



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.

**Our Asylum System at Grave Risk: What
You Can Do**

June 26, 2020

Introductions

Presenters:

- Karen Sullivan, Advocacy Attorney
- Reena Arya, Senior Staff Attorney
- Jill Marie Bussey, Director of Advocacy
- Victoria Neilson, Managing Attorney



Agenda

- Background and state of play
- Headlines of the proposed Asylum rule
- How to prepare your program
- Ways to respond
- Questions



Asylum Definition

... who is outside his or her country of residence or nationality, or without nationality, and **is unable or unwilling to return to, and is unable OR unwilling to avail himself or herself of the protection** of, that country because of **persecution** OR a well-founded fear of **persecution** on account of **race, religion, nationality, membership in a particular social group, or political opinion.**



Asylum Requirements

- Past persecution, or well-founded fear of future persecution
- On account of protected ground
- Committed by the government, or by persecutor the government is unable or unwilling to control
- Not subject to any bars
- Merits favorable **exercise of discretion**



Background

- Assault on asylum for three years
- Narrowing substantive eligibility
- Speeding up hearings
- Border policies prevent due process
- Regulations--hard to undo
 - New rule this week extending asylum EAD waiting period to 365 days and denying initial EADs to EWIs and those who file asylum beyond one year.



The Proposed Rule

Sweeping changes proposed:

- Rewriting of substantive definitions
- Reducing due process in procedures
- Making it more difficult to pass credible fear/reasonable fear



State of Play

- Proposed Asylum Rule, *Procedures for Asylum and Withholding of Removal; Credible and Reasonable Fear Review* opened for comment June 15, 2020
- Comment period is only 30 days
- Advocates requested normal 60-day period
- NPRM on asylum rules is 161 pages long, more than 60 pages of actual proposed regulations



Poll for Organizations

For agencies and organizations: Will your program or organization submit a comment by the July 15, 2020 deadline?

- Yes
- No
- Undecided



Due Process Violations

- Asylum seekers can be denied a hearing in immigration court
- On motion by DHS or judge's own initiative, judge "shall" **pretermi**t and deny asylum, withholding, CAT if not prima facie eligible
- Applicant given ten days to respond to motion

Effect: Asylum Seekers will never get their day in court, especially pro se applicants and those in MPP.



Particular Social Group

- Codifies three part PSG test
 - Immutable; particularity; social distinction
- Must state PSG before IJ or waived
 - Even if ineffective assistance
- Adjudicator will not look favorably on claims based on (laundry list) including:
 - Affluence
 - Returning from United States
 - "interpersonal disputes of which governmental . . .unaware or uninvolved"



Political Opinion

- Severely limits definition--applicant possesses an ideal or conviction in support of the furtherance of a discrete cause related to political control of a state or a unit thereof
- Expressive behavior against private entities like gangs or terrorists will not qualify unless related to efforts by the state to control such organizations



Persecution

- Never defined in regulations before
- Emphasizes severity
 - Brief detentions or threats with no effort to carry out not enough
 - Laws on books not enough unless proof of enforcement
- No requirement to assess cumulative harm
- No requirement to assess how children experience harm



Nexus

- No “interpersonal animus or retribution”
- Persecutor must persecute others with same protected characteristic
- No resistance to gangs, terrorists, etc.
- No targeting for wealth
- No past gang membership
- **No gender**



Expanded Discretion

- Laundry list of discretionary factors:
 - EWI; Fraudulent documents unless arrival directly to US
 - Passes through third country or spent 14 days in third country
 - Was in U.S. unlawfully for more than one year
 - Did not pay taxes
 - Withdrew asylum application, didn't attend interview, didn't quickly apply to reopen



Internal Relocation

Old Rule	Proposed New Rule
Can consider: any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties.	Size of country, geographic locus of persecution, size reach or numerosity of alleged persecutor, and applicants ability to flee to the US.
Presumption of no Internal Relocation if government is the persecutor.	Asylum applicant bears the burden of proving they cannot internally relocate is not reasonable.



Firm Resettlement

Old Rule	Proposed Rule
<ul style="list-style-type: none"> • If received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement. • Pathway to an offer for firm resettlement is enough 	<ul style="list-style-type: none"> • If resided or could have resided in permanent or non-permanent status (asylee, refugee status) • Stayed in a third country without status for one year • Dual citizens who pass through home country <p>Applicant bears the burden</p>

DHS Bears the Burden



Convention Against Torture

No claim based on “**rogue official**” - Must be acting under color of law

For **acquiescence** must prove “prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.”

Effect: Those who were tortured by drug cartels who are able to operate because of support from Mexican police will be denied.



Credible Fear/Reasonable Fear

- Raises statutory “significant possibility” of persecution standard to “a substantial and realistic possibility of succeeding”
- Adjudicator must consider bars including the possibility of internal relocation
- Anyone barred from asylum must meet higher reasonable fear standard
- CFI - Withholding/CAT must meet higher standard
- Subject to asylum/withholding only proceedings



Poll for Commenters

For those submitting a comment, will you use CLINIC’s template comment and/or resources?

- Yes
- No
- Undecided



Beginning the Commenting Process

- Engage your leadership
- Find out about organizational policies about comments
- Research your organization’s practice and client base and how best to serve them (LawLogix or CMS)
- Think of client cases to ask permission to highlight their stories.



How to Make the Comment Unique

- Use the template comment as a guide
- Use your own words, change the order, pick and choose topics
- Focus the comment on issues that are most important to your organization and clients
- Gather stories and statistics about your practice. Use examples.



Responding to the Asylum Rule

Three Ways to Comment:

- Write your own comment and submit directly through regulations.gov
- Use CLINIC's template comment and submit directly through regulations.gov
- Use a click-to-comment campaign to submit a shorter, topic-specific comment



Full-Length Comment

Who: Organizations that would be gravely impacted by these changes, and/or have unique concerns, are willing to dedicate the time

Why: Original research and comments are more persuasive, may present unique, new concerns

How: CLINIC and other partner organizations can share research and provide assistance.

See Guide to Submitting a Public Comment



Template Comment

Who: Organizations that are concerned, but may not have as much time to dedicate

Why: Allows you to submit a comment of substance, modify with your org's experiences

How: Template comment provides paragraphs to choose from, prioritize your org's concerns.

Template on CLINIC's webpage.

See Guide to Submitting a Public Comment



Click-to-Comment

Who: Organizations or individuals who have little time to dedicate. Orgs can share to public.

Why: Less substantive, less original (though you can edit the submission), but adds to the chorus

How: Choose a topic focus, link to comment site, edit suggested comment text, submit directly through website.

Automatically sends to regulations.gov



Advocacy Beyond Comment

- Encourage others to submit comments
- Raise awareness through communications
 - Op-Eds
 - Storytelling
- Stay up to date
- Engage Members of Congress



Resources

- CLINIC's dedicated landing page
<https://cliniclegal.org/resources/asylum-and-refugee-law/new-proposed-rule-places-us-asylum-system-grave-risk>
 - Asylum Rule Template Comment
 - Step-by-Step Instructions: How to Submit a Public Comment
 - Defend Immigrants by Taking Part in the Federal Rulemaking Process
 - Stories



Questions



Thank You for Learning with Us!

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