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RE: EOIR Docket No. 18-0002, Human Rights First's Comment in Response to Proposed Rulemaking: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review

Human Rights First submits these comments in response to the Department of Homeland Security's (DHS) and Executive Office for Immigration Review's (EOIR) Notice of Proposed Rulemaking published in the Federal Register on June 15, 2020, by which the agencies propose to rewrite decades of asylum law to create new restrictions on eligibility for protection in the United States. In violation of U.S. and international law and settled principles of refugee protection, the proposed rule seeks to profoundly rework U.S. asylum law in a way that will result in countless refugees being returned to danger. The proposed rule would render much of U.S. case law and the specific language used by Congress in the relevant statutes meaningless.

The proposed changes would, for instance, ban from asylum, or deny asylum to, refugees who suffered brief detentions or escaped their persecutors before threats could be carried out, transited through other countries on their way to the United States, crossed into the United States between ports of entry, or were unable to precisely articulate the legal parameters of their persecuted social group at their hearings. The proposed changes would certainly lead to denials of asylum to protestors from Hong Kong, people who risked their lives to oppose activities of terrorist, militant, criminal or other armed groups that control territories, victims of religious persecution forced to give up the practice of their faith, women targeted for honor killings, forced marriage or severe domestic abuse, and refugees persecuted due to their sexual orientation or gender identities. The rule would, moreover, separate many refugee families through its asylum denials; leave refugees without a route to integration and naturalization by improperly blocking refugees from asylum (evading both the route created by Congress and the Refugee Convention's direction to states to encourage such integration and naturalization); block asylum seekers from due process, removal hearings and other forms of immigration relief; allow adjudicators to deny asylum without ever hearing an asylum seeker's testimony; and illegally raise the credible fear screening standard set by Congress. The rule would also deport torture survivors back to torture.

In a rare public statement criticizing U.S. proposed regulatory changes, the UN High Commissioner for Refugees (UNHCR) has expressed serious concerns that the proposed rule is

"a departure from humanitarian policies and practices long championed by the United States."[1] We agree.

Human Rights First strongly opposes this proposed rule and urges the agencies to abandon it. Through our pro bono refugee representation program, Human Rights First and our volunteer lawyers see firsthand how difficult it already is for asylum seekers to be granted protection in the United States. If the provisions of this proposed rule had been in place, many of our refugee clients, who are now asylees, would have been denied asylum or permanently separated from their families. And the proposed rule, if codified, will result in the deportation of countless future asylum seekers who have faced grave violations of their human rights and qualify for asylum under the Immigration and Nationality Act (INA).

In the supplementary information to the proposed rule, the agencies mischaracterize asylum laws as "an expression of a nation's foreign policy" and "an assertion of a government's right and duty to protect its own resources and citizens." In fact, the Refugee Act of 1980 "was a clear statement of intention of the United States Congress to move away from a refugee and asylum policy which, for over forty years, discriminated on the basis of ideology, geography and even national origin, to one that was rooted in principles of humanitarians and objectivity."[2]

When it enacted the Refugee Act of 1980, Congress intended to eliminate such biases in U.S. refugee and asylum determinations and bring our country's asylum laws into accordance with U.S. treaty obligations. The 1951 Convention Relating to the Status of Refugees (Refugee Convention), drafted in the wake of World War II, protects refugees from return to persecution, encourages their integration and naturalization and prohibits states from penalizing them for illegal entry or presence. The United States helped lead efforts to draft the Convention and ratified its Protocol, legally binding itself to the Refugee Convention's provisions.

Human Rights First and its interest in this issue

For over 40 years, Human Rights First has provided pro bono legal representation to refugees seeking asylum in the United States and advocated for the protection of the human rights of refugees. Human Rights First grounds its work in the legal standards of the 1951 Refugee Convention, its Protocol, and other international human rights instruments, and we advocate adherence to these standards in U.S. law and policy. Human Rights First operates one of the largest and most successful pro bono asylum representation programs in the country. Working in partnership with volunteer attorneys at many of the nation's leading law firms, we provide legal representation, without charge, to hundreds of refugees each year through our offices in California, New York, and Washington D.C. This extensive experience dealing directly with refugees seeking protection in the United States is the foundation for our advocacy and informs the comments that follow.

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[1] UNHCR, "Statement by UN High Commissioner for Refugees Filippo Grandi on U.S. Asylum Changes" (July 9, 2020), https://www.unhcr.org/news/press/2020/7/5f0746bf4/statement-un-high-commissioner-refugees-filippo-grandi-asylum-changes.html.

[2] Deborah Anker, "The Refugee Act of 1980: A Historical Perspective" (1982), https://www.jstor.org/stable/23141008?read-now=1&seq=1#page_scan_tab_contents.

The agencies have only provided the public with 30 days to comment on the Notice of Proposed Rulemaking (NPRM), an insufficient period for a regulation that eviscerates asylum protections through multiple complex provisions.

The public has not been given adequate time to respond to this proposed rule, which would profoundly rewrite asylum law and render ineligible for protection countless refugees. It is comprised of numerous provisions and dense, technical language. Among other fundamental changes, it creates new and restricted immigration proceedings for asylum seekers, arbitrarily eliminates entire categories of asylum claims, creates multiple new bars to asylum that would block countless refugees, and reverses decades of settled law and principles. It violates U.S. and international law. These changes are so sweeping that any one provision would require longer than a 30-day comment period. To give the public only 30 days to respond meaningfully to this unprecedented rule, especially during a global pandemic, will essentially deprive the public of the right to comment on the NPRM. This alone is a critical reason for the agencies to withdraw the proposed rule and, should they choose to reissue it, grant the public significantly more time to respond.

Additionally, on July 9, 2020, DHS and the Department of Justice (DOJ) published a proposed regulation that set forth additional alterations to the procedures for expedited removal that create additional bars to asylum and withholding of removal and impermissibly elevate the standard set for these preliminary screenings by Congress. That notice of proposed rulemaking explicitly states that procedures set forth in the July 9 regulation conflict with the procedures set forth in this NPRM.[3] The agencies stated in the July 9, 2020 proposed regulation that they would request comment regarding how to best reconcile these procedures. It is critical that the public have an opportunity to comment on how the agencies propose to reconcile these procedures before either proposed rule goes into effect. Given the complexity and scope of both proposed rules and the extent to which they both unlawfully transform expedited removal procedures, this additional comment period must be substantially more than 30 days.

The proposed rule would make countless refugees ineligible for asylum by drastically narrowing key legal definitions including "persecution," "political opinion," and "particular social group."

Under the INA, applicants are eligible for asylum if they have a well-founded fear of future persecution and a central reason for this persecution is their nationality, race, religion, political opinion, or membership in a particular social group. 8 U.S.C. § 1158(b). Applicants are entitled to withholding of removal if they are more likely than not to suffer persecution because of one or more of these same five grounds. 8 U.S.C. § 1231(b)(3). The proposed rule fundamentally alters and narrows these elements of an asylum and withholding claim and provides, for the first time, a regulatory definition of "persecution."

[3] Dep't of Homeland Security & Dep't of Justice, "Security Bars and Processing," 85 FR 41201 (July 9, 2020), https://www.federalregister.gov/documents/2020/07/09/2020-14758/security-bars-and-processing.

I. *Persecution*

The agencies propose to amend 8 C.F.R. § 208.1 and 8 C.F.R. § 1208.1 by adding 8 C.F.R. § 208.1(e) and 8 C.F.R. § 1208.1(e), which creates a regulatory definition of persecution that is impermissibly narrow and at the same time unclear. The concept of persecution has resisted unitary definition, both internationally and in U.S. asylum law, due to the wild diversity of forms of harm to which persecutors subject their fellow humans and the varied circumstances in which that harm occurs, but also because a well-founded fear has both an objective and subjective component. The proposed rule defines persecution as "an extreme concept involving a severe level of harm that includes actions so severe that they constitute an exigent threat." This heightened standard would result in adjudicators rejecting claims involving severe violence and threats on the basis that they are not "extreme" enough, not "severe" enough, and do not constitute an "exigent threat." It would reverse the long-accepted definition of persecution as a "threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive[4] The proposed rule states that persecution "does not include intermittent harassment, including brief detentions." It is not clear what this means. Under well-established law, various forms of harm that may not rise to the level of persecution if considered individually, may constitute persecution in their cumulative effect, as noted above. In these cases, "intermittent harassment" may be part of a sequence of events that may indeed constitute persecution. Similarly, "brief detentions" may or may not constitute persecution in and of themselves, depending on factors such as the conditions of detention, how the asylum applicant is treated while detained, and the context surrounding these incidents; they are frequently "included" in a cumulative experience of harm that unquestionably constitutes persecution. Adjudicators can and should consider these scenarios in context and cumulatively. The proposed rule would discourage this.

Similarly, the proposed regulation states that persecution "does not include . . . threats with no actual effort to carry out the threats." This rule would produce bizarre and unjust results in situations where, for example, the asylum applicant deprived those threatening him of the opportunity to carry out their threats by fleeing the country. Asylum and withholding of removal were intended by Congress to protect and preserve the living, not the dead, and there exists in U.S. asylum law a body of precedent that considers when threats standing alone may constitute persecution, and does so much more coherently than this proposed rule.[5] Moreover, there should be no doubt that threats may be part of a cumulative course of conduct that rises to the level of persecution, but this rule injects murkiness even into that uncontroversial proposition.

In our experience, our clients—including many political activists—have suffered serious harm from short or recurring periods of detention by their country's government, which often operate as warnings that they will be harmed or tortured more severely if they do not cease their activities. Longer, more severe detentions could also be dismissed by adjudicators on the theory that each individual instance was not sufficiently extreme and severe and did not pose an exigent threat on its own.

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[4] *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985).

[5] *Herrera-Reyes v. Att'y Gen.*, 952 F.3d. 101 (3d Cir. 2020); *Tamara-Gomez v. Gonzales*, 447 F.3d 343 (5th Cir. 2006); *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015); *Osorio v. INS*, 18 F.3d 1017 (2d Cir. 1994); *Navas* v. INS, 217 F.3d 646 (9th Cir. 2000).

One Human Rights First client, for example, who was granted asylum years ago, fled Syria after he was taken in for interrogation by Syrian intelligence on two occasions. Both of these detentions lasted hours rather than days, but during that time, this man, a married father of young children, was left alone in windowless rooms for hours to listen to the screams of women being tortured, and his interrogators threatened the lives of his children and other family members; on the second occasion they also abused him physically. This proposed rule would encourage adjudicators to discount this man's past harm on the grounds that his detentions were "brief" and that there was no "actual effort" on the part of the intelligence agencies to carry out their threats against the lives of his children, despite the fact that he suffered grave psychological harm in custody and that both he and his interrogators were aware that they could do anything they wanted to him and his family at any time.

The proposed rule could likely trigger asylum denials to pro-democracy advocates protesting in Hong Kong if their detentions were "brief" and they escaped before threats of additional harm could be perpetrated. Many would also be denied asylum under various provisions in the proposed rule aimed at denying asylum to refugees who transit other countries on their way to safety in the United States.

The proposed rule's unclear reference to persecution requiring "a severe level of harm that includes actions so severe that they constitute an exigent threat" also threatens the protection of refugee claimants if the harm they are fleeing is the violation of their identities or consciences. Asylum seekers seeking the freedom to live according to their consciences and identities have on occasion faced wrongful denials of their cases even under current law based on adjudicators' failure to understand that being forced to suppress what they believe or who they are is itself persecution. This regulation, with the language just cited, would make such wrongful denials more frequent.

In 2005, for example, a panel of the Ninth Circuit affirmed the denial of asylum to a Chinese Christian, Xiaoguang Gu.[6] Mr. Gu had been arrested in China for attending an unofficial house church and distributing Christian religious materials. The record reflected that he had been detained for three days, interrogated, and struck about 10 times with a rod, leaving marks but no lasting injury. He was released after being forced to sign a statement admitting that he had done wrong, and was warned by his employer that if he engaged in any further "illegal activities" he would be fired from his job. As a result of this abuse and these threats, between his release from custody and his flight to the United States, Mr. Gu limited his religious activities to reading his Bible at home. He testified in immigration court that he had come to the United States in order to be able to practice his religion freely. After his arrival here, he learned that the authorities in China had come looking for him, he believed because he had sent religious materials to China from the United States. A majority of the panel upheld the immigration judge and Board of Immigration Appeals' (BIA) conclusions that Mr. Gu had not suffered persecution because he did not "experience further problems" after his release from police custody in China. Lost in all of this was any consideration of the suppression of his religious freedom.

[6] *Gu v. Gonzales*, 454 F.3d 1014 (9th Cir. 2006) (withdrawing earlier decision appearing at 429 F.3d 1209 (9th Cir. 2005).

The *Gu* decision created an uproar, which led DHS to join in a motion to reopen the case before the BIA, whose subsequent approval led the Ninth Circuit to withdraw its earlier decision. Under this proposed regulation, however, we could expect to see more denials of this kind and no willingness to fix them. The same danger would arise for claims based on sexual orientation—setting aside for a moment the fact that a separate provision of this proposed regulation would invalidate all gender-based claims on other grounds—as those claims as well have at times met with denials that operate on the theory that the asylum applicant could live safely in his home country if he would only remain in the closet.

The proposed regulation compounds the latter problem by dismissing a home country's own persecutory laws, mandating that government laws or policies that are infrequently enforced do not independently constitute persecution. This change would encourage adjudicators to ignore the impact of such laws—even if rarely enforced—on an LGBT asylum seeker's ability to live a free and dignified life in the home country. In a country with laws on the books that make homosexual acts punishable by death, for example, an LGBT person is highly unlikely to be able to live a normal life, or even to seek protection from the police when a victim of crimes, whether motivated by the victim's sexual orientation or otherwise. The problem in such cases may not be the direct enforcement of this particular persecutory law, but the fact that its existence contributes to the denial of core human rights.

II. *Political opinion*

The proposed rule would amend 8 C.F.R. § 208.1 and 8 C.F.R. § 1208.1 by adding 8 C.F.R. § 208.1(d) and 8 C.F.R. § 1208.1(d), which impermissibly narrow what constitutes a political opinion for purposes of asylum and withholding of removal, and would result in the deportation of individuals who were threatened and brutally harmed because of their political beliefs and actions. The proposed rule defines political opinion as "one expressed by or imputed to an applicant in which the applicant possesses an ideal or conviction in support of the furtherance of a discrete cause related to political control of a state or a unit thereof." This restricted definition would eliminate all valid asylum claims where the applicant was persecuted for a political opinion that is not explicitly tied to a specific cause related to "political control of a state or a unit thereof," even in cases where the government itself persecuted the applicant. This definition is confusing and vaguely worded, contravenes long-established principles of asylum adjudication, and would return innumerable refugees to persecution. Indeed, in recognition of the fact that a person may be persecuted for a broad range of political opinions and expressions, U.S. courts have interpreted a political opinion to be significantly broader than a conviction related to political control of a state or unit thereof.[7] A political opinion can encompass feminism[8] and opposition to guerilla groups.[9] But the proposed rule narrows the definition of political opinion so drastically that it would seem that even individuals who are persecuted *by their governments* for actions that the government disapproves of would be denied protection unless their views and activities fit into the proposed rule's narrow box. This is particularly problematic given that

[7] *See, e.g., Espinosa-Cortez v. Att'y Gen.*, 607 F.3d 101, 110 (3d Cir. 2010); *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010); *Delgado v. Mukasey*, 508 F.3d 702, 708–09 (2d Cir. 2007); *Chavarria v. Gonzales*, 446 F.3d 508, 518 (3d Cir. 2006).
[8] *Fatin v. I.N.S.*, 12 F.3d 1233, 1242 (3d Cir. 1993).
[9] *Delgado v. Mukasey*, 508 F.3d 702 (2d Cir. 2007).

many refugees who flee to the United States to escape political persecution are reluctant to characterize their own activities as "political," either because that label was used to stigmatize them in their home countries, where "politics" is a loaded and dangerous term. This is frequently true of activists working in fields not involving partisan politics. While their persecutors in many cases do impute political opinions to such refugees, these often take the form of broad accusations of opposition, not "an ideal or conviction in support of the furtherance of a discrete cause related to political control" of the state or a unit thereof.

A Human Rights First client from Cameroon, for example, who had suffered atrocious persecution in his home country, was emphatic that the harm he feared was on account of his student activism seeking reasonable working and teaching conditions at the university campuses in his area, not political opposition party membership. Given that his activities were clearly a challenge to government policies and were understood as such by the Cameroonian government which targeted him for arrest, he was granted asylum years ago now without any conceptual difficulty. It is unclear what would happen to this classic refugee claim under the proposed rule.

Another former Human Rights First client, a woman from Burma, was targeted by the forces of the military junta then in power in that country for documenting rapes of women from her ethnic minority by Burmese military personnel. Even under the current regulations, an immigration judge failed to understand the political meaning of her human rights documentation work, and her application for asylum was initially denied based on lack of nexus. This clearly erroneous result was corrected following an appeal, but what would happen to this woman under the proposed rule?

The proposed rule's purposefully cramped understanding of political opinion, ironically, would appear to exclude much of the content of political opinion and disagreement in the present-day United States. In many of the countries whose citizens are forced to flee to the United States to escape political persecution, almost any activity independent of the government can be seen by an authoritarian or repressive government as a threat to its security, but the retribution that follows is not always articulated in the terms this proposed rule would require.

Asylum seekers may also flee because their governments are unable or unwilling to control non-state actors who seek to harm them due to their political opinion. Despite this reality, long recognized by U.S. asylum law, the proposed rule states that *in general, asylum claims will not be successful* where individuals fear persecution on account of a political opinion "defined solely by generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations absent expressive behavior in furtherance of a cause against such organizations related to efforts by the state to control such organizations or behavior that is antithetical to or otherwise opposes the ruling legal entity of the state or a legal sub-unit of the state." Again, the proposed rule is so poorly phrased as to be incomprehensible, but it would appear intended to wipe out the majority of asylum claims where an individual faces harm at the hands of non-state forces, even in regions where such forces act as de facto governments and kill anyone opposed to them. By limiting the definition of a political opinion in such situations to "expressive behavior" that directly relates to *efforts by the state to control* these organizations, or behavior that directly opposes the state, the rule makes it virtually impossible to win asylum where an applicant was persecuted by forces that the government is making no serious effort to

control, or where the applicant's opposition to such forces is not framed as support for state efforts to control them. Under this rule, many political opinion claims stemming from persecution by gangs, guerrilla forces, terrorist organizations, and other non-state actors would instantly fail.

Human Rights First has worked with several refugees, for example, who were themselves targeted by the Islamic State in Syria, or lost family members to murder or disappearance by that group, because they or their relatives were opposed to it. Their opposition, however, had nothing to do with "efforts by the [Syrian] state to control" the Islamic State—the regime of Bashar al-Assad was making no such efforts, and these refugees were *also* opposed to that regime. This cannot remove their opposition to the Islamic State from the scope of "political opinion."

While the proposed rule specifies that a woman who is forced to abort a pregnancy or undergo involuntary sterilization, or is persecuted for refusal to undergo such a procedure, will be deemed to have been persecuted on account of political opinion, it does not similarly protect a woman who resists state or non-state actors who claim that they have a right to rape her or subject her to an honor killing, for example.

III. *Particular social group*

The proposed rule would amend 8 C.F.R. § 208.1 and 8 C.F.R. § 1208.1 by adding 8 C.F.R. § 208.1(c) and 8 C.F.R. § 1208.1(c), which eviscerate "membership in a particular social group" as a basis for asylum. UNCHR has characterized the fluid definition of particular social group in the following way: "The term . . . should be read in an evolutionary manner, open to the diverse and changing nature of groups in various societies and evolving international human rights norms."[10] The cognizability of a particular social group is an issue that must be assessed on a case-by-case basis, with attention to the specific circumstances in a country. Nonetheless, DOJ has repeatedly sought to eliminate particular social groups previously recognized by the BIA, federal courts of appeals, and international law.[11] This proposed rule would result in the continued and arbitrary dismantling of protections for asylum seekers who face harm because of their membership in a particular social group.

The proposed rule rejects broad categories of particular social groups with no regard to the circumstances of individual cases. It would also impose on several types of claims, notably gender-based claims brought by women and girls, an astonishingly retrograde framing, treating much of their persecution as a personal or familial problem. This characterization is doubly disturbing since it underlies the failure of protection these refugees suffer from at home, and blasts U.S. asylum law back to a past from which other areas of American law moved on decades ago. This nearly categorical rule would provide that:

[10] UNHCR, Refugees Guidelines On International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (May 7, 2002), https://www.unhcr.org/en-us/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html.
[11] *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018); *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019).

> The Attorney General, in general, will not favorably adjudicate claims of aliens who claim a fear of persecution on account of membership in a particular social group consisting of or defined by…past or present criminal activity or association (including gang membership); presence in a country with generalized violence or a high crime rate; being the subject of a recruitment effort by criminal, terrorist, or persecutory groups; the targeting of the applicant for criminal activity for financial gain based on perceptions of wealth or affluence; interpersonal disputes of which governmental authorities were unaware or uninvolved; private criminal acts of which governmental authorities were unaware or uninvolved; past or present terrorist activity or association; past or present persecutory activity or association; or, status as an alien returning from the United States.

These exceptions bear no relation to whether an individual is a member of a particular social group as previously defined by agency and federal court decisions. Each of these exceptions is broad and vague. For example, prohibiting asylum grants based on particular social groups that relate to "presence in a country with generalized violence or a high crime rate" would arbitrarily undermine asylum claims from countries that suffer from high rates of violence, where the asylum applicant's citizenship in such a country was simply an element in the social group. The rule's peremptory rejection of claims based on fears of recruitment by a wide range of non-state armed groups, while a transparent attempt to bar many claims from Central America, where persecution by such groups, including in the form of punishment for refusing recruitment into them, is a widespread cause of flight from the country, will result in the wrongful denial of many types of refugee claims, including but certainly not limited to those brought by Central American youth.

The dismissal of particular social groups that are based on "interpersonal disputes of which governmental authorities were unaware or uninvolved" would have predictable negative consequences for asylum applicants fleeing gender-based harm within their families or communities, asylum applicants whose need for international refugee protection typically stems from this very insistence on characterizing their persecution as a matter of personal conflict. For them and for other asylum applicants whose harm adjudicators would now be encouraged to write off as "interpersonal disputes," this proposed rule creates an unnecessary conflict with decades of precedent—in both U.S. and international refugee law—recognizing that the standard for granting protection against persecution by non-state actors (however large- or small-scale) is not whether governmental authorities were aware of or involved in the abuse, but rather whether they were (or would be) willing and able to protect the refugee.

One former Human Rights First client, then a young teenager from Guinea, sought refuge with a family friend in the United States to avoid being forced into marriage by her father, who had promised her to one of his own friends, a man her father's age. The young girl wanted to complete her education and have some say in whom she later married; while government authorities in Guinea at the time were not aware of her particular situation, she had little reason to seek help from them, as an abundance of independent evidence and her own experience in her community made clear that such recourse would be futile and indeed likely to make her situation worse. This child's predicament also could not fairly be characterized as an "interpersonal dispute," but this regulation would encourage such portrayal in any case where the persecutor

and the victim are individual people, ignoring the social norms and structures that exist to protect the persecutor rather than the victim.

The proposed rule does not alter the "unable or unwilling" standard for showing a failure of state protection—indeed, the supplementary information to the rule cites to it, for example at page 36280—yet by misunderstanding the standard in the context of what it deems to be "interpersonal disputes," the proposed rule sets the stage for wrongful denials of valid asylum claims.

Also extremely troubling is the proposed requirement that an individual articulate a particular social group on the record in order to be granted asylum on that basis. According to the proposed rule, a failure to define a particular social group before an immigration judge will waive the claim for appeal or a motion to reopen or reconsider. In general, in any refugee status determination, it should not be the refugee's job to argue the intricacies of the law of a country not his own. Asylum adjudication systems, in order to function safely, must be geared to enable refugees, including those unrepresented by counsel, to present their claims as easily as possible. In such a system, it should be the refugee's job to present her facts; the adjudicator bears responsibility for evaluating the facts and considering whether they meet the requirements of the law.[12] While the current U.S. asylum system already confronts refugees with a host of technical, procedural, and evidentiary hurdles, the new burden of lawyering imposed by this proposed rule is one that does not apply to any of the other grounds in the refugee definition: an asylum seeker whose claim is based on political opinion, for example, will not be denied on appeal for failing to enunciate at trial the precise contours of the political opinion at issue (even though this proposed rule would create confusion around the concept of political opinion comparable to that currently characterizing the interpretation of "particular social group").

For asylum seekers represented by counsel whose cases were denied based on *their lawyers'* failure to define adequately the particular social group, the proposed rule would bar them from moving to reopen their cases based on the ineffective assistance they received from those lawyers. Again, this prohibition, which raises clear due process concerns, does not apply to any of the other grounds of the refugee definition.

In 1996, a teenage girl from Togo was granted asylum in the United States by the BIA based on her fear of being forced to undergo female genital cutting (FGC) in her home country.[13] This decision set the precedent that has protected many girls and women from FGC in the decades since, yet the particular social group the BIA settled on ("young women who are members of the Tchamba-Kunsuntu Tribe of northern Togo who have not been subjected to female genital mutilation, as practiced by that tribe, and who oppose the practice") was distinct from those argued both by the applicant's counsel and by the then-INS even before the BIA. It serves

[12] UNHCR, "Note on Burden and Standard of Proof in Refugee Claims" (Dec. 16 1998), https://www.refworld.org/pdfid/3ae6b3338.pdf ("In view of the particularities of a refugee's situation, the adjudicator shares the duty to ascertain and evaluate all the relevant facts."); UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees" (Jan. 1972), https://www.unhcr.org/4d93528a9.pdf ("Determination of refugee status is a process which takes place in two stages. Firstly, it is necessary to ascertain the relevant facts of the case. Secondly, the definitions in the 1951 Convention and the 1967 Protocol have to be applied to the facts thus ascertained.").
[13] *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

neither the due process interests of refugees nor the thoughtful development of U.S. asylum law to preclude asylum applicants from arguing on appeal a different framing of their particular social group from that presented to the immigration judge.

The proposed rule fundamentally changes the requirements for establishing nexus, in contravention of the asylum statute

The INA requires that, for purposes of establishing past persecution or well-founded fear, "at least one central reason" for the persecution must be race, religion, nationality, political opinion, or membership in a particular social group. 8 U.S.C. § 1158(b)(1)(B)(i). The proposed rule amends 8 C.F.R. § 208.1 and 8 C.F.R. § 1208.1 by adding 8 C.F.R. § 208.1(f) and 8 C.F.R. § 1208.1(f), which improperly jettison this statutory standard and create new principles regarding nexus that will make it nearly impossible for many refugees to be granted asylum.

It states that in general, asylum claims will not be successful where the persecution is based on: interpersonal animus or retribution; interpersonal animus where the persecutor has not targeted or manifested an animus against other members of the particular social group; generalized disapproval of, disagreement with, or opposition to criminal, terrorist, guerrilla, or other non-state organizations "absent expressive behavior in furtherance of a discrete cause against such organizations related to control of a state or expressive behavior that is antithetical to the state or a legal unit of the state"; resistance to recruitment or coercion by guerilla, criminal gang, terrorist, or other non-state organizations; the targeting of the applicant based on wealth or affluence of perception of wealth or affluence; criminal activity; perceived, past or present, gang affiliation; or gender.

Providing for blanket denials of claims where persecution is based on "interpersonal animus or retribution" disregards the reality that persecutors often have mixed motives, and harm individuals both because of a protected characteristic *and* animus or retribution. The proposed rule encourages adjudicators to deny claims whenever interpersonal animus exists, regardless of any other motivation that the persecutors may have had. It would also encourage adjudicators to dismiss any harm by an individual persecutor as a matter of "interpersonal animus."

It then goes even further to mandate the general denial of claims where the persecutor has not targeted or shown an animus against other members of the particular social group. This requirement will result in the unjustified denial of claims, for example, in which victims of domestic violence cannot show that their partners attacked other women as well. As DHS noted in its brief filed in 2004 in *Matter of R-A-*, this is like saying that a slave is not suffering persecution on account of his status as a slave because his master is only oppressing his own slaves, not those of other slaveowners.[14] It profoundly undermines the statutory definition of refugee, which requires only that a protected characteristic be *at least one central reason f*or the

[14] *Matter of R-A-*, brief of the Dep't of Homeland Security (Feb. 19, 2004), https://cgrs.uchastings.edu/sites/default/files/Matter%20of%20R-A-%20DHS%20brief.pdf.

persecution—nowhere does it mandate that the persecutor must have harmed others for that same characteristic.[15]

The other aspects of the new nexus definition similarly invalidate many valid asylum claims. The proposed rule arbitrarily excludes cases involving resistance to gangs, guerillas, and other non-state organizations "absent expressive behavior in furtherance of a discrete cause against such organizations related to control of a state or expressive behavior that is antithetical to the state or a legal unit of the state." As noted earlier in connection with its occurrence in the proposed regulation on political opinion, this phrase is incomprehensible and will be a recipe for unnecessary litigation and, from what we can understand of it, for the wrongful denial of valid claims.

The proposed rule also categorically excludes cases of resistance to recruitment by any type of non-state armed group, even, apparently, if the resulting persecution is based on a protected characteristic. There exists a body of law considering when claims based on resistance to recruitment by an armed group are cognizable as refugee claims, and there is no legal basis for excluding cognizable claims on the grounds that the recruiting armed force was not governmental.

Human Rights First worked with a human rights defender from the Democratic Republic of the Congo, for example, whose work in his home country involved advocacy against the recruitment and use of child soldiers by all the armed forces present in the eastern part of that country. With respect to the rebel armies there, his cause was certainly a "discrete cause against such organizations," but it was not "related to control of a state or expressive behavior that is antithetical to the state or a legal unit of the state." This human rights defender was not advocating for any of the sides engaged in the armed conflict; he was advocating for all of them to cease recruiting and using children as soldiers and to release the children already in their forces. This should be a clear asylum claim based on political opinion, yet both the "political opinion" and the "nexus" section of this proposed regulation would result in its denial.

Lastly, the proposed rule excludes persecution based on gender from the refugee definition. UNHCR has affirmed that women who fear persecution on the basis of gender should be considered members of a particular social group for the purpose of determining refugee status.[16] U.S. agency and court decisions have long recognized that sex is a prototypical immutable characteristic for purposes of a particular social group.[17] The proposed rule will have far-

[15] This novel requirement would also create unnecessary evidentiary burdens for asylum applicants, who may have no basis to know whether or not their particular persecutor targeted others similarly situated. Human Rights First has represented some women seeking asylum based on severe domestic violence, for example, who only learned by chance, after their own relationships had already become abusive, that their abuser had previously treated a former spouse or partner in the same way. This proposed regulatory requirement would deny protection to the first spouses or partners of such abusers, as well as to others suffering from informational deficits beyond their control.

[16] UNHCR, "Information Note on UNHCR's Guidelines on the Protection of Refugee Women" (July 22 1991), https://www.unhcr.org/en-us/excom/scip/3ae68cd08/information-note-unhcrs-guidelines-protection-refugee-women.html.

[17] *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985); *De Pena-Paniagua v. Barr*, 957 F.3d 88 (1st Cir. 2020); *Orellana v. AG*, 956 F.3d 171 (3d Cir. 2020); *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014); *NLA v. Holder*, 744 F.3d 425 (7th Cir. 2014); *Quinteros v. Holder*, 707 F.3d 1006 (8th Cir. 2013).

reaching harms in eliminating gender as a basis for asylum in contravention of the INA and international law.

The proposed rule prohibits asylum seekers from introducing crucial evidence in court

The proposed rule amends 8 C.F.R. § 208.1 and 8 C.F.R. § 1208.1 by adding 8 C.F.R. § 208.1(g) and 8 C.F.R. § 1208.1(g), which mandate that "evidence promoting cultural stereotypes about an individual or a country" will not be admissible in adjudicating the application. Human Rights First certainly encourages the agencies, and refugee advocates, to strive to rid themselves of implicit and explicit biases and stereotypes—whether based on race, religion, nationality, gender, or other protected characteristics—in refugee adjudication and immigration policy. That said, much of the persecution that takes place worldwide and falls within the scope of the asylum and withholding statutes is based on stereotypes about people and cultures, typically perpetrated by the persecutors. It is difficult to see how an asylum seeker whose claim stems from such dynamics can be expected to prove her claim without discussing and documenting them.

In August 1998, for example, with the outbreak of the second war in the Democratic Republic of the Congo, there was a wave of persecution of Tutsi and Banyamulenge in the country, fomented by the ruling authorities in Kinshasa. This persecution also extended to a number of people who "looked Tutsi" but were in fact members of other ethnic groups. A number of refugees affected by this persecution fled the country; the United States granted asylum to some and resettled others. Discussing these refugee claims necessarily involved discussing, and documenting, the stereotypes that were the basis for singling the victims out for persecution—that Tutsi were perceived as having oval faces and narrow noses, for example (however untrue this might be in individual instances), as well as how they were perceived culturally within Congolese society. While on some level such evidence could be seen to "promote" those same perceptions, at least by repetition, it is unclear how an asylum seeker in this situation could be expected to meet his burden of proof without offering it.

To give another example, the applicant in *Matter of Kasinga* provided evidence, including that of a cultural anthropologist, concerning the practice of FGC among her ethnic group, the expectations of husbands that their wives would have undergone the procedure before marriage, and so on. These were, at the time, novel facts to most asylum adjudicators in the United States. Certainly this evidence did not mean that every member of the Tchamba-Kusuntu ethnic group supported or furthered FGC—the applicant's own father had not, which is why she had been spared this harm until he died—but assessments of well-founded fear involve an assessment of likelihoods, which makes such evidence critical.

This proposed rule constitutes a marked departure from the relaxed evidentiary rules typically applicable in immigration proceedings, and is all the more harmful—and ironic—in light of the fact that the BIA's recent precedents in claims based on membership in a particular social group, by forcing applicants to prove that the group in question is perceived as a group by society at large and not only by the persecutor, have forced applicants to submit ever more evidence of social perceptions, cultural history, and dominant attitudes in their home countries. This rule could result in critical evidence being dismissed—for example, evidence of *machismo* in a culture, as well as documentation of abuse of women in a particular culture, including

widespread rape or femicide, could be excluded if the adjudicator deems that this evidence can also be conceived of as a cultural stereotype. This rule violates due process principles of fundamental fairness in proceedings and the INA's guarantee that individuals have the right to present evidence on their behalf. 8 U.S.C. § 1229a(b)(4)(B). Additionally, 8 C.F.R. § 1240.7(a) states that the immigration judge may receive any evidence that is "material and relevant to any issue in the case." The proposed rule rejects these fundamental principles and denies asylum seekers the right to present critical country conditions evidence.

The proposed rule invents a new definition of "firm resettlement" in order to block nearly all refugees who fled to the United States by way of another country

Under 8 U.S.C. § 1158(b)(2)(A)(vi), individuals are ineligible for asylum if they were "firmly resettled in another country prior to arriving in the United States." Current 8 C.F.R. § 208.15 explains that an individual is "firmly resettled if, prior to arrival in the United States, he or she entered the country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement." This definition of firm resettlement has been interpreted and applied by the BIA and the federal courts of appeals for many years.[18]

The proposed rule amends 8 C.F.R. § 208.15 and 8 C.F.R. § 1208.15 to create an entirely new definition of firm resettlement that abandons this framework and makes it nearly impossible for refugees to be granted asylum if they traveled through another country. It is a third-country transit ban by another name.

The proposed rule considers refugees to be firmly resettled regardless of whether they were offered permanent residency status. First, it mandates that an individual is firmly resettled if she "could have resided" in a "permanent *or* non-permanent, *potentially* indefinitely renewable legal immigration status," and this "regardless of whether the individual applied for or was offered such status." This would be unworkable. Adjudicators would need to engage in speculation regarding a country's laws, whether an individual would have been granted status had she applied under that country's laws, and whether a temporary status could be indefinitely renewed. It forces judges and asylum officers to first act as third-country adjudicators—without any expertise in that country's law—and then as U.S. adjudicators. Not only is this unworkable, but it would return people to danger in violation of U.S. legal obligations.

This rule would result in the removal from the United States of refugees who are *not*, in fact, firmly resettled in a third country and might never be able to obtain status there. Once these individuals are removed from the United States and are unable to secure status in the third countries that the proposed rule speciously claims they are firmly resettled in, they may be deported to danger in the countries they fled from. This proposed rule will thus achieve a similar result to the Interim Final Rule published July 16, 2019 (the third-country transit ban), which has barred refugees from asylum merely for having passed through third countries en route to seek protection in the United States.

[18] *See, e.g.*, *Sall v. Gonzales*, 437 F.3d 229 (2d Cir. 2006); *Abdille v. Ashcroft*, 242 F.3d 477 (3d Cir. 2001); *Lara v. Lynch*, 833 F.3d 556 (5th Cir. 2016); *Camposeco-Montejo v. Ashcroft*, 384 F.3d 814 (9th Cir. 2004); *Elzour v. Ashcroft*, 378 F.3d 1143 (10th Cir. 2004).

For instance, in the case of Mexico, some asylum seekers have been issued so-called humanitarian visas, which are typically issued for a one-year periods and are renewable under Mexican legislation. However, in practice, many of these humanitarian visas are not renewed, in particular, because many were issued in recent years for the purpose of permitting asylum seekers to safely transit through Mexico. Granting asylum seekers temporary status permits them to use public transportation and to avoid the need to pay traffickers and/or cartels who control transit routes for asylum seekers traveling through the country. Denying asylum protections to individuals who have received these temporary humanitarian visas would return individuals to danger when they were not offered, and did not have a possibility of, permanent resettlement in Mexico.

Moreover, considering refugees to be firmly resettled in a country where they *could have* obtained temporary, *potentially* renewable status permits adjudicators to deny asylum where an individual could—potentially—have applied for a work permit in a country where he/she had no guarantee of permanent residence. It should also be noted that a number of the countries where refugees often find themselves on temporary residence permits, typically tied to work contracts, are countries that are not signatories to the 1951 Refugee Convention or its 1967 Protocol and/or do not have functioning asylum systems—for example, Saudi Arabia—meaning that the loss of temporary residence leaves the asylum applicant no protection against forced return to his country of persecution. The proposed rule should be abandoned because it does not take into account these realities. It would deny asylum to individuals who are not firmly resettled and would be in danger of being deported from these third countries to the home country they fled.

Human Rights First, for example, represented a woman from Syria who, along with her husband, had spent much of her working life in Saudi Arabia, on temporary residence permits tied to the husband's work contracts. The two were saving up with the intention of retiring to Syria. All their plans were turned upside down when the husband died unexpectedly and her whole family back in Syria were forced to flee that country for political reasons that also threatened her. Their hometown was subsequently bombed to the ground. Left a widow in Saudi Arabia, this woman was initially able to acquire a temporary residence permit based on a work contract of her own, but an economic downturn in Saudi Arabia due to the declining price of oil was leading to a "saudization" of the workforce. When her work contract—and with it her residence permit—was terminated as a result while she was on a visit to the United States, she had nowhere to go. Unable to return to Saudi Arabia and fearing for her life in Syria, she applied for asylum here.

While it should be clear from this example how impermanent such "potentially indefinitely renewable" arrangements frequently are in fact, even if the finite nature of her status in Saudi Arabia were recognized, the widow just described would have been barred from asylum by another provision of this regulation. The proposed rule would also apply the firm resettlement bar to individuals who physically resided voluntarily, without continuing to suffer persecution or torture, in any one country for one year or more after departing their country of nationality or last habitual residence and prior to arrival or in the United States. This proposed change is a drastic departure from the existing regulation and would bar asylum for individuals who lived in countries where they would not even have been legally eligible to apply for status. For example, an asylum applicant from Syria who spent a year or more in Lebanon—a country that offers refugees no lasting security of any kind and has been actively returning Syrian refugees to

Syria—would find herself barred from asylum under this provision. So would a Uyghur refugee from China who spent a year without status in Malaysia.

Even more perversely, this proposed change would make thousands of refugees waiting for hearings under the Migrant Protection Protocols (MPP) ineligible for asylum merely because the U.S. government required them to wait in Mexico for over a year for their hearings—including months of delays resulting from postponements of hearings due to COVID-19.[19] It would be cruel to punish asylum seekers and eliminate their eligibility for asylum merely because the U.S. government placed them in MPP. This proposed change would operate as a third-country transit ban for anyone who lived in another country for a year or more, even if only by virtue of heeding the instructions of the U.S. government.

The proposed rule also eliminates the existing important exceptions to the firm resettlement bar. Under the proposed rule, an individual could not argue that he is exempt from the bar because entry into the country was a necessary consequence of his flight from persecution or that the conditions of residence in that country were substantially and consciously restricted. For example, refugees who are able to stay in another country for an indefinite period but are unable to work, receive medical care, send their children to public school, live anywhere but in limited parts of that country's territory, or obtain insurance would not be exempted from the firm resettlement bar. Human Rights First represented several activists from Bhutan, for example, who had spent years as refugees in camps in Nepal before arriving in the United States; they were not legally allowed to leave the camps and were not allowed to work. In other words, they had no future at all in Nepal, and in recognition of that fact, the United States and several other countries moved to resettle this population nearly in its entirety, with the result that a few Human Rights First asylum clients from Bhutan saw their family members resettled here through the Refugee Admissions Program. The current regulation, unlike the proposed rule, recognizes that individuals may have the ability to stay permanently in a country but be so oppressed in that country that they do not even have the right to basic necessities. It serves no legitimate public purpose and is both cruel and unproductive to include such individuals in the scope of the firm resettlement bar.

Through these provisions, the rule seeks essentially to implement the Interim Final Rule published on July 16, 2019, which was vacated in its entirety by a federal district court on June 30, 2020, after it had resulted in unlawful denials of asylum and ripped apart families for almost a year.[20] Like the Interim Final Rule, the proposed rule would harm asylum seekers in unimaginable ways, leaving asylum seekers' spouses and children permanently stranded in danger since family members of refugees determined to be ineligible for asylum due to the new resettlement rules do not qualify for automatic protection as "derivative asylees." As a result, refugees who manage to qualify under the elevated withholding of removal or CAT standards

[19] Human Rights First, "Pandemic as Pretext: Trump Administration Exploits COVID-19, Expels Asylum Seekers and Children to Escalating Danger" (May 2020), https://www.humanrightsfirst.org/sites/default/files/PandemicAsPretextFINAL.pdf (as of June 2020, more than 1,200 individuals in MPP had been waiting in Mexico for more than one year for MPP immigration court proceedings).

[20] Human Rights First, "Asylum Denied, Families Divided: Trump Administration's Illegal Third-Country Transit Ban" (July 2020), https://www.humanrightsfirst.org/resource/asylum-denied-families-divided-trump-administration-s-illegal-third-country-transit-ban. The report in its entirety is appended to the end of this comment.

would be unable bring their families to safety in the United States. In addition, refugee families who sought asylum together would be divided where, for instance, a parent is granted withholding of removal but the rest of the family is ordered deported back to the country where that parent has been determined to face a very high likelihood of persecution. These lesser, inadequate forms of relief leave refugees unable to reunite with family, leaving them in permanent limbo. These refugees face obstacles to integration such as inability to bring their children and spouse to the United States, fear of living under a permanent removal order, lack of permanent legal status, lifelong check-ins with ICE officers, baseless threats of imminent deportation, and denial of access to benefits crucial for integration and self-sufficiency.

Human Rights First has documented the serious harms inflicted on asylum seekers by the third-country transit asylum ban in its report published in July 2020,[21] and these same harms would apply to this proposed rule as well. In fact, the proposed rule is even broader than the third-country transit ban, in that it applies to all asylum seekers rather than only to individuals seeking asylum at or after crossing the southern border. We urge the agencies to rescind this proposed rule in light of the extensively documented harms of the third-country transit ban.

The proposed rule would unfairly deny asylum based on purported ability to internally relocate where the relocation would not be safe or reasonable

Under current 8 C.F.R. § 208.13 and 8 C.F.R. § 1208.13, an asylum seeker is ineligible for asylum if he or she can avoid persecution by relocating within the country of persecution and it would be reasonable for him or her to do so. In determining the reasonableness of relocation, adjudicators are currently instructed to consider factors such as: whether the applicant would face other serious harm in the place of proposed relocation, ongoing civil strife in the country, the country's administrative, economic, or judicial infrastructure, geographical limitations, age, gender, health, and social and family ties. 8 C.F.R. § 208.13(b)(3); 8 C.F.R. § 1208.13(b)(3). The emphasis in the current regulation, which offers these factors as a non-exhaustive list of potentially relevant considerations, is on a case-by-case adjudication of the reasonableness and effectiveness of an internal flight alternative. There are many reasons that internal relocation could be dangerous or unreasonably burdensome to an applicant, especially in countries with high levels of violence and widespread human rights violations. We have worked with clients from Central American countries who would have been unable to internally relocate safely because of gang control of entire regions throughout the country.

The proposed rule amends 8 C.F.R. § 208.13 and 8 C.F.R. § 1208.13 to eliminate these factors and their accompanying holistic analysis and replaces them with mandatory factors for the adjudicator to consider, including: size of the country, geographic locus of the alleged persecution, size, reach, and numerosity of the alleged persecutor, and the applicant's *demonstrated ability to relocate to the United States in order to apply for asylum*. This proposed change disregards the realities of the countries that many asylum seekers flee from. First, it eliminates important considerations regarding the reasonableness of relocation and no longer directs adjudicators to consider widespread civil strife and geographic, social, or economic limitations on ability to relocate.

[21] *See id.*

Second, it disadvantages applicants who are persecuted in larger countries or by persecutors that operate in only a segment of the country, regardless of the individual circumstances of the case. It licenses adjudicators to issue blanket denials of asylum based on generalized conclusions that internal relocation is feasible because a country is large or a persecutor does not operate everywhere. Domestic violence victims could be denied asylum based on the "numerosity" of the alleged persecutor, even in the face of evidence that their abusive partners could and in fact did track them down anywhere in the country.

Most troubling is the requirement that adjudicators consider "demonstrated ability to relocate to the United States in order to apply for asylum," which incorrectly suggests that because an individual successfully fled their country to escape danger and harm she is more likely to be able to relocate internally. This misunderstands the obstacles to internal relocation in many valid refugee claims, which are not simply a matter of moving costs. Human Rights First for example represented a woman from Honduras who was targeted by the 18th Street gang in her neighborhood of Tegucigalpa. She was the mother of a very young child and the gang had already murdered one of her siblings. Every neighborhood she had lived in or where she had any contacts in Honduras was under the control of the same gang. Relocating to adjacent MS-13 territory posed a different risk, of being targeted based on an association with the 18th Street gang imputed to her simply by virtue of her home address. All of these areas were also places of extremely high levels of violence. The gang's monitoring of her movements also made it dangerous for her to go to her job. This woman had immediate family in the United States; relocating here gave her guarantees of protection against her persecutors and a safe future for her child. Internal relocation in Honduras offered neither of these things. Considering an asylum seeker's ability to reach the United States as a mandatorily relevant factor in assessing the reasonableness of his relocation *within* his country of origin is illogical and would tip the scales against *every* asylum seeker in the United States.

The proposed changes to the internal relocation analysis also require asylum seekers who have experienced past persecution to establish that they cannot reasonably relocate. Under current regulations, an asylum seeker who suffered past persecution benefits from a presumption that internal relocation is not reasonable. This presumption aligns with the reality that if someone has already suffered harm so severe that it rises to past persecution, it should be presumed that they would not be safe in their country. Yet the proposed rule flips this reality on its head and instead creates a presumption that internal relocation would be *reasonable*. This change adds to the numerous new and unreasonable obstacles that asylum seekers would face under this proposed rule.

The rule creates new discretionary factors to block large numbers of asylum seekers from a discretionary grant of asylum, in violation of the asylum statute and U.S. obligations under the 1967 Refugee Protocol

The rule proposes to amend 8 C.F.R. § 208.13 and § 1208.13 by adding 8 C.F.R. § 208.13(d) and 8 C.F.R. § 1208.13(d) to essentially ban additional large categories of asylum seekers—in ways that directly contravene the statute and its intent—under the guise of denials of asylum. In fact, U.S. courts have previously ruled that attempts to ban several of these categories of asylum

seekers —those who cross the border outside ports of entry and those who transit through other countries—are not consistent with U.S. refugee law.

Congress enacted U.S. asylum laws to protect refugees with well-founded fears of persecution. While a grant of asylum is discretionary, due to the risk of harm or death that asylum seekers face upon being deported to their home country, the BIA and federal courts of appeals have repeatedly recognized that only egregious adverse factors should outweigh a fear of persecution.[22] Despite this long-established principle, the proposed rule creates new "significant adverse discretionary factors" on the basis of which adjudicators are encouraged to exercise negative discretion and deny asylum.

The proposed rule's additional categories of discretionary asylum denials include:

> "(i) An alien's unlawful entry or unlawful attempted entry into the United States unless such entry or attempted entry was made in immediate flight from persecution in a contiguous country;"
> "(ii) The failure of an alien to apply for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited before entering the United States;" and
> "(iii) An alien's use of fraudulent documents to enter the United States, unless the alien arrived in the United States by air, sea, or land directly from the applicant's home country without transiting through any other country."[23]

Fundamental to the asylum statute is its very first provision—that anyone who is physically present in the United States or who arrives in the United States, whether or not at a designated port of entry, and regardless of status, *may apply for asylum*. 8 U.S.C. § 1158(a)(1). To enable adjudicators to deny asylum solely because an asylum seeker did not pass through a port of entry is incompatible with this key statutory provision and inconsistent with Article 31 of the 1951 Refugee Convention, which generally prohibits the United States from imposing penalties on refugees on account of their illegal entry or presence. In August 2019, a federal district court vacated the administration's prior attempt to bar asylum for individuals who sought protection after crossing the southern border, finding the proclamation to be "inconsistent with 8 U.S.C. § 1158."[24]

Denying asylum to refugees because they crossed into the United States without proper authorization or used fraudulent documents to flee to safety violates the Refugee Convention and Protocol. Article 31 of the Refugee Convention addressed the reality that "[a] refugee whose departure from his country of origin is usually in flight, is rarely in a position to comply with the requirements for legal entry" and "that the seeking of asylum can require refugees to breach

[22] *Dankam v. Gonzales*, 495 F.3d 113 (4th Cir. 2007); *Huang v. INS, 436 F.3d 89* (2d Cir. 2006); *In re Kasinga*, 21 I&N Dec. 357 (BIA 1996).
[23] 85 FR 36293.
[24] *O.A. v. Trump*, 404 F.Supp.3d 109 (D.D.C. 2019).

immigration rules."[25] Article 31(1) of the Convention prohibits the United States from penalizing refugees for illegal entry or presence in most cases. The denial of asylum is certainly a penalty; it will lead a refugee to either be returned to his or her country of persecution or to be permanently separated from his or her spouse and children.

Moreover, none of these factors is so "egregious" that it can outweigh the risk of persecution. In fact, these factors reflect a profound misunderstanding of the reality that asylum seekers face. Refugees fleeing harm in their home countries may enter without inspection precisely because they are fleeing and hope to find safety in the United States; additionally, unlawful U.S. policies such as metering, MPP, Asylum Cooperative Agreements, and the Prompt Asylum Claim Review program have made it so difficult to seek protection as at an official port of entry that entering without inspection has become the safest path in many cases. Similarly, in our work, we have clients who had no choice but to use fraudulent documents to escape their home countries and reach the United States.

Asylum seekers often transit through other countries because they cannot reach the United States directly and are desperate to flee the danger in their home countries; to deny asylum on this basis is arbitrary, much like the third-country transit ban. This particular adverse factor cloaks the third-country transit ban in "discretion" but it will operate in a similar way—permitting denials of asylum to individuals who passed through countries with dysfunctional asylum systems where they would neither be safe nor receive refugee protection. Denying asylum on these bases would likely result in asylum-eligible individuals being deported en masse.

One Human Rights First client, for example, fleeing repeated detention and torture in his home country in Central Africa, realized by the time he reached Mexico that he was extremely sick with what was later diagnosed as cancer. He was vomiting blood but when he sought medical care in Mexico he was turned away. He had no community support in Mexico and did not speak Spanish but had a very close contact in the United States willing to receive him. He found that the metering system in place for those seeking to present themselves at the U.S. port of entry was dysfunctional and chaotic, with people selling the numbers that were supposed to mark asylum seekers' place in the backlog to approach U.S. Customs and Border Protection (CBP). His money was running out; fearing that he would die if he remained in this situation, he crossed the Rio Grande and waited for the Border Patrol. Under the regulations, an immigration judge would be authorized to deny asylum in his case.

The proposed rule creates virtually automatic bars to asylum not provided for in U.S. law

The rule proposes amend 8 C.F.R. §208.13 and §1208.13 by adding 8 C.F.R. § 208.13(d) and 8 C.F.R. § 1208.13(d). These provisions conflict with the INA because they create new bars to asylum eligibility that are not provided for in the INA, violating the statute's requirement that regulations be "consistent" with Congress's carefully crafted limitations. 8 U.S.C. § 1158

[25] Guy S. Goodwin-Gill, Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection, UNHCR (background paper commissioned by UNHCR for an expert roundtable held in Geneva, Switzerland, Nov. 8–9, 2001), p. 190 (quoting Draft Report of the Ad Hoc Committee on Statelessness and Related Problems, 'Proposed Draft Convention Relating to the Status of Refugees', UN doc. E/AC.32.L.38, 15 Feb. 1950, Annex I (draft Art. 26); Annex II (comments, p. 57)).

(b)(2)(C). Though the agencies characterize the new bars as discretionary factors, they are virtually automatic bars. The proposed rule requires that adjudicators *will not favorably exercise discretion to* grant asylum to anyone who, for example, spent more than fourteen days in a third country without applying for protection or transited through more than one country to the United States (subject to similar exceptions as the Interim Final Rule), accrued more than one year of unlawful presence in the United States prior to filing for asylum, at the time the asylum application was filed with DHS had failed to timely file taxes or satisfy tax obligations, or had income that would result in tax liability that was not reported to the Internal Revenue Service (IRS). These are only a few of the bars to asylum under the proposed rule. The agencies attempt to disguise these bars as discretionary factors by providing that in extraordinary circumstances—such as national security or foreign policy considerations—or where an applicant would face "exceptional and extremely unusual hardship," an adjudicator can *consider* not applying the bars. Because these standards are extremely difficult to meet and still would not guarantee an asylum grant, these factors operate as de facto bars.

Mandating discretionary denial of asylum to an asylum seeker based on the fact that he was out of status for a year or more contravenes the statutory exceptions to the one-year deadline to file for asylum, which recognize that changed circumstances or extraordinary circumstances may justify late filing for asylum. To deny asylum to refugees for filing taxes late is counterproductive—many asylum seekers in their first year in the United States are unfamiliar with our income tax system or face bureaucratic hurdles in trying to obtain from the IRS the Individual Taxpayer Identification Number needed to allow them to file a tax return before obtaining employment authorization from DHS.[26] Currently the focus of most adjudicators and refugee advocates is on making sure they sort out any outstanding tax issues prior to their applications for asylum being adjudicated, not filed. The other grounds for "discretionary" denial listed here, such as that applicable to an asylum seeker who has "been found to have abandoned a prior asylum application" or who did not attend an asylum interview with DHS but cannot show that the interview notice was not mailed to the address he provided to DHS, are similarly unnecessary and will also inflict severe harm on legitimate refugees.

Human Rights First has represented several asylum seekers, for example, who failed to attend an asylum interview with DHS because they never received notice of the interview. (Some of these asylum applicants found out about the interview notice when they themselves contacted the Asylum Office to find out why they had not been called to an interview.) As far as USCIS records showed, the interview notice had been mailed to their last address—the problem was that it had not been received, a circumstance this proposed regulation does not recognize.

We strongly oppose these news bars to asylum, which are incompatible with the narrow limitations on asylum eligibility set forth by Congress in the INA.

[26] This is a particular problem where the asylum seeker was detained by DHS upon arrival in the United States and DHS has retained her identity documents, and given the fact the DHS has almost recently extended the period of time asylum applicants must wait to apply for an initial work authorization document to one year.

The proposed rule will result in victims of torture being deported to their home countries

It is a violation of U.S. and international law to return a person to a country where he is more likely than not to be tortured at the instigation of or with the consent or acquiescence of a public official or person acting within an official capacity.[27] It is already extremely difficult to be granted protection on this basis because of the stringent more likely than not standard and the requirement that a public official or person acting in an official capacity instigate, consent, or acquiesce to the torture. Nonetheless, the proposed rule amends 8 C.F.R. § 208.18 and 8 C.F.R. § 1208.18 to impose new barriers to obtaining protection under the Convention against Torture that violate legal requirements and do not reflect the realities of how governments carry out torture against their citizens.

The proposed rule makes applicants ineligible for protection under CAT if they were tortured by a "rogue official"—a public official not acting under "color of law."[28] In the discussion of the proposed rule, the agencies cite factors such as whether the officer was on duty and in uniform at the time of his conduct and whether the officer threatened to retaliate through official channels if the victim reported his conduct to authorities. This change will severely limit the availability of CAT protection to persons at real risk of torture. We have represented clients who were tortured by government officials in plain clothes, and country conditions evidence reflects that this is all too common. We are concerned that an ill-informed analysis of whether the government official committing an act of torture was officially on duty, in uniform, or acting in an official capacity will block protection for persons who were tortured directly by their country's government. Such an interpretation violates the Convention against Torture and its implementing statute.

Dedicated primarily to the protection of refugees, Human Rights First mainly represents applicants for CAT protection who face torture for reasons protected under the Refugee Convention and Protocol. In a number of countries from which refugees regularly seek protection in the United States, the government agencies responsible for much torture operate in the shadows, and the legal basis for the very existence of these agencies is sometimes murky. In Syria, for example, the agents of the intelligence services responsible for hundreds of thousands of cases of torture do not wear uniforms when on duty, and with a couple of exceptions, these intelligence services themselves may not be officially attached to any government ministry authorized by publicly known law. These kinds of arrangements foster the total lack of accountability (to the public) that characterizes the operations of these services, and in no way reflect a lack of authorization for those operations on the part of those in governmental authority. Similarly, in a number of countries death squads and other such forces have operated, and inflicted harm amounting to torture on dissidents, on persons suspected of common crime, on persons seen as deviating from dominant social norms, and others, without their existence being officially acknowledged by the governments that either arm them or allow them to operate. It is critical that any consideration of the nature of these torturous operations be sensitive to context and local realities. We are deeply concerned that this regulation will instead encourage

[27] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (June 26, 1967), https://www.ohchr.org/en/professionalinterest/pages/cat.aspx.

[28] It should be noted that on July 14, 2020, the Attorney General held that "under color of law" was the applicable standard and that "rogue official" was not. *Matter of O-F-A-S-*, 28 I&N Dec. 35 (A.G. 2020). The proposed rule, however, equates these two standards.

adjudicators to reinforce the deniability that many countries whose officials commit or acquiesce to torture are eager to maintain.

Another new burden to protection under CAT created by the proposed rule is to narrow the definition of "acquiescence." Acquiescence has previously been defined as willful blindness.[29] The proposed rule purports to define willful blindness as awareness of a high probability of activity constituting torture and a deliberate effort to avoid learning the truth. It also states that a public official must have 1) awareness of the activity and 2) breach his or her legal responsibility to intervene. By requiring that the official have awareness, the definition does not encompass the meaning of willful blindness. The proposed rule specifies that it is insufficient to be mistaken, recklessly disregard the truth, or negligently fail to inquire—actions that often connote turning a blind eye. Indeed, federal courts of appeals have held that it is sufficient for purposes of protection under CAT that public officials "could have inferred" the torture was taking place.[30]

Adjudicators relying on this rule will deny claims for protection under CAT unless the applicant can demonstrate that the government official had actual awareness of the torture—an unfair burden given the difficulties of establishing the exact mental state of an official. Whereas an applicant can show through circumstantial evidence that a government official turned a blind eye to the torture, it is far more difficult to establish actual awareness. Under the proposed rule, countless victims of torture will be returned to their home countries in violation of U.S. and international law.

The proposed rule creates new asylum-and-withholding-only proceedings that further restrict access to relief for asylum seekers

Asylum seekers who have been placed into expedited removal proceedings and found to have a credible fear of persecution, reasonable possibility of persecution, or reasonable possibility of torture will no longer have their claims adjudicated in full removal proceedings under INA § 240. Instead, the proposed rule amends 8 C.F.R. § 208.30, 8 C.F.R. § 1208.30, 8 C.F.R. § 1003.1, 8 C.F.R. § 1003.42, 8 C.F.R. § 1208.2, 8 C.F.R. § 208.2, 8 C.F.R. § 235.6, and 8 C.F.R. § 1235.6 to require that these individuals will be placed into "asylum-and-withholding-only" proceedings, where they can only apply for asylum, withholding of removal, or protection under CAT. The adjudicator would not be able to consider eligibility for other relief, even if an applicant clearly qualifies for it. The asylum seeker would also be unable to dispute his removability.

This change will harm asylum seekers who are placed in expedited removal proceedings because it will limit the relief they can seek. An asylum seeker who during the pendency of her case married a U.S. citizen and was otherwise eligible to apply for adjustment of status, for example, would be unable to do so under this rule; applying for permanent residence from outside the country based on an approved family-based visa petition is not an option for most asylum seekers who face danger in their home countries, so this would force the immigration system to conduct what is typically a more complex and time-consuming asylum adjudication rather than

[29] *Silva-Rengifo v. Att'y Gen*, 473 F.3d 58, 70 (3d Cir. 2007); *Matter of J-G-D-F-*, 27 I&N Dec. 82, 90 (BIA 2017).
[30] *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052 (9th Cir 2006); *Silva-Rengifo v. Att'y Gen.* 473 F.3d 58 (3d Cir. 2007).

allowing the new family to establish itself through more routine means. Moreover, the legislative history of the statute establishes that Congress intended for asylum seekers to be referred to "normal non-expedited removal proceedings."[31]

Human Rights First has also represented the odd asylum seeker who was actually admissible to the United States, and had been placed in expedited removal proceedings based on a lack of familiarity on the part of CBP with the specific requirements of the person's visa category. One such client had served as an interpreter for U.S. forces in Iraq, was facing grave threats to his life as a result, and on this basis had been approved for a Special Immigrant Visa, based on which he was arriving in the United States, expecting to be admitted to this country as a lawful permanent resident. Instead, due to a previously-resolved confusion in his security and background check records, he was denied admission, and, when he made clear that he feared return to Iraq, he was placed in detention to await a credible fear interview. He passed the credible fear interview, but shortly after his case was referred to the immigration court, Human Rights First was able to establish that he was in fact admissible to the United States. Based on this, rather than enduring a long, humiliating, and difficult asylum process from a county jail in New Jersey, this man was finally able to receive the lawful permanent resident status for which he had been approved for having repeatedly risked his life for U.S. forces. This proposed rule would have risked prolonging this man's unbearable situation, with consequences cruel to him and embarrassing to the U.S. government.

The proposed rule heightens the standards for credible fear and reasonable fear interviews and will return asylum seekers to danger without a fair hearing

Asylum seekers placed into expedited removal must establish a credible fear of persecution or torture in order to be placed in removal proceedings and present their case before an immigration judge. This is already a difficult burden to place on asylum seekers, who often are detained, cannot access counsel before their fear interviews, and must present their story to an asylum officer after a traumatic journey to the United States and poor conditions in CBP or Immigration and Customs Enforcement custody.

To establish a credible fear of persecution, individuals must show a "significant possibility" that they could establish eligibility for asylum. 8 U.S.C. § 1225(a)(b)(1)(B)(v). The proposed rule amends 8 C.F.R. § 208.30(e)(1) to create a new standard that is far more difficult to meet: "a substantial and realistic possibility of succeeding." By its plain language, this standard is higher than a "significant possibility" and violates the statute. Not only does it contravene the INA, but it also increases the risk that asylum seekers with valid claims will be turned away at the threshold credible screening for not meeting an excessively high standard. A credible fear screening is conducted while the asylum seeker is in detention, often very recently arrived, and frequently still reeling from the shock of detention, the difficulties of the journey, the inability to establish communication with loved ones here in the United States or back home, and, for those who speak languages less common among the detained population, frequently unable to

[31] Dep't of Homeland Security & Executive Office for Immigration Review, "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (June 15, 2020), https://www.federalregister.gov/documents/2020/06/15/2020-12575/procedures-for-asylum-and-withholding-of-removal-credible-fear-and-reasonable-fear-review (quoting H.R. Rep. No. 104-828 (1996) (Conf. Rep.).

communicate with anyone around him, which compounds the effects of all the other phenomena just noted. The officers conducting these interviews, meanwhile, are often doing so over the phone, through interpreters also present by phone, and against substantial background noise. They are operating with little to no prior information about the claim and through interpreters of very variable quality.

In one credible fear interview Human Rights First attended, for example, the applicant, an older woman from Central America, was trying to testify about years of very serious spousal abuse, and the asylum officer, an older man, was genuinely trying to listen to her, but both were speaking through an interpreter who was present over a very poor speakerphone connection. There was an unbearable amount of noise right outside the room from guards speaking on walkie-talkies and electric doors sliding open and shut, as the applicant struggled to explain forms of sexual abuse she had suffered that she found particularly shameful. Every time she tried to talk about this, her voice would drop, and the interpreter would miss what she had said and not translate it. She had counsel present, who flagged this for the officer, and the applicant was ultimately able to get her testimony heard, but most asylum seekers are unrepresented at this stage. Another asylum seeker, who had experienced detention and torture in Syria, was physically shaking when he met with a lawyer immediately before his credible fear interview, asking for confirmation that in this detention center where he was now they did not torture people. Yet another, a Rwandan national who had also lived through horrors, was a perfectly clear witness in French but found upon receiving the write-up of his credible fear interview, which he had attended without counsel, that the asylum officer had understood his claim backwards, essentially inverting the persecutors and the persecutees.

The existing credible fear standard was intended to take into account these realities. The proposed rule does not, and Human Rights First is deeply concerned that it will result in increased numbers of refugees being returned to persecution.

We also oppose the proposed rule's provision that enables DHS officers to apply asylum bars to block individuals at the credible fear stage. This is a new and deeply concerning trend. In the past year, DHS has permitted asylum officers to apply these bars at the credible fear stage to block people on the basis of the third-country transit ban. This is the first time since Congress created the expedited removal process in 1996 that adjudicators have been authorized to apply asylum bars at the credible fear stage. Codifying this additional barrier in the regulations would cause countless asylum seekers to be turned back to danger without a full hearing on their asylum eligibility. Unsurprisingly, positive credible fear rates dropped precipitously by 45 percent from an average of 67.5 percent (May to September 2019) to 37 percent (October 2019 to June 2020) after the Supreme Court lifted the stay on the third-country transit asylum ban in September 2019 and as the administration began to use other fast-track deportation programs to limit access to counsel, according to government data.[32] We strongly urge the agencies not to implement these additional barriers for asylum seekers at the threshold fear screening.

[32] USCIS, "Semi-Monthly Credible Fear and Reasonable Fear Receipts and Decisions", https://www.uscis.gov/tools/reports-studies/immigration-forms-data/semi-monthly-credible-fear-and-reasonable-fear-receipts-and-decisions.

The proposed rule requires that, once individuals are determined to be ineligible for asylum at the credible fear screening, they must then meet a higher burden to be able to present a case to an immigration judge. Whereas they previously would have only needed to establish a significant possibility of eligibility for relief, they would instead need to show a "reasonable possibility" of persecution or torture—a much higher standard. In the past year, DHS officials have carried out this process and required anyone barred from asylum by the third-country transit ban to meet the higher standard; Human Rights First has documented cases of refugees turned back to danger as a result of this policy.[33]

The proposed rule would permanently bar asylum seekers from any immigration relief for not knowing the technicalities of the law

Under 8 U.S.C. § 1158(d)(6), an individual who files a frivolous asylum application is permanently barred from ever receiving immigration benefits. The current regulation, 8 C.F.R. § 208.20 and § 1208.20, defines a frivolous application as one where "any of its material elements is deliberately fabricated." The proposed rule amends this definition at 8 C.F.R. § 208.20 and § 1208.20 to include asylum applications where the applicant knew or was willfully blind to the fact that the application contained a fabricated essential element, was premised upon false or fabricated evidence, was filed without regard to the merits of the claim, or was clearly foreclosed by applicable law. This standard could lead to a frivolousness finding for the vast majority of denied asylum claims. An adjudicator who concludes that an asylum claim does not meet the necessary legal standards for asylum eligibility could then conclude, under the proposed rule, that the application is frivolous for this very reason.

Asylum law is highly technical and confusing. It is in constant flux. Particularly for unrepresented individuals, understanding the requirements of asylum eligibility is often an impossible task, varies by federal circuit court, and is subject to new regulations, including this proposed rule that rewrites decades of asylum law. Punishing asylum seekers for seeking safety without legal expertise is not fair and not logical.

We also have concerns that the proposed rule would enable asylum officers to determine that an application is frivolous and refer the case to an immigration judge on that ground. Given the severity of the consequences for filing a frivolous application, we oppose permitting asylum officers who do not conduct full adversarial hearings to make such a finding.

The proposed rule would deprive asylum seekers of the right to present their cases in court

The rule proposes to amend § 1208.13 by adding 8 C.F.R. § 1208.13(e). Under the proposed addition, an immigration judge must pretermit or deny an application for protection if the applicant has not established a prima facie claim for relief or protection. This can be done solely on the basis of the I-589 application, and without affording the applicant an opportunity to testify or present additional evidence. While the proposed regulation provides that an applicant be given the opportunity to respond before the judge pretermits or denies, even for those lucky enough to

[33] Human Rights First, "Asylum Denied, Families Divided: Trump Administration's Illegal Third-Country Transit Ban" (July 2020), https://www.humanrightsfirst.org/resource/asylum-denied-families-divided-trump-administration-s-illegal-third-country-transit-ban.

be represented by counsel at the time of filing the I-589 form, this is not a meaningful safeguard against erroneous denial and wrongful return of refugees to persecution. Even skilled and experienced refugee lawyers find that many asylum claims take time to develop. Lawyers need time to develop a relationship of trust with a new client, to interview the client in detail about her facts, to engage in country research to place those facts in context, to talk to witnesses (who sometimes offer facts of which even the asylum applicant was unaware), and to engage in legal research. The realities of immigration court practice are that often, the I-589 must be filed before all these efforts are perfected: asylum seekers often knock on many doors before finding legal representation, and by the time they do, deadlines for submission of the application, or one-year deadlines to file for asylum, may be looming. Adequately responding to an attempt to pretermit an asylum application on the grounds, for example, that the asylum seeker's particular social group is not legally cognizable, will often require the submission of the entire evidentiary submission. This will be exceedingly difficult for the lawyer to do in the time allotted, and in any case goes against whatever efficiency gains the agencies contemplate in this proposal.

As for unrepresented asylum seekers, succeeding in filing a technically complete I-589 form is a daunting obstacle to many, and one that proposed revisions to the I-589 form would make even worse. Many asylum seekers do not speak or write English, some have limited literacy even in their native languages, and some are detained. Many asylum seekers in detention or under MPP are unable to secure assistance, including translators, to complete the application; the U.S. government provides them with none. It is Human Rights First's experience, from decades of assisting lawyers at major U.S. law firms in completing this form as volunteer counsel to asylum-seeking clients, that some of the questions on the form are opaque even to many otherwise highly skilled attorneys, and that the way to use this form to effectively present an asylum seeker's case is also not obvious to all. Asylum seekers who lack such assistance frequently misunderstand key questions on the form, do not realize the level of detail expected from them in response, and are, in many cases, attempting to reduce some of the most painful experiences of their lives to writing in a foreign language. Human Rights First has seen I-589's completed by unrepresented people who, in response to a question about whether they feared return to their country and if so why, wrote simply: "Because in my country war." This, on its own, does not state an asylum claim, but it likewise does not mean the applicant does not have one. This is why the law requires an evidentiary hearing.

This change would violate due process principles of fundamental fairness in proceedings and the INA's guarantee that individuals have the right to present evidence on their behalf. 8 U.S.C. § 1229a(b)(4)(B). Furthermore, 8 C.F.R. § 1240.11(c)(3) requires an evidentiary hearing to resolve factual issues.

Conclusion

For the reasons outlined above, Human Rights First recommends that DHS and EOIR abandon this proposed rule in its entirety. This rule rewrites decades of asylum law without the requisite legal authority and arbitrarily changes existing regulations to eliminate refugee protection for the majority of people seeking safety in the United States. We strongly oppose this proposed rule and urge the agencies to withdraw it and protect refugees in accordance with U.S. and international law.I