



Act now to save America's asylum system

Toolkit | July 2020

This is a toolkit to respond to the Notice of Proposed Rulemaking (NPRM) issued by DHS/USCIS and DOJ/EOIR on June 15, 2020 entitled [Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review](#)

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1. Background information

What's happening

- In June, the Trump administration proposed sweeping regulations that would end the U.S. asylum system as we know it.
- The administration provided only 30 days for the public to weigh in, which is unusually short for such a complex regulatory proposal (which can be provided comment periods of 180 days or more).
- The public must submit comments in response to the proposed rule by **Wednesday, July 15, 2020, 11:59 PM ET**.

Why it matters

The proposed rule would create insurmountable obstacles for asylum seekers by narrowing the circumstances under which people can be granted asylum and undermining due process. These changes would have a particularly harmful impact on survivors of torture and gender-based violence, the LGBTQ+ community, and those fleeing gang violence.

The proposed rule, if issued, would:

- Ban all claims to asylum arising out of gender-based harm, affecting women and LGBTQ+ people
- Ban all claims to asylum arising out of gang violence and recruitment
- Narrow instances when an asylum applicant would qualify for relief under political opinion
- Narrow the definition of persecution to be an extreme concept of severe legal harm that would exclude many legitimate asylum claims
- Narrow the qualification for protection under the Convention against Torture
- Significantly reduce asylum seekers' access to a fair hearing by drastically raising the burden they face to prove their claims in their initial interviews and allowing fast-track deportation
- Deny asylum to many who have traveled through a secondary country on their way to the U.S. (an effective ban on Central American and African asylum seekers)
- Ban virtually all claims by those who have entered between border checkpoints
- Ban asylum seekers with an incomplete understanding of complex U.S. asylum law
- Breach confidentiality requirements that allow asylum seekers to safely disclose their stories to asylum officers and immigration judges, likely reducing their comfort with coming forward to seek their right to asylum

The International Rescue Committee | From Harm To Home | Advocacy@Rescue.org

What we're asking you to do

- Submit a unique public comment on the proposed rule on or before Wednesday, July 15, 2020.
- Reach out to your networks and encourage them to do the same.

Why public comments are important

- Federal agencies issue rules and regulations that impact our daily lives. After a rule is proposed, there is a public comment period during which time anyone can submit their input to the relevant agency. These comments are reviewed and taken into consideration before the rule is finalized.
- Agencies must consider and respond to all public comments filed on time. If it appears the agency did not consider all substantive public comments, it may open the agency to litigation under the Administrative Procedures Act (APA). The APA is a powerful tool for communities to influence immigration policy. For example, in the SCOTUS's recent decision to uphold DACA, the Court ruled that the Trump administration did not fulfill its duty under the APA to fully deliberate the impact of its decision to end the program.

2. How to submit your public comment

You have two options for submitting a comment.

Option 1: Add your unique voice to a sample comment

The IRC has launched its own click-to-comment page to help you submit your comment. This tool allows you to use comment templates detailing some of the most harmful rule changes to help you write and submit a unique comment.

Option 2: Write your own comment

You can submit your own comment directly to Regulations.gov by following the instructions below.

Step-by-Step instructions to submit comments on Regulations.gov:

1. Go to the "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review" comment page: <https://www.regulations.gov/document?D=EOIR-2020-0003-0001>
2. Click on the blue "Comment Now!" button in the top right corner
3. Type your comment and name, and if desired, enter your contact information. Note that the content of the comment and your name will be made viewable publicly
4. Click Continue
5. Review your comment, check the disclaimer box, and click Submit Comment

What to consider when writing your comment

Draw from your personal experiences, expertise, and beliefs. Make sure to personalize your comment.

- Did your ancestors come to the U.S. seeking to escape persecution?
- Are you or do you know an asylum seeker or asylee?
- Why do you believe that the U.S. should be a bastion of hope, freedom, and safety for persecuted people worldwide?
- Why do you believe that the U.S. should not turn its back on survivors of torture and gender-based violence, the LGBTQ+ community, and those fleeing gang violence?

- Why do you oppose these changes?

Overarching themes to include in your comment

- The rule imposes insurmountable barriers at every stage of the asylum process that will be impossible for almost all asylum seekers to overcome, effectively shutting the door to the vast majority of people fleeing persecution and returning them to dangerous situations
- The rule undermines the U.S.'s long tradition of welcoming those seeking freedom and safety

Five key harms to consider in your comment

- 1. The proposed rule would prohibit many asylum claims arising out of gender-based harm, affecting women, girls, and gender non-conforming people.**
 - a. This rule redefines domestic violence as an “interpersonal dispute”
 - b. The proposed rule’s redefinition of political opinion to only include opinions involving state actors would exclude those persecuted for feminist or LGBTQ+ advocacy.
- 2. The proposed rule would allow blanket denials of claims arising out of gang violence and recruitment.**
 - a. The rule especially targets asylum seekers from Central American countries, where gang warfare and violence have driven the region to have some of the highest homicide rates in the world.
- 3. The proposed rule will result in the denial of most asylum seekers through a transit ban.**
 - a. If an asylum seeker transits through at least one other country without seeking asylum there first, they would likely be denied under this regulation.
 - i. For example, if an asylum seeker flies into the U.S. with more than one layover, their claim would likely be denied as a matter of discretion. This especially harms African asylum seekers as there are little to no direct or one-stop flights from the countries in which they are fleeing.
 - b. This rule does not consider that while a transit country may have an asylum system, it may not be able to provide proper protections for that individual.
 - i. Persecutors are known to follow survivors after they try to escape.
 - ii. Some people, especially women and LGBTQ+ individuals, may face threats to safety in a transit country, making firm resettlement impossible.
- 4. The proposed rule would deny asylum seekers a fair hearing.**
 - a. The rule would give immigration judges and asylum officers more power to deny an asylum case without a hearing and throw out cases they deem as “frivolous.” (The rule broadens the definition of “frivolous” to mean that the asylum seeker’s case is “patently without merit or substance,” but this could simply mean that they were unable to provide enough evidence from the very beginning even if they have legitimate fears of persecution.)
 - b. This rule puts an impossible burden on asylum seekers to put together a case for asylum protection at the very first step of their claim, most likely without legal representation and the means to gather the required evidence. If an asylum seeker cannot immediately meet these stringent standards to prove their claim, their application could be thrown out.
- 5. The proposed rule does not address how it would affect pending claims, which leaves current asylum seekers in a state of uncertainty.**
 - a. If the rule is applied to those with pending claims, it would unfairly punish individuals who have abided by the law.
 - b. For example, the rule would render ineligible those who submitted their applications more than a year after arriving in the U.S., even though this is explicitly allowed under the Immigration and Nationality Act.

Quick facts about the U.S. asylum system

- Asylum protections were set up to protect refugees: a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of

being persecuted in the future “on account of race, religion, nationality, membership in a particular social group, or political opinion.”

- There are two types of asylum claims: affirmative and defensive. Individuals can apply for asylum affirmatively if they are physically present in the U.S., regardless of how they entered the country within one year after arrival. For defensive asylum, individuals seek asylum as a defense against deportation.
- The total number of persons granted asylum in the U.S. increased 46 percent from 26,509 in 2017 to 38,687 in 2018, but if the proposed rule is implemented, this number would fall dramatically.
- In 2018, the three leading countries of nationality of persons granted either affirmative or defensive asylum were China (18 percent), Venezuela (16 percent), and El Salvador (7.7 percent).

Additional information about comment submission

- To easily find your comment in the future, save the Comment Tracking Number provided to you on the submission confirmation page. Because comments are sometimes reviewed first, there may be a delay before it appears on Regulations.gov.
- To view the comments that have already been submitted on the public charge rule, navigate to the proposed rule page and click on “Open Docket Folder” at the top of the page:
<https://www.regulations.gov/docket?D=EOIR-2020-0003>
- To review “Frequently Asked Questions” about the public comment process, posted by the National Archives, visit: <https://www.regulations.gov/faqs> or https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf.

When submitting a public comment, remember:

- Comments are public. What you post will be available for the government and the public to see.
- Personalized comments are the most effective. The administration must only consider and respond to each unique comment.

3. Share with your networks

The quality and QUANTITY of public comments in response to this proposed rule matters. Encourage your networks to file public comments using the attached tools and resources. Promote through your social media platforms.

Sample social language

The Trump admin proposed sweeping regulations that would end the US asylum system as we know it. Join me in submitting a public comment in opposition to these proposed changes. Now is the time to make your voice heard by July 15. #SaveAsylum act.rescue.org/asylumproposals

New proposed regulations from the Trump admin will be the final nail in the coffin for the US asylum system, creating insurmountable obstacles for asylum seekers. Join me in the fight to #SaveAsylum and speak up by July 15. act.rescue.org/asylumproposals

URGENT: The Trump administration proposed barriers to asylum, making it nearly impossible for survivors of torture and gender-based violence, the LGBTQ+ community, and those fleeing gang violence to get asylum in the US. Join me in the fight to #SaveAsylum and act before July 15. act.rescue.org/asylumproposals

Asylum is under attack. The government must respond to all unique comments on proposed regulations. Submit a comment today to let the government know that you oppose their efforts to end asylum as we know it. #SaveAsylum act.rescue.org/asylumproposals

4. Additional resources

- Information from the Tahirih Justice Center of the proposed rule's impacts on women, girls, and those facing gender-based harm <https://www.tahirih.org/get-involved/advocate/standwithsurvivors/>
- Information from Human Rights First detailing how the new rule will affect the U.S. asylum system <https://www.humanrightsfirst.org/press-release/human-rights-first-condemns-rule-seeks-re-write-refugee-laws-eliminate-asylum>
- Upcoming webinar from Center Global on how to write a comment with a focus on the negative impact on LGBTQ asylum seekers <https://us02web.zoom.us/meeting/register/tZ0kduuvrTkpHNNFkBVIqzsgE5jfwfgwgO5c>
- Op ed by Natalia Nanasi, professor at SMU Dedman School of Law in Dallas and director of the Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women <https://thehill.com/opinion/immigration/502938-new-trump-immigration-regulations-would-devastate-refuge-pathways>
- Op ed by Philip G. Schrag, professor at Georgetown University <https://thehill.com/opinion/immigration/502881-the-end-of-asylum-for-now>
- Op ed by Bill Frelick, director of the Refugee and Migrant Rights Division of Human Right Watch, <https://thehill.com/opinion/civil-rights/503507-for-world-refugee-day-the-us-plans-to-reject-them-all#.XvV55qaUjl.twitter>