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Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border

The United States has the ability to both safeguard public health in the midst of the COVID-19 response and safeguard the lives of children, families and adults seeking asylum and other humanitarian protection at the U.S. southern border, as public health experts have repeatedly stressed in letters urging revocation of policies that expel, block and turn back to danger children, families and adults seeking refuge. Not only have public health experts concluded that the March 2020 Centers for Disease Control and Prevention (CDC) order and its extensions, which have been used to justify these policies, were specious from a public health perspective, but numerous media reports confirm that experts within CDC had objected to the order as lacking a public health basis and not motivated by public health concerns.[1] In early November 2020, a spokesperson for the Biden campaign told CBS News that a Biden Administration would "direct the CDC and [Department of Homeland Security] DHS to review this policy and make the appropriate changes to ensure that people have the ability to submit their asylum claims while ensuring that we are taking the appropriate COVID-19 safety precautions, as guided by the science and public health experts."

The U.N. Refugee Agency (UNHCR) explained in its March 2020 legal guidance on the COVID-19 response that state entry measures should not prevent people from seeking asylum from persecution and that states may not deny entry to people at risk of refoulement. In November 2020, it warned that "measures restricting access to asylum must not be allowed to become entrenched under the guise of public health." The public health consensus is clear: there is "no public health rationale" to bar or discriminate against asylum seekers or migrants based on immigration status. Moreover, various categories of travelers are currently allowed to arrive in the United States from international destinations, including at the southwest border,[2] and transmission of COVID-19 is already widespread within U.S. communities.

Instead of bans, expulsions and asylum denials, the Biden Administration should employ science-based public health measures at borders to protect the health of the American public, U.S. border officers, communities on both sides of the border and the lives of those seeking refuge, safety and freedom. We recommend effective, evidence-based public health measures, many of which are currently used in the United States and in connection to travel, to mitigate COVID-19 risks. These measures – outlined in greater detail below – include:

- Immediately strengthen public health decision-making, contingency planning for increases or shifts in arrivals, coordination (both internally and cross-border), and funding for public health authorities and humanitarian entities implementing public health safeguards, as well as strengthen public health surveillance[3] at the border

[1] These policies, and their impact, are outlined in this backgrounder. In late November 2020, a federal court issued a preliminary injunction blocking DHS from expelling unaccompanied children under the CDC order and finding that the government was not likely to prevail on its assertion that the U.S. public health laws cited as authority for the CDC order authorize expulsions.

[2] In addition to arrivals at U.S. airports, more than 40 million pedestrians, car, bus and train passengers, including U.S. citizens and various categories of persons deemed "essential," entered the United States through the southern border between April and September 2020 according to the Bureau of Transportation Statistics (presumably including U.S. citizens and others deemed "essential").

[3] Public health surveillance is defined by CDC as "the ongoing, systematic collection, analysis, and interpretation of health-related data essential to planning, implementation, and evaluation of public health practice."

and support improved public health capacity in Mexico by, among other steps, funding health, refugee aid, humanitarian and other agencies already working with asylum seekers and migrants there

- Use masks, social distancing, hand hygiene (including alcohol-based hand sanitizer and handwashing facilities), distancing demarcations and barriers at border posts and during processing
- Adapt border processing to minimize delays, avoid congregate situations, reduce density, and maximize ventilation, and use and repurpose areas appropriate for non-congregate processing, identifying larger locations with more appropriate layouts and conditions that can be used to scale up reception capacities should arrivals increase or shift
- Ramp up testing capacity, which should be conducted by CDC or Department of Health and Human Services (HHS) and further enhanced via mobile medical/testing units, testing any person who has symptoms, has been exposed to a person with COVID-19, is referred to a congregate setting, or as required by any applicable (frequently-shifting) travel or after-travel guidance
- Expand quarantine capacity and isolation capacity through use of motels, mobile units or other individualized accommodations for people determined to be ill, or for those who need to quarantine due to symptoms, exposure, applicable travel or after-travel guidance, or inability to shelter at a home, ensuring that such capacities – which fall within the jurisdiction of CDC and/or local health authorities – are not conducted by Customs and Border Protection (CBP) or Immigration and Customs Enforcement (ICE), and that appropriate accommodations, supervision and support are in place for all children, including unaccompanied children, who are immediately transferred from CBP to Office of Refugee Resettlement (ORR) custody
- Ensure safety during transportation through use of masks, well-ventilated vehicles, larger capacity vehicles to allow sufficient distancing, and cleaning and disinfecting frequently-touched surfaces
- Employ safeguards at shelters or reception locations through measures including health screenings, masks, social distancing, reduced density, use of outdoor areas, ventilation, and testing, taking into account location layout, duration of stay and local requirements
- Do not hold families, adults or children in congregate detention, which presents a range of health risks; instead families and adults can shelter in place with their families or other community contacts in the United States (after any brief shelter or reception visit) through parole and proven case management alternatives to detention, while ensuring immediate transfer of unaccompanied children to HHS/ORR custody and their swift release to sponsors with use of safe travel precautions, and
- Provide health information and education appropriate for a person's health literacy level and linguistic needs, including current information about after-travel precautions, which are subject to change

Many of the strategies identified in these recommendations can be scaled up or adjusted, if new arrivals increase or as needs shift among various border locations. While these recommendations focus on public health measures, various non-governmental organizations have issued recommendations on strategies to strengthen processing and prepare for potential shifts or increases in arrival numbers.[4] U.S. authorities should consult with UNHCR, the U.N. Children's Fund (UNICEF) and the various aid, medical and other humanitarian organizations already working with refugee and migrant populations on both sides of the border. As stressed below, contingency planning and coordination with local public health authorities, medical and refugee aid groups, shelters, and other organizations working with refugees on both sides of the border is critical, as is funding for public health measures and local health authorities, providers, shelters and others. In addition, as there are

[4] Human Rights First, "Walking the Walk: 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy, Chapter 3: Upholding Refugee Protection and Asylum at Home;" International Rescue Committee, "Safety for all: Responding to the humanitarian crisis in Central America, restoring the U.S. asylum system, and protecting the most vulnerable;" Asylum Access & other organizations, "Recommendations from Mexican Civil Society Organizations to the Biden-Harris Administration: Restitution and Support for Asylum Seekers Subjected to MPP."

significant variations among border locations – such as the physical design of ports of entry (POEs), security challenges due to threat levels on the Mexican side of the border, levels of COVID-19 transmission, shelter layouts and available local resources – specific steps require discussion and engagement with local health authorities, medical providers, shelters and refugee assistance organizations.

These recommendations include multiple levels of public health safeguards to be applied simultaneously. The current unavailability of particular measures should not be used as an excuse to turn away or ban people seeking protection. Instead, public health, humanitarian and health authorities should take steps to rapidly address any gaps and adjust practices to employ the range of other effective measures identified here.

Medical experts have long warned that detention of asylum seekers and migrants in congregate custody, jails and detention facilities has negative health consequences, that asylum seekers and migrants should be released from such facilities given the dangers of COVID-19 spread there, and that medical evidence shows that alternatives to detention result in improved health outcomes. The massive spread of SARS-CoV-2 (the virus that causes COVID-19) in U.S. immigration detention facilities due to the lack of sufficient releases, confirms the urgent public health imperative to swiftly shift from mass migration detention to effective community-based case management.

This is a dynamic situation. Public health measures will need to be reviewed and adjusted as the COVID-19 transmission context, asylum arrival levels, public health guidance, testing technology and capacity, availability of vaccines and therapeutics, and evidence and understanding of the disease change. As the science is rapidly evolving, we recommend following the best scientific guidance available at the time and ensuring that systems are in place to accommodate frequently updated guidance.

For a detailed discussion of the evidence-based measures recommended by public health experts,[5] please consult the full recommendations paper.

[5] 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 Johns Hopkins Bloomberg School of Public Health; Physicians for Human Rights; and Doctors of the World; as well as Dr. Rebecca Cázares, Refugee Health Alliance; Dr. Joanne Csete, Columbia University Medical Center; Dr. Marie DeLuca, Columbia University Medical Center; Dr. Hope Ferdowsian, University of New Mexico School of Medicine; Dr. Rohini J. Haar, School of Public Health, U.C., Berkeley; Dr. Michele Heisler, School of Public Health, University of Michigan; Dr. Monik C. Jiménez, Harvard T.H. Chan, School of Public Health; Dr. S. Patrick Kachur, Columbia University Medical Center; Dr. Ling San Lau, Columbia University Mailman School of Public Health; Dr. Alan R. Lifson, School of Public Health, University of Minnesota; Dr. Joseph B. McCormick, University of Texas School of Public Health; Terry McGovern, Columbia University Medical Center and Columbia University Mailman School of Public Health; Dr. Ranit Mishori, Georgetown Medical Center; Lisa Mitchell-Bennett, University of Texas School of Public Health; Dr. Rachel Moresky, Columbia University Medical Center and Columbia University Mailman School of Public Health; Dr. Stephen Morse, Columbia University Medical Center; Dr. Kathleen Page, Johns Hopkins University; Dr. Rupa R. Patel, Washington University in St. Louis; Helen Perry, Global Response Management; Dr. Adam Richards, Community Partners International; Dr. Leslie F. Roberts, Columbia University Medical Center; Dr. Ana Cristina Sedas, Harvard Medical School; Dr. Ronald Waldman, George Washington University Milken Institute School of Public Health and Doctors of the World; Monette Zard, Columbia University Medical Center and Columbia University Mailman School of Public Health; and Dr. Amy Zeidan, Emory University School of Medicine.