



The
CENTER for
VICTIMS of
TORTURE

Submitted via Federal eRulemaking Portal

August 15, 2019

Department of Homeland Security (USDHS)

Executive Office for Immigration Review (EOIR)

Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review

Re: Agency EOIR, Docket No. 19-0504 - Public Comment Opposing the Proposed Changes to Asylum Eligibility Criteria and Procedural Modifications. EOIR Docket No. 19-0504; A.G. Order No. 4488-2019.

Dear Ms. Alder Reid:

We are writing on behalf of the Center for Victims of Torture (CVT) to oppose the Department of Homeland Security (DHS), Executive Office for Immigration Review (EOIR) proposed changes to Asylum Eligibility Criteria, Docket Number 19-0504, published in the Federal Register on July 16, 2019.

The proposed rule will be extremely detrimental to survivors of torture, as it is designed to limit refugees' access to the asylum process in the United States. It creates a safe third country policy—which bars asylum seekers from qualifying for asylum if they transited through another country before arriving at the United States southern border—and does so unilaterally, notwithstanding the inability of the transit countries to provide safety, as they face continuous incidences of violence and corruption.

For the reasons detailed in the comments that follow, DHS and EOIR should immediately withdraw their current proposal and dedicate their efforts to advancing policies that safeguard individuals fleeing persecution in their home countries.

Thank you for the opportunity to submit comments on this interim final rule. Please do not hesitate to contact CVT with any questions or for further information.

/s/ Andrea Carcamo Cavazos

Andrea Carcamo
Senior Policy Counsel
acarcamo@cvt.org

/s/ Scott Roehm

Scott Roehm
Washington Office Director
sroehm@cvt.org

DETAILED COMMENTS in opposition to EOIR, Docket No. 19-0504. Public Comment Opposing Changes to Asylum Eligibility Criteria and Procedural Modifications.

The Center for Victims of Torture (CVT) welcomes the opportunity to comment on the Interim Final Rule creating changes to Asylum Eligibility and Procedural Modifications, EOIR Docket No. 19-0504 (“the proposed rule,” or “IFR”).

Founded in 1985 as an independent non-governmental organization, CVT is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the U.S., the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives and restores the hope of more than 25,000 primary and secondary survivors of torture, other gross human rights violations, and severe war-related trauma. The vast majority of CVT’s clients in the United States are asylum seekers and refugees.

CVT also conducts research, training and advocacy, with each of those programs rooted in CVT’s healing services. The organization’s policy advocacy leverages the expertise of five stakeholder groups: survivors, clinicians, human rights lawyers, operational/humanitarian aid providers, and foreign policy experts. CVT organizes a network of torture treatment programs focused on rebuilding the lives of survivors of torture across the nation. These programs serve primarily asylum seekers, asylees, and refugees.

Historical Context of U.S. Asylum and Refugee Law

The United States’ obligations toward refugees and asylum seekers derive from both domestic and international law (treaty law and customary international law). Many of those obligations—and the United States’ embrace of them—are a result of the horrors of World War II, which caused the displacement of approximately one million European refugees. United Nations member states created the Office of the United Nations High Commissioner for Refugees (UNHCR) on December 14, 1950,¹ which was followed by the 1951 U.N. Refugee Convention and 1967 U.N. Protocol Relating to the Status of Refugees—the two international legal instruments that give rise to contemporary asylum and refugee law. “A person is a refugee as soon as he or she fulfills the criteria contained in the definition and not when he or she is declared or determined to be a refugee by a particular country.”² As a result, many asylum seekers are in fact refugees.

The United States enacted domestic law on this matter in passing the Refugee Act in 1980, which incorporated many of the provisions found in the Refugee Convention and Protocol, most notably the

¹ Statute of the Office of the United Nations High Comm’r for Refugees, G.A. Res. 428(V), U.N. Doc A/1775 (Dec. 14, 1950), available at www.unhcr.org/4d944e589.pdf (last visited on August 8, 2019).

² See office of the United Nations High Comm’r for Refugees, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Handbook), ¶128, U.N. Doc. HCR/PRO/4 (updated 2011), available at www.refworld.org/docid/4f33c8d92.html (last visited on August 8, 2019).

definition of “refugee”³ and the principle of *non-refoulement* (no return),⁴ which prohibits returning those who meet the definition of “refugee” to countries where they would face persecution on account of any of the protected grounds.⁵ The principle’s counterpart in U.S. law is embodied in the withholding of removal provisions (“Withholding”) of the Immigration and Nationality Act.⁶

The prohibition on torture is also relevant in the refugee and asylum context, for several reasons. First, an astonishing number of refugees and asylum seekers are torture survivors.⁷ Second, as a State party to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), the United States has embraced and reinforced obligations to prevent acts of torture; to investigate, prosecute and punish its perpetrators; to exclude evidence obtained under torture; and to refuse to send a person to a place where he or she would be at risk of being tortured (non-refoulement). It has also assumed responsibility for “ensur[ing] in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”⁸ These obligations are absolute: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”⁹ Third, refugees seeking asylum in the United States may also be eligible for relief under CAT, a legal protection separate from—and, as explained below, one that affords less protections and fewer benefits than—asylum.

The IFR is Unlawful

The IFR is inconsistent with both international and domestic law. The IFR will inevitably return refugees to the countries where they will be persecuted, which contradicts the principle of *non-refoulement* engrained in the Refugee Act of 1980 and the 1951 U.N. Refugee Convention. For torture survivors at risk of the same upon return, the IFR will also violate Article 3 of CAT.

Moreover, although the executive branch can “establish additional limitations and conditions... under which an [individual] shall be eligible for asylum,”¹⁰ they must be consistent with the provisions of the

³ INA §101(a)(42); See Convention Relating to the Status of Refugees, *supra* note 11, incorporated by reference, Protocol Relating to the Status of Refugees, *supra* note 12, at art. I, para. 2.

⁴ INA §§ 101(a)(42); See Convention Relating to the Status of Refugees, *supra* note 11.

⁵ Convention Relating to the Status of Refugees, *supra* note 11, at art.33, incorporated by reference in art. I, para. 1 of the Protocol.

⁶ INA §241(b)(3).

⁷ Kalt, et al. *Asylum Seekers, Violence and Health: A Systemic Review of Research in High Income Host Countries*. March 2013. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3673512/>; U.S. Department of Health & Human Services, Office of Refugee Resettlement. *Services for Survivors of Torture*. Available at <https://www.acf.hhs.gov/orr/programs/survivors-of-torture> (last visited on August 8, 2019).

⁸ United Nations. *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; General Comment No. 3 of the Committee Against Torture*. November, 2012. Available at https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf (last visited on August 8, 2019).

⁹ Convention Relating to the Status of Refugees, at art 2., incorporated by reference in art. I, para. 1 of the Protocol.

¹⁰ 8U.S.C. §1158(b)(2)(C).

INA found at 8 U.S.C. § 1158. By imposing a categorical bar on persons fleeing persecution who have entered the United States at our southern border for anyone who passed through another country before entering the United States, the new rule exceeds the parameters that Congress set forth in two express statutory bars on asylum: claims by asylum seekers who have “firmly resettled” in another country prior to their seeking protection in the United States, and claims by foreign nationals covered by safe third country agreements.¹¹

Survivors of Torture will be Adversely Affected by the IFR:

The IFR will affect the many torture survivors coming through the southern border who are not Mexican. The proposed rule revises 8CFR 208.13(c) as follows:

[The IFR adds] a new mandatory bar to eligibility for asylum for an [individual] who enters or attempts to enter the United States across the southern border, but who did not apply for protection from persecution or torture where it was available in at least one third country outside the [individual’s] country of citizenship, nationality, or last lawfully habitual residence through which he or she transited en route to the United States.

...

The bar would be subject to several limited exceptions, for (1) an [individual] who demonstrates that he or she applied for protection from persecution or torture in at least one of the countries through which the [individual] transited en route to the United States, and that [he or she] received a final judgment denying [him or her] protection in such country; (2) an [individual] who demonstrates that he or she satisfies the definition of “victim of a severe form of trafficking in persons” provided in 8 CFR 214.11; or (3) an [individual] who has transited en route to the United States through only a country or countries that were not parties to the 1951. Convention Relating to the Status of Refugees, the 1970 Protocol, or the CAT.¹²

As Mexico is party to the Refugee Convention, any non-Mexican citizen seeking asylum at the Southern Border will be barred from asylum. Many asylum seekers, and the substantial population of torture survivors among them, who are fleeing gangs with international reach will be asked to remain in transit countries where they will face the same fate, as those countries do not have the infrastructure to keep asylum seekers safe. Nearly half of those seeking asylum at our border are likely to be survivors of torture.¹³

¹¹ 8U.S.C. §1158(b)(2)(A)(vi).

¹² EOIR, Docket No. 19-0504 at 22.

¹³ Kalt, et al. *Asylum Seekers, Violence and Health: A Systemic Review of Research in High Income Host Countries*. march 2013. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3673512/> (last visited on August 8, 2019); Health

Contrary to the administration's claims, implementation of the IFR will also put severely traumatized, otherwise asylum-eligible individuals—including torture survivors—at heightened risk of deportation to persecution.¹⁴

Once it is determined the new bar applies to an asylum seeker the immigration officer will conduct a reasonable fear interview to assess whether the survivor qualifies for protection under Withholding or CAT. Both Withholding and CAT Protection require refugees to show that it is more likely than not—i.e., greater than 50% chance—that they will be persecuted on one of the protected grounds (Withholding) or tortured (CAT Protection) if returned to their country. By contrast, asylum requires a “significant possibility,” which can be as low as a 10% chance. Survivors of torture are likely to face difficulties meeting the higher threshold of a reasonable fear interview, but not because the facts of their cases are insufficient. According to CVT clinicians, it is difficult for most torture survivors to share the painful experiences of their torture even in the safety of our healing centers. Asking them to do so under the increasingly coercive conditions imposed by the administration is both unreasonable and cruel. For example, the administration is doubling up border protection officers as asylum officers, who are now conducting credible and reasonable fear interviews. Many survivors were detained and tortured at the hands of officials in uniform, and in institution-like settings. They are far [less likely to disclose](#) extremely personal experiences under circumstances that trigger reminders of the trauma they suffered, and as such some may well be returned to face the torture they fled in violation of Article 3 of CAT.

Moreover, even if refugees are granted protection under Withholding or CAT, neither form of protection grants nearly the same immigration and social benefits to the survivor as asylum does, which poses significant barriers to the survivor's healing.

Limited and uncertain legal status, in addition to increased risk of detention

Unlike asylees, relief under Withholding or CAT does not lead to a green card or eventual citizenship. Virtually the only benefit afforded to a recipient of one of those forms of protection is a work permit. This means that the asylum-seeker could be sent back to his or her country of origin if the Department of Homeland Security later reopens his or her case in immigration court and establishes that he or she is no longer likely to be tortured in the country of removal. Many times survivors have to attend ICE check-ins and provide evidence to demonstrate they continue to request protection from other nations.

[They] are left in long-term legal limbo. In fact, the immigration judge enters an order of removal but simultaneously freezes the deportation by granting withholding of removal or CAT protection. While the refugee cannot be returned to the country where the immigration judge has found he or she is more likely than not to be persecuted or tortured, the refugee has not been granted any immigration status. The government

and Human Services. Office of Refugee Resettlement. *Services for Survivors of Torture*. also available at <https://www.acf.hhs.gov/orr/programs/survivors-of-torture> (last visited on August 14, 2019).

¹⁴ EOIR, Docket No. 19-0504 at 20.

sometimes continues to detain these refugees and can try to remove them to another country.¹⁵

Limited and uncertain legal status further complicates an already challenging but near-universal early goal of treatment for torture and trauma survivors: restoring a sense of safety. As CVT's Director of Client Services, Dr. Northwood, has explained, without effective rehabilitation many torture victims "are unable to achieve the subjective sense of safety and calm that healthy people take for granted due to the dysregulation of their nervous system under chronic threat."¹⁶

For example, one of CVT's clients was able to study because she had access to financial aid due to her status as an asylee. She finished her BA very quickly, and is now working in the healthcare field, which has helped tremendously in her healing. Absent that sense of safety and stability, many survivors struggle to heal, to reconstruct their social connections, to improve their socioeconomic situation, and to focus on building a future in the United States.

Family Separation

As colleagues at Human Rights First have explained:

One of the most damaging consequences of extending only withholding of removal or CAT protection to refugees is the potential for permanent family separation. Because these limited forms of relief apply only to the applicant, refugees cannot include spouses and children under their applications. As a result, an immigration judge may grant protection to a refugee parent but order a child deported. Similarly, these refugees cannot petition to bring their children and spouses to safety in the United States as refugees granted asylum or resettled from other countries can. A refugee's children and spouse may be left stranded in dangerous or even life-threatening situations abroad. These refugees cannot even visit family abroad since neither withholding nor CAT protection entitles a refugee to a travel document.¹⁷

Many of the serious negative health consequences associated with family separation have been well documented.¹⁸ One less commonly acknowledged consequence, which affects many CVT clients and

¹⁵ Human Rights First. *Withholding of Removal and the U.N. Convention Against Torture—No Substitute for Asylum, Putting Refugees at Risk*. November 2018, available at https://www.humanrightsfirst.org/sites/default/files/CAT_Withholding.pdf (last visited on August 8, 2019).

¹⁶ Brief for the Center for Victims of Torture as Amicus Curiae at 11, *Al Bihani et al. v. Trump*, 09-cv-00745-RCL (D.C. Dist. Ct., January 24, 2018)(hereinafter "CVT Guantanamo Amicus Brief"), available at <https://www.cvt.org/sites/default/files/Final%20Amicus%20Brief-4.Jan%202018.pdf> (last visited on August 8, 2019).

¹⁷ Human Rights First. *Withholding of Removal and the U.N. Convention Against Torture—No Substitute for Asylum, Putting Refugees at Risk*. November 2018, available at https://www.humanrightsfirst.org/sites/default/files/CAT_Withholding.pdf (last visited on August 8, 2019).

¹⁸ See, e.g., Letter to DHS Secretary Kirstjen Nielsen and Attorney General Jeff Sessions from medical and mental health professionals and researchers working in the United States, June 2018, available at <https://secure.phr.org/secure/family-separation-sign-letter> (last visited on August 8, 2019); See also Statement

families who were forced to leave loved ones behind when they fled their home countries, is “ambiguous loss:” the uncertainty of not knowing whether family members are dead or alive, absent or present.¹⁹

As the IFR will prevent survivors of torture and other inhumane treatment from accessing asylum and keeping their families safe, it will complicate and, in many cases, prevent survivors’ healing due to the uncertainty and lack of permanence of their status in the United States.

A CVT client from East Africa made the journey to the southern border through South and Central America. He was persecuted for establishing a school, as he was accused of “organizing” the students against the government. His son and wife are still in his home country, a fact that constantly troubles him and prevents his healing. If he was unable to obtain asylum—and obtaining CAT or Withholding instead—he will be unable to bring them to the United States.

In Making Broad Assumptions, the Administration Wrongfully States the Rule Serves to Weed out Meritless Claims.

According to the administration:

[O]ver the past decade, the overall percentage of [persons] subject to expedited removal and referred, as part of the initial screening process, for a credible-fear interview on claims of a fear of return has jumped from approximately 5 percent to above 40 percent. The number of cases referred to DOJ for proceedings before an immigration judge has also risen sharply, more than tripling between 2013 and 2018. These numbers are projected to continue to increase throughout the remainder of Fiscal year (“FY”) 2019 and beyond. Only a small minority of these individuals, however, are ultimately granted asylum.²⁰

...

[M]ore than 436,000 of the currently pending immigration cases include an asylum application. But a large majority of the asylum claims raised by those apprehended at the southern border are ultimately determined to be without merit. The strain on the immigration system from those meritless cases has been extreme and extends to the judicial system.²¹

from Ana María López, MD, MPH, FACP, President, American College of Physicians, *available at* <https://www.acponline.org/acp-newsroom/acp-objects-to-separation-of-children-from-their-parents-at-border>. (last visited on August 8, 2019).

¹⁹ Northwood and Utrzan, *Broken Promised and Lost Dreams: Navigating Asylum in the United States* at 5, *Journal of Marital and Family Therapy* (2016) (citing Boss, 2004; p.554).

²⁰ EOIR, Docket No. 19-0504 at 5.

²¹ *Id.* at 6.

In other words, the administration assumes the reason why asylum seekers are not winning in court, notwithstanding having passed a credible fear interview, is because they have “meritless claims,” but it provides no explanations or evidence—beyond raw numbers—to support that assumption. A more likely, and evidence-based, explanation for the low grant rates is that the immigration court system does not work. For example:

- According to a study of removal cases between 2007 and 2012, only 37% of immigrants were able to secure legal representation.²²
- An individual is statistically five times more likely to obtain asylum if they are represented by an attorney.²³ In 2017, “90 percent of applicants without an attorney were denied, while almost half of those with representation were successful in receiving asylum.”²⁴
- An asylum attorney can cost upwards of \$10,000.
- Pro-bono legal assistance for asylum is very limited. Some non-profits and other practitioners provide low-bono assistance, but even then the low-bono rate can range from \$1,000 to \$5,000. Very few legal service providers can offer free representation.
- As immigration Judges have significant discretion, there is a substantial discrepancy in grant rates in different jurisdictions.²⁵ This means that asylum seekers’ ability to obtain relief depends largely on their physical location, rather than the merits of their claim.
- Some asylum seekers are determined not to have a meritorious claim without having been provided a meaningful opportunity to present their case. For example, lack of adequate instructions by government officials regarding court location and dates leads to *in absentia* removal orders, which are then interpreted as “meritless” claims.²⁶

In other words, the better assumption is that the IFR will more likely prevent the entry of those with *meritorious* claims than it will those without.

²² American Immigration Council. *Access to Counsel in Immigration Court. September 2016.* <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court> (last visited on August 8, 2019).

²³ TRAC Immigration. *Asylum Representation Rates Have Fallen Amid Rising Denial Rates.* <https://trac.syr.edu/immigration/reports/491/>; American Immigration Council. *Access to Counsel in Immigration Court. September 2016.* <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court> (last visited on August 8, 2019).

²⁴ National Immigration Forum. *Fact Sheet: U.S. Asylum Process.* Jan, 2019. <https://immigrationforum.org/article/fact-sheet-u-s-asylum-process/> (last visited on August 8, 2019).

²⁵ TRAC Immigration. *Judge-by-Judge Asylum Decisions in Immigration Courts FY 2013-2018.* <https://trac.syr.edu/immigration/reports/judge2018/denialrates.html> (last visited on August 8, 2019)

²⁶ CLINIC. *Denied a Day in Court: The Government’s Use of In Absentia Removal Orders Against Families Seeking Asylum.* 2018. <https://cliniclegal.org/resources/denied-day-court> (last visited on August 8, 2019).

The Administration States the IFR will Prevent Those who Falsely Claim Asylum from Being Allowed to Enter the United States.

The Administration states that “[t]his rule mitigates the strain on the country’s immigration system by more efficiently identifying [individuals] who are misusing the asylum system to enter and remain in the United States rather than legitimately seeking urgent protection from persecution or torture.”²⁷

The administration makes the unfounded assumption that anyone who does not seek asylum in a transit country will not meet the definition of “refugee.” As discussed above, to the extent that assumption is based on asylum grant rates, it lacks a sufficient evidence base. Further, the administration does not offer proof that individuals who have valid claims are more likely to apply for relief in the first country in which they arrive. It is unreasonable to expect survivors to apply for asylum in crime and corruption infested countries. The reality is that the bar will apply to many with valid asylum claims, the IFR will result in the return of individuals to countries where they may face death, or even torture, thus violating domestic and international law.

The Administration Claims to be Concerned the Immigration Court Backlog will Increase by Asylum Seekers Arriving at the Southern Border While Continuing to Create Policies that Exacerbate this Backlog.

The Administration claims to be concerned by the addition of cases to a system facing a significant backlog:

The large influx of [individuals] also consumes substantial resources of DOJ, whose immigration judges adjudicate aliens’ claims and whose officials are responsible for prosecuting and maintaining custody over those who violate Federal criminal law. Despite DOJ deploying close to double the number of immigration judges as in 2010 and completing historic numbers of cases, currently more than 900,000 cases are pending before the immigration courts. This represents an increase of more than 100,000 cases (or a greater than 13 percent increase in the number of pending cases) since the start of FY 2019. And this increase is on top of an already sizeable jump over the previous five years in the number of cases pending before the immigration judges. From the end of FY 2013 to the close of FY 2018, the number of pending cases more than doubled, increasing nearly 125 percent.²⁸

There is no question there is a backlog in the adjudication of cases. However, since its inception, the Trump administration has created immigration policies that have bloated the backlog. The first was to stop allowing the administrative closure of cases, for which the respondent had to show good moral

²⁷ *Id.* at 5-6.

²⁸ EOIR, Docket No. 19-0504 at 6.

character and that he or she was an asset to the community.²⁹ “With a stroke of a pen, the court removed 330,211 previously completed cases and put them back on the ‘pending’ rolls. These cases were administratively closed, and had been considered part of the court’s completed caseload.”³⁰ Under previous administrations there had been a priority list of those to remove from the United States, which—smartly—deprioritized immigrants without a criminal history, and those who had family ties to United States citizens and ties to the community.³¹ Unfortunately, the Trump administration has done away with that prioritization and is seeking to deport anyone lacking adequate immigration documentation in the United States, which has added and continues to add more cases to an already taxed immigration docket. In addition, in 2018, USCIS issued a memorandum stating it would place in removal proceedings individuals whose applications with the agency were denied,³² which inevitably meant that additional individuals would be placed in the immigration court docket. “Since Trump took office, the nationwide backlog has grown by 68 percent to 877,000 cases.”³³ The administration decided not to grant Venezuelans fleeing the Maduro regime Temporary Protected Status, a move that would have diverted a significant number of applicants from the affirmative asylum process, since Venezuelans are by far the largest nationality applying for affirmative asylum.³⁴ Unprecedented ICE raids are also adding to the backlog. “[U]nder the Trump administration, the immigration court backlog has grown much faster in one year than the inflow of migrants—at a rate almost three times that of new cases coming into the courts.”³⁵

If the administration was truly concerned about reducing the backlog, it could and should focus on the many executive actions and policy changes it has adopted that are exacerbating the backlog, rather than stripping persecuted people of their right to seek asylum in the United States.

²⁹ NOLO. *Prosecutorial Discretion All But Dead as Immigration Remedy, Owing to Trump Order*. Available at <https://www.nolo.com/legal-encyclopedia/prosecutorial-discretion-all-but-dead-as-immigration-remedy-owing-to-trump-order.html> (last visited on August 8, 2019).

³⁰ TRAC Immigration. *Immigration Court Backlog Surpasses One Million Cases*. Available at <https://trac.syr.edu/immigration/reports/536/> (last visited on August 8, 2019).

³¹ American Immigration Council. *The End of Immigration Enforcement Priorities Under the Trump Administration*. 2018. Available at <https://www.americanimmigrationcouncil.org/research/immigration-enforcement-priorities-under-trump-administration> (last visited on August 8, 2019).

³² USCIS Policy Memorandum. Available at <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum> (last visited August 8, 2019).

³³ Politico. *How Trump Broke the Immigration Courts*. June 2019. Available at <https://www.politico.com/magazine/story/2019/07/16/trump-ice-raids-immigration-courts-arent-ready-227359> (last visited on August 8, 2019).

³⁴ USCIS. *Asylum Office Workload, January, 2019*. Available at https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AffirmativeAsylumStatisticsJan2019.pdf (last visited on August 8, 2019).

³⁵ Politico. *How Trump Broke the Immigration Courts*. June 2019. Available at <https://www.politico.com/magazine/story/2019/07/16/trump-ice-raids-immigration-courts-arent-ready-227359> (last visited on August 8, 2019).

Smugglers did not Create the Humanitarian Crisis at the Border, and Whether or not the IFR Reduces Smuggling it will not Resolve that Crisis.

According to the Administration:

...the rule seeks to curtail the humanitarian crisis created by human smugglers bringing men, women, and children across the southern border. By reducing the incentive for aliens without an urgent or genuine need for asylum to cross the border—in the hope of a lengthy asylum process that will enable them to remain in the United States for years, typically free from detention and with work authorization, despite their statutory ineligibility for relief—the rule aims to reduce human smuggling and its tragic effects.³⁶

The idea that smugglers are creating the humanitarian crisis at the southern border is preposterous. It is illogical to fathom that people are risking their lives to come to the United States because there suddenly are more individuals willing to take them in exchange for large sums of money. Refugees are not coming to the United States because smugglers exist, they are coming here because unprecedented violence and persecution—including torture—in Central America and other countries has left them no choice.³⁷ Smuggling is a consequence, not a cause, and the desperate need for people to flee which has allowed the smuggling business to keep growing.

For example, one of CVT's clients from West Africa travelled north to the United States through Central America and Mexico after arriving in Ecuador. She was raped along the way, and became pregnant as a result. She mentioned that people travelled through Mexico in groups, and that she witnessed people dying or being killed along the way. She would have been unable to remain in Mexico because of the lack of access to basic needs and medical care. She faces ongoing threats and death in her home country and several of her family members have been killed, including her husband.

Moreover, while the administration claims it wants to diminish the tragic effects of smuggling, it continues to create policies that incentivize clandestine border crossings. The Remain in Mexico and metering policies force asylum seekers to wait in dangerous Mexican cities for long periods of time, thereby giving asylum seekers no option but to attempt crossing with the help of smugglers. Similarly, the IFR will put individuals in more danger. As more asylum seekers (for the reasons mentioned above) are unable to pass the higher threshold of the reasonable fear interview, they will have an incentive to attempt crossing the border with smugglers to avoid being returned to a country that will not protect

³⁶ EOIR, Docket No. 19-0504 at 7.

³⁷ Amnesty International. *Fleeing for our Lives: Central American Migrant Crisis*. <https://www.amnestyusa.org/fleeing-for-our-lives-central-american-migrant-crisis/>; Doctors Without Borders. *What is the Central American migration crisis?* <https://www.doctorswithoutborders.org/central-american-migration-crisis>; Emerson Collaborative, *Overlooked War: Why Central American Refugees are Fleeing to the U.S.* June 2016. <https://www.emersoncollective.com/articles/2016/06/overlooked-war-why-central-american-refugees-are-fleeing-to-the-u-s/>

them, or where they will face persecution. And those who make that desperate choice will face the risk of smugglers holding them for ransom and / or turning them into victims of labor or sex trafficking.³⁸

CONCLUSION:

The administration must withdraw this Rule, which is unlawful and will seriously harm both asylum seekers generally and survivors of torture specifically.

³⁸DHS. *The Perils of Illegal Border Crossing*. July, 2018. Available at <https://www.dhs.gov/news/2018/07/19/perils-illegal-border-crossing> (last visited August 14, 2019).