

## SAMPLE COMMENTS ON PROPOSED ASYLUM RULES

I am writing to express my grave concern over the proposed changes. These proposed changes constitute an unnecessary, harsh, and unlawful gutting of the asylum protections enshrined in United States and international law. I submit these comments to express opposition to the entirety of the Proposed Rules concerns with the administration's continued efforts to exclude refugees from obtaining the security and stability the United States asylum system has long promised. I urge that the Proposed Rules be rescinded in their entirety.

The proposed rules needlessly and cruelly exclude bona fide refugees from asylum eligibility.

The United States asylum system was first codified in statute through the Refugee Act of 1980, described by one prominent scholar as a bipartisan attempt to "reconcile our rhetoric with our law, our national immigration policy and our international treaty obligations so that we could maintain a consistent posture towards the world as a nation with a strong humanitarian tradition and a unique historic role as a haven for persons fleeing oppression." The Act among other measures designed to bring the United States domestic legal code into compliance with the provisions of the United Nations Protocol Relating to the Status of Refugees created a "broad class" of refugees eligible for a discretionary grant of asylum.

The asylum protections provided by United States law are sacred. Asylum provides those fleeing horrors with physical safety, a path to citizenship and security, and the opportunity to reunite with immediate family members who may still remain abroad in danger. Many see the domestic asylum system as a symbol of the United States' commitment never to repeat its failure to save thousands of Jewish refugees refused entry to the United States on the St. Louis and others fleeing the Holocaust. Others point to the critical role that domestic asylum policy plays in serving the United States' foreign policy interests abroad. For those individuals seeking asylum in the United States, the stakes could not be higher a claim denied often means return to death or brutal persecution.

The laws, regulations, and process governing asylum adjudications are already exceedingly harsh. Asylum seekers bear the evidentiary burden of establishing their eligibility for asylum in the face of a complex web of laws and regulations, without the benefit of appointed counsel and often from a remote immigration jail. The obstacles to winning asylum are exceedingly high; indeed in some parts of the country and before certain immigration judges, almost no one succeeds. Today, newly imposed barriers to accessing asylum in the United States are breathtaking in scope, with those seeking safety at the southern border subject to return to dangerous conditions in Mexico and an overlapping web of policies that preclude asylum eligibility for countless migrants simply because of their national origin, manner of entry, or their flight path. There are consistent reports of the documented deaths and brutalities endured by those who sought but were denied asylum protections in the United States.

Specifically, the bars to asylum based on allegations of criminal conduct are already sweeping and over-broad in nature and scope. Any conviction for an offense determined to be an "aggravated felony" is considered a per se "particularly serious crime" and therefore a mandatory bar to asylum. "Aggravated felony" is a notoriously vague term, which exists only in immigration law. Originally limited to murder, weapons trafficking and drug trafficking, it has metastasized to encompass hundreds of offenses, many of them neither a felony nor aggravated, including petty offenses such as misdemeanor shoplifting, simple misdemeanor battery, or sale of counterfeit DVDs. The existing crime bars should be narrowed, not expanded. Even for those not categorically barred from relief, the immigration adjudicator maintains full discretion to deny asylum.

Immigration adjudicators already have vast discretion to deny asylum to those who meet the refugee definition but have been convicted of criminal conduct. Further categorical bars are not needed. The agencies' efforts to add seven new sweeping categories of barred conduct to the asylum eligibility criteria is unnecessary and cruel. The Proposed Rules drain the phrase "particularly serious crime," 8 U.S.C. 1158, of any sensible meaning.

The Proposed Rules are also arbitrary and capricious. They would constitute a marked departure from past practice. And the agencies have proffered no evidence or data to support these changes.

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As the Director of Programs and Advocacy at Centro Legal de la Raza and authorized to submit comment on behalf of Centro Legal de la Raza in Oakland, CA, I write to express our strong organizational opposition to this proposed rule change. We are members of the public and stakeholders working with asylum seekers. We believe strongly that our nation must comply with obligations mandated under international human rights laws and treaties. U.S. law enshrines the protections of the international Refugee Convention, drafted in the wake of the horrors of World War II. Under the Refugee Act of 1980, passed with bipartisan support, anyone present or arriving in the U.S. can apply for asylum. The United States must welcome and properly adjudicate the applications of asylum seekers fleeing persecution and torture outside of the U.S.

It is well documented by international refugee and human rights experts, the U.S. Citizenship & Immigration Services (USCIS) Refugee, Asylum and International Operations (RAIO) (see asylum officer and RAD officer training materials), and relative case law that asylum seekers and refugees are often charged with crimes or detained in their home countries precisely because they are being persecuted or tortured by government actors in their home countries. An asylum seeker's asylum claim may rest on extrajudicial and unjust criminalization and detention as their evidence of persecution and/or torture on account of a protected ground.

With this understanding, the U.S. congress determined that criminal conduct & convictions that do not rise to the level of: aggravated felonies; a "particularly serious crime" such that they are a danger to the U.S.; committed a "serious nonpolitical crime" outside the United States; or pose a danger to the security of the United States would not bar applicants from eligibility for asylum in the U.S. Besides these restrictions, we have bars to asylum that prohibit grants of asylum for applicants implicated in terrorism or persecution of others. The United States has entrusted specially trained asylum officers and immigration judges with discretion to make determinations about whether or not applicants are deserving of positive discretion. This proposed rule to further limit asylum seekers from gaining these humanitarian protections would undermine years of legal jurisprudence & violate our obligations under international laws and treaties. The multiple attacks against asylum seekers under this administration and the Trump administration's flagrant support of White supremacy combined with reprehensible statements against Mexicans, Central Americans, and Africans and inhumane policies against migrants of color demonstrate that these proposed regulations & policies are motivated by pure malevolence and racism.

Racial profiling in the criminal justice system in the U.S. poses the threat of an unequal justice to migrants of color. We live and work in communities where we witness and experience racial profiling and disparate treatment in the criminal justice system. We have witnessed and experienced the increased criminalization of immigrant communities of color and in border states at the Mexico - U.S. border that are now, highly militarized. Racial disparities in arrests, convictions, and sentencing in the U.S. are widely known and documented. The U.S. criminal justice system has a long history of disenfranchising people of color through racist policies employed in policing, mass incarceration, &

other methods widely employed and administered throughout the criminal justice system. Our harsh immigration laws exploit these obstacles to drive mass incarceration and mass deportation of people of color. Migrants of color in particular are much more likely to suffer racial profiling that violates fundamental rights under the Fourth and Fifth Amendments of the U.S. Constitution and leads to grave collateral consequences such as removal to a country where they may be persecuted, tortured, or killed. Therefore, any proposed policies or regulations that disqualify eligibility for the protections of asylum because of criminal convictions as proposed; would implicate an unequal justice that threatens the constitutional rights we hold dear and so many have died for. The proposed changes would cause dangerous regressions in any historical achievements made towards an more equal justice in the U.S. We implore you to reject these and any proposed regulations and policies that would undermine or contradict the rights based law and policy we have created through harmonization with international human rights laws and standards.

This proposed rule would punish people who've already endured mistreatment & racial profiling in the criminal legal system a second time -- with deportation back to the persecution & torture they fled. This is profoundly immoral and makes a mockery of due process. For these reasons, we call upon the Trump administration to withdraw this proposal.

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I write to record, in the strongest possible manner, my opposition to this proposed rule change. Despite this administration's attempt to close our nation's doors to all immigrants, I and millions of my fellow citizens strongly believe that our nation must welcome the, particularly those fleeing violence in their home countries. U.S. law upholds the protections of the international Refugee Convention. Under the Refugee Act of 1980, passed with bipartisan support, anyone present or arriving in the U.S. can apply for asylum.

For asylum seekers, making it to the U.S. often means they have found safety from persecution, torture, and sometimes death. Yet asylum seekers face many unjust obstacles in the immigration system, and I am quite concerned about the way that this proposed rule would inject racial profiling into the asylum process. This latest attack would put even more people seeking asylum at risk of danger - and death. I believe we must recognize the humanity of every person, including immigrants, something that this proposed rules change doesn't do. Our immigration and asylum policies must honor our ideals of compassion, fairness, and respect for human rights - not trample them.

For the love of God, stop blaming immigrants for every ill that besets our country - treat them as humans and respect the law that requires their protection. Withdraw this proposal!

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I oppose the new rule change that would exclude many asylum seekers based on future contact with the U.S.'s flawed criminal legal system. The Trump administration and his adviser Stephen Miller have made a mockery of the Asylum laws. They are cruel and inhumane, cause trauma to families and involve racial profiling.

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As the Director of a Refugee Women's Health Clinic in a large urban setting I am writing to voice my opposition to the proposed changes to baring asylum eligibility. Low level offenses are not dangerous, nor should they exclude anyone from being allowed to seek refuge within our country. As

someone who personally was convicted of a low level offense as a teenager I can't imagine being barred from being allowed to live in a safe, prosperous country like the US due to a silly mistake I made many years ago. There is no basis for this change, and no data to support the value of the change, so I strongly oppose it.

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I strongly oppose this proposed rule change to asylum eligibility. As an attorney at the Bronx Defenders, I work with real people every day - some citizens and some noncitizens, and see how our criminal justice system can unfairly target low-income people of color. As a result, I am deeply concerned that this rule will endanger the lives of many people, harm our communities, and tear families apart, based on contact with the criminal legal system that is in no way probative of their danger or potential harm to the community.

The U.S. must serve as a refuge for people fleeing persecution, and our law enshrines the protections of the international Refugee Convention, drafted after the Holocaust and massive genocide during World War II. Under the Refugee Act of 1980, passed with bipartisan support, anyone present or arriving in the U.S. can apply for asylum. For asylum seekers, making it to the U.S. often means they have found safety from persecution, torture, and sometimes death. There are already innumerable barriers, legal and logistical, to people seeking and being granted asylum in the U.S.

This proposed rule would unlawfully make this process - meant to be a lifeline to people in need - even less accessible, and impermissibly inject racial profiling into the asylum process. This would in turn eviscerate one of the most important defenses people who have lives and families and often contribute in numerous different ways to their communities - have against deportation.

This proposed rule would punish people who've already endured mistreatment and racial profiling in the criminal legal system a second time -- with deportation back to the very life-threatening situation they fled. This is profoundly immoral, makes a mockery of due process, and comes right out of Steven Miller's racist playbook. The criminal legal system in the U.S. is wracked with racial profiling and obstacles to equal justice. For every Harvey Weinstein who is actually arrested, there are thousands of wealthy men who escape consequence for their illegal acts and crimes - while thousands of poor people of color are arrested on extremely minor charges every day. Our harsh immigration laws exploit these obstacles to drive mass incarceration and mass deportation of people of color.

In sum, this rule should not be implemented.

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I strongly oppose the proposed rule change. As one who has worked for several organizations serving asylum seekers, other immigrants, and refugees I know that U.S. law enshrines the protections of the international Refugee Convention, drafted in the wake of the horrors of World War II. Under the Refugee Act of 1980, passed with bipartisan support, anyone present or arriving in the U.S. can apply for asylum.

Rather than honoring American ideals of compassion, fairness, and respect for human rights the proposed rule change would make many people with involvement in our flawed legal system totally

ineligible for asylum. Both our criminal and immigration systems already routinely uses the 'criminal' label as a way of stripping people of their rights and humanity, and disproportionately target people of color. The proposed rule change would only make these injustices worse and inflict further harm on people who have already suffered greatly and bar their path to establishing legal presence.

Where is the logic in demonizing and persecuting people without immigration status while simultaneously making legal status impossible for them to achieve? The proposed rule offends against logic, against compassion, against human rights, and against international law to which the US has long subscribed. Therefore I call upon the Trump administration to withdraw this proposal.

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I write to express my strong opposition to this proposed rule change.

I am a concerned member of the public who believes strongly that this nation must welcome people fleeing violence, and who is strongly concerned about racial profiling in the criminal legal system. Immigrants are a vital part of my community, my neighborhood, and my state.

I am myself an immigrant from El Salvador who has lived in the U.S. for close to 40 years. My family fled extreme violence when i was a child and I am deeply concerned that this rule change would send other people who have fled violence back to danger and death.

I work with immigrant community members daily, and am concerned this rule would put many more people in life-threatening danger. I repeatedly hear stories of the extreme violence asylum seekers have survived and find it unbelievable that they must face more persecution when they arrive here. Everyone has a right to live free of violence, no matter their background.

I have also worked with incarcerated and formerly incarcerated people. I strongly think it's wrong to punish people a second time after they've completed their sentences. Deportation is often a matter of life and death. No one should be given a death sentence for crossing a border in order to survive.

The values this country professes demand it to be a place of refuge for people fleeing violence, starvation, poverty, or persecution. U.S. law enshrines the protections of the international Refugee Convention, drafted in the wake of the horrors of World War II. Under the Refugee Act of 1980, passed with bipartisan support, anyone present or arriving in the U.S. can apply for asylum. For asylum seekers, making it to the U.S. often means they have found safety from persecution, torture, and sometimes death. Yet asylum seekers face many unjust obstacles in the immigration system.

This proposed rule would inject racial profiling into the asylum process. This latest attack would put even more people seeking asylum at risk of danger - and death. This would in turn eviscerate one of the most important defenses community members have against deportation. This proposed Trump rule would punish people who've already endured mistreatment and racial profiling in the criminal legal system a second time -- with deportation back to the very life-threatening situation they fled. This is profoundly immoral, makes a mockery of due process, and comes right out of Steven Miller's racist playbook. The criminal legal system in the U.S. is wracked with racial profiling and obstacles to equal justice. This country's harsh immigration laws exploit these obstacles to drive mass incarceration and mass deportation of people of color.

I believe we must recognize the humanity of every person, including immigrants, and protect our neighbors from discrimination and abuse. Immigration and asylum policies must honor our ideals of compassion, fairness, and respect for human rights - not trample them.

For these reasons, I call upon the Trump administration to withdraw this proposal immediately.

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As the Director of Legal Services at Just Neighbors, a Virginia-based non-profit immigration legal service provider, I am writing to register our strong opposition to the proposed changes to the asylum regulations posted in the FR of 12/19/2019. The proposed changes would adversely affect asylum seekers; most particularly, low-income asylum seekers, many of whom our non-profit serves. The following are our strongest concerns regarding the proposed changes:

1) Expansion of list of crimes which bar a refugee from applying for asylum.

a) This proposed expansion includes alien smuggling, including the "smuggling" of ones' children. However, many asylum-seekers are coming as family units and the addition of the alien smuggling category of "crimes" which bar one from applying for asylum is nothing less than a veiled attempt to exclude our mostly Central Americans clients from applying for asylum merely because they are escaping violence in Central America along with their children. It is at least arbitrary and capricious and seemingly racially motivated.

b) The proposed expanded list also includes an alien who is accused of acts of domestic battery. Again, this is a sweeping change and not based on any evidence which would support such a change. Moreover, the grant of asylum is already discretionary; therefore the addition of an exclusionary category based on an accusation of domestic battery, as opposed to a conviction, is unwarranted.

c) The proposed expanded list in it's entirety is unwarranted. The list of crimes which constitute a bar to asylum is already overbroad and should not be further broadened. There is no evidentiary basis to warrant such a broadening and, as noted above, asylum is already discretionary, therefore any convictions or arrests can be considered by an asylum officer/IJ when making a decision.

2) Applicants would need to wait 365 days to be eligible for an EAD: There is no evidentiary basis which warrants changing the wait time to apply for an EAD from 150 days to 365 days. The notion that applicants are applying for asylum merely to acquire an EAD is not based on any evidence. Just Neighbors has assisted countless asylum seekers both here in Virginia as well as near the Southern border. Each individual we have worked with has a credible claim to asylum and has or will file for asylum based on the persecution suffered, not based on any alleged desire to acquire a work permit. Any notion claiming asylum seekers only wish to have a work permit is not based on reality and is arbitrary and capricious.

3) Applicants would not be eligible for an EAD if they did not enter legally through a POE: By law, asylum seekers can apply for asylum regardless of manner of entry. Any attempt to limit a work permit to those who enter legally through a POE is in contravention of the law and is unwarranted.

4) The issuance of an EAD would be discretionary: Presently, USCIS officers adjudicating EAD applications do not have to weigh any positive or negative equities when determining whether to issue an EAD. The addition of this proposed criteria would pose an undue burden on USCIS officers adjudicating applications and serve to do nothing but lengthen adjudication times and overburden adjudicating officers. Once again, the proposed change is not based on any rational explanation and is arbitrary and capricious.

As a non-profit which represents numerous asylum seekers, we submit that all the proposed changes, not merely those listed above, are unwarranted, not based on any real evidence, and are at least arbitrary and capricious and possibly motivated to exclude Central American asylum seekers in particular.

Thank you.

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I write to express my strong opposition to this proposed rule change. I am a concerned member of the public who believes strongly that our nation must welcome people fleeing violence, and who is strongly concerned about racial profiling in the criminal legal system. Immigrants are a vital part of

my community, my neighborhood, and my state. I believe we must recognize the humanity of every person, including immigrants, and protect our neighbors from discrimination and abuse. Our immigration and asylum policies must honor our ideals of compassion, fairness, and respect for human rights - not trample them. For these reasons, I call upon the Trump administration to withdraw this proposal.

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I am writing in response to the above-referenced Proposed Rules to express my strong opposition to the Proposed Rules to amend regulations relating to eligibility for asylum published in the Federal Register on December 19, 2019.

For the reasons detailed in the comments that follow, the Department of Homeland Security and the Department of Justice should immediately withdraw their current proposal, and instead dedicate their efforts to ensuring that individuals fleeing violence are granted full and fair access to asylum protections in the United States.

Thank you for the opportunity to submit comments on the Proposed Rules. You will find them attached.

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I oppose the new rules for the following reasons

- they do not comply with UN rules on the treatment of refugees and asylees
- they violate the human rights of asylees
- they are arbitrary and capricious and do not have a sufficient nexus to a government interest
- they violate the due process clause and equal protection clauses of the Constitution
- they are purposely aimed at harming vulnerable populations who are fleeing persecution in their home countries

I would be personally harmed by the law going into effect because I would be unable to effectively provide aid to asylums and refugees through my programs at the Immigration Advocates Network and immi.org.

Therefore I request that this rule not go into effect, now or ever.

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This proposed rules are a terrible idea that will harm asylum seekers. They seek to create a system of suspicion towards them and are especially harsh when viewed through a trauma-informed lens. Asylum seekers are an inherently vulnerable population because of the trauma they have experienced in their countries of origin and, often, along the journey to find safety. Existing literature suggests that at least one out of every three asylum seekers struggles with depression, anxiety, and/or post-traumatic stress disorder (PTSD). One recent study found the mental health problems facing refugees and asylum seekers so acute that more than a third of the study's sample admitted having suicidal thoughts in the preceding two weeks.

Studies also consistently reveal a high prevalence of comorbidity of PTSD and substance use disorders, with individuals with PTSD up to 14 times more likely to struggle with a substance use disorder. Asylum seekers in the United States are often unable to access affordable medical care and treatments for complex trauma; some turn to drugs and alcohol in an effort to self-medicate. The proposed new bars to asylum include any drug-related conviction (with one exception for a first minor marijuana possessory offense) and any second conviction for driving under the influence. This approach is not only cruel but also ignores the evidence. Particularly given the vulnerabilities of asylum seeking populations, prior struggles with addiction should be addressed with treatment and compassion, not a closed door and deportation order.

Immigration adjudicators already maintain the authority to deny asylum to individuals with drug-related criminal histories on the basis of discretion. Denying asylum seekers even the opportunity to present the countervailing factors of their past trauma and potential recovery is simply cruel. It rids them of the chance to actually tell their story.

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As an attorney who practiced asylum law exclusively for over four years, I strongly oppose this proposed regulation.

On the surface, alien smuggling or harboring may appear to be an appropriate bar to asylum. However, the statutory language is extremely broad:

"Harboring" under 8 U.S.C. 1324(a)(1)(A)(iii) entails the following three elements:

- (1) the noncitizen came, entered or remained in the United States in violation of the law,
- (2) the defendant knew or recklessly disregarded that the noncitizen entered or remained in the United States in violation of the law,
- (3) the defendant concealed, harbored or shielded from detection the noncitizen in any place, including any building or any means of transportation.

Under this statute, one could be convicted of "harboring" for allowing any undocumented person to reside with him/her or even giving an undocumented person a ride. This may include, for example, a live-in employee who provides babysitting or elder care, a friend, or even an immediate family member. I am aware of at least one case in which a woman was prosecuted under the statute for allowing her undocumented boyfriend to live with her. It would be unjust to prevent a sincere asylum seeker from obtaining asylum simply because s/he was trying to provide lodging to a similarly situated "alien."

I object to the bar for illegal reentry as overbroad. Many asylum seekers I have represented have re-entered the U.S. because of a new threat that arose in their home country subsequent to their departure from the U.S.

I further object to the bar for any crime "involving street gang activity." This could include nonviolent activity as minor as spraying graffiti on a building. Further, I have personally represented sincerely reformed gang members who have learned from their pasts and devoted their lives to preventing youth from becoming involved with gangs. Surely, this is the type of person we should want in our country--especially if they are seeking asylum and would not be safe in their home country due to their prior gang affiliation or other reasons.

In addition, I find it disturbing that the proposed regulation would bar folks who merely have been arrested, but not convicted, of domestic violence offenses. Immigration officers should not attempt to substitute their own judgment for the judgment of the trier of fact in the criminal case.

For these and other reasons, I strongly urge the rejection of these proposed regulations.

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I am a retired immigration attorney with substantial experience in asylum applications. I am simply appalled by the proposed changes which in effect expand the reasons by which asylum may be denied. The idea that the crime of driving while under the influence is a serious crime, constituting a danger to the United States is beyond belief. At over 1,000,000 arrests per year, it is one of the most common reasons for arrest in the United States. In most states, it is judged to be a mere

misdemeanor, barring extenuating circumstances. Using a misdemeanor as a basis for denying asylum is a major redrafting of the law of asylum as it was passed by Congress.

Further, the idea that a person who has been accused BUT NOT CONVICTED of an domestic violence offense, is deeply troubling and antithetical to the constitutional guarantee against double jeopardy. Although an asylum case is not a criminal case, it takes on every quality of a criminal case when an immigrant must defend against such an accusation not only in criminal court, but also in immigration court in order to be afforded the right to asylum. This does not pass the the sniff test.

It is extremely difficult to be granted asylum in the United States. Asylum laws were passed in order to provide a form of relief for those people fleeing persecution. It would be a travesty and overzealous application of asylum limitations if a DUI conviction or a mere accusation of domestic violence would preclude such relief.

DO NOT PASS THESE ANY OF THESE LIMITATIONS PROPOSED BARS TO ASYLUM ELIGIBILITY.

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- I oppose this! The processes/laws in place are sufficient (or already too restrictive) and the proposed rules would unfairly and unnecessarily restrict access to asylum

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- I oppose the Proposed Rules for the reasons stated in the attached letter. Asylum-seekers are already thoroughly vetted and must already navigate a complicated system of laws and requirements.

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- A person pending asylum with minor crimes in his or her history should be able to enjoy a second chance to retract their behavior.

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I am strongly opposed to the categories of Alien Smuggling, Illegal Reentry, and Fraudulent Documents being included as grounds to deny asylum. In many cases, these actions cause harm to no one and are actions immigrants are forced into as a result of a broken immigration system. The U.S. needs to enact comprehensive, compassionate immigration reform, rather than persecuting individuals.

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- The proposed bars to asylum eligibility are nothing but a way to eliminate persons from seeking asylum from dangerous places.

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You're trying to include people who've gotten a D.U.I as a bar? On its face it's prejudiced against poor people. The obvious reasoning is a poor person will never get the same consideration as someone who is not. That's reality, and so is the fact that a lot of these immigrants are in the poor person category by default.

You're lumping marijuana in there? I don't even do that and I find it hilarious that you would try to add that in.

You're also trying to include "engaged in acts of battery or extreme cruelty in a domestic context,

even if no conviction resulted". That one is funny for two reasons:

First and foremost is your laughably ignorant "even if no conviction resulted".

Secondly, have any of you ever been involved in anything like that? I have, I(the man) was the abused for a long while, only to have it turned around on me by the system. I never got to say one word in court(I was told by a lawyer they'd not take me because it'd be an instant lose...no matter what proof I had had), never got to show MY proof that I still have years later(minus some videos I took of myself, she'd found those and trashed them). Screwed enough I ended up just leaving my home state and will never go back to a place that will do that to someone.

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- This is easy, Cannabis should not be on Schedule 1 because it has known medical value. Go to [medicalcannabis.com](http://medicalcannabis.com) Or go to Pubmed and search for cannabis research.

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I am concerned about the new bar to asylum for convictions of offenses for alien smuggling under INA 274(a)(1)(A). As described in section III.A.2 of the proposed rule, convictions under this section are mostly already a bar to asylum for being an aggravated felony, except for a first offense for the purpose of assisting the alien's spouse, child, or parent. As described in section III.A.2, the proposed rule makes the bar to asylum cover this exception too: "The proposed rule would broaden this bar so that first-time offenders who engage in illegal smuggling or harboring to aid certain family members, in violation of section 1324(a)(1)(A) or (2), are deemed to have committed particularly serious crimes." I am concerned about the expansion of the bar to asylum to cover this exception.

When a family group consisting of adults and children enter the US illegally together, the adults are generally considered to be guilty of having brought the children to the US illegally under INA 274(a)(1)(A)(i). The US government can prosecute and convict the adults for this offense, and that would make them ineligible for asylum under this proposed rule. Yet this ineligibility for asylum arguably arises primarily from the fact that they are adults in a family group including children entering together, and the manner of the group's entry being illegal. This seems contrary to the spirit of 8 USC 1158(a)(1) (part of the Refugee Act of 1980), which says an alien "who arrives in the United States (whether or not at a designated port of arrival [...])" may apply for asylum, as well as the spirit Article 31(1) of the 1951 Refugee Convention (as applied to the US through the 1967 Refugee Protocol), which says contracting states shall not impose penalties on refugees "on account of their illegal entry".

You could argue that, in this example, technically the adults are not being made ineligible for asylum due to their own illegal entry, but rather due to their assistance to the children in their family to enter the US illegally, but in my opinion that is a distinction without a practical difference, because adults are generally deemed to be assisting children when entering together. Asylum seekers often travel in family groups involving adults and children, and if the Refugee Act and the Refugee Convention envision that asylum seekers should be able to obtain asylum despite illegal entry, then I would argue that they also envision that when asylum seekers travel in a family group involving adults and children, all members of that group should be able to obtain asylum, if otherwise eligible, despite their illegal entry together.

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- Women fleeing extreme violence should not be barred from asylum just because they are trying to save their children.