

December 12, 2023

To Members of Congress,

We write as refugee and human rights law experts to express our extreme concern over proposals which would effectively dismantle the U.S. asylum system. In particular, we express our concern that the proposals now being considered fundamentally violate US obligations under the UN Refugee Convention and Protocol:

The proposals under discussion would punish people seeking asylum for their manner of entry to the United States in clear violation of Article 31 of the Refugee Convention. This article prohibits states from imposing penalties on refugees on account of their illegal entry or presence, noting in its introductory note that “the seeking of asylum can require refugees to breach immigration rules.”

One proposal under consideration would bar asylum to any person who transited through a third country en route to the United States unless they sought and were denied refugee protection in each country of transit. Congress already created a “safe third country” provision in U.S. law with specific requirements for a country to be considered “safe” in these terms, which this proposal would essentially override in a manner that puts the US in breach of international law.

Another proposal would heighten the standard which a person must meet in order to pass their initial screening, critical in terms of their ability to progress and present their full claims for asylum in the United States, to the higher “reasonable possibility” or even “more likely than not” standards. The current “significant possibility” standard already deviates from international standards by raising the evidentiary requirements for accessing full asylum adjudication. The Supreme Court expressly rejected a “more likely than not” standard for full asylum merits adjudications and to impose such a high standard in what is intended to be a screening interview would be perverse and would certainly result in bona fide refugees being returned to persecution in violation of the principle of *non-refoulement*.

We exhort Congress to uphold the fundamental right to seek asylum and U.S. obligations under international refugee law and reject any legislative compromises as described above.

Signed:

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