Comments of the United Nations High Commissioner for Refugees on the Proposed Rule from the U.S. Department of Justice (Executive Office for Immigration Review):

"Procedures for Asylum and Withholding of Removal"

Submitted 23 October 2020

I. Introduction

The Office of the United Nations High Commissioner for Refugees (UNHCR) submits the comments below on the new Proposed Rule on Procedures for Asylum and Withholding of Removal from the U.S. Department of Justice (*hereinafter* "the Proposed Rule"). These comments focus on those aspects of the Proposed Rule which are of interest to UNHCR and may have a significant impact on the safeguards based on international legal standards available to persons seeking international protection.

This submission is offered consistent with UNHCR's supervisory responsibility as set out under its Statute[1] and reiterated in the 1967 United Nations Protocol Relating to the Status of Refugees (the "1967 Protocol")[2] and the 1951 United Nations Convention Relating to the Status of Refugees (the "1951 Convention").[3] The United States is a signatory and State Party to the 1967 Protocol, and is therefore bound to comply with the obligations deriving from the 1967 Protocol as well as, by incorporation, articles 2-34 of the 1951 Convention.[4] Furthermore, as a State Party, the United States has agreed to cooperate with UNHCR to facilitate the Office's duty of supervising, in particular, the application of the provisions of the Protocol, and, as incorporated therein, the 1951 Convention.[5]

One of the means by which UNHCR exercises its supervisory responsibility is by providing to States parties its guidance and interpretations of the 1951 Convention, the 1967 Protocol, and other international refugee instruments. This guidance and these interpretations are informed by UNHCR's nearly seven decades of experience assisting refugees and supervising the treaty-based system and standards of international refugee protection.

UNHCR presents these comments today out of concern that the Proposed Rule puts forward a variety of changes that, if adopted and implemented, would diverge from the U.S.'s international legal obligations related to refugee protection. The Proposed Rule will create new procedural barriers to a fair and efficient review of a claim for international protection, especially if applied alongside provisions in other recent proposed regulations concerning asylum procedures. UNHCR has a strong interest in ensuring that U.S. asylum law and policy aligns with the international treaty obligations that the United States helped to create and respectfully offers its guidance on these obligations.

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[1] G.A. Res. 428(v), Statute of the Office of the United Nations High Commissioner for Refugees (Dec. 14, 1950) [hereinafter UNHCR Statute].
[2] Protocol Relating to the Status of Refugees, art. II, 19 U.S.T. 6223, 606 U.N.T.S. 267 (Jan. 31, 1967) [hereinafter Protocol].
[3] Convention Relating to the Status of Refugees, art. 35, 19 U.S.T. 6259, 189 U.N.T.S. 150 (July 28, 1951) [hereinafter Refugee Convention]. UNHCR has a mandate to "[p]romot[e] the conclusion and ratification of international conventions for the protection of refugees" and to "supervis[e] their application and propos[e] amendments thereto." UNHCR Statute ¶ 8(a).
[4] *See* Protocol.
[5] "The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees . . . in the exercise of its functions." Protocol, art. II.

II. Overarching Comments on the Proposed Rule's Incompatibility with the 1951 Convention and the 1967 Protocol on the Status of Refugees

UNHCR appreciates the decades-long engagement between our agency and the U.S. government on technical aspects of international refugee law and its domestic realization, including asylum adjudication procedures. In this context, UNHCR has substantial concerns about the Proposed Rule, as it would diminish the United States' capacity to guarantee protection of refugees from return to situations of serious harm. UNHCR observes that the Proposed Rule puts forth several procedural changes that affect critical aspects of the process around adjudicating claims for protection in the United States, and is troubled that these move the United States away from the humanitarian spirit of the 1951 Convention and 1967 Protocol.

As a preliminary matter, UNHCR observes with concern the apparent understanding, in the discussion section of the Proposed Rule, that its provisions are in line with the U.S.'s international obligations (including under the 1967 Protocol).[6] This does not comport with UNHCR's understanding of the obligations under the 1967 Protocol, and as addressed more extensively below, there are aspects of the Rule that are at variance with international standards. International refugee law together with complementary aspects of international human rights law – in keeping with the spirit of U.S. humanitarianism which was codified in the 1980 Refugee Act – is premised on ensuring international protection for all those in need of it. Fundamentally, in the first instance, this requires ensuring non-refoulement, which can be achieved by establishing fair and efficient asylum procedures that are not unduly 'adversarial' in nature. UNHCR is concerned that some aspects of the Proposed Rule move the U.S. further away from fair and efficient adjudication of claims for protection, and in their practical impact create unfair barriers for asylum-seekers to relief in removal proceedings.[7]

These practical obstacles introduced in the Proposed Rule include: a 15-day filing deadline for asylum-seekers in asylum-and-withholding-only proceedings to submit their claims; a 30-day re-filing deadline for asylum-seekers whose applications are rejected as 'incomplete' (including applications rejected due to non-substantive or minor technical mistakes); and a $50 asylum application fee. Additionally, UNHCR has concerns about proposed changes to the probative value of different forms of evidence and timelines for adjudication.

UNHCR is concerned not just about the discrete impact of each element in the Proposed Rule, but also about the cumulative impact of these changes which, taken together and in combination with provisions of other recently proposed regulations concerning asylum procedures, may prove impossible for many asylum-seekers to surmount.[8] These changes will have a particularly negative impact on vulnerable groups in need of international protection, including children and persons who appear *pro se* in their proceedings. UNHCR underscores the need to implement fair and efficient procedures that account for the particularly vulnerable situation of many asylum-seekers,[9] and would welcome opportunities to discuss ways to achieve this.

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[6] *See, e.g.,* Proposed Rule at 59,694. The Proposed Rule asserts that inflexible filing deadlines are considered 'reasonable' and as such "do not violate… any international treaty obligations." *Id.*

[7] UNHCR has previously submitted comments addressing other proposed regulations related to asylum procedures, including the Notice of Proposed Rulemaking entitled "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review," 85 Fed. Reg. 36,264 (June 15, 2020). In that series of comments, UNHCR expressed concern over various new provisions that would limit access to asylum procedures in the United States for those seeking international protection. Especially when taken together, the provisions in that rule and the present Proposed Rule might further preclude asylum-seekers from filing their claims and having them fairly adjudicated.

[8] *See supra,* fn. 7.

[9] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees ¶ 190 (Feb. 2019) [hereinafter UNHCR Handbook].

Ultimately, UNHCR is concerned that the Proposed Rule may lead to the denial of international protection to, and refoulement of, refugees. Non-refoulement, a norm of customary international law, is the cornerstone of the 1951 Convention and its 1967 Protocol. The Proposed Rule, by impeding access to asylum through the introduction of procedural changes, puts forward a regulatory framework at variance with international legal standards. In light of the Proposed Rule's incompatibility with international refugee and human rights law, **UNHCR recommends that the government refrain from implementing the provisions discussed below.** Should the government proceed with the Proposed Rule, UNHCR recommends that the rule be carefully reconsidered and amended so that it is brought into compliance with international standards.

UNHCR has long acknowledged that the United States is facing unprecedented challenges associated with new and increased flows of asylum-seekers within the sub-region. We recognize that the U.S. asylum system is under significant strain and is in need of reform, and we appreciate the ongoing engagement with the Department of Justice on ways to improve the quality and efficiency of the system and reduce the current asylum backlog. UNHCR stands ready to continue supporting the U.S. government in grappling with these complex challenges, with a view towards building a more resilient, fair, and efficient domestic asylum system that upholds international standards.

III. Observations on Specific Provisions of the Proposed Rule

In this section, UNHCR offers observations and comments on certain aspects of the Proposed Rule on Procedures for Asylum and Withholding of Removal. The below analysis mirrors the structure of the discussion in the Proposed Rule for ease of reference, providing in each case discussed an overview of how the proposed change will affect persons seeking international protection, followed by consideration of the relevant international legal standards.

A. Form I-589 Filing Requirements

1. Filing Deadline for Asylum Applications in Asylum-and-Withholding-Only Proceedings

The Proposed Rule establishes a new filing deadline for applications submitted in asylum-and-withholding-only proceedings[10] (a new procedure put forward in a separate proposed rule).[11] Specifically, asylum-seekers would have to file their applications within 15 days of their first hearing before an immigration judge in these proceedings.[12] An immigration judge has the authority to extend the deadline for "good cause," though the Proposed Rule does not define what that term encompasses.[13] If an individual does not file an asylum application by the deadline, the

[10] Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 59,692, 59,693, 59,699 (proposed Sep. 23, 2020) (to be codified at 8 C.F.R. pts. 1003, 1208, 1240) [hereinafter Proposed Rule].

[11] Asylum-and-withholding-only proceedings are a stand-alone process within the expedited removal framework for full consideration of an asylum applicant's eligibility for asylum, withholding of removal, or protection under the Convention Against Torture (CAT) proposed in Notice of Proposed Rulemaking "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review," 85 Fed. Reg. 36,264, 36,289-90 (proposed June 15, 2020). Asylum-and-withholding proceedings have not been implemented because the rule that would create them has not been finalized as of the date this set of comments. UNHCR previously submitted comments on that proposed rule in which it explained extensively its concerns with such proceeding. *See* Comments of UNHCR on the Proposed Rules from the U.S. Department of Justice and U.S. Department of Homeland Security: "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review" 6-9 (submitted July 15, 2020). In that set of comments, UNHCR recommended that the government refrain from instituting "asylum-and-withholding-only" proceedings and instead continue to use full removal proceedings.

[12] Proposed Rule at 59,693, 59,699.

[13] Proposed Rule at 59,693, 59,699. The Proposed Rule cites to 8 C.F.R. §§ 1003.29 and 1240.6 in its discussion of "good cause" in the context of continuances in removal proceedings, though neither of those regulations offer a definition of the concept. What

opportunity to file such an application will be deemed waived (in other words, abandoned), and the individual's case will be returned to the Department of Homeland Security to proceed with removal.[14] UNHCR is concerned that this provision will, in the absence of substantial further safeguards, have the effect of precluding many asylum applicants from having their claims adjudicated; a time limit must be preconditioned on applicants having had an effective opportunity to lodge their asylum claims during that period, and where such an effective opportunity does not exist such a timeline would be incompatible with international standards on fair and efficient asylum procedures.[15]

UNHCR anticipates that this 15-day filing deadline, in the absence of substantial further safeguards and without more clearly defined exceptions, may severely restrict the ability of persons seeking international protection to file their asylum applications. Significant numbers of individuals who find themselves in asylum-and-withholding-only proceedings, should those be implemented, may encounter significant difficulties in, or be effectively precluded from, timely filing their claims due to a range of obstacles, such as previous trauma, limited English proficiency, level of education, and lack of access to legal advice, information or representation. During this short window of time, asylum-seekers may not have the chance to search for and retain an attorney or otherwise obtain legal services. In addition, because individuals in asylum-and-withholding-only proceedings could be subject to detention, they may be even more vulnerable and encounter greater difficulties in obtaining legal services and filing their claim, since asylum-seekers are often held in remote facilities where they are even less likely to have access to counsel than those not detained or in large metropolitan areas. As a result, asylum-seekers may be refouled to territories where their lives and freedoms are in danger without ever having had an effective opportunity to present their claims.

Moreover, even persons seeking international protection who do have counsel may face challenges in meeting this rapid filing deadline. Often, for example, qualified legal representatives must meet with their asylum-seeking clients for a number of hours, sometimes over the course of multiple interviews, to understand and develop the facts of the claim such that an application can be prepared. This is especially common in cases where applicants have suffered profound trauma or where applicants are children.[16] Further, should the revised, more detailed Form I-589 released in connection to the Proposed Rule on "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review" become effective,[17] qualified legal representatives will likely have to spend greater time with each asylum-seeker to gather the necessary

constitutes "good cause" has been addressed more extensively in case law and EOIR policies and procedures memoranda. *See Matter of L-A-B-R- et al.*, 27 I&N Dec. 405 (AG 2018) (explaining the good-cause standard, noting that "[t]he good-cause standard is a substantive requirement that limits the discretion of immigration judges and prohibits them from granting continuances for any reason or no reason at all."); MaryBeth Keller, Office of the Chief Immigration Judge, EOIR, *Operating Policies and Procedures Memorandum 17-01: Continuances* (July 31, 2017) ("[A]n assessment of good cause will depend on the specific factors of each case. Nevertheless, in general, the reason and support for the request as well as any opposition to it, the timing of the request, the respondent's detention status, the complexity of the case, the number and length of any prior continuances, and concerns for administrative efficiency are all appropriate factors to be considered in determining whether to grant a continuance and for how long.").

[14] Proposed Rule at 59,693, 59,699.

[15] UNHCR considers an "effective opportunity" to submit an asylum claim to encompass several elements, including that timeframes must not constitute an automatic bar to submitting an asylum claim; exceptions to the deadline must be fair and flexible to ensure the right to access asylum; consideration of any time limit is conditioned upon the applicant's opportunity to effectively present his or her application; and timelines must not exclude refugees sur place. *See, e.g.*, UNHCR, *Amicus Curiae Submission to the Supreme National Court of Justice: Writ of Constitutional Protection (Amparo en Revisión) 762/2019* ¶¶ 26 – 46 (Dec. 13, 2019), available at https://www.refworld.org.es/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5f9315ea4 [hereinafter "UNHCR Amicus Curiae Submission to the Supreme National Court of Justice"].

[16] UNHCR observes that the Proposed Rule does not appear to make an exception for accompanied children, for example, who would presumptively be placed into asylum-and-withholding-only proceedings with their parents. That group of children may be impacted if they desire to file independent applications for protection to preserve their own opportunity to seek asylum, withholding of removal, or protection under the Convention Against Torture (particularly relevant should their accompanying parent not be found eligible for protection).

[17] OMB Control Number 1615-0067.

information, potentially forcing them to reduce their caseloads and thereby limiting the availability of legal services. In effect, and especially when coupled with the consequences of submitting an application that contains technical deficiencies,[18] UNHCR is troubled by the possibility that the immense time pressure of this filing deadline will compromise asylum-seekers' ability to timely and properly submit their claims, including when represented.

Under international law, States are given leeway to establish appropriate procedures for determining who is and is not entitled to asylum.[19] However, in order to ensure consistency with international obligations, fair procedures for determining refugee status should account for the vulnerabilities and practical challenges that applicants may experience. In some cases, for instance, individuals might have significant challenges submitting an application for asylum to the authorities if they have suffered profound trauma, have limited English proficiency, or do not have access to counsel.[20] Therefore, the framework for examining asylum applications, including the time limit for filing, should reflect "an understanding of the applicant's particular difficulties and needs,"[21] and – despite variance in that framework from state to state – should include essential guarantees and basic requirements.[22]

UNHCR recognizes the desire of States to receive claims promptly in order to maintain a fair and efficient asylum system, and the strong interest those in need of international protection themselves have in this. UNHCR considers the protection of applications from rejection—without assessment of their substantive merits—based solely on timing or other procedural grounds to be a "fundamental safeguard."[23] In interpreting Article 1 of the 1951 Convention, UNHCR observes that "failure to meet formal, technical requirements such as time limitations [as to the submission of claims] does not negate the refugee character of [a] person."[24] Regarding the timing of an application, "[a]n applicant may be a refugee even if his or her application for international protection was not lodged at the earliest possible time."[25] Delays may result, for example and as above, from a need to first secure and consult with legal counsel, the complexity of a claim, a difficult immediate situation facing an applicant, or from trauma, cultural, or gender issues.[26] Thus, an asylum-seeker's failure to submit an application within a certain period of time, as well as

[18] *See infra*, Section III.A.2 (discussing what constitutes an 'incomplete' asylum application and the consequences for filing an incomplete application).
[19] UNHCR Handbook, ¶ 190.
[20] *See* UNHCR Handbook, ¶ 190 ("It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within . . . an understanding of an applicant's particular difficulties and needs."); UNHCR, Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466 at 9-10 ("Due consideration should be given to any circumstances of the case that may lead to delays in applying for international protection or appropriately substantiating the claim, including trauma due to past experience, feelings of insecurity, or language problems. UNHCR recalls that a late application or substantiation does not preclude the credibility of the applicant's statements.").
[21] UNHCR Handbook, ¶ 190.
[22] UNHCR Handbook, ¶ 192.
[23] UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12 (31 May 2002), ¶ 20 (citing *Jabari v. Turkey*, ECHR, ¶ 40) (July 10, 2000); Conclusion No. 15 (XXX), 1979 on refugees without an asylum country, ¶ (i) (A/AC.96/572, ¶ 72.2). UNHCR has provided guidance to other countries regarding reasonable filing deadlines in the context of asylum procedures. *See, e.g.*, UNHCR Amicus Curiae Submission to the Supreme National Court of Justice, ¶¶ 26 – 46 (explaining that, with respect to filing deadlines, several elements must be present to ensure that an asylum procedure is fair and efficient, including that timeframes must not constitute an automatic bar to submitting an asylum claim; exceptions to the deadline must be fair and flexible to ensure the right to access asylum; consideration of any time limit is conditioned upon the applicant's opportunity to effectively present his or her application; and timelines must not exclude refugees sur place).
[24] UNHCR, *Interpreting Article 1 of the 1951 Convention*, ¶ 9.
[25] Inter-Parliamentary Union & UNHCR, A Guide to International Refugee Protection and Building State Asylum Systems: Handbook for Parliamentarians No. 27, p. 167 (2017).
[26] *Id.*

failure to fulfill other formal requirements, "should not in itself lead to an asylum request being excluded from consideration."[27]

The Proposed Rule sets out to shorten existing deadlines on what is considered a timely filing without considering procedural safeguards that typically ensure fairness in a faster process. UNHCR observes that under current U.S. law, individuals are not eligible to apply for asylum if they did not file within one year of their arrival to the United States unless they can establish that they qualify for an exception to that statutory deadline, including by virtue of extraordinary circumstances relating to a delay in submitting the application.[28] The Proposed Rule, however, so strictly condenses the timeframe in which asylum-seekers in the newly proposed asylum-and-withholding only procedures may file their applications that they in most cases could not be said to have a realistic opportunity to prepare and submit their claims. Further, the rule does not offer procedural safeguards, such as exceptions based on specific need profiles or access to necessary facilities at the outset, including legal counseling, representation, and interpretation.[29] Those who do not file their claims will be considered to have waived their chance to do so and will be processed for removal from the United States. Therefore, this provision, which calls for the prompt removal of those seeking international protection who do not file their claims within this minimal allotted time, is at variance with international standards and principles of due process on asylum processing.

UNHCR recommends that this provision of the Proposed Rule not be issued. Instead, UNHCR proposes that asylum-seekers be given access to necessary facilities, such as legal services and competent interpreters, so that they are better positioned to complete and file their applications within a reasonable, more flexible period of time that would allow for timely processing. UNHCR recommends that any time limits on filing asylum applications are fair in view of the likely circumstances of those seeking international protection, including under conditions of detention, and include adequate flexibility and exceptions for vulnerable cases, or other needs.

2. Re-filing an Incomplete Application with EOIR

The Proposed Rule would amend existing regulations concerning the processing of 'incomplete' asylum applications and procedures for re-filing them.[30] More specifically, the Proposed Rule would remove the current provision that an asylum-seeker's incomplete application submitted via mail will be deemed complete if the immigration court fails to return it within 30 days of receipt.[31] Instead, the rule would provide that immigration courts will reject incomplete asylum applications and return them "in a timely fashion" to the individual seeking protection or that person's legal

[27] UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12 (31 May 2002), ¶ 20.
[28] *See* 8 U.S.C. § 1158(a)(2)(B).
[29] *See* UNHCR, *UNHCR Comments on the European Commission's Proposed for an Asylum Procedures Regulation - COM 2016 467*, 26-27 (Apr. 2019), available at https://www.refworld.org/docid/5cb597a27.html. UNHCR has noted that time limits to filing an asylum application "is preconditioned on the applicant having had an effective opportunity to lodge the application within that time frame." *Id.* "In practice, an 'effective opportunity' should not only refer to, for example, . . . States' logistical arrangements to allow for applicants to be interviewed, but also take into account 'the difficulties such applicants may face because of, inter alia, the difficult human and material situation.'" *Id.* at 27. Further, where applicants request legal assistance and representation, the "time line should not expire before the legal advisor or counsellor has had an effective opportunity to advise the applicant, and she or he has had an opportunity to act upon that advice." *Id.*
[30] "Incomplete" applications are those that do not include a response to each of the required questions contained in the form, are unsigned, are unaccompanied by required materials specified in 8 C.F.R. § 1208.13(a), or do not include any required payment. Proposed Rule at 59,694, 59,699; *see also infra* Section III.A.3 (addressing UNHCR's concerns regarding a fee for asylum applications).
[31] Proposed Rule at 59,694, 59,699.

representative.[32] It does not specify a window of time during which an immigration court must return an 'incomplete' application.

With respect to re-filing, whereas in the past there was no prescribed time limit on when an asylum-seeker could submit his or her 'corrected' application, the Proposed Rule would create a 30-day deadline for asylum-seekers to correct any deficiencies.[33] Should an asylum-seeker fail to re-file a 'complete' application before the new deadline, absent exceptional circumstances,[34] the application would be deemed abandoned and the claim for protection denied.[35] The notice of proposed rulemaking indicates that "reasonable filing deadlines do not violate . . . any international treaty obligations."[36] Reasonable filing deadlines, in the context of fair and efficient asylum procedures, may be consistent with international obligations if they preserve sufficient flexibility to take into account individual circumstances and safeguard against the risk that claimants will be denied an effective opportunity to seek asylum, which can be achieved in part by ensuring access to legal counseling and competent interpreters. In particular, such filing deadlines should be accompanied by robust safeguards against the risk that a person may be returned to a risk of serious harm without assessment of their international protection needs. UNHCR has concerns over the impact of the proposed provisions on re-filing, including the short timeframe asylum-seekers would have to address deficiencies in their applications.

UNHCR is concerned that this provision will result in the summary dismissal of large numbers of asylum applications, leading to a significant number of asylum-seekers never receiving a hearing to present their claim. UNHCR observes that the Proposed Rule does not set any deadline by which immigration courts must accept as complete or may reject as incomplete applications for asylum and is concerned that asylum-seekers could possibly have their applications rejected significant periods of time after initially filing them, which may leave in limbo vulnerable individuals in need of protection. In addition, the provision risks creating unmanageable backlogs and gaps in ability to adequately plan necessary processing capacities. Accordingly, while the rule expresses an intent "to ensure that cases of individuals seeking asylum are processed efficiently by minimizing any delay between the return of an incomplete asylum application and the re-filing of a complete one,"[37] an increased burden to expedite asylum procedures appears to fall exclusively on asylum-seekers.

In addition, UNHCR is concerned by the short time period that asylum-seekers have to re-file an incomplete application. It often takes many days, if not longer, for mail from the immigration court to reach asylum-seekers, and UNHCR is aware that it could take a large part of the response period for mail to reach detained asylum-seekers in particular. Thus, even if an applicant has the technical resources to re-file a 'complete' application, the time to do so may have nearly or already expired by the time the applicant is notified, and it is not clear whether such occurrence, which is plainly outside an asylum-seeker's control, would excuse a late re-filing as an "exceptional circumstance."[38] Furthermore, UNHCR is concerned that, while worrying for all asylum-seekers, these rules may have a particularly adverse impact on *pro se* applicants who have to prepare

[32] Proposed Rule at 59,694, 59,699.
[33] Proposed Rule at 59,694, 59,699.
[34] This provision cross-references 8 C.F.R. § 1003.10(b) for a definition of "exceptional circumstances." Under that regulation, "exceptional circumstances" refer to circumstances "beyond the control of the parties or the immigration court," such as "battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances."
[35] Proposed Rule at 59,694, 59,699.
[36] Proposed Rule at 59,694.
[37] Proposed Rule at 59,694.
[38] UNHCR is also concerned about the possibility that an individual's change of address and rejected asylum application could become crossed in the mail. If an immigration court does not receive an applicant's new contact information before returning the incomplete asylum application, the applicant may never receive his or her rejected application and lose the opportunity to pursue protection.

their applications without assistance; may not speak English; and may not be familiar with legal standards and requirements related to protection, among other issues that may necessitate greater time to address application deficiencies and re-file.

As explained above, while States have leeway to establish appropriate procedures for determining who is or is not entitled to asylum, they must take account of the fact that that asylum-seekers may experience technical and other difficulties in filing their claims.[39] The framework for examining asylum applications should include essential guarantees and basic requirements that reflect an understanding of the challenges those seeking international protection may face.[40] Among other measures, these include providing the applicant with the necessary facilities, such as a competent interpreter and access to legal services, for submitting his or her case.

UNHCR is concerned that the provision on re-filing incomplete applications does not comport with these basic requirements and will impose harsh penalties in a context where applicants themselves are simply not provided with the assistance or opportunity to present their claims. It In appropriate circumstances, incomplete applications may be considered implicitly withdrawn and result in the provisional discontinuation of the application.[41] In some cases, it may be appropriate to consider an application implicitly withdrawn, for example, where the applicant without good cause "failed to respond to requests to provide information essential to his or her application."[42] However, this conclusion should be drawn only where the applicant had had an effective opportunity to make their claim, including access to the necessary enabling support to do so such as legal advice and representation, as well as interpretation services. UNHCR has recommended that any such deemed withdrawal should result in a discontinuation of the proceedings, and not in a rejection of the application, such that reopening the application is possible without any time limits.[43] Otherwise, by rejecting an application and not allowing it to be reopened, international protection needs may not be examined.

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[39] UNHCR Handbook, ¶¶ 189-90.

[40] UNHCR Handbook, ¶ 190; *see also* UNHCR Amicus Curiae Submission to the Supreme National Court of Justice, ¶¶ 26 – 46 (explaining that, with respect to filing deadlines, several elements must be present to ensure that an asylum procedure is fair and efficient, including that timeframes must not constitute an automatic bar to submitting an asylum claim; exceptions to the deadline must be fair and flexible to ensure the right to access asylum; consideration of any time limit is conditioned upon the applicant's opportunity to effectively present his or her application; and timelines must not exclude refugees sur place).

[41] *See* UNHCR, *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, Council Document 14203/04, Asile 64, of 9 November 2004 (Feb. 10, 2005), at 25-26; European Union: Council of the European Union, Council Directive 2013/32/EU, of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2013 O.J. (L. 180/60 -180/95), arts. 27, 28(1)(a). Alternatively, incomplete applications could be rejected if the authorities determine that the application is unfounded. *See id*.

[42] *See* European Union: Council of the European Union, Council Directive 2013/32/EU, of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2013, OJ (L. 180/60 -180/95), art. 28(1); UNHCR, *UNHCR Comments on the European Commission's Proposed for an Asylum Procedures Regulation - COM 2016 467*, 33 (Apr. 2019). "In general, UNHCR considers that an application can only be rejected where there has been a full examination of all relevant facts and circumstances, based on which the determining authority has established that the applicant is not a refugee or does not qualify for subsidiary protection. However, UNHCR appreciates that there may be situations where the determining authority is not able to undertake a full examination and that applications for international protection, despite having been made, are to be discontinued. This includes applications that have been made, but where, despite having an effective opportunity, the applicant has not lodged an application." UNHCR, *UNHCR Comments on the European Commission's Proposed for an Asylum Procedures Regulation - COM 2016 467*, 33 (Apr. 2019). UNHCR has previously strongly supported a provision of the European Commission's recast Asylum Procedures Directive "which notes that the determining authority can reject a claim that is considered implicitly withdrawn or abandoned only after an adequate examination of its merits." *Id*.

[43] *See* UNHCR, *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards*, pp. 25-26. As noted above, while it may be appropriate to discontinue applications where, for example, applicants had an effective opportunity to but did not lodge an application, other grounds for rejecting applications may risk leading to an incorrect decision on an individual's international protection needs. UNHCR, *UNHCR Comments on the European Commission's Proposed for an Asylum Procedures Regulation - COM 2016 467*, 33 (Apr. 2019). For instance, "[i]n UNHCR's view, an applicant may fail to cooperate, not appear at a personal interview or not comply with residence or reporting obligations for a variety of reasons, including issues of miscommunication, procedural errors, or service of post, which do not necessarily indicate the absence of international protection needs, or prevent the determining authority from examining the application." *Id*. Similarly, failure to re-file an application within a particular window of time does not necessarily indicate an absence of international protection needs.

UNHCR observes that the U.S. system is already at variance with international standards regarding essential guarantees and basic requirements, as it does not provide applicants with access to interpreters, nor a qualified legal representative who could explain the law and asylum process to them and assist them therein. Without access to interpreters or qualified legal representatives, UNHCR considers an interview or hearing on the merits of the claim to be particularly necessary for asylum-seekers to submit their cases. UNHCR does not consider rejection of an application appropriate unless, on the one hand, the applicant has received all relevant information to respond to requests for information, including information about the consequences of failing to do so, in a language that they understand, and, on the other, the authorities have fully and fairly examined the applicant's claim on its merits.[44]

UNHCR recommends that this provision of the Proposed Rule not be issued. Should this rule be implemented, however, UNHCR recommends that the government provide a tentative timeframe for immigration courts to return incomplete applications to avoid potential bottlenecks or backlogs in processing and gaps in the ability to plan for adequate processing capacities. Further, UNHCR proposes that asylum-seekers be given access to necessary facilities, such as qualified legal representatives and competent interpreters, so that they are better positioned to file 'complete' applications and to respond to any perceived application deficiencies within a reasonable, flexible period.

3. Submission of Any Applicable Asylum Fee

The Proposed Rule would require individuals to submit a fee currently set at $50 USD at the time of filing their asylum applications, marking the first time that immigration courts would mandate a payment for a claim for protection.[45] If an asylum-seeker files an application that is not accompanied by the required fee, the immigration court shall reject the application as 'incomplete' and return the application to the asylum-seeker to correct the deficiency within 30 days.[46] If an asylum-seeker fails to resubmit their application with the payment within the prescribed period, absent "exceptional circumstances," the application will be deemed abandoned and the opportunity to file such an application will be deemed waived.[47] "Exceptional circumstances" that may merit an extension of the deadline to re-file an incomplete application are defined as those "beyond the control of the parties or the immigration court," such as domestic violence, serious illness of the asylum-seeker, or serious illness or death of the asylum-seeker's spouse, child, or parent.[48] While unaccompanied children who file their applications with U.S. Citizenship and Immigration Services would be exempt from the fee,[49] the Proposed Rule does not appear to

[44] UNHCR, *UNHCR Comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection Status (Recast) COM (2011) 319 Final*, 12, 13, 21 (Jan. 2012), https://www.refworld.org/docid/4f3281762.html.
[45] Proposed Rule at 59,694-95, 59,699. UNHCR observes that this provision may be affected by the status of the USCIS rule that establishes a $50 fee for asylum applications. *See* 8 C.F.R. § 1103.7(b)(4)(ii) (providing that fees required under DHS regulations must be paid when EOIR uses a DHS form in removal proceedings); Final Rule, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 85 Fed. Reg. 46,788 (Aug. 3, 2020) (establishing a $50 fee for asylum applications). Two federal courts enjoined the USCIS fee rule shortly after it was finalized, and litigation in those cases remains ongoing. *See ILRC et al. v. Wolf et al.*, 3:20-cv-05883 (N.D. Cal.) (granting a preliminary injunction on Sept. 29, 2020); *NWIRP et al. v. USCIS et al.*, 1:19-cv-03283 (D.D.C.) (granting a preliminary injunction on Oct. 8, 2020). Thus, it is UNHCR's understanding that, should this Proposed Rule be enacted, asylum-seekers would not have to pay a fee unless and until the USCIS fee rule is allowed to be implemented.
[46] Proposed Rule at 59,699.
[47] *Id.*
[48] *See* Proposed Rule at 59,699 (defining "exceptional circumstances" at 8 C.F.R. § 1003.10(b)).
[49] *See* Final Rule, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 85 Fed. Reg. 46,788, 46,844 (Aug. 3, 2020).

make any exceptions to this provision for other especially vulnerable categories of asylum-seekers, including those who are detained.

UNHCR is concerned that persons seeking international protection may not have the means to pay a filing fee, which may preclude them from seeking or obtaining protection. In many cases, asylum-seekers in the United States are without significant resources, particularly during the period immediately after crossing the border, and must wait significant periods before obtaining work authorization, if they ever become eligible.[50] This rule will likely prejudice especially vulnerable groups, such as detained asylum-seekers, who probably have no income and may not have access to any money, as it makes no exceptions for them. Similarly, this provision will be harmful to asylum-seekers found to have a credible or reasonable fear who are placed into asylum-and-withholding-only proceedings, may be subject to detention, and must file their applications within 15 days of their initial hearings. It is unreasonable to believe that asylum-seekers in such a position can make this payment, and many may lack contacts who can provide financial support that would allow them to pursue their claims. Therefore, individuals who cannot work, have no income, and must pay an application fee may be exposed to risks linked to negative coping mechanisms. Even those who might have family members, friends, or advocates that can assist with the fee may be unable to arrange the payment in advance of their accelerated filing deadlines. Consequently, this aspect of the Proposed Rule will likely restrict access to protection procedures for large numbers of asylum-seekers.

One of the foundational principles of international refugee law is the prohibition on sending asylum-seekers or refugees to territories where they face a threat to their lives or freedom.[51] Protection from refoulement and seeking asylum are fundamental rights, the enjoyment of which must not be premised on the ability to pay. Article 1 of the 1951 Convention establishes a framework for determining who is and who is not a refugee. Fair and efficient procedures for determining refugee status are essential to the full and inclusive application of the 1951 Convention. Access to asylum procedures must be open and unobstructed to anyone who seeks protection.[52] Fees may constitute an obstacle to accessing asylum that is inconsistent with the humanitarian and protective character of the Convention, as well as with the universal nature of the right to seek asylum. In light of the potentially grave consequences of prohibiting access to asylum procedures for those seeking international protection, it is essential that asylum-seekers have an opportunity to file and have their claims adjudicated, without being precluded from doing so by a fee they cannot pay.

UNHCR observes that asylum-seekers are often forced to flee their countries of origin with few or no possessions and may be victimized by corrupt or criminal actors on their journey to safety.

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[50] *See* Final Rule, "Asylum Application, Interview, and Employment Authorization for Applicants," 85 Fed. Reg. 38,532 (June 26, 2020). Under regulations issued by the Department of Homeland Security that took effect August 25, 2020, individuals must now wait a year from filing their asylum applications before they are eligible to apply for employment authorization, and they are subject to a variety of new rules restricting eligibility for employment authorization. *Id.* For instance, those who enter without inspection or fail to file an asylum application within one year of entry into the United States will no longer qualify for employment authorization. *Id.* UNHCR has considered the potential impact of introducing fees on certain types of applications, such as the possibility that individuals will face exploitative situations or the delay or prevention of family reunification. *See* UNHCR, *UNHCR Observations on the Proposed Amendments to the Danish Aliens Legislation, L 87*, ¶ 37 (Jan. 6, 2016), available at https://www.refworld.org/docid/5694ed3a4.html. For instance, those seeking international protection may lack access to the labor market and often face difficulties in accessing the mainstream banking systems and private loan schemes, and as a result, they may not be able to cover required fees. *Id*. Thus, UNHCR has recommended that "States reduce or waive administrative costs, and make available financial assistance schemes" to cover the cost of some applications. *Id*.

[51] Refugee Convention, art. 33(1).

[52] *See* UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures*, EC/GC/01/12 ¶ 5 (May 31, 2001), available at https://www.refworld.org/docid/3b36f2fca.html (noting that States have acknowledged the importance of fair and efficient procedures "by recognizing the need for all asylum-seekers to have access to them").

When they arrive in a country of refuge, they may have next to no resources. In cases where asylum-seekers may have some resources, imposing a cost for asylum applications may force individuals to choose between paying for legal assistance and submitting formally 'complete' applications for protection. This fee is likely to create undue hardship by limiting an asylum-seeker's ability to file his or her claim and access a full and fair adjudication. It is particularly worrisome in the context of government-initiated removal proceedings against which asylum-seekers would be forced to pay to defend themselves. Thus, requiring a fee for asylum applications, especially in the removal context, appears to be a harsh measure that may deter or even prevent the filing of claims, which could result in refoulement of those with international protection needs.

UNHCR recommends that the government not impose any fee for asylum and other protection-based applications. If the government does move forward with requiring a fee for asylum and other protect-based applications, however, UNHCR recommends that it offer wide-ranging and accessible fee waivers.

B. Form I-589 Procedural Requirements

1. Supplementing the Record

The Proposed Rule contains several provisions regarding evidence that may be considered during the adjudication of an asylum application. The Rule expands the list of government agencies "that may possess relevant information for an immigration judge in adjudicating a claim,"[53] while revising "the standard for an immigration judge's consideration of information from non-governmental sources to ensure that only probative and credible evidence is considered."[54] Further, the rule would allow immigration judges to submit evidence into the record and consider that evidence in rendering their decision on an asylum claim, so long as the evidence is credible and probative and the judge provides a copy of it to both parties and gives them an opportunity to comment on or object to the information.[55]

In the context of the adversarial setting of the immigration courts, UNHCR is concerned that these proposals may negatively impact asylum-seekers' capacity to have fair consideration of their claims. In particular, UNHCR finds it worrisome that the Proposed Rule invites immigration judges to consult a wide variety of materials produced by the U.S. government without applying to those the same evidentiary threshold it would apply to other evidence often presented by asylum-seekers, including that from foreign governments or non-governmental organizations.[56] In other words, UNHCR is concerned that the regulation explicitly seems to favor the consideration of certain sources or evidence produced by one source, with the potential of excluding the consideration of other relevant, credible and probative materials, which may result in narrowing the set of evidence to be properly considered in the adjudication of an asylum application in line with principles of impartiality and fairness. While these rules are worrying for all asylum-seekers,

[53] Proposed Rule at 59,695, 59,699.
[54] Proposed Rule at 59,695. More specifically, the revised provision permits an immigration judge to rely on foreign government and non-governmental sources only "if those sources are determined by the judge to be credible or probative."
[55] Proposed Rule at 59,695, 59,699-700.
[56] The standard for corroboration in asylum cases under U.S. law has become increasingly difficult for applicants to meet, making their ability to submit country conditions evidence, including that produced by non-governmental organizations, that supports their claim even more critical. Since the passage of the REAL ID Act in 2005, an immigration judge can require an applicant to provide corroborating evidence to sustain his or her burden of proof, even if the immigration judge finds the applicant's testimony credible, persuasive, and specific. *See* REAL ID Act of 2005, Pub. L. No. 109-13, § 101(a)(3)(B)(ii), 119 Stat. 302 (codified at 8 U.S.C. § 1158(b)(1)(ii) (2014)); 8 U.S.C. § 1158(b)(1)(B)(ii) ("Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.").

they will likely have a particularly adverse impact on *pro se* applicants who have to prepare their applications without assistance, may not be literate or speak English, and may not be familiar with legal standards and requirements related to protection.

Under international standards, asylum adjudication needs to be conducted in a fair and efficient process in which those seeking international protection have a realistic opportunity to have their claims developed, heard in full, and fairly decided.[57] Such a system is more likely to identify effectively those in need of international protection, thereby helping prevent instances of refoulement. UNHCR considers adjudicators and asylum-seekers to have a shared duty to ascertain and evaluate *all* facts relevant to refugee status determination[58]—meaning that all credible sources with probative value be considered evenhandedly. Where an account appears credible but is not "susceptible of proof," or in other words, cannot be corroborated, the applicant should be given the benefit of the doubt.[59] The inquiry should be directed towards ensuring that those in need of international protection receive it. International standards recognize the diverse set of reasons that an asylum-seeker may not be able to describe the harm they have suffered, the reasons why, and other elements of the asylum analysis using legal terminology or concepts, including reasons such as trauma, English proficiency, age, level of education, and religious or cultural backgrounds.[60]

The Proposed Rule risks diverging from international standards in a few respects. First, the rule invites adjudicators to favor one type of source and potentially to adopt as a starting point the lesser reliability of other evidence. UNHCR has noted that decision-makers should have access to "accurate, impartial, and up-to-date country of origin information *from a variety of sources* as a key decision-making tool."[61] Thus, although UNHCR recognizes the importance of reliable evidence and information—regardless of the source—in deciding asylum claims, it is concerned that the Proposed Rule appears to privilege one source of evidentiary material and might be taken as imposing a higher evidentiary bar for, and so suggesting a *prima facie* preference against, other relevant sources.[62] *Pro se* and child asylum-seekers may be most acutely affected, as they may not be able to establish to the satisfaction of an immigration judge, while up against a seasoned government attorney in a highly-adversarial setting, why their evidence should be found credible and probative, making it more difficult for them to fairly present their claims.

The limited guidance contained in the proposed rule appears to be skewed towards a certain set of sources that alone might not convey a complete set of critical facts to adjudicating a claim. Nor are other protections in place that would function alongside this rule to assure asylum-seekers (especially those appearing *pro se*) a full and fair hearing.[63] For example, without necessary facilities (like competent interpreters or qualified legal representatives), asylum-seekers may not understand differing value given to various pieces of evidence or its relevance to the legal analysis.

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[57] See UNHCR Handbook, ¶ 190.
[58] UNHCR Handbook, ¶ 196.
[59] UNHCR Handbook, ¶ 196.
[60] UNHCR Handbook, ¶¶ 46, 190; UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution*, ¶¶ 35-36.
[61] UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12 (31 May 2002), ¶ 50(j) (emphasis added).
[62] UNHCR observes that the Proposed Rule does not comment upon the credibility or probative value of UNHCR materials, such as doctrinal and country-specific guidance, non-return advisories, and other publications. In light of UNHCR's supervisory responsibility under its Statute and reiterated in its 1967 Protocol, and given that the United States has agreed to cooperate with UNHCR in its execution of that supervisory role, UNHCR encourages the government to clarify that adjudicators should consider UNHCR materials as appropriate in deciding applications for international protection.
[63] *See* Inter-Parliamentary Union & UNHCR, A Guide to International Refugee Protection and Building State Asylum Systems: Handbook for Parliamentarians No. 27, p. 171 (2017) (explaining that adjudicators should render decisions that are "individual, objective and impartial").

UNHCR recommends that the Government revise this provision to ensure that it is implemented in a manner consistent with international standards. For instance, the provision might apply the credible and probative standard to all evidence considered, including that produced by the Government. The Government should permit applicants to continue to support their claims with credible and probative evidence that provides adjudicators with information that can help them determine in a fair and impartial manner whether the applicant is entitled to refugee protection, and should not apply different evidentiary thresholds to relevant evidence solely on the basis that it derives from a source other than the Government itself.

2. The Asylum Adjudication Clock

The Proposed Rule would direct immigration judges to adjudicate asylum applications within 180 days of filing absent exceptional circumstances.[64] To effectuate this adjudicatory timeline, the rule would limit an immigration judge's ability to set filing deadlines that would cause the adjudication of an asylum application to exceed 180 days absent a showing of exceptional circumstances.[65] The Proposed Rule defines "exceptional circumstances" narrowly,[66] pointing to situations that are "clearly out of the ordinary, uncommon, or rare," providing examples involving domestic violence suffered by asylum-seekers or a close family member, serious illness of the asylum-seeker or a close family member, or the death of a close family member.[67] It notes that "less compelling circumstances" than these types of instances would not justify an extension of the period of time to adjudicate an asylum application.[68]

While UNHCR supports the timely and efficient adjudication of asylum applications, it is concerned that requiring immigration judges to adjudicate asylum applications within a rigid timeframe – where that timeframe does not make adequate provision for exceptions in case of delays attributable to asylum-seekers but outside their control in view of the wide range of challenges and obstacles they may face – may impact the quality of decisions and lead to erroneous outcomes. In particular, as a result of the lack of flexibility in the adjudicatory timeline, asylum-seekers might face greater obstacles in effectively presenting their claims. For example, persons seeking international protection may not have sufficient opportunity to find and retain a qualified legal representative, gather evidence critical to corroborating their claims, or pursue complementary forms of protection for which they may be eligible, as well as to recover from traumatic experiences so that they can effectively convey their accounts. The narrow range of permissible exceptions to the adjudicatory time frame in the Proposed Rule do not appear to allow immigration judges to consider common realities that asylum-seekers face.

Under international law, asylum-seekers have the right to be heard, with due process guarantees and within a reasonable time, at the first instance.[69] While recognizing the value in a state's intent to adjudicate an asylum application promptly, a swift decision should not be issued at the expense of minimum due process guarantees, which may require a certain degree of flexibility. Such guarantees include access to necessary facilities, including access to competent interpreters and

[64] Proposed Rule at 59,696, 59,699-700. UNHCR observes that this provision aligns with existing law at 8 U.S.C. § 1158(d)(5)(A)(iii) and notes that its comments are the same regardless of where the approach was first articulated.
[65] Proposed Rule at 59,696, 59,699.
[66] Proposed Rule at 59,696.
[67] *See* Proposed Rule at 59,696 (citing to 8 U.S.C. § 1229a(e)(1), which notes that "exceptional circumstances" include "battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances").
[68] *See* Proposed Rule at 59,696, 59,699. The discussion section of the Proposed Rule clarifies that circumstances that may constitute "good cause" justifying a continuance of removal proceedings do not necessarily warrant an exception to the 180-day adjudication deadline for an asylum application. *Id*.
[69] Inter-Parliamentary Union & UNHCR, A Guide to International Refugee Protection and Building State Asylum Systems: Handbook for Parliamentarians No. 27, p. 156 (2017).

legal advice and representation at the outset of the procedure,[70] as well as the opportunity to present evidence in support of the asylum claim and sufficient exceptions for specific need profiles and more complex cases.[71] Further, based on its extensive experience handling refugee claims, UNHCR has identified a variety of additional factors that may affect adjudicatory timeframes.[72] For instance, the speed of case processing may depend on the level of complexity of claims; availability, quality and efficiency of support procedures, such as interpretation; and existence of obstacles to accessing asylum procedures. Therefore, UNHCR observes that adjudicators should have sufficient flexibility and latitude to protect minimum due process guarantees and account for the diverse variables that may necessitate greater time or attention to any particular case, which in turn will likely enhance the quality and fairness of the adjudication.

The Proposed Rule is at variance with with international standards on asylum procedures because it does not reflect the many elements that may influence what constitutes an appropriate case processing timeframe. While it leaves open the possibility that the timeline may be extended, it does so for only the most extreme cases, including situations involving domestic violence and serious illnesses. Nevertheless, there may be circumstances that are outside of an asylum-seeker's control that could also justify a more extended period during which to adjudicate his or her application. For example, some asylum-seekers may present complex claims that require greater time to consider and analyze the facts and applicable law, and others may work diligently to but experience delays in obtaining legal counsel or gathering critical evidence to support their claims. Accounting for these variables supports an adjudication system that is fairer and more accurate, and one that comports with international standards on asylum procedures and due process.

UNHCR recommends that, if the Government does move forward with this provision, it offer to immigration judges considerable flexibility in the adjudication timeline to account for the variety of variables that may influence case processing, such that efficiency is appropriately balanced with fairness and accurate outcomes. UNHCR welcomes continued engagement and discussions with the Government on effective case management procedures, drawing from UNHCR's experience working with countries across the world on similar issues.

IV. Conclusion

UNHCR recognizes the current challenges associated with increased flows of asylum-seekers within the sub-region and the corresponding strains on an asylum system in need of reform, and offers its continued support to the U.S. authorities to overcome these challenges. Nonetheless, we are concerned that the proposals in this rule stray from international standards on fair and efficient asylum adjudication, and so create conditions whereby the United States risks refouling those in need of international protection. UNHCR urges the U.S. government to engage in robust consultation with our agency, so that we might provide technical support and examples of good practices for making a procedure faster but still in line with international standards on fair and efficient procedures.

[70] Inter-Parliamentary Union & UNHCR, A Guide to International Refugee Protection and Building State Asylum Systems: Handbook for Parliamentarians No. 27, p. 157 (2017).
[71] UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12 (31 May 2002), ¶ 50(h).
[72] *See* UNHCR, Procedural Standards for Refugee Status Determination Under UNHCR's Mandate 137 (Aug. 2020).