

ASYLUM PROCESSING RULE AT ONE YEAR

Urgent Fixes Needed to Provide Fair,
Efficient and Humane Adjudications

Introduction

One year ago, the Department of Homeland Security (DHS) began implementing an [Interim Final Rule](#) (referred to as the “Asylum Processing Rule,” or “APR”) that created a new process for some asylum seekers who had recently come to the United States. This rule, which went into effect on May 31, 2022, [provides](#) that asylum seekers who have established a credible fear of persecution may have their asylum cases decided initially by the U.S. Citizenship and Immigration Services (USCIS) Asylum Office and that cases not granted by the Asylum Office are then referred to immigration court removal proceedings.

Prior to the rule, the government would generally place asylum seekers with a credible fear of persecution in immigration court removal proceedings — a process that is often more adversarial and traumatizing than USCIS Asylum Office adjudications and requires additional governmental resources. While the rule created the potential for a more efficient and humane process through the resolution of more asylum cases through initial USCIS asylum interviews — a step that advocates have long urged the government to take — certain fundamental flaws, including unreasonably short deadlines, have hindered access to counsel and deprived asylum seekers of a fair opportunity to present their cases.

The rule requires the Asylum Office to schedule an interview (the “Asylum Merits Interview,” or “AMI”) within 21 to 45 days of a positive credible fear determination, leaving asylum seekers virtually no time to find a lawyer and prepare their case. Those who are not granted by the Asylum Office are subjected to accelerated timelines in immigration court as well, with a final hearing on their case occurring within just a few months. These rapid timelines for scheduling AMIs and immigration court proceedings conflict with Congress’s [intent](#) — in setting a one-year filing deadline for asylum applications and [rejecting](#) a shorter deadline — to provide asylum seekers with adequate time to secure legal representation and prepare their cases. The timelines are also counterproductive and inefficient. Lack of access to counsel and inadequate preparation time lead to mistaken referrals to immigration court of cases that could have been granted at the AMI stage, as well as immigration court denials that necessitate further administrative and judicial appeals to correct erroneous decisions.

Another serious defect of the rule is that it is embedded in the expedited removal process, requiring asylum seekers to first overcome that hurdle before they can have their cases adjudicated by the Asylum Office. This damaging approach limits governmental flexibility, creates inefficiencies, and further cements DHS’s use of a due process deficient procedure, which often yields mistaken decisions that return refugees to persecution and torture. The rule also endangers the lives of refugees seeking asylum by eviscerating a critical safeguard in the process that has saved asylum seekers from summary deportation for decades: asylum seekers’ ability to request reconsideration of erroneous negative

credible fear decisions. The APR created a draconian and unrealistic seven-day deadline for asylum seekers to file requests for reconsideration and barred them from submitting more than one request.

Over the past year, DHS has conducted a phased implementation of referrals to AMIs in certain detention centers and for asylum seekers planning to live in or near certain cities. It has also applied its new restrictions on requests for reconsideration to asylum seekers attempting to remedy erroneous credible fear decisions. Since the rule went into effect, Human Rights First has monitored the rule's implementation, convened a national group of legal service providers and advocates dedicated to assisting asylum seekers processed under the rule, analyzed data published by DHS on implementation of the rule, and joined other organizations in issuing recommendations. This report is based on Human Rights First's observations and monitoring of the rule over the past year and updates prior Human Rights First [materials analyzing](#) DHS data on the rule.

Key Findings

- **The timelines for scheduling AMIs under the APR systematically deny asylum seekers an opportunity to secure legal counsel.** According to DHS data from May 31, 2022 through April 3, 2023, **only 8.4 percent of asylum seekers whose cases have been completed by the Asylum Office under the APR were represented at their AMIs**, in stark contrast to representation rates for asylum seekers in other proceedings. For instance, of all asylum decisions in immigration court in Fiscal Year (FY) 2022, over [90 percent](#) of asylum seekers were represented, according to data analyzed by Syracuse University's Transactional Access Records Clearinghouse (TRAC). Additionally, [64 percent](#) of all people released from detention who have pending cases in immigration court are represented, according to TRAC data. Legal organizations have reported to Human Rights First that they often did not have initial contact with asylum seekers until *after* their AMIs had taken place and that they have had to turn down APR cases due to the unduly short deadlines. Law professors have [warned](#) that these timelines present obstacles to ethical legal representation as well.
- **Accelerated timelines in immigration court proceedings under the APR also prevent asylum seekers from securing representation.** Of all cases referred under the APR that were completed by the immigration court, only 41 percent were represented, in contrast to the significantly higher general representation rates for people with immigration court cases described above. **Those who were represented were far more likely to secure protection from deportation, with asylum seekers who obtained relief represented at nearly twice the rate of asylum seekers ordered removed.** Over 40 percent of all removal orders were issued because the asylum seeker did not attend their hearing (referred to as an "in absentia" removal order). Given that the vast majority of non-detained immigrants attend court in general, this high rate of in absentia removal orders raises serious concerns that the short deadlines and lack of access to legal representation are thwarting asylum seekers' ability to obtain information about their cases.



- **With many asylum seekers scheduled for AMIs mere weeks after being released from detention, pro bono legal service organizations are unable to represent asylum seekers on such a short timeframe.** In the rare event that attorneys manage to take on an APR case for representation, it has sometimes been necessary to reject other APR cases and pause all other work in order to represent a client at an AMI due to the unreasonable timelines. Some attorneys were unable to secure or translate evidence such as declarations from the asylum seeker or other witnesses, police reports, death certificates, or psychological evaluations, simply because there was no time. Building rapport with clients in a matter of weeks or less in order to obtain the necessary information about their case and prepare them to testify about some of their most traumatic experiences has also been an enormous challenge, including in cases where clients exhibited symptoms of Post-Traumatic Stress Disorder (PTSD).
- **The APR deadlines convert what the government intended to be a less adversarial alternative to immigration proceedings into an extremely traumatizing, unfair process for many asylum seekers.** For instance, a 19-year-old Afro-Colombian woman who had been attacked and threatened with death due to her race and status as a witness cooperating with the police experienced such severe re-traumatization when she had to testify at her AMI, which was conducted less than four weeks after her release from detention by an asylum officer who was unfamiliar with the record — possibly also due to the fast timelines — and resulted in a referral to immigration court, that she considered giving up on her asylum case. An unrepresented Peruvian asylum seeker processed under the APR, whom the National Immigrant Justice Center (NIJC) did not have capacity to represent due to the strict timelines, was denied asylum even though NIJC assessed that clients with similar claims are routinely granted asylum by the court.
- **Over the past year, many asylum seekers who erroneously received negative credible fear determinations have been ordered deported — and some have already been returned to danger in violation of non-refoulement or are in imminent danger of deportation — because their reconsideration requests were denied due to the draconian seven-day deadline and limitation on more than one request for reconsideration.** These include: a Nicaraguan asylum seeker who had been threatened and physically attacked by police officers because of his anti-government political opinions; an Eritrean asylum seeker who had been detained and whipped by the Eritrean government and military, leaving scars on his body; a Peruvian woman who had been kidnapped, raped, tortured, and threatened with death by her ex-partner and was afraid to disclose this information at her credible fear interview (CFI); a Russian asylum seeker fleeing threats by the Russian government who was deported back to Russia; a 19-year-old LGBTQ asylum seeker from Colombia who fled homophobic violence, sexual abuse, and death threats in Colombia; and a Colombian asylum seeker who had been strangled, beaten, hit by a car, and threatened due to her political opinion and her public testimony in a sexual assault case.
- **It is virtually impossible for most asylum seekers to submit a request for reconsideration within seven days.** Legal service organizations report that many asylum seekers are not informed of the deadline by the government in a language they



understand and are unaware that the deadline even exists until long after it has passed because they are unable to consult with attorneys in time, especially while jailed. Even with the assistance of legal counsel, many asylum seekers who are detained during CFIs cannot file a timely request for reconsideration, especially because the government has declined to resolve basic logistical challenges that prevent attorneys from even attempting to represent clients in requesting reconsideration from the Asylum Office. These include the failure to timely provide the credible fear record and a requirement that the Form G-28 confirming legal representation contain a physical signature from asylum seekers, who are often detained and cannot meet in person with their attorneys in time.

- **Limiting referrals for AMIs to asylum seekers who have overcome the obstacles of expedited removal limits flexibility, undermines efficiency, and fuels erroneous deportations of refugees through the deeply flawed expedited removal process.** Virtually no one is represented during the credible fear process in the detention centers where the administration has conducted CFIs for potential AMI referrals, with 99 percent of asylum seekers unrepresented during their CFIs. Data on the APR has also confirmed [longstanding concerns](#) about the Houston Asylum Office, which issues positive credible fear determinations at a disproportionately low rate and has a history of persistent allegations of misconduct and due process violations.

Recommendations

As of April 2023, DHS has [paused](#) referrals of asylum seekers for Asylum Merits Interviews under the rule at the same time that it has increasingly [diverted](#) asylum officers away from full asylum adjudications in order to conduct credible fear interviews (CFIs). An asylum seeker placed in expedited removal must pass a CFI in order to have an opportunity to apply for asylum and avoid immediate deportation. However, DHS is not required to use expedited removal and may refer asylum seekers directly for full asylum adjudications.

DHS has now implemented two other Biden administration policies — new iterations of Trump-era policies — against people seeking safety at the border including [fast-track CFIs](#) in Customs and Border Protection (CBP) custody and an [asylum ban](#) that [denies](#) asylum to refugees despite their eligibility for asylum under U.S. law. A provision in the new asylum ban regulation further eliminates the critical safeguard of requests for reconsideration of erroneous negative credible fear decisions, exacerbating the due process nightmare that has resulted from the restrictions on requests for reconsideration in the Asylum Processing Rule.

The administration must immediately change course. Instead of using punitive Trump-era approaches, the administration should focus on fixing the Asylum Processing Rule in line with the longstanding recommendations of advocates and legal service providers to humanely and efficiently process the cases of people seeking safety at the border. Additionally, the administration should — as detailed in prior Human Rights First [recommendations](#) — maximize access to asylum at ports of entry, redouble steps to



strengthen capacities to receive and protect refugees in other countries, expand legal pathways to the United States without making such pathways contingent on denial of asylum access, and ramp up and work with Congress to fund reception capacities, legal representation, and sufficient asylum adjudication capacities to address asylum backlogs and ensure fair and timely adjudication of asylum cases.

In order to achieve the Asylum Processing Rule's intended purpose of ensuring "efficient adjudication while preserving fairness" and protecting "equity, human dignity, and fairness", the Biden administration, DHS, and the Department of Justice (DOJ) must take urgent steps, including:

- Issue a final Asylum Processing Rule that resolves the fundamental flaws that have impeded fair adjudications during the year that it has been in effect, including:
 - Remove the rushed deadlines for scheduling AMIs and provide that interviews should not be scheduled for at least 90 days after the credible fear determination or, if the person does not undergo a CFI, at least 90 days after their release from government custody, allowing additional time through rescheduling as needed consistent with the law;
 - To ensure accurate, efficient decision-making at the earliest part of the process and avoid violating Congress's intent to provide asylum seekers sufficient time to search for counsel and prepare their case before filing an asylum application, provide that the Asylum Office should accept requests for rescheduling and evidentiary filing extensions within the first year of the individual's most recent date of entry. Continuances thereafter should be decided under the "good cause" and "exceptional circumstances" standards in line with U.S. law and existing USCIS policy;
 - Eliminate arbitrary timelines for immigration court hearings to avoid due process deficient rushed proceedings and instead provide that immigration court hearings under the APR are governed by existing timelines for regular removal proceedings;
 - Allow DHS to refer asylum seekers for AMIs regardless of whether they have undergone the expedited removal process; and
 - Fully restore the unrestricted authority of the Asylum Office to reconsider negative credible fear determinations to ensure that refugees are not wrongly deported to persecution and torture in violation of U.S. law and treaty obligations.
- Adequately staff AMIs, as well as affirmative asylum interviews and immigration court proceedings, and work with Congress to ensure necessary appropriations for asylum adjudication, avoiding the use of expedited removal which diverts asylum office and immigration court resources away from actual asylum adjudications.
- While the Asylum Processing Rule remains in effect, DHS and DOJ should take additional steps to help mitigate barriers to access to counsel and erroneous decisions including:



- Provide designated agency points of contact on the Asylum Processing Rule, who can share information about implementation, discuss cases that require immediate escalation, and assist with logistics such as scheduling, to better facilitate legal representation of asylum seekers processed under the rule;
- Issue guidance and provide training to asylum officers regarding the impact of the short timeframes and the difficulty of obtaining evidence prior to an AMI; and
- Issue broad guidance to asylum officers on granting requests to reschedule AMIs, including where asylum seekers need additional time to secure legal representation and to gather evidence and prepare a case; and
- Provide guidance and training to USCIS asylum offices regarding the equitable tolling of the APR's seven-day deadline for requests for reconsideration, including where asylum seekers could not access counsel;
- While the government continues to wield expedited removal, DHS and USCIS should ensure that asylum seekers are not wrongly deported due to erroneous credible fear determinations:
 - Require that copies of the Asylum Office credible fear decision and related record be served on the applicant and counsel on the day the credible fear decision is issued, and if counsel later enters an appearance require that the decision and record be served within 24 hours of receiving notice of representation;
 - Stop requiring attorneys to obtain physical signatures from their clients on the Form G-28 in order to enter an appearance, which attorneys often cannot obtain timely while representing jailed clients remotely, thereby obstructing attorneys' ability to represent their clients;
 - Implement a Quality Assurance Review Process for requests for reconsideration, which are often erroneously denied or disregarded;
 - Provide new and strengthened training and guidance for asylum officers conducting fear interviews that comply with statutory requirements, including trauma-informed and non-adversarial interviewing methods, applying the "significant possibility" standard, and appropriate and sensitive interviewing of LGBTQ individuals and other vulnerable populations;
- The DHS Office of Inspector General and the DHS Office for Civil Rights and Civil Liberties should closely monitor and investigate complaints of asylum officers' failure to conduct fear interviews appropriately, provide adequate language interpretation in the asylum seeker's primary language, use non-adversarial interview methods, apply the correct legal standard, and respond meaningfully to requests for reconsideration.



Background on Phased Implementation of the Rule

Though the APR has been in effect for a year, DHS has not referred all — or even most — asylum seekers with positive credible fear determinations for Asylum Merits Interviews. The rule provides the option for referral of asylum seekers for AMIs, but DHS may still refer asylum seekers for regular immigration court removal proceedings. Since May 31, 2022, DHS has conducted a phased implementation of the rule, limiting its scope to specific detention centers and destination cities.

Initially, DHS [indicated](#) that it only referred people to AMIs if they 1) received a positive credible fear determination while detained at the South Texas ICE Processing Center (Pearsall) and the Houston Contract Detention Facility and 2) indicated an intent to reside in or near Boston, Chicago, Los Angeles, Miami, New York, Newark, or San Francisco. DHS later began conducting CFIs at other detention centers in Texas and California for potential referrals for AMIs and added New Orleans and Washington, D.C. as destination cities. Some asylum seekers also received non-detained CFIs if they were planning to reside in the above destination cities, but DHS appears to have later reverted to exclusively conducting detained CFIs for referrals to the process.

According to [data](#) published by DHS, the vast majority of CFIs conducted under the rule have taken place at Pearsall (1,955 completed or pending CFIs) and Houston (2,528 completed or pending CFIs). The majority of AMIs have been scheduled at the Newark Asylum Office (531), New York Asylum Office (327), Miami Asylum Office (249), and San Francisco Asylum Office (224). DHS has released asylum seekers from detention pending their AMIs. However, given that most CFIs have been conducted in detention, individuals have been scheduled for their AMI just weeks after being released from detention due to the requirement to schedule an AMI within 21 to 45 days of a positive credible fear determination.

The asylum seekers most often scheduled by DHS for AMIs have been from Colombia, Peru, Dominican Republic, Ecuador, and Brazil, leaving asylum seekers from Cuba, Venezuela, and Nicaragua conspicuously under-represented. DHS's motivations may relate to these countries' policies on accepting people denied asylum and deported — a factor that appears to drive [much](#) of the agency's [approach](#) to refugee protection, rather than U.S. and international refugee law (which extends protection based on fear of persecution and *not* based on nationality or the migration policies of countries of persecution). However, the reality is that including populations that are often [granted](#) asylum should — if the APR rule is improved by eliminating the unworkable timelines — allow more efficient and accurate resolution of many of these cases as well, without incurring the additional governmental costs inherent in the removal process.

Under the phased implementation, 1,732 AMIs have been scheduled nationally since the rule has taken effect and 722 were still pending completion as of April 3, 2023. These small numbers can be attributed to the limited implementation approach and pauses on implementation, including an earlier pause in December 2022.

Even though referrals to AMIs are paused again as of April 2023, the Asylum Processing Rule remains in effect. Immigration judges continue to decide cases referred to



immigration court after an AMI. These proceedings are subject to the accelerated timelines required by the rule. Additionally, restrictions on requests for reconsideration of negative credible fear determination remain in effect and continue to cause devastating consequences for asylum seekers wrongly ordered deported.

Rushed Timelines Thwart Access to Legal Representation, Fairness, and Efficiency

Over the past year, asylum seekers referred for AMIs and immigration court proceedings under the rule have been overwhelmingly unable to obtain legal representation due to the rule's unduly short timeframes. With AMIs scheduled between 21 to 45 days after a positive credible fear determination — which is typically issued while an asylum seeker is jailed in ICE custody — asylum seekers have mere weeks to travel to their destination, settle into their new community, secure housing and any needed medical and mental healthcare or other support, reach out to legal organizations, complete an intake, work with an attorney to prepare a case, gather supporting documents, and prepare to testify about traumatic past events. It is even more [difficult](#) for asylum seekers to secure legal counsel and prepare their case while they are still detained during the credible fear process.

In the vast majority of cases, securing an attorney and preparing a case in these circumstances is impossible. Asylum seekers often do not have time to even schedule an initial consultation with an attorney or legal organization to learn about the basic aspects of the asylum process.

Data confirms abysmal representation rates

DHS [data](#) on implementation of the APR confirms that the timelines systematically deny asylum seekers an opportunity to secure legal counsel. According to data from May 31, 2022 through April 3, 2023, **only 8.4 percent of asylum seekers whose cases have been completed by the Asylum Office under the APR were represented at their AMIs.**¹ This low representation rate stands in stark contrast to representation rates for asylum seekers in other proceedings. For instance, of 52,877 asylum decisions in immigration court in FY 2022, over [90 percent](#) of asylum seekers were represented, according to data analyzed by Syracuse University's Transactional Access Records Clearinghouse (TRAC). Additionally, [64 percent](#) of all people released from detention who have pending cases in immigration court are represented, according to TRAC data. USCIS does not provide regular data on representation rates for affirmative USCIS asylum interviews, but prior data suggests that these rates are certainly nowhere near the abysmal AMI representation rates. In FYs 2006-2009, the most recent period for which this data is available, [58 percent](#) of asylum seekers were represented at their Asylum Office interviews.

¹ This figure includes cases that were either granted asylum or referred to immigration court at the AMI stage and does *not* include cases that were administratively closed by the Asylum Office, because a case may be closed prior to an AMI for a variety of reasons and so may not accurately reflect whether a person was represented at an AMI.



The dismal representation rate of 8.4 percent for AMIs makes clear that the timeframes are fundamentally incompatible with meaningful access to counsel and due process. Systematically blocking access to counsel through unreasonable deadlines violates due process, denies asylum seekers the protection they are eligible for, and undermines the government's goal of efficiently resolving cases. [Studies have repeatedly shown](#) that legal representation ensures that more individuals receive asylum and other immigration relief that they are eligible for under U.S. law. For instance, **represented immigrants who were never detained were nearly [five times](#) more likely than unrepresented immigrants who were never detained to obtain relief if they sought it.**

Moreover, the DHS APR data confirms that USCIS infrequently, if ever, provides additional time to find representation and prepare a case. Asylum seekers have been rapidly scheduled for AMIs, with median times **ranging from just 31 to 40 days after receiving a positive credible fear determination.** It is virtually impossible for many asylum seekers to prepare a case and secure an attorney in this time frame. While the government has touted the efficiency of its new process, the speed at which AMIs are conducted is counterproductive: cases that are unnecessarily referred into removal proceedings because of lack of representation or inadequate preparation time exacerbate the immigration court backlog and require further adjudications to rectify the error. Of all AMIs over the past year that resulted in a grant of asylum or a referral to immigration court, **64.7 percent were referred to immigration court,** likely in part due to some unnecessary referrals that could have been averted had asylum seekers had the necessary additional time before their AMIs. Indeed, data analyzed by TRAC has [shown](#) that asylum seekers whose cases move on accelerated timelines are less likely to secure representation and receive a positive asylum determination.

DHS data on immigration proceedings under the rule through March 31, 2023 also reflects dire representation rates. Of all cases referred under the APR that were completed by the immigration court under the accelerated timeframes, only **41 percent were represented,** in contrast to the significantly higher general representation rates above for people with immigration court cases. **Those who were represented were far more likely to secure protection from deportation.** Nearly 60 percent of asylum seekers who obtained relief in immigration court under the APR were represented, while only around 32 percent of asylum seekers who were ordered removed were represented.

The deadlines likely prevent asylum seekers from attending their hearings as well. **41.5 percent of all removal orders issued in immigration court under the rule have been issued in absentia** (i.e. merely because the asylum seeker did not attend court), raising serious concerns that the short deadlines and lack of access to legal representation are thwarting asylum seekers' ability to obtain information about their cases. Many asylum seekers likely are not aware of their hearings due to lack of notice, language barriers, difficulties locating or accessing immigration courts, confusion over multiple obligations to appear before different agencies (many asylum seekers mistakenly believe that their Immigration and Customs Enforcement (ICE) check-in is their immigration court hearing), and other obstacles. Others may not understand the requirements to attend or the consequences of not attending. Studies have previously found that the vast majority of non-



detained immigrants attend court, and that even more — [96 percent](#) — attend court when they have an attorney.

Legal organizations struggle to meet with and represent asylum seekers subject to APR process

Due to the short timelines, it is impossible for many asylum seekers to even *speak* with a legal organization about the process and learn about the basic details of how to prepare for an AMI or immigration court hearing. **Multiple legal organizations reported to Human Rights First that they often did not have initial contact with asylum seekers until after their AMIs had taken place.** For instance, the National Immigrant Justice Center (NIJC) noted that **the majority of asylum seekers have already had their AMIs at the time of their initial contact with NIJC**, making it impossible to provide a general orientation on the process, let alone refer them for representation.

Even where asylum seekers have an opportunity to obtain basic information about the process, this is not a substitute for full legal representation, which is extremely difficult to secure on these timelines. Given the dearth of governmental and other funding for legal representation, many pro bono legal service organizations have weeks or months-long waits for an initial legal intake or consultation. After deciding to accept a case for representation, attorneys must work with clients to prepare a case, including preparing them to testify, gathering and translating evidence, submitting legal arguments in advance of a hearing or interview, and in some cases obtaining expert reports, including psychiatric or medical evaluations. Law professors have [warned](#) that the unreasonable timelines in the APR present obstacles to ethical legal representation.

Obtaining expert reports may also take weeks or months. For instance, Physicians for Human Rights [reported](#) that from January 2020 to May 2022, it took on average 53 days to locate and assign a volunteer clinician to conduct a forensic evaluation after the request was submitted, with some cases taking much longer to be placed with a clinician due to limited availability in the state and other factors. After a case has been placed with a clinician, additional time is required to conduct the evaluation and write a declaration.

As a result, in the rare event that attorneys can speak with asylum seekers prior to their AMI and manage to take on the case for representation, some are severely limited in their ability to prepare the case and have had to pause all other work. For instance, NIJC reported that the strict timelines require attorneys “to drop everything” to prepare a single case under the APR because of the unduly short timeline, preventing the organization from taking on other APR cases.

The Feerick Center for Social Justice at Fordham University School of Law and Americans for Immigrant Justice have worked together to create template forms and guidance related to the APR for pro se asylum seekers and pro bono representatives, implement a training program for attorneys on the APR, and start a pilot program to represent asylum seekers in their AMIs before the Miami Asylum Office. Though the pause on referrals for AMIs has prevented this pilot program from launching, the Feerick Center and Americans for Immigrant Justice reported to Human Rights First that the **timelines are so short that they**



had to create a model where attorneys could only serve one or two clients at a time in order to meet the deadlines.

The AMI is scheduled within mere weeks, but attorneys have even less time to prepare and submit evidence to the Asylum Office. The rule generally requires the applicant to submit evidence seven days prior to the AMI, or that the evidence be postmarked 10 days prior if mailed. Attorneys reported that they could not gather important evidence prior to the deadline, such as declarations from the asylum seeker or other witnesses, police reports, death certificates, or psychological evaluations. NIJC explained that translating evidence in time was a herculean effort that took up the organization's resources and was often only possible where the documents were written in Spanish because of more limited interpretation capacity for other languages.

Other attorneys reported that they could not submit key evidence simply because there was no time to translate it by the deadline. Building rapport with clients in a matter of weeks or less in order to obtain the necessary information about their case and prepare them to testify about some of their most traumatic experiences was also an enormous challenge, including in cases where clients exhibited symptoms of PTSD. In one instance, an attorney learned crucial information about her client one day in advance of the AMI. Studies [have shown](#) that asylum seekers experience PTSD at higher rates compared to the general population, which may impede their ability to prepare for their cases. The short timelines exacerbate these barriers by preventing asylum seekers from securing legal counsel and making it extremely difficult to obtain additional evidence such as psychological evaluations that may help ensure fair and accurate outcomes.

Attorneys explained that the process generally favored clients who spoke Spanish (facilitating faster interpretation services), had gathered supporting evidence in advance (which is often impossible for people fleeing for their lives who are detained upon reaching the United States), had access to and ability to use technology, and did not have severe PTSD that impacted their ability to prepare a case and testify. Conversely, the process disfavors asylum seekers who speak languages for which it is more difficult to secure rapid interpretation; could not gather supporting evidence because they were not aware of what evidence they could be expected to provide, had to flee for their lives before they could obtain it, or had evidence that was lost or stolen during the journey or confiscated by DHS; do not have access to or ability to use technology to communicate with attorneys or send and obtain documents, or have severe PTSD that impedes ability to prepare for a case and testify. While some asylum officers did not require additional corroborating evidence and relied primarily on an asylum seeker's testimony to grant asylum, other officers may refuse to grant a case without additional evidence.

Since the APR was implemented, groups have recommended steps to expand access to legal services for asylum seekers processed under the APR, including in an August 2022 [letter](#) to the administration. While officials have taken some steps in response, other key recommendations have not been adopted and legal nonprofits continue to urge the following crucial steps, including:

- Provide designated agency points of contact on the Asylum Processing Rule;



- Issue guidance and provide training to asylum officers regarding the impact of the short timeframes and the difficulty of obtaining evidence prior to an AMI to help ensure that asylum officers do not arbitrarily require corroborating evidence where the asylum seeker did not have time to obtain it, resulting in unnecessary referrals to immigration court; and
- Issue broad guidance to asylum officers on granting requests to reschedule AMIs, including where asylum seekers need additional time to secure legal representation and to gather evidence and prepare a case, to ensure that cases are not wrongfully referred to immigration court due to inadequate preparation time.

Accounts of asylum seekers impacted by APR illuminate ways for administration to fix rule and ensure more humane process

The APR deadlines convert what the government intended to be a less adversarial system into an extremely traumatizing, unfair process for many asylum seekers. The accounts of asylum seekers forced to undergo this process illustrate the devastating consequences of the deadlines. Asylum seekers have been unnecessarily referred to immigration court to endure traumatic and adversarial proceedings instead of having their cases resolved at the AMI stage, denied asylum by the immigration court, and forced to testify while severely traumatized shortly after fleeing their country of persecution and suffering the trauma of U.S. detention. These stories reflect a small fraction of the harms, as it is extremely difficult to track many individual stories because cases are often adjudicated before people have had an opportunity to speak with an attorney or advocate.

- **An asylum seeker from Ecuador, who was assisted pro se by the NIJC Immigration Court Helpdesk in preparing for his immigration court hearings under the APR, was granted asylum but forced to testify about the traumatic details of being raped because he was unrepresented and could not prepare a declaration on his own.** The NIJC Immigration Court Helpdesk helped prepare him to address inconsistencies between what he reported at his CFI — during which he was detained and traumatized — and subsequent testimony, as well as to explain to the judge why he had not previously testified about his rape. NIJC reported that had he had an attorney representing him, he might have been spared having to testify in court about the details of his rape because the court could have relied on a written declaration prepared with the assistance of an attorney.
- **A 19-year-old Afro-Colombian woman who had been attacked and threatened with death due to her race and status as a witness cooperating with the police was so traumatized by her AMI, which was conducted less than four weeks after her release from detention and resulted in a referral to immigration court, that she considered giving up on her asylum case.** Though she managed to secure representation prior to her AMI, her attorney did not have adequate time to obtain a psychological evaluation, secure key pieces of evidence for her home country, or prepare the client to testify. According to her attorney, the asylum officer was not familiar with the record, possibly also due to the fast timelines, and found that the asylum seeker was not credible. Human Rights First represented her before the immigration court and she was granted



asylum, with the judge noting her “expressed nervousness” at the beginning of the AMI and “her repeated references to trauma.”

- **An unrepresented Peruvian asylum seeker processed under the APR, whom NIJC did not have capacity to represent due to the strict timelines, was denied asylum.** The asylum seeker had received death threats for witnessing and reporting a bombing to the police. After the Chicago Asylum Office conducted an AMI and referred him to immigration court, the judge denied asylum based on a legal determination that his persecution was not “on account of” a protected ground. NIJC reported that had the organization been able to represent him and articulate the legal arguments to the judge, he might have been granted asylum given that NIJC clients with similar claims are routinely granted asylum by the court. Though the NIJC Immigration Court Helpdesk attempted to assist him pro se in advance of his immigration court hearing, the attorney who helped him noted: **“There is only so much we can do pro se.”**

In some instances, the Asylum Processing Rule has resulted in the quick resolution of asylum cases, sparing people from the trauma of enduring years-long delays and adversarial proceedings in immigration court. However, in the cases documented by Human Rights First, this has primarily occurred where the client secured counsel due to prior contact with a legal service provider while detained or where the attorney was somehow able to pause all other work in order to represent them.

Many asylum seekers have no opportunity to speak with attorneys while detained or sufficiently in advance of their AMIs. Requiring organizations to drop all work to represent a small number of APR cases is unsustainable and forces them to turn down other APR cases that could also benefit greatly from representation. **Only a lucky few can find counsel in these circumstances — and the vast majority are predictably left unrepresented.** As noted above, gathering and translating documents may only be possible where the client has prepared them in advance or where the organization has capacity for rapid translation — often only possible for Spanish-language documents. [Asylum law](#) provides that an adjudicator may rely on testimony alone where the testimony is credible and the applicant cannot reasonably obtain corroborating evidence. Some asylum officers have relied on asylum seekers’ testimony to grant asylum in AMIs rather than requiring them to submit additional corroborating evidence. However, the government must issue guidance and provide training on the impact of the short timeframes to ensure that officers do not wrongly require corroboration even where the fast timelines did not permit the asylum seeker to obtain it, resulting in referral to immigration court.

Some lucky asylum seekers manage, against enormous odds, to secure counsel and obtain asylum at the AMI stage. Their stories confirm that if the unworkable deadlines are remedied, the Asylum Processing Rule could provide a humane and fair pathway for many more asylum seekers to obtain quick resolution of their cases and avoid additional trauma. For instance:

- **In November 2022, an asylum seeker from Ecuador who fled persecution based on his sexual orientation secured representation and was granted asylum after an AMI with the Chicago Asylum Office, but due to the strict timelines in the APR, taking on**



his case meant that his attorney at NIJC had to turn down other APR cases that were subsequently not granted and referred to immigration court. NIJC first spoke with him one week before all evidence had to be submitted to the Asylum Office, but he had already gathered supporting letters from family members and a police report that NIJC quickly translated because of in-house capacity to translate Spanish-language documents. NIJC attributed the success of his AMI to his ability to secure evidence in advance, access to and ability to use technology, which enabled him to quickly scan and email documents, the fact that the documents had to be translated from Spanish rather than any other language (which would have taken substantially more time), and the relatively straightforward nature of his asylum claim. Nonetheless, his attorney at NIJC noted that she had to put all of her other work on hold while preparing his case due to the stringent timeline and could only do so because she did not have other immediate hearings or filings.

- In September 2022, an asylum seeker from the Dominican Republic who fled severe domestic violence was granted asylum after an AMI at the Newark Asylum Office, sparing her the trauma of having to present her case in immigration court and undergo cross-examination by an ICE attorney.** An organization in Texas that assisted her in detention during her credible fear process immediately referred her to an organization in Pennsylvania, Aldea PJC, which began representing her a mere week before the AMI. Despite the unusual speed with which she was connected with representation, her attorney at Aldea had no time to obtain supporting evidence, such as declarations from family members, in advance of the AMI. After the AMI, her attorney quickly responded to a subsequent Request for Evidence (RFE) regarding an aspect of the woman's asylum claim, allowing for quick resolution of her case rather than an unnecessary referral to immigration court. Her ability to secure a lawyer before her AMI and the asylum officer's decision not to require additional corroborating evidence were important factors in the fast resolution of her case.
- An attorney reported that she was only able to represent a Colombian asylum seeker fleeing domestic violence in her AMI because she had previously represented her during her CFI — which is rare because most asylum seekers are unrepresented during their CFIs — and even then faced enormous challenges in timely preparing the case because the asylum seeker did not yet have her own phone number and had trouble accessing her own email accounts to obtain evidence and witness information.** The asylum seeker was granted asylum at the AMI stage, saving her years of uncertainty and legal limbo. The attorney noted that the AMI was less traumatic for the client compared to immigration court due to the non-adversarial nature of the AMI, but that the woman would likely have been unable to secure counsel if not for her prior contact with the organization in detention due to the rapid scheduling of her AMI just weeks after her release from detention and the severe trauma and barriers she faced while adjusting to life in the United States.



Asylum Processing Rule Exacerbates Ongoing Endemic Flaws of Expedited Removal

The expedited removal process has [long resulted](#) in the [return](#) of [refugees](#) to persecution, torture, and [death](#) in violation of U.S. and international law. Under U.S. [law](#), people placed in expedited removal who express an intent to seek asylum or fear of return to their country must be referred for a CFI with the USCIS Asylum Office. During the interview, if an asylum officer determines that the asylum seeker has a credible fear of persecution (i.e. a “significant possibility” the individual would be eligible for asylum after a full hearing), the asylum seeker must be afforded an opportunity to apply for asylum and a full hearing on their application. An asylum seeker who receives a negative credible fear determination may have the decision reviewed by the immigration court, which is often a “[rubber stamp](#)” [review](#) where some asylum seekers may not even speak, present new evidence, or have their attorneys present. Asylum seekers who receive negative credible fear determinations that are affirmed by the immigration judge are subject to immediate deportation.

CFIs are typically conducted in detention and are [plagued](#) by due process violations, including barriers to securing legal representation, confusing, cursory, or hostile interviews, failure to provide interpretation in the correct language, and horrific conditions of confinement that deprive asylum seekers of a meaningful opportunity to share their stories. During the Biden administration, there have been mounting reports of due process violations and wrongful deportations of asylum seekers through the flawed expedited removal process. Widespread flawed credible fear determinations have resulted in deportation orders against political activists tortured by their countries’ governments, LGBTQ individuals fleeing violence, and other refugees, as Human Rights First documented in an August 2022 [report](#) on the use of expedited removal.

DHS is not required to place anyone in expedited removal and may refer asylum seekers for full adjudications of their claims without first requiring them to pass a CFI. However, the APR provides that asylum seekers may be referred for AMIs only *after* being subjected to the fundamentally flawed expedited removal process and passing a CFI. Limiting referrals for AMIs to asylum seekers who have overcome the obstacles of expedited removal further entrenches a deeply flawed, unnecessary process that DHS is not required to use and has continued to fuel erroneous deportations of refugees.

The APR also eviscerated a critical safeguard in the expedited removal process. Since the expedited removal process was implemented in 1997, the Asylum Office has had [unrestricted authority](#) to reconsider its mistaken negative credible fear decisions, regardless of when an asylum seeker requests reconsideration or whether they have previously requested it. DHS codified this authority in U.S. [regulations](#) in 2000. For decades, this safeguard has [shielded](#) many refugees from wrongful deportation to persecution and torture. In just three years, between FY 2019 to FY 2021, the ability of the Asylum Office to reconsider erroneous negative credible fear determinations saved at least [569](#) asylum seekers from summary deportation and enabled them to apply for asylum. Across seven asylum offices in FY 2021, a staggering [15 percent](#) of all requests for reconsideration resulted in a reversal of a negative credible fear determination.



In its APR, the Biden administration hollowed out this longstanding protection by imposing a new, unworkable seven-day deadline on the filing of these requests and barring the Asylum Office from considering more than one request. These restrictions have been catastrophic. Asylum seekers who suffered severe due process violations during their CFIs and were erroneously ordered deported due to egregious mistakes by the asylum officer have been unable to seek reversal of these decisions and are barred from applying for asylum. Some have already been deported to danger. The administration's new asylum ban [rule](#) further [destroys](#) the protection of requests for reconsideration, providing that asylum seekers who receive negative credible fear determination due to the ban — i.e. because of how they entered the United States or their travel through a transit country — cannot submit a request for reconsideration at all.

Implementation of APR underscores flaws of expedited removal

Over the past year, DHS has conducted CFIs for potential referral to AMIs in certain detention centers in Texas and California.² Funneling cases through detention for potential AMI referrals has severely limited the number of asylum seekers even eligible for referral to AMIs because detaining asylum seekers during the credible fear process [prevents](#) them from meaningfully participating in their CFIs. The vast majority of these CFIs were decided by the Houston Asylum Office, which issues positive credible fear determinations at a disproportionately low rate and has a history of [persistent allegations](#) of misconduct and due process violations.

DHS's APR data reflects that only **53.9 percent** of asylum seekers included in the data received positive credible fear determinations and had an opportunity to apply for asylum.³ 5,019 of the total scheduled 5,974 CFIs have been under the jurisdiction of the Houston Asylum Office. In contrast, 91.7 percent of asylum seekers who underwent CFIs at the Otay Mesa and the Imperial Regional Detention Facilities — the two detention centers where the rule was implemented that are *not* under the jurisdiction of the Houston Asylum Office — received positive credible fear determinations. 53.9 percent is a staggeringly low rate that reflects the Houston Asylum Office's disproportionately low positive credible fear rates compared to other Asylum Office positive credible fear rates and overall historical rates.

Congress [intended](#) for the credible fear standard to be a low screening threshold to ensure that refugees would have an opportunity to apply for asylum. In FY 2016, [88.3](#) percent of asylum seekers who received a credible fear screening established a credible fear of persecution. Positive credible fear determinations during the Obama and George W. Bush administrations averaged nearly [80](#) percent. However, positive credible fear rates plummeted under the Trump administration due to a slew of illegal [policies](#), [regulations](#), and Attorney General [rulings](#) that rigged the system against refugees seeking asylum, falling to

² DHS has also conducted some non-detained credible fear interviews for potential referral to AMIs, but the vast majority of CFIs have been conducted in detention.

³ This figure includes credible fear cases that either received positive or negative fear determinations and excludes cases that were administratively closed, dismissed by the immigration judge, or are pending. Negative credible fear determinations that are reversed by the immigration court are counted as positive credible fear determinations.



44.3 percent in FY 2020. While positive credible fear rates have risen to [73.5](#) percent in FY 2023 as of May 15, the Houston Asylum Office [often issues](#) erroneous negative decisions and its positive credible fear rate is disproportionately low, as confirmed by the 53.9 percent rate for CFIs conducted primarily by the Houston Asylum Office. Indeed, overall [USCIS data](#) on CFIs conducted between January 1, 2022 and June 30, 2022 confirms that the Houston Asylum Office had the lowest positive credible fear determination rate (57.4 percent) nationally, whereas all other asylum offices (not including Houston) had an average positive credible fear rate of 79.4 percent for that period.

Last year, organizations that represent and advocate for asylum seekers submitted a formal [complaint](#) to the DHS Office of Inspector General and the Office of Civil Rights and Civil Liberties regarding the Houston Asylum Office's mishandling of CFIs, including the denial of access to counsel, lack of legal orientation, failure to provide appropriate interpretation, and biased and deficient individualized fear determinations. Despite the alarming deficiencies in adjudications carried out by the Houston Asylum Office, the administration appears to have designated the Houston Asylum Office to coordinate additional CFIs in egregious conditions in CBP jails at the border, with even more [restrictions](#) on access to counsel.

The APR data confirms that virtually no one is represented during the credible fear process in the detention centers where the administration conducted CFIs for potential AMI referrals. Since the rule went into effect, **99 percent** (4,959 of 5,011) of asylum seekers included in the data — the vast majority of whom underwent CFIs in detention — did not have legal representation at their CFIs.⁴ This abysmal representation rate confirms [longstanding concerns](#) that asylum seekers subjected to expedited removal face insurmountable barriers to secure legal representation. The pace and unpredictability with which CFIs occur make it even more difficult to find an attorney willing to provide representation. This 1 percent representation rate for CFIs — most of which were conducted in detention — is drastically lower than the already dismal representation rate for detained immigrants with pending immigration court proceedings ([35.8 percent](#)) and far below that of immigrants with pending cases who have been released from detention ([64 percent](#)).

These alarming outcomes make clear that requiring a CFI as a precondition for referral to an AMI is extremely harmful to asylum seekers and must be eliminated from the APR. Instead, the APR should provide for referral to AMIs regardless of whether asylum seekers have undergone the expedited removal process.

Evisceration of requests for reconsideration fuels erroneous deportations of refugees

The APR's imposition of severe limitations on requests for reconsideration has had predictably devastating consequences for refugees subjected to the flawed expedited removal process. The rule requires asylum seekers to request reconsideration within seven days after the immigration court affirms a negative credible fear determination and limits each asylum seeker to one request. After the administration published the Asylum

⁴ These statistics include credible fear cases that either received positive or negative fear determinations and exclude cases that were administratively closed, dismissed by the immigration judge, or are pending.



Processing Rule, UNHCR [objected](#) to the evisceration of this safeguard, noting that the government should preserve “the authority of DHS to reconsider negative credible fear determinations, as it helps ensure that asylum-seekers may have their claims properly screened before removal, without imposing **numerical or time constraints** that might compromise an asylum-seeker's right to be heard.” Over the past year, many asylum seekers have been ordered deported — and some have already been returned to danger or are in imminent danger of deportation — because their reconsideration requests were denied due to the draconian new restrictions. Deporting refugees after flawed credible fear decisions violates U.S. and international law prohibitions on refoulement (return of refugees to persecution).

It is virtually impossible for most asylum seekers to submit a request for reconsideration within seven days. Legal service organizations report that many asylum seekers are often not informed of the deadline by the government in a language they understand and are unaware that the deadline even exists until long after it has passed because they are unable to consult with attorneys in time, especially while jailed. Submitting a request for reconsideration without the assistance of an attorney is difficult to impossible given that it must be submitted in English and many asylum seekers do not understand why they received a negative credible fear determination. Even with the assistance of legal counsel, many asylum seekers who are detained during CFIs cannot file a timely request for reconsideration. It is extremely difficult to schedule prompt legal calls, and frequent transfers between detention centers further complicate communication with counsel. Preparing a request for reconsideration on a seven-day timeline (which includes weekends and holidays) imposes an enormous and unworkable burden on legal service providers, who need to speak with their clients, review the credible fear record, write a request containing factual and legal arguments explaining why the CFI was erroneously decided, and potentially gather and submit additional evidence.

Moreover, over the course of the past year, the government has declined to resolve basic logistical challenges that prevent attorneys from even attempting to represent clients in requesting reconsideration from the Asylum Office. For instance, asylum seekers and their attorneys frequently do not receive the credible fear decision and notes, where the asylum officer documents the content of the interview and reasons for the negative decision. Inability to review this record prevents attorneys from submitting a request for reconsideration that directly addresses the reasons for the negative credible fear decision. The government routinely fails to provide asylum seekers with their own credible fear record, in violation of federal [regulations](#).

Many attorneys experience enormous delays in obtaining the credible fear record and others are unable to even request it because of stringent signature requirements for the Form G-28 — a document confirming legal representation. The Asylum Office requires attorneys to submit the G-28 with the signature of the asylum seeker in order to obtain information or documents regarding the case. This stands in contrast to ICE policy allowing detained individuals' legal representatives to write “detained” in place of a client's signature and imposes additional significant burdens and delays, especially in light of the fact that many legal organizations are located hours away from detention centers. Despite repeated recommendations to resolve these basic barriers, including eliminating the G-28



requirement and directing asylum offices to timely provide the credible fear record to attorneys, the government has not addressed these concerns.

In light of the ongoing devastating consequences of the restrictions on requests for reconsideration, organizations have repeatedly [urged](#) DHS to provide guidance to the USCIS Asylum Office regarding the equitable tolling of the seven-day deadline to ensure that asylum seekers who have been unfairly hindered from accessing counsel or submitting a request have a meaningful opportunity to seek protection. Federal courts have routinely [found](#) that untimely filings are subject to equitable tolling despite strict statutory requirements. DHS has not issued such guidance.

The harrowing accounts of asylum seekers denied reconsideration of their credible fear decisions due to the seven-day deadline make clear that the unrestricted authority of the Asylum Office to reconsider negative credible fear determinations must be immediately restored. These accounts also underscore that the administration's recent decision to completely eliminate requests for reconsiderations for many asylum seekers through its [asylum ban](#) is a terrible misstep that will only escalate violations of the government's non-refoulement obligations.

- **In October 2022, the Houston asylum office denied a request for reconsideration that was filed after the seven-day deadline for a gay asylum seeker from Colombia who suffered multiple homophobic attacks,** including one where he needed surgery as a result, and was fired on account of his sexual orientation. **His CFI decision and notes were riddled with errors and evidence of disturbing and unprofessional conduct by the asylum officer and interpreter.** For instance, the record reflects that the asylum officer referred to the asylum seeker's city of residence as "evil gay." The CFI record also shows that the interpreter refused to take the interpreter's oath *and* refused to acknowledge that the content of the CFI was confidential, yet the asylum officer failed to contact another interpreter to conduct the CFI.⁵ In his decision, the asylum officer incoherently claimed that the applicant, who testified that he is gay and lived with his male partner, "does not fall within defined characteristics of 'sexual minorities,'" raising serious concerns about the asylum officer's competency to interview LGBTQ asylum seekers and his expectations that they conform to his preconceived notions of how LGBTQ people should present themselves. The asylum seeker was deported the same day that his attorney at Immigration Equality filed the request for reconsideration, and the Houston asylum office later rejected it, citing the seven-day deadline and the fact that the asylum seeker had already been deported.⁶
- **A Nicaraguan asylum seeker who was threatened and physically attacked by police officers because of his anti-government political opinions was denied reconsideration by the Houston asylum office in September 2022 due to the seven-day deadline.** He had not shared the details of his asylum claim with the asylum officer

⁵ It is unclear if this was misconduct or a clerical mistake, but if it was error, the fact that this went unnoticed in the asylum officer's review, in addition to the other blatant errors in the decision, cast serious doubt on the accuracy of the entire record and necessitate reconsideration by the Asylum Office.

⁶ The Asylum Processing Rule also bars requests for reconsideration once the asylum seeker has been deported.



during his CFI because he feared retaliation at the hands of the Nicaraguan government should the contents of his CFI be shared. His request for reconsideration was submitted by his attorney at the Refugee and Immigrant Center for Education and Legal Services (RAICES) only 11 days after the immigration judge affirmed the negative CFI, but the asylum office rejected the RFR based on the seven-day deadline, denying him an opportunity to seek asylum.

- **Citing the seven-day deadline, the Houston asylum office refused to reconsider the negative credible fear determination of an Eritrean asylum seeker who had been detained and whipped by the Eritrean government and military, leaving scars on his body.** At the CFI, the asylum officer only asked the man “yes” or “no” questions and did not inquire about his actual or perceived political opinion, which was the basis for the persecution he suffered. The asylum seeker later secured an attorney, Haregu Gaime, who reported to Human Rights First that it was extremely difficult to obtain documents from the client and represent him because he was detained. When Gaime requested reconsideration of the patently erroneous decision, the Houston asylum office denied it based solely on the seven-day deadline.
- **In March 2023, the Arlington Asylum Office denied a request for reconsideration for a Peruvian woman who had been kidnapped, raped, tortured, and threatened with death by her ex-partner who has connections to the Peruvian police and who had been afraid to disclose this information at her CFI because of shame and fear that she would not be believed.** She was unaware of the seven-day deadline. After building a relationship with an attorney at the Florence Immigrant and Refugee Rights Project, she was able to disclose the severe abuse after the attorney visited her in person. Her attorney filed a request for reconsideration around nine days after the seven-day deadline and argued that it should be equitably tolled, but the Asylum Office denied due to the deadline.
- **Multiple Russian asylum seekers were denied reconsideration by the Houston, New York, and Newark asylum offices and one has already been deported to Russia due to the seven-day deadline, according to their attorney Jennifer Scarborough.** After receiving erroneous negative CFIs, the detained asylum seekers did not speak with an attorney or learn about the seven-day deadline until after it had passed, leaving them with no recourse to reverse the mistaken decision. One asylum seeker was deported to Russia in March 2023 despite having fled threats by the Russian government. After months of advocacy by Scarborough, the Houston Asylum Office issued two of the other asylum seekers discretionary Notices to Appear due to legal error in their initial CFIs, permitting them to apply for asylum. But Scarborough reported that she is in touch with additional Russian asylum seekers whose CFIs were erroneously denied who were unable to request reconsideration before the seven-day deadline, and warned that legal error by the Asylum Office combined with the arbitrary deadline “creates a situation where people with bona fide claims are left suffering the consequences of an asylum officer’s mistake.”
- **An asylum seeker from the Dominican Republic was denied reconsideration by the Asylum Office because of the seven-day deadline even though she was delayed in**



submitting the request because she was hospitalized after having multiple seizures in detention. She had been brutally beaten, cut with a knife, and threatened with death by drug lords who were collaborating with the police in the Dominican Republic. Even though a legal service organization assisted her in submitting a request for reconsideration in March 2023 that explained that she was unable to meet the deadline due to her seizures and argued for equitable tolling of the deadline because it would be unfair to apply it to her, the request was denied solely based on the seven-day deadline.

In some instances, attorneys have been unable to gather the necessary documents or information to file a detailed and comprehensive request for reconsideration due to the seven-day deadline, forcing them to decide between submitting a basic request within the deadline — preventing them from later submitting a more substantive request due to the restriction on more than one request — or risk missing the seven-day deadline and receiving a denial on that basis. For example:

- **A 19-year-old LGBTQ asylum seeker from Colombia was denied reconsideration of his negative CFI after his attorney at RAICES had to urgently file an RFR on the day she first spoke with him because the seven-day deadline was about to pass, which prevented her from preparing a detailed RFR or reviewing the CFI decision in advance.** The asylum seeker had fled homophobic violence, sexual abuse, and death threats in Colombia. During the CFI in July 2022, he was repeatedly interrupted by the asylum officer when he tried to describe the homophobic attacks he suffered. The immigration judge conducting the credible fear review also barred the asylum seeker from sharing this information on the basis that it was ostensibly not mentioned during the CFI. The Houston asylum office initially refused to consider the request for reconsideration because the attorney had not had an opportunity to obtain the client's signature on the G-28 form, and then rejected the request without explanation when it was submitted the following day — the day after the seven-day deadline passed — with the required signature.

The restriction barring more than one request for reconsideration has also endangered asylum seekers, including those who filed a pro se request for reconsideration and subsequently secured counsel to assist them in filing a more substantive request. Multiple requests have sometimes proven [necessary](#) to obtain a correct decision from the Asylum Office when it has previously declined a valid and compelling request for reconsideration. The Asylum Office routinely issues rote denials without reasoned explanation or individualized analysis, necessitating additional requests for reconsideration in cases that merit a reversal of the determination. Attorneys have reported that some requests are denied immediately after they are received, indicating that the Asylum Office did not even read through the detailed request and supporting evidence.

In light of these concerns, advocates and legal service providers have repeatedly [urged](#) DHS to implement a quality assurance review process for requests for reconsideration, including requiring the Asylum Office to complete a written individualized analysis for each RFR denial and provide review of every decision. Additional requests are also often needed where there has been a change in law or where the asylum seeker obtains new evidence, such as a medical or psychological evaluation, or learns new information about the danger they face



such as recent death threats issued against them or attempts by their home country's government to track them down. Prior to the implementation of the Asylum Processing Rule, the Asylum Office reversed numerous erroneous negative credible fear determinations where a prior request for reconsideration had been filed and wrongly rejected.

The numerical restriction particularly punishes asylum seekers who submitted a pro se request for reconsideration and then submitted a more substantive request with the assistance of counsel, including:

- **The Asylum Office refused to consider a detailed request for reconsideration filed by an attorney for a Colombian asylum seeker because she had previously been unrepresented and submitted a short, handwritten letter asking the Asylum Office to reconsider.** The asylum seeker had been strangled, beaten, hit by a car, and threatened due to her political opinion and her public testimony in a sexual assault case. Even though her attorney submitted a detailed request for reconsideration by the seven-day deadline that outlined ways in which the asylum officer had disregarded relevant caselaw, the Asylum Office issued a denial letter citing the date that the handwritten letter had been submitted with no mention of the complete request filed by counsel.
- **An asylum seeker from Colombia who was raped and threatened with death because she is married to a military official in her home country was denied reconsideration and deported because according to the Houston Asylum Office, she had submitted a pro se request for reconsideration days before her attorney submitted a detailed request within the seven-day deadline.** The negative credible fear decision was based on the asylum officer's legal error in not recognizing precedential caselaw regarding persecution based on family membership as well as a finding that the asylum seeker was not credible based on a minor inconsistency about a date with no consideration given to the asylum seeker's severe trauma and how it might affect her testimony.



Mission Statement

Human Rights First works to create a just world in which every person's intrinsic human rights are respected and protected, to build societies that value and invest in all their people. To reach that goal demands assisting victims of injustice, bringing perpetrators of abuse to justice, and building institutions that ensure universal rights.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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