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**Re: Comment on the Proposed Rule by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) on Circumvention of Lawful Pathways, CIS No. 2736-22; Docket No: USCIS 2022-0016; A.G. Order No. 5605-2023**

Dear Acting Director Daniel Delgado and Assistant Director Lauren Alder Reid;

The Washington Office on Latin America submits this comment in response to the Department of Homeland Security (DHS) and Department of Justice (DOJ) proposed rule, published in the Federal Register on February 23, 2023, that would make seeking asylum inaccessible to a significant population that might otherwise qualify.<sup>1</sup> This would violate U.S. asylum law and endanger vulnerable people.

The rule implies a “rebuttable” presumption of ineligibility for asylum in the United States unless the asylum seeker meets one of a limited number of exceptions, including having applied for and received a formal denial of protection in a transit country or entered at a port of entry with a previously scheduled appointment using the CBP One mobile application. Both of these exceptions have large inadequacies, and could leave large numbers of people in grave danger, the very outcome that the drafters of current U.S. asylum law sought to prevent.

## **The proposed rule’s denial of access to asylum would violate U.S. asylum law and international humanitarian commitments.**

The right to seek asylum became a permanent part of U.S. law with the passage of the Refugee Act of 1980. That legislation added a new section to the Immigration and Nationality Act (INA), Section 208 (8 U.S. Code Sec. 1158), establishing non-citizens’ right to apply for asylum if present in the United States, or upon arriving on U.S. soil. A non-citizen may remain in the United States if, after receiving due process, they are judged to face a threat to life or freedom

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<sup>1</sup> “Notice of Proposed Rule Making” (U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.), accessed March 22, 2023, <https://public-inspection.federalregister.gov/2023-03718.pdf>.

on account of their race, religion, nationality, membership in a particular social group, or political opinion.<sup>2</sup>

Section 208 codifies the right to apply for asylum enshrined in the 1951 Refugee Convention, to which the United States is a signatory<sup>3</sup>. That landmark international agreement sought to avoid repeating a tragic outcome of World War II, when the United States and other nations turned away numerous refugees fleeing the Holocaust and other crimes against humanity.

The asylum statute makes no distinction about how the non-citizen applicant arrives in the United States. Those who enter without inspection by crossing the land border between ports of entry may have committed a misdemeanor (8 U.S. Code Sec. 1325), but nothing in the law indicates that their manner of entry has any bearing on their eligibility to apply for asylum.<sup>4</sup>

The INA foresees only two scenarios in which an asylum seeker may be turned away to a third country, including a country through which the asylum seeker passed en route to the United States. Those scenarios are:

1. Removal of the asylum seeker to a country with which the U.S. government has reached a “safe third country” agreement (8 U.S. Code Sec. 1158(a)(2)(A)). That third country—not the asylum seeker’s country of citizenship, which they are fleeing—would offer protection.<sup>5</sup>
2. Evidence that the asylum seeker was already “firmly resettled” in a third country prior to arriving in the United States (8 U.S. Code Sec. 1158(b)(2)(A)(vi)).<sup>6</sup> This means that, “prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement” including asylum (8 C.F.R. Sec. 208.15).<sup>7</sup>

The only country with which the United States currently maintains a safe third country agreement is Canada<sup>8</sup>. Canada is almost never a country through which migrants transit en route to the U.S.-Mexico border, so this reason for removing an asylum seeker to another country falls away.

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<sup>2</sup> “8 USC CHAPTER 12, SUBCHAPTER II: IMMIGRATION,” 12, accessed March 22, 2023, <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-chapter12-subchapter2&saved=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGl0bGU4LXNlY3Rpb24xMTU4%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim>.

<sup>3</sup> “UNHCR - The 1951 Refugee Convention,” accessed March 22, 2023, <https://www.unhcr.org/1951-refugee-convention.html>.

<sup>4</sup> “8 USC 1325: Improper Entry by Alien,” accessed March 22, 2023, [https://uscode.house.gov/view.xhtml?req=\(title:8%20section:1325%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title8-section1325\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:8%20section:1325%20edition:prelim)%20OR%20(granuleid:USC-prelim-title8-section1325)&f=treesort&edition=prelim&num=0&jumpTo=true).

<sup>5</sup> “8 USC CHAPTER 12, SUBCHAPTER II: IMMIGRATION,” 12.

<sup>6</sup> “8 USC CHAPTER 12, SUBCHAPTER II: IMMIGRATION,” 12.

<sup>7</sup> “8 CFR 208.15 -- Definition of ‘Firm Resettlement.’,” accessed March 22, 2023, <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208/subpart-A/section-208.15>.

<sup>8</sup> “8. U.S.-Canada Agreement Covering Third-Country Asylum Claims at the Border (December 5, 2002),” U.S. Department of State, accessed March 22, 2023, [//2009-2017.state.gov/s/l/38616.htm](https://2009-2017.state.gov/s/l/38616.htm).

Cases of “firm resettlement” in a third country are also rare among migrants who have fled to the U.S.-Mexico border, with the possible exception of those who successfully applied for asylum in Mexico or Central America and faced no new threats there. This reason for removing an asylum seeker to another country also rarely applies, though immigration courts have determined that some Haitians who had first emigrated to South America were “firmly resettled” there<sup>9</sup>.

These are the only scenarios in which the Immigration and Nationality Act foresees removing an asylum seeker to a third country without affording a chance to apply for asylum. (Another exception has been the Trump and Biden administrations’ use of the Title 42 pandemic authority to expel asylum seekers, which is under appeal after being struck down by a U.S. district court in November 2022.) How and where an asylum seeker crossed into the United States does not matter. How many countries through which the asylum seeker passed does not matter.

In 2019, the Trump administration sought to implement a ban on asylum for those who passed through third countries. That rule had fewer exceptions than the current draft rule, and offered almost no alternative pathways. A federal court rightfully struck this rule down in 2020 because it gave the executive branch powers to truncate asylum and send migrants back to third countries that were clearly not foreseen in the INA. Though the Biden administration’s “rebuttable presumption” is not as sweeping as the Trump-era rule, it still arrogates powers to the executive that the statute does not grant.

The draft rule’s justification text argues that the INA’s asylum provisions are more flexible than its language indicates. It contends that Section 208 “authorizes the Secretary and the Attorney General to ‘establish’ ‘requirements and procedures’ to govern asylum applications.” It interprets these requirements and procedures so broadly that they even include severely truncating the right to apply for asylum via what it calls a “rebuttable presumption of asylum ineligibility” for those who passed through third countries.

The INA is careful to list specific exceptions to the right to seek asylum. The ability to define “requirements and procedures” does not mean the ability to add new exceptions unrelated to what it specifies, no matter how “rebuttable” they may be under some infrequent circumstances.

The draft rule further argues that the INA, in Section 208(b)(2)(C), empowers the Attorney General to, “by regulation, establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum.”

The key phrase here is “consistent with this section.” Adding a sweeping new exception to the right to seek asylum, one that may place thousands of people in grave danger, is hardly consistent with either the letter or the spirit of the INA’s asylum provisions. If it were possible to

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<sup>9</sup> “BIA Rules Haitian Asylum Applicant Firmly Resettled in Brazil | Catholic Legal Immigration Network, Inc. (CLINIC),” April 20, 2020, <https://www.cliniclegal.org/resources/asylum-and-refugee-law/bia-rules-haitian-asylum-applicant-firmly-resettled-brazil>.

severely truncate the right to apply for asylum by adding a list of “inconsistent” limitations and conditions, then the Trump administration would surely have sought to do so.

The proposed rule is neither a technical nor a cosmetic “fix”. It is a dramatic denaturing of the right to seek asylum.

## The asylum ban, paired with the expedited removal process, will fuel mass deportations of people who could otherwise qualify for asylum.

The administration plans to enforce the transit ban within the “expedited removal” framework, which forces asylum seekers to defend their cases within a few days, from the austere custody of U.S. Customs and Border Protection (CBP) holding facilities, without meaningful access to counsel. During those few days, if an asylum seeker does not pass a “credible fear” screening with an asylum officer, they are deported without ever seeing an immigration judge.

Normally, migrants who aren’t expelled under Title 42 either go to Immigration and Customs Enforcement (ICE) detention, where they face an immigration judge usually within months, or — in nearly all cases if the asylum seeker is a child or a parent with children—they are released into the United States with dates to appear in immigration court. Instead of this, the administration plans to require many asylum seekers to gather the evidence and arguments necessary to “rebut the presumption of ineligibility” (i.e. prove they fall within one of the few exceptions to the rule) within days of apprehension. Those who fail to do so would be automatically subject to a higher screening standard (in violation of U.S. law governing credible fear interviews) and would face deportation to danger if they cannot pass the screening.<sup>10</sup>

The rushed procedure could end up with many “false negatives”, as asylum seekers subjected to this process would be disoriented from their days in CBP’s jail-like holding facilities, especially after undergoing a harrowing journey to the U.S. that likely included violence, persecution, and trauma. With little to no access to counsel on the complex rule, no chance to gather documentary evidence, language barriers, and inhospitable detention conditions, it will be extremely challenging for asylum seekers to prove they should not be banned by the rule. The result is the removal of people to places where they face life-threatening circumstances, a serious human rights violation known as “refoulement”, already committed repeatedly under Title 42 expulsions.<sup>11</sup>

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<sup>10</sup> “8 U.S. Code § 1225 - Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing | U.S. Code | US Law | LII / Legal Information Institute,” accessed March 22, 2023, <https://www.law.cornell.edu/uscode/text/8/1225>.

<sup>11</sup> “BIDEN ADMINISTRATION PLAN TO RESURRECT ASYLUM BAN ADVANCES TRUMP AGENDA” (Human Rights First, January 2023), [https://humanrightsfirst.org/wp-content/uploads/2023/01/AsylumBanFactsheet\\_final2.pdf](https://humanrightsfirst.org/wp-content/uploads/2023/01/AsylumBanFactsheet_final2.pdf).

## CBP One and Humanitarian Parole, the rule's proposed alternative pathways, are insufficient to protect at-risk populations.

The draft rule argues that, rather than cross the U.S.-Mexico border between ports of entry, migrants should take advantage of opportunities to apply for a two-year humanitarian parole status or, once in northern Mexico, use the CBP One app to schedule an asylum application appointment at a U.S.-Mexico border port of entry<sup>12</sup>. As currently designed, neither of these options is adequate to protect those fleeing danger.

### Humanitarian Parole

The current pathway to protection through “humanitarian parole” allows a combined total of up to 30,000 people per month to apply online for a two-year documented status in the United States. Once approved, applicants may enter the United States by air, without having to come to the U.S. land border. The presidential authority to grant this status has been part of the INA since 1952, predating asylum (8 U.S. Code Sec. 1182(d)(5)(A)).<sup>13</sup>

If not stayed or overturned in federal court in coming months, due to a lawsuit filed by 20 Republican states' attorneys-general, the humanitarian parole program could evolve into an important legal pathway. The ability to apply without touching U.S. soil, which requires a harrowing journey through Central America and Mexico and is usually impossible without the aid of a smuggler, saves lives and could mean many millions of dollars in lost profits for organized crime and corrupt officials.

In the form that the Biden administration established in October 2022 (for Venezuelans) and January 2023 (for Cubans, Haitians, and Nicaraguans), however, the humanitarian parole process suffers from severe flaws. Four stand out:

1. The program is currently available only to citizens of Cuba, Haiti, Nicaragua, and Venezuela. The draft rule does not clearly state an intention to make humanitarian parole available to other nationalities whose citizens frequently apply at the U.S.-Mexico border for protection in the United States.
2. In order to qualify, parole applicants must hold passports, in most cases valid passports. In most of Latin America and the Caribbean, it is uncommon for someone to hold a passport unless they are of wealthy or middle-class economic status. For those who lack passports, this humanitarian parole requirement makes powerful gatekeepers of the often corrupt passport-issuing authorities of states that in many cases are dictatorships, and in all cases are failing to protect their citizens.

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<sup>12</sup> “U.S. Border Patrol’s Glitchy, Mandatory App Is a Nightmare for Migrants,” Rest of World, March 9, 2023, <https://restofworld.org/2023/cbp-one-app-issues-migrants/>.

<sup>13</sup> “8 USC 1182: Inadmissible Aliens,” accessed March 22, 2023, <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

3. In order to qualify, parole applicants must have someone in the United States who is willing to sponsor them. Like the passport requirement, the need to have a U.S.-based contact with the financial wherewithal to be a sponsor is a barrier that favors applicants who are better off. Less-wealthy or less-connected applicants may have greater needs for protection, but they are mostly shut out of the humanitarian parole program in its current form.
4. Humanitarian parole is not asylum. It is a two-year status. Should those two years expire and not be renewed, migrants who are unable to apply for asylum or another legal pathway could be compelled to return to the countries that they fled, or end up in limbo, effectively undocumented.

## CBP One

The only way to apply for asylum at the U.S.-Mexico border without committing the misdemeanor of “improper entry” is to present themselves at official ports of entry. Since 2016, that has been difficult to do, as Customs and Border Protection (CBP) has stationed officers at the borderline, turning asylum seekers away when they determined that their facilities had no capacity to hold them.

This practice, called “metering,” forced migrants, shelters, and in some cases local governments to improvise “waitlists” for asylum seekers stranded, often in very insecure conditions, in Mexican border cities. <sup>14</sup>Metering and waitlists particularly endangered Mexican asylum seekers, who have been forced to wait in the very country they are seeking to flee.

Federal courts struck down “metering” in 2021 and 2022, but the effect was minimal because by then, the Title 42 pandemic authority was also blocking asylum seekers from ports of entry<sup>15</sup>.

In January 2023 the Biden administration rolled out a new functionality on CBP’s smartphone app, “CBP One,” allowing asylum seekers to secure appointments at ports of entry, if determined by geolocation to be in Mexico, north of Mexico City. This is now the only means by which to secure an asylum application appointment at the U.S.-Mexico border.

The app is certainly superior to the haphazard “metering” and “waitlist” system that existed before. But it suffers from serious flaws that, like metering, block access to asylum.

1. Media and NGO reports have pointed to a series of technical problems with CBP One. These include connectivity issues—especially for migrants who lack smartphones and Wi-Fi access—and frequent bugs and crashes. The app is so far available only in English, Spanish, and to some extent Haitian Kreyol. Its GPS functionality at times

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<sup>14</sup> “CAMPI Publications,” The Strauss Center, accessed March 22, 2023, <https://www.strausscenter.org/campi-publications/>.

<sup>15</sup> “CGRS Applauds Decision in *Al Otro Lado v. Mayorkas* | Center for Gender and Refugee Studies,” Center for Gender and Refugee Studies, September 3, 2021, <https://cgrs.uchastings.edu/news/cgrs-applauds-decision-al-otro-lado-v-mayorkas>; “Judge Rules Turnback Policy Illegal; Government Must End Practice | Center for Gender and Refugee Studies,” Center for Gender and Refugee Studies, August 10, 2022, <https://cgrs.uchastings.edu/news/judge-rules-turnback-policy-illegal-government-must-end-practice>.

refuses to recognize that a migrant is, in fact, applying from northern Mexico. The app also harms people with darker skin due to racial bias in the facial photo stage of its application process, which has prevented many from obtaining an appointment, as recorded by AP the San Diego Union-Tribune, and the Rio Grande Valley Monitor.<sup>16</sup> CBP spokespeople have told reporters that they are working on these technical flaws.

2. The most notable flaw, though, is not technological: it is the very limited number of appointments made available to the large population of asylum seekers currently stranded in northern Mexico. In February 2023, CBP made an average of 742 appointments per day available, border-wide, to asylum seekers under a system of Title 42 exemptions<sup>17</sup>. While that may sound like a lot, it is just a small fraction of demand at a time of large-scale hemisphere-wide protection-seeking migration. In order to secure an appointment, migrants must be ready and on their phones to fill out the online application every morning at 9:00 AM Eastern—earlier elsewhere—when spots open up<sup>18</sup>. If they—or the CBP One application—are too slow, then their chance at protection in the United States evaporates quickly, usually within a few minutes<sup>19</sup>. Nearly every day, the app shows a “no appointments available” screen by 9:05. The limited availability of appointments and the need to register each individual separately has forced families to separate: media accounts point to spouses being forced to part ways at the borderline, and even parents forced either to leave their children behind or to send them across the border unaccompanied.<sup>20</sup>

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<sup>16</sup> Lindsay Toczyłowski [@L\_Toczyłowski], “In Tijuana Doing a Legal Clinic and Trying to Explain to People That the Reason They Can’t Take Their Photo within the CBP One App Is Because It Has Trouble Recognizing Darker Complexions. Two @ImmDef Lawyers Have Been Working to Take One Person’s Photo for 20 Minutes. <https://t.co/Z4xy4Lr4n3>,” Tweet, *Twitter*, March 1, 2023, [https://twitter.com/L\\_Toczyłowski/status/1631063774210785280](https://twitter.com/L_Toczyłowski/status/1631063774210785280); “Online System to Seek Asylum in US Is Quickly Overwhelmed | AP News,” AP News, January 28, 2023, <https://apnews.com/article/technology-united-states-government-caribbean-mexico-mobile-apps-49b38b18869ed3b2260fb6d774153456>. “Asylum Seekers in Tijuana Are Scrambling through Mobile App Error Messages for Few Appointments into the U.S.,” San Diego Union-Tribune, January 22, 2023, <https://www.sandiegouniontribune.com/news/immigration/story/2023-01-22/cbp-one-app-asylum-tijuana>. Valerie Gonzales, “Language Barriers, Tech Glitches Impacting Access to New US Asylum App | The Monitor,” myRGV, accessed March 22, 2023, <https://myrgv.com/local-news/2023/01/21/language-barriers-tech-gitches-impacting-access-to-new-us-asylum-app/>.

<sup>17</sup> “Notice (Other) – #181 in Louisiana v. Centers for Disease Control & Prevention (W.D. La., 6:22-Cv-00885) – CourtListener.Com,” CourtListener, accessed March 22, 2023, <https://www.courtlistener.com/docket/63210302/181/louisiana-vcenters-for-disease-control-prevention/>.

<sup>18</sup> “Online System to Seek Asylum in US Is Quickly Overwhelmed | AP News.”

<sup>19</sup> “Asylum Seekers in Tijuana Are Scrambling through Mobile App Error Messages for Few Appointments into the U.S.”

<sup>20</sup> Daina Beth Solomon and Ted Hesson, “Struggling with U.S. Asylum App, Migrant Families Split at Border,” *Reuters*, February 27, 2023, sec. United States, <https://www.reuters.com/world/us/struggling-with-us-asylum-app-migrant-families-split-border-2023-02-27/>; Andrea Castillo, “Asylum Seekers Face Decision to Split up Families or Wait Indefinitely under New Border Policy,” Los Angeles Times, February 24, 2023, <https://www.latimes.com/politics/story/2023-02-24/asylum-seeking-families-consider-separation-shortage-mobile-app-appointments>; Sandra Sanchez, “Parents Sending Migrant Children Alone across Bridges into South Texas,” *Border Report*, February 23, 2023, <https://www.borderreport.com/immigration/parents-sending-migrant-children-alone-across-border-into-south-texas/>.

Unless bugs are fixed and the number of available appointments is increased, CBP One will replace “metering” as a new barrier to the right to seek asylum at the border. The app’s limitations, and the difficulty of accessing humanitarian parole, make these “alternative pathways,” in their current form, no substitute for the right to seek asylum—a right that the draft rule proposes to limit severely.

## The transit ban would expel people to danger in northern Mexico.

The “transit ban” could involve swift removal of large numbers of asylum seekers, many of them from countries very far from the U.S.-Mexico border. Flying them back to their countries of origin would be so costly that the Biden administration is instead negotiating with Mexico’s government to accept deportees across the land border, as it has done in about 2.7 million Title 42 expulsions and over 81,000 implementations of the now-defunct “Remain in Mexico” program.<sup>21</sup>

Sending large numbers of migrants who could otherwise be eligible for asylum, but are banned by the rule, into Mexican border cities, subjects them to conditions in which basic services are scarce and security conditions are dangerous. During the Biden administration’s first two years, Human Rights First “tracked at least 13,480 reports of murder, torture, kidnapping, rape, and other violent attacks on migrants and asylum seekers blocked in or expelled to Mexico under Title 42.”<sup>22</sup> Black, indigenous, LGBTI, and women asylum seekers and migrants face pervasive violence, harassment, and discrimination, including frequent abuse by Mexican authorities.

Mexican border cities like Tijuana and Ciudad Juárez have some of the world’s highest rates of violent crime.<sup>23</sup> The State Department has issued a “Level 4: do not travel” warning—the same severity as Afghanistan or Syria—for the state of Tamaulipas, which borders Laredo and south Texas’s Rio Grande Valley (Matamoros, Tamaulipas is where criminals kidnapped four U.S. citizens, killing two, in March 2023.) Homeland Security Secretary Alejandro Mayorkas himself recognized the “extreme violence and insecurity” experienced by migrants and asylum seekers in Mexico in his last memo to terminate the Remain in Mexico program.<sup>24</sup>

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<sup>21</sup> Nick Miroff, Maria Sacchetti, and Kevin Sieff, “Biden Weighs Border Deal That Would Deport Non-Mexicans to Mexico,” *Washington Post*, February 9, 2023, <https://www.washingtonpost.com/national-security/2023/02/08/biden-border-deportations-mexico/>; Adam Isacson, “Title 42 Expulsions and Regular Apprehensions of All Migrants at the U.S.-Mexico Border,” WOLA Border Oversight, 42, accessed March 22, 2023, <https://borderoversight.org/2023/03/16/title-42-expulsions-and-regular-apprehensions-of-all-migrants-at-the-u-s-mexico-border/>; “Details on MPP (Remain in Mexico) Deportation Proceedings,” TRAC Immigration, November 2022, <https://trac.syr.edu/phptools/immigration/mpp/>.

<sup>22</sup> “Title 42: ‘Human Rights Stain, Public Health Farce,’” Human Rights First, accessed March 22, 2023, <https://humanrightsfirst.org/library/title-42-human-rights-stain-public-health-farce/>.

<sup>23</sup> “Ranking 2022 de Las 50 Ciudades Mas Violentas Del Mundo” (Seguridad, Justicia, y Paz, February 20, 2023), [http://geoenlace.net/seguridadjusticiaypaz/archivo/c5fb24\\_f7c1a29250.pdf](http://geoenlace.net/seguridadjusticiaypaz/archivo/c5fb24_f7c1a29250.pdf).

<sup>24</sup> Alejandro Mayorkas, “Termination of the Migrant Protection Protocols” (U.S. Department of Homeland Security, October 29, 2021), [https://www.dhs.gov/sites/default/files/2022-01/21\\_1029\\_mpp-termination-memo.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1029_mpp-termination-memo.pdf).

## The transit ban undermines U.S. foreign policy interests in the region

As the promoter of, and signatory to, the Los Angeles Declaration on Migration and Protection, the U.S. government along with 20 regional partners committed to “promote access to protection and complementary pathways for asylum seekers, refugees, and stateless persons in accordance with national legislation and with respect for the principle of non-refoulement.”<sup>25</sup>

As we have laid out above, the asylum ban would violate U.S. and international law and return asylum seekers to places where their lives could be at risk. While since June 2022, the U.S. has invested over \$950 million in assistance to the region to advance on the commitments and pillars of action within the Declaration, restricting access to asylum at the U.S. border will place additional burden on protection systems in the region, such as in Mexico, that are already overburdened by an unprecedented increase in claims in recent years.<sup>26</sup>

As the U.S. tightens its borders, other countries may also follow suit and step back from promising initiatives and policies to increase regular pathways for migration and international protection.

## Conclusion

It is absurd to require hundreds of thousands of migrants who need protection, or who could be contributing to U.S. communities and economies, to first cross the Darién Gap, Central America, and Mexico, in order to somehow set foot on U.S. soil and still face considerable probability of denial and continued danger. There must be safer and more accessible pathways, for those who need it, to seek protection.

That asylum—which requires migrants to reach U.S. soil—is not the best path to protection does not mean that a rule is needed to curtail it. Often, people fleeing danger have no other choice but to seek asylum, especially now, when so many other paths to protection are closed off. The right to apply for asylum, without regard to how one arrives on U.S. soil or what route

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<sup>25</sup> The White House, “Los Angeles Declaration on Migration and Protection,” The White House, June 10, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/>.

<sup>26</sup> “Additional Assistance to Respond to the Venezuela Regional Crisis,” *United States Department of State* (blog), accessed March 22, 2023, <https://www.state.gov/additional-assistance-to-respond-to-the-venezuela-regional-crisis/>; “Los Angeles Declaration on Migration and Protection Lima Ministerial Meeting,” *United States Department of State* (blog), accessed March 22, 2023, <https://www.state.gov/los-angeles-declaration-on-migration-and-protection-lima-ministerial-meeting/>; <sup>26</sup> “Struggling to Survive: Plight of Asylum Seekers at Mexico’s Southern Border Highlights Need for Regional Action,” WOLA, accessed March 22, 2023, <https://www.wola.org/analysis/struggling-to-survive-plight-of-asylum-seekers-at-mexicos-southern-border-highlights-need-for-regional-action/>.

one takes to do so, is firmly established in U.S. law and in the United States' international humanitarian obligations. That must not change.

The Washington Office on Latin America calls on the Departments of Homeland Security and Justice to withdraw this rule in its entirety, to avoid endangering and immiserating migrants arriving at the U.S. southern border, and instead allocate resources toward vastly increased capacity for humane asylum processing, alternatives to detention, and fair adjudications.