**ASYLUM RULE TEMPLATE COMMENT - INSTRUCTIONS**

Below is a template to help immigration services organizations draft a public comment in response to the administration’s proposed Asylum Rule that would eliminate asylum for the vast majority of asylum seekers at the U.S. southern border. (Read more about the proposed rule [here](http://www.govinfo.gov/content/pkg/FR-2023-02-23/pdf/2023-03718.pdf).)

**Why submit a public comment?** When the federal government proposes a new rule, it is required by the Administrative Procedures Act to give the public an opportunity to read the rule and submit comments. The comment you submit will be public record and available for anyone to read. After the comment period closes, the government agency that proposed the rule must read all the comments submitted and take them into consideration when drafting the final version of the rule. If a very large number of people or organizations submit comments, and/or the comments identify significant problems with the regulation, then it takes longer for the final rule to be published and take effect, or the agency may make amendments to the rule. Furthermore, if the agency disregards substantive comments, the comments can be helpful in later litigation about the process followed in publishing the rule.

**How do I submit a comment?** You can submit comments online at regulations.gov (click [here](https://www.regulations.gov/document/USCIS-2022-0016-0001) to go directly to the asylum rule). Click on the “comment” button and either enter your comment in the text box (must be fewer than 5,000 characters) or upload your comment as a PDF. CLINIC has also published step-by-step commenting instructions that are available [here](https://cliniclegal.org/resources/step-step-instructions-how-submit-public-comment). Below are some important tips to keep in mind as you are drafting your comment. Below are some important tips to keep in mind as you are drafting your comment.

**Write comments in your own words.** The template on the following pages is intended to help guide you and give you an example and ideas, but ***the comment should be edited with your original words***. Feel free to delete whole sections or paragraphs and replace them with your organization’s perspective on the issue. The agency will bundle any comments that are too similar to each other, and they will consider this bundle as one comment, rather than as individual submissions.

It may be helpful, prior to drafting your comment, to do some research on your own program and practice, the demographics of your clients, and the local community. Consider what aspects of the rule would be particularly troublesome to your organization and your clients. Gather some numbers and statistics that you can use to demonstrate how many of your clients or people in your community will be affected, how and to what extent, and at what financial cost.

**Attach research and supporting documents.** If you cite statistics or supporting documents in your comments, we recommend including them as an attachment so that they are clearly part of the administrative record. Another option is to include a live link to cited sources. If you include links, specifically request that the agency read the material at these links.

**If you have experience in an issue area, say so.** If you are a subject matter expert and want to offer comments on your area of expertise, explain why you are qualified to offer this perspective. Feel free to explain your educational and professional background. If you are called to work with immigrants by your faith, feel free to talk about your faith in your comment.

**Provide contact information for a representative of the organization.** Organizational comments should be signed by a representative of the organization and should provide the business contact information of the representative for any follow-up questions or concerns. Keep in mind that this comment will be publicly available, so do not include personal addresses or cell phone numbers.

Submitted via [www.regulations.gov](http://www.regulations.gov)

DATE

Daniel Delgado, Acting Director

Border and Immigration Policy

Office of Strategy, Policy, and Plans

U.S. Department of Homeland Security

Lauren Alder Reid, Assistant Director, Office of Policy,

Executive Office for Immigration Review

U.S. Department of Justice

**RE: DHS RIN 1615-AC83/EOIR RIN 1125-AB26 or Docket No. USCIS 2022-0016/A.G. Order No. 5605-2023 Public Comment Opposing Proposed Rule: Circumvention of Lawful Pathways**

Our organization, NAME, submits this comment in response to the proposed rule published in the Federal Register on February 23, 2023. Our organization urges the Department of Justice (DOJ) and Department of Homeland Security (DHS) to withdraw this proposed rule in its entirety. This proposed rule is all too reminiscent of the previous administration’s transit ban and is also very similar to its [metering](https://www.hrw.org/news/2019/12/23/us-mexican-asylum-seekers-ordered-wait) policy, which both denied migrants the ability to seek protection from persecution and harm. This new rule not only denies people the right to seek asylum at the southern border but disqualifies asylum seekers who do not seek asylum at an official U.S. port of entry. Asylum is a lifeline for tens of thousands of vulnerable noncitizens seeking refuge, and this proposed rule violates the United States’ obligations under both domestic and international law to accept applications for asylum and offer asylum seekers protection if they meet certain criteria. The rule on its face would erase the possibility of asylum protections for nearly all individuals who seek asylum at the southern border.

**[Organization NAME’s mission is… Describe your organization’s work with immigrants. If the organization is faith-based, please describe the relationship between the organization’s faith-based roots and its work with immigrants and/or asylum seekers. If possible, include data about the population the organization serves. If possible, include anecdotes about the asylum seekers your organization has assisted who are grateful for the safety they found in the United States.**

**Sample language for Catholic organizations: As a Catholic organization, we base our work with immigrants on our belief in the fundamental and equal dignity of all people as created in the image of God, as well as our call as Christians to welcome the stranger and care for the vulnerable. Catholic social teaching on immigration strongly supports the right of migrants to seek asylum. The U.S. Conference of Catholic Bishops has consistently condemned policies that would weaken asylum access, including this and previous iterations of an asylum or transit ban.]**

Our organization objects to the proposed rule for the following reasons:

1. **Thirty days is insufficient time to fully respond to the Notice of Proposed Rule Making.**

The Biden administration is providing a 30-day comment period for the proposed rule, which is an insufficient timeframe given the complexity of the rule and that the rule denies people the right to seek asylum in violation of U.S. law. [Executive Order 12866](https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf), an order [acknowledged](https://www.federalregister.gov/documents/2021/01/26/2021-01866/modernizing-regulatory-review) by the Biden administration, states that “…each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.”

**[Explain how the 30-day timeframe to submit the proposed rule is difficult for your organization to complete and how an extension is needed. Explain how your organization has been unjustly burdened by trying to submit a comment in only 30 days. If your organization is unable to cover every topic/argument it would have liked to include, talk about how the time constraints has hindered your ability to do so]**

1. **The proposed rule undermines U.S and international law on the rights of asylum seekers.**

Should this proposed rule move forward, the vast majority of migrants seeking refuge at the U.S. southern border would be turned away and sent into harm’s way. This proposed rule flies in the face of decades of asylum processing and Congressional intent as to eligibility for asylum. By law, asylum seekers can apply to have a fair chance at obtaining asylum regardless of how and where they enter the United States.[[1]](#footnote-2) If this proposed rule moves forward, it would require asylum seekers jump through unnecessary hoops in order to access the U.S. asylum system — contrary to the intent of the 1980 Refugee Act and in direct violation the United States’s treaty obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

The proposed rule would leave many applicants who qualify for asylum only eligible to be considered for withholding of removal or protection under the Convention Against Torture. While both avenues allow for some limited protection in the United States, they do not provide the full rights and protection of asylum, including family reunification and permanent immigration status. Finally, the proposed rule circumvents the government’s own laws on credible fear by instituting the higher evidentiary standard of “reasonable possibility” instead of the Congressionally mandated lower standard of “significant possibility.”

**[Insert how this rule would overall affect the organization’s clients and mission. While making the comment unique, you are describing how this proposed rule will directly affect your work and the lives of your clients].**

1. **The conditions under which asylum seekers may still request asylum under the rule are so limited as to make nearly all asylum seekers ineligible to apply for asylum.**

The proposed rule creates an unreasonable “rebuttable presumption” that an asylum seeker is **ineligible** for asylum unless the individual is granted parole prior to arrival or has presented themselves at a port of entry through a pre-scheduled time and place by using the CBP One app and has sought asylum or other protection in any country they traveled through and received a final denial. It is nearly impossible for an asylum seeker without the assistance of an attorney to establish any of these three prerequisites to preserve asylum eligibility, and furthermore, setting these additional standards are currently inconsistent with U.S. law.

1. **A majority of asylum seekers who arrive at the U.S. southern border are not, and will likely never, be eligible to enter the United States through one of the established humanitarian parole programs.**

The recently implemented humanitarian parole programs only apply to a select number of nationalities — Cuban, Haitian, Nicaraguan or Venezuelan — and require the person fleeing to have contacts in the United States with specific immigration statuses able to financially sponsor them. While these humanitarian parole programs may help some people fleeing conflict zones and/or authoritarian regimes, these programs only benefit those who have the ability to obtain passports or travel documents and who have U.S.-based contacts with ample resources to provide money for airfare and a place to stay in the United States. Most asylum seekers fleeing for their lives should not have to risk jeopardizing their safety, and they certainly do not have the privilege to wait in their home countries in order to apply for humanitarian parole, let alone the connections or means to do so.

**[Insert any anecdotal information about organizational clients or prospective clients who would never be able to enter the U.S. through an established humanitarian parole program. Also include information about any client who has attempted to apply for the program but does not have a sponsor or cannot wait long enough in their home country due to danger.]**

1. **Requiring the use of the CBP One application as a precondition for asylum eligibility is violates U.S. asylum law.**

The proposed rule requires that asylum seekers download the CBP One application on their phones, register themselves and their families, and search for an appointment to present themselves to Customs and Border Protection, or CBP, in order to seek asylum. Given the technical difficulties many have with using CBP One, its existence has been equated to another ‘metering’ system, which the [courts](https://www.splcenter.org/seeking-justice/case-docket/al-otro-lado-inc-et-al-v-mayorkas-et-al) have found to be illegal. Under the metering system, asylum seekers had to schedule a time to come to the U.S. Port of Entry to seek asylum and many individuals languished outside the U.S. in dangerous conditions.

The requirement that asylum seekers have access to this [application](https://www.texasmonthly.com/news-politics/cbp-app-asylum-biden-administration/) to be eligible to apply for asylum is also troubling because its use requires reliable internet access which many asylum seekers at the border do not have. The proposed rule does allow for an exception if a person is unable to utilize the CBP One app, but the individual bears the burden of proving that they were unable to use the app. This poses a hardship to those who face language barriers and illiteracy who are the most vulnerable and unlikely to be able to explain how their challenges make it harder for them to navigate these byzantine asylum procedures. Many people who are unable to use the app will find it difficult or impossible to demonstrate that the app was inaccessible to them.

**[Insert any specific client anecdotes of CBP One not working properly or of those who are unable to properly understand how to use the app based on language barriers or illiteracy. The app is only available in English, Spanish and Haitian Kreyol. If your organization does not have a client who used or is using CBP One, explain how time consuming it would be for your organization to work with clients (or client’s family members) on the border and explain the app to them. Explain how the attorney or representative can’t make the appointment because CBP One requires the asylum seeker to make the appointment.]**

1. **Applying for asylum and awaiting a subsequent denial in a third country is nearly impossible for most fleeing asylum seekers.**

The proposed rule outlines that one can be exempted from the presumption of asylum ineligibility if they apply for and are denied asylum in a third country. This is essentially a transit ban similar to the one the Trump administration issued in 2019 which was struck down by the courts in 2021. The countries asylum seekers most often travel through, namely Mexico and other [Central American](https://humanrightsfirst.org/wp-content/uploads/2022/10/IsGuatemalaSafeforRefugeesandAsylumSeekers.pdf) countries, do not have asylum procedures similarly structured to those of the United States, have backlogged asylum systems, and are generally unsafe.

**[Insert any anecdote of a client that has attempted to seek asylum on the way to the U.S. and was able to navigate the process, had to wait a long time or faced persecution and/or harm in the third country. Some examples are of people facing sexual or gender-based violence, violence based on being LGBTQI, or violence based on being Indigenous, Black or because of a disability. Also, highlight cases where access to the asylum system in a transit country was based on lack of resources, language barriers or illiteracy, etc. Finally, highlight any cases where people filed for asylum but then had to wait a long time for the decision and during that time suffered violence and then fled to the U.S.]**

1. **The presumption of asylum ineligibility can be rebutted only in very narrow and extreme circumstances.**

The presumption of asylum ineligibility could potentially be rebutted if, at the time they entered the United States, the asylum seeker or a family member traveling with them suffered a severe medical emergency, faced an imminent or extreme threat to their life or safety, was a victim of a severe form of human trafficking, or faced other exceptionally compelling circumstances. The exceptions to the proposed rule are very narrow and require a showing by a “preponderance of the evidence.” Even those who could potentially meet one of these exceptions may not be in possession of medical documentation or proof of imminent harm other than their own testimony in order to meet this evidentiary standard. Moreover, asylum officers and immigration judges are not medical experts with the required expertise to evaluate these types of medical issues. Asylum seekers without counsel will have yet another hurdle to contend with to meet the heightened “preponderance of the evidence” standard to rebut the presumption of asylum ineligibility.

**[Insert information about clients who suffered harm in transit to the United States, or who have serious medical needs or conditions or anyone who is a victim of trafficking. Be sure to mention that they would not be able to prove these circumstances with anything other than their own testimony or whether getting medical records to prove the medical diagnosis, while detained, would have been nearly impossible.].**

1. **The proposed rule is discriminatory against certain asylum seekers based on racial, economic, and other factors.**

Migrants at the southern border should be able to safely seek asylum without discrimination. The proposed rule discriminates against certain asylum seekers based on racial, economic, and other factors.

The proposed rule is discriminatory against Black, Brown and Indigenous asylum seekers. Particularly, the requirement to apply for asylum in a transit country is disproportionately dangerous for Black asylum seekers who have historically been turned away from the asylum process or suffered race-based discrimination in transit countries such as Mexico. In addition, the proposed rule unfairly privileges asylum seekers with economic means. Those who have a working phone and can remain in an area with sustained internet to make an appointment using CBP One have more access to the asylum system. Due to the limitations of the CBP One application, asylum seekers who cannot read or understand English, Spanish or Haitian Kreyòl; people with darker complexions not recognized by facial recognition software; and people with disabilities have a hard time making an appointment using CBP One and will therefore have less opportunity to apply for asylum. Hinging asylum eligibility on having the right connections in the U.S. or having economic resources is discriminatory and unfair.

**[Insert information about clients facing danger in transit countries based on race or economic means. Also insert any anecdotes of clients at the border who struggled with finding reliable internet or could not understand how to get around the border and access shelters or services or were turned away based on their race or nationality.]**

1. **The proposed rule will cause further family separation.**

The proposed rule offers some concessions to maintain family unity for those who can either rebut the presumption of asylum ineligibility or those who are fortunate enough to meet an exception. However, the proposed rule ignores that the vast majority of asylum seekers will not qualify for asylum, due to the difficulty of establishing an exception to the rule and/or the inability to rebut presumption of asylum ineligibility, and will instead have to apply for withholding of removal and/or protection under the Convention Against Torture. Neither of these forms of protection allows for a person to petition for their family member or obtain permanent immigration status in the United States. As a result, this proposed rule has the potential to separate many families.

**[Insert any anecdotal information about a client who was only able to gain withholding of removal or CAT protection and thus separated from their family members and never able to obtain permanent status in the U.S.].**

1. **The proposed rule violates asylum seekers’ due process rights.**

The proposed rule violates the due process rights of legitimate asylum seekers. Critically, the proposed rule eviscerates two safeguards for asylum applicants who are given negative credible fear findings: it would require asylum seekers to affirmatively request immigration judge review of a negative credible fear finding, and it would eliminate asylum office reconsideration of negative decisions. Many asylum seekers in credible fear proceedings do not have access to an attorney and would not know to affirmatively ask for immigration judge review. The use of reconsiderations is needed to [safeguard the rights and due process](https://humanrightsfirst.org/library/biden-administration-move-to-eliminate-requests-for-reconsideration-would-endanger-asylum-seekers-deport-them-to-persecution-and-torture/) of asylum seekers where the asylum officer in the first instance issues an erroneous decision. Eliminating these safeguards would certainly send many asylum seekers back into the hands of their persecutors. In recent years, nearly [one quarter](https://trac.syr.edu/immigration/reports/523/) of negative credible fear determinations were overturned by the immigration judges.

**[Insert any anecdote where an asylum seeker’s negative credible fear finding was overturned by the IJ or the AO. Also include any anecdotes where the negative credible fear decisions were overturned, and the asylum seeker was eventually granted asylum.]**

1. **Conclusion**

This proposed rule contains several procedural elements which require a full 60-day comment period to be adequately addressed. The proposed rule, if enacted in its current form, would return scores of asylum seekers to danger in Mexico, another transit country, or their country of origin. The proposed rule is similar in substance to the asylum bans issued by the Trump administration. The United States' asylum system has been a model for countries around the world to welcome refugees who come to its door. This proposed rule is not in line with the American value of welcoming refugees and asylum seekers and, more importantly, the proposed rule is contrary to U.S. and international law which protects the right to safely seek asylum. We call upon the administration to withdraw this proposed rule in its entirety.

Respectfully submitted,

[Name, position and signature]

1. *See* 8 USC 1158(a)(1). [↑](#footnote-ref-2)