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Submitted via: <https://www.regulations.gov>.

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Re: Notice of Proposed Rulemaking and Request for Comment on 'Circumvention of Lawful Pathways'

The #WelcomeWithDignity campaign for asylum rights calls on President Biden, the Department of Homeland Security, and the Department of Justice to reverse course and withdraw this proposed rule in its entirety. For good measure, President Biden must declare its introduction a mistake. The agencies have titled this rule "Circumvention of Lawful Pathways," insinuating that people seeking asylum at our southern border are somehow evading existing lawful pathways to protection. In fact, for over three years, it is the U.S. government that has circumvented its legal obligations to refugees, implementing a series of policies that have choked off access to asylum at the southern border. The proposed rule continues down that dangerous path, amounting to an asylum ban that would prevent most people fleeing persecution from lawfully exercising their right to seek asylum.

With the end of Title 42, the United States is returning to what had been the status quo for asylum processing for over 40 years until that process was radically upended in 2020 by the Trump administration. The United States is more than capable of processing people seeking asylum again. We know there is a backlog of humanitarian need created by the United States' illegal policy of denying people their right to seek asylum for the past three years. This is a humanitarian challenge, not an enforcement challenge or a political game. It is by no means an insurmountable one.

The #WelcomeWithDignity campaign has compiled clear, evidence-based recommendations for resuming asylum processing, developed by the country's



leading experts in refugee protection and border management, available at: <https://welcomewithdignity.org/solutions>. We have presented these recommendations to the Biden administration.

We have pointed out that policies like an asylum ban are, in effect, a ban on Black, Brown, Indigenous, LGBTQ+, and poor people fleeing persecution, the most marginalized groups seeking safety. People seeking safety are entitled to the same protections whether they arrive at our shores by plane or on foot. Yet the ban favors asylum seekers from wealthy and predominantly white countries who have the ability to reach the United States directly by plane.

The vast majority of people seeking asylum will instead be forced to request an appointment using the government's CBP One app. The CBP One app is riddled with glitches and is inaccessible to people who lack reliable access to a smartphone, internet, and electricity. The app is also only available to people who are literate or fluent in English, Spanish, and Haitian Kreyol. This will put Indigenous, African, and female applicants at a particular disadvantage. And it will leave asylum seekers stranded in precarious conditions as they desperately await an appointment.

This proposal violates the legal and human right to seek asylum as outlined in the 1951 Refugee Convention and its 1967 Protocol, to which the United States acceded over 50 years ago, designed to prevent the horrors of the Holocaust from ever occurring again. Our commitment to upholding this right was codified in the 1980 Refugee Act, which a bipartisan Congress passed with the intent of aligning U.S. law with our treaty obligations to protect refugees and to never return them to persecution.

Seeking asylum is legal, no matter how people reach our border, what countries they pass through on their way, and whether or not they can book an appointment on an inaccessible and dysfunctional smartphone app. The proposed ban would deny vulnerable individuals their right to seek protection unless they can show they have applied for and been denied asylum in at least one of the countries they passed through en route to the U.S. border. Yet the most common countries of transit are notoriously some of the most dangerous places in the world for Black, Brown, LGBTQ+, and Indigenous migrants, who routinely fall victim to grave violence on their journey.



None of these countries have the capacity to receive the asylum seekers we turn away and adequately ensure their protection. Some are considered too dangerous for U.S. citizens by the U.S. Department of State. Many people seeking asylum at our southern border come to us fleeing human rights abuses in these very countries.

The #WelcomeWithDignity campaign is deeply concerned with the dangerous precedent this proposed rule sets. While the agencies state the ban would expire after two years, the temporary nature of the ban does not make it any less illegal. Moreover, any future administration could abuse the precedent the rule sets and impose an asylum ban indefinitely.

As a campaign led by people impacted by the U.S. asylum system, we know what the impact of this policy will be: it will turn away people with valid asylum claims, sending them to danger, persecution, and death. The rule does nothing to meet the global challenge of forced migration, instead abdicating the United States' responsibilities to refugees entirely and foisting them upon countries with far fewer resources than us. For centuries, the United States has prided itself on serving as a refuge for the persecuted, an aspiration that is immortalized at the base of the Statue of Liberty, where the simple message is inscribed: "Give me your tired, your poor, your huddled masses yearning to breathe free." If President Biden proceeds with this ban, he should dismantle the Statue of Liberty as well.

The #WelcomeWithDignity campaign once again calls on the administration to reverse course on this proposed rule and withdraw it in its entirety. We represent more than 100 legal services, humanitarian aid, civil rights, and advocacy organizations that stand ready to welcome people seeking asylum at the border. An asylum ban will only exacerbate dysfunction, chaos, and suffering and undermine the ability of our member organizations to serve their communities. Instead, we urge the administration to uphold the right to seek asylum, follow through on its promises, and work alongside communities and service providers to establish a fair and humane asylum process at the southern border.

Reverse course and restore asylum now.