

January 8, 2019

Submitted via <https://www.regulations.gov/document?D=EOIR-2018-0001-0001>

Lauren Alder Reid, Assistant Director
Office of Policy, Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041

**Re: Comments in Response to Interim Final Rule: EOIR Docket No. 18-0501/
A.G. Order No. 4327-2018: Aliens Subject to a Bar on Entry under Certain
Presidential Proclamations; Procedures for Protection Claims.**

Dear Ms. Alder Reid:

The Tahirih Justice Center (Tahirih) is pleased to submit the following comments regarding the Department of Justice Executive Office for Immigration Review (EOIR) and the Department of Homeland Security's (DHS) Interim Final Rule (the Rule): *Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims*, published in the Federal Register on November 8, 2018.

Tahirih is a national, nonpartisan policy and direct services organization that has assisted over 25,000 immigrant survivors of gender-based violence throughout the past twenty-one years. Our clients endure unimaginable atrocities such as human trafficking, domestic violence, and sexual assault.

Tahirih firmly opposes this Rule barring asylum for refugees who enter the United States (US) between official Ports of Entry (POEs or Ports). Instead, we urge EOIR and DHS to abandon the Rule in favor of policies and practices that maximize flexibility to ensure that vulnerable asylum seekers have a full and fair opportunity to seek safe haven in the US.

- I. **The Rule violates US international treaty obligations and longstanding US law¹ recognizing that refugees fleeing grave danger cross the border in any manner necessary to survive.**

Victims of persecution flee their homes as a last resort, desperately hoping to withstand the tremendous peril that awaits them during their journeys toward safety. Women and girls who do manage to escape gender-based violence do so with their lives hanging in the balance. Most do not have the luxury of choosing where, how, and when to enter the US. Upon arriving at the border, whether at an official POE or elsewhere, a survivor's immediate concern is requesting asylum so that she may someday rebuild her life free from sexual abuse, death threats, and

ATLANTA

230 Peachtree Street NW
Atlanta, GA 30303
Tel: 470-481-4700
Fax: 470-481-7400
Atlanta@tahirih.org

BALTIMORE

211 E. Lombard Street
Suite 307
Baltimore, MD 21202
Tel: 410-999-1900
Fax: 410-630-7539
Baltimore@tahirih.org

GREATER DC | NATIONAL

6402 Arlington Boulevard
Suite 300
Tel: 571-282-6161
Fax: 571-282-6162
TTY: 711
Falls Church, VA 22042
GreaterDC@tahirih.org
Justice@tahirih.org

HOUSTON

1717 St. James Place
Suite 450
Houston, TX 77056
Tel: 713-496-0100
Fax: 713-481-1793
Houston@tahirih.org

SAN FRANCISCO BAY AREA

881 Sneath Lane
Suite 115
San Bruno, CA 94066
Tel: 650-270-2100
Fax: 650-466-0006
SFBayArea@tahirih.org

tahirih.org

other trauma. Furthermore, asylum seekers are oftentimes not even aware that they can approach a POE to seek asylum, or how they might find one. One of Tahirih's cases involved Sara*, a Mexican woman who was kidnapped by sex-traffickers in Mexico. After being held by her captors and subjected to horrific physical and sexual abuse for 6 months, she managed to escape and unknowingly crossed the border into the US in the process. Sara was granted asylum in 2014.

Congress expressly and unequivocally recognized on a bipartisan basis the dire reality refugees face while escaping persecution in enacting the Refugee Act of 1980 allowing individuals to apply for asylum regardless of where or how they enter the US.ⁱⁱ In *Matter of Pula*,ⁱⁱⁱ the Board of Immigration Appeals further affirmed that manner of entry is not a bar to asylum, but rather, only one of many factors to weigh in evaluating asylum claims. Finally, US commitments under the 1951 United Nations Refugee Convention and 1967 Protocol specifically shield refugees from punishment for "irregular entry."^{iv}

II. While the Rule purports to provide a better alternative - for refugees to seek asylum at a POE - the Administration is simultaneously preventing them from doing so.

Reports abound of refugees arriving at POEs and trying to apply for asylum, only to be unlawfully thwarted by US Customs and Border Protection (CBP). According to numerous accounts, the current "process" for applying for asylum involves first waiting in line in Mexico for days, weeks, or months. Some indicate that wait times are inconsistent from one port to another and even within the same port from day to day. Mexican immigration officials are also reportedly physically preventing refugees from approaching ports.^v According to a report from DHS' Office of the Inspector General (OIG), this situation is causing some who are turned away from the POE to cross the border unlawfully as a last resort. Ironically, this scenario is what the Rule purports to try to prevent.^{vi}

In December, Tahirih attorneys traveled to Tijuana and spoke with numerous individuals with potential asylum claims who were staying at a temporary shelter in Benito Juarez. There was confusion among the refugees as to how to apply for asylum, with rumors about a "list" they could put their names on. Two people recounted how they tried to approach the POE that afternoon to see where their names were on the list, but Mexican police officers would not allow them near the border. Tahirih's attorneys observed firsthand a group of mothers attempting to approach the border, only to be blocked by heavily armed Mexican federal police in riot gear.

Approximately 30, 40, and 60 people were allowed to cross the border to seek asylum on each of the three days that our attorneys were in Mexico. Some had waited roughly 5 weeks before being allowed to apply. Many were unaware of the existence of the list, while others knew about it but did not know how or when to add their names. For example, our attorneys learned that people could sign-up between 7 and 10 am, but that there might also be an afternoon time slot. Some families did try to sign up during these times but were not able to do so. Our attorneys ultimately learned that the "list" was not part of a formal, US government process but was managed by refugees at the shelter trying to maintain order. Without cell phones, many who were able to put their names on the list had no way of knowing if and when their numbers were called.

Our attorneys also learned that unaccompanied minors were no longer being allowed to walk over the bridge to the US to seek refuge. When volunteer attorneys tried to accompany the children, Mexican officials apprehended two of them and ultimately put them in a shelter. The volunteers tried to intervene but were threatened with arrest because they were unrelated to the children whom they were transporting.

III. Survivors of gender-based violence who must wait in Mexico for their turn to apply for asylum in the US face immediate threats to their safety and delayed access to counsel and critical mental health services.

The lack of an organized process for seeking asylum at POEs is posing great danger for survivors of gender-based violence whose traffickers and abusers can more easily locate and continue to threaten them in Mexico. Women and children sleeping outside or staying at shelters are also particularly vulnerable to sexual violence, kidnapping, and other threats unrelated to prior persecution.

Beatrice*, a woman whom a Tahirih attorney counseled in Tijuana, fled Central America after suffering years of domestic abuse including regular beatings and rapes. Beatrice's husband became increasingly violent toward both her and their children over time. Beatrice fled to Tijuana, found a shelter, and applied for humanitarian asylum. After several weeks, however, she realized that she and her children were no longer safe in Mexico either. Her husband's relative, also from their country, managed to find them in Tijuana and violently attack them.

Many women whom our attorneys met with at the Benito Juarez shelter expressed that they felt unsafe there and wanted tents for privacy. The shelter was an open-air sports complex accommodating roughly 5000 people, with very little security. Tahirih's attorneys learned that the women and children at the shelter were showering out in the open and being subjected to unwanted touching from others. There were not enough beds for everyone so some were sleeping outside the shelter as well.^{vii}

Women and girls face an alarming threat of sexual violence in Mexico while en route to the US to seek asylum after fleeing persecution at home. Below is a very small sample of Tahirih's clients' stories:

- A 20 year old Honduran woman seeking asylum in the US was raped in Mexico after fleeing her country with her two young sons, ages 2 and 4.
- A 19 year old Salvadoran asylum seeker traveling with her younger brother was kidnapped in Mexico by the Gulf Cartel en route to the US, and was sexually assaulted by one of her kidnappers.
- A 16 year old Honduran girl was raped and sex trafficked in Mexico. She has a viable asylum claim from Honduras but is currently applying for a T visa.

- A 17 year old Honduran girl, a 16 year old Guatemalan girl, and a 15 year old Guatemalan girl, who all qualified for asylum but secured lawful status as Special Immigrant Juveniles, were raped in Mexico after fleeing their home countries.

Survivors of gender-based violence are also in dire need of trauma-informed mental health services, as well as access to counsel. Waiting weeks or months in Mexico without such access prolongs the healing process for both survivors and their children, and delays their ability to make informed decisions about their legal options and next steps.

IV. Permitting those who cross into the US between POEs to apply for withholding of removal and relief under the Convention Against Torture (CAT) is inadequate to ensure their and their families' full protection from harm.

Permitting refugees who enter the US between POEs to continue to apply for other forms of humanitarian relief as required by law^{viii} still puts them at grave risk of return to persecution. Withholding of Removal and relief under the Convention Against Torture have stricter legal standards and are therefore more difficult to prove. Those who would otherwise be granted asylum, but under the Rule will be denied, will remain in danger if they cannot meet the higher burden of proof for withholding of removal. And, asylum seekers are often only eligible for withholding of removal and barred from asylum due to the circumstances of the persecution they are fleeing. Furthermore, asylum confers applicants with the ability to include dependents in their applications, while withholding of removal requires each individual to present his or her own claim. The result will be re-traumatization of children forced to recount sensitive information to government officials, or, upon denial of one's claim, likely separation from a parent. Withholding of removal renders applicants subject to deportation at any time with no ability to ultimately become a US citizen. Survivors need stability in order to fully heal from trauma.

One of Tahirih's clients, Maria* from Guatemala, was not eligible for asylum because her abuser forced her to travel to the US and she was ordered removed in absentia. He became abusive after she had her first child, striking her with a belt, kicking her, and hitting her in the head. He forced Maria to return to Guatemala by threatening to never let her see her children again if she didn't. After returning, the abuse continued, and Maria tried to seek help unsuccessfully from the police. She fled to the US and was ultimately granted withholding of removal. If Maria had been granted asylum, she would have been able to include her children as dependents on her application. Instead, she has been separated from her children since 2014 through no fault of her own.

Another client, Anna* from Honduras, was granted withholding of removal instead of asylum even though she had a meritorious asylum claim. When she was 15, her aunt sold her to a man 25 years older. He treated her like a prisoner, abusing her physically and sexually for 10 years, which resulted in two forced pregnancies. Anna's captor was arrested, but he was able to get the charges against him dismissed. He threatened to kill Anna if she ever reported him again. She finally escaped but when she arrived at the POE she was never asked by CBP if she wanted to apply for asylum as required by law. Anna was given an expedited removal order, went into hiding for several months, and fled again. Unfortunately, through no fault of her own, Anna was no longer eligible for asylum.

She met the higher legal threshold for withholding of removal and her case was granted. Anna has also been separated from her two children since 2014.

V. Conclusion

For the reasons described above, we urge DHS and EOIR to promptly withdraw this inhumane, unjust, and unnecessary Rule. US immigration policies should not penalize or threaten the well-being of survivors of violence in urgent need of refuge, due to circumstances beyond their control. Our policies should instead seek to maximize the safety of survivors throughout the asylum process. The Rule undermines the will of Congress, as it contravenes existing laws that recognize the perilous reality refugees endure as they flee in desperation for their lives.

We look forward to your detailed feedback on these comments, and please contact me at irenas@tahirih.org or 571-282-6180 for additional information.

Respectfully,



Irena Sullivan
Senior Immigration Policy Counsel

*Pseudonym

ⁱ That the Rule violates the INA was recently affirmed by the Ninth Circuit Court of Appeals in *East Bay Sanctuary Covenant*, which issued a Temporary Restraining Order against implementation of the Rule.

ⁱⁱ See Section 208(a)(1) of the Immigration & Nationality Act.

ⁱⁱⁱ <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3033.pdf>

^{iv} It is also noteworthy that with regard to unaccompanied minors, the Rule further violates the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), risking the re-traumatization of unaccompanied children by forcing them to present their cases in an adversarial setting before the Immigration Judge instead of before asylum officers.

^v See <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>; <https://news.yahoo.com/take-number-migrants-blocked-border-wait-turn-apply-asylum-210835939.html>; <https://medium.com/aclu/trump-administration-is-illegally-turning-away-asylum-seekers-1329924e3c8a>; <https://theintercept.com/2018/06/16/immigration-border-asylum-central-america/>.

^{vi} See <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> at 7.

^{vii} The generally deplorable, life-threatening conditions our attorneys observed at the Benito Juarez shelter are noteworthy. There was significant overcrowding with not enough beds or water and no protection from the rain. Raw sewage overflowed from temporary toilets and mixed with rising floodwaters where families, some with infants, were sheltered. Outside, refugees were in apparent need of clean clothing, food, fresh water, diapers, formula, and medical care. All were in a state of exhaustion, disorientation and distress. Parents were cradling hungry, weeping children with persistent coughs and bloated stomachs. Some had tents, but others set up informal sleeping spaces in the open air on small mats with thin blankets. Many of the children were merely wearing diapers and T-shirts.

^{viii} See INA § 241(b)(3); 8 C.F.R. §§ 208.16–208.18.