

June 15, 2023

Submitted via <https://www.regulations.gov>

Daniel Delgado, Acting Director
Border and Immigration Policy
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security
Washington, DC 20528

Lauren Alder Reid, Assistant Director
Office of Policy
Executive Office for Immigration Review
Department of Justice
Falls Church, VA 22041

Re: Comment in Opposition to the Proposed Expanded Applicability of the Circumvention of Lawful Pathways Rule in the Maritime Context, CIS No. 2744-23; Docket Number USCIS 2022-0016; A.G. Order No. 5660-2023

Dear Acting Director Delgado and Assistant Director Reid,

The undersigned 69 civil, human rights, faith-based, and immigration groups submit the following comments to the Department of Homeland Security (DHS) and the Department of Justice (DOJ) (collectively, “the Departments”) in response and opposition to the expanded applicability in the maritime context of the Circumvention of Lawful Pathways final rule (“Final Rule”) published on May 16, 2023.

We urge the Departments to immediately cease implementation of the rule and rescind it in its entirety, and to prioritize meaningful access to the asylum system through fair and humane procedures. In particular, we submit this comment to oppose the extension of the Final Rule to maritime arrivals. This proposed extension of the Final Rule (1) only serves to further restrict asylum access to those who are most vulnerable and to disparately harm Black and Brown asylum seekers; (2) adds to the lengthy and troubling history of discriminatory treatment of Haitians and other people intercepted at or arriving by sea; and (3) deprives stakeholders of sufficient time to comment on the broad implications of this expansion through an unjustified truncated comment period.

(1) This Final Rule effectively shuts out vulnerable Haitians and Cubans from accessing asylum in the United States.

The right to seek asylum upon entry to the United States, regardless of where or how an individual arrives or whether they sought protection elsewhere during transit, is protected under U.S. and international law. The expansion of the Final Rule to individuals who enter via a maritime border would effectively foreclose any avenue for vulnerable asylum seekers from Haiti and Cuba to seek asylum in the United States; and further compound the harm that asylum seekers intercepted at or arriving by sea historically suffer.

The Departments' stated expectation is that "coupling an expansion of lawful, safe, and orderly pathways into the United States with this rule's consequences for noncitizens who do not avail themselves of one of those options would lead to a reduction in the numbers of migrants who would otherwise undertake a dangerous sea journey to the United States." **The Departments fail to understand that asylum seekers who attempt a dangerous maritime crossing do so solely because it is their only option to escape persecution and torture.**

The in-country realities in both [Haiti](#) and [Cuba](#) make it virtually impossible for many individuals to access the Departments' enumerated preferred pathways, such as parole or a CBP One appointment, as accessing passports, third country travel visas and the CBP One application are effectively foreclosed. For example, for a Cuban or Haitian national to request a CBP One appointment on the mobile app, they would need to travel to the Northern part of Mexico to be within the bounds of the app's geo-fencing. This would require Haitians to first acquire legal permission to enter the Dominican Republic, which is a lengthy and difficult process due to corruption and anti-Haitian discrimination. Acquiring a travel visa with a Haitian passport is prohibited in most countries, but some Haitians are able to get legal authorization to travel to Mexico or somewhere in South America. They then must make the dangerous journey North, often through several countries, just to access the CBP One app. It could take months for an individual to then secure an appointment on the app, all the while contending with the [racial bias](#) in the facial recognition technology of the app and confronting risks of violence, kidnapping, and squalid conditions at the border.

Additionally, the recent introduction of certain pathways for Haitian and Cuban nationals to seek parole into the United States are time limited and do not offer legal protections from forced repatriation, and therefore cannot be viewed as alternatives for individuals fleeing persecution and torture in search of safety. Furthermore, an extensive [backlog](#) for individuals seeking parole through this process already exists, with more than 580,000 pending cases for Haitians and 380,000 pending cases for Cubans in a program that paroles only 30,000 a month across four countries. At this rate, it might take a Haitian beneficiary over six years to be approved to enter the United States through this program. Asylum seekers desperate for protection are searching for alternate pathways.

(2) The Departments' proposed extension of the Final Rule to maritime arrivals adds to a long history of discriminatory treatment of people intercepted at or arriving by sea, especially Haitian asylum seekers.

The United States has a long history of restricting asylum access to people who arrive by sea, flouting international legal obligations. Since the 1970s, Haitians have sought safety in the United States by taking to the sea. The United States' response, even after the passage of the landmark Refugee Act of 1980, has been ruthless: [summary returns and denials of asylum screening](#), [discriminatory ban and scapegoating](#) of Haitians for the HIV/AIDS epidemic, the erection of a [mass detention](#) system in the United States, and confining tens of thousands of people, including children, to [offshore migrant detention center at the Guantánamo Bay](#) military base in Cuba. Rather than turn the page on this shameful history, the Biden administration has continued mass expulsions of people from Haiti, despite global outrage following [anti-Black violence in Del Rio, TX](#) and [disparate treatment](#) of people intercepted at sea. These ruthless policies have been intended to deter Haitian migrants from seeking asylum in the United States and led to the U.S. Department of Homeland Security's Office for the Civil Rights and Civil Liberties (CRCL) [to open an investigation](#) in January 2023 into whether DHS policies relating to maritime interdictions diminishes the civil rights and civil liberties of migrants seeking protection.

The expansion of the asylum ban is yet another extension of this cruelty toward Haitians in particular, and people intercepted at or arriving by sea in general. The Departments proclaim to extend their asylum ban to people who enter via a maritime border under humanitarian pretenses—claiming that the Final Rule’s focus on land arrivals would incentivize travel by sea, which may end in tragedy.¹ However, rather than deterring maritime crossings, this expansion is likely to compound the harms faced by people who must resort to travel by sea, locking them out of asylum eligibility purely due to their geographic location. Asylum seekers from Haiti or Cuba frequently have no choice but to take to the sea, after years of restrictive visa requirements, failed diplomatic relations, political instability, and economic downfall. This extension to the Final Rule would further penalize them for merely attempting to seek safety in the only manner available to them.

(3) The Final Rule’s comment period denies our organizations a meaningful opportunity to provide thoroughly researched and developed comments.

The Departments presented the Final Rule as a temporary measure to deal with a potential increase in the number of people seeking asylum along the Southwest Border with Mexico following the expiration of the Title 42 public health restrictions. However, upon publication of the Final Rule, the Departments attempted to shoehorn in an expansion of the rule with absolutely no rationale for shortening the comment period below the sixty-day minimum recommended by Executive Orders 12866 and 13563.

We object to the truncated thirty-day comment period for the expanded applicability of the Final Rule in the maritime context. Our organizations provide a range of humanitarian, legal and social services and advocacy to migrants in several contexts and since the publication of the Final Rule have been dedicated to monitoring its implementation, providing legal orientation and representation to asylum seekers subject to the rule, and advocating with the Administration regarding the swift termination of the rule. Thirty days is wholly insufficient for stakeholders to meaningfully engage with the serious implications of an expansion of the Final Rule on asylum seekers arriving by sea.

In conclusion, we urge you to rescind the Final Rule in its entirety, including its expansion to maritime arrivals, and ensure robust asylum access in compliance with domestic and international law to *all* asylum seekers, whether they arrive by land or sea.

Sincerely,²

#WelcomeWithDignity, [USCIS-2022-0016-12572](#)

Al Otro Lado, [USCIS-2022-0016-12600](#)

Aldea, The People’s Justice Center

Alianza Americas

America’s Voice

American Friends Service Committee (AFSC)

¹ 88 Fed. Reg. 31314, 31321.

² Note: Where applicable, a hyperlink to the organization’s original comment submitted during the initial comment period for the Final Rule is included.

American Immigration Council, [USCIS-2022-0016-12228](#)

Americans for Immigrant Justice, [USCIS-2022-0016-12620](#)

Amnistía Internacional

Asian Americans Advancing Justice | AAJC, [USCIS-2022-0016-12540](#)

Beyond Borders

Bridges Faith Initiative, [USCIS-2022-0016-12596](#)

Capital Area Immigrants' Rights (CAIR) Coalition, [USCIS-2022-0016-12208](#)

Catholic Legal Immigration Network, Inc.

Center for Constitutional Rights

Centro para la Observación Migratoria y el Desarrollo Social en el Caribe (OBMICA)

Communities United for Status and Protection

Comuna Caribe

Detention Watch Network, [USCIS-2022-0016-17857](#)

Diocesan Migrant and Refugee Services Inc., [USCIS-2022-0016-12341](#)

Florence Immigrant & Refugee Rights Project, [USCIS-2022-0016-12344](#)

Freedom Network USA

Friends Committee on National Legislation, [USCIS-2022-0016-12610](#)

Global Justice Clinic, NYU School of Law*

Haitian Bridge Alliance, [USCIS-2022-0016-12543](#)

Harvard Immigration and Refugee Clinical Program, [USCIS-2022-0016-12603](#)

HIAS, [USCIS-2022-0016-12226](#)

Human Rights First, [USCIS-2022-0016-12320](#)

Human Rights Watch, [USCIS-2022-0016-12202](#)

* This communication does not purport to represent the institutional views, if any, of New York University.

Immigrant Action Alliance

Immigrant Defenders Law Center, [USCIS-2022-0016-12544](#)

Immigration Equality, [USCIS-2022-0016-12335](#)

Institute for Justice and Democracy in Haiti

Inter-Faith Committee on Latin America, [USCIS-2022-0016-1700](#)

Interfaith Welcome Coalition—San Antonio

International Refugee Assistance Project (IRAP), [USCIS-2022-0016-12324](#)

Jewish Activists for Immigration Justice of Western MA

Justice Action Center, [USCIS-2022-0016-12325](#)

Kino Border Initiative, [USCIS-2022-0016-12211](#)

Las Americas Immigrant Advocacy Center, [USCIS-2022-0016-12589](#)

LatinoJustice PRLDEF

Lawyers for Good Government, [USCIS-2022-0016-12616](#)

Legal Aid Justice Center, [USCIS-2022-0016-12306](#)

Louisiana Advocates for Immigrants in Detention

Mariposa Legal, program of COMMON Foundation, [USCIS-2022-0016-12564](#)

Minnesota Freedom Fund

Muslim Advocates, [USCIS-2022-0016-12332](#)

National Immigrant Justice Center, [USCIS-2022-0016-12300](#)

National Immigration Litigation Alliance

National Immigration Project (NIPNLG), [USCIS-2022-0016-12200](#)

NETWORK Lobby for Catholic Social Justice, [USCIS-2022-0016-12560](#)

New Sanctuary Coalition

Northwest Immigrant Rights Project, [USCIS-2022-0016-12541](#)

Northeastern University School of Law Immigrant Justice Clinic

Oasis Legal Services, [USCIS-2022-0016-12335](#)

Oromo Center for Civil and Political Rights

Quixote Center

RAICES, [USCIS-2022-0016-12271](#)

Refugee Health Alliance

Robert F. Kenney Human Rights, [USCIS-2022-0016-12543](#)

Student Clinic for Immigrant Justice

T'ruah: The Rabbinic Call for Human Rights, [USCIS-2022-0016-49618](#)

The Advocates for Human Rights, [USCIS-2022-0016-12319](#)

UndocuBlack Network, [USCIS-2022-0016-12584](#)

Unitarian Universalists for Social Justice, [USCIS-2022-0016-12243](#)

U.S. Committee for Refugees and Immigrants (USCRI)

Witness at the Border, [USCIS-2022-0016-11580](#)

Wind of the Spirit

Women's Refugee Commission, [USCIS-2022-0016-12273](#)