

May 18, 2020

Alex Azar
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Department of Health and Human Services
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Washington, D.C. 20201

Robert R. Redfield, MD
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Dear Secretary Azar and Director Redfield:

We are public health experts at leading public health schools, medical schools, hospitals, and other institutions across the United States who are working at the forefront of the response to the novel coronavirus. We recognize that extraordinary circumstances require extraordinary measures to keep us all safe and healthy. However, we are gravely concerned that the current administration is using the imprimatur of the Centers for Disease Control and Prevention (CDC) to circumvent laws and treaty protections designed to save lives and enable the mass expulsion of asylum seekers and unaccompanied children through an order first issued on March 20, 2020.¹ The CDC order is based on specious justifications and fails to protect public health.

We urge the CDC and Department of Health and Human Services (HHS) to withdraw – not extend or expand indefinitely – this policy 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 unaccompanied children seeking asylum and other protection. The nation’s public health laws should not be used as a pretext for overriding humanitarian laws and treaties that provide life-saving protections to refugees seeking asylum and unaccompanied children.

The Order’s Specious Public Health Rationale

Despite its public health pretext, the CDC order fails to further public health and disregards alternative measures that can protect public health while preserving access to asylum and other protection.²

The order focuses on non-citizens who lack documentation and arrive by land. It exempts permanent residents and U.S. citizens, and does not apply to tourists arriving by plane or ship – even though these modes of transportation are explicitly listed by HHS as congregate settings with *higher* risk of disease transmission than land travel.³ A travel restriction issued the same day as the CDC order similarly provides broad exceptions for travel related to education, trade, and commerce.⁴ The rule is thus being used to target certain classes of noncitizens rather than to protect public health.

There is no public health rationale for denying admission to individuals based on legal status. The order’s stated justification is that the migrants and asylum seekers who are subject to it would normally be held by Customs and Border Protection (CBP) in “congregate settings” for prolonged periods of time.⁵ However, instead of holding individuals in facilities widely recognized as dangerous and unsanitary,⁶ CBP has the discretion and legal authority to parole adults and families seeking asylum or other legal protection, and the government could facilitate the expeditious release of unaccompanied children from custody.⁷ A recent study found that of several hundred asylum seekers currently at the Mexico-U.S. border, 92 percent have family or friends they could live with in the United States.⁸ Allowing individuals to shelter in place with family or friends would reduce the need for quarantine facilities, resolving another concern stated in the CDC order.

While availability of testing is rapidly evolving, the current lack of accurate testing capability is not a justification to shut the border to people seeking safety, despite the assertion in the CDC order, particularly when other safeguards – like use of masks, hand sanitizer, and other screening measures – are available.⁹

Finally, the order points to the spread of COVID-19 in open-air “asylum camps” and shelters along the border as “inevitable” and yet another reason to close the border to asylum seekers.¹⁰ These camps, and the high occupancy of migrant shelters, are a direct result of U.S. policy decisions to restrict access to asylum. Under the “Migrant Protection Protocols” (MPP), tens of thousands of asylum seekers have been forced to wait in dangerous and precarious conditions in Mexico, and to risk their lives and health to travel repeatedly across the border to attend hearings and receive notices of new hearing dates due to COVID-related adjournments.¹¹ As noted above, the vast majority of these individuals could instead be safely sheltering in place – one of the few measures proven to stop the spread of the virus – at the homes of family or friends in the United States. The CDC order, which countenances mass expulsions of asylum seekers to Mexico, will only increase the risk to the health and safety of people seeking protection and endanger public health on both sides of the border.

Over 20 European countries have explicitly exempted asylum seekers from entry bans and border closures, and the European Union included an exemption for persons seeking international protection in its travel restrictions.¹² The United States should follow suit, relying on the measures outlined below.

Our Recommendations for an Alternative Approach

Protecting public health is of paramount importance during the COVID-19 pandemic. However, a pandemic does not absolve the federal government of its legal and treaty obligations to asylum seekers and unaccompanied children.¹³ The CDC remains the source of information Americans most widely trust as they navigate this crisis.¹⁴ Trust is the cornerstone of an effective pandemic response; yet it is undermined when public health authorities such as the CDC issue orders that endanger public health or when their public health guidance is subject to political interference.

Rather than imposing a ban or suspension on people seeking protection from harm, U.S. authorities should use evidence-based public health measures to process asylum seekers and other persons crossing the U.S. border. Asylum seekers and migrants should not be discriminated against due to their immigration status or displacement and should not be subjected to more stringent health restrictions at the border than other persons. We urge you to rescind this order and instead advise U.S. government counterparts to implement the following measures, which are grounded in the best available public health guidance:

- During border processing, facilitate social distancing through demarcations and the use of outdoor and other areas for processing; require wearing of masks or similar cloth coverings over the face and nose for both officers and persons crossing into the United States; use plexiglass barriers and/or face shields for officers during interviews and identity-checks; provide hand-sanitizer and other handwashing for both officers and other persons; and provide requisite distance, as well as masks and other measures, in transport;
- Rather than detaining asylum seekers in congregate settings, allow asylum seekers to wait for their court hearings with their families or other contacts in the United States through parole, case management and other alternatives to detention;
- Promptly transfer unaccompanied children to the legal authority of the Office of Refugee Resettlement for swift reunification with family members and caregivers in the United States; and
- Facilitate self-quarantine at destination locations, should all individuals crossing the southern border be required to do so. Under no circumstances should CBP operate mass quarantine facilities.

As the World Health Organization, the U.N. Refugee Agency, and other U.N. agencies have explained, “there are ways to manage border restrictions in a manner which respects international human rights and refugee protection standards, including the principle of non-refoulement, through quarantine and health checks” and that “our primary focus should be on the preservation of life, regardless of status.”¹⁵ We can

– and we must – both safeguard public health and uphold laws requiring the protection of asylum seekers and unaccompanied children.

Sincerely,

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¹ U.S. Dep't of Health and Human Services & Centers for Disease Control and Prevention, "Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists," Mar. 20, 2020, https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf.

¹ Affiliation for identification purposes only.

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- ² Joanna Naples-Mitchell, “There is No Public Health Rationale for a Ban on Asylum Seekers,” Just Security, Apr. 20, 2020, <https://www.justsecurity.org/69747/there-is-no-public-health-rationale-for-a-categorical-ban-on-asylum-seekers/>; Lucas Guttentag & Stefano Bertozzi, “Trump Is Using the Pandemic to Flout Immigration Laws,” NY Times, May 11, 2020, <https://www.nytimes.com/2020/05/11/opinion/trump-coronavirus-immigration.html>; Dr. Chris Beyrer & Yael Schacher, Expelling Asylum Seekers is not the Answer, April 27, 2020, <https://www.refugeesinternational.org/reports/2020/4/26/expelling-asylum-seekers-is-not-the-answer-us-border-policy-in-the-time-of-covid-19>.
- ³ U.S. Dep’t of Health and Human Services & Centers for Disease Control and Prevention, “Control of Communicable Diseases; Foreign Quarantine; Suspension of Introduction of Persons into the United States from Designated Foreign Countries or Places for Public Health Purposes,” 85 Fed. Reg. 16559, 16561.
- ⁴ *Id.* at 16547.
- ⁵ U.S. Dep’t of Health and Human Services & Centers for Disease Control and Prevention, *supra* note 1, at 2.
- ⁶ American Immigration Council, “Challenging Unconstitutional Conditions in CBP Detention Facilities,” <https://www.americanimmigrationcouncil.org/litigation/challenging-unconstitutional-conditions-cbp-detention-facilities/>; *see also* DHS Office of Inspector General, “Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley,” Jul. 2, 2019, https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf.
- ⁷ *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,” Sept. 2018, https://www.humanrightsfirst.org/sites/default/files/PAROLE_BOND.pdf (Asylum seekers who are paroled into the United States overwhelmingly appear for their court hearings).
- ⁸ Tom K. Wong, “Seeking Asylum: Part 2,” U.S. Immigration Policy Center at UC San Diego, 13, Oct. 29, 2019, <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.
- ⁹ Joanna Naples-Mitchell, “There is No Public Health Rationale for a Ban on Asylum Seekers,” Just Security, Apr. 20, 2020, <https://www.justsecurity.org/69747/there-is-no-public-health-rationale-for-a-categorical-ban-on-asylum-seekers/>.
- ¹⁰ *See* U.S. Dep’t of Health and Human Services & Centers for Disease Control and Prevention, *supra* note 1, at 9.
- ¹¹ Rafael Carranza, “Aid Groups Are Trying to Help Asylum-Seekers Stranded at the U.S.-Mexico Border. COVID-19 Makes It That Much Harder,” Arizona Central, Apr. 18, 2020, <https://www.azcentral.com/story/news/politics/border-issues/2020/04/18/border-aid-groups-demand-changes-remain-mexicopolicy-during-pandemic/2992981001/>; *see also*, Dep’t of Homeland Security, “Joint DHS/EOIR Statement on the Rescheduling of MPP Hearings,” May 10, 2020, <https://www.dhs.gov/news/2020/05/10/joint-dhseoir-statement-rescheduling-mpp-hearings> (On May 10, 2020, DHS and the Executive Office for Immigration Review (EOIR) issued a joint press statement instructing asylum seekers in MPP with hearing dates prior to June 22 to “present themselves at the port of entry indicated on their tear sheet one month later than the date indicated on their most recently noticed date.” It is unclear how DHS and EOIR communicated this change to asylum seekers themselves, and whether it will actually result in less travel for them).
- ¹² United Nations High Commissioner for Refugees, “Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic,” Apr. 9, 2020, <https://www.unhcr.org/cy/wp-content/uploads/sites/41/2020/04/Practical-Recommendations-and-Good-Practice-to-Address-Protection-Concerns-in-the-COVID-19-Context-April-2020.pdf>
- ¹³ United Nations High Commissioner for Refugees, “Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response,” Mar. 16, 2020, <https://www.refworld.org/docid/5e7132834.html>; Lucas Guttentag, “Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors,” Just Security, Apr. 13, 2020, <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>.
- ¹⁴ Nathaniel Rakich, “Who Do Americans Trust Most on COVID-19?,” FiveThirtyEight, <https://fivethirtyeight.com/features/americans-trust-the-cdc-on-covid-19-trump-not-so-much/>.
- ¹⁵ World Health Organization, Office of the High Commissioner for Human Rights, the U.N. Refugee Agency, and the International Organization for Migration, “The rights and health of refugees, migrants and stateless must be protected in COVID-19 response,” Mar. 31, 2020, <https://www.unhcr.org/en-us/news/press/2020/3/5e836f164/rights-health-refugees-migrants-stateless-must-protected-covid-19-response.html>.