

Guidance for AAP Members on the Proposed Rule to Alter U.S. Asylum System

July 2020

State of Play

In June, the Trump Administration released a [proposed rule](#) that, if finalized, would severely restrict asylum. Among other provisions, the proposed rule would:

- Ban all claims to asylum arising out of gender-based harm
- Ban all claims to asylum arising out of gang violence and recruitment
- Raise the burden asylum seekers face to prove their claims in their initial interviews
- Require applicants to show direct failure of their government to intervene
- Breach confidentiality requirements that enable asylum seekers to safely disclose their fears and the violence they suffered to asylum officers and judges
- Encourage judges to deny asylum claims to those who crossed the border without authorization or who worked without authorization

The public has until July 15, 2020 to [comment](#) on the proposal. As far as we are aware, the comment deadline has not yet been extended.

We created this toolkit to help pediatricians understand the impact of the rule on children's health and learn how to submit comments to the proposal.

What's in the Rule

The proposed rule makes numerous changes to the U.S. asylum system, making it significantly more difficult to be granted asylum in the U.S. For more details about the rule, please see the answers to the questions below.

What are the new bars to asylum?

The proposed rule instructs immigration judges and Asylum Officers to deny asylum to individuals who have:

- Passed through at least two countries prior to arriving in the United States or stayed in another country for at least 14 days prior to arriving in the United States.
- Ever failed to pay taxes, paid taxes late, or failed to report any income to the IRS.
- Been unlawfully present in the United States for at least one year.
- Several other bars to asylum are included in the regulation. Immigration judges are instructed to use a person's unlawful entry into the United States as a "significant adverse factor" when deciding whether to grant asylum. This would be applied despite the fact that many people are "metered" or turned away at ports of entry, and it is legal to seek asylum between ports of entry.

How would this regulation change asylum law?

The proposed rule would redefine what it means to be "persecuted," raising the definition of "persecution" to cover only "extreme" harms. This would be a much higher standard than the current one.

The proposed rule also seeks to redefine what it means to be persecuted on account of “membership in a particular social group” or on account of “political opinion.” Many Central Americans who were the victims of MS-13 or other transnational criminal organizations previously won asylum on these grounds. The proposed rules would effectively eliminate that possibility by declaring that “particular social groups” relating to opposition to gangs or terrorist organizations do not qualify, nor would political opposition to those groups.

There would also be an outright ban on applying for asylum on account of gender. Gender-based violence would no longer be acceptable grounds for seeking asylum.

Currently, an asylum applicant is ineligible if he or she was “firmly resettled” in another country prior to arriving in the United States. The proposed rule redefines what it means to have “firmly resettled” in a third country. Anyone who *could have* resettled in a third country on their way to the United States—even if they didn’t know that a provision in that country’s law would have allowed them to stay there permanently—was indeed “firmly resettled” by the government’s definition.

Other changes include heightened standards for protection under the Convention Against Torture, heightened screening processes at the border, and new burdens on asylum applicants to prove that they could not have relocated elsewhere to avoid persecution.

- Individuals who were denied asylum for these reasons would still be eligible for withholding of removal or protection under the Convention Against Torture. But the rules also make it harder to win both of those forms of relief.
- The proposed regulations also impose expansive new grounds for having an asylum application declared “frivolous.” A person whose asylum application is declared frivolous is banned from any other immigration relief.

What procedural changes do the new rules make?

The rule makes two major changes to the asylum process.

Individuals who seek protection at the border who pass the first stage of the asylum process would no longer be put into full immigration court proceedings. Instead, they would only be given access to narrower “asylum-only” court proceedings. In these proceedings, even if they were eligible for another form of relief than asylum, they would not be allowed to apply for it.

Second, the new rules would permit judges to deny asylum applications without a hearing. Currently, asylum applicants must be permitted to testify about their case. But under the new rules, judges could declare that an applicant hadn’t put enough evidence in the application itself and deny a person their day in court. This change would be particularly harmful for those without lawyers.

For more information, please see this [resource guide](#) from the Tahirih Justice Center.

What You Can Do: Comment on the Proposal

From now until July 15, 2020, you can voice your concerns about the proposed rule through an official process known as “notice and comment.” Federal law requires that the government read and consider every unique comment before issuing a final rule.

Why individual public comments matter:

- Raise the profile of this issue to policymakers and the public and show that this issue is important to hundreds of thousands of people across different sectors
- Delay the rulemaking process and shape the administration’s decisions
- Assist with future legal challenges
- Give people who are affected by the rule a chance to raise their voice and tell their story

To make it easier for AAP members to submit comments on the proposed changes to the U.S. asylum system, **AAP has drafted some key messages below that you can use to inform your comments.**

We **strongly encourage** you to personalize the comments with your perspective and, where possible, to speak specifically to the harms of this proposal on children. As groups have ramped up large-scale advocacy efforts around regulatory comments, there are concerns that agency officials may give less weight to similar, “form letter”-like comments, so make sure to **make yours as specific and unique to your experience** as possible.

To submit comments, please follow these steps:

- 1) Visit [Regulations.gov](https://www.regulations.gov) and click “Submit a Formal Comment” in the top right-hand corner.
- 2) Enter your comment in the text box (must be fewer than 5,000 characters) or upload your comments as a PDF.

Key Messages for Comments

- **[Include a deidentified story about how asylum in the U.S. has helped a family that you care for]**
- [AAP Policy Statement](#), *Effect of Armed Conflict on Children*: “Special protection and humanitarian assistance should be afforded to child refugees and children displaced. Children fleeing armed conflict should be allowed to petition for asylum and should be screened for evidence of human trafficking.”
- Children deserve our compassion and assistance. Children do not immigrate, they flee. They are seeking safe haven in our country and they need our help and support.
- Many of the children and families seeking asylum at our borders have been victims of unspeakable violence and have been exposed to trauma. They are fleeing countries with the highest rates of violence in the hemisphere, overlaid with high rates of poverty. The experiences of children seeking asylum in the U.S. demand our compassion and we should do everything in our power to promote their health and safety.

- All children in immigrant families seeking safe haven in the U.S. should be treated with dignity and respect. In every decision about children, government decision-makers should prioritize the best interests of the child.
- Newly arrived child refugees or those seeking asylum should be referred to medical, behavioral, and dental health homes and receive legal representation when needed.
- The Administration should rescind this proposal and instead put forward protective policies that ensure the health and well-being of children in immigrant and refugee families.

Comment FAQs

Who should submit comments?

Anyone can submit comments! Affected families, concerned community members, organizations, and even elected officials can submit comments. In the case of asylum, AAP members have valuable expertise to offer. We encourage you to submit comments yourself and to urge others to do so as well.

Can I sign on to comments that someone else has drafted?

If five people or organizations sign on to one comment letter, that counts as one comment. If they each send in their own comments, that counts as five comments. It's fine to work off of a sample comment, but you should modify it to reflect your own thoughts and experiences so that it counts as a *unique* comment.

Since all comments are public, be sure to check with your employer/institution if you plan to submit comments using your professional credentialed affiliation.

When should I submit a comment?

You can submit a comment to the [Federal Register](#) any time before July 15, 2020. Click "Submit a Formal Comment" and if you include references in your letter, be sure to include the full source material in your actual submission so that it is part of the administrative record.

Can comments be submitted anonymously?

If an individual does not want to disclose their name or contact information, we recommend having a friend or representative submit the comment on their behalf rather than submitting the comment anonymously. A pediatrician could submit comments on behalf of a patient and should acknowledge their relationship in the comment to provide context and legitimacy.

Is commenting considered lobbying?

No. Unlike asking a member of Congress to vote for or against a specific bill, submitting public comments to an agency is not considered lobbying under federal law.

Can I see what comments other people have submitted?

All comments submitted to regulations.gov are public; however, there is often a lag time between when comments are submitted to the federal government and when they are available publicly.