

## Public Health Measures to Safely Manage Asylum Seekers and Children at the Border

The United States has the ability to both safeguard public health in the midst of the COVID-19 crisis and safeguard the lives of families, adults, and children seeking asylum and other humanitarian protection at the U.S. southern border. Public health experts recommend the use of the measures outlined below 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. These measures include social distancing, wearing masks or similar coverings, using hand sanitizer, demarcations and barriers, health screenings, sheltering in place at homes of family members through proven case management strategies, and more. Such measures, rather than banning people seeking humanitarian protection, protect both public health and the lives of those seeking safety and freedom.

### The Humanitarian Protection Ban's Specious Public Health Rationale

Using a highly flawed order issued by the Centers for Disease Control and Prevention (CDC) on March 20, 2020 and an April 20 extension, the Department of Homeland Security (DHS) is expelling people seeking asylum and unaccompanied children – without screening them for international protection needs, despite U.S. refugee and anti-trafficking laws and treaties designed to protect them.

The rule has been described as an immigration policy masquerading as a public health policy by public health experts, and as “medical gerrymandering” by a leading legal scholar:

Unquestionably, the United States faces a pandemic of unknown scope and duration that has led to the greatest social and economic disruption and restrictions on personal movement in our lifetime.... But the COVID-19 ban is an act of medical gerrymandering. It is crafted to override critical legal rights and safeguards in singling out only those arriving at the border without authorization and deeming that class of people a unique and unmitigable public health threat. It tries to justify an end-run around congressionally mandated procedural rights and protections essential for refugees and unaccompanied minors and it does so to achieve an impermissible goal. What's additionally shocking here: the statutory provision does not actually give the executive branch expulsion authority.

While the CDC order was presented as an urgent response to the pandemic, a recent report revealed that it “was in large part repurposed from old draft executive orders and policy discussions that have taken place repeatedly” since the administration came into office, with the idea of invoking public health powers “on a ‘wish list’ of about 50 ideas to curtail immigration” crafted early on by White House Senior Advisor Stephen Miller.

In concluding that alternatives to suspending entry were not viable, the CDC order relied on incorrect and insufficient DHS assertions that the (now barred) individuals likely lack homes or places in the United States to self-isolate and that these individuals must necessarily be held in congregate areas in the custody of Customs and Border Protection (CBP) for hours or days. In essence, the CDC order pointed to CBP's own processing and detention practices at the border as the justification for expelling asylum seekers and unaccompanied children.

Using the CDC order, DHS has expelled more than 21,000 people – including asylum seekers and unaccompanied children – as of early May 2020. These families, adults, and unaccompanied children have been sent to dangerous areas of Mexico as well as to other countries of origin from which they have fled. In the first two weeks of

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expulsions, nearly 400 children were expelled, including 120 unaccompanied children who were sent to Central America. In April, more than 700 additional unaccompanied children were expelled, in violation of U.S. anti-trafficking laws. As of early May, DHS has allowed only 59 people subject to the CDC order to be screened for a fear of returning to their country of origin; only two have passed.

Distinguishing the order from reasonable health measures such as careful screening, a Washington Post editorial on April 12, 2020 explained that “[i]t’s a different thing to impose a systematic, draconian, extralegal regime, one never contemplated by Congress, whose effect is to ignore and override 40 years of asylum and immigration law.” Noting that “it is precisely in times of emergency that any country faces its most severe tests – ones that call into question the nation’s essential character and values,” the editorial board warned that the administration was “betraying this country’s long tradition as a beacon to those fleeing oppression.”

This document outlines key points and recommendations developed with input from public health,<sup>1</sup> humanitarian, legal, and human rights experts and provides background on public health measures at the border.

## Key Points and Recommendations

- **The United States has the ability to both safeguard public health in the midst of the COVID-19 crisis and safeguard the lives of families, adults, and children seeking asylum and other protection at the U.S. southern border.** With political will and necessary action, both can be protected; there is no need to sacrifice the safety of asylum seekers and unaccompanied children to protect Americans. The World Health Organization (WHO), the UN Refugee Agency (UNHCR), the International Organization for Migration, and the Office of the High Commissioner for Human Rights explained in a [statement](#) on March 31, 2020 that “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.”
- **A ban or suspension directed at asylum seekers and unaccompanied children is not justified from a public health perspective.** The public health consensus is clear: there is “[no public health rationale](#)” to bar people based on their immigration status. UNHCR explained in March 2020 [legal guidance](#) 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.”
- Rather than imposing a ban or suspension on people seeking protection from harm, **U.S. authorities should use measures recommended by public health experts** to process asylum seekers and all other travelers 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 people allowed into the country.
- **These public health measures should include measures such as social distancing, appropriate masks, disinfectants, and sanitation supplies**, as well as the use of parole to family and friends rather than detention in congregate settings; and – when and if required of people crossing the southern border – self-quarantine at destination locations instead of mass quarantine by CBP in congregate settings.
- **Men, women, and children seeking asylum or other protection should not be held in congregate settings** by CBP but should instead be released to join their families or other contacts in the United States

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<sup>1</sup> Numerous epidemiologists and other public health experts, including those with prior CDC experience, weighed into the development of these recommendations including experts with or contacted through: the Forced Migration and Health Program at Columbia University’s Mailman School of Public Health; the Center for Humanitarian Health at John’s Hopkins Bloomberg School of Public Health; Physicians for Human Rights; Médecins Sans Frontières; and Doctors of the World; as well as Dr. Ronald Waldman, Milken Institute School of Public Health, George Washington University; Dr. Michele Heisler, School of Public Health, University of Michigan; Dr. Rohini J. Haar, School of Public Health, U.C., Berkeley; and Dr. Monik C. Jiménez, Harvard T.H. Chan, School of Public Health.

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through parole, case management, and other alternatives to detention. The parole of asylum seekers in the Trump administration’s so-called “Migrant Protection Protocols” should be swift, as they have already undergone CBP processing on prior occasions and are already in U.S. immigration court proceedings. Requiring them to travel back and forth again and again through dangerous parts of Mexico to attend hearings, and now to receive notices of new hearing dates as hearings adjourn due to COVID-19, puts their health and the health of others at risk.

## Background on Various Public Health Measures at the Border

- **Social distancing in lines and at processing.** People permitted to cross into the United States at southern border posts are asked to practice social distancing. CBP and CDC should instruct CBP officers to facilitate social distancing to the extent possible in lines at ports of entry, during processing, and as officers conduct outdoor processing. Officers can use lines or other demarcations to set six-foot distances where people should stand in lines or sit during interviews. Some ports of entry have outdoor parking or other areas that could be used to conduct interviews if additional space is needed. CBP can use facilities like those operated by the Health and Human Services (HHS) Office of Refugee Resettlement to conduct swift processing, rather than holding families, children, and others in CBP custody. CBP should work with Mexican counterparts to encourage distancing in lines as people approach U.S. border posts, without leaving people waiting in danger.
- **Masks or cloth coverings.** Asylum seekers and all others approaching U.S. ports of entry should be recommended to wear masks, bandanas, scarves, or similar cloth coverings over the mouth and nose, as the CDC currently recommends in the United States for public settings where social distancing is difficult to maintain. Border officers should be required to wear masks while on duty. CBP could also add clear plastic or plexiglass barriers at interview locations, and interviewing officers could wear face shields, if necessary from a public health perspective. While officers should provide masks to any people who do not have such face coverings, young children should be excused per CDC guidance and, as breathing can be restricted by such coverings, a child should not be forced to wear a mask or similar covering without instructions and assistance from a trusted adult. Children under two years old, and other vulnerable people as specified in CDC guidance, should not be expected to wear masks because of the risk of suffocation.
- **Disinfectants and Sanitizers.** Border officers, asylum seekers, and all people crossing at ports of entry or apprehended between ports should be provided with and asked to use hand sanitizer before and after exchanging documents, using any fingerprint machinery, or touching other surfaces. As hand-washing facilities at the border are limited and often lack soap, CBP and Mexican counterparts should take steps to expand their availability, including by using portable washing stations such as those in the Laredo and Brownsville, Texas tent courts.
- **Parole and other alternatives to holding people for days in congregate settings.** Men, women, and children seeking asylum or other protection should not be held in congregate settings but should instead be released to join their families or other contacts in the United States. CBP has the legal authority to parole asylum seekers from the border or defer their inspection; it also has the ability to use case management and other alternatives to detention for cases that require appearance support. Medical evidence has proven that alternatives to immigration detention result in improved physical and behavioral health outcomes. To save – rather than endanger – more lives, these other options should be pursued. CBP must provide people with documentation that includes name and photograph, so they will be able to travel to their destinations.
- **Unaccompanied children.** U.S. anti-trafficking law requires that children be screened to determine if they meet the criteria to be designated as an unaccompanied child, a designation that is critical for them to access protections from return to trafficking or other harms. Screenings should occur using the public health safeguards outlined and, as necessary, accommodations should be made based on the age and

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developmental stage of the child. Officials should use age-appropriate language to communicate the risks of COVID-19 and advise on any specific safety measures. Unaccompanied children should be immediately transferred to the legal authority of HHS, using safe and appropriate transportation that meets the minimum protections referenced in this document.

- **Transport.** CBP should clean vehicles frequently, wiping down door handles and internal surfaces between trips, and use larger vehicles and buses to enable social distancing by leaving empty seats and providing six feet of space between people. It is recommended that windows be opened, if possible, to increase ventilation. Officers and migrants should wear or be provided masks or similar face coverings.
- **Quarantine at homes.** The CDC recommends that people returning to the United States from Mexico stay at home for 14 days and practice social distancing. CDC advises those who cross the southern border to refrain from crossing if ill and follow health requirements on both sides of the border, without recommending self-quarantining. Should public health authorities direct all people crossing the southern border to quarantine for 14 days, asylum seekers – the vast majority of whom have family or other close contacts they are planning to join – should do so at the homes of family, friends, or other community contacts, using distancing, face-covering, hand-washing, and other safeguards in transit. Mass quarantining conducted by CBP or ICE, which use congregate settings, should not be employed. For the few asylum seekers who do not have destination locations, the CDC should work with local health authorities to identify quarantine locations. Some refugee assistance shelters and organizations may also be able to assist.
- **Health screening.** Under existing operating procedures for ports of entry, any person with a fever over 100 degrees Fahrenheit who exhibits symptoms consistent with an infectious disease like COVID-19 should be referred for further medical screening. Enhanced health screening – where all arrivals are required to be “asked about their medical history, current condition, and asked for contact information for local health authorities” – is currently directed at airport arrivals from China, Iran, and certain European countries – and *not* currently required for other travelers at airports or the northern and southern land borders. If enhanced screening of people crossing ports of entry or encountered by CBP should be recommended for public health reasons, a quick three-question screen of symptoms can be administered to ask about any fever, cough, or difficulty breathing, along with temperature testing. The WHO has issued detailed guidelines for interviews and other steps to detect and manage COVID-19 at international ports of entry. A CBP physician adviser informed Physicians for Human Rights that, with respect to people in the agency’s custody, it conducts a phased approach to the identification of medical issues such as potential COVID-19; there have, however, been many reports of deficiencies in CBP medical care.
- **Testing.** While prompt, accurate testing may one day become widely available, the lack of such testing is *not* a public health justification for refusing to allow men, women, and children seeking asylum or other protection into the United States. The other measures outlined here can be employed to safeguard public health. Any testing of individuals who may have the virus should be conducted free of charge.
- **Treatment and isolation for any ill people.** For any arrival who is determined to be ill with COVID-19 but does not require hospitalization, U.S. agencies should send them to the home of their families or other planned destination to isolate, as the CDC recommends for people within the United States. However, as the use of public transportation is discouraged for people who are ill, for those who would otherwise use public transportation, the CDC should work with local health authorities to provide access to facilities like unused dorm rooms or motel rooms that allow those who are ill to actually isolate away from other people rather than in congregate settings – a measure being used for homeless populations in many U.S. localities. Neither CBP nor ICE should be the agency charged with conducting either quarantine or isolation.