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RE: Public Comment on Interim Final Rule on Procedures for Credible Fear Screening and Consideration for 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 writes to comment upon the interim final rulemaking issued by the Department of Homeland Security (DHS) and the Department of Justice (DOJ) (collectively, the “Departments”) on March 29, 2022, entitled “Procedures for Credible Fear Screening and Consideration for Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers” (the “Interim Final Rule”).

I. Women’s Refugee Commission and the Migrant Rights and Justice Program’s Interest in Commenting on the Interim Final Rule

The WRC is a non-profit organization that advocates for the rights of displaced women, children, and youth. 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 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 Interim Final 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 Interim Final Rule and especially those reflecting the Departments’ responsiveness to public comments on the Proposed Rule published August 20, 2021, WRC writes to express serious concern with the Interim Final Rule’s ability to ensure that people seeking protection receive due process and have their cases adjudicated outside of government custody.

II. The Interim Final Rule Makes Some Positive Changes Responsive to Comments by WRC and Others on the August 20, 2021 Notice of Proposed Rulemaking (“Proposed Rule”)

WRC appreciates the Departments’ responsiveness to concerns raised about the credible fear and asylum processes in the Proposed Rule as reflected in several key changes made in the Interim Final Rule. We highlight the positive changes in three areas: (1) the U.S. Citizenship and Immigration Services (USCIS) Asylum Office stage; (2) the restoration of regular Immigration and Nationality Act (INA) Section 240 proceedings; and (3) the harmonization of parole standards for asylum seekers in expedited removal.

A. Asylum Merits Interviews and Increased Scope of Eligibility Review

¹ Reports of our findings include: Women’s Refugee Commission and Instituto para las Mujeres en la Migracion A.C., *Stuck in Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021*, (2022); 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 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).

As we stated in our comments on the August 20, 2021 Proposed Rule, we support referring asylum seekers for initial asylum adjudications with asylum officers as it allows interviews to take place—presuming the asylum seeker is not detained—in less traumatic and adversarial settings. For this reason, we support the general concept of the Asylum Merits Interviews introduced in this Interim Final Rule,² as well as the authority for asylum officers to make eligibility determinations as to withholding of removal and protection under the Convention Against Torture eligibility.³ Nonetheless and as described in detail in Section III.A, *infra*, the benefits of these changes are reduced by other aspects of the Interim Final Rule that (a) permit the detention of asylum seekers while they undergo Asylum Merits Interviews; and (b) impose unreasonable deadlines for the Asylum Office interview process.

WRC also welcomes the restoration in this Interim Final Rule of the request for reconsideration review mechanism for asylum seekers who receive a negative credible fear determination.⁴ This mechanism is a critical safeguard for asylum seekers in expedited removal, the majority of whom remain detained while they undergo the credible fear process. However, WRC is disappointed by the Interim Final Rule’s unrealistic and prejudicial deadline of seven days to request reconsideration following an immigration judge’s concurrence with a negative credible fear determination. A mere seven days is especially unreasonable for detained, unrepresented, and non-English speaking asylum seekers, who constitute the majority of individuals going through the expedited removal credible fear process.⁵

B. Restoration of Regular INA Sec. 240 Proceedings

WRC commends the withdrawal of the strongly objectionable provision in the Proposed Rule depriving asylum seekers of their right to regular section 240 proceedings in immigration court following a denial by the Asylum Office in the initial adjudication of their asylum application.⁶ We further support the general concept behind the addition of the status conference⁷ as a small step toward reducing the heightened adversariness of immigration court proceedings. Nonetheless, these advances are severely undermined by the extremely rushed timelines applied to these proceedings, as well as several procedural concessions to DHS that exacerbate the fundamental asymmetry of these proceedings to the prejudice of asylum seekers, especially those who lack legal

² 87 Federal Register (Fed. Reg.) 18081, 18086, 18216-18217 (Mar. 29, 2022); 8 C.F.R. § 208.9.

³ 87 Fed. Reg. at 18218; 8 C.F.R. § 208.16.

⁴ 87 Fed. Reg. at 18219; 8 C.F.R. § 208.30(g)(1)(i).

⁵ *See, e.g.*, 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-reconsiderationwould-endanger-asylum-seekers>.

⁶ 87 Fed. Reg. at 18082, 18098, 18223-18226; 8 C.F.R. § 1240.17.

⁷ 87 Fed. Reg. at 18083, 18224; 8 C.F.R. § 1240.17(f)(2).

representation.⁸ We detail our concerns regarding the new “streamlined” removal proceedings in the Interim Final Rule in Section III.B, *infra*.

C. Harmonization of Parole Standards for Asylum Seekers in Expedited Removal

WRC is pleased that the Interim Final Rule replaces the fundamentally unfair and unworkable parole standard put forth in the Proposed Rule with the application of the 8 C.F.R. § 212.5(b) parole standard to individuals in expedited removal and throughout the credible fear process,⁹ a recommendation WRC made in our comments on the August 20, 2021 Proposed Rule. However, the Interim Final Rule’s failure to address the systemic arbitrary denials of parole by DHS to individuals eligible under the 8 C.F.R. § 212.5(b) standard raises significant concerns about the likely impacts of this regulatory change. We address these concerns in Section IV, *infra*.

III. Other Changes Reflected in the Interim Final Rule Threaten to Deprive Asylum Seekers of Due Process Including Legal Representation

While WRC is seriously concerned by several of the changes in the Interim Final Rule, we are nonetheless grateful for the opportunity to comment provided by the Rule’s interim status and its reflection of the Departments’ ongoing willingness to engage with civil society as they seek to implement significant reforms. We highlight the concerning changes reflected in the Interim Final Rule in three areas: (1) rushed and inefficient processing at the USCIS Asylum Office stage; (2) prejudicial accelerated timelines in immigration court; and (3) the unaddressed potential harmful impacts on children and families.

A. Rushed Asylum Merits Interviews

The “streamlined” process set out in the Interim Final Rule mandating USCIS conduct the Asylum Merits Interview 21 to 45-days following a positive credible fear determination¹⁰ is unreasonable and unfair.¹¹ Rushing people seeking asylum through their claims limits their ability to access legal services and meaningfully prepare for the Asylum Merits Interview, not least when an asylum seeker may be required to submit evidence as few as seven days after a positive credible fear determination.¹² 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

⁸ Unlike respondents, DHS may revise its position any time up to the merits hearing, as well as decline to participate in the proceedings altogether. *See* 87 Fed. Reg. at 18224-18225; 8 C.F.R. §§ 1240.17(f)(2)(C), (f)(3)(ii).

⁹ 87 Fed. Reg. at 18082, 18088, 18220; 8 C.F.R. §§ 212.5(b), 235.3(b), (c).

¹⁰ 87 Fed. Reg. at 18216; 8 C.F.R. § 208.9(a)(1).

¹¹ *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-towardrestoring-humane-asylum-policy/>.

¹² 87 Fed. Reg. at 18217; 8 C.F.R. § 208.9(e)(1).

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.

Critically, the probability of a significant number of erroneous determinations resulting from the rushed Asylum Merits Interview process undermines the very goals of fairness and efficiency posited by the Departments for this Interim Final Rule.¹³ Moreover, the low grant rate of 15 percent at the Asylum Merits Interview stage estimated by the Departments¹⁴ fails to either acknowledge or address either the Asylum Office's longstanding failure to grant asylum applications that are later overwhelmingly granted by the immigration courts¹⁵ or discriminatory disparities in adjudications.¹⁶ Absent attention to these significant roadblocks to achieving true fairness and efficiency at the Asylum Office, the Interim Final Rule threatens to exacerbate existing inefficiencies while continuing to deprive asylum seekers of due consideration of their claims.

B. Fundamentally Unfair Accelerated Timelines in Immigration Court

As with the Asylum Office stage described above, the Interim Final Rule imposes "streamlined" timelines on section 240 removal proceedings that would in practice operate to deny asylum seeking individuals a fair day in court. These timelines mandate an initial hearing only 30 to 35 days following service of the Notice to Appear (NTA) on the asylum seeker,¹⁷ and the submission of evidence only 30 days after that hearing.¹⁸ Moreover, the Interim Final Rule significantly restricts asylum seekers' ability to obtain continuances.¹⁹ This streamlined approach will make it

¹³ 87 Fed. Reg. at 18087-18088.

¹⁴ 87 Fed. Reg. at 18089, 18186-18187.

¹⁵ See, e.g., Human Rights First, "Erroneous Asylum Office Referrals Delay Refugee Protection, Add to Backlogs," (April 19, 2022), <https://www.humanrightsfirst.org/blog/erroneous-asylum-office-referrals-delay-refugee-protection-add-backlogs>.

¹⁶ Human Rights First, "USCIS Records Reveal Systemic Disparities in Asylum Decisions," (May 17, 2022), <https://www.humanrightsfirst.org/resource/uscis-records-reveal-systemic-disparities-asylum-decisions>.

¹⁷ 87 Fed. Reg. at 18223; 8 C.F.R. § 1240.17(b). Absent from the Interim Final Rule is any acknowledgement of the frequently substantial gap between when an NTA is served upon the respondent and when it is filed with EOIR, not to mention DHS's ongoing inability to issue NTAs that include hearing dates. See *Pereira v. Sessions*, 138 S.Ct. 2105, 2119 (2018) (government citing administrative burden of meeting threshold statutory requirements in serving NTA with time, date, and place of proceedings); *Niz Chavez v. Garland*, 141 S.Ct. 1474, 1484 (2021) ("The government admits that producing compliant notices has proved taxing over time."). Combining these continuing, endemic administrative failures with super accelerated timelines primarily burdening asylum seekers runs directly counter to the most basic due process guarantees.

¹⁸ 87 Fed. Reg. at 18223-18224; 8 C.F.R. § 1240.17(f).

¹⁹ 87 Fed. Reg. at 18225; 8 C.F.R. § 1240.17(h).

extremely difficult if not impossible for asylum seekers to obtain legal counsel or secure expert witnesses or critical evidence from the countries they are fleeing. As a result, even fewer asylum seekers placed into expedited removal will find legal representation, a problem only compounded where asylum seekers remained detained while going through this process.

The potential for fundamentally unfair treatment of unrepresented asylum seekers is exacerbated by the Interim Final Rule's provisions (a) permitting immigration judges to forego merits hearings on the asylum claim where neither DHS nor the asylum seeker register an intent to present additional evidence at the status conference,²⁰ and (b) prohibiting merits hearings where the asylum seeker fails to contest the Asylum Office's denial of asylum eligibility.²¹ WRC is 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. Effectively, the Interim Final Rule deprives asylum seekers of meaningful legal assistance and then punishes them for any difficulties they might experience navigating a confusing and foreign legal process on their own.

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 Interim Final Rule—these arbitrary immigration court deadlines be eliminated and adequate safeguards restored to ensure immigration judges' compliance with their legal duty to develop the record.

C. Unaddressed Impacts on Children and Families

WRC is troubled by the intention indicated by the Departments in the Interim Final Rule to place more families with children in expedited removal.²² We heartily disagree that the ability to subject more children and their parents and legal guardians to the mistreatment and illegal deportation endemic to expedited removal (as we describe in greater detail in the following section) constitutes the "significant public benefit" claimed by DHS in the Interim Final Rule.²³

While another portion of the Interim Final Rule provides welcome procedural safeguards for family unity, we urge the Departments to proceed with caution in order to preserve the full spectrum of rights due to unaccompanied immigrant children under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).²⁴ The Interim Final Rule grants asylum

²⁰ 87 Fed. Reg. at 18225; 8 C.F.R. § 1240.17(f)(4)(i).

²¹ 87 Fed. Reg. at 18224; 8 C.F.R. § 1240.17(f)(2)(i)(B).

²² 87 Fed. Reg. at 18108-18109.

²³ *Id.*

²⁴ Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 23 Dec. 2008.

officers' discretionary authority to include a concurrently arriving child²⁵ on their accompanying relative's (non-parent or legal guardian) positive credible fear evaluation and determination for purposes of family unity.²⁶ Given the potential for such a discretionary determination to deprive a child otherwise eligible under the TVPRA of a full affirmative asylum interview and non-streamlined 240 proceedings, we urge the Departments to reconsider. While the Departments should indeed take systematic steps to ensure that concurrently arriving family members are able to maintain contact and unity and not subject to separation or needless immigration custody, at minimum this discretionary authority should be accompanied by a mandatory advisal of the potential consequences to the child and their accompanying non-parent or legal guardian adult relative, a review process, and the obligation to consider input from the non-citizens' legal counsel (including of both adult relative and child where applicable) to ensure that children are not deprived of their rights without informed consent.

IV. The Interim Final Rule Does Not Resolve Persistent Threats to the Fairness and Wellbeing of Asylum Seekers Posed by Expedited Removal and Detention

As we expressed in our comments on the August 20, 2021 Proposed Rule, WRC is deeply concerned that the Interim Final 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.²⁷ 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.²⁸ 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.²⁹ 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

²⁵ The regulatory language states "accompanying family members", which necessarily includes children. 87 Fed. Reg. at 18218; 8 C.F.R. § 208.30(c)(2).

²⁶ 87 Fed. Reg. at 18218; 8 C.F.R. § 208.30(c)(2).

²⁷ *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011).

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

²⁹ 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-andreturns-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-reconsiderationwould-endanger-asylum-seekers>.

by U.S. law in more than half of the cases where monitors were present during interviews.³⁰ 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.³¹ We recommend the Departments amend the interim final rule to provide for initial USCIS adjudications of claims or at minimum ensure a process that is not dependent upon subjecting asylum-seeking individuals to expedited removal.

Although WRC welcomes the clarification of parole eligibility for asylum seekers in expedited removal, we insist that expedited asylum adjudications in custody are fundamentally unfair, lead to erroneous decisions, and limit due process. Unless explicitly required to occur outside of government custody and with adequate time for an asylum seeker to articulate a claim for protection, this Interim Final 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.³²

Detention of people seeking asylum runs contrary to U.S. legal obligations under the Refugee Convention and Protocol,³³ and UNHCR has affirmed the general principle that “asylum-seekers should not be detained.”³⁴ As noted above, Women’s Refugee Commission has published numerous reports for over 20 years documenting the trauma, harm, and immense due process violations caused by detention on women, families, and others seeking asylum. With families, child-welfare research overwhelmingly shows that the use of carceral or carceral-like detention on children causes significant harms, which persist for years after the detention. The negative effects are significant for all ages of children, occur for all lengths of stay in carceral or carceral-like institutions, and occur when children are in detention alone or with family members.³⁵

³⁰ 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>.

³¹ 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/research/expedited-removal-asylum-seekers>.

³² 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-BorderScreening-Adjudication-Factsheet.pdf>.

³³ 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.

³⁴ 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>.

³⁵ Lorek, Ann, K. Ehntholt, A. Nesbitt, E. Wey, C. Githinji, E. Rossor, and R> Wickramasinghe (2009). “The mental and physical health difficulties of children held within a British immigration detention center: A pilot study.” *Child*

DHS has a well-documented history of arbitrarily denying parole to people seeking asylum, and even the welcome harmonization of the parole provisions in the Interim Final Rule is inadequate to protect against unnecessary and arbitrary detention of people seeking asylum.³⁶ 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.³⁷ These widespread arbitrary denials occur under the same regulatory framework extended to non-citizens in expedited removal through this Interim Final Rule, where under 8 C.F.R. § 235.3(b)(2)(iii), (4)(ii), (c) DHS could release asylum seekers placed into expedited removal for “urgent humanitarian reasons” or “significant public benefit,” including where continued detention is not in the public interest (8 C.F.R. § 212.5(b)).

In order to address routine, arbitrary denials of parole of people seeking protection despite their apparent eligibility, we 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.³⁸ Contrary to the Refugee Convention, which makes clear people seeking protection should not be penalized because of unauthorized entry or presence,³⁹ 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.⁴⁰ This is particularly concerning when government policies currently block individuals from seeking protection at ports

Abuse & Neglect 33 (9): 573-575.; Centers for Disease Control and Prevention (2013), “Mental health surveillance among children – United States, 2005–2011.” *Morbidity and Mortality Weekly Report*, 62(Suppl), 1–35; Cohodes, Emily M., Sahana Kribakaran, Paola Odriozola, Sarah Bakirci, Sarah McCauley, H. R. Hodges, Lucinda M. Sisk, Sadie J. Zacharek, and Dylan G. Gee. 2021. “Migration-related trauma and mental health among migrant children emigrating from Mexico and Central America to the United States: Effects on developmental neurobiology and implications for policy.” *Developmental Psychology* 63(6): 1-29.

³⁶ 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_alien_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-nielson-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/documents/2019.05.30_-_002_-_class_complaint_for_injunctive_and_declaratory_relief.pdf.

³⁷ 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/resource/immigration-and-customs-enforcement-records-received-through-foia-confirm-need-increased>; American Immigration Council, “Immigrants and Families Appear in Court: Setting the Record Straight,” (July 2019), <https://www.americanimmigrationcouncil.org/research/immigrants-and-families-appear-court>; 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.

³⁸ People seeking protection who enter without inspection should also be eligible for bond hearings before immigration courts.

³⁹ Convention Relating to the Status of Refugees (July 28, 1951), 189 U.N.T.S. 137, Art. 31.

⁴⁰ *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

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.⁴¹

V. Conclusion

WRC is concerned that the Interim Final Rule would limit the due process rights of asylum seekers who merit protection by supercharging adjudication procedures for those placed into expedited removal proceedings. We support the Departments' efforts to place asylum interviews in a more appropriate, non-adversarial and less traumatizing setting. However, it is critical that asylum applicants still have the full opportunity to substantially participate at all stages of their proceedings, which requires a presumption against detention and meaningful facilitation of access to legal counsel. This Interim Final 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 changes. We urge the Departments to significantly revise the Interim Final Rule to address the critical issues outlined above and ensure that the rights of people seeking asylum are respected.

Sincerely,

Katharina Obser
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Women's Refugee Commission

⁴¹ 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/failureprotect-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").