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RAICES

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RE: Systemic Deficiencies at the Houston Asylum Office in Assessments of Credible and Reasonable Fear Cause Harm and Irreversible Damage to Asylum Seekers

We, the undersigned organizations, jointly file this complaint to request an investigation into the severe violations of due process and statutory obligations in the conduct of credible fear

interviews (CFIs) and Reasonable Fear Interviews (RFIs) by representatives of the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS). While many of the issues we raise have occurred in numerous asylum offices, the Houston Asylum Office has a particularly egregious record of conducting these screenings and we therefore ask that you investigate the Houston Asylum Office's conduct.

On June 30, 2021, several non-governmental organizations (NGOs) sent a letter¹ detailing some of these same concerns to USCIS, Immigration and Customs Enforcement (ICE), and the Executive Office of Immigration Review (EOIR), but to date have not received any response. Unfortunately, the issues raised in that letter have only gotten worse.

The Office of Civil Rights and Civil Liberties (CRCL) has the authority to investigate the allegations in these complaints which include: the denial of access to counsel, lack of legal orientation, difficulties with language access, and biased and deficient individualized fear determinations.² Moreover, we are concerned that the Houston Asylum Office routinely denies viable CFIs, applying a higher legal standard than the "significant possibility" standard required under the Immigration and Nationality Act (INA) § 235(b)(1)(B)(v) for asylum seekers to proceed to a full hearing on their claims. As a result, many bona fide asylum seekers are at risk of persecution and torture upon deportation to their countries of origin without ever receiving a full hearing on their claims.³

While these violations affect all asylum seekers, they disproportionately affect those who are detained. Delays in scheduling fear interviews, inadequate processes, and deficient adjudications cause asylum seekers to remain in custody for extended periods of time, often in deplorable conditions.⁴ The ongoing detention and deportation of asylum seekers with bona fide claims for relief is a deeply disturbing trend that must be reversed.

¹ Advocate Coalition Letter dated June 30, 2021 available at https://www.splcenter.org/sites/default/files/detained_asylum_seeker_grievance_letter_30_june_2021.pdf.

² Complainants note that asylum seekers who are subject to reasonable fear interviews (RFIs) and required to meet a higher standard of reasonable fear in order to progress with their claims, experience some of the same problems discussed in the complaint, such as access to counsel, language access, and inadequate application of guidance. Thus, complainants have included RFI case examples that present these issues in the Appendix. The applicable standards discussed in this complaint, however, are focused on credible fear.

³ Human Rights Watch, "How Can You Throw Us Back?" *Asylum Seekers Abused in the U.S. and Deported to Harm in Cameroon* (Feb. 10, 2022) (hereinafter "Deported to Harm") ("Following deportation, as this report shows, many experienced the very harm and persecution they told the US government they feared if returned."). <https://www.hrw.org/report/2022/02/10/how-can-you-throw-us-back/asylum-seekers-abused-us-and-deported-harm-cameroon>. (Reporting on harm experienced by Cameroonians after being removed from the United States. While the focus of the HRW report is not expedited removal, some of the asylum-seekers in the report were removed after a finding of no credible fear by USCIS that was upheld by an immigration judge.)

⁴ See, DHS OIG, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, (June 3, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>. (Detailing immediate concerns at four detention centers, including inadequate sanitation, inadequate health care, and lack of visitation.)

We therefore seek an investigation by CRCL that results in recommendations that will ensure that CFIs are conducted in a reasonable timeframe, fairly, and in accordance with the INA, international treaty obligations, and the guidance provided by the Refugee and Asylum International Operations (RAIO) Directorate. In support of this request for an investigation, we are attaching a spreadsheet that includes summaries and identifying information for 30 asylum seekers in whose cases officers in the Houston Asylum Office⁵ mishandled asylum-related pre-screening interviews. *See generally* Appendix.

We summarize below the proper legal standard for adjudicating preliminary fear interviews, and then discuss the primary issues we have identified in cases handled by the Houston Asylum Office.

I. Background Information on the CFI Standard Under the Immigration Statute and Applicable USCIS Guidance

The INA requires only a “significant possibility” that the noncitizen “could establish eligibility for asylum.”⁶ Through its Asylum Officer training materials,⁷ RAIO has interpreted this standard to mean that the purpose of a credible fear screening is “to quickly identify *potentially* meritorious claims to protection and to resolve frivolous ones with dispatch. . . . If [a noncitizen] passes this threshold-screening standard, the claim for protection . . . will be further examined by an immigration judge[.]”⁸ The statute further requires that the determination of credible fear is to be conducted by specially trained representatives of the USCIS Asylum Office after apprehension of an asylum seeker by Customs and Border Protection (CBP).⁹ Reviews of negative determinations are to be conducted by immigration judges (IJs) no later than seven days following the CFI denial.¹⁰ DHS and the Department of Justice (DOJ) have just published an

⁵ While the issues discussed below are sufficiently alarming to merit an investigation by DHS oversight bodies, we are especially concerned that these problems are most severe in the Houston Asylum Office because it is this office that will likely be overseeing CFIs in the Biden administration’s pilot alternative to detention house arrest program in Houston. *See* Ted Hesson, “U.S. to Try House Arrest for Immigrants as Alternative to Detention,” Reuters, Feb. 8, 2022, <https://www.reuters.com/world/us/us-try-house-arrest-immigrants-alternative-detention-2022-02-08/>.

⁶ INA § 235(b)(B)(v). *See also* 142 Cong. Rec. S11491 (daily ed. Sept. 27, 1996) (statement of Senate Judiciary Committee Chairman Orrin Hatch) (noting that Congress intended it to be to be a low screening standard for admission into the usual full asylum process.)

⁷ INA § 235(b). The guidance currently in effect is the 2017 CFI Lesson Plan with modifications required by the *Kiakombua* settlement (vacating 2019 CFI Lesson Plan and requiring reinstatement of prior Lesson Plan with certain changes as noted below.). *See, generally, Kiakombua v. Wolf*, 498 F.Supp.3d 1, (D.D.C. 2020).

⁸ U.S. Citizenship and Immigration Services – RAIO, Asylum Division Officer Training Course: Credible Fear, (Feb. 27, 2017), on file with the authors and available at aila.org, AILA doc. 17022435.

⁹ INA § 235(b)(1)(A)(ii) and (b)(1)(E).

¹⁰ INA § 235(b)(1)(B)(iii)(III).

Interim Final Rule that reiterates the “significant possibility” standard.¹¹ Moreover, this rule, set to go into effect on May 28, 2022, will expand the role of asylum officers, having them replace IJs as the initial adjudicators of merits claims following a positive CFI. Once this rule is in effect, it will be even more important that asylum officers understand and follow applicable law, both for CFIs and for merits adjudications.

In *Kiakombua v. Wolf*, 498 F.Supp.3d 1 (D.D.C. 2020), asylum seekers challenged the USCIS 2019 CFI Lesson Plan for being so restrictive that it was *ultra vires* to the statute. The District Court of Columbia agreed, finding that Congress used the word “could” in the credible fear definition to convey that “a possibility, rather than certainty [of persecution] suffices at the credible fear stage of the asylum-eligibility process.” *Kiakombua v. Wolf*, 498 F.Supp.3d 1, 41 (D.D.C. 2020). A CFI “is intended to be a mere ‘screening interview[,]’ . . . during which ‘[t]he applicant need not show that he or she *is in fact eligible* for asylum – a ‘credible fear’ equates to only a ‘significant possibility’ that the alien would be eligible.” *Kiakombua*, 498 F.Supp.3d at 39 (quoting *DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1965 (2020)) (emphasis in the original). Thus, since the asylum standard requires only a “10% chance” or a “reasonable possibility” of persecution, the credible fear screening hurdle is even lower: less than a 10% likelihood of persecution.¹²

When DOJ issued interim regulations to implement the credible fear process, it described the “significant possibility” standard as one that sets “a low threshold of proof of *potential* entitlement to asylum; many [noncitizens] who have passed the credible fear standard will not ultimately be granted asylum.”¹³ These regulations remain in effect and were in effect when the interviews included in this complaint occurred.¹⁴

At the CFI stage, the asylum officer should only screen out claims where there is clearly no merit. USCIS has explicitly advised that “[w]hen there is reasonable doubt regarding the outcome of a credible fear determination, the applicant *likely merits a positive credible fear determination*. The questions at issue can be addressed in a full hearing before an immigration

¹¹ Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Federal Register 18078 (Mar. 29, 2022) <https://www.govinfo.gov/content/pkg/FR-2022-03-29/pdf/2022-06148.pdf>. [Hereinafter Asylum Processing Rule].

¹² See Memorandum from Bill Ong Hing to John Lafferty, Chief of USCIS Asylum Div. at 3, (Apr. 21, 2014), <http://static.squarespace.com/static/50b1609de4b054abacd5ab6c/t/53558353e4b02071f74ee3c4/1398113107754/Response%20to%20USCIS%20Credible%20Fear%20Memo.%20Bill%20Hing.%2004.21.2014.pdf>

¹³ 62 Fed. Reg. 10312, 10320 (Mar. 6, 1997) (emphasis added).

¹⁴ On December 11, 2020, DHS and the Department of Justice released a final rule purporting to alter this standard, which was enjoined in *Pangea Legal Services v. DHS*, 512 F.Supp.3d 966 (N.D. Cal 2021) on January 8, 2021. The Asylum Processing Rule, published on March 29, 2022 reaffirms the “significant possibility” standard. See proposed 8 CFR § 208.30(e)(3).

judge.”¹⁵ Moreover, the regulations prohibit USCIS from conducting the CFI in an adversarial manner, making even more plain that the purpose of the inquiry is to elicit as much information as possible from the asylum seeker that might permit them to meet the low threshold of credible fear and thereafter pursue their claim in full.¹⁶

When an Asylum Office issues a negative CFI finding that is upheld by an Immigration Judge, an asylum seeker currently has the right to make a Request for Reconsideration (“RFR”) of the credible fear determination by USCIS.¹⁷ The Asylum Processing IFR¹⁸ will only allow a single RFR to be filed within seven days of an IJ upholding a negative fear finding. We are relieved that the IFR allows the Asylum Office some ability to reconsider decisions because the original version of the rule eliminated RFRs entirely,¹⁹ but we are concerned by the short timeline and limit to one RFR. Some of the errors noted in this complaint were only remedied through the RFR process.

II. The Houston Asylum Office Has Systematically Failed to Comply with the INA, Regulations, and RAIO Guidance in Conducting CFIs

Despite the clear language of the INA, requiring only a “significant possibility” of qualifying for asylum, as well as RAIO guidance that spells out the purpose of CFIs to screen out migrants who do not have fear-based claims, the Houston Asylum Office has systematically violated the rights of asylum seekers by imposing legal standards that are often impossible to meet in the expedited removal setting. Moreover, the Houston Asylum Office has failed to implement required safeguards when interviewing vulnerable populations. Finally, the Houston Asylum Office has failed to facilitate access to counsel before and during CFIs.

A. The Houston Asylum Office Has Failed to Implement Changes to the CFI Lesson Plans Required by *Kiakombua v. Wolf*, 498 F.Supp.3d 1 (D.D.C. 2020)

Following the decision in *Kiakombua v. Wolf*, 498 F. Supp.3d 1 (D.D.C. 2020), which vacated the April 2019 and September 2019 Credible Fear Lesson Plans issued during the Trump

¹⁵ Memorandum from John Lafferty, Chief, USCIS Asylum Div., to Asylum Office Dirs. et al. regarding Release of Updated Asylum Division Officer Training Course Lesson Plan, Credible Fear of Persecution and Torture Determinations (Feb. 28, 2014), <http://www.aila.org/infonet/uscisasylum-revised-credible-fear-lesson-plan>, at 16. (Emphasis added).

¹⁶ 8 CFR § 208.30(d) (“The asylum officer will conduct the interview in a nonadversarial manner[.]”)

¹⁷ See 8 C.F.R. 1208.30(g)(2)(iv)(A) (Noting that the Asylum Office may reconsider a negative determination even after the Immigration Judge affirms the negative CFI, where information comes to light that warrants such action, including bias and the use of deficient processes in the initial CFI, as well as new or changed information materially affecting the asylum claim.)

¹⁸ See proposed 8 CFR § 208.30(d) at 87 Federal Register 18078 (Mar. 29, 2022).

¹⁹ See 86 Federal Register 46906 (Aug. 20, 2021).

administration, the USCIS Asylum Office instructed its adjudicators to rely on the February 2017 Lesson Plan, with some alterations. To implement the *Kiakombua* order, the Asylum Office instructed²⁰ its officers to no longer use the following provisions of the 2017 Lesson Plan in making credible fear determinations:

1. Officers cannot require that [noncitizens] “identify more than significant evidence that the applicant is a refugee entitled to asylum.”
2. Officers cannot require consideration of any discretionary factors such as considering internal relocation where the [noncitizen] has established a significant possibility of establishing asylum eligibility through past persecution.
3. Officers cannot place a burden on the [noncitizen] to show these impermissible factors related to discretion, not asylum eligibility.
4. Officers cannot require that [noncitizens] provide “evidence” and “facts” that pertain to “every element” of their eligibility for asylum.
5. Officers cannot require corroboration at the CFI stage in addressing credibility.
6. Officers cannot consider whether the [noncitizen’s] home government has “abdicated its responsibility” to control persecution in looking to whether the government is unable or unwilling to control a persecutor.²¹

Through the complaints we have gathered, it appears that the Houston Asylum Office is continuing to rely on the enjoined directives in the 2017 CFI Guidance in adjudicating CFIs and issuing denials in cases where they should have found credible fear.

The Houston Asylum Office routinely requires noncitizens undergoing CFIs to prove that they are eligible for asylum, rather than meeting the screening threshold that they have a significant possibility of prevailing at a full hearing.

*Mr. J.M. is seeking asylum from Venezuela based on his political opinion. At his CFI he testified that he had been detained, beaten, and scarred by the Venezuelan government in retaliation for his political beliefs. Although the Houston Asylum Office officer found Mr. J.M. to be credible, he denied the CFI determining that the past harm Mr. J.M. experienced did not rise to the level of past persecution and found that he could avoid future persecution by ending his political activities.*²²

²⁰ Email dated November 19, 2020 detailing modifications to the 2017 CFI Lesson Plan guidance in conformity with the *Kiakombua* decision, obtained from counsel. *See also* “Credible Fear Lesson Plans Comparisons Chart,” Catholic Legal Immigration Network, Inc. last updated November 3, 2021 available at <https://cliniclegal.org/resources/asylum-and-refugee-law/credible-fear-lesson-plans-comparison-chart> (“During the litigation, USCIS reverted to using the 2017 Credible Fear Lesson Plan.”).

²¹ *Id.*

²² *See* Appendix, summary at row 16.

These conclusions, particularly requiring an asylum seeker to forgo their political activities, would be improper even in a full merits adjudication, but are clearly not lawful under the “significant possibility” CFI standard.

In another example, a Houston Asylum Officer improperly required corroboration from an asylum seeker at a CFI; even at a merits interview, asylum seekers are not required to provide corroboration if their testimony is sufficiently detailed and persuasive, and it is clearly error to require this type of evidence at a CFI.²³

A Houston Asylum Office officer denied Mr. A.G.’s CFI in August 2021. Although he provided detailed testimony of him and another man being attacked in Senegal because they were perceived as gay, as well as information about being “outed” on a social media site, the Asylum Officer demanded corroboration at the CFI, even though there is no requirement for corroboration at this screening stage. The officer then incorrectly summarized Mr. A.G.’s testimony, omitted significant events, and denied his CFI.²⁴

By its failure to apply the proper legal standards as set forth in the 2017 CFI RAI0 Guidance, the Houston Asylum Office causes asylum seekers with bona fide claims to be deported to countries where they face danger, persecution, and torture without ever having a full hearing on their claims.

B. The Houston Asylum Office Fails to Implement CFIs Consistently with Related Guidance Issued by the RAI0 for the Adjudication of Asylum Claims in Vulnerable Populations

In addition to the failure of the Houston Asylum Office to conduct CFIs in accordance with the INA and *Kiakombua* discussed above, we have identified numerous examples of CFIs conducted in apparent disregard of due process and the training provided by the RAI0 Directorate for interviewing LGBTI asylum seekers, children, and survivors of torture and severe trauma. Many case examples highlight the office’s repeated failure to provide appropriate language access and to serve Notices to Appear (NTAs) on rare language speakers when an interpreter in the applicant’s primary language is unavailable for the CFI. These examples present troubling patterns of disregard for the agency’s own guidance and practices that prejudice

²³ An asylum seeker is not required to corroborate their claim at the merits stage if their testimony is sufficiently credible and detailed. See INA 208(b)(1)(B)(ii). (“The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.”)

²⁴ See Appendix, summary at row 9.

asylum seekers who may have the most difficulty expressing their reasons for fleeing persecution to government officials.

1. The Houston Asylum Office Fails to Provide Appropriate Language Interpretation and to Issue Notices to Appear as Required When It Is Unable to Furnish an Appropriate Interpreter

The Houston Asylum Office routinely fails to provide appropriate language interpreters to asylum seekers, forcing them to proceed with CFIs in languages in which they are not fluent.²⁵ Asylum seekers have also agreed to move forward with CFIs in languages in which they lack fluency because they were unaware of their right to insist upon an interpreter in their primary language. Asylum Officers often pressure asylum seekers to go forward with interviews in their second or third-best language. Concerned about ongoing detention, and not wanting to anger the asylum officer who will decide their fate, asylum seekers sometimes proceed in a language in which they are not fully fluent, fearing that the alternative would be worse.

According to guidance issued by USCIS on June 14, 2013, Asylum Offices should issue NTAs to speakers of rare languages once the officer determines that they cannot proceed in a more common language and no interpreter is available in their primary, rare language within the next 48 hours.²⁶ Several asylum seekers included in this complaint were unable to establish their credible fear in the alternative languages that were used despite their requests for rare language interpreters, and were issued negative CFI determinations.

Mr. Y.S. is a Bissa speaker from Burkina Faso. Mr. Y.S. advised the Asylum Officer from the Houston Asylum Office who conducted his CFI that he was not fluent in French, and requested a Bissa interpreter. After Mr. Y.S. reluctantly agreed to proceed in French, the CFI notes by the Asylum Officer incorrectly state that Mr. Y.S. testified during his CFI that he “was detained and forced to lay on the ground while a criminal group took his information.” The Officer’s notes also erroneously indicated that Mr. Y.S. was from “Republique Du Benin.” In conversation through a Bissa interpreter, however, Mr. Y.S. told his counsel that he was physically tortured and threatened with death, more than once, by powerful Arab Islamist terrorist groups in his hometown, and survived with scars

²⁵ Bobbi-Jean Misick, *Seeking asylum in the U.S. is not easy. It’s harder when you speak a rare language*, WWNO New Orleans Public Radio, Feb. 3, 2022, <https://www.wwno.org/immigration/2022-02-03/seeking-asylum-in-the-u-s-is-not-easy-its-harder-when-you-speak-a-rare-language>

²⁶ Ted H. Kim, Acting Chief of the Asylum Division, *Memorandum: Processing Credible Fear Cases When a Rare Language Interpreter is Unavailable*, June 14, 2013, <https://www.uscis.gov/sites/default/files/document/memos/Processing-CF-RareLanguageInterpreter-Unavailable.pdf>

*all over his body evidencing their abuse. As a result of the Officer's failure to provide a Bissa interpreter, Mr. Y.S. never had the opportunity to provide this critical testimony and was issued a negative credible fear determination.*²⁷

The Houston Asylum Office should follow RAIO Guidance and provide interpretation in the asylum seeker's primary language. Where that is not feasible to do within 48 hours, it should issue an NTA, allowing the asylum seeker to present their claim at a full merits hearing.

2. The Houston Asylum Office Fails to Interview Vulnerable Populations in Accordance with Agency Guidance for Asylum Seekers Who Are LGBTI, Children, and Survivors of Trauma and Torture

In addition to departing from the current CFI Lesson Plan guidance and statutory requirements, the Houston Asylum Office fails to follow the guidance set forth by RAIO in interviews of LGBTI asylum seekers, children, and survivors of torture and severe trauma.²⁸ Although these lesson plans were developed to train asylum officers to conduct interviews on the merits, they should be applied, with even more leeway, to asylum seekers in the credible fear context. In both the June 30, 2021 NGO letter cited above and the collection of cases included in the appendix to this complaint, advocates complained that officers conducting CFIs exhibited insensitivity or hostility towards asylum seekers in these categories, and imposed unduly harsh and restrictive limitations on how they could answer questions in violation of the regulatory requirement that CFIs be conducted in a non-adversarial manner.²⁹ It is worth noting that the LGBTI guidance specifically cautions adjudicators against making an adverse credibility finding based on an asylum seeker's failure to mention their sexual orientation at the credible fear stage, thus acknowledging the possibility that an asylum seeker would not feel comfortable disclosing such personal information at an initial screening interview.³⁰

²⁷ See Appendix, summary at row 18.

²⁸ See U.S. Citizenship & Immigration Servs., RAIO Directorate Combined Training Course: Adjudicating Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Refugee and Asylum Claims (Dec. 20, 2019), https://www.uscis.gov/sites/default/files/document/foia/LGBTI_Claims_LP_RAIO.pdf, RAIO Directorate Combined Training Program: Children's Claims (Dec. 20, 2019), https://www.uscis.gov/sites/default/files/document/foia/Childrens_Claims_LP_RAIO.pdf, RAIO Directorate Officer Training: Interviewing Survivors of Torture and Other Severe Trauma (Dec. 20, 2019), https://www.uscis.gov/sites/default/files/document/foia/Interviewing_-_Survivors_of_Torture_LP_RAIO.pdf

²⁹ 8 CFR § 208.30(d) ("The asylum officer will conduct the interview in a non-adversarial manner[.]")

³⁰ U.S. Citizenship & Immigration Servs., RAIO Directorate Combined Training Course: Adjudicating Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Refugee and Asylum Claims, at 44 (Dec. 20, 2019), https://www.uscis.gov/sites/default/files/document/foia/LGBTI_Claims_LP_RAIO.pdf

Additionally, Houston Asylum Office officers routinely fail to employ safeguards when interviewing children. In one example, an officer failed to employ required child interviewing techniques.

A.B., a 13-year-old asylum seeker from Guinea, was so intimidated by the CBP agent, that rather than give his real name to the officer, he gave the name of a childhood friend and “admitted” he was not a minor, even though he was. While the Houston Asylum Officer found A.B. credible as to the fact that he was intimidated into giving the CBP officer the wrong name and age, the interviewing asylum officer proceeded with the detained CFI, in violation of regulations regarding notification by federal agencies when encountering an unaccompanied child. The officer went on to issue a negative CFI determination, finding no nexus to a protected characteristic, despite the entirely inappropriate procedure for the child applicant.³¹

In another example, an officer did not use a trauma-informed interviewing approach with an asylum seeker who was a torture survivor.

Mr. L.M. was attacked by rebels in the Democratic Republic of Congo and suffers traumatic brain injury as a result, making it very difficult for him to communicate. Despite the clear physical limitations caused by his brain injury, his CFI was denied, and he was only released after his counsel filed an RFR and he was forced to sit through two more re-traumatizing interviews.³²

Although RAIO has issued extensive guidance on how officers should conduct interviews of vulnerable asylum seekers, the Houston Asylum Office routinely ignores this guidance in the CFI context and subjects members of vulnerable populations to lengthy, adversarial interviews that often make it impossible for the asylum seeker to articulate the basis of their fear.

C. CFIs Are Conducted in Conditions that Interfere with Access to Counsel

We have also seen in the attached complaints that asylum seekers were forced to proceed with CFIs after having been transferred among various facilities and provided no information about where they were or the process in which they were engaging. Numerous logistical and technological issues also mar the CFI process. Asylum seekers have repeatedly reported having to complete their CFIs over telephones with poor connections and in rooms with bad acoustics, causing garbled audio and impeding their ability to speak with the Asylum Officer. This deficient

³¹ See Appendix, summary at row 20.

³² See Appendix, summary at row 22.

technology also causes interpreters to drop off the line repeatedly, unnecessarily disrupting the flow of the interview.

The regulations require that “if the officer conducting the interview determines that the [noncitizen] is unable to participate effectively in the interview because of illness, fatigue, or other impediments, the officer may reschedule the interview.”³³ The transfer of asylum seekers to multiple facilities just prior to conducting their CFIs causes fatigue and other impediments including compounded trauma, which diminishes their ability to effectively participate in a CFI. Moreover, the regulations require that at “the time of the interview, the asylum officer shall verify that the [noncitizen] has received in writing the relevant information regarding the fear determination process. The officer shall also determine that the [noncitizen] has an understanding of the fear determination process.”³⁴ However, we have encountered asylum seekers who were provided no information about the asylum process whatsoever prior to their CFIs, and did not understand the purpose of the interview.

CFIs are also frequently conducted with no or very little notice to counsel of their upcoming interview. When counsel attempts to contact the Houston Asylum Office prior to the CFI, in an effort to schedule a time to ensure that counsel will be available to represent their client, counsel regularly receives no response. Failing to coordinate with counsel prior to the CFI causes unnecessary harm to the asylum seeker, either by forcing them to proceed with their interview without representation, or asking for a continuance to ensure the CFI takes place at a time when counsel is available, and thereby extending the asylum seeker’s time in detention. These conditions impede asylum seekers’ ability to participate meaningfully in the credible fear process.

The example below demonstrates the effect of the noncitizen not being given adequate time to prepare for the CFI:

Mr. XX fled Cuba and presented at the port-of-entry seeking asylum. After being transported between multiple holding facilities, and an 8-hour bus ride in handcuffs, he arrived at a detention facility in Texas very tired and scared. He was taken to his CFI disoriented and confused. He did not understand what the interview was for. During the interview, the Asylum Officer told Mr. XX to limit his responses to the questions she asked, making him feel like he could not add additional details or explanations to his responses. His CFI was denied and he was transferred again to a different facility in Eloy, Arizona where an IJ affirmed his CFI via video-teleconference in a hearing where Mr. XX was barely allowed to speak. Only after this ordeal was Mr. XX able to contact a

³³ 8 C.F.R. § 208.30(d)(1).

³⁴ 8 C.F.R. § 208.30(d)(2).

*Florence Project staff attorney who, after reviewing the CFI record and speaking with Mr. XX, found that there was key information missing about the persecution by the Cuban government that Mr. XX. and his family suffered based on their Chinese background. The Florence Project successfully represented Mr. XX. in an RFR before the Houston Asylum Office.*³⁵

If Mr. XX had not made contact with a Florence Project staff attorney, he would not have been able to vacate the expedited removal order issued against him and he may have been erroneously returned to Cuba without the opportunity to present his claim. This example represents an unfortunately common scenario in which asylum seekers are forced to proceed with CFIs with little or no information about their significance and after enduring the disorientation of multiple transfers.

III. Conclusions and Recommendations:

While we are concerned generally with how asylum officers conduct CFIs, we have seen that the Houston Asylum Office in particular has failed to apply the proper legal standard in conducting CFIs, denying bona fide asylum seekers the opportunity to present their cases in full hearings, and endangering their lives by returning them to harm's way without due process.

Moreover, these deficient CFIs cause applicants to remain in detention far longer than necessary, at expense to the federal government and U.S. taxpayers. In one egregious case, an asylum seeker fleeing homophobic persecution in Ghana spent over a year in immigrant detention after the Houston Asylum Office issued a wrongful negative credible fear determination. He was released only after securing counsel to submit an RFR and in total spent over 14 months in ICE custody.³⁶ If the Houston Asylum Office conducted these threshold interviews correctly, asylum seekers would be quickly screened to determine whether they meet the intentionally low standard of “significant possibility” of qualifying for asylum, as Congress intended.

The above examples demonstrate a number of problems with the conduct and determinations of CFIs conducted by the Houston Asylum Office. Overall, the Houston Asylum Office has shown an egregious pattern of issuing negative findings of potentially meritorious asylum claims and applying unduly high standards for the demonstration of credible fear that conflict with the immigration statute and regulations, *Kiakombua*, and RAIO guidance for the use of rare language interpreters and working with specific vulnerable populations. In addition,

³⁵ See Appendix at row 29. Because the Florence Project was not able to obtain a release from this asylum seeker, we refer to him as Mr. XX here.

³⁶ See Appendix at row 27.

advocates complain of CFIs being conducted in an adversarial manner, shortly after multiple detention transfers, with no information given to the asylum seeker about asylum or the purpose of the CFI process, and no access to counsel for preparation. We urge CRCL to open an investigation of the Houston Asylum Office immediately, and support our recommendations on how it can comply with the law and protect the rights of asylum seekers.

We make the following recommendations for redress of the deficiencies and abuses committed by the Houston Asylum Office:

- First, the Asylum Office should issue a Notice to Appear under INA § 240 and effectuate the release of any asylum seeker for whom it is unable to provide a CFI within a reasonable period of time after their apprehension or entry to the United States. Given that asylum seekers are detained in conditions of confinement that often retraumatize them, we believe that CFIs should be conducted no more than 14 days from the date of apprehension or entry.³⁷ Additionally, given the trauma and disorientation many asylum seekers undergo on their journey to the U.S. border, CFIs should not be conducted fewer than two days after an asylum seeker's arrival in the United States.
- Second, if the Asylum Office cannot provide an interpreter in the applicant's primary language within 48 hours, it should issue a Notice to Appear under INA § 240 as required by the guidance issued on June 14, 2013, *Memorandum: Processing Credible Fear Cases When a Rare Language Interpreter is Unavailable* and effectuate the release of the asylum seeker.³⁸
- Third, the Asylum Office should give counsel at least 48 hours' notice of CFIs so that they can appear at the interviews and represent their clients.
- Fourth, all officers at the Asylum Office who conduct CFIs should be required to undergo ongoing training on trauma-informed interviewing techniques, interviewing vulnerable populations, and on understanding the significant possibility standard. Additionally, officers should be trained on non-adversarial interviewing.

³⁷ Once the Asylum Processing Rule goes into effect, it will be even more important that CFIs are conducted in accordance with the law since the notes from these interviews will form the basis of the asylum application. Given the expedited timeline once CFIs are completed, we are concerned that there will be a disincentive for the Asylum Office to timely complete CFIs.

³⁸ Under the Asylum Processing Rule, the notes from the CFI will become the asylum application itself, making it even more important that asylum seekers have access to interpreters who are fluent in their primary language. *See* proposed 8 C.F.R. § 208.3(a)(2)

- Fifth, USCIS should develop new training and guidance for the conduct of CFIs that comport with statutory requirements and standards, and the related guidance produced by RAIO for the fair consideration of asylum claims. At a minimum, we believe that the 2017 CFI Lesson Plan should be reissued and updated to include the amendments ordered by the court in *Kiakombua*. USCIS should also ensure that asylum officers receive regular, ongoing training concerning claims based on LGBTI group membership, including cultural sensitivity training for interviewing LGBTI people. We would welcome the opportunity to engage with USCIS to develop guidance that is more clearly aligned with the statute, and that implements any forthcoming regulations with the principles outlined in this complaint.
- Sixth, the Asylum Office should implement a robust procedure for investigating complaints of its officers' failure to follow the required CFI guidelines. Supervisory Asylum Officers should not only review CFI decisions, they should regularly monitor interviews to ensure that Asylum Officers are conducting interviews appropriately, using non-adversarial interview techniques, and employing the proper legal standard.

Through the complaints described in the attached spreadsheet, we have documented disturbing trends in the conduct of CFIs by the Houston Asylum Office, particularly of asylum seekers detained at facilities near the border and in the southeastern part of the United States. We await CRCL's response, and look forward to working with you to provide guidance to ensure that the rights of people seeking asylum in the United States are upheld. Please feel free to contact Victoria Neilson at the National Immigration Project of NLG, victoria@nipnlg.org, (202) 742-4447, or Mich Gonzalez at Southern Poverty Law Center, SIFI, mich.gonzalez@splcenter.org, (786) 753-1383 if you have any questions or would like to schedule a meeting.

Sincerely,

American Gateways
 Black Alliance for Just Immigration (BAJI)
 Florence Immigrant & Refugee Rights Project
 Immigration Equality
 Immigrant Legal Resource Center (ILRC)
 National Immigration Project (NIPNLG)
 Refugee and Immigrant center for Education and Legal Services (RAICES)

Southern Poverty Law Center (SPLC)
Texas A&M University School of Law - Legal Clinics
University of San Francisco - Immigration & Deportation Defense Clinic and Migration Studies
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cc:

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