

PUBLIC COMMENT ON PROPOSED “CIRCUMVENTION OF LAWFUL PATHWAYS” RULE

Submitted Friday, May 24, 2023

InterAction, the largest alliance of international NGOs in the U.S. with more than 170 Member organizations that are collectively active in displacement and migratory contexts, submits this statement during the comment period for USCIS, DHS, Executive Office for Immigration Review, and DoJ consideration regarding the Biden Administration’s proposed rule, Circumvention of Lawful Pathways.

InterAction is dismayed that the proposed rule would impose undue restrictions on vulnerable people’s access to asylum when it should focus on expanding access to accommodate an anticipated increase in the number of vulnerable people seeking asylum.

As a party to the 1951 Convention relating to the Status of Refugees and a proponent of refugee rights globally, the United States must lead by example and uphold international standards, including allowing people to make asylum claims along its territorial borders.

Under the proposed rule, a new rebuttable presumption of ineligibility for asylum (CFR 208.33 and 8 CFR 1208.33) applies to noncitizens crossing into United States territory anywhere along the southwest land border, including at regular ports of entry, unless several conditions are met. These conditions are unduly restrictive and problematic, particularly:

- ▶ **Third country transit:** The rule introduces a presumption of ineligibility for asylum for individuals who have not sought protection in a third country before reaching the United States. This places an undue burden of proof on asylum seekers and amounts to a transit ban.
- ▶ **Explicit rejection of generalized violence as grounds for rebuttal:** The rule explicitly states that threats of generalized violence are insufficient grounds for rebuttal, despite their rampant prevalence along the border.
- ▶ **Alternative pathways:** The U.S. Government justifies the rule by stating that imposing consequences for bypassing lawful pathways can protect migrants from a dangerous journey and reduce migration. However, there is no evidence to support these conjectures. Instead, these changes could trap would-be migrants in unsafe situations by restricting their movement.
- ▶ **Reliance on the CBP One application:** U.S. asylum applicants must use the new CBP One application, which collects personal identifying and biometric data to conduct background checks—including any previous encounters with border agents or asylum claims in third countries. Applicants and advocates report multiple problems with the application, ranging from applicant accessibility to privacy concerns.

The text of the proposed rule suggests that it would encourage migrants to avail themselves of lawful, safe, and orderly pathways into the United States or otherwise to seek asylum. However, it imposes conditions on how people enter the country that risk breaching the 1951 Refugee Convention and the U.S. Refugee Act of 1980, which both describe people’s right to claim asylum at national borders.

We are encouraged that the United States is committed to providing leadership on refugee policy, but caution that its own asylum policies should be no exception. We strongly urge the Biden Administration to expand its capabilities to process asylum claims at the U.S. southwest border, remove the proposed assumption of ineligibility from the proposed rule, and reduce its dependency on the CBP One application.

