

## **TRUMP'S WORST ATTACK ON ASYLUM TO DATE - WHAT YOU CAN DO**

The Trump administration has published a new rule that will effectively end the possibility of getting asylum for hundreds of thousands of people. The rule was published on June 15, 2020 and comments on it will be accepted for 30 days. Afterwards it will go into effect. We must stop this rule from being put into operation and you can help by 1) Sending a comment on it, and 2) Contacting your Senator and Congressperson and letting them know your thoughts about the rule.

Please be sure to state that 30 days is not enough time to understand and comment on such a complicated and far-reaching proposal. The comment period should be extended to 60 days as is typical. This rule is a political stunt which has been rushed by this administration just before elections and puts the integrity of the asylum process at risk.

### **CURRENT LAW**

#### **Asylum Eligibility Requirements**

A person has to have suffered past persecution, or have a well-founded fear of future persecution on account of at least one protected ground (race, religion, nationality, membership in a particular social group, or political opinion), that was committed by the government, or by a persecutor the government is unable or unwilling to control. They cannot be subject to any bars and they must merit favorable exercise of discretion.

The connection between the persecution and the protect ground(s) is referred to as the nexus.

#### **What the new rule wants to do**

In general, this rule rewrites substantive definitions used in the determination of asylum eligibility. It greatly reduces due process for people applying for asylum, and it makes passing a credible or reasonable fear interview more difficult. The rule seems to especially target asylum applicants from the Northern Triangle (Guatemala, Honduras, and El Salvador) since many of the changes limit relief for situations that people from those countries currently qualify for.

### **THE PROPOSED NEW RULES**

Below are the major changes that would essentially eliminate the possibility of getting asylum for many people who are currently seeking it and others in the future. This is not an exhaustive list of the proposed changes but it demonstrates the inhumanity of this attack.

#### **1) Denial of Due process**

Immigration and Customs Enforcement (ICE) agents can file a motion or an Immigration Judge can decide to pretermite and deny a case, based only on the asylum application form filed, denying the asylum seeker the ability to appear in court and argue their case. Immigration Judges can assume the validity of the application without a hearing which denies the person the opportunity to present additional evidence or testify on their own behalf. This new determination of asylum claims denies asylum seekers of their due process rights, especially those who do not

have representation and/or are detained. Preparing an asylum defensive claim is a complicated process and those without representation or the time to prepare a case are at a great disadvantage.

The ability to pretermite allows Immigration Judges with extremely high asylum denial rates to appear normal and also aids them in meeting their “quota” of cases.

### **Changes the Definition of persecution**

The rule raises the bar as to what qualifies as persecution and makes it even more ambiguous. The proposed regulation seeks to redefine the term “persecution” to mean incidents “involving a severe level of harm that includes actions so severe that they constitute an exigent threat.” This is an unreasonable interpretation of a statutory term. The rule also has no requirement to assess the difference between how children and adults experience harm. Even if a person were fleeing a country with a persecutory law, they would be denied unless they can prove that the law was enforced all the time, an impossible requirement.

### **Nexus (the reason a person is persecuted)**

Asylum law requires that a nexus exists between the persecution a person suffered and at least one of the five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. The rule would greatly limit certain types of persecution that would qualify for asylum. It would override a great deal of case law that addressed nexus in numerous situations where asylum was granted.

### **Particular Social Group**

Particular social group (PSG) is a protected ground category that allows individuals to claim asylum because they have suffered persecution because they belong to a group outside of, or in addition to, the other four protected grounds. The rule requires an applicant to articulate any and all PSGs when they initially apply for asylum. If they don't, they are barred from raising a PSG later in their case. Again, people without representation do not know what a PSG is and will not raise one in their application. Although the facts might suggest a well-founded PSG, the specific articulation of a PSG is a feat that is difficult for even the most seasoned immigration practitioners – especially with the recent caselaw. Similarly, people who are detained, even when represented, will not have enough time to research and assert PSGs in their initial application. This essentially takes away a potential path to success.

Of particular concern, is that persons who are persecuted because of a gender-based social group, like women fleeing asylum or LGBTQ people fleeing oppression, are ineligible for asylum. The proposed regulation is attempting to overwrite decades of asylum law by seemingly clarifying ambiguous statutory language. Instead, it limits and restricts this purposefully broad term which is meant to be freely interpreted on a case by case basis.

### **Political Opinion**

The rule severely limits the definition of political opinion. The definition is rewritten to say that an applicant has to possess an ideal or conviction in support of the furtherance of a discrete cause related to political control of a state or a unit thereof. For example, people who state opposition

to their government and are repeatedly imprisoned for several days and beaten while imprisoned would not qualify for asylum using political opinion as a protected ground.

Expressive behavior against private entities like gangs or terrorists will not qualify unless related to efforts by the state to control such organizations. Therefore, a person who resists gang recruitment as an individual and expresses opposition to the gang and its behavior and is beaten by the gang because of this expression, would also not qualify.

### **Expanded discretion to deny asylum**

Under the new rule, the Immigration Judge must consider the following as significant adverse discretionary factors:

The person entered without inspection, unless they were coming from a contiguous country. This places an unfair restriction on everyone who is not from Canada or Mexico. (See Firm Resettlement below) The vast majority of people, and all of KIAC's clients, seeking asylum have entered without inspection.

The person passed through a third country, or countries, or spent 14 days in third country and did not seek asylum or refugee. Or they applied for asylum and were denied in that country. This would require people fleeing El Salvador, Honduras, Nicaragua, or Guatemala to seek asylum in Honduras, Guatemala, or Mexico. Since these are countries from which many people are fleeing, this just illustrates the intent to ban people from the Northern Triangle. Of course, individuals who have funds could overcome this factor by getting a direct flight to the US. In addition, the administration's Remain In Mexico policy that has trapped thousands on the Mexican border ensures that this factor will apply to all of them.

Unlawful presence for one year before filing an asylum application is another significant adverse factor. Many people do not file for asylum because they either don't know they should, don't know how, or don't have representation.

Failing to file taxes and to file them on time is another significant adverse factor. Immigration Judges and asylum officers will now be required to interpret tax law to determine if a person was required to file taxes and a devious interpretation will be to say that all applicants should have, therefore adding another significant adverse factor to their case. If we couple this requirement with the new rule that makes asylum seekers wait 365 days after filing their application to get work authorization we see the Catch 22 that people are placed in. Namely, that they would be required to work without the possibility to apply for a work permit, while being required to pay taxes. People in this situation are typically paid under the table and have no record of their income. While KIAC tries to help as many people as possible file taxes there are still many who we have not been able to obtain help.

### **Internal Relocation**

Another factor an Immigration Judge considers is whether a person can safely relocate in their country. The new rule eliminates considering many of the current limits to relocating internally. Factors like race, family ties, and ability to make a living are not to be considered. If the government is not the persecutor, the applicant has to prove that it would be unsafe to relocate.

Victims of domestic violence, gangs, and criminal cartels must establish, by a preponderance of the evidence, that these non-government actors could continue to persecute them if they relocated. Providing such evidence is almost impossible and is a shift in the burden of proof that currently exists in asylum law.

### **Firm Resettlement**

A bar to asylum is that a person was firmly resettled in another country before coming to the US. If they received or there was a pathway to an offer of permanent resident status, citizenship, or some other type of permanent resettlement, that is considered firm resettlement. The government bears the burden of proving the person was indeed firmly resettled.

The new rule says that if they resided or could have resided in permanent or non-permanent status (asylee, refugee status) or if they stayed in a third country without status for one year, they were firmly resettled. The applicant bears the burden of refuting this. Consider the Garifuna woman fleeing persecution in Honduras, or the Amhara woman from Ethiopia gathering the evidence she would need to prove that she could not have resided in Guatemala or Brazil as an asylee or refugee. As with most sections in this rule, the deck is stacked against them.

### **Convention Against Torture (CAT)**

The Convention Against Torture allows a person to remain in the US if they were a victim of severe pain or suffering, whether physical or mental, that was intentionally inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. This currently includes government officials, like police officers, who were acting illegally or outside their scope of responsibility. They are known as “rogue officials.”

The new rule will not grant CAT relief if the persecutor is a rogue official and, the acquiescence must occur “prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.” It would be almost impossible for a person seeking asylum to gather enough evidence to prove acquiescence. The effect of this is to deny those who were tortured by rogue officials or drug cartels who are able to operate because of support from the police.

### **EXAMPLES OF PEOPLE ADVERSELY AFFECTED BY THESE RULES**

SEP demonstrated against his government because he opposed their repressive actions. He participated in street demonstrations, fed other protesters and hung an anti-government sign on his house. Because of his opposition, government forces beat him several times, attempted to burn down his home, and repeatedly detained him. He fled to the US and entered without inspection. We represented him and he was granted asylum. He has since become a legal permanent resident.

JR and her partner lived together as lesbians. A crowd in her town attempted to stone them to death. When she went to the police they were laughed at and told to leave, even though there is a law in their country against anti-lesbian behavior. Her parents told her they would turn her over

to the mob. JR fled. She flew through two other counties and spent one month in a third one, regaining her strength before traveling by foot through five countries to get to the US. She entered without inspection. We represented her and she was granted asylum. We are now helping her apply for her green card.

A, a Mayan, lived in a small village. When she went to a city to work in order to support her family she was savagely beaten by people because they hated Mayans. She continued to try to work but the persecution became so bad she had to flee. She entered without inspection. We represented her and she was granted asylum. She is now applying for his green card.

If the proposed rules were in effect when we represented EP, JR and A, **they would not have been granted asylum and they likely would have been deported.**

Ray Garrido, KIAC legal Services Director and Isis Goldberg, KIAC Paralegal

## WHAT YOU CAN DO

You can use the information above to create your own comment. Please don't just copy and paste.

- Add one or more of your own arguments if you think anything wasn't mentioned
- Add arguments based in feelings (for example, "I think the proposed regulation is unfair because it is intentionally designed to discriminate against one of the most vulnerable populations in America. People who come to America seeking refuge should not be treated like animals, they should be treated with humanity." – etc.)
- Rephrase some or all of the arguments used here and put them into your own words (like when you were plagiarizing that paper on Julius Caesar back in 10th grade)
- Put the arguments into a different order.
- If you would like to read the entire Proposed Rule you can see it here:  
<https://www.federalregister.gov/documents/2020/06/15/2020-12575/procedures-for-asylum-and-withholding-of-removal-credible-fear-and-reasonable-fear-review>

## WAYS TO COMMENT - TAKE ACTION

**We are providing several ways for you to add your voice. All comments must be received by July 15, 2020:**

### Use the government's comment form

You can comment directly [here](#)

The character limit on the form is 5,000. You can also attach a PDF if your comment is longer. If you need help converting a document to PDF, we can do it for you.

**Use the CLINIC comment form**

Go to [this link](#) to customize CLINIC's comment

**Use the Tahirih Justice Center comment form**

They have created a comment template addressing the danger this proposed regulation poses on survivors of gender-based violence seeking asylum protections. You can use their form [here](#).

**Mail a letter to the Department of Homeland Security**

The letter must be **postmarked** by July 15, 2020.

**Address:**

Lauren Alder Reid, Assistant Director  
Office of Policy  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 1800,  
Falls Church, VA 22041

**BE SURE TO ADD, DELETE, OR MODIFY THE POINTS BELOW SO THAT YOUR LETTER IS UNIQUE.**

Dear Ms. Alder Reid

I submit this comment to oppose **DHS/EOIR; RIN 1125-AA94; EOIR Docket No. 18-0002** Notice of Proposed Rulemaking (NPRM)

- This NPRM will gut the American asylum system which has been a foundation of our society, offering protection to those escaping danger in their home countries
- The NPRM seeks to target the most vulnerable of individuals including women fleeing domestic violence and LGBTQ individuals fleeing oppressive and life-threatening situations
- The new rule would impose barriers at every stage of the process making it nearly impossible to obtain asylum
- The vast majority of asylum seekers will be turned away and returned to harm's way
- Due process is denied under this rule
- The regulation gives immigration judges and asylum officers great latitude in throwing out asylum requests as "frivolous" and to deny applications without a hearing.
- The asylum system will likely become available only to those with substantial means to obtain legal counsel

Sincerely,

**SIGN YOUR NAME**

**IT IS IMPORTANT TO PROVIDE YOUR CONTACT INFORMATION BECAUSE THEY HAVE TO RESPOND TO YOU.**

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Please send a copy of your comment to [ray@kitsapiac.org](mailto:ray@kitsapiac.org). It's important to us to know what you are saying.

Thank you and let us maintain hope that we can stop this tortuous attack on asylum.

Ray Garrido and Isis Goldberg