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**Re: Comment on the Proposed Rule by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) on Circumvention of Lawful Pathways, CIS No. 2736-22; Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023**

Dear Acting Director Daniel Delgado and Assistant Director Lauren Alder Reid;

The National Partnership for New Americans (NPNA) and We Are All America (WAAA) submit this comment in response to the Department of Homeland Security (DHS) and Department of Justice (DOJ)'s [proposed rule](#) published in the Federal Register on February 23, 2023, that would ban forcibly displaced people and asylum seekers from protection in the United States and deprive refugees of the ability to reunite with their families and pursue a path to citizenship. The proposed rule is a new version of similar asylum bans promulgated by the Trump administration that were repeatedly struck down by federal courts as unlawful.

The asylum ban attempts to cut off access to asylum for many refugees at the southern border, discriminates against Black, Brown, and Indigenous asylum seekers, and seeks to circumvent U.S. law and treaty obligations to refugees. The National Partnership for New Americans (NPNA) and We Are All America (WAAA) strongly urge the agencies to withdraw the proposed rule in its entirety and stop pursuing asylum bans that advance the Trump administration's agenda and have been [welcomed](#) by anti-immigrant hate groups. The administration should instead uphold refugee law, restore full access to asylum at ports of entry and for those entering in between ports of entry, ensure fair and humane asylum adjudications, and rescind the Trump administration entry and transit bans in their entirety.

We recognize that the asylum system in the United States must undergo a complete transformation. However, there are a number of actions that can be taken to temporarily address the major issues it is facing: from allocating funding for asylum adjudication backlog reduction efforts at U.S. Citizenship and Immigration Services, to increasing resources to grow the scale and pace of refugee resettlement through programs like FEMA's Shelter and Services Program, both priorities part of a broader appropriations and administrative advocacy strategy at NPNA and WAAA. Our communities are eager to welcome refugees, but they cannot do it alone.

NPNA is a national multiethnic, multiracial coalition of 61 immigrant and refugee organizations across 40 states, that works together with its members to advance immigrant and refugee equity and inclusion policies; build and expand capacities around immigration legal services and inclusion programming; and drive campaigns that strengthen democracy through increased civic participation. Through the WAAA campaign we work to uphold and strengthen our nation's commitment to welcome and protect those seeking freedom, safety and refuge in the United States. We organize people across religious and cultural differences to build inclusive communities. For years, WAAA has led the emergence of an effective national organizing infrastructure to mobilize public support for people fleeing violence and persecution, counter nativist forces, and develop more welcoming policies and practices in this area at the federal and state levels.

We believe the transit ban is a death sentence for people who have been displaced from their homes and seek dignity and safety. Should this proposal go into effect, it would showcase the Biden Administration's violation of long-standing international law and is a shameful return to Trump-era policies that betray our values and longstanding commitment to welcome those seeking refuge.

### **The 30-Day Comment Period Provides Insufficient Time to Comment on the Rule**

The Biden administration has provided only 30 days for the public to comment on the proposed rule, effectively denying the public the right to meaningfully comment under the notice and comment rulemaking procedures required by the Administrative Procedure Act. This timeframe is insufficient for a sweeping proposed rule that would deny many people access to asylum in violation of U.S. law. On March 1, 2023, 172 organizations [wrote](#) to the agencies urging them to provide at least 60 days to comment on the complex 153-page rule that would have enormous implications for asylum access at the border and in USCIS and immigration court asylum proceedings.

Executive Orders 12866 and 13563 state that agencies should generally provide at least 60 days for the public to comment on proposed regulations. A minimum of 60 days is especially critical given the rule's attempt to ban asylum for many refugees in violation of U.S. law and

international commitments and return many to death, torture, and violence. While the agencies cite the termination of the Title 42 policy in May 2023 as a justification to curtail the public's right to comment on the proposed rule, this reasoning is specious especially given that the administration itself sought to formally end Title 42 nearly a year ago and has had ample time to prepare for the end of the policy.

Providing a 30-day comment period for the proposed asylum ban is reminiscent of Trump administration practices, when agencies routinely provided 30-day comment periods on sweeping asylum rules, leaving the public little time to meaningfully assess and respond to proposed rules.

A longer comment period would have allowed NPNA and WAAAs to gather more insight from directly impacted people to include in this comment. We have a network of hundreds of member and partner organizations who serve hundreds of thousands of individuals, but a limited time period prevents us from gathering many more stories from individuals seeking asylum and those who have experienced the system. The 30-day comment period overlapping with the USCIS fee rule comment period, appropriations season and the multiple instances immigrant and refugee serving organizations have had to do rapid response work in just over three months, creates even more challenges.

### **Overview of Proposed Rule**

The proposed rule bans refugees from asylum protection based on their manner of entry into the United States and transit through other countries, factors that are irrelevant to their fear of return and have no basis in U.S. law.

The rule would create a presumption of asylum ineligibility for individuals who 1) did not apply for and receive a formal denial of protection in a transit country; and 2) entered between ports of entry at the southern border or entered at a port of entry without a previously scheduled appointment through the CBP One mobile application, subject to extremely limited exceptions.

CBP One is an extremely flawed government tool to request an appointment at a port of entry that is inaccessible to many asylum seekers due to financial, language, technological, and other barriers, discriminates against Black and Indigenous asylum seekers, and has very limited appointment slots such that requiring asylum seekers to use the application essentially turns asylum access into a lottery. The proposed rule attempts to establish CBP One as the only mechanism to request asylum at the southern border and seeks to punish those who cannot wait indefinitely in danger while they attempt to schedule an appointment.

The asylum ban violates U.S. law, which ensures access to asylum regardless of manner of entry or transit and prohibits restrictions on asylum that are inconsistent with provisions in the U.S. asylum statute. [Members of Congress](#), [human rights advocates](#), [faith-based organizations](#), and many others urged the administration not to issue the proposed rule and voiced strong opposition to it when the administration announced its intention to publish it.

President Biden's February 2021 [Executive Order](#) promised to "restore and strengthen our own asylum system, which has been badly damaged by policies enacted over the last 4 years that contravened our values and caused needless human suffering." As a candidate, he [pledged](#) that his administration would not "deny[] asylum to people fleeing persecution and violence" and would end restrictions on asylum for those who transit through other countries to reach safety. The proposed rule blatantly contravenes these promises and attempts to instead deport refugees to danger based on manner of entry and transit in circumvention of existing refugee law and treaty obligations.

The asylum ban would apply in the fundamentally flawed expedited removal process as well as in full asylum adjudications before USCIS and the immigration court. Expedited removal is the process that allows the U.S. government to deport people arriving at the border without ever seeing an immigration judge if they do not express fear or do not pass a "credible fear" screening interview where they must show a significant possibility that they could establish asylum eligibility in a full hearing. In expedited removal, asylum seekers covered by the proposed rule would be required to gather the evidence and arguments necessary to "rebut the presumption of ineligibility" (i.e. prove they fall within one of the few exceptions to the rule). Those who fail to do so would be automatically subject to a higher screening standard (in violation of [U.S. law](#) governing credible fear interviews) and would face deportation to danger if they cannot pass the screening. Even those who do pass would be subject to the presumption of ineligibility in an immigration hearing and if barred from asylum would only be eligible for lesser forms of protection known as Withholding of Removal or Convention Against Torture (CAT) protection. These protections do not provide a pathway to citizenship, are subject to revocation at any time, and do not allow people to petition for their spouses and children.

The rule will also apply to immigrants in full asylum hearings before USCIS and the immigration court. In these proceedings, asylum seekers would be denied asylum if they cannot rebut the presumption of ineligibility, resulting in the deportation of many refugees and leaving others with only lesser forms of protection available to them.

### **The Asylum Ban Violates U.S. Law and Treaty Obligations**

The proposed rule contravenes U.S. law governing asylum access, expedited removal procedures, and prohibitions on the return of refugees to persecution and torture. Congress

passed the Refugee Act of 1980 to codify the United States' obligations under the Refugee Convention and Protocol.

The United States played a lead role in drafting the Refugee Convention in the wake of World War II. By later acceding to the Refugee Protocol, the United States promised to abide by the Convention's legal requirements, including non-discriminatory access to asylum, its prohibition against returning refugees to persecution, and its prohibition against imposing improper penalties on people seeking refugee protection based on manner of entry. The U.N. Refugee Agency (UNHCR) [previously warned](#), with respect to the Trump administration's entry and transit bans, that such asylum bans are not consistent with fundamental protections of refugee law, including the right to seek asylum, the principle of non-refoulement, and the prohibition against penalties for irregular entry. By denying asylum where an individual has not used certain limited migration pathways, the proposed rule attempts to unlawfully use the existence of lawful pathways as a justification to deny access to asylum at the border. UNHCR, IOM, and UNICEF recently [warned](#) that the provision of safe pathways "cannot come at the expense of the fundamental human right to seek asylum."

The Refugee Act of 1980 incorporated these principles into U.S. law. 8 U.S.C. 1158 provides that people may apply for asylum regardless of manner of entry into the United States. It also delineates limited exceptions where an asylum seeker may be denied asylum based on travel through another country, but these restrictions only apply where an individual was "firmly resettled" in another country (defined to mean the person was eligible for or received permanent legal status in that country) or if the U.S. has a formal "safe third country" agreement with a country where refugees would be safe from persecution and have access to fair asylum procedures. The statute prohibits the administration from issuing restrictions on asylum that are inconsistent with these provisions. 8 U.S.C. 1231 codified the prohibition against returning refugees to countries where they face persecution. The proposed rule, which conditions access to asylum on manner of entry and transit, would result in the return of refugees to danger and unequivocally contravenes these provisions of U.S. law.

In 1996, Congress created the expedited removal process through the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Under this process, asylum seekers placed in expedited removal who establish a credible fear of persecution [must be referred](#) for full asylum adjudications. The proposed rule attempts to unlawfully circumvent the credible fear screening standard established by Congress, which was [intended](#) to be a low screening threshold. The government is required to refer asylum seekers in expedited removal for full asylum adjudications if they can show a "significant possibility" that they could establish asylum eligibility in a full hearing. The proposed rule attempts to eviscerate this standard by first requiring asylum seekers to prove to an asylum officer by a preponderance of evidence that they can rebut the presumption of asylum ineligibility, and then requiring those who cannot overcome

the presumption to meet a higher fear standard before being permitted to seek protection. This provision is inconsistent with U.S. law.

The proposed rule also violates the Refugee Convention's prohibition against imposing improper penalties on asylum seekers based on their irregular entry into the country of refuge. The agencies explicitly note that the asylum ban would inflict "consequences" on people seeking asylum – a blatant attempt to punish people based on their manner of entry into the United States. These consequences could include the denial of access to asylum, deportation to harm, family separation, and deprivation of a path to naturalization. With respect to the Trump administration's entry ban, UNHCR has [stated](#) that "[n]either the 1951 Convention nor the 1967 Protocol permits parties to condition access to asylum procedures on regular entry."

The proposed asylum ban violates these key provisions of U.S. law and treaty commitments. Indeed, similar Trump administration asylum bans targeting refugees at the border based on manner of entry and transit were vacated and enjoined by federal courts for violating these provisions of U.S. law, as discussed below. In 2021, when the Biden administration first considered adopting an asylum ban, legal counsel for the White House [warned](#) that it could be struck down as illegal for the same reason that federal courts struck down the Trump administration bans. Nonetheless, the agencies have decided to proceed with this patently illegal policy.

Protecting access to asylum and advocating for the rights of asylum seekers is part of the core of our work. Our collective field represents the largest national grassroots organizing effort on behalf of refugees and asylees in the nation. This rule would make it impossible for people traveling through a third country to claim asylum and would put thousands of people vulnerable to the unsafe living conditions happening at the border.

### **Resurrecting Illegal Policies Used By the Last Administration to Ban Asylum Seekers**

The proposed rule is a new iteration of similar asylum bans the Trump administration attempted to advance. Those bans, which similarly barred refugees from asylum protection based on manner of entry and transit, were [repeatedly struck down](#) by federal courts as unlawful. The Trump administration's transit ban, which was in effect for a year before it was vacated, [inflicted](#) enormous damage including deportation of refugees to harm, separation of families, and prolonged detention. This proposed rule would similarly be wielded to deny refugees asylum and block and rapidly deport refugees without access to asylum hearings through expedited removal, resulting in the same horrific harms.

Despite the Biden administration's attempts to distinguish its proposed rule from the previous administration's, it would similarly operate as an asylum ban for refugees based on factors that

do not relate to their fear of return and would result in asylum denials for all who are unable to establish that they qualify for the extremely limited exceptions. Its use in expedited removal will require asylum seekers—many of whom have suffered persecution and violence and underwent a harrowing journey to reach safety—to prove that the rule does not apply to them in a credible fear interview shortly after arrival in the United States, while detained and with little to no access to counsel, likely without knowledge of how the rule works or what they need to prove.

### **Asylum Ban Would Disparately Harm Black, Brown, and Indigenous Asylum Seekers**

This rule discriminates against asylum seekers based on manner of entry and transit and will have a racially disparate impact on asylum seekers from Africa, the Caribbean, and Latin America. The proposed ban, which applies only to people who seek protection at the southern border, will disproportionately harm people of color who do not have the resources or ability to arrive in the United States by plane.

The United States and other countries employ [visa regimes](#) to prevent people from reaching their countries' territories to seek asylum while often allowing access to people from wealthier and predominantly white nations. Imposing a ban on refugees seeking safety at the southwest border will, like the Trump third-country transit ban, disproportionately harm people of color who must undertake an often difficult and dangerous journey to arrive in the United States by way of the southern border. During the period that the Trump transit ban was implemented, immigration court asylum denial rates [skyrocketed](#) for many Black, Brown, and Indigenous asylum seekers requesting safety at the southern border. For instance, asylum grant rates declined by 45 percent for Cameroonian asylum applicants, 32.4 percent for Cubans, 29.9 percent for Venezuelans, 17 percent for Eritreans, 12.9 percent for Hondurans, 12 percent for Congolese (DRC), and 7.7 percent for Guatemalans from December 2019 to March 2020, compared to the year before the third-country transit asylum ban began to affect refugee claims, according to data analyzed by Syracuse University's Transactional Records Access Clearinghouse.

Additionally, as discussed below, requiring asylum seekers to use CBP One to seek asylum at the border disparately harms Black asylum seekers due to racial bias in its facial recognition technology and is inaccessible to many Indigenous, African, and other asylum seekers due to language barriers. This proposed asylum ban will significantly thwart the Biden administration's stated [commitment](#) to racial justice and equity.

The ban also builds in nationality-based discrimination in access to asylum, as it largely bans asylum for people who do not enter the United States via limited parole initiatives or previously scheduled appointments at ports of entry while simultaneously only affording limited access to parole initiatives for certain nationalities. For instance, while there are currently limited parole initiatives for some nationalities, there are no similar parole initiatives for people from

Guatemala, Honduras, and El Salvador — and recent [reporting](#) has indicated the Biden administration plans to wield the asylum ban against these nationalities.

No one wants to leave their home. This is a recurring phrase uttered by displaced people, most of whom were forced to leave their country of origin due to war and on-going violence. Within the NPNA and WAAA network, we have close colleagues and organizers who have shared their lived experiences with us regarding fleeing persecution. One of our colleagues, Naveed, is an asylum-seeker from Afghanistan who has been awaiting his asylum hearing in the U.S. for several months. This month, Naveed spoke upon his experience with having to flee his home country, and anxiously awaiting for the day he can be reunited with his family who is still in Afghanistan. In addition, our National Campaign Director, Basma Alawee, spoke about her experiences with being forced to leave her home country of Iraq several years prior when her husband started to become a target for political factions back home.

### **Requiring Refugees at the Southwest Border to Use CBP One Denies Asylum Access to the Most Vulnerable Refugees**

The rule requires asylum seekers at the southwest border to schedule appointments through the CBP One app and would generally deny asylum to refugees who arrive at a border port of entry without a previously scheduled appointment and were not denied protection in a transit country. CBP One is impossible for [many asylum seekers to access or use](#), including those who do not have the resources to obtain a smartphone or ability to navigate the app. The app is not available in most languages—including Indigenous languages—and all error messages are in English, barring many asylum seekers from using the app. It also disparately harms [Black asylum seekers](#) due to racial bias in its facial recognition technology, which has [prevented](#) many from obtaining an appointment. Asylum seekers who can access and navigate the app are still often unable to schedule appointments due to extremely limited slots and are forced to remain in danger indefinitely. Requiring refugees to use CBP One at the southwest border also raises concerns that the system will be used for [illegal metering](#) (based not on wait time but on luck, technology skills, or resources to secure an appointment — turning asylum access in effect into a lottery).

Requiring asylum seekers to schedule an appointment through CBP One has already resulted in horrific violence and death, including the [murder](#) of a 17-year-old Cuban child in Mexico who was required to wait weeks for an appointment. A [Venezuelan family](#) unable to secure an appointment at a port of entry near them in Piedras Negras and forced to travel over 1200 miles to another port of entry for an appointment was kidnapped, tortured, and extorted by a criminal group while traveling to their appointment. After 20 days, their abductors blindfolded them and brought them to the U.S.-Mexico border, threatening to murder them if they did not cross. After crossing, the family tried to explain to Border Patrol that they had been kidnapped and forced to



cross, but agents told them they were criminals for crossing illegally and expelled them back to Mexico.

By requiring people at the southwest border to use CBP One, the proposed rule would leave many vulnerable asylum seekers in grave danger, including LGBTQI+ asylum seekers, women, and survivors of gender-based violence. Asylum seekers unable to secure appointments through the CBP One app will be forced to remain indefinitely at the border in dangerous conditions, often with no access to safe housing or stable income as they continue to try to make an appointment. These conditions increase the [likelihood](#) that they will be targeted for violence by cartels, traffickers, and the abusers from which they initially fled. Many LGBTQI+ asylum seekers and families and other vulnerable populations have already been unable to secure appointments through CBP One, leaving them in extreme danger.

Requiring asylum seekers to use the CBP One app will also separate families. The administration's use of the CBP One app and denial of access to asylum for people who cannot schedule appointments through the app has already [forced](#) families to separate. Families unable to secure CBP One app appointments together as a family unit have made the impossible choice to send their children across the border alone to protect them from harm in Mexican border regions. Like the Title 42 policy and other policies that block, ban, and deny asylum to refugees, this proposed rule would fuel family separations at the border.

### **Deportation of Refugees to Danger**

If implemented, the asylum ban would lead to the deportation of refugees to countries where they are at risk of persecution and torture. The rule largely bans asylum for refugees based on their manner of entry into the U.S. and travel through other countries—factors that are irrelevant to their fears of return and will lead to denials of asylum for refugees. Refugees who are otherwise eligible for asylum but banned by the rule would likely be deported to danger.

While the Trump administration's transit ban was in effect, asylum seekers were denied all relief and ordered deported due to the ban, [including](#) a Venezuelan opposition journalist and her one-year-old child; a Cuban asylum seeker who was beaten and subjected to forced labor due to his political activity; a Nicaraguan student activist who had been shot at during a protest against the government, had his home vandalized, and was pursued by the police; a gay Honduran asylum seeker who was threatened and assaulted for his sexual orientation; and a gay Nicaraguan asylum seeker living with HIV who experienced severe abuse and death threats on account of his sexual orientation, HIV status, and political opinion.

Many asylum seekers were summarily ordered deported through expedited removal without an asylum hearing due to the transit ban, [including](#) Indigenous asylum seekers fleeing gender-based

and other persecution in Guatemala and a Congolese woman who had been beaten by police in her country when she sought information about her husband, who had been jailed and tortured due to his political activity.

### **Use of Asylum Ban in Expedited Removal Will Fuel Mass Deportations, Due Process Violations**

Like the Trump administration, the Biden administration plans to implement this asylum ban in the expedited removal process, where asylum seekers would be deported without an asylum hearing if they do not pass their fear screenings. Asylum seekers would be required to show that the asylum ban does not apply to them or that they can rebut the presumption of ineligibility, which will be impossible for many given that these screenings typically occur over the phone while asylum seekers are detained, with little to no access to counsel. Language barriers, abusive and dangerous conditions of confinement, acute trauma, and lack of knowledge of the requirements of this complex rule would make it extremely challenging for asylum seekers to overcome this ban in preliminary screenings. Many would be unable to prove to an asylum officer that they should not be banned by the rule.

These due process violations would be magnified if the administration pursues its reported plan to conduct credible fear interviews within days of asylum seekers' arrival in Customs and Border Protection (CBP) custody, where dire conditions and lack of access to counsel would exacerbate the due process nightmare. The Trump administration similarly conducted credible fear interviews in CBP custody through the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) programs, which the Biden administration [ended](#). Resurrecting this policy and imposing the asylum ban in these fear screenings would be a due process fiasco.

Asylum seekers detained in CBP custody [have frequently reported](#) being provided insufficient or inedible food and water; lack of access to showers and other basic hygiene; and inability to sleep because of overcrowding, lack of adequate bedding, cold conditions, and lights that are kept on all night. For asylum seekers subjected to PACR and HARP, positive credible fear determinations [plummeted](#): only 18 percent of individuals in PACR and 30 percent in HARP passed their screenings, compared to 40 percent nationwide (excluding HARP and PACR) during the same period.

Asylum seekers who are banned by the rule during their credible fear interviews would have to meet a heightened screening standard in order to access immigration court hearings, and would be subject to deportation if they cannot pass the screening. As discussed above, the proposed rule's attempt to illegally elevate the credible fear standard established by Congress violates the statute and Congressional intent in setting a low screening threshold.

## **Proposed Rule Attempts to Eviscerate Critical Safeguards in the Expedited Removal Process**

In addition to imposing an asylum ban during the credible fear process, the proposed rule would eliminate critical safeguards for asylum seekers who receive negative credible fear determinations because they are barred under the rule. It would 1) deprive asylum seekers of the right to immigration court review of negative credible fear determinations where they do not affirmatively request review and 2) eliminate asylum seekers' ability to request USCIS reconsideration of negative credible fear determinations. These changes would apply to all asylum seekers banned under the rule and would accelerate their wrongful deportation to harm.

The proposed rule would change existing regulations to deny asylum seekers immigration court review of negative credible fear determinations if they do not affirmatively request review. This provision would apply to asylum seekers issued negative credible fear determinations due to the asylum ban. Immigration court review of negative credible fear determinations is a crucial safeguard guaranteed by [statute](#); from Fiscal Years 2018 to 2021, for instance, over a quarter of credible fear determinations were [reversed](#) through immigration court review. In its December 11, 2020 "death to asylum" rule, the Trump administration previously [imposed](#) a similar hurdle on asylum seekers, depriving them of immigration court review of credible fear decisions where they did not affirmatively request review, a change that the Biden administration [reversed](#) in the May 31, 2022 asylum processing rule. In reversing the Trump administration regulation, the agencies [explained](#) that "treating any refusal or failure to elect review as a request for IJ review, rather than as a declination of such review, is fairer and better accounts for the range of explanations for a noncitizen's failure to seek review." Despite the agencies' conclusion less than a year ago, they now seek to deprive asylum seekers of the right to immigration court review where they do not affirmatively request it.

Requiring asylum seekers to affirmatively request review of negative credible fear determinations creates an additional hurdle for asylum seekers, the vast majority of whom are unrepresented during the credible fear process, while they navigate an already convoluted process that carries potentially deadly consequences if they cannot seek review of a wrongful negative credible fear determination. Due to language and other barriers, asylum seekers may not understand the requirement to affirmatively request immigration court review.

The proposed rule also attempts to entirely eliminate asylum seekers' longstanding right to submit requests to USCIS to reconsider erroneous negative credible fear determinations if they are barred under the rule. This safeguard has, for decades, [shielded](#) many refugees from deportation to persecution and torture. According to data provided in the asylum processing rule, between FY 2019 to FY 2021, USCIS reconsideration of erroneous negative credible fear

determinations saved at least 569 asylum seekers from deportation to persecution or torture without an opportunity to apply for asylum.

In the asylum processing rule, the agencies imposed severe limitations on asylum seekers' ability to submit requests for reconsideration of negative credible fear determinations, setting an unworkable seven-day deadline for submitting a request for reconsideration (following immigration judge review, which must happen within seven days of the fear determination) and limiting asylum seekers to a single request. Advocates and attorneys have condemned these new restrictions, which have [barred](#) asylum seekers issued erroneous negative credible fear determinations from obtaining reconsideration due to draconian temporal and numerical restrictions. UNHCR [has opposed](#) elimination of this safeguard and warned that it may increase the risk of refoulement. Rather than fully restoring the right to request reconsideration, the agencies now seek to eliminate it completely for asylum seekers who are determined during their credible fear screenings to be banned under the proposed rule. This provision would prevent many asylum seekers wrongly found to be banned under the rule from subsequently presenting evidence to USCIS that they should have been exempted or qualified for an exception, which would especially harm unrepresented asylum seekers rushed through the credible fear process without any meaningful opportunity to present their claim.

### **The Proposed Rule Would Leave Refugee Families Separated, Deprive Refugees of a Path to Citizenship**

Refugees banned from asylum protection under the rule would have to establish eligibility for Withholding of Removal or protection under CAT to obtain protection from deportation. Those who are otherwise eligible for asylum but are unable to meet the higher threshold to establish eligibility for withholding of removal or CAT protection would be deported, while many granted these lesser forms of protection would be left in permanent limbo, separated from families, and under constant threat of deportation. Unlike asylum, these forms of relief do not confer permanent status or a path to citizenship, do not allow people to petition for their spouses and children, do not permit people to travel abroad, and leave people with a permanent removal order, subject to deportation at any time.

As a result, many refugees who should be granted asylum under U.S. law will languish in the United States in legal limbo, indefinitely separated from spouses and/or children who remain abroad in danger. The Trump administration's transit ban similarly left many refugee families separated by barring refugees from asylum and leaving them with the inadequate protection of withholding of removal. Under the Trump transit ban, refugees denied asylum due to the transit ban and granted withholding of removal faced potentially permanent separation from their spouses and children, [including](#): an Anglophone Cameroonian refugee who was brutally tortured by the Cameroonian military and could not reunify with his wife and child, who were in hiding

in Cameroon because of the threats they faced; a Cuban musician and critic of the government who was jailed and beaten and could not petition for his wife and two children who remained in Cuba; and a Venezuelan refugee who fled after being detained and tortured and could not reunify with his three children who lived in Venezuela.

Exceptions in the proposed rule that promote family unity where refugee families travel to the United States together will not prevent the separation of families where spouses and children remain abroad. Like the Trump transit ban, this asylum ban would leave refugee families indefinitely separated.

### **Asylum Seekers are Unsafe in Transit Countries, Without Access to Meaningful Protection**

The proposed rule attempts to require many refugees to seek asylum in transit countries that have no formal agreement with the U.S. and where refugees would not be safe or have access to meaningful asylum procedures, thereby circumventing U.S. law requirements for safe third countries. In Mexico, which would be a transit country for non-Mexican asylum seekers at the southern border, refugees face life-threatening harms. There have been over [13,000](#) attacks reported against asylum seekers and migrants stranded in Mexico under the Title 42 policy over the past two years alone and refugees do not have access to fair asylum procedures in Mexico, where many are at [risk of deportation](#) to persecution in their home countries. Black asylum seekers and migrants face [pervasive](#) anti-Black violence, harassment, and discrimination, including widespread abuse by Mexican authorities.

[El Salvador](#), [Honduras](#), and [Guatemala do not](#) have functional asylum systems that can protect large numbers of refugees and many transiting through these countries face extreme dangers including gender-based violence, anti-LGBTQI+ attacks, race-based violence, and other persecution.

The proposed rule will have a devastating impact on women and LGBTQI+ people who are particularly vulnerable to gender-based violence (GBV) and other persecution. It is [well-documented](#) that countries of transit that survivors of GBV pass through while trying to reach the southern U.S. border provide very little if any true protection even when they are granted asylum there. Women and LGBTQI+ asylum seekers face enormous dangers in many countries of transit, including Mexico and Central American countries, and would be at risk of persecution on the basis of the same immutable characteristics that led them to flee their home countries. Applying and waiting for review of their asylum claims in these countries prolongs survivors' perilous journeys in search of safe haven.

### **Conclusion**

The proposed rule is illegal, inhumane, and discriminatory. Like the Trump administration's entry and transit bans, this asylum ban will deport refugees to persecution and torture and separate families. The proposed rule also requires asylum seekers at the border to use a discriminatory and deficient mobile app that is contingent on resources, language skills, and an ability to wait indefinitely for an appointment slot, cutting off asylum access for many of the most vulnerable asylum seekers.

NPNA and WAAA call on the administration to withdraw this rule in its entirety, stop punishing migrants arriving at the U.S. southern border, and instead allocate resources toward humane asylum processing and fair adjudications. When we implement immigration policies that prioritize treating people with dignity, compassion and respect for their human rights, we can strengthen our multi-ethnic and multi-racial democracy where immigrants, refugees and all people can reach their full potential and contribute to our nation's brightest future. We urge the administration to take a humane and inclusive approach instead of doubling down on failed and callous policies from the previous administration.