



COALITION ON HUMAN NEEDS

1825 K Street, NW · Suite 411 · Washington, DC 20006 · 202.223.2532 · Fax 202.223.2538 · www.chn.org

March 27, 2023

Submitted via: <https://www.regulations.gov>.

Daniel Delgado
Acting Director
Border and Immigration Policy
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security
telephone (202) 447-3459

Lauren Alder Reid
Assistant Director,
Office of Policy, EOIR
U.S. Department of Justice
telephone (703) 305-0289

Re: Comment on the Proposed Rule by the [Department of Homeland Security](#) (DHS) and the [Executive Office for Immigration Review](#) (EOIR) on Circumvention of Lawful Pathways, CIS No. 2736-22; Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023

Dear Acting Director Daniel Delgado and Assistant Director Lauren Alder Reid:

I am writing on behalf of the Coalition on Human Needs (CHN) in submitting this comment in response to the Department of Homeland Security (DHS) and Department of Justice (DOJ)'s [proposed rule](#) published in the Federal Register on February 23, 2023. Contrary to U.S. and international law, the proposed rule would ban many refugees from asylum protection in the United States and would make it impossible for many refugees to reunite with their families and pursue a path to citizenship. The proposed rule is similar to asylum bans promulgated by the Trump administration that were repeatedly struck down by federal courts as unlawful.

The Coalition on Human Needs strongly urges the agencies to withdraw the proposed rule in its entirety. The administration should instead uphold refugee law, restore full access to asylum at ports of entry, ensure fair and humane asylum adjudications, and rescind the Trump administration entry and transit bans in their entirety.

The Coalition on Human Needs is an independent alliance of national organizations working together to promote public policies which address the needs of low-income and other vulnerable populations. CHN's membership includes human service providers, civil rights, religious, labor, and professional organizations, and others concerned with the well-being of children, women, the elderly, people with disabilities, immigrants, and communities of color. CHN does not receive government funding. We are particularly concerned that the proposed asylum ban would

favor people with more financial resources over refugees most desperately in need and would cause disproportionate harm to Black, brown, Indigenous, and LGBTQ+ people. Further, we believe that the proposed rule will result in more and prolonged family separation, which will have harmful and inhumane consequences for all family members, including children. CHN has regularly held meetings and circulated information via email in which hundreds of advocates have learned from experts about dangers endured by asylum-seekers

We are a nation of immigrants, and our prosperity is inextricably tied to immigrant contributions to our economy and culture. Protecting the rights of immigrants and refugees living in or seeking entrance into the United States and reforming our failed immigration system are moral and economic imperatives. CHN's member organizations and network of hundreds of thousands of individuals nationwide understand that our nation has been strengthened in many ways by the contributions of immigrants who came here with nothing and were often fleeing persecution or violence. We strongly believe a just and efficient immigration system will advance our nation's economic growth and productivity. We are highly troubled both by this proposed rule's overall restrictions on the lawful opportunity to seek asylum and by the inequitable application of the ban. By making it far easier to enter the U.S. at an airport as opposed to a southern border location and by requiring the use of a mobile application to secure an appointment, the proposed rule would significantly favor people with more financial resources and throw up barriers to impoverished and desperate refugees and asylees that will prevent their entry into the U.S., contrary to existing law. Further, the proposal consigns people seeking asylum to prolonged dangerous conditions when instead it should be ensuring that people already in danger are provided refuge.

We recommend that the Biden Administration take a more lawful, equitable and humane approach towards immigrants and refugees. We urge the Administration to restore asylum access at ports of entry, which could help prevent people from being forced to cross borders through dangerous or illegal means. Furthermore, we recommend strengthening capacities to receive and protect refugees in other countries, which could help alleviate the pressure on countries that are currently receiving a large number of refugees. We advocate expanding legal pathways to the United States, which could provide a safer and more reliable option for refugees and immigrants to enter the country. In terms of processing asylum claims, we recommend upgrading the system to ensure that claims are processed fairly and efficiently.

Specifically, we recommend that the Administration:

- Take action to improve safe pathways for refugees to migrate to the Americas. This includes increasing and strengthening regional refugee resettlement programs and other safe migration pathways, without denying access to asylum. Human rights, including the right to seek asylum and protection from violence, should be respected and centered in regional discussions. Additionally, efforts should be made to support the development of refugee-hosting capacity in other countries in the Americas to provide more options for refugees seeking safety and protection.
- Uphold and comply with refugee law at U.S. borders without discrimination. Specifically, this means restarting and maximizing asylum at ports of entry, rather than

restricting or metering it, as well as ending the Title 42 policy, which limits access to asylum, and ensuring that people seeking asylum have prompt access to ports of entry.

- Provide increased funding to create effective and humane structures for receiving refugees in the U.S. so that we fulfill our legal and moral obligations to protect asylum-seekers from harm. It is imperative to strengthen and sustain a coordinated and well-funded network of faith-based groups, shelters, legal aid and humanitarian organizations to provide case support and reception for refugees at the U.S. border.
- Upgrade the asylum adjudication processes in the U.S by improving the efficiency and accuracy of the process and avoiding rushed or counterproductive adjudications. We also call on Congress to fund sufficient asylum adjudication capacity to address the backlog of cases and ensure timely adjudication of new cases.
- Rescind — and never resurrect — other Trump-era policies that deny and block refugees from asylum and separate their families at the border.

The 30-Day Comment Period is Too Brief

Executive Orders 12866 and 13563 state that agencies should generally provide at least 60 days for the public to comment on proposed regulations. We believe that the 30 days allowed for comments on this proposed rule is too brief, considering the complexity of the issue and its serious consequences for people seeking to escape from violence and other threatening conditions. CHN associates itself with the March 1 [letter](#) sent by 172 organizations to the Departments of Justice and Homeland Security urging them to provide at least 60 days to comment on the complex 153-page rule that would have enormous implications for asylum access at the border and in USCIS and immigration court asylum proceedings. With more time, organizations providing assistance to refugees at the border and those aware of conditions in transit countries could have provided more information about how similar restrictions have greatly increased hardship and even death for people who should have been protected.

The Asylum Ban Violates U.S. Law

U.S. law ensures access to asylum regardless of manner of entry or transit and prohibits restrictions that are inconsistent with provisions in the U.S. asylum statute. The proposed rule is contrary to U.S. law governing asylum access and prohibitions on the return of refugees to persecution and torture because it conditions access to asylum on the manner of entry and transit.

U.S. asylum law (8 U.S.C. 1158) provides that people may apply for asylum regardless of manner of entry into the United States. While it allows limited exceptions where an asylum seeker may be denied asylum based on travel through another country, these restrictions only apply where an individual was “firmly resettled” in another country (defined to mean the person was eligible for or received permanent legal status in that country) or if the U.S. has a formal “safe third country” agreement with a country where refugees would be safe from persecution and have access to fair asylum procedures. The statute prohibits the administration from issuing restrictions on asylum that are inconsistent with these provisions. 8 U.S.C. 1231 codified the prohibition against returning refugees to countries where they face persecution.

Because the policies in the proposed rule were understood by many to be contrary to U.S. law, [Members of Congress](#), [human rights advocates](#), [faith-based organizations](#), the [U.N. High Commission for Refugees](#) and many others opposed such bans when previously applied and/or urged the administration not to issue the proposed rule and voiced strong opposition to it when the administration announced its intention to publish it.

In fact, President Biden has previously joined in opposing similar asylum bans. As a candidate, he [pledged](#) that his administration would not “deny...asylum to people fleeing persecution and violence” and would end restrictions on asylum for those who travel through other countries to reach safety. The Biden Administration’s February 2021 [Executive Order](#) promised to “restore and strengthen our own asylum system, which has been badly damaged by policies enacted over the last 4 years that contravened our values and caused needless human suffering.” The proposed rule breaks these promises and seeks instead to deport refugees to perilous conditions based on the manner of entry and transit in circumvention of existing refugee law and treaty obligations.

The proposed rule is similar to asylum bans the Trump administration attempted to implement. Those bans, which also barred refugees from asylum protection based on manner of entry and transit, were [repeatedly struck down](#) by federal courts as unlawful. The Trump administration’s transit ban, which was in effect for a year before it was vacated, [inflicted](#) enormous damage including harm inflicted on refugees who were deported, separation of families, and prolonged detention. This proposed rule would be expected to have a similar effect, denying asylum and rapidly deporting refugees without access to asylum hearings through expedited removal, with the same unacceptable harms inflicted on them.

The U.N. High Commission on Refugees (UNHCR) [previously warned](#), with respect to the Trump administration’s entry and transit bans, that such asylum bans are not consistent with fundamental protections of refugee law, including the right to seek asylum, the principle of non-refoulement (no forced return to an unsafe location), and the prohibition against penalties for irregular entry.

The Asylum Ban Favors People with Financial Resources over those Without

The proposed rule would create a presumption of asylum ineligibility for individuals who 1) did not apply for and receive a formal denial of protection in a transit country; and 2) entered between ports of entry at the southern border or entered at a port of entry without a previously scheduled appointment through the CBP One mobile application, subject to extremely limited exceptions.

Access to asylum regardless of manner of entry must be protected because many of those fleeing persecution and fearing for their lives do not have access or means for air travel. Those most desperate are the least likely to be able to secure a passport or visa or to purchase a plane ticket. In addition, requiring people to schedule an online appointment through the CBP One mobile application disregards significant problems that disproportionately affect the poorest refugees. Lack of access to a mobile phone and a reliable internet connection are two barriers. CBP One cannot translate into many languages spoken by people seeking refugee status; if people seeking asylum lack literacy, they cannot use the app. It is reported to be flawed in recognizing darker

complexions, thereby discriminating against Black refugees, and people with disabilities including blindness have found it difficult to use. Moreover, several news outlets have reported issues with the functionality of the CBP One app, making it difficult for individuals to secure appointments or even navigate the app altogether.

Asylum seekers who can access and navigate the app are still often unable to schedule appointments due to extremely limited slots and are forced to remain in danger indefinitely. One 17-year-old from Cuba was [killed](#) in Mexico while awaiting an appointment. LGBTQI+ asylum seekers, women, and survivors of gender-based violence are particularly at risk of being preyed upon during their long waits for an appointment. Requiring refugees to use CBP One at the southwest border also raises concerns that the system will be used for [illegal metering](#) (based not on wait time but on luck, technology skills, or resources to secure an appointment — making asylum access arbitrary and inequitable).

The proposed ban would improperly deny the right to seek asylum both in the fundamentally flawed expedited removal process as well as in full asylum adjudications before USCIS and the immigration court. Expedited removal is the process that allows the U.S. government to deport people arriving at the border without ever seeing an immigration judge if they do not express fear or do not pass a “credible fear” screening interview where they must show a significant possibility that they could establish asylum eligibility in a full hearing. In expedited removal, asylum seekers covered by the proposed rule would be required to gather the evidence and arguments necessary to “rebut the presumption of ineligibility” (i.e. prove they fall within one of the few exceptions to the rule). Those who fail to do so would be automatically subject to a higher screening standard (in violation of [U.S. law](#) governing credible fear interviews) and would face deportation to danger if they cannot pass the screening. Even those who do pass would be subject to the presumption of ineligibility in an immigration hearing and if barred from asylum would only be eligible for lesser forms of protection known as Withholding of Removal or Convention Against Torture (CAT) protection. The rule will also apply to immigrants in full asylum hearings before USCIS and the immigration court. In these proceedings, asylum seekers would be denied asylum if they cannot rebut the presumption of ineligibility, resulting in the deportation of many refugees and leaving others with only lesser forms of protection available to them.

People subject to the proposed ban are unlikely to have access to counsel to ensure that they understand the procedures and opportunities to make their case.

The proposed rule’s use in expedited removal will require asylum seekers—many of whom have suffered persecution and violence and risked a highly dangerous trek to reach safety—to prove that the rule does not apply to them in a credible fear interview shortly after arrival in the United States, while detained and with little to no access to counsel, likely without knowledge of how the rule works or what they need to prove.

The restrictions set up by the proposed rule will make it more difficult for asylum seekers to succeed in establishing credible fear, and the rule would also make it impossible to appeal such adverse decisions in immigration court. In previous years (2018-2021), over one-quarter of adverse credible fear determinations were reversed during immigration court review. Restricting

access to this review will mean substantial numbers who actually can demonstrate credible fear will be wrongly denied.

Similarly, the proposed rule also attempts to eliminate asylum seekers' longstanding right to submit requests to USCIS to reconsider erroneous negative credible fear determinations if they are barred under the rule. This safeguard has, for decades, [shielded](#) many refugees from deportation to persecution and torture. When USCIS reconsidered incorrect negative credible fear determinations, data from FY 2019 to FY 2021 showed that at least 569 asylum seekers were saved from deportation to conditions of persecution and torture.

The Asylum Ban Would Disparately Harm Black, Brown, Indigenous, Those Fleeing Gender-Based Violence, and LGBTQI+ Asylum Seekers

By discriminating against asylum seekers based on their manner of entry and transit, the proposed rule will have a racially disparate impact on asylum seekers from Africa, the Caribbean, and Latin America. The proposed ban, which applies only to people who seek protection at the southern border, will disproportionately harm people of color who do not have the resources or ability to arrive in the United States by plane.

The ban also builds in nationality-based discrimination in access to asylum, as it largely bans asylum for people who do not enter the United States via limited parole initiatives or previously scheduled appointments at ports of entry while simultaneously only affording limited access to parole initiatives approving entry into the U.S. for certain nationalities. For instance, while there are currently limited parole initiatives for some nationalities, there are no similar parole initiatives for people from Guatemala, Honduras, and El Salvador — and recent [reporting](#) has indicated the Biden administration plans to wield the asylum ban against these nationalities.

The United States and other countries have been requiring visas to prevent people from reaching their countries' borders to seek asylum while often allowing access to people from wealthier and predominantly white nations. Imposing a ban on refugees seeking safety at the southwest border will, like the Trump third-country transit ban, disproportionately harm people of color who must undertake an often difficult and dangerous journey to arrive in the United States by way of the southern border.

Most of those entering at the southern border are Black, brown, and Indigenous people from Central America and the Caribbean who lack visas to enter Mexico. Nearly half of all asylum applicants in Mexico in 2021 were Haitians.

Most asylum seekers enter Mexico undocumented. Most said they came fleeing violence or persecution in their home countries but did not attempt to request protection at an official border crossing, fearing agents from Mexico's immigration authority, the National Migration Institute (INM) would deport them. Most applied for refugee status once in Mexico. A few said they sought protection at the border and were turned away by INM agents or security guards. Many said INM agents dissuaded them from seeking refugee status in Mexico and pressured them to accept voluntary returns to their countries.

In 2021, nearly 90,000 people applied for refugee status in Tapachula, Mexico, equivalent to a quarter of the city's population. Most wait many months for their applications to be reviewed and to receive documents proving their legal status and allowing them to leave. (Source: <https://www.hrw.org/news/2022/06/06/mexico-asylum-seekers-face-abuses-southern-border>.)

They often face discrimination, and struggle to find work and housing. Support programs by the UN High Commission for Refugees (UNHCR) and the Mexican government are insufficient. Some interviewees said they felt unsafe in Tapachula because it is close to the Guatemalan border, where the criminal groups they had fled were operating. Many attacks on migrants in Mexico have been documented. Black asylum seekers and migrants face [pervasive](#) anti-Black violence, harassment, and discrimination, including widespread abuse by Mexican authorities.

[El Salvador](#), [Honduras](#), and [Guatemala do not](#) have functional asylum systems that can protect large numbers of refugees and many transiting through these countries face extreme dangers including gender-based violence, anti-LGBTQI+ attacks, race-based violence, and other persecution.

The proposed rule will have a devastating impact on women and LGBTQI+ people who are particularly vulnerable to gender-based violence (GBV) and other persecution. It is [well-documented](#) that countries of transit that survivors of GBV pass through while trying to reach the southern U.S. border provide very little if any true protection even when they are granted asylum there.

U.S. law prohibits requiring people seeking asylum to remain in transit countries that are unsafe.

Increased Dangers of Family Separation

The requirement for asylum seekers to use the CBP One app will cause family separations, as families who are unable to secure appointments through the app together will be forced to send their children across the border alone to protect them from harm in Mexican border regions. This policy, along with others that deny or limit access to asylum for refugees, such as the Title 42 policy, could exacerbate family separations at the border and create even more chaos at the border. By barring many parents from entering the U.S., pressure has increased on children to make the trip on their own. As reported recently in the [N.Y. Times](#), some of these children are being exploited in illegal and dangerous jobs.

In addition, refugees who are allowed to enter the U.S. because they are judged eligible for Withholding of Removal or protected under the Convention Against Torture (CAT) but who are under the proposed rule banned from asylum protection, are left separated from their families, without permanent status, unable to travel abroad or to petition for their family members to join them.

Conclusion


The proposed rule is illegal, inhumane, and discriminatory. Like the Trump administration's entry and transit bans, this asylum ban will deport refugees to persecution and torture and will

separate families. The proposed rule also requires asylum seekers at the border to use a discriminatory and deficient mobile app that depends on sufficient resources, language skills, and an ability to wait indefinitely for an appointment slot, cutting off asylum access for many of the most vulnerable asylum seekers.

As an alliance committed to meeting human needs and preventing harm, the Coalition on Human Needs calls on the administration to withdraw this rule in its entirety, stop punishing migrants arriving at the U.S. southern border, and instead allocate resources toward humane asylum processing and fair adjudications.

The proposed rule bans refugees from asylum protection based on their manner of entry into the United States and transit through other countries, factors that discriminate against the poorest asylum-seekers and against people of color and other minorities, are irrelevant to their fear of return, and have no basis in U.S. law.

Thanking you for the opportunity to submit these comments,

A handwritten signature in black ink, appearing to read "Deborah Weinstein", with a long, sweeping flourish extending to the right.

Deborah Weinstein
Executive Director

Confirmation on submission # lfr-fu80-aauf