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Daniel Delgado
Acting Deputy Assistant Secretary for Immigration Policy
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security

Lauren Alder Reid
Assistant Director
Office of Policy, Executive Office for Immigration Review
U.S. Department of Justice

Submitted via <https://www.regulations.gov/document/USCIS-2024-0006-0002>

RE: Departments of Homeland Security and Justice Interim Final Rule entitled *Securing the Border*; USCIS Docket No. USCIS-2024-0006; A.G. Order No. 5943-2024

Dear Acting Deputy Assistant Secretary Delgado and Assistant Director Alder Reid:

The Women's Refugee Commission (WRC) submits this comment in response and in opposition to the Department of Homeland Security (DHS) and Department of Justice (DOJ) ("the Departments") Interim Final Rule entitled *Securing the Border* ("Interim Final Rule").¹

The Interim Final Rule denies access to asylum, based on arbitrary southwest border encounters, to anyone who enters the United States between ports of entry with extremely limited exceptions; eliminates critical, long standing due process requirements for fear screenings; raises the standard for eligibility for withholding of removal and protection under the Convention Against Torture (CAT); and makes asylum accessible exclusively to those who can wait in Mexico to receive a CBP One appointment on a mobile device and reach the designated port of entry at the scheduled time. The Interim Final Rule violates the Immigration and Nationality Act (INA) and the United States' obligations under international law. WRC strongly advises that the Departments rescind the Interim Final Rule in its entirety.

¹ DHS and DOJ, *Securing the Border*, 89 Fed. Reg. 48710.

I. WRC’s interest in commenting on the Interim Final Rule.

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

Since 1996, MRJ staff have made numerous visits to the southwest border region, including along Mexico’s northern border, as well as to immigration detention centers for adult women and families and to shelters housing unaccompanied children throughout the country. WRC has interviewed hundreds of women, families, and children seeking asylum in the United States. Based on the information that we collect on these visits and our analysis of the laws and policies relating to these issues, we advocate for improvements, including by meeting with government officials and service providers and by documenting our findings through fact sheets, reports, backgrounders, and other materials. We make recommendations to address identified or observed gaps or ways in which we believe the corresponding department or agency can improve its compliance with the relevant standards.²

II. The 30-day post-promulgation comment period provides insufficient time to comment on the Interim Final Rule.

The WRC objects to the abbreviated post-promulgation comment period provided for the Interim Final Rule, which effectively denies the public the right to meaningfully comment as envisioned by the Administrative Procedure Act (APA). This time frame is insufficient for an interim final rule that significantly alters asylum processing, as is the justification provided for bypassing the notice-and-comment period under the APA. On February 23, 2024, WRC and more than 150

² Reports of our findings include: WRC, *Opportunities for Welcome* (2023); WRC and Jewish Family Service of San Diego, *Welcoming People Seeking Safety: A San Diego Blueprint for Humanitarian Reception* (2023); WRC and Instituto para las Mujeres en la Migración A.C., *Stuck in Uncertainty and Exposed to Violence: The Impact of U.S. and Mexican Migration Policies on Women Seeking Protection in 2021* (2022); WRC, *Asylum Denied: Remain in Mexico 2.0* (2021); WRC, *Prison For Survivors: The Detention of Women Seeking Asylum in the United States* (2017); WRC, Lutheran Immigration and Refugee Service, and Kids in Need of Defense, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* (2017); WRC and Lutheran Immigration and Refugee Service, *Locking Up Family Values, Again: A Report on the Renewed Practice of Family Immigration Detention* (2014); WRC, *Migrant Women and Children at Risk: In Custody in Arizona* (2010); WRC, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* (2010); WRC, *Innocents in Jail: INS Moves Refugee Women From Krome to Turner Guilford Knight Correctional Center* (2001); WRC, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center* (2000); and WRC, *Liberty Denied: Women Seeking Asylum Imprisoned in the U.S.* (1997).

other immigrant rights, advocacy, and legal services organizations expressed their strong opposition to reports of forthcoming policies “shutting down” the southern border by severely curtailing or eliminating access to asylum.³ The “good cause” exception to notice-and-comment rulemaking cited by the Departments relies on long standing structural challenges such as backlogged immigration case processing and limited Department resources to claim a sudden and imminent emergency state of exception. Moreover, the Interim Final Rule layers several drastic and complex changes to asylum processing on top of the already-existing complexities of the Circumvention of Lawful Pathways Rule (“the CLP Rule”)⁴ and the forthcoming proposed asylum processing changes in the “Application of Certain Mandatory Bars in Fear Screenings” Rule (“the Mandatory Bars Rule”). Those rules also only provided 30 day comment periods, despite stakeholders requesting more time.⁵ The complicated administrative records of these rules warrant DHS providing stakeholders a meaningful opportunity to comment on the Interim Final Rule rather than a truncated comment period, particularly in the context of a post-promulgation comment period.

With a longer comment period, WRC would have provided a more thorough analysis of the Interim Final Rule and the concerns it raises, including by elaborating on specific complexities and demonstrating the alternative steps DHS could take to develop a more efficient and fair asylum system that complies with the United States’ domestic and international obligations to protect refugees.

III. The Interim Final Rule arbitrarily and illegally blocks women, children, families and LGBTQ+ community members seeking safety from asylum based on border encounter numbers completely unrelated to their need for protection.

³ Women’s Refugee Commission and 150 other organizations, “Letter Opposing Proposed Biden Administration Actions that Would Harm People Seeking Asylum,” (Feb. 23, 2024),

<https://www.womensrefugeecommission.org/research-resources/womens-refugee-commission-and-150-organizations-oppose-proposed-biden-administration-actions-that-would-harm-people-seeking-asylum/>.

⁴ Despite a court finding the CLP Rule unlawful, it remains in effect while litigation continues. *East Bay Sanctuary Covenant v. Biden*, 683 F. Supp. 3d 1025 (N.D. Cal. 2023), appeal held in abeyance, 93 F.4th 1130 (9th Cir. 2024).

⁵ Center for Gender & Refugee Studies, “Request to Provide a Minimum of 60 days for Public Comment in Response to the Department of Homeland Security (DHS) Notice of Proposed Rulemaking (NPRM): Application of Certain Mandatory Bars in Fear Screenings” (May 21, 2024), <https://cgrs.uclawsf.edu/ourwork/publications/request-provide-minimum-60-days-public-comment-response-department-homeland>; Tahiri Justice Center and 502 other organizations, “Request to Provide a Minimum of 60 days for Public Comment in Response to the Department of Homeland Security United States Citizenship and Immigration Services and Department of Justice Executive Office for Immigration Review Joint Notice of Proposed Rulemaking,” (June 18, 2020), <https://www.tahiri.org/wp-content/uploads/2020/06/Request-for-Extension-of-Asylum-Rule-CommentPeriod-from-502-organizations.pdf>; Women’s Refugee Commission and 30 other organizations, “Letter Requesting Extension of Public Comment Period for Proposed Rule Making Fundamental Changes to Asylum Processing and the Immigration System,” (Aug. 6, 2020), <https://www.womensrefugeecommission.org/research-resources/letterrequesting-extension-of-public-comment-period-for-proposed-rule-making-fundamental-changes-to-asylumprocessing-and-the-immigration-system/>.

Together with the Proclamation, the Interim Final Rule bars access to asylum after an arbitrary weekly average of 2,500 encounters between ports of entry is reached, despite such a number having no bearing on the legitimacy of a person’s asylum case.⁶ As the Departments admit in the Interim Final Rule, eliminating asylum eligibility for all but a few select groups based on the number of people encountered by DHS between ports of entry will result in “costs” to those who would otherwise merit protection.⁷ As WRC has demonstrated time and again in its work, these “costs” are in reality severe harms to the health and safety of women, children, families and LGBTQ+ community members fleeing persecution.

Moreover, the Interim Final Rule and its arbitrary numerical limitations on asylum eligibility violate U.S. law and treaty obligations. The United States is a State party to the 1967 United Nations Protocol Relating to the Status of Refugees (“Refugee Protocol”), and is therefore bound to comply with the obligations deriving from the Refugee Protocol as well as, by incorporation, articles 2-34 of the 1951 United Nations Convention Relating to the Status of Refugees (“Refugee Convention”).⁸ Furthermore, as a State party, the United States has agreed to cooperate with the United Nations High Commissioner on Refugees (UNHCR) to facilitate its duty of supervising, in particular, the application of the provisions of the Refugee Protocol, and, as incorporated therein, the Refugee Convention.⁹

The Interim Final Rule contravenes U.S. law governing asylum access, expedited removal procedures, and prohibitions on the return of refugees to persecution and torture. Congress passed the Refugee Act of 1980 to codify the United States’ obligations under the Refugee Convention and Protocol. The United States promised to abide by the Convention’s legal requirements, including non-discriminatory access to asylum, its prohibition against returning refugees to persecution, and its prohibition against imposing improper penalties on people seeking refugee protection based on manner of entry. The Refugee Act of 1980 incorporated these principles into U.S. law. 8 U.S.C. 1158, which provides that people may apply for asylum regardless of manner of entry into the United States. By denying asylum in almost all cases when DHS has not gone seven consecutive days without fewer than 1,500 encounters between ports of entry—conditions entirely unrelated to an individual’s asylum claim—the Interim Final Rule seeks to unlawfully use arbitrary numerical limitations as a justification to deny access to asylum at the U.S.-Mexico border. This policy will result in the return of refugees to danger and unequivocally contravenes these provisions of U.S. law.

⁶ Joseph R. Biden Jr., “A Proclamation on Securing the Border,” The White House (June 4, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/06/04/a-proclamation-on-securing-the-border/>; DHS and EOIR, *Securing the Border*, 89 Fed. Reg. 48710.

⁷ *Securing the Border*, 89 Fed. Reg. 48710, 48767 (June 5, 2024) (to be codified at 8 C.F.R. pts. 208, 235, 1208).

⁸ See Protocol Relating to the Status of Refugees, art. II, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

⁹ “The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees . . . in the exercise of its functions.” *Id.*, art. II.

Under international human rights law binding on the United States, access to territory cannot be suspended based on emergencies. While States may, in emergencies, take certain measures to ascertain and manage risks at their borders (including public health risks), those measures cannot include preclusion of access to asylum.¹⁰ The Interim Final Rule threatens the right to seek asylum and puts individuals at risk of refoulement, putting the United States in violation of its international legal obligations. No conditioning provision like an arbitrary benchmark of border encounters can overcome that legal flaw.

IV. The Interim Final Rule would significantly undermine family unity.

WRC is extremely troubled by the family separations that will result due to the Interim Final Rule and its impact on family unity. Under the Interim Final Rule, asylum seekers who are unable to overcome the limitation on ineligibility would have no option to reunify with their families through the lesser forms of protection available to them in the United States. These individuals would be eligible only for lesser forms of protection such as Convention Against Torture (CAT) protection or withholding of removal, which do not provide permanent status or a pathway to citizenship, do not permit people to travel abroad, and which leave people with a permanent removal order and subject to deportation at any time. Individuals with these lesser forms of protection are unable to petition for their spouses and children, indefinitely separating families and leaving family members languishing abroad in danger, in contravention of the Departments' assessment that this Rule will not "impose a negative impact on family well-being or...the integrity of the family as an institution".¹¹ Such an outcome conflicts with the spirit, if not the letter, of the executive order establishing the Family Reunification Task Force¹² and all the laudable work done by this Administration to reunify the families cruelly forced apart in the name of deterrence through the Zero-Tolerance Policy.¹³

Eliminating the obligation for Customs and Border Protection (CBP) officers to ask people they encounter whether they fear return to their country will result in *refoulement* in violation of U.S. obligations.¹⁴ The "manifestation of fear" process described in the Interim Final Rule is similar to the "shout test" in place under Title 42, which resulted in the erroneous return of many people

¹⁰ UNHCR, Key Legal Considerations on Access to Territory for Persons in Need of International Protection in the Context of the COVID-19 Response (Mar. 2020), <https://www.refworld.org/docid/5e7132834.html>.

¹¹ *Securing the Border*, 89 Fed. Reg. 48710, 48768 (June 5, 2024) (to be codified at 8 C.F.R. pts. 208, 235, 1208).

¹² [Exec. Order No. 14,011](https://www.federalregister.gov/documents/2021/02/02/2021-02-02-executive-order-14011), 86 Fed. Reg. 8,273 (Feb. 2, 2021).

¹³ Women's Refugee Commission, "Family Separation in Their Own Words: The Lasting Harm of the Trump Administration's Zero Tolerance Policy," (Jan. 23, 2024), <https://www.womensrefugeecommission.org/research-resources/family-separation-in-their-own-words-the-lasting-harm-of-the-trump-administrations-zero-tolerance-policy/>.

¹⁴ *Securing the Border*, 89 Fed. Reg. 48710, 48739–40 (June 5, 2024) (to be codified at 8 C.F.R. pts. 208, 235, 1208).

seeking protection, including vulnerable women and children, to situations of danger and persecution.¹⁵

The Interim Final Rule allows DHS to apply the “family unity” provision in the Asylum Merits Interview (AMI) process, allowing a spouse and/or minor children of the principal applicant found eligible for withholding of removal or CAT protection to be eligible for derivative asylum status. WRC supports the Departments adopting a non-discretionary family unity provision for the AMI process in a final rule.¹⁶

V. The Interim Final Rule’s asylum restrictions will result in erroneous removals and produce serious due process violations.

The existing U.S. asylum infrastructure is woefully inadequate to administer the layered and extensive changes represented by the Interim Final Rule and its predecessors, namely the CLP Rule and the proposed Mandatory Bars Rule. In a reversal of more than 25 years of the expedited removal process established by Congress, the Interim Final Rule requires CBP officials to refer people for a credible fear interview (CFI) if they appear to “manifest” a fear of return. This practice runs counter to CBP’s existing and established requirement that its officers ask the three questions on the Form I-867B to assess an individual’s fear or concern of return and refer them for a CFI. Requiring people to proactively demonstrate their fear of return, known as the “shout test,” has previously resulted in CBP failing to refer people who did express fear for CFIs.¹⁷ It is also unreasonable to assume that individuals, many of whom were persecuted by government officials in their home countries, would within minutes or hours of their encounter with US government officials offer their testimony or signs of fear. Research has long proven that it is critical that individuals are specifically asked about their fear of return.¹⁸

¹⁵ See, e.g., Women’s Refugee Commission, Title 42 and Asylum Processing at the US-Mexico Border: An Asylum Primer (July 23, 2021), <https://www.womensrefugeecommission.org/research-resources/title-42-asylum-processing-at-us-mexico-border-primer/>.

¹⁶ See also Women’s Refugee Commission and 18 other organizations, “Recommendations for Final Asylum Processing Rule,” (Mar. 15, 2024), <https://www.womensrefugeecommission.org/research-resources/womens-refugee-commission-and-other-immigrants-rights-organizations-provide-recommendations-to-the-department-of-justice-and-homeland-security-on-the-asylum-processing-interim-final-rule/>.

¹⁷ Center for Gender & Refugee Studies (CGRS), ““Manifesting” Fear at the Border: Lessons from Title 42 Expulsions,” (Jan. 30, 2024), <https://cgrs.uclawsf.edu/our-work/publications/%E2%80%9Cmanifesting%E2%80%9D-fear-border-lessons-title-42-expulsions>.

¹⁸ U.S. Commission on International Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, (2016), <https://www.uscirf.gov/sites/default/files/Report%20Highlights.%20CBPs%20Record%20Identifying%20Asylum%20Seekers.pdf>; Allen Keller et al., *Study on Asylum Seekers in Expedited Removal as Authorized by Section 605 of the International Religious Freedom Act of 1998: Evaluation of Credible Fear Referral in Expedited Removal at Ports of Entry in the United States* 16–18 (Feb. 2005), https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/evalCredibleFear.pdf; US Government Accountability Office, *Opportunities Exist to Improve the Expedited Removal Process*, No. GAO/GGD-00-176 (Sept. 2000).

In practice, reports have found that CBP officials either ignore manifestations of fear or verbally abuse people who express fear of return.¹⁹ There is also no documentation required of a CBP officer who ignores an individual's request for a fear interview and therefore no accountability.

Those few individuals who overcome the "shout test" in order to access a screening on their fear-based claim will do so in the expedited removal process, where asylum seekers are deported without a hearing if they do not pass their fear screenings. Asylum seekers will be required to show either that they qualify under an extremely narrow set of exceptions to the Interim Final Rule or that they qualify under a heightened standard for Withholding of Removal or CAT Protection, which will be impossible for many given that these screenings typically occur over the phone while asylum seekers are detained, with little to no access to counsel. Language barriers, abusive and dangerous conditions of confinement, acute trauma, and lack of knowledge of the requirements of this complex rule and other related restrictions will make it extremely challenging for asylum seekers to overcome either the Interim Final Rule or the heightened standard for Withholding of Removal and CAT Protection in preliminary screenings.²⁰ Many will be unable to prove to an asylum officer that they should not be banned by the Rule despite bona fide asylum claims.

To further exacerbate the due process concerns, WRC has for years documented the inappropriate treatment and conditions of ICE and CBP custody, including grave concerns over due process. CBP and ICE detention facilities are essentially prisons or jails, often located in remote areas with few existing local service providers to help provide legal information to inform asylum seekers of the application process. Within government custody and without adequate time for an asylum seeker to articulate a claim for protection, this Interim Final Rule may result in rushed adjudications and erroneous removals of individuals with meritorious claims to harm or death.

These due process violations are magnified by other obstacles that restrict access to asylum and rush people through the screening process in dire conditions without effective access to legal

¹⁹ Human Rights First; "Two Weeks of the Biden Border Proclamation and Asylum Shutdown," (June 2024), <https://humanrightsfirst.org/wp-content/uploads/2024/06/Two-Weeks-of-the-Biden-Border-Proclamation-Asylum-Shutdown.pdf>; CGRS, "'Manifesting' Fear at the Border: Lessons from Title 42 Expulsions," (Jan. 30, 2024), <https://cgrs.uclawsf.edu/our-work/publications/%E2%80%9Cmanifesting%E2%80%9D-fear-border-lessons-title-42-expulsions>.

²⁰ See, e.g., Women's Refugee Commission, *Prison for Survivors: The Detention of Women Seeking Asylum in the United States* (Oct. 1, 2017), <https://www.womensrefugeecommission.org/research-resources/prison-for-survivors-women-in-us-detention-oct2017/>. Human Rights First, a nonpartisan international human rights organization, found that people are three times more likely to receive a negative screening and be ordered deported to their countries of feared persecution or to Mexico under the CLP Rule. Rebecca Gendelman, "Correcting the Record: The Reality of U.S. Asylum Process and Outcomes," Human Rights First (Nov. 3, 2023), <https://humanrightsfirst.org/library/correcting-the-record-the-reality-of-u-s-asylum-processand-outcomes/>.

counsel.²¹ These include reducing the amount of time people have to consult an attorney and conducting CFIs in CBP custody;²² increasing the prosecution of people entering between ports of entry;²³ and establishing an expedited docket to deport people entering at the southern border.²⁴ DHS has also announced, but not published,²⁵ new guidance allowing AOs to consider if internal relocation within the asylum applicant’s home country is reasonable at the credible fear stage.²⁶

Further, the Interim Final Rule attempts to unlawfully circumvent the credible fear screening standard established by Congress in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which was intended to be a low screening threshold.²⁷ While previously the U.S. government was required to refer asylum seekers in expedited removal for full asylum adjudications if they could show a “significant possibility” that they could establish asylum eligibility in a full hearing, the CLP Rule subjected people to a presumption of ineligibility for asylum that they could only rebut by meeting a preponderance of the evidence standard.²⁸ Where an asylum seeker could not rebut the asylum ineligibility presumption, the CLP Rule subjected them to the same heightened “reasonable possibility” fear screening standard applied to those in administrative removal or reinstatement of removal.²⁹

The Interim Final Rule further eviscerates Congressional intent by imposing a new even higher screening standard of “reasonable probability” for those subject to the Interim Final Rule and eligible only for screening for Withholding of Removal and CAT Protection.³⁰ The Rule makes clear that “reasonable probability” is much closer to the actual merits hearing evidentiary standard for Withholding of Removal and CAT Protection of “more likely than not” than the

²¹ See, e.g., Human Rights Watch, “They Treat You Like You Are Worthless: Internal DHS Reports of Abuses by US Border Officials,” (Oct. 21, 2021), <https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials>.

²² DHS, “Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration,” (Apr. 27, 2023), <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actionsmanage-regional-migration>.

²³ Department of Justice, “Justice Department Expands Efforts to Dismantle Human Smuggling Operations and Support Immigration Prosecutions,” (May 31, 2024), <https://www.justice.gov/opa/pr/justice-department-expandefforts-dismantle-human-smuggling-operations-and-support>.

²⁴ DHS, “DHS and DOJ Announce “Recent Arrivals” Docket Process for More Efficient Immigration Hearings,” (May 16, 2024), <https://www.dhs.gov/news/2024/05/16/dhs-and-doj-announce-recent-arrivals-docket-process-moreefficient-immigration>.

²⁵ Center for Gender & Refugee Studies, “CGRS Seeks Transparency on Asylum Screening Guidance,” (May 24, 2024), <https://cgrs.uclawsf.edu/news/cgrs-seeks-transparency-asylum-screening-guidance>.

²⁶ DHS, “DHS Announces Proposed Rule and Other Measures to Enhance Security, Streamline Asylum Processing,” (May 9, 2024), <https://www.dhs.gov/news/2024/05/09/dhs-announces-proposed-rule-and-othermeasures-enhance-security-streamline-asylum>.

²⁷ Congressional Record Volume 142, Number 136 (Sept. 27, 1996), <https://www.govinfo.gov/content/pkg/CREC-1996-09-27/html/CREC-1996-09-27-pt1-PgS11491-2.htm>.

²⁸ *Circumvention of Lawful Pathways*, 88 Fed. Reg. 31314 (May. 16, 2023) (codified at 8 C.F.R. pt. 208).

²⁹ *Id.*

³⁰ *Securing the Border*, 89 Fed. Reg. 48710, 48745 (June 5, 2024) (to be codified at 8 C.F.R. pts. 208, 235, 1208).

previous “reasonable possibility” standard,³¹ effectively forcing those few who are able to “manifest” their fear satisfactorily for a CBP officer into a mini merits interview on their protection claim within hours or days of arrival, while detained, and without the assistance of counsel. The Asylum Officers Union described the CLP Rule’s “reasonable possibility” standard as one that forces officers to break the law when applied and returns individuals with bona fide protection claims to danger.³² This new, heightened “reasonable probability” standard is far too high for a preliminary screening and will likely result in a significant decline in credible fear pass rates and erroneous denials of protection.

VI. The Interim Final Rule, compounded by the Circumvention of Lawful Pathways Rule and other existing drastic policy changes, imposes unprecedented new barriers to asylum protection.

Since May 2023, the CLP Rule has already barred access to asylum for most people entering the United States through the southern border. Despite a court finding the CLP Rule unlawful, it remains in effect while litigation continues.³³ Human Rights First, a nonpartisan international human rights organization, found that people are three times more likely to receive a negative screening and be ordered deported to their countries of feared persecution or to Mexico under the CLP Rule.³⁴

Since the CLP Rule went into effect, people seeking asylum have been forced to wait for weeks and months to secure appointments to enter at ports of entry and suffered over 2,500 kidnappings, acts of torture, forced disappearances, extortions, and other forms of violent attacks while waiting in Mexico.³⁵ Violence is growing in parts of Mexico where migrants wait, including Doctors Without Borders documenting a 70 percent increase in migrants reporting sexual violence in northern border cities Reynosa and Matamoros.³⁶

Like the CLP Rule, under the Interim Final Rule asylum seekers are not subjected to its bar if they or a traveling family member faced an acute medical emergency; an imminent and extreme

³¹ *Securing the Border*, 89 Fed. Reg. 48710, 48746-47 (June 5, 2024) (to be codified at 8 C.F.R. pts. 208, 235, 1208).

³² Brief of Nat’l Citizenship and Immigration Servs. Council 119 as Amicus Curiae in Support of Plaintiffs at 7, 22, *M.A. v. Mayorkas*, No. 1:23-cv-01843 (D.D.C. Oct. 6, 2023), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.256826/gov.uscourts.dcd.256826.46.1.pdf>.

³³ *East Bay Sanctuary Covenant v. Biden*, 683 F. Supp. 3d 1025 (N.D. Cal. 2023), appeal held in abeyance, 93 F.4th 1130 (9th Cir. 2024).

³⁴ Rebecca Gendelman, “Correcting the Record: The Reality of U.S. Asylum Process and Outcomes,” Human Rights First (Nov. 3, 2023), <https://humanrightsfirst.org/library/correcting-the-record-the-reality-of-u-s-asylum-process-and-outcomes/>.

³⁵ Christina Asencio, “Trapped, Preyed Upon, and Punished,” Human Rights First (May 7, 2024), <https://humanrightsfirst.org/library/trapped-preyed-upon-and-punished/>.

³⁶ Doctors Without Borders, “17 days in captivity along the US-Mexico border,” (Feb. 28, 2024), <https://www.doctorswithoutborders.org/latest/17-days-captivity-along-us-mexico-border>.

threat to their life or safety; or was a ‘victim of a severe form of trafficking in persons’ as defined in 8 CFR 214.11.”³⁷ Despite these exceptions, the CLP Rule has prevented at-risk people from accessing asylum.³⁸

The Proclamation and Interim Final Rule also allows CBP Office of Field Operations officials at ports of entry to assess whether an individual qualifies for an exception and should be processed.³⁹ It is unclear what guidance or training has been provided to ensure fair adjudications on the spot at the limit line. In its first weeks of being in effect, the Interim Final Rule has resulted in people with medical emergencies, survivors of kidnapping and rape, and other vulnerable people being denied access to protection.⁴⁰

Notably, the Interim Final Rule does not include two exceptions from the CLP Rule: 1) being denied asylum in a country in which the individual transited through and 2) presenting at a port of entry without a CBP One appointment due to language, illiteracy, or technological barriers. The Interim Final Rule narrows access to asylum exclusively to individuals who enter via a CBP One appointment or through another process approved by the Secretary.

CBP One fails to meet demand from people seeking asylum, suffers from technological difficulties, and is inherently discriminatory. CBP One appointments are only scheduled at eight southwest ports of entry. For more than a year, appointments have remained at 1,450 available each day to individuals waiting in central or northern Mexico. Wait times for appointments have increased to as long as seven months.⁴¹ Some asylum seekers cannot use the CBP One app because it is only available in English, Spanish, and Haitian Creole and they do not speak these languages, including Indigenous speakers who speak rare languages.⁴² Others cannot use the app because of physical disabilities, illiteracy, limited digital literacy, or limited access to Wi-Fi. Relying on a mobile application for access to asylum necessitates that people fleeing persecution have the financial means to purchase a smartphone and daily internet service.

³⁷ 89 Fed. Reg. 48733.

³⁸ See Christina Asencio, “Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban,” Human Rights First (May 7, 2024), <https://humanrightsfirst.org/library/trapped-preyed-upon-and-punished/>.

³⁹ Plaintiff’s Brief Regarding Presidential Proclamation at 5, *Al Otro Lado v. Mayorkas*, No. 3:23-cv-01367-AGS-BLM (S.D. Cal. June 20, 2024),

<https://storage.courtlistener.com/recap/gov.uscourts.casd.764598/gov.uscourts.casd.764598.80.0.pdf>.

⁴⁰ Human Rights First, “Two Weeks of the Biden Border Proclamation and Asylum Shutdown,” (June 2024), <https://humanrightsfirst.org/wp-content/uploads/2024/06/Two-Weeks-of-the-Biden-Border-Proclamation-Asylum-Shutdown.pdf>.

⁴¹ Christina Asencio, “Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban,” at 10, Human Rights First (May 7, 2024), <https://humanrightsfirst.org/library/trapped-preyed-upon-and-punished/>.

⁴² The International Mayan League, “Biden’s Proclamation a Betrayal to Indigenous Peoples Seeking Refuge and Safety,” (June 4, 2024), https://issuu.com/mayanleague.org/docs/iml_statement_executive_order_june_4_2024.docx.

CBP One effectively acts as a digital metering waitlist, in which CBP determines who, where, and when an individual will be processed.⁴³ Practically under the CLP Rule and now definitively under the Interim Final Rule, individuals without CBP One appointments will be turned away from ports of entry and unable to seek asylum. Without access to ports of entry, people are more likely to cross irregularly and be barred from seeking asylum—many without being aware of these restrictions. Deterrence-based policies like the CLP Rule and Interim Final Rule fail to deter and instead allow cartels and smugglers to more easily target, extort, kidnap, and enact violence upon migrants waiting in Mexico and searching for other routes to seek asylum.⁴⁴ Mexican immigration officials also detain and bus people seeking asylum to southern Mexico, even when they are traveling north to enter the United States with a CBP One appointment.⁴⁵

Unlike the CLP Rule, Mexican nationals are not exempt from the Interim Final Rule. Mexican asylum seekers are therefore trapped and at risk in their country of feared persecution, contradicting the Refugee Convention and Protocol. The Departments acknowledge that referrals for credible fear interviews of Mexican nationals has sharply increased in the last year.⁴⁶ This increase should be all the more reason to exempt Mexican asylum seekers from the Interim Final Rule; there are more protection needs from this population now than in recent years.

VII. Conclusion.

WRC opposes the Interim Final Rule because it violates refugee law and indefinitely restricts access to asylum for the most vulnerable and in need of protection. The Interim Final Rule is the latest in a series of policies that dramatically restrict access to asylum and undermine the United States' moral and legal obligations to protect people fleeing persecution and harm. Our responsibilities to ensure legal protection do not change based on the historically greater number of refugees around the world. Instead, the United States should pursue a fair, humane asylum system. WRC urges the Departments to rescind the Interim Final Rule in its entirety.

Thank you for your consideration.

⁴³ Human Rights Watch, ““We Couldn’t Wait” Digital Metering at the US-Mexico Border,” (May 2024), https://www.hrw.org/sites/default/files/media_2024/04/us_mexico0524%20web.pdf.

⁴⁴ *Id.*

⁴⁵ Christina Asencio, “Trapped, Preyed Upon, and Punished: One Year of the Biden Administration Asylum Ban,” at 21-22, Human Rights First (May 7, 2024), <https://humanrightsfirst.org/library/trapped-preyed-upon-and-punished/>.

⁴⁶ 89 Fed. Reg. 48738.