

Congress of the United States
Washington, DC 20515

February 23, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Mayorkas:

We write to urge you to employ alternative forms of humanitarian relief for individuals subject to deportation for the remainder of the COVID-19 pandemic. We also urge you to safely and effectively end all expulsions under title 42 of the Public Health Service Act as soon as practicable and ensure that migrants can access our nation's asylum system.

We welcomed President Biden's Executive Orders ordering a review of the Trump administration's anti-asylum policies. We also applaud the department for pursuing a 100-day deportation moratorium and agree that a thorough review of our immigration enforcement system is desperately needed after the past four years. Much work will be required to repair the damage that was inflicted by the previous administration's cruel immigration agenda and we are prepared to assist with this effort however we can.

We write out of deep concern about continued Title 42 expulsions and deportations that have taken place in recent weeks, seemingly regardless of whether these migrants meet priorities for removals. In many cases these deportees are families and children who likely pose no security threat. The Trump administration misused Title 42 to summarily expel hundreds of thousands of migrants while denying them due process and access to the asylum system in contravention of international legal obligations.

Numerous public health experts have also called on the CDC to rescind the Title 42 order as it has "no scientific basis as a public health measure."¹ And the experts at the CDC seem to agree. Reportedly, in March 2020, CDC officials initially refused to comply with the administration's demands to effectively eliminate access at the border to our asylum system via emergency powers because they saw no valid public health justification.²

Nor do Title 42 expulsions have a valid legal basis. Last May, after more than a month of obfuscation, the Trump Administration produced to Congress a deeply-flawed "justification" of the Title 42 Order that led Yale Professor Oona Hathaway, a member of the State Department's Advisory Board on International Law, to state publicly that the Trump Administration's explanation, "suggests that it is not only ignoring its international law obligations in this case, but it also, apparently, misunderstands international law altogether."³ In November, a federal court ruled that these Title 42 expulsions are in fact unlawful. Although the D.C. Circuit recently lifted that injunction pending appeal, it did *not* rule that the Title 42 order was legally sound.

¹ Letter to Acting HHS Secretary Cochran and CDC Director Walensky. (2021, January 28). <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky>.

² Dearen, J., & Burke, G. (2020, October 3). Pence ordered borders closed after Cdc experts refused. Associated Press. <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>.

³ Hathaway, O. (2020, May 15). The Trump Administration's Indefensible Legal Defense of Its Asylum Ban. <https://www.justsecurity.org/70192/the-trump-administrations-indefensible-legal-defense-of-its-asylum-ban/>.

The Biden administration need not and should not leave this to the courts. You have the power to halt these expulsions by repealing the Title 42 order, and you should use it as soon as practicable. Expulsions under Title 42 actually endanger public health, including the health of enforcement officers and migrants. Many migrants are at high risk of exposure to COVID-19 while being detained in the United States pending their expulsion or deportation to less-resourced countries with severely strained health systems. Haiti, for example, has only 124 ICU beds and the capacity to ventilate 62 patients for a country of eleven million.⁴ The island nation also is mired in severe economic, security, and constitutional crises, yet has received more than 900 migrants since February 1. This includes a recent February 8 flight in which 72 people were deported to Port-au-Prince, including a two-month-old baby and 21 other children.⁵

Even with the development and distribution of COVID-19 vaccines, we still face an uphill battle to reach herd immunity. At a time when travel is restricted worldwide, and we are observing the emergence of multiple alarming COVID-19 variants, continued expulsions and deportations threaten to export the virus to already vulnerable nations. Leading public health experts have repeatedly made clear that by employing sensible, science-based public health measures the United States can safeguard public health and safely process people seeking protection at our border.⁶

Mr. Secretary, the CDC order authorizing expulsions without due process under Title 42 was immoral and dangerous when issued and continues to put hundreds of thousands of people at risk. We urge you to safely and effectively end this practice as soon as practicable and to employ alternative forms of humanitarian relief for individuals subject to deportation until we have this virus under control.

We thank you for your leadership in working to address the COVID-19 pandemic.


Sincerely,



FREDERICA S. WILSON
Member of Congress



PRAMILA JAYAPAL
Member of Congress



GREGORY W. MEEKS
Chairman
House Foreign Affairs Committee



BENNIE G. THOMPSON
Chairman
Committee on Homeland Security

⁴ Losonczy, L. I., Barnes, S. L., Liu, S., Williams, S. R., McCurdy, M. T., Lemos, V., Chandler, J., Colas, L. N., Augustin, M. E., Papali, A., & Research and Education consortium for Acute Care in Haiti (REACH) Study Group (2019). Critical care capacity in Haiti: A nationwide cross-sectional survey. *PloS one*, 14(6), e0218141. <https://doi.org/10.1371/journal.pone.0218141>

⁵ Pilkington, E. (2021, February 8). Outcry as more than 20 babies and children deported by Us to Haiti. *The Guardian*. <https://www.theguardian.com/us-news/2021/feb/08/us-ice-immigration-customs-enforcement-haiti-deportations>.

⁶ Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border . (2020, December). file:///C:/Users/mwolf-johnson/Downloads/public_health_recommendations_for_processing_families_children_and_adults_seeking_asylum_or_other_protection_at_the_border_dec2020_0(1).pdf.

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