July 15, 2020

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

Office of Information and Regulatory Affairs,  
Office of Management and Budget,  
725 17th Street NW, Washington, DC 20503;  
Attention: Desk Officer, U.S. Citizenship and Immigration Services, DHS

RE: RIN 1125-AA94 or EOIR Docket No. 18-0002, Public Comment Opposing Proposed Rules on Asylum, and Collection of Information OMB Control Number 1615-0067

The Columban Center for Advocacy and Outreach submits this comment urging the Department of Justice (DOJ) and Department of Homeland Security (DHS) to withdraw these proposed rules in their entirety. Asylum is a lifeline for tens of thousands of vulnerable refugees, and these proposed regulations violate the United States’ responsibilities under domestic and international law. Just as importantly, these rules, which would eliminate asylum for the vast majority of asylum seekers, are morally wrong—if these rules are published as written, the United States will cease to be a leader in providing humanitarian protection to the most vulnerable.

As the US-based advocacy office representing the Missionary Society of St. Columban, the Columban Center for Advocacy and Outreach stands in solidarity with marginalized people whom Columban missionaries serve in 16 countries throughout the world. Since our founding as a Catholic missionary society over 100 years ago, we have “welcomed the stranger” (Matthew 25: 31-46) in our communities and defended the rights of migrants and refugees everywhere. In the United States specifically, we have accompanied and served asylum-seekers arriving at the U.S.-Mexico border for over 25 years.

As a Catholic organization, we believe our moral standing as a society can be measured by our actions toward the most vulnerable. Through our long-established ministry on both sides of the U.S./Mexico border, Columbans have seen the deeply traumatizing impacts of harsh border enforcement and severe limits on access to protection on asylum seekers and their families.

We see firsthand the challenges people arriving at the southern border are facing due to current restrictive asylum policies, including the Migrant Protection Protocols (MPP), Prompt Asylum Case Review (PACR), Humanitarian Asylum Review Process (HARP), and metering. These restrictions trap people in life-threatening situations. From this experience, we know that solutions do not lie in further restrictions on access to protection, such as in this proposed rule, but rather in sustainably addressing root causes of migration and upholding access to asylum.

“

“A life unlike your own can be your teacher.” – St. Columban
As Columban missionaries working on both sides of the Mexican border, in El Paso, TX as well as Ciudad Juarez, Mexico, we are involved in the following efforts:

- expanding access to safe shelter space for those forced to wait in Mexico,
- coordinating transportation for asylum-seekers to ensure people have a safe way to return to ports of entry for their hearings,
- coordinating donations and resources for waiting asylum-seekers,
- assisting asylum-seekers in accessing Mexican work permits and limited healthcare,
- and providing emotional and spiritual support as families navigate increasingly complex decisions.

We believe that all human life is sacred, and that all persons should be treated with dignity, regardless of immigration status. When human life is under attack from war, violence, or persecution, our faith calls us to welcome people into the safety of our own homes. Fr. Timothy Mulroy, Society Leader of the Missionary Society of St. Columban, reminds us that “Christian churches have always been places of refuge.”

We submit this comment based on our experiences as a direct humanitarian service provider at the U.S./Mexico border. Overall, the proposed rules would result in virtually all asylum applications being denied, by removing due process protections, imposing new bars, creating sweeping categories of mandatory discretionary denials, and heightening legal standards.

For all these reasons, we strongly object to the substance of the proposed rule and urge the administration to rescind it in its entirety.

We urge DOJ and DHS to follow the example of people of faith and faith-based organizations that have consistently welcomed and supported those seeking asylum by immediately rescinding this proposed rule. It is not a crime to seek asylum. This proposed rule not only endangers the lives of asylum seekers but also the credibility of our asylum system itself and our international leadership as a beacon of hope to refugees from around the world.

Furthermore, because these regulations cover so many topics, we are not able to comment on every proposed change. The fact that we have not discussed a particular change to the law in no way means that we agree with it—we oppose these regulations in their entirety and call upon the agencies to withdraw them.

Below are the reasons we object to the proposed changes:

**8 CFR § 1208.13 (e)—The Proposed Rule Would Deprive Asylum Seekers of Their Day in Court**

Section 8 CFR § 1208.13 (e) would allow immigration judges to deny asylum to asylum seekers without even allowing them a hearing or chance to testify, if judges determine, on their initiative or at the request of a DHS attorney, that the application form does not adequately make a claim.

This proposal callously disregards the realities of people seeking protection. Many asylum seekers, especially those who are unrepresented and those who are detained, struggle to complete the 12-page asylum application form at all. Columbans in Mexico accompany some of the most vulnerable asylum seekers such as mothers and children, those without any resources, and the deeply traumatized. Many asylum-seekers are unable to meet their basic needs after difficult
journeys. Columbans work to fulfill these basic needs such as shelter, food, and healthcare while at the same time often acting as unofficial interpreters (as all forms provided by Customs and Border Protection are in English) and accompaniers as asylum seekers navigate the complex application process. The majority of asylum-seekers Columbans accompany move through the process without legal representation, which immediately puts them at a severe disadvantage under this proposed change.

Asylum seekers are often not well-versed in the complexities of the U.S. asylum system and cannot be expected to lay out every element of their asylum claims in the application before arriving in court. Allowing immigration judges to deny asylum cases without even taking any testimony or looking beyond the asylum application would inevitably lead to meritorious cases being denied and vulnerable asylum seekers being returned to harm.

**8 CFR § 208.1(c); 8 CFR § 1208.1(c)—The Proposed Rule Will Make it Virtually Impossible to Prevail on a Particular Social Group Claim**

Applicants for asylum and withholding of removal are legally required to demonstrate that the persecution they fear is on account of a protected characteristic: race, religion, nationality, membership in a particular social group (PSG), or political opinion. INA § 101(a)(42). These regulations would essentially make it impossible for asylum seekers, especially those from Central America and Mexico, to win protection based on particular social group membership.

An asylum seeker’s life should not be dependent on an applicant’s ability to expertly craft arguments in the English language in a way that satisfies highly technical legal requirements; the asylum officer or immigration judge has a duty to help develop the record. It would be unconscionable to send an applicant back to persecution for failure to adequately craft PSG language. Applying this proposed regulation to asylum seekers, including unrepresented individuals, would raise serious due process issues.

**8 CFR § 208.13; 8 CFR § 1208.13—The Proposed Rule Imposes a Laundry List of Anti-Asylum Measures Under the Guise of “Discretion”**

For decades, the United States has recognized the unique situation of asylum seekers and found that “the danger of persecution should generally outweigh all but the most egregious of adverse factors.” *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987). The proposed rule would turn on its head years of jurisprudence to deny most asylum applications on discretionary grounds and severely limiting the actual discretion adjudicators exercise.

Specifically, under the proposed rules, any asylum seeker who enters or attempts to enter the United States without inspection could be denied asylum as a matter of discretion. Additionally, the rule would add another bar, preventing most refugees who spent 14 days in any country en route to the United States from qualifying for asylum. This change would disqualify most asylum seekers who travel through Mexico where the administration blocks asylum seekers, forcing them to wait for months to request protection at ports of entry. These rules place asylum seekers in an impossible position where they will be denied asylum if they wait on the “metering” lists at a port of entry but will also be denied asylum if they cross the border in order to make their requests for protection.
Due to our work responding to the needs of asylum seekers subjected to current restrictions on accessing asylum, Columbans know first-hand the resulting challenges faced by both asylum-seekers and humanitarian services providers on the Mexican side of the border.

- One such challenge is lack of safe and stable shelter spaces:
  - There does not exist adequate shelter space in Ciudad Juarez to serve all people subjected to Remain in Mexico policies. Not only is there not enough space but the official shelters that exist are not designed for long-term stays nor are they able to adequately provide for social distancing during the pandemic. With the wait times for asylum seekers under Remain in Mexico stretching into years, a lack of long-term shelter space presents multiple obstacles to safely remaining in Ciudad Juarez, especially for women and children, while awaiting their hearings.
  - Barriers also exist to establishing safe, long-term shelters as the threats of violence against waiting asylum seekers create a chilling effect on accessing available buildings. Case example: Columbans are responding to the needs of traumatized women in living under the Remain in Mexico provisions by trying to expand access to safe, long-term, humane shelters where the women can create community and have access to support systems. These efforts are becoming increasingly difficult, however, as they are unable to find landlords willing to rent their space to migrants due to fears of being targeted by traffickers and cartels.

- Additionally, asylum seekers face threats of violence:
  - Lack of access to safe shelter space, the unknown nature of wait times, and lack of community support all increase the vulnerability of asylum seekers waiting in Mexico. Asylum seekers are considered “dollar signs” by traffickers and cartels waiting to exploit their vulnerability. Columbans provide support services to those who have been subjected to these types of violence, especially women and children.

Asylum-seekers affected by the current restrictive policies such as ‘metering’ and ‘Migrant Protection Protocols’ are more vulnerable to sexual assault, kidnapping, and extortion. These policies are also creating a bottleneck at ports of entry along the border, often forcing people to undertake more dangerous, and in some cases deadly, crossings between ports of entry. These challenges compound to result in forced stays in Mexico of more than 14 days (often months to years) and increases of asylum seekers crossing in between ports of entry- both of which would disqualify them from asylum under this proposal. These should be considered irrelevant factors in a person’s asylum application.

8 CFR § 208.20; 8 CFR § 1208.20—The Proposed Rule Impermissibly Heightens the Legal Standards for Credible and Reasonable Fear Interviews and Will Turn Away Refugees Without Providing Them a Full Hearing

The proposed rule would also make it significantly more difficult for asylum seekers subject to expedited removal to have their request for asylum fully considered by an immigration judge. When Congress added expedited removal to the INA, it intentionally set the standard for the
credible fear interview—significant possibility—low so that genuine refugees are not deported to persecution. Under this rule, the government redefines the broad “significant possibility” standard to mean “a substantial and realistic possibility of succeeding.” Asylum seekers may have been forced to flee at a moment’s notice, unable to take anything with them. Others may be experiencing the physical, mental and emotional manifestations of trauma. To expect asylum seekers to immediately be able to meet a heightened standard is unrealistic and unconscionable.

**Conclusion**

These proposed rules represent a radical rewriting of the U.S. asylum system. Taken together, these proposed rules would eviscerate asylum protections that have been in place in the United States for decades. The vast majority of asylum seekers are likely to be denied asylum under these proposed rules even if they have well-founded fears of persecution. Further, it is difficult to imagine any asylum seeker arriving at the southern border who would not be subject to one of the bars imposed under these, and prior, recent rules, or who would be able to meet the elevated evidentiary burdens, both in preliminary border fear screenings and in asylum interviews and proceedings before immigration judges.

The Catholic Church recognizes that people have the right to migrate to build a better life for them and their families if they cannot do so in their country of origin.

We call upon the administration to withdraw these proposed rules in their entirety.

Scott Wright
Director
Columban Center for Advocacy and Outreach