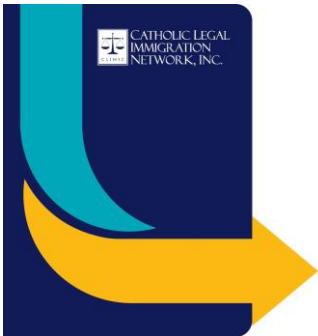




Advocate for Asylum Seekers at the Southern Border

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CLINIC's Mission Statement

Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs.


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Advocate for Asylum Seekers at the Southern Border



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Agenda

- Background and state of play
- Specifics of the Proposed Rule
- How you can help: Ways to comment!
- Questions

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Definition of Asylum:

• ... who is outside his or her country of residence or nationality, or without nationality, and is **unable or unwilling to return to, and is unable OR unwilling to avail himself or herself of the protection of, that country because of persecution OR** a well-founded fear of persecution on account of **race, religion, nationality**, membership in a **particular social group**, or **political opinion**.

- INA 101(a)(42)

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Who can apply for asylum? Where can one apply for asylum?

- **Anywhere and anyone!**
- Any [asylum seeker] who is **physically present in** the United States or who arrives in the United States (**whether or not at a designated port of arrival** and including an [asylum seeker] who is brought to the United States after having been interdicted in international or United States waters), irrespective of such [their] **status**, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

- INA 101(a)(1)

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State of Play

- Proposed Asylum Rule, Circumvention of Lawful Pathways opened for comment February 23, 2023
- Comment period is only 30 days. Comment deadline: March 27, 2023
- Advocates requested normal 60-day period
- Notice of Proposed Rulemaking (NPRM) on asylum rules is 52 pages of actual proposed regulations.
- The proposed rule is intended to last two years, but after the sunset date the rule will continue to apply to those who entered within the two-year period.
- Intended to take effect on May 11, 2023

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The Proposed Rule

Proposed changes under this rule:

- Will create a **“rebuttable presumption” of ineligibility** for asylum for certain non-citizens **who enter the United States through the southern border** on or after the sunset date of Title 42 **without a previously scheduled appointment through CBP One, and who have passed through a third country without seeking asylum there.**
- Reducing due process in procedures at the border
- Due to go into effect on May 11, 2023

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Story of Angeline

- Angeline, a human rights defender, fled Haiti to Mexico in 2021, where she applied for asylum. She met and married her husband Dorcelly.
- The family was discriminated against and harassed in Mexico by Mexican authorities. The family was detained even though they had documents showing that their asylum status was pending.
- In June 2023, the family arrived in Ciudad Juarez, Chihuahua, MX to cross to the US and seek asylum. At a shelter they were told to download the CBP One app, register and attempt to obtain an appointment. Each time they attempted to complete the registration the facial recognition section froze or crashed. Once registered, they tried for months to schedule an appointment.

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Story of Angeline Cont'd

- Angeline and her family have no connections or family members in the United States. They don't have Haitian passports, but they do have their IDs.
- Angeline became ill, deteriorated quickly and could not afford to see a doctor. Angeline was constantly called racial slurs in the shelter and felt scared.
- The family hired a guide who took their money, cellphones, abandoned them, and threatened to kill them if they reported him to authorities.
- The family enters the United States, is apprehended and placed in detention. Dorcelly and Angeline have credible fear interviews. Only Angeline has a claim.

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Does the rebuttable presumption apply to everyone?

The rebuttable presumption of ineligibility for asylum **does not** apply to:

- . Those who have sought asylum in a third country and were denied
- . Those who have sought humanitarian parole through one of the established programs for nationals from Cuba, Haiti, Nicaragua, or Venezuela.
- . Those who have arrived at a U.S. port of entry for a prescheduled appointment with the DHS scheduling app known as "CBP One" or those who can demonstrate that "CBP One" was not available for them to use to schedule the appointment.
- . Unaccompanied minors.

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Those who Transit through a 3rd Country

- Similar to the prior transit ban, which was struck down.
- Must travel through a third country and apply for asylum and receive a **final denial**.
- Transit country must be a party to the 1951 Refugee Convention/1967 Protocol
- No mention of the type of asylum system
- Will Angeline meet this Exception?

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CBP One



- Denies access to the most vulnerable asylum seekers.
- Must have reliable internet to download and use the App.
- Must register and schedule an appointment on the App.
- Problems with facial recognition software
- App. Is only in three languages: English, Spanish and Haitian Kreyòl
- Will make asylum seekers wait in precarious situations.
- Amounts to "metering" an action that has been struck down by the courts.
- Will Angeline meet this exception?

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Special Parole Programs

- Special parole programs for nationals of **Cuba Haiti, Nicaragua or Venezuela**. Must be a national or an accompanying family member
- Can only apply outside the US and cannot have entered Mexico or Panama irregularly on or after January 9, 2023
- Must have a US based supporter who has immigration status
- Approved I134A
- A plane ticket & valid passport
- Pass security and public safety checks
- Must be granted based on significant public interest or humanitarian reasons.
- Will Angeline qualify?

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How can one rebut the presumption?

Must demonstrate exceptionally compelling circumstances by a **preponderance of the evidence**, then the rule will not apply.

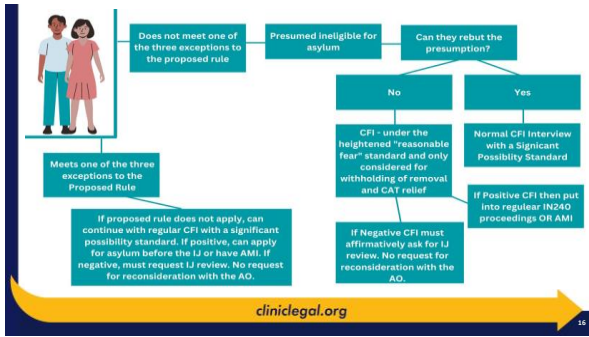
- Where the asylum seeker or a member of their family with whom they are traveling is facing an **acute medical** emergency.
- Where the asylum seeker is faced with **imminent and extreme** threats to their life or safety including murder, rape, kidnapping, torture or murder
- Where an asylum seeker is a victim of a **severe** form of trafficking under the TVPRA.

In addition to these three grounds, the adjudicator could also determine if there are any other **exceptional compelling circumstance**

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Due process concerns

- Lack of due process in expedited removal
 - The rule will most likely
 - The rule will be applied in expedited removal where asylum seekers rarely have lawyers.
 - These CFIs could take place in CBP custody – where asylum seekers have less of a chance to find a lawyer
 - Would be virtually impossible to prove that the ban does not apply while detained and without an attorney.

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Additional concerns

- **Family separation** because the vast majority of asylum seekers will only be eligible for withholding of removal and/or protection under the Convention Against Torture
- **Discriminatory** – The proposed rule will have a disproportionate impact on Black, Brown and Indigenous asylum seekers.
- How will Angeline be affected by the proposed rule?

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THE COMMENT PROCESS

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Beginning the Comment Process

- Engage your organizational leadership/consider submitting an individual comment.
- Find out about organizational policies about comments.
- Research your organization's practice and client base and how best to serve them
- Think of client cases to ask permission to highlight their stories.

**Comments are due no later than March 27 at 11:59pm Eastern Time*

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How to Respond to the Proposed Asylum Rule

How You/Your Organization Can Comment:

- Write your own comment and submit directly through [regulations.gov](https://www.regulations.gov).
 - *DHS Docket No.: USCIS 2022-2016*
- Use CLINIC's template comment and submit directly through [regulations.gov](https://www.regulations.gov).
- Use a click-to-comment campaign to submit a shorter, topic-specific comment

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Drafting Your Comment

- Use a template comment as a guide.
- Use your **own words**, change the order, pick and choose topics
MAKE YOUR COMMENT UNIQUE
DUPLICATION = ELIMINATION
- Focus the comment on issues that are most important to **your** organization and clients
- Gather stories and statistics about **your** practice. Use examples, share **client stories**.

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Focusing Your Comment On What's "Particularly Welcome"

Duration of the rule: Modified to be shorter, longer or of indefinite duration	Rebuttable presumption: Modify, eliminate, or add to the proposed grounds	Proposed exceptions: Modify, eliminate or add to the proposed exceptions to the rebuttable presumption
Proposed mechanisms for evaluating Asylum, Withholding and CAT claims: retain or modify	Application of the rebut. presump. in adjudications (after the rule's sunset date): Add or amend regulatory provisions	Whether the rule provides migrants a meaningful and realistic opportunity to seek protection.

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Individual/Organizational Comment

- Who:** Organizations that would be gravely impacted by these changes, and/or have unique concerns, are willing to dedicate the time
- Why:** Original research and comments are more persuasive, may present unique, new concerns
- How:** CLINIC and other partner organizations can share research and provide assistance

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CLINIC's Organizational Template Comment

- **Who:** Organizations that are concerned, but may not have as much time to dedicate
- **Why:** Allows you to submit a comment of substance, modify with your org's experiences
- **How:** Template comment provides paragraphs to choose from, prioritize your org's concerns.

*Template comment will be placed on CLINIC's webpage.

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Comment Campaign

CLINIC has partnered with Welcome with Dignity and other partners in a comment campaign. noasylum.us

- **Who:** Organizations or individuals who have little time to dedicate or simply wish to show solidarity for those affected.
- **Why:** Less substantive, less original (though you can edit the submission), but adds to the chorus
- **How:** Choose a topic focus, link to comment site, edit suggested comment text, submit directly through website. Automatically sends to regulations.gov

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Advocacy beyond 30-day comment period

- Encourage others to submit comments. Remind folks the comment deadline is **March 27, 2023, 11:59pm**.
- Raise awareness:
 - Op-Eds, Sign-on letters
 - Social media (Twitter, Instagram, Facebook, LinkedIn)
- Stay up to date
 - Subscribe to CLINIC's [email lists and newsletters](#).
 - Read our press release statement: [Proposed Ban on Asylum Violates U.S. Law and Catholic Social Teaching](#)
 - Read CLINIC's [TIPS](#) on the proposed asylum rule.

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**SIGN UP TO RECEIVE UP
TO DATE INFO FROM
CLINIC**