

## JUSTICE NEWS

### Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

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## Department of Justice and Department of Homeland Security to Publish Joint Notice of Proposed Rulemaking to Restrict Certain Criminal Aliens' Eligibility for Asylum

The Department of Justice and the Department of Homeland Security (collectively, "the Departments") today issued a notice of proposed rulemaking (NPRM) that would amend their respective regulations in order to prevent certain categories of criminal aliens from obtaining asylum in the United States. Upon finalization of the rulemaking process, the Departments will be able to devote more resources to the adjudication of asylum cases filed by non-criminal aliens.

Asylum is a discretionary immigration benefit that generally can be sought by eligible aliens who are physically present or arriving in the United States, irrespective of their status, as provided in section 208 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1158. However, in the INA, Congress barred certain categories of aliens from receiving asylum. In addition to the statutory bars, Congress delegated to the Attorney General and the Secretary of Homeland Security the authority to establish by regulation additional bars on asylum eligibility to the extent they are consistent with the asylum statute, as well as to establish "any other conditions or limitations on the consideration of an application for asylum" that are consistent with the INA. Today, the Attorney General and Secretary of Homeland Security are proposing to exercise their regulatory authority to limit eligibility for asylum for aliens who have engaged in specified categories of criminal behavior. The proposed rule will also eliminate a regulation concerning the automatic reconsideration of discretionary denials of asylum applications in limited cases.

The proposed regulation would provide seven additional mandatory bars to eligibility for asylum. The proposed rule would add bars to eligibility for aliens who commit certain offenses in the United States. Those bars would apply to aliens who are convicted of:

- (1) A felony under federal or state law;
- (2) An offense under 8 U.S.C. § 1324(a)(1)(A) or § 1324(a)(1)(2) (Alien Smuggling or Harboring);
- (3) An offense under 8 U.S.C. § 1326 (Illegal Reentry);
- (4) A federal, state, tribal, or local crime involving criminal street gang activity;
- (5) Certain federal, state, tribal, or local offenses concerning the operation of a motor vehicle while under the influence of an intoxicant;
- (6) A federal, state, tribal, or local domestic violence offense, or who are found by an adjudicator to have engaged in acts of battery or extreme cruelty in a domestic context, even if no conviction resulted; and
- (7) Certain misdemeanors under federal or state law for offenses related to false identification; the unlawful receipt of public benefits from a federal, state, tribal, or local entity; or the possession or trafficking of a controlled substance or controlled-substance paraphernalia.

The seven proposed bars would be in addition to the existing mandatory bars in the INA and its implementing regulations, such as those relating to the persecution of others, convictions for particularly serious crimes, commission of serious nonpolitical crimes, security threats, terrorist activity, and firm resettlement in another country.

Under the current statutory and regulatory framework, asylum officers and immigration judges consider the applicability of mandatory bars to asylum in every proceeding involving an alien who has submitted an application for asylum. Although the proposed regulation would expand the mandatory bars to asylum, the proposed regulation does not change the nature or scope of the role of an immigration judge or an asylum officer during proceedings for consideration of asylum applications.

The proposed rule would also remove the provisions at 8 C.F.R. § 208.16(e) and §1208.16(e) regarding reconsideration of discretionary denials of asylum. The removal of the requirement to reconsider a discretionary denial would increase immigration court efficiencies and reduce any cost from the increased adjudication time by no longer requiring a second review of the same application by the same immigration judge.

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