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*I am writing in my capacity as an individual and not as a spokesperson for New Mexico State University. This comment is informed by my research on immigration issues and involvement with community-based organizations in the border region.*

### **Comment on the Proposed Rule by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) on the “Circumvention of Lawful Pathways”.**

The U.S. used to be a country in which asylum-seeking was a human right, in accordance with its domestic laws, international treaty obligations, and fundamental morals. With the proposed “*Circumvention of Lawful Pathways*” rule, the Biden administration continues previous administrations’ efforts to restrict, delegitimize, and criminalize asylum-seeking. With this proposed rule migrants will have virtually no right to asylum if they have not sought protection in a transit country on their way to the U.S. Migrants who do not meet the criteria for existing parole programs, including the expansion to 30,000 individuals from Venezuela, Nicaragua, Haiti, and Cuba per month, or who have not secured an appointment with the new CBP One app will also have almost no access to asylum.

The proposed rule will inevitably cause avoidable and unjust human suffering in several ways, including:

- The administration’s parole program expansion, while valuable in some respects, does not include nationals from other countries that were [increasingly encountered at the southern border](#) in recent months, including Colombia, Peru, or Venezuela. The parole program also excludes all individuals without a passport, financial sponsor in the U.S., or who are unable to afford a flight—meaning the expansion will not cover some of the most vulnerable asylum seekers.
- Requiring migrants to seek asylum in transit countries to the U.S. (including Honduras, El Salvador, Guatemala, and Mexico) in which they are at high risk of violence, kidnapping, and killings and which have either [strained or dysfunctional asylum systems](#) is cruel and creates additional problems for people seeking safety.
- The requirement for migrants who do not meet other eligibility criteria to seek asylum in a transit country first also disproportionately harms Black and indigenous migrants, women, children, and LGBTQ+ people, as individuals in these groups are at [higher risk of violence and exploitation](#).
- The exception to allow migrants to make appointments using the CBP One app also excludes particularly vulnerable migrants who do not have access to a smartphone. Those who do have the technological means to access this service may not benefit from the exception, since the app is [reportedly](#) prone to errors and only offers limited appointment

slots Furthermore, it inadvertently encourages family separation because it is challenging for families to secure appointments together.

- The app also discriminates against people of color as it has [greater difficulty detecting their facial features](#) and fails to account for the different linguistical needs of migrants. The app also does not offer any indigenous language and error messages are communicated in English only.
- The fact that children are exempt from the proposed rule [will likely tempt](#) desperate parents to send their children to the U.S. alone, placing them at high risk of labor exploitation and mental health problems due to the separation from their caregivers.

In addition, the administration argues that eliminating the option to seek asylum upon unauthorized entry would lower the reliance of migrants on human smugglers. However, as Dr. Slack from the University of Texas at El Paso [points out](#), migrants' satisfaction with human smugglers rests upon reaching a desired destination within the U.S., not crossing the border to encounter an immigration official (especially not when chances of staying in the desired destination upon such an encounter are marginal). Thus, the argument that the rule makes migrants less likely to seek help from human smugglers is flawed. In addition, stricter immigration enforcement measures historically have increased the likelihood for human smugglers to abandon migrants en route to the border out of fear of getting caught, placing migrants in more dangerous situations.

Evidently, this rule is grounded in the overarching priority to lower the number of asylum seekers at the southern border. It would appear, therefore, that the federal administration is positing that the well-being of asylum seekers is not a concern of the United States. Most Americans, however, disagree: According to a 2022 [study](#) by the Pew Research Center, 72% of Americans consider *“taking in civilian refugees from countries where people are trying to escape violence and war”* as *“very”* or *“somewhat important”*.

A broken immigration system and pressure from anti-immigration groups have undeniably created precedent for the administration to continue on a path of stricter enforcement measures and fewer options for asylum seekers. But what happened to President Biden's commitment upon taking office to [“securing our border, while ensuring the dignity of migrants and upholding their legal right to seek asylum”](#)?

Standing by this promise would entail the adoption of policy options in which the well-being and human rights of migrants are considered a priority. For instance, this would involve reaffirming individuals' fundamental human right to asylum, reallocating money away from hiring additional CBP personnel (who are [not qualified to conduct asylum interviews](#)) to increasing the number of asylum officers, investing in local border communities to increase their capacity to assist migrants in transit, and including community stakeholders who serve migrants in border areas and elsewhere in the policy decision-making progress. In addition, more expansive and nuanced efforts to address the root causes of migration (including greater [decision-making power to local community-based, civic, and faith-based organizations and more resources for climate change](#)

[adaptation](#)) should be a central short- and long-term strategy to prevent people from having to leave their homes in the first place.

As every policy decision must weigh costs and benefits, the federal administration should ask itself whether the cost of exposing more migrants to violence, unlivable conditions, and breaking with its own laws and values is worth the anticipated “benefit” of giving fewer people a chance at survival and a better future.

Sincerely,

Isabel K. Latz