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Selected docket entries for case 22-15518

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Filed	Document Description	Page	Docket Text
04/19/2023	<u>72</u>		FILED OPINION (RICHARD R. CLIFTON, MARK J. BENNETT and ROOPALI H. DESAI) We REVERSE the district court's grant of a permanent injunction and dissolve the injunction. Judge: MJB Authoring. FILED AND ENTERED JUDGMENT. [12698270] (AKM)
	<u>72</u> Opinion	2	
	72 Post Judgment Form DOCUMENT COULD NOT BE RETRIEVED!		
	<u>72</u> Web cites	52	

FOR PUBLICATION**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

KRISTIN K. MAYES, Attorney
General; STATE OF ARIZONA; AL
REBLE; PHOENIX LAW
ENFORCEMENT ASSOCIATION;
UNITED PHOENIX FIREFIGHTERS
ASSOCIATION LOCAL 493,

Plaintiffs-Appellees,

v.

JOSEPH R. BIDEN, in his official
capacity as President of the United
States; ALEJANDRO N.
MAYORKAS, in his official capacity
as Secretary of Homeland Security;
U.S. DEPARTMENT OF
HOMELAND SECURITY; TROY A.
MILLER, in his official capacity as
Senior Official Performing the Duties
of the Commissioner of US Customs
and Border Protection; TAE
JOHNSON, in his official capacity as
Senior Official Performing the Duties
of Director of US Immigration and
Customs Enforcement; UR
MENDOZA JADDOU, in her official
capacity as Director of US Citizenship

No. 22-15518

D.C. No.
2:21-cv-01568-
MTL

OPINION

and Immigration Services; OFFICE OF PERSONNEL MANAGEMENT; KIRAN AHUJA, in her official capacity as director of the Office of Personnel Management and as co-chair of the Safer Federal Workforce Task Force; UNITED STATES GENERAL SERVICES ADMINISTRATION; SHALANDA YOUNG, in her official capacity as Acting Director of the Office of Management and Budget and as a member of the Safer Federal Workforce Task Force; SAFER FEDERAL WORKFORCE TASK FORCE; JEFFREY ZIENTS, in his official capacity as co-chair of the Safer Federal Workforce Task Force and COVID-19 Response Coordinator; L. ERIC PATTERSON, in his official capacity as Director of the Federal Protective Service and member of the SFWTF; JAMES M. MURRAY, in his official capacity as Director of the United States Secret Service and member of the SFWTF; DEANNE CRISWELL, in her official capacity as Director of the Federal Emergency Management Agency and member of the SFWTF; ROCHELLE WALENSKY, in her official capacity as Director of the Centers for Disease Control and Prevention and member of

the SFWTF; CENTERS FOR DISEASE CONTROL AND PREVENTION; FEDERAL ACQUISITION REGULATORY COUNCIL; MATHEW C. BLUM, in his official capacity as Chair of the Federal Acquisition Regulatory Council and Acting Administrator of the Office of Federal Procurement Policy, Office of Management and Budget; LESLEY A. FIELD, in her official capacity as a member of the Federal Acquisition Regulatory Council and Acting Administrator for Federal Procurement at the Office of Federal Procurement Policy, Office of Management and Budget; KARLA S. JACKSON, in her official capacity as a member of the Federal Acquisition Regulatory Council and Assistant Administrator for Procurement at the National Aeronautics and Space Administration; JEFFREY A. KOSES, in his official capacity as a member of the Federal Acquisition Regulatory Council and Senior Procurement Executive at the General Services Administration; JOHN M. TENAGLIA, in his official capacity as a member of the Federal Acquisition Regulatory Council and Principal Director of Defense Pricing and Contracting at the Department of

Defense; UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF JUSTICE; MERRICK B. GARLAND, Attorney General, in his official capacity as Attorney General of the United States,

Defendants-Appellants,

ARIZONA CHAMBER OF COMMERCE & INDUSTRY; FIFTY-SIXTH ARIZONA LEGISLATURE,

Intervenors.

Appeal from the United States District Court
for the District of Arizona
Michael T. Liburdi, District Judge, Presiding

Argued and Submitted March 7, 2023
Las Vegas, Nevada

Filed April 19, 2023

Before: Richard R. Clifton, Mark J. Bennett, and Roopali
H. Desai, Circuit Judges.

Opinion by Judge Bennett

SUMMARY*

Injunction

The panel reversed the district court’s order granting a permanent injunction and dissolved the injunction, which had enjoined the President’s “Contractor Mandate” Executive Order requiring federal contractors who worked on or in connection with federal government projects to be vaccinated against COVID-19.

President Biden issued Executive Order 13,991, establishing the Safer Federal Workforce Task Force that was charged with providing ongoing guidance concerning the operation of the Federal Government during the COVID-19 pandemic. The President invoked his authority under the Federal Property and Administrative Services Act of 1949 (“Procurement Act”) to direct federal agencies to include in certain contracts a clause requiring covered contractor employees to follow COVID-19 safety protocols, including vaccination requirements, in order for employees to be eligible to work on federal government projects. Plaintiffs sued to enjoin the vaccination mandate. This lawsuit revolves around four documents that comprise the Contractor Mandate: the Executive Order, the Task Force Guidance, the Office of Management and Budget Determination, and the Federal Acquisition Regulatory Council Guidance.

The district court granted a permanent injunction against the Contractor Mandate, effective in any contract that either

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

involved a party domiciled or headquartered in Arizona and/or was performed “principally” in Arizona.

The panel considered the first factor of the permanent injunction inquiry: actual success on the merits. First, the panel held the Major Questions Doctrine—which requires that Congress speak clearly if it wishes to assign to an agency decisions of vast economic and political significance—did not apply. There is no relevant agency action here, and the doctrine does not apply to actions by the President. Second, the panel held that even if the Major Questions Doctrine applied, it would not bar the Contractor Mandate because the Mandate is not a transformative expansion of the President’s authority under the Procurement Act. The Contractor Mandate is not an exercise of regulatory authority at all, but of proprietary authority. It is not a “transformative expansion” of any authority, regulatory or proprietary, to require federal contractors—amid an unprecedented global pandemic—to take vaccination-related steps that promote efficiency and economy by reducing absenteeism, project delays, and cost overruns. Third, the panel held that the Contractor Mandate fell within the President’s authority under the Procurement Act. The panel held that the President was justified in finding that prescribing vaccination-related steps contractors must take in order to work on government contracts would directly promote an economical and efficient “system” for both procuring services and performing contracts. The President was authorized by the Act to establish a procedure by which taxpayer funds used to pay contractors who work on federal government contracts are only used to pay those contractors whose relevant employees are vaccinated against COVID-19. Fourth, the panel held that the nondelegation doctrine and state sovereignty concerns did not invalidate the

Contractor Mandate. Finally, the panel held that the Contractor Mandate satisfied the Office of Federal Procurement Policy Act’s procedural requirements. The panel held that Arizona’s claims under the Administrative Procedure Act also failed.

Because Arizona failed to satisfy the first prong of the permanent injunction inquiry—actual success on the merits—the panel held that it need not analyze whether it had satisfied the remaining prongs. The panel reversed the district court’s grant of a permanent injunction and dissolved the injunction.

COUNSEL

David L. Peters (argued), Anna O. Mohan, and Mark B. Stern, Appellate Staff Attorneys; Joshua Revesz, Counsel, Office of the Assistant Attorney General; Brian M. Boynton, Principal Deputy Assistant Attorney General; United States Department of Justice; Washington, D.C.; Samuel F. Callahan, Associate Deputy General Counsel; Shraddha A. Upadhyaya, Associate General Counsel; Arpit K. Garg, Deputy General Counsel; Daniel F. Jacobson, General Counsel; Office of Management and Budget; Washington, D.C.; for Defendants-Appellants.

Alexander W. Samuels (argued), Deputy Attorney General; James K. Rogers, Senior Litigation Counsel; Drew C. Ensign, Deputy Solicitor General; Joseph A. Kanefield, Chief Deputy & Chief of Staff; Mark Brnovich, Attorney General of Arizona; Office of the Arizona Attorney General; Phoenix, Arizona; Hannah H. Porter and Kevin E. O’Malley, Gallagher and Kennedy, Phoenix, Arizona; for Plaintiffs-Appellees Mark Brnovich and State of Arizona.

Dennis I. Wilenchik, Wilenchik & Bartness PC, Phoenix, Arizona, for Plaintiff-Appellee Al Reble.

Michael Napier, Napier Abdo Coury & Baillie PC, Phoenix, Arizona, for Plaintiff-Appellee Phoenix Law Enforcement Association and United Phoenix Firefighters Association Local 493.

Michael G. Bailey (argued), Tully Bailey LLP, Phoenix, Arizona, for Intervenor Arizona Chamber of Commerce & Industry.

Kory Langhofer (argued) and Thomas J. Basile, Statecraft PLLC, Phoenix, Arizona, for Intervenor Fifty-Sixth Arizona Legislature.

Natalie P. Christmas, Assistant Attorney General of Legal Policy; James H. Percival, Deputy Attorney General of Legal Policy; Henry C. Whitaker, Solicitor General; Ashley Moody, Attorney General of Florida; Office of the Florida Attorney General; Tallahassee, Florida; for Amici Curiae the States of Florida, Alabama, Alaska, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia.

Daryl Joseffer and Stephanie A. Maloney, United States Chamber Litigation Center, Washington, D.C.; Steven P. Lehotsky, Gabriela Gonzalez-Araiza, and Adam Steene, Lehotsky Keller LLP, Washington, D.C.; Matthew H. Frederick, Lehotsky Keller LLP, Austin, Texas; for Amicus Curiae the Chamber of Commerce of the United States of America.

OPINION

BENNETT, Circuit Judge:

The purpose of the Federal Property and Administrative Services Act of 1949 (“Procurement Act”), 40 U.S.C. § 101 *et seq.*, “is to provide the Federal Government with an economical and efficient system for . . . [p]rocur[ing] and supplying property and nonpersonal services, and . . . contracting,” *id.* § 101(1). “The President may prescribe policies and directives that the President considers necessary to carry out” the Procurement Act, so long as they are “consistent” with the Act. *Id.* § 121(a). President Biden was justified in concluding that requiring federal contractors who worked on or in connection with federal government projects to be vaccinated against COVID-19 would promote economy and efficiency in federal contracting. Because the district court erred in enjoining the President’s “Contractor Mandate” Executive Order, we dissolve the injunction entered by the district court.

In the midst of the COVID-19 pandemic—and faced with a rising death toll and lost work hours during a recession—the President invoked his authority under the Procurement Act. He used that authority to direct federal agencies to include in certain contracts a clause requiring covered contractor employees to follow COVID-19 safety protocols, including vaccination requirements, for employees to be eligible to work on federal government projects. The President’s delegated executive officer found that requiring vaccination against COVID-19 would reduce absenteeism, lower cost overruns, and prevent delays on government projects. Determination of the Acting OMB Director Regarding the Revised Safer Federal Workforce

Task Force Guidance for Federal Contractors and the Revised Economy & Efficiency Analysis, 86 Fed. Reg. 63,418, 63,418 (Nov. 16, 2021) (“OMB Determination”).

Plaintiffs sued to enjoin the vaccination requirement. The district court granted a permanent injunction against the Contractor Mandate, effective in any contract that either involved a party domiciled or headquartered in Arizona and/or was performed “principally” in Arizona. The federal government appealed. We stayed the district court’s injunction pending resolution of this appeal. Dkt. No. 70.

We have jurisdiction under 28 U.S.C. §§ 1291 and 1292(a)(1). We **REVERSE** the district court’s grant of a permanent injunction and dissolve the injunction.

I. BACKGROUND

A. Statutory Framework

1. The Procurement Act

This dispute involves two provisions of the Procurement Act:

§ 101. Purpose

The purpose of this subtitle is to provide the Federal Government with an economical and efficient system for the following activities:

(1) Procuring and supplying property and nonpersonal services, and performing related functions including contracting

40 U.S.C. § 101.

§ 121. Administrative

(a) Policies prescribed by the President. – The President may prescribe policies and directives that the President considers necessary to carry out this subtitle. The policies must be consistent with this subtitle.

Id. § 121.

2. The Procurement Policy Act

The Office of Federal Procurement Policy Act (“Procurement Policy Act”), 41 U.S.C. § 1707,¹ states that a “procurement policy, regulation, procedure, or form . . . may not take effect until 60 days after it is published for public comment in the Federal Register” if it “relates to the expenditure of appropriated funds” and either “has a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form” or “has a significant cost or administrative impact on contractors or offerors.” *Id.* § 1707(a)(1).

The Procurement Policy Act’s requirements apply to specific “executive agenc[ies].” *Id.* § 1707(c)(1). But “[i]f urgent and compelling circumstances make compliance with the [notice and comment] requirements impracticable,” the officer authorized to issue the procurement policy may waive them. *Id.* § 1707(d).

¹ In addition to the substantive challenges to the Contractor Mandate that Arizona asserted related to the Procurement Act, Arizona also asserted procedural challenges under the Procurement Policy Act.

B. Organizational Framework

On his first day in office, President Biden issued Executive Order 13,991, establishing the Safer Federal Workforce Task Force (“Task Force”). Protecting the Federal Workforce and Requiring Mask-Wearing, 86 Fed. Reg. 7,045, 7,046 (Jan. 25, 2021). Executive Order 13,991 charged the Task Force with “provid[ing] ongoing guidance to heads of agencies on the operation of the Federal Government, the safety of its employees, and the continuity of Government functions during the COVID-19 pandemic.” *Id.*

The Office of Federal Procurement Policy is part of the Office of Management and Budget (“OMB”). 41 U.S.C. § 1101(a). Congress has authorized it to “provide overall direction of Government-wide procurement policies . . . and promote economy, efficiency, and effectiveness in the procurement of property and services.” *Id.* § 1101(b).

Congress also created the Federal Acquisition Regulatory Council (“FAR Council”). 41 U.S.C. § 1302(a). The Administrator of the Office of Federal Procurement Policy chairs the FAR Council and provides guidance on how agencies should obtain full and open competition in contracting. *See id.* §§ 1121, 1122(a)(1)–(2), 1302(b). The FAR Council promulgates the Federal Acquisition Regulation (“FAR”), *id.* § 1303, which contains standard provisions that are included in certain government contracts, *see* 48 C.F.R. §§ 1.000–53.300.

C. Factual Background

There have been over 760 million confirmed cases of COVID-19 worldwide,² and more than 100 million such cases in the United States.³ The disease has caused over 6.8 million deaths around the world.⁴ More than 1.1 million of those deaths have been in the United States.⁵ Since January 2020, a state of public health emergency has been in effect in the United States because of the disease.⁶

The COVID-19 pandemic has also had profound economic effects. The pandemic triggered the greatest worldwide recession since the end of World War II.⁷ The United States Census Bureau concluded that the pandemic's initial impact on the U.S. economy was "more widespread

² World Health Organization, Coronavirus (COVID-19) Dashboard, <https://covid19.who.int> (last visited Apr. 11, 2023) (hereinafter "Global WHO Dashboard").

³ World Health Organization, Coronavirus (COVID-19) Dashboard: United States of America, <https://covid19.who.int/region/amro/country/us> (last visited Apr. 11, 2023) (hereinafter "United States WHO Dashboard").

⁴ Global WHO Dashboard, *supra* note 2.

⁵ United States WHO Dashboard, *supra* note 3.

⁶ The state of emergency will expire at the end of day on May 11, 2023. *See* Exec. Off. of the President, Statement of Administration Policy Re: H.R. 382 & H.J. Res. 7 (Jan. 30, 2023).

⁷ Eduardo Levy Yeyati & Federico Filippini, *Social and Economic Impact of COVID-19* (Brookings Inst., Brookings Global Working Paper #158, 2021), at 1, <https://www.brookings.edu/research/social-and-economic-impact-of-covid-19/>.

than on mortality.”⁸ It “caused the biggest blow to the U.S. economy since the Great Depression.”⁹ Just a year into the pandemic, the cost of lost work hours in the United States associated with the pandemic had exceeded \$100 billion.¹⁰

In response, and once COVID-19 vaccinations were widely available and deemed safe and effective, the President issued an executive order requiring federal contractors’ employees to get vaccinated if they work on or in connection with federal government contracts or work in the same workplace as such employees. This lawsuit revolves around four documents that together comprise the “Contractor Mandate”: (1) the Executive Order, (2) the Task Force Guidance, (3) the OMB Determination, and (4) the FAR Council Guidance.

1. The Executive Order

In September 2021, President Biden issued Executive Order 14,042, Ensuring Adequate COVID Safety Protocols for Federal Contractors. 86 Fed. Reg. 50,985 (Sept. 14, 2021) (“EO”). The EO was issued pursuant to the Procurement Act to “promote[] economy and efficiency in

⁸ U.S. Census Bureau, *Pandemic Impact on Mortality and Economy Varies Across Age Groups and Geographies* (Mar. 8, 2021), <https://www.census.gov/library/stories/2021/03/initial-impact-covid-19-on-united-states-economy-more-widespread-than-on-mortality.html>.

⁹ Lucia Mutikani, *What to Know About the Report on America’s COVID-Hit GDP*, World Economic Forum (July 31, 2020), <https://www.weforum.org/agenda/2020/07/covid-19-coronavirus-usa-united-states-economy-gdp-decline/>.

¹⁰ Abay Asfaw, *Cost of Lost Work Hours Associated with the COVID-19 Pandemic—United States, March 2020 Through February 2021*, 65 AM. J. INDUS. MED. 20, 27 (2022).

Federal procurement by ensuring that the parties that contract with the Federal Government provide adequate COVID-19 safeguards to their workers performing on or in connection with a Federal Government contract or contract-like instrument.” *Id.* at 50,985.

The EO directs executive agencies subject to the Procurement Act to include, in qualifying federal contracts,¹¹ a clause requiring contractors to comply with guidance that would subsequently be issued by the Task Force. *Id.*¹² The Task Force was directed to issue its guidance by September 24, 2021. *Id.* The EO states that, before the deadline, the OMB Director “shall, as an exercise of the delegation of my authority under the [Procurement] Act, *see* 3 U.S.C. § 301, determine whether such Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors.” *Id.* at 50,985–86.

The EO further instructs the FAR Council to amend the FAR to include the same COVID-19 safety clause. *Id.* at 50,986. It states that “agencies are strongly encouraged, to the extent permitted by law,” to seek to modify existing contracts to include the COVID-19 safety clause. *Id.* at 50,987.

2. The Task Force Guidance

On September 24, 2021, in accordance with the President’s deadline, the Task Force issued its initial

¹¹ We use the term “contracts” to also include the “contract-like instruments” referenced in the EO. *Accord Georgia v. President of the U.S.*, 46 F.4th 1283, 1290 n.1 (11th Cir. 2022).

¹² The EO extends to subcontractors “at any tier.” 86 Fed. Reg. at 50,985. Hence, we use the term “contractors” to include both contractors and subcontractors. *Accord Georgia*, 46 F.4th at 1290 n.1.

guidance for federal contractor and subcontractor work locations. The guidance was updated on November 10, 2021, and states, in relevant part:

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than January 18, 2022. After that date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.

Safer Federal Workforce Task Force, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* 5 (updated Nov. 10, 2021) (“Task Force Guidance”).¹³

The Task Force Guidance defines “covered contractor employee” as “any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace.” *Id.* at 3. The definition extends to employees

¹³ Available at https://www.saferfederalworkforce.gov/downloads/Guidance%20for%20Federal%20Contractors_Safer%20Federal%20Workforce%20Task%20Force_20211110.pdf.

who were “not themselves working on or in connection with a covered contract.” *Id.* A “covered contractor workplace” excludes a covered employee’s residence but encompasses any location “controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract.” *Id.* at 4. The Task Force Guidance includes exceptions for otherwise-covered employees who are not vaccinated against COVID-19 because of a disability (including medical conditions) or a “sincerely held religious belief, practice, or observance.” *Id.* at 5.

3. The OMB Determination

On November 10, 2021, the Acting OMB Director—exercising power delegated under § 2(c) of the EO—determined that the Task Force Guidance *would* promote economy and efficiency in federal contracting. OMB Determination, 86 Fed. Reg. at 63,418. The Acting OMB Director reasoned that the Task Force Guidance would “decrease the spread of COVID-19, which will in turn decrease worker absence, save labor costs on net, and thereby improve efficiency in Federal contracting.” *Id.* at 63,421. The OMB Determination also explained how COVID-19 infections “impose[] significant costs on contractors and the federal government,” and how vaccination against COVID-19 “reduces net costs.” *Id.* at 63,421–22 (bolding and capitalization omitted).¹⁴

¹⁴ The Acting OMB Director had previously issued a determination reaching the same conclusion but with less detail. *See generally* 86 Fed. Reg. 53,691 (Sep. 28, 2021). The November 10 OMB Determination “rescind[ed] and supersede[d]” that prior determination. 86 Fed. Reg. at 63,418.

4. The FAR Council Guidance

On September 30, 2021, the FAR Council—in accord with § 3(a) of the EO—issued guidance on how to include the COVID-19 safety clause in new contracts and solicitations. *See generally* Memorandum from FAR Council to Chief Acquisition Officers, et al., *Issuance of Agency Deviations to Implement Executive Order 14042* (Sept. 30, 2021) (“FAR Council Guidance”).¹⁵ The FAR Council Guidance includes a sample clause that implements the COVID-19 vaccination requirement. *Id.* at 4–5.

D. Proceedings Below

The State of Arizona and then-Attorney General Mark Brnovich (“Arizona”) filed a lawsuit challenging the EO on September 14, 2021—the date the EO was published. Once the scope of the Contractor Mandate became clear, Arizona amended its complaint to also challenge the Task Force Guidance, OMB Determination, and FAR Council Guidance, and filed a motion for a preliminary injunction.¹⁶ All plaintiffs¹⁷ filed a renewed motion for a preliminary injunction with the Second Amended Complaint.

In January 2022, the district court issued an order granting plaintiffs’ request for a preliminary injunction. *See*

¹⁵ Available at <https://www.whitehouse.gov/wp-content/uploads/2021/09/FAR-Council-Guidance-on-Agency-Issuance-of-Deviations-to-Implement-EO-14042.pdf>.

¹⁶ A federal employee joined the amended complaint and motion for a preliminary injunction.

¹⁷ Two Arizona public sector unions also joined Arizona and the federal employee, *see* note 16 *supra*, as plaintiffs, asserting claims against Defendant City of Phoenix, a federal contractor, for implementing the Contractor Mandate.

generally Brnovich v. Biden, 562 F. Supp. 3d 123 (D. Ariz. 2022). The district court first held that Arizona had standing to challenge the Contractor Mandate because of its proprietary interests (its contracts with the federal government) and its sovereign interests (its own vaccination policies). *See id.* at 142–47.

Next, the district court concluded that the Contractor Mandate exceeded the President’s statutory authority under the Procurement Act. *See id.* at 150–57. The court reasoned that allowing the Mandate to go into effect would allow the President to enact any policy, “no matter how tenuous[ly]” connected to “the broad goals of achieving economy and efficiency in federal procurement.” *Id.* at 152. The court also concluded that the Contractor Mandate is a public health measure, not a procurement policy. *See id.* at 153–54. It held that the Procurement Act does not clearly authorize the passage of such a measure, because “[w]e expect Congress to speak clearly when authorizing [the executive branch] to exercise powers of ‘vast economic and political significance.’” *Id.* at 153 (second alteration in original) (quoting *Alabama Ass’n of Realtors v. Dep’t of Health & Human Servs.*, 141 S. Ct. 2485, 2489 (2021) (per curiam)).

The court then concluded that, as many Arizona agencies are federal contractors, Arizona would suffer irreparable harm from implementing the Contractor Mandate in the form of (1) lost contracts, funds, and employees; (2) “compliance and monitoring costs”; and (3) the purported conflict between the Mandate and Arizona’s vaccination laws. *Id.* at 165. The court found that the balance of harms and public interest weighed in favor of an injunction because “issuing an injunction here would do [the government] little harm” as the President could “recommend vaccination among contractors” rather than mandating it. *Id.* at 166. The court

rejected Arizona’s proposal for a nationwide injunction, reasoning that “[e]quitable remedies should redress only the injuries sustained by a particular plaintiff in a particular case.” *See id.* at 166–67.¹⁸

In February 2022, the district court issued a permanent injunction barring the federal government from enforcing the Contractor Mandate in any contract (i) “to which a contracting party [was] domiciled in or headquartered in the State of Arizona” or (ii) “to be performed principally in the State of Arizona.”¹⁹ The court also issued a final judgment

¹⁸ The court instructed Arizona to submit a proposed form of permanent injunction. *Id.* at 167.

¹⁹ Until the district court’s permanent injunction, the Contractor Mandate was not otherwise prohibited from implementation in Arizona. While the Mandate had already been challenged in various courts across different circuits, and several of those courts had enjoined the Mandate, none of those injunctions covered contracting parties domiciled in or headquartered in Arizona or contracts to be performed principally in Arizona. *See Louisiana v. Biden*, 55 F.4th 1017, 1019, 1021 (5th Cir. 2022) (preliminary injunction covering Indiana, Louisiana, and Mississippi); *Georgia v. President of the United States*, 46 F.4th 1283, 1289, 1291 (11th Cir. 2022) (preliminary injunction covering Alabama, Georgia, Idaho, Kansas, South Carolina, Utah, and West Virginia); *Commonwealth v. Biden*, 57 F.4th 545, 557 (6th Cir. 2023) (limiting the already-granted preliminary injunction to the named parties); *Missouri v. Biden*, 576 F. Supp. 3d 622, 635 (E.D. Mo. 2021) (preliminary injunction covering Alaska, Arkansas, Iowa, Missouri, Montana, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming); *State v. Nelson*, 576 F. Supp. 3d 1017, 1040 (M.D. Fla. 2021) (preliminary injunction covering Florida); *but see* Order, *State v. Nelson*, 8:21-cv-02524-SDM-TGW, ECF No. 48 (Nov. 9, 2022) (granting stay pending appeal until March 31, 2023); Joint Status Report, ECF No. 49 (Mar. 29, 2023) (jointly proposing a continuation of the stay until May 25, 2023).

pursuant to Federal Rule of Civil Procedure 54(b).²⁰ The federal government appealed.²¹

After oral argument, we stayed the district court’s permanent injunction. Dkt. No. 70. We issued the stay “pursuant to Fed. R. Civ. P. 62(g) and . . . until we issue[d] an opinion on the merits of this appeal.” *Id.*

II. STANDARD OF REVIEW

We review the district court’s decision to grant a permanent injunction for an abuse of discretion. *Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788, 802 (9th Cir. 2020). We review determinations underlying the injunction under three standards: “factual findings for clear error, legal conclusions de novo, and the scope of the injunction for abuse of discretion.” *United States v. Washington*, 853 F.3d 946, 962 (9th Cir. 2017).

²⁰ The district court dismissed the plaintiffs’ claims challenging a different Executive Order, which required COVID-19 vaccinations for federal employees. The district court also dismissed (without prejudice) the federal employee plaintiff’s claims because they were nonjusticiable, and dismissed with prejudice the unions’ claims.

²¹ After briefing was completed in this case, the State of Arizona elected a new Attorney General, Kristin Mayes. AG Mayes informed the court that Arizona would no longer pursue certain arguments it had previously made. However, Arizona would continue to defend the district court’s core holding that the Contractor Mandate exceeded the defendants’ authority under the Procurement Act and that the equitable factors for injunctive relief were met. Shortly thereafter, the Arizona Legislature, the Speaker of the Arizona House of Representatives, the President of the Arizona Senate, and the Arizona Chamber of Commerce & Industry filed an emergency motion to intervene, seeking to continue to assert the “abandoned” positions. We granted permissive intervention to the Arizona Legislature and the Arizona Chamber of Commerce & Industry, and the Intervenors participated in oral argument.

A plaintiff seeking a permanent injunction must establish: “(1) actual success on the merits; (2) that it has suffered an irreparable injury; (3) that remedies available at law are inadequate; (4) that the balance of hardships justify a remedy in equity; and (5) that the public interest would not be disserved by a permanent injunction.” *Indep. Training & Apprenticeship Program v. Cal. Dep’t of Indus. Relations*, 730 F.3d 1024, 1032 (9th Cir. 2013) (citing *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)). When the United States is a party, the balance of the equities and public interest factors merge. *Cf. Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (noting the merging of the two factors in a preliminary injunction analysis).

III. DISCUSSION

On appeal, no party challenges the district court’s finding that Arizona has Article III standing because of its proprietary interests. The district court did not err—let alone clearly err—in its factual finding that Arizona is “likely to suffer direct injury as a result of the Contractor Mandate.” *Brnovich*, 562 F. Supp. 3d at 143. To compete for and work on federal government contracts, Arizona would have to comply with the Contractor Mandate. We therefore move on to whether Arizona has satisfied the first factor of the permanent injunction inquiry: actual success on the merits.²²

²² Because Arizona suffers a direct injury sufficient to confer standing, we do not need to determine whether Arizona has also suffered injury to its “sovereign” interests.

A. The Major Questions Doctrine does not apply.²³

1. The doctrine does not apply to actions by the President.

The Major Questions Doctrine has evolved over the years, but in its current form, it requires “Congress to speak clearly if it wishes to assign to *an agency* decisions of vast ‘economic and political significance.’” *Util. Air. Regul. Grp. v. EPA* (“*UARG*”), 573 U.S. 302, 324 (2014) (emphasis added) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).

But there is no relevant agency action here. Through the Procurement Act, Congress delegated to *the President* the authority to “prescribe policies and directives that the President considers necessary” to “provide the Federal Government with an economical and efficient system” for “[p]rocurring . . . property and nonpersonal services, and performing related functions including contracting.” 40 U.S.C. §§ 101, 121. The Major Questions Doctrine is motivated by skepticism of agency interpretations that “would bring about an enormous and transformative expansion in . . . regulatory authority without clear congressional authorization.” *UARG*, 573 U.S. at 324. Those concerns are not implicated here as the President “does not suffer from the same lack of political accountability that agencies may, particularly when *the*

²³ Arizona has purported to no longer pursue its Major Questions Doctrine argument. The Intervenor continues to advance it. Regardless, we independently determine whether the Major Questions Doctrine bars the Contractor Mandate. See *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991) (“[T]he court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.”).

President acts on a question of economic and political significance.” Georgia, 46 F.4th at 1313 (Anderson, J., concurring in part and dissenting in part) (emphasis added); *see also Louisiana*, 55 F.4th at 1038 (Graves, J., dissenting) (same).

Article II provides that “[t]he executive Power shall be vested in a President,” who must “take Care that the Laws be faithfully executed.” U.S. Const. art. II, §§ 1–3. “[T]he Framers made the President the most democratic and politically accountable official in Government.” *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2203 (2020). This accountability is ensured through regular elections and “the solitary nature of the Executive Branch, which provides ‘a single object for the jealousy and watchfulness of the people.’” *Id.* (quoting *The Federalist No. 70*, at 479 (A. Hamilton) (J. Cooke ed., 1961)). And, of course, the President does not get a “blank check,” here or otherwise. First, the President’s actions must be authorized by and consistent with the Procurement Act. Second, the Constitution always provides checks on all branches of government.²⁴ If we were to determine that the Major

²⁴ One of those checks requires the judicial branch to respect the constitutional powers of the political branches. *See New York v. United States*, 505 U.S. 144, 182 (1992) (“The Constitution’s division of power among the three branches is violated where one branch invades the territory of another”); *Myers v. United States*, 272 U.S. 52, 116 (1926) (“[T]he reasonable construction of the Constitution must be that the branches should be kept separate in all cases in which they were not expressly blended”).

And allowing the President the necessary discretion to faithfully execute our laws is a core principle of our government. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 493 (2010) (“It is his responsibility to take care that the laws be faithfully executed. The buck stops with the President”).

Questions Doctrine prevents the President from exercising lawfully delegated power, we would be rewriting the Constitution’s Faithfully Executed Clause in a way never contemplated by the Framers. We decline to do so.

We recognize that three other circuits have concluded, without expressly deciding, that the Major Questions Doctrine applies to presidential action. But the Sixth Circuit never squarely addressed its reasoning for treating presidential action the same as agency action. *See Kentucky v. Biden*, 23 F.4th 585, 606–08 (6th Cir. 2022) (relying on circuit precedent involving the Occupational Safety & Health Administration to equate Congressional requirements for agency action with those for presidential action). Similarly, the lead opinion from Eleventh Circuit—while not labeling its analysis as pursuant to the Major Questions Doctrine—discussed the “statutory parameters” of contracting for agencies, but never discussed how or why such constraints apply to the President. *See Georgia*, 46 F.4th at 1295–97. And in its opinion upholding a preliminary injunction enjoining the Contractor Mandate, the Fifth Circuit similarly held that “delegations to the President and delegations to an agency should be treated the same under the major questions doctrine” because the Constitution “makes a single President responsible for the actions of the Executive Branch.” *Louisiana*, 55 F.4th at 1031 n.40 (quoting *Seila Law*, 140 S. Ct. at 2203).

But that supposed equivalence does not account for how the two are different, as recognized by the Supreme Court in its treatment of agencies as different from the President. *See, e.g., Free Enter. Fund*, 561 U.S. at 513–14 (holding that the structure of an independent agency violated the Constitution *because* the President, who is “accountable to the people for executing the laws,” lacked the ability to hold the

independent agency accountable). Far from assuming the President is limited in the performance of his duties, the Supreme Court instead requires an “express statement” to find that Congress meant to subject the President’s actions to additional scrutiny. *Cf. Franklin v. Massachusetts*, 505 U.S. 788, 800–01 (1992) (declining to consider the President an “agency” under the APA because Congress did not explicitly subject his actions to review under the statute).

It is perhaps for these reasons that, before our sister circuits enjoined the Contractor Mandate, the Major Questions Doctrine had “never been applied to the exercise of power by the President.” *Georgia*, 46 F.4th at 1314 (Anderson, J., concurring in part and dissenting in part). We find that the Doctrine does not apply to Presidential actions and therefore does not bar the Contractor Mandate.

2. The Contractor Mandate is not a transformative expansion of regulatory authority.

But even if the Major Questions Doctrine applied to Presidential actions, it would still not preclude the Contractor Mandate. Arizona initially argued that the Doctrine applies here because the Contractor Mandate satisfies what Arizona described as the Doctrine’s three “independent triggers”: it (1) involves “a matter of great ‘political significance,’” (2) “seeks to regulate ‘a significant portion of the American economy,’” and (3) “‘intrud[es] into an area that is the particular domain of state law,’” *i.e.*, compulsory vaccination mandates. Arizona relied on Justice Gorsuch’s concurrence in *West Virginia* in advancing this position. *W. Virginia v. EPA*, 142 S. Ct. 2587, 2620–21 (2022) (Gorsuch, J., concurring).

However, the majority in *West Virginia* described the effect of the EPA action in that case as “restructur[ing] the

American energy market” because it “*represent[ed]* a ‘transformative expansion in [its] regulatory authority.’” *Id.* at 2610 (quoting *UARG*, 573 U.S. at 324) (third alteration in original) (emphasis added). We do not read that sentence to mean that restructuring a sector or seeking to regulate a significant portion of the American economy is sufficient by itself to trigger the Major Questions Doctrine. But even if that were sufficient, no part of the Contractor Mandate represents an “enormous and transformative expansion in . . . regulatory authority.” *UARG*, 573 U.S. at 324.

First, the Contractor Mandate is not an exercise of regulatory authority at all, but of proprietary authority. The district court concluded that the Mandate is a regulatory public health measure, not a proprietary procurement policy. *See Brnovich*, 562 F. Supp. 3d at 153–54. But nothing in the Mandate constitutes a regulation. And its broad scope alone does not make it regulatory.²⁵

It is true that “[a]n exercise of proprietary authority can amount to a regulation if it seeks to regulate conduct *unrelated* to the government’s proprietary interests.” *Georgia*, 46 F.4th at 1314 n.3 (Anderson, J., concurring in

²⁵ The Fifth Circuit relied on the broad scope of the Contractor Mandate to conclude that it is regulatory. *Louisiana*, 55 F.4th at 1032–33 (stating that “[t]here is little internal about a mandate which encompasses even employees whose sole connection to a federal contract is a cubicle in the same building as an employee working ‘in connection with’ a federal contract” (internal quotation marks and footnote omitted)). But we believe that is not the correct inquiry for whether conduct is regulatory. Because the federal government contracts with approximately one-fifth of the American workforce, almost any procurement policy will have “external” effects. *See* U.S. Dep’t of Labor, *History of Executive Order 11246*, <https://www.dol.gov/agencies/ofccp/about/executive-order-11246-history> (last visited Apr. 11, 2023).

part and dissenting in part) (emphasis added). But the conduct that the Contractor Mandate seeks to regulate *is* related to the government’s proprietary interest here: efficient and economic procurement of services. The Contractor Mandate requires vaccination of all contractor employees who will work on or in connection with a covered contract. It also imposes that requirement on employees in the same workplace as a covered contractor employee, presumably because of the way a contagious disease such as COVID-19 spreads. *Id.* (Anderson, J., concurring in part and dissenting in part); *see also S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief) (“Because people may be infected but asymptomatic, they may unwittingly infect others [with COVID-19].”). To some, the requirement may appear overinclusive;²⁶ to others, it may seem underinclusive. But even if the Contractor Mandate were overinclusive or underinclusive (or both), that would not mean it is *unrelated* to efficient and economic procurement of services.

The government, as it does every day, drew certain lines. Perfection in line-drawing is not required. *Cf. Dandridge v. Williams*, 397 U.S. 471, 484–85 (1970) (discussing how “the concept of ‘overreaching’” has “no place” in analysis of a “regulation in the social and economic field”). And imperfect over- or under-inclusiveness does not mean that the authority being exercised is *regulatory* rather than

²⁶ The Contractor Mandate could cover employees who never interact directly with an employee working on a federal contract. That possible over-inclusiveness does not somehow render the Mandate legally infirm.

proprietary. Nor does it give courts the authority to redraw those lines.

Second, the Contractor Mandate is not a “transformative expansion” of any authority—regulatory *or* proprietary. Arizona, the district court, and other circuits raise alarms about how the federal government has never sought, under the authority of the Procurement Act, to regulate the health decisions of American workers or to “reduc[e] absenteeism.” *Brnovich*, 562 F. Supp. 3d at 152–53 (“Nor has the President, in the seventy years since the Procurement Act was enacted, ever used his authority under the Act to effectuate sweeping public health policy.”); *Kentucky*, 23 F.4th at 607 (“[W]e lack . . . a clear statement from Congress that it intended the President to use a property-and-services procurement act, for a purpose never-before recognized, to effect major changes in the administration of public health.”). But this argument equates inactivity with forbidden activity. *See PennEast Pipeline Co., LLC v. New Jersey*, 141 S. Ct. 2244, 2261 (2021) (“[T]he non-use[] of a power does not disprove its existence.” (citation omitted)). The history of the Procurement Act, Executive Orders passed under its authority, and subsequent judicial interpretations demonstrate that the Contractor Mandate is not a transformative expansion of the President’s statutory authority.²⁷

The Procurement Act was enacted in 1949. As discussed above, the purpose of the Act is to promote an economical and efficient system of federal government procurement.

²⁷ Other circuits have recounted this history as well. *See Louisiana*, 55 F.4th at 1023–27; *Kentucky*, 23 F.4th at 605–06; *Georgia*, 46 F.4th at 1299–1301.

See Gundy v. United States, 139 S. Ct. 2116, 2127 (2019) (plurality op.) (noting that a statute’s statement of purpose “is an appropriate guide to the meaning of the [statute’s] operative provisions” (alteration in original) (internal quotation marks and citation omitted)).

“[T]he most prominent use of the President’s authority under the [Act]” in the first few decades of its existence was “a series of anti-discrimination requirements for Government contractors.” *Am. Fed’n of Lab. & Cong. of Indus. Orgs. v. Kahn*, 618 F.2d 784, 790–91 (D.C. Cir. 1979) (en banc). Several Presidents issued Executive Orders forbidding contractors from discriminating on the basis of race, creed, color, or national origin. *Id.* at 790–91, 791 n.33 (citing orders). In *Kahn*, the en banc D.C. Circuit recognized that some of these Executive Orders “were issued under the President’s war powers and special wartime legislation,” but that “for the period from 1953 to 1964[,] only the [Procurement Act] could have provided statutory support for the Executive action.” *Id.* at 790–91 (emphasis added).

In 1964, the Third Circuit became the first appellate court to consider these executive actions. *See Farmer v. Philadelphia Elec. Co.*, 329 F.2d 3 (3d Cir. 1964). The *Farmer* court ruled that the President had the authority to issue the orders under the Procurement Act. *Id.* at 8 (“In view of the [Procurement Act], we have no doubt that the applicable executive orders and regulations have the force of law.”).²⁸ Three years later, the Fifth Circuit also declined to

²⁸ *Farmer* also relied on the Defense Production Act of 1950 for statutory authorization. *See* 329 F.2d at 7–8. However, the *Farmer* court made clear that such reliance was in addition to the Procurement Act’s authority. *See id.* (quoting provisions of the Procurement Act and

hold that an antidiscrimination Executive Order was “so unrelated” to the Procurement Act’s purpose that it “should be treated as issued without statutory authority.” *Farkas v. Texas Instrument, Inc.*, 375 F.2d 629, 632 n.1 (5th Cir. 1967).

In 1971, the Third Circuit upheld an Executive Order requiring contractors to commit to affirmative action hiring programs. *Contractors Ass’n of E. Pa. v. Sec’y of Lab.*, 442 F.2d 159, 170 (3d Cir. 1971). The court found the Executive Order supported by the President’s authority under the Procurement Act because preventing the federal government’s suppliers from “increasing its costs and delaying its programs by excluding from the labor pool available minority workmen” would improve the economy and efficiency of federal contracts. *Id.*

In 1979, the en banc D.C. Circuit upheld an Executive Order by President Carter that required federal contractors to adhere to price and wage guidelines. *Kahn*, 618 F.2d at 785. The *Kahn* court recognized that the Executive Order had the additional motive of slowing inflation in the economy, *see id.* at 792–93, but respected the President’s calculation that there was a “nexus between the wage and price standards and likely savings to the Government,” *id.* at 793.

In 1986 and 1996, Congress recodified the Procurement Act without any substantive change.²⁹ In 2001, President

referring to those provisions for statutory authority when finding the Executive Orders at issue “have the force of law,” *id.* at 8).

²⁹ Pub. L. No. 99-500, 100 Stat. 1783, 1783-345 (1986); Pub. L. No. 99-591, 100 Stat. 3341, 3341-345 (1986); Pub. L. No. 104-208, 110 Stat. 3009, 3009-337 (1996).

Bush issued an Executive Order that required government contractors and their subcontractors to post notices at their facilities informing their employees of certain labor rights. Exec. Order No. 13,201, 66 Fed. Reg. 11,221, 11,221–22 (Feb. 17, 2001). This was the first Executive Order to explicitly cite the Procurement Act as its source of authority. *Id.* at 11,221; *but see Louisiana*, 55 F.4th at 1037 (Graves, J., dissenting) (“Executive Orders are not required to lay out the specific statute that the President’s authority falls under.”).

A year later, Congress recodified the Procurement Act³⁰ with minor changes but clarified that those edits made “no substantive change in existing law.” Act of August 21, 2002 § 5(b). This is the Act’s present form as to the provisions relevant here.

In 2003, the D.C. Circuit upheld the validity of President Bush’s 2001 Executive Order. *UAW-Labor Employment & Training Corp. v. Chao*, 325 F.3d 360, 362 (D.C. Cir. 2003). President Bush had justified the Executive Order by asserting a nexus to economy and efficiency because “[w]hen workers are better informed of their rights, . . . their productivity is enhanced” and because “[t]he availability of such a workforce from which the United States may draw facilitates the efficient and economical completion of its procurement contracts.” *Id.* at 366 (quoting 66 Fed. Reg. at 11,221). The D.C. Circuit recognized that the “link may seem attenuated” but found that there was “enough of a nexus” to uphold the Order. *Id.* at 366–67.

³⁰ Pub. L. No. 107-217, 116 Stat. 1062, 1063, 1068 (2002) (“Act of August 21, 2002”).

In 2009, the District Court of Maryland upheld an Executive Order issued by President Bush requiring federal contractors to use the E-Verify system to confirm employees' compliance with immigration law ("E-Verify Order"). *Chamber of Commerce v. Napolitano*, 648 F. Supp. 2d 726, 738 (D. Md. 2009). The district court deferred to the President's judgment that contractors with "rigorous employment eligibility confirmation policies" would be "more efficient and dependable procurement sources," *id.* (quoting Exec. Order No. 13,465, 73 Fed. Reg. 33,285 (June 11, 2008)), and noted that "[t]he President and his Administration are in a better position than this Court to make such determinations," *id.*

Finally, in 2015, President Obama issued an Executive Order requiring federal contractors to "ensur[e] that employees on [federal] contracts can earn up to 7 days or more of paid sick leave annually, including paid leave allowing for family care." Exec. Order No. 13,706, 80 Fed. Reg. 54,697, 54,697 (Sept. 7, 2015). The President justified the order under the Procurement Act on the following basis:

Providing access to paid sick leave will improve the health and performance of employees of Federal contractors and bring benefits packages at Federal contractors in line with model employers, ensuring that they remain competitive employers These savings and quality improvements will lead to improved economy and efficiency in Government procurement.

Id. This order was not challenged in federal court. *See Georgia*, 46 F.4th at 1301.

As this history demonstrates, Presidents have used the Procurement Act to require federal contractors to commit to affirmative action programs when racial discrimination was threatening contractors' efficiency; to adhere to wage and price guidelines to help combat inflation in the economy; to ensure compliance with immigration laws; and to attain sick leave parity with non-contracting employers because federal contractors were lagging behind and losing talent. It is not a “transformative expansion” of that same authority to require federal contractors—amid an unprecedented global pandemic—to take vaccination-related steps (already required by many private employers) that promote economy and efficiency by reducing absenteeism, project delays, and cost overruns.

Congress's re-enactment of the Procurement Act is also instructive. “Congress is presumed to be aware of a[] . . . judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without [substantive] change.” *Chugach Mgmt. Servs. v. Jetnil*, 863 F.3d 1168, 1174 (9th Cir. 2017) (citation omitted); *see also Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 536 (2015) (“If a word or phrase has been given a uniform interpretation by inferior courts, a later version of that act perpetuating the wording is presumed to carry forward that interpretation.” (cleaned up) (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (2012))). We must presume that, when recodifying the Act in 2002, Congress knew that the Third, Fifth, and D.C. Circuits had interpreted the President's Procurement Act authority and the statutory terms “economy” and “efficiency” broadly, and that President Bush had—just a year prior in 2001—relied on those terms to issue an Executive Order requiring

government contractors to post notices informing their employees of certain labor rights.³¹

Congress’s affirmation of the broad understandings of those terms through re-enactment adds further weight to our holding that the Procurement Act supports an exercise of authority like the Contractor Mandate. Presidents have, when the need arose, used the Procurement Act in ways they found necessary to promote economy and efficiency in federal contracting and procurement. The Contractor Mandate, which fits well within the Procurement Act’s historical uses, was not a transformative expansion of the President’s authority under that Act.³²

³¹ Since the Procurement Act was last recodified in 2002, we will not presume Congressional approval of President Bush’s Executive Order upheld in *Chao*, the E-Verify Order, or President Obama’s Executive Order targeting paid sick leave. But when “the President’s view of his own authority under a statute . . . has been acted upon over a substantial period of time without eliciting congressional reversal, it is ‘entitled to great respect’” and the President’s “construction of a statute . . . should be followed unless there are compelling indications that it is wrong.” *Kahn*, 618 F.2d at 790 (emphasis added) (citations omitted); see also *Kisor v. Wilkie*, 139 S. Ct. 2400, 2426 (2019) (Gorsuch, J., concurring in the judgment) (“[T]he government’s early, longstanding, and consistent interpretation of a statute, regulation, or other legal instrument could count as powerful evidence of its original public meaning.” (emphasis omitted)).

³² At oral argument, counsel for one Intervenor stated that it “is difficult to reconcile” multiple historical uses of the Procurement Act—such as the antidiscrimination orders or the E-Verify Order—with their view of the Major Questions Doctrine. Oral Arg., at 45:20–46:15. We think that might well be true: *if* Arizona’s initial and Intervenor’s current view of the Doctrine were correct, then many prior actions by Presidents would be suspect. But that provides us with an additional reason why that view

The Fifth Circuit recognized the history of the Procurement Act, but concluded that the Contractor Mandate was “strikingly unlike” any past action taken under the Act, not least because “a vaccination cannot be undone at the end of the workday.” *Louisiana*, 55 F.4th at 1030 (cleaned up) (quoting *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 142 S. Ct. 661, 665 (2022) (per curiam)). But the *impacts* of anti-discrimination or affirmative action programs, wage and price policies, and immigration law compliance mechanisms also do not *end* with the workday—and even if they did, we do not see how that in itself would circumscribe the President’s authority.

The Fifth Circuit also found important that previous Executive Orders “govern[ed] the conduct of *employers*, [whereas] the vaccine mandate purports to govern the conduct of *employees*.” *Id.* But this supposed distinction “frames the issue at the wrong level of generality.” *Kentucky*, 23 F.4th at 610. As Judge Graves highlighted in dissent in *Louisiana* when discussing the E-Verify Order, the employer/employee distinction does not stand up to scrutiny:

Both Executive Orders require something of employers, namely that the employer use the E-Verify system to verify the immigration eligibility of its workers, and that the employer uses a system to verify the vaccine eligibility of its workers. Both necessarily touch the employees, namely that employees

of the Doctrine is *not* correct. We agree with the courts that upheld those prior Executive Orders as within the President’s authority under the Procurement Act for the same (or similar) reasons we now find that the Contractor Mandate is within President Biden’s authority.

working for federal contractors must be verified under the E-Verify system or be subject to termination, and that employees working for federal contractors must be verified as being COVID-19 vaccine compliant or be subject to termination.

55 F.4th at 1036–37 (Graves, J., dissenting).

In sum, we find that the Major Questions Doctrine is not relevant here because the Contractor Mandate is a Presidential—not an agency—action. But even if the Doctrine applied, it would not bar the Contractor Mandate because the Mandate is not a transformative expansion of the President’s authority under the Procurement Act.

B. The Contractor Mandate falls within the President’s authority under the Procurement Act.

Plaintiffs also argue that, even if the Major Questions Doctrine does not bar the Contractor Mandate, the Mandate nonetheless exceeds the scope of the President’s authority under the Procurement Act. We disagree.

The Procurement Act empowers the President to “prescribe policies and directives that the President considers necessary to carry out” the statute’s objective of “provid[ing] the Federal Government with an economical and efficient system” for “[p]rocur[ing] . . . nonpersonal services, and performing related functions including contracting.” 40 U.S.C. §§ 101, 121(a). Our Circuit has not yet addressed the scope of the President’s authority under the Procurement Act. But for the EO to have the force of law, “it is necessary to establish a nexus between the [EO] and some delegation of the requisite legislative authority by

Congress.” *Chrysler Corp. v. Brown*, 441 U.S. 281, 304 (1979).

Different circuits have interpreted that requirement differently. The D.C. Circuit requires a “sufficiently close nexus” between an order issued pursuant to the Procurement Act and the statutory goals of economy and efficiency. *See Chao*, 325 F.3d at 366 (quoting *Kahn*, 618 F.2d at 792). The Fourth Circuit requires a finding that the executive branch policies are “reasonably related to the Procurement Act’s purpose.” *Liberty Mut. Ins. Co. v. Friedman*, 639 F.2d 164, 170 (4th Cir. 1981). Even though the D.C. Circuit’s language sounds more stringent, its standard is a “lenient” one, *Chao*, 325 F.3d at 367, and “[e]conomy’ and ‘efficiency’ are not narrow terms; they encompass those factors like price, quality, suitability, and availability of goods or services that are involved in all acquisition decisions,” *Kahn*, 618 F.2d at 789.

The President tasked the OMB Director to “determine whether [the Task Force’s] Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors.” 86 Fed. Reg. at 50,986. The Acting OMB Director determined that the Task Force Guidance will “decrease the spread of COVID-19, which will in turn decrease worker absence, save labor costs on net, and thereby improve efficiency in Federal contracting.” 86 Fed. Reg. at 63,421. The OMB Determination further explained how COVID-19 infections “impose[] significant costs on contractors and the federal government,” and how vaccination against COVID-19 “reduces net costs.” *Id.* at 63,421–22 (bolding and capitalization omitted). Although Arizona describes the Contractor Mandate as an effort to make federal contractors “*supposedly* more efficient,” the district court did not make factual findings that contradicted

the findings underlying the OMB Determination or conclude that those findings were arbitrary and capricious. See generally *Brnovich*, 562 F. Supp. 3d at 152–57. There is no legal basis to disregard the OMB’s findings, all of which support the reasoning behind the Contractor Mandate.

Under either the D.C. or Fourth Circuit’s tests, the Contractor Mandate falls within the President’s Procurement Act authority.³³ The findings in the OMB Determination show a “sufficiently close nexus” with, *Kahn*, 618 F.2d at 792, and a “reasonabl[e] relat[ionship]” to, *Liberty Mut.*, 639 F.2d at 170, the Contractor Mandate and the Procurement Act’s goals of economy and efficiency. It is axiomatic that federal contracts will be performed more economically and efficiently with fewer absences. Would our analysis be different if the COVID-19 pandemic were far less serious? Perhaps, but unfortunately the President did *not* face that hypothetical. The President faced a pandemic the likes of which the world has not seen in more than a century.

Our conclusion is bolstered by precedent interpreting the Procurement Act. The broad language of the Act purposefully gives the President both “necessary flexibility and ‘broad-ranging authority’” in setting procurement policies. *Chao*, 325 F.3d at 366 (citation omitted). And the Act leaves room for the President’s discretion by directing the President to “prescribe policies and directives that the President *considers* necessary” to carrying out the purposes of the Act. 40 U.S.C. § 121(a) (emphasis added). This statute does not present the worry of Congress hiding

³³ Because any formulation of the nexus test we might adopt would yield the same result, we do not need to provide a definitive standard here.

“elephants in mouseholes.” *Whitman v. Am. Trucking Ass’n, Inc.*, 531 U.S. 457, 468 (2001).

In this way, the Procurement Act is similar to the statutory text at issue in *Biden v. Missouri*, 142 S. Ct. 647 (2022) (per curiam). In *Missouri*, the Supreme Court held that language authorizing the Secretary of Health and Human Services to impose conditions he “*finds necessary* in the interest of . . . health and safety” was adequate authorization to impose a vaccination requirement on the employees of facilities that receive Medicare and Medicaid funds. *Id.* at 652 (quoting 42 U.S.C. § 1395x(e)(9)) (emphasis added).

The Sixth Circuit concluded that the Procurement Act only confers authority “to implement systems making *the government’s* entry into contracts less duplicative and inefficient, but it does not authorize [the President] to impose a medical mandate directly upon contractor employees themselves.” *Kentucky*, 23 F.4th at 605. Therefore, according to the *Kentucky* court, the government lacked authority to regulate contractors directly to improve *their* economy and efficiency, rather than the government’s. *Id.* Likewise, the Eleventh Circuit held the Procurement Act’s “statutory scheme” is limited to “a framework through which agencies can articulate specific, output-related standards” for their procurement decisions. *Georgia*, 46 F.4th at 1295. There, the court determined the Contractor Mandate is “different in nature than the sort of project-specific restrictions” set forth in the Procurement Act. *Id.* at 1296.

We respectfully disagree. The Act’s text—empowering the President to “prescribe . . . directives that the President considers necessary,” 40 U.S.C. § 121(a), to realize “an economical and efficient system” for “[p]rocurring . . .

services, and performing . . . contracting,” *id.* § 101(1)—allows for prescribing requirements that address contractors’ operations. The word “system” encompasses *how* the contractors’ services are to be rendered. Merriam-Webster defines “system” as “an organized or established procedure.”³⁴ We hold that the President was justified in finding that prescribing vaccination-related steps contractors must take in order to work on government contracts would directly promote an economical and efficient “system” for both procuring services and performing contracts. And we believe the President was authorized by the Act to establish a procedure by which taxpayer funds used to pay contractors who work on federal government projects are only used to pay those contractors whose relevant employees are vaccinated against COVID-19.

The Sixth Circuit in *Kentucky* also did not adequately address Presidents’ historical practices under the Procurement Act, many of which undeniably affected contractors’ own operations rather than merely the government’s entry into contracts. *See* 23 F.4th at 605–10. President Bush justified his 2001 Executive Order requiring contractors to post notices informing their employees of certain labor rights on the explicit basis that “[w]hen workers are better informed of their rights, . . . *their productivity is enhanced.*” 66 Fed. Reg. at 11,221 (emphasis added). This was the last Executive Order issued under the Procurement Act before Congress’s latest recodification of the Act, in which Congress stated it was making “no substantive change in existing law.” Act of August 21, 2002 § 5(b).

³⁴ *System*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/system> (last visited Apr. 11, 2023).

The *Kentucky* court classifies the Executive Orders in *Kahn*, *Chao*, and *Napolitano* as having a “‘close nexus’ to the ordinary hiring, firing, and management of labor.” *Kentucky*, 23 F.4th at 607 (quoting *Kahn*, 618 F.2d at 792). But the Contractor Mandate is also closely related to the ordinary management of labor—as evidenced by the analogous private sector practices that the Acting OMB Director cited in the OMB Determination. 86 Fed. Reg. at 63,421–22; accord *Louisiana*, 55 F.4th at 1036–37 (Graves, J., dissenting) (explaining how the E-Verify Order in *Napolitano* and the Contractor Mandate place similar requirements on employees).

The district court, Arizona, and the Fifth Circuit worry that upholding the Contractor Mandate will mean there is no limiting principle to the President’s authority under the Procurement Act. The district court hypothesized that sustaining the Contractor Mandate would permit the President to enact any executive order, “no matter how tenuous” the connection to economy and efficiency, such as “requiring all federal contractor employees to refrain from consuming soda or eating fast food.” *Brnovich*, 562 F. Supp. 3d at 152. The Fifth Circuit went further, positing that upholding the Contractor Mandate would enable the Executive Branch to require that “all federal contractors certify that their employees take daily vitamins, live in smoke-free homes, exercise three times a week, or even, at the extremity, take birth control in order to reduce absenteeism relating to childbirth and care.” *Louisiana*, 55 F.4th at 1031–32; accord *Georgia*, 46 F.4th at 1296 (warning that the Procurement Act “is not an ‘open book’ to which contracting agencies may ‘add pages and change the plot line’” (quoting *West Virginia*, 142 S. Ct. at 2609)).

We reject these invitations to adjudicate slippery-slope hypotheticals. “In our system of government, courts base decisions not on dramatic Hollywood fantasies, . . . but on concretely particularized facts developed in the cauldron of the adversary process and reduced to an assessable record.” *United States v. Kincade*, 379 F.3d 813, 838 (9th Cir. 2004) (en banc) (internal citation omitted). Moreover, the Procurement Act has a clear textual limiting principle in that the President can *only* prescribe policies and directives that he “considers necessary” to ensure “an economical and efficient system” for procurement and contracting. 40 U.S.C. §§ 101, 121(a). While a future President might try to analogize soda consumption to a worldwide pandemic in issuing an Executive Order under the Procurement Act, we will leave the consideration of that hypothetical Executive Order to a future court.

We hold that the Contractor Mandate falls within the President’s authority under the Procurement Act.

C. Other doctrines do not bar the Contractor Mandate.

1. Nondelegation Doctrine

The district court also invoked the constitutional avoidance canon to invalidate the Contractor Mandate, reasoning that the Mandate “raises serious constitutional questions” under the nondelegation doctrine. *Brnovich*, 562 F. Supp. 3d. at 155–56. We disagree. The nondelegation doctrine arises out of the principle that Congress “may not transfer to another branch ‘powers which are strictly and exclusively legislative.’” *Gundy*, 139 S. Ct. at 2123 (quoting *Wayman v. Southard*, 23 U.S. 1, 42–43 (1825)). But the

Supreme Court has recognized that “Congress simply cannot do its job absent an ability to delegate power under broad general directives,” *Mistretta v. United States*, 488 U.S. 361, 372 (1989), and has concluded that a statutory delegation is constitutional so long as Congress “lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform,” *id.* (second alteration in original) (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)).

The Supreme Court has only twice found statutory delegations excessive under the nondelegation doctrine.³⁵ No statutory delegation has been invalidated due to nondelegation concerns in nearly ninety years. The Supreme Court has found an intelligible principle when the agency was authorized to regulate in the “public interest,” *see National Broadcasting Co. v. United States*, 319 U.S. 190, 215–17 (1943), and—more recently—when the agency issued air quality standards “requisite to protect the public health,” *Whitman*, 531 U.S. at 473. The Procurement Act has a clear intelligible principle that easily clears the low threshold established by *National Broadcasting Company*: it authorizes the President to “prescribe policies and directives that the President considers necessary” to secure “an economical and efficient system” for procurement and contracting. 40 U.S.C. §§ 101, 121(a). This principle “can

³⁵ *See A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 530–42 (1935) (invalidating a statute that empowered the President to approve industry-specific “codes of fair competition” and thus regulate the entire economy); *Panama Refin. Co. v. Ryan*, 293 U.S. 388, 414–20 (1935) (invalidating a statute that authorized the President to prohibit interstate and foreign transportation of oil produced in excess of state quotas but provided no guidance for how to exercise discretion).

be applied generally to the President’s actions to determine whether those actions are within the legislative delegation.” *Kahn*, 618 F.2d at 793 n.51.

2. Federalism and State Sovereignty

Neither federalism nor state sovereignty concerns bar the Contractor Mandate. The district court viewed the Mandate as a “regulation of health and safety matters” and thus in conflict with Arizona’s “traditional police power.” See *Brnovich*, 562 F. Supp. 3d at 156–57 (citations omitted). But the Contractor Mandate is aimed at federal contracting, even if also motivated by health and safety concerns. And the federal government undisputedly has the power to regulate the performance of federal contracts. See *Gartrell Constr. Inc. v. Aubry*, 940 F.2d 437, 440–41 (9th Cir. 1991) (exempting federal contractors from state licensing requirements); *United States v. Virginia*, 139 F.3d 984, 990 (4th Cir. 1998) (“[F]ederal contractors cannot be required to satisfy state ‘qualifications in addition to those that the [Federal] Government has pronounced sufficient.’” (second alteration in original) (quoting *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 190 (1956))). Even if the Mandate did regulate health and safety, the federal government does not “invade[]” areas of state sovereignty “simply because it exercises its authority . . . in a manner that displaces the States’ exercise of their police powers.” *Hodel v. Virginia Surface Min. & Reclamation Ass’n*, 452 U.S. 264, 291 (1981).

The nondelegation doctrine and state sovereignty concerns do not somehow invalidate the Contractor Mandate.

D. The Contractor Mandate satisfies the Procurement Policy Act’s procedural

requirements.

Arizona contends that the Task Force’s Guidance, the FAR Council Guidance, and the OMB Determination fail the Procurement Policy Act’s procedural requirements. The Procurement Policy Act typically requires that comments on a proposed policy be open for at least 30 days and that the policy not take effect until 60 days after its publication for comment. 41 U.S.C. § 1707(a), (b). The district court correctly rejected Arizona’s procedural challenges.

1. Task Force Guidance and FAQs

The Task Force documents survive any procedural challenge for two reasons. First, the Task Force is not one of the specifically enumerated “executive agenc[ies]” that the Procurement Policy Act’s requirements apply to. *Id.* § 1707(c)(1). It is merely a body created by Executive Order 13,991. *See* 86 Fed. Reg. at 7,045–46. It can only advise the President, *id.* at 7,046, and thus lacks the “*substantial independent authority*” required of an “agency,” *Meyer v. Bush*, 981 F.2d 1288, 1292 (D.C. Cir. 1993). *See also id.* at 1292–97 (concluding that the President’s Task Force on Regulatory Relief was not an “agency” under the Freedom of Information Act because it lacked “substantial independent authority”).

Second, the Task Force Guidance and FAQs have no standalone legal force. The EO stated that any Task Force Guidance would only be binding *after* the OMB Director’s economy-and-efficiency determination. 86 Fed. Reg. at 50,985–86. Therefore, as the district court found, the Task Force Guidance and FAQs “do not independently constitute a binding ‘policy, regulation, procedure, or form.’” *Brnovich*, 562 F. Supp. 3d at 160.

2. The FAR Council Guidance

The district court correctly held that the FAR Council Guidance “is not binding of its own force” and “does not compel agencies to take any specific action.” *Id.* That Guidance points contracting officers to “the direction[s] . . . issued by their respective agencies.” FAR Council Guidance, at 2. Thus, the FAR Council Guidance is not a “procurement policy, regulation, procedure, or form” such that it would need to conform to the Procurement Policy Act’s notice-and-comment procedures under 41 U.S.C. § 1707. *Brnovich*, 562 F. Supp. 3d at 160.

3. The OMB Determination

The federal government argues, as it did below, that the Acting OMB Director did not have to comply with the notice-and-comment provisions because the Director was acting pursuant to power delegated to her by the President. The federal government also notes that, like the district court, this court “need not determine the applicability of the [Procurement Policy Act] because the . . . Director voluntarily complied with § 1707.”

The district court found that even if the Acting OMB Director were subject to the notice-and-comment requirements of the Procurement Policy Act, she “properly invoked the § 1707(d) waiver provision,” *id.* at 158, because “‘urgent and compelling circumstances’ made compliance with ordinary § 1707 procedures impracticable with respect to the revised OMB determination,” *id.* at 159. We agree.

The Acting OMB Director made clear that the “broader economy-and-efficiency purpose” of the OMB Determination “would be severely undermined by the minimum delay required under” § 1707’s notice-and

comment provisions. 86 Fed. Reg. at 63,424. Arizona claims that § 1707(d)'s waiver provision only applies to "temporary" procurement regulations, whereas the OMB Determination here has "no certain endpoint." Arizona incorrectly equates an unknown duration with an *unlimited* duration. In a dynamic situation such as a pandemic, the absolute end date of temporary measures cannot be definitively determined in advance. In that way, the OMB Determination is temporary much like a public health emergency or a grant of emergency use authorization is temporary.

Arizona also argues that there are *no* "urgent and compelling circumstances" here because the Contractor Mandate is "putatively based solely on promoting economy and efficiency in federal contracting" and the government relies on "supposed efficiency gains." In contrast, Arizona highlights that the Centers for Medicare & Medicaid Services in *Missouri* had found that immediate publication would "significantly reduce . . . infections, hospitalizations, and deaths." 142 S. Ct. at 654. Health-related concerns like those in *Missouri* may be immediately calculable. But the economic and logistical consequences of infections, isolation periods, and quarantine requirements on federal contracts and budget overruns necessarily operate as domino effects. Therefore, it is not disqualifying that health concerns in one context were based on actual data while economic projections in this context are just that: projections.

For similar reasons discussed above (no final agency action in the case of the FAR Council Guidance and no

agency in the case of the Task Force), Arizona’s claims under the Administrative Procedure Act (“APA”) also fail.³⁶

Because Arizona fails to satisfy the first prong of the permanent injunction inquiry—actual success on the merits—we need not analyze whether it has satisfied the remaining prongs. *Cf. Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc) (stating that courts “need not consider the remaining” preliminary injunctive factors if a plaintiff fails the “threshold inquiry” of likelihood of success on the merits (quoting *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013))).

IV. CONCLUSION

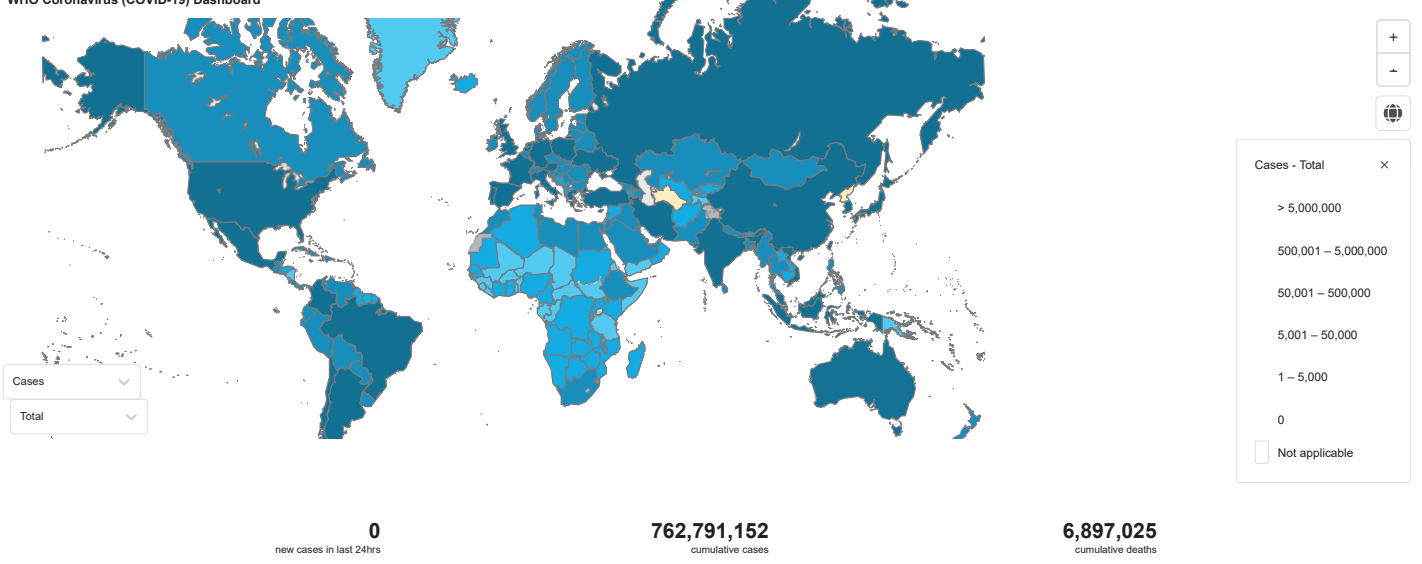
The President, when faced with an unprecedented pandemic that has claimed millions of lives and caused billions of dollars of productivity losses, issued a Mandate requiring that certain employees of contractors working on federal projects be vaccinated against the disease that resulted in the pandemic. The President appropriately relied on a statute that gave him the necessary flexibility and broad-ranging authority to ensure economy and efficiency in federal procurement and contracting. The President issued the Contractor Mandate following the required procedural measures, and the Mandate became effective upon a reasoned determination of its benefits by the OMB.

³⁶ In its briefing, Arizona originally requested that we remand the APA claims to the district court for further injunction-related litigation. However, Arizona has now abandoned that request, and Intervenor has not sought such a remand. Thus, we treat that remand request as waived.

We **REVERSE** the district court's grant of a permanent injunction and dissolve the injunction.



WHO Coronavirus (COVID-19) Dashboard



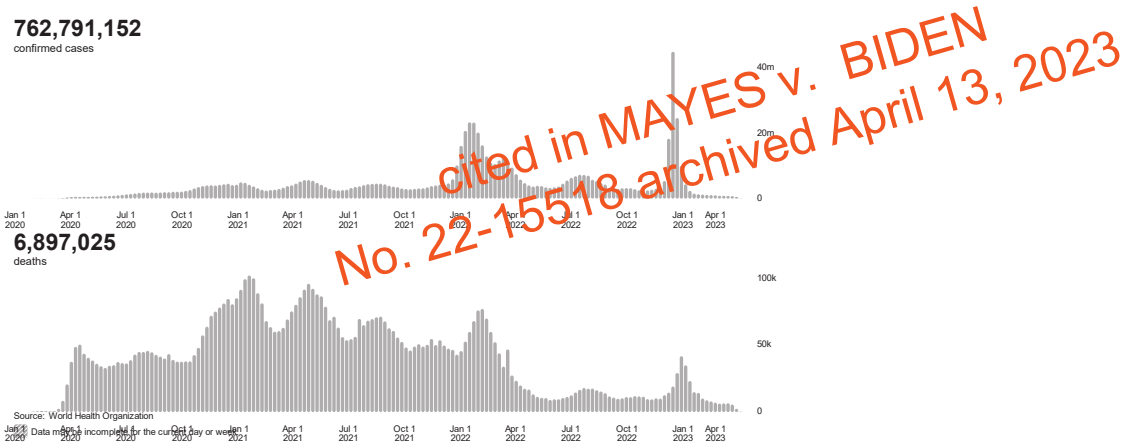
Globally, as of 10:11am CEST, 12 April 2023, there have been 762,791,152 confirmed cases of COVID-19, including 6,897,025 deaths, reported to WHO. As of 11 April 2023, a total of 13,340,275,493 vaccine doses have been administered.

Global Situation

Daily Weekly

762,791,152 confirmed cases

6,897,025 deaths



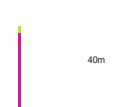
Situation by WHO Region

Daily Weekly Cases Deaths

Count

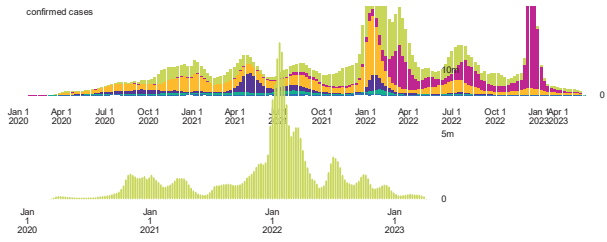
Europe	275,110,560 confirmed
Western Pacific	202,153,158 confirmed
Americas	191,814,966 confirmed
South-East Asia	60,867,951 confirmed
Eastern Mediterranean	23,324,249 confirmed
Africa	9,519,504 confirmed

Source: World Health Organization
 Data may be incomplete for the current day or week.





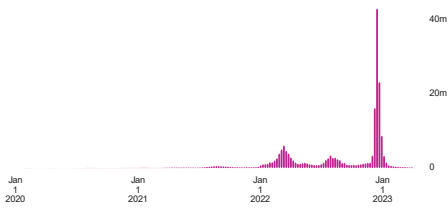
WHO Coronavirus (COVID-19) Dashboard



Western Pacific

202,153,158

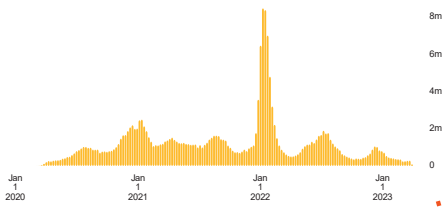
confirmed cases



Americas

191,814,966

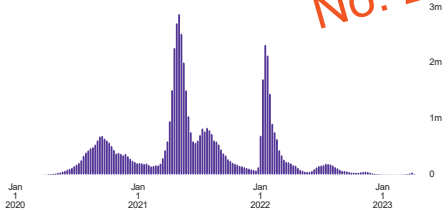
confirmed cases



South-East Asia

60,867,951

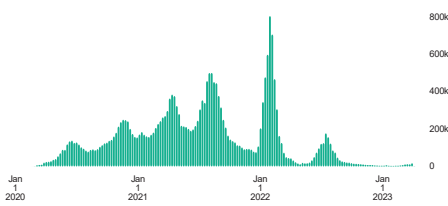
confirmed cases



Eastern Mediterranean

23,324,249

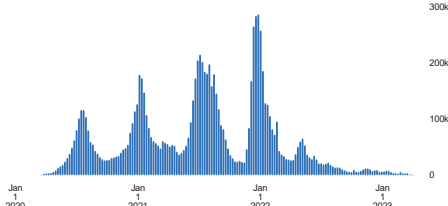
confirmed cases



Africa

9,519,504

confirmed cases



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No. 22-15518 archived April 13, 2023



WHO Coronavirus (COVID-19) Dashboard

Situation by Country, Territory or Area

United States of America

102,873,924 confirmed cases



China

99,239,252 confirmed cases



India

44,768,172 confirmed cases



France

38,791,479 confirmed cases



Germany

38,368,891 confirmed cases



Brazil

37,319,254 confirmed cases



Japan

33,523,927 confirmed cases



Republic of Korea

30,918,060 confirmed cases



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WHO Coronavirus (COVID-19) Dashboard



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Source: World Health Organization

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Report

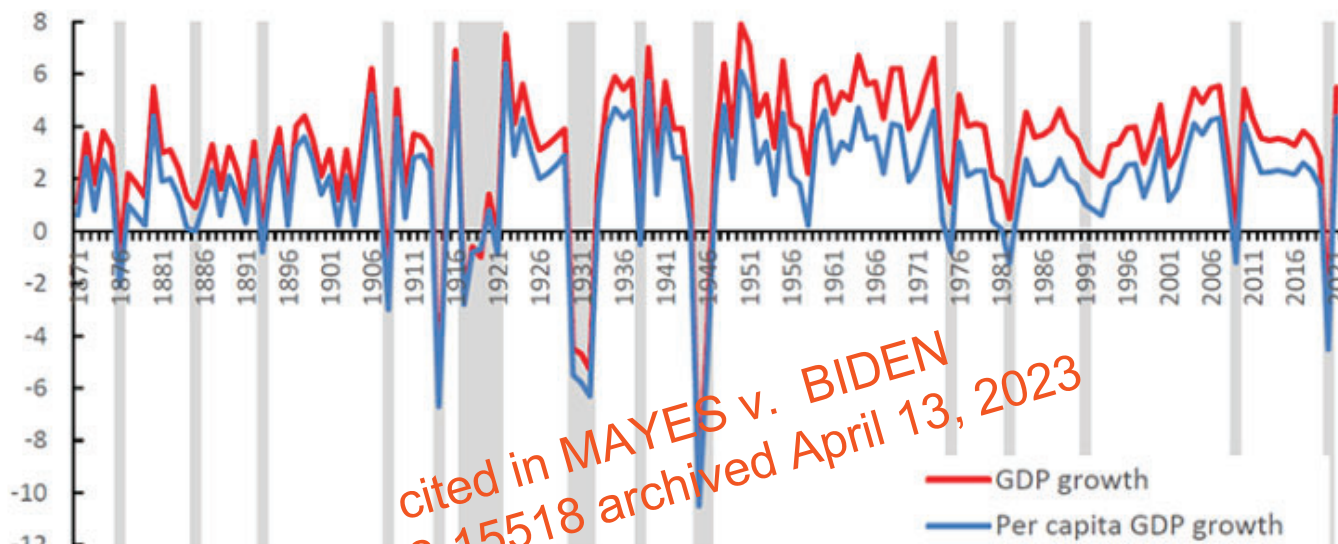
Social and economic impact of COVID-19

Eduardo Levy Yevati and Federico Filippini Tuesday, June 8, 2021

Introduction

The impact of the pandemic on world GDP growth is massive. The COVID-19 global recession is the deepest since the end of World War II (Figure 1). The global economy contracted by 3.5 percent in 2020 according to the April 2021 World Economic Outlook Report published by the IMF, a 7 percent loss relative to the 3.4 percent growth forecast back in October 2019. While virtually every country covered by the IMF posted negative growth in 2020 (IMF 2020b), the downturn was more pronounced in the poorest parts of the world (Noy et al. 2020) (Figure 2).

Figure 1. Global GDP growth in a historical perspective

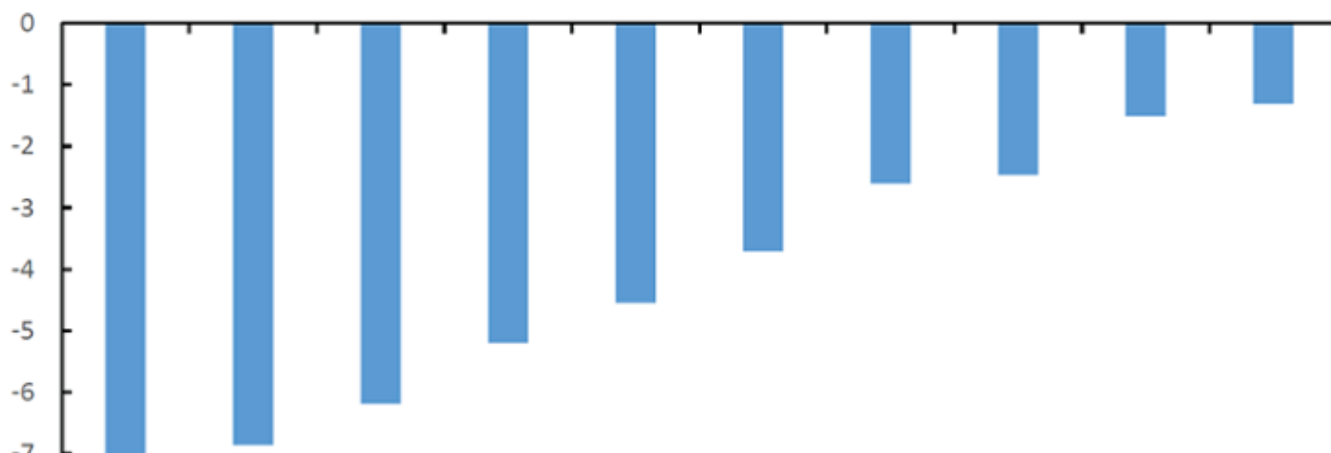


*cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023*

Sources: Bolt et al. (2018), Kose, Sugawara, and Terrones (2019, 2020), and IMF-WEO Apr-2021. Shaded areas refer to global recessions.

The impact of the shock is likely to be long-lasting. While the global economy is expected to recover this year, the level of GDP at the end of 2021 in both advanced and emerging market and developing economies (EMDE) is projected to remain below the pre-virus baseline (Figure 3). As with the immediate impact, the magnitude of the medium-term cost also varies significantly across countries, with EMDE suffering the greatest loss. The IMF (2021) projects that in 2024 the World GDP will be 3 percent (6 percent for low-income countries (LICs)) below the no-COVID scenario. Along the same lines, Djiofack et al. (2020) estimate that African GDP would be permanently 1 percent to 4 percent lower than in the pre-COVID outlook, depending on the duration of the crisis.

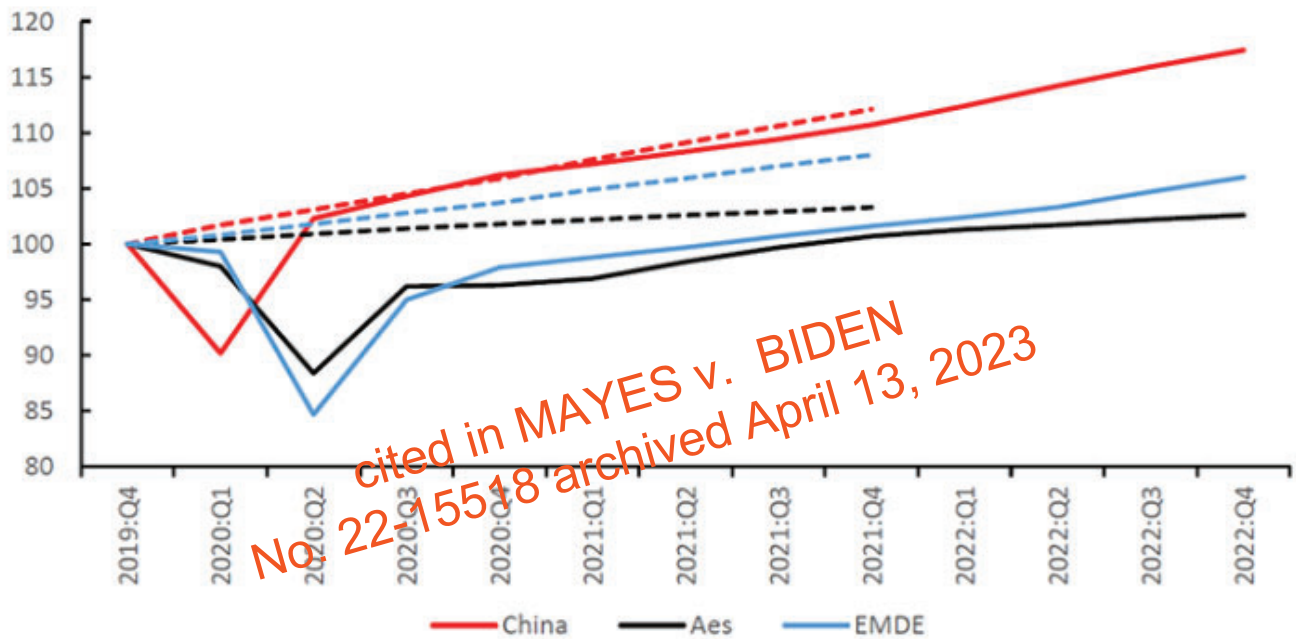
Figure 2. Global GDP growth 2020





Source: IMF-WEO Apr-2021. Note: AE = Advance economies; Emerging Asia ex. CHN = emerging and developing Asia excluding China; EM. Eur = Emerging and developing Europe; LAC = Latin America and the Caribbean; MECA = Middle East and Central Asia; SSA = sub-Saharan Africa.

Figure 3. Quarterly World GDP (GDP forecast in Jan-2020 vs. Jan-2021, 2019 Q1 = 100)



Source: IMF-WEO Jan-2021. Note: dashed lines indicated estimates from Jan-2020 World Economic Outlook Update.

The pandemic triggered a health and fiscal response unprecedented in terms of speed and magnitude. At a global scale, the fiscal support reached nearly \$16 trillion (around 15 percent of global GDP) in 2020. However, the capacity of countries to implement such measures varied significantly. In this note, we identify three important preexisting conditions that amplified the impact of the shock:

- *Fiscal space:* The capacity to support household and firms largely depends on access to international financial markets,
- *State capacity:* Fast and efficient implementation of policies to support household and firms requires a substantial state capacity and well-developed tax and transfer infrastructure; and
- *Labor market structure:* A large share of informal workers facing significant frictions to adopt remote working, and high levels of poverty and inequality, deepen the deleterious impact of the crisis.

Additionally, the speed and the strength of the recovery will be crucially dependent on the capacity of the governments to acquire and roll out the COVID-19 vaccines.

This paper presents a succinct summary of the existing economic literature on the economic and fiscal impact of the pandemic, and a preliminary estimate of the associated economic cost. It documents the incidence of initial conditions (with a particular focus on the role of the labor market channel) on the transmission of the shock and the speed and extent of the expected recovery, summarizes how countries attempted to attenuate the economic consequences and the international financial institutions assisted countries, reports preliminary accounts of medium-term COVID-related losses, and concludes with some forward-looking considerations based on the lessons learned in 2020.

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**BROOKINGS GLOBAL
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JUNE 2021**

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at BROOKINGS

Social and economic impact of COVID-19

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Dean of the School of Government at Universidad Torcuato Di Tella

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June 2021

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Acknowledgements

Prepared for The Independent Panel of the World Health Organization. We are grateful to Mauricio Cárdenas, Ricardo Hausmann, Anders Nordstrom, Rodrigo Valdés, Andrés Velasco, Alejandro Werner, Ernesto Zedillo and members of The Independent Panel for their useful comments, and Joaquin Marandino for excellent research assistance. The usual disclaimers apply.

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1. Introduction 1

2. The costs of COVID-19 in 3 stages 4

 2.1 Stage 1: The macroeconomic impact 4

 2.2 Stage 2: The fiscal reaction..... 7

 2.3 Stage 3: The recovery..... 9

3. Initial conditions 12

 3.1 Fiscal space 12

 3.2 State capacity..... 13

 3.3 The labor market channel..... 14

 3.4 Initial conditions and economic impact 16

4. Dealing with the pandemic..... 20

 4.1 Cross-country evidence on lockdowns and economic activity 21

 4.2 Fiscal response to the pandemic 24

5. The role of IFIs..... 31

6. Estimating the economic costs of the pandemic 33

7. Final remarks 36

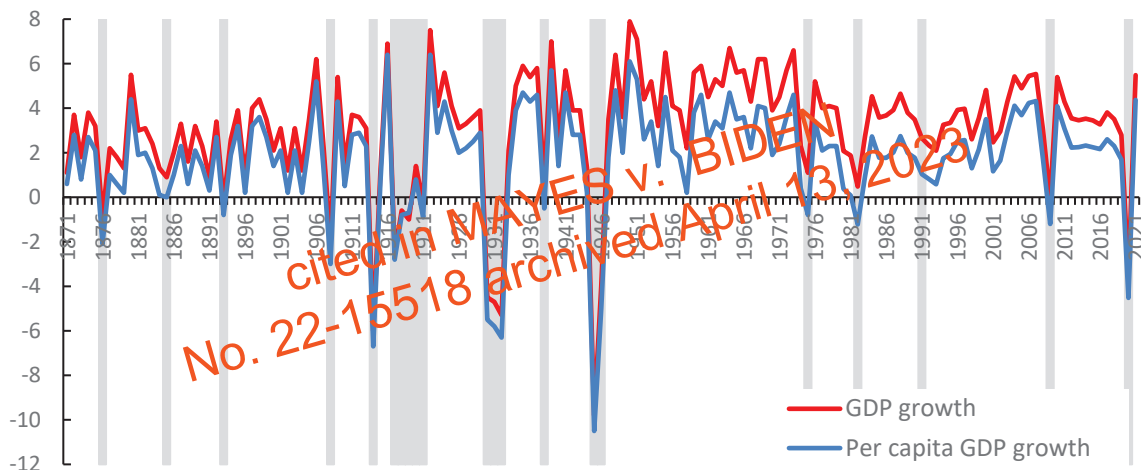
References 38

*cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023*

1. Introduction

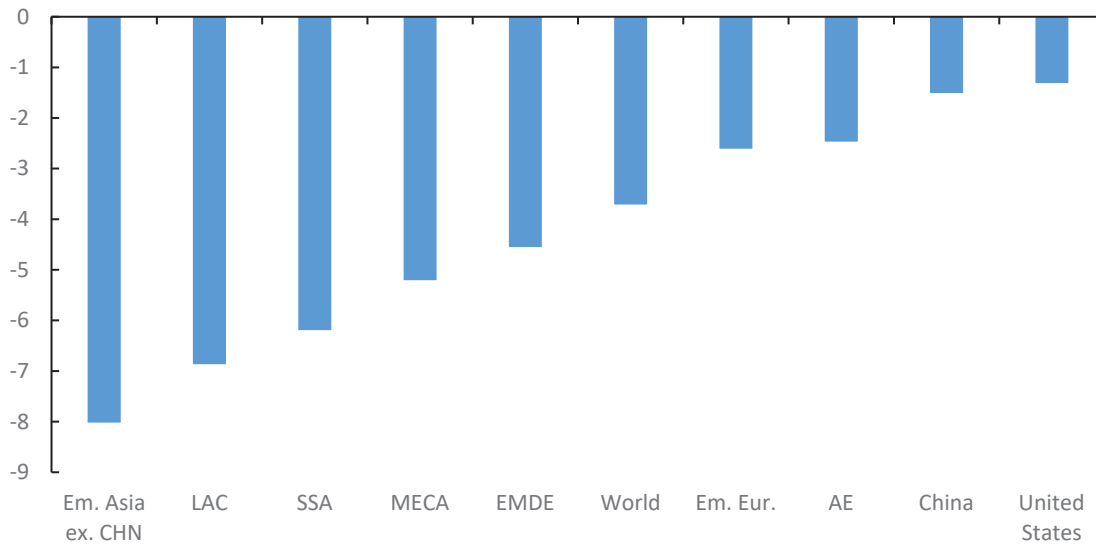
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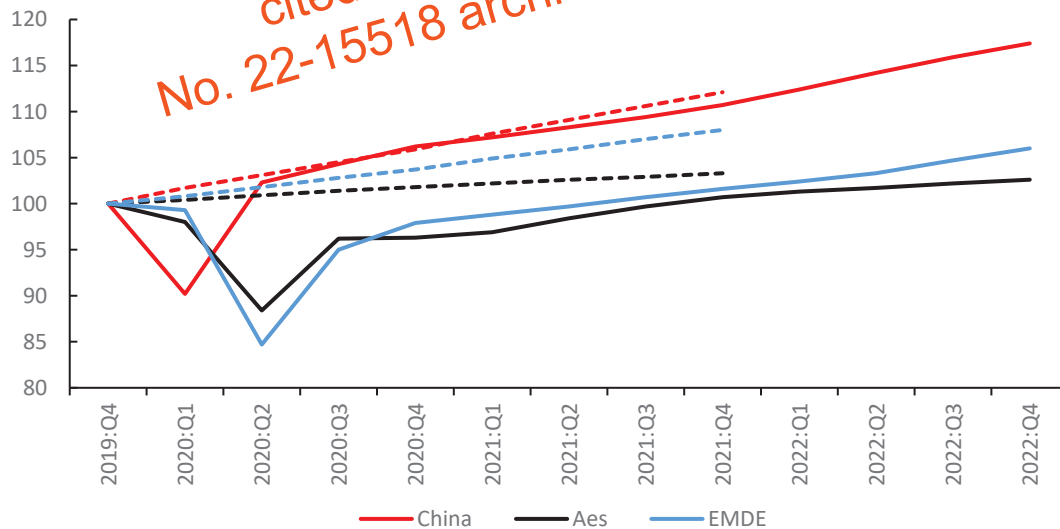


Sources: Bolt et al. (2018), Kose, Sugawara, and Terrones (2019, 2020), and IMF-WEO Apr-2021. Shaded areas refer to global recessions.

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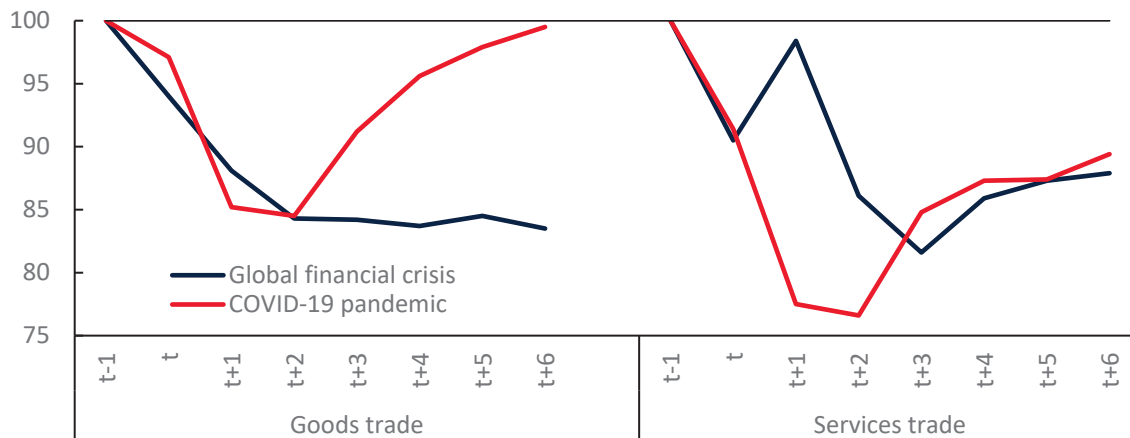
2. The costs of COVID-19 in 3 stages

The COVID-19 shock can be interpreted as a combination of supply and demand shocks (Baqaee and Farhi, 2020; Caballero and Simsek, 2020; Guerrieri et al., 2020). The supply shock was mainly driven by the restriction of activities due to lockdowns and distancing measures to contain the spread of the virus, causing sectors to struggle to keep up with demand, while the demand shock reflected both the income effect suffered by workers in restricted activities, as well as the diminished mobility and changes in consumption patterns due to contagion concerns (IMF 2020b).

2.1 Stage 1: The macroeconomic impact

The COVID shock propagated quickly across countries causing a synchronized negative impact. More than 90 percent of the global economy experienced a contraction in per capita GDP, the highest share of countries simultaneously contracting since the Great Depression of 1930-32 (World Bank Global Outlook, 2020). The shock propagated through three key channels: (i) a disruption of global value chains, (ii) restrictions to international mobility, which affected economies and activities differently, depending on their exposure and preparedness; and (iii) a reduction in cross-country remittances.

Trade experienced a short-lived but deep dive (Figure 4). Goods trade fell rapidly, adding to the economic decline in manufacturing countries, but recovered quickly, reflecting the substitution of demand from contact-intensive services (impaired by COVID-related restriction) to goods, and the considerable resilience of global value chains to transitory disruptions in the first semester (The World Bank, 2021). Predictably, services trade remained below pre-crisis levels due to travel restrictions.

Figure 4. Trade in Goods and Services (Index, t-1 = 100)

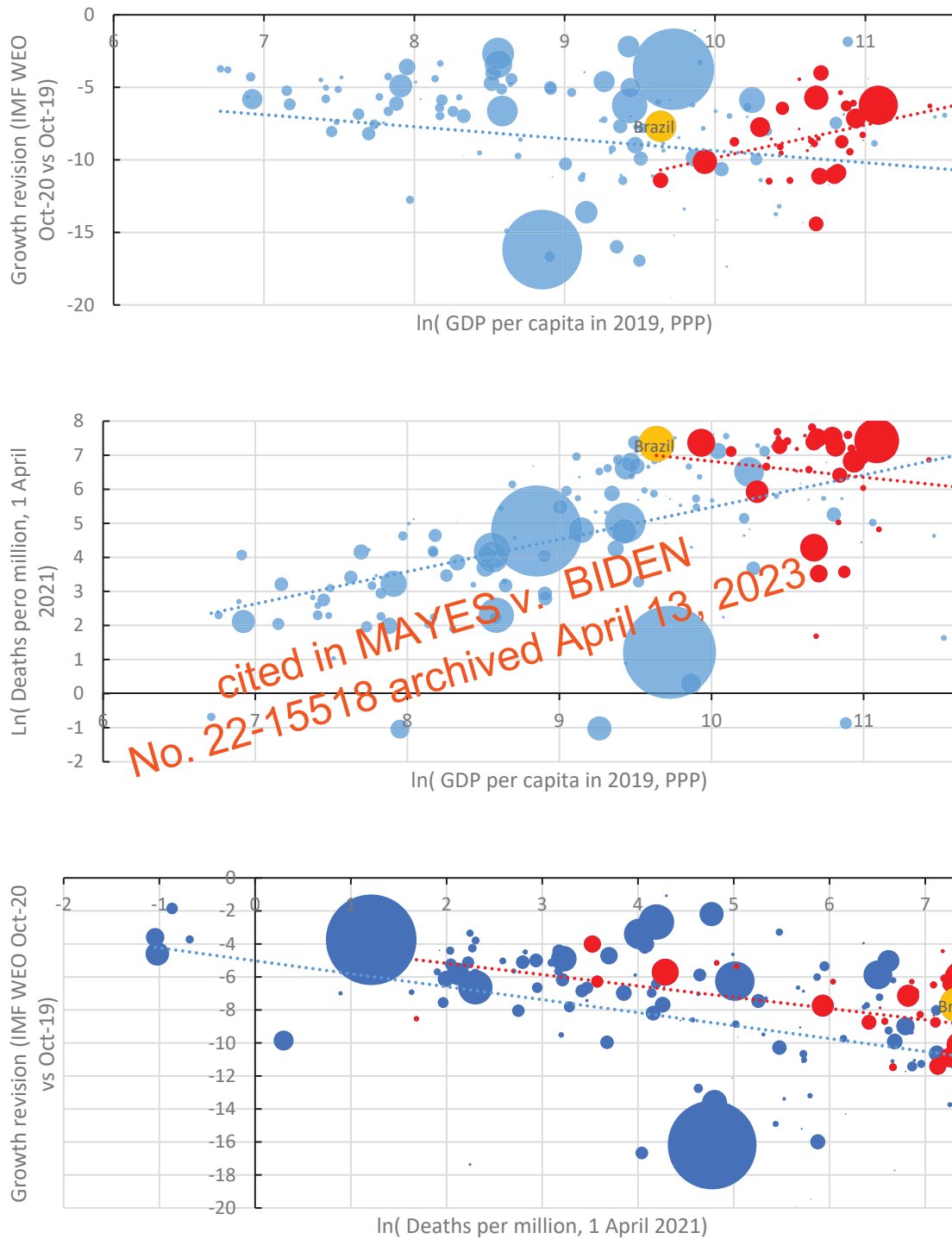
Source: The World Bank (2021). Note: Goods trade is in real terms from the CPB Netherlands Bureau for Economic Policy Analysis, whereas services trade is in values from the WTO. For global financial crisis, t = November 2008; for COVID-19, t = March 2020.

There is a positive correlation between the magnitude of growth revisions and the death toll (Figure 5). The IMF-WEO growth projections have been revised down from pre-COVID levels by 9 percent on (unweighted) average. To be sure, there are extremes cases, such as Peru or India, whose growth was revised downwards by more than 15 percentage points. In the next sections, we discuss some of the factors that allowed countries to fare better economically.

In addition, the death toll has been on average larger for high-income countries. This can be attributed to several reasons, including demographics, the degree of international integration, and the fact that most northern hemisphere countries went through two winters (and two therefore COVID waves).

As a result, there is a weak negative unconditional correlation between income and COVID impact. The finding, highlighted recently by Deaton (2021), is entirely due to the higher circulation of COVID in advanced economies. However, as we show in section 3 below, if the size of the COVID shock is controlled for, developed economies fared better than the rest. Moreover, as we document in section 6, once we measure the economic cost over the full cycle (including the recovery), or (even more so) when we consider a 10-year medium-term window, the correlation between income and economic losses is inverted: **poor countries will ultimately face a larger cost.**

Figure 5. Growth forecast and income (areas proportional to population; in red, OECD countries)



Source: IMF (2020b) and Our World in Data. Note: Red bubbles refer to OECD countries.

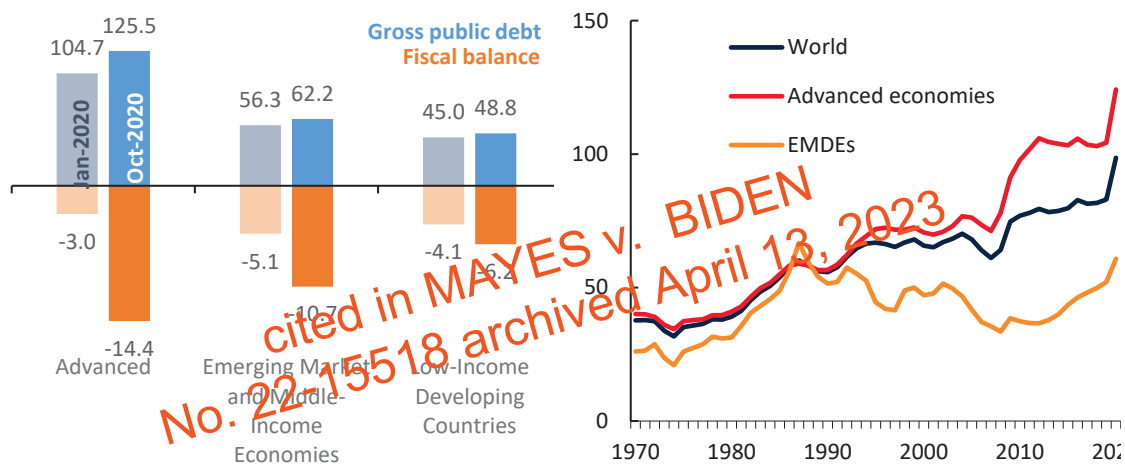
2.2 Stage 2: The fiscal reaction

The COVID-shock triggers an unprecedented and (very) heterogeneous response from governments across the globe (see section 4.2). The increase of the fiscal deficit in advanced economies doubles that of emerging and middle-income countries and was five times larger than that of lower-income economies (*Figure 6a*). The sizable discretionary fiscal support, along with the contraction in output and fiscal revenues, led to an increase in government debts (*Figure 6b*).

Figure 6. Fiscal response (as percentage of GDP)

Panel a. Forecasts for General Government Gross Debt and Fiscal Balances, 2020 (Percent of GDP)

Panel b. Government debt (as percentage of GDP)



Source: The World Bank (2021) and IMF Fiscal Monitor Oct-2020

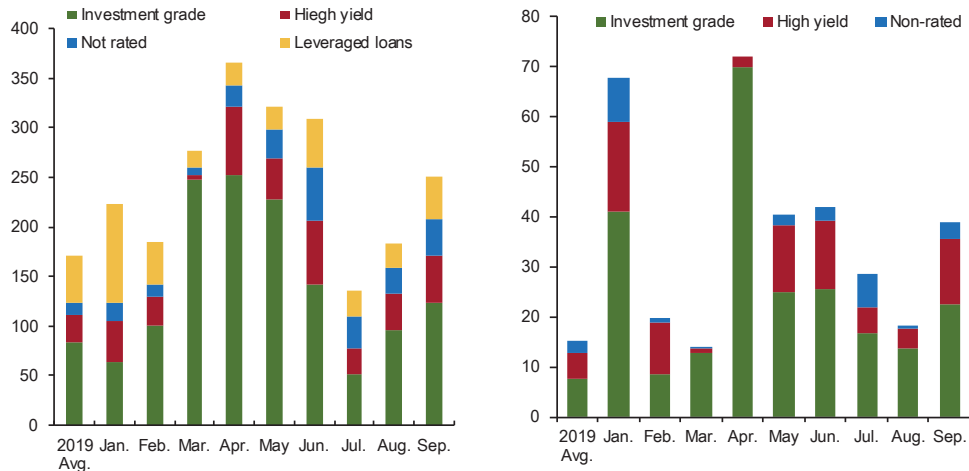
The risks stemming from deterioration of the fiscal front –funded by the issuance of debt or base money – were regarded as secondary for most governments in 2020.

Governments focused on providing support for households and struggling companies. Corporate indebtedness will also likely increase as firms are facing an abrupt reduction in sales, particularly in the developing world (*Figure 7*).

Figure 7. Corporate Bonds Issuances (in billion USD)

Panel a. Advance Economy Corporate Bonds and Leverage Loan Issuance (in billion USD)

Panel b. Emerging Market Hard Currency Corporate and Sovereign Bond Issuance (in billion USD)

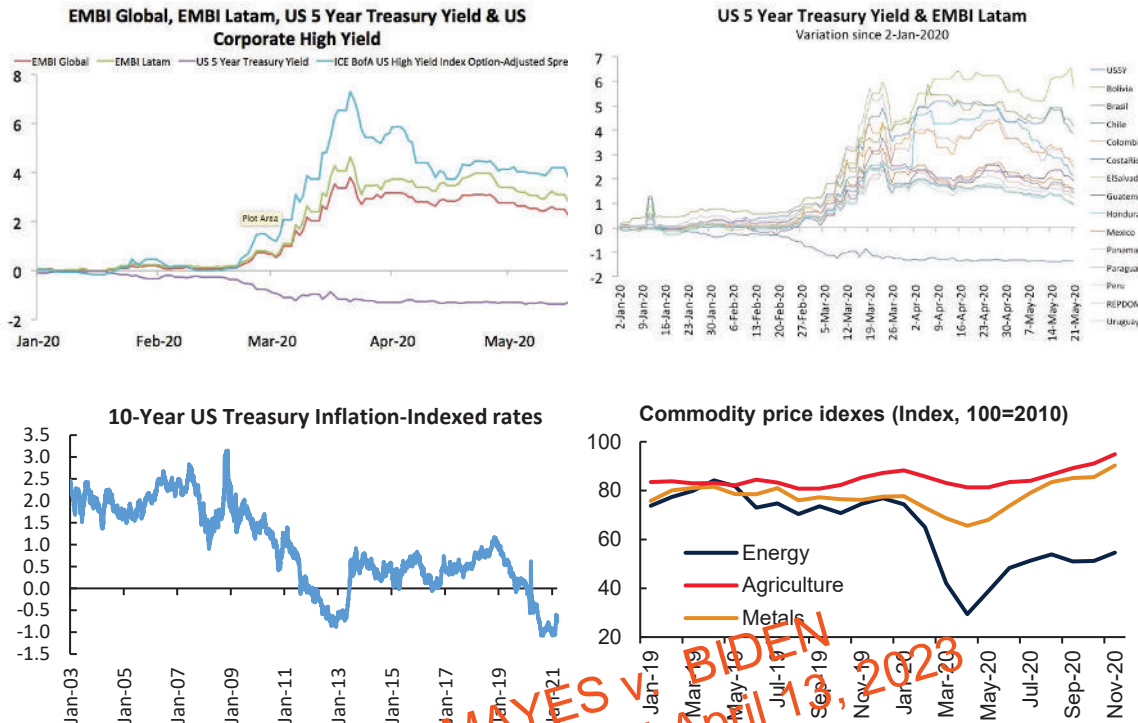


Source: IMF (2020c)

The world is experiencing moderate tailwinds. Zero or negative real interest rates in advanced economies (the reflection of vast global liquidity) combine with a considerable appetite for risk assets that favours investment and capital flows to emerging economies, reducing their borrowing costs (Figure 8).

Finally, partly because of the lax financial conditions, we are facing a boost to commodity prices (Figure 8). Again, this has a differential impact across economies, especially in the developing world, depending on whether a country is a net exporter or importer of commodities. In particular, it may compound the economic pain and social deterioration in low-income commodity importers.

Figure 8. International Financial Conditions

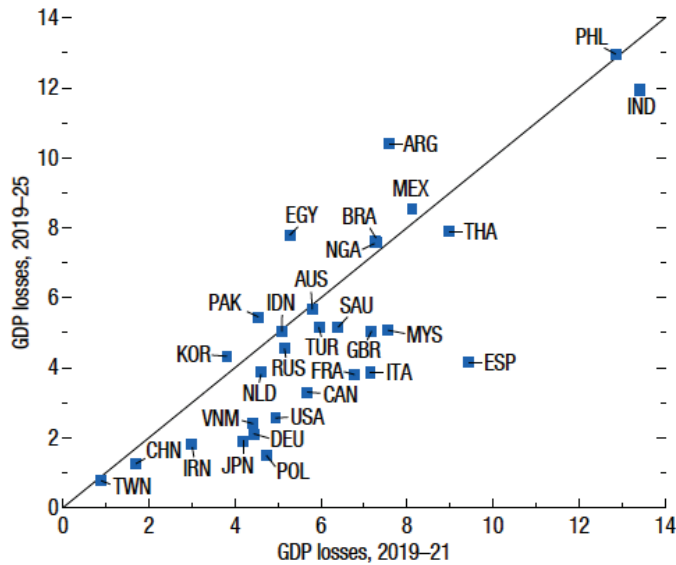


Source: Fred and Central Bank of Panama based on JP Morgan, updated from LY-Valdés (2020).

cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023

2.3 Stage 3: The recovery

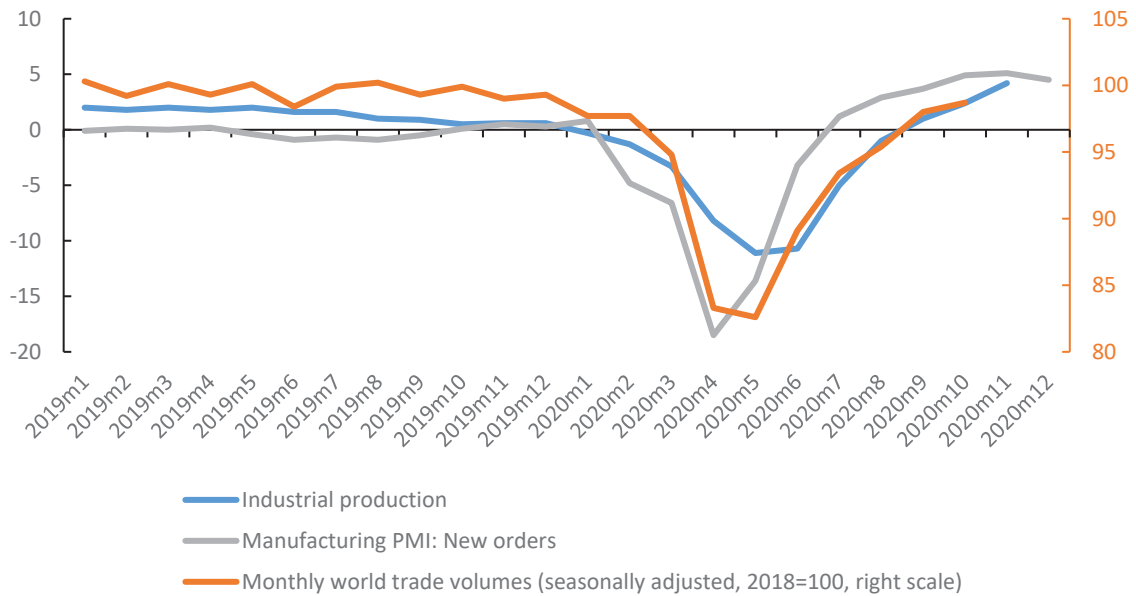
The global economy is recovering slowly from the *lockdowns*. The recent World Economic Outlook (WEO) update, published in April 2021, estimates a partial recovery in 2021 with a baseline scenario for growth at +5.8%. Economies are expected to operate with excess capacity in the medium term (Figure 9). Both advanced and developing economies are expected to operate below the 2019 level even after the 2021 rebound – pointing to modest growth in 2020–2025.

Figure 9. Losses: 2019:21 versus 2019-25

Source: IMF (2020)

At the time of this writing, the path of the post-COVID pandemic and its economic consequences remain uncertain and may be revised. One key source of uncertainty stems from the fact that the intermittent containment efforts could remain in force for longer than expected as the vaccination effort progresses slowly in some advanced countries and a new wave strikes in developing ones. Preliminary high-frequency indicators suggest that the rebound in economic activity may have faded somewhat in the first quarter of 2021 (Figure 10) as the second wave intensifies, both in the northern and southern hemispheres with the U.S. and China the notable exceptions. At any rate, the speed and success of the vaccination efforts will be critical to the timeliness and strength of the recovery.

Figure 10. High-frequency economic activity indicators



Note: Three-month moving average, annualized percent change; deviations from 50 for manufacturing PMI, unless noted otherwise. Source: IMF WEO Jan-2021

*cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023*

3. Initial conditions

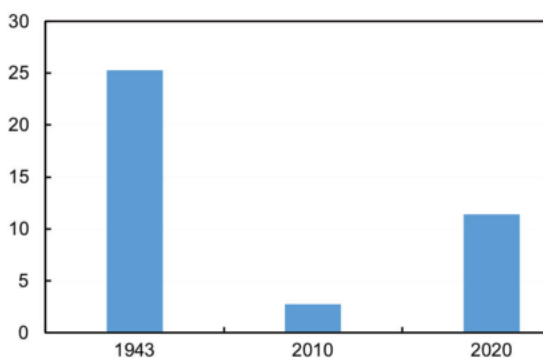
Initial conditions help explain the heterogenous impact, response, and outlooks across countries. The pandemic highlighted the traditional problems of the differential fiscal space to cope with the crisis through fiscal stimuli. It also revealed other equally critical aspects: the capacity of governments to buffer the health and economic impact of the pandemic, its ability to prioritize and allocate its scarce resources efficiently, and the crucial role played by the labor market structure in inhibiting the government effort to attenuate the impact of the shock. In this section, we address these three aspects.

3.1 Fiscal space

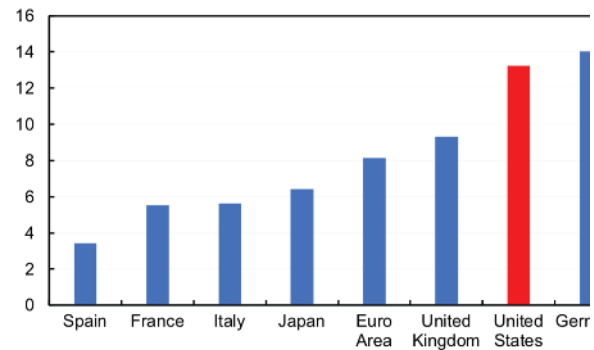
Fiscal stimuli are very heterogeneous across countries (Figure 11a). The fiscal stimulus during the COVID-19 shock was almost three times the amount observed during the Global Financial Crisis (Figure 11a). The amount of the fiscal stimulus was originally calibrated with the assumption that this would be an one-off shock. However, the second/third wave of new cases and the persistence of the economic damage implies that further support is needed for the vulnerable and should be extended in developed economies until relevant treatments and vaccines are made available to all.

Figure 11. Fiscal Stimuli

Panel a. Discretionary fiscal stimulus (as percentage of GDP)



Panel b. International fiscal response to COVID-19 (as percentage of 2019 GDP)



Source: IMF (2020b)

In addition to the fiscal space, an important dimension to understand the capacity of individual governments to cope with the pandemic is their political space. The political space is relevant to understand the interaction between lockdowns and the fiscal response. Specifically, stricter and more persistent lockdowns mean bigger downturns and stronger demands for support for household and firms (see section 4.1). The

(effectiveness of the) lockdown and the fiscal response are, in turn, conditioned by two aspects. On the one hand, many countries came from a period of increased civil unrest that may detract from the government's ability to restrict mobility; on the other hand, besides the predictable economic toll of a protracted lockdown, most countries suffer from lockdown fatigue linked to diminished socialization and stressed mental health due to limited mobility or to the combination of working from home and managing virtual schooling for dependents. The diverse degree of compliance with protocols and restrictions also helps explain the heterogeneous efficacy of the fiscal response.

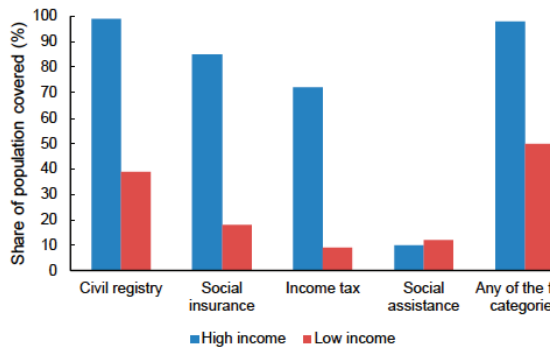
Looking ahead, the question is whether governments can provide additional support without causing renewed financial stress. The risk of financial turmoil has been magnified by the rise in debt levels due to the pandemic (Figure 11b). Less developed countries –running behind the vaccination race– that need more persistent fiscal stimuli to support the vulnerable, with more limited access to cheap finance, will face the toughest test in the months ahead.

3.2 State capacity

The COVID-19 crisis posed a critical challenge for policymakers as they need to quickly reach workers and households during the abrupt economic crisis. To support affected groups, policymakers require sufficient information (e.g. household composition, job status, income) and a reliable delivery framework to ensure that the support reaches the targeted population. These is particularly difficult for emerging and low-income countries with large informal sectors and therefore more limited sources of information on employment and labor income (IMF 2020e) (Figure 12a). Prady et al. (2020) estimate that on average, countries have spent an additional 1 percent of GDP to flex up pre-existing social programs—insurance, assistance, and labor market-related—and to introduce new ones (Figure 12b). Additional fiscal outlays have mainly financed the expansion of social assistance systems to cover over 1.8 billion people worldwide (Gentilini et al. 2020).

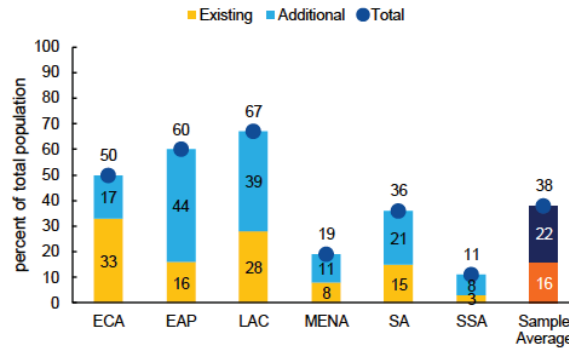
Figure 12. Fiscal Assistance

Panel a. Data availability across government registries (by income group)



Source: IMF (2020e)

Panel b. Existing, additional, and total population coverage of monetary transfers during Covid-19



Source: Gentilini et al. (2020). Note: Sample of 57 countries. EAP: East Asia and Pacific; ECA: Europe and Central Asia; LAC: Latin America and Caribbean; MENA: Middle East and North Africa; SA: South Asia; SSA: Sub-Saharan Africa.

There are three key success factors for the rapid and efficient delivery of government responses. First, existing social support infrastructure, the presence of which help manage the support of vulnerable populations immediately and without the need for special response measures. Second, the strength of the digital delivery, considering that these reliefs ought to reach the beneficiaries during lockdowns – some of the quickest delivery vehicles have come from emerging markets (McKinsey 2020). Third, real-time tracking: because traditional monitoring systems based on field surveys cannot do this job (due to the low frequencies and lengthy-time lags of data collection and processing and the mobility restrictions imposed worldwide), policymakers should rely on nontraditional, advanced analytics and data (updated daily or weekly) to check the pulse on households and businesses.

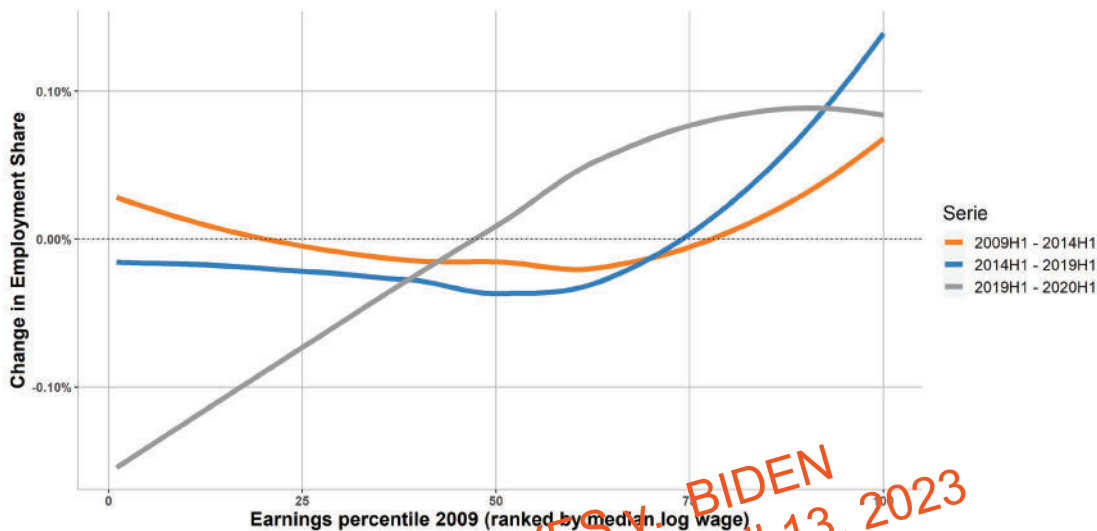
3.3 The labor market channel

The pandemic is having disproportional effects on the most economically vulnerable segments of the population. The COVID-19 shock affected workers and labour income differently, depending on the composition of the workforce in terms of skills, occupation types, infrastructure (particularly, but not exclusively, those lacking connectivity), and type of contractual relations (particularly, informal and self-employed workers).

The precariousness of workforce influenced the economic impact through four distinct channels:

- The prevalence of informality and self-employment reduced the coverage of job retention and furlough schemes (Escobari and Levy Yeyati, 2020);
- The limited ability to assign resources and attenuate the negative shock to the labor income of precarious workers, in turn, reduced the effectiveness of social distancing (Levy Yeyati and Sartorio 2020) (Figure 13);

Figure 13. Smoothed Change in Employment by Occupation Wage Percentile



Sources: Levy Yeyati and Valdez (2020)

- The fact that lower-income economies have a lower share of jobs that can be done at home (Dingel and Neiman 2020):¹ conditions to telework depend on occupation and worker characteristics (Bick et al. 2020) and on the available infrastructure (connectivity, access to digital devices, availability of childcare and school services); and
- The bias of COVID-related restrictions against primarily low-wage, high-contact jobs such as cleaning, hospitality, or health care activities, and the fact that remote jobs often require skills or hardware that low-wage workers may not have (Figure 14).

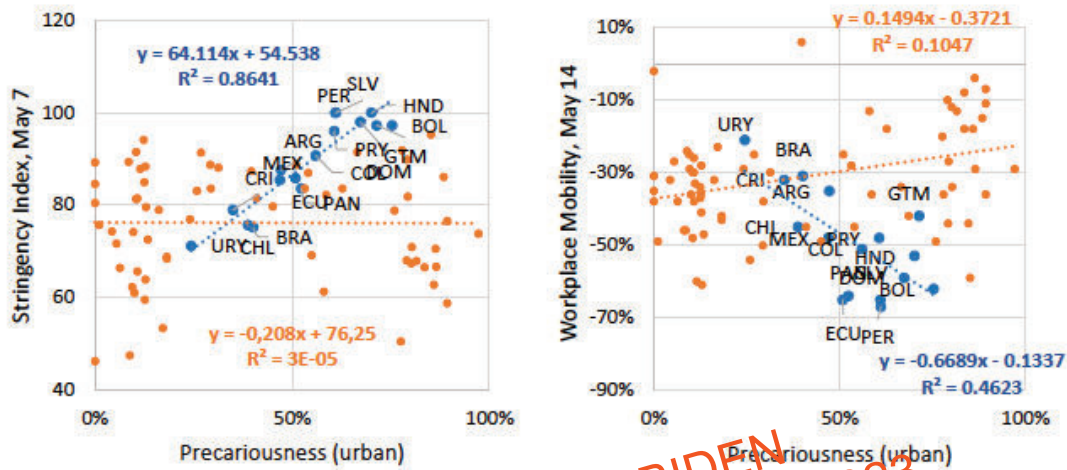
This pattern, if persistent, does not bode well for developing economies. Due in part to the relative abundance of unskilled labor, the adoption of new, labor-substituting technologies has been so far slower, resulting in the past in [less labor market polarization](#) (Busso et al. 2020) and even [declining-to-stable inequality](#) (Messina et al. 2020), albeit from very high levels and [for varied reasons](#) (Levy Yeyati et al. 2014). But

—

¹ For instance, the authors show that, in 13 Latin American countries, the average share of teleworkable jobs is only 20%—ranging from 14% in Honduras to 27% in Uruguay.

this delay in the introduction of new technologies implies that the acceleration effect of the pandemic may be even more pronounced, as developing economies move swiftly from a labor-intensive production mix to streamlined processes with leaner payrolls. For this reason, the COVID impact on labor markets may be larger and more persistent than in the developed world due to the prevalence of unskilled labor.²

Figure 14. Lockdowns and Labour Market



Sources: Levy Yeyati and Valdez (2020)

3.4 Initial conditions and economic impact

What does the evidence say about the link between pre-existing conditions and the economic impact of the pandemic? Can it be argued that nations with adequate fiscal space, state capacity, and labor formality soften the impact of the COVID shock? Answering this question is not straightforward for several reasons. COVID-19 hit countries with an intensity that is hard to quantify empirically and, importantly, while the three identified pre-existing conditions amplified the impact, there were not more important than the actual disease burden in terms of both the economic and social costs of coping with the pandemic.

While there is evidence that supports the hypothesis that pre-conditions help to mitigate the economic costs of the pandemic, no comprehensive study addresses all pre-conditions at once. This is in no small part because the economic costs are being continuously reassessed. An exception is [The World Bank \(2020\)](#), which shows that the

² When comparing the impact on employment based on unemployment data for 2020, one has to bear in mind that, in the US, the absence of furlough schemes implies that temporarily suspended workers are added to the unemployed; hence, the sharp peak and fast decline in temporary unemployment in the U.S. in the first semester, and the plateauing once labor dynamics start to reflect permanent layoffs.

decline in economic activity in the second quarter of 2020 is correlated with the number of cases and the stringency of the lockdown, as well as with per capita GDP, a standard proxy for economic development (Table 1). One should note, however, that the number of cases may not be a reliable gauge of the intensity of the pandemic, as testing varied considerably across countries and over time. Since a similar caveat applies to growth, the economic impact of COVID-19 is often measured as the difference between pre- and post-COVID *growth forecasts* for the period 2020-21, as we mostly do here.

Table 1. Initial Conditions and Output 2020-Q2

	GDP growth, y-o-y		
	(1)	(2)	(3)
Log (COVID-19 cases in Q2 per mill. pop)	-0.982** (0.378)	-1.073** (0.505)	-1.455*** (0.468)
Stringency of containment measures in Q2	-0.205*** (0.0634)	-0.137* (0.0757)	-0.125* (0.0683)
Log GDP <i>per capita</i> (2017 USD PPP)		3.441** (1.692)	3.693** (1.528)
Share of services in GDP		-0.331** (0.135)	-0.260** (0.123)
Share of manufacturing in GDP		0.00796 (0.154)	-0.0496 (0.139)
Share of exports in GDP		-0.00589 (0.0268)	-0.01 (0.0242)
GDP growth Q1 2020			0.802*** (0.225)
Constant	9.149* (4.791)	-10.02 (14.36)	-13.67 (12.99)
Observations	59	58	58
R-squared	0.265	0.371	0.499

Source: The World Bank (2021)

There is a link between fiscal space and fiscal stimulus. Benmelech et al. (2020) find that a country's credit rating is the most important determinant of its fiscal spending (and monetary expansion) during the pandemic. Indeed, as noted, high-income countries entered the crisis with historically low (in real terms, negative) interest rates and, as a result, were prone to using non-conventional monetary policy tools such as quantitative easing. The World Bank (2020) has also found evidence that the COVID-19 impact is biased against informality, an aspect tightly related to per capita GDP, as low-income economies, ill-equipped to provide fiscal and monetary support, are typically characterized by higher levels of labor precariousness, which in turn is particularly high in (contact-intensive) service activities that were hit particularly hard by the pandemic (as Table 1 reports).

We find evidence that preconditions affect the economic response to COVID. Table 2 reports three basic models: columns 1 and 2 regress the growth forecast revision on cumulative deaths per million (a proxy for the intensity of the COVID shock), per capita GDP (alternatively, the labor informality rate), and interactions with the shock. Results are as expected: Per capita income mitigates the shock; informality amplifies it. Column 3 regresses a measure of working hours lost against the shock and the informality rate; the results point in the same direction: Onformality led to a greater hour loss. The findings are by no means definitive but are indicative that these two preconditions may have played amplifying roles.

Table 2. Initial Conditions and Economic Impact of the Covid Shock

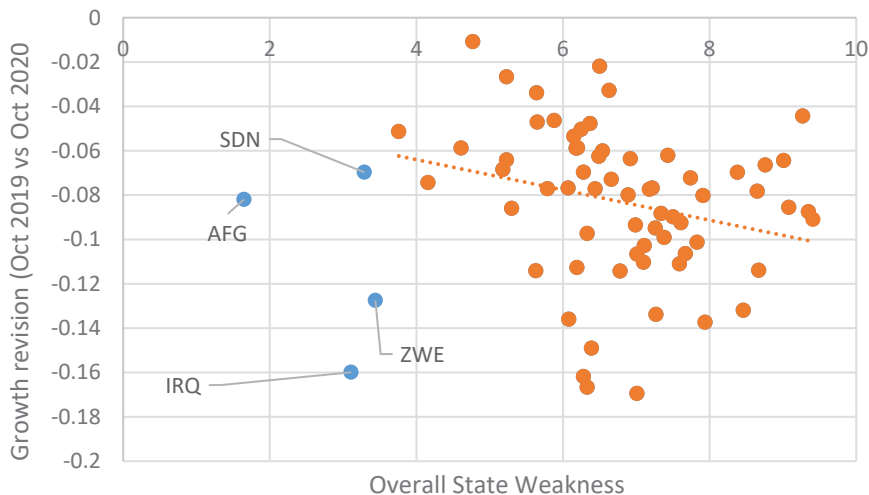
	(1)	(2)	(3)
	Forecast revision	Forecast revision	Working hours lost
Ln (Deaths per million)	0.126 (0.15)	-5.266*** (-2.67)	0.341 (0.35)
Labor informality	14.49*** (2.02)		-11.77 (-1.18)
Ln (Deaths per million) x labor informality	-3.181*** (-2.73)		4.788*** (2.73)
Ln (GDP per capita)		-1.382 (-1.29)	
Ln (Deaths per million) x Ln (GDP per capita)		0.393** (1.97)	
Constant	-8.212* (-1.46)	13.61 (1.29)	2.917 (0.45)
Observations	66	65	64
R2	0.222	0.261	0.463

Source: Authors' estimations based on IMF-WEO, ILO, Ourworldindata.org.

There seems to be a weak link between state capacity and economic performance under COVID. The role of state capacity is more difficult to define and, as a result, less often researched.³ Here, as a proxy for the lack of state capacity, we use the [Index of State Weakness in the Developing World](#), which ranks all 141 developing countries according to their relative performance in four critical spheres: Economic, political, security, and social welfare. We find this index negatively correlated to growth revisions, as expected, but only weakly (Figure 15).

³ Serikbayeva et al. (2020) study the link between state capacity and deaths from Covid-19. The state capacity is proxied by the level of democracy, government policy responses, the share of the elderly population, and health system resource capacity. The study presents strong evidence for the critical role of state capacity in achieving positive policy outcomes.

Figure 15. GDP losses vs. State Weakness



Sources: IMF (2020c) and Rice and Patrick (2016)

In sum, while preconditions played a key part in the welfare impact of the pandemic, they appear to have been also influential in buffering its impact on aggregate economic performance.

*cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023*

4. Dealing with the pandemic

While public policy responses varied across countries, we could identify two common features across countries: the speed and the synchronicity of the responses. Indeed, by late March 2020, as much as 25 percent of the world population was under lockdown measures (Hale et al. 2020). Broadly, the policy responses targeted two broad objectives:

- (a) Reduce the spread of the virus and strengthen the health systems; and
- (b) Support households and firms that faced sudden income/revenue losses due to supply and demand shortages, and the financial system to avert a spike in non-performing loans and defaults.

Policymakers tackled the first objective through quarantines, lockdowns, and social distancing. These policies played a critical role in slowing the transmission of the virus and reducing the stress on the health care system—particularly in less developed countries with modest health capacity. With large heterogeneity across countries, these measures were complemented with higher health care spending to ensure adequate capacity and resources. Predictably, these policies had a significant economic impact: for instance, Demirgüç-Kunt et al. (2020) estimate that non-pharmaceutical interventions led to a decline of about 10 percent in economic activity across Europe and Central Asia during 2020.

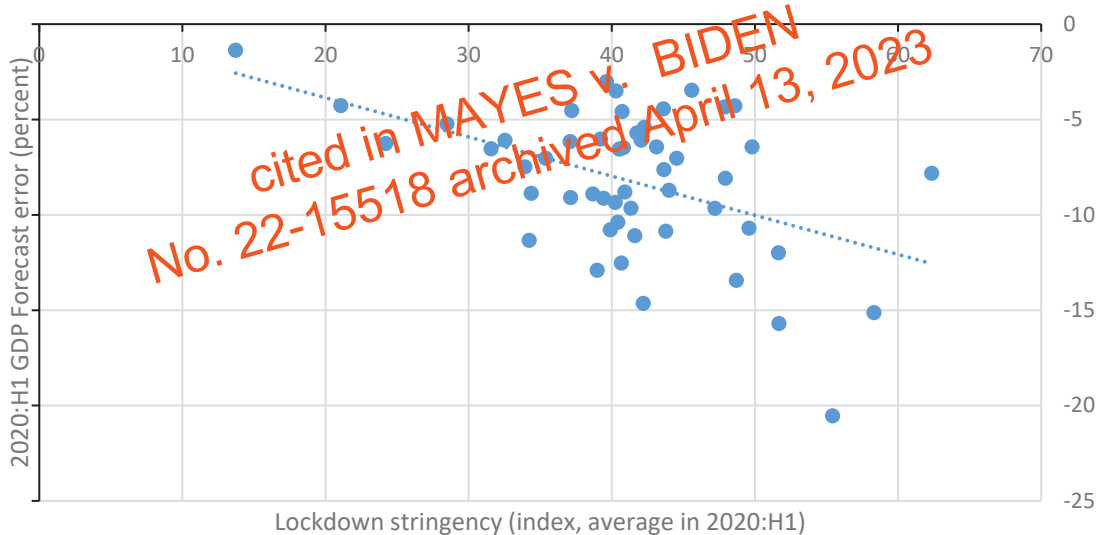
On the other hand, policymakers implemented different fiscal, monetary, and regulatory measures to tackle the second objective. Household support measures were especially relevant in developing economies, where staying at home implied a sudden collapse of income as a larger share of workers are informal and their families depend on their labor income to make ends meet (Loayza and Meza-Cuadra 2018; Busso et al. 2020). Many governments supported households through salary subsidies, relief from contractual obligations and debt, and conditional cash transfers. Governments provided liquidity support through measures such as loans, equity injections, and guarantees to support firms. Some governments also encouraged banks to make use of available capital and liquidity buffers to support lending—at the risk of preserving nonviable “zombie” firms. These policies were complemented by a sharp reduction of monetary policy rates and a sustained quantitative easing by central banks to relax borrowing conditions in financial markets.

4.1 Cross-country evidence on lockdowns and economic activity

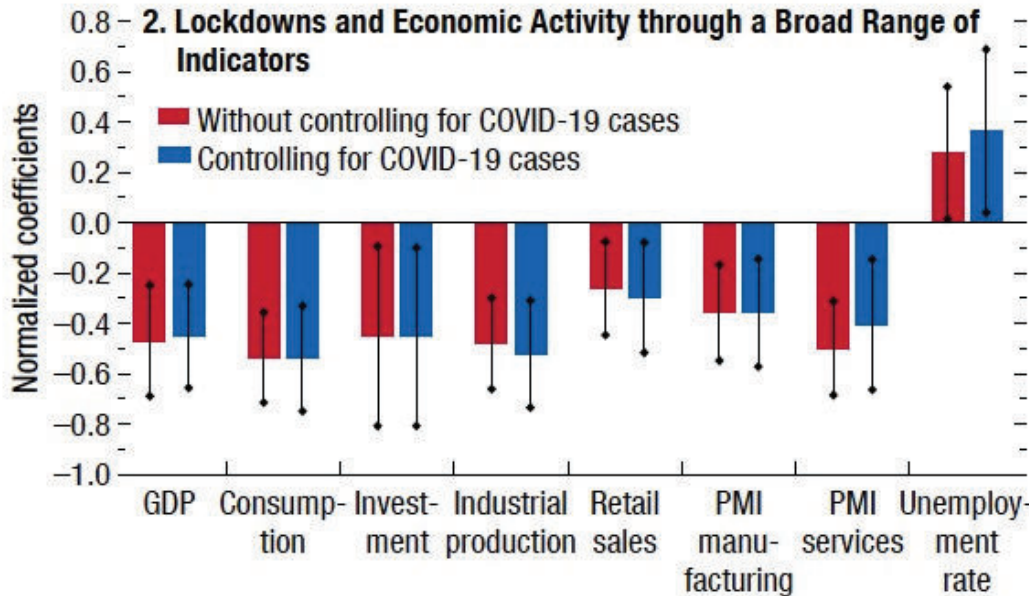
There is consensus that lockdown measures negatively affected economic activity.

Several authors point to a substantial role of lockdowns in the United States leading to employment losses, a substantial decline in spending, and deterioration in local economic conditions (Brodeur, and Wright 2020; Coibion, Gorodnichenko, and Weber 2020). Similar effects have been documented across different countries (Carvalho and others 2020; Demirgüç-Kunt et al. 2020). The correlation between lockdown and economic activity is displayed Figure 16 and, in more detail, in Figure 17. The data provides suggestive evidence that the stringency of lockdowns had a short-term economic impact, as measured by the GDP relative to pre-pandemic forecasts. However, this evidence should be interpreted with caution given the large heterogeneity displayed in the sample and the fact that there are important omitted variables (e.g. The dependence on international inputs or capital, or the incidence of demographic, geographical, and seasonal factors) as well as lagged effects.

Figure 16. GDP Forecast Error in 2020 H1 and Lockdown Stringency

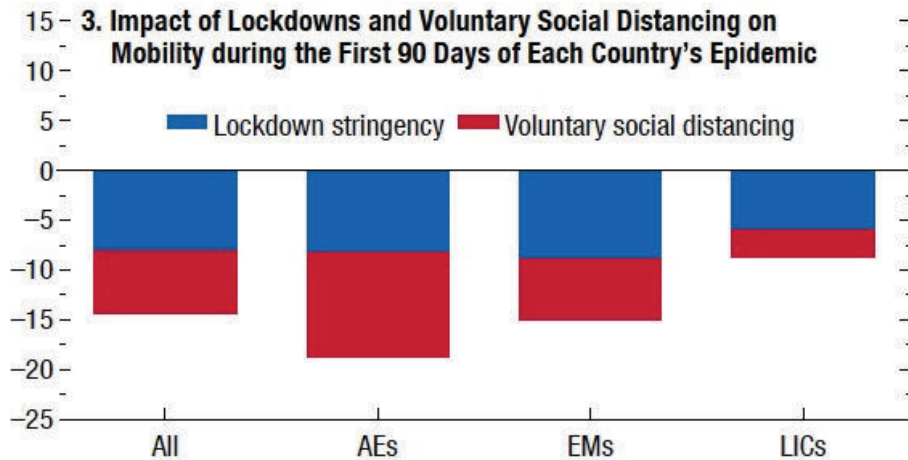


Source: IMF WEO Oct-20

Figure 17. Lockdowns and Economic Activity

Source: IMF WEO Oct-20

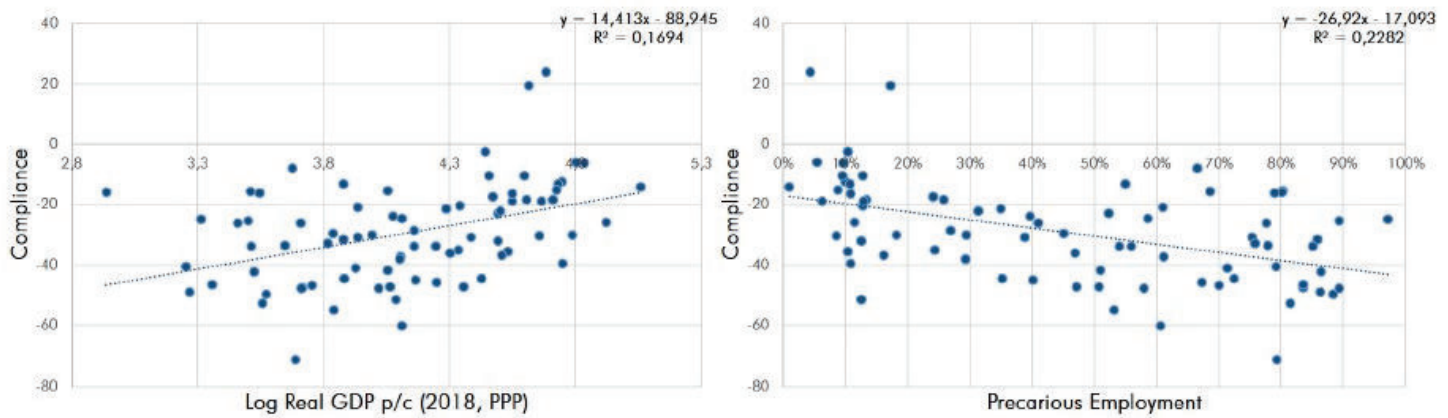
There is an incipient consensus that, while strict lockdowns helped reduce the circulation of the virus at an early stage, their impact declined over time due to “lockdown fatigue”. Based on studies using the University of Oxford’s Lockdown Stringency Index (and its sub-components) and Google’s Mobility Index for a cross section of more than 100 countries, we can list a few stylized preliminary facts: 1) Lockdowns (particularly, restrictions on public events and private gatherings) have a large effect both on mobility and COVID-19 cases at the initial stage of the pandemic (Askitas et al., 2020; Wong et al., 2020); 2) The early effectiveness of lockdowns on reproduction and related deaths was heterogeneous, depending on country-specific factors such as average daily temperature, population density, health system quality, and age structure (Deb et al., 2020; Li et al., 2020; Goldstein et al., 2020); 3) Compliance (as measured by the response of the Mobility Index to changes in the Stringency Index) declined over time, and was particularly weak in emerging and developing countries where, in part for this reason, lockdowns were particularly stringent and long (Levy Yeyati and Sartorio, 2020; Goldstein et al., 2020; and Figure 18); and 4) The effectiveness of lockdowns declined over time, in part (but not solely) as a result of a weaker compliance (Goldstein et al., 2020; Caselli et al., 2020).

Figure 18. Impact of Lockdowns and Voluntary Social Distancing

Source: IMF WEO 2020-Oct

Several papers point to the large contribution of voluntary social distancing as a key factor affecting mobility and the economy. Aum, Lee, and Shin (2020), Goolsbee and Syverson (2020), Maloney and Taskin (2020), and Levy Yeyati and Sartorio (2020) show that mobility has been tightly correlated with the spread of COVID-19—mobility declines after a steady increase in daily deaths, and vice versa— even after controlling for government lockdowns. This implies that the pandemic affects the economy beyond the intensity of a lockdown, a pattern that was estimated and reported in the IMF's WEO (2020) by decomposing variations in mobility into a component explained by official restrictions (again, proxied by the Stringency Index) and a residual, and then modeling changes in economic activity due to each of the two components. As can be seen in Figure 18, there is a considerable portion of the economic impact that could be attributed to voluntary distancing or, more rigorously, to actions that are orthogonal to variations in lockdown intensity, particularly in advanced economies. In addition, compliance with de jure restrictions over time depends on socioeconomic conditions such as per capita income or labor precariousness (Levy Yeyati and Sartorio, 2020) (Figure 19), which suggests that long lockdowns in middle-to low-income countries may lose their impact and –to the extent to which non-compliance extends to social distancing in general– even be counterproductive.

Figure 19. Correlations between compliance with Real GDP per capital and Urban Labor Precarity, June 22th



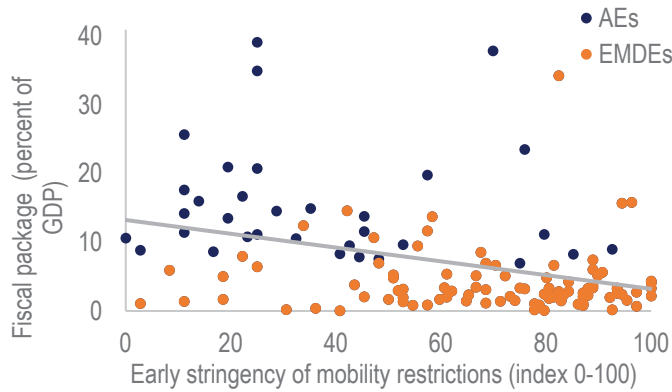
Sources: Levy Yeyati and Sartorio (2020) based on Oxford COVID-19 Government Response Tracker (OxCGRT), Google COVID-19 Community Mobility Reports, World Bank and International Labor Organization

4.2 Fiscal response to the pandemic

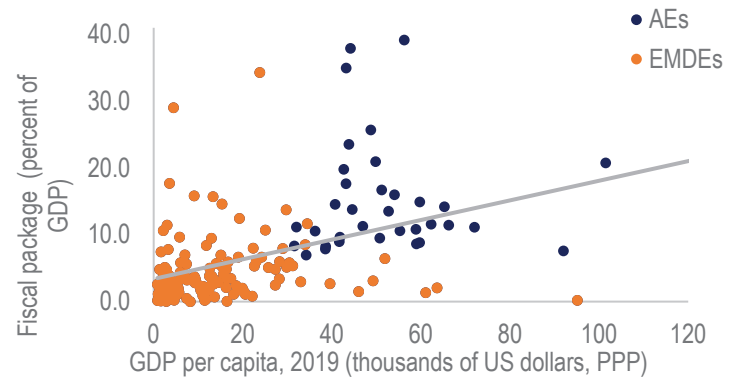
The size, composition, and evolution of fiscal support have varied widely because of country circumstances. Three stylized facts help to draw some intuition of the drivers behind this diversity. On average, countries that deployed smaller fiscal packages (i) put in place strong containment measures, such as mobility restrictions, early on (before COVID-19 cases peaked), (ii) have lower per capita income (a broad proxy for development), and (iii) have higher borrowing costs (wider sovereign bond spreads) that limit their capacity for on-budget support (Figure 20).

Figure 20. Discretionary Fiscal Response to the COVID-19 Crisis and Country Preconditions

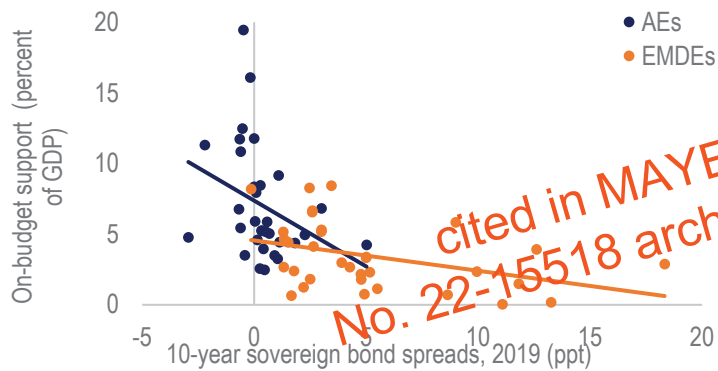
Panel a. Fiscal Support and Stringency of Early Containment



Panel b. Fiscal Support and Initial Income per Capita



Panel c. Fiscal Support and Initial Sovereign Spreads



Sources: OxCGR Database; IMF, World Economic Outlook database; and IMF staff estimates. Note: Sovereign spreads are computed over 10-year US Treasury bond yields for non-European economies and 10-year German bund yields for European economies. Grey trend lines in panels 1 and 2 refer to both AEs and EMDEs; blue and orange trend lines in panels 3 and 4 refer to AEs and EMDEs, respectively. AEs = advanced economies; EMDEs = emerging market and developing economies; PPP = purchasing power parity; ppt = percentage point.

Debt-funded fiscal stimuli in advanced economies contrast with modest ones in developing countries, where central bank financing has been more prevalent. The main fiscal measures are outlined below (see also Table 3):

- *Wage subsidies.* Furlough programs for businesses with revenue losses have been particularly effective in preserving employment linkages in advanced economies with a majority of salaried workers (Barrero et al. 2020).⁴

⁴ The take-up of job retention schemes averaged one-quarter of employees in OECD economies.

- *Cash and in-kind transfers*⁵. Particularly effective in protecting the disposable income of the poor when means-tested and targeted to those most likely to spend, existing cash transfer programs coverage were expanded and supplemented with the distribution of food and hygiene items, and other voucher programs. These policies provided complementary coverage to vulnerable households, particularly in developing economies with larger informal sectors where job retention programs had limited impact (Figure 21).
- *Loans and guarantees*. While governments announced significant programs to provide liquidity to cash-strapped businesses, most programs had a low take-up explained by design issues (large loan size and low coverage of the guarantees), administrative capacity constraints or program conditionality, liquidity buffers in less-affected sectors and firms, the availability of other forms of government support such as grants and wage subsidies (Anderson, Papadia, and Véron 2020), and private debt overhang.
- *Equity injections*. In some cases (New Zealand, Singapore), governments provided convertible loans to national airlines with options to convert bonds into common equity, which ensured that the risks and rewards are better shared by the state and shareholders (OECD 2020a). In France, airline support was combined with conditionality on cutting emissions, which helps foster a “greener” recovery.
- *Tax measures*. Many countries extended deadlines and deferred payment of taxes (OECD 2020b, Djankov and Nasr, 2020) to support household and firm liquidity, albeit with a relatively low impact given that tax burdens were already limited by low sales and reduced profits (OECD 2020b)⁶. Additionally, tax-based support was less effective in emerging and developing economies because of the presence of widespread informality.
- *Payment forbearance policies*. These policies included moratoriums facilitated by government support or public enterprises on payments of mortgages (United States), utilities (Argentina, Colombia, Japan), rents (China), or loans (Argentina, Turkey) and provided short-term relief to households and businesses, including in informal sectors, to buffer the impact of the crisis on disposable income.

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⁵ Bronka et al. 2020 estimates that means-tested universal credit allowance fully offset the adverse impact of the pandemic on poverty in the U.K. On the other hand, Chetty et al. 2020 estimate that in the United States, however, higher-income households that received “stimulus checks” under the Coronavirus Aid, Relief, and Economic Security Act have spent less than lower-income households that received those checks, and on goods less affected by the lockdown, such as durables, limiting the aggregate impact.

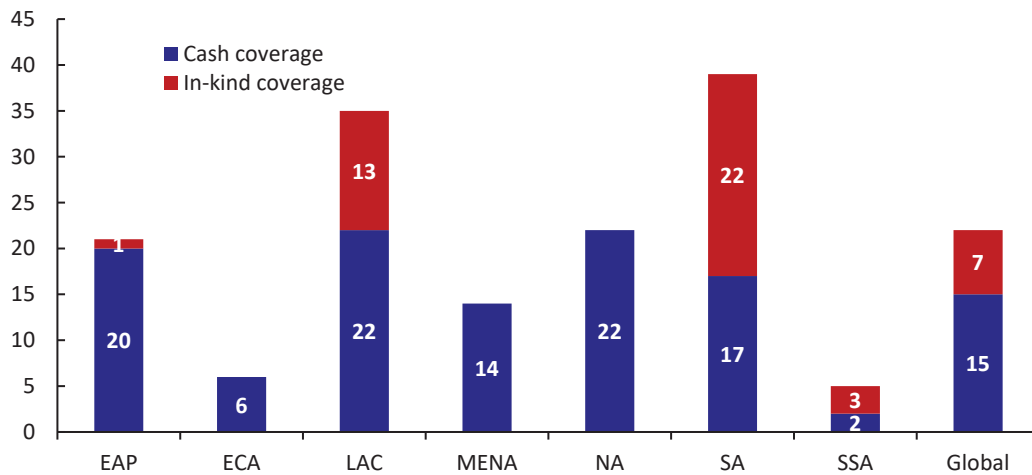
⁶ These measures were implemented through tariff waivers on medical supplies (Colombia, Vietnam), accelerated VAT refunds (France, Indonesia), new and expanded loss carry-back rules (China, New Zealand, Japan), accelerated depreciation deductions (Australia) and reduced social security contributions (Argentina, China, France, Korea).

Table 3. Fiscal and monetary response to the pandemic

Maintain financial stability	Monetary-policy actions	Provide quantitative easing/liquidity injections Reduce interest rates
Maintain household economic welfare	Support of critical needs	Maintain household disposable incomes (Cash and in-kind transfers) Ease household expenses/financial obligations (payment forbearance policies)
Help companies survive the crisis	Liquidity/cash-flow improvements Balance-sheet interventions	Postpone government fees/receivables and non-debt obligations (payment forbearance policies) Provide equity interventions (equity injections) Restructure debt and defer loans (loans) Guarantee funds (guarantees)
	Companies cost reduction	Reduce/eliminate government fees (tax measures) Compensate/reduce salary costs (wage subsidies)

Source: Author's elaboration based on McKinsey (2020)

Figure 21. Increase in the Coverage of Social Assistance (in percentage of the population)



Source: Gentilini et al. (2020). Note: EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; ENA = Middle East and North Africa; NA = North America; SA = South Asia; SSA = sub-Saharan Africa.

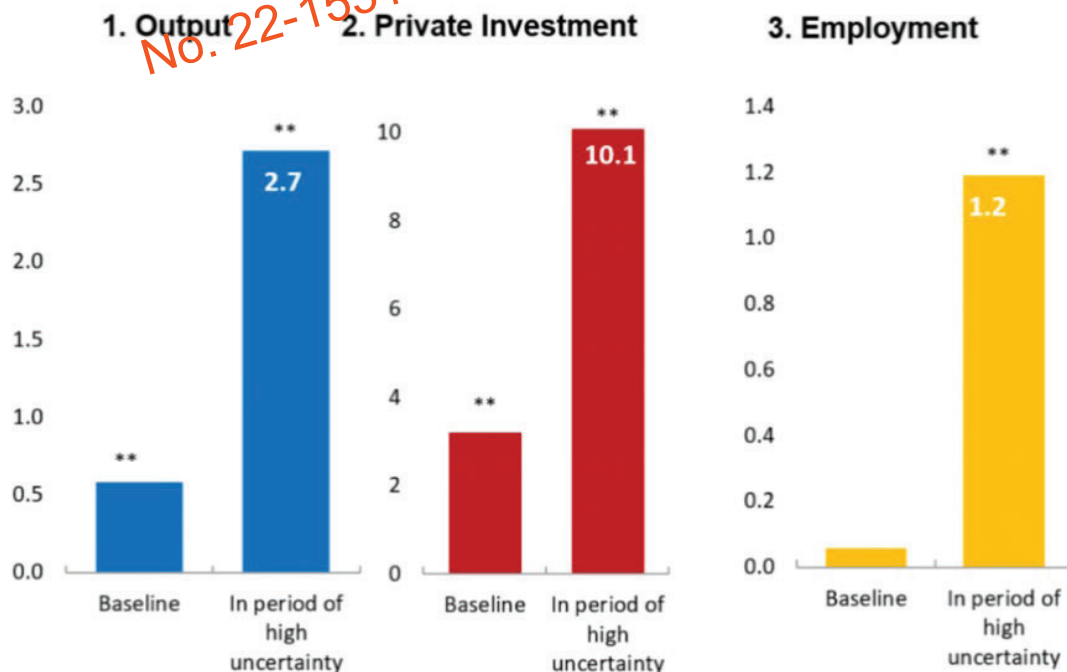
There are several fiscal risks associated with the duration of the aforementioned policies in the event of a lengthening of the pandemic:

- *A protracted economic downturn.* The lack of widespread availability of effective therapies or a vaccine implies a considerable risk for recovery. This could mean more bankruptcies, further deterioration in banks' balance sheets, and a greater need for fiscal resources to support and retrain unemployed workers at a time when debt ratios and base money are already quite stretched in many developing countries.
- *Tightening of financial conditions.* The rapid growth in sovereign and private debt stocks, particularly among non-financial corporations, and the need to service those debts, has left government budgets and private entities more exposed to changes in financing conditions and potential debt overhangs (depressed investment due to the anticipation of future taxes to pay current debt).
- *Commodity market volatility.* Commodity price fluctuations impact commodity exporters and importers differently. A sharp fall in oil prices would further undermine the already-stretched budgets of oil exporters but could also provide importers with some relief. Conversely, the ongoing boom in food items could put additional pressure on commodity importers in the developing world.
- *Contingent liabilities.* Although new guarantees remain largely untapped by firms to date, their use of guarantees may accelerate and could eventually be called in the event of a new fall in economic activity, adding to public indebtedness and fiscal needs.

To a lesser extent, there are also upside fiscal risks. These include the rapid development and wide distribution of a safe, affordable, and effective vaccine; changes in economic structures that boost productivity through new techniques or technologies; or the normalization that proceeds faster than expected in areas that have reopened without sparking new outbreaks of infections. Realization of these outcomes would imply a faster economic recovery than expected, thereby reducing the necessary fiscal support.

Public investment could play a central role in the post-pandemic scenario. Countries have redirected resources budgeted to public investment to finance the measures discussed above. In this vein, it could help revive economic activity and create new low-skilled jobs in the short term. IMF (2020f) estimates that increasing public investment by 1 percent of GDP could strengthen confidence in the recovery and boost GDP by 2.7 percent, private investment by 10 percent, and employment by 1.2 percent (Figure 22). The impact is magnified due to the uncertainty on the economic outlook that depressed private investment, potentially inducing a crowding-in of private resources. To be sure, these estimates assume that the existing public and private debt burdens do not jeopardize the response of the private sector to the stimulus, which remains a considerable source of risk; because of that, they are more relevant for developed countries under the assumption of the continuation of extremely low interest rates.

Figure 22. Amplifying effects of public investment



Source: IMF (2020f)

We believe risks are balanced but biased against developing countries. Vaccine rollouts and new mutations may find many developing countries ill-prepared. Because those countries where vaccine supply may be constrained are often low-income ones with limited fiscal space, delays due to production hurdles or competition for jobs will likely translate into wider cross-country inequality. Moreover, remaining risks are still uncertain and likely to affect economies differently. For example, even if vaccines prevent deaths, they may not reduce circulation as expected; vaccine hesitancy, particularly high among young people, may slow down vaccine rollouts (paradoxically, relaxing the supply constraint); and virus mutations may not only feed people’s fears and delay a return to normality but may also require further vaccination (or boosts) down the road. While all this would be especially problematic for developing countries without the resources to cope with a second wave—which, as a result, may see new waves that hinder economic activity in 2022—it also represents a hurdle to the recovery of cross-country transportation and migration, with global consequences. **Globally-minded governments and multilateral institutions should anticipate, internalize, and address these risks before they are realized.**

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No. 22-15518 archived April 13, 2023

5. The role of IFIs

Global liquidity and capital flight, short-lived as it was (see section 2), affected countries in very different ways. To analyze this, it is useful to distinguish four groups of countries: *Advanced* (benefited by near-zero interest rates), *emerging markets in good standing* (where the increase in sovereign risk premiums was largely offset by the decline in risk-free interest rates leaving borrowing costs near pre-COVID levels), *emerging markets in crisis* (with significant private debt ratios and limited or no access to private refinancing, hence dependent on multilateral lending), and *frontier markets* (with limited or no private financing, reliant on—mostly concessionary—multilateral and bilateral lenders and donors).

The injection of global liquidity by central banks helped countries selectively. It was positive for the first group and to a lesser extent the second group by enabling the funding of fiscal stimuli, but was at best neutral for the third (rationed from capital markets due to their domestic crises) and the fourth (with no private funding). This exacerbated the long-standing conundrum faced by the international financial community during global crises: Those with access to multilateral support do not need it; those with needs cannot access it.

The IMF created new liquidity windows to help emerging economies cope with capital flight. The Fund has two types of programs: Back-loaded conditional ones (e.g., Stand by agreements) tailored to deal with fundamental macroeconomic misalignments, and front-loaded unconditional ones (e.g., FCL and PCL, as well as the new SLL) aimed at external liquidity shocks to otherwise well-behaved economies. As a result, economies with a less-than-stellar track record hit by an external shock remain unattended. Recognizing this gap, in April 2020 the IMF launched the Rapid Financing Instrument (RFI) that “provides rapid and low-access financial assistance to member countries facing an urgent balance of payments need, without the need to have a full-fledged program in place” (IMF 2020a) and the RCF, a similar line available “only to low-income countries eligible for concessional financing”, in addition to temporarily extending the size of these emergency loans (from 50 to 100 percent of quota). Despite all these efforts, the use of the facilities has been rather modest: About \$250 billion out of its \$1 trillion lending capacity (as of December 21, 2020), centered on countries without financial constraints. More importantly, this use was concentrated in the unconditional liquidity windows, primarily the RFI, which were used by many as a financial backstop against a persistent increase in borrowing costs, reflecting a well-known reluctance from governments to engage in an IMF program due to reputation and political stigma.

Another attempt to make up for potential liquidity problems in the developing world was the proposal to issue SDRs, the IMF’s basket currency. Such a move, emulating a similar one in the context of the 2009 global financial crisis, is the international equivalent to a central bank’s transfer to finance the Treasury and would have benefitted all IMF member countries. Advocated by many experts (see, e.g., [Gallagher et al., 2020](#)), it was ultimately stalled by the opposition of the U.S. government, but remains a likely outcome under the Biden administration.

A third initiative that also received wide support from [experts](#) and multilaterals was a debt relief for low- and middle-income economies to enhance their fiscal space. The proposal is based on the view that, because countries suffered a permanent loss and a persistent impairment of their growth potential, concessionary lending is not enough and a true transfer, in the form of a nominal debt haircut, is needed. In the end, the initiative received a lukewarm response from the private sector and key bilateral lenders, such as China, and was narrowed down to a [temporary suspension of debt service](#) under which 73 countries are eligible for a temporary suspension of debt-service payments to official bilateral creditors through June 2021.⁷

Other ideas to fill in the gaps of the international financial architecture were floated during the year with no success. The creation of a Special Purpose Vehicle ([SPV](#)) to be used to [leverage countercyclically](#) the investment-grade rating of multilaterals or regional reserve funds in times of historically low interest rates failed to stir the interest of potential beneficiaries that, as noted above, did not perceive liquidity as a relevant restriction. Similarly, calls for a recapitalization of multilateral lending institutions were weakened by the fact that existing multilateral resources were far from exhausted by demand and, overall, by the combination of low financing costs in high- and middle-income economies and solvency, as opposed to liquidity, concerns in low-income ones.

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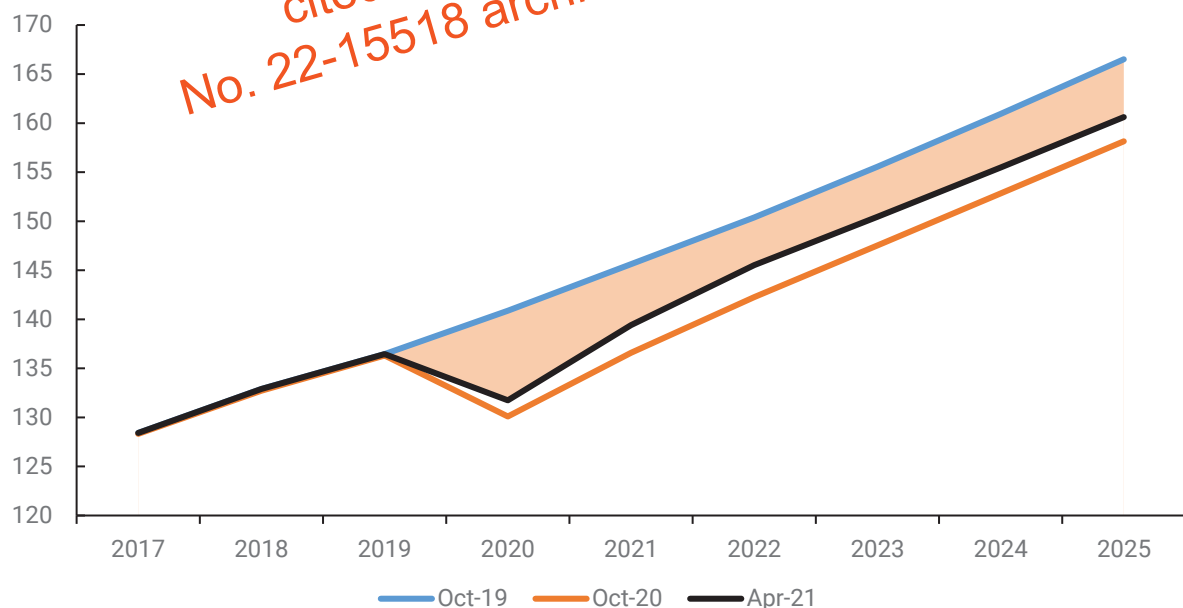
⁷ Note that, since these economies receive grants and concessional loans, any debt service suspension by bilateral official donors is likely to be offset by a smaller amount of new funds from the same source, with limited or no effect on the availability of finance in the short term.

6. Estimating the economic costs of the pandemic

To complement the previous analysis, in this section we present a back-of-the-envelope, preliminary assessment of the economic cost of COVID-19. As will become clear below, this is an indicative exercise, modelled in blocks so that the reader can decide what to include, and open-ended as the crisis is still ongoing and the numbers used are broad projections under permanent revision.

First, we approximate the output loss over a 10 year window. We accumulate the differences between the realized real GDP in 2020 and the one projected right before the pandemic, and between pre- and post-COVID projections for 2021-2030 (the shaded area in Figure 23 compares pre-Covid real GDP growth forecast from the WEO of October 2019 with the most current, upgraded forecast from the WEO April-2021), discounted at a 0 percent real interest rate. The calculation yields a total equal to 53 percent of the 2019 global GDP (Table 4).

Figure 23. Global GDP Projections (in constant USD, index 2017=100)



Sources: IMF WEO Oct-2019, Oct-2020 and Apr-2021

Second, we add the economic costs of the fiscal stimuli. There are several complex, non-linear channels influencing the realized and future output losses that are not incorporated in the GDP forecasts. In particular, we need to address the 15 percent of

GDP global fiscal stimulus without which the output loss in 2020 would have been much steeper. How much of this stimulus should be regarded as a cost? This is a non-trivial exercise for various reasons because almost half of the stimulus was below the line (loans, equity stakes, guarantees) with a cost that is contingent on the speed and composition of economic recovery in each country.⁸ On the other hand, COVID is estimated to have triggered an additional sovereign issuance equivalent to 8.7 percent of GDP (no estimate is available for private debt). One could assume that the debt plus a fraction of the behind-the-line stimulus would need to be repaid in the future in the form of additional fiscal adjustment (relative to the pre-COVID scenario). If, in addition, we assume that the fiscal multiplier during the stimulus is comparable to that during the adjustment, we could project the output cost of the fiscal packages based on its estimated impact in 2020. Part of the above-the-line fiscal effort is probably already incorporated in the IMF projections. However, we are ignoring episodes of financial stress and possible debt crisis in some heavily indebted countries with limited access to international capital. And we are not considering the additional fiscal stimulus scheduled for 2021, particularly in advanced countries. All things considered, including the full 15 percent of GDP stimulus in the cost seems a reasonable proxy.

A comprehensive calculation of the economic cost of the pandemic cannot ignore the value of the excess in deaths due—directly or indirectly through health externalities—to COVID-19. There is no simple way to put a value on a human life. For the sake of argument—and with the view of highlighting the magnitude of the pandemic loss to argue for the need to invest in preventing new ones—we adopt the “statistical lives” approach that measures how much people value a reduction in mortality or morbidity risk. Although no single number is universally accepted, the value of a statistical life for the US ranges between \$10 million and \$7 million per life (Cutler and Summers 2020). If we take a considerably more conservative figure, \$5 million per life, acknowledging that the statistical value may vary across countries, the cost related to the global cumulative deaths registered so far equals 16.9 percent of the global GDP.

The pandemic brought significant education losses. Crucially, school closures posed a serious risk to human capital accumulation across the world, both in terms of effective hours of schooling and retention ratios (the increase in dropouts). Moreover, this cost is highly regressive, as richer countries and households were better equipped to cope with distancing restrictions and sacrificed fewer hours of school classes (OECD, 2020). At a global scale, school closures affected 1.6 billion students at the peak of the pandemic

⁸ The economic impact of fiscal stimuli is also hard to appraise, since it depends on the ineffable fiscal multiplier, which in turn varies with the nature of the economic depression and the quality and composition of the package. However, for the purpose of our cost calculation, we can ignore the counterfactual (output losses in the absence of fiscal stimulus).

(World Bank 2020b). On average, students missed 69 days of instruction in 2020 in LICs, compared with 46 days in emerging market economies and 15 days in advanced economies. Azevedo et al. (2020) estimate the lifetime loss in labour earnings for the affected cohort at \$10 trillion—around 12 percent of global GDP.⁹

Many, harder-to-quantify factors should be added to this account. For instance, the job and firm destruction (with its concomitant loss of job-specific human capital and the firms' social capital and know-how). Some of these costs can be simulated based on calibrations reported in the existing empirical literature and certainly deserve more detailed analysis. Others, like the cost of untreated/un-diagnosed illnesses or the psychological loss of social distancing, can be only conjectured. **At any rate, the estimated total cost of the pandemic that follows from our discussion above, around 100 percent of GDP (Table 4), is likely to be a conservative lower bound.**

Table 4. Economic Cost of the Covid-19

Damages from COVID-19 (IMF WEO Apr-2021)	<i>As percentage of GDP*</i>
Lost 2020 Global GDP from COVID-19	6.65%
Lost 2021-30 Global GDP from COVID-19	
<i>Discounted at 0%</i>	48.03%
Total GDP loss 2020-30 (discounted at 0%)	54.68%
<i>Memorandum</i>	
Global fiscal impulse (IMF Fiscal Monitor Apr-2021)	
Above the line	9.19%
Below the line	6.12%
Total fiscal impulse	15.31%
Change in Gross Government Debt	7.30%
Statistical value of deaths related to Covid-19	
Total deaths related to Covid-19	2,828,146
Statistical value of a life (lower bound, in bn USD)	0.005
Total value of deaths related to the pandemic	16.87%
Education and human capital loss	
Lifetime loss in labor earnings for the affected cohort	12%

Source: Author's calculation

⁹ This is a broad estimate, as education losses have persistent consequences that will only be apparent in the long term. For example, Hanushek and Woessmann (2020) estimated the cost equivalent to a half academic year loss to be a 2.2 percent lower annual GDP for the remainder of the century, which depending on the discount rate could yield a larger total than the one we use in our exercise.

7. Final remarks

One key theme of the post-pandemic debate will likely be the speed and extent of the unwinding of fiscal stimuli and increased indebtedness. The natural reference is the late 2009 debate on fiscal unwinding in the aftermath of the global financial crisis. The contrast between then and now arises from today's consensus that zero interest rates are here to stay, at least for a while ([Blanchard, 2019](#)), despite warnings that a possible inflation revival may lead to an unanticipated interest rate reversal ([Summers, 2021](#); [Cochrane, 2021](#)).

While the jury is still out on fiscal unwinding in advanced countries, fiscal concerns are more pressing in the developing world. Indebtedness (including contingent liabilities due to guaranteed loans to the private sector) and the need to reduce spending to manageable levels (deficits skyrocketed and tax hikes look counterproductive during a fragile recovery) are relevant for emerging economies whose currently moderate financing costs are sensitive to market fears or rating downgrades that might trigger capital flight. And, while this is a potential problem in emerging economies, it is a clear and present danger in non-financially integrated economies in need of debt relief to compensate permanent economic losses. **Most developing economies lack the fiscal space to renew the support of wages and firms or to cope with a tax revenue fall in 2021.** As noted, risks are tilted to the downside, in a context in which psychological and economic fatigue limits the policy space—particularly in countries where the pandemic temporarily froze episodes of political unrest. Moreover, in some cases, the resulting economic stagnation may test the banking sector's resilience. Considering the failure of existing IMF programs to generate demand and contribute to smooth out fiscal restrictions in the post-pandemic, in particular in low-income economies, a discussion of a **global emergency budget support** facility emerged. This facility could replicate the current liquidity facilities, which lend to central banks to support international reserves, as a direct loan to national Treasuries in the event of a systemic crisis. Such a discussion will likely trigger objections similar to those opposing increases in the volume of current liquidity facilities, based on moral hazard considerations that, in our view, have little empirical support (Cordella & Levy Yeyati, 2005). We believe that the economic cost caused by a premature adjustment—let alone the prospective economic losses associated with systemic crises in general, including one related with a new pandemic in the future—warrant some innovative efforts.

The role of the labor market channel—limiting the coverage of job retention policies and deepening the impact of the accelerated digitization—rekindled the debate on [universal income](#). Besides several design complications, including the political

difficulties of reconciling existing transfer programs into a new universal scheme, for reasons already noted most economies lack the fiscal space to proceed in this direction. However, we anticipate that the debate will center on a more limited universal minimum income, possibly means-tested and conditional on professional training, to fill in the gaps of the social safety net revealed by the pandemic. Along the same lines, the importance of dual markets behind the regressive social impact of the crisis may pave the way for renewed active labor market policies such as training and reskilling or wage subsidies, as well as flexible labor contracts with portable benefits to ease the creation –or mitigate the destruction–of formal jobs or, more generally, to reduce the precariousness of the self-employed. Investments in training and connectivity (to facilitate telework) should help contain job loss and reduce the economy’s exposure to new COVID waves. This agenda may also incorporate strategies to delay or reorient automation by revising the bias of tax systems and making technology more complementary to labor ([Acemoglu, 2019](#)).

All of the above requires funding and technical assistance and calls for a more active, coordinated, and specialized presence of the international community and multilateral institutions. On the one hand, the international financial institutions should strengthen their presence both to smooth out the unwinding of the fiscal efforts (to avoid a sharp fiscal adjustment that may derail the rebound) and provide technical capacity and orientation to the labor, tax, and state reforms needed to minimize the consequences of a protracted convalescence. There are pending assignments such as the IMF’s issuance of SDR that will hopefully resume. Others, like the already mentioned debt relief initiative, deserve a political push. There is also the perennial demand for an international lender of last resort, a part that the IMF plays only selectively–or, through the new RFI, to a limited extent. And there is an urgent need to coordinate the supply and funding of vaccines to low-income countries that may otherwise see the pandemic continuing through 2022 and beyond.

The pandemic macroeconomic crisis, as we argue here, has so far been less about liquidity than it is about permanent fiscal losses and foregone growth opportunities. Again, there is a broad contrast between advanced and developing nations. Whereas in the former, where huge fiscal transfers *increased* disposable income in the peak of the pandemic, experts recommend new fiscal stimuli to be conducted through infrastructure and productive investments, in the latter, particularly in low-income countries, the new challenges call for a reorientation of long-term official loans from infrastructure project financing to budgetary financing as a way to defer deficit adjustment and foster reforms—a tidal change in the way the international financial community approaches the developing world. As such, it offers the perfect opportunity to reassess how we conceive international cooperation.

References

Anderson, J., F. Papadia, & N. Véron. 2020. "Government-guaranteed in Europe: Beyond the Headline Numbers." Realtime Economic Issues Watch (blog), Peterson Institute for International Economics, July 21. <https://www.piie.com/blogs/realtime-economic-issueswatch/government-guaranteed-bank-lending-europebeyond-headline>.

Askatas, Nikos & Tatsiramos, Konstantinos & Verheyden, Bertrand, 2020. "Lockdown Strategies, Mobility Patterns and COVID-19," IZA Discussion Papers 13293, Institute of Labor Economics (IZA).

Azevedo, João Pedro & Amer Hasan & Diana Goldemberg & Syedah Aroob Iqbal & Koen Geven. 2020. "Simulating the Potential Impacts of COVID-19 School Closure on Schooling and Learning Outcomes: A Set of Global Estimates." Policy Research Working Paper 9284, World Bank, Washington, DC.

Barrero, Jose Maria & Nicholas Bloom & Steven J. Davis. 2020. "COVID-19 Is Also a Reallocation Shock," Working Papers 2020-60, Becker-DeMunnick Institute for Research In Economics.

Béland, Louis-Philippe & Brodeur, Abel & Wright, Taylor, 2020. "The Short-Term Economic Consequences of COVID-19: Exposure to Disease, Remote Work and Government Response," IZA Discussion Papers 13159, Institute of Labor Economics (IZA).

Benigno, Gianluca & Andrew T. Foerster & Christopher Otrok & Alessandro Rebucci, 2020. "COVID-19: A double whammy of financial and economic sudden stops for emerging economies," Vox eBook Chapters, in Simeon Djankov & Ugo Panizza (ed.), COVID-19 in Developing Economies, edition 1, volume 1, chapter 1, pages 329-341, Centre for Economic Policy Research.

Benmelech, Efraim & Nitzan Tzur-Ilan, 2020. "The Determinants of Fiscal and Monetary Policies During the Covid-19 Crisis," NBER Working Papers 27461, National Bureau of Economic Research, Inc.

Bick, Alexander & Blandin, Adam & Mertens, Karel, 2020. "Work from Home after the Covid-19 Outbreak". CEPR Discussion Paper No. DP15000, Available a

Blanchard, Olivier, 2019. "Public Debt and Low Interest Rates," American Economic Review, American Economic Association, vol. 109(4), pages 1197-1229, April.

Bonardi, Jean-Philippe et al. (2020), "Fast and local: How lockdown policies affect the spread and severity of covid-19", *Covid Economics* 23: 325–351.

Bronka, Patryk & Collado, Diego & Richiardi, Matteo, 2020. "The Covid-19 crisis response helps the poor: the distributional and budgetary consequences of the UK lock-down," *EUROMOD Working Papers EM11/20*, EUROMOD at the Institute for Social and Economic Research.

Busso, Matías & Julián Messina. 2020. "The Inequality Crisis: Latin America and the Caribbean at the Crossroads." *Inter-American Development Bank*.
<https://publications.iadb.org/publications/english/document/The-Inequality-Crisis-Latin-America-and-the-Caribbean-at-the-Crossroads.pdf>.

Caballero, Ricardo J. & Alp Simsek, 2020. "Asset Prices and Aggregate Demand in a "Covid-19" Shock: A Model of Endogenous Risk Intolerance and LSAPs," *NBER Working Papers 27044*, National Bureau of Economic Research, Inc.

Carvalho, Vasco M & Hansen, Stephen & Ortiz, Álvaro & Ramón García, Juan & Rodrigo, Tomasa & Rodriguez Mora, Sevi & Ruiz, José, 2020. "Tracking the COVID-19 Crisis with High-Resolution Transaction Data," *CEPR Discussion Papers 14642*, CEPR. Discussion Papers.

Caselli, Francesca & Francesco Grigoli & Welcheng Lian & Damiano Sandri, 2020. "Protecting Lives and Livelihoods with Early and Tight Lockdowns," *IMF Working Paper 2020/234*.

Chetty, Raj & John N. Friedman & Nathaniel Hendren & Michael Stepner & The Opportunity Insights Team, 2020. "The Economic Impacts of COVID-19: Evidence from a New Public Database Built Using Private Sector Data," *NBER Working Papers 27431*, National Bureau of Economic Research, Inc.

Coibion, Olivier & Yuriy Gorodnichenko & Michael Weber, 2020. "Labor Markets During the COVID-19 Crisis: A Preliminary View," *NBER Working Papers 27017*, National Bureau of Economic Research, Inc.

Cochrane, John, 2021. "Inflation and Debt," *National Affairs*, Number 46, Winter 2021.
<https://www.nationalaffairs.com/publications/detail/inflation-and-debt>

Cordella, Tito & Eduardo Levy Yeyati, 2005. "Country insurance", *IMF Staff Papers*, vol. 52.

Cutler David M. & Lawrence H. Summers, 2020. The COVID-19 Pandemic and the \$16 Trillion Virus. *JAMA*. 2020; 324(15): 1495–1496. doi:10.1001/jama.2020.19759

- Deaton, Angus, 2021. "COVID-19 and Global Income Inequality," NBER WP #28292
- Demirguc-Kunt, Asli & Lokshin, Michael M. & Torre, Ivan, 2020. "The Sooner, the Better: The Early Economic Impact of Non-Pharmaceutical Interventions during the COVID-19 Pandemic," Policy Research Working Paper Series 9257, The World Bank.
- Dingel, Jonathan I. & Brent Neiman, 2020. "How Many Jobs Can be Done at Home?," NBER Working Papers 26948, National Bureau of Economic Research, Inc.
- Djankov, S., & J. Nasr. 2020. "Tax Relief in a Time of Crisis: What Countries Are Doing to Sustain Business and Household Liquidity." Let's Talk Development (blog), World Bank, April 1. <https://blogs.worldbank.org/developmenttalk/tax-relief-time-crisis-what-countries-are-doing-sustainbusiness-and-household>.
- Djiofack, Calvin Z. & Hasan Dudu & Albert G. Zeufack, 2020. "Assessing COVID-19's economic impact in sub-Saharan Africa: Insights from a CGE model," Vox eBook Chapters, in Simeon Djankov & Ugo Panizza (ed.), COVID-19 in Developing Economies, edition 1, volume 1, chapter 1, pages 53-68, Centre for Economic Policy Research.
- Gallagher, Kevin & José Antonio Ocampo & Ulrich Volz, 2020. "Special Drawing Rights: International Monetary Support for Developing Countries in Times of the COVID-19 Crisis", De Gruyter. DOI: <https://doi.org/10.1515/er-2020-0012>
- Gentilini, Ugo & Almenfi, Mohamed & Babaker Alsafi & Dale, Pamela & Lopez, Ana Veronica & Mujica Canas, Ingrid & Verónica & Cordero, Rodrigo Ernesto Quintana & Zafar, Usama, 2020. "Social Protection and Jobs Responses to COVID-19: A Real-Time Review of Country Measures". World Bank, Washington DC.
- Guerrieri, Veronica & Guido Lorenzoni & Ludwig Straub & Iván Werning, 2020. "Macroeconomic Implications of COVID-19: Can Negative Supply Shocks Cause Demand Shortages?," NBER Working Papers 26918, National Bureau of Economic Research, Inc.
- Hale, T. & Angrist, N. & Kira, B. & Petherick, A. & Phillips, T. & S. Webster, 2020. "Variation in government responses to COVID-19". Blavatnik School of Government, BSG Working Paper, BSG-WP-2020/032.
- Hanushek, Eric A. & Ludger Woessmann. 2020. "The Economic Impacts of Learning Losses." OECD Education Working Paper 225, Organisation for Economic Cooperation and Development, Paris.
- Haug, N., Geyrhofer, L., Londei, A. et al. Ranking the effectiveness of worldwide COVID-19 government interventions. *Nat Hum Behav* 4, 1303–1312 (2020). <https://doi.org/10.1038/s41562-020-01009-0>

International Monetary Fund (IMF). 2020a. "World Economic Outlook, April 2020: The Great Lockdown", Washington, DC.

International Monetary Fund (IMF). 2020b. "World Economic Outlook, October 2020: A Long and Difficult Ascent", Washington, DC

International Monetary Fund (IMF). 2020c. "Global Financial Stability Report, October 2020: Bridge to Recovery", Washington, DC

International Monetary Fund (IMF). 2020d. "Outlook for Latin America and the Caribbean, October 2020: Pandemic Persistence Clouds the Recovery", Annex 1, Washington, DC.

International Monetary Fund (IMF). 2020e. "Special Series on Fiscal Policies to Respond to COVID-19, Reaching Households in Emerging and Developing Economies: Citizen ID, Socioeconomic Data, and Digital Delivery", Washington, DC.

International Monetary Fund (IMF). 2020f. "Fiscal Monitor, October 2020: Policies for the Recovery". Washington, DC: International Monetary Fund.

International Monetary Fund (IMF). 2021. "World Economic Outlook, October 2021: After-Effects of the COVID-19 Pandemic: Prospects for Medium-Term Economic Damage", Chapter 2. Washington, DC: International Monetary Fund.

Levy Yeyati, Eduardo & Samuel Pienknagura (2014), Wage compression and the decline in inequality in Latin America: Good or bad?, VoxEU, June 10, 2014.

Levy Yeyati, Eduardo & Rodrigo Valdes, 2020. "COVID-19 in Latin America: How is it different than in advanced economies?," Vox eBook Chapters, in Simeon Djankov & Ugo Panizza (ed.), COVID-19 in Developing Economies, edition 1, volume 1, chapter 1, pages 100-111, Centre for Economic Policy Research.

Levy Yeyati, Eduardo & Luca Sartorio, 2020. "Take me out: De facto limits on strict lockdowns in developing countries", Working Paper UTDT #8, Buenos Aires, Argentina.

Loayza, Norman & Claudia Meza-Cuadra. 2018. "A Toolkit for Informality Scenario Analysis." Washington, DC: The World Bank.

Maloney, William F. & Taskin, Temel, 2020. "Determinants of Social Distancing and Economic Activity during COVID-19: A Global View," Policy Research Working Paper Series 9242, The World Bank.

Messina, Julián, & Joana Silva. 2019. "Twenty Years of Wage Inequality in Latin America." IDB Working Paper Series No. IDB-WP-1041.

https://publications.iadb.org/publications/english/document/Twenty_Years_of_Wage_Inequality_in_Latin_America_en_en.pdf.

McKinsey, 2020. The \$10 trillion rescue: How governments can deliver impact.

Noy, Ilan & Nguyen Doan & Benno Ferrarini & Donghyun Park, 2020. "The economic risk of COVID-19 in developing countries: Where is it highest?," Vox eBook Chapters, in Simeon Djankov & Ugo Panizza (ed.), COVID-19 in Developing Economies, edition 1, volume 1, chapter 1, pages 38-52, Centre for Economic Policy Research.

Organization for Economic Co-operation and Development (OECD). 2020a. "Equity Injections and Unforeseen State Ownership of Enterprises during the COVID-19 Crisis." OECD Publishing, Paris. Organization for Economic Co-operation and Development (OECD). 2020b. "Tax Administration Responses to COVID-19: Measures Taken to Support Taxpayers." OECD Publishing, Paris.

Prady, Delphine & Herve Tourpe & Sonja Davidovic & Soheib Nunhuck, 2020. "Beyond the COVID-19 Crisis: A Framework for Sustainable Government-To-Person Mobile Money Transfers", IMF Working Paper No. 20/198, Washington, DC.

Sangmin Aum & Sang Yoon (Tim) Lee & Yongseok Shin, 2020. "Inequality of Fear and Self-Quarantine: Is There a Trade-off between GDP and Public Health?," NBER Working Papers 27100, National Bureau of Economic Research, Inc.

Serikbayeva, Balzhan & Abdulla, Kanat & Oskembayev, Yessengali, 2020. "State capacity in responding to COVID-19," MPRA Paper 101511, University Library of Munich, Germany.

Summers, Larry, 2021. "Opinion: The Biden stimulus is admirably ambitious. But it brings some big risks, too," Washington Post.
<https://www.washingtonpost.com/opinions/2021/02/04/larry-summers-biden-covid-stimulus/>

The World Bank. 2021. Global Economic Prospects, January 2021: Subdued Global Economic Recovery. January. Washington, DC.

The World Bank. 2020. South Asia Economic Focus, October 2020: "Beaten or Broken? Informality and COVID-19," Washington, DC.

The World Bank. 2020b. The Human Capital Index 2020 Update: Human Capital in the Time of COVID-19. Washington, DC.

Weber, Enzo (2020), "Which measures flattened the curve in Germany", Covid Economics 24: 205–217.

cited in *MAYES v. BIDEN*
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Initial Impact of COVID-19 on U.S. Economy More Widespread Than on Mortality



Pandemic Impact on Mortality and Economy Varies Across Age Groups and Geographies

March 08, 2021

Written by: Victoria Udalova

*cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023*

The initial impact of the COVID-19 pandemic on the U.S. economy was widespread and affected people across all age groups and all states while the initial mortality impact targeted mostly older people in just a few states according to independent research [<https://www.pnas.org/content/117/45/27934>] by the U.S. Census Bureau.

During April 2020, the first full month of the pandemic, the United States experienced an additional 2.4 deaths per 10,000 individuals [<https://www.census.gov/library/stories/2021/02/indirect-impact-of-covid-19-results-in-higher-pandemic-death-toll.html>] beyond predictions based on historical mortality trends. This was a 33% increase in all-cause national mortality – deaths caused directly or indirectly by the coronavirus.

There was a weak correlation between increased mortality rates and negative economic impact across states. There were states that experienced

America Counts Story

Indirect Impact of COVID-19 Results in Higher Pandemic Death Toll

Independent Census Bureau research shows racial disparities in U.S. COVID-19 mortality rates and a higher death toll indirectly related to the pandemic.

[<https://www.census.gov/library/stories/2021/02/indirect-impact-of-covid-19-results-in-higher-pandemic-death-toll.html>]

significant employment displacement but no additional mortality, for example. On the other hand, there were states that experienced large mortality impacts but modest economic impacts.

These additional deaths during the early days of the pandemic were highly concentrated in older age groups and in a few states.

Recent research examined the relationship between the pandemic's mortality and economic impacts across different age groups and geography.

Economic Impact of COVID-19 Pandemic

The COVID-19 pandemic has caused a devastating loss of life but it has also devastated the nation's economy.

Similar to the excess mortality concept [https://www.census.gov/library/stories/2021/02/in-direct-impact-of-covid-19-results-in-higher-pandemic-death-toll.html], the pandemic's economic impact is calculated by taking the difference between what is expected (based on historical trends) and what actually happens during a given period.

The ratio of employment to population is one measure of economic activity that shows the share of population 16 years and older working full- or part-time.

This measure closely tracks other possible measures of economic activity such as unemployment rate, percent of population with unemployment insurance claims, consumer spending, and small business employment.

Declines in the employment-to-population ratio that exceeded predictions indicate there was additional employment loss in the country due to the pandemic.

The decline in the employment-to-population ratio in the United States in April 2020 was significant. Historical trends predicted a 61.3% ratio but it turned out to be 51.5%. This additional national decline was 9.9 per 100 individuals in April 2020 (Figure 1). That means there were fewer people employed than was expected before the pandemic.

America Counts Story

Moms, Work and the Pandemic

New data show that there were 1.4 million more mothers not actively working for pay in January compared to pre-pandemic levels.

[https://www.census.gov/library/stories/2021/03/moms-work-and-the-pandemic.html]

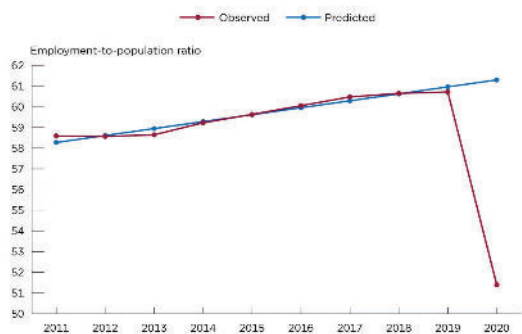
America Counts Story

Young Adults Living Alone Report Anxiety, Depression During Pandemic

The U.S. Census Bureau's Household Pulse Survey provides insight into the mental health and well-being of adults living alone during COVID-19.

[https://www.census.gov/library/stories/2021/01/young-adults-living-alone-report-anxiety-depression-during-pandemic.html]

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Note: Working population 16 and up.

Source: "Initial economic damage from the COVID-19 pandemic in the United States is more widespread across ages and geographies than initial mortality impacts." Maria Polyskova, Geoffrey Kocks, Victoria Udalova, and Amy Finkelstein. *Proceedings of the National Academy of Sciences* 117, no. 45 (2020): 27934-27938. <www.pnas.org/content/117/45/27934>.

[/content/dam/Census/library/stories/2021/03/initial-impact-covid-19-on-united-states-economy-more-widespread-than-on-mortality-figure-1.jpg]

Impacts Varied by Geography

Deaths caused directly or indirectly by COVID during the first full month of the pandemic were highly geographically concentrated.

About half of all national excess deaths were in just two states: New York and New Jersey.

But the economic impact pattern was completely different because it was more geographically widespread.

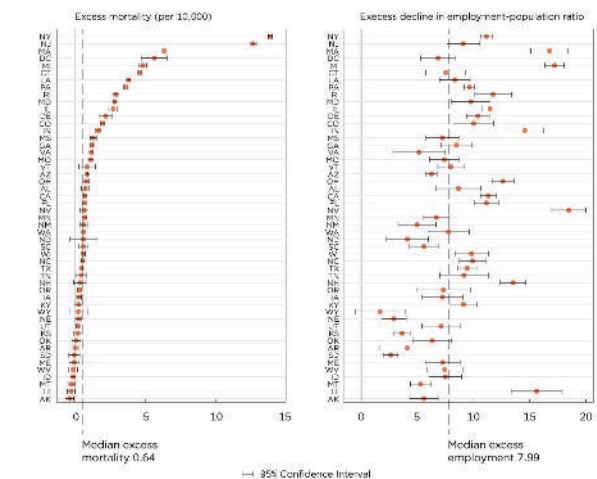
Every state, except for Wyoming, experienced a statistically significant decline in the employment-to-population ratio during that time.

The two states with the largest initial declines in employment – Nevada and Michigan – only accounted for about 7% of the national employment displacement.

There was a weak correlation between increased mortality rates and negative economic impact across states. There were states that experienced significant employment displacement but no additional mortality, for example. On the other hand, there were states that experienced large mortality impacts but modest economic impacts.

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Figure 2. Excess All-Cause US Mortality (per 10,000) and Excess Decline in Employment-to-Population Ratio by State: April 2020



Source: "Initial economic damage from the COVID-19 pandemic in the United States is more widespread across ages and geographies than initial mortality impacts." Maria Poliakova, Geoffrey Kocks, Victoria Udejona, and Amy Finkelstein, *Proceedings of the National Academy of Sciences* 117, no. 45 (2020): 27934-27939. <www.pnas.org/content/117/45/27934>.

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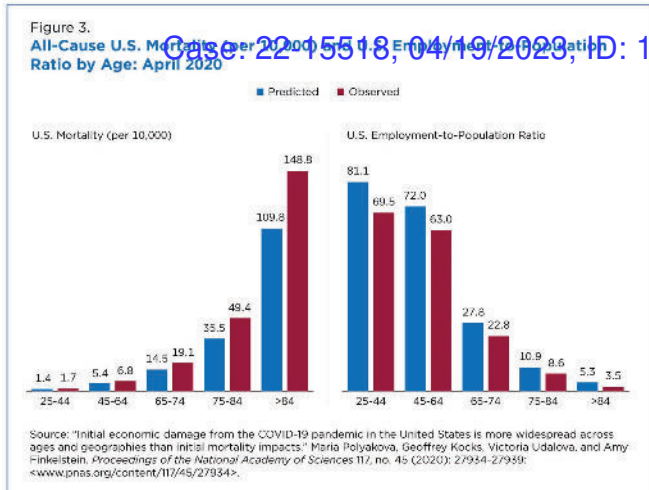
Different Patterns by Age

As with geography, job loss was more widespread than excess mortality across age groups.

In April 2020, excess mortality increased with age and was largest among the oldest age group. Individuals ages 85 and older represent only 3% of the total U.S. population ages 25 years and older but accounted for 34% of the overall excess mortality in the country.

On the other hand, employment displacement decreased with age. It was largest among the younger age group (ages 25 to 44). These individuals make up only 39% of the U.S. population ages 25 and older but accounted for about half of the people 25 and older who lost their jobs nationwide.

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[/content/dam/Census/library/stories/2021/03/initial-impact-covid-19-on-united-states-economy-more-widespread-than-on-mortality-figure-3.jpg]

Beyond the First Month of Pandemic

Findings presented here document the pandemic’s impacts during April 2020. As the policy response and individuals’ behaviors change over time, the mortality and economic impacts will continue to evolve.

Beyond the virus itself, economic decline caused by the pandemic may have had an indirect impact on the U.S. death count. Excess all-cause mortality measure would capture any such changes – from, say, fewer workplace fatal accidents to more drug overdoses – but the extent to which it happened and the mechanisms underlying the relationship between economic activity and mortality must be addressed in future work.

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National Preparedness Month: September 2022

September 2022

When major disasters strike, visit the Census Bureau's Emergency Management page (under TOPIC) to access demographic and economic data for the impacted areas.



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Working Paper

Racial Disparities in Excess All-Cause Mortality During COVID-19 Pandemic

February 01, 2021

This paper investigates racial disparities in the initial all-cause mortality impacts of the COVID-19 pandemic and how it varies across states.



[/library/working-papers/2021/demo/SEHSD-WP2021-01.html]

Working Paper

New Evidence on the Impacts of Early Exposure to the 1918 Influenza Pandemic on Old-Age Mortality

January 2018



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and socioeconomic characteristics of recipients. [library/stories/2022/05/who-is-receiving-social-safety-net-benefits.html]

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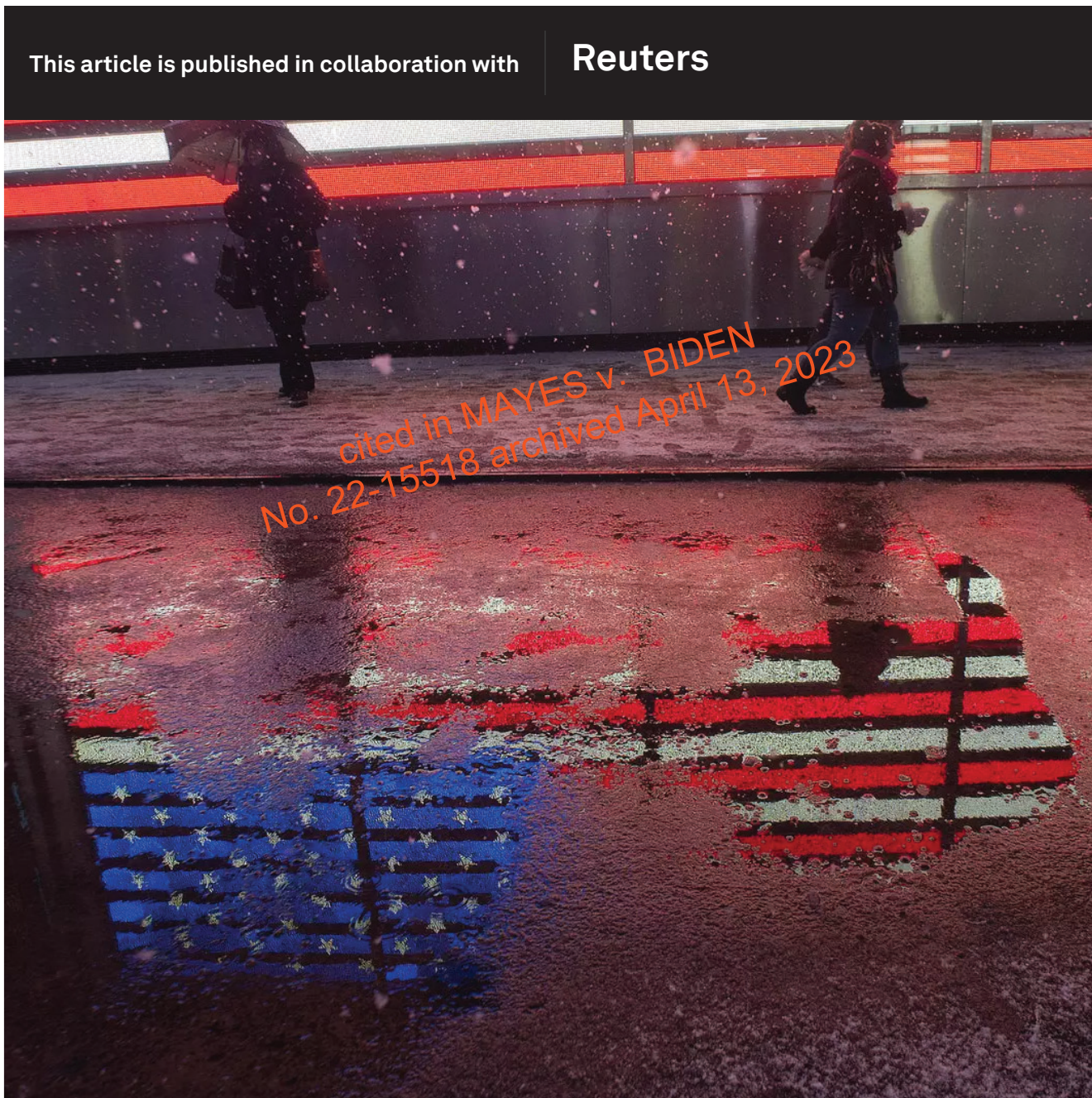
COVID-19

What to know about the report on America's COVID-hit GDP

Jul 31, 2020

This article is published in collaboration with

Reuters



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Some of the deepest contractions on record. Image: REUTERS/Keith Bedford

Lucia Mutikani

Correspondent , Thomson Reuters

- **The COVID-19 pandemic has caused the biggest blow to the US economy since the Great Depression.**
 - **GDP fell at a 32.9% annualized rate, the deepest decline since records began back in 1947.**
 - **30.2 million Americans were receiving unemployment checks in the week ending July 11.**
-

The U.S. economy suffered its biggest blow since the Great Depression in the second quarter as the COVID-19 pandemic shattered consumer and business spending, and a nascent recovery is under threat from a resurgence in new cases of coronavirus.

The bulk of the deepest contraction in at least 73 years reported by the Commerce Department on 30th July occurred in April when activity almost ground to an abrupt halt after restaurants, bars and factories among others were shuttered in mid-March to slow the spread of coronavirus.

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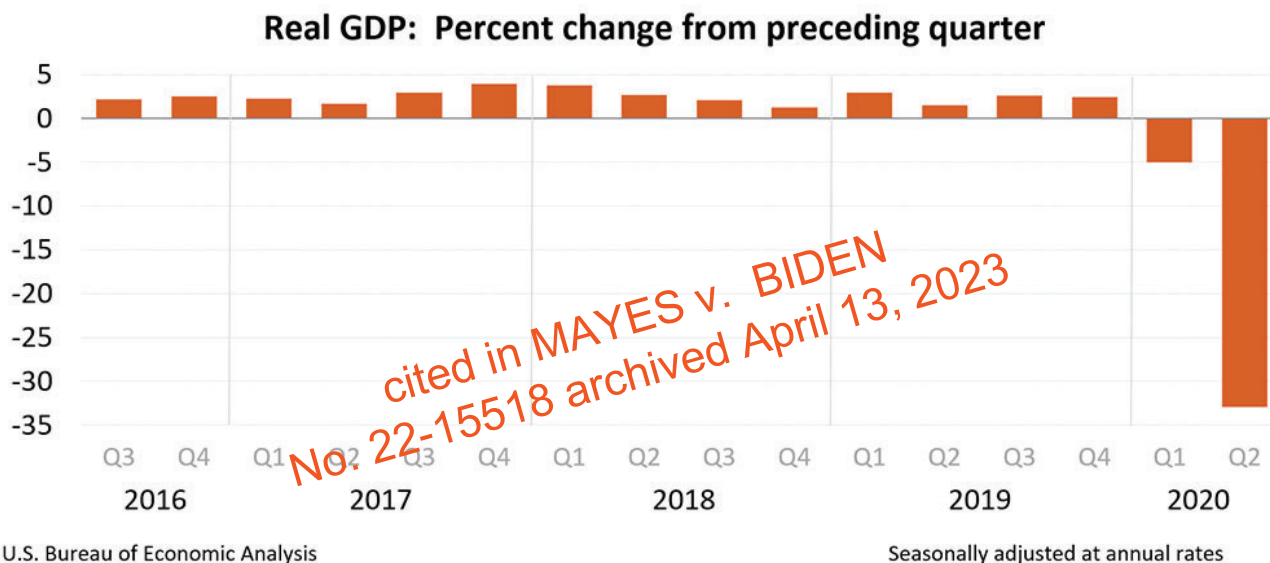
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More than five years of growth have been wiped out. With the recovery faltering, pressure is mounting for the White House and Congress to agree on a second stimulus package. President Donald Trump, who is trailing Democratic challenger and former Vice President Joe Biden in opinion polls, said on Wednesday he was in no hurry. Trump on 30th of July raised the possibility of delaying the Nov. 3 presidential election.

“This is hard to swallow,” said Jason Reed, finance professor at the University of

This is hard to swallow, said Jason Keed, finance professor at the University of Notre Dame's Mendoza College of Business. "Right now, the American economy is speeding toward a fiscal cliff. Not only do we need Americans to take serious action preventing the spread of the disease, but we also need Congress to agree on another stimulus package and quickly."

Gross domestic product collapsed at a 32.9% annualized rate last quarter, the deepest decline in output since the government started keeping records in 1947. The drop in GDP was more than triple the previous all-time decline of 10% in the second quarter of 1958. The economy contracted at a 5.0% pace in the first quarter. It fell into recession in February.



No. 22-15518 archived April 13, 2023
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The biggest fall on record Image: US Bureau of Economic Analysis

Economists polled by Reuters had forecast GDP slumping at a 34.1% rate in the April-June quarter.

On a year-on-year basis GDP fell a record 9.5% last quarter. Output shrank 10.6% in the first half. The level of GDP has dropped to levels last seen in the last quarter of 2014.

Though activity picked up starting in May, momentum has slowed amid the explosion of COVID-19 infections, especially in the densely populated South and ...

West regions where authorities in hard-hit areas are closing businesses again

and pausing reopenings. That has tempered hopes of a sharp rebound in growth in the third quarter.

Federal Reserve Chair Jerome Powell on Wednesday acknowledged the slowdown in activity. The U.S. central bank kept interest rates near zero and pledged to continue pumping money into the economy.

Trump's campaign shrugged off the GDP slump, saying the economy was "rebounding." Biden blamed a leadership "failure," and urged "a massive public health response to save lives and get our economy back up to speed." Stocks on Wall Street fell. The dollar dipped against a basket of currencies. U.S. Treasury prices rose.

Broad historic declines

Economists say without the historic fiscal package of nearly \$3 trillion, the economic contraction would have been deeper. The package offered companies help paying wages and gave millions of unemployed Americans a weekly \$600 supplement, which expires on Friday. Many companies have exhausted their loans.

This, together with the sky-rocketing coronavirus infections is keeping layoffs elevated. In a separate report on Thursday, the Labor Department said initial claims for unemployment benefits increased 12,000 to a seasonally adjusted 1.434 million in the week ending July 25. A staggering 30.2 million Americans were receiving unemployment checks in the week ending July 11.

"Tens of millions of workers have lost their jobs over the past few months and remain unemployed, and the pace of improvement in the labor market has slowed," said Gus Faucher, chief economist at PNC Financial in Pittsburgh.

"These \$600 payments are adding about \$75 billion per month to household income, at a time when income from work has plummeted. The loss of huge amounts of unemployment income in the near term would be a significant drag on consumer spending."

There have been claims, mostly from Republicans, that the generous jobless benefits are discouraging some of the unemployed from looking for work. The GDP report showed income at the disposal of households surged \$1.53 trillion in the second quarter compared to an increase of \$157.8 billion in the January-March period.

A significant portion of the income was stashed away, boosting savings to \$4.69 trillion from \$1.59 trillion in the first quarter. Consumer spending, which accounts for more than two-thirds of the U.S. economy, plunged at a 34.6% pace last quarter.

Business investment tumbled at a 27% rate. It was pulled down by spending on equipment, which collapsed at a 37.7% rate. Investment in equipment has now contracted for five straight quarters. Boeing reported a bigger-than-expected quarterly loss on Wednesday and slashed production on its widebody programs.

The pandemic has also crushed oil prices, leading to deep cuts in shale oil production and layoffs. Spending on nonresidential structures such as mining exploration, shafts and wells plunged at a record 34.9% rate.

Investment in homebuilding tumbled at a 38.7% rate. Government spending rose, though state and local government outlays fell. Trade added to GDP, but inventories were a drag.

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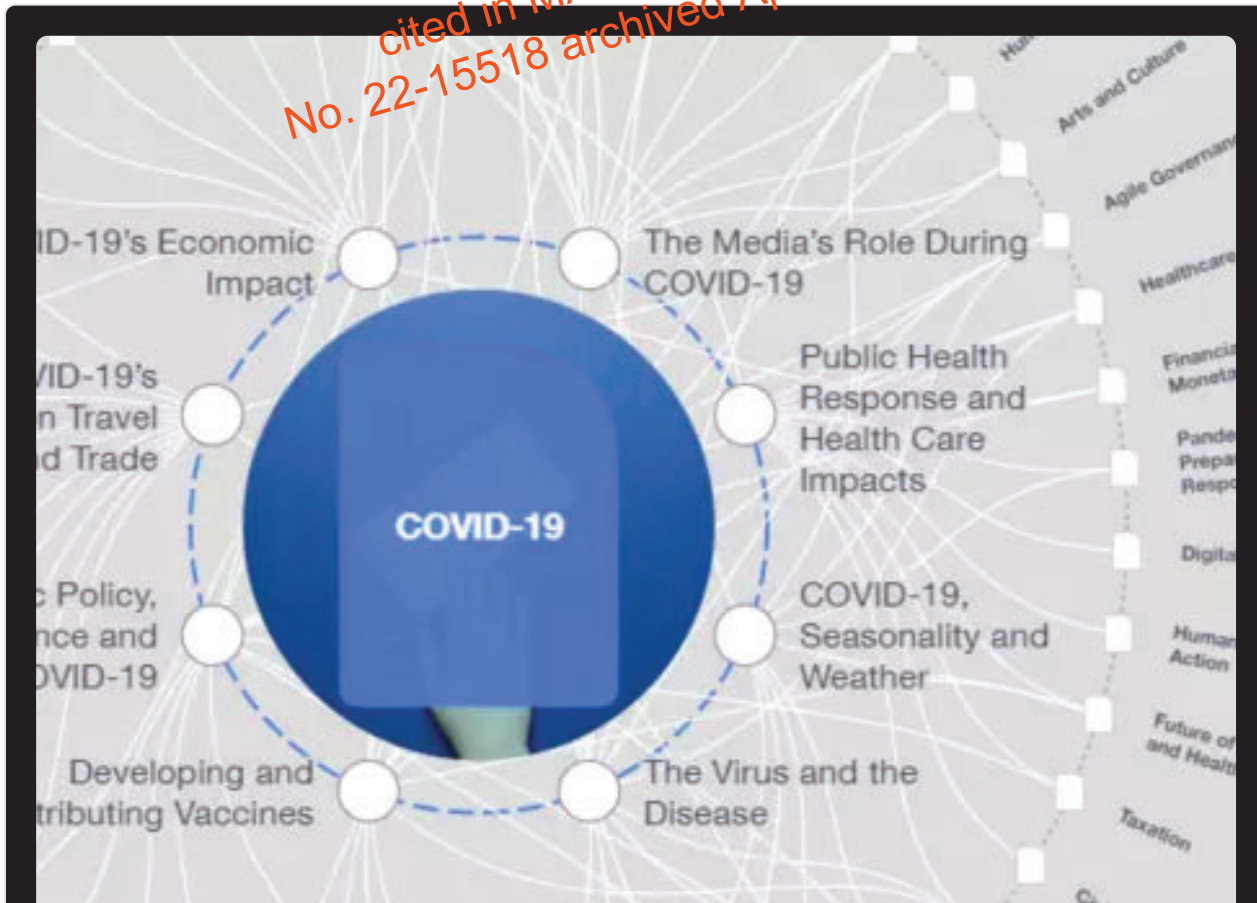
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Safer Federal Workforce Task Force
COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors
Updated November 10, 2021

Introduction

On September 9, President Biden announced his [Path Out of the Pandemic: COVID-19 Action Plan](#). One of the main goals of this science-based plan is to get more people vaccinated. As part of that plan, the President signed Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), (“the order”) which directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause (“the clause”) that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (“Task Force”), provided that the Director of the Office of Management and Budget (“OMB”) approves the Task Force Guidance (the or this “Guidance”) and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of SARS-CoV-2, the virus that causes COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The order also sets out a process for OMB and the Safer Federal Workforce Task Force to update the Guidance for covered contractors, which the Task Force will consider doing based on future changes to Centers for Disease Control and Prevention (“CDC”) COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions. It also sets out a process for the Federal Acquisition Regulatory Council (“FAR Council”) to implement such protocols and guidance for covered Federal procurement solicitations and contracts subject to the Federal Acquisition Regulation (“FAR”) and for agencies that are responsible for covered contracts and contract-like instruments not subject to the FAR to take prompt action to ensure that those covered contracts and contract-like instruments include the clause, consistent with the order.

Covered contractors shall adhere to the requirements of this Guidance. The Director of OMB has, as authorized by Executive Order 14042, approved this Guidance and has, an exercise of the delegation of authority (see 3 U.S.C. § 301) under the Federal Property and Administrative Services Act determined that this Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. The Director has published such determination in the Federal Register.

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Definitions

Community transmission – means the level of community transmission as set forth in the [CDC COVID-19 Data Tracker County View](#).

Contract and contract-like instrument – has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” [86 Fed. Reg. 38,816, 38,887](#) (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, this term shall have the meaning set forth in that final rule.

That proposed rule defines a contract or contract-like instrument as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contractor or subcontractor workplace location – means a location where covered contract employees work, including a covered contractor workplace or Federal workplace.

Covered contract – means any contract or contract-like instrument that includes the clause described in Section 2(a) of the order.

Covered contractor – means a prime contractor or subcontractor at any tier who is party to a covered contract.

Covered contractor employee – means any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace. This includes employees of covered contractors who are not themselves working on or in connection with a covered contract.

Covered contractor workplace – means a location controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract. A covered contractor workplace does not include a covered contractor employee’s residence.

Federal workplace – means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

Fully vaccinated – People are considered [fully vaccinated](#) for COVID-19 two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine. There is currently no post-vaccination time limit on fully vaccinated status; should such a limit be determined by the Centers for Disease Control and Prevention, that limit will be considered by the Task Force and OMB for possible updating of this Guidance.

For purposes of this Guidance, people are considered fully vaccinated if they have received COVID-19 vaccines currently approved or authorized for emergency use by the U.S. Food and Drug Administration (Pfizer-BioNTech, Moderna, and Johnson & Johnson [J&J]/Janssen COVID-19 vaccines) or COVID-19 vaccines that have been listed for emergency use by the World Health Organization (e.g., AstraZeneca/Oxford). More information is available at [Interim Clinical Considerations for Use of COVID-19 Vaccines | CDC](#).

Clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated two weeks after they have completed the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. More information is available at the CDC website [here](#).

Mask – means any mask that is consistent with CDC recommendations as set forth in [Types of Masks and Respirators | CDC](#). This may include the following: disposable masks, masks that fit properly (snugly around the nose and chin with no large gaps around the sides of the face), masks made with breathable fabric (such as cotton), masks made with tightly woven fabric (i.e., fabrics that do not let light pass through when held up to a light source), masks with two or three layers, masks with inner filter pockets, and filtering facepiece respirators that are approved by the National Institute for Occupational Safety and Health or consistent with international standards. The following do not constitute masks for purposes of this Guidance: masks with exhalation valves, vents, or other openings; face shields only (without mask); or masks with single-layer fabric or thin fabric that does not block light.

Guidance

Covered contractors are responsible for ensuring that covered contractor employees comply with the workplace safety protocols detailed below. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products. Agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

- 1. Vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation*

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than January 18, 2022. After that date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they are not vaccinated against COVID-19 because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Should a Federal agency have an urgent, mission-critical need for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated, the agency head may approve an exception for the covered contractor—in the case of such limited exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

The covered contractor must review its covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide their employer with one of the following documents: a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020), a copy of medical records documenting

the vaccination, a copy of immunization records from a public health or State immunization information system, or a copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record.

The covered contractor shall ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Covered contractors are strongly encouraged to incorporate similar vaccination requirements into their non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a Federal contract, such as those contracts and agreements related to the provision of food services, onsite security, or groundskeeping services at covered contractor workplaces.

2. Requirements related to masking and physical distancing while in covered contractor workplaces

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, as discussed further in this Guidance.

In addition to the guidance set forth below, CDC's guidance for mask wearing and physical distancing in specific settings, including healthcare, transportation, correctional and detention facilities, and schools, must be followed, as applicable.

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions discussed in this Guidance. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Fully vaccinated individuals do not need to physically distance regardless of the level of transmission in the area.

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).
- Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).

- For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer.

Covered contractors may provide for exceptions to mask wearing and/or physical distancing requirements consistent with CDC guidelines, for example, when an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing. Covered contractors may also provide exceptions for covered contractor employees engaging in activities in which a mask may get wet; high intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing; or activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a [workplace risk assessment](#). Any such exceptions must be approved in writing by a duly authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces, as discussed further below.

Masked individuals may be asked to lower their masks briefly for identification purposes in compliance with safety and security requirements.

Covered contractors must check the [CDC COVID-19 Data Tracker County View website](#) for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols. When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

3. *Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.*

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols detailed herein at covered contractor workplaces. The designated person or persons may be the same individual(s) responsible for implementing any additional COVID-19 workplace safety protocols required by local, State, or Federal law, and their responsibilities to coordinate COVID-19 workplace safety protocols may comprise some or all of their regular duties.

The designated individual (or individuals) must ensure that information on required COVID-19 workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces, including by communicating the required workplace safety protocols and related policies by email, websites, memoranda, flyers, or other means and posting signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in this Guidance in a readily understandable manner. This includes communicating the COVID-19 workplace safety protocols and requirements related to masking and physical distancing to visitors and all other individuals present at covered contractor workplaces. The designated individual (or individuals) must also ensure that covered contractor employees comply with the requirements in this guidance related to the showing or provision of proper vaccination documentation.

*cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023*

Frequently Asked Questions

Frequently Asked Questions regarding this Guidance can be found here:

<https://www.saferfederalworkforce.gov/faq/contractors/>

All Task Force Guidance, FAQs, and additional information for Federal contractors and subcontractors can be found here:

<https://www.saferfederalworkforce.gov/contractors/>

*cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023*

September 30, 2021

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES
DEFENSE ACQUISITION REGULATIONS COUNCIL
CIVILIAN AGENCY ACQUISITION COUNCIL

FROM: Lesley A. Field LESLEY FIELD Digitally signed by LESLEY FIELD
Date: 2021.09.30 16:48:42 -0400'
Acting Administrator
for Federal Procurement Policy
Office of Management and Budget

John M. Tenaglia TENAGLIA.JOHN.M.115494592
6 Digitally signed by
TENAGLIA.JOHN.M.1154945926
Date: 2021.09.30 17:04:52 -0400'
Principal Director, Defense Pricing and Contracting
Department of Defense

DocuSigned by:
Jeffrey A. Koses Jeffrey A. Koses
218D80B9E8AC4A0
Senior Procurement Executive &
Deputy Chief Acquisition Officer
Office of Acquisition Policy
General Services Administration

Karla Smith Jackson Digitally signed by Karla Jackson
Date: 2021.09.30 16:53:01 -0400'
Senior Procurement Executive
Assistant Administrator for Procurement
National Aeronautics and Space Administration

SUBJECT: Issuance of Agency Deviations to Implement Executive Order 14042

The purpose of this memorandum is to provide agencies that award contracts under the Federal Acquisition Regulation (FAR) with initial direction for the incorporation of a clause into their solicitations and contracts to implement guidance issued by the Safer Federal Workforce Task Force (Task Force) pursuant to Executive Order 14042 ("the order").

Background

The order directs agencies to ensure that the parties that contract with the Federal Government provide adequate COVID-19 safeguards to their workers performing on or in connection with the contract to decrease the spread of COVID-19, reduce worker absence, lower labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work.

On September 24, 2021, the Task Force issued guidance to implement the order, COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors. The Task Force guidance requires:

No. 22-15518 archived April 13, 2023
BIDEN
cited in MAYES v. BIDEN

- All covered contractor employees to be fully vaccinated for COVID-19 by December 8, 2021, except in limited circumstances where an employee is legally entitled to an accommodation;
- All individuals, including covered contractor employees and visitors, to comply with published Centers for Disease Control and Prevention guidance for masking and physical distancing at a covered contractor workplace, as discussed in the Task Force guidance; and
- Covered contractors to designate a person or persons to coordinate implementation of and compliance with the Task Force guidance and the required workplace safety protocols at covered contractor workplaces.

Section 3(a) of the order directs the Federal Acquisition Regulatory Council (FAR Council) to develop a contract clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations published by the Task Force and to provide initial policy direction to acquisition offices for use of the clause by recommending that agencies exercise their authority under FAR subpart 1.4., Deviations from the FAR.

Guidance

The FAR Council has developed the attached clause pursuant to section 3(a) of the order to support agencies in meeting the applicability requirements and deadlines set forth in the order. Contracting officers should follow the direction for use of the clause set forth in the deviations issued by their respective agencies.

Agencies are reminded of the following points as they develop and issue their deviations:

1. Applicability and effective dates. In accordance with section 5 of the order, agencies are required to include an implementing clause in solicitations and contracts for services, including construction, in accordance with the following dates specified in section 6 of the order:

- new contracts awarded on or after November 14 from solicitations issued before October 15 (this includes new orders awarded on or after November 14 from solicitations issued before October 15 under existing indefinite-delivery contracts);
- new solicitations issued on or after October 15 and contracts awarded pursuant to those solicitations (this includes new solicitations issued on or after October 15 for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);
- extensions or renewals of existing contracts and orders awarded on or after October 15, 2021; and
- options on existing contracts and orders exercised on or after October 15, 2021.

To maximize the goal of getting more people vaccinated and decrease the spread of COVID-19, the Task Force strongly encourages agencies to apply the requirements of its guidance broadly, consistent with applicable law, by including the clause in:

- contracts that have been or will be awarded prior to November 14 on solicitations issued before October 15; and
- contracts that are not covered or directly addressed by the order because the contract or subcontract is under the simplified acquisition threshold or is a contract or subcontract for the manufacturing of products.

2. Exclusions. The clause shall not be applied to:

- contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act (the exclusion would not apply to a procurement contract or subcontract under the FAR to an Indian-owned or tribally-owned business entity); or
- solicitations and contracts if performance is outside the United States or its outlying areas (the exclusion is limited to employees who are performing work only outside the U.S. or its outlying areas).

3. Timing of deviations. Agencies should act expeditiously to issue their deviations so that their contracting officers may begin to apply the clause on or before October 15, as explained above. Agencies should review, and update as necessary, any relevant guidance previously provided to contractors to ensure consistency with the deviated FAR text.

4. Civilian agency coordination of deviations. Civilian agencies that adopt the attached clause language without change in their deviations will be presumed to have consulted with the Chair of the Civilian Agency Acquisition Council (CAAC) required by FAR 1.404(a)(1). However, if a civilian agency intends to use clause text different than the deviated clause text provided, the agency must consult with the CAAC Chair, William Clark, who will consult with OMB and the Task Force to ensure consistency with Administration policy. Any such request must be emailed to william.clark@gsa.gov.

Once processed, agencies are requested to share the deviation widely among their workforces to ensure full awareness of, and compliance with, the order.

Civilian agencies should furnish a copy of their approved class deviations (including direction to the workforce, prescription for use of clause, and clause text) to the FAR Secretariat, General Services Administration, by emailing the deviation to GSARegSec@gsa.gov. Agencies must submit their class deviations no later than October 15, 2021.

5. Length of deviation. The FAR Council has opened a case (FAR Case 2021-021, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors) to make appropriate amendments in the FAR to reflect the requirements of the order. Agencies are encouraged to make their deviations effective until the FAR is amended or the deviation is otherwise rescinded by the agency.

Attachment

FAR Deviation Clause

Executive Order 14042

Ensuring Adequate COVID Safety Protocols for Federal Contractors

Baseline is FAC 2021-07, published in the Federal Register on August 11, 2021.

September 24, 2021

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

[52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

(a) *Definition.* As used in this clause -

United States or its outlying areas means —

- (1) The fifty States;**
- (2) The District of Columbia;**
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;**
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands;**
and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.**

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

*cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023*

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)]

cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023

Office of Federal Contract Compliance Programs

History of Executive Order 11246

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On September 24, 1965, more than two years after the Rev. Martin Luther King Jr. delivered his “I Have A Dream” speech on the steps of the Lincoln Memorial and more than a year after the Civil Rights Act of 1964 became the law of the land, the Nation took a historic step towards equal employment opportunity when President Lyndon Johnson issued Executive Order 11246.

For the first time, Executive Order 11246 charged the Secretary of Labor, a Cabinet-level official with strong enforcement authority, with the responsibility of ensuring equal opportunity for minorities in federal contractors’ recruitment, hiring, training and other employment practices. Until that time, such efforts had been in the hands of various Presidential committees. Executive Order 11246 continued and reinforced the requirement that federal contractors not discriminate in employment and take affirmative action to ensure equal opportunity based on race, color, religion, and national origin.

Signed by President Johnson that early autumn Friday in 1965, Executive Order 11246 became a key landmark in a series of federal actions aimed at ending racial, religious and ethnic discrimination, an effort that dated back to the anxious days before the U.S. was thrust into World War II.

Today, Executive Order 11246, as amended and further strengthened over the years, remains a major safeguard, protecting the rights of workers employed by federal contractors—approximately one-fifth of the entire U.S. labor force—to remain free from discrimination on the basis of their race, color, religion, sex, sexual orientation, gender identity, or national origin...and opening the doors of opportunity through its affirmative action provisions.

Executive Order 8802

As America geared up its industrial might for what proved to be its inevitable entrance into a global war, President Franklin Delano Roosevelt responded to leaders, such as A. Philip Randolph and Baynard Rustin, who protested that African-American workers were blocked from taking jobs in segregated war production factories. On June 25, 1941, FDR signed Executive Order 8802, outlawing discrimination based on race, color, creed, and national origin in the federal government and defense industries.

Executive Order 9346

In 1943, President Roosevelt broadened the coverage of Executive Order 8802 by making it applicable to all government contractors.

Executive Order 10308

Nearly a decade later, on December 3, 1951, President Harry S. Truman’s Executive Order 10308 advanced the achievements initiated during World War II by creating the Committee on Government Contract Compliance. The committee, as its name implies, was tasked with overseeing compliance by federal contractors with the non-discrimination provisions of Executive Order 8802.

Executive Order 10479

*cited in MAYES V. BIDEN
No. 22-15518 archived April 13, 2023*

President Dwight D. Eisenhower took a further step on August 13, 1953, by creating the President's Committee on Government Contracts under Executive Order 10425. This reorganization furthered the principle that it is the obligation of the contracting agencies of the United States Government and government contractors to insure compliance with, and successful execution of, the equal employment opportunity program of the United States Government.”

This Executive Order made the head of each contracting agency of the federal government responsible for obtaining compliance by their contractors and subcontractors with the nondiscrimination provisions of the contracts into which they entered. Coordination would be provided by the President's Committee on Government Contracts, housed in the Department of Labor, and comprised of representatives of major contracting agencies, the Labor and Justice Departments, and the General Services Administration as well as eight Presidential appointees. The President designated the Committee's chair and vice chair.

Executive Order 10925

By the time John F. Kennedy was elected President, it was evident that to advance equal employment opportunity federal involvement needed to be broader and more proactive. On March 6, 1961, shortly after JFK took office, he signed Executive Order 10925, opening a new chapter in achieving access to good jobs by requiring government contractors to “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin.”

Executive Order 10925 gave federal contracting agencies authority to institute procedures against federal contractors who violated their EEO obligations—including contract cancellation, debarment from future contracts and other sanctions. It also created the President's Committee on Equal Employment Opportunity, which upon passage of the Civil Rights Act in 1964 became the Equal Employment Opportunity Committee. The President's Committee was chaired by Vice President Lyndon Johnson and later by Vice President Hubert Humphrey. The Committee's vice chair was Secretary of Labor Willard Wirtz.

Like its predecessors, Executive Order 10925 gave each federal department and agency Executive Order enforcement responsibility for its contractors, and each developed its own organizational approach to carrying out these responsibilities. The President's Committee oversaw issues of policy and the Department of Labor played a coordinating role.

Executive Order 11246

President Johnson's vision of creating a “Great Society” led to a host of endeavors that sought to change the political, social and economic landscape of the U.S. In his 1965 commencement address to graduates of Howard University, LBJ gave voice to his vision, declaring, “We seek not just freedom but opportunity. We seek not just legal equality but human ability. Not just equality as a right and a theory but equality as a fact and equality as a result.”

At LBJ's request, Vice President Humphrey led a comprehensive review “of the activities of the various federal agencies involved in the field of civil rights.” Humphrey's conclusions and recommendations, articulated in a memorandum to Johnson, were based on the principle that “...whenever possible operating functions should be performed by departments and agencies with clearly defined responsibilities, as distinguished from interagency committees or other interagency arrangements. That principle is particularly applicable to civil rights programs where it is essential that our objectives be pursued vigorously and without delay that frequently accompanies a proliferation of interagency committees and groups.”

The Vice President continued, “The Secretary of Labor, as Vice Chairman of the [President's] Committee [on Equal Employment Opportunity], has had primary responsibility for reviewing complaints and, through the contracting departments and agencies, insuring compliance by government contractors with nondiscrimination requirements. With all the experience gained over a period of years by the personnel involved in this program, responsibility should now be vested directly in the Department of Labor, and I so recommend.”

Thus, on September 24, 1965, President Johnson signed Executive Order 11246, making the Secretary of Labor responsible for administering the order's non-discrimination and affirmative action provisions. Soon thereafter, Secretary of Labor Wirtz established the Office of Federal Contract Compliance. Edward C. Sylvester, Jr. was appointed as the agency's first director.

Executive Order 13279

On December 12, 2002, President Bush signed Executive Order 13279 amending Executive Order 11246. This amendment allows religiously affiliated contractors (religious corporations, associations, educational institutions, or societies) to prefer individuals of a particular religion when making employment decisions relevant to the work connected with its activities. However, such contractors and subcontractors are not exempted or excused from complying with the other requirements of Executive Order 11246.

Executive Order 13665

On April 8, 2014, President Obama signed the Presidential Memorandum and Executive Order 13665, amending Executive Order 11246. These measures, which apply to federal contractors and subcontractors, are aimed at promoting equal pay for women by improving transparency of wages and making gender pay disparities easier to identify. The new Executive Order prohibits retaliation by federal contractors against employees or applicants who inquire about, discuss, or disclose details of their own or other employees' or applicants' compensation. The

Executive 13672

On July 21, 2014, President Obama signed Executive Order 13672, amending Executive Order 11246, to prohibit federal contractors and subcontractors from discriminating on the basis of sexual orientation or gender identity. This Executive Order prohibits federal contractors from discriminating against lesbian, gay, bisexual, and transgender employees and applicants. The Executive Order directed the Secretary of Labor to prepare regulations implementing the new protections. As a result, the Department of Labor published a final rule in the Federal Register on December 9, 2014, changing OFCCP's regulations to require federal contractors and subcontractors to treat applicants and employees without regard to their sexual orientation or gender identity. This final rule took effect on April 8, 2015. Contractors covered by the new rule will have to ensure that agreements modified or entered into after the effective date of the final rule, as well as job solicitations and postings, contain appropriate references to the new prohibited forms of discrimination. Contractors will need to revise their EEO and affirmative action policies and statements to include sexual orientation and gender identity as protected classes.

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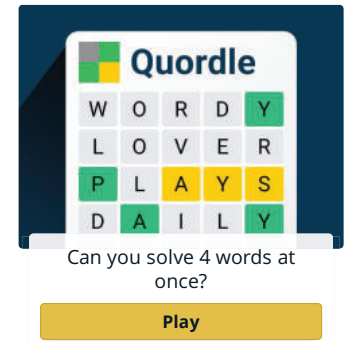
system noun

sys·tem 'si-stəm

[Synonyms of system](#)

- 1** : a regularly interacting or interdependent group of items forming a unified whole
 | a number *system*
 : such as
- a (1)** : a group of interacting bodies under the influence of related forces
 | a gravitational *system*
- (2)** : an assemblage of substances that is in or tends to equilibrium
 | a thermodynamic *system*
- b (1)** : a group of body organs that together perform one or more vital functions
 | the digestive *system*
- (2)** : the body considered as a functional unit
- c** : a group of related natural objects or forces
 | a river *system*
- d** : a group of devices or artificial objects or an organization forming a network especially for distributing something or serving a common purpose
 | a telephone *system*
 | a heating *system*
 | a highway *system*
 | a computer *system*
- e** : a major division of rocks usually larger than a series and including all formed during a period or era
- f** : a form of social, economic, or political organization or practice
 | the capitalist *system*
- 2** : an organized set of doctrines, ideas, or principles usually intended to explain the arrangement or working of a **systematic** whole
 | the Newtonian *system* of mechanics
- 3 a** : an organized or established procedure
 | the touch *system* of typing
- b** : a manner of classifying, symbolizing, or schematizing
 | a taxonomic *system*
 | the decimal *system*
- 4** : harmonious arrangement or pattern : **ORDER**
 | bring *system* out of confusion
 – Ellen Glasgow
- 5** : an organized society or social situation regarded as stultifying or oppressive : **ESTABLISHMENT sense 2** →
 usually used with *the*

systemless 'si-stəm-ləs adjective



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WORD OF THE DAY

MacGyver

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Synonyms

complex network

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Choose the Right Synonym for *system*

METHOD, MODE, MANNER, WAY, FASHION, SYSTEM mean the means taken or procedure followed in achieving an end.

METHOD implies an orderly logical arrangement usually in steps.

| effective teaching *methods*

MODE implies an order or course followed by custom, tradition, or personal preference.

| the preferred *mode* of transportation

MANNER is close to **MODE** but may imply a procedure or method that is individual or distinctive.

| an odd *manner* of conducting

WAY is very general and may be used for any of the preceding words.

| has her own *way* of doing things

FASHION may suggest a peculiar or characteristic way of doing something.

| rushing about in his typical *fashion*

SYSTEM suggests a fully developed or carefully formulated method often emphasizing rational orderliness.

| a filing *system*

**cited in MAYES v. BIDEN
No. 22-15518 archived April 13, 2023**

Example Sentences

| The players like the coach's *system*.

| Under the new *system*, students will have to pass an exam to graduate.

| She devised a new filing *system*.

| We need a better *system* for handling incoming e-mail.

Recent Examples on the Web

But critics say the laws will remove Israel's *system* of checks and balances and concentrate power in the hands of the governing coalition.

– Ilan Ben Zion, *Chicago Tribune*, 27 Mar. 2023

One of the judge's findings was that the prison *system* did not provide hospital-level care for prisoners who needed it.

– Mike Cason | *Mcason@al.com*, *al*, 27 Mar. 2023

Where the school *system* sees a deteriorating, vacant shell in the shadow of the newer \$80 million Fairmont Heights High, the alumni association sees a prospective museum and multiuse center for the surrounding community.

– Lateshia Beachum, *Washington Post*, 27 Mar. 2023

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Word History

Etymology

Late Latin *systemat-*, *systema*, from Greek *syntēmat-*, *syntēma*, from *synistanai* to combine, from *syn-* + *histanai* to cause to stand — more at [STAND](#)

First Known Use

circa 1638, in the meaning defined at [sense 1](#)

Time Traveler

The first known use of *system* was circa 1638

[See more words from the same year](#)

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No. 22-15518 archived April 13, 2023

Phrases Containing system

- ABO system
- autonomic nervous system
- case system
- digestive system
- buddy system
- decimal system
- foster system
- expert system
- get it out of one's system

[See More](#)

Dictionary Entries Near system

- systaltic
- system**
- systematic

[See More Nearby Entries](#)

Cite this Entry

Style

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Facebook Twitter

Kids Definition

system noun

sys·tem ('sis-təm)

- 1 **a** : a group of objects or units combined to form a whole and to move or work together
 - | the railroad *system*
 - | a park *system*
- b** : a group of bodily organs that together carry on one or more vital functions
 - | the digestive *system*
- c** : the body considered as a functional unit
 - | a *system* weakened by disease
- d** : an orderly plan or method of governing or arranging
 - | a democratic *system* of government
- e** : a major division of rocks usually larger than a series and including all formed during a period or era
- 2 **a** : a set of ideas or statements that explains the order or functioning of a whole
- b** : a method of classifying, representing, or arranging
 - | a decimal *system* of numbers

systemless (-ləs) adjective

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Medical Definition

system noun

sys·tem ('sis-təm)

- 1 **a** : a group of body organs or structures that together perform one or more vital functions
 - see CIRCULATORY SYSTEM, DIGESTIVE SYSTEM, ENDOCRINE SYSTEM, LIMBIC SYSTEM, NERVOUS SYSTEM, REPRODUCTIVE SYSTEM, RESPIRATORY SYSTEM
- b** : the body considered as a functional unit
- 2 : a manner of classifying, symbolizing, or schematizing
 - | a taxonomic *system*

More from Merriam-Webster on system

English: Translation of system for Spanish Speakers

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WORDS AT PLAY



13 Unusually Long English Words

Pulchritudinous and many more



Every Letter Is Silent, Sometimes

When each letter can be seen but not heard



'Dunderhead' and Other 'Nicer' Ways to Say Stupid

As illustrated by some very smart pups



When Were Words First Used?

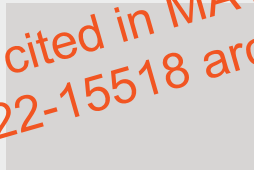
Look up any year to find out

ASK THE EDITORS



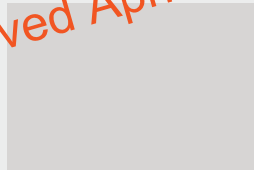
Weird Plurals

One goose, two geese. One moose, two... moose. Wh...



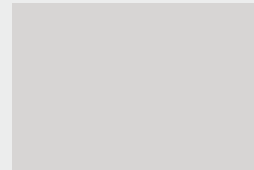
Irregardless

It is in fact a real word (but that doesn't mean ...



Bring vs. Take

Both words imply motion, but the difference may b...

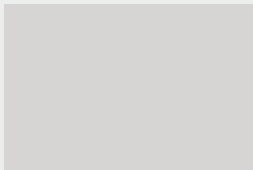


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The fascinating story behind many people's favori...

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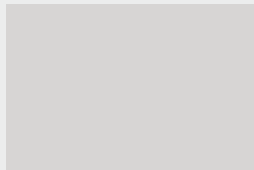
WORD GAMES



Name That Hat!

Time to put on your thinking cap.

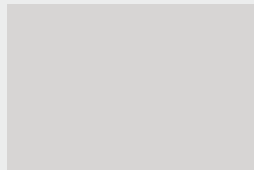
TAKE THE QUIZ >



Name That Flower

Can you tell the difference between a lilac and a...

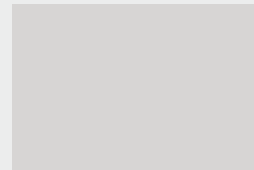
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