

Public Comments Urge Withdrawal of Biden Administration’s Proposed Asylum Ban

On February 23, 2023, the Biden administration [proposed a rule](#) that would ban many refugees from asylum. Groups had been anticipating this rule and nearly [300 non-governmental organizations](#) and nearly [80 members of Congress](#) voiced their strong opposition to the asylum ban — even before the proposed rule was out. After the proposed rule was published, organizations issued [factsheets](#) and [explainers](#) detailing the harms of the rule and the chaos it would inflict if implemented. The proposed rule would bar from asylum many refugees who qualify for it, turn many away to grave harms, and deprive others of a path to citizenship or the ability to reunite with their spouses and children. There are paths forward that are legal, fair, and humane — the asylum ban is none of these.

If implemented, the rule would violate U.S. laws and international obligations and impose tremendous human costs — yet the government provided a mere 30 days for public comment (this truncated timeline also met [significant opposition](#)). Despite this unduly short 30-day comment period, over 51,000 individuals and organizations filed comments. The [vast majority of comments opposed](#) the asylum ban. The immediate and overwhelming opposition to the proposed asylum ban is a testament to the support for asylum. This document details the strong opposition to the proposed rule and strong support for the right to seek asylum.

A notably diverse array of administration allies, nonpartisan groups, legal experts, and civil society groups condemned the proposed rule and overwhelmingly urged the administration to withdraw it. In addition to refugee and immigrant rights advocates, a wide range of faith-based, human rights, civil rights and other civil society organizations, as well as Members of Congress, the UN Refugee Agency and the asylum officers’ union, have stressed that the proposed rule would violate U.S. law, international law and treaties binding on the United States, inflict grave harms on people seeking refugee protection, cause disorder and dysfunction, and discourage other countries from hosting refugees.

The rules’ opponents include Black-led organizations, the Catholic Bishops, major unions and civil rights organizations representing millions of people, leading LGBTQ advocacy organizations, Holocaust survivors and their families, Rabbis, former refugees and asylum seekers, and 82 Members of Congress from the president’s own party. On the other hand, [anti-immigrant hate groups welcomed](#) the proposal to bar refugees from U.S. asylum.

Members of Congress confirmed the proposed bar would be unlawful under law enacted by Congress and should be withdrawn.

- 12 Senators, led by Senators Menendez and Padilla, filed a formal [comment](#) stressing that “this rule violates our legal obligations to protect refugees fleeing persecution and usurps Congressional authority by adding unlawful bars to asylum eligibility.” Senators Padilla and Durbin also [wrote](#) to President Biden in February to urge his administration to not proceed with this proposal as it would circumvent the statute and “undermine the fundamental right to asylum, violating the letter and spirit of the law.”
- In addition, Senators Cortez-Masto and Hickenlooper explained in a [comment](#) that the proposal “contravenes the process established by Congress to assess the validity of asylum claims” and would create “a system that increases human suffering and adds layers of bureaucratic red tape to the asylum process prescribed by Congress—barriers that will make it nearly impossible for migrants fleeing persecution and torture to actually seek asylum.”

- Led by the chairs of the **Congressional Hispanic Caucus (CHC)**, **Congressional Progressive Caucus (CPC)**, **Congressional Black Caucus (CBC)**, and **Congressional Asian Pacific American Caucus (CAPAC)**, a group of **68 House Members** signed a [comment](#) confirming that the proposed rule “runs afoul of this nation’s founding principles and violates the U.S.’s obligations to asylum seekers under domestic and international law,” in particular the 1967 Protocol Relating the Status of Refugees and 8 U.S.C. § 1158.

The Asylum Officers’ union and former Immigration Judges concluded proposed rule violates U.S. immigration law and international refugee law.

- The union representing over 14,000 USCIS employees including **Asylum Officers** who adjudicate asylum cases [concluded](#) that “the measures that the Proposed Rule seeks to implement are **inconsistent with the asylum law enacted by Congress**, the treaties the United States has ratified, and our country’s moral fabric and longstanding tradition of providing safe haven to the persecuted,” “would force [asylum officer union] members to take actions that would **violate their oath** to faithfully discharge their duty to carry out the immigration laws adopted by Congress,” and “could make them complicit in violations of U.S. and international law.”
- The Round Table of more than 50 **former Immigration Judges and Board of Immigration Appeals members**, with vast experience adjudicating asylum cases, [explained](#) that the proposed bar conflicts with international law and Congressional intent, would toss aside statutorily mandated protections, and will invariably result in wrongful removals, noting that while “it may sound less harsh to refer to the rule as a “rebuttable presumption” rather than a bar, the term is misleading and inaccurate.

The UN Refugee Agency (UNHCR) confirmed the proposed rule violates international refugee law. UNHCR [concluded](#) the proposed rule fails to provide a meaningful and realistic opportunity to seek protection, runs afoul of central principles of international refugee law binding on the United States, will lead to the refoulement of large numbers of asylum-seekers of different nationalities, ethnic backgrounds or religions, and would place refugees “**at risk of persecution and/or death**” – explaining that the rule’s exceptions and rebuttal factors do not rectify the breach of international legal standards.

Faith-based groups and leaders opposed the proposed rule, including the [American Jewish Committee](#), [Catholic Charities USA](#), [Catholic Charities Boston](#), [Catholic Charities NY](#), [Catholic Legal Immigration Network, Inc.](#), [Catholic Migration Services](#), the [U.S. Conference of Catholic Bishops](#), the [Episcopal Church](#), the [Evangelical Lutheran Church in America DE-MD Synod](#), [Church World Service](#), [HIAS](#), [Lutheran Immigration and Refugee Service \(LIRS\)](#), [Lutheran Social Services of the National Capital Area](#), the [National Council of Jewish Women](#), [NETWORK Lobby for Catholic Social Justice](#), and [World Relief](#), an arm of the National Association of Evangelicals, as well as individual rabbis and nuns, congregations, [religious](#) orders, and [T’ruah](#), a rabbinic human rights organization representing over 2,300 rabbis and cantors nationwide. Faith-based organizations working near the border also opposed the ban, including [Diocesan Migrant & Refugee Services \(DMRS\)](#), [Hope Border Institute](#), [Kino Border Initiative](#), and [Jewish Family Service of San Diego](#). In an op-ed, Bishop Seitz, Chair of the Catholic Bishop’s migration committee [wrote](#) about the asylum ban, “The only crisis at the border is a moral crisis. And the only failure is one of courage and justice.”

Black-led groups detailed the disparate impact and harms that would be inflicted on Black asylum seekers, calling for withdrawal of the proposed ban, including [African Communities Together](#), [African Human Rights Coalition](#), [BAJI](#), [Haitian Bridge Alliance](#), along with the Black

Immigrant Bail Fund and Cameroon Advocacy Network, and [UndocuBlack](#). These groups warned that the asylum ban would disproportionately deny Black asylum seekers a meaningful opportunity to apply for protection, violate human rights law prohibiting racial discrimination, exacerbate systemic racism against Black asylum seekers in the immigration system, and force Black asylum seekers to apply for protection in countries where they face widespread racism and violence.

The [International Mayan League](#) detailed the harmful impacts that the ban would have on **Indigenous people**, warning that the ban would further marginalize Indigenous persons and especially endanger Indigenous girls, women, and LGBTQ+ people who are at heightened risk for sex and human trafficking.

Unions and civil rights groups opposed the ban and urged its withdrawal, including [Service Employees International Union \(SEIU\)](#), representing approximately 2 million workers, the [AFL-CIO](#), a federation of 60 unions representing 12.5 million workers, and [Council 119](#) (the asylum officers' union), as well as the [ACLU](#), [CHIRLA](#), [Community Change Action](#), [MALDEF](#), [SPLC](#), [Asian Americans Advancing Justice](#), and, as outlined below, the Human Rights Campaign and other LGBTQ+ civil rights organizations.

LGBTQ+ organizations representing millions opposed the proposed asylum ban. Writing on behalf of its more than three million members and supporters nationwide, the **Human Rights Campaign** strongly [opposes](#) the proposed rule as it would deny protection to many refugees, including LGBTQ+ people and people living with HIV, place LGBTQ+ migrants at active risk of facing the same dangers that they are trying to flee from, and is inconsistent with the Biden administration's demonstrated commitment to LGBTQ+ people around the globe. A joint [comment](#) from **Immigration Equality, Oasis Legal Services, Lawyers for Good Government, Transgender Law Center, Black LGBTQIA+ Migrant Project, The Council for Global Equality, Familia: Trans Queer Liberation Movement, The Human Rights Campaign Lambda Legal, Mijente, Santa Fe Dreamers Project, The TransLatin@ Coalition Whitman-Walker Health, and The Young Center for Immigrant Children's Rights** warned the rule will result in the wrongful denial of meritorious queer and trans asylum claims, endanger lives of those trying to comply with its requirements and violates the promises made by President Biden to "Protect[] Vulnerable LGBTQI+ Refugees and Asylum Seekers" and "restore and strengthen our own asylum system." **Equality California**, on behalf of its nearly one million members, strongly [opposes](#) the proposed rule as it would prevent current and future asylum seekers from accessing protection they merit under domestic and international law and leave others in the U.S. without stable protection.

Childrens' rights and protection experts opposed the asylum ban including [First Focus on Children](#), the [Young Center](#), [Kids in Need of Defense \(KIND\)](#), [Save the Children](#), and the [American Academy of Pediatrics](#).

[**Holocaust survivors and their family members filed comments opposing the asylum ban.**](#)

Relatives of people murdered in the Holocaust after being denied entry to the United States also submitted comments, including the [child of Holocaust survivors](#) who "had relatives on the doomed St. Louis who were denied safe haven and were sent back to their deaths." The comment warned that the asylum ban "would be a repeat of that situation."

Many organizations with presence, research and or other expertise in the Americas detailed ways in which the proposed rule would turn away refugees to places where their lives and rights are at risk, undermine the LA Declaration and/or other efforts to encourage other countries to host many

refugees, and exacerbate humanitarian needs and unsafe conditions along the US-Mexico border and in other locations on the migration route – including [Doctors Without Borders \(MSF\)](#), [HIAS](#), the [International Rescue Committee](#), [Oxfam](#), [Kids in Need of Defense \(KIND\)](#), the [Washington Office on Latin America \(WOLA\)](#), and [Women’s Refugee Commission](#). The former presidents of [Costa Rica](#) and [Colombia](#) raised similar concerns in op-eds.

Human rights organizations called for withdrawal of the asylum ban which violates international human rights and refugee law, including [Amnesty International USA](#), [Human Rights First](#), [Human Rights Watch](#), [Robert F Kennedy Human Rights](#) and [Physicians for Human Rights](#).

Refugees and many organizations focused on immigrants’ rights and refugee protection submitted comments in opposition to the proposed rule, including [AILA](#), [AIC](#), [CHIRLA](#), the [International Rescue Committee](#), [IRAP](#), [NIJC](#), the [Refugee Congress](#), and [Tahirih Justice Center](#) – *as well as organizations working along the southwest border to provide legal representation and/or humanitarian aid to asylum seekers and migrants*, such as the [Florence Immigrant and Refugee Rights Project](#), [Immigrant Defenders Law Center](#), [Kino Border Initiative](#), [Las Americas](#), [Lawyers for Good Government](#), [RAICES](#), [Al Otro Lado](#), and [Jewish Family Service of San Diego](#).

Medical and public health experts warned of the harmful, devastating impact of the ban on the physical and mental health of people seeking safety, including [Doctors Without Borders](#), [Physicians for Human Rights](#), the [Program on Forced Migration and Health at Columbia University’s Mailman School of Public Health](#), and the [American Academy of Pediatrics](#).

Comments submitted instead urged solutions that uphold law and values, including to restore access to asylum, strengthen regular pathways to the United States and capacities to protect refugees in other countries and increase humanitarian reception, legal representation, and asylum adjudication capacities. A number of comments urged U.S. agencies to strengthen and expand parole initiatives, steps that should not be coupled with bans and bars to asylum. In addition, the Asylum Officers’ union stressed that “The answer to long backlogs in asylum processing, and the associated delays in granting meritorious claims and denying unmeritorious ones, is not to devise new ways to shut the door to refugees. It is to allocate adequate resources to the asylum system: to ensure there are enough asylum officers, immigration judges, and administrative staff to fairly, humanely, and expeditiously hear and adjudicate asylum claims.”

This document was compiled by Human Rights First in April 2023.