



Fighting since 1989 for the rights and dignity of people living with HIV/AIDS

15 Maiden Lane, 18th  
Floor New York, NY 10034  
Tel: 212.577.3001 Fax:  
212.577.3192  
[www.hivlawproject.org](http://www.hivlawproject.org)

December 4, 2008

U.S. Department of Health and Human Services  
Centers for Disease Control and Prevention

1600 Clifton Road, NE., E03

Atlanta, GA 30333

VIA EMAIL

To: [part34publiccomments@cdc.gov](mailto:part34publiccomments@cdc.gov)

**Re: Interim Final Rule on Medical Examination of Aliens- Revisions to Medical Screening Process**

**Docket Number: CDC-2008-0002**

To Whom It May Concern:

HIV Law Project thanks the U.S. Department of Health and Human Services for the opportunity to submit comments in response to the proposed Interim Final Rule on Medical Examination of Aliens. We write to address a significant omission in the rule-- the failure to remove HIV from the list of "communicable diseases of public health significance" (hereinafter "communicable diseases") while proposing other changes to the very regulation that contains this list.

This failure constitutes a repudiation of the national consensus as recently expressed by Congress's repeal of the statutory entry ban for those with HIV, and echoed by Center for Disease Control (CDC) Director Julie Gerberding who has stated a commitment to removing HIV from the list of communicable diseases. We urge HHS to act swiftly to revise the proposed rule to conform with Congress's clearly stated intent to end this discriminatory, punitive, and irrational bar. Doing so will finally end a shameful practice that keeps the United States in company with countries such as Libya, Saudi Arabia, Iraq, and Sudan.

**HIV Law Project. Fighting for the rights of people living with HIV/AIDS since 1989**  
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HIV Law Project was founded in 1989 to provide quality legal and advocacy services in New York City for underserved HIV-positive persons, including women and their families, undocumented and recent immigrants, and communities of color. HIV Law Project was the first, and remains the only, organization in New York City focused exclusively on legal advocacy for these communities, and has therefore developed special expertise in the issues facing HIV-positive immigrants.

### **The President, Congress, and the Director of the CDC have Called for the Removal of HIV from the List of Communicable Diseases**

On July 30, 2008, President Bush made history by signing into law the Congressional repeal of the statutory entry bar for people with HIV. In doing so the Executive and the Legislature affirmed our long-standing commitment to human rights and dignity and rejected a discriminatory and irrational practice.

Subsequent to this historic legislation, CDC Director Julie Gerberding publicly stated her commitment to repealing the HIV ban. In a response to a Washington Post editorial condemning HHS for failing to rewrite the rules in order to allow the admission of people with HIV/AIDS into the country, she wrote, "HHS has clearly stated our intent to remove HIV infection as an inadmissible condition for entering the United States. We are already preparing the revised rule."<sup>1</sup>

We are encouraged by the actions of President Bush and Congress, and by Director Gerberding's commitment to revising the rule. We urge the CDC and HHS to expedite the removal of HIV from the list of communicable diseases of public health significance in order to fully realize the intent of this legislation.

### **The Proposed Regulation is a Violation of International Human Rights**

The HIV entry bar violates human rights enumerated in the International Covenant on Civil and Political Rights, the UN Declaration of Human Rights, and the UN Guidelines on Human Rights and HIV/AIDS. Specifically, the UN Guidelines on Human Rights and HIV/AIDS advise that regulations purporting to safeguard the public health from the spread of HIV should be narrowly drawn to avoid impinging on human rights.

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<sup>1</sup> Gerberding, Julie. Letter. Washington Post. 06 October 2008:A14.

[Many of these] restrictions... infringe on the principle of non-discrimination, for example when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum... (T)he publication of HIV status and the right to liberty of person is violated when HIV is used to justify deprivation of liberty or segregation. Such coercive measures are not the least restrictive measures possible and are often imposed discriminatorily against already vulnerable groups.<sup>2</sup>

When vulnerable groups, such as women, gay men, ethnic and national minorities, and the poor are subjected to an HIV entry ban, the potential for human rights abuse is exacerbated. As a result, we undermine our country's fundamental principles of dignity, equality, and respect, particularly for those who belong to underrepresented groups.

UN Secretary-General Ban Ki-moon has joined the chorus of international condemnation of HIV travel restrictions. During his August 3, 2008 address to the International Aids Conference, he congratulated the United States for repealing the statutory ban to entry for people living with HIV. At the same time, he noted that discrimination against people with HIV, including restricting the ability of HIV positive individuals to travel, is an affront to commonly shared notions of human dignity and respect.

Since taking up the position of Secretary General of the United Nations, some of my most moving and inspiring experiences have been meetings with colleagues and others living with HIV. They are wonderfully courageous and motivated people, and should serve as an example to us all on how to act with dignity in the face of adversity. That they should be discriminated against, including through restrictions on their ability to travel between countries, should fill us all with shame.<sup>3</sup>

Maintaining a standard of inadmissibility for those with HIV reflects an immigration policy based upon fear rather than informed public health policy. It is a discriminatory measure that violates international human rights and burdens vulnerable groups. The power to end this infringement rests with HHS: it is imperative that it do so now.

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<sup>2</sup> UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, ¶ 105, HR/PUB/06/09 (2006).

<sup>3</sup> Secretary-General Ban Ki-moon, Address to the International Aids Conference (Aug. 3, 2008).

## **The Inclusion of HIV is Contrary to the Intent of the Law and is Unnecessary for the Maintenance of the Public Health**

The proposed rule seeks to add diseases that are “quarantinable” to the list of diseases which are subject to an entry bar, and includes the following: cholera, yellow fever, plague, and SARS. The proposed rule seeks to ensure, rightly, that the public health is protected from highly contagious and dangerous communicable diseases. However, the on-going inclusion of HIV in this list lacks any rational basis, perpetuates the stigmatization of individuals living with HIV, and is unsupported by medical evidence.

As the *UNAIDS International Guidelines on HIV/AIDS and Human Rights* points out,

Public health is most often cited by States as a basis for restricting human rights in the context of HIV... Although such measures may be effective in the case of diseases which are contagious by casual contact and susceptible to cure, they are ineffective with regard to HIV since HIV is not casually transmitted... These coercive measures drive people away from prevention and care programmes, thereby limiting the effectiveness of public health outreach. **A public health exception is, therefore, seldom a legitimate basis for restrictions on human rights in the context of HIV.**<sup>4</sup>

The UN’s International Guidelines make clear that not only is there no rational basis for an entry bar, but that as a coercive measure it may be pushing people away from the care and treatment that they need. The HIV ban reaffirms the stigma associated with HIV and encourages people to stay underground by avoiding testing. In effect, the ban undermines the public health by giving rise to higher numbers of people whose disease progresses undetected and untreated.

Public health goals are ill-served by preventing individuals who present no threat to the public health from visiting or immigrating to the United States. By continuing to treat HIV as a disease warranting fear and exclusion from the United States, HHS is engaging in a discriminatory, punitive, and irrational practice. We therefore request that HHS take immediate action to remove HIV from the list of communicable diseases.

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<sup>4</sup> UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, ¶ 105, HR/PUB/06/09 (2006) (emphasis added).

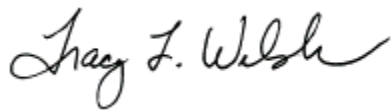
In the words of Physicians for Human Rights, Health Action AIDS Campaign Director Pat Daoust, “If we are ever to effectively address HIV/AIDS from a public health perspective, we must first abolish all discriminatory practices against those infected with HIV. The travel ban is nothing more than a continuation of misunderstood, and offensive, practices that violate human rights and contribute to the stigma that fuels this pandemic.”<sup>5</sup>

There is no better time than now to end the HIV entry ban. The recent statutory repeal of the ban signals a sea change in policy regarding people with HIV. It shows we are a country that places paramount importance on the rights of all people, and that we are prepared to move beyond anachronistic, irrational fears about the transmission of HIV. It further demonstrates that we are ready to join the international community in rejecting discriminatory and coercive practices used against people with HIV.

But Congress cannot do it alone. HHS now has the power -and the responsibility- to implement the will of the American public. It must remove HIV from the list of communicable diseases so that the United States can fully honor our tradition of treating all people with dignity, respect, and equality under the law.

Thank you very much for the opportunity to submit these comments.

Sincerely yours,

A handwritten signature in cursive script that reads "Tracy L. Welsh".

Tracy L. Welsh, Esq.  
Executive Director

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<sup>5</sup> Press Release, Physicians for Human Rights. PHR Opposes Proposed US Travel Restrictions for People with AIDS on Human Rights Grounds, Calls for Complete Lifting of US HIV Travel Ban. (Nov. 30, 2007)