August 6, 2020

Dear Acting Secretary Wolf and Attorney General Barr:

As public health and medical experts at leading public health schools, medical schools, hospitals, and other U.S. institutions, we write to express our grave concerns about the rule proposed on July 9, 2020 that would bar refugees from asylum and other humanitarian protections in the United States purportedly to protect public health during pandemics.

The rule ignores and misuses the science and core principles of public health. It would grant the Department of Homeland Security (DHS) and the Department of Justice (DOJ)—agencies that lack public health expertise—authority to label asylum seekers as a national security threat, scapegoating them as vectors for a potentially vast array of diseases and denying them protection. These sweeping new bans would direct immigration authorities to deport people seeking refugee and torture protection to life-threatening dangers in violation of U.S. law and treaty obligations. Like the March 20, 2020 order from the Centers for Disease Control and Prevention (CDC) that DHS has been using to evade humanitarian protections at the border under the pretext of COVID-19, the proposed regulation is based on specious justifications and would be detrimental.

We urge DHS and DOJ to rescind the proposed rule and instead direct U.S. officials to use rational, evidence-based public health measures to safeguard both the health of the public and the lives of adults, families, and children seeking protection from persecution and torture. Public health cannot justify this discriminatory policy that imperils the lives of people seeking protection in the United States.

The Proposed Regulation Is Not Based on Sound Public Health Principles

Despite its pretext of protecting public health during pandemics, the proposed rule would undermine public health and further endanger people seeking protection in the United States.

While purporting to address current and future diseases that could cause a pandemic, the rule would, in fact, allow DHS and DOJ to ban refugees based on a host of other diseases including those that are not subject to U.S. quarantine laws, are treatable, and/or do not present risk of widespread public transmission, such as gonorrhea, syphilis, tuberculosis, and Hansen’s disease (leprosy), among others.

There is no public health rationale to applying public health measures differently based on immigration status. Yet the rule bars asylum seekers who have even briefly transited through a country where a covered disease is prevalent without regard to whether an individual has been exposed. While States may use health measures such as testing or quarantine, as needed, the U.N. Refugee Agency (UNHCR) has explained in legal guidance regarding asylum access during the COVID-19 pandemic that states may not
impose measures that preclude refugees from admission or deny them an effective opportunity to seek asylum, and that “(d)enial of access to territory without safeguards to protect against refoulement cannot be justified on the grounds of any health risk.”

The rule is disproportionate and not designed to halt disease transmission. It would mandatorily bar a refugee who “has come into contact” with a communicable disease covered by the rule at any point in the past and does not limit its application to recent exposure or infection. Asylum seekers infected with a covered disease while in the United States would be barred from protection—potentially even years after arriving in the United States—and subject to deportation, including asylum-seeking doctors, nurses, or other essential personnel engaged in vital work to address the disease. Perversely, the rule punishes asylum seekers, including those in U.S. immigration detention, for the failure of U.S. authorities to prevent and mitigate communicable disease outbreaks. Public trust is essential for the success of public health measures. By explicitly linking health concerns to immigration enforcement, this rule will likely erode trust, discourage care-seeking, and undermine public health goals.

In bypassing public health experts, the rule would authorize unqualified government functionaries who lack public health or medical training to make assessments with profound implications for access to asylum and other humanitarian protections. For instance, DHS and DOJ lack the expertise and ability to assess the prevalence of a communicable disease in another country. Immigration judges and DHS officers are not qualified to make medical diagnoses yet would be directed by the rule to determine whether an asylum seeker’s symptoms are indicative of a covered disease. This is particularly troubling during preliminary fear screening interviews when the vast majority of asylum seekers are detained, unrepresented, and have virtually no access to independent medical assessments.

**Our Recommendations for an Alternative Approach**

Rather than banning people seeking protection, U.S. authorities should adopt measures grounded in the best available public health guidance. With respect to SARS-COV-2, leading public health experts have recommended measures—detailed in the attached letter and paper—to protect U.S. border officers, those exercising their legal right to request protection in the United States, and the public health of our nation. In addition, U.S. authorities should heed the recommendations of public health and prison experts to stem infections by drastically reducing the populations in Immigration and Customs Enforcement detention facilities by releasing asylum seekers and other immigrants to shelter with family or friends.

Public health measures in the United States have moved on from the days when individuals with communicable diseases were treated merely as vectors of disease and immigrants were scapegoated for outbreaks and barred from the United States. Just ten years ago, the CDC lifted an immigration ban on individuals living with HIV—first adopted in the 1980s when there were more known cases of HIV/AIDS in the United States than anywhere else in the world—acknowledging that the restrictions were not an effective or necessary public health measure. The United States should not repeat past mistakes by adopting another discriminatory and ineffective ban on the pretext of public health.

This proposed rule, like the March 20 CDC order, is xenophobia masquerading as a public health measure, and both must be rescinded. These policies undermine the credibility of public health practice and expertise in the United States, with devastating results for the safety and well-being of both asylum
seekers and the American public. The United States can and must both safeguard public health during emergencies and uphold U.S. laws and treaties protecting the lives of those seeking safety and freedom here.

Sincerely,*

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3 Human Rights First, “Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger,” May 2020, [https://www.humanrightsfirst.org/sites/default/files/PandemicAsPretextFINAL.pdf](https://www.humanrightsfirst.org/sites/default/files/PandemicAsPretextFINAL.pdf).

4 42 C.F.R. § 34.2.


