

Circumvention of Lawful Pathways Comment Templates

Four Options

Comment Template #1

This rule would create a presumption of asylum ineligibility for individuals who did not apply for, and/or did not receive a denial of, protection in a transit country, and for those who entered between ports of entry at the southern border or attempted to enter at a port of entry without a previously scheduled appointment through the CBP One mobile application. The proposed rule seriously weakens the rights of asylum seekers. It places unnecessary burdens on people who are already traumatized and have traveled on dangerous journeys to reach the safety of our border.

The rule makes this point:

The presumption would apply only to noncitizens who have neither availed themselves of alternative options, including seeking asylum or protection elsewhere, nor availed themselves of safe and orderly processing, including mechanisms for seeking a lawful, safe, and orderly way to enter at a port of entry and any available parole processes.

There is nothing in the rule that requires the “elsewhere” country to be safe. Review a map of Central America and you will see that most of the countries a person has to travel through to reach our southern border are countries from which thousands of people are seeking asylum. For example, Human Rights Watch 2021 report on Guatemala stated “Guatemala has a nascent and cumbersome asylum system that is not capable of providing effective protection to asylum seekers forcibly transferred from the United States.”¹

The Human Rights Watch report on Honduras noted “Several UN special rapporteurs and the Working Group on Enforced or Involuntary Disappearances warned, in April, of growing numbers of migrants from Honduras, Guatemala, and El Salvador who have disappeared in Mexico, including 741 Hondurans from March through August 2019.”²

There are numerous reports of thousands of people fleeing these countries to seek asylum in the United States. It does not make sense, nor is it in keeping with asylum law that we require people to seek asylum in countries that have deplorable human rights records and ineffective asylum systems. It is also unsafe for LGBTQ people to seek asylum in transit countries where those who are LGBTQ continue to face violence, prejudice and discrimination due to their LGBTQ identity.

The UN High Commissioner for Refugees' interpretation of safe third country rules, requires that the asylum seeker must also have a meaningful connection to the third country that makes staying there reasonable, not just pass through it.

People who are subject to the rebuttable presumption would still be eligible for withholding of removal. They would still be added to the immigration court backlog and would possibly require more complicated assessments of whether or not they had applied for and been denied asylum in a third country. The rule does nothing to reduce this problem which either results in years of waiting before a person's case is heard or such rapid adjudication that there is not adequate time to prepare for one's case.

This rule supposes that asylum applicants would use the CBP One app to schedule an appointment at the border. This requires a level of technical literacy that many, if not most, asylum applicants don't possess. In addition, the app makes it almost impossible for a family to schedule appointments together, therefore increasing the possibility of family separation. There are also problems with the requirement to submit photos using the app. There are credible reported problems with photos of people with darker skins and small children and the possibility that transgender persons may present differently at the border than when their photo was taken. These situations will all lead to problems when people arrive at the Port of Entry (POE).

The standard for asylum is well-established under U.S. and international law, and does not discriminate based on manner of entry or immigration status. It is wrong to deny the opportunity to apply for asylum just because a person does not enter through a POE. This rule overturns the long-established practice of allowing those who enter by any means to apply for asylum.

Comment Template #2

I am writing to oppose this rule for the following reasons. First of all, 30 days is not enough time to allow for comments. The magnitude of this rule requires that people be given enough time to research it and to comment constructively. The requirements of this rule smack of “guilty until proven innocent”. Without legal representation it will be nearly impossible for people to meet these requirements. My local immigrant assistance center has worked for many people seeking asylum, from all over the world, and it is clear to me that most of them would not or could not meet the requirements of this rule.

Requiring people to use the CBP One App is inaccessible and unfair.

The app is only available in English, Spanish and Haitian Creole. This makes it impossible for people who speak other languages to use it unless they can get someone to translate the instructions. This requires them to pay someone. Using an app like this also requires a level of technical skill that many people seeking asylum don't have. The app does not allow members of a family to schedule appointments at the same time which make the probability of separating the family very high. The app also is not reliable in capturing photos of people with darker skin tones and small children. All of this will lead to problems when people arrive at a point of entry for their appointment. These people have suffered too much trauma already and this technology requirement just adds to their trauma.

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Requiring people to seek asylum in a third country is unsafe & inhumane.

The countries in Central America are not safe places for people to seek asylum. Thousands of people are fleeing these countries because of violence and corruption. They don't have adequately functioning asylum systems. It is unfair to require someone who has already suffered persecution to go to such a country to seek asylum. It does not make sense, nor is it in keeping with asylum law that we require people to seek asylum in countries that have deplorable human rights records and ineffective asylum systems. It is also unsafe for LGBTQ people to seek asylum in transit countries where those who are LGBTQ continue to face violence, prejudice and discrimination due to their LGBTQ identity.

Comment Template #3

The CBP One App is a flawed method for people seeking asylum.

This app is only available in three languages. How will people who don't speak one of those languages apply for an appointment at a port of entry. Many people who would need to use this app do not have the technical skills to use it. We will be discriminating against those people by making the app the only way to schedule an appointment.

In addition, people seeking asylum typically don't have access to the internet or cell phone coverage when relocating to a new country.

Since part of the requirement in using the app is to take photographs of those who will be applying. There are credible reports that the app does not do a good job of capturing recognizable images of people with darker skin tones and infants. These people will face problems when they come for their interviews as they may not be recognized as the same person that made the appointment.

In general, these rules appear to be an effort to make it extremely hard for people to apply for asylum in the US. That is not what our asylum laws intended.

Comment Template #4

Requiring people to seek asylum in a third country is inexcusable

It is unjust to require people to apply for asylum in countries that have horrible human rights records. This rule violates our laws. US law allows people to apply for asylum regardless of how they entered our country. What is the point of making people apply for asylum in countries that have barely functioning asylum systems and from which thousands of their own citizens are fleeing?