June 12, 2024

VIA ELECTRONIC SUBMISSION (https://www.regulations.gov)

Daniel Delgado
Director for Immigration Policy
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security

Re: Comment in Response to Notice of Proposed Rulemaking: Application of Certain Mandatory Bars in Fear Screenings (DHS Docket No. USCIS-2024-0005; RIN 1615-AC91)

Dear Director Delgado:

The 47 undersigned national, statewide, and local organizations that serve and advocate for survivors of domestic violence, sexual assault, and human trafficking (collectively, the "Undersigned Organizations"), submit this comment[1] in response to the Notice of Proposed Rulemaking, *Application of Certain Mandatory Bars in Fear Screenings*, (the "Proposed Rule" or the "Rule") published by U.S. Citizenship and Immigration Services ("USCIS"), Department of Homeland Security ("DHS" or "the Department"), in the Federal Register on May 13, 2024.[2] These organizations have served as expert resources for the media, Congress, policymakers, researchers and others on the unique barriers to safety and justice facing survivors and immigration remedies for survivors fleeing gender-based violence.[3]

Per DHS's invitation to "interested parties" to submit "relevant written data, views, or arguments" on the Proposed Rule, the Undersigned Organizations address in this comment the Proposed Rule's myriad deficiencies and how it will adversely affect survivors of gender-based and other persecution if finalized.[4]

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[1] All sources cited shall be incorporated into the administrative record as if set forth fully herein and are provided in **Exhibits 1-104**. *See* **Appendix A** (Table of Authorities).

[2] U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, Notice of Proposed Rulemaking, *Application of Certain Mandatory Bars in Fear Screenings*, 89 Fed. Reg. 41347 (May 13, 2024) (DHS Docket No. USCIS-2024-0005; RIN 1615-AC91), available at: https://www.govinfo.gov/content/pkg/FR-2024-05-13/pdf/2024-10390.pdf.

[3] *See e.g.*, Tahirih Justice Center, *Publications*, available at: https://www.tahirih.org/news-media/publications/.

[4] As an initial matter, we note that DHS failed to follow Executive Orders and the Administrative Procedure Act ("APA") by allowing stakeholders only 30 days to comment rather than 60 days. Along with dozens of other organizations, we previously pointed this out to the Department and requested an extension of the comment period to 60 days in order to provide stakeholders with a meaningful opportunity to comment on the Proposed Rule. *See* Comment ID USCIS-2024-0005-0037 (May 19, 2024), available at: https://www.regulations.gov/comment/USCIS-2024-0005-0037 ("Comment ID USCIS-2024-0005-0037") **(Exhibit 1)**. If we had received 60 days for comment, we would have been

The Proposed Rule is flawed legally and procedurally, unsupported factually and as a matter of policy, and must be promptly withdrawn. As discussed below in Section I, the Proposed Rule contravenes domestic and international law and presents a major departure from longstanding and recently reaffirmed DHS policy – a change for which the Department provides no meaningful explanation. The Proposed Rule will significantly increase the risk that survivors of gender-based and other persecution will be summarily and unlawfully blocked from applying for protection in the United States (*see* Section II, *infra*). If finalized it would, among other adverse outcomes, make the asylum process even more arbitrary and unworkable than the status quo.

The Undersigned Organizations urge the Department to withdraw this Proposed Rule in its entirety and instead adopt humane and workable solutions to the humanitarian and operational challenges inherent in any asylum system.[5]

I. The Proposed Rule Violates Domestic and International Law.

Currently, pursuant to longstanding law and policy, asylum officers ("AOs") are not permitted to consider the mandatory bars to asylum and withholding of removal as part of the credible fear and reasonable fear determinations ("CF/RF stage").[6] The Proposed Rule introduces sudden changes to longstanding U.S. legal and policy precedent to allow AOs to consider – and adjudicate – the potential applicability of certain bars to asylum and statutory withholding of removal during the CF/RF stage. According to DHS, the Proposed Rule is "intended to enhance operational flexibility and help DHS more swiftly remove certain noncitizens who are barred from asylum and statutory withholding of removal."[7] If finalized, the Proposed Rule would grant AOs discretion to summarily reject a subset of asylum seekers earlier in the process at the CF/RF stage based on several factors that are currently — *and should only be* — considered and adjudicated once an asylum seeker has a full merits hearing before an immigration judge.

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able to provide additional evidence for the record and comment on additional areas as well as expand our comment on the topics discussed below. *See* Section III, *infra*.

[5] Oxfam America and Tahirih Justice Center, *Surviving Deterrence: How US Asylum Deterrence Policies Normalize Gender-Based Violence*, at 21-26 (2022), available at: https://www.tahirih.org/wp-content/uploads/2022/10/Oxfam_Tahirh_Surviving-Deterrence_English_2022.pdf (detailing concrete steps that the U.S. Government can take at the executive and congressional levels to begin to realize such a transformation and to mitigate the harm that current U.S. policies engender) **(Exhibit 2)**; *see also* Welcome With Dignity, *Policy Solutions to Safeguard and Strengthen the U.S. Asylum System* (2024), available at: https://welcomewithdignity.org/wwd-solutions-2024/ **(Exhibit 3)**; Tahirih Justice Center, *Ensuring Equal and Enduring Access to Asylum*: *Why 'Gender' Must Be a Protected Ground*, available at: https://www.tahirih.org/wp-content/uploads/2021/09/Ensuring-Equal-and-Enduring-Access-to-Asylum-Tahirih-Justice-Center.pdf **(Exhibit 4)**.

[6] *See* 8 C.F.R. § 208.30(e)(5), available at: https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208/subpart-B/section-208.30 **(Exhibit 5)**; 8 C.F.R. § 208.31(c), available at: https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208/subpart-B/section-208.31 **(Exhibit 6)**.

[7] 89 Fed. Reg. at 41347.

The APA provides for agency action to be set aside when it is "not in accordance with law."[8] The Immigration and Nationality Act ("INA"), Public Law 107–296, 116 Stat. 2135, as amended, stipulates that fear interviews be limited to a determination of whether there is a significant possibility that a person can establish past persecution, or a well-founded fear of future persecution, on account of a protected ground. Congress intended to impose a low screening threshold to avoid the risk that people would be erroneously screened out of their chance to seek asylum during the CF/RF stage in the expedited removal process.[9] There is good reason for that statutory limitation. Without exception, the statutory bars to asylum require fact-intensive determinations that have no place in the summary, initial screening of the CF/RF stage. To take just one example of many, the "serious non-political crime" bar in 8 U.S.C. § 1158(b)(2)(A)(iii) requires consideration of, at a minimum, the nature of the offense, its intended target, the type and quantum of evidence suggesting that the person seeking asylum committed the crime, any extenuating evidence, and the circumstances surrounding the supposed action. The CF/RF stage is a wholly inappropriate juncture at which to make such determinations. Yet the provisions of the Proposed Rule go beyond the existing statutory mandate – which, significantly, has not been modified to accommodate the change the Department seeks to implement – to further permit consideration and adjudication of the mandatory bars to asylum at the CF/RF stage, rendering the Proposed Rule inconsistent with governing law as a result.

Throughout the Proposed Rule, the Department asserts, without providing any supporting evidence, that allowing AOs "to consider the potential applicability of certain bars to asylum and statutory withholding of removal" during the CF/RF stage would help curb "terrorism and significant criminality."[10] Aside from stating its enforcement priorities, however, DHS offers no data or other objective measures to support its claims.[11] The Department also admits that any reduction in strains on resources would be modest, so much so that the Department has not – or

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[8] 5 U.S.C. § 706(2)(A), available at: https://uscode.house.gov/view.xhtml?req=granuleid:USC-2000-title5-section706&num=0&edition=2000 **(Exhibit 7)**.

[9] *Cf.* Executive Office for Immigration Review, Department of Justice; U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, Interim Final Rule with Request for Comments, *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 87 Fed. Reg. 18078, 18084 (Mar. 29, 2022), available at: https://www.govinfo.gov/content/pkg/FR-2022-03-29/pdf/2022-06148.pdf ("2022 IFR") **(Exhibit 8)**.

[10] 89 Fed. Reg. at 41351.

[11] In addition, there is plenty of evidence to the contrary, *see, e.g.,* Ran Abramitzky, *et al*., *Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-born, 1870–2020*, NBER Working Paper No. 31440 (July 2023, Rev. Mar. 2024), available at: https://www.nber.org/system/files/working_papers/w31440/w31440.pdf **(Exhibit 9)**; Michael T. Light, *et al*., *Comparing Crime Rates between Undocumented Immigrants, Legal Immigrants, and Native-Born US citizens in Texas*, PNAS Vol. 117, No. 51 (Dec. 7, 2020), available at: https://www.pnas.org/doi/abs/10.1073/pnas.2014704117 **(Exhibit 10)**.

cannot – quantify the purported reduction.[12] DHS further concedes that it would also bear the costs of the Proposed Rule in that it "would, in some cases, result in AOs spending additional time, during fear screenings, to inquire into the applicability of the above cited mandatory bars, additional time writing up the required mandatory bar analysis for the credible or reasonable fear determination, and additional time spent by SAOs to review any mandatory bar analysis conducted in such determinations, ..."[13] Given the lack of evidence that any efficiencies or savings will result, combined with the Department's own admission that the Proposed Rule would actually cause AOs to spend more time on a case thereby slowing down the process, the Department's justification is not reasonable and fails to substantiate why the Proposed Rule is needed.

Yet that does not stop DHS from flaunting its decision to remove decades of due process protections, claiming that "since such cases would no longer need to be heard before an immigration court, additional capacity would be available for immigration judges to decide other cases."[14] DHS then explains that "noncitizens subject to the above cited bars will be quickly removed from the United States, freeing up the Departments' resources to safely, humanely, and effectively enforce and administer the immigration laws."[15] But the Department should also be using its resources to "safely, humanely, and effectively enforce and administer the immigration laws" by ensuring that survivors fleeing persecution do not end up improperly and unjustly removed due to the new application of the mandatory bars at – what even DHS itself has previously agreed[16] – is a completely inappropriate stage.

Moreover, the limited empirical data to which DHS does cite fails to actually support the points for which it is offered (*e.g.*, the citation to 660,000 individuals removed or returned by DHS from May 12, 2023 to March 31, 2024 is irrelevant to why the Proposed Rule must be "swiftly finaliz[ed]" to "expand[] operational flexibility"). In any event, the Department's unsupported assertion that the Proposed Rule will promote operational flexibility is outweighed by the specific, identifiable, data-supported likelihood that the Proposed Rule would have life-threatening consequences for asylum seekers.[17]

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12 89 Fed. Reg. 41359.

13 *Id.*

14 *Id*.

15 *Id.*

16 *See, e.g.,* 87 Fed. Reg. at 18093.

17 *See* Section II, *infra*. Inaccurate data used by the United States in making these determinations would have life-or-death consequences for asylum seekers fleeing to safety. For example, the United States relies on data-sharing agreements with certain countries to make a mandatory bar determination for people accused of committing certain crimes, but "those accusations are often based on prejudicial evidence and/or unfounded allegations." National Immigrant Justice Center, *Human Rights Organizations Call for Investigation of U.S. Reliance on Unreliable Information Provided by Foreign Sources* (Aug. 2023), available at: https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2023-

Introducing more discretion into an already opaque process will not, as DHS claims, "create systematic efficiencies while simultaneously protecting legal rights."[18] The Department fails to include any discussion of how it will ensure legal rights will be protected when it has *never* applied the fact-intensive review of mandatory bars at the CF/RF stage. Since the expedited removal process was implemented, empirical data has shown a high risk of error inherent in the process, and concerns about human rights and constitutional violations persist.[19] For example, on average, more than 25 percent of immigration judge decisions over the past 25 years have found that migrants had established a credible fear of persecution or torture after an AO initially found no credible fear.[20]

08/Explainer%20CRCL%20Complaint_%20DHS%20reliance%20on%20foreign%20data%20sources_final1_0.pdf **(Exhibit 11a)** ("As part of the Salvadoran government's proclaimed 'state of exception,' officials often bring false charges against individuals as a form of political persecution; these claims come back to haunt asylum seekers when they arrive in the United States having fled. U.S. immigration enforcement agencies use the unsubstantiated information in proceedings in ways that hinder individuals' ability to seek asylum and other forms of relief. Asylum seekers can then be deported back to El Salvador without a chance to dispute or challenge the veracity of the evidence presented against them."); *see also* National Immigrant Justice Center ("NIJC"), Access Now, Cristosal, and Stanford Law School's International Human Rights & Conflict Resolution Clinic, *Request for an investigation into the Department of Homeland Security's reliance on noncredible information provided by human rights abusing authorities in El Salvador* (June 6, 2023), available at: https://www.accessnow.org/wp-content/uploads/2023/08/Complaint-Re-El-Salvador-Data-Sharing-Agreements-REDACTED-PUBLIC-VERSION.pdf **(Exhibit 11b)**; *see also* Jesse Franzblau, National Immigrant Justice Center, Policy Brief, *Caught in the Web: The Role of Transnational Data Sharing in the U.S. Immigration System*, at 6-7 (2022), available at: https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2022-12/NIJC_Policy_Brief_Foreign_data_sharing_December-2022.pdf **(Exhibit 12)**; U.S. Department of State, *El Salvador 2022 Human Rights Report*, at 1-2, 8-13 (2023), available at: https://www.state.gov/wp-content/uploads/2023/02/415610_EL-SALVADOR-2022-HUMAN-RIGHTSREPORT.pdf **(Exhibit 13)**; Human Rights Watch & Cristosal, *"We Can Arrest Anyone We Want:" Widespread Human Rights Violations Under El Salvador's "State of Emergency,"* at 1-3, 90 (Dec. 2022), available at: https://www.hrw.org/sites/default/files/media_2022/12/elsalvador1222web.pdf **(Exhibit 14)**.

[18] 89 Fed. Reg. at 41351.

[19] *See* Section II.C, *infra*; *see also* Christina Asencio, "Trapped, Preyed Upon, and Punished," Human Rights First (May 7, 2024), at 4, available at: https://humanrightsfirst.org/wp-content/uploads/2024/05/Asylum-Ban-One-Year-Report_final-formatted_5.13.24.pdf **(Exhibit 15)**; *see also* Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 Southern California Law Review 181 (2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2769620 **(Exhibit 16)**.

[20] *See* TRAC, *Immigration Judge Decisions Overturning Asylum Officer Findings in Credible Fear Cases* (Mar 14, 2023), available at: https://trac.syr.edu/reports/712/ **(Exhibit 17)**; *see also* U.S. Department of Justice, Executive Office for Immigration Review, *Q1 2024 Adjudication Statistics on Credible Fear Review and Reasonable Fear Review Decisions*, available at: https://www.justice.gov/eoir/media/1344816/dl?inline (confirming that data for the most recent time period available is consistent with this trend) **(Exhibit 18)**.

Moreover, the Proposed Rule claims – twice – that it "does not affect a noncitizen's ability to request immigration judge review of an adverse credible fear determination."[21] Yet the Proposed Rule again fails to contain any discussion of how or why this change will not impact review of an adverse credible fear determination, or whether that review will now encompass immigration judge review of a mandatory bar determination at this stage (and if so, what that process might look like). Previously, when a change of this magnitude has been proposed, the U.S. Department of Justice Executive Office for Immigration Review would also join or issue the proposed rulemaking, but here it has not done so. Thus, the Proposed Rule fails to provide any support for its hollow claim that "legal rights" will be protected here; to the contrary, the evidence demonstrates that they will not. Furthermore, this assertion that the Department is "simultaneously protecting legal rights" is especially rich where here the Department's Proposed Rule will effectively remove its mandatory bars determination from judicial review, which survivors can currently seek under 8 U.S.C. § 1252.

If finalized, the Proposed Rule would undoubtedly increase the number of erroneous denials thereby impeding access to asylum, while making the expedited removal process even more inefficient and inconsistent. Like the Circumvention of Lawful Pathways ("CLP") regulation,[22] the Proposed Rule makes the CF/RF stage harder for some asylum seekers to pass (and thus be given a full hearing) at the expense of due process. The CF/RF stage was designed to ensure that the U.S. Government does not illegally deport people who have a chance of qualifying for asylum, withholding of removal, or protection under the Convention Against Torture. The reality is, people seeking asylum are screened within days of their arrival, often while held in detention, exhausted and traumatized from their journey to the U.S. border and almost always alone, without legal representation. There is hardly time for an applicant to prepare the extensive evidence and sophisticated legal arguments required in a full merits hearing, including any arguments regarding the applicability of statutory bars. Indeed, these issues are currently considered by an AO during a full merits interview when there is more opportunity to seek legal advice, retain an attorney, and gather evidence. For these reasons, the CF/RF stage was conceived as a low threshold screening, with those more complicated legal questions reserved for a full merits hearing.

A. <u>The Proposed Rule Departs from Existing Policy and Practice Without Reasonable Justification</u>.

DHS claims that the Proposed Rule "is consistent with the Administration's demonstrated record of providing operators maximum flexibility and tools to apply consequences, including by more expeditiously removing those without a lawful basis to remain in the United States, while

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[21] 89 Fed. Reg. at 41351, n. 10; 89 Fed. Reg. at 43153, n. 27.

[22] U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice, Final Rule, *Circumvention of Lawful Pathways*, 88 Fed. Reg. 31314 (May 16, 2023), available at: https://www.govinfo.gov/content/pkg/FR-2023-05-16/pdf/2023-10146.pdf.

providing immigration relief or protection to those who merit it at the earliest point possible."[23] DHS has historically taken the opposite position, however, and DHS's attempts to justify its departure from precedent are tenuous at best.

The Proposed Rule sets forth a dramatic alteration of the well-established practice of AOs not considering the applicability of mandatory bars during the CF/RF stage. Not only is this a departure from historical precedent, including a rule issued in 2000 that precluded consideration of the asylum bars at the CF stage,[24] but it is also a reversal of DHS's own position in 2022, explicitly instructing AOs not to apply the mandatory bars at this stage.[25] The Department does not point to any evidence of changed circumstances since 2022 which might justify the Proposed Rule's departure from existing U.S. legal and policy precedent.[26]

In its 2022 IFR, DHS recognized that applying the mandatory bars at the CF/RF stage would (1) be inconsistent with the policy goals of the CF/RF stage and (2) deny fair process to individuals found to have a significant possibility of establishing eligibility for asylum or statutory withholding of removal but for the potential applicability of a mandatory bar. The 2022 IFR followed a final rule entitled *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review* (the "Anti-Asylum Rule" or "Global Asylum Rule'').[27] The Global Asylum Rule, *inter alia*, sought to revise the CF/RF process to require that all the mandatory bars to asylum and withholding be considered during this CF/RF stage. Just as it is here, the reversal of historical precedent was predicated on efficiency considerations.[28]

Although the Global Asylum rule is currently enjoined,[29] the 2022 IFR specifically stated it sought to "return to existing and two-decade-long practice of not applying at the credible fear screening the mandatory bars."[30] In articulating this position, DHS laid out several reasons why

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[23] 89 Fed. Reg. at 41351.

[24] *See* 65 Fed. Reg. 76121, 76137 (Dec. 6, 2000) ("If [a noncitizen] is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Service shall nonetheless place the [noncitizen] in proceedings under section 240 of the Act for full consideration of the [noncitizen's] claim, ...").

[25] *See* 87 Fed. Reg. at 18078.

[26] *See* 89 Fed. Reg. at 41352.

[27] 85 Fed. Reg. 80274 (Dec. 11, 2020).

[28] 85 Fed. Reg. at 80286 (discussing the merits of the proposed rule to "allow the immigration system to more efficiently focus its resources on adjudicating claims that are more likely to be meritorious").

[29] On January 8, 2021, the U.S. District Court for the Northern District of California enjoined the implementation of the rule. *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021) **(Exhibit 22)**.

[30] 87 Fed. Reg. at 18084.

not considering the applicability of mandatory bars furthers the very efficiency concerns articulated in the Global Asylum rule:

- *Less Efficient, Not More Efficient*: "Requiring asylum officers to broadly apply mandatory bars during credible fear screenings would have made these screenings less efficient, undermining congressional intent that the expedited removal process be truly expeditious, and would further limit DHS's ability to use expedited removal to an extent that is operationally advantageous."[31]
- *Complex Legal and Factual Inquiry Is Required*: "Applying a mandatory bar often involves a complex legal and factual inquiry."[32]
- *Decision Should Be Made In Full Merits Interview or IJ Hearing, Not at the CF/RF Stage*: "Because of the complexity of the inquiry required to develop a sufficient record upon which to base a decision to apply certain mandatory bars, such a decision is, in general and depending on the facts, most appropriately made in the context of a full merits interview or hearing, whether before an asylum officer or an IJ, and not in a screening context."[33]
- *Need to Develop Record Sufficiently for a Decision on Mandatory Bars Would Improperly Expand CF/RF Stage Beyond Its Congressionally Intended Purpose*: "If a mandatory bar were to become outcome determinative, it would be necessary to develop the record sufficiently to make a decision about the mandatory bar such that, depending on the facts, the interview would go beyond its congressionally intended purpose as a screening for potential eligibility for asylum or related protection...and would instead become a decision on the relief of protection itself."[34]
- *Must Afford Noncitizens a Reasonable and Fair Opportunity to Contest Application of the Mandatory Bars*: "[D]elays do serve important purposes—particularly in cases with complicated facts—namely ensuring that the procedures and forum for determining the applicability of mandatory bars appropriately account for the complexity of the inquiry and afford noncitizens potentially subject to the mandatory bars a reasonable and fair opportunity to contest their applicability."[35]
- *Due Process and Fairness Considerations Counsel Against Application of Mandatory Bars During the CF/RF Stage*: "Furthermore, due process and fairness considerations counsel against applying mandatory bars during the credible fear screening process. Due to the intricacies of fact finding and legal analysis required to make a determination on the applicability of any mandatory bars, individuals found to have a

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31 *Id.* at 18093.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.* at 18094.

credible fear of persecution should be afforded the additional time, procedural protections, and opportunity to further consult with counsel ….”[36]

- *The Complicated Mandatory Bars Process Is Incompatible with the Quick Screening Function of the CF/RF Stage*: “The Departments agree with these commenters that a complicated process requiring full evidence gathering and determinations to be made on possible bars to eligibility is incompatible with the function of the credible fear interview as a screening mechanism designed to quickly identify potentially meritorious claims deserving of further consideration in a full merits hearing and to facilitate the rapid removal of individuals determined to lack a significant possibility of establishing eligibility for asylum . . . .”[37]

Simply put, the 2022 IFR clearly articulated that applying the mandatory bars at the CF/RF stage would either compromise an applicant’s essential and necessary due process protections or would amount to further delays and undermine Congress’s intent that the expedited removal process be truly expeditious. For example, the terrorism- and crime-related mandatory bars are often fact-sensitive, require extensive evidence, heavily litigated, and subject to different legal standards and interpretations circuit-by-circuit – all concerns the 2022 IFR specified when outlining why the mandatory bars should not be applied at the CF/RF stage. Rather, these terrorism- and crime-related mandatory bars would be outcome determinative when arbitrarily applied, which, as the 2022 IFR stated, was beyond the intended purpose of the CF/RF stage.

Finally, the Proposed Rule fails to provide any evidence — or even discussion — about how the AOs will manage to “apply consequences” that have *never* been adjudicated or applied at the CF/RF stage before. Among other deficiencies, the Proposed Rule contains no discussion regarding how AOs will be able to properly address the incredibly complex and fact-specific analysis needed in determining whether an asylum applicant has provided “material support” to a terrorist organization and whether a waiver or exemption should apply. Indeed, the Department seems to go with the “just take our word for it” approach to rulemaking here by ignoring or oversimplifying the issue entirely. It merely states (again, without citation or support) that the Proposed Rule “is consistent with the Administration’s demonstrated record of providing operators maximum flexibility and tools to apply consequences, including by more expeditiously removing those without a lawful basis to remain in the United States . . . .”[38] It does not provide that “demonstrated record” nor does it explain *how exactly* AOs will be able to properly apply these bars or, significantly, how waivers or exemptions will be handled.

In fact, so little consideration has been given to this issue that the words “material support” and “waiver” never even appear in the NPRM. In its rush to remove due process entirely and deport asylum-seeking survivors as quickly as possible, the Department completely ignores the fact that “[m]uch of the litigation over the terrorist bar concerns whether an asylum applicant

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36 *Id.* at 18134-35.

37 *Id.* at 18135.

38 *Id.* at 41351.

provided 'material support' to a terrorist organization."[39] It ignores the severe impact this Proposed Rule will have on survivors fleeing persecution from these very groups and their members, or how it will send them right back into harm's way. The Department does have the authority to waive the application of the terrorism-related grounds of inadmissibility, and it has issued exemptions from the bar as well. This authority is significant particularly due to the extreme injustice that can result in application of the mandatory bar to a so-called material support situation where (1) the applicant *did not intend* to support terrorist activity, (2) any alleged support was *de minimis* (*e.g.,* a glass of water), and (3) the support was provided *under duress or coercion*.[40] The Proposed Rule only states that "AOs will continue to retain discretion to issue positive fear determinations where a noncitizen demonstrates a credible or reasonable fear at the applicable screening standard, even where there may be indicia of a mandatory bar but . . . there is additional evidence that the noncitizen would not be subject to the bar because of exception or exemption."[41] But as demonstrated in Section II below, it is unlikely that a survivor would have that "additional evidence" immediately after fleeing persecution and seeking safety at the U.S. border, and often in detention for example. Under this Proposed Rule, the asylum seeker would be prevented from ever reaching safety in the United States, without which they will lose their ability to collect their evidence and fully demonstrate the meritoriousness of their asylum claim. Instead, the Proposed Rule will return them to harm's way.

B. Application of the Mandatory Bars During the CF/RF Stage Also Contravenes International Law and Guidelines.

The Proposed Rule would allow the unjust and incorrect application of mandatory bars against survivors fleeing gender-based persecution, resulting in *refoulement* — in contravention of the United States's obligations under international law and UNHCR guidelines.

First, the United Nations Refugee Agency has advised governments against considering statutory bars in initial admissibility screenings or during accelerated procedures in light of the significant probability of adverse outcomes that could befall an applicant prematurely excluded from protection to which they are otherwise entitled. UNHCR published guidelines for applying bars to asylum in 2003.[42] The UNHCR Guidelines state that "[g]iven the grave consequences of exclusion, it is essential that rigorous procedural safeguards are built into the exclusion determination procedure. Exclusion decisions should, in principle, be dealt with in the context of

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[39] Congressional Research Service, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part Two)*, at 3-4 (Sept. 7, 2022), available at: https://crsreports.congress.gov/product/pdf/LSB/LSB10816 **(Exhibit 23)** (discussing the category of bars that place limitations on the ability to be *granted* asylum, rather than those bars that place limitations on the ability to *apply* for asylum).

[40] *See id.*

[41] 89 Fed. Reg. at 41353.

[42] UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*, (Sept. 4, 2003), available at: https://www.unhcr.org/us/media/guidelines-international-protection-no-5-application-exclusion-clauses-article-1f-1951 **(Exhibit 24)**.

the regular refugee status determination procedure and not in either admissibility or accelerated procedures, so that a full factual and legal assessment of the case can be made."[43]

Critically, the exclusion determination procedure described in the Proposed Rule lacks procedural safeguards, "rigorous" (as preferred by the UNHCR) or otherwise. Rather, the Proposed Rule does precisely the opposite of what UNHCR advises ─ it expressly allows AOs to apply certain bars to asylum eligibility up front, at the border, as part of the CF/RF stage, *i.e.*, an "accelerated procedure", which dramatically increases the risk of erroneous deportations.

Second, there can also be no question that consideration of asylum bars at the CF/RF stage violates the government's duty of *non-refoulement*. Doing so forces fact-intensive and legally nuanced adjudications into a forum that people seeking asylum are very unlikely to have counsel; when, as a result, they have no notice of the bars to asylum; and before they could possibly gather evidence relevant to the bars to asylum. Worse still, survivors of severe trauma such as domestic violence, sexual assault, rape, and trafficking are very unlikely to be able to effectively discuss fact-intensive issues when they arrive at the border. And it is not just trauma that leaves survivors particularly vulnerable at the CF/RF stage. Given that people in credible fear interviews likely just arrived in the United States, many of them also suffer from hunger, exhaustion, linguistic and cultural barriers, possible family separations, and the effects of immigration detention. *See* Section II, *infra*. Requiring people experiencing these numerous barriers to demonstrate the non-application of the mandatory asylum bars is a recipe for *refoulement*. The Department has failed to consider this evidence and the resulting impact of its Proposed Rule. There is no doubt that the NPRM's proposal to apply the mandatory bars at the CF/RF stage will result in routine violations of the U.S.'s obligations under international law.

II. The Proposed Rule Will Significantly Harm Survivors of Gender-Based Persecution.

The Department acknowledges that the Proposed Rule would be "outcome determinative" for people who had already "been found to have a positive credible or reasonable fear of persecution."[44] Survivors of gender-based persecution already face unique barriers to articulating a credible or reasonable fear during the expedited removal process even where their case is very strong. It is common for a survivor, in an act of self-preservation and protection, to have never spoken about the abuse they suffered at all prior to having to describe it to an immigration officer. Gender-based violence often carries severe social stigmas that silence survivors due to internalized humiliation and shame. Some carry a well-justified fear of retaliation for reporting abuse, including further violence and ostracization from one's family and community.[45] A survivor may have never disclosed sexual abuse to their spouse with whom they are now arriving at the U.S. border for fear of being blamed for "adultery" or "seduction" or otherwise forever

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[43] *Id.* at 8-9.

[44] *See* 89 Fed. Reg. at 41351.

[45] Yasmin Vafa & Rebecca Epstein, *Criminalized Survivors: Today's Abuse to Prison Pipeline for Girls* (2023) at 14, available at: https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2023/04/Criminalized-Survivors_Georgetown-Gender-Justice.pdf **(Exhibit 25)**.

altering the nature of their relationship. A survivor may be arriving at the border along with the very person who abused her – her persecutor – as a "family unit." Finally, a survivor may hesitate to disclose abuse in front of her children who are present during the interview for fear of further traumatizing them.

In light of the above, requiring survivors to explain whether they are subject to a bar during the CF/RF stage will effectively prevent those with strong claims fleeing life-threatening abuse from accessing protection.

A. A Survivor's Ability to Effectively Tell Their Story, Provide Evidence, and Apply Facts to Complex Legal Standards Is Severely Curtailed at the CF/RF Stage.

Our clients have survived rape, severe and routine beatings, female genital mutilation/cutting ("FGM/C"), child and forced marriage, and attempted femicide. They have been trafficked for profit, subjected to slavery, and coerced into relationships with men who use violence – sexual, verbal, emotional, and physical abuse – to establish power and control over them. They have been persecuted and repeatedly beaten based on their sexual orientation or gender identity. They have been subjected to acid attacks and attempted murder as a matter of family "honor." They have been forced by their persecutors to do many acts under duress and threat of further violence or death.

Finding the courage to escape that violence – often in haste when a rare opportunity to flee presents itself – does not mean escaping the associated mental and physical impacts of trauma.[46] Like survivors of other traumatic events – war, natural disasters, criminal attacks – immigrant survivors of gender-based violence are marked in ways both visible and invisible. For those survivors who successfully make their way to the U.S. border to seek asylum or other relief, their trauma is likely to be aggravated by the dangerous journey, well justified anxiety about the asylum process, fear of border officials, and the terror of potentially being forced to return to their conditions of persecution.

In fact, the Department has recognized previously that asylum seekers endure severe trauma[47] and we know that rates of post-traumatic stress disorder, depression, anxiety, and other mental health challenges occur in far higher rates among people seeking asylum than the general

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[46] *See, e.g.*, Stuart L. Lustig, *Symptoms of Trauma Among Political Asylum Applicants: Don't Be Fooled*, 31 Hastings Int'l & Comp. L. Rev. 725, 726, 728 (2008) ("Lustig") **(Exhibit 26)**; U.S. Dep't of Justice, Office on Violence Against Women, *The Importance of Understanding Trauma-Informed Care and Self-Care for Victim Service Providers* (July 30, 2014) ("DOJ Trauma-Informed Care") **(Exhibit 27)**.

[47] *See, e.g., USCIS RAIO Directorate – Officer Training: Interviewing Survivors of Torture and Other Severe Trauma* (Dec. 20, 2019), available at: https://www.uscis.gov/sites/default/files/document/foia/Interviewing_-_Survivors_of_Torture_LP_RAIO.pdf **(Exhibit 28)**.

population.[48] Trauma has several well-understood, well-established effects that deeply impact survivors' ability to navigate any asylum system - let alone one stacked against them which is exacerbated by the Proposed Rule.

1. *Trauma, language barriers, and a lack of counsel all make it even more difficult for a survivor to tell their full story and defend against mandatory bars during the CF/RF stage.*

A survivor of gender-based violence experiencing exhaustion, acute and/or ongoing trauma, and language barriers upon arrival at the U.S. border is highly unlikely to be able to retain counsel at the CF/RF stage. Lacking counsel[49] and familiarity with the U.S. legal system, a survivor cannot reasonably be expected to present sufficient evidence, along with the highly technical legal and factual analysis, that is typically required for gender-based asylum claims. In fact, these claims – which often fall within the "particular social group" ground of asylum – have been deemed so complex that the Department has been charged with clarifying this ground of asylum through regulations.[50] It follows that explaining at this stage why a mandatory bar to asylum does not apply to them will be virtually impossible for survivors even with the most meritorious of claims.

Indeed, survivors need sufficient case preparation time beyond what the expedited removal process allows. As discussed, the devastating impacts of severe and sustained trauma prevents them from being able to immediately process and describe the horrific abuses they have endured. This is often near impossible until they are able to develop a relationship with a service provider whom they trust. It is often only with the help of a mental health provider, doctor, and/or advocate that a survivor can begin to heal enough to speak about the experiences of sexual assault and rape, domestic and intimate partner violence, or other gender-based abuse that they have experienced.

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[48] *See* UNHCR, *Refugee Resettlement: An International Handbook to Guide Reception and Integration*, at 233 (2002), available at: https://www.unhcr.org/3d98623a4.html (**Exhibit 29**).

[49] NIJC, *Obstructed Legal Access: NIJC's Findings From 3 Weeks of Telephonic Legal Consultations in CBP Custody* (May 25, 2023), available at: https://immigrantjustice.org/staff/blog/obstructed-legal-access-nijcs-findings-3-weeks-telephonic-legal-consultations-cbp; NIJC, *Obstructed Legal Access: June 2023 Update* (June 20, 2023), available at: https://immigrantjustice.org/staff/blog/obstructed-legal-access-june-2023-update; NIJC, *Government Obstruction Forces NIJC to Discontinue Legal Consultations for People Facing Asylum Screenings in CBP Detention* (Aug. 1, 2023), available at: https://immigrantjustice.org/press-releases/government-obstruction-forces-nijc-discontinue-legal-consultations-people-facing (compiled at **Exhibit 57**).

[50] *See* Executive Order 14010, *Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border* (Feb. 2, 2021), available at: https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02561.pdf (**Exhibit 30**).

a. Impact of Trauma on Memory and Relaying Events

As an initial matter, trauma has serious effects on memory.[51] The result is that many trauma survivors suffer from an "impairment of recall".[52] Memory problems can cause confusion around "details of particular incidents," especially times, dates, and "which specific actions occurred on which specific occasion."[53] Survivors may also have difficulty identifying details that those who have not experienced trauma would view as central.[54] To take a well-known example, many survivors are unable to clearly identify the person who inflicted violence or torture on them, often because their minds were focused on other, more immediately salient details, such as the presence or use of a weapon.[55]

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[51] Severe stress – which is routinely occasioned by traumatic events – can "inhibit processing of and memory for peripheral details." Deborah Davis & William C. Follette, *Foibles of Witness Memory for Traumatic/High Profile Events*, 66 J. Air L. & Com. 1421, 1455-56 (2001) ("Davis & Follette") (**Exhibit 31**). Moreover, traumatic experiences "are often stored in the memory as sensations or emotional states" that are not immediately recorded as personal narratives. Evert Bloemen, *et al*., *Psychological and Psychiatric Aspects of Recounting Traumatic Events by Asylum Seekers*, Care Full 62, 74 (2006) ("Bloemen") (noting that traumatic memories may therefore be available only "as isolated, nonverbal, sensory, motor, and emotional fragments.") (**Exhibit 32**).

[52] Michael Kagan, *Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination*, 17 Geo. Immigration L.J. 367, 388 (2003) ("Kagan") (quoting Juliet Cohen, *Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers*, 13 Int'l J. Refugee L. 293, 298, 308 (2001) ("Cohen")) (**Exhibit 33**); Jessica Chaudhary, *Memory and Its Implications for Asylum Decisions*, 6 J. Health & Biomedical L. 37, 44-45 (2010) (**Exhibit 34**). Such loss of memory can take the form of broad "psychogenic amnesia," or "loss of memory caused by psychological trauma." Davis & Follette, *supra*, at 1462. It can also manifest as much more narrow memory loss that goes only to "selected components of the traumatic event." *Id.* at 1462-63.

[53] Davis & Follette, *supra*, at 1514; *see* J. Douglas Bremner, *Traumatic Stress: Effects on the Brain*, 8 Dialogues Clinical Neuroscience 445, 448-49 (2006) (**Exhibit 35**). Dates are particularly problematic, because human brains are skilled at recalling relative sequences of events but not exact dates. *See* Cohen, *supra*; Melanie A. Conroy, *Real Bias: How Real ID's Credibility and Corroboration Requirements Impair Sexual Minority Asylum Applicants*, 24 Berkeley J. Gender L. & Just. 1, 37 (2009) ("Conroy") (**Exhibit 36**); Carol M. Suzuki, *Unpacking Pandora's Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 Hastings Race & Poverty L.J. 235, 257 (2007) (**Exhibit 37**).

[54] *See* U.S. Dep't of Health & Hum. Servs., Substance Abuse & Mental Health Servs. Admin., *A Treatment Improvement Protocol (TIP) Series No. 57, Trauma-Informed Care in Behavioral Health Services* 61-62 (2014) ("HHS Trauma-Informed Care"), available at: https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4816.pdf (**Exhibit 38**); Heather J. Clawson, *et al.*, U.S. Dep't of Health & Hum. Servs., *Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking* 1 (2008), available at: https://aspe.hhs.gov/system/files/pdf/75356/ib.pdf ("HHS Treating the Hidden Wounds") (**Exhibit 39**).

[55] *See, e.g.,* Davis & Follette, *supra*, at 1457.

Thus, unsurprisingly, the effects of trauma naturally contribute to problems with a survivor's ability to tell their full story, particularly at the CF/RF stage, given that a "difficulty in information processing and in the logical, verbal reconstruction and description of the memory is at the very core of trauma reactions."[56] A person who was tortured, for instance, may be left with memories of "the sensory data from the traumatic event - the sights, sounds, smells, and bodily sensations - but without the linguistic narrative structure that gives a person's ordinary memories a sense of logical and chronological coherence."[57] Detachment can "make it difficult for people to coherently communicate what they have survived."[58] And being emotionally overwhelmed can lead survivors to appear "ambivalent in telling their stories of abuse" or to "minimize[ ] the seriousness of the abuse."[59] Indeed, even when they are able to fully relay events, survivors of sexual and other severe trauma may need "second and subsequent interviews...in order to establish trust and to obtain all necessary information."[60]

b. Impact of Trauma on Appearance of Credibility

Many survivors might also behave in ways that untrained individuals may read as indicating a lack of credibility when the behaviors are in fact indicators of the impact of trauma itself. As explained above, trauma can lead to apparent inconsistencies as survivors become able to recount additional details over time. Trauma can also lead survivors to dissociate, or to be nervous, passive, unable to make eye contact, or reluctant to speak, and it also affects their cadence, affect, and tone.[61] Trauma can cause survivors to "hesitate," "waver," or seem uncertain when describing traumatic experiences.[62] Survivors can also appear mechanical or unemotional

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[56] Bloemen, *supra*, at 78.

[57] Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 Santa Clara L. Rev. 457, 487 (2016) (**Exhibit 40**); *see* Davis & Follette, *supra*, at 1459; Epstein & Goodman, *supra*, at 411; Alana Mosley, *Re-Victimization and the Asylum Process:* Jimenez Ferreira v. Lynch: *Re-Assessing the Weight Placed on Credible Fear Interviews in Determining Credibility*, 36 Minn. J. Law & Inequality 326 (July 2018), available at: https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1600&context=lawineq ("Mosley") (**Exhibit 41**); Hannah Rogers, *et al*., *The Importance of Looking Credible: The Impact of the Behavioural Sequelae of Post-Traumatic Stress Disorder on the Credibility of Asylum Seekers*, 21 Psych., Crime & L. 139, 140 (2015) (**Exhibit 42**).

[58] Kagan, *supra*, at 396.

[59] Catrina Brown, *Women's Narratives of Trauma: (Re)storying Uncertainty, Minimization, and Self-Blame*, 3 Narrative Works 1, 11-12, 17 (2013) (**Exhibit 43**).

[60] UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol relating to the Status of Refugees* 9 (May 2, 2002) ("UNHCR Gender Guidelines"), available at: https://www.unhcr.org/3d58ddef4.pdf (**Exhibit 44**).

[61] *See, e.g.*, HHS Trauma-Informed Care, *supra*, *at* 61-62, 69; Conroy, *supra*, at 34; Kagan, *supra*, at 396.

[62] Paskey, *supra*, at 484, 489; Kim Lane Scheppele, *Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth*, 37 N.Y.L. Sch. L. Rev. 123, 126-27 (1992) (**Exhibit 45**).

while discussing the abuse and violence inflicted upon them.[63] Expecting survivors of gender-based violence to navigate complex legal concepts in the presence of an asylum officer who is not an expert on the impact of trauma on behavior and memory, without time to obtain an attorney or any expert witnesses or supporting documents, sets them up for failure when their claims may be meritorious.

c. Language Barriers

The failure to provide adequate and timely language access through interpretation also prevents the Proposed Rule's change from working at all, much less from providing any sort of efficiency during the CF/RF stage. Executive Order 13166 establishes both procedural and substantive requirements for agencies providing language access.[64] Substantively, DHS's stated policy requires the provision of "meaningful access for individuals with limited English proficiency to operations, services, activities, and programs that support each Homeland Security mission area by providing quality language assistance services in a timely manner."[65] Yet, the policy is not appropriately implemented in the expedited removal process, particularly during the CF/RF stage. Interpretation problems are frequent and systemic, especially when interpretation is provided remotely via telephone or videoconference as so frequently occurs during the CF/RF interviews.[66]

Worse still, when a person seeking asylum speaks a rare dialect, such as an Indigenous dialect from Central America, asylum officers often cannot find an interpreter who speaks both the Indigenous dialect and English.[67] Though it has not considered language barriers as part of this rulemaking, the Department did describe some language-barrier issues in its recently released Indigenous Languages Plan:

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[63] *See* Linda Piwowarczyk, *Seeking Asylum: A Mental Health Perspective*, 16 Geo. Immigr. L.J. 155, 157-58 (2001) (**Exhibit 46**); Lustig, *supra*, at 726.

[64] EO 13166, *Improving Access to Services for Persons with Limited English Proficiency* (Aug. 11, 2000), available at: https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf (**Exhibit 47**).

[65] DHS Updated Languages Plan (Nov. 2023), available at: https://www.dhs.gov/sites/default/files/2023-11/23_1115_dhs_updated-language-access-plan.pdf (**Exhibit 48**); *see also* DHS Indigenous Languages Plan (Feb. 2024), https://www.dhs.gov/sites/default/files/2024-02/24_0228_dhs-indigenous-languages-plan-english-508.pdf (**Exhibit 49**).

[66] *See, e.g.*, Rebecca Gendelman, *Pretense of Protection: Biden Administration and Congress Should Avoid Exacerbating Expedited Removal Deficiencies*, at 18, Human Rights First (Aug. 2022), available at: https://humanrightsfirst.org/wp-content/uploads/2023/01/PretenseofProtection-21.pdf (**Exhibit 50**) ("Gendelman"); Zefitret Abera Molla, CAP20 Report, *Improving Language Access in the U.S. Asylum System* (May 25, 2023), available at: https://www.americanprogress.org/article/improving-language-access-in-the-u-s-asylum-system/ (**Exhibit 19**); Pooja R. Dadhania, *Language Access and Due Process in Asylum Interviews*, 97 *Denv. L. Rev.* 707 (2019) (**Exhibit 20**); Rachel Nolan, *A Translation Crisis at the Border*, The New Yorker (Dec. 30, 2019), available at: https://www.newyorker.com/magazine/2020/01/06/a-translation-crisis-at-the-border (**Exhibit 51**).

[67] Gendelman, *supra*, at 2, 13.

> Indigenous migrants will sometimes not request interpreters even if they are available. They will not necessarily readily identify as Indigenous. Many Indigenous language speakers in Guatemala or other Central American countries are expected to speak the country's dominant language of Spanish even if they are not proficient in it. As a result, many Indigenous persons may say they speak Spanish even if they are not proficient in the language. Many Indigenous migrants have feared their own governments; they have experienced exploitation and violence and have been denigrated for being Indigenous or speaking an Indigenous language in their home countries.[68]

Adding that:

> Several organizations noted that Indigenous women and girls from Central America and Mexico are especially vulnerable during the migration process. Others noted that women, girls, and LGBTQI+ individuals must be especially protected. Below are some important considerations:
>
> - They may have been sexually assaulted.
> - Victims of sexual assault need interpreters who speak their own languages so they can communicate what they are feeling and what has occurred.
> - Due to the nature of sexual assault, they may be ashamed, embarrassed, and/or less likely to express what happened, and may show resistance when they need to express themselves about these harms.
> - Interpreters should be of the same sex or gender as the migrant.[69]

With so many compounded challenges at play, including language access issues, it is unsurprising that the CF/RF process is rife with resultant errors for survivors.[70] Past experiences of the

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[68] DHS Indigenous Languages Plan (Feb. 2024), *supra*, at 10; *see also id.* At 5 ("In July 2022, the USCIS Refugee, Asylum, and International Operations Directorate issued a memorandum to Asylum Division staff on Language Access in Credible Fear Screenings. The memorandum provides new guidance to Asylum Officers on determining which language to use during credible fear interviews and actions they should take if an interpreter cannot be provided in the preferred language."). The 2022 *Language Access In Credible Fear Screenings* memorandum is available at: https://www.uscis.gov/sites/default/files/document/memos/Language-Access-in-Credible-Fear-Screenings.pdf (**Exhibit 52**).

[69] DHS Indigenous Languages Plan (Feb. 2024), *supra,* at 10-11.

[70] Katherine Shattuck, *Preventing Erroneous Expedited Removals: Immigration Judge Review and Requests for Reconsideration of Negative Credible Fear Determinations*, 93 Wash. L. Rev. 459, 484

Undersigned Organizations' clients confirm as much. Even in immigration court with time to prepare, these issues can persist, as they did in one example where an immigration judge proceeded, over an objection, with relay translation from English to Spanish to a dialect of Mam, which the client seeking asylum did not speak fluently. This resulted in errors occurring at every stage of the process. In other cases, Indigenous-speaking people are interviewed in Spanish despite notifying the asylum officer that they do not speak Spanish.[71]

2. *Survivors face severe difficulties in gathering evidence.*

The difficult task of disproving the application of a mandatory bar is further complicated by the many difficulties survivors face in gathering and providing objective documentation or evidence to corroborate their claims "by a preponderance of the evidence." There are numerous reasons that survivors' corroborating evidence is largely elusive at the CF/RF stage.

First, as noted above, escaping persecution often entails sudden decisions to flee in haste, making it impossible to prepare or plan. Faced with a narrow window of opportunity to flee, a survivor often has no chance to collect documents or personal belongings, such as a mobile phone, identity documents, police reports, or hospital records. Even if they did have an opportunity to collect evidence, they would first need to have a sophisticated understanding of the U.S. asylum system to understand what documents would be helpful.

Second, just as trauma makes it extremely challenging for survivors to tell full and coherent stories at the CF/RF stage, it also severely interferes with survivors' ability to carry out even the basic administrative tasks needed in order to obtain evidence.[72] Further, the trauma associated with reviewing evidence of violence can prevent survivors from fully documenting their cases. For example, the abusive intimate partner of Jane*,[73] Tahirih's client, had their daughter killed. Overwhelmed with grief, Jane could not bring herself to view the photographs of her daughter's deceased body and would not permit their submission as evidence in support of her asylum case.

Third, it is well established that external actors often bar survivors from retaining or gathering corroborating evidence and can even have an impact on the records that DHS might use when applying a mandatory bar during the CF/RF stage. Human traffickers and perpetrators of domestic violence notoriously prevent survivors from having or controlling their own bank accounts, communicating privately on phones or email, or storing documents and photos in a private and secure place - all potential sources of evidence in other types of cases.

(2018) ("Shattuck") (**Exhibit 53**); *see also* Jennifer Medina, *Anyone Speak K'iche' or Mam? Immigration Courts Overwhelmed by Indigenous Languages*, N.Y. Times (Mar. 19, 2019), available at: https://www.nytimes.com/2019/03/19/us/translators-border-wall-immigration.html (**Exhibit 54**).

[71] Shattuck, *supra*, at 483-84.

[72] *See, e.g.*, Tahirih Justice Center, *Precarious Protection: How Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution* (Oct. 2009), available at: https://www.tahirih.org/wp-content/uploads/2009/10/Precarious-Protection_Tahirih-Justice-Center.pdf (**Exhibit 55**).

[73] Survivors' names have been changed for privacy where an asterisk appears after their name.

People who perpetrate gender-based violence also routinely prevent survivors from seeking medical and law enforcement assistance, eliminating the initial capture and preservation of evidence. People who abuse survivors may also confiscate or destroy documents ranging from passports to personal correspondence to further manipulate, isolate, and punish survivors and prevent them from escaping or seeking help. A survivor might thus have to risk her safety trying to retain or regain control over her own documents, records and other belongings that could serve as key evidence – including proof that a mandatory bar should *not* apply – in her case.[74]

Fourth, access to corroborating evidence to support survivors' claims can also be very limited. As UNHCR has explained, "[with] gender-related claims, the usual types of evidence used in other refugee claims may not be readily available. Statistical data or reports on the incidence of sexual violence may not be available due to under-reporting of cases, or lack of prosecution."[75] The formidable obstacles survivors already faced in seeking safety were only further amplified by the global pandemic which gave survivors fewer and fewer opportunities to be outside the home and trapped many inside 24/7 with abusers who monitored their every move

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[74] *See, e.g.*, Anne L. Ganley, *Health Resource Manual* 37 (2018) (**Exhibit 56**); Rachel Louise Snyder, *No Visible Bruises: What We Don't Know About Domestic Violence Can Kill Us* (2019); Margaret E. Adams & Jacquelyn Campbell, *Being Undocumented & Intimate Partner Violence (IPV): Multiple Vulnerabilities Through the Lens of Feminist Intersectionality*, 11 Women's Health & Urb. Life 15, 21-24 (2012) (**Exhibit 58**); Misty Wilson Borkowski, *Battered, Broken, Bruised, or Abandoned: Domestic Strife Presents Foreign Nationals Access to Immigration Relief*, 31 U. Ark. Little Rock L. Rev. 567, 569 (2009) (**Exhibit 59**); Nat'l Domestic Violence Hotline, *Abuse and Immigrants*, available at: https://www.thehotline.org/is-this-abuse/abuse-and-immigrants-2 (**Exhibit 60**); Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003); available at: https://www.ncjrs.gov/pdffiles1/nij/grants/202561.pdf (**Exhibit 61**); Memorandum from Paul Virtue, General Counsel, Immigration & Naturalization Service (Oct. 16, 1998), at 7-8, available at: https://asistahelp.org/wp-content/uploads/2018/10/Virtue-Memo-on-Any-Credible-Evidence-Standard-and-Extreme-Hardship.pdf (**Exhibit 62**); Edna Erez, *et al.*, *Intersection of Immigration and Domestic Violence: Voices of Battered Immigrant Women*, 4 Feminist Criminology 32, 46-47 (2009) (**Exhibit 63**); Immigration & Customs Enforcement, *Information for Victims of Human Trafficking* (2016), available at: https://www.ice.gov/sites/default/files/documents/Document/2017/brochureHtVictims.pdf (**Exhibit 64**); National Sexual Violence Resource Center, *Assisting Trafficking Victims: A Guide for Victim Advocates* 2 (2012), available at: https://www.nsvrc.org/sites/default/files/publications_nsvrc_guides_human-trafficking-victim-advocates.pdf (**Exhibit 65**).

[75] UNHCR Gender Guidelines, *supra*, at 10.

and communication.[76] Thus, "cases in which an applicant can provide" documentary "evidence of all of [her] statements will be the exception rather than the rule."[77]

These factors can and do severely affect survivors' ability to tell their stories and present their case against the application of a mandatory bar. As such, it is highly inappropriate to expect them to defend themselves against mandatory bars which they are likely completely unaware of.

Just as the expedited removal process exacerbates the effects of trauma, it also exacerbates challenges with providing documentary evidence. **Taken together with the effects of trauma, the general unavailability of documentary evidence, and the inability to retain counsel at the CF/RF stage means that some of the very people who have suffered the worst persecution are often the least able to defend themselves against the unjust and incorrect application of a mandatory bar.**

3. *The Proposed Rule fails to consider the impact on survivors who have been unjustly criminalized.*

The Proposed Rule fails to consider the impact it will have on survivors who have been unjustly "criminalized" and are trying to escape to safety.[78] A well-known tactic of people who abuse is to assert power and control over the survivor by falsely accusing them of criminal behavior or forcing them to commit certain crimes under duress.[79] Survivors may be unjustly

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[76] *See, e.g.*, Rená Cutlip-Mason, *For Immigrant Survivors, the Coronavirus Pandemic is Life-Threatening in Other Ways*, Ms. Magazine (Apr. 14, 2020), available at: https://msmagazine.com/2020/04/14/for-immigrant-survivors-the-coronavirus-pandemic-is-life-threatening-in-other-ways/ (**Exhibit 66**); Tahirih Justice Center, *The Impact of COVID-19 on Immigrant Survivors of Gender-Based Violence* (Mar. 23, 2020), available at: https://www.tahirih.org/wp-content/uploads/2020/03/Impact-of-Social-Distancing-on-Immigrant-Survivors-of-Gender-Based-Violence_Final-March-23-2020.pdf (**Exhibit 67**).

[77] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* § 196 (1979) (**Exhibit 68**).

[78] *See, e.g.,* U.S. Dep't of Justice, Office on Violence Against Women, *The Impact of Incarceration and Mandatory Minimums on Survivors: Exploring the Impact of Criminalizing Policies on African American Women and Girls* (2017), available at: https://www.justice.gov/ovw/page/file/926631/download (explaining that "analysis also needs to consider the victimization that occurs prior to adulthood that places many girls and young women on pathways to detention and incarceration, such as the heightened risks of commercial sexual exploitation.") (**Exhibit 69**).

[79] *See, e.g.,* Assia Serrano & Nathan Yaffe, *The Domestic Violence Survivors Justice Act and Criminalized Immigrant Survivors*, 26 CUNY L. Rev. F. 24 (2023), available at: https://academicworks.cuny.edu/clr/vol26/iss1/2/ (**Exhibit 70**); Neda Said, *et al*., *Punished By Design: The Criminalization of Trans & Queer Incarcerated Survivors* (2022), available at: https://survivedandpunished.org/wp-content/uploads/2022/06/PunishedByDesign_FINAL-2.pdf (**Exhibit 71**); Danielle Malangone, *Understanding the Needs of Criminalized Survivors* (2020), available

criminalized, for example, when they act in self-defense against an abusive spouse, or when they are forced to engage in criminal activity entirely against their will by human traffickers. Systemic inequities and problems result in the increased criminalization of survivors of gender-based violence as well.[80] Indeed, the empirical evidence demonstrates that "girls are pushed into the legal system in three main ways as a *direct result* of the violence they experience: [1] Girls are blamed and *criminalized for being sex trafficked*; [2] Girls are *criminalized for acting in self-defense* against abusers; and [3] Girls are punished or *criminalized for reporting abuse*."[81] In the context of domestic violence, we are aware of an example where an abuser planted drugs in his wife's car and then smashed her taillight to get her pulled over and arrested. In another example, an abuser set fire to his home himself and called the fire department to report that his wife did it. She was arrested and jailed for weeks.

Many of our clients have unjustly faced domestic violence charges after defending themselves from horrific abuse. In one instance, a Tahirih Justice Center client who had been subjected to years of physical abuse finally defended herself only to discover that the person who abused her had videotaped the incident, gave the tape to the police, and pressed domestic violence charges against her. Only after obtaining expert legal help and additional pro bono assistance here in the United States were the charges against her dropped. Indeed, it is quite common for savvy individuals who perpetrate domestic violence to file counter charges in court because they

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at: https://www.innovatingjustice.org/sites/default/files/media/document/2020/Monograph_Overview_111920.pdf (**Exhibit 72**); Free Marissa Now: Fact Sheet on Domestic Violence & The Criminalization of Survival, available at: http://www.freemarissanow.org/fact-sheet-on-domestic-violence—criminalization.html (**Exhibit 73**); Mary E. Gilfus, *Women's Experiences of Abuse as a Risk Factor for Incarceration* (Dec. 2002), available at: https://vawnet.org/sites/default/files/assets/files/2017-08/AR_Incarceration.pdf (**Exhibit 74**); *see also* The Survivors Justice Project and The Sentencing Project, *Sentencing Reform for Criminalized Survivors: Learning from New York's Domestic Violence Survivors Justice Act* (Apr. 2023), available at: https://www.sentencingproject.org/app/uploads/2024/02/Sentencing-Reform-for-Criminalized-Survivors.pdf (**Exhibit 75**).

[80] *See* ASISTA & Ujima, Inc.: The National Center on Violence Against Women in the Black Community, Practice Advisory: *Anti-Blackness and Immigrant Survivors of Gender-Based Violence*, at 2 (Feb. 2023) ("ASISTA & Ujima") ("When we apply an analysis that considers the interaction of a Black immigrant survivor's multiple identities, we see that Black immigrant survivors may experience several obstacles to relief due to society's harmful treatment of their multiple identities."), available at: https://asistahelp.org/wp-content/uploads/2023/02/ASISTA-Ujima-Anti-Blackness-Practice-Advisory-Final.pdf (**Exhibit 76**); *see also* Kimberlé W. Crenshaw, *et al.*, *Say Her Name: Resisting Police Brutality Against Black Women*, AFRICAN AM. POLICY FORUM & COLUMBIA LAW SCHOOL CENTER FOR INTERSECTIONALITY AND SOC. POLICY STUDIES, at 22 (2015), available at: https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4235&context=faculty_scholarship ("Crenshaw") ("The reflexive criminalization of Black women seems at times to heighten the perception that they are threatening, foreclosing the possibility in officers' minds that they are simply survivors of violence") (**Exhibit 77**).

[81] Vafa & Epstein, *supra* at 8.

understand that in doing so they are often able to get their own charges dismissed in plea bargain that results in nolo prosequi for both parties, further complicating a survivor's own record and their evidence of abuse and persecution.

B. The Mandatory Bars Have Been Improperly Applied to Asylum Seekers.

Repeatedly, survivors have had to defend themselves against an unjust and incorrect application of a mandatory bar during a full merits interview or an immigration court hearing. If the Proposed Rule becomes final, however, DHS intends to apply mandatory bars at the CF/RF stage, ignoring the fact that the Department has attempted to unjustly and incorrectly apply these mandatory bars in the past to people fleeing persecution, including against women who have been held captive and forced to provide water to a member of a terrorist organization while under duress (*i.e.*, by the very persecutors they are fleeing) or Afghan asylum seekers who have risked their lives working as interpreters in service to the United States.[82]

Significantly, the serious nonpolitical crime bar and the terrorism bar are often used against survivors who are fleeing violence. For example, survivors of trafficking who are fleeing their persecutors and individuals forced to marry a gang member under threat of death and other horrific violence against them or family members could find themselves subject to these bars without counsel or recourse. A survivor's effort to demonstrate by a preponderance of the evidence that they are not subject to the bar is further complicated by the criminalization of survivors of gender-based violence and the lack of understanding or training on these significant issues for AOs conducting fear screenings. *See* Section II.A.3.

Moreover, the experience of Tahirih's client, Lucy* illustrates how imperative it is for individuals to have legal counsel while navigating the nuances of the mandatory bars. While in her home country studying for her master's degree, Lucy became romantically involved with another classmate who soon began brutally abusing her and threatening to kill her. Despite her attempts to break things off, he pursued her, even beating her in public. Police and the public would not help her, saying it was a "personal problem" between the couple. Eventually, Lucy applied for a doctorate program in the United States, but her abuser followed her here. While in the states, the abuse and stalking continued until Lucy realized that police in the U.S. might actually help her — and they did. Lucy got a protective order and her school kept her abuser, who was also a student here, away from her. While he eventually returned to their home country, he has made credible threats to kill her if she ever dares to return home herself.

To save her own life, Lucy had to apply for asylum, but her asylum application was complicated by the fact that her former partner who abused her was involved with a student group

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[82] *See, e.g.,* Kevin Sieff, "Alleged terrorism ties foil some Afghan interpreters' U.S. visa hopes," The Washington Post (Feb. 2, 2013), available at: https://www.washingtonpost.com/world/asia_pacific/alleged-terrorism-ties-foil-some-afghan-interpreters-us-visa-hopes/2013/02/01/3d4b80fc-6704-11e2-889b-f23c246aa446_story.html **(Exhibit 78)**; Anwen Hughes, *Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States*, at 30 (Nov. 2009), available at: https://humanrightsfirst.org/wp-content/uploads/2022/12/HRF-Denial-and-Delay-Terrorism-Bars-2009.pdf **(Exhibit 78a)**.

that supported the political agenda of an organization the U.S. might have considered to be a terrorist organization. This resulted in a lengthy asylum interview and necessitated additional briefing by counsel at closing. Without expert legal support, it is likely that even a well-educated asylum applicant like Lucy might have been excluded from the protections that she so desperately needed and was legally eligible for. It was only after 7 years of expert legal representation by the Tahirih Justice Center that Lucy was granted asylum.

The Tahirih Justice Center has represented many survivors who are unable to fully express their fears of return during the CF/RF stage, including survivors who might theoretically be subject to criminal bars. For example, when she was still just a minor, Ava* crossed into the U.S. from Central America via a river after fleeing human trafficking in her home country. While being interviewed by CBP officers she expressed her fear of return but did not feel comfortable disclosing all the details as to why. It was not until she spoke with a counselor at the shelter where she was placed that she opened up about all the abuse that prompted her to flee. This included the fact that in the 7th grade her bus driver groomed her for human trafficking. The trafficker isolated and raped her while convincing her and her parents that they were in a loving relationship, then - through violent beatings and threats - he forced her to assist him in selling drugs.

It took the approach of a trained counselor to uncover the trafficking, and the trauma informed skills of Ava's legal team to uncover all the details of her past abuse. Had her entire eligibility hinged on that first interview - where she spoke alone, as a minor, after exiting the treacherous river that she crossed - she may have disclosed her involvement in her traffickers' drug sales without the full context of the duress that she was under because of the violent physical abuse and threats and would have lost the ability to seek the protections she was entitled to under the law.

Similarly, 8 U.S.C. § 1158(b)(2) bars asylum if "there are serious reasons for believing that the [person] has committed a serious nonpolitical crime outside the United States prior to the arrival of the [person] in the United States." But determining whether a serious crime was political or not is a very fact-specific inquiry. Without the opportunity to develop facts and argument, an asylum officer could, facially at least, apply a mandatory bar to a survivor of human trafficking who was forced by her traffickers to engage in crimes such as commercial sex/prostitution or drug smuggling, for instance. That finding would not only unduly bar her from asylum under the "serious non-political crime" bar, but it would also result in her expedited removal right back to her trafficker.

LGBTQIA+ individuals, like Tahirih Justice Center's client Juliana*, face intersecting challenges in articulating their claims to asylum and withholding of removal. After spending a lifetime hiding her sexual orientation in Central America, Juliana applied for asylum based on her status as a lesbian. Through Tahirih counsel, she articulated how dangerous it was for her to reveal her sexual orientation in her home country given the climate of fear surrounding her as other lesbian and gay individuals had been dismembered or hanged by villagers because of who they loved. Additionally, as a teenager, Juliana was "claimed" by a local gang leader who raped and impregnated her multiple times. Every time Juliana tried to escape his abuse, either his fellow gang members or complicit police officers turned her back over to the gang leader. When her persecutor was sent to jail, Juliana was forced to visit him and smuggle in illicit items after being

threatened that she would "pay for her disobedience with her children's lives". Under this extreme duress, Juliana broke the law. It took counsel, who was an expert in trauma informed lawyering practices, months to build rapport with Juliana and uncover the entirety of the circumstances regarding these illegal activities. She had grown very distrusting given her past experiences with complicit systems and law enforcement officers and had spent all her life concealing the parts of her identity that put her at risk. All of this would have made it impossible for her to reveal the totality of her experiences and circumstances to an asylum officer at the CF/RF stage.

It is abundantly clear that authorizing AOs to consider certain mandatory bars during the CF/RF stage will have a significant impact on the ability of survivors fleeing gender-based persecution to obtain asylum. To propose this change under the guise of purported "operational flexibility" so that the agency can remove asylum seekers swiftly without regard to the meritoriousness of their claims for asylum is unconscionable. The Department has not properly considered the real-world impact the Proposed Rule would have on asylum seekers, particularly survivors of gender-based violence, and the disparate impact it would have on vulnerable populations generally.

C. The CF/RF Stage Is Already a Flawed Process and the Wrong Time to Adjudicate the Mandatory Bars to Asylum and Withholding of Removal.

Decades of experience with the expedited removal CF/RF stage have shown that it is an extremely flawed process.[83]

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[83] *See, e.g.*, Rebecca Gendelman, "Correcting the Record: The Reality of U.S. Asylum Process and Outcomes," Human Rights First (Nov. 3, 2023), available at: https://humanrightsfirst.org/library/correcting-the-record-the-reality-of-u-s-asylum-process-and-outcomes/ (**Exhibit 79**). Am. Immigration Lawyers Ass'n, *et al.*, Letter to Leon Rodriguez and Sarah Saldana (Dec. 24, 2015), available at: https://www.aila.org/advo-media/aila-correspondence/2015/letter-uscis-ice-due-process (**Exhibit 80**); Statement for the Record of Eleanor Acer, Dir., Refugee Protection, Human Rights First, Hearing before the Subcomm. On Immigration and Border Security of the H. Comm. Judiciary, at 6 (Feb. 11, 2015), available at: https://docs.house.gov/meetings/JU/JU01/20150211/102941/HHRG-114-JU01-20150211-SD003.pdf (**Exhibit 81**); Mosley, *supra*, at 315; Katherine Shattuck, *supra*, at 482-83; American Immigration Council, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers* (May 2017), available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/the_perils_of_expedited_removal_how_fast-track_deportations_jeopardize_detained_asylum_seekers.pdf (**Exhibit 82**); *Barriers to Protection*, *supra*; Human Rights Watch, *Separated Families Report Trauma, Lies, Coercion* (July 26, 2018), available at: https://www.hrw.org/news/2018/07/26/us-separated-families-report-trauma-lies-coercion (**Exhibit 83**). *See, e.g.,* CRCL Complaint, *Ongoing Due Process Violations and Human Rights Abuses at the Torrance County Detention Facility* (Aug. 2023), available at: https://innovationlawlab.org/media/TCDF_Complaint-8_21_2023_Redacted.pdf (explaining that "DHS repurposed TCDF in January 2023 to conduct rapid [CFIs], . . . [and] in so doing, DHS has regularly blocked migrants' access to counsel, engaged in due process and privacy violations during the CFIs, and mistreated noncitizens in its custody") (**Exhibit 84**).

1. *Under the Proposed Rule, the Asylum Officer would effectively become the sole arbiter of the mandatory bars.*

The Proposed Rule also recommends removing a survivor's ability to appeal an adverse determination to federal court and to seek review in immigration court as part of a full 240 hearing. Instead, the Proposed Rule would place AOs in the new position of sole arbiter of the mandatory bars. This plan is flawed at best and life-threatening at worst. A study entitled *Refugee Roulette: Disparities in Asylum Adjudication*, included an analysis of 133,000 decisions involving nationals from eleven key countries rendered by 884 asylum officers over a seven-year period. It concluded that in asylum cases, which can spell the difference between life and death, the outcome appears to depend in large measure on which government official decides the claim and that in many cases the most important moment in an asylum case is the instant in which a clerk randomly assigns an application to a particular AO.[84]

Additionally, violations abound during the CF/RF stage, including AOs rushed failure to elicit all relevant information at the interview and compiling notes that do not accurately reflect either the statements of people seeking asylum or the effects of trauma.[85]

Violations also include AO refusal to follow USCIS's own guidelines concerning the presence of children at the CF/RF stage. These violations are incredibly pernicious because when faced with the choice of traumatizing their own children by sharing the details of their persecution with the asylum officer in front of them, many reasonable parents and guardians choose silence. For example, Tahirih Justice Center client Pamela's* fear of return to her home country was rooted in years of severe abuse by her partner, including rapes that resulted in pregnancy. But when faced with having to discuss her experiences with sexual assault in front of her child who was in the room, Pamela did not disclose this information during the CF/RF stage. Similarly, another Tahirih client, Sharon*, obtained a sworn declaration from a neighbor who witnessed the decades of abuse that she suffered, rather than ask her own daughter to provide a declaration of witnessing the same abuse. It is understandable that parents would choose to protect their children with silence rather than disclosing painful and graphic details of abuse in front of them and risking further traumatization of both parent and child.

2. *Survivors have difficulty discussing gender-based violence with uniformed immigration officers.*

Survivors may also be particularly fearful of discussing gender-based violence in a carceral setting with uniformed immigration officers present or nearby who may trigger traumatic associations with abusive and complicit authorities in their home country. In addition to its effects

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[84] Andrew I. Schoenholtz, *et al*., J, *Refugee Roulette: Disparities in Asylum Adjudication*, Stanford Law Review, available at: https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub (**Exhibit 85)**; J. Ramji-Nogales, *et al*., *Refugee Roulette*: *Selected Topics in Migration Studies* (2023), available at: https://doi.org/10.1007/978-3-031-19631-7_9 (**Exhibit 86)**.

[85] *See, e.g.,* Asencio, *supra; see also* NIPNLG, *et al.*, April 27, 2022, Complaint, available at: https://nipnlg.org/sites/default/files/2023-04/2022_27April-CFI-complaint.pdf (**Exhibit 87)**.

on memory, trauma has severe emotional consequences.[86] There can be no doubt that the expedited removal process exacerbates the effects of trauma that survivors already face. There are at least three reasons for this: the fact that survivors repeatedly encounter government officials; the format of credible and reasonable fear interviews; and the universal use of detention under horrifying conditions.

First, as part of the expedited removal process, survivors repeatedly encounter law enforcement and other officials — Border Patrol agents, USCIS AOs, and others. Many trauma survivors, however, fear law enforcement and other government officials.[87] This is no surprise, given that officials in survivors' countries of origin often either inflicted persecution or torture or looked the other way while others did so. Law enforcement is thus often a perceived threat, and survivors of trauma can be hypersensitive around perceived threats, whether or not those threats are real.[88] Even the rare survivor who fully remembers her traumatic experience may be unable to recount that experience when faced with government officials.[89]

Second, the format of credible and reasonable fear interviews makes matters worse. Recounting trauma through a series of questions and answers, as in the CF/RF stage, simply heightens responses to trauma.[90] For those who understand the CF/RF process, the stress added by the stakes of the interview, which could result in deportation back to persecution and harm, exacerbates the situation. Credible and reasonable fear interviews also happen fairly quickly, again with unfamiliar government officials with whom the survivor has no rapport.[91] Time limits on the CF/RF interviews, inherent in a system with demanding quotas, also prevent AOs from eliciting full and complete details about fear of return. In short, far from being designed to allow survivors of serious trauma to explain their experiences, the credible and reasonable fear interview process makes that exceedingly difficult task significantly more difficult.

Third, credible and reasonable fear interviews often take place while survivors are held in detention, a harmful and punitive practice that retraumatizes survivors of gender-based violence,

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86 T. K. Logan, *et al.*, *Understanding Human Trafficking in the United States*, 10 Trauma, Violence, & Abuse 3, 16 (January 2009) (**Exhibit 88)**. Trauma can, for instance, lead to avoidance and dissociation. Maureen E. Cummins, *Post-Traumatic Stress Disorder and Asylum: Why Procedural Safeguards Are Necessary*, 29 J. Contemp. Health L. & Pol'y 283, 289 (2013) (**Exhibit 89)**.

87 *See* HHS Treating the Hidden Wounds, *supra*, at 3; Kagan, *supra*, at 379-80.

88 Shawn C. Marsh, *et al*., *Preparing for a Trauma Consultation in Your Juvenile and Family Court*, Nat'l Council Juv. & Fam. Ct. Judges 10 (Apr. 3, 2015).

89 *See* Jim Hopper, *et al.*, *Important Things to Get Right About the "Neurobiology of Trauma" Part 3: Memory Processes*, End Violence Against Women Int'l 5-6 (Sept. 2020) (**Exhibit 91)**; Sabrineh Ardalan, *Access to Justice for Asylum Seekers*, 48 U. Mich. J.L. Reform 1001, 1001-1002 (2015) (**Exhibit 92)**; Walter Kälin, *Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing*, 20 Int'l Migration Rev. 230, 232 (1986) (**Exhibit 93)**.

90 Kagan, *supra*, at 394.

91 *See* Conroy, *supra*, at 13-14. Deborah A. Morgan, *Not Gay Enough for the Government: Racial and Sexual Stereotypes in Sexual Orientation Asylum Cases*, 15 Law & Sexuality 135, 140-41 (2006) (**Exhibit 94)**.

exacerbates mental health challenges, and compounds the difficulties of finding counsel, language access, and evidence.[92] Indefinite and prolonged detention leads to severe psychological impacts, complicating a survivor's ability to coherently present relevant facts in an interview. The conditions of detention also replicate some of the dynamics of power and control that victims experience in the course of domestic violence. This includes vulnerability to arbitrary rules, sudden and disproportionate punishments, and destruction of independent agency and autonomy. Furthermore, the persistence of sexual abuse by staff in detention is well established.[93] One complaint detailed that women reportedly suffered sexual abuse at the hands of facility guards, who allegedly removed them from their sleeping quarters late at night to force them to engage in sexual acts, groped them in front of their children, and promised money or assistance in exchange for sexual favors.[94] Another report found that the number of sexual assault allegations "across multiple facilities suggests limited adherence to the Prison Rape Elimination Act universally, with sexual assault occurring at a rate up to 3.5 times higher than that of the 2020 population.[95]

3. *Increasing the time AOs spend on the CF/RF process at the border without hiring more AOs results in inequity for all asylum seekers, not just those at the U.S. border.*

When the Department issues rules that increase the responsibilities of AOs at the U.S. border, the Department often responds by surging AOs to the U.S. border to help implement the new rules. This typically results in negative impacts across the system, not only for the asylum seekers fleeing persecution and arriving at the U.S. border after the rule's effective date, but it also harms asylum seekers who have already been waiting for their case to be adjudicated because there are fewer AOs to work on the pending cases. This is exactly what happened when the Department implemented the 2023 asylum ban (CLP regulation), for instance and the Proposed

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92 *See, e.g.,* Asencio, *supra*.

93 *See, e.g.,* Zeba Warsi, *Immensely Invisible: Women Fighting ICE's Inaction on Sexual Abuses* (Jul. 21, 2023), Futuro Investigates, available at: https://futuroinvestigates.org/investigative-stories/immensely-invisible/ (**Exhibit 95**); National Immigrant Justice Center (NIJC) Complaint (May 22, 2024), available at: CRCL complaint letter - abuse in ICE detention A (immigrantjustice.org) (**Exhibit 96**); Southern Poverty Law Center (SPLC), Project South, the Georgia Latino Alliance for Human Rights (GLAHR), the Black Alliance for Just Immigration (BAJI), El Refugio, the Georgia Human Rights Clinic, and Owings MacNorlin LLC, July 12, 2022, Complaint, available at: https://www.splcenter.org/sites/default/files/stewart-detention-center-nurse-complaint-07-12-2022.pdf (**Exhibit 97**).

94 *See, e.g.,* MALDEF Complaint (2014), available at: https://www.maldef.org/2014/10/maldef-and-other-groups-file-complaint-detailing-sexual-abuse-extortion-and-harassment-of-women-at-ice-family-detention-center-in-karnes-city/ (**Exhibit 98**).

95 Nicole Lue, *et al*., *Trends in Sexual Assault Against Detainees in US Immigration Detention Centers*, 2018-2022 (Jan. 2023), available at: https://jamanetwork.com/journals/jama/fullarticle/2800675; (citing R. Morgan & A. Thompson, *Criminal Victimization, 2020 - Supplemental Statistical Tables*. Bureau of Justice Statistics (Feb. 2022)), available at: https://bjs.ojp.gov/library/publications/criminal-victimization-2020-supplemental-statistical-tables) (**Exhibit 99**).

Rule will have the same effect.[96] By, *inter alia*, unjustly preventing these survivors from reaching the services of the Undersigned Organizations and by impacting current clients of the Undersigned Organizations as well, the Proposed Rule will adversely impact the Undersigned Organizations, too.

D. The Proposed Rule Would Have a Disparate Impact on Black, Brown, and Indigenous Survivors.

The survivor stories identified in Section II.B. above are primarily stories from clients who are Black, Brown, or Indigenous asylum seekers. Indeed, the discussion and resources in Section II.A.3 demonstrate how survivors of color tend to be disproportionately criminalized and more likely to be impacted by authorities' racial and gender biases.[97] As Ujima, Inc. and ASISTA have explained,

> Anti-immigrant policies [such as this one], harmful and unjustified stereotypes about Black women that lead to police violence or criminalization, and negative immigration consequences of criminal-legal system contacts all intersect to disadvantage Black immigrant survivors in particular. The intersection of increased chances of criminalization and the immigration consequences of that criminalization makes an abuser's use of immigration status as a tool of power and control especially harmful for Black immigrant survivors, for whom contact with

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[96] *See* American Immigration Council, *Fact Sheet: A Primer on Expedited Removal*, at 3 (Dec. 2023) ("Individuals placed in expedited removal proceedings who express fear of return are referred to asylum officers for their screening interviews. These officers are often the same corps handling affirmative asylum applications (i.e., cases filed by individuals in the United States who are not in removal proceedings). Since these asylum seekers are often detained pending completion of the credible or reasonable fear process, their cases are prioritized by the government. Asylum Office resources are therefore diverted to these interviews, contributing to the growing backlog of affirmative asylum cases.") **(Exhibit 100)**.

[97] "Enforcement and application of safe harbor laws are also vulnerable to authorities' race and gender bias, which can contribute to the disproportionate punishment of exploited Black girls as criminals rather than victims of sexual violence. Studies show that Black girls are more likely to be arrested for prostitution, more likely to be adjudicated, and more likely to be detained in a locked facility than white girls, even after being identified as victims of trafficking." Vafa & Epstein, *supra*, at 8 (citing Priscilla A. Ocen, *(E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1639 (2015) **(Exhibit 101)**; Rebecca Epstein , Jamilia Blake & Thalia Gonzalez, Georgetown Law Center on Poverty & Inequality, *Girlhood Interrupted: The Erasure of Black Girls' Childhood* (2017) at 8, available at: https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf) **(Exhibit 102)**; *cf.* Crenshaw, *et al*., *supra*, at 22 ("The reflexive criminalization of Black women seems at times to heighten the perception that they are threatening, foreclosing the possibility in officers' minds that they are simply survivors of violence").

the criminal-legal system may be an obstacle to obtaining survivor-based immigration relief.[98]

Additional recent reports have also described problems that Black asylum seekers encounter at the U.S./Mexico border. "Haitian and other Black migrants face barriers to obtaining asylum protection in Mexico owing to a long and confusing process, insufficient language access, and racial and country of origin bias in the adjudication of their claims."[99] Yet the Proposed Rule would leave decisions over the application of mandatory bars to AOs who are forced into shortened and rushed decision-making. If finalized, this Proposed Rule will result in a heightened risk of biased and unjust mandatory bar applications with a disproportionate impact on Black, Brown, and Indigenous asylum seekers.[100]

III. The Undersigned Organizations Object to the Shortened Time Period for Public Comment.

Previously the Tahirih Justice Center, along with nearly 80 other advocacy and legal services organizations (including many of the other organizations submitting this comment), co-signed a letter sent on May 19, 2024, requesting that DHS extend its atypically truncated original comment period for the Proposed Rule from 30 days to not less than 60 days.[101] The substance of that submission is incorporated by reference herein.

- DHS has provided insufficient time for public comment, and it has done so without justification. The NPRM proposes changes to the asylum process - but the public has been given a mere 30 days to respond. At least 60 days are needed for the public to submit thorough, considered comments on a rule with such sweeping consequences.

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98 ASISTA & Ujima, Inc., *supra*, at 3 ("When we apply an analysis that considers the interaction of a Black immigrant survivor's multiple identities, we see that Black immigrant survivors may experience several obstacles to relief due to society's harmful treatment of their multiple identities.").

99 Gender & Refugee Studies (CGRS), Haitian Bridge Alliance (HBA), and the UC Law SF Haiti Justice Partnership (HJP), *Precluding Protection: Findings from Interviews with Haitian Asylum Seekers in Central and Southern Mexico*, at 6 (April 2024), available at: https://cgrs.uclawsf.edu/our-work/publications/precluding-protection-findings-interviews-haitian-asylum-seekers-central-and **(Exhibit 103);** *see also* Human Rights First, *U.S. Asylum Bans Strand LGBTQI+ Refugees in Danger and Risk Return to Persecution* (June 2024), available at: Factsheet_Asylum-Bans-Strand-LGBTQI-Refugees_final-formatted.pdf (humanrightsfirst.org) **(Exhibit 21)**.

100 *See generally* United States of America, *Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD)*: *Anti-Black discrimination against non-citizens and ongoing violations of international protections for migrants, refugees, and asylum seekers of African descent*, 107th Session (Aug. 2022), available at: https://rfkhr.imgix.net/asset/US-Coalition_anti-Black-Discrimination-in-Immigration__CERD-Report_072222.pdf **(Exhibit 104)**.

101 *See* Comment ID USCIS-2024-0005-0037, *supra*.

- The NPRM's lengthy preamble makes numerous unsupported or conflicting assumptions and assertions, many of which are belied by respected research and the administration's own previous statements.

- Had DHS provided an appropriate period for public comment, Undersigned Organizations would have included in this comment a number of additional points, arguments, and resources, including but not limited to a thorough refutation of the error-ridden assumptions embedded in the Proposed Rule.

- With additional time, Undersigned Organizations would have had the opportunity to gather additional firsthand client accounts of the various adverse impacts of the Proposed Rule. The limits of time and staffing, combined with numerous other simultaneous responsibilities, have prevented a fulsome review and comment.

Thus, this comment does not - and cannot - represent the full response of the Undersigned Organizations. It also does not, because it cannot given the limited time provided, include all of the analysis and evidence that the Undersigned Organizations would have provided if given at least 60 days to respond to the rule. DHS's decision not to provide more than 30 days for comment has therefore impaired the Undersigned Organizations' opportunity and ability to comment on the Rule. The abbreviated timeframe for comment can hardly be said to satisfy the requirement for public opportunity to participate in rulemaking provided for in the APA.

* * * *

We urge the Department to consider the harmful effects that this Proposed Rule will have on survivors of gender-based violence and other asylum seekers fleeing persecution and we implore DHS to withdraw it. The harmful impacts the Proposed Rule will most certainly cause if implemented outweigh any purported efficiencies to the process, which the Department has expressly recognized would be very modest at best. The Department has failed to provide any meaningful justification to overcome this imbalance.

Thank you for your consideration of this comment and the numerous exhibits attached to it for the record.

Sincerely,

National Organizations

Asian Pacific Institute on Gender-Based Violence

ASISTA Immigration Assistance

Autistic Self Advocacy Network

Battered Women's Justice Project (BJWP)

Caminar Latino - Latinos United for Peace and Equity

Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces

Esperanza United

Freedom Network USA

Futures Without Violence

Immigrant Legal Resource Center

Jewish Women International

Just Solutions

Justice and Joy National Collaborative (formerly National Crittenton)

Justice for Migrant Women

Mujeres Latinas en Accion

National Advocacy Center of the Sisters of the Good Shepherd

National Alliance to End Sexual Violence

National Center on Domestic Violence, Trauma, and Mental Health

National Network to End Domestic Violence

National Organization of API Ending Sexual Violence

National Resource Center on Domestic Violence

National Women's Political Caucus

Tahirih Justice Center

The National Domestic Violence Hotline

Ujima, The National Center on Violence Against Women in the Black Community

UltraViolet Action

VALOR

State/Local Organizations

Advocating Opportunity

Deaf Unity

Embrace Services, Inc.

FRIENDS, Inc.

Her Justice, Inc.

Jane Doe Inc., The Massachusetts Coalition Against Sexual Assault and Domestic Violence

Justice At Last

Los Angeles LGBT Center

Louisiana Foundation Against Sexual Assault
Maine Coalition Against Sexual Assault
Monsoon Asians & Pacific Islanders in Solidarity
Nevada Coalition to End Domestic and Sexual Violence
New Mexico Coalition Against Domestic Violence
Peaceful Families Project
Raksha, Inc.
Tennessee Coalition to End Domestic and Sexual Violence
Tewa Women United
UNIDOS
Wisconsin Coalition Against Sexual Assault
Wyoming Coalition Against Domestic Violence and Sexual Assault

Comment in Response to Notice of Proposed Rulemaking: Application of Certain Mandatory Bars in Fear Screenings (DHS Docket No. USCIS-2024-0005; RIN 1615-AC91) Submitted by Tahirih Justice Center on Behalf of the Undersigned Organizations

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
1	Comment ID USCIS-2024-0005-0037 (May 19, 2024), at https://www.regulations.gov/comment/USCIS-2024-0005-0037.	2
2	Oxfam America and Tahirih Justice Center, *Surviving Deterrence: How US Asylum Deterrence Policies Normalize Gender-Based Violence*, at 21-26 (2022), available at: https://www.tahirih.org/wp-content/uploads/2022/10/Oxfam_Tahirh_Surviving-Deterrence_English_2022.pdf.	2
3	Welcome With Dignity, *Policy Solutions to Safeguard and Strengthen the U.S. Asylum System* (2024), available at: https://welcomewithdignity.org/wwd-solutions-2024/.	2
4	Tahirih Justice Center, *Ensuring Equal and Enduring Access to Asylum*: *Why 'Gender' Must Be a Protected Ground*, available at: https://www.tahirih.org/wp-content/uploads/2021/09/Ensuring-Equal-and-Enduring-Access-to-Asylum-Tahirih-Justice-Center.pdf	2
5	C.F.R. § 208.30(e)(5), available at: https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208/subpart-B/section-208.30.	2
6	8 C.F.R. § 208.31(c), available at: https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208/subpart-B/section-208.31.	2
7	5 U.S.C. § 706(2)(A), available at: https://uscode.house.gov/view.xhtml?req=granuleid:USC-2000-title5-section706&num=0&edition=2000	2
8	Executive Office for Immigration Review, Department of Justice; U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, Interim Final Rule with Request for Comments, *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 87 Fed. Reg. 18078, 18084 (Mar. 29, 2022), available at: https://www.govinfo.gov/content/pkg/FR-2022-03-29/pdf/2022-06148.pdf.	3
9	Ran Abramitzky, *et al*., *Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-born, 1870–2020*, NBER Working Paper No. 31440 (July 2023, Rev. Mar. 2024), available at: https://www.nber.org/system/files/working_papers/w31440/w31440.pdf.	4

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
10	Michael T. Light, *et al*., *Comparing Crime Rates between Undocumented Immigrants, Legal Immigrants, and Native-Born US citizens in Texas*, PNAS Vol. 117, No. 51 (December 7, 2020), available at: https://www.pnas.org/doi/abs/10.1073/pnas.2014704117.	4
11a	National Immigrant Justice Center, *Human Rights Organizations Call for Investigation of U.S. Reliance on Unreliable Information Provided by Foreign Sources* (Aug. 2023), available at: https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2023-08/Explainer%20CRCL%20Complaint_%20DHS%20reliance%20on%20foreign%20data%20sources_final1_0.pdf.	4
11b	National Immigrant Justice Center, Access Now, Cristosal, and Stanford Law School's International Human Rights & Conflict Resolution Clinic, *Request for an Investigation into the Department of Homeland Security's Reliance on Noncredible Information Provided by Human Rights Abusing Authorities in El Salvador* (Jun. 6, 2023), available at: https://www.accessnow.org/wp-content/uploads/2023/08/Complaint-Re-El-Salvador-Data-Sharing-Agreements-REDACTED-PUBLIC-VERSION.pdf	4
12	Jesse Franzblau, National Immigrant Justice Center, Policy Brief, *Caught in the Web: The Role of Transnational Data Sharing in the U.S. Immigration Syst*, at 6-7 (2022), available at: https://immigrantjustice.org/research-items/policy-brief-caught-web-role-transnational-data-sharing-us-immigration-system.	4
13	U.S. Department of State, *El Salvador 2022 Human Rights Report*, at 1-2, 8-13 (2023), available at: https://www.state.gov/wp-content/uploads/2023/02/415610_EL-SALVADOR-2022-HUMAN-RIGHTSREPORT.pdf.	4
14	Human Rights Watch & Cristosal, *"We Can Arrest Anyone We Want:" Widespread Human Rights Violations Under El Salvador's "State of Emergency,"* at 1-3, 90 (December 2022), available at: https://www.hrw.org/sites/default/files/media_2022/12/elsalvador1222web.pdf.	5
15	Christina Asencio, "Trapped, Preyed Upon, and Punished," Human Rights First (May 7, 2024), at 4, available at: https://humanrightsfirst.org/wp-content/uploads/2024/05/Asylum-Ban-One-Year-Report_final-formatted_5.13.24.pdf.	6

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
16	Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 Southern California Law Review 181 (2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2769620.	6
17	*See* TRAC, *Immigration Judge Decisions Overturning Asylum Officer Findings in Credible Fear Cases* (Mar 14, 2023), available at: https://trac.syr.edu/reports/712/.	6
18	U.S. Department of Justice, Executive Office for Immigration Review, *Q1 2024 Adjudication Statistics on Credible Fear Review and Reasonable Fear Review Decisions*, available at: https://www.justice.gov/eoir/media/1344816/dl?inline.	6
19	Zefitret Abera Molla, CAP20 Report, *Improving Language Access in the U.S. Asylum System* (May 25, 2023), available at: https://www.americanprogress.org/article/improving-language-access-in-the-u-s-asylum-system/.	6
20	Pooja R. Dadhania, *Language Access and Due Process in Asylum Interviews*, 97 *Denv. L. Rev.* 707 (2019).	6
21	Human Rights First, *U.S. Asylum Bans Strand LGBTQI+ Refugees in Danger and Risk Return to Persecution* (June 2024), available at: https://humanrightsfirst.org/library/u-s-asylum-ban-strands-lgbtqi-refugees-in-danger-and-risks-their-return-to-persecution/	6
22	*Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021).	6
23	Congressional Research Service, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part Two)*, at 3-4 (Sept. 7, 2022), available at: https://crsreports.congress.gov/product/pdf/LSB/LSB10816.	7
24	UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*, (Sept. 4, 2003), available at: https://www.unhcr.org/us/media/guidelines-international-protection-no-5-application-exclusion-clauses-article-1f-1951.	8
25	Yasmin Vafa & Rebecca Epstein, *Criminalized Survivors: Today's Abuse to Prison Pipeline for Girls* (2023) at 14, available at: https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2023/04/Criminalized-Survivors_Georgetown-Gender-Justice.pdf.	8

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
26	Stuart L. Lustig, *Symptoms of Trauma Among Political Asylum Applicants: Don't Be Fooled*, 31 Hastings Int'l & Comp. L. Rev. 725, 726, 728 (2008).	8
27	U.S. Dep't of Justice, Office on Violence Against Women, *The Importance of Understanding Trauma-Informed Care and Self-Care for Victim Service Providers* (July 30, 2014).	8
28	*SCIS RAIO Directorate – Officer Training: Interviewing Survivors of Torture and Other Severe Trauma* (Dec. 20, 2019), available at: https://www.uscis.gov/sites/default/files/document/foia/Interviewing_-_Survivors_of_Torture_LP_RAIO.pdf.	8
29	UNHCR, *Refugee Resettlement: An International Handbook to Guide Reception and Integration*, at 233 (2002), available at: https://www.unhcr.org/3d98623a4.html.	8
30	Executive Order 14010, *Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border* (Feb. 2, 2021), available at: https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02561.pdf.	9
31	Deborah Davis & William C. Follette, *Foibles of Witness Memory for Traumatic/High Profile Events*, 66 J. Air L. & Com. 1421, 1455-56 (2001).	10
32	Evert Bloemen, *et al*., *Psychological and Psychiatric Aspects of Recounting Traumatic Events by Asylum Seekers*, Care Full 62, 74 (2006).	10
33	Michael Kagan, *Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination*, 17 Geo. Immigration L.J. 367, 388 (2003).	10
34	Jessica Chaudhary, *Memory and Its Implications for Asylum Decisions*, 6 J. Health & Biomedical L. 37, 44-45 (2010).	10
35	J. Douglas Bremner, *Traumatic Stress: Effects on the Brain*, 8 Dialogues Clinical Neuroscience 445, 448-49 (2006).	10

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
36	Melanie A. Conroy, *Real Bias: How Real ID's Credibility and Corroboration Requirements Impair Sexual Minority Asylum Applicants*, 24 Berkeley J. Gender L. & Just. 1, 37 (2009).	10
37	Carol M. Suzuki, *Unpacking Pandora's Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 Hastings Race & Poverty L.J. 235, 257 (2007).	10
38	U.S. Dep't of Health & Hum. Servs., Substance Abuse & Mental Health Servs. Admin., *A Treatment Improvement Protocol (TIP) Series No. 57, Trauma-Informed Care in Behavioral Health Services* 61 (2014), available at: https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4816.pdf.	11
39	Heather J. Clawson, *et al.*, U.S. Dep't of Health & Hum. Servs., *Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking* 1 (2008), available at: https://aspe.hhs.gov/system/files/pdf/75356/ib.pdf.	11
40	Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 Santa Clara L. Rev. 457, 487 (2016).	11
41	Alana Mosley, *Re-Victimization and the Asylum Process: Jimenez Ferreira v. Lynch: Re-Assessing the Weight Placed on Credible Fear Interviews in Determining Credibility*, 36 Minn. J. Law & Inequality 326 (July 2018), available at: https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1600&context=lawineq.	11
42	Hannah Rogers, *et al*., *The Importance of Looking Credible: The Impact of the Behavioural Sequelae of Post-Traumatic Stress Disorder on the Credibility of Asylum Seekers*, 21 Psych., Crime & L. 139, 140 (2015).	11
43	Catrina Brown, *Women's Narratives of Trauma: (Re)storying Uncertainty, Minimization, and Self-Blame*, 3 Narrative Works 1, 11-12, 17 (2013).	11
44	UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol relating to the Status of Refugees* 9 (May 2, 2002), available at: https://www.unhcr.org/3d58ddef4.pdf.	11

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
45	Kim Lane Scheppele, *Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth*, 37 N.Y.L. Sch. L. Rev. 123, 126-27 (1992).	11
46	Linda Piwowarczyk, *Seeking Asylum: A Mental Health Perspective*, 16 Geo. Immigr. L.J. 155, 157-58 (2001).	11
47	EO 13166, *Improving Access to Services for Persons with Limited English Proficiency* (Aug. 11, 2000), available at: https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf.	12
48	DHS Updated Languages Plan (Nov. 2023), available at: https://www.dhs.gov/sites/default/files/2023-11/23_1115_dhs_updated-language-access-plan.pdf.	13
49	DHS Indigenous Languages Plan (Feb. 2024), https://www.dhs.gov/sites/default/files/2024-02/24_0228_dhs-indigenous-languages-plan-english-508.pdf.	13
50	Rebecca Gendelman, *Pretense of Protection: Biden Administration and Congress Should Avoid Exacerbating Expedited Removal Deficiencies*, at 18, Human Rights First (Aug. 2022), available at: https://humanrightsfirst.org/wp-content/uploads/2023/01/PretenseofProtection-21.pdf.	13
51	Rachel Nolan, *A Translation Crisis at the Border*, The New Yorker (Dec. 30, 2019), available at: https://www.newyorker.com/magazine/2020/01/06/a-translation-crisis-at-the-border.	13
52	USCIS, Language Access In Credible Fear Screenings Memorandum (2022), available at: https://www.uscis.gov/sites/default/files/document/memos/Language-Access-in-Credible-Fear-Screenings.pdf.	13
53	Katherine Shattuck, *Preventing Erroneous Expedited Removals: Immigration Judge Review and Requests for Reconsideration of Negative Credible Fear Determinations*, 93 Wash. L. Rev. 459, 484 (2018).	13
54	Jennifer Medina, *Anyone Speak K'iche' or Mam? Immigration Courts Overwhelmed by Indigenous Languages*, N.Y. Times (Mar. 19, 2019), available at: https://www.nytimes.com/2019/03/19/us/translators-border-wall-immigration.html.	13

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
55	Tahirih Justice Center, *Precarious Protection: How Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution* (Oct. 2009), available at: https://www.tahirih.org/wp-content/uploads/2009/10/Precarious-Protection_Tahirih-Justice-Center.pdf.	13
56	Anne L. Ganley, *Health Resource Manual* 37 (2018).	13
57	NIJC, *Obstructed Legal Access: NIJC's Findings From 3 Weeks of Telephonic Legal Consultations in CBP Custody* (May 25, 2023), available at: https://immigrantjustice.org/staff/blog/obstructed-legal-access-nijcs-findings-3-weeks-telephonic-legal-consultations-cbp ; NIJC, *Obstructed Legal Access: June 2023 Update* (June 20, 2023), available at: https://immigrantjustice.org/staff/blog/obstructed-legal-access-june-2023-update; NIJC, *Government Obstruction Forces NIJC to Discontinue Legal Consultations for People Facing Asylum Screenings in CBP Detention* (Aug. 1, 2023), available at: https://immigrantjustice.org/press-releases/government-obstruction-forces-nijc-discontinue-legal-consultations-people-facing.	14
58	Margaret E. Adams & Jacquelyn Campbell, *Being Undocumented & Intimate Partner Violence (IPV): Multiple Vulnerabilities Through the Lens of Feminist Intersectionality*, 11 Women's Health & Urb. Life 15, 21-24 (2012).	14
59	Misty Wilson Borkowski, *Battered, Broken, Bruised, or Abandoned: Domestic Strife Presents Foreign Nationals Access to Immigration Relief*, 31 U. Ark. Little Rock L. Rev. 567, 569 (2009).	14
60	Nat'l Domestic Violence Hotline, *Abuse and Immigrants*, available at: https://www.thehotline.org/is-this-abuse/abuse-and-immigrants-2.	14
61	Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003); available at: https://www.ncjrs.gov/pdffiles1/nij/grants/202561.pdf.	15
62	Memorandum from Paul Virtue, General Counsel, Immigration & Naturalization Service (Oct. 16, 1998), at 7-8, available at: https://asistahelp.org/wp-content/uploads/2018/10/Virtue-Memo-on-Any-Credible-Evidence-Standard-and-Extreme-Hardship.pdf.	15
63	Edna Erez, *et al.*, *Intersection of Immigration and Domestic Violence: Voices of Battered Immigrant Women*, 4 Feminist Criminology 32, 46-47 (2009).	15

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
64	Immigration & Customs Enforcement, *Information for Victims of Human Trafficking* (2016), available at: https://www.ice.gov/sites/default/files/documents/Document/2017/brochureHtVictims.pdf.	15
65	National Sexual Violence Resource Center, *Assisting Trafficking Victims: A Guide for Victim Advocates* 2 (2012), available at: https://www.nsvrc.org/sites/default/files/publications_nsvrc_guides_human-trafficking-victim-advocates.pdf.	15
66	Rená Cutlip-Mason, *For Immigrant Survivors, the Coronavirus Pandemic is Life-Threatening in Other Ways*, Ms. Magazine (Apr. 14, 2020), available at: https://msmagazine.com/2020/04/14/for-immigrant-survivors-the-coronavirus-pandemic-is-life-threatening-in-other-ways/.	15
67	Tahirih Justice Center, *The Impact of COVID-19 on Immigrant Survivors of Gender-Based Violence* (Mar. 23, 2020), available at: https://www.tahirih.org/wp-content/uploads/2020/03/Impact-of-Social-Distancing-on-Immigrant-Survivors-of-Gender-Based-Violence_Final-March-23-2020.pdf.	16
68	UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* § 196 (1979; reissued 2019).	16
69	U.S. Dep't of Justice, Office on Violence Against Women, *The Impact of Incarceration and Mandatory Minimums on Survivors: Exploring the Impact of Criminalizing Policies on African American Women and Girls* (2017), available at: https://www.justice.gov/ovw/page/file/926631/download.	16
70	Assia Serrano & Nathan Yaffe, *The Domestic Violence Survivors Justice Act and Criminalized Immigrant Survivors*, 26 CUNY L. Rev. F. 24 (2023), available at: https://academicworks.cuny.edu/clr/vol26/iss1/2/.	16
71	Neda Said, *et al*., *Punished By Design: The Criminalization of Trans & Queer Incarcerated Survivors* (2022), available at: https://survivedandpunished.org/wp-content/uploads/2022/06/PunishedByDesign_FINAL-2.pdf.	16
72	Danielle Malangone, *Understanding the Needs of Criminalized Survivors* (2020), available at: https://www.innovatingjustice.org/sites/default/files/media/document/2020/Monograph_Overview_11192020.pdf.	16

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
73	Free Marissa Now: Fact Sheet on Domestic Violence & The Criminalization of Survival, available at: http://www.freemarissanow.org/fact-sheet-on-domestic-violence—criminalization.html.	16
74	Mary E. Gilfus, *Women's Experiences of Abuse as a Risk Factor for Incarceration* (Dec. 2002), available at: https://vawnet.org/sites/default/files/assets/files/2017-08/AR_Incarceration.pdf.	16
75	The Survivors Justice Project and The Sentencing Project, *Sentencing Reform for Criminalized Survivors: Learning from New York's Domestic Violence Survivors Justice Act* (Apr. 2023), available at: https://www.sentencingproject.org/app/uploads/2024/02/Sentencing-Reform-for-Criminalized-Survivors.pdf.	16
76	ASISTA & Ujima, Inc.: The National Center on Violence Against Women in the Black Community, Practice Advisory: *Anti-Blackness and Immigrant Survivors of Gender-Based Violence*, at 2 (Feb. 2023), available at: https://asistahelp.org/wp-content/uploads/2023/02/ASISTA-Ujima-Anti-Blackness-Practice-Advisory-Final.pdf.	16
77	Kimberlé W. Crenshaw, *et al.*, *Say Her Name: Resisting Police Brutality Against Black Women*, AFRICAN AM. POLICY FORUM & COLUMBIA LAW SCHOOL CENTER FOR INTERSECTIONALITY AND SOC. POLICY STUDIES, at 22 (2015), available at: https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4235&context=faculty_scholarship.	17
78	Kevin Sieff, "Alleged terrorism ties foil some Afghan interpreters' U.S. visa hopes," The Washington Post (Feb. 2, 2013), available at: https://www.washingtonpost.com/world/asia_pacific/alleged-terrorism-ties-foil-some-afghan-interpreters-us-visa-hopes/2013/02/01/3d4b80fc-6704-11e2-889b-f23c246aa446_story.html.	17
78a	Anwen Hughes, *Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States*, at 30 (Nov. 2009), available at: https://humanrightsfirst.org/wp-content/uploads/2022/12/HRF-Denial-and-Delay-Terrorism-Bars-2009.pdf	17
79	Rebecca Gendelman, "Correcting the Record: The Reality of U.S. Asylum Process and Outcomes," Human Rights First (Nov. 3, 2023), available at: https://humanrightsfirst.org/library/correcting-the-record-the-reality-of-u-s-asylum-process-and-outcomes/.	17

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
80	American Immigration Lawyers Association, *et al.*, *Letter to Leon Rodriguez and Sarah Saldana* (Dec. 24, 2015), available at: https://www.aila.org/advo-media/aila-correspondence/2015/letter-uscis-ice-due-process.	17
81	Statement for the Record of Eleanor Acer, Dir., Refugee Protection, Human Rights First, Hearing before the Subcomm. On Immigration and Border Security of the H. Comm. Judiciary, at 6 (Feb. 11, 2015), available at: https://docs.house.gov/meetings/JU/JU01/20150211/102941/HHRG-114-JU01-20150211-SD003.pdf.	17
82	American Immigration Council, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers* (May 2017), available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/the_perils_of_expedited_removal_how_fast-track_deportations_jeopardize_detained_asylum_seekers.pdf.	18
83	Human Rights Watch, *Separated Families Report Trauma, Lies, Coercion* (July 26, 2018), available at: https://www.hrw.org/news/2018/07/26/us-separated-families-report-trauma-lies-coercion.	18
84	CRCL Complaint, *Ongoing Due Process Violations and Human Rights Abuses at the Torrance County Detention Facility* (Aug. 2023), available at: https://innovationlawlab.org/media/TCDF_Complaint-8_21_2023_Redacted.pdf.	18
85	Andrew I. Schoenholtz, *et al*., J, *Refugee Roulette: Disparities in Asylum Adjudication*, Stanford Law Review, available at: https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub.	19
86	Jaya Ramji-Nogales, *et al*., *Selected Topics in Migration Studies, Chapter 9: Refugee Roulette* (2023), available at: https://ebin.pub/selected-topics-in-migration-studies-3031196309-9783031196300.html.	19
87	NIPNLG, et al., April 27, 2022, Complaint, available at: https://nipnlg.org/sites/default/files/2023-04/2022_27April-CFI-complaint.pdf.	19
88	T. K. Logan, *et al.*, *Understanding Human Trafficking in the United States*, 10 Trauma, Violence, & Abuse 3, 16 (January 2009).	19
89	Maureen E. Cummins, *Post-Traumatic Stress Disorder and Asylum: Why Procedural Safeguards Are Necessary*, 29 J. Contemp. Health L. & Pol'y 283, 289 (2013).	19

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
90	Intentionally Left Blank	N/A
91	Jim Hopper, *et al.*, *Important Things to Get Right About the "Neurobiology of Trauma" Part 3: Memory Processes*, End Violence Against Women Int'l 5-6 (Sept. 2020).	19
92	Sabrineh Ardalan, *Access to Justice for Asylum Seekers*, 48 U. Mich. J.L. Reform 1001, 1001-1002 (2015).	19
93	Walter Kälin, *Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing*, 20 Int'l Migration Rev. 230, 232 (1986).	19
94	Deborah A. Morgan, *Not Gay Enough for the Government: Racial and Sexual Stereotypes in Sexual Orientation Asylum Cases*, 15 Law & Sexuality 135, 140-41 (2006).	19
95	Zeba Warsi, *Immensely Invisible: Women Fighting ICE's Inaction on Sexual Abuses* (Jul. 21, 2023), Futuro Investigates, available at: https://futuroinvestigates.org/investigative-stories/immensely-invisible/.	20
96	National Immigrant Justice Center (NIJC) Complaint (May 22, 2024), available at: https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2024-05/CRCL complaint letter NIJC request for investigation Sec. 504.pdf.	20
97	Southern Poverty Law Center (SPLC), Project South, the Georgia Latino Alliance for Human Rights (GLAHR), the Black Alliance for Just Immigration (BAJI), El Refugio, the Georgia Human Rights Clinic, and Owings MacNorlin LLC, July 12, 2022, Complaint, available at: https://www.splcenter.org/sites/default/files/stewart-detention-center-nurse-complaint-07-12-2022.pdf.	20
98	MALDEF Complaint (2014), available at: https://www.maldef.org/2014/10/maldef-and-other-groups-file-complaint-detailing-sexual-abuse-extortion-and-harassment-of-women-at-ice-family-detention-center-in-karnes-city/.	20
99	Nicole Lue, *et al.*, *Trends in Sexual Assault Against Detainees in US Immigration Detention Centers*, 2018-2022 (Jan. 2023), available at: https://jamanetwork.com/journals/jama/fullarticle/2800675.	20
100	American Immigration Council, *Fact Sheet: A Primer on Expedited Removal*, at 3 (Dec. 2023).	20

APPENDIX A: TABLE OF AUTHORITIES		
Exhibit No.	**Exhibit Name**	**Attachment No.**
101	Priscilla A. Ocen, *(E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1639 (2015).	20
102	Rebecca Epstein , Jamilia Blake & Thalia Gonzalez, Georgetown Law Center on Poverty & Inequality, *Girlhood Interrupted: The Erasure of Black Girls' Childhood* (2017) at 8, available at: https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf).	20
103	Gender & Refugee Studies (CGRS), Haitian Bridge Alliance (HBA), and the UC Law SF Haiti Justice Partnership (HJP), *Precluding Protection: Findings from Interviews with Haitian Asylum Seekers in Central and Southern Mexico*, at 6 (April 2024), available at: https://cgrs.uclawsf.edu/our-work/publications/precluding-protection-findings-interviews-haitian-asylum-seekers-central-and.	20
104	United States of America, *Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD)*: *Anti-Black discrimination against non-citizens and ongoing violations of international protections for migrants, refugees, and asylum seekers of African descent*, 107th Session (Aug. 2022), available at: https://rfkhr.imgix.net/asset/US-Coalition_anti-Black-Discrimination-in-Immigration__CERD-Report_072222.pdf.	20