ROUND TABLE SPEAKS OUT AGAINST EXPANDED ASYLUM BARS!

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Lauren Alder Reid, Assistant Director

Office of Policy, Executive Office for Immigration Review

5107 Leesburg Pike, Suite 2616

Falls Church, VA 22041

Maureen Dunn, Chief

Division of Humanitarian Affairs, Office of Policy and Strategy

U.S. Citizenship and Immigration Services

Department of Homeland Security

20 Massachusetts Ave. NW

Washington, DC 20529-2140

**Re**: **EOIR Docket No. 18– 0002**

Dear Ms. Alder Reid and Ms. Dunn,

We are writing as members of the Round Table of Former Immigration Judges to express our strong opposition to the Department of Justice and Department of Homeland Security Joint Notice of Proposed Rulemaking (“proposed rule”) on “Procedures for Asylum and Bars to Asylum Eligibility”.

The Round Table of Former Immigration Judges is a group of former Immigration Judges and Board of Immigration Appeals (BIA) Members who united to file amicus briefs and engage in other advocacy work. The group formed in 2017. In just over two years, the group has grown to more than 40 members, dedicated to the principle of due process for all. Its members have served as amici 37 times in cases before the Supreme Court, various circuit courts, the Attorney General, and the BIA. The Round Table of Former Immigration Judges has also submitted written testimony to Congress and has released numerous press statements and a letter to EOIR’s director. Its individual members regularly participate in teaching, training, and press events.

The Round Table opposes the proposed rule which violates the Immigration and Nationality Act, the United States Constitution, and the country’s international treaty obligations. Each member of the Round Table has adjudicated applications for asylum and is intimately familiar with the asylum adjudication process. Accordingly, the Round Table has the following concerns about the additional asylum bars and limits to immigration judges’, appellate immigration judges’, and asylum officers’ ability to exercise discretion in asylum cases.

The Round Table asserts that immigration judges and asylum officers who have been tasked with adjudicating asylum cases, are in the best position to assess the impact of criminal conduct and convictions on asylum applications. The task of analyzing and reviewing criminal conduct and convictions should not be taken away from the judges and asylum officers through regulation. Asylum seekers are the most vulnerable members of society who are seeking refuge in the United States. Trained judges and asylum officers should have the authority to consider their cases, even where the applicants have criminal convictions. Such authority is designated to the judges and asylum officers by statute.[[1]](#footnote-1)

The agencies justify the expansive limitations on asylum by citing the authority designated to the Attorney General in the statute: “Congress further provided the Attorney General with the authority to establish by regulation ‘any other conditions or limitations on the consideration of an application for asylum,’ so long as those limitations are ‘not inconsistent with this chapter.’ INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B); *see also* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C).” The new bars and limits on discretionary relief set forth in the proposed regulation are not consistent with the statute and are contrary to Congressional intent. They also interfere with the role of immigration judges and asylum officers. We therefore oppose the proposed additional bars to eligibility, the clarification of the effect of criminal convictions, and the removal of regulations regarding reconsideration of discretionary denials of asylum.

**Additional Limitations on Eligibility for Asylum**

The proposed rule intends to bar asylum to individuals convicted of nearly any criminal offense 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.[[2]](#footnote-2)

In the domestic violence context, a conviction would not be required.[[3]](#footnote-3)

The agencies rely on the language in 8 U.S.C. § 1158(b)(2)(B)(ii) to assert that the Attorney General and Secretary of the Department of Homeland Security (DHS) have the authority to classify all felony offenses as particularly serious crimes.[[4]](#footnote-4) However, such a blanket rule is not consistent with 8 U.S.C. § 1158(b)(2)(B)(ii), which states that the Attorney General may designate “offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).” 8 U.S.C. §1158(b)(2)(A)(ii) specifies the bar to asylum is for a particularly serious crime wherein the non-citizen is a danger to the community. Designating all felony convictions under all jurisdictions as bars to asylum is beyond what Congress intended and improperly removes all discretion and legal analysis from immigration judges and asylum officers. Had Congress intended to bar all felony convictions, it would have specified that in the statute.

The agencies suggest that it has become too time intensive, difficult, and inefficient for immigration judges to make determinations about particularly serious crimes and aggravated felonies using the categorical approach required by the United States Supreme Court.[[5]](#footnote-5) However, it is the job of an immigration judge to employ his or her legal skills and analyze cases. Moreover, the statute purposely does not limit the particularly serious crime bar to aggravated felonies. Immigration Judges are in the best position to analyze whether a conviction, if not an aggravated felony, is nevertheless a particularly serious crime that should bar an individual from asylum. Regulating away the immigration judge corps’ ability to exercise discretion does not render the process more efficient,[[6]](#footnote-6) rather, it turns immigration judges into mindless adjudicators. Moreover, the agencies cannot regulate out of existence Supreme Court precedent and international treaty obligations in order to promote efficiency. The Supreme Court has held immigration judges to the categorical and modified categorical analysis when analyzing criminal convictions, as that is what the statute requires.[[7]](#footnote-7)

Furthermore a conviction for a crime does not, without more, make one a present or future danger—which is why the Refugee Convention’s particularly serious crime bar, made part of United States law through 8 U.S.C. § 1158, should only properly apply if both (1) a migrant is convicted of a particularly serious crime and (2) a separate assessment shows that she is a present or future danger.[[8]](#footnote-8) By acceding to the 1967 Protocol Relating to the Status of Refugees,[[9]](#footnote-9) which binds parties to the United Nations Convention Relating to the Status of Refugees,[[10]](#footnote-10) the United States obligated itself to develop and interpret United States refugee law in a manner that complies with the Protocol’s principle of non-refoulement (the commitment not to return refugees to a country where they will face persecution on protected grounds), even where potential refugees have allegedly committed criminal offenses. As noted above, immigration judges and asylum officers already have over-broad authority to deny asylum based on allegations of criminal activity, which vastly exceeds the categories for exclusion and expulsion set out in the Convention. Instead of working towards greater congruence with the terms of the Convention, the Proposed Rules carve out categorical bars from protection that violate the language and spirit of the treaty.

Moreover, the Supreme Court in *INS v. Cardoza-Fonseca* found, “[i]f one thing is clear from the legislative history of the new definition of "refugee," and indeed the entire 1980 Act, it is that one of Congress' primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees.”[[11]](#footnote-11) The proposed regulations do the exact opposite.

The suggestion that the extensive bar is intended to increase efficiencies is belied by the agencies’ instructions that judges and asylum officers use a “reason to believe” standard to determine whether an offense is in furtherance of a criminal street gang and to “assess all reliable evidence in order to determine whether [a] conviction amounts to a domestic violence offense.”[[12]](#footnote-12) Further, in the domestic violence context, the proposed regulation would require the judges and asylum officers to consider whether non-adjudicated *conduct* “amounts to a covered act of battery or extreme cruelty.”[[13]](#footnote-13)

The proposed regulations bar asylum to those convicted of a crime involving a criminal street gang, regardless of whether the conviction is a felony or misdemeanor.[[14]](#footnote-14) Moreover, this proposed bar does not even require that the statute of conviction include involvement in a street gang as an element. Rather, the proposal is that the judges and asylum officers use a “reason to believe” standard to make the determination.[[15]](#footnote-15) Federal courts have set forth the way in which to perform the categorical approach, whereas, the “reason to believe” standard is arbitrary. Such an approach in the street gang context will lead to the unpredictable results the agencies suggest they are trying to avoid in other sections of the proposed regulations.

Further, the agencies propose to bar asylum under 8 U.S.C. § 1158(b)(2)(C) to “aliens who engaged in acts of battery and extreme cruelty in a domestic context in the United States, regardless of whether such conduct resulted in a criminal conviction.”[[16]](#footnote-16) As discussed above, these sweeping bars to asylum eliminate the discretionary authority given to immigration judges and asylum officers. They also require an immigration judge to hold the equivalent of a criminal trial to determine if such activity has been “engaged in.”

Requiring immigration judges to make complex determinations regarding the nature and scope of a particular conviction or, in the case of the domestic violence bar, conduct, will lead to massive judicial inefficiencies and “mini-trials” within the asylum adjudication process. The scope of the “reliable evidence” available to immigration judges in asylum cases is potentially limitless; advocates on both sides would be obligated to present endless documents and testimony to prove their cases. This would put an unsustainable burden on respondents, their counsel, and attorneys for DHS. Asylum merits hearings, which tend to be three hours at most under current case completion requirements[[17]](#footnote-17), would provide insufficient time for either side to fully present their cases and would make it impossible for immigration judges to complete cases under the current time constraints.

As the immigration courts contend with backlogs that now exceed one million cases, tasking judges and asylum officers with a highly nuanced, resource-intensive assessment of the connection of a conviction to gang activity and/or the domestic nature of alleged criminal conduct will prolong asylum cases and lead to disparate results that will give rise to an increase in appeals. The proposed regulations repeatedly cite increased efficiency as justification for many of the proposed changes. Yet requiring immigration judges to engage in mini trials to determine the applicability of categorical criminal bars, rather than relying on adjudications obtained through the criminal legal system, will dramatically decrease efficiency in the asylum adjudication process.

As discussed above, the Supreme Court has “long deemed undesirable” exactly the type of “post hoc investigation into the facts of predicate offenses” proposed by the agencies here.[[18]](#footnote-18) Instead, the federal courts have repeatedly embraced the “categorical approach” to determine the immigration consequence(s) of a criminal offense, wherein the immigration judge relies on the statute of conviction as adjudicated by the criminal court system, without relitigating the nature or circumstances of the offense in immigration court[[19]](#footnote-19). As the Supreme Court has explained, this approach “promotes judicial and administrative efficiency by precluding the relitigation of past convictions in minitrials conducted long after the fact.”[[20]](#footnote-20)

Furthermore, the Departments asks for comments on: (1) what should be considered a sufficient link between an asylum seeker’s underlying conviction and the gang related activity in order to trigger the application of the proposed bar, and (2) any other regulatory approaches to defining the type of gang-related activities that should render individuals ineligible for asylum. The premise of these questions is wrong: a vague “gang related” bar should not be introduced at all. The Immigration and Nationality Act and existing regulations already provide overly broad bars to asylum where criminal behavior by an asylum seeker causes concern by an immigration judge or asylum officer. Adding this additional, superfluous layer of complication risks erroneously excluding bona fide asylum seekers from protection without adding any useful adjudicatory tool to the process.

Suggesting that the proposed regulations are aiming at efficiency while also requiring immigration judges to engage in excessive litigation is contradictory and makes it clear that the agencies are simply trying to eliminate asylum rather than increase efficiencies in adjudication. This does not comport with the statute, constitution, or the United States’ international treaty obligations. Finally, efficiencies will not result, as immigration judges will nevertheless be required to analyze the particularly serious crime bar for the withholding of removal analysis.[[21]](#footnote-21)

In addition to creating new bars to asylum both by designating most crimes as “particularly serious crimes” pursuant to 8 U.S.C. § 1158(b)(2)(B)(ii), the agencies also render most crimes categorically exempt from a positive discretionary adjudication of asylum pursuant to 8 U.S.C. § 1158(b)(2)(C). This effort is unlawful. The agencies’ reliance on 8 U.S.C. § 1158(b)(2)(C) to render all felony convictions a bar to asylum takes away the discretionary authority granted to immigration judges and asylum officers when it comes to assessing the impact of a conviction on asylum eligibility. Immigration judges and asylum officers have the opportunity to review all evidence, including the circumstances of the conviction during asylum interviews and hearings. Such discretionary determinations are consistent with the statute and the intent of asylum, which is to protect the most vulnerable individuals in society from persecution. “The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.”[[22]](#footnote-22)

Setting arbitrary large-scale blanket bars to a discretionary determination is inconsistent with the statute and the United States’ international treaty obligations. The statute provides specific language about criminal bars, persecutor bars, and particularly serious crimes.[[23]](#footnote-23) Had Congress intended to remove the discretionary authority to grant relief to nearly all applicants with criminal convictions, it would have made that clear in the above referenced sections. However, Congress clearly delineated bars to asylum and while it also provided the Attorney General the authority to clarify such bars, it in no way suggested the Attorney General could regulate away legal analysis of the bars or an immigration judge’s or asylum officer’s discretion.[[24]](#footnote-24) The proposed rules add sweeping categories of offenses that automatically remove an applicant from the consideration of discretion—a regulatory proposal that is ultra vires to the plain text of the statute.

The agencies also propose to bar under 8 U.S.C. 1158(b)(2)(B)(ii) and (b)(2)(C) anyone convicted of alien harboring under 8 U.S.C. § 1324(a)(1)(A), (2),[[25]](#footnote-25) illegal reentry under 8 U.S.C. 1326,[[26]](#footnote-26) any convicted of a second or subsequent offense for driving while intoxicated, impaired (DUI), or under the influence or a single such offense that resulted in death or serious bodily injury.[[27]](#footnote-27) The agencies further propose to bar asylum under 8 U.S.C. § 1158(b)(2)(B)(ii) to all individuals convicted for domestic violence and child abuse, regardless of whether the conviction is a misdemeanor or felony.[[28]](#footnote-28) The proposed regulations do not render the adjudication process more efficient, as the language in the domestic violence and DUI bar is vague and requires a case by case assessment of the facts of the case. The proposed regulations serve to eliminate discretion while increasing demands on immigration judges and asylum officers as well as the length and complexity of hearings and interviews.

Moreover, the proposed bar to asylum for multiple offenses for driving under the influence is problematic, particularly for individuals with offenses from states like New Jersey. Unlike the majority of states, New Jersey does not criminalize the offense of driving while intoxicated (DWI). In NJ, DWI is only a traffic offense.[[29]](#footnote-29) Individuals who have been arrested for a DWI have access to certain constitutional protections, such as being entitled to a public defender, and having the burden of proof of beyond a reasonable doubt.[[30]](#footnote-30) However, other constitutional protections are not available, namely the right to trial by jury. This is true regardless of whether the DWI is a first, second, or third offense, and regardless of whether actual jail time may be imposed.[[31]](#footnote-31)

As a practical matter. NJ DWI adjudications are conducted in municipal courts, in which judges, the prosecutors, and the public defenders are all part-time, township-appointed officials. The dockets are often enormous, and, in many cases, defendants do not even seek time to obtain an attorney. They line up to meet with the prosecutor and enter into plea agreements that limit their amount of jail time and/or loss of license. The defendants, with their attorneys if they have one, then appear before the judge and allocute to a brief set of facts and plead guilty; then pay their fines and leave. The prosecutor does not normally even appear in court.

Thus, under the INA, a DWI offense under NJ law does not constitute a crime. In order to be found guilty of a crime, more is needed than just a formal judgment of guilt under a “reasonable doubt” standard, and some punishment was imposed.[[32]](#footnote-32) However, under the proposed regulations, such an offense could nevertheless bar an individual from asylum.

The agencies further propose to bar asylum under 8 U.S.C. § 1158(b)(2)(C) to individuals convicted of an expansive list of misdemeanor convictions, including simple possession of a controlled substance.[[33]](#footnote-33) Including such minor offenses in the list of convictions that lead to a bar to asylum further demonstrate that the agencies are working to eliminate discretion from the adjudicatory process. Furthermore, although Congress assigned to the Attorney General the authority to promulgate regulations further defining the particularly serious crime bar and other limits on asylum, had Congress intended to bar from asylum all applicants with criminal convictions, it would have provided such direction in the statute.[[34]](#footnote-34) The language of the statute shows that Congress intended to distinguish particularly serious crimes and aggravated felonies from other crimes, as it set forth specific language barring applicants with such offenses from asylum.[[35]](#footnote-35) Congress easily could have indicated that all felonies or all criminal convictions constitute particularly serious crimes, but it did not. Accordingly, the bar is in conflict with the statute.

**Clarification on the Effect of Criminal Conviction**

The agencies further propose to increase the burden on asylum applicants to prove that orders vacating convictions or modifying sentences were not entered to avoid immigration consequences or for rehabilitative purposes.[[36]](#footnote-36) They also create a rebuttable presumption against the validity of an order if such order was entered after the initiation of a removal proceeding or if the applicant moved for the order more than one year after the original order of sentencing.[[37]](#footnote-37) Furthermore, “the rule would provide that the alien must establish that the court issuing an order vacating or expunging a conviction or modifying a sentence had jurisdiction and authority to do so.”[[38]](#footnote-38) These new rules would increase, rather than decrease burdens on immigration judges and asylum officers. It would require judges and asylum officers to look beyond a court order. It would also require judges and asylum officers to make jurisdictional findings about state court orders on facially valid orders. It is a long-standing legal principle that courts have jurisdiction to determine their own jurisdiction.[[39]](#footnote-39) If a state court has determined it had jurisdiction to issue an order, it is not the role of the immigration court or any other court to question that finding.

**Removal of Regulations Regarding Reconsideration of Discretionary Denials of Asylum**

“The proposed rule would remove the automatic review of a discretionary denial of an alien's asylum application by removing and reserving paragraph (e) in 8 C.F.R. 208.16 and 1208.16.”[[40]](#footnote-40) The current regulatory section is consistent with the purpose of asylum—to protect the most vulnerable members of society, including family members of those fleeing persecution. To remove it is inconsistent with the purpose of asylum and therefore inconsistent with the statute. The agencies acknowledge that the purpose of the existing regulation is to promote family unity and reunification with spouses and children in third countries.[[41]](#footnote-41) However, the agencies suggest that the automatic reconsideration is unnecessary, as family unity is a discretionary factor that should be considered in the original adjudication.[[42]](#footnote-42) 8 C.F.R. § 208.16(e) and 1208.16(e) provide additional procedural protections to vulnerable refuges who have been found eligible for withholding of removal. While the existing regulations require reconsideration and a weighing of factors, including family reunification, they in no way require the immigration judge or asylum officer to grant asylum upon reconsideration. The proposed regulation provides an extra layer of protection for vulnerable family members and should not be removed.

The agencies again suggest that efficiency is the reason behind eliminating this regulatory section. However, as discussed above, there are multiple sections of this proposed regulation that render adjudications less, not more efficient. The purpose of this proposed section is to further limit discretion and reduce access to asylum.

**Conclusion**

These proposed rules erode access to asylum in violation of Congressional intent, the United States Constitution, and international treaty violations. The Round Table of Immigration Judges therefore urges the Department of Justice and DHS to withdraw, not implement this rule.

Very truly yours,

/s/

Stephen Abrams

Sarah Burr

Teofilo Chapa

Jeffrey Chase

George Chew

Bruce J. Einhorn

Noel Ferris

John Gossart

Paul Grussendorf

Miriam Hayward

Rebecca Jamil
Bill Joyce

Carol King
Elizabeth A. Lamb

Donn Livingston
Peggy McManus

Laura Ramirez

John Richardson

Lory Rosenberg

Susan Roy

Paul Schmidt

Ilyce Shugall

Denise Slavin

Andrea Sloan

Polly Webber

The Round Table of Former Immigration Judges

Many, many thanks to our Round Table colleague Judge Ilyce Shugall, who organized and coordinated our response!

PWS

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1. 8 U.S.C. §§ 1158(b)(1)(A); 1229a [↑](#footnote-ref-1)
2. 84 Fed. Reg. 69645 (December 19, 2019). [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. 84 Fed. Reg. 69645. [↑](#footnote-ref-4)
5. *Id.* citing *Taylor v. United States*, 495 U.S. 575 (1990); *Mathis v. United States*, 136 S. Ct. 2243 (2016); *Descamps v. United States*, 133 S. Ct. 2276 (2013). [↑](#footnote-ref-5)
6. 84 Fed. Reg 69646 [↑](#footnote-ref-6)
7. *Taylor* v. *United States,* 495 U.S. 575 (1990); *Moncrieffe v. Holder*, 569 U.S. 184, 186 (2013); *Mathis* v. *United States,* 136 S. Ct. 2243 (2016); *Descamps* v. *United States,* 133 S. Ct. 2276 (2013) [↑](#footnote-ref-7)
8. See U.N. High Commissioner for Refugees, *Criminal Justice and Immigration Bill: Briefing for the House of Commons at Second Reading* ¶ 11 (July 2007), <http://www.unhcr.org/en-us/576d237f7.pdf> (the Refugee Convention’s particularly serious crime bar only applies if (1) a migrant is convicted of a particularly serious crime and (2) a separate assessment shows she is a “present or future danger.”). [↑](#footnote-ref-8)
9. United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 268. [↑](#footnote-ref-9)
10. Convention Relating to the Statute of Refugees, July 28, 1951, 140 U.N.T.S. 1954 (hereinafter

“Refugee Convention”). [↑](#footnote-ref-10)
11. *INS v. Cardoza-Fonseca*, 480 U. S. 421, 437 (1987) [↑](#footnote-ref-11)
12. 84 Fed. Reg. 69649, 69652 [↑](#footnote-ref-12)
13. 84 Fed. Reg 6952. [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
17. Memorandum, James R. McHenry III, Case Priorities and Immigration Court Performance Measures, January 17, 2018; *see also* <https://www.npr.org/2018/04/03/599158232/justice-department-rolls-out-quotas-for-immigration-judges> (discussing memorandum requiring that Immigration Judges complete 700 cases per year). [↑](#footnote-ref-17)
18. *Moncrieffe v. Holder*, 569 U.S. 184, 186 (2013). [↑](#footnote-ref-18)
19. *See Moncrieffe*, 569 U.S. at 191 (“This categorical approach has a long pedigree in our Nation’s immigration law.”). [↑](#footnote-ref-19)
20. *Moncrieffe*, 569 U.S. at 200-201. [↑](#footnote-ref-20)
21. 8 U.S.C. § 1231(b)(3)(B)(ii) [↑](#footnote-ref-21)
22. 8 U.S.C. §1158(b)(1)(A) (emphasis added) [↑](#footnote-ref-22)
23. 8 U.S.C. § 1158(b)(2)(A), (B) [↑](#footnote-ref-23)
24. 8 U.S.C. § 1158(b)(2)(C) (“The Attorney General may by regulation establish additional limitations and conditions, consistent with this section…”) (emphasis added) [↑](#footnote-ref-24)
25. 84 Fed. Reg. 69647 [↑](#footnote-ref-25)
26. 84 Fed. Reg. 69648 [↑](#footnote-ref-26)
27. 84 Fed. Reg. 69650 [↑](#footnote-ref-27)
28. 84 Fed. Reg. 69651 [↑](#footnote-ref-28)
29. *See* NJSA § 39:4-50; *see generally* NJSA §§2C:1-98 (NJ criminal code, in which DWI does not appear) [↑](#footnote-ref-29)
30. *See, e.g. State v. Ebert*, 871 A.2d 664 (App. Div. 2005) [↑](#footnote-ref-30)
31. *State v. Hamm*, 121 N.J. 109, 577 A 2.d 1259 (1990) [↑](#footnote-ref-31)
32. *Castillo v. Att’y Gen.*, 729 F.3d 296 (3d Cir. 2013) [↑](#footnote-ref-32)
33. 84 Fed. Reg. 69653 [↑](#footnote-ref-33)
34. 8 U.S.C. § 1158(b)(2)(B)(ii) (“The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).”) [↑](#footnote-ref-34)
35. 8 U.S.C. § 1158(b)(2)(A)(ii), (B)(i) [↑](#footnote-ref-35)
36. 84 Fed. Reg. 69654 [↑](#footnote-ref-36)
37. 84 Fed. Reg. 69655 [↑](#footnote-ref-37)
38. 84 Fed. Reg. 69656 [↑](#footnote-ref-38)
39. *United States v. United Mine Workers of America*, 330 U.S. 258, 289 (1947) [↑](#footnote-ref-39)
40. 84 Fed. Reg. 69656 [↑](#footnote-ref-40)
41. 84 Fed. Reg. 69656 [↑](#footnote-ref-41)
42. 84 Fed. Reg. 69657 [↑](#footnote-ref-42)