



## **Policy Brief: Proposed Asylum Rule Blocks Asylum Seekers from Humanitarian Protection**

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The Trump administration has proposed fundamental changes to the U.S. asylum system in the form of a regulation that would undermine the protections currently available to people who flee to the United States to escape persecution, torture, or even death in their home countries. The proposed rule, which is not yet final, would render ineligible for asylum entire categories of people who qualify under U.S. law for asylum and pose no risk to U.S. national security or public safety. Despite the sweeping nature of these changes, and their potentially life-or-death consequences for asylum seekers, the administration allowed only 30 days (rather than the usual 60) for public comment on the proposed rule. The short comment period notwithstanding, [AILA submitted comments](#) to the proposed rule.

### **The Asylum System Today**

The existing legal framework governing asylum was created by the Refugee Act of 1980. The purpose of the Act was to ensure that people who come to the United States seeking safety are not deported to countries where they will be persecuted or killed. At the same time, the current asylum system has stringent eligibility criteria already built into it to ensure someone who would pose a threat to public safety or national security is excluded. For example, existing criteria bar people who have committed an "aggravated felony" or a "particularly serious crime," as well as anyone who has engaged in terrorist activity or poses a danger to national security. In other words, the asylum system as it stands contains ample safeguards. The administration has not shown that the new restrictions in the proposed rule are necessary or more effective than the existing rigorous criteria for asylum.

### **The Regulation Would Penalize Asylum Seekers for Actions They Took to Flee Persecution**

*Illegal Reentry into the United States:* Central to U.S. asylum law is the principle, reflected in statute, that an asylum seeker can apply for asylum, even if he or she arrived in the U.S. in an irregular manner, including crossing a border illegally. The proposed rule attempts to change that, creating a bar to asylum for people who have been convicted of illegal reentry into the country. The administration maintains that this is justified because anyone seeking protection can come to a port of entry and ask for asylum without entering illegally. But in practice, the ports of entry are a wholly inadequate means for people to seek protection. Policies such as Remain in Mexico and the practice of metering require asylum seekers to wait days, weeks, or sometimes months in Mexico before they are permitted to ask for asylum. Rather than being allowed to request safe haven in the United States, they are often stranded in extremely dangerous

parts of Mexico with limited access to food, water, and shelter. Faced with such a grim prospect, some asylum seekers must resort to entering the U.S. illegally as their only way of finding safety.

**Harboring:** The proposed rule would punish family members who help their loved ones flee the same persecution they fled in their home countries. Under existing law, bringing people into the country illegally or "harboring" them once they are here are both considered serious crimes and constitute bars to asylum. Importantly, current law includes an exception for a first-time offense by individuals trying to help a spouse, child, or parent. The proposed rule would eliminate this exception and would therefore apply the harboring provision even to parents fleeing with their own children.



*Tents housing dozens of refugees seeking asylum trapped in Matamoros, Mexico, after requesting protection at the U.S. port of entry*

**Use of Fraudulent Documents:** The proposed rule would bar from asylum nearly everyone who has been convicted of using fraudulent documents—unless the person can prove that a fraudulent document was used to escape the country in which persecution was occurring, and if the person claims fear of persecution immediately upon arriving at a port of entry. These requirements are unreasonable given that most asylum seekers are unfamiliar with the requirements of the U.S. asylum system and may have been persecuted by police in their home countries, which might make them apprehensive of immediately sharing sensitive and personal facts when screened by uniformed and armed U.S. border officials.

### **The Regulation Would Create Excessive and Unnecessary Criminal Bars to Asylum**

The rule would subject asylum seekers to the harshest criminal bars in the history of immigration law.

**Any and All Felonies:** The proposed rule would bar from asylum anyone who has been convicted of any crime defined as a "felony" under federal or state law, or punishable by more than one year's imprisonment. This would apply even to relatively minor, nonviolent crimes such as shoplifting. Under the rule, a judge or asylum officer would have no leeway to consider *why* a person committed a particular crime, or whether or not that crime actually renders the person a risk to public safety.

**Alleged Criminal Street Gang Activity:** The rule would also bar from asylum anyone convicted of *any* crime whatsoever if the asylum adjudicator has "reason to believe" – a very low standard – the crime was committed in furtherance of criminal street gang activity. Even if the person in question was never convicted of a gang-related crime, the adjudicator could decide that the person was engaged in gang-related activity. Asylum adjudicators are not trained as experts in gang-related crimes.

***Charges Rather Than Convictions:*** Under the rule, asylum adjudicators could bar someone from asylum if he or she had been charged with "battery and extreme cruelty in a domestic context"—even if that person had never been convicted. This runs counter to the presumption of innocence.

***Expunged Convictions:*** The rule would allow asylum adjudicators to bar someone from asylum based on convictions that had been expunged or vacated by state courts. In other words, adjudicators could ignore the decisions of state courts.

### **Remaining Protections for Asylum Seekers Would be Insufficient**

If the proposed rule goes into effect, the remaining legal protections for asylum seekers would be grossly insufficient to protect them. While some victims of persecution may qualify for "withholding of removal" or for protection under the Convention Against Torture (CAT), it is much more difficult to qualify for these forms of relief than it is to qualify for asylum. In addition, the federal government reserves the right to remove people granted CAT or withholding of removal to third countries rather than letting them remain in the United States. Moreover, they are ineligible for lawful permanent residence and are blocked from bringing their family members to join them in the United States. In short, these forms of relief are no substitute for asylum, which the proposed rule would thoroughly undermine.