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 experts who warned that the CDC’s March 2020 order 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, the order was indefinitely extended in May 2020 and reissued in October 2020 with minor modifications. 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.” 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.

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. 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.”

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). 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. The Trump administration furthered this anti-immigrant agenda when it strong-armed the CDC into authorizing the mass expulsion of asylum seekers.

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. As the situation has evolved, the CDC has updated requirements for travelers, 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. But rather than employ additional measures outlined by public health experts for safe processing of asylum seekers and migrants, 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. 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. 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.

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. 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,\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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,

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12 See supra note 1.


17 See, e.g., 8 C.F.R. § 212.5 (describing circumstances under which CBP could parole an individual into the United States); 8 U.S.C. § 1182(d)(5)(A) (describing DHS’s authority to parole individuals into the United States). See Human Rights First, “Parole vs. Bond in the Asylum System,” September
Asylum seekers who are paroled into the United States overwhelmingly appear for their court hearings.


23 Id.