



DELAWARE COALITION AGAINST DOMESTIC VIOLENCE

Breaking the cycle of violence.

July 15, 2020

*Lauren Alder Reid, Assistant Director
Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1800
Falls Church, VA 22041*

Re: U.S. 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): Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review; RIN 1615-AC42 / 1125-AA94 / EOIR Docket No. 18-0002/ A.G. Order No. 4714-2020 published in the Federal Register on June 15, 2020.

Dear Assistant Director Reid:

I am submitting the following comments on behalf of the Delaware Coalition Against Domestic Violence (DCADV) in response and **opposition** to the above-referenced NPRM.

The Delaware Coalition Against Domestic Violence (DCADV) is a federally recognized state domestic violence coalition, and was founded in 1994. DCADV works with our member organization and allies to support the empowerment of victims of domestic violence and their children through access to services and legal remedies. DCADV also seeks to change the societal conditions that support sexism, racism, homophobia, and other oppressions and which contribute to the continued presence of domestic and sexual violence in intimate relationships. Since its founding, the Coalition has engaged in a wide variety of activities that encompass public education, economic justice, training, prevention, and systems advocacy initiatives. It is through these efforts that DCADV is able to work closely with the justice, health care, education, advocacy, and social service communities in facilitating the creation of effective policies and programs that will serve the interests of victims and their children in Delaware. Domestic violence, sexism, racism, homophobia, and gender-based violence are pervasive; the proposed rule directly impacts survivors, and oppresses those seeking asylum.

DCADV strongly opposes the proposed rule because it unfairly changes current U.S. asylum policies and processes. We object in particular to how these changes will prevent victims of brutal gender-based violence, domestic violence and oppression from obtaining protection under our immigration laws. We urge the Departments to rescind the rule.

- I. Equal protection is a necessary ideal that our nation must uphold, survivors of gender-based violence and domestic violence deserve protection from persecution, something this proposed rule will deny.**



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Asylum was created to protect those in desperate need of a safe haven, an escape from the persecution they are facing. This persecution directly contradicts a person's right to freedom and expression, an attempt to force people to change characteristics that either cannot be changed or should not have to be changed: gender, race, religion, nationality, sexuality or political opinion. All survivors of persecution deserve a chance to seek protection, and this is a core aspect recognized by international human rights law.

Gender-based violence and domestic violence are pervasive; the perpetrator is often a person classified as a “non-government actor” (could be family members, or intimate partners). When a survivor is abandoned by the country that raised them, a country that cannot or will not protect the survivor, there is a desperate need for international protection in the form of asylum.

DCADV opposes the proposed rule because it would expressly exclude those who suffer persecution on account of “gender” from being eligible for asylum.¹

The majority of those who suffer such persecution worldwide are those who identify as women and girls. Denying them the U.S.’s protection unfairly discriminates against them, and discounts the severe harm they experience.

DCADV works with member organizations and allies to support the empowerment of victims of domestic violence and gender-based violence through access to services and legal remedies. We are dedicated to the stopping of violence worldwide, and focus on creating public education, economic justice, training, prevention, and systems advocacy initiatives in support of victims. Our coalition works to end domestic violence, rape, sexual assault, human trafficking, forced marriage, “honor” crimes, female genital mutilation/cutting (FGM/C), femicide, forced impregnation, and punishment on account of sexual orientation/gender identity.

In DCADV’s experience, immigrant survivors of gender-based violence are particularly vulnerable, traumatized, and susceptible to multiple victimization and revictimization, including because of their lack of status, dependent status on an abuser, isolation, or long waits in legal limbo on their immigration cases.

Asylum in the U.S. can be a critical possible lifeline for the survivors we serve, and must continue to provide protection for them. Returning survivors of gender-based violence to countries where they face persecution will put their lives in jeopardy.

II. Domestic violence and other gender-based violence that is severe and unaddressed by the authorities is NOT just an “interpersonal dispute” or a “private criminal act.”

¹ While the rule purports to allow gender-based claims in “rare circumstances,” in practice, this exception will have no effect. The rule allows judges to pre-emptively terminate any “legally insufficient” claims – e.g., those based on gender - at the outset. Such claims will then be deemed “frivolous” under another provision in the rule, forever barring an applicant from any immigration status or benefits of any kind. Survivors will be deterred or prevented from applying at all, and the parameters of the exception will go untested.



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The proposed rule says that a persecuted group cannot be defined by circumstances related to “interpersonal disputes” or “private criminal acts” as to which governmental authorities were “unaware or uninvolved.”²

This regressive framing echoes a time in this country before the 1984 passage of the Family Violence Prevention and Services Act and the 1994 Violence Against Women Act, when domestic violence was treated as a “private matter,” with victims suffering in silence behind closed doors. It is appalling to hear the U.S. government, in 2020, minimize domestic violence as nothing more than an interpersonal dispute, and shows how women in countries with such attitudes find themselves with no hope of protection and no way out, wherever they turn.

It is well-known that the reporting stage is difficult and dangerous for survivors, and often these risks are increased when a survivor is in fear of escalated violence from the authorities. The survivor may also be in fear of the authorities alerting their abuser/persecutor, and that this alert will prevent their escape. With this proposed rule, the victim will lose all access to escape from a life of violence and pain.

The United States provides protection for those facing gender-based violence and domestic violence; however these laws and protections are limited or non-existent in many countries: <http://pubdocs.worldbank.org/en/679221517425064052/EndingViolenceAgainstWomenandGirls-GBVLaws-Feb2018.pdf> . In many countries there is a lack of protection for victims of gender-based violence, and this lack of protection creates a plethora of problems; law enforcement officers have been known to dismiss reports of gender-based violence and domestic violence, and in some situations have been an accomplice in harming survivors. It is possible that law enforcement is involved in the persecution, or that they are the sole perpetrator of violence in a person's life. It is not uncommon for fellow officers to ignore the actions of their colleagues.

Survivors who can provide information, and evidence to support their cases should be able to seek asylum from “gender-based” persecution as systemic human rights abuses, sanctioned by the state. They should not be punished twice: first by the failure of their own government to protect them, and second by the U.S.’s refusal to accept evidence of that failure.

III. The creation of a narrow definition for “political opinion” gives rise to a large percentage of people that will be excluded from asylum; those that advocate for equal rights for women, LGBTQ+, and the change of social norms create a target for persecution, and should allow these individuals to be eligible for protection.

The Asylum NPRM proposes to narrow the definition of “political opinion” for the purposes of asylum to require “furtherance of a discrete cause related to political control of a state or a unit thereof.” This describes that, unless an asylum-seeker was persecuted for fighting the ruling party for political control, or for staging a coup, they could not pursue an asylum claim based on “political opinion.”

² Again, while the rule alludes to “rare circumstances” in which such cases might be considered, this is ultimately an empty assurance and will serve to deny survivors of gender-based violence any protection.



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Narrowing the definition of “political opinion” has dangerous implications and would exclude survivors persecuted for trying to advance equal rights for women, LGBTQ+, and the change of social norms; in legal matters like marriage, business contracts, property ownership and inheritance; or in civil rights like voting or serving in office. The proposed rule would exclude such persecution, no matter how heinous the harm.

Under the proposed rule, any such request for asylum under the “political opinion” ground for persecution would be deemed “legally insufficient.”

IV. The proposed rule will deny immigrant survivors due process.

As advocates for immigrant survivors of domestic violence, sexual assault, and gender-based violence, the Asylum NPRM poses huge concerns to DCADV, not only because it could cut survivors off from asylum protection, but also because it could make them unable to apply for protection under the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA).

In our experience, many survivors have experienced violence and victimization both in their home countries and in the U.S., and under current law, they may have both a VAWA/TVPA and asylum case. The proposed rule, however, would limit survivors who are put into “expedited removal” to “asylum-and-withholding” proceedings only, preventing survivors from obtaining protection under VAWA/TVPA.

The Asylum NPRM would effectively block all avenues of relief from deportation for survivors of gender-based violence, in multiple ways, including by:

- “streamlining” hearings in ways that will prohibit survivors from seeking VAWA/TVPA protections;
- creating more barriers to survivors in initial screenings that determine whether they will even get a hearing;
- characterizing the kinds of persecution that survivors face as “legally insufficient”;
- re-defining what makes an asylum claim “frivolous” in ways that mean a survivor of gender-based persecution could be deemed permanently ineligible for any immigration benefits
- allowing immigration judges to “pretermite” -- preemptively deny, without ever holding a hearing -- an asylum application whenever they deem it “legally insufficient”; and
- outlining more factors that must be considered “significantly adverse” or will cause an asylum application to be denied, including things that can be directly related to PTSD.

We are alarmed that the proposed rule will block immigrant survivors’ cases well before they ever see a judge, and in any event will deny them a fair hearing.

We are also tremendously concerned about the Departments’ planned expansion of the harsh “expedited removal” policy to reach anyone encountered by DHS officers anywhere



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in the U.S. who cannot prove legal status or that they have been continuously present in the U.S. for the last two years or more.

This “expanded expedited removal” policy, in combination with the Asylum NPRM, will sweep in many immigrant survivors who will be swiftly deported.

Abusers and traffickers invariably isolate and control their victims; confiscate or destroy their identity documents or other government records; and prevent survivors from having anything in their own name, even a library card, let alone a lease or utility bill or a bank statement that could help show how long an immigrant survivor has been in the U.S.

The Departments’ policy changes will make it even easier for perpetrators to terrorize their victims and even more likely that survivors will be deported before they can access protections that Congress specifically created for them under U.S. asylum law, VAWA and the TVPA.

This Asylum NPRM would be devastating to immigrant survivors, and will drastically undermine public health and safety.

V. Compromising the confidentiality of asylum records will harm survivors.

Within the form that border officers currently recite to asylum-seekers says that “United States law provides strict rules to prevent disclosure of what you tell an asylum officer about the reasons you fear harm.”

However, the proposed rule sets forth a string of new and vaguely worded circumstances that would allow for the disclosure of asylum records, without any clear limitation as to whom it may be disclosed, so long as it is for a specified purpose.

The proposed rule would allow for disclosure of information in an asylum application “as part of a federal or state investigation, proceeding, or prosecution; as a defense to any legal action relating to the alien’s immigration or custody status; an adjudication of the application itself or an adjudication of any other application or proceeding arising under the immigration laws; pursuant to any state or federal mandatory reporting requirement; and to deter, prevent, or ameliorate the effects of child abuse.”

Confidentiality is of the utmost importance, and allows survivors to feel better protected, and served. There are a vast number of reasons why confidentiality is critical, and many of those reasons include further persecution of the victim if information was spread. An example of a victim facing further persecution due to a lack of confidentiality is: a woman tells asylum officers of the abuse she has been experiencing, she has children, is she going to be reported to CPS for “failure to protect her children”? If she was forced to steal food in an effort to survive, will she be punished for protecting her life?



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Confidentiality is critical to full disclosures, and full disclosures are critical to a survivor's chances to survive "expedited removal." And yet under the rule, no real assurances of confidentiality can be given anymore.

A lack of confidentiality could deter survivors from seeking asylum in the first place; the consequences could be extensive, including increased fear of retaliation, or harassment.

The proposed Asylum NPRM will drastically change how survivors can escape violence, and have access to a better life. The United States has been considered "the last hope" for many, and denying survivors access to the country will leave them stranded, alone, and in fear of their life once again. We are asking that this proposed rule be denied, for the health, safety and betterment of our global community. Let the United States be a safe haven for those in desperate need, let the United States be the protection that so many deserve.

Thank you for considering these comments in response and **opposition** to this NPRM, and please contact DCADV at 302-658-2958 to provide any additional information you might need.

Sincerely,

Sue Ryan

Executive Director, DCADV