



Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

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Samantha Deshommes
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Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
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RE: RIN 1615-AC67; DHS Docket No. USCIS-2021-0012, Public Comment Submitted in Support of Proposed Rules on “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers”

Dear Division Chief Deshommes:

The City of Seattle Office of Immigrant Refugee Affairs (OIRA) submits this comment in support of the proposed rule that would allow individuals applying for asylum, withholding of removal under INA 241 (b)(3) or protection under the Convention Against Torture (CAT) to have their claims adjudicated by an asylum officer within U.S. Citizenship and Immigration Services (“USCIS”). This policy change would increase access to justice for individuals seeking these forms of relief and make the adjudication process more efficient and streamlined.

The City of Seattle is a Welcoming City with a commitment to protect the rights of immigrants and refugees, who are integral parts of our families and communities. Seattle has made great efforts to protect our immigrant and refugee workers and residents. Such efforts include executive orders¹, resolutions², and ordinances³ to ensure immigrants feel welcome and safe in the city. The City has also funded social programs to help income-eligible residents with what we consider to be basic needs. In 2012, the City created the Office of Immigrant and Refugee Affairs (OIRA) to improve the lives of Seattle’s immigrant and refugee families. The City of Seattle, through OIRA, funds and coordinates the Legal Defense Network (LDN) that provides ongoing full direct representation to over 150 low-income residents, students and workers of Seattle, Washington at any given time.

¹ See http://murray.seattle.gov/wp-content/uploads/2016/11/Executive-Order-2016-08_Welcoming-City.pdf

² See <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s3=&s2=&s4=Ordinance+121063&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=RESNY&Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2Fresny.htm&r=7&f=G>

³ See <http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CBOR&s1=114436.cbn.&Sect6=HITOFF&l=20&p=1&u=~public/cbor2.htm&r=1&f=G>

As a Welcoming City that respects and upholds the American value of welcoming immigrants, **OIRA strongly supports giving USCIS asylum officers the authority to adjudicate withholding of removal and CAT cases, in addition to asylum.** The Biden administration has declared it a priority to repair our “long-broken” immigration system.⁴ By authorizing trained government officials within USCIS to adjudicate these additional claims for immigration relief, rather than relying solely on the Immigration Court to do so, this policy would be a step towards repairing our current system and offering prompt due process for applicants.

I. The proposed rule strengthens due process.

Under the proposed rule, such individuals could have their claims for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (“INA”) (“withholding of removal”), and/or protection under the regulations issued pursuant to the legislation implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) initially adjudicated by an asylum officer within USCIS. Currently, asylum officers are only authorized to adjudicate applications for affirmative asylum, *not* defensive applications for asylum, withholding of removal or protection under CAT. Under the proposed rule, asylum officers could grant asylum, withholding of removal, and/or protection under CAT, as appropriate, to individuals defending themselves against expedited removal.

Typically, an applicant for asylum either applies affirmatively before USCIS, or defensively before the Immigration Court. This proposed rule would apply to individuals subject to expedited removal proceedings, often following apprehension and arrest at the U.S. borders with Mexico and Canada. Under the new rule, however, their defensive applications for asylum, withholding of removal and/or CAT could first be adjudicated by an asylum officer rather than proceeding immediately to the Immigration Court.

Unchanged from current policy, the proposed rule would require all individuals applying for asylum, withholding of removal and/or protection under CAT at the border to first pass a “credible fear” interview, in which an officer determines that there’s a “significant possibility” that the applicant can establish in a hearing before an Immigration Judge that they have been persecuted or have a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion (or that they would be subject to torture, for those seeking CAT relief) if returned to their country.⁵ While the proposed rule maintains the initial credible fear threshold that those seeking asylum-related relief at the border must clear, it creates a new pathway to relief that would allow some applicants to avoid the uncertainty and delay of formal Immigration Court proceedings.

II. The proposed rule relieves the current strain and backlog on the Immigration Court system

The proposed rule would allow individuals meeting the credible fear standard to present their claims before an USCIS asylum officer. Under current policy, an asylum officer lacks the authority to grant relief

⁴ See <https://www.whitehouse.gov/priorities/>

⁵ See <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening>

to an individual statutorily ineligible for asylum.⁶ Currently, these individuals, after meeting the credible fear standard, would have their cases heard by the Immigration Court, potentially waiting years for their first hearing, and even longer for a final decision in their case.

As of September 2021, a case pending before the Immigration Court takes an average of 934 days to be adjudicated.⁷ This is the national average, with some jurisdictions seeing backlogs of 1,208 (Los Angeles) and 963 days (Seattle)⁸— roughly three years. This is the result of a national backlog of nearly 1.5 million pending cases, a steady increase since Fiscal Year 2006.^{9 10}

If a significant portion of applications for withholding of removal and protection under CAT could first be heard by an USCIS asylum officer, the pressure on the Immigration Court would be reduced, and applicants could pursue and potentially obtain relief more promptly.

III. The proposed rule increases access to legal representation

To increase access to legal representation, the Department of Justice (DOJ), Office of Legal Access Programs¹¹ provides accreditation to experienced, qualified individuals who seek to represent clients in their immigration matters.¹¹ Partial DOJ accreditation, which is far more common than full accreditation, authorizes non-attorneys working at recognized nonprofit organizations to represent clients before USCIS and Immigration and Customs Enforcement (ICE).¹² The proposed rule would allow these DOJ-accredited representatives to represent clients seeking withholding of removal and CAT relief as the matter is pending before USCIS, not the Immigration Court. Currently, partially accredited representatives would not be authorized to do this, as only fully-accredited representatives are authorized to represent clients in matters before the Immigration Court.

Allowing withholding of removal and CAT cases to proceed before USCIS, not just the Immigration Court, would potentially give applicants greater access to the free or low-cost legal representation provided by DOJ-recognized service providers. Representation bears significant impact in legal proceedings. In the Immigration Court context, individuals represented by an attorney (or fully-accredited DOJ representative) are significantly more likely to be granted asylum, withholding of removal, or protection

⁶ Example of individuals presumed to be statutorily ineligible for asylum include the following: those who did not apply for asylum within one year of their most recent entry to the U.S., *see* I.N.A. § 208(a)(2)(B); applicants who have previously applied for but were denied asylum, *see* § 208(a)(2)(C); applicants who committed a “particularly serious crime”, *see* § 208(a)(2)(A)(ii). While there is also a ‘particularly serious crime’ (PSC) bar to obtaining withholding of removal relief, courts have found that more (and sometimes less serious) crimes trigger the PSC bar to asylum relief.

⁷ See https://trac.syr.edu/phptools/immigration/court_backlog/

⁸ See https://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_charge.php

⁹ See https://trac.syr.edu/phptools/immigration/court_backlog/

¹⁰ This average obscures the difference between detained cases—individuals who remain detained for the entirety of their removal proceedings—and non-detained cases, which includes those who were detained initially, but were later released and allowed to proceed with their case on the non-detained calendar. The cases of detainees housed at the Northwest Detention Center, the ICE facility 30 miles south of Seattle, are currently pending an average of 81 days. Even among non-detained cases, there is a range. Juvenile cases are given priority, which increases the average time for non-juvenile cases to 1013 days. See https://trac.syr.edu/phptools/immigration/court_backlog/

¹¹ See <https://www.justice.gov/eoir/recognition-and-accreditation-program>

¹² See <https://icor.eoir.justice.gov/en/faq/>, “What is an Accredited Representative?”

under CAT.¹³ It follows that applicants with similar cases who appear *with* representation before USCIS would have a higher chance of success than those appearing without legal representation, and having these matters adjudicated by USCIS allows for a greater pool of skilled legal representatives.

IV. The proposed rule continues to offer guarantee of judicial review

The proposed rule does not alter any of the safeguards currently in place for individuals seeking asylum-related relief. Individuals denied asylum, withholding of removal, and/or protection under CAT by a USCIS asylum officer would still have the option to have their case heard by the Immigration Court, and undoubtedly, many would pursue this option. But unlike the current policy, which requires *all* applications for withholding of removal and protection under CAT to be heard by the Immigration Court, some meaningful number of applications would be adjudicated by USCIS and avoid Immigration Court altogether.

V. The Seattle Office of Immigrant and Refugee Affairs supports this proposed rule as a positive step for individuals at the border seeking asylum-related relief.

Fair and efficient administration of justice on the border is a daunting, and probably impossible, goal. Individuals seeking to enter the United States are subject to extended detention, as well as dangerous and unhygienic conditions, bolstered by protocols that undermine international law and threaten due process.¹⁴ This proposed rule does not magically change this reality. However, if implemented properly, this proposed rule would streamline the current process for individuals seeking asylum-related relief at the border, which would in turn promote access to legal representation and reduce strain on the Immigration Court system.

Sincerely,



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¹³ Among 627,000 asylum cases decided in the Immigration Court system over the past 20 years, 47% of represented applicants obtained asylum or asylum-related relief. Less than 18% of unrepresented applicants obtained similar relief. <https://trac.syr.edu/phptools/immigration/asylum/>

¹⁴ See <https://www.rescue.org/article/what-happening-us-southern-border>