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Residence and Naturalization Division Chief
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: *Alien Registration Form and Evidence of Registration,* 90 FR 11793 (March 12, 2025)
DHS Docket No. USCIS-2025-0004

Dear Mr. Phillips:

The Center for Gender & Refugee Studies (CGRS) submits this comment in response to DHS Docket No. USCIS-2025-0004, *Alien Registration Form and Evidence of Registration,* 90 FR 11793 (March 12, 2025) (hereinafter "Interim Final Rule" or "Rule"). We include the following outline to guide your review.

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I. EXPERTISE OF THE CENTER FOR GENDER & REFUGEE STUDIES

The Center for Gender & Refugee Studies (CGRS) was founded in 1999 by Professor Karen Musalo[1] following her groundbreaking legal victory in *Matter of Kasinga*[2] to advocate for asylum seekers fleeing gender-based violence. CGRS protects the fundamental human rights of refugee women, children, LGBTQ+ individuals, and others who flee persecution and torture in their home countries. CGRS is an internationally respected resource, renowned for our knowledge of the law and ability to combine sophisticated legal strategies with policy advocacy and human rights interventions.

We take the lead on emerging issues, participate as counsel or *amicus curiae* in impact litigation to advance the rights of asylum seekers,[3] produce an extensive library of litigation

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[1] Bank of America Foundation Chair in International Law; Professor & Director, Center for Gender & Refugee Studies, University of California College of the Law, San Francisco.

[2] 21 I&N Dec. 357 (BIA 1996).

[3] *See, e.g.*, *RAICES v. Noem,* No. 25-cv-306 (D.D.C. filed Feb. 3, 2025) (challenging Presidential proclamation that invokes INA 212(f) to "suspend the entry" of noncitizens at the southern border); *E.Q. v. DHS*, No. 1:25-cv-00791 (D.D.C. filed Mar. 17, 2025) (challenging rule that requires asylum officers conducting initial fear screenings to make complicated determinations about applicability of mandatory bars that would render individuals ineligible for asylum); *Las Americas Immigr. Advoc. Ctr. v. DHS,* No. 1:24-cv-01702 (D.D.C. filed June 12, 2024) (challenging "Securing the Border" rule); *Al Otro Lado and Haitian Bridge Alliance v. Mayorkas,* No. 3:23-cv-01367-AGS-BLM (S.D. Cal., Oct. 13, 2023), appeal docketed, No. 23-3396 (9th Cir. Nov. 7, 2023) (granting in part and denying in part government's motion to dismiss challenge to turnbacks of arriving asylum seekers without CBP One appointments); *East Bay Sanctuary Covenant v. Trump*, 683 F. Supp. 3d 1025 (N.D. Cal. July 25, 2023), (granting plaintiffs summary judgment in challenge to "Circumvention of Lawful Pathways" rule), vacated, No. 23-16032 (9th Cir. Apr. 10, 2025) (vacating and remanding to district court for further proceedings); *Immigr. Def. Law Ctr. v. Mayorkas*, No. CV 20-9893 JGBSHKX, 2023 WL 3149243, 18-19 (C.D. Cal., Mar. 15, 2023) (granting in part and denying in part defendants' motion to dismiss challenge to implementation of MPP 1.0 and granting plaintiffs' motion for class certification); *Huisha-Huisha v. Mayorkas*, 642 F. Supp. 3d 1 (D.D.C. Nov. 15, 2022) (vacating and setting aside Title 42 policy as arbitrary and capricious), cert. and stay granted sub nom. *Arizona v. Mayorkas*, 143 S. Ct. 478, 214 L. Ed. 2d 312 (2022), and vacated, No. 22-5325, 2023 WL 5921335 (D.C. Cir. Sept. 7, 2023); *Al Otro Lado v. EOIR*, 120 F.4th 606 (9th Cir. Oct. 25, 2022) (affirming in part and vacating in part district court's ruling that held metering of asylum seekers at ports of entry); *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966 (N.D. Cal. 2021) (preliminarily enjoining the "Global Asylum" rule); *Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020) (affirming in part and vacating in part the district court's injunction against the use of *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) (*Matter of A-B- I*), and guidance implementing *Matter of A-B-* in credible fear proceedings); *U.T. v. Barr*, 1:20-cv-00116-EGS (D.D.C. filed Jan. 15, 2020) (challenging rule providing the structure for asylum cooperative agreements enabling the removal of asylum seekers to designated countries without hearing their claims in the United States); *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021) (vacating *Matter of A-B- I* and *Matter of A-B-,* 28 I&N Dec. 199 (A.G.

support materials, maintain an unsurpassed database of asylum records and decisions, and work in coalitions with refugee, immigrant, LGBTQ+, children's, and women's rights networks.[4] Since our founding, we have engaged in international human rights fact-finding and analysis with a strong emphasis on El Salvador, Guatemala, Haiti, Honduras, and Mexico, to address the underlying causes of forced migration that produce refugees, including climate change and environmental disasters.[5]

As a critical part of our mission, CGRS serves as a resource to decision makers to promote laws and public policies that recognize the legitimate protection claims of those fleeing persecution and torture. Our goal is to create a U.S. framework of law and policy that respects the rights of refugees and aligns with international law. It is in furtherance of our mission that we submit this comment urging that the Rule be rescinded in its entirety.

II. THE INTERIM FINAL RULE VIOLATES THE ADMINISTRATIVE PROCEDURE ACT BECAUSE IT WAS ISSUED WITHOUT PRIOR NOTICE AND THE OPPORTUNITY TO COMMENT

A. The Legal Challenge to the Rule Correctly States that the Rule is a Legislative Rule

CGRS notes that the Rule is already the subject of litigation claiming the Department of Homeland Security ("DHS" or "the Department") issued the Rule in violation of the Administrative Procedure Act ("APA") because the Rule is a legislative rule, not a procedural rule, and is therefore subject to the APA's notice and comment requirements.[6]

Plaintiffs further claim that, in violation of the APA,

> the [Rule] is arbitrary and capricious because, in adopting it, Defendants have failed to articulate a reasoned explanation for their decision, which represents a change in the agency's longstanding policy; failed to consider reasonable alternatives; entirely

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2021) (*Matter of A-B- II*) concerning the proper evaluation of asylum and related claims of relief based on domestic violence and fear of gang violence; and *Matter of A-C-A-A-*, 28 I&N Dec. 351 (A.G. 2021) (vacating *Matter of A-C-A-A-*, 28 I&N Dec. 84 (A.G. 2020) concerning the proper evaluation of asylum claims based on membership in a particular social group).

[4] *See, e.g.*, the Welcome With Dignity campaign.

[5] *See, e.g.*, Center for Gender & Refugee Studies (CGRS), The Chile Declaration and Plan of Action H2024-2034: A Blueprint for Addressing Climate and Disaster-Related Displacement in the Americas (2025); Precluding Protection: Findings from Interviews with Haitian Asylum Seekers in Central and Southern Mexico (2024); "Manifesting" Fear at the Border: Lessons from Title 42 Expulsions (2024); Honduras: Climate Change, Human Rights Violations, and Forced Displacement (2023); Far from Safety: Dangers and Limits to Protection for Asylum Seekers Transiting Through Latin America (2023).

[6] Compl. ¶ 103-107, *CHIRLA v. U.S. Dep't. of Homeland Security*, No. 1:25-cv-00943 (D.D.C. Mar. 31, 2025).

failed to consider important aspects of the problem; failed to take into account reliance interests; and offered explanations for their decision that run counter to the evidence before the agency.[7]

CGRS agrees with these claims and offers this additional explanation of the impact of the Rule on people seeking asylum, which further supports the view that the Rule is not a procedural rule.

B. The Rule is Not a Procedural Rule Because It Alters the Interests of People Seeking Asylum

As explained in detail below, the Rule provides confusing, contradictory guidance to people seeking asylum on what they must do to comply with the requirements of INA 262, 8 U.S.C. 1302, which imposes a duty on noncitizens to apply for registration and be fingerprinted if they remain in the United States longer than 30 days. Asylum seekers have an interest in understanding their legal obligations in the United States, in having a clear sense of what steps they must take to comply with those obligations, and in not having to undertake duplicative actions by providing the government with registration-related information already in its possession.

As a particularly vulnerable class, by definition, asylum seekers have a strong interest in maintaining their ability to continue enjoying legal protection in the United States by complying with all applicable laws. The Rule substantially alters those interests and therefore is subject to the APA's notice and comment requirements because it is a legislative rule and not a rule of agency organization, procedure, or practice. Because DHS failed to provide prior notice and an opportunity to comment, the Rule violates the APA.

III. THE INTERIM FINAL RULE VIOLATES THE APA BECAUSE IT IS ARBITRARY AND CAPRICIOUS

A. The Department Failed to Consider Reasonable Alternatives to Promulgating a New General Registration Form

1. The underlying Executive Order does not require the creation of a new form.

The Department explains in the preamble to the Rule that its purpose is to "partially implement section 7 of Executive Order 14159, Protecting the American People Against Invasion (Jan. 20, 2025), 90 FR 8443 (Jan. 29, 2025)." Rule 11795. That section directs the Secretary of Homeland Security, in coordination with the Secretary of State and the Attorney General, to take appropriate action to announce and publicize information about the legal requirements of sections 261-266 of the INA, 8 U.S.C. 1301-1306; ensure

[7] *Id.*, ¶ 109.

previously unregistered individuals comply with those requirements; and ensure that failure to comply is treated as a civil and criminal enforcement priority.[8] DHS further explains that in response to this Executive Order, it reviewed the existing regulations at 8 CFR 264 implementing the INA's registration requirements and "determined that it would be appropriate to designate a general registration form in addition to those already identified in the regulations" in the belief that doing so "may improve registration outcomes for certain groups of aliens." Rule 11795.

The Department fails to explain why the promulgation of a new form, on its own, is appropriate for the stated purpose of "improv[ing] registration outcomes," particularly since the Rule will create confusion among people seeking asylum and other forms of humanitarian relief, because existing forms for those purposes already solicit the necessary information.

The Rule amends 8 CFR 264.1 by making one addition each to the list of prescribed registration forms in 264.1(a) and to the list of forms constituting evidence of registration in 264.1(b). We note that the structure of 8 CFR 264.1 as it existed prior to the publication of the Rule is inherently confusing. That is, 8 CFR 264.1(a) simply lists prescribed registration forms, while 264.1(b) lists forms constituting evidence of registration.

As discussed further below, 8 CFR 264.1(a) fails to list certain forms and applications that when approved result in the issuance of documents listed in 264.1(b). The regulations provide no guidance whatsoever on whether an individual already in possession of a form constituting evidence of registration is required to submit one of the forms prescribed as registration forms if they have not done so already.

Rather than attempting to clarify, modernize, update, or otherwise remedy this confusing scheme, the Rule simply designates the newly created Form G-325R, Biographic Information (Registration), or its successor form, as a general registration form, and the USCIS Proof of Alien G-325R Registration, or its successor form, as constituting evidence of registration. DHS could have chosen to designate as additional registration forms preexisting forms and applications that already contain the inquiries required under INA 264(a), 8 U.S.C. 1304(a), or that, upon approval, result in the issuance of documents evidencing registration under 8 CFR 264.1(b). However, the Rule provides no indication that the Department considered doing so.

2. Asylum applications already solicit the necessary information, making the new registration form redundant, unnecessary, and confusing for asylum seekers.

DHS could have designated applications for asylum as registration forms. The Rule sets forth the five inquiries provided for in the statute authorizing registration, INA 264(a), 8

[8] Protecting the American People Against Invasion, 90 FR 8443, 8444 (Jan. 29, 2025) (hereinafter "Executive Order").

U.S.C. 1304(a), each one of which solicits information required by the asylum application. Rule 11794. We list each of the five inquiries below and show how they correspond to questions on the application for asylum:

(1) *the date and place of entry of the alien into the United States: See* Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589"), Part A.I. Information About You, Item 19.c. ("List each entry into the U.S. beginning with your most recent entry. *List date (mm/dd/yyyy), place, and your status of each entry*.").

(2) *activities in which he has been and intends to be engaged*: *See* Form I-589, Part A.III. Information About Your Background, which collects information about address and residential history, education, and employment history. *See also*, Part B. Information About Your Application, which collects information about past experiences of harm or mistreatment, organizations or groups with which the noncitizen was associated in their home country, and continued participation in such groups. *See also*, Part C. Additional Information About Your Application, which collects information about prior asylum applications, travel and residence in third countries, requests for immigration benefits in third countries, prior involvement in causing harm or suffering to others, and commission of crimes (as well as arrests, charges, convictions, or sentences). Asylum applicants are also subject to interview by an asylum officer or examination by an immigration judge for the purpose of eliciting all relevant and useful information bearing on the applicant's eligibility for asylum, which includes whether there are reasonable grounds for regarding the applicant as danger to the security of the United States under INA 208(b)(2)(A)(iv), 8 U.S.C. 1158(b)(2)(A)(iv), or whether the applicant is likely to engage in any terrorist activity after entry into the United States as described in INA 212(a)(3)(B)(i)(II), 8 U.S.C. 1182(a)(3)(B)(i)(II). *See* 8 CFR 208.9(b).

(3) *the length of time he expects to remain in the United States: See* Form I-589, Instructions for Application for Asylum and for Withholding of Removal, Part 1. Filing Instructions, II. Basis of Eligibility, A. Asylum ("If you are granted asylum, you and any eligible spouse or child included in your application can remain and work in the United States and may eventually adjust to lawful permanent resident status."). *See also* Form I-589, Instructions for Application for Asylum and for Withholding of Removal, What Is the Purpose of This Form? ("This application is used to apply for asylum in the United States…"). Given the fact that a grant of asylum is indefinite and provides a basis to apply for lawful permanent resident status, a noncitizen who applies for asylum is clearly informing the government that they expect to remain in the United States indefinitely.

(4) *the police and criminal record, if any, of such alien*: *See* Form I-589, Part B. Information About Your Application, Item 2. ("Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States (including for an

immigration law violation)? If 'Yes,' explain the circumstances and reason for the action."). *See also*, Part C. Additional Information About Your Application, Item 6. ("Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States (including for an immigration law violation? If 'Yes,' for each instance, specify in your response: what occurred and the circumstances, dates, length of any sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to those incidents, if they are available, or an explanation of why documents are not available.").

(5) *such additional matters as may be prescribed:* In addition to those noted above, asylum applications contain inquiries on a host of additional matters, including further information related to the applicant's identity, background, past activity and experiences, and other information needed to assess an applicant's eligibility for asylum. *See generally,* Form I-589.

Additionally, it is important to note that under 8 CFR 208.3(a)(2), an asylum applicant who is issued a positive credible fear determination is considered to have satisfied filing requirements for further consideration of the asylum application by USCIS. The written record of a positive credible fear determination is further considered a complete asylum application for purposes of meeting the one-year filing deadline, starting the employment authorization clock, and triggering the obligation to adjudicate the asylum claim. When they proposed this provision, DHS and the Department of Justice explained:

> During [the credible fear interview] process, the asylum officer would "elicit all relevant and useful information" for the credible fear determination, *id.* § 208.30(d), create a summary of the material facts presented by the noncitizen during the interview, read the summary back to the noncitizen, and allow the noncitizen to correct any errors, *id.* § 208.30(d)(6). The record created would contain the necessary biographical information and sufficient information related to the noncitizen's fear claim to be considered an application. … The information required to be gathered during the credible fear screening process is based on the noncitizen's own testimony under oath in response to questions from a trained USCIS asylum officer. Thus, the Departments believe that the screening would provide sufficient information upon which to conduct a full asylum interview.[9]

Given that DHS considers applications made in this form to be the equivalent of filing Form I-589 for the purposes stated, DHS could have also chosen to designate asylum applications made in this manner to be registration forms, to consider the record of a

[9] Notice of Proposed Rulemaking, *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 86 FR 46906, 46916 (Aug. 20, 2021).

credible fear determination to constitute evidence of registration, and to consider a noncitizen who undergoes a credible fear interview or other protection screening to have fulfilled their duty under INA 262, 8 U.S.C. 1302. Because the Department did not do so, it has created additional confusion among asylum seekers in various stages of the process, who will not be certain about what, if anything, is required of them by the Rule and who will be fearful of incurring the statute's draconian penalties.

If DHS had designated asylum applications as registration forms, it would have increased efficiency for the Department by reducing the number of noncitizens who have already provided DHS the information required under INA 264(a), 8 U.S.C. 1304(a) but, due to the confusion created by the Rule, perceive a need to submit a separate, duplicative, form for processing by U.S. Citizenship and Immigration Services. It would also have reduced an unnecessary burden on people seeking asylum, who will now be confused as to what they must do to comply with the Rule and will be fearful of making a mistake that could lead to severe penalties.

3. DHS failed to align the list of forms prescribed as registration forms with the list of forms constituting evidence of registration.

When an asylum application is approved, the asylee is issued a Form I-94, Arrival/Departure Record. Given that the Form I-94 is already deemed to constitute evidence of registration under 8 CFR 264.1(b), DHS could consider a noncitizen who files *any* complete application, form, or other benefit request that, if approved, results in the issuance of a Form I-94, to have fulfilled their duty under INA 262, 8 U.S.C. 1302.

Similarly, DHS could have designated Form I-765, Application for Employment Authorization ("Form I-765"), as a registration form. When USCIS approves Form I-765, it issues the applicant Form I-766, Employment Authorization Document ("Form I-766"). Since Form I-766 is already deemed to constitute evidence of registration under 8 CFR 264.1(b), DHS could consider a noncitizen who files a complete Form I-765 or otherwise makes a complete request for an Employment Authorization Document in accordance with Department procedures, to have fulfilled their duty under INA 262, 8 U.S.C. 1302.

We note also that both asylum applications and requests for employment authorization contain associated mechanisms for the collection of biometric information, including the fingerprints required under INA 262, 8 U.S.C. 1302. *See*, e.g., Form I-589, Instructions for Application for Asylum and for Withholding of Removal, IX. Biometrics, Including Fingerprints and Photographs:

> Applicants for asylum are subject to a biometrics check of all appropriate records and other information databases maintained by the Department of Homeland Security, the Department of Justice, and the Department of State. You and your eligible spouse or children, regardless of age, listed on your asylum application must provide biometrics to initiate the required background investigations or for identity verification. You and your spouse and children will be given instructions on how to

> complete this requirement. You will be notified in writing of the time and location of the Application Support Center (ASC) where you must go to be fingerprinted and photographed.

See also, Form I-765, Instructions for Application for Employment Authorization, General Instructions:

> USCIS may require that you appear for an interview or provide biometrics (fingerprints, photograph, and/or signature) at any time to verify your identity, obtain additional information, and conduct background and security checks, including a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your application or petition.

Finally, DHS could deem a Form I-797, Notice of Action, indicating receipt or approval of any prescribed registration form to constitute evidence of registration.

The failure to consider these or any other alternatives while publicizing the INA's registration requirements and treating failure to comply as civil and criminal enforcement priorities demonstrates that the Rule is arbitrary and capricious.

B. The Department Failed to Provide Clarity to Asylum Seekers on What They Must Do to Comply with the Registration Requirements

The Department gives confusing and contradictory guidance on what individuals seeking asylum must do to comply with the requirements of INA 262, 8 U.S.C. 1302.

1. The Rule exacerbates, not clarifies, the regulation's confusing structure.

As discussed above, the structure of 8 CFR 264.1 is inherently confusing. The first part, 8 CFR 264.1(a), fails to list certain forms and applications the approval of which results in the issuance of documents listed in the second part, 264.1(b). The regulatory text provides no guidance on whether an individual already in possession of a form constituting evidence of registration is required to submit one of the forms prescribed as registration forms if they have not done so already. The Rule fails to remedy this contradictory scheme, merely adding one newly created form each to the lists in 8 CFR 264.1(a) and (b).

2. The Rule provides inconsistent guidance on a point that it acknowledges can cause confusion for asylum seekers.

In addition, the preamble to the Rule provides inconsistent guidance on what steps asylum seekers must take to be in compliance with the INA's registration requirements. DHS states that the population affected by the Rule includes "aliens who are present in the United States without inspection and admission or inspection and parole and have not yet registered (i.e., have not yet filed a registration form designated under 8 CFR 264.1(a), *and* do not have evidence of registration under 8 CFR 264.1(b))." Rule 11797 (emphasis added).

It thus suggests that such individuals would be required to **both** file a prescribed registration form **and** be in possession of a form constituting evidence of registration.

However, on the prior page, DHS states, "An alien who has previously registered consistent with 8 CFR 264.1(a), *or* an alien who has evidence of registration consistent with 8 CFR 264.1(b), need not register again[.]" Rule 11796 (emphasis added).

The confusion for people who have sought, or are seeking, asylum is that they could reasonably believe there is no need for them to file an additional form to comply with the registration requirements. This is because an asylee already in possession of a Form 1-94, Arrival/Departure Record or an asylum applicant in possession of a Form I-766, Employment Authorization Document, even though Forms I-589 and I-765 do not appear in 8 CFR 264.1(a)'s list of prescribed registration forms, could reasonably conclude that because they have evidence of registration, they are not currently unregistered, and there would therefore be no need to file an additional form to comply with the INA's registration requirements.

The Department even acknowledges this source of confusion in a footnote:

> [Applicants for asylum and Temporary Protected Status] may receive an EAD, which is designated as evidence of registration in § 264.1(b), but such aliens frequently are not required to apply for an EAD and may not be entitled to one. In addition, the application for an EAD (Form I-765, Application for Employment Authorization) is not designated as a registration form in § 264.1(a), which could result in confusion. Rule 11797, n. 5.

Incredibly, DHS did not remedy this confusion by designating Form I-589, Form I-765, or Form I-821, Application for Temporary Protected Status, as registration forms nor did it explain why it failed to do so. Indeed, there is no rational explanation, which leaves open the question of whether the confusion is the point.

Similarly, an asylum seeker who has filed a Form I-589 or who has undergone a credible fear interview could reasonably believe that because they have already provided the U.S. government the information required under INA 264(a), 8 U.S.C. 1304, there would be no need for them to take further action to comply with the INA's registration requirements. However, the contradictory statements cited above cause confusion, making it impossible for asylum seekers to have certainty as to what, if any, additional actions they may be required to take under the Rule.

3. The Rule creates additional confusion by the use of outdated form names.

Furthermore, the Rule fails to update the names of the forms listed in 8 CFR 264.1(a) and (b). For example, Form I-590, Registration for Classification as Refugee, the most recent edition of which was issued January 20, 2025, remains rendered as "Form I-590, Registration for Classification as Refugee—Escapee—Refugee-escapees paroled pursuant to section 1 of the Act of July 14, 1960" in 8 CFR 264.1(a). The regulatory text does not

indicate whether a successor form would be considered a prescribed registration form. The outdated references to versions of forms no longer in use, combined with the lack of clarity on whether successor forms are prescribed as registration forms or constitute evidence of registration, further adds to the confusion. It also demonstrates why adherence to the APA's public notice and comment procedures are critical.

These facets of DHS's approach to the Rule demonstrate that the Department has failed to consider important aspects of the problems it claims to be issuing the Rule to address and has failed to articulate a reasoned explanation for the decision to issue the Rule as drafted.

IV. THE INTERIM FINAL RULE FAILS TO COMPLY WITH U.S. INTERNATIONAL LEGAL OBLIGATIONS NOT TO PENALIZE PEOPLE SEEKING ASYLUM AND NOT TO RETURN PEOPLE TO PERSECUTION OR TORTURE

A. The Rule Fails to Comport with the International Law Basis for U.S. Asylum Law

In addition to failing to meet the requirements of the Administrative Procedure Act, the Rule is in violation of the relevant international legal obligations of the United States. These are found in the 1967 Protocol Relating to the Status of Refugees ("Refugee Protocol")[10] and the 1984 Convention Against Torture (CAT).[11] The United States acceded to the Refugee Protocol in 1968 with no relevant declarations or reservations. By doing so, the United States undertook to apply all substantive articles of the 1951 Convention Relating to the Status of Refugees (Refugee Convention).[12] The United States ratified CAT in 1994 with no relevant reservations, declarations, or understandings. These treaties have been implemented in domestic law in the Refugee Act of 1980 and the Foreign Affairs Reform and Restructuring Act of 1998, other subsequent legislation, and accompanying regulations.

Under the Refugee Protocol, the United States is prohibited from returning refugees to territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.[13] The corresponding provision in U.S. law incorporates the treaty obligation, stating that the Attorney General "may not remove" a person to a country if the Attorney General determines that the person's "life or freedom would be threatened in that country because of the [person's] race, religion, nationality, membership in a particular social group, or political opinion."[14] U.S. law incorporates nearly verbatim the definition of a refugee found

[10] 606 U.N.T.S. 267 (entry into force 4 Oct. 1967).
[11] 1465 U.N.T.S. 85 (entry into force 26 June 1987).
[12] 189 U.N.T.S. 137 (entry into force 22 April 1954).
[13] 1951 Convention Relating to the Status of Refugees, art. 33, binding on the United States by means of U.S. accession to the 1967 Protocol Relating to the Status of Refugees, art. I.1.
[14] INA 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A).

in the Refugee Protocol, and provides that a person meeting that definition may in the exercise of discretion be granted asylum.[15]

The Refugee Protocol includes an additional constraint on the United States, which is that refugees may not be penalized for their illegal entry or presence, save under certain specified circumstances.[16]

Under CAT, the United States shall not "expel, return ('*refouler*') or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture."[17] The corresponding regulation again incorporates the treaty obligation, providing that a person will be eligible for protection under CAT if they establish "that it is more likely than not that [they] would be tortured if removed to the proposed country of removal."[18]

By becoming a state party to these treaties, we have agreed to carry out their terms in good faith.[19] Under the Refugee Protocol, the United States has additionally and specifically undertaken to cooperate with the Office of the United Nations High Commissioner for Refugees (UNHCR) in the exercise of its functions and in particular to facilitate UNHCR's duty of supervising the application of the provisions of the Refugee Convention and Refugee Protocol.[20]

Authoritative guidance on the procedures and criteria by which the United States may comply with treaty obligations is found in the Conclusions of UNHCR's Executive Committee,[21] the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*,[22] and other UNHCR guidelines and analyses. Furthermore, drawing on an abundance of legislative history, the Supreme Court has explicitly recognized that in enacting the Refugee Act of 1980, Congress intended to bring U.S. law into conformance with international law.[23] This clear directive from Congress and from the Supreme Court must inform the administrative rulemaking process.

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[15] INA 101(a)(42)A), 8 U.S.C. 1101(42)(A); INA. 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A).
[16] 1951 Convention Relating to the Status of Refugees, art. 31, binding on the United States by means of U.S. accession to the 1967 Protocol Relating to the Status of Refugees, art. I.1.
[17] 1984 Convention Against Torture (CAT), art. 3.
[18] 8 CFR 208.16(c)(2).
[19] Vienna Convention on the Law of Treaties, art. 26. 1155 U.N.T.S. 331 (entry into force 27 Jan. 1980).
[20] 1967 Protocol Relating to the Status of Refugees, art. II.1.
[21] UNHCR, A Thematic Compilation of Executive Committee Conclusions (7th Ed.) (June 2014).
[22] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, HCR/1P/4/ENG/REV.4 (Apr. 2019).
[23] *INS v. Cardoza-Fonseca,* 480 U.S. 421, 426 (1987).

B. The Rule Will Violate U.S. Treaty Obligations by Penalizing Refugees, Not Protecting Them

In refugee-hosting countries around the world, registration is a way to ensure that people can exercise their right to seek asylum. UNHCR advises that registration should be available *on a voluntary basis* to all persons seeking international protection.[24] From this perspective, registration is a tool of protection, which can help prevent *refoulement* and facilitate refugees' social and economic inclusion. Done properly, registration can benefit refugees and people seeking asylum by providing them with documentation of their identity and status. It can also benefit the host country by providing a better picture of the number, location, situation, and protection needs of those seeking asylum.

In contrast, registration as envisaged by the Rule is designed to identify people for deportation, not protection. Rule 11797-98. The Executive Order on which the Rule rests is replete with unsubstantiated and erroneous statements and accusations about the nature of the noncitizen population and fails to acknowledge in any way that U.S. immigration laws include the Refugee Act of 1980. [25] Nevertheless, "faithfully executing the immigration laws of the United States"[26] includes providing asylum and other humanitarian protections under the relevant statutes and ensuring noncitizens are not removed to countries where they are at risk of persecution or torture.

The Rule likewise fails to take the protection-related elements of U.S. immigration laws into account. As explained in detail above, people seeking asylum and other forms of humanitarian protection already provide the Department with the information required under INA 264(a), 8 U.S.C. 1304(a). Many also already hold documents constituting evidence of registration.

Without clarifying what the Department admits can be a source of confusion for people seeking asylum, Rule 11795, n.5, the preamble to the Rule emphasizes civil or criminal penalties, including removal, for failure to register, as well as for failure to notify the Department in writing of each change of address within ten days.[27] Thus, the Rule as applied to people already granted, or in need of, international protection constitutes a penalty under the Refugee Protocol (incorporating art. 31 of the Refugee Convention). Article 31 prohibits States from penalizing refugees for their illegal entry or presence when they come directly from territories where their life or freedom is threatened, present themselves without delay to the authorities, and show good cause for their irregular entry

[24] UNHCR, Guidance on Registration and Identity Management, Module 3.3 Access to registration (emphasis added).
[25] Executive Order *supra* n. 8.
[26] *Ibid.,* at § 1.
[27] *See* INA 266(a) and (b), 8 U.S.C. 1306(a) and (b); INA 237(a)(3)(A), 8 U.S.C. 1227(a)(3)(A); and INA 237(a)(3) (B)(i), 8 U.S.C. 1227(a)(3)(B)(i). *See also* Rule at 11794.

or presence. [28] It applies to people seeking asylum, including those who have not yet formally applied, as well as to refugees.[29] In assessing whether a refugee or asylum seeker falls within the protection of art. 31, each case must be evaluated on its own facts and circumstances.[30]

Because the Rule lacks clarity with respect to whether and how it applies to asylees, asylum applicants, and people with protection needs who have not yet applied for asylum, and makes no provision for consideration of their individual circumstances, it will breach art. 31 in many, if not most, of those cases if it is used as a basis to conclude the individuals failed to comply with the INA's registration requirements. Nor is there any doubt that the consequences for failure to register and to provide timely address updates constitute a penalty under art. 31. Prohibited penalties include financial and other measures that are "punitive, discriminatory, retributive or deterrent in character."[31] The inflammatory language in Executive Order 14159 underscores the Rule's punitive character.

C. The Rule Will Violate U.S. Treaty Obligations by Leading to the *Refoulement* of Refugees

Because the Rule further encumbers and complicates the asylum application process, and will potentially lead to criminal penalties as well as removal,[32] it will result in people being returned to persecution or torture in violation of our international treaty obligations and our domestic law.

We are concerned with the Rule's impact on people at various stages of the process, based on the potential consequences of even inadvertent failure to comply with its confusing provisions. For people already granted asylum or another form of humanitarian protection, the possibility of a new basis for deportability under the Rule will make their situation precarious as they move through later stages of the immigration process such as adjustment of status and then naturalization.

For people who have a pending application for asylum, any penalties imposed under the Rule may become a factor in a negative discretionary determination when their claim is adjudicated and thus preclude them from obtaining protection, leading to their *refoulement.* Those who entered without inspection and have not yet applied for asylum

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[28] UNHCR, Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees, HCR/GIP/24/14 (23 Sept 2024) (hereinafter UNHCR Guidelines).
[29] *Ibid.,* at ¶ 10.
[30] *Ibid.,* at ¶ 23.
[31] *Ibid.,* at ¶ 28.
[32] *See* INA secs. 266(a) and (b), 8 U.S.C. 1306(a) and (b); INA sec. 237(a)(3)(A), 8 U.S.C. 1227(a)(3)(A); and INA sec. 237(a)(3) (B)(i), 8 U.S.C. 1227(a)(3)(B)(i). *See also* Rule 11794.

face that same risk of a negative discretionary determination when their claim is adjudicated.

V. DHS SHOULD NOT CHARGE A FEE FOR FILING FORM G-325R

As stated above, CGRS urges DHS to rescind the Rule in its entirety. However, CGRS acknowledges that DHS solicited comments "on the option of adding a biometric services fee per registrant of $30, for the collection, use, and storage of biometric information, pursuant to 8 CFR 103.16 and 17." Rule 11797. Because of the negative impact doing so would have on asylum seekers, CGRS opposes the assessment of a $30 fee for the filing of Form 325R.

Charging any fee at all will be devastating for asylum seekers, particularly women who are already vulnerable to abuse and exploitation as they attempt to regularize their immigration status by applying for asylum. Given that applicants for asylum are statutorily prohibited from being issued an Employment Authorization Document until the application has been pending for at least 180 days, INA 208(d)(1), 8 U.S.C. 1158(d)(2), a fee of $30 will be prohibitive for many of the most at-risk asylum seekers and will cause a significant number of them to miss the 30-day filing deadline simply due to lack of funds. Combined with the uncertainty and confusion about the need to file Form G-325R in the first place as discussed above, this prospect would needlessly burden asylum seekers with additional stress, anxiety, and financial strain.

VI. CONCLUSION

For the foregoing reasons, and in the interest of justice and compliance with the United States' domestic and international *non-refoulement* obligations, we urge the Department to rescind the Interim Final Rule in its entirety.

We appreciate the opportunity to submit this comment on the Rule. Should you have any questions, please contact Kate Jastram at jastramkate@uclawsf.edu or 415-636-8454.

Sincerely,

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