

**EXH. 38**  
**DECL. OF ROCHELLE WALENSKY, M.D., MPH**

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I, Rochelle Walensky, M.D., MPH, pursuant to 28 U.S.C. § 1746, hereby declare and affirm,

1. I am the Chief of the Division of Infectious Diseases at Massachusetts General Hospital (“MGH”) located in Boston, Massachusetts. I am also Professor of Medicine at Harvard Medical School.

2. I have served as the Chief of MGH’s Division of Infectious Diseases since September 2017. The Division provides clinical care, treatment, education and management of infectious disease and also serves as home to a rich infectious diseases research portfolio. As Chief of the Division, I provide leadership and support for these various programs, including not only the Division’s inpatient and outpatient clinical services related to the care of patients with infectious diseases, but also a broad array of research activities in a variety of areas of microbiology, molecular biology, immunology, diagnostics, and host defense.

3. My educational background includes a Doctor of Medicine (M.D.) from the Johns Hopkins University School of Medicine and a Master of Public Health (MPH) from the Harvard School of Public Health. The institutions at which I received postdoctoral training include Johns Hopkins Hospital, Brigham & Women’s Hospital, and MGH.

4. I have been appointed to the academic faculty at Harvard Medical School since 2001, and from 1998 to the present have had a variety of appointments at Brigham and Women’s Hospital and MGH, ascending clinical and academic rank. I have held a number of additional administrative leadership positions, including as a member of the Board of Directors for Mass General Brigham Incorporated (formerly Partners HealthCare System, Inc.).

5. I have played an active advisory role in the response to the COVID-19 outbreak in Massachusetts. I am a member of Governor Charles Baker's COVID-19 Advisory Group as well as his Reopening Advisory Board for COVID-19.

6. I submit this declaration in support of the multistate litigation brought by Massachusetts and other states challenging the policies of the Department of Homeland Security ("DHS") announced on July 6, 2020 by "Broadcast Message" to amend requirements of the Student and Exchange Visitor Program ("July 6 Directive").

7. I have compiled the information set forth below based on personal knowledge, independent research, and review of published academic sources and government directives. I have also familiarized myself with the July 6 Directive in order to understand its impact on public health and higher education systems.

### **The Outbreak and Spread of COVID-19**

8. SARS-CoV-2 is a novel, sometimes lethal coronavirus discovered in 2019. The relentless spread of COVID-19, the disease caused by SARS-CoV-2, began in late 2019.

9. COVID-19 is a highly contagious, and at times fatal, respiratory disease. The disease has an extreme risk of person-to-person transmission via respiratory droplets and in close contact settings has also been demonstrated to be transmitted by aerosols.

10. Although symptoms of the disease are multiple and varied, and may include fever, cough and shortness of breath, many individuals who contract COVID-19 are asymptomatic or pre-symptomatic and therefore are unaware of their infection and risk of infecting others. Even those that ultimately show symptoms of infection may not do so until days after exposure to the virus, during which time they may be infectious to others. It is generally thought that people with symptoms are likely able to actively spread virus for approximately 48 hours before their

symptoms occur. The disease tends to have more severe outcomes for individuals aged 60 and over and individuals with underlying health conditions, but has had lethal effects across demographic groups. In Massachusetts alone, we have 137 documented deaths in people under 50 years old, and 16 deaths among those 20-29 years.

11. The risk of transmission for COVID-19 is of most concern for indoor gatherings of any size, but particularly for large, densely populated indoor gatherings. Such gatherings can facilitate the spread of infection of COVID-19 not only to the gathered individuals and to those with whom they come into close contact, but ultimately unknowingly to others in their communities.

#### **Attempts to Prevent and Mitigate the Spread of COVID-19**

12. Federal, state and local governments, including the Commonwealth of Massachusetts, have issued guidance and directives to prevent and mitigate the spread of COVID-19. These have included mandating the shutdown of physical workplaces, advising or ordering residents to stay home, and limiting the size of in-person gatherings. Despite an early surge, Massachusetts has to date done an exceptional job in maintaining control of escalating cases seen in so many other parts of the country.

13. Measures designed to allow sectors and workplaces to reopen safely have included limiting the occupancy of buildings (“de-densifying”) and the number of individuals that can gather indoors, and issuing detailed protocols for social distancing, hygiene, staffing, cleaning and disinfecting. Masking has been a key part of this successful strategy.

## **Mitigating the Spread of COVID-19 on University and College Campuses**

14. In both my advisory roles and in my research, I have investigated and analyzed the measures and programs for SARS-CoV-2 necessary to keep university and college students safe and to permit the reopening of campuses.

15. Universities and colleges face (and pose to their communities) a particular challenge to the prevention and mitigation of the spread of COVID-19. This is especially true of residential colleges with intimate classrooms, large lecture halls, aging faculty, staff commuting from at-risk communities, and populations of young adults, many of whom are eager to socialize and less cautious about the risks of COVID-19 infection and spread.

16. In the absence of an effective vaccine, a proven therapy, and/or sufficient herd immunity, the ability of campuses to safely reopen in Fall 2020 hinges on several factors: frequent screening to rapidly detect, isolate, and contain new SARS-CoV-2 infections when they occur; uncompromising, continuous attention to basic prevention, such as cleaning and disinfecting; and behavioral interventions to reduce the baseline severity of transmission, such as mask-wearing and social distancing.

17. In those communities in which the spread of COVID-19 infection is active, limiting the number of individuals gathered in single indoor settings—such as dormitories, classrooms and lecture halls—is critical to the prevention and mitigation of the spread of the disease on university and college campuses. This is especially the case where such settings have poor ventilation, limited filtration capacity, and do not permit adequate social distancing.

18. These prevention and mitigation measures pose considerable costs and burdens on universities and colleges in terms of equipment, staffing, infrastructure, testing and tracing, and

other operational costs. Many have claimed they will be unable to survive the economic burden required.

19. For instance, obtaining an adequate supply of testing equipment, in order to conduct regular screening on campuses, would be a challenge. On a college campus of 5,000 enrollees, screening of the students alone every two days will require roughly 195,000 test kits over the abbreviated semester. At per test costs (including the test equipment and associated personnel costs) ranging from \$10 to \$50 (they currently run approximately \$100/test), overall testing costs could reach nearly \$10 million for a given semester. Fortunately, lower-cost, self-administered testing may soon be available and could make screening much more viable and affordable. Pooling could also facilitate more efficient, higher volume screening, but pooling introduces its own logistical challenges and personnel requirements, and could increase the time to definitively identify and isolate a positive case, resulting in further transmission.

20. Costs aside, such a supply of testing may simply not be available to universities and colleges. As the daily rates of positive confirmed cases of COVID-19 in the United States have increased, the strains on testing supplies and testing locations have likewise increased; testing sites in some parts of the country have precipitously closed due to exhaustion of tests and supplies; others have turnaround time for results in excess of 7-10 days. Limitations on the ability of universities and colleges to obtain an adequate supply of testing equipment will further limit their ability to conduct in-person instruction.

21. The prevention and mitigation measures required for a safe reopening of universities and colleges also require advance notice and time for their administration and operationalization. For instance, limiting the capacity of buildings and indoor spaces may require redesigned floor plans and courses to be reorganized, divided or redesigned to accommodate the

space limitations. Those professors who are in at-risk categories may be unable to safely instruct such classes in an in-person setting, which may require other reorganization and reassignments for Fall 2020 courses.

22. Because the infrastructure, material resources, human resources and student structures of universities and colleges will vary considerably, and because the nature and degree of COVID-19 infection will also vary in different communities, higher education institutions must make a series of complex, campus- and situation-specific determinations in response to the risk of COVID-19 infection.

23. Because of the dynamic and fast-moving nature of the spread of COVID-19 infection, institutions such as universities and colleges must remain flexible and agile as they respond to changes in the public health crisis over the course of the semester. Some of these determinations may need to be made quickly, and at times on an emergency basis, in response to the quickly evolving conditions of COVID-19 spread on their campuses and in their communities.

### **The Impact of the July 6 Directive on Public Health and Higher Education Systems**

24. If universities and colleges conduct in-person instruction that requires or facilitates close contact between students, faculty and staff, or that results in large numbers of individuals gathering in indoor spaces—but do not have the resources and/or advance notice with which to implement adequate COVID-19 prevention, testing surveillance, and mitigation measures—then such instruction would pose a substantial risk of increasing the spread of COVID-19 among students, faculty and staff at higher education institutions, to their household members, and to their broader communities. Indeed, university and college campuses could

become the source of individualized outbreaks, which could then result in outbreaks for the surrounding areas and region.

25. If international students currently residing in the United States on F-1 or M-1 visas are forced to vacate their current housing and leave the United States, especially those individuals in parts of the country experiencing significant increases in positive cases, they risk exposing themselves to the virus during their travel or in their home country, and subsequently spreading infection to those with whom they come in contact, potentially expanding the spread of the disease.

26. Decision-making at the academic institutional level during a pandemic, such as the outbreak of COVID-19 among higher education contacts and the surrounding community, requires a commitment to the prevention and mitigation of disease spread. Inserting other considerations into this decision-making poses a risk to public health. If the policies set forth in the July 6 Directive result in the increased use of in-person instruction before universities and colleges have had the opportunity to implement adequate COVID-19 safety, prevention and mitigation measures, this will harm students, faculty and staff at higher education institutions, those in their households, and the communities in which they currently live or to which they may return.



I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of July, 2020

/s/ Rochelle Walensky  
Rochelle Walensky, M.D., MPH  
Professor, Harvard Medical School  
Chief, Division of Infectious Diseases,  
Massachusetts General Hospital