



Seattle
Office of Immigrant and
Refugee Affairs
Hamdi Mohamed, Director

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Samantha L. Deshommès
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, D.C. 20529-2140

RE: DHS Docket No. USCIS 2023-03718; RIN 1125-AB26, 1615-AC83 Circumvention of Lawful Pathways

Dear Division Chief Deshommès:

The City of Seattle Office of Immigrant and Refugee Affairs (“OIRA”) respectfully submits this comment opposing the proposed Department of Homeland Security (DHS) and Department of Justice (DOJ) proposed rule titled “Circumvention of Lawful Pathways” (“Rule”) published on February 23, 2023. OIRA believes the proposed policy may have unintended harmful consequences and potentially catastrophic impacts on individuals who are seeking refuge from dangerous and terrifying situations.

I. As a Welcoming City, the City of Seattle Office of Immigrant and Refugee Affairs has significant interest in the proposed Rule.

The estimated total population of Seattle is 730,400 people, and of those, the latest United States Census statistics estimate that 18 percent, or around 131,472 individuals, are foreign-born.¹ Twenty-four percent of King County residents were born outside the United States, significantly higher than the national average of 14 percent. Of these immigrants, the majority contribute to Seattle’s economy, whether by starting successful small and large businesses, paying taxes, or working in one of the many local industries that support both the local and the national economies.

Due in large part to the above statistics, and because Seattle embraces its identity as a Welcoming City, the City of Seattle manifests its core value of providing infrastructure, goods, and services for all residents, but especially for vulnerable, disabled, and marginalized people who are integral parts of our families and communities. The government of Seattle has made great efforts to protect our

¹ See: <https://www.census.gov/quickfacts/fact/table/seattlecitywashington,US/PST045217>

immigrant and refugee workers and residents. Such efforts include executive orders², resolutions³, and ordinances⁴ to ensure immigrants feel welcome and safe in the city. The City has also funded social programs to help income-eligible residents with what we consider to be basic needs. In 2012, the City created the Office of Immigrant and Refugee Affairs to improve the lives of Seattle's immigrant and refugee families. The City of Seattle, through OIRA, funds and coordinates the Legal Defense Network (LDN) that provides ongoing full direct representation to over 150 low-income residents, students and workers of Seattle, Washington at any given time. As a Welcoming City that respects and upholds the American value of welcoming immigrants, we oppose the proposed rule.

II. We recommend the Agencies extend the comment period for the Notice of Proposed Rulemaking (NPRM) beyond 30 days.

To enable a comprehensive review of the proposed rule, we recommend that the Biden administration extend the comment period beyond the current 30-day timeframe. The proposed rule is complex, making a longer period of review necessary to ensure meaningful public input.

[Executive Order 12866](#), which the Biden administration recognizes, emphasizes the importance of providing the public with a meaningful opportunity to comment on proposed regulations, with a recommended minimum comment period of 60 days. However, the current NPRM is nearly 50 pages long and includes sweeping new restrictions, while only allowing for a 30-day comment period. This may not provide the public with sufficient time to fully understand the proposed changes and respond thoughtfully.

It's worth noting that each of the proposed changes to the asylum rules may require a 60-day comment period to facilitate thorough research and analysis. Moreover, the NPRM incorporates multiple, unrelated changes issued in a single document, further underscoring the need for an extended comment period.

If the proposed rule is not rescinded, we strongly recommend reissuing it with a comment period of at least 60 days. This will provide the public with sufficient time to review and provide comprehensive comments, in accordance with Executive Order 12866. This approach will also ensure that the most vulnerable individuals are not subject to decision-making that could have life-altering consequences.

III. The U.S. should instead be improving access to asylum, as we call for a reevaluation of the proposed rule to ensure compliance with U.S. and international law.

The United States has a strong history of upholding the rights of asylum seekers. However, it appears that the proposed rule may not align with this commitment and established U.S. law.

² See: http://murray.seattle.gov/wp-content/uploads/2016/11/Executive-Order-2016-08_Welcoming-City.pdf

³ See:

<http://clerk.seattle.gov/~scripts/nphbrs.exe?s1=&s3=&s2=&s4=Ordinance+121063&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=RESNY &Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2Fresny.htm&r=7&f=G>

⁴ See:

<http://clerk.ci.seattle.wa.us/~scripts/nphbrs.exe?d=CBOR&s1=114436.cbn.&Sect6=HITOFF&l=20&p=1&u=/~public/cbor2.htm&r=1&f=G>

Ensuring unobstructed access to our asylum system for individuals, regardless of their entry method, is essential.

Under current U.S. law, anyone physically present or arriving in the United States has the right to apply for asylum, regardless of their status or port of entry. The exception to this rule is limited and applies only if the safe third country has a fair and comprehensive asylum system, and the asylum seeker's life or freedom is not threatened on a protected ground. However, the conditions in Mexico, Guatemala, Honduras, and El Salvador remain highly dangerous, and their asylum systems do not provide a fair and meaningful review of asylum claims.

Our office believes that individuals should have unrestricted access to our asylum system, as they flee terror and persecution, and that we should only limit this right in exceptional circumstances, as required by law.

IV. We request reconsidering the proposed policy to prevent unintended harm and risks for children, LGBTQIA+ migrants, and family separation.

Providing ample and equal opportunities for children and families to request protection is essential, to prevent them from being sent back to the same dangers they fled from. Migrants are also at risk of harm while waiting for appointments with Customs and Border Protection (“CBP”) in Mexico. The consequences of requiring asylum seekers to wait outside of the country have been horrific; a December 2022 Human Rights First report tracked at least 13,480 violent attacks against migrants and asylum-seekers trapped in or expelled to Mexico.⁵ LGBTQIA+ migrants waiting to enter the U.S. face an additional risk of homophobic violence, including rape, torture, and murder, as well as homelessness and lack of medical care.⁶

To prevent family separation and alleviate the emotional trauma of children, it is recommended to reconsider the rule that makes it harder for families to cross the border together with their children. This ban forces some families to send their children unaccompanied, as unaccompanied children are not subject to the ban. Research shows that family separation causes significant mental distress and trauma to children.^{7 8}

The impact of this policy may be significant for Seattle, as many unaccompanied minors living in the area are at risk of severe mental health issues due to family separation and the dangerous journey to the U.S.-Mexico border. When they age out of facilities, they often lack access to supportive public services and a support system. It's essential to ensure that all children, regardless of their status or

⁵ “Title 42: “Human Rights Stain, Public Health Farce,” Human Rights First, December 2022, <https://humanrightsfirst.org/library/title-42-human-rights-stain-public-health-farce/>.

⁶ Teodoro Garcia, LGBTQ Asylum Seekers Still Facing Grave Dangers Due To Title 42, Human Rights First, Aug. 12, 2022, <https://humanrightsfirst.org/library/lgbtq-asylum-seekers-still-facing-grave-dangers-due-to-title-42/>.

⁷ See: <https://www.researchgate.net/profile/Kristina-Lovato/project/The-Impact-of-Deportation-Related-Family-Separations-on-the-Well-Being-of-Latinx-Children-and-Youth-A-Review-of-the-Literature/attachment/5c32d8ec3843b006754eeec1/AS:712296821178370@1546836204769/download/Literature+Review.pdf>

⁸ See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8612557/>

home country, have the support of their families. This support network can help them succeed and reduce their need for costly emergency services.

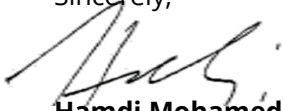
V. The conditions under which asylum seekers may still request asylum under the rule, including the mandatory implementation of a mobile device application are so limited as to make nearly all asylum seekers ineligible to apply for asylum.

We believe the rule may cause confusion at ports of entry and exacerbate backlogs in immigration courts. Asylum-seekers are only able to submit necessary information to CBP through the “CBP One” mobile application, which has limited availability and is inaccessible to those with limited English proficiency or no access to smartphones or the Internet. This puts many at risk of being turned away by CBP. The previous Trump Transit Ban demonstrated how convoluted rules can create confusion and backlog in immigration courts. Streamlining the process and providing alternative means of submitting information could alleviate these issues.

VI. In conclusion, OIRA recommends rescinding or reconsidering the proposed rule to protect asylum seekers from returning to danger in transit countries or their country of origin.

We recommend that the Biden administration and Congress proactively consider alternative options, such as temporary protected status and humanitarian parole, to bolster the humanitarian protections for asylum seekers as Title 42 ends. By implementing these measures, we can ensure that individuals seeking refuge receive the protection they need while also upholding our nation's values. It is crucial that these programs are founded on empathy, due process, racial equity, and our legal obligations under international agreements. We look forward to partnering with you and hope that you provide the necessary resources to enable local governments to welcome asylum-seekers and other migrants seeking refuge.

Sincerely,



Hamdi Mohamed, Director

Office of Immigrant and Refugee Affairs

City of Seattle

hamdi.mohamed@seattle.gov

(206) 233-3886