

IMMIGRATION **JUSTICE** CAMPAIGN



The End of Asylum: Administration's New Regulation Would Devastate U.S. Asylum System

June 25, 2020

Agenda

- Background: Asylum and Refugee Protection in the United States
- Proposed Changes to Asylum Law: Mechanism and Timeline
- Key Ways the Regulation Would Devastate Asylum Seekers in the U.S.
- What You Can Do

Speakers

- **Jennie Guilfoyle**, Deputy Director of Programs, Immigration Justice Campaign
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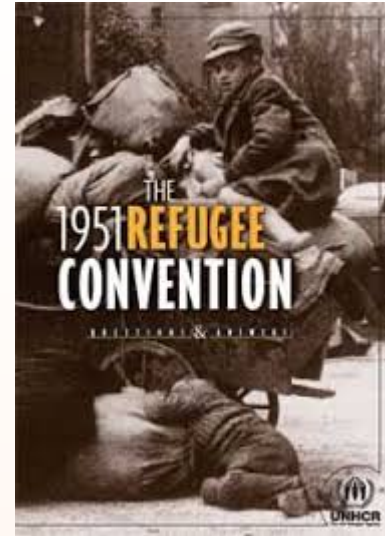
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RESOURCES

Asylum and Refugee Protection

- Developed after World War II
- United Nations Refugee Convention
- Same legal eligibility requirements
 - **Refugees:** screened overseas, to U.S. as refugees
 - **Asylees:** get to the U.S. on their own and apply individually for asylum
 - **Both must meet same legal requirements**



Asylum in the U.S. Since 1980

- Eligibility based on:
 - Persecuted/ “well-founded fear” of persecution
 - By gov’t/person(s) gov’t unable or unwilling to control
 - “On account of” race, religion, nationality, political opinion, or membership in a particular social group
 - This comes from UN Refugee Convention
- Permanent protection: provides a pathway to a green card, reunification with spouse and children, path to citizenship

Asylum Process

- **People not stopped at border**
 - Asylum Interview with USCIS
 - If denied, can apply before immigration judge in removal hearing
- **People stopped at border**
 - Must pass “credible fear interview” to stay in U.S. and apply for asylum
 - Apply for asylum before immigration judge in removal hearing

Administration's Previous Attacks on Asylum

Procedural: keeping people out of U.S.

- “Metering” at ports of entry
- Remain in Mexico

Substantive: narrowing asylum eligibility

- Southern border transit bar
- Attacks on “particular social group”: *Matter of A-B-* and *Matter of L-E-A*

Basics of the Regulatory Process

- Congress passes a law, agency must it. Administrative Procedure Act provides a process where the agency can propose regulations which will bind the agency.
- Agency must respond to concerns and issues raised in comments
- How long does it take to finalize a regulation?

Proposed Asylum Rule

- Published in Federal Register on June 15:
<https://www.federalregister.gov/documents/2020/06/15/2020-12575/procedures-for-asylum-and-withholding-of-removal-credible-fear-and-reasonable-fear-review>
- Summary by American Immigration Council:
<https://immigrationimpact.com/2020/06/11/end-asylum-trump/#.XvSpe0VKhaR>

Basic Details of This Rule

- Official proposed one June 15, with a 30-day comment period
- Proposed by DHS and DOJ and will bind both asylum officers and immigration judges
- Depending on the number of comments, will likely take at least 3-4 months to finalize.
 - Nothing changes until then!
- Will be subject to immediate challenge in court after finalized

Proposed Changes Include:

- Changes to asylum process
 - Credible fear interviews (harder to pass)
 - Denying asylum without a hearing
 - Penalizing applicants for “frivolous” claims
- Changes to asylum legal standards
 - Severely limiting “particular social group”
 - Narrowing “political opinion”
 - Narrow definition of “persecution”

Undermining U.S. Asylum and Refugee System

Refugee Act of 1980

“The Congress declares that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.

The objectives of this Act are to provide a permanent and systematic procedures for the admission to this country of refugees.”

Proposed Regulation

“As an expression of a nation’s foreign policy, the laws and policies surrounding asylum are an assertion of a government’s right and duty to protect its own resources and citizens, while aiding those in true need of protection from harm.”

Severely Limiting Asylum Grounds

Generally, NO to:

- “Interpersonal” conflicts/animus
- Gender
- Resistance to gang recruitment
- Perceived past or present gang affiliation
- Disapproval/disagreement with gangs, terrorist organizations
- No consideration of evidence of cultural stereotypes, incl. related to race, religion, nationality, and gender

“Particular Social Group” -NO to:

- Resistance to gang recruitment
- Former gang membership
- “Interpersonal disputes” and “private criminal acts”
- Returning from U.S.

Much higher burden to make legal argument about PSG

Narrowing and Constraining “Political Opinion”

- Only when “applicant possesses an ideal or conviction in support of the furtherance of a discrete cause related to political control of a state or a unit thereof.”
- Aimed at eliminating claims where there is an anti-gang political opinion:
 - [No to] “claims of persecution on account of a political opinion defined solely by generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations.”

Redefining “Persecution”

- Persecution is NOT:
 - Persecutory laws and policies, without evidence they would be applied to applicant personally
 - “Intermittent harassment, including brief detentions”
 - “Repeated threats with no actions taken to carry out the threats”
- “Persecution is an extreme concept of a severe level of harm”

New Bars and Barriers to Asylum

- Three new “transit bans”
 - Passing through “more than one” country
 - Staying in any transit country for over 14 days
 - New “firm resettlement” definition
- Failure to file taxes properly
- One year of “unlawful presence”
- Unlawful entry and use of false documents as “significant adverse factors”
- New standards for “internal relocation”

New Definition of a “Frivolous Asylum Application”

- Severe penalties for “frivolous” asylum applications
- Old definition: “knowingly” submit an application with a “deliberately fabricated material element.”
- New definition: “knowingly” or with “willful blindness” submit a frivolous application, defined as one which:
 - Contains a “fraudulent essential element”
 - “Premised on false or fabricated evidence” unless the application would have been granted anyway
 - “Filed without regard to the merits of the claim”
 - “Clearly foreclosed by applicable law”
- Pressure to force applicants to withdrawn applications
- Asylum officers can now declare applications frivolous

Closing the “Credible Fear” Door

- Context and significance
 - Must pass CFI to stay in U.S., apply for asylum
 - Rule would lead to far more denials
- Changes would make it much harder to pass
 - Raising the legal standard to pass
 - Making it harder to get an immigration judge to review negative decision
 - Increasing avenues for denial of CFI

New Obstacles to a Fair Day in Court

- “Pretermission” of asylum claims
 - No right to a full asylum hearing if the application does not present a “prima facie” case for eligibility for protection.
 - DHS may ask judge to pretermit case or judge may choose to do so on his or her own with at least 10 days notice.
- Fewer due process protections
 - Failure to raise a PSG deems it permanently waived, even if counsel was ineffective.

The Consequences of Ending Asylum

- Benefits of asylum vs. withholding of removal
 - Family unity
 - Path to citizenship and permanent safety
- Who would and wouldn't qualify under the new rules?
 - Asylum seekers who arrive at the southern border
 - Those who can fly to the United States
 - Wealthy oligarchs
 - People without lawyers

How You Can Help

- Volunteer with Immigration Justice Campaign
 - Attorneys
 - Other opportunities
 - Sign up at www.immigrationjustice.us
- Submit a public comment opposing changes to the asylum regulations. **Deadline is July 15.**



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Speak Out Against Proposed Rule that Would Gut U.S. Asylum System

On June 15, 2020, the Trump Administration published a new regulation that, if implemented, will decimate the U.S. asylum system. Send a comment to the government highlighting why this rule would be disastrous for those in need of protection.

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Take Action Now: Tell the Government to Halt Plans to End Asylum

The Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS) and Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) proposed a [new regulation](#) which, if implemented, will drastically limit the ability of individuals to obtain asylum in the United States. The regulation was published in the Federal Register on June 15. The public has 30 days – until July 15 – to comment on the proposed rule. The administration will review and address those comments before the rule becomes finalized, so it is critical for us to submit as many unique comments as possible.

This new regulation represents the most sweeping assault on the asylum system yet under the Trump administration. If the regulation goes into effect, it could negate U.S. asylum law—and decades of established case law—with devastating consequences to thousands of people seeking asylum in the U.S. It will become nearly impossible for individuals fleeing threats such as domestic violence, honor crimes, and harms associated with gender identity and sexual orientation to obtain humanitarian relief.

The public may submit comments on the regulation through midnight on July 15. AILA and the American Immigration Council, and through their



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