



Oficina Legal del Pueblo Unido, Inc.
1405 Montopolis Dr.
Austin, TX 78741
512.474.5073(p) 512.474.0726(f)
texascivilrightsproject.org

February 28, 2022

Rená Cutlip-Mason, Chief, Division of Civil Rights
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Dept. of Homeland Security
5900 Capital Gateway Dr.
Camp Springs, MD 20588

Lauren Alder Reid, Assistant Director
Office of Policy
Executive Office for Immigration Review
Dept. of Justice
5107 Leesburg Pike
Falls Church, VA 22041

Via Electronic Submission

Re: Comments in Response to DHS Notice Requesting Comments on “Security Bars and Processing; Delay of Effective Date,” Docket Number USCIS 2020-0013

Dear Ms. Cutlip-Mason & Ms. Adler Reid:

We write in response to your December 28, 2021, request for comments regarding the delay of the Security Bars and Processing rule’s effective date to December 31, 2022. This rule was issued in December 2020 by the Trump Administration and was scheduled to go into effect on January 22, 2021, but DHS and DOJ (“the Departments”) have now delayed its effective date twice due to ongoing litigation and an injunction on a related regulation.¹ Rather than delaying the effective date of this rule yet again, we urge the Departments to rescind this egregious, illegal rule.

The Security Bars and Processing Rule violates federal law, which provides that “[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien’s status, may apply for asylum.”² Nonetheless, this rule renders migrants ineligible for asylum and withholding of removal protections and instead labels them a “danger to the security of the United States” if they come from, or even simply pass through, a country where a communicable disease is present. Under this rule, the United States will be sending asylum seekers

¹ *Sec. Bars and Processing; Delay of Effective Date*, 86 Fed. Reg. 246, 73615-16 (Dec. 28, 2021), <https://www.federalregister.gov/documents/2021/12/28/2021-28016/security-bars-and-processing-delay-of-effective-date#citation-18-p73617>.

² 8 U.S.C. § 1158(a)(1).



Oficina Legal del Pueblo Unido, Inc.
1405 Montopolis Dr.
Austin, TX 78741
512.474.5073(p) 512.474.0726(f)
texascivilrightsproject.org

to dangerous conditions where they will likely face persecution, torture, violence and death based on a false and disingenuous claim of protecting the security of the country.

The Texas Civil Rights Project³ is a 501(c)(3) legal advocacy organization with offices all across Texas. TCRP is dedicated to defending the rights and dignity of all those in Texas in the courtroom, in partnership with our communities, and with an eye towards meaningful policy changes. Since our founding in 1990, TCRP has fought for the rights of immigrants. We are lawyers and advocates for Texas communities, boldly serving the movement for equality and justice.

More specifically, TCRP's Racial and Economic Justice Program is dedicated to advancing human dignity, protecting freedom of movement, and advocating on behalf of Texas border communities, in particular migrants. As United States border policies have changed dramatically in the last years, and continue to do so, TCRP has been at the forefront of protecting migrants' rights to seek asylum. During the height of the family separations crisis in 2018, TCRP interviewed asylum seekers and separated families and continues to do so, as family separations have not ceased. Additionally, in January 2021, TCRP, along with the ACLU and other partner organizations, sued the Biden Administration on behalf of families and vulnerable individuals who were expelled and denied asylum under Title 42.⁴ As part of this litigation, TCRP conducted hundreds of intakes with asylum-seeking families, and we continue working to ensure justice inside and outside the courts.

The Security Bars & Processing Rule would exacerbate dangers for asylum seekers.

The Security Bars & Processing Rule is inhumane because of the dangers it would cause for asylum seekers. As part of our Title 42 litigation, TCRP conducted hundreds of intakes with asylum-seeking families that had been expelled. These intakes provided invaluable insight into the varied threats and dangers asylum seekers face. Many of the families with whom we spoke were forced to seek shelter in plazas patrolled and preyed upon by cartels; they suffered from lack of medical care, and traveled with minors at risk for human trafficking. They shared their experiences of having their children kidnapped, trafficked, threatened, and physically and sexually assaulted. In addition, the adults also reported being robbed, extorted, threatened, and also experiencing physical and sexual violence. These families have witnessed people disappear or die, both at home and in Mexico. None of the migrants had access to counsel.

By outright denying asylum and withholding of removal protections under the Convention Against Torture (CAT), the Security Bars and Processing rule will directly place these families back in harm's way and will compound the harm asylum seekers already face. By making asylum seekers ineligible for primary humanitarian protections afforded under our laws, this rule is unjustifiably denying vulnerable people access to a system they have a legal right to use. While the Departments

³ See *About TCRP*, TEXASCIVILRIGHTS.ORG (2019), <https://txcivilrights.org/about-us/>.

⁴ See *Huisha-Huisha v. Mayorkas*, No. CV 21-100(EGS), 2021 WL 4206688 (D.C. Cir. Sept. 16, 2021) (case outcome pending); *Order Suspending Introduction of Certain Persons from Countries Where a Quarantinable Communicable Disease Exits*, 85 Fed. Reg. 201 (Oct. 16, 2020), https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf. The Trump Administration relied on 42 U.S.C. § 265 to close the border and restrict immigration access, citing a public health emergency in light of the COVID-19 pandemic.



Oficina Legal del Pueblo Unido, Inc.
1405 Montopolis Dr.
Austin, TX 78741
512.474.5073(p) 512.474.0726(f)
texascivilrightsproject.org

have previously responded to public comments stating migrants can still receive protection against removal under CAT,⁵ the plain language of the rule suggests otherwise.⁶ And even if the Departments attempt to mitigate the harm through departmental protocols—as Title 42 has shown, these safety mechanisms are woefully inadequate. As expelled asylum seekers have stated all across the southern border, even when they are able to verbalize their fear, they fall on deaf ears and they are removed from the US without a second thought.⁷ No safety mechanisms will suffice when people’s fundamental rights are denied, especially in the manner that this rule denies vulnerable people their basic right to asylum.

Furthermore, assuming an individual is actually granted an interview for a CAT screening, the rule does not contemplate protections to ensure that person will have access to counsel. As you know, and as you stated in the response to public comments to this rule,⁸ although CAT protections are mandatory, the burden of proof to obtain CAT relief is much higher than that required for asylum.⁹ This is an incredibly difficult bar to reach without legal representation, and as previous DHS practice informs us, the lack of access to counsel tends to be the norm for processes contemplated under these types of restrictive rules. As legal advocates, we are already fighting an uphill battle to simply mitigate the harm that the U.S. government has already inflicted, without adding further injury through this rule.

The Security Bars & Processing Rule perpetuates anti-immigrant, racist sentiment.

Like the administration before it, the Biden Administration seeks to rely on the guise of health concerns¹⁰ to perpetuate anti-immigrant sentiment and the xenophobic falsehood that migrants

⁵ See *supra* n. 1 at 84162.

⁶ See 8 C.F.R. §§ 208.16(d)(2)(i) (. . . an application for withholding of removal under section 241(b)(3) of the Act or under the regulations issued pursuant to the legislation implementing the Convention Against Torture shall be denied if the applicant falls within section 241(b)(3)(B) of the Act . . .); 208.16(d)(2)(ii) (“If a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law . . . then an alien is ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture . . .”).

⁷ See “*They Lied to Us*”: Biden Admin. Continues to Expel, Mistreat Families Seeking Asylum, HUMAN RIGHTS FIRST (MAY 13, 2021), <https://www.humanrightsfirst.org/blog/they-lied-us-biden-administration-continues-expel-mistreat-families-seeking-asylum> (“‘We said we had been kidnapped in Mexico. It’s not safe for us. It’s not safe for our children.’ [U.S. officers] didn’t listen. Without a fear screening interview, Fernando and his family were expelled to Tijuana, a city they’d never been to, with nothing but the clothes on their backs, their documents, and their cell phones. They’d never had a chance to ask for asylum.”); “*Illegal and Inhumane*”: Biden Admin. Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount, HUMAN RIGHTS FIRST (Oct. 2021), [humanrightsfirst.org/sites/default/files/IllegalandInhumane.pdf](https://www.humanrightsfirst.org/sites/default/files/IllegalandInhumane.pdf) (“DHS has referred only 3,217 individuals processed under Title 42 for fear screenings as of the end of September 2021, just 0.28 percent of more than one million expulsions, according to data obtained by CBS News.”).

⁸ See *supra* n. 1 at 84162.

⁹ See 8 C.F.R. § 208.16(c)(2).

¹⁰ There is a consensus amongst public health experts that there is no health justification for the Security Bars and Processing rule. *Letter to DHS Sec’y Wolf and Att’y Gen. Barr signed by leaders of public health schools, medical schools, hospitals, and other U.S. institutions*, COLUMBIA SCH. OF PUBLIC HEALTH (Aug. 6, 2020), <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-proposed-rule-would-bar-refugees-asylum-and-and>.



Oficina Legal del Pueblo Unido, Inc.
1405 Montopolis Dr.
Austin, TX 78741
512.474.5073(p) 512.474.0726(f)
texascivilrightsproject.org

carry disease. This trope has caused migrants to undergo harmful practices throughout U.S. history. For instance, in the early 1900s, U.S. officials required Mexican laborers to take “baths” at fumigation facilities at the border before entering, claiming that dousing Mexicans with toxic chemicals was necessary to protect border communities from “dirty lousy destitute Mexicans” carrying typhus and lice.¹¹ This humiliating process, which started in Texas, eventually spread and inspired Nazi Germany’s use of gas chambers.¹²

To this day, the U.S. government continues to perpetuate anti-immigrant sentiment, and “white supremacist state violence along the U.S.-Mexico border is still very much alive.”¹³ In September 2021, U.S. Border Patrol agents violently responded to the arrival of Black asylum seekers near Del Rio, Texas.¹⁴ In this incident, agents on horseback used whips to corral Haitian migrants like cattle.¹⁵ Many Haitians were fleeing from dangerous conditions and instability.¹⁶ Rather than allowing them to seek asylum, the Biden Administration expelled about 7,000 by October 2021¹⁷—citing public health concerns under Title 42.¹⁸ Following this atrocity, Daniel Foote resigned from his position as Special Envoy for Haiti and noted in his resignation letter that he would “not be associated with the United States’ inhumane, counterproductive decision to deport thousands of Haitian refugees and . . . immigrants to Haiti.”¹⁹ TCRP, in support of its partner organization, Haitian Bridge Alliance, responded to this crisis by filing numerous Texas Public Information Act requests in an effort to shed light on the government’s actions and support litigation efforts to obtain justice for asylum seekers.

Public health and medical experts from across the country have underscored that the rule “punishes asylum seekers, including those in U.S. immigration detention, for the failure of the U.S. authorities to prevent and mitigate communicable disease outbreaks.”²⁰ They have emphasized

¹¹ Andre Grajeda, *El Paso Border Prac. Influence the Holocaust*, BULLOCK MUSEUM (Apr. 6, 2018), <https://www.thestoryoftexas.com/discover/texas-story-project/el-paso-holocaust-influence>.

¹² *Id.*

¹³ Laura Peña, *Terror by Horseback: Systemic Oppression Along the Border*, THE AM. PROSPECT (Sept. 30, 2021), <https://prospect.org/justice/terror-by-horseback-systemic-oppression-along-the-border/>.

¹⁴ *Id.*

¹⁵ Eileen Sullivan & Zolan Kanno-Youngs, *Images of Border Patrol’s Treatment of Haitian Migrants Prompt Outrage*, THE N.Y. TIMES (Sept. 21, 2021), <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.

¹⁶ Haiti is a country with a tumultuous government following the assassination of their president, and Haiti’s infrastructure had also suffered from massive earthquakes. See *Haiti: A Path to Stability for a Nation in Shock*, INT’L CRISIS GROUP (Sept. 30, 2021), <https://www.crisisgroup.org/latin-america-caribbean/haiti/b44-haiti-path-stability-nation-shock>.

¹⁷ Diana Beth Solomon, *Migrants’ hopes dashed by surprise deportation to Haiti from U.S. border*, REUTERS (Oct. 8, 2021), <https://www.reuters.com/world/americas/migrants-hopes-dashed-by-surprise-deportation-haiti-us-border-2021-10-08/>.

¹⁸ *News Comment by UN High Comm’r For Refugees Filippo Grandi on conditions and expulsions at the US border*, THE UNHCR (Sept. 21, 2021), <https://www.unhcr.org/en-us/news/press/2021/9/614a27324/news-comment-un-high-commissioner-refugees-filippo-grandi-conditions-expulsions.html>.

¹⁹ L. Carol Ritchie & Michele Kelemen, *U.S. Special Envoy To Haiti Quits Over Deportations of Haitian Migrants* (Sept. 23, 2021), <https://www.npr.org/2021/09/23/1040055089/us-special-envoy-haiti-quits-deportations-refugees>.

²⁰ *Id.*



Oficina Legal del Pueblo Unido, Inc.
1405 Montopolis Dr.
Austin, TX 78741
512.474.5073(p) 512.474.0726(f)
texascivilrightsproject.org

that the rule has no medical basis, and instead, plainly discriminates against asylum seekers—“scapegoating them as vectors for a potentially vast array of disease.”²¹ Unless rescinded, this rule will only repeat and expand a shameful pattern in our history by perpetuating anti-immigrant sentiment and the now debunked trope that migrants carry disease.

Failing to rescind the Security Bars & Processing Rule will codify DHS’ Title 42 practices & its accompanying harms.

The Biden Administration has unfortunately continued many anti-immigrant policies from the Trump era, such as Title 42. Failing to rescind the Security Bars & Processing rule will effectively codify DHS’ Title 42 practices and the known harms from that policy.²² TCRP has concerns about the harrowing impact of this rule—especially given that the humanitarian data on Title 42 clearly shows that it has caused specific harm to BIPOC migrants. Our partner organization Human Rights First specifically notes that the policy “turn[s] away Black and LGBTQ asylum seekers to suffer bias-motivated violence.”²³ Between January 21, 2021 and January 12, 2022, Human Rights First also “tracked at least 8,705 reports of kidnapping, murder, torture, rape, and other violent attacks against migrants and asylum seekers blocked in or expelled to Mexico under the Biden Administration.”²⁴ These harms experienced by individuals denied access to our asylum system are the types of harms that this rule will also foster, but with even less approval or oversight required by external agencies.

If the Security Bars & Processing Rule became effective, it would give the Departments complete authority to bar asylum seekers and suspend the asylum process for indefinite amount of time—with no restriction or oversight. This rule facilitates the Departments effectively closing the border to asylum seekers in contravention of federal law as soon as a public health emergency is announced—regardless of whether or not public health experts agree the Departments’ actions are necessary or helpful in ensuring public health. Furthermore, this rule does not have time limitations or other constraint mechanisms in place to ensure it is invoked only for purported public health reasons. And, no other departments or agencies are involved in invoking this rule, making decisions, or overseeing implementations. Thus, under this rule the Departments would be making decisions supposedly in the name of public health, without having the public health expertise required to make these types of decisions.

The Security Bars & Processing rule would be yet another anti-immigrant policy following a long line of Trump-era policies that have denied migrants the right to seek asylum. To uphold President Biden’s commitment to restore faith in our immigration system,²⁵ it is essential that the

²¹ *Id.*

²² *A Shameful Record: Biden Admin.’s Use of Trump Policies Endangers People Seeking Asylum*, HUMAN RIGHTS FIRST (Jan. 2022), <https://www.humanrightsfirst.org/sites/default/files/ShamefulRecord.pdf>.

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ See *Executive Order No. 14012*, 86 Fed. Reg. 23, 8277 (Feb. 2, 2021). President Biden’s executive order underscored our character as a “nation of opportunity and of welcome.” It further stated, “it is essential to ensure that



Oficina Legal del Pueblo Unido, Inc.
1405 Montopolis Dr.
Austin, TX 78741
512.474.5073(p) 512.474.0726(f)
texascivilrightsproject.org

Departments begin to take concrete steps to protect migrants, and rescinding this rule is just one step of many.

Thank you for taking the time to review this comment.

Sincerely,

/s/ Kassandra Gonzalez
Kassandra Gonzalez
Manne Family Fellow
(512) 474-5073 ext. 182
kassandra@texascivilrightsproject.org

/s/ Karla Marisol Vargas
Karla Marisol Vargas
Senior Attorney
(956) 787-8171 ext. 128
kvargas@texascivilrightsproject.org

TEXAS CIVIL RIGHTS PROJECT
P. O. Box 219
Alamo, Texas 78516
(956) 787-8171

our laws and policies encourage full participation by immigrants . . .” and “that immigration processes and other benefits are delivered effectively and efficiently.”