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August 15, 2019

Lauren Alder Reid
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RE: EOIR Docket No. 19-0504, Comments in Response to Interim Final Rule: Asylum Eligibility and Procedural Modification

Dear Ms. Reid:

I write on behalf of the Human Rights Initiative of North Texas in strong opposition to the Executive Office for Immigration Review's interim final rule ("IFR") to amend regulations regarding asylum eligibility and procedural modification, published in the Federal Register on July 16, 2019. The IFR, which contravenes United States and international law, turns people fleeing persecution back to their persecutors simply because their journey to safety was too circuitous. It is a callous rejection of our international responsibility to be a safe haven for people fleeing persecution, torture, and death.

Human Rights Initiative of North Texas ("HRI") is a non-profit legal services agency that represents people fleeing humanitarian abuses from all over the world. Our clients include asylum seekers pursuing relief through both affirmative and defensive proceedings. Every day for nearly twenty years, HRI has represented people who have fled horrifying abuse in their home countries for speaking up against government corruption, for practicing their faith, and for living their authentic lives.

HRI operates with a pro bono model, in which our in-house legal experts mentor teams of pro bono attorneys to help our clients navigate our complex asylum system. Before connecting a client with one of our more than 250 pro bono attorneys from top DFW firms and corporations, HRI's staff conducts a rigorous screening to determine whether the individual qualifies for relief under our laws, and whether the person has sufficient, credible evidence to prove her claim. Despite this Administration's barrage of policies designed to make it more difficult for people fleeing persecution to seek assistance, HRI continues to sign on clients who have survived serious atrocities and managed to secure entry into the United States to pursue their claims.

The IFR would have profound effects on people's ability to seek relief in the U.S., functionally eviscerating protections for many asylum seekers like the people we serve. The Departments of Justice and Homeland Security should rescind this unlawful rule, and address the very real, regional humanitarian crises in Honduras, Guatemala, and El Salvador with meaningful strategies that address the rights abuses and deprivations that have pushed people to flee; enhance the capacity of Mexico and other countries to provide asylum and host refugees; manage U.S. asylum arrivals with a genuine humanitarian response rooted in due process; and upgrade the U.S. asylum and immigration court systems.

I. HRI SERVES CLIENTS WHO TRAVEL BY NECESSITY THROUGH OTHER COUNTRIES TO REACH SAFETY IN THE U.S.

HRI's clients flee to the U.S. for safety from across the world. For years, we have served clients from African countries who have travelled through Central and South America to reach the U.S. because they were unable to secure American travel visas. We also regularly serve clients from Central and South American countries, who must travel up through Central America to present themselves at the U.S.-Mexico border for relief.

For example:

- Beza,* who is Eritrean by descent and born in Ethiopia, fled to the U.S. from Sudan after years of forced displacement because of her Pentecostal Christian faith. She and her husband hired smugglers to get passports and get to the U.S. They flew from Khartoum to Dubai to Spain, and then on to Mexico City. From Mexico City, they took a bus to a U.S. border city and then a taxi to the U.S. port of entry, where they presented themselves and asked for asylum. They were granted asylum in 2013.
- Diana* fled to the U.S. from El Salvador, where the police did nothing in response to her repeated reports of rapes and beatings by her partner, despite having a restraining order. With the help of her family, she paid a smuggler to help her reach Texas, traveling by bus to Guatemala, and on to Mexico in an eighteen-wheeler truck. Diana was granted asylum in 2017.
- Emilio* fled to the U.S. from Nicaragua at the age of 10, where he had been beaten and neglected by his grandmother and sexually assaulted by an adult close to his family. His mother purchased him a flight to Guatemala, where he met a coyote who took him on buses to Mexico and crossed into the U.S. He was granted asylum in 2017.
- Kamal* fled to the U.S. from Sudan, where he had been tortured and threatened with death for speaking out against the government-controlled Janjaweed militia, President al-Bashir, and the Sudanese government. Kamal took an 18-hour bus trip to a city that bordered Egypt, and then a ten-hour train to Cairo. Knowing that Egypt was particularly dangerous for Sudanese people at the time, he paid a smuggler \$5,000 to help him obtain a visa to Mexico, where he had arranged for someone to assist him in obtaining travel documents to Europe. He made it to Mexico City, where his contact set him up to be mugged, leaving him without his passport and with little money remaining. An immigrant

community in Mexico City temporarily took him in and helped raise enough money to get him to San Ysidro, California, where he immediately surrendered to immigration officials. He was granted asylum in 2018.

* Names changed for anonymity

At present, HRI has clients with pending asylum claims from Cameroon, the Democratic Republic of Congo, and Honduras, all of whom have traveled, by necessity, through other countries before arriving at the U.S. Southern Border. Under the new rule, people just like our clients—escaping persecution and unable to travel by air or sea directly to the U.S.—will be barred from pursuing their legitimate asylum claims.

II. OBTAINING A TRAVEL VISA IS OFTEN IMPOSSIBLE FOR PEOPLE FLEEING PERSECUTION.

The only practical way for someone (other than a Mexican national) to reach the U.S. and seek asylum under the new rule is to fly directly to the U.S. interior, which requires a visa. For many people like our clients, obtaining a visa—even a nonimmigrant tourist visa—is simply impossible.

Many barriers can make securing an American travel visa out of reach. To secure a visa, a person must submit an online application, wait for an appointment, and then interview in-person at an American consulate. Some countries from which our clients flee, like Libya and Venezuela, do not have a U.S. Embassy or Consulate, making it “more difficult to qualify for a visa” even if a person is able to travel internationally for their interview.¹ Many countries from which our clients flee, like Somalia and Sudan, have very high refusal rates for visitor visas—rates that, for the most part, have increased under the current Administration.² Those refusal rates make it even less likely that someone will be able to secure travel documents. And, even if a person is seeking a visa in a country that has an American embassy with a relatively low refusal rate, there is generally a waiting period. For example, the wait time in Uganda, which had a 42% refusal rate last year, was 22 calendar days as of August 15, 2019.

Many of HRI’s clients must flee at a moment’s notice. If they don’t already have a tourist visa in hand, they may not have the time to see if they will be among the lucky visitors from their country to secure a visa. Kamal,* for example, had to flee within hours after Janjaweed militiamen attacked him in his home in the middle of the night and gave him one day to leave Sudan or be killed.

¹ *Visitor Visa*, U.S. DEP’T STATE, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html> (last visited Aug. 15, 2019); *Countries With Limited or No U.S. Visa Services*, U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/countries-limited-visa-services.html> (last visited Aug. 15, 2019).

² *Compare, e.g.*, U.S. DEP’T STATE, ADJUSTED REFUSAL RATE – B-VISAS ONLY BY NATIONALITY FISCAL YEAR 2018 (2019), <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY18.pdf> (showing rates for Angola, Burundi, Cameroon, Guatemala, Honduras, El Salvador, Libya, Sierra Leone, Somalia, Sudan, Syria, Uganda, and Zimbabwe, for example), *with* U.S. DEP’T STATE, ADJUSTED REFUSAL RATE – B-VISAS ONLY BY NATIONALITY FISCAL YEAR 2015 (2016), <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY15.pdf> (same).

For people like Kamal, the only way to reach safety in the U.S. is to travel to a country that does not require a travel visa and journey up through Central America. The IFR eviscerates their opportunity to pursue asylum in the U.S.

III. IT IS UNSAFE FOR MANY INDIVIDUALS TO SEEK ASYLUM IN THE COUNTRIES THROUGH WHICH THEY TRANSITED.

For many of HRI's clients, seeking asylum in the countries through which they transited is a perilous proposition. For some, the proximity of neighboring countries means that the persecutors they've fled from are still within reach. Nicaragua, El Salvador, Honduras, and Guatemala are part of a 4 Border Control Agreement, which permits the free movement of citizens throughout the region³—making it relatively easy for persecutors to find and follow someone who has fled.

Even if they are safe from the persecutors in their home country, the conditions in Mexico and Guatemala are increasingly perilous for foreigners traveling to safety. The U.S. Department of State reports that “[v]iolent crime, such as armed robbery and murder, is common” and “[g]ang activity, such as extortion, violent street crime, and narcotics trafficking, is widespread.”⁴ Guatemala has high levels of violence, inequality, and poverty, and gang-violence and extortion are rampant.⁵

As people travel up through Mexico, conditions continue to pose serious dangers. People traveling through Central America to seek safety in the U.S. are often targeted with violence during their journey in Mexico—particularly with sexual violence.⁶ The U.S. Department of State reports that “[v]iolent crime, such as homicide, kidnapping, carjacking, and robbery is widespread” across the country, and identifies risks of violent crime and criminal organization/gang-based activity in all of the U.S.-Mexico border states (Baja California Sur, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas).⁷ Asylum seekers waiting in Mexican border states for the American immigration courts to adjudicate their claims report rape,

³ E.g., *Immigration Laws*, U.S. EMBASSY IN NICARAGUA, <https://ni.usembassy.gov/u-s-citizen-services/citizenship-services/immigration-laws/>.

⁴ *Guatemala Travel Advisory*, U.S. DEP'T STATE, Feb. 28, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/guatemala-travel-advisory.html>.

⁵ U.S. DEP'T STATE, GUATEMALA 2018 HUMAN RIGHTS REPORT (Mar. 2019), <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>; HUMAN RIGHTS FIRST, IS GUATEMALA SAFE FOR REFUGEES AND ASYLUM SEEKERS? (June 2019), https://www.humanrightsfirst.org/sites/default/files/GUATEMALA_SAFE_THIRD.pdf.

⁶ DOCTORS WITHOUT BORDERS, FORCED TO FLEE CENTRAL AMERICA'S NORTHERN TRIANGLE: A NEGLECTED HUMANITARIAN CRISIS 11–12 (May 2017), https://www.doctorswithoutborders.org/sites/default/files/2018-06/msf_forced-to-flee-central-americas-northern-triangle.pdf; Cecilia Menjívar & Andrea Gómez Cervantes, *El Salvador: Civil War, Natural Disasters, and Gang Violence Drive Migration*, MIGRATION POLICY INST., Aug. 29, 2018, <https://www.migrationpolicy.org/article/el-salvador-civil-war-natural-disasters-and-gang-violence-drive-migration> (“Increasingly, crossing Mexico by land has become one of the most treacherous migration undertakings in the world.”).

⁷ *Mexico Travel Advisory*, U.S. DEP'T STATE, Apr. 9, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

kidnaping, sexual exploitation, assault, and other violent crimes.⁸ The homicide rate in Ciudad Juárez has risen five times over the past three years; kidnappings have risen 100% over the first six months of 2019, compared to the same period last year.⁹ Just last week, the director of a migrant shelter in Nuevo Laredo was kidnapped after refusing to hand over people in the shelter to an organized criminal enterprise.¹⁰ These risks are especially high for asylum seekers from African countries, whose race and limited Spanish proficiency make them targets for gang violence and exploitation.¹¹

Our clients recount these realities as they share their journeys with our attorneys. For example, HRI's client Diana,* who fled from El Salvador and traveled through Guatemala and Mexico to reach the U.S., did not feel safe until she was able to cross the border. Her partner was a powerful El Salvadorian business owner and smuggler with many connections in Guatemala. He had found her every time she had moved before—sometimes with the help of gang connections—and she was afraid that he would easily find her again there. She also feared for her safety in Mexico because of the dangerous conditions.

Unfortunately, Diana's story is not uncommon: our clients transiting through Central America can often only find safety in the U.S. The IFR's requirement that asylum seekers pursue relief in another country through which they have traveled puts them at serious risk of harm.

IV. IT IS IMPRACTICAL, UNNECESSARY, AND CRUEL FOR MANY INDIVIDUALS TO SEEK ASYLUM IN THE COUNTRIES THROUGH WHICH THEY TRANSITED.

Mexico and the Northern Triangle countries through which asylum seekers may travel are also poorly equipped to meaningfully adjudicate their claims. Mexico's system is understaffed and under-resourced to process the substantial number of asylum applications that it already receives, and people with legitimate claims for asylum are often erroneously denied relief.¹² Guatemala's

⁸ HUMAN RIGHTS FIRST, *DELIVERED TO DANGER: ILLEGAL REMAIN IN MEXICO POLICY IMPERILS ASYLUM SEEKERS' LIVES & DENIES DUE PROCESS* (Aug. 2019), <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf>; see also *Mexican City of Nuevo Laredo Not a Safe Place for People Seeking Asylum*, DOCTORS WITHOUT BORDERS, July 3, 2019, <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/mexican-city-nuevo-laredo-not-safe-place-people-seeking-asylum> (“According to MSF patient data from January to May of this year, more than 45 percent of 378 patients treated by MSF in Nuevo Laredo have suffered at least one episode of violence in the city . . . [and] 45 people (12 percent) have been kidnapped[.]”); HUMAN RIGHTS WATCH, *WE CAN'T HELP YOU HERE* (July 2019), <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico> (“According to the Mexican government, the country is currently facing an ‘emergency of violence and insecurity,’ and the national security plan of Mexican President Andrés Manuel López Obrador states in its opening sentence that Mexico is ‘among the most unsafe countries in the world.’”).

⁹ *Id.* at 3.

¹⁰ Gus Bova, *Nuevo Laredo Shelter Director Reportedly Kidnapped After Protecting Cuban Migrants*, TEX. OBSERVER, Aug. 11, 2019, <https://www.texasobserver.org/nuevo-laredo-shelter-director-reportedly-kidnapped-after-protecting-cuban-migrants/?fbclid=IwAR1JSNyOMT0jS3IE0odlqD0MLFebYHBq2RVTQsaW57sldyz2bL4WoPLg6WM>.

¹¹ E.g., Lorne Matalon, *Africans in Juarez: The Migration Mosaic Expands*, TEX. STANDARD, Aug. 13, 2019, <https://www.tpr.org/post/africans-ju-rez-migration-mosaic-expands>.

¹² Lizbeth Diaz & Delphine Schrank, *Mexico's Refugee Agency Turns to U.N. Amid Asylum Surge, Funding Cuts*, REUTERS, May 21, 2019, <https://www.reuters.com/article/us-usa-immigration-mexico/mexicos-tiny-refugee-agency->

system is ill-equipped to absorb a large amount of asylum cases, having considered only 262 claims between January and November 2018 and less than 100 the year before.¹³ The systems in El Salvador and Honduras are even less realistic options: in the most recent year, Honduras processed only 107 applications, and El Salvador processed only 20.¹⁴

This data is consistent with what HRI has observed: in our experience, clients who have sought asylum during their journey to the U.S. have faced summary denials, despite their legitimate claims of persecution. One of HRI's clients, for example, sought asylum in five countries in South and Central America before finally reaching the U.S. to seek protection. Requiring asylum seekers to pursue their legitimate asylum claims in countries with systems ill-equipped to make a meaningful determination about their claim is not only impractical and unnecessary; it is cruel.

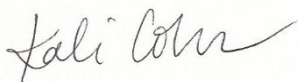
V. CONCLUSION

For the reasons detailed above, the IFR should be immediately rescinded. It is callous rejection of the U.S.'s humanitarian obligations that jeopardizes the safety of people fleeing persecution throughout the world. Its provisions would put protection out of reach for people like HRI's clients described in this letter: people who have fled serious abuse in their home countries and are seeking refuge in the U.S.

Rather than using resources to put the IFR into force, the U.S. government should use its power to address the inadequacy of existing American systems to provide due process to people in need and the actual causes of forced displacement. Recommendations for doing so were developed and endorsed by a coalition of immigrant-serving organizations, available at: <https://www.humanrightsfirst.org/resource/protecting-refugees-and-restoring-order-real-solutions-humanitarian-crisis>.

For further information, please do not hesitate to reach me at kcohn@hrionline.org.

Respectfully,



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[turns-to-un-amid-asylum-surge-funding-cuts-idUSKCN1SS06N](#); HUMAN RIGHTS FIRST, DANGEROUS TERRITORY: MEXICO STILL NOT SAFE FOR REFUGEES 7 (July 2017), <http://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep.pdf>.

¹³ HUMAN RIGHTS FIRST, *supra* note 5 at 2.

¹⁴ *Refugee Status Determinations for Asylum Seekers in Honduras*, CENTER FOR HUMANITARIAN DATA, <https://data.humdata.org/dataset/unhcr-asylum-seekers-determination-hnd>; *Refugee Status Determinations for Asylum Seekers in El Salvador*, CENTER FOR HUMANITARIAN DATA, <https://data.humdata.org/dataset/unhcr-asylum-seekers-determination-sl>; see also U.S. DEP'T STATE, EL SALVADOR 2018 HUMAN RIGHTS REPORT 13 (Mar. 2019), <https://www.state.gov/wp-content/uploads/2019/03/EL-SALVADOR-2018.pdf>;