

## **Comment on USCIS 2022–0016: Circumvention of Lawful Pathways**

The Unitarian Universalists for Social Justice (UUSJ) is an organization with the goal of advocating for the values of Unitarian Universalists to promote more just and equitable national policies that reflect the worth and dignity of every person. As people of faith, we strongly oppose the proposed rule, which would violate our country's legal and moral obligations to asylum seekers.

The proposed rule would restrict access to asylum based on how they entered the United States and whether they passed through other countries. While the proposed rule is somewhat different from the Trump Administration's ban on asylum, it would have a similar effect: people seeking protection would be deported without receiving due process consideration of their asylum claims. In short, it would disproportionately affect Black, Brown, and Indigenous asylum seekers who have to make the long and treacherous journey through Central America to the U.S. southern border.

The proposed rule is immoral and at variance with how the U.S. has treated asylum seekers under U.S. immigration law and the U.N.'s 1951 International Convention<sup>1</sup> and 1967 Protocol Relating to the Status of Refugee<sup>2</sup> for decades. As people of faith, we believe migrants have a moral right to apply for asylum regardless of their method of entry.

The rule would rely on migrants making an appointment to present themselves at a Port of Entry using a cell phone app, which is available only in English and Spanish. This would discriminate against the poorest migrants, who may not have a smartphone, and speakers of other languages, such as Haitians, indigenous people, and people from many African countries. It would additionally be very difficult for such asylum seekers to "demonstrate by a preponderance of the evidence"<sup>3</sup> that they were unable to access or use the scheduling system given these same obstacles. The number of daily appointments is also far short of the number needed.

The alternative requirement that asylum seekers apply for asylum in Mexico or another transit country<sup>4</sup> is unrealistic and cruel. Asylum seekers from Haiti, Cameroon, and similarly distressed countries have already completed long and arduous journeys when they reach Mexico. They often have few or no resources left when they reach the U.S. border and have no way of supporting themselves while they remain in Mexico.

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<sup>1</sup> "Convention and Protocol Relating to the Status of Refugees" conclusion date: July 25<sup>th</sup>, 1951. *United Nations High Commissioner for Refugees* <https://www.unhcr.org/en-us/3b66c2aa10>

<sup>2</sup> "Protocol relating to the Status of Refugees" registration: October 4<sup>th</sup>, 1967. *United Nations High Commissioner for Refugees* <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees>.

<sup>3</sup> §§ 1208.33(a)(1)(ii) of the proposed rule.

<sup>4</sup> §§ 1208.33(a)(1)(iii) of the proposed rule.

Neither the Northern Triangle Countries nor Mexico has the capability to protect large numbers of refugees. Honduras, El Salvador, and Guatemala suffer from a variety of security, economic, and governance issues that have been exacerbated by several recent natural disasters. By any minimal standard, they lack the capacity to provide protection for their own citizens, much less asylum seekers.

Mexico is not a viable safe third country for large numbers of asylum seekers. While the legal framework of Mexico's asylum system is among the most progressive in the world, Mexico lacks the ability to accept the large number of refugees envisioned in the proposed rule. In particular, the administrative authorities in charge of reviewing asylum applications are underfunded, face a growing number of asylum applications, and have a large backlog. Further, Mexico's economic and demographic circumstances make it difficult to take in many refugees. Mexico's GDP is 20 times smaller than the GDP of the U.S. In addition, Mexico has a younger population than the U.S. and has an excess of workers. Finally, gang and gender-based violence in Mexico is systemic. The United States Ninth Circuit Court of Appeals found in a ruling invalidating a previous rulemaking that "evidence in the record contradicts the agencies' conclusion that aliens barred by the Rule have safe options in Mexico."<sup>5</sup> Despite changes subsequent to this ruling, the dangers faced by asylum seekers awaiting a hearing or applying for asylum in Mexico remain profound.

The high cost of this proposed rule, if implemented, will be borne by those who would be sent back to their home countries to face persecution, systemic violence, war, and even death. The cost-benefit analysis even acknowledges that "the costs of the proposed rule primarily are borne by migrants and the Departments", yet despite the Office of Management and Budget classifying this proposed rule as significant under 3(f)(4) of Executive Order 12866, almost nothing is done in the cost-benefit section to quantify these costs. Additionally, the foregone benefits, economic and otherwise, of a more welcoming policy toward asylum seekers in our country are not even considered.<sup>6</sup>

Should the proposed rule be implemented despite our disapproval, the U.S. Government needs to work to minimize its harm. It should ensure that the other governments to which we expect them to apply, most notably Mexico, have timely and adequate provisions for asylum and that asylees must have safe shelter, adequate food and education, and medical benefits. The United States government should also:

- Provide an adequate number of family appointments so that the proposed rule does not become a de facto denial of asylum and ensure families can be interviewed together so that we avoid family separation.
- Provide legal representation to any asylee prior to turning them away.
- Dramatically improve its CBP One application and provide instruction in its use to personnel in Mexico.

Thank you for the opportunity to comment on this proposed rule. We hope the agency will reconsider the proposed rule or, at the very least, take action to mitigate the harm caused by its implementation.

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<sup>5</sup> E. Bay Sanctuary Covenant v. Barr 964 F.3d 832 (9th Cir. 2020).

<sup>6</sup> See, for example, Michael A. Clemens, *The Economic and Fiscal Effects on the United States from Reduced Numbers of Refugees and Asylum Seekers* (Bonn, Germany: IZA – Institute for Labor Economics).