

What You Need to Know About Trump's Proposal to Eliminate the US Asylum System

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In sweeping new proposed regulations announced on June 11, the Trump administration took the first step toward administering a final blow to the U.S. asylum system.

The proposed rules, which impose nearly a dozen new bars to asylum, would rewrite asylum law to exclude nearly all people seeking refuge. Should the rules go into effect, the United States could no longer call itself a country that offers refuge to the persecuted.

Who would the new asylum rules apply to?

The rules would apply to any person seeking asylum in the United States, regardless of how they enter the country. Unlike prior rules that focused on the southern border, the new rules would even affect people who fly to the United States on a visa and later seek asylum.

They could also affect people who already applied for asylum and have pending cases. Over 300,000 people currently have affirmative asylum applications pending with U.S. Citizenship and Immigration Services (USCIS). Hundreds of thousands of additional people have asylum cases pending in immigration court.

What are the new bars to asylum?

The proposed regulation instructs immigration judges and Asylum Officers to deny asylum to individuals who have:

- Passed through at least two countries prior to arriving in the United States or stayed in another country for at least 14 days prior to arriving in the United States.
- Ever failed to pay taxes, paid taxes late, or failed to report any income to the IRS.
- Been unlawfully present in the United States for at least one year.

Several other bars to asylum are included in the regulation. Immigration judges are instructed to use a person's unlawful entry into the United States as a "significant adverse factor" when deciding whether to grant asylum. This would be applied despite the fact that many people are "metered" or turned away at ports of entry, and it is legal to seek asylum between ports of entry.

Individuals who were denied asylum for these reasons would still be eligible for withholding of removal or protection under the Convention Against Torture. But the rules also make it harder to win both of those forms of relief.

The proposed regulations also impose expansive new grounds for having an asylum application declared "frivolous." A person whose asylum application is declared frivolous is banned from any other immigration relief.

How would this regulation change asylum law?

This proposed regulation would go further than any of the Trump administration's previous attempts to change asylum law, including when former Attorney General Jeff Session's tried to eliminate asylum for victims of domestic violence. The rule would redefine what it means to be "persecuted," raising the definition of "persecution" to cover only "extreme" harms. This would be a much higher standard than the current one.

The administration also wants to redefine what it means to be persecuted on account of "membership in a particular social group" or on account of "political opinion."

Many Central Americans who were the victims of MS-13 or other transnational criminal organizations previously won asylum on these grounds. The proposed rules would effectively eliminate that possibility by declaring that "particular social groups" relating to opposition to gangs or terrorist organizations do not qualify, nor would political opposition to those groups.

There would also be an outright ban on applying for asylum on account of gender. Even women fleeing from sex slavery at the hands of ISIS would not be allowed to argue that they were persecuted "on account of gender."

The rules also redefine what it means to have “firmly resettled” in a third country. Anyone who *could* have resettled in a third country on their way to the United States—even if they didn’t know it was a possibility—was indeed “firmly resettled” by the government’s definition.

Other changes included heightened standards for protection under the Convention Against Torture, heightened screening processes at the border, and new burdens on asylum applicants to prove that they could not have relocated elsewhere to avoid persecution.

What procedural changes do the new rules make?

The rule makes two major changes to the asylum process.

Individuals who seek protection at the border who pass the first stage of the asylum process would no longer be put into full immigration court proceedings. Instead, they would only be given access to narrower “asylum-only” court proceedings. In these proceedings, even if they were eligible for another form of relief than asylum, they would not be allowed to apply for it.

Second, the new rules would permit judges to deny asylum applications without a hearing. Currently, asylum applicants must be permitted to testify about their case. But under the new rules, judges could declare that an applicant hadn’t put enough evidence in the application itself and deny a person their day in court. This change would be particularly harmful for those without lawyers.

What’s next for the asylum rules?

Beginning on Monday, June 15, people will have 30 days to submit comments responding to the rule.

After the 30-day period is over, the government must take those comments into account when preparing a final rule. Because this process can be lengthy, the rule is not expected to go into effect until the fall at the earliest. Should the rules go into effect, they would represent the end of the asylum system as we know it.

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