

*Submitted via Federal eRulemaking Portal*

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Lauren Alder Reid, Assistant Director,  
Office of Policy  
Executive Office for Immigration Review  
Department of Justice

Andrew Davidson, Asylum Division Chief  
Refugee, Asylum and International Affairs Directorate  
U.S. Citizenship and Immigration Services  
Department of Homeland Security

**Re: Public Comment Opposing Proposed Rules on Security Bars and Processing Docket Number USCIS 2020-0013 / RIN 1615-AC57; A.G. Order No. 4747-2020 / RIN 1125-AB08**

Dear Ms. Alder Reid and Mr. Davidson:

The Center for Victims of Torture (CVT) respectfully submits this comment in opposition to the Proposed Rule by the Department of Justice (DOJ) and Department of Homeland Security (DHS) on Security Bars and Processing, Docket No. USCIS 2020-0013 published on July 9, 2020.

The Proposed Rule will put the lives and wellbeing of torture survivors—who comprise a shocking percentage of the U.S. refugee and asylum seeking populations—at needless heightened risk. As the comments that follow make clear, there is no legitimate public health or national security rationale for excluding asylum seekers. Those claims are a pretext for yet another attempt by the administration to prevent asylum seekers from pursuing humanitarian relief in the United States. Were the rule to take effect as proposed, asylum seekers would be returned to danger in violation of domestic and international law.

DOJ and DHS should immediately withdraw their current proposal and dedicate their efforts to advancing policies that safeguard individuals fleeing persecution, including torture.

Thank you for the opportunity to submit comments on this Proposed Rule. Please do not hesitate to contact us with any questions or for further information.

Andrea Carcamo /s/  
Senior Policy Counsel  
[acarcamo@cvt.org](mailto:acarcamo@cvt.org)

Darlene Lynch /s/  
Head of External Relations (CVT Georgia)  
[dlynch@cvt.org](mailto:dlynch@cvt.org)

Scott Roehm /s/  
Washington Director  
[sroehm@cvt.org](mailto:sroehm@cvt.org)

**DETAILED COMMENTS in opposition to proposed rule on Security Bars and Processing  
Docket Number USCIS 2020-0013/RIN 1615-AC57; A.G. Order No. 4747-2020 / RIN 1125-  
AB08.**

The Center for Victims of Torture (CVT) welcomes the opportunity to comment on the proposed rule titled “Security Bars and Processing,” Docket No. USCIS 2020-0013 (“the Proposed Rule,” or “the Rule”).

Founded in 1985 as an independent non-governmental organization, CVT is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the U.S., the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives and restores the hope of more than 25,000 primary and secondary survivors of torture, other gross human rights violations, and severe war-related trauma. The vast majority of CVT’s clients in the United States are asylum seekers.

Since 2016, CVT has operated a torture survivor rehabilitation center in the state of Georgia, home to the Centers for Disease Control and Prevention and other leading public health institutions and academic programs. As a member of the Georgia Global Health Alliance, it works in partnership with these groups to advance science-based public health initiatives, particularly with respect to mental health.

CVT also conducts research, training and advocacy, with each of those programs rooted in CVT’s healing services. The organization’s policy advocacy leverages the expertise of five stakeholder groups: survivors, clinicians, human rights lawyers, operational/humanitarian aid providers, and foreign policy experts. CVT helps organize a network of torture treatment programs focused on rebuilding the lives of survivors of torture across the nation. These programs serve primarily asylum seekers, asylees, and refugees.

**I. Background**

On July 9, 2020 United States Citizenship and Immigration Services (a component of DHS) and the Executive Office for Immigration Review (a component of DOJ) (“the agencies”) published jointly the Notice of Proposed Rulemaking that is the subject of this comment.

The Proposed Rule would make drastic changes to asylum and related humanitarian protections designed by Congress to ensure that the United States can efficiently and effectively recognize and process individuals who are refugees and deserve our protection. More specifically, the Rule purports to “mitigate the risk of a deadly communicable disease being brought to the United States, or being further spread within the country,” through four dangerous regulatory changes:

First, the Proposed Rule would add public health emergencies to the national security grounds on which people seeking asylum or withholding of removal could be denied. Specifically, asylum seekers for whom DHS determines that “entry would pose a risk of further spreading infectious or highly contagious illnesses or diseases, because of declared public health emergencies in the United States or because of conditions in their country of origin or point of embarkation to the

United States” would be banned for “pos[ing] a significant danger to the security of the United States.”

Second, the Rule would make these same bars applicable at the initial credible fear screening stage for asylum seekers in expedited removal proceedings. In other words, DHS would have the power to swiftly deport asylum seekers who DHS determines pose “a danger to the security of the United States” on public health grounds, without affording them basic due process protections.

Third, the Rule would force those seeking protection under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to demonstrate, affirmatively, at the initial credible fear screening stage that they would more likely than not be tortured in their country of removal.

Finally, even for those who manage at this initial stage to convince DHS that it is more likely than not that they would be tortured in their prospective country of removal, the Rule would nevertheless allow removal to a third country.

As Human Rights First has explained,<sup>1</sup> if the Rule were to take effect as proposed, it would have consequences both devastating and senseless. This is especially the case given the administration’s concurrent efforts to expand expedited processing of asylum seekers into the interior of the United States. For example, the Rule could:

- “Bar from asylum (and the lesser withholding of removal relief) asylum-seeking nurses, doctors, health aides, cleaners and other essential personnel who have ‘come into contact with’ COVID-19 while risking their lives in the pandemic response in the United States;
- Bar asylum-seekers from refugee protections who have fallen ill from COVID-19 while in the United States waiting for an asylum hearing, including asylum-seekers who contract coronavirus in ICE detention centers;
- Bar asylum-seekers from refugee protection merely because they recently came from a country other than the United States where COVID-19 is prevalent, even if they have a well-founded fear of persecution;
- Block asylum-seekers coming to U.S. airports, land ports of entry, or after crossing the border from requesting protection, if they were recently in a country where COVID-19 is prevalent, such as Russia, Brazil, [and] El Salvador, even if they are not in fact infected;
- ...

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<sup>1</sup> Trump Administration Expands Public Health Pretext to Block Asylum-Seekers, July 8, 2020, <https://www.humanrightsfirst.org/press-release/trump-administration-expands-public-health-pretext-block-asylum-seekers>

- Allow the administration to potentially extend the ban to other diseases,<sup>2</sup> including treatable conditions like gonorrhea, syphilis and TB, to block even more asylum-seekers.

## **II. The Proposed Rule is part of a larger scheme to end asylum**

Through the establishment of policies, agreements, and dubious unilateral changes to well-settled asylum law, it is clear that the Trump administration seeks to prevent individuals—especially, but not only, those arriving at our southern border—from accessing the U.S. asylum process at all, much less actually obtaining asylum. These actions form the backdrop to the proposed rule and include the following:

**Proposed Rule Dismantling Asylum:** On June 15, 2020 the DHS and DOJ proposed jointly a rule that gives rise to the most sweeping changes to asylum since the 1996 overhaul of the Immigration and Nationality Act through the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA). It severely limits the number of individuals who will qualify for asylum, which will lead to the removal of survivors of torture and other trauma.

**Blanket Ban for asylum seekers at the borders:** On March 19, 2020 the Centers for Disease Control and Prevention (CDC) issued an order allowing the closure of the U.S. borders using COVID-19 as a public health justification. The order allows DHS to remove those seeking protection at the border and between ports of entry without implementing a procedure to determine whether they might qualify for humanitarian protection.

**Changing asylum immigration case law:** The attorney general certified to himself several immigration court cases and decided them in a way that upends longstanding law. In overruling *Matter of A-B-* and *Matter of L-E-A-*, the attorney general made it significantly more difficult for individuals from Central America to win their asylum cases, since they largely rely on these two cases.

**Zero Tolerance leading to Family Separation:** The administration adopted a policy of pursuing criminal charges against *every* individual, including asylum seekers, who crossed the border outside of a port of entry, then forcibly separated children from the parents who were subjected to criminal proceedings. Family separation was a cruel practice that will have long lasting consequences for asylum seekers and the United States.<sup>3</sup>

**Asylum Ban 1.0:** In November 2018, the president issued a proclamation banning individuals who enter the United States between ports of entry from asylum.<sup>4</sup>

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<sup>2</sup> USCIS, Policy Manual, Chapter 6 - Communicable Diseases of Public Health Significance, <https://www.uscis.gov/policy-manual/volume-8-part-b-chapter-6>

<sup>3</sup> Center for Victims of Torture, 8 Facts about Refugees and Asylum Seekers, Fact 4, <https://www.cvt.org/AsylumFact4>

<sup>4</sup> Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, <https://www.federalregister.gov/documents/2018/11/09/2018-24594/aliens-subject-to-a-bar-on-entry-under-certain-presidential-proclamations-procedures-for-protection>

**Migrant Protection Protocols:** Established in January 2019, this policy forces asylum seekers to wait in dangerous Mexican border cities during the pendency of their cases. Besides placing asylum seekers in danger, it undermines their ability to obtain assistance of counsel, greatly diminishing their ability to win their case.<sup>5</sup>

**Asylum Ban 2.0:** In July 2019, the administration disqualified from asylum any individual who transited through a third country before arriving at the United States southern border. This disqualifies all but Mexican asylum seekers arriving at our southern border from asylum.<sup>6</sup>

**Agreements with other countries:** The Trump administration has forced some countries that are not safe into entering into “safe third country” agreements—from which people are fleeing violence and persecution that these countries’ governments cannot, or will not, effectively address—including El Salvador, Guatemala, and Honduras.

**Fees for Asylum seekers:** The administration has finalized a rule creating fees for asylum applications and initial work authorizations for asylum seekers. Beginning in October 2020, asylum seekers will have to pay \$50 to submit an asylum application and \$550 for their initial work authorization.

**Work Authorization Restrictions:** The administration recently finalized a rule that doubles the time an asylum seeker must wait before qualifying for a work permit (from 150 days to 365 days) and imposes additional restrictions on eligibility. Yet another final rule eliminates entirely the time limit previously imposed on USCIS to adjudicate work authorization applications, which implicitly authorizes the agency to delay any such adjudication indefinitely.

### **III. A 30-day comment period does not provide the public sufficient time to provide diverse, evidence-based feedback**

Under the Administrative Procedures Act, the agencies have a duty: “(1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.”<sup>7</sup>

Moreover, as 31 organizations explained in an August 6 letter to DOJ and DHS:

Executive Order 12866 requires agencies to “...afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include

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<sup>5</sup> Human Rights First. Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process, <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf> (last accessed on 12/30/2019)

<sup>6</sup> Asylum Eligibility and Procedural Modifications, A Rule by the Homeland Security Department and the Executive Office for Immigration Review on 07/16/2019, <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>

<sup>7</sup> *Capital Area Immigrants’ Rights Coalition (CAIR) v. Trump*, No. 19-cv-2117, ECF No. 72, 24-25 (D.D.C. June 30, 2020) (internal citations omitted).

a comment period of not less than 60 days.” Executive Order 13563 likewise directs agencies to “...afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.” There is no compelling reason to except the NPRM from the Executive Orders’ general rule of providing a minimum of 60 days for public comment. Rather, the highly technical, nuanced, legal and policy issues the NPRM addresses—and, above all, the severe human cost it is certain to inflict—illustrate why a minimum of 60 days must be allowed for the public to file comments in response to the rule.<sup>8</sup>

A 30 day comment period is especially unreasonable during the pandemic, when challenges ranging from child-care, to caring for sick relatives, to the stress of the pandemic itself will make it impossible for many to meaningfully respond absent the typical 60 day period.

#### **IV. Excluding asylum seekers on specious “public health” grounds would undermine national security**

##### **a. Barring asylum seekers would serve no legitimate public health purpose**

Over the last several months, scores of public health professionals have made clear that barring asylum seekers serves no legitimate public health purpose.<sup>9</sup>

In May, 57 public health experts wrote to DHS Secretary Alex Azar and Centers for Disease Control Director Robert Redfield objecting to the March 20 CDC order that closes the U.S. border to Mexico and Canada (now indefinitely) to those who lack “valid travel papers”—such as asylum-seekers—under the guise of protecting public health.

“There is no public health rationale for denying admission to individuals based on legal status,” the experts wrote.

The order’s stated justification is that the migrants and asylum seekers who are subject to it would normally be held by Customs and Border Protection (CBP) in “congregate settings” for prolonged periods of time. However, instead of holding individuals in facilities widely recognized as dangerous and unsanitary, CBP has the discretion and legal authority to parole adults and families seeking asylum or other legal protection, and the government could facilitate the expeditious release of unaccompanied children from custody. A recent study found that of several hundred asylum seekers currently at the Mexico-U.S. border, 92 percent have family or friends they could live with in the United

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<sup>8</sup> Request to Provide a Minimum of 60 days for Public Comment in Response to the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS) and Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (the Departments) Joint Notice of Proposed Rulemaking (NPRM), July 24, 2020, [https://s33660.pcdn.co/wp-content/uploads/2020/08/Comment-Period-Extension-Request\\_Security-Bars-and-Processing-RIN-1615-AC57-Docket-No.-USCIS-2020-0013-.pdf](https://s33660.pcdn.co/wp-content/uploads/2020/08/Comment-Period-Extension-Request_Security-Bars-and-Processing-RIN-1615-AC57-Docket-No.-USCIS-2020-0013-.pdf)

<sup>9</sup> Joanna Naples-Mitchell, There Is No Public Health Rationale for a Categorical Ban on Asylum Seekers, Just Security, April 17, 2020, <https://www.justsecurity.org/69747/there-is-no-public-health-rationale-for-a-categorical-ban-on-asylum-seekers/>

States. Allowing individuals to shelter in place with family or friends would reduce the need for quarantine facilities, resolving another concern stated in the CDC order.<sup>10</sup>

The experts then provided a roadmap, using evidence-based public health measures, for safely processing asylum seekers and others crossing the U.S. border.

The politicization of public health has been particularly troubling to public health professionals based in Georgia, which is not only the home of the CDC, but has also been long-recognized as a national center of public health leadership and expertise. In June, Georgia public health experts spoke out in opposition to the administration's misuse of the CDC's public health authority to shut the U.S. border. In a rare rebuke of the CDC in its own backyard, a coalition of more than 40 professionals condemned the CDC's order and urged the director to rescind it:

In Georgia, we take justifiable pride in the CDC and applaud it when it insists on science-based public health measures in the face of political attacks, including during the current pandemic ... [F]or this reason, we are deeply dismayed that you have chosen to sacrifice CDC's independence and allow CDC's voice to be used instead to advance the current administration's anti-immigration policies. This not only damages the CDC's reputation as a global public health authority, but it hurts all of us who have come to depend on CDC for credible, unbiased guidance.<sup>11</sup>

Most recently, 170 public health and medical experts from leading public health schools, medical schools, hospitals, and other institutions across the country wrote a letter to Acting Secretary Wolf and Attorney General Barr to express grave concerns about the rule and the "specious" health justifications it employs to target asylum-seekers and deny them humanitarian protections.

The rule ignores and misuses the science and core principles of public health. It would grant the Department of Homeland Security (DHS) and the Department of Justice (DOJ)—agencies that lack public health expertise—authority to label asylum seekers as a national security threat, scapegoating them as vectors for a potentially vast array of diseases and denying them protection. These sweeping new bans would direct immigration authorities to deport people seeking refugee and torture protection to life-threatening dangers in violation of U.S. law and treaty obligations.<sup>12</sup>

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<sup>10</sup> Letter to HHS Secretary Azar and CDC Director Redfield Signed by Leaders of Public Health Schools, Medical Schools, Hospitals, and Other U.S. Institutions, May 18, 2020, <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>

<sup>11</sup> Letter to CDC Director Robert Redfield from a coalition of Georgia professionals from the fields of public health, medicine, law and immigration, June 17, 2020, [https://www.cvt.org/sites/default/files/attachments/u101/downloads/letter\\_to\\_dir.\\_redfield\\_from\\_georgia\\_professionals\\_re\\_border\\_closure\\_order\\_final\\_dc161420.pdf](https://www.cvt.org/sites/default/files/attachments/u101/downloads/letter_to_dir._redfield_from_georgia_professionals_re_border_closure_order_final_dc161420.pdf)

<sup>12</sup> Letter to DHS Secretary Wolf and Attorney General Barr Signed by Leaders of Public Health Schools, Medical Schools, Hospitals, and Other U.S. Institutions, August 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>

More than one-quarter of the experts who joined the letter come from the Georgia public health community, where it is well understood that public health is only credible when it uses science to analyze public health threats and responds in a way that protects the public through the least restrictive means necessary. Flouting these core principles undermines the credibility of our public health institutions, erodes public trust, and does lasting damage to our nation's ability to confront the current pandemic and future health crises. It does all this without any discernible public health benefit and with life-threatening consequences for vulnerable individuals seeking refuge in the U.S.

**b. The Proposed Rule would at once endanger asylum seekers and make the American public less safe.**

As Mr. Roehm and former Reagan White House official Linda Chavez have explained elsewhere:

Immigrants of all stripes ... are disproportionately on the front lines providing all of us with essential services [during the pandemic], often at tremendous personal risk. Immigrants are more likely to work in the very jobs we depend on at this perilous moment. Nearly 30% of doctors and 40% of health aides in the United States are foreign born, and immigrants disproportionately work in the service or food industries that keep us fed during this crisis. They are also becoming sick and dying in alarming numbers to do so.<sup>13</sup>

This includes refugees, asylum seekers, and the many torture survivors among them. Indeed, at CVT, the vast majority of our clients receiving rehabilitation services are asylum seekers, who include nursing home and daycare staff, personal care attendants, delivery drivers, grocery store and other food supply chain employees, and poultry plant workers.

By further diminishing the possibility that asylum seekers can come to the United States and instead facilitating their return to danger — especially when public health experts have emphasized that fair treatment of refugees does not undermine efforts to combat COVID-19 — the Proposed Rule would needlessly make all of us less safe.

**V. The Proposed Rule violates domestic and international law as it would lead to the *refoulement* of refugees and survivors of torture**

The Proposed Rule violates both the 1951 Refugee Convention and CAT.

The United States, while not a party to the 1951 Refugee Convention itself, did ratify the 1967 Protocol. In ratifying the 1967 Protocol, the United States bound itself to the obligations of the 1951 Refugee Convention as well.<sup>14</sup> The Refugee Convention states that “no Contracting State

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<sup>13</sup> Linda Chavez and Scott Roehm, Trump's coronavirus order scapegoats immigrants and doesn't make us safer, USA TODAY, April 28, 2020, <https://www.usatoday.com/story/opinion/2020/04/28/trump-plays-politics-coronavirus-immigration-2020-campaign-column/3030329001/>

<sup>14</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, Article 1, <https://www.refworld.org/docid/3ae6b3ae4.html>



shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.”<sup>15</sup>

As explained in Section I above, the Proposed Rule would bar from asylum and withholding of removal asylum seekers who have “come into contact with’ COVID-19;” contracted the virus while in the United States waiting for an asylum hearing, including those infected in ICE detention centers; or who have recently arrived from a country other than the United States where COVID-19 is prevalent—which now includes much of the world—even if they have a well-founded fear of persecution and are not in fact infected. Moreover, in some cases, whether individuals fleeing persecution qualify for asylum would depend on the ability of asylum officers and immigration judges—presumably few, if any, of whom have medical training—to determine if a claimant has COVID-19 based on their symptoms and their travel history.

These draconian regulatory changes would inevitably lead to violations of the United States’ non-refoulement obligations under the Refugee Convention. They will similarly inevitably result in violations of the same obligation under CAT.

The United States signed CAT in 1988 and codified the Convention into U.S. law in 1998.<sup>16</sup> Pursuant to Article 3 of CAT, “No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” This obligation is non-derogable, including during the current pandemic.<sup>17</sup>

Again as described in Section I above, the Proposed Rule would force those seeking protection under CAT to demonstrate at the initial credible fear screening stage that they would more likely than not be tortured in their country of removal. This would require that survivors spontaneously raise and then prove their CAT claim when they are fresh off a typically perilous journey to the United States. That is asking the near-impossible of many survivors, who can and often do suffer profound psychological harm from their trauma, including shame, stigma, denial, communication difficulties, and damage to memory.

It often takes several sessions for the clinicians at CVT to obtain details of clients’ torture. As Cecil Walker, MFT, Psychotherapist, at CVT Georgia explains:

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<sup>15</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 33.1, <https://www.refworld.org/docid/3be01b964.html>

<sup>16</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, 1988 U.S.T. 202, 1465 U.N.T.S. 85 (enacted into U.S. Law on October 21, 1998 by Fiscal Year 1999 Omnibus Consolidated and emergency Supplemental Appropriations Act, Pub. L. No. 104-277, Div. G, Sub. B, Title XXI S2242 of the foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681-822 (1998).

<sup>17</sup> Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020), <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

Even in a therapeutic setting, it is often difficult for clients to thoroughly describe their traumatic experiences, necessitating several sessions before they're able to carefully unfold their narrative without triggering excessive psychological stress, so to ask them to detail and prove their CAT claims at the immediate moment of arrival, as the new administrative rules ask, would likely be too overwhelming for them. Also, several of our clients have worked through COVID-19 in essential positions in the food industry and janitorial services providing basic, necessary labor during the current public health crisis as opposed to being a danger to public health as the new rules imply.

Absent a fair and meaningful mechanism to determine if asylum seekers are survivors of torture, the Propose Rule cannot safeguard against violations of the United States' non-refoulement obligations under CAT.

## **VI. Conclusion**

The administration must abstain from implementing the Proposed Rule, which will denigrate the asylum system and harm asylum seekers, including the torture survivors among them.