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Author contributions

D.E. and S.G. were responsible for the literature search, background and rationale, writing all or part

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Competing interests

The authors declare no competing interests.



Public health law must never again be misused to expel asylum seekers: Title 42

To the Editor — On 1 April 2022, the US Centers for Disease Control and Prevention (CDC) moved to close a sorry chapter in the organization's history by terminating the inhumane immigration policy known colloquially as Title 42¹. The original order, issued on 20 March 2020, invoked a rarely used provision of US health law — section 265 of US Code Title 42 — allowing the US federal government, on the grounds of public health, to immediately turn away and expel people arriving at the border seeking asylum protection². The order was then revised and renewed multiple times over two years by the CDC under both the Trump and Biden administrations. The public health justification for Title 42 was spurious at its inception and at odds with the science on SARS-CoV-2 transmission and infection. In allowing public health to be weaponized and used as a means to subvert the internationally recognized right to seek asylum, the CDC established a disturbing global precedent that undermined trust in public health institutions at precisely the moment when the world needed that trust most.

Since the earliest days of the pandemic, public health experts have noted that tried and tested public health measures such as masking, social distancing, improved ventilation and testing can be layered together to allow the safe processing of asylum seekers at US borders^{3,4}. The Title 42 order was enacted at the start of the pandemic despite the reported objections of senior CDC career scientists, and to this day, none have stepped forward to defend the action⁵. The tenuous public health basis for the order was underscored by the thousands of other travelers — including tourists — who were allowed to cross the border each day with little or no public health measures in place, while the order continued to be applied

for the sole purpose of expelling asylum seekers. Notably, in their August 2021 renewal of the order, the CDC stated that safe processing is possible and is currently being implemented for unaccompanied minors. Yet, expanding these safety measures to families and adult asylum seekers took over seven months. Even as the science on COVID-19 evolved, the effective uses of testing and masking were demonstrated, and vaccines became widely available and encouraged, there was no commensurate change in the application of the ban. Indeed, the Title 42 order remained in effect even as masking and vaccination mandates eased around the United States as the Omicron BA.1 wave subsided.

The misuse and misappropriation of public health language by the administration to further immigration control objectives has caused untold damage to individuals and migrant populations. Many thousands of men, women and children have been returned to face threats to life and physical insecurity in Mexico and other countries⁶. Venezuelans have been expelled to Colombia, and thousands of Haitians expelled to Haiti, a country which the Biden administration itself has noted is “grappling with a deteriorating political crisis, violence, and a staggering increase in human rights abuses”⁷. The human costs of these policies have been profound, with over 9,800 kidnappings and other violent attacks (documented by Human Rights First) against migrants blocked in and/or expelled to Mexico since the Biden administration took office⁸.

In March 2022, two contradictory court decisions highlighted the uncertainty and harm caused by utilizing public health as a stand-in for immigration policy. A federal court of appeals issued a ruling in a case involving migrant families, noting that they

could not be expelled to countries where they may face persecution, and stating that “the CDC’s § 265 order looks in certain respects like a relic from an era with no vaccines, scarce testing, few therapeutics, and little certainty”⁹. Yet later that same day, a federal judge in Texas ruled that the Biden administration could not exempt unaccompanied minors from the order despite the CDC’s August 2021 update that outlined the government’s ability and capacity to safely process this population. The dichotomy between the two rulings demonstrated the need for the CDC to provide clear leadership using the evidence that exists—to reclaim from politicians and lawyers its position as the science-based public health authority that it has always been—a move that finally came on 1 April, with its decision to revoke the order. However, the termination will only take effect on 23 May 2022, inflicting yet more harm on migrants and asylum-seekers in the ensuing weeks.

The developing humanitarian emergency in Ukraine provides a vivid illustration of the important role that asylum and international refugee protections play in protecting human life. Ukraine’s neighboring states have waived COVID-19 travel restrictions to allow unfettered admission to safety, thereby living up to both the letter and spirit of international refugee law. European countries are balancing the present but manageable risks posed by COVID-19 with the need to safeguard the right to life and asylum of those seeking protection from violence and conflict.

In sharp contrast, the United States singled out asylum seekers to be banned and expelled. The Title 42 order not only was discriminatory and lacking a basis in evidence, but also fueled the xenophobic trope that migrants are vectors of disease, feeding the stigma and discrimination

that has regrettably come to mark much of the US response to this pandemic¹⁰. At a time when public health and science have been under assault from the spread of misinformation and disinformation, the CDC, through its own misuse of public health to block the lifesaving right to asylum, further eroded the legitimacy so central to trust in our public health institutions. The harms caused by Title 42 will persist long beyond the revocation of the order. As this chapter draws to a close, it is imperative to ensure that the asylum processes that will be instituted will be equitable and humane. And it is equally imperative to ensure that public health is never again weaponized against those seeking protection at the US border.

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Competing interests

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