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Re: Comment on the Proposed Rule by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) on Circumvention of Lawful Pathways, CIS No. 2736-22; Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023

Dear Acting Director Daniel Delgado and Assistant Director Lauren Alder Reid,

Bridges Faith Initiative submits this comment in response to the Department of Homeland Security (DHS) and Department of Justice (DOJ)'s [proposed rule](#) published in the Federal Register on February 23, 2023. This rule would ban many peoples' ability to submit their claims for asylum and access asylum protection in the United States

This ban will cut off access to asylum for many LGBTQ+, Black, Brown, and Indigenous refugees at the southern border and circumvent U.S. law and treaty obligations to refugees. Bridges Faith Initiative strongly urges the agencies to withdraw the proposed rule in its entirety and stop pursuing asylum bans that anti-immigrant hate groups welcome and which go against U.S. laws and American values. The administration should instead uphold refugee law, restore full access to asylum at ports of entry, and ensure fair and humane asylum adjudications. The rule says the administration wishes to lower the number of asylum seekers crossing between Ports of Entry for the safety of the asylum seekers. If that is the intent of this rule, then the only reasonable and legal way to offer support would be to allow asylum seekers to approach a port of entry and ask for asylum as was done prior to March 2020 and before the Trump administration. Currently the Customs and Border Patrol (CBP) has agents on the international bridges,

physically blocking asylum seekers from approaching the ports of entry, giving them no choice but to cross between ports of entry. If the intent of this administration is to decrease the number of crossings between Ports of Entry, then the Secretary of the Department of Homeland Security should direct the CBP to end blocking asylum seekers from approaching a port of entry and ensure there would be consequences for CBP officers who flout the order. The other recommendations for the administration are: a) that it should end the use of expedited removal; and b) support more funding for legal representation for asylum seekers.

Bridges Faith Initiative (BFI) and its Interest in the Issue

BFI is an inter-faith nonprofit organization. Our mission is to build bridges between people, policies, and governments. In the U.S. we bring together committed voices of diverse faiths to educate and enlighten our policymakers to support policies and programs that integrate refugees into the U.S., promote civilian security, and end mass atrocities. We work with organizations that provide direct support to asylum seekers at the border as well as those who support asylum seekers in the cities of Philadelphia and Atlanta.

Overview of Proposed Rule

The proposed rule bans refugees from asylum protection based on their manner of entry into the U.S. and transit through other countries, factors that are irrelevant to the asylum seekers' fear of return and have no basis in U.S. law.

The rule would create a presumption of asylum ineligibility for individuals who 1) did not apply for and receive a formal denial of protection in a transit country; and 2) entered between ports of entry at the southern border or entered at a port of entry without a previously scheduled appointment through the CBP One mobile application, subject to extremely limited exceptions.

CBP One is an extremely flawed government tool to request an appointment at a Port of Entry because it is inaccessible to many asylum seekers due to financial, language, technological, and other barriers. It discriminates against Black, Brown, LGBTQ+ and Indigenous asylum seekers, and has very limited appointment slots, requiring asylum seekers to use the application essentially as a lottery. The proposed rule attempts to establish CBP One as the only mechanism to request asylum at the southern border and seeks to punish those who cannot wait indefinitely while in danger as they attempt to schedule an appointment.

Asylum Ban Would Disparately Harm LGBTQ+ Black, Brown, and Indigenous Asylum Seekers

This rule discriminates against asylum seekers based on manner of entry and transit and will also have a racially disparate impact on asylum seekers from Africa, the Caribbean, South Asia and Latin America. This proposed ban, which applies only to people who seek protection at the southern border, will disproportionately harm people of color who do not have the resources or the ability to arrive in the U.S. by plane.

The U.S. and other countries employ [visa regimes](#) to prevent people with meagre resources from seeking asylum while often allowing access to people from wealthier and predominantly white nations. Imposing a ban on refugees seeking safety at the southern border will, disproportionately harm people of color and LGBTQ+ people, who must undertake often difficult and dangerous journey to arrive in the U.S. by way of the southern border.

Additionally, as discussed in detail below, requiring asylum seekers to use CBP One to seek asylum at the border disproportionately harms Black asylum seekers due to racial bias in its facial recognition technology. It is also inaccessible to many Indigenous, African, and other asylum seekers due to language and access barriers. This proposed asylum ban will significantly thwart the Biden administration's stated [commitment](#) to racial justice and equity.

One of the asylum seekers we are working with currently at the southern border is of the Garifuna indigenous community from Honduras. Marisol [name changed for confidentiality purposes] is a lesbian. Because her neighbors, in the city of Puerto Cortes, Honduras found out she was a lesbian, the police arrested her, and she was raped in custody by male policemen. She managed to escape and found her way to the southern border of the U.S. As she walked through Guatemala and Mexico there was no way that she could have applied for asylum. Human Rights Watch [documented](#) serious abuse and discrimination against LGBTQ+ asylum seekers in Mexico. Several LGBTQ+ asylum seekers said that Mexican immigration agents, police, and National Guard soldiers targeted them for extortion. Because of the anti-LGBTQ+ actions by the Mexican authorities, Marisol felt she could not seek asylum in Mexico as she feared she would be raped by the authorities again. She now fears for her life as she is forced to stay in Southern Mexico waiting for the CBP One app to work and be able to access the slots of times for an appointment.

While at the U.S. southern border Marisol has not been able to access asylum. First, she did not have a phone that was new enough to support the technology of the app could support the app. Secondly, she did not have functioning internet to download the app. The biggest barrier to access asylum, however, was technological literacy. Marisol is a high school graduate; however, she is not technologically literate, and does not have an email address. Because of this she has been targeted by traffickers who say they will give her a phone and help her with working on the app to answer the 52 questions online if she pays them. She did not pay the gangs because Bridges Faith Initiative was able to connect her with a non-profit in Mexico that offered to help

her, provide her with an appropriate phone and train her on using the app. After the CBP One app was introduced, we have heard from our partners on the ground that gang members and unscrupulous individuals extort money from asylum seekers to provide them phones and help them with technology.

In the text of the proposed rule, the administration says that the CBP asserts that the majority of the immigrants crossing at Ports of Entry have smartphones. This is an erroneous assumption. The majority do have phones, but they are not smartphones. The phones are mostly flip phones or phones that only work in Mexico. The CBP One app does not work on such phones. The Department of Homeland Security needs to check with organizations working with immigrants in Mexico and understand the realities of immigrants who are waiting there before making such assumptions. This policy of using the CBP One app as the sole way to access asylum at the U.S. southern border will discriminate against a large majority of asylum seekers and asylum will be only available to those who can afford a phone that is compatible with the required technology or find a nonprofit that might give them such a phone. Currently this app is placing a burden on nonprofits who need to find phones for asylum seekers without means to do so. It is also creating more gang activity at the border, with gangs preying on immigrants who don't have phones or internet and asking for exorbitant sums for access to both. Gang activity and trafficking will only increase if this rule goes into effect and the CBP One app is the sole process to access asylum at a port of entry at the southern border.

Limited Parole Opportunities Tied to the End of Asylum Ban Creates Nationality Based Discrimination Access to Asylum.

This proposed rule also builds in nationality-based discrimination in access to asylum, as it bans asylum for people who do not enter the United States via limited parole initiatives while simultaneously only affording limited access to parole initiatives for certain nationalities. For instance, while there are currently limited parole initiatives for some nationalities, such as Ukraine, Cuba, Haiti, Nicaragua, and Venezuela there are no similar parole initiatives for people from Guatemala, Honduras, and El Salvador. There are also no parole programs for people from any African or Asian countries. Tying the right to seek asylum to a nationality is extremely limiting and is reminiscent of the 1924 Nationality and Immigration Act which was discriminatory and racist. The 1924 established a quota system for some nationalities and banned other nationalities especially those considered non-white Asians from immigrating. The law was not modified to aid the flight of Jewish refugees in the 1930s or 1940s and caused much hardship for those fleeing Nazi Germany.¹ “The act limited total immigration to about 164,000 people per year. The quotas were designed to “protect” America from “undesirable” immigrants, including

¹ [“Token Refuge: The Story of the Jewish Refugee Shelter at Oswego, 1944-1946.”](#) By Sharon Lowenstein-Poisner. Published 1986.

Jews, Asians, and Africans, according to the U.S. Holocaust Memorial Museum.”² Nationality based asylum is wrong, harmful, and illegal.

Conclusion

The proposed rule is illegal, inhumane, and discriminatory. Like the Trump administration’s entry and transit bans, this asylum ban will deport refugees to persecution and torture, and separate families. The proposed rule also requires asylum seekers at the border to use a discriminatory and deficient mobile app that is contingent on resources, language skills, and an ability to wait indefinitely for an appointment slot and denying asylum access for many of the most vulnerable asylum seekers.

Bridges Faith Initiative calls on the administration to withdraw this rule in its entirety, stop punishing migrants arriving at the U.S. southern border, and instead allocate resources toward humane asylum processing and fair adjudications.

² <https://www.washingtonpost.com/history/2019/05/01/jews-fleeing-holocaust-werent-welcome-us-then-fdr-finally-offered-refuge-some/>