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Department of Justice

Andrew Davidson, Asylum Division Chief  
Refugee, Asylum and International Affairs Directorate  
U.S. Citizenship and Immigration Services  
Department of Homeland Security

### **Proposed Rule Bars Asylum Seekers on a False Public Health Basis**

**RE: Public Comment Opposing Proposed Rule on Security Bars and Processing - RIN 1615-AC57 / USCIS Docket No. 2020-0013; RIN 1125-AB08 / A.G. Order No. 4747-2020**

Dear Ms. Reid and Mr. Davidson,

I am writing on behalf of Physicians for Human Rights (PHR) to express our strong objections to the proposed Rule RIN 1615-AC57 / USCIS Docket No. 2020-0013; RIN 1125-AB08 / A.G. Order No. 4747-2020 Security Bars and Processing.

PHR is an international non-governmental organization that for more than 30 years has used science and the credible voices of medical professionals to document and call attention to severe human rights violations around the world.

In this Public Comment, PHR argues that **the proposed Rule weaponizes public health arguments against asylum seekers without safeguarding the United States from communicable disease.**

PHR coordinates an Asylum Network of experts who provide more than 700 pro bono forensic evaluations annually for asylum seekers and applicants for other forms of humanitarian relief. PHR experts have provided thousands of such evaluations over the past 30 years, through a network of now more than 1,700 trained health professionals nationwide. PHR experts conduct forensic evaluations according to the principles in the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the "Istanbul Protocol," the global standard for documenting torture.



A research study confirmed that approximately 90 percent of asylum seekers for whom PHR experts have provided medical-legal affidavits are granted asylum.<sup>1</sup> Therefore, we have extensive experience and insight as an organization regarding the types of cases and profiles of applicants who have historically been recognized as asylees in the U.S. immigration system.

The proposed Rule classifies vast categories of asylum seekers as a national security threat, based on the supposed threat of communicable disease. PHR can state definitively that the current asylum system already safeguards against communicable disease. This Rule is unnecessary, cruel, and unlawful. It is not based on sound science. It will not protect public health, but it will deny refugees the protection they deserve and are legally entitled to seek.

### **Background on the Rule**

The proposed Rule allows the Department of Homeland Security (DHS) and Department of Justice (DOJ) to classify asylum seekers as national security threats and therefore ineligible for asylum or withholding of removal because of “emergency public health concerns based on communicable disease due to potential international threats from the spread of pandemics.”

The Rule would allow the U.S. government to bar any asylum seeker who:

- 1) exhibits symptoms “consistent with being afflicted with any contagious or infectious disease”;
- 2) has “come into contact” with such a disease; or
- 3) has come “from a country, or a political subdivision or region of a country, or has embarked at a place, where such disease is prevalent or epidemic.”

In practice, asylum seekers could be banned simply for having traveled through a country where COVID-19 is prevalent, spent time in U.S. immigration detention centers where U.S. neglect has allowed the disease to spread, or displayed symptoms of COVID-19, like a cough or fever, that could just as easily be signs of another illness.

The Rule would not stop at COVID-19, giving DHS and DOJ misplaced public health powers to ban asylum seekers based on the threat of other communicable – and treatable – diseases, including gonorrhea, syphilis, Hansen’s disease, and tuberculosis, among others.

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<sup>1</sup> S. L. Lustig, S. Kureshi, K. L. Delucchi, et al, “Asylum grant rates following medical evaluations of maltreatment among political asylum applicants in the United States,” *Journal of Immigrant and Minority Health*, 2008;10:7–15.



Under this Rule, an asylum seeker who was deemed a national security threat based on supposed contact with a communicable disease would also have their last avenue for relief – Convention Against Torture (CAT) relief – arbitrarily circumscribed. The Rule elevates the standard for CAT relief during preliminary fear screenings to the same level of proof that is required during a full immigration hearing before a judge.

PHR has conducted evaluations for many clients with a legitimate need for protection who faced challenges in recounting their full story due to trauma or difficulties with translation. The existing standard of proof allows clients time to recover in safety in the United States, fully develop their case, and gather supporting evidence. By raising the standard of proof, the proposed Rule would prevent many PHR clients from obtaining protection.<sup>2</sup>

### **The Rule Lacks a Basis in Public Health**

Since March 2020, the Trump administration has banned asylum seekers at the U.S. border on [suspect](#) public health grounds. This new Rule, like the March 2020 asylum ban, bars asylum seekers without assigning any comparable risk to tourists, students, or business travelers taking an identical transit route.

By once again banning asylum seekers under the guise of public health while uncontrolled community spread of COVID-19 [within](#) the United States continues, the administration makes transparent the xenophobic policy strategy behind the Rule.

In April 2020, PHR interviewed six experts in infectious disease epidemiology: Dr. Ronald Waldman, Professor Lawrence Gostin, Dr. Gregg Gonsalves, Dr. Monik Jiménez, Laurie Garrett, and Sanjana Ravi. All six experts agreed that there was no public health justification for a ban on asylum seekers as a group:

- Dr. Ronald Waldman, physician and professor of global health at George Washington University, told PHR, “There is no reason why asylum seekers would be more likely to be at risk of contracting or transmitting the virus than any other group of people.”

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<sup>2</sup> Many PHR clients, who are physically and emotionally traumatized, cannot immediately produce a coherent, comprehensive, linear account to explain their fear of return within hours of their interception by border officers, or to border or asylum officers of the opposite sex whom they have never met before. PHR clients may have difficulty recounting their experiences right away due to trauma, mental health conditions, fear of officials, stigma about being an abuse survivor, or shame related to their protected characteristic. Some clients struggle to recount their trauma because they are sobbing or weeping as they remember these traumatic experiences, making it difficult to understand them. Common symptoms of post-traumatic stress disorder (PTSD) – which many of our clients suffer from – include hyper-vigilance, avoidance behavior, memory loss, and non-linear narratives, but these symptoms, which are actually evidence of trauma, may translate into a negative credibility assessment if the adjudicator is not well informed about typical trauma presentation. Furthermore, the adversarial nature of immigration proceedings may exacerbate these symptoms. Moreover, the format and environmental circumstances of the asylum-seeking process further heighten these difficulties.



- Professor Lawrence Gostin, director of the O’Neill Institute for National and Global Health Law at Georgetown University, agreed: “There is no scientific evidence for it.”
- Dr. Monik Jiménez, assistant professor at Harvard Medical School and Harvard T.H. Chan School of Public Health, said that the ban’s classifications were “not based on sound epidemiological evidence of groups that may be at higher or lower risk.”
- Laurie Garrett, Pulitzer Prize-winning journalist and pandemic expert, said of asylum seekers, “There is no particular reason to single them out. And there is no particular reason to believe that closing the border has any effect whatsoever on the spread of disease. The disease is already here.”
- Sanjana Ravi, senior analyst at the Johns Hopkins Center for Health Security, said, “By refusing to let asylum seekers enter the U.S. – thereby condemning them to live in dangerous and unsanitary conditions in Mexico, where social distancing measures may be impossible to implement – the Trump administration ... is actively undermining public health.”
- Dr. Gregg Gonsalves, assistant professor in epidemiology of microbial diseases at Yale School of Medicine, said, “If somebody is at risk of persecution and/or death, and you’re worried about the potential for them to transmit coronavirus, test them for the virus rather than leaving them to die a more certain death from the political conditions at home.”

The six experts agreed that the United States already has procedures in place to safeguard against communicable disease. The vast majority of asylum seekers could be screened for COVID-19 symptoms, referred to health services for additional testing if necessary, and then released to family or friends in the United States with whom they could safely self-quarantine. The experts [outlined](#) safe paths for asylum seekers’ travel to their final destinations. For individuals without family or friends in the United States, the experts agreed that the U.S. government can work with religious and community organizations to facilitate their safe transport to shelters, vacant motels, hotels, YMCAs, or school dormitories, where they can safely shelter in place and practice necessary social distancing.

The same logic applies now. If the administration were truly concerned with reducing the threat of COVID-19, it would heed evidence-based recommendations by public health experts, rather than using unscientific public health arguments as a cover for an anti-asylum agenda.

### **The Rule Violates U.S. Legal Obligations**

The Rule also violates U.S. legal obligations to asylum seekers under U.S. and international law.



U.S. refugee and immigration [laws](#) guarantee individuals the opportunity to request protection at ports of entry or after crossing into the United States (8 U.S.C. § 1158(a)(1)). Moreover, the United States is bound to multiple international treaties that bar the return of individuals to places where they may face persecution or torture, namely the Refugee Convention and Refugee Protocol (Refugee Act of 1980, Pub. L. No. 96-212) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277; see 8 C.F.R. § 208.16(c)).

The Office of the United Nations High Commissioner for Refugees has [clearly stated](#) that countries must not deny entry to asylum seekers in the midst of the COVID-19 pandemic. Likewise, the UN Subcommittee on Prevention of Torture has [stated](#) that CAT protections may not be forgone under the current pandemic.

## **Conclusion**

For more than 30 years, volunteer health professionals in PHR's Asylum Network have provided evaluations to thousands of survivors of torture and ill-treatment who seek a safe haven from persecution and an opportunity to recover in the United States from the trauma and injury they have endured. Our organization and clinicians are deeply familiar with the serious harms many asylum seekers have fled and the strong evidentiary basis for their claims to remain in the United States.

The proposed Rule is being used to erode protections for asylum seekers while failing to further the public health needs on which it is purportedly based. By banning asylum seekers on baseless public health grounds, this Rule violates the right to seek asylum and U.S. obligations under international treaties and domestic law. The proposed change in U.S. regulations will not protect public health but will return many asylum seekers to risks of grave harm or death in their home countries.

We urge you to rescind this dangerous Rule immediately and restore protections for people fleeing persecution. Any future Rules should be consistent with both U.S. legal obligations and evidence-driven public health guidance.

Sincerely,

Donna McKay  
Executive Director  
Physicians for Human Rights