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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

**COMMITTEE ON  
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**COMMITTEE ON  
THE BUDGET**

February 14, 2022

Dr. Rochelle Walensky  
Director  
Centers for Disease Control and Prevention  
1600 Clifton Road  
Atlanta, GA 30329

Dear Director Walensky:

We write to express our concern with the continued application of Title 42 to unlawfully restrict the legal and human right to seek asylum at the US-Mexico border as well as the expulsion of people fleeing persecution and torture. Despite political instability, natural disasters, persecution, and other extraordinary conditions threatening their lives and livelihoods, asylum seekers asking for protection at the Southern U.S. border continue to be expelled en masse, returning them to the exact danger from which they fled<sup>1</sup>.

March 20<sup>th</sup> 2022 will mark two years since the Trump Administration issued the Title 42 expulsion order over objections by senior CDC medical experts that it lacked a public health justification.<sup>2</sup> Public health experts have repeatedly stated<sup>3</sup> that there is no public health imperative for Title 42 expulsions, and that continuing expulsions under this order creates public health risks and ignores scientific consensus regarding the cause and prevention of COVID-19 transmission. Dr. Anthony Fauci, Chief Medical Advisor to the President of the United States, also stated in October that migrants are “absolutely not” a “major reason why COVID-19 is spreading in the U.S.” and “focusing on immigrants, expelling them...is not the solution to an outbreak.”<sup>4</sup> the U.S. should end Title 42 expulsions and adhere to the recommendations from public health experts to safely process people seeking asylum.

The U.S. Department of Homeland Security (DHS) has used Title 42 to summarily expel people more than 1,300,000 times since the pandemic began, with minimal procedural protections

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<sup>1</sup> <https://thehill.com/latino/572588-advocates-in-utter-disbelief-after-biden-resumes-haitian-repatriations>

<sup>2</sup> <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>; <https://www.cbsnews.com/news/trump-administration-closed-borders-migrant-children-covid-19/>

<sup>3</sup> <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/july-2021-letter-hhs-secretary-becerra-and-cdc-director-walensky-title-42-order>

<sup>4</sup> <https://www.forbes.com/sites/alisondurkee/2021/10/03/fauci-says-immigrants-are-absolutely-not-driving-covid-19-surge-lets-face-reality-here/?sh=50224691173d>

guaranteed by U.S. and international law. Congress enumerated specific protections for refugees in the Immigration and Nationality Act in order to ensure the safe and fair processing of those seeking asylum. The lack of access to immigration judges or asylum officers to assert claims for asylum and other humanitarian protection – only 3,217 migrants out of 1,163,000 border expulsions under Title 42 have even been referred for fear screenings under the Convention Against Torture and of these only 272 were not expelled under the basis of those screenings<sup>5</sup> – is indicative of this malpractice.

DHS’s enforcement of Title 42 and its neglect of recommended public health measures, including testing of unaccompanied minors, single adults, and family units, only amplifies risks to public health. Additionally, dependence on expulsion strategies not only “heightens the risk of COVID-19 transmission across national borders”<sup>6</sup> but also perpetuates racially based tropes presenting migrants as vectors of disease.

The Biden administration has defended Title 42 expulsions as a purportedly necessary public health measure.<sup>7</sup> Department of Homeland Security Secretary Mayorkas has stated that “it’s a heartbreaking thing to see” asylum seekers continuing to be turned away at our southern border, however, that the Title 42 expulsions policy “is not an immigration policy that we in this administration would embrace, but we view it as a public health imperative as the Centers for Disease Control has so ordered.”<sup>8</sup> This claim strains credulity, given testimony that the order was initially adopted over the objection of CDC’s career officials and the consensus among epidemiologists and other public health experts that the ongoing policy serves no sound public health purpose. Moreover, the government’s application of COVID-19 restrictions to different categories of immigrants is arbitrary, suggesting that deterring and expelling asylum seekers is the primary governmental concern, not public health. While our borders are currently open to vaccinated travelers, the government continues to deny even vaccinated asylum seekers the legitimate right to seek protection. In short, protecting public health and ensuring access to asylum are in no way mutually exclusive.

The continued use of Title 42 expulsions has been vehemently opposed by human and civil rights organizations such as the ACLU, Oxfam America, Human Rights First, Refugees International, among hundreds of others<sup>9</sup>, and federal district court Judge Emmet Sullivan ruled that “the federal government does not have the authority to rapidly expel families who entered the U.S,” under Title 42... “without considering their claims for protection.” Furthermore, reports of human rights violations in Mexico signal that the Biden Administration must repeal this measure and do more to address its legal and moral obligation to protect asylum seekers.

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<sup>5</sup> <https://www.humanrightsfirst.org/resource/joint-ngo-letter-us-compliance-convention-against-torture-obligations>

<sup>6</sup> <https://www.unhcr.org/en-us/news/press/2021/8/6113dfc14/unhcr-concerned-expulsion-flights-under-covid-19-asylum-restrictions.html>

<sup>7</sup> <https://www.latimes.com/opinion/story/2021-05-27/title-42-border-immigration>

<sup>8</sup> <https://www.washingtonexaminer.com/opinion/is-title-42-an-immigration-policy-or-not>

<sup>9</sup> [https://www.humanrightsfirst.org/sites/default/files/Joint%20Letter%20in%20response%20to%20RMX%202.0%20and%20Title%2042%20continuation\\_12172021.pdf](https://www.humanrightsfirst.org/sites/default/files/Joint%20Letter%20in%20response%20to%20RMX%202.0%20and%20Title%2042%20continuation_12172021.pdf)

Considering the negative impact of Title 42 to public health and asylum seekers, we call on the CDC to immediately reverse course and discontinue the application of Title 42 expulsions along the US-Mexico border. For nearly two years now, the CDC has made various determinations on the continued application of Title 42 with very little transparency into the factors that justify this inhumane policy. Therefore, we request a response to the following questions in a timely manner.

- How does the CDC determine that asylum seekers pose a public health threat that is distinct from and not amenable to the same mitigation measures as those applied to other visitors/travelers who are allowed to cross the border?
- To what extent are various agencies, including the Departments of Homeland Security, Justice, State, Health and Human Services, and the Centers for Disease Control and Prevention, consulting with and coordinating with one another on Title 42 expulsions and other border-related policies?
- Is the CDC working with DHS on vaccination plans for those in U.S. Customs and Border Protection custody? Please provide any COVID-19 vaccination plans that have been implemented or plan to be implemented for migrants detained in CBP custody.
- Congress wrote the Immigration and Nationality Act with the specific purpose of implementing America's treaty obligations to screen asylum seekers for eligibility for refugee protection and other related forms of protection. How do the Executive Branch's actions comport with both Congressional intent and America's legal obligations to screen people in order to ensure they are not returned to a place where they are likely to face harm?
- In determining whether a policy so restrictive as Title 42 is necessary to protect the public health, has the CDC reviewed the steps taken by the European Union that enable its member nations to permit asylum seekers to seek protection despite COVID-19?
- Given CDC's stated rationale for the Order's necessity, why hasn't CDC at least exempted from Title 42 individuals who are fully vaccinated against COVID-19, who have recently recovered from COVID-19, who have tested negative within 24 hours of seeking entry, or who have completed quarantine while in US custody?
- As public health experts have noted, the implementation of Title 42 itself raises public health concerns. How does the harm caused to individuals expelled under Title 42, and the risks to which they are subject, factor into CDC's sixty-day reviews?
- Please provide the written analysis the CDC relied upon in each sixty-day review conducted to date. Please provide this analysis upon completion of any subsequent review.
- Has there been any effort to track Covid-19 outbreaks in other countries that are the result of the United States' deportation and expulsion policies during the global pandemic?

If you have any questions, please do not hesitate to contact Kristen Torres with Rep. Chu at [Kristen.Torres@mail.house.gov](mailto:Kristen.Torres@mail.house.gov) or Aissa Canchola with Rep. Pressley at [Aissa.Canchola@mail.house.gov](mailto:Aissa.Canchola@mail.house.gov) or Jonathan Martinez with Rep. Velázquez at [Jonathan.Martinez@mail.house.gov](mailto:Jonathan.Martinez@mail.house.gov).

Sincerely,

/s/  
Judy Chu  
Member of Congress

/s/  
Nydia Velázquez  
Member of Congress

/s/  
Joaquin Castro  
Member of Congress

/s/  
James P. McGovern  
Member of Congress

/s/  
Eleanor Holmes Norton  
Member of Congress

/s/  
Ann Kirkpatrick  
Member of Congress

/s/  
Adriano Espaillat  
Member of Congress

/s/  
Barbara Lee  
Member of Congress

/s/  
Ilhan Omar  
Member of Congress

/s/

/s/  
Ayanna Pressley  
Member of Congress

/s/  
Nanette Diaz Barragán  
Member of Congress

/s/  
Grace Napolitano  
Member of Congress

/s/  
Alan Lowenthal  
Member of Congress

/s/  
Rashida Tlaib  
Member of Congress

/s/  
Ritchie Torres  
Member of Congress

/s/  
Frederica S. Wilson  
Member of Congress

/s/  
Madeleine Dean  
Member of Congress

/s/  
Jesús G. “Chuy” García  
Member of Congress

/s/

Jan Schakowsky  
Member of Congress

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Mark Pocan  
Member of Congress

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Jamaal Bowman, Ed.D.  
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Grace Meng  
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Betty McCollum  
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Diana DeGette  
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Juan Vargas  
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Alexandria Ocasio-Cortez  
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Chellie Pingree  
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