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March 27, 2023

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Submitted via <https://www.regulations.gov/commenton/USCIS-2022-0016-0001>

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

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

**RE: Comments in Opposition to the Joint Notice of Proposed Rulemaking  
entitled *Circumvention of Lawful Pathways*; [RIN: 1125-AB26 / 1615-AC83](#) / Docket  
No: USCIS 2022-0016 / A.G. Order No. 5605-2023**

Dear Assistant Director Reid and Acting Director Delgado:

The Boston Bar Association (BBA) is submitting the following comments to the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and the Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), in response and opposition to the above-referenced Notice of Proposed Rulemaking (“the Rule”) issued by the agencies on February 23, 2023. The BBA opposes the proposed Rule, which will exclude current and future asylum seekers from a meaningful opportunity to have their asylum claims heard, contrary to established law and fundamental principles of due process.

I write to you on behalf of a volunteer organization of over 15,000 members drawn from private practice, corporations, government agencies, legal-aid organizations, the courts, and law schools, who carry out thousands of hours of *pro bono* service each year. As an Association, we have for years spoken in opposition to practices that threaten the rights and well-being of immigrants. In 2018, we tasked a working group with establishing a framework to guide the Association in responding to immigration policies and developments. These principles inform our advocacy for immigration policies and practices that protect fundamental rights and human dignity, vindicate immigrants’

established constitutional rights to due process and equal protection, and promote the ability of all people to meaningfully exercise their rights and access justice through the legal system. The continued public faith in our institutions and the health of our democracy requires adherence to such principles, which is why we are deeply troubled that the proposed Rule fails these principles.

The BBA urges EOIR and DHS to consider the following concerns we have regarding the Rule and ensure that a fair asylum system is made accessible to all those who seek refuge in the United States.

The Boston Bar Association's 2018 [Statement of Principles Concerning Immigration and Related Issues](#) ("Immigration Principles") affirms that "immigrants, including those who have entered the country without documentation, are entitled to the protections of the Due Process and the Equal Protection Clauses." Remaining steadfastly committed to our Immigration Principles and our belief that the "constitutional right to due process and equal protection, guaranteed to every person regardless of immigration or citizenship status, must be protected and enforced," the BBA would like to express our deep concern regarding the Rule as it raises significant due process and access to justice concerns:

1. By contravening [established law](#), which dictates that each and every individual entering the U.S. should have *meaningful* access to asylum and protection against persecution whether or not at a designated port of arrival. Further concerning, is the fact that the Rule will continue to impact individuals who entered during the 24 months of its effectiveness for the rest of their lives – while asylum seekers who arrived at a different time will be held to a different standard.
2. By creating a very high standard of "rebuttable presumption" of ineligibility, which would limit due process and access to justice, much like automatic ineligibility, given the complexity of navigating and rebutting the presumption. Only 1% of credible fear interviewees have attorney representation, and the exceptions to the "rebuttable presumption" will be extremely difficult, if not impossible to navigate for *pro se* asylum seekers. Even represented asylum seekers will likely face serious difficulties with the standard and its application by border officers.
3. By hinging access to asylum on the CBP One application, which in its current form is not equally accessible to all users. Several news outlets and advocates on the ground have reported that [the application regularly freezes](#), requires access to reliable internet service (inaccessible for many migrants), and [does not consistently recognize individuals with darker complexions](#) resulting in unequal access for Black and brown applicants.
4. By forcing individuals to await final determination in other countries where they are likely to face even more dangerous situations, adding to the trauma of their journeys while failing to resolve the instability and crisis at the Southern border, which the Rule purports to address.

As our Immigration Principles state, “When...the federal or state government or members of the public target a population and limit or seek to limit that group’s access to judicial or administrative forums, it creates a vulnerable subclass, undermining our system of democracy and the Constitution.” While not all individuals who arrive at our border are eligible for asylum, under law each and every one must be afforded a meaningful opportunity to have their claim for asylum heard. For the reasons stated above, the BBA opposes the implementation of the Rule, and we urge you to develop regulations that provide for a fair and just asylum process.

Sincerely,

A handwritten signature in blue ink, appearing to read 'H. Kilson', with a stylized flourish at the end.

Hannah L. Kilson  
President-Elect