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RE: Public Comment on Proposed Rules on Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers (DHS Docket No. USCIS-2021-0012; RIN 1615-AC67)

The Women's Refugee Commission (WRC) writes to comment upon the proposed rulemaking issued by the Department of Homeland Security (DHS) and Department of Justice (DOJ) (collectively, the "Departments") on August 20, 2021, entitled "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers" (the "Proposed Rule").

I. The Women's Refugee Commission and the Migrant Rights and Justice Program's Interest in Commenting on the Proposed Rule

The WRC is a non-profit organization that advocates for the rights of women, children, and youth fleeing violence and persecution. We are leading experts on the needs of refugee women and children and the policies and programs that can protect and empower them. The Migrant Rights and Justice ("MRJ") Program focuses on the right to seek asylum in the United States and strives to ensure that migrants and refugees, including women and children, are provided with humane reception in transit and in the United States, given access to legal protection, and are protected from exposure to gender discrimination or gender-based violence.

Since 1996, MRJ staff have made numerous visits to the southwest border region, including along Mexico's northern border, as well as to immigration detention centers for adult women and families and to shelters housing unaccompanied children throughout the country. WRC has interviewed hundreds of detained women, families, and children seeking asylum in the United States.[1] Based on the information that we collect on these visits and our analysis of the laws and

[1] Reports of our findings include: Women's Refugee Commission, *Prison For Survivors: The Detention of Women Seeking Asylum in the United States*, (2017); Women's Refugee Commission, Lutheran Immigration and Refugee Service, and Kids in Need of Defense, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*, (2017); Women's Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values, Again: A Report on the Renewed Practice of Family Immigration Detention,* (2014); Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona,* (2010); Women's Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention,* (2010); Women's Refugee Commission, *Innocents in Jail: INS Moves Refugee Women From Krome to*

policies relating to these issues, we advocate for improvements, including by meeting with government officials and service providers and by documenting our findings through fact sheets, reports, backgrounders, and other materials. We make recommendations to address identified or observed gaps or ways in which we believe the corresponding department or agency can improve its compliance with the relevant standards.

As leading experts on legal and humanitarian protections to asylum seekers, and on the harms of often punitive treatment of people seeking protection at U.S. borders and in immigration detention facilities, WRC is concerned that if implemented, the Proposed Rule's "streamlined procedures" would contravene domestic and international law by leading to erroneous decisions that deport individuals to countries where they face persecution or torture. While we welcome some of the changes to the asylum system envisioned by the proposed rule, WRC urges the Departments to significantly clarify or withdraw the Proposed Rule to ensure that people seeking protection receive due process and have their cases adjudicated outside of government custody.

II. The Proposed Rule Positively Allows U.S. Citizenship and Immigration Services Asylum Officers to Conduct Initial Asylum Adjudications, but Occurs Within a Flawed and Unfair Framework of Expedited Removal

Under the Proposed Rule, people placed in expedited removal who have passed their credible fear interviews would have their applications for asylum and other related relief from removal adjudicated by U.S. Citizenship and Immigration Services (USCIS) asylum officers rather than being referred to full proceedings under section 240 of the Immigration and Nationality Act (INA).[2] WRC supports directly referring asylum seekers for initial asylum adjudications with USCIS asylum officers, allowing interviews to take place in less traumatic and adversarial settings.[3] However, as detailed further in Section V, *infra*, we do not support conducting initial asylum adjudications at the US-Mexico border or in custody. Asylum seekers should be referred for interviews in their destination locations within the United States and should not be subjected to the expedited removal process or other streamlined processing that would similarly limit due process.[4]

WRC is deeply concerned that the Proposed Rule is premised on the continued use of the flawed expedited removal process. As discussed below in more detail, the Proposed Rule not only utilizes and expands the use of expedited removal, but also eliminates the vital (if still insufficient) procedural safeguard of full immigration court hearings in its attempt to "streamline" processing.

Turner Guilford Knight Correctional Center, (2001); Women's Refugee Commission, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center*, (2000); and Women's Refugee Commission, *Liberty Denied: Women Seeking Asylum Imprisoned in the U.S.*, (1997).

[2] Proposed 8 CFR §§ 1003.48 and 208.14(c)(5).

[3] *See* Women's Refugee Commission, *The US Must Rebuild the Asylum System, Not Destroy it Further* (May 2021) https://www.womensrefugeecommission.org/wp-content/uploads/2021/05/US-Must-Rebuild-Asylum-System-Not-Destroy-Further.pdf.

[4] *See* American Immigration Council, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers* (May 9, 2017), https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers.

The Proposed Rule embraces the use of expedited removal, a process that has failed to meet due process rights and comply with domestic refugee law and international commitments. Notably, DHS is not required to use expedited removal.[5] It can place asylum seekers into full immigration court removal proceedings, parole or release them on recognizance, and provide the opportunity to apply for asylum through the Asylum Office.[6] By using expedited removal, DHS limits asylum seekers' due process by subjecting them to a flawed credible fear interview, typically in ICE detention and with limited access to counsel.

Expedited removal has led to mistreatment and the illegal deportation of refugees for 25 years.[7] The U.S. Commission on International Religious Freedom (USCIRF) and other nongovernmental organizations have long documented serious issues with the expedited removal process, including that U.S. Customs and Border Protection (CBP) officers failed to screen asylum seekers as required by U.S. law in more than half of the cases where monitors were present during interviews.[8] Asylum seekers also experience continued family separation, lack of medical care, limited access to counsel and language services, and numerous procedural issues while in expedited removal.[9] We recommend the Departments amend the proposed rule to provide for initial USCIS adjudications of claims in a process that is not dependent upon subjecting asylum-seeking individuals to expedited removal.

WRC strongly urges that the Proposed Rule ensures adequate asylum officer staffing to make its provisions operational. Today, there are already weeks to months-long delays for credible fear interviews in numerous sectors.[10] Logistical and capacity issues must be addressed before the implementation of the Proposed Rule. Moreover, we note that the Proposed Rule indicates that a significant investment of resources will be needed to implement the planned changes. Typically, USCIS is funded through fees charged to applicants and petitioners requesting immigration or naturalization benefits. However, to the extent possible, we urge the Departments to secure the necessary resources from Congress rather than through increased fees for applicants. Under no

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[5] Matter of E-R-M- & L-R-M-, 25 I&N Dec. 520 (BIA 2011).

[6] 8 U.S.C. § 1182(d)(5)(A); Matter of E-R-M- & L-R-M-, 25 I&N Dec. 520 (BIA 2011).

[7] Congressional Record Volume 146, Number 111 (September 19, 2000), https://www.govinfo.gov/content/pkg/CREC-2000-09-19/html/CREC-2000-09-19-pt1-PgS8752.htm; Human Rights Watch, "“You Don't Have Rights Here”: US Border Screening and Returns of Central Americans to Serious Harm," (October 16, 2014), https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk#; Human Rights First, "Biden Administration Move to Eliminate Requests for Reconsideration Would Endanger Asylum Seekers, Deport Them to Persecution and Torture," (September 30, 2021), https://www.humanrightsfirst.org/resource/biden-administration-move-eliminate-requests-reconsideration-would-endanger-asylum-seekers.

[8] U.S. Commission on International Religious Freedom, "Report on Asylum Seekers in Expedited Removal," (February 8, 2005), https://www.uscirf.gov/publications/report-asylum-seekers-expedited-removal; Elizabeth Cassidy and Tiffany Lynch, "Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal," U.S. Commission on International Religious Freedom, (2016), https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf.

[9] Kathryn Shepherd and Royce Bernstein Murray, "The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers," American Immigration Council, (May 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_perils_of_expedited_removal_how_fast-track_deportations_jeopardize_detained_asylum_seekers.pdf.

[10] Coalition Letter on Detained Asylum Seekers Deprived of Due Process in Expedited Removal Process, (June 30, 2021), https://www.splcenter.org/sites/default/files/detained_asylum_seeker_grievance_letter_30_june_2021.pdf.

circumstances should the additional costs be funded through costs to asylum applicants. During the previous administration, USCIS planned to implement an unprecedented and unacceptable fee on affirmative asylum applications, which would have made the United States one of just four countries in the world to require such a fee from people seeking protection.[11]

III. The Proposed Rule Would "Streamline" Processing by Unacceptably Limiting Asylum Seekers' Ability to Be Heard Before an Immigration Judge

The Proposed Rule intends to create proceedings which are "more streamlined than section 240 removal proceedings,"[12] but doing so would unacceptably deny asylum seeking individuals their day in court. Under the Proposed Rule, asylum seeking individuals who are placed in expedited removal and have passed their credible fear interview will have their cases heard by USCIS asylum officers rather than being referred to immigration court for full proceedings under section 240 of the Immigration and Nationality Act (INA).[13] While we generally support initial claims being heard by an asylum officer in a non-custodial and less adversarial setting, we are very concerned that the Proposed Rule will limit an asylum seeker's opportunity to be heard before an immigration judge following a denial by the asylum office.

If the USCIS asylum officer does not grant asylum, the asylum seeking individual may only seek review of the decision and the interview transcript, instead of being referred to immigration court for full proceedings under section 240 of the INA. To present additional evidence to the immigration court upon presenting their case for review, an asylum seeker "must establish that the testimony or documentation is not duplicative of testimony or documentation already presented to the asylum officer, and that the testimony or documentation is necessary to ensure a sufficient factual record upon which to base a reasoned decision on the application or applications."[14] In other words, under this new "streamlined process," individuals who receive denials at the Asylum Office who wish to appeal have a new, additional burden on top of the already onerous immigration court preparation of convincing an immigration judge to accept further evidence. This change will not improve efficiency but instead create a high-stakes additional preparation step for asylum applicants to both prepare the appeal as well as convince the immigration judge that there is reason to accept further testimony and evidence.

WRC strongly objects to this change to the rights of asylum-seeking individuals in the United States. This streamlined approach could allow immigration judges to deny additional evidence and prevent an asylum seeker from bringing expert witnesses or providing details beyond the transcript of the Asylum Office interview. We are concerned that this process would allow immigration judges to rapidly approve denials without due process or meaningful participation by counsel, in violation of INA § 292.

Additionally, we are concerned that review of appeals by the Board of Immigration Appeals and federal circuit courts may similarly become cursory because they will no longer have a traditional trial transcript to review. Allowing immigration judges the discretion to deny additional evidence

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[11] Catholic Legal Immigration Network, Inc. (CLINIC), *"USCIS Fee Schedule Changes." Fee Schedule Changes* (Sept. 15, 2020), cliniclegal.org/issues/fee-schedule-changes.

[12] 86 Federal Register (Fed. Reg.) 46906, 46919 (Aug. 20, 2021).

[13] Proposed 8 CFR §§ 1003.48 and 208.14(c)(5).

[14] Proposed 8 CFR § 1003.48(e)(1).

and proceed only from the Asylum Office interview transcript may lead to potential erroneous deportation and *refoulement* of people to harm. Taken together, these new procedures risk may send individuals to countries in which they would face grave danger, constituting a fundamental violation of the United States' domestic and international legal obligations to refrain from returning refugees to persecution or torture. We strongly urge that—if the Departments move forward with the Proposed Rule—individuals who are not granted asylum by an asylum officer be referred for full INA § 240 removal proceedings.

IV. The Proposed Rule Makes Some Positive Changes to the Credible Fear Procedure at 8 CFR § 208.3

As discussed previously, expedited removal is a fundamentally flawed process and should not be used against asylum seeking individuals. To the extent that the expedited removal process continues to remain a part of the asylum process, we applaud the Departments for clarifying at proposed 8 CFR § 208.3 that credible fear interviews must be performed by USCIS asylum officers.[15] In 2019, CBP piloted a program allowing CBP officers and agents, rather than trained USCIS asylum officers, to conduct credible fear interviews. CBP is an agency with a well-documented history of abuse and misconduct towards migrants and asylum seekers[16] whose track record is demonstrably incompatible with carrying out legal protection functions. Unlike CBP officers and agents, USCIS asylum officers have asylum law training and can conduct credible fear interviews in a trauma-informed manner. CBP officers and agents are ill-suited to conduct sensitive, non-adversarial interviews, lack the training and experience of specialized asylum officers, and already routinely fail to conduct required screenings and to refer people seeking protection for credible fear screenings.[17] The CBP credible fear pilot was enjoined by a federal court.[18] The proposed rule would appropriately keep future administrations from again seeking to have CBP officers and agents without the appropriate background conduct credible fear interviews.

The proposed rule also clarifies at proposed 8 CFR § 208.30(e)(2) that people seeking asylum only need to demonstrate a "significant possibility" that they can prevail on their claim for asylum, withholding of removal, or protection under the Convention Against Torture. This is a welcome change proposed by the Departments that would provide important protections for individuals in expedited removal. The WRC previously submitted extensive comments in opposition to changes to the credible fear standard put forth in the "Security Bars" rule and "Global Asylum" rule, which would have returned vulnerable asylum seekers who merited protection to danger and potentially

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[15] Proposed 8 CFR§ 208.3(d).

[16] *See, e.g.,* Katy Murdza and Walter Ewing, *American Immigration Council Special Report: The Legacy of Racism within the U.S. Border Patrol* (February 10, 2021), https://www.americanimmigrationcouncil.org/research/legacy-racism-within-us-border-patrol; Shaw Drake and Kate Huddleston, *ACLU News & Commentary: Addressing Radicalized Violence Against Migrants Requires a Complete Overhaul of Customs and Border Protection* (September 24, 2021), https://www.aclu.org/news/immigrants-rights/addressing-racialized-violence-against-migrants-requires-a-complete-overhaul-of-customs-and-border-protection/l; Women's Refugee Commission, *Prison for Survivors*, *supra* FN 1 at *9*-10

[17] *See, e.g.* Human Rights First, *Allowing CBP to Conduct Credible Fear Interviews Undermines Safeguards to Protect Refugees* (April 2019), https://www.humanrightsfirst.org/sites/default/files/CBP_Credible_Fear.pdf.

[18] *A.B.-B. v. Morgan*, No. 20-CV-846 (RJL), 2020 WL 5107548, at *1 (D.D.C. Aug. 31, 2020).

to death.[19] We applaud the Departments for rejecting these changes to the credible fear standard and restoring the standard to one that comports with INA §235(b)(1)(B).

V. The Proposed Rule Fails to Specify Where or When "Streamlined" Processes Occur; Expedited Asylum Adjudications in Custody are Fundamentally Unfair and Lead to Erroneous Decisions and Limit Due Process

The changes outlined in the Proposed Rule are extensive, yet the location and timeline for these processes is not described. Unless explicitly required to occur outside of government custody and with adequate time for an asylum seeker to articulate a claim for protection, this Proposed Rule may result in rushed asylum adjudications and erroneous removals of individuals with meritorious claims to harm or death. Expedited processing of asylum applications in custody—particularly in CBP custody at the US-Mexico border or in Immigration and Customs Enforcement (ICE) custody—raises serious due process concerns, including through exacerbating applicants' existing trauma and medical or mental health conditions.[20]

WRC has for years documented the inappropriate treatment and conditions of ICE and CBP custody, including grave concerns over due process. CBP and ICE detention facilities are essentially prisons or jails, often located in remote areas with few existing local service providers to help provide legal information to inform asylum seekers of the application process. Adjudications, both of credible fear interviews and in immigration courts, often occur by telephone or video instead of in person. Additionally, despite the imperative role that interpreters play to ensure the fair adjudication of applications, access to interpreters is routinely inadequate or nonexistent, particularly for those who speak any of many Indigenous, Middle Eastern, and African languages.[21] One previous policy that kept asylum seekers in expedited removal proceedings in CBP custody failed to provide access to attorneys to prepare for screening interviews. Under this policy, the number of asylum seekers who passed their screening interview was only 23 percent, in comparison to 74 percent prior to this change.[22]

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[19] Women's Refugee Commission Comment on Executive Office for Immigration Review, Department of Justice and U.S. Citizenship and Immigration Services, Department of Homeland Security, Security Bars and Processing; Delay of Effective Date Interim Final Rule (USCIS Docket No: USCIS 2020-0013 A.G. Order No. 5004-2021), (April 21, 2021), https://www.womensrefugeecommission.org/wp-content/uploads/2020/08/WRC-Comment-on-Security-Bars-Processing-NPRM-04212021.pdf; Women's Refugee Commission Comment on Department of Homeland Security and Department of Justice, Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review Notice of Proposed Rulemaking (RIN 1125-AA94 / EOIR Docket No. 18-00002) (July 15, 2020), https://www.womensrefugeecommission.org/wp-content/uploads/2020/07/WRC-Comment-Letter-DHS-DOJ-Asylum-07152020.pdf.

[20] *See, e.g.,* Women's Refugee Commission, *Prison for Survivors, The Detention of Women Seeking Asylum in the United States*, (2017); Human Rights First, CGRS, Women's Refugee Commission, The Center for Victims of Torture & Network Lobby for Catholic Social Justice, *Do Expedited Screenings and Adjudications at the Border Work?* (May 2021) https://www.womensrefugeecommission.org/wp-content/uploads/2021/05/Expedited-Border-Screening-Adjudication-Factsheet.pdf.

[21] The Proposed Rule does require USCIS to provide an interpreter for applicants who are unable to proceed with the new post credible fear interview procedure in English. Proposed 8 CFR§ 208.9(g). WRC strongly urges that the Departments specify that interpreters are qualified to interpret, preferably certified to interpret in Article III courts, and are competent in the language and/or dialect that asylum applicants indicate is their best language, and that applicants will retain flexibility to supply their own interpreter.

[22] U.S. Government Accountability Office, *Southwest Border: DHS and DOJ Have Implemented Expedited Credible Fear Screening Pilot Programs, but Should Ensure Timely Data Entry*, (January 25, 2021).

The Proposed Rule also fails to specify the timing for these changes to occur, and a "streamlined" process that takes place within days or weeks is unreasonable and unfair.[23] Rushing people seeking asylum through their claims limits their ability to access legal services and meaningfully prepare for the credible fear screening. An asylum seeker cannot collect evidence or arrange expert evaluations, especially given the immense evidentiary requirements in asylum cases, on an expedited timeline to prepare a complete case. Further, fast-track proceedings do not allow an officer to develop the rapport necessary to sufficiently gather critical information and may adversely affect case outcomes. It is imperative that asylum seekers are not forced to complete expedited screenings while being held in detention facilities and instead can meaningfully work with legal representation to adequately collect necessary components of their asylum application outside of custody. Failing to adequately screen for protection may lead to erroneous decisions and the deportation of refugees to persecution and torture.

VI. The Departments Should Release Asylum Seekers on Parole or Bond to Avoid Arbitrary and Inhumane Detention of Asylum Seekers

As discussed in Section V, *supra,* detention of people seeking protection negatively impacts their ability to receive protection and increases their risk of their erroneous return to harm or death. Detention of people seeking asylum runs contrary to U.S. legal obligations under the Refugee Convention and Protocol,[24] and UNHCR has affirmed the general principle that "asylum-seekers should not be detained."[25] However, DHS has a well-documented history of arbitrarily denying parole to people seeking asylum, and the current and proposed parole provisions are inadequate to protect against unnecessary and arbitrary detention of people seeking asylum.[26] Government data on parole determinations demonstrates that the agency systematically denies parole to people seeking asylum, often citing pretextual and arbitrary justifications for doing so.[27] Under proposed 8 C.F.R. § 235.3(b)(2)(iii), (4)(ii) DHS could release asylum seekers placed into expedited removal

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[23] *See* Kate Huddleston, *Ending PACR/HARP: An Urgent Step Toward Restoring Humane Asylum Policy* (February 16, 2021), Just Security, https://www.justsecurity.org/74678/ending-pacr-harp-an-urgent-step-toward-restoring-humane-asylum-policy/.

[24] Convention Relating to the Status of Refugees, (July 18, 1951), 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees, (January 31, 1967), 606 U.N.T.S. 267.

[25] U.N. High Commissioner for Refugees, "UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers," (February 1999), https://www.refworld.org/pdfid/3c2b3f844.pdf.

[26] U.S. Immigration and Customs Enforcement, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," (December 8, 2009), https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf; Class Complaint for Injunctive and Declaratory Relief, *Damus v. Nielson, No. 1:18-cv-00578* (D.D.C. filed Mar. 15, 2018) https://www.aclu.org/legal-document/damus-v-nielsen-complaint; Class Complaint for Injunctive and Declaratory Relief, *Heredia Mons v. McAleenan, No. 1:19-cv-01593* (D.D.C. filed May 30, 2019) https://www.splcenter.org/sites/default/files/2019.05.30_-_002_ _class_complaint_for_injunctive_and_declaratory_relief.pdf.

[27] Human Rights First, "Immigration and Customs Enforcement Records Received Through FOIA Confirm Need for Increased Oversight of Agency's Arbitrary and Unfair Parole Decisions for Asylum Seekers," (September 2021), https://www.humanrightsfirst.org/sites/default/files/FOIARecordsParole.pdf; American Immigration Council, "Immigrants and Families Appear in Court: Setting the Record Straight," (July 2019), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_and_families_appear_in_court _setting_the_record_straight.pdf; Ingrid V. Eagly and Steven Shafer, "Measuring In Absentia Removal in Immigration Court," 168 University of Pennsylvania Law Review 817 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3633267.

if "detention is unavailable or impracticable," including where "continued detention would unduly impact the health or safety of individuals with special vulnerabilities."

While WRC welcomes the Departments efforts to clarify that individuals should be paroled if their detention would impact their health or safety, we believe that this proposed provision is far too narrow and will not succeed in protecting vulnerable asylum-seeking individuals from inhumane and unnecessary detention. To reduce arbitrary and unnecessary detention of people seeking asylum, we suggest that the Departments amend proposed 8 C.F.R. § 235.3(b)(2)(iii), (4)(ii) to clarify that DHS should parole people if continued detention is not in the public interest (8 C.F.R. § 212.5(b)). Under the Biden administration, asylum-seeking individuals have spent months waiting in detention for credible fear interviews while separated from family and while suffering from serious medical and mental health conditions.[28] Most detained asylum-seeking individuals would face difficulty requesting and being granted parole under the proposed standard of detention being "unavailable or impractical."

In order to address routine, arbitrary denials of parole of people seeking protection despite their apparent eligibility, we further and critically recommend that the Departments amend 8 C.F.R. § 235.3(c) to provide for a presumption of release unless DHS establishes by clear and convincing evidence that an individual is a danger to the community and no less restrictive alternative would mitigate that risk. The Departments should also ensure that parole under Section 235.3(c) covers people seeking protection who enter the U.S. without inspection.[29] Contrary to the Refugee Convention, which makes clear people seeking protection should not be penalized because of unauthorized entry or presence,[30] asylum seeking individuals who enter without inspection are currently unable to request bond hearings before an immigration judge under *Matter of M-S-*, a Trump administration Attorney General ruling that that Biden administration has not reversed.[31] This is particularly concerning when government policies currently block individuals from seeking protection at ports of entry and force them to cross irregularly and in dangerous conditions to reach safety in the U.S. but would still be deeply problematic even if access to asylum were more regularized.[32]

VII. Conclusion

WRC is concerned that the Proposed Rule would limit the due process rights of asylum seekers who merit protection by changing adjudication procedures for those placed into expedited removal proceedings. We support the Departments' efforts to place asylum interviews in a more

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[28] Coalition letter on Detained Asylum Seekers Deprived of Due Process in Expedited Removal Process (June 30, 2021), https://www.splcenter.org/sites/default/files/detained_asylum_seeker_grievance_letter_30_june_2021.pdf

[29] People seeking protection who enter without inspection should also be eligible for bond hearings before immigration courts.

[30] Convention Relating to the Status of Refugees (July 28, 1951), 189 U.N.T.S. 137, Art. 31.

[31] Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019).

[32] *See, e.g.,* Human Rights First, *"Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger,"* (April 2021), https://www.humanrightsfirst.org/resource/failure-protect-biden-administration-continues-illegal-trump-policy-block-and-expel-asylum; Office of Inspector General, U.S. Department of Homeland Security, *"CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry,"* (October 27, 2020), https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf (finding that "creating barriers to entry at ports of entry may incentivize undocumented [noncitizens] to attempt to cross into the United States illegally, between ports of entry").

appropriate, non-adversarial and less traumatizing setting. However, it is critical that asylum applicants still have the full opportunity to present all necessary evidence in immigration court with counsel. This Proposed Rule would "streamline" proceedings in a manner that would limit due process and lead to erroneous deportations to countries where they would suffer persecution or even death, in violation of the U.S.'s legal obligation of *non-refoulement*.

Thank you for the opportunity to comment on these proposed changes. We urge the Departments to significantly revise or withdraw the Proposed Rule.

Sincerely,

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