



Trump Administration's Proposed Changes to the U.S. Asylum System

The Department of Justice and the Department of Homeland Security are [proposing significant changes](#) to the current asylum system. These changes would eliminate the U.S. asylum system as it currently exists, preventing many people with clearly well-founded fears of persecution from accessing refuge.

Not only would these changes severely curtail the opportunities asylum seekers have to make their case before an immigration judge, they would abdicate America's legal obligations to protect those who fear persecution as established under the Refugee Act of 1980 and international agreements.

The proposed restrictions are so sweeping that they would have a significant impact on *everyone* seeking protection in the in the U.S., not just those applying for asylum at the U.S.-Mexico border. Currently, the [majority of asylum seekers](#) apply from within the U.S., not at the border.

The federal agencies published a [Notice of Proposed Rule Making](#) on June 15 and will be accepting [public comments](#) on the rule until July 15, 2020.

Specifically, the proposed regulation would:

- **Make it more difficult for asylum seekers to pass initial credible fear screenings and enter the asylum process.**
 - As initially crafted, credible fear screenings are the first step in the asylum process, meant to screen out only those very few who have clearly illegitimate claims before they enter the immigration court system. Asylum seekers are given little time to speak to a lawyer or gather evidence to demonstrate their need for protection in these interviews. The system was designed to ensure that we do not inadvertently screen out someone entitled to protection.
 - The proposed regulation would make it much more difficult for asylum seekers to pass credible fear screenings and would prevent many who have legitimate fears of persecution from ever being able to make their case before a judge.
 - Because asylum seekers lack knowledge of our system, the regulation's requirement that they must affirmatively ask for review from an immigration judge is inconsistent with our desire to ensure those who deserve protection are able to get it.
- **Severely limit who is eligible for asylum.**
 - According to U.S. law, to obtain asylum in the U.S., an individual must prove they have a well-founded fear of persecution on the basis of their race, religion, nationality, political opinion, or membership in a particular social group.

- The proposed regulation calls for more narrow definitions of “persecution,” “well-founded fear,” “political opinion,” and “particular social group.” Together, these changes would significantly reduce the number of people eligible for asylum.
 - It lists a number of grounds - including almost all claims typically made by those fleeing violence in Central America - that will no longer meet the definition of asylum.
 - The proposed regulation also redefines “torture” such that any pain or suffering committed by a “rogue official” does not count towards an individual’s protection claim under the [Convention Against Torture](#).
- **Restrict access to asylum.**
 - The proposed regulation adds bases for immigration judges to reject applications as a matter of discretion or “pre-termit” asylum claims before an applicant has access to a hearing.
 - It would also require asylum seekers to have sought asylum in at least one other country they have traveled through before reaching the U.S. (Similar to the [Third Country Transit Rule](#))
 - It would restrict access to asylum for anyone who:
 - Has failed to timely file their taxes or has any outstanding back taxes, potentially denying protection to asylum seekers purely due to their financial situation.
 - Missed an asylum interview for any reason, or
 - Has any criminal convictions – even if they were reversed or expunged on grounds other than innocence.
 - The regulation would also eliminate confidentiality for asylum seekers potentially deterring individuals from applying for asylum.
- **Expand the definition of a “frivolous” asylum claim.**
 - Under current U.S. asylum law, if a claim is declared “frivolous” the applicant is permanently barred from *any* future benefits under the Immigration and Nationality Act, including access to other available humanitarian protections or visas or status of any kind. The current standard for a “frivolous” claim requires an asylum judge to determine the applicant has knowingly misrepresented a key part of their claim. In other words, it requires the intent to mislead.
 - The proposed regulation adds a number of vague grounds for a claim to be deemed “frivolous,” including if the claim is “premised upon false or fraudulent evidence” or “is filed without regards to the merits” without explicitly defining those standards. It also allows asylum officers to declare claims frivolous in addition to immigration judges.