

Congress of the United States
Washington, DC 20515

January 21, 2020

The Honorable Chad Wolf
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20520

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Re: 84 FR 69640; EOIR Docket No. 18-0002, A.G. Order No. 4592-2019; RIN 1125-AA87, 1615-AC41; Comments in Opposition to Proposed Rulemaking: Procedures for Asylum and Bars to Asylum Eligibility

Dear Acting Secretary Wolf and Attorney General Barr:

We write to express our strong opposition to the proposed rules to amend regulations relating to eligibility for asylum published in the Federal Register on December 19, 2019. The Department of Homeland Security and the Department of Justice should immediately withdraw their current proposal and instead dedicate their efforts to ensuring that individuals fleeing violence are granted full and fair access to asylum protections in the United States.

On December 19th, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) issued a joint set of proposed rules that would make three primary changes to the rules governing asylum adjudications. We are submitting these comments to express opposition to the entirety of the proposed rules and grave concerns with the administration's continued efforts to exclude refugees from obtaining the security and stability the United States asylum system has long promised.

The asylum protections provided by United States law are sacred. Asylum provides those fleeing horrors with physical safety, a path to citizenship and security, and the opportunity to reunite with immediate family members who may still remain abroad in danger.¹ Specifically, the bars to asylum based on allegations of criminal conduct are *already* sweeping and over-broad in nature and scope.² The existing crime bars should be narrowed, not expanded. The agencies' efforts to add *seven* new sweeping categories of barred conduct to the asylum eligibility criteria are unnecessary and cruel. The proposed rules drain the phrase "*particularly serious crime*," 8 U.S.C.

¹ The permanency and family reunification benefits that accompany asylum are not provided to those granted withholding of removal or protection under the Convention Against Torture, the alternative forms of relief described throughout the Proposed Rules as a justification for the breadth of the new proposed bars. For more details on the differences between the forms of protection, *see* section VI *infra*.

² The existing categorical bars to asylum eligibility are discussed in detail on p. 69641 of the Proposed Rules.

§ 1158, of any sensible meaning. The proposed rules would constitute a marked departure from past practice. And the agencies have proffered no evidence or data to support these changes.

The proposed rules repeatedly cite increased efficiency as justification for many of the proposed changes.³ Yet requiring adjudicators to engage in mini-trials to determine the applicability of categorical criminal bars, rather than relying on adjudications obtained through the criminal legal system, will dramatically *decrease* efficiency in the asylum adjudication process.

The section of the proposed rules that outlines a new set of criteria for determining whether a conviction or sentence is valid for the purpose of determining asylum eligibility is an excessive use of authority that is not authorized by the Immigration and Nationality Act. These proposed rules unfairly interfere with asylum seekers' efforts to establish their claims. Immigration and asylum laws are already highly complex, and the process of seeking asylum is in many instances re-traumatizing, particularly for applicants who do not have counsel to represent them and who lacked effective counsel in their underlying criminal proceedings. The proposed rules as applied to asylum applicants who seek post-conviction relief will transform an already difficult process into an adversarial inquiry, contrary to the intent of Congress.

The expanded criminal bars only serve to exclude asylum seekers from safety and a pathway to citizenship and do not accomplish the stated goal of making communities safer. It is already immensely difficult to navigate our asylum and immigration laws. Many individuals are not even aware of their right to apply for asylum until after encounters with immigration enforcement that leads them to service providers and community advocates who can educate them on navigating through their different options. The proposed rules are also serving to exclude vulnerable communities from protection, including LGBTQ immigrants, survivors of trafficking and domestic violence, and immigrant youth of color who have experienced trauma, abuse, coercion, and trafficking. These are communities our asylum laws were created to protect. Despite the unique difficulties they face, the proposed rules would compound their harm and prevent them from achieving family unification and a pathway to citizenship.

When Congress speaks clearly through a statute, the plain meaning of that statute governs.⁴ In the asylum statute, Congress explicitly made the commission of a particularly serious crime a bar to asylum. The canon of interpretation known as *expressio unius est exclusio alterius* instructs that, "expressing one item of [an] associated group or series excludes another left unmentioned."⁵ The proposed rules attempt to create numerous categories of discretionary "pseudo-particularly serious crimes," barring asylum through a categorical exercise of discretion even if those offenses are

³ See Proposed Rules at 69646, 69656-8.

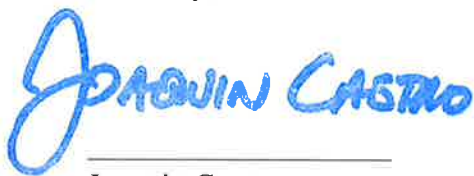
⁴ See, e.g., *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997).

⁵ *United States v. Vonn*, 535 U.S. 55, 65 (2002).

ultimately found not to be particularly serious crimes. Such an effort violates this canon of interpretation and places the Proposes Rules above our nation's statute.

In conclusion, we denounce the efforts of the Department of Homeland Security and the Department of Justice to once again narrow the doors into the United States for asylum seekers. We ask that these departments consider the comments expressed above and rescind the proposed rules in their entirety.

Sincerely,



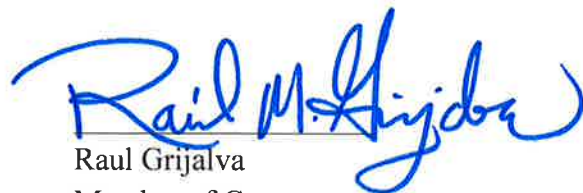
Joaquin Castro
Member of Congress



Richard Blumenthal
United States Senator



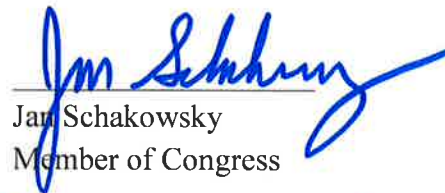
Juan Vargas
Member of Congress



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Bonnie Watson Coleman
Member of Congress



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