



Working to Reduce Poverty in America

August 7, 2019

**Lauren Alder Reid**  
**Assistant Director, Office of Policy**  
**Executive Office for Immigration Review (EOIR)**  
**5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041**  
**Submitted online:** <https://www.regulations.gov/comment?D=EOIR-2019-0002-0001>

**RE:** Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33829, EOIR Docket No. 19-0504

Chair of the Board  
Charles Cornelio

Vice Chair  
Robert McCann

Secretary  
Martina O'Sullivan

Treasurer  
Michael Erne

President & CEO  
Sr. Donna Markham OP, PhD

Dear Departments:

Catholic Charities USA (CCUSA) submits these comments to the Department of Justice's (DOJ) Executive Office of Immigration Review (EOIR) and the Department of Homeland Security (DHS) (the departments); EOIR Asylum Eligibility and Procedural Modifications; EOIR Docket No. 19-0504; A.G. Order No. 4488-2019 Docket ID: EOIR 2019-0002 ("the interim final rule").

CCUSA is a national membership organization representing more than 167 diocesan Catholic Charities member agencies. These member agencies operate more than 2,600 service locations across the 50 states, the District of Columbia, and five U.S. territories. Their diverse array of social services reached more than 10 million individuals in need last year. These services include immigration and refugee services. In 2017, nearly 100 Catholic Charities agencies served over 25,000 immigrants and refugees through 217 programs. Our Catholic heritage includes a scriptural call to provide hospitality to newcomers as if welcoming Christ Himself. The Catholic Church, like our nation as a whole, finds its identity and roots in various immigrant communities. We affirm the inherent dignity bestowed by God on every human person, including immigrants and refugees, no matter the circumstances that compel a person to begin a new life in our community.

## I. INTRODUCTION

CCUSA opposes the departments' interim final rule on Asylum Eligibility and Procedures. The new restrictions on asylum go against the Immigration and Nationality Act (INA) by effectively removing asylum as a form of immigration relief. The interim final rule undermines due process and increases the likelihood of human smuggling activity along the southern border. It may also trigger negative and unintended consequences among regional countries that are also affected by the migratory crisis. Finally, it will send a troubling message throughout the global community on how migrants and refugees are to be treated. For these reasons, the departments' interim final rule should be withdrawn in its entirety.



## II. THE INTERIM FINAL RULE'S PURPORTED PURPOSE CIRCUMVENTS THE STATUTE AND CONFLICTS WITH ITS INTENT

The interim final rule suggests that asylum is a discretionary benefit.<sup>1</sup> The departments' interpretation of the statute's deference to the Secretary of Homeland Security and the Attorney General suggests that asylum, as a form of relief, can be denied almost in its entirety under the law.<sup>2</sup> The departments justify this unprecedented maneuver by claiming most claims are "meritless" and the strain of hearing these claims undermines the humanitarian purposes of asylum, has exacerbated the humanitarian crisis of human smuggling, and affects diplomatic negotiations with foreign countries.<sup>3</sup> The interim final rule claims it will mitigate the strain on the U.S. immigration system by identifying aliens seeking asylum in the U.S. rather than in other countries through which they travelled.<sup>4</sup> The justifications for enacting the interim final rule are lacking in merit and comprehension of global and regional realities.

The pursuit of asylum as a form of immigration relief is not a "discretionary benefit." The INA established criteria for an alien to meet in order to qualify for asylum. "The Secretary of Homeland Security or the Attorney General **may grant asylum to an alien who has applied for asylum** in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section **if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.**"<sup>5</sup> A DHS Secretary's and the Attorney General's discretion allows for determining whether INA criteria are met. However, to interpret "discretion" to establish requirements and procedures whose purpose is to ultimately deny judicial review of an asylum seeker's claim circumvents the INA and is an unacceptable authoritative overreach by two executive agencies.

### a. The Interim Final Rule Will Inhibit Migrant's Due Process Rights in an Attempt to Reduce Immigration Court Backlogs

A backlog exists in our immigration courts.<sup>6</sup> 900,000 cases are pending before the immigration courts with over 436,000 of those cases including an asylum application.<sup>7</sup> The departments state that "final disposition of asylum claims, even those that lack merit, can take years and significant government resources to resolve[.]"<sup>8</sup> Courts have consistently

---

<sup>1</sup> Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33829, EOIR Docket No. 19-0504, at 4 (July 16, 2019).

<sup>2</sup> *Id.*, at 4-5.

<sup>3</sup> *Id.*, at 5.

<sup>4</sup> *Id.*, at 6.

<sup>5</sup> 8 U.S.C. § 1158(b)(1)(A) "Eligibility" (2019) (emphasis added).

<sup>6</sup> EOIR Asylum Eligibility and Procedural Modifications, *supra* at 6.

<sup>7</sup> *Id.*, at 6.

<sup>8</sup> *Id.*, at 7.

held that anyone on United States soil is protected by the Constitution's right to due process.<sup>9</sup> Since an asylum seeker must be present within the U.S. to seek asylum,<sup>10</sup> he or she is entitled to due process. For migrants seeking asylum, cases are reviewed to decide whether applicants have a credible fear of persecution in their home countries.<sup>11</sup> If a credible fear is established, the asylum seeker is placed in the immigration court system.<sup>12</sup> However, even if officers decided that asylum seekers have no credible fear and should be deported, the asylum seeker still has a right to appeal that denial to an immigration judge.<sup>13</sup>

Due process is a vital aspect of the American judicial process and a worthy endeavor despite the time and resources it requires, particularly in a country such as the U.S. that cherishes and embodies the rule of law and a sense of fairness in adjudicating cases. Asylum seeker cases should continue to be afforded due process in order to decide whether applicants have a credible fear of persecution in their home countries and should be placed in the immigration court system for a consideration of their request.

#### b. Human Smuggling

The final interim rule claims to seek the curtailment of human smuggling across the southern border by "reducing the incentive for aliens without an urgent or genuine need for asylum to cross the border."<sup>14</sup> This ignores the reality of the root causes driving migrants from their homelands in search of safety, protection, and ultimately a better life for them and their families. Removing asylum as a viable and legal pathway to the U.S. will only exacerbate human smuggling for migrants who are tired and poor but yearning to breathe free.<sup>15</sup> The U.S. Conference of Catholic Bishops (USCCB) states in its background document on the root causes of migration:

Efforts must also continue to address the epidemic of violence, as well as its underlying causes, in Central America and in the border regions. U.S. Government policies must reflect the importance of controlling the illicit drug trade, the centrality

---

<sup>9</sup> Katie Benner and Charlie Savage, *Due Process for Undocumented Immigrants Explained*, The New York Times, (June 25, 2018), <https://www.nytimes.com/2018/06/25/us/politics/due-process-undocumented-immigrants.html>

<sup>10</sup> 8 U.S.C. § 1158(b)(1)(A) "Eligibility."

<sup>11</sup> "Questions & Answers: Credible Fear Screening," USCIS, (July 25, 2019), <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening>.

<sup>12</sup> *Due Process for Undocumented Immigrants Explained*, supra, <https://www.nytimes.com/2018/06/25/us/politics/due-process-undocumented-immigrants.html>; see also, "Obtaining Asylum in the United States," USCIS, (June 25, 2018), <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>

<sup>13</sup> *Id.*

<sup>14</sup> EOIR Asylum Eligibility and Procedural Modifications, *supra* at 7.

<sup>15</sup> Please read Emma Lazarus's *The New Colossus*, a sonnet describing American immigration available at: <https://www.poetryfoundation.org/poems/46550/the-new-colossus>.

of curbing corruption at every level of national life, and the need to curtail the illegal arms trade, weapons and human trafficking, as well as the resultant violence that accompanies these illicit activities. The region is currently suffering under the despotic scourge of transnational criminal organizations with hemispheric theaters of operations: they not only destabilize the governments in the region through corruption and complicity, but cause untold suffering, especially among the most vulnerable.<sup>16</sup>

Removing asylum as an option for migrants fleeing these scenarios will not reduce human smuggling because the root causes leading to the pursuit of asylum have not been addressed. The U.S. is uniquely qualified to help resolve the root causes within the region. We urge the Administration and Congress to take this responsibility seriously via Comprehensive Immigration Reform and contemplating Pope Francis's message: "look to build bridges between people, bridges that allow us to break down the walls of exclusion and exploitation."<sup>17</sup>

### c. Diplomatic Relations

The final interim rule also aims to assist the U.S. in its relations with foreign nations on immigration issues.<sup>18</sup> We do not believe this argument is provided in good-faith based on the realities and related actions by the Administration. The U.S. Department of State acknowledges in its own strategy for Central America, "...the region suffers from high rates of violence and crime with weak judicial systems to protect and prosecute those affected. Roughly half of Central America's people live in poverty."<sup>19</sup> Yet when these countries do utilize their court systems and the rule of law, they are questioned and threatened when judicial decisions do not align with the Administration's objectives. For example, the Administration claimed it "did not believe" the Guatemalan Supreme Court in its finding that an act from the country's congress was required to execute a "safe third country agreement" with the U.S. on immigration issues. As a result, Guatemala, which is recognized as having "some of the worst poverty, malnutrition and maternal-child mortality rates in the region, especially in rural and indigenous areas"<sup>20</sup> will potentially face a

---

<sup>16</sup> United States Conference of Catholic Bishops, *Background on the Root Causes of Migration*, (July 25, 2019), <http://www.usccb.org/issues-and-action/human-life-and-dignity/global-issues/background-on-root-causes-of-migration.cfm>.

<sup>17</sup> United States Conference of Catholic Bishops, *Committee on Migration Chair Strongly Opposes Administration's Announcement to Build a Wall at U.S.-Mexico Border, Increase Detention and Deportation Forces*, (January 25, 2017), <http://www.usccb.org/news/2017/17-023.cfm>.

<sup>18</sup> EOIR Asylum Eligibility and Procedural Modifications, *supra* at 8.

<sup>19</sup> U.S. Department of State, *U.S. Strategy for Central America*, (July 25, 2019), <https://www.state.gov/u-s-strategy-for-central-america/>.

<sup>20</sup> *The World Bank in Guatemala – Overview*, (July 25, 2019), <https://www.worldbank.org/en/country/guatemala/overview#1>.

continued lack of U.S. aid, tariffs, a travel ban,<sup>21</sup> or something that has been publicly described as “very severe with respect to Guatemala.”<sup>22</sup>

The Guatemalan reaction to the Administration’s suggested draconian policies are as would be expected. News reports cite, “Juan Carlos Tefel, who heads the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations, [who] said [the Administration’s proposed] retaliatory measures would have a more devastating impact on Guatemala than the migration agreement. Jordán Rodas, Guatemala’s human rights prosecutor, said U.S. penalties ‘could destabilize the country’ by driving poverty rates higher. They could also prompt more Guatemalans to head for the United States as they lose jobs or income[.] The country is already the largest source of migrants apprehended on the border in the U.S. Southwest.”<sup>23</sup>

The interim final rule will not aid diplomatic relations with regional partners. As a national service provider network that serves vulnerable migrants along the border and throughout the U.S., we understand the necessary level of resources needed to provide adequate and humane care to migrants. Regional countries do not possess the requisite levels of resources to address this crisis compared to the U.S., increasing the likelihood of strained relations. The interim final rule, and proposed retaliatory measures against Central American countries and Mexico, do not appear to address or be concerned with resolving the migratory crisis via collaboration throughout the region. Rather, the interim final rule along with policies such as “Remain in Mexico” appear to be an effort focused on an “out of sight, out of mind” approach to migrants. The interim final rule describes Mexico’s “robust protection regime” without offering any evidence.<sup>24</sup> In reality, “there are only 48 staff members in the entire country and [Mexico’s refugee] commission expects to receive 60,000 asylum claims this year, a number that may rise with further U.S.-Mexico negotiations... [Mexican] federal, state and municipal governments all completely lack humanitarian funds... They completely ignore this responsibility and instead focus resources entirely on repression and enforcement.”<sup>25</sup> U.S. District Judge Jon Tigar cited in his reasoning for enjoining the final interim rule stated, “I wasn’t able to find a scintilla of evidence about the adequacy of [the]

---

<sup>21</sup> Trump, Donald (@realDonaldTrump), (July 23, 2019), 5:23 AM, Tweet, <https://twitter.com/realDonaldTrump/status/1153641906699681795>.

<sup>22</sup> *Trump threatens tariffs on Guatemala after backing off asylum deal*, MSN (Video), (July 25, 2019), <https://www.msn.com/en-us/news/video/trump-threatens-tariffs-on-guatemala-after-backing-off-asylum-deal/vp-AAEQQgM>.

<sup>23</sup> Mary Beth Sheridan and Kevin Sieff, *Guatemalans fear Trump threats on migration accord could cripple their economy*, Washington Post (July 24, 2019), [https://www.washingtonpost.com/world/the\\_americas/guatemalans-fear-trump-threats-on-migration-accord-could-cripple-their-economy/2019/07/24/76faa0be-ae1d-11e9-9411-a608f9d0c2d3\\_story.html?utm\\_term=.3e72fbc42a9f](https://www.washingtonpost.com/world/the_americas/guatemalans-fear-trump-threats-on-migration-accord-could-cripple-their-economy/2019/07/24/76faa0be-ae1d-11e9-9411-a608f9d0c2d3_story.html?utm_term=.3e72fbc42a9f).

<sup>24</sup> EOIR Asylum Eligibility and Procedural Modifications, *supra* at 22.

<sup>25</sup> James Fredrick, *Mexico Is Overwhelmed By Asylum Claims As It Ramps Up Immigration Enforcement*, National Public Radio, (June 14, 2019), <https://www.npr.org/2019/06/14/732485182/mexico-is-overwhelmed-by-asylum-claims-as-it-ramps-up-immigration-enforcement>.

asylum system in Guatemala."<sup>26</sup> The Roman Catholic Episcopal Conference of Guatemala also stated its "enormous concern about the consequences of that [US-Guatemala] agreement that would sharpen the difficult situation of migrants in [Guatemala], people looking for opportunities in the North and are denied here. Government action should focus on its responsibility to provide a minimum of life opportunities worthy of the population."<sup>27</sup> These examples illustrate how comparatively impoverished regional partners are being tasked with the insurmountable burden of addressing this crisis with no assistance from the U.S. We implore the Administration, DOJ, and DHS to consider the human element of this migratory crisis by working with regional countries to address the root causes of migration rather than pursue the proposed approaches.

Consideration should also be given to the message the final interim rule will convey to the rest of the world: asylum seekers are not welcome. The United Nations High Commissioner for Refugees (UNHCR) released a statement that the agency is, "deeply concerned about the new rule barring from asylum the majority of people crossing the southern U.S. land border. This will endanger vulnerable people in need of international protection from violence or persecution."<sup>28</sup> The final interim rule's ripple effect is already taking place in countries like Turkey, where roughly 3.6 million Syrian refugees have settled after world-renowned violence took place in their homeland, resulting in the displacement.<sup>29</sup> These levels of human migration and displacement must be recognized as unacceptable and resolved through humane policies. Recently a, "crackdown was announced formally by authorities, who issued a warning saying Syrians who are registered in other cities have until Aug. 20 to return there or be forced to leave Istanbul. Those who are not registered at all could be deported to Syria, where Turkey has set up enclaves for returnees. But those areas are subject to attack by Syrian and Russian warplanes, as well as fighting among the various rebel groups." The timing of this crackdown along with the U.S.'s recent asylum policy change efforts cause concern. It highlights how the final interim rule emits a "green light" to the global community to treat refugees fleeing persecution in their homelands harshly and/or return them to perilous situations. The final interim rule could trigger a global pandemic of unintended consequences that are inhumane and unjust to all migrants. The U.S. must continue to be a leader on refugee policy and continue to address global root causes of

---

<sup>26</sup> Vanessa Romo, *Federal Judge Blocks Trump Administration's New Asylum Rule*, National Public Radio, (July 24, 2019), <https://www.npr.org/2019/07/24/744860482/trump-administrations-new-asylum-rule-clears-first-legal-hurdle>.

<sup>27</sup> Roman Catholic Episcopal Conference of Guatemala, *Comunicado de la Conferencia Episcopal de Guatemala*, (July 13, 2019) available at: <http://www.iglesiacatolica.org.gt/dserdoc.htm> See also <http://www.iglesiacatolica.org.gt/CEG-20190713.pdf>.

<sup>28</sup> *UNHCR deeply concerned about new U.S. asylum restrictions*, United Nations High Commissioner on Refugees, (July 15, 2019), <https://www.unhcr.org/en-us/news/press/2019/7/5d2cdf114/unhcr-deeply-concerned-new-asylum-restrictions.html>

<sup>29</sup> Umar Farooq and Nabih Bulos, *Anti-refugee sentiment grows in Turkey as government begins to send Syrians back*, L.A. Times, (July 25, 2019), <https://www.latimes.com/world-nation/story/2019-07-25/turkey-shows-signs-of-exasperation-over-refugees>.

migration rather than represent a nation that denies asylum seekers their pursuit of justice and a better life.

### III. CONCLUSION

The interim final rule's interpretation of the INA is overbroad and circumvents the statute's intent to provide asylum seekers with a potential immigration benefit. It also denies an asylum seeker's right to due process. It will exacerbate human smuggling into the U.S. and strain diplomatic relations and regional partners' already minimal resources to address this migration crisis without the necessary U.S. assistance. It may also create dangerous unintended global migratory consequences. We continue to encourage Congress and the Administration to respond with compassion towards our migrant brothers and sisters and address this crisis with Comprehensive Immigration Reform and humane immigration policies. Catholic Charities provides essential services to immigrants and newcomers to this country, a consistent part of our mission throughout our history. We stand ready to assist in the humane treatment of migrants and encourage sound policies that address root causes of migration. We find the interim final rule to be deeply flawed and unacceptable social policy and urge its swift and immediate withdrawal.

Respectfully submitted,



Brian R. Corbin  
Executive Vice President,  
Member Services  
Catholic Charities USA