



Working to Reduce Poverty in America

March 27, 2023

*Submitted via Regulations.gov*

Daniel Delgado, Acting Director  
Border and Immigration Policy  
Office of Strategy, Policy, and Plans  
U.S. Department of Homeland Security

Lauren Alder Reid, Assistant Director, Office of Policy,  
Executive Office for Immigration Review  
U.S. Department of Justice

Chair of the Board  
Neal Black

President & CEO  
Sr. Donna Markham OP, PhD

Episcopal Liaison  
The Most Reverend  
Frank J. Dewane  
Bishop of Venice, FL

**Re: Comments to Notice of Proposed Rulemaking on Circumvention of Lawful Pathways  
Department of Homeland Security [USCIS-2022-0016-001] and Department of Justice [A.G. Order No. 5605-2023]**

Acting Director Delgado and Assistant Director Reid:

Catholic Charities USA (CCUSA) submits these comments in response to the Notice of Proposed Rulemaking (NPRM or proposed rule) titled “Circumvention of Lawful Pathways.” We acknowledge the administration’s efforts to prepare for the anticipated end of Title 42 enforcement at the southwest border. However, we oppose the proposed rule because it creates additional barriers for people fleeing harm to exercise their legal right to request life-saving protections in the United States. Furthermore, we oppose the proposed rule as it will increase migrants’ vulnerability to smuggling, trafficking, and other forms of exploitation — the very types of dangers they are escaping. We urge the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to rescind the proposed rule, and we reiterate our call for policies that protect our nation’s borders while also restoring full access to asylum protections for vulnerable people.

CCUSA is the voluntary, national membership organization for Catholic Charities agencies throughout the United States and its territories. Each agency is a separate



2050 Ballenger Avenue, Suite 400, Alexandria, VA 22314 | Phone: 703-549-1390 | Fax: 703-549-1656  
[www.CatholicCharitiesUSA.org](http://www.CatholicCharitiesUSA.org)

legal entity under the auspices of its bishop. CCUSA's 167-member agencies operate in over 3,000 service sites across 50 states, Washington D.C., and the U.S. territories and have a long history of serving local communities and alleviating poverty. In fulfillment of the Gospel mandate of Matthew 25 such as "to welcome the stranger, feed the hungry, give water to the thirsty" and consistent with Catholic social teaching, the Catholic Charities network is committed to welcoming newcomers to this country with charity and respect for the human person, as it has done for over 110 years. In 2021, the Catholic Charities nationwide network served more than 15 million people across the country with an array of social services, including over 600,000 immigrants, refugees, and asylees. In addition, the network welcomed 225,000 asylum seekers and provided them with essentials in the same year. The Catholic Charities network carries out these ministries in coordination with government agencies at all levels as asylum seekers are processed into the country.

Under the proposed rule, individuals who enter the U.S. without appropriate travel documents will be presumed ineligible for asylum. This presumption will not apply to those who can prove they requested asylum in a transit country and were denied prior to arriving in the U.S. or were pre-authorized for travel to the U.S. through a humanitarian parole program. Additionally, the presumption would not apply where individuals who arrive at a port of entry can show they have scheduled an appointment through the CBP One mobile application ("CBP One app" or "the app") to request admission or can show that it was not possible to access or use the app's scheduling system. The proposed rule will not apply to a narrow group of individuals, including unaccompanied children, persons with an acute medical emergency, and individuals who can establish they face an imminent and extreme threat to life or safety or were a victim of a severe form of trafficking.<sup>1</sup> As a network with ministries that serve immigrants, refugees, and asylum seekers, we are deeply concerned by the human suffering this rule will cause and urge the administration

---

<sup>1</sup> Circumvention of Lawful Pathways, 88 FR 11704.

to adopt policies that will uphold human dignity, protect individual rights, and promote the common good.

**The proposed rule violates U.S. law and obligations under international law**

Several decades ago, the United States agreed to abide by international standards for protecting vulnerable populations when it signed the 1951 Convention and its 1967 Protocol, which state that persons would not be returned to countries where they face a serious threat to their life and freedom.<sup>2</sup> To bring U.S. law in alignment with its international obligations, Congress enacted the Refugee Act of 1980 and provided assurance to people who seek asylum from within the United States or at its border that they would not be returned to countries where they may face persecution.<sup>3</sup> Where a person may have traveled through a third country prior to arriving in the U.S., Congress expressly stated that firm resettlement must have occurred in that country in order to refuse the person's asylum request.<sup>4</sup> Simply traveling through a country prior to arrival or entry into the U.S. is not sufficient to constitute firm resettlement.<sup>5</sup> Many people fleeing persecution in their homelands must travel through one or more countries in order to get to the U.S. to request asylum. The presumption of asylum ineligibility this rule proposes if a person fails to seek protection in a transit country contradicts existing law and creates unnecessary barriers that limit migrants' access to the asylum process. Notably, a federal court struck down a similar Trump-era policy that would have required migrants to request asylum in a transit country before applying for protection in the U.S. If this proposed rule is implemented as written, it may not withstand legal challenge.<sup>6</sup> For these reasons, we oppose this proposed rule.

---

<sup>2</sup> See Convention Relating to the Status of Refugees (189 U.N.T.S. 150, entered into force April 22, 1954) United Nations. 1951.

<sup>3</sup> Refugee Act of 1980, PL 96-212, 94 Stat. 102 (1980); See also 8 U.S.C. § 1158.

<sup>4</sup> 8 U.S.C. § 1158(b)(2)(A)(vi); See also 8 CFR § 208.15 defining firm resettlement.

<sup>5</sup> *Id.*

<sup>6</sup> Federal court strikes down Trump's asylum ban, Politico, July 1, 2020, <https://politi.co/3LMPsml>.

## **Advanced authorization for travel through humanitarian parole should not be a prerequisite to access asylum at the border**

As previously noted, one of the few ways persons may overcome the presumption of asylum ineligibility under the proposed rule is if they obtained prior approval for travel to the U.S. under one of the country-specific humanitarian parole programs. The Immigration and Nationality Act (INA) authorizes the Department of Homeland Security (DHS) to grant noncitizens entry to the country temporarily for “urgent humanitarian reasons or significant public benefit.”<sup>7</sup> Because humanitarian parole is designed to respond to short-term emergencies, such as temporary illness or displacement, it should not be used as a precursor for responding to the urgent and long-term needs of asylum seekers. Doing so would be a misuse of the agency’s parole authority. Moreover, even if asylum seekers were to attempt to enter the country through a parole program, it would not be a viable option for many people who may not have the resources and support to obtain parole. The current country-specific humanitarian parole programs require individuals to first secure a financial sponsor in the U.S. and pass security vetting, among other requirements before they can apply for authorization to travel to the U.S.<sup>8</sup> Not everyone can secure a U.S.-based sponsor to facilitate the process. Without this support, individuals will likely travel to the U.S. border to request admission and risk being denied a chance to request asylum under this rule. The parole processes also require the noncitizen to have an unexpired passport before they can receive travel approval. Not everyone can obtain a passport, especially people fleeing political persecution or those who lack the financial means to pay for a passport. Obtaining travel documents through humanitarian parole is also not possible for these individuals, and they will risk being turned back should they travel to the border. When Congress created asylum laws, it provided access to the asylum process regardless of how an applicant entered the country. It considered the many factors that would cause a person to travel to the U.S. without documentation and created a pathway for those

---

<sup>7</sup> INA Section [212\(d\)\(5\)\(A\)](#)

<sup>8</sup> Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, USCIS, <https://bit.ly/406tejD>; Uniting for Ukraine, [www.uscis.gov/ukraine](http://www.uscis.gov/ukraine).

individuals to access the asylum process. This proposed rule creates a new condition for asylum eligibility that is not consistent with current law.

**The CBP One app is a deeply flawed tool and an ineffective way to control access to the asylum process**

Customs and Border Protection (CBP) launched the CBP One mobile app on October 28, 2020, as a single portal for certain travelers entering the U.S. to access a range of services provided by the agency.<sup>9</sup> In anticipation of increased migration to the southern border upon the termination of Title 42 in May, DHS expanded the use of the mobile app on January 12, 2023, to require migrants arriving without travel documents to pre-schedule appointments in the app in order to seek asylum at designated ports of entry.<sup>10</sup> Under the proposed rule, individuals who cannot provide confirmation of a pre-scheduled appointment will be presumed ineligible for asylum unless they can prove the app was not accessible or their attempts to use the app's scheduling feature were unsuccessful. The proposed rule fails to consider that migrants on the move may not have access to reliable internet or even have mobile phones sophisticated enough to download the app. No person should be denied a chance to seek asylum because they lack access to technology. Moreover, the app is available only in English, Spanish, and Haitian Creole, despite the thousands of asylum seekers who arrive at the border from across the globe and speak other languages.<sup>11</sup> Users and advocates have reported other challenges with the app including geo-location issues and the inability to obtain an appointment due to technical glitches.<sup>12</sup> According to one report, migrants were turned away from

---

<sup>9</sup> CBP One Mobile Application, U.S. Customs and Border Protection, <https://bit.ly/40oFSe9>

<sup>10</sup> DHS Scheduling System for Safe, Orderly and Humane Border Processing Goes Live on CBP One App, <https://bit.ly/40qRrB4>

<sup>11</sup> Senator Markey calls on DHS to ditch mobile app riddled with glitches, privacy problems, for asylum seekers, Press Release, February 21, 2023, <https://bit.ly/42HeNUM>.

<sup>12</sup> At US border, tech issues plague new migrant applications, BBC News, March 8, 2023, <https://bbc.in/3K1fGAs>.

the border after not being able to provide confirmation of their scheduled appointment because the mobile app froze repeatedly before they could obtain a confirmation.<sup>13</sup> There are reports of varied outcomes for users with darker skin tones with some not able to upload their photos to the app, further underscoring years-long concerns related to racial bias in facial recognition technologies used by U.S. law enforcement agencies.<sup>14</sup> Earlier this month, over 30 House democrats wrote to DHS Secretary Alejandro Mayorkas and expressed concerns about the serious harm to asylum seekers that have resulted from reported “inaccessibility, usability, and inequities” of the app.<sup>15</sup> While the proposed rule states the presumption of ineligibility will not apply to individuals who arrive at the border without an appointment and can show it was not possible to access or use the app,<sup>16</sup> it is unclear how this exception will be implemented. For example, the proposed rule notes the narrow cases in which it would be impossible to use or access the app: “language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacles.”<sup>17</sup> However, it is not clear whether a lack of internet access, not having a smartphone, or losing a phone would be considered a serious obstacle. This lack of clarity may lead to inconsistent enforcement across the ports of entry and create conditions for officers’ misuse of discretion to grant exemptions. DHS should discontinue the use of the CBP One app as it creates inequitable access to asylum.

### **The proposed rule will increase migrants’ vulnerability to exploitation**

When legal pathways to life-saving protections in the U.S. are severely limited, as they are under this proposed rule, it forces people seeking safety to consider more dangerous options to enter the country. Migrants will become more vulnerable to smugglers and traffickers if this proposed rule is implemented as written. Given the

---

<sup>13</sup> Asylum-seekers with CBP One issues turned back at border, Border Report, updated February 3, 2023, <https://bit.ly/3lyhTd0>

<sup>14</sup> Facial recognition bias frustrates Black asylum applicants to US, advocates say, The Guardian, February 8, 2023, <https://bit.ly/3lzO9N3>.

<sup>15</sup> House Democrats call to improve border appointment app, Roll Call, March 14, 2023, <https://bit.ly/3lAg1Ra>.

<sup>16</sup> 88 FR 11704, 11723.

<sup>17</sup> *Id.* at footnote 173.

extremely limited access to asylum under this proposal, thousands of asylum seekers will likely not be able to overcome the presumption of their ineligibility and will be stranded in Mexico, leaving them unprotected and exposed to the same dangers they are escaping. Criminal organizations have been reported to prey on migrants in Mexico, violently attacking them, exploiting them for their money in exchange for a promise to help them get into the U.S. illegally, and even trafficking them. In 2021, criminal organizations violently attacked and kidnapped at least 8,700 asylum seekers who were stuck in Mexico because of restrictive policies at the border such as Title 42.<sup>18</sup> We urge DHS to immediately reverse this proposal as its implementation will increase human rights violations against vulnerable people.

### **Conclusion**

The Gospel tells us when we welcome the stranger, we welcome Christ, and Catholic social teaching emphasizes the importance of the call to defend the inherent dignity of every person and to promote the common good. This proposed rule, if implemented, would not only violate U.S. law but also interfere with our moral obligation to protect vulnerable people and uphold their dignity. We recognize that Congress must take up and pass meaningful comprehensive immigration reform legislation to respond to the migration trends and growing challenges at our southern border. However, until that happens, we urge the administration to create pathways to allow people to exercise their legal right to request asylum in a humane and orderly way. As the administration prepares to end Title 42 enforcement, we call for a process that will prioritize the safety of migrants and asylum seekers, as well as the officials who will process them. We support policies that will ensure coordination between local, state, and federal authorities as they collaborate with faith-based service providers to serve people in need.

---

<sup>18</sup> U.S. Asylum and Border Policies Resulting in Human Rights Violations, Human Rights First, March 1, 2022, <https://bit.ly/3yZWPzh>.

Thank you for the opportunity to submit comments on this proposed rule.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Brian R. Corbin". The signature is fluid and cursive, with the first name "Brian" and last name "Corbin" clearly distinguishable.

Brian R. Corbin  
Executive Vice President  
Catholic Charities USA