



Office of the General Counsel

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Office of Information and Regulatory Affairs,
Office of Management and Budget,
725 17th Street NW, Washington, DC 20503;
Attention: Desk Officer, U.S. Citizenship and Immigration Services, DHS

Re: “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review” RIN 1125-AA94 or EOIR Docket No. 18-0002

The United States Conference of Catholic Bishops Migration and Refugee Services (“USCCB/MRS”) appreciates the opportunity to provide public comment and share our grave concerns with the Department of Justice, Executive Office of Immigration Review (“DOJ/EOIR”) and the Department of Homeland Security (“DHS”) regarding the above referenced Notice of Proposed Rulemaking (“NPRM” or “Rule”) on eligibility for asylum, published in the Federal Register on June 15, 2020 (85 Fed. Reg. 36,264).¹

The U.S. Catholic Church holds a strong and pervasive pastoral interest in the welfare of migrants, including asylum seekers, and welcomes newcomers from around the world. For decades, USCCB has collaborated with the U.S. government to welcome and manage the provision of services to asylees, unaccompanied immigrant children, domestic and foreign-born victims of human trafficking, Afghan and Iraqi Special Immigrants, Cuban and Haitian entrants, and refugees. USCCB/MRS provides services and advocacy on behalf of these and other populations to advance the migration policy priorities of USCCB’s Committee on Migration and the teachings of the Gospel and of our Catholic faith.

The Catholic Church’s work of assisting immigrants stems from the belief that every person is created in God’s image and all are deserving of human dignity. In the New Testament, the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons, stating: “I was a stranger and you welcomed me.”² Furthermore, while the Catholic Church recognizes the

¹ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36,264 (June 15, 2020).

² Mt. 25:35.

right of sovereign nations to control their borders, it also teaches that nations have an obligation to respect the human rights of migrants and to protect the right to life for those fleeing violence and persecution. Through its direct service work and its advocacy, USCCB/MRS has affirmed a person's right to seek asylum, as a life-saving protection and is deeply troubled by recent administrative policy changes that are cutting off access to that right, including this proposed Rule.

We believe this Rule, which attempts to curtail our nation's long-standing commitment to providing individuals and families with humanitarian protection, is not only unlawful, but contrary to the public interest. The changes proposed by the Rule seek to detrimentally alter the regulations that provide the protective framework of our country's asylum law and break from decades-worth of legal precedent, creating unrecognizable procedures and impossible standards for asylum-seekers to meet. Further, the proposed changes threaten due process, impose new bars, heighten a multitude of legal standards, and create sweeping categories of mandatory discretionary denials. The proposed changes set forth in the NPRM are so severe and expansive that they would upend nearly every facet of asylum and refugee law in the U.S., and as such, threaten to cut off access to asylum for nearly all asylum seekers.³ While USCCB/MRS is troubled by and strongly opposes each of the proposed changes set forth in the Rule, in the interest of complying with the 30-day period allowed for comment,⁴ we will express specific concerns over the following aspects the Rule:

- The proposed regulations in the Rule are direct violations of domestic and international law; and
- The Rule fails to consider the root causes of forced migration and threatens vulnerable individuals and family unity, violating the U.S.'s global leadership role in providing and being a model and catalyst for other nations to provide compassionate humanitarian protection to those in need.

Further, we note that the Rule is particularly troubling as it has been proposed at an unprecedented time in our history due to the global coronavirus pandemic. For these reasons, and as explained below, we strongly urge DOJ and DHS to rescind the regulations proposed in the NPRM in their entirety.

I. In Changing the Standard for Persecution for Asylum and Withholding of Removal Claims, the Rule Is Contrary to Domestic and International Asylum Law.

The proposed Rule should be withdrawn, as it is inconsistent with several asylum-related provisions of the Immigration and Nationality Act (INA) as well as provisions of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Related to the Status of

³ Natalie Nanasi, "New Trump Immigration Regulations Would Devastate Refuge Pathways," THE HILL (June 16, 2020), <https://thehill.com/opinion/immigration/502938-new-trump-immigration-regulations-would-devastate-refuge-pathways>.

⁴ It is important to note that the NPRM is over 160 pages long including more than 60 pages the proposed regulations themselves—including dense, technical language and broad new restrictions. Given the magnitude of the Rule, we note that any one of the sections of these regulations, standing alone, would merit 60 days for the public to fully absorb the magnitude of the proposed changes, perform research on the existing rule and its interpretation, and respond thoughtfully instead of the 30 days allowed for comment.

Refugees. Our analysis will be narrowly focused on one of the many proposed alterations to the current asylum protections that we find would be contrary to law: the heightened standard for establishing persecution.

A. The proposed changes to the definition of persecution defy Congressional intent, ignore firmly established legal precedent, and lack fundamental understanding of asylum seekers; experiences and vulnerabilities and why they need protection.

In order to be eligible for asylum, an applicant must meet the definition of refugee as written in the INA, which states that a refugee is “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁵ This definition was first given in the 1951 Convention Relating to the Status of Refugees (“1951 Convention”) and the 1967 Protocol Related to the Status of Refugees (“1967 Protocol”),⁶ of which the U.S. is a signatory. Through the Refugee Act of 1980, Congress incorporated the Protocol definition of refugee into U.S. immigration law and thereby meet U.S. legal obligations under the international treaty.⁷

Protecting vulnerable populations from persecution or a well-founded fear of persecution is the cornerstone of our nation’s asylum law. Though the Refugee Act does not offer a definition of persecution, courts including the Board of Immigration Appeals have long held that persecution is the “threat to life or freedom of, or the infliction of suffering or harm upon, those who suffer in a way regarded as offensive.”⁸ The definition has been further refined by case law from the U.S. Supreme Court and U.S. federal Circuit Courts of Appeals.⁹

The proposed Rule seeks to add a paragraph to the existing law and for the first time, codify the definition of persecution narrowly as “an intent to target a belief or characteristic, a severe level of harm, and the infliction of a severe level of harm by the government of a country or by persons or an organization that the government was unable or unwilling to control.”¹⁰ Further, with regard to the severity of harm, the proposed Rule adds that persecution is an “extreme concept involving a severe level of harm that includes actions so severe that they

⁵ INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A).

⁶ See Convention Relating to the Status of Refugees, opened for signature July 28, 1951, 189 U.N.T.S. 137; see also Protocol Relating to the Status of Refugees, opened for signature Jan. 31, 1967, 606 U.N.T.S. 267.

⁷ INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A).

⁸ *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985).

⁹ See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-1 (1987)(finding that an individual who premises an asylum claim on a well-founded fear of future persecution must demonstrate both a subjectively genuine and an objectively reasonable fear and that a well-founded fear may exist even when there is as little as a one-in-ten chance of future persecution); see also *Fisher v. INS*, 79 F.3d 955, 961 (9th Cir. 1996)(en banc)(persecution is defined as “the infliction of suffering or harm upon those who differ in a way that is regarded as offensive”); see also *Duarte de Guinac v. INS*, 179 F.3d 1156, 1163 (9th Cir. 1999)(finding that persecution can be both physical and psychological); see also *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998)(the cumulative effect of incidents sufferec may rise to the level of persecution).

¹⁰ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36,264 (June 15, 2020).

constitute an exigent threat.”¹¹ The Rule does not offer a definition of “extreme.” It does, however, list non-exhaustive scenarios in which persecution would not be found.¹² The scenarios amount to a list of bright line negative bars on which an asylum officer or immigration judge would be required to issue a negative finding for persecution. These narrow, bright line bars would drastically limit consideration of the kinds of varied harms that can cumulatively amount to persecution, and would erode the fact-based standards that have been previously set forth by case law. Such changes would in effect force adjudicators to reject claims involving violence and threats. For instance, the Fourth Circuit Court of Appeals (4th Circuit) has recognized that death threats alone are a form of persecution.¹³ Contrary to the 4th Circuit line of decisions, under the reading of the proposed Rule and coupled with the scenarios offered, an instance of repeated death threats would not rise to the level of persecution unless there was an action to carry out the threat.¹⁴ The proposed Rule provides an opportunity for premature denial of an asylum claim, cutting off inquiry about whether there was cumulative evidence showing past persecution. Moreover, in the example of death threats as recognized and relevant events in sustaining the presumption of well-founded fear of future persecution, illustrates the extreme confusion and limitations the Rule would create in a radical departure from existing law.

DOJ/EOIR and DHS appear to justify the addition of the definition of persecution by stating that the “changes better align the relevant regulations with the high standard Congress intended for the term ‘persecution.’”¹⁵ We believe this to be an erroneous interpretation of Congress’ intent. A look into the legislative history of the Refugee Act makes it clear that it was Congress’ fundamental intent for the U.S. to meet its legal obligation under the treaty which requires conforming with the definition provided by the 1967 Protocol.¹⁶ Further, in interpreting the 1967 Protocol’s definition, the U.S. is guided by the Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (“Handbook”).¹⁷ The Handbook infers that “a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution...other serious violations of human rights—for the same reasons—would also constitute persecution.”¹⁸ Further, the Handbook states that determining whether actions amount to persecution will vary by the circumstance of each case, includes an evaluation of the element of subjectivity, and states that that a claim to persecution can be made on “cumulative grounds.”¹⁹ The Rule’s proposed list of bright line bars on which an adjudicator could cut off access to asylum is contrary to the letter and spirit of the Handbook by unduly limiting the

¹¹ *Id.*

¹² *Id.*

¹³ See, e.g., *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (“[W]e have expressly held that the threat of death qualifies as persecution.”)

¹⁴ While we note the Rule addresses the inconsistencies due to such changes in footnote 32 of the Rule, we respectfully request that DOJ EOIR not retroactively apply the new standards and criteria proposed in the Rule.

¹⁵ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36,264 (June 15, 2020) (interpreting *Fatin v. INS*, 12 F.3d 1233, 1240 n.10 (3d Cir. 1993)).

¹⁶ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 437 (1987).

¹⁷ *Id.* at 439-440; see also U.N. High Comm’r for Refugees, *The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, (Geneva, 1979), available at <https://www.unhcr.org/4d93528a9.pdf>.

¹⁸ U.N. High Comm’r for Refugees, *supra* note 15 at ¶ 51.

¹⁹ *Id.* at ¶ 52-53.

definition of persecution in an unacceptable manner. By incorporating the international definition of “refugee” into U.S. law, it is clear that Congress intended to adopt the humanitarian, definition set forth in the 1967 Protocol, and in turn, abide by the guidelines set forth in the Handbook on persecution. While the Handbook can serve as guidance as it is a non-binding international legal source, it is notable that in the drafting of the Refugee Act, Congress did look to incorporate and be responsive to international legal sources, including the Handbook. As such, the Rule is an abrupt change and contradiction to prior Congressional intent.

As long-time service providers to unaccompanied immigrant children, USCCB/MRS is especially concerned with the fact that the proposed Rule is silent on the factors for adjudicators to consider in regards to claims by children, who may experience harm differently than adults. In its officer training module, the Refugee, Asylum, and International Operations Directorate (RAIO) explains that “the harm a child fears or has suffered may still qualify as persecution despite appearing to be relatively less than necessary for an adult to establish persecution.”²⁰ Case law from several federal Circuit Courts of Appeals have held that: infants can be the victim of persecution even in the absence of present recollection of the actions and events that imposed the persecution²¹; a child completely dependent on their family and community can experience persecution based on a combination of circumstances, including displacement, economic hardship, and viewing the bullet-ridden body of a family member²²; and that adjudicators should consider the “cumulative significance” of regular discrimination and harassment towards a child over several years on account of being Jewish.²³ We note that in our experiences, children infrequently express their trauma in a linear manner nor often in an initial encounter. With the absence of explicit language relating to the vulnerability of children, we fear that the explicit exclusion of children from the newly proposed regulatory language will result in the negative adjudication of children’s asylum claims, placing an already uniquely vulnerable demographic at risk of further harm.

B. The proposed changes to the definition of persecution would be a breach to the international legal obligations of the U.S.

The U.S. has a two-fold legal obligation to provide protection to refugees—domestically and internationally. Not only does the Rule conflict with domestic law, but it also falls short of the U.S.’ international obligations under the 1951 Convention and the 1967 Protocol. As explained in Section I.A., *supra*, the UNHCR has issued guidance on determining an applicant’s persecution claim in the Handbook, and generally regards persecution as the threat to life or freedom on account of one of the five grounds of asylum eligibility.²⁴ The UNHCR has also

²⁰ U.S. CITIZENSHIP AND IMMIGRATION SERV., REFUGEE, ASYLUM, AND INTERNATIONAL OPERATIONS DIRECTORATE, CHILDREN’S CLAIMS TRAINING MODULE 45 (Dec. 2019), *available at* https://www.uscis.gov/sites/default/files/files/nativedocuments/Childrens_Claims_LP_RAIO.pdf (citing Marina Ajdukovic and Dean Ajdukovic, “Psychological Well-Being of Refugee Children,” *Child Abuse and Neglect* 17:6, 843 (1993); Betty Pfefferbaum, “Posttraumatic Stress Disorder in Children: A Review of the Past 10 Years,” *J. Am. Acad. Child Adolesc. Psychiatry*, 36:11, at 1504-05).

²¹ *Id.* at 45 (citing *Benyamin v. Holder*, 579 F.3d 970, 972 (9th Cir. 2009)).

²² *Id.* at 46 (citing *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006)).

²³ *Id.* at 46 (citing *Kholyavskiy v. Mukasey*, 540 F.3d 555, 571 (7th Cir. 2007)).

²⁴ U.N. High Comm’r for Refugees, *supra* note 15 at ¶ 51-53.

explained that it is “axiomatic” that an individual “fleeing from persecution should always receive temporary refuge if this is necessary for his immediate protection, and should also have the possibility of receiving durable asylum within the shortest possible time.”²⁵

In addition, both Article 33 of the 1951 Convention²⁶ as well as customary international law²⁷ prohibit refoulement. The UNHCR has noted the importance of non-refoulement, stating that it is at “the centre of refugee protection principles.”²⁸ Since the adjudication of asylum and withholding are carried out concurrently, the proposed Rule, increases the risk of refoulement for those refugees who, summarily cut off by the bright line negative bars from seeking asylum in the U.S., are likewise summarily cut off from accessing and attaining protection from removal. It therefore puts the country at serious risk of failing to meet its international obligations regarding non-refoulement.

II. The Rule Presents Grave Public Policy Concerns.

Finally, the Rule presents a myriad of serious public policy concerns. It fails to take into account the root causes of forced migration that explain why individuals are seeking protection in the U.S. It also jeopardizes the well-being of those vulnerable individuals fleeing persecution, including those seeking both safety and family unity. Further, the Rule thereby undermines the role of our nation as a traditional global leader in providing humanitarian protection.

A. The Rule fails to protect asylum seekers from the persecution that is the root cause forcing individuals to flee their homes and often to the U.S.

The Rule follows the disturbing policy and operational pattern established by the Administration of cutting off access to legal protections for asylum-seekers fleeing persecution.²⁹ The Rule attempts to frame the proposed changes as an exertion of U.S. power to maintain “normal international relations” and defend “the country against foreign encroachment and

²⁵ U.N. High Comm’r for Refugees, *Note on Asylum*, EC/SCP/12 (Aug. 30, 1979), <https://www.refworld.org/docid/3ae68cd44.html>.

²⁶ Convention Relating to the Status of Refugees, *supra* note 7, at art. 33.

²⁷ U.N. High Comm’r for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol* 7 (Jan. 26, 2007), <https://www.unhcr.org/4d9486929.pdf>; see also United Nations High Commissioner for Refugees, *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93* (Jan. 31, 1994), <https://www.refworld.org/docid/437b6db64.html>; GUY GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 346 (3rd ed. 2007) (“The evidence relating to the meaning and scope of non-refoulement in its treaty sense amply supports the conclusion that today the principle forms part of general international law. There is substantial, if not conclusive, authority that the principle is binding on all States, independently of specific assent.”).

²⁸ U.N. High Comm’r for Refugees, *Legal Considerations Regarding Access to Protection and a Connection Between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries* 2 (2018), <https://www.refworld.org/pdfid/5acb33ad4.pdf>.

²⁹ See NAT’L IMMIGRANT JUSTICE CTR., *ASYLUM SEEKERS AND REFUGEES* (2020), <https://immigrantjustice.org/issues/asylum-seekers-refugees>; see also HUMAN RIGHTS FIRST, “Grant Rates Plummet as Trump Administration Dismantles U.S. Asylum System, Blocks and Depots Refugees” (June 2020), <https://www.humanrightsfirst.org/sites/default/files/AdministrationDismantlingUSAsylumSystem.pdf>.

dangers.”³⁰ However, there is no meaningful analysis that is included to support this claim. Through our global work with immigrants and refugees, particularly in the Northern Triangle countries of Central America, the Catholic Church has come to witness that many are fleeing violence and persecution and are seeking refuge—not looking to harm the U.S. or disrupt foreign relations.

We see the consistently high levels of violence in Central America, political instability in parts of South America (namely Venezuela), and the lack of many countries’ capacity to offer adequate protection.³¹ In his pastoral letter, *I See Violence and Strife in the City*, Archbishop José Luis Escobar Alas, Archbishop of San Salvador, stated: “[t]he faithful know that they are being monitored [by gangs] in their comings and goings in the communities. The same applies to pastoral agents who are constantly watched . . . The exodus of families is heartbreaking . . . It is truly unfortunate and painful that the Church cannot work because of this atmosphere of insecurity and anxiety that shakes our beloved country.”³² Over the course of one year, one parish alone was “exposed to murder, persecution, exodus, and extortion,” including the murder of six active parishioners by stabbing, dismemberment, or firearms.³³ The experiential Catholic reality, is that the people fleeing violence are not themselves per se dangerous, rather they are escaping danger that is targeting them, their families and their communities.

While some individuals are escaping violence generally, there are certain groups who are expressly targeted for certain characteristics and actions and the proposed changes in Rule would make it more difficult to denote these particular characteristics. One of the proposed changes in the Rule is codifying the particular social group requirements for asylum by establishing a set of bright line bars, scenarios for which an asylum officer or immigration judge could deny the asylum seeker is part of a persecuted particular social group needing protection.³⁴ Among the excluded bases are past or present criminal activity, presence in a country with generalized violence or a high crime rate, attempted recruitment of the applicant by criminal, terrorist, or persecutory groups, targeting of the applicant for criminal activity for financial gain based on perceptions of wealth, interpersonal disputes of which governmental authorities were unaware or uninvolved, private criminal acts of which governmental authorities were unaware or uninvolved, and status as individuals returning from the U.S.³⁵ This change would thus bar asylum for victims of domestic violence, victims of gang violence and recruitment, and victims

³⁰ Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 36,264 (citing *Kleindienst v. Mandel*, 408 U.S. 753, 765).

³¹ For example, the Mexican asylum system has seen large increases in requests for protection: from just over 1,000 in 2013 to nearly 30,000 in 2018. In the first two months of 2019, there was a further 185-percent increase in the number of people seeking asylum in Mexico compared to the same period in 2018 and efforts to meet the demand are not able to ensure adequate access to protection. COMISIÓN MEXICANA DE AYUDA A REFUGIADOS, BOLETÍN ESTADÍSTICO DE SOLICITANTES DE REFUGIO EN MÉXICO (2013), available at https://www.gob.mx/cms/uploads/attachment/file/413013/COMAR_2013.pdf; Rachel Schmidtke, *2018 Migration To and Through Mexico Fact Sheet*, WILSON CENTER (March 15, 2019), <https://www.wilsoncenter.org/article/2018-migration-to-and-through-mexico-fact-sheet>.

³² Most Reverend Jose Luis Escobar Alas, *I See Violence and Strife in the City: A Pastoral Letter on the Occasion of the Feast of the Beloved Blessed Oscar Romero*, 18 (March 24, 2016).

³³ *Id.* at 15.

³⁴ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36,264 (June 15, 2020).

³⁵ *Id.*

of extortion, which make up a great number of asylum claims for the many vulnerable migrants fleeing from Central America.³⁶

As mentioned above, violence and forced internal displacement continue unabated within the Northern Triangle countries who will be disproportionately affected by changes proposed by the Rule,³⁷ and much of the violence is targeted at the vulnerable families and children who are subsequently forced to flee for safety and seek haven in the U.S.³⁸ The Northern Triangle is one of the most dangerous regions in the world, with homicide rates ranking amongst the world's highest for decades.³⁹ These realities—gang violence, domestic violence and femicide, corruption, impunity, and lack of opportunity related to displacement and violence—are the primary factors driving families to flee north for protection.

The Rule ignores the larger interrelated migration context. It minimizes the life-threatening dangers asylum seekers are fleeing and attempts to regulate its way out of U.S. domestic and international asylum obligations through administrative fiat. Instead of continuing with administrative efforts to narrow asylum protections, the U.S. should look to meaningfully address the root causes of forced migration at a regional level. It should invest in expanded programming to address the needs of vulnerable families and children in the Northern Triangle. Meanwhile, America should meet its asylum obligations to those fleeing from Central America.

B. The Rule undermines the role of the U.S. as a traditional leading provider of humanitarian protection in the global community.

The U.S. has a long and proud history of providing humanitarian protection to asylum seekers and refugees. George Washington envisioned the special global humanitarian role of the U.S. even in the early days of the Republic, stating in a welcoming letter to Francis Adrian Van Der Kamp, who was seeking asylum in our nation: “I take the speediest occasion to well-come your arrival on the American shore. I had always hoped that this land might become a safe and agreeable Asylum to the virtuous and persecuted part of mankind, to whatever nation they might belong...”⁴⁰ Further, as the years passed, the Statue of Liberty has become a lasting American symbol, not only signifying that the U.S. is a land of liberty, but that our nation is seen by the world as a place that welcomes and provides liberty and new life for “those yearning to be free.”⁴¹

³⁶ Nicole Narea, “*Trump Is Quietly Gutting the Asylum System Amid the Pandemic*,” VOX (June 12, 2020), <https://www.vox.com/2020/6/12/21288063/trump-immigration-asylum-border-regulation>.

³⁷ *Id.*, see also AMERICAN IMMIGRATION COUNCIL, “*Asylum in the United States*,” (June 11, 2020), available at <https://www.americanimmigrationcouncil.org/research/asylum-united-states> (finding that in FY18 El Salvador, Honduras, and Guatemala were 3 of the 5 countries that made up 52.6% of the nearly 40,000 individuals granted asylum).

³⁸ *E.g.*, U.S. CONFERENCE OF CATHOLIC BISHOPS/MIGRATION AND REFUGEE SERV., TEMPORARY PROTECTED STATUS: A VITAL PIECE OF THE CENTRAL AMERICAN PROTECTION AND PROSPERITY PUZZLE 6 (2017), available at <http://www.usccb.org/about/migration-policy/fact-finding-mission-reports/upload/el-salvador-honduras-report-20171016.pdf>.

³⁹ Amelia Cheatham, “*Central America’s Turbulent Northern Triangle*,” COUNCIL ON FOREIGN RELATIONS (Oct. 1, 2019), <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>.

⁴⁰ *Letter from George Washington to Francis Adrian Van der Kemp* (May 28, 1788), available at <https://founders.archives.gov/documents/Washington/04-06-02-0266>.

⁴¹ Emma Lazarus, *New Colossus* (1883).

In current times, the crowning manifestation of the American role as a nation that welcomes those fleeing persecution has been seen in how we have lived out our commitment to and obligations under the 1967 Protocol, as operationalized by the U.S. refugee resettlement and asylum programs. Since 1980, the U.S. has resettled over 3 million refugees,⁴² more than three times as many refugees as the rest of the world combined.⁴³ The U.S. Catholic Church proudly has assisted with that effort, resettling approximately 1 million of that total the U.S. government welcomed to our country. The U.S. has also contributed greatly to global refugee protection through asylum grants, including over 720,000 asylum grants from 1980 to 2018.⁴⁴

This Rule undermines the U.S. global role in refugee protection by cutting off access to U.S. asylum. As described above, the Rule amounts to a virtual asylum bar for anyone seeking asylum in the U.S. Since 2016, through administrative actions, refugee resettlement goals have fallen from 110,000 in 2017⁴⁵ to 18,000 in 2020.⁴⁶ Further, actual admissions have fallen from 84,994 in 2016 to 30,000 in 2019.⁴⁷

The Rule undermines the U.S. global role in refugee protection because it attempts to avoid international and domestic asylum obligations through unlawful regulations. The U.S. will therefore lose its moral authority to challenge other countries that are seeking to avoid their protection obligations. Coupled with the drastically reduced commitment to refugee resettlement, the U.S. is no longer leading by positive example in the community of nations and has lost considerable authority to positively influence refugee protection by other nations.

Conclusion

For these reasons, this Rule is unlawful and unjust. DHS and EOIR should rescind the Rule. We strongly believe that how we as a country respond to asylum seekers arriving at our borders is a test of our moral character. As Pope Francis encouraged: “If we want security, let us give security; if we want life, let us give life; if we want opportunity, we must give opportunity. The yardstick we use for others will be the yardstick which time will use for us.”⁴⁸ Given their

⁴² U.S. DEP’T OF STATE ET AL., REPORT TO CONGRESS: PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2020 (2019), available at <https://www.state.gov/reports/report-to-congress-on-proposed-refugee-admissions-for-fy-2020/>.

⁴³ Phillip Connor et al., *For the First Time the U.S. Resettles Fewer Refugees than the Rest of the World*, PEW RESEARCH CENTER (July 5, 2018), <https://www.pewresearch.org/fact-tank/2018/07/05/for-the-first-time-u-s-resettles-fewer-refugees-than-the-rest-of-the-world/>.

⁴⁴ See U.S. DEP’T OF STATE ET AL., REPORT TO CONGRESS, *supra* note 42.

⁴⁵ See U.S. DEP’T OF STATE ET AL., REPORT TO CONGRESS: PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2018 6 (2017), available at <https://www.state.gov/remarks-and-releases-bureau-of-population-refugees-and-migration/proposed-refugee-admissions-for-fiscal-year-2018/>.

⁴⁶ See U.S. DEP’T OF STATE ET AL., REPORT TO CONGRESS, *supra* note 42.

⁴⁷ Statistics are derived from data provided by the U.S. Department of State. See *Interactive Reporting: Admissions and Arrivals*, REFUGEE PROCESSING CENTER, available at https://ireports.wrapsnet.org/Interactive-Reporting/EnumType/Report?ItemPath=/rpt_WebArrivalsReports/Map%20-%20Arrivals%20by%20State%20and%20Nationality (last visited June 24, 2020).

⁴⁸ Speech of His Holiness Pope Francis to the U.S. Congress (September 24, 2015).

vulnerability, asylum seekers arriving at our border deserve and need our protection and our compassion. We must remember that they are fellow children of God. We must also remember that our nation is bound by treaty and domestic law to provide that compassionate protection to them.

Respectfully submitted,

A handwritten signature in blue ink, reading "Anthony R. Picarello, Jr.", written in a cursive style.

Anthony R. Picarello, Jr.
General Counsel & Assc. General Secretary