

Response to proposed Pandemic Asylum ban

Sin Barreras/Without Barriers urges the Department of Justice and the Department of Homeland Security to withdraw their latest proposed rule, with its renewed attack on asylees' opportunity to flee to the United States, in its entirety. Asylum is a lifeline for tens of thousands of vulnerable people, and it would violate the United States' duties under domestic law and international treaty to reject them based on highly dubious premises. This rule would eliminate asylum for the vast majority of asylum seekers and is morally wrong. If it becomes law, our country will cease to be a leader in providing humanitarian assistance and protecting the most vulnerable.

From its founding eight years ago, Sin Barreras has offered a wide range of activities in immigration and citizenship services including asylum petition assistance; legal and court-related consultations; community workshops; and many others. From 127 one-on-one clients in 2014, we served 1,159 in 2019. In the last three years, we prepared 71 successful citizenship petitions, 38 Green card petitions, 74 DACA petitions, 167 citizenship-test preparations, and 42 other petitions including asylum. We are intimately familiar with the horrific conditions asylum candidates have fled, their gut-wrenching experiences during their immigration journey, and the vast difficulties they encounter in preparing viable asylum petitions. We also know how tremendously meritorious these people are of discretion and how much they will bring benefit to U.S. society.

This proposed new rule would exclude on public health grounds any asylum application who comes from a country affected by the Covid-19 pandemic, or who has passed through a country affected by Covid. At this point, this is anyone in the world! The U.S. has the highest case incidence of Covid-19 in the world, so calling asylum seekers a "danger to the security of the U.S." because they might have been in an infected area is absurd and xenophobic. In fact, this rule is unnecessary because of existing laws and screening procedures that protect public health, but this language tries to capitalize on fears around the pandemic to point blame at people seeking asylum.

Under the proposed rule, the administration would strip asylum eligibility from anyone who is from—or who passed through—countries where COVID-19 is prevalent, and would also apply to any other "infectious disease" designated by the U.S. government. Asylum seekers would also be ineligible for a lesser form of protection called "withholding of removal;" and such individuals would now be considered "a danger to the security of the United States," triggering an asylum bar or withholding under the immigration laws.

Such a justification is a major break with prior administrations. In 2005, the then-Attorney General held that the National Security bar applied (only) to risks to "defense, foreign relations, or economic interests." Covid-19 is none of those things and there is no precedent for Congress or the administration to define a national security bar this way. In fact, current immigration law already includes limits on immigration based on public health. But those limitations have never been considered national security concerns. Moreover, the proposed rule sweeps broadly to

include any “communicable disease of public health significance.” Given our own failure to adequately respond to the Covid-19 pandemic, ascribing a public health reason for such a rule is ludicrous. Indeed, it is counter-factual and thus illegal.

The new rule would also affect credible fear interviews by allowing low-level immigration officials to issue deportation orders based on passing through a Covid-affected country without consideration of “credible fear” which has been the asylum standard for fifty years. Under the proposed rule, asylum seekers subject to the national security bar would fail these credible fear interviews by accident of geography regardless of how threatened or at risk they were of torture or death in the country they are fleeing from. This cannot be allowed to stand.

This new rule provides another example of the Trump administration’s using any pretext to further its anti-immigrant agenda. While the administration has been demonstrably unsuccessful in controlling the pandemic, it is using Covid-19 as justification to deny protection to individuals fleeing harm who otherwise have enjoyed long protection under U.S. and international law. We call on the administration to withdraw this proposed rule in its entirety, and on our supporters to speak out in opposition as well.