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Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

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The Departments of Justice and Homeland Security Publish Final Rule to Restrict Certain Criminal Aliens' Eligibility for Asylum

New Mandatory Bars Prevent Convicted Felons, Drunk Drivers, Gang Members, and Other Criminal Aliens from Receiving Asylum

Today, the Department of Justice and the Department of Homeland Security announced the publication of a Final Rule amending their respective regulations to prevent certain categories of criminal aliens from obtaining asylum in the United States. The rule takes effect 30 days after publication of the Final Rule in the Federal Register, which is scheduled to occur on Wednesday, Oct. 21.

Asylum is a discretionary immigration benefit that generally can be sought by eligible aliens who are physically present or arriving in the United States, irrespective of their status, as provided in section 208 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1158. However, in the INA, Congress barred certain categories of aliens from receiving asylum. In addition to the statutory bars, Congress delegated to the Attorney General and the Secretary of Homeland Security the authority to establish by regulation additional bars on asylum eligibility to the extent they are consistent with the asylum statute, as well as to establish "any other conditions or limitations on the consideration of an application for asylum" that are consistent with the INA.

To ensure that criminal aliens cannot obtain this discretionary benefit, the Attorney General and Secretary of Homeland Security have exercised their regulatory authority to limit eligibility for asylum for aliens who have engaged in specified categories of criminal behavior.

The new bars apply to aliens who are convicted of:

- (1) A felony under federal or state law;
- (2) An offense under 8 U.S.C. § 1324(a)(1)(A) or § 1324(a)(1)(2) (Alien Smuggling or Harboring);
- (3) An offense under 8 U.S.C. § 1326 (Illegal Reentry);
- (4) A federal, state, tribal, or local crime involving criminal street gang activity;
- (5) Certain federal, state, tribal, or local offenses concerning the operation of a motor vehicle while under the influence of an intoxicant;
- (6) A federal, state, tribal, or local domestic violence offense, or who are found by an adjudicator to have engaged in acts of battery or extreme cruelty in a domestic context, even if no conviction resulted; and
- (7) Certain misdemeanors under federal or state law for offenses related to false identification; the unlawful receipt of public benefits from a federal, state, tribal, or local entity; or the possession or trafficking of a controlled substance or controlled-substance paraphernalia.

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Aliens who have committed certain domestic violence offenses, even if not convicted, will also be barred from asylum.

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