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March 27, 2023

Re: Center for Law and Social Policy Comment on Circumvention of Lawful Pathways, CIS No. 2736-22;
Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023

Daniel Delgado, Acting Director
Border and Immigration Policy, Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security

Lauren Alder Reid, Assistant Director,
Office of Policy, Executive Office for Immigration Review
U.S. Department of Justice

Dear Daniel Delgado and Lauren Alder Reid,

The Center for Law and Social Policy appreciates this opportunity to offer our expertise on this proposed rule. Our extensive research and policy expertise at the intersection of immigration, child development, and anti-poverty issues, as well as our experiences speaking with affected migrants makes it clear that the proposed asylum rules [Docket No: USCIS 2022-0016] will cause direct harm to children arriving at the border with their families. **We strongly oppose the proposed rule, which we refer to as the asylum ban hereafter. It should not be enacted in any form.**

The proposed asylum ban undercuts the ability of families with children to seek refuge, an exceptional feature of the U.S.'s increasingly punitive immigration system. By dismantling our asylum system, the U.S. is no longer a place where families with children can seek refuge from violence, persecution, and authoritarianism. This ban, whether temporary or not, sets a dangerous precedent for border policies that contradict international standards for safe, equitable, and humane migration.

This rule essentially requires all asylum seekers to expose themselves to more violence before seeking refuge. Most importantly, the asylum ban directly puts children in harm's way. It would result in literally sending children back to the exact dangers they and their families fled from without ample and equal opportunity to request protection. Migrants are at risk of harm in Mexico as they wait for appointments. The consequences of requiring asylum seekers to wait outside of the country have been horrific; a December 2022 Human Rights First report tracked at least [13,480](#) violent attacks against migrants and asylum-seekers trapped in or expelled to Mexico.¹ LGBTQIA+ migrants waiting to enter the U.S. face an additional risk of homophobic violence, including rape, torture, and murder, as well as homelessness and lack of medical care.²

Because of this rule, more children with legitimate claims to asylum will be deported. Children arriving at the border are already often subject to expedited removal, and this rule would expand this dangerous process. This means more children will be deported without sufficient time or support to establish their case. A recent issue brief from First Focus on Children finds that [expedited processes prioritize pushing families through the system over fairness](#).³ Expedited removal gives little time for families and children to make their case for asylum, with little to no legal and language support and little consideration for a child's unique circumstances and needs.

The proposed rule disproportionately impacts Black, brown, and indigenous migrant children. These proposed restrictions to asylum only apply to people who seek protection at the southern border, and it privileges white and other wealthy asylum seekers who are more able to apply for a visa,⁴ hold a passport, arrive by airplane, have a sponsor in the U.S., and/or seek refuge in other nations.⁵ The proposed rule applies particularly to Cuban, Haitian, Nicaraguan, and Venezuelan asylum seekers, many of whom are indigenous, Black, or Brown. Black migrants have faced widespread racial discrimination from both individuals and governmental authorities in Mexico.⁶

The proposed rule will rely on biased and glitchy technology. The rule requires asylum seekers to secure smartphones and make appointments using an app called CBP One. Asylum seekers are typically fleeing from danger, and it is unreasonable and actively harmful to require asylum seekers to make appointments using an inaccessible app.⁷ The CBP One app is exclusionary; if people are fortunate enough to even have or secure a smartphone, the app is [not available in Haitian Creole](#) or indigenous languages.⁸ There have also been reports that it is glitchy and does not recognize Black faces in certain light,⁹ nor does it recognize fidgeting babies.¹⁰ Members of Biden's own party have additionally raised concerns about CBP One's racial biases and asylum seekers' data privacy with the use of this app.¹¹ In addition, securing enough appointments for an entire family before available slots fill up has proven to be impossible, [forcing families to choose between continuing to wait indefinitely or separate](#).¹²

The rule will increase family separation.¹³ This ban makes it harder for families to cross the border together with their children, forcing some, as many have done, to send their children unaccompanied across the border, as unaccompanied children are not subject to this ban. In addition, family members who are unable to flee together due to immediate danger or other reasons [would be unable to petition for their spouses and children](#) once receiving protection in the United States, leaving little to no options for families to reunite.¹⁴ [Research](#) has demonstrated that children experience mental distress and trauma as a result of family separation.¹⁵

The rule harms LGBTQIA+ asylum seekers.¹⁶ The rule requires LGBTQIA+ asylum seekers to apply for asylum in unsafe transit countries. If someone does not apply for asylum on their way to the U.S., they may be deemed ineligible for asylum. In reality, applying for asylum in a transit country is barely an option.¹⁷ Common transit countries such as Mexico, Honduras, El Salvador, and Guatemala have documented histories of severe violence and torture of LGBTQIA+ people.¹⁸ The governments of these countries fail to protect LGBTQIA+ people, including their children and LGBTQIA+ children, from

egregious abuses and frequently engage in them. The rule forces LGBTQIA+ people to seek protection in places that cannot give it, endangering their lives in the process.¹⁹

The administration attempts to differentiate itself from Trump-era asylum restrictions through exceptions and alternative pathways to asylum, which are weak and questionable. Due to the unreasonably high and dangerous burdens imposed by the rule, these exceptions and alternatives will fail to protect people who need it the most. Families with children, including LGBTQIA+ asylum seekers, will be stranded in hostile border nations or returned to countries where they are unsafe. **The end result will have the same harrowing outcomes that have been documented under the Trump administration: adults and children will be tortured, assaulted, or murdered as long as the administration limits asylum access.**

Moreover, given this proposed rule would impact hundreds of thousands of vulnerable families, including children, the government should have extended the comment period from 30 to 60 days, to allow adequate time for all stakeholders to voice their feedback and input on this impactful rule. 30 days is a cruelly short amount of time to solicit feedback from entire communities of migrants and their advocates. Moreover, regulations.gov has been experiencing delays in website loading in the days leading up to the deadline for comments, further indicating a need to extend the comment period.

There is no question that implementing this harmful rule will increase chaos at the border and put children and families at risk. The rule is a return to hateful and dangerous Trump-era policies, which fomented distrust and fear within immigrant communities, an impact still felt today. We strongly urge you to not move forward with implementing this rule and instead commit to strengthening our asylum system and working with organizations around the country to welcome asylum seekers with dignity and respect.

We appreciate the opportunity to comment on this important issue. If you have further questions, please contact Suma Setty, Senior Policy Analyst, at ssetty@clasp.org.

¹ “Title 42: “Human Rights Stain, Public Health Farce,” Human Rights First, December 2022, <https://humanrightsfirst.org/library/title-42-human-rights-stain-public-health-farce/>.

² Teodoro Garcia, LGBTQ Asylum Seekers Still Facing Grave Dangers Due To Title 42, Human Rights First, Aug. 12, 2022, <https://humanrightsfirst.org/library/lgbtq-asylum-seekers-still-facing-grave-dangers-due-to-title-42/>.

³ “Issue Brief: Fast, Not Fair — How Expedited Processes Harm Immigrant Children Seeking Protection,” *First Focus on Children and The Young Center*, Mar. 6, 2023, <https://firstfocus.org/resources/fact-sheet/fast-not-fair-how-expedited-processes-harm-immigrant-children-seeking-protection>.

⁴ “Mexico/Central America: New Visa Restrictions Harm Venezuelans,” Human Rights Watch news release, July 5, 2022, <https://www.hrw.org/news/2022/07/05/mexico/central-america-new-visa-restrictions-harm-venezuelans>.

⁵ Camilo Montoya-Galvez, “U.S. officials processed 9,926 undocumented Ukrainians in last 2 months, data show,” CBS News, April 11, 2022, <https://www.cbsnews.com/news/immigration-ukraine-us-mexico-border/>; [Adam](#)

Isacson, “A tragic milestone: 20,000th migrant deported to Haiti since Biden inauguration,” *Washington Office on Latin American*, Feb. 17, 2022, <https://www.wola.org/analysis/a-tragic-milestone-20000th-migrant-deported-to-haiti-since-biden-inauguration/>.

⁶ “2017 Country Reports on Human Rights Practices: Mexico,” U.S. Department of State, 2017 <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/mexico/>.

⁷ Arelis Hernandez, “Desperate migrants seeking asylum face a new hurdle,” *The Washington Post*, Mar. 11, 2023, <https://www.washingtonpost.com/nation/2023/03/11/asylum-seekers-mexico-border-app/>.

⁸ Sandra Sanchez, “Improving immigration applications a top USCIS goal, new plan says,” *Myhighplains.com*, Jan. 27, 2023, <https://www.myhighplains.com/border-report/tps-extended-for-haitians-but-cbp-one-app-still-not-available-in-creole/>.

⁹ Melissa del Bosque, “Facial recognition bias frustrates Black asylum applicants to US, advocates say,” *The Guardian*, Feb. 8, 2023, <https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias>.

¹⁰ Andrea Castillo, “Asylum seekers face decision to split up families or wait indefinitely under new border policy,” *Los Angeles Times*, Feb. 24, 2023, <https://www.latimes.com/politics/story/2023-02-24/asylum-seeking-families-consider-separation-shortage-mobile-app-appointments>.

¹¹ “Senator Markey Calls On DHS To Ditch Mobile App Riddled With Glitches, Privacy Problems, For Asylum Seekers,” Ed Markey United States Senator for Massachusetts, February 21, 2023, <https://www.markey.senate.gov/news/press-releases/senator-markey-calls-on-dhs-to-ditch-mobile-app-riddled-with-glitches-privacy-problems-for-asylum-seekers>.

¹² Andrea Castillo, “Asylum seekers face decision to split up families or wait indefinitely under new border policy,” *Los Angeles Times*, Feb. 24, 2023, <https://www.latimes.com/politics/story/2023-02-24/asylum-seeking-families-consider-separation-shortage-mobile-app-appointments>.

¹³ Miriam Abaya, “5 ways the Biden asylum ban punishes children,” *First Focus on Children*, Feb. 24, 2023, <https://firstfocus.org/blog/5-ways-the-biden-asylum-ban-punishes-children>.

¹⁴ “Biden Administration’s Proposed Asylum Ban: Illegal, Inhumane, and No Solution,” *Human Rights First*, February 2023, https://humanrightsfirst.org/wp-content/uploads/2023/02/Biden_asylum_ban_factsheet_Feb2023_1.pdf.

¹⁵ Brittney Bringuez, Kathryn Hampton, Ranit Mishori, ““Part of my heart was torn away”: What the U.S. Government Owes the Tortured Survivors of Family Separation,” *Physicians for Human Rights*, Apr. 19, 2022, <https://phr.org/our-work/resources/part-of-my-heart-was-torn-away/>.

¹⁶ “Biden’s Asylum Ban Will Return Refugees to Danger and Death,” *Washington Office on Latin America*, Feb. 23, 2023, <https://www.wola.org/2023/02/biden-asylum-ban-refugees-danger-death/>; “US: LGBT Asylum Seekers in Danger at the Border,” *Human Rights Watch*, May 31, 2022, <https://www.hrw.org/news/2022/05/31/us-lgbt-asylum-seekers-danger-border>.

¹⁷ “Is Guatemala Safe for Refugees and Asylum Seekers?,” *Human Rights First*, June 2019, <https://humanrightsfirst.org/wp-content/uploads/2022/10/IsGuatemalaSafeForRefugeesandAsylumSeekers.pdf>; “Is Mexico Safe for Refugees and Asylum Seekers?,” *Human Rights First*, November 2018, https://humanrightsfirst.org/wp-content/uploads/2022/10/MEXICO_FACT_SHEET_PDF.pdf

¹⁸ “‘Every Day I Live in Fear’: Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States,” *Human Rights Watch*, Oct. 7, 2020, <https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador>.

¹⁹ “U.S. policies and practices subjecting LGBTQ asylum seekers to human rights violations, arbitrary detention in often life-threatening conditions, and denials of and delays in refugee protection,” *Human Rights First*, August 2022, https://humanrightsfirst.org/wp-content/uploads/2022/09/HRF_Submission_IE_LGBTQ.pdf.