

# THE *Episcopal* CHURCH

March 20, 2023

The Episcopal Church, as the U.S.-based constituent member of the Anglican Communion, the third largest Christian denomination globally, opposes the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS) and Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) Joint Notice of Proposed Rulemaking: Circumvention of Legal Pathways; RIN 1125-AB26 / 1615-AC83 / USCIS Docket No. 2022-0016 / A.G. Order No. 5605-2023.

The Episcopal Church has longstanding policy affirming the universal right to seek asylum. These policies are rooted in our strong belief in just and humane immigration policies and the fundamental principle of legal due process for all. It is because of our commitment to supporting the most vulnerable among us that we oppose regulations that deny protection to those fleeing persecution. The proposed rule undermines our nation's obligation to protect fundamental human rights and ensure everyone has the right to seek asylum from persecution.

We specifically oppose conditioning asylum eligibility solely upon access to an appointment at a port of entry or seeking protection in a third country as it creates significant barriers that violate refugee protections and subject asylum seekers to direct harm. The limited exceptions under the rule will lead to vulnerable migrants including LGBTQ, Black, Indigenous, and disabled people with meritorious claims being denied their basic right to seek asylum and being forced to wait in or being sent back to places where they will face harm or persecution. The rule as proposed is temporary, but any amount of time this rule is implemented would violate the full right to seek asylum as provided under domestic and international law.

Under 8 U.S.C. §1158(a)(1), “any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.” While we recognize the Biden Administration's efforts to improve refugee processing in the Western Hemisphere, expand country-specific parole programs, and offer additional seasonal employment opportunities, increasing legal pathways for some cannot be a substitute for the basic mechanisms to seek asylum as required under U.S. law.

As a signatory to the 1951 Refugee Convention, the 1967 Protocols, and the Convention Against Torture, the United States would be compromising its position as a world leader committed to human rights if it implements this rule. In the 1951 Refugee Convention, Article 31 states that we “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” Article 33 states, “No Contracting State 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 of a particular social group or political opinion.” This proposed rule, by returning asylum seekers to Mexico or to any country from which they have fled if they do not

follow a limited, flawed process, will continue to put them in harm's way and does not adhere to our nation's laws and principles.

These proposed changes to asylum process would abrogate our country's established legal precedents, which offer pathways of protection to the most vulnerable. The measures outlined in the rule would be a detriment to human life and would violate our legal obligations to those seeking protection. The Episcopal Church urges the Department of Homeland Security and the Department of Justice to rescind this proposed rule.

Respectfully,

The Rev. Dr. Charles K. Robertson  
Canon to the Presiding Bishop for Ministry Beyond The Episcopal Church