



July 15, 2020

Submitted via www.regulations.gov

Lauren Alder Reid
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5107 Leesburg Pike, Suite 1800
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Re: EOIR Docket No. 18-0002, RIN 1125-AA94, Comments in Response to Proposed Rulemaking: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review

Dear Ms. Reid:

We write on behalf of the Women's Law Project in response to the Department of Justice and the Department of Homeland Security's (collectively, the Departments) Notice of Proposed Rulemaking.¹ We strongly oppose the proposed changes regarding asylum. The current asylum regulatory framework is inherently unjust and problematic; however, the proposed rule would make matters worse by eroding existing protections for the most vulnerable asylum seekers, specifically those fleeing gender-based violence in their country of citizenship.² The harm caused by the proposed changes to asylum would fall heaviest among individuals fleeing domestic and sexual violence, those who have endured female genital mutilation, women with children, and LGBTQ+ and gender-nonconforming people. As such, we submit the following information for your consideration.

¹ See Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 36,264 (proposed June 15, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-06-15/pdf/2020-12575.pdf>.

² The National Immigrant Justice Center agrees with this assertion, on the grounds that the proposed rule "would ensure that no women, LGBTQ individuals, or gang violence survivors can win asylum. The law dramatically expands findings of fraud or frivolous applications, short-circuits due process, and builds the pathway to rushed fear and torture screenings." National Immigrant Justice Center, *A Timeline Of The Trump Administration's Efforts To End Asylum: June 2020*, <https://immigrantjustice.org/issues/asylum-seekers-refugees>.

The Women’s Law Project (WLP) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP is dedicated to creating a more just and equitable society by advancing the rights and status of all women and LGBTQ+ people through high impact litigation, advocacy, and education. Throughout its history, the WLP has played a leading role in the struggle for equality and to eliminate discrimination against women in Pennsylvania and beyond. WLP has also done significant work to protect LGBTQ+ identifying individuals from various forms of discrimination. WLP believes that all persons, regardless of their gender, race, immigration status, or economic situation, should have access to the resources and support they need to ensure their health and wellbeing.

The proposed rule is a radical departure from current policy that would effectively end the human right to seek asylum, especially for many women and LGBTQ+ individuals.

The fundamental right to seek asylum was internationally recognized under the Universal Declaration of Human Rights in 1948.³ Under U.S. law, an individual seeking safety in the U.S. or at its borders must overcome an onerous process to prove they satisfy the definition of refugee in order to qualify for asylum; specifically, asylum seekers must demonstrate they have a credible fear of persecution or torture in their home countries.⁴ In the U.S., asylum is only available to individuals who fear persecution that meets one of five, narrow grounds: persecution based on 1) race; 2) religion; 3) nationality; 3) membership in a particular social group; 5) or political opinion.⁵ If an individual’s fear of persecution is among one of the protected grounds, they can avail themselves to judicial review of their claims by an immigration judge under the Immigration and Nationality Act’s § 240 proceedings.⁶ We strongly oppose the proposed rule because it would prevent individuals fleeing gender-based violence and oppression from obtaining protection under our current immigration laws.

³ See U.N., Universal Declaration of Human Rights, Article 14 (1948), <https://www.un.org/en/universal-declaration-human-rights/>.

⁴ Fear screenings for noncitizens currently subject to expedited removal involve considering “whether there is a *significant possibility* that the [noncitizen] can establish, in a hearing on the merits, eligibility for asylum, statutory withholding of removal, or withholding or deferral of removal under Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”).” Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 36,264, 36,266 (proposed June 15, 2020). Citing 8 C.F.R. § 208.30(f), 235.6(a)(1)(ii), 1235.6(1)(i). In addition, under the current regulations, screening for relief under CAT involves considering “whether the [noncitizen] can establish that there is a significant possibility that he or she could establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” *Id.*, citing 8 C.F.R. § 208.16(c), 208.30(e)(3), 1208.16(c).

⁵ See 8 C.F.R. § 208.1(b), 208.30(e)(2), 1208.16(b). (stating that screenings for statutory withholding of removal relief currently involves considering “whether there is a *significant possibility* that the [noncitizen] can establish in a hearing that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion, if removed to the proposed country of removal.”).

⁶ See Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 36,264, 36,266 (proposed June 15, 2020) (citing 8 C.F.R. § 208.30(f), 235.6(a)(1)(ii), 1235.6(1)(i)); *see also* Immigration and Nationality Act, 8 U.S.C. § 1229a (2020).

I. The proposed rule would deny survivors of gender-based violence equal protection from persecution.

Roughly half of refugees in the U.S. are women.⁷ The proposed rule would shut the door on a large share of asylum seekers by explicitly prohibiting claims of persecution on account of gender.⁸ This is a radical departure from the long-standing recognition that victims of gender-based violence are entitled to protection from persecution under membership in a particular social group claims. Indeed, as recently as 2017, in a case captioned *Matter of A-R-C-G-*, the Board of Immigration Appeals (B.I.A.) recognized that gender satisfies the criteria for a particular social group (PSG).⁹ In 2018, former Attorney General Jeff Sessions certified *Matter of A-B-* to himself, which allowed him to overrule the precedential *Matter of A-R-C-G-*.¹⁰ The 2018 opinion reversed the underlying case on procedural grounds, but it did not go as far as to hold that gender could never form a PSG. Hence, longstanding legal precedent interpreting current regulations establishes that gender is a cognizable group under the PSG analysis.

If implemented, the proposed rule would deny protection to women and girls fleeing domestic violence, rape, female genital mutilation, and childhood marriage. Indeed, women face exceedingly high rates of gender-based violence around the world.

- Approximately 1 in 3 (35%) women worldwide have experienced physical and/or sexual violence.¹¹
- About 200 million women have experienced female genital mutilation.¹²
- Women and girls account for 72% of all human trafficking victims globally, the large majority of whom are trafficked for the purpose of sexual exploitation.¹³
- Around 650 million women and girls worldwide were married before the age of 18.¹⁴

Refugees in Pennsylvania arrive from countries that have struggled to eradicate gender-based violence and to protect their most vulnerable populations: women, children, and LGBTQ+ individuals.¹⁵

⁷ See Nadwa Mossaad, *Refugees and Asylees: 2018*, Department of Homeland Security Office of Immigration Statistics, 6 (Oct. 2019), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf.

⁸ See Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 36,264, 36,292 (proposed June 15, 2020).

⁹ Motion for Leave to File Brief of Amicus Curiae at 5, *Matter of S-K-E-R- et al.*, No. 18-60665, 2019, at 5 (5th Cir. Apr. 8, 2019)(stating that the B.I.A. has held that “Honduran women in domestic relationships unable to leave or Honduran women regarded as property who are unable to leave a domestic relationship” are cognizable social groups.)(citing *Matter of A-R-C-G-*, 26 I&N Dec. 388 (B.I.A. 2014) at 388.)

¹⁰ See *Matter of A-B-*, 27 I&N Dec. 316 at 334-36 (A.G. 2018).

¹¹ See *Facts and figures: Ending violence against women*, UN Women,

<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>

¹² See *Gender-Based Violence (Violence Against Women and Girls)*, The World Bank (Sept. 25, 2019), <https://www.worldbank.org/en/topic/socialdevelopment/brief/violence-against-women-and-girls>

¹³ See *id.*

¹⁴ See *id.*

¹⁵ The Pennsylvania Department of Human Services collects data on the countries of origin for refugees arriving to the Commonwealth. Between October 2019 and April 2020, 112 came from Afghanistan, 78 came from Ukraine, and 60 came from the Democratic Republic of the Congo (DRC). DHS

Across the world, women are persecuted for the basic fact that they are women. The proposed changes to foreclose asylum claims based on gender-based persecution would not magically erase its pervasive existence in the world – it just prevents women from receiving protection. Violence targeted *at* women, *because* they are women, is not viewed in the same way as other forms of persecution. This is because violence against women may be viewed as a societal norm and thus is deemed a “personal” crime. However, this persistent violence is due to the social, economic, and political status of being a woman. The disparate handling of gender-based persecution “lies in the international community's willingness to tolerate sexual abuse against women.”¹⁶ Denying asylum to people seeking protection in the U.S. because they are fleeing gender-based persecution is unjust and discriminatory.

Even further, the United States would be breaking with international consensus if it removed gender-based persecution as a valid ground for asylum. The United Nations High Commissioner for Refugees (UNHCR) has recognized gender as a form of persecution. Though gender is not specifically included in the definition of refugee, “it is widely accepted that [gender] can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims.”¹⁷ Congressional intent in adopting the Refugee Act¹⁸ was “to bring the United States’ domestic laws in line with the [United Nations Protocol Relating to the Status of Refugees].”¹⁹

In the same way that eliminating gender explicitly will exclude women who have been persecuted because of their gender, the elimination of gender also creates the possibility that

Downloadable Arrival Statistics, <https://www.dhs.gov/refugeesinpa/Pages/Facts.aspx> (follow hyperlink, then click “Oct. 2019-Apr. 2020” under “Downloadable Arrival Statistics” option). *See generally* U.N. Assistance Mission in Afghanistan (2018), https://unama.unmissions.org/sites/default/files/unama_ohchr_evaw_report_2018_injustice_and_impunity_29_may_2018.pdf (stating that the murder of women is the second most prevalent form of violence in Afghanistan); *OSCE-led survey on violence against women: Ukraine*, Organization for Security and Cooperation in Europe, iii (2019), https://www.osce.org/files/f/documents/1/3/440312_0.pdf (stating that sixty-seven percent of Ukrainian women report having experienced “psychological, physical, or sexual violence at the hands of a partner or non-partner since the age of 15.”); Nina Wilen, *War-torn Congo has been called ‘the rape capital of the world.’ Here is how fighters think about sexual violence.*, WASHINGTON POST (Aug. 31, 2017), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/08/28/what-do-rebels-think-about-sexual-violence-in-congo-we-asked-them/> (stating that the DRC has been called “the rape capital of the world.”); *see also* Malokele Nanivazo, *Sexual Violence in the Democratic Republic of the Congo*, U.N. University (May 24, 2012), <https://unu.edu/publications/articles/sexual-violence-in-the-democratic-republic-of-the-congo.html>; Nash Mir Center, *Old problems, new prospects. LGBT situation in Ukraine in 2019* (2019), <https://gay.org.ua/publications/Situation-of-LGBT-in-Ukraine-2019-ENG.pdf> (providing a landscape analysis of LGBT human rights situation in Ukraine); *Afghanistan*, <https://www.humandignitytrust.org/country-profile/afghanistan/> (last visited July 14, 2020) (referencing the penal code regarding LGBTQ+ “crimes” in Afghanistan).

¹⁶ Binaifer Nowrojee et al., *Shattered Lives: Sexual Violence During the Rwandan Genocide and Its Aftermath*, 28, Human Rights Watch (1996).

¹⁷ U.N. Refugee Agency, *GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, n.6 at 3 (2002), <https://www.unhcr.org/3d58ddef4.pdf>.

¹⁸ *See* Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).

¹⁹ *Grace v. Whitaker*, 344 F. Supp. 3d 96, 106 (D.D.C. 2018).

adjudicators will contort claims to exclude LGBTQ+ individuals from asylum protections. The data regarding the persecution of LGBTQ+ individuals in these countries—and indeed globally—is almost wholly unavailable due to underreporting.

Status as a persecuted LGBTQ+ individual has long been recognized as a cognizable ground for asylum, with claims relating to sexual orientation most frequently considered membership in a particular social group.²⁰ Sending asylees back to countries where they must conceal their sexual orientation and attempt to mute such an immutable characteristic, one that is so integral to human dignity, controverts the essence of membership in a PSG as one of the protected grounds in the 1951 Convention Relating to the Status of Refugees.²¹

Further, even in those cases wherein an LGBTQ+ person does not have their case understood as one based upon a gender nexus—and therefore categorically eliminated from consideration under the proposed rules—they will already have their own unique barriers to overcome. In Pennsylvania, many migrants come from countries where their sexual and gender-nonconforming identities must be hidden for fear of either state-sanctioned death, or culturally acceptable murders.²² Because of this, undertaking an honest interview with an adjudicator can be trying. A poor interview experience, among other things, will bar an asylee from their fears being considered “credible.” Many LGBTQ+ asylum seekers “do not feel safe to narrate their experiences truthfully or fully during their refugee status determination.”²³ LGBTQ+ refugees’ experiences “have taught them that they need to hide to survive. Speaking openly with strangers about their lives can feel shameful and dangerous.”²⁴

These insights from the countries of origin of Pennsylvania’s migrant community illustrate not only why the exclusion of gender as a ground for persecution is so dangerous, but how difficult it is for LGBTQ+ migrants to break down years of ingrained behavior in order to give an interview that an adjudicator will deem credible.

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

The proposed rules would reject meritorious asylum claims of victims of domestic and sexual violence for failing to report to legal authorities in their country of citizenship. Specifically, amendments to Part 208 – Procedures for Asylum and Withholding of Removal, pertaining to the particular social groups which may meritoriously claim a fear of persecution—stipulates that

²⁰ See *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822–23 (B.I.A. 1990). The opinion was accepted as precedent in all future proceedings by Att’y Gen. Order No. 1895-94 (June 19, 1994); see also, *Karouni v. Gonzales*, 399 F.3d 1163, 1172 (9th Cir. 2005) (holding “all alien homosexuals” as a cognizable PSG).

²¹ See U.N. Refugee Agency, *UNCHR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, United Nations High Commissioner for Refugees 15 (2008), <https://www.refworld.org/docid/48abd5660.html>.

²² See *supra* n.16; see also *supra* n. 15 (Afghanistan).

²³ Organization for Refugees, Asylum, and Migration, *Blind Alleys: The Unseen struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Refugees in Mexico, Uganda and South Africa, Part I: Guidance for NGOs, Governments, UNHCR & Program Funders*, (February 2013), https://oramrefugee.org/wp-content/uploads/2019/12/20130226-oram_ba_southafrica.pdf

²⁴ *Id.*

claims will not be “favorably adjudicated” on account of a PSG consisting of or being defined by “interpersonal disputes that governmental authorities were unaware of or uninvolved in,” among other enumerated conditions.²⁵ If implemented, this rule would unfairly exclude survivors of domestic assault and sexual violence who often do not report for fear of escalating tensions between themselves and their abusers and/or bias and judgement from authorities, among other reasons. Domestic violence is often perpetrated by private actors within abusive personal relationships, but that does not lessen its impact on the victim and its omnipresence around the world.

Further, the proposed rule fails to consider the lived realities of gender-based violence. It is widely known that domestic violence often goes unreported to legal authorities.²⁶ Many survivors have credible reasons to believe that local authorities will ignore their complaints or fail to protect them.²⁷ Beyond even this, one in four countries have no laws to specifically protect women from domestic violence, and thus they are unable to seek legal protection from their abusers in their country of origin.²⁸

This echoes a time when, prior to the 1984 passage of the Family Violence Prevention and Services Act²⁹ and the 1994 Violence Against Women Act,³⁰ domestic violence was treated as a “private matter,” leaving victims to suffer in silence behind closed doors.³¹ Today, there are significant initiatives in the U.S. to remove implicit biases against battered persons,³² though

²⁵ Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 36,264, 36,291 (proposed June 15, 2020).

²⁶ See Phumzile Mlambo-Ngcuka, *Violence Against Women and Girls: The Shadow Pandemic*. UN WOMEN (Apr. 6, 2020) (“Wide under-reporting of domestic and other forms of violence has previously made response and data gathering a challenge, with less than 40 per cent of women who experience violence seeking help of any sort or reporting the crime. Less than 10 per cent of those women seeking help go to the police.”), <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>.

²⁷ In Ukraine, a report found that only 7% of women who experience violence from their current partner report it to police. A survey found that 39% of criminal justice practitioners view domestic violence as a “private affair” and 60% of these practitioners “believe that victims can be blamed for provoking the violence against themselves.” See Joelle Vachter, *Violence against women will remain widespread if Ukrainian law enforcement bodies do not make it a priority*, EUAM UKRAINE (Nov. 29, 2017), <https://www.euam-ukraine.eu/news/opinion/violence-against-women-will-remain-widespread-if-ukrainian-law-enforcement-bodies-do-not-make-it-a-priority/>.

²⁸ See *id.*

²⁹ See 42 U.S.C. § 10401-10421 (2010).

³⁰ See 2 U.S.C. § 13701-14040.

³¹ See Jeannie Suk, *At Home in The Law: How the Domestic Violence Revolution is Transforming Privacy* 65, Yale University Press (2009).

³² See generally Lynn Rosenthal, Ending Domestic Violence & Sexual Assault in the United States, White House Blog (MARCH 20, 2014 AT 1:13 PM), <https://obamawhitehouse.archives.gov/blog/2014/03/20/ending-domestic-violence-and-sexual-assault-united-states>; The National Coalition Against Domestic Violence, <https://ncadv.org/>; No More, <https://nomore.org/>.

underreporting is a continuing issue.³³ It is thus nonsensical and counterproductive to change current U.S. asylum policy in a manner that discounts the systematic and pervasive issue of domestic violence, as the proposed rule seeks to do.

Moreover, while some countries have taken steps to more effectively respond to gender-based violence, these efforts are often slow and do not immediately eradicate the violence experienced by women. For example, the Afghani government has made efforts to criminalize violence against women, such as: murder, beating, mutilation, and child marriage. These efforts have included passing the Elimination of Violence Against Women (EVAW) law and the establishment of EVAW commissions, courts, and prosecutors.³⁴ However, the violence did not subside. A 2018 report by the UN Assistance Mission in Afghanistan (UNAMA) demonstrated that police often failed to take action and forward cases of murder – and “honor” killings – to prosecutors.³⁵ Further, survivors of gender-based violence have consistently reported being pressured or coerced by family members, perpetrators, communities, and EVAW law institutions to withdraw complaints. The “pressure” to withdraw complaints includes limiting the survivors’ access to their children and being ostracized by their families or communities.³⁶ Survivors cannot be blamed for failing to alert authorities under such conditions.

The global trend of drastically underreported incidents of sexual and domestic violence may be even more true within the LGBTQ+ community. There is a significant underreporting of acts of violence against LGBTQ+ persons.³⁷ LGBTQ+ persons and their family members report numerous barriers to fair treatment, such as: poor-conduct by police officers when attempting to report; fear of disclosing sexual orientation or gender identity; and fear of retaliation and re-victimization (either impacting them, their family, or witnesses).³⁸ As a result of these numerous barriers, LGBTQ+ persons may opt not to report domestic and sexual violence at even greater rates than their heterosexual counterparts, so what little data exists is likely not reflective of reality.

The accounts of individuals fleeing violence based on being LGBTQ+ further illustrates the dire need to maintain protections, not eliminate them, as the proposed rule seeks to do. Gay Afghani men, forced to live a life of secrecy, may be victims of “honor killings” if their families ever learn of their sexual orientation. One gay man, Rameen, had been targeted by individuals trying to kill him because of his sexual orientation, but fortunately, he lived to tell about it.³⁹ He also

³³ See Martin Huecker et al., *Domestic Violence*, StatPearls Publishing (2020), https://www.ncbi.nlm.nih.gov/books/NBK499891/?report=reader#_NBK499891_pubdet. (stating that many cases go unreported); See also Enrique Gracia, *Unreported cases of domestic violence against women: towards an epidemiology of social silence, tolerance, and inhibition*, J Epidemiol Community Health (2004) <https://jech.bmj.com/content/jech/58/7/536.full.pdf> <https://jech.bmj.com/content/58/7/536> (stating that while 25% of women experience IPV in their lifetimes, only 2.5-15% report having experienced IPV)

³⁴ See *supra* n.19.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See Inter-American Commission on Human Rights, *Violence Against LGBTI Persons*, Organization of American States 71 (2015), <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>.

³⁸ See *id.* at 16.

³⁹ See Associated Press, *Fear, Secrecy and Danger a Way of Life for Afghan Gays*, NBC News (Nov. 6, 2016), <https://www.nbcnews.com/feature/nbc-out/fear-secrecy-danger-way-life-afghan-gays-n678466>.

shared the story of his friend, Zabi, who was stabbed to death by family members after coming out as gay.⁴⁰ Tragically, family members perpetrate a high rate of violence towards persons who do not conform to gender roles and gender expressions, including against those who oppose arranged marriages on grounds of their sexuality.⁴¹ In the DRC, lesbian and bisexual women and trans men are systematically targeted for a form of sexual violence called “corrective rape,” with the purpose of punishing them for their gender expression and sexuality.⁴² Private (and public actors), perceive trans men as lesbians who can be “corrected” via the sexual intrusion.⁴³

Allowing domestic violence survivors to seek asylum is not limited to its moral imperative. The United Nations has advocated that “domestic violence ... may constitute persecution for reason of membership in a particular social group” under the principles of the 1951 Refugee Convention, 1967 Protocol on the Status of Refugees, and the 1980 Refugee Act.⁴⁴ Because the proposed rule punishes domestic violence survivors for failing to contact authorities, an act that very well may exacerbate the violence they experience, it is unacceptable and should not be implemented.

III. Supporting equal rights for women and LGBTQ people and advocating for social norm changes can make individuals vulnerable to and targets of persecution, and therefore should be eligible for protection.

Political activists will also be harmed by the proposed changes. The Departments seek to narrow the definition of political opinion, which “will not favorably adjudicate claims of persecution on account of a political opinion defined solely by generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations absent expressive behavior.”⁴⁵ Under current regulations, “political opinion” interpreted to include not only causes against a state or a political entity, but also movements against a culture.⁴⁶ The proposed rule would amend the current definition of “political opinion” in a manner that would deny

⁴⁰ *Id.*

⁴¹ See Sida, *The Rights of LGBTI Persons in Afghanistan*, 1 (Nov. 2014)

<https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>

⁴² See MOPREDS et al., *Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC)*, 4, U.N. Human Rights Committee (Oct. 2017),

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/COD/INT_CCPR_CSS_COD_29078_E.pdf.

⁴³ See *id.*

⁴⁴ UNHCR filed an amicus brief in *Matter of A-R-C-G-*. see generally, Brief of Amicus Curiae the United Nations High Commissioner for Refugees in Support of Respondents at 388, *Matter of A-R-C-G-*, 26 I&N Dec. 388 (B.I.A. 2014).

⁴⁵ Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 36,264, 36,280 (proposed June 15, 2020).

⁴⁶ See e.g., *Hernandez-Chacon v. Barr*, 948 F.3d 94, 102–03 (2d Cir. 2020) (refusing to succumb to the physical advances of gang members is analogous to a political opinion of standing opposed to a culture of male-domination).

protections to feminist and LGBTQ+ activists who fight for equality and become targets of retaliatory violence because of their activism.

Under current regulations, activists with convictions against cultural phenomena can seek asylum if their political opinion becomes a source of persecution. The proposed rule would eliminate this form of protection by narrowing the definition of “political opinion” to mean beliefs specifically related “to political control of a state or a unit thereof.”⁴⁷ If implemented, the proposed rule would result in eliminating protections for advocates speaking out for women’s and LGBTQ+ rights as a political opinion, and thus bar asylum on these grounds. For individuals doing human rights work in oppressive countries, the inability to organize without asylum as a safety net might mean a permanent foreclosure to democracy.

The proposed changes to the definition of persecution based on “political opinion” will greatly harm women, girls, and LGBTQ+ activists fleeing persecution due to their beliefs. Notably, in 2012 the Taliban shot human rights activist Malala Yousafzai due to her advocacy for women’s right to education in Pakistan.⁴⁸ Malala and her father were determined to give women and girls in Pakistan access to free quality education and for those beliefs, Malala was shot three times.⁴⁹ Under the proposed rule, Malala would not be eligible to seek asylum in the U.S. because, in the words of the proposed regulation, her actions are defined by “disapproval of, disagreement with, or opposition to criminal terrorist, gang, guerilla, or other non-state organizations.” This disapproval, disagreement, and opposition stemmed from the Taliban blocking girls from attending school.⁵⁰ In the Democratic Republic of Congo (DRC), women risk their lives and bodily safety to speak out against gender inequality. People who challenge the norm risk harassment, violence, jail time, sexual violence, and death. Rape is a punishment reserved for female activists in particular.⁵¹

To ensure that political activists can freely and safely speak out against inequalities, the asylum system must continue to protect political activists.

Conclusion

The proposed rule is extremely dense, technical, confusing, conflicts with long-standing regulations, and unfairly changes current U.S. asylum policies and process. On all levels, the proposed rule undermines the ability of individuals fleeing gender-based violence and oppression to obtain protection under our current immigration laws. Should the discriminatory proposed rules be approved and enforced, the lives and futures of asylum seekers would be threatened irreversibly for generations to come. For the forgoing reasons, we urge the Departments to immediately withdraw the entirety of the proposed rule.

⁴⁷ Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. at 36,280 (proposed June 15, 2020).

⁴⁸ See *Malala Yousafzai – Biographical*, The Nobel Prize, <https://www.nobelprize.org/prizes/peace/2014/yousafzai/biographical/>.

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See Kate Bolongaro, *Congo’s Female Tech Activists Risk Violence, Jail, and Rape to Speak Out*, Vice (Sept. 23, 2016), https://www.vice.com/en_us/article/bmv5xz/congos-female-tech-activists-risk-violence-jail-and-rape-to-speak-out.

Respectfully,

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