S. Department of State
2201 C St., NW
Washington, DC 20520

David Pekoske
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Lana Hurdle
Acting Secretary
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

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