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Department of Homeland Security
Executive Office for Immigration Review

RE: Proposed Rule - "Circumvention of Lawful Pathways", published on
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A.G. Order No.: 5605-2023

To Whom It May Concern,

I write to provide a comment in opposition to the above-referenced proposed rule. I am the Executive Director of HIAS and Council Migration Service of Philadelphia, Inc., DBA HIAS Pennsylvania. HIAS Pennsylvania has been providing social and legal services to low-income refugees and immigrants for 140 years. We were founded for this purpose in 1882 and have increased our immigration legal services as immigration law and policy has become increasingly restrictive making it harder for immigrants to enter and remain in the United States. Today, we are one of the largest immigration legal services providers in Pennsylvania and serve more than 4,000 low-income Pennsylvania immigrants per year. We write in opposition to this rule for many reasons, as detailed below, but the primary reason for opposing this proposed rule is that it is seeking to solve the wrong problem and doing so by violating our own Constitution, our international obligations, and the humanitarian policies that make the United States a world leader.

I. The Proposed Rule Doesn't Address the Real Problem at Our Border

The rule was passed to address concerns about increasing number of asylum seekers who are, supposedly, overwhelming our Southern border and Southern border towns, cities, and states. However, what is overwhelming are not the numbers of people but the fact that our current laws and policies force months to years long waits for work authorization. As increasing numbers of eligible asylum seekers come to our country, because they have no other options, it is imperative for our citizens, as well as for those seeking safety within our country, that they be made eligible to work immediately upon given parole into the country. Shelters, food banks and other charitable institutions are being inundated with requests for help from people who want nothing more than to work and care for their families but who are, instead, forced by our government to seek charity since they are not legally permitted to work until months and months after an asylum petition is filed.

Meanwhile, staffing crises in every industry except for technology continue unabated. Businesses all over the country have been forced to either close, reduce their hours or exploit their staff



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(resulting in regular turnover) because they simply cannot find help in sufficient numbers to meet the demand. As baby boomers retire in droves, and the impact of two decades of birth rate decline and rising mortality rates due to COVID-19 and gun violence are felt, the staffing crises should not be a surprise. Immigrants, as they have been at every point of economic downturn in our country's history, are who will help our economy fully recover. But as long as immigrants are prevented from using their skills, courage and determination, both they and we will continue to suffer.

What could be a resolution for many ills – overwhelming need at our southern border, overwhelming need for our country's faltering economy and the strengthening of our moral leadership in a time of worldwide crisis – is instead a rule that does the exact opposite. The proposed rule fails to meet the needs of a growing number of persecuted persons, fails to respond to the demands of our economy and the business community and simply lines the United States up as yet another country that is closing its doors and turning its back on the unabating displacement crisis worldwide.

II. The Proposed Rules Violate our Constitutional and Worldwide Obligations to Asylum Seekers

Beyond the fact that the rule is not responsive to the actual problems that need solving, the rule also creates additional problems by violating our own Constitution and our worldwide obligations as signatories to the Geneva Convention. These documents require our border to be open to asylum seekers. Instead, the rule proposes to constrain access to our border to those who have access to CBP One, despite myriad issues with this app, and to those who have been denied asylum in countries through which they have traveled, regardless of whether the asylum-seeking process in these countries are viable.

A. Using CBP One Violates Constitutional and Federal Anti-discrimination Mandates

As recognized by both the Guardian and the American Immigration Council, the App itself does not work for black or brown asylum seekers. See, Melissa Del Bosque, “*Facial Recognition Bias Frustrates Black asylum applicants to US, advocates say*”, The Guardian, (February 8, 2023) (last viewed March 14, 2023 at <https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias>); American Immigration Council, “CBP One: An Overview”, (February 28, 2023) (last viewed March 17, 2023 at <https://www.americanimmigrationcouncil.org/research/cbp-one-overview>). Specifically, CBP One has been known to not recognize photos of black and brown immigrants as live persons and has misidentified two different persons as one and the same thereby exposing individuals to the risk of being identified as being wanted for criminal behavior or for immigration infractions. For our federal government to use a tool that has been proven to work inconsistently at best for an entire race of people is the very definition of unlawful discrimination.

B. Using CBP One without Plain Language Information and Translations of that Plain Information for any User Violates Constitutional Due Process and Federal Language Access Mandates

In addition, as outlined by the American Immigration Council, there are numerous concerns regarding the privacy of users of CBP One, the voluntariness of use of the program and the ability to

understand the implications of use given that currently instructions are not written using plain language and are in English, Spanish and Haitian Creole only. Given all these concerns, requiring asylum seekers – who speak languages from all over the world – Russian, Chinese, Swahili, French as well as indigenous languages - to use CBP One to enter the country is problematic at best.

Due Process, which is guaranteed by our Constitution to anyone on United States soil, requires the ability to understand processes that could result in loss of freedom (detention) and/or removal from the United States. Additionally, Federal language access requirements require that government processes be accessible to non-English speakers. Translating what is, in English, confusing and difficult to understand, to only two additional languages hardly meet the language access requirements.

C. Requiring the use of CBP One, without Specific Protocols Surrounding Exemptions, Violates Constitutional Mandates

CBP One, proposed in the rule as the way to manage asylum seekers in an orderly manner, presupposes that those having language barrier issues, literacy issues or simply issues with their own technology or the seamless workability of the app will somehow be able to overcome all of these issues and use the app successfully. Even though there is an exemption for individuals who have language, literacy or technology issues, there is nothing in the proposed rule that suggests how people can access the exemption. In other words, if an individual does not have CBP One and cannot get it, or cannot get it to work, there is nothing in the rule that suggests what the individuals are supposed to do even though the rule suggests that they may qualify for an exemption from the requirement to use the app. What will happen to individuals who simply arrive at a port of entry at an unscheduled place and time? Will efforts to determine whether the person fits an exemption be made? And if so, and the individual is considered exempt, will they be seen immediately or told to wait in dangerous and unsafe conditions either in the US or in a country other than the United States?

D. The Proposed Rule Effectively Restricts Asylum for Those Individuals Who Might Have to Pass Through Countries that Do Not Have Viable Asylum Systems in Accordance with the United States' Own Evaluations of Those Asylum Systems.

The Proposed rule permits asylum seekers to enter the country only if they have first asked for and been denied asylum in any countries which they pass through between the asylum seeker's country of origin and the United States. This impacts only those persons who cannot afford to fly to the United States from their country of origin and who must get to the United States on foot. For many, this will mean that they will have to seek asylum in El Salvador, Honduras and Guatemala – three countries that the United States Department of State, as recently as 2021, has found to have asylum systems that are not viable.

Regarding El Salvador, the US Department of State, in its own Human Rights Report, has stated,

“The legal framework requires persons with international protection needs to file their claim within five days of entering the country; the criteria for case decisions is unclear; and the appeals process is decided by the same government entity that issues the initial decision.”

U.S. Department of State, 2021 Country Reports on Human Rights Practices, p. 19 (last viewed on March 17, 2023 at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/>). There is no budget for the Commission for Refugee Status and, as the State Department says in the report, the system has “major regulatory and operational gaps”. *Stet.*

The situation for asylum seekers is even worse in Honduras. As the report states,

“Transiting migrants and asylum seekers with pending cases were vulnerable to abuse and sexual exploitation by criminal organizations. Women, children, and LGBTQI+ migrants and asylum seekers with pending cases were especially vulnerable to abuse. Asylum seekers and refugees continued to face acute protection risks in border zones.”

U.S. Department of State, 2021 Country Reports on Human Rights Practices at p. 12. In addition, the asylum system is new in Honduras and heavily reliant on help from the United Nations High Commissioner for Refugees (UNHCR).

Guatemala’s asylum program is difficult to access and procedurally confusing. As the Department of State indicated,

“UNHCR reported that identification and referral mechanisms for potential asylum seekers were inadequate and requirements to travel to Guatemala City for parts of the process continued to limit access. Despite regulations published in 2019, there continued to be gaps and lack of clarity in the procedures for implementing the legal framework.”

U.S. Department of State, 2021 Country Reports on Human rights Practices at p. 18.

It is clear from our own government’s report and investigation that forcing migrants to seek asylum first in countries through which they travel is simply a way to delay their safety, stability and the safety and stability of their children and dependents. It is unconscionable in the extreme to expect those fleeing persecution to spend time and money accessing legal processes that our own government knows do not work.

III. Conclusion

For all these reasons, HIAS Pennsylvania opposes the proposed rules, “Circumvention of Legal Pathways”. Not only do these rules render asylum inaccessible for many, violating both our Constitutional and international obligations, but they constitute a missed opportunity to solve the actual problem that increased numbers of asylum seekers pose: the problem of expediting work authorization. Providing work authorization immediately upon parole into the country would turn the increased numbers of asylum seekers into immediate participants in our economy – reducing the staffing crises that currently exist in almost every industry, contributing to our tax base and reducing dependency on shelter systems, food banks and private charities.

Thank you for your consideration.

Sincerely,



Cathryn Miller-Wilson
Executive Director