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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, EOIR
U.S. Department of Justice

RE: Comment on the Proposed Rule by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) on Circumvention of Lawful Pathways, CIS No. 2736-22; Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023

Dear Acting Director Delgado and Assistant Director Alder Reid:

The American Psychological Association (APA) is the nation's largest scientific and professional nonprofit organization representing the discipline and profession of psychology. APA has more than 146,000 members and affiliates who are clinicians, researchers, educators, consultants and students. Through the application of psychological science and practice, our association's mission is to make a positive impact on critical societal issues across the states. We submit these comments in response to the Department of Homeland Security (DHS) and Department of Justice (DOJ)'s proposed rule published in the Federal Register on February 23rd, 2023. The proposed rule would effectively ban many immigrants from asylum protection into the United States and deprive immigrants the ability to reunite with their families and pursue a path to citizenship. As of March 8, 2023, it was announced that new appointments would be released daily through the CBP One app only, while still relying on the CBP One website for other functions. The 30-day comment period is insufficient for the complexity of the proposed rule and should be expanded an additional 60 days for public comment.

The 30-day Comment Period Provides Insufficient Time to Comment on the Rule

The Administration has allowed for only 30 days to comment on the proposed rule, which denies the public the right to meaningfully comment under the notice and comment rulemaking procedures. The time frame is not sufficient for a lengthy and complex proposed rule that would effectively deny many individuals the access to asylum. Agencies generally allow at least 60 days for the public to have sufficient time to effectively comment on a proposed rule. The agencies cite the termination of the Title 42 policy in May 2023 as a justification for this short comment period. However, given that the Administration has considered ending Title 42 for almost a year, the reasoning for the short comment period falters.

The Proposed Rule Requires Immigrants at the Southwest Border to use CBP One which Denies Access to the most Vulnerable Immigrants and Would Unfairly Impact Individuals of Color Seeking Asylum

The proposed rule bans immigrants from asylum protection based on their manner of entry into the United States and transit through other countries. The result is a disparate impact on asylum seekers from Latin America. The proposed rule applies only to those entering the United States from the southern border, who are primarily individuals of color. There are hundreds and thousands of families already living in tent encampments on the U.S.-Mexico border as a result of Title 42 and previous Migrant Protection Protocols who will be affected by this new rule.¹

Furthermore, the CBP One app, a government tool to request an appointment at a port of entry, is inaccessible to many trying to enter the country because of their lack of financial means and knowledge of technology to be able to access CBP One. In addition, the CBP One app only offers fact sheets in limited languages, including English, Spanish, Haitian Creole, Portuguese and Russian, while the app only offers access in English, Spanish and French. Most notably, the app proposes to treat asylum seekers in the same way it treats those traveling by plane to have their agriculture products inspected. In no way should individuals be compared to agriculture products or should they be competing with those individuals checking their agriculture products to get an appointment. Asylum seekers have a much more dire need to secure an appointment.

The proposed rule tries to establish CBP One as the only means of requesting asylum at the border and unfairly impacts those who cannot wait indefinitely for an appointment. Many immigrants do not have the resources to obtain a smart phone or have the ability to use an app. Asylum seeker unable to secure appointments through the CBP One app will need to wait at the border indefinitely which will drastically increase their risk of victimization as they try to make an appointment. In addition, several functional aspects of the app are not yet operational, for example the app requirement to submit advance information. The app has simply posted “Coming Soon. The feature is coming soon. Additional services will be rolled out over the next

¹ Misra, S., Kwon, S.C., Abraido-Lanza, A.F., Chebli, P., Trinh-Shevrin, C., & Yi, S.S. (2021). Structural racism and immigrant health in the United States. *Health Education & Behavior*, 48(3), 332-341.

year.” These types of functional gaps in the CBP One app must be addressed prior to full roll out. Asylum seekers should not be held at the border while waiting for app programming to be completed. The app does not clearly communicate or direct asylum seekers to submit advance information through the CBP One website. Functionality gaps and a bifurcated system will only create confusion.

Requiring the use of CBP One also includes the possible outcome that families will be separated. Families who are unable to secure appointments as a unit will have to make the choice of whether or not to send their children across the border without their parents. Therefore, this proposed rule would tear families apart.

Family Separation

Given the very possible outcome of family separation due to the requirement that families must make an appointment through the CBP One app, we would also like to highlight the importance of keeping families together. Based on evidence of the psychological harm of parent-child separation, we urge the Administration’s commitment to the humane policy of keeping families together to protect immigrants from further trauma. Recent psychological research conducted on the U.S.-Mexico border has highlighted significant trauma symptoms as a result of the Migrant Protection Protocols and Title 42.² The CBP app is currently geared toward individual applicants and does not allow room for family appointments.

Decades of psychological research have determined that it is in the best interest of the child and parents to keep families together. Families fleeing their homeland to seek sanctuary in the United States are already under a tremendous amount of stress.³ Sudden and unexpected family separation, such as separating families during immigration proceedings, can add to that stress, leading to emotional trauma for children.⁴ Research also suggests that the longer children and parents are separated, the greater the reported symptoms of anxiety and depression are for children.⁵ ⁶ Therefore, continuing the practice of keeping families together is vital to their mental health.

There is a growing body of research showing that toxic stress (prolonged exposure to trauma and the biological stress response) and adverse childhood experiences can have a profound adverse

² Mercado, A., Venta, A., Morales, F., Palomin, A., Garcini, L., Silva, M., & Domenech Rodríguez, M. M. (2022). Trauma in the American asylum process: Experiences of immigrant families under the migrant protection protocols. *Psychological Trauma: Theory, Research, Practice, and Policy*. <https://doi.org/10.1037/tra0001368>

³ Chaundry, A. (2011). Children in the aftermath of immigration enforcement. *The Journal of the History of Childhood and Youth*, 4 (1), 137-154.

⁴ Dreby, J. (2012). The burden of deportation on children in Mexican immigrant families. *Journal of Marriage and Family*, 74, 829- 845. doi:10.1111/j.1741-3737.2012.00989x.

⁵ Suárez-Orozco, C., Bang, H.J. & Kim, H.Y. (2010). I felt like my heart was staying behind: Psychological implications of family separations and reunifications for immigrant youth. *Journal of Adolescent Research*, 26 (2), 222-257.

⁶ Venta, A., Mercado, A., Domenech Rodríguez, M. (2022). Immigration (2023). *Current Opinion in Psychology*. <https://www.sciencedirect.com/journal/current-opinion-in-psychology/special-issue/10BWCT180DK>

impact on later adult health outcomes.^{7 8} Fortunately, research also indicates that the impact of these environmental risk factors can be reduced through early and sustained intervention.^{9 10 11} This vital and early intervention could be achieved through access to mental health care for migrants.

Thank you for the opportunity to comment on this important issue. Should you have any questions, please feel free to contact Serena Dávila at sdavila@apa.org.

Sincerely,



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Chief Advocacy Officer
American Psychological Association

⁷ American Psychological Association. (2018). Health disparities in racial/ethnic and sexual minority boys and men. <https://www.apa.org/pi/health-disparities/resources/race-sexuality-men>

⁸ Shonkoff, J. P., & Gardner, A. (2012). The lifelong effects of early childhood adversity and toxic stress. *Pediatrics*, 1542, 2011–2663.

⁹ Masten, A. (2014). *Ordinary magic: Resilience in development*. New York, NY: Guilford.

¹⁰ Center on the Developing Child. (2015). *Supportive relationships and active skill-building strengthen the foundations of resilience: Working paper No. 13*. Retrieved from www.developingchild.harvard.edu

¹¹ Leslie, L. K., Mehus, C. J., Hawkins, J. D., Boat, T., McCabe, M. A., Barkin, S., ... Beardslee, W. (2016). Primary health care: Potential home for family-focused preventive interventions. *American Journal of Preventive Medicine*, 51, 106–118.