



Submitted via regulations.gov

May 26, 2022

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Chief, Division of Humanitarian Affairs
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20588

Lauren Alder Reid
Assistant Director, Office of Policy
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Department of Justice
5107 Leesburg Pike
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RE: DHS Docket No. USCIS-2021-0012; Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers

Dear Chief Cutlip-Mason and Assistant Director Reid,

The Immigrant Legal Advocacy Project, (ILAP), respectfully submits the following comments regarding the interim final rule, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers (DHS Docket No. USCIS-2021-0012).

I. About ILAP and interest in proposed changes:

ILAP is Maine's only statewide immigration legal services organization, serving more than 1,000 people seeking asylum in Maine each year through direct representation, pro bono coordination, and legal services workshops. Through our practice and community partnerships, ILAP has deep understanding and expertise in how lack of access to qualified legal representation, cultural and language barriers, and systemic racism in the U.S. immigration system can undercut an asylum seeker's rights and access to justice. To meet Congressional intent and uphold the values that underpin our system, every step of the asylum process must be evaluated through a lens of accessibility. This must include maximizing opportunities for legal representation and other services and minimizing stress and re-traumatization. If we do not operationalize our process around these priorities, the goals of the U.S. asylum system are undermined, with life or death consequences for those forced to navigate it.

II. Due process, access to justice, and the rights of asylum seekers must *always* be prioritized above speed

While efficiency and streamlining in the asylum system for the sake of helping people move through the process so they can achieve greater security, stability, and begin rebuilding their lives is an important consideration, speed should never be prioritized above asylum seekers having adequate time to put their best cases forward. Throughout the interim final rule's proposed process, the rights of asylum seekers are in jeopardy due to quick timelines that do not leave adequate opportunity for them to obtain counsel and other resources and prepare for next steps.

For example, as one of the first steps in the process, the interim final rule would require that USCIS hold the asylum merits interview 21 to 45 days after a positive fear determination and that the asylum seeker submit evidence for the interview 14 days in advance. The rule would not allow for additional time before the asylum merits interview except for in exigent circumstances. Accordingly, an asylum seeker who has just arrived in the U.S. after fleeing for their life, likely having endured a harrowing journey, would only have a matter of days up to a few weeks to – in a language they may not speak, in a system they are unfamiliar with -- obtain counsel and gather and prepare evidence, while simultaneously trying to meet their basic needs. Few if any asylum seekers will be able to secure legal representation under these circumstances.

The Biden administration's "Dedicated Docket" program sheds light on how when tight timelines are applied to the asylum system, access to representation decreases. According to a study from Syracuse University, only 15.5% of asylum seekers subjected to the Dedicated Docket program have been able to obtain counsel.¹ The study compared representation rates on asylum cases that were not part of the Dedicated Docket that were proceeding during the same time period – 91.1 percent had legal representation.² Furthermore, the study showed that without representation, access to life-saving protection plummets: "A total of 1,557 asylum seekers on the Dedicated Docket have received deportation orders so far. Of these, only 75 – just 4.7 percent – had representation. By contrast, since the start of the Dedicated Docket program just 13 people—all represented—have been granted asylum or another form of lawful relief from deportation."³

In addition to the time, language, and information barriers individuals face, given the volume and need for legal services, organizations like ILAP may not be available for intake, to provide representation, or to place cases with pro bono counsel under the extremely short timeline. If representation is available, the timeline would provide almost no time for counsel to build trust, refer clients for additional wraparound services as needed, and take the time to try to minimize stress and re-traumatization.

The clear outcome of the proposed timeline is that people in extremely vulnerable states will be forced to face asylum merits interviews alone. As described above, time and time again, studies make clear that access to representation in immigration cases is vital to obtaining relief and that without counsel, immigrants who should win their cases slip through the cracks.⁴ In the U.S. criminal legal system, we do not permit people at risk of losing their freedom, life, or being torn from their families to face the

¹ *Unrepresented Families Seeking Asylum on "Dedicated Docket" Ordered Deported by Immigration Courts*, Transactional Records Access Clearinghouse, Syracuse University (Jan. 13, 2022), <https://trac.syr.edu/immigration/reports/674/>.

² *Id.*

³ *Id.*

⁴ *Rising to the Moment: Advancing the National Movement for Universal Representation*, VERA Institute (December 2020), <https://www.vera.org/downloads/publications/rising-to-the-moment.pdf>.

system alone. In asylum cases, where people are at risk of the same outcomes, we do. For as long as a right to counsel is not guaranteed, policy and practice must be to maximize opportunities for asylum seekers to obtain representation.

To address the problems with the timeline of the asylum merits interview, ILAP recommends that the interviews not be scheduled for 90 days after the credible fear interview. Additionally, should people need more time to find representation or gather evidence, asylum offices should grant requests for extensions for up to a year following the most recent date of entry. After that time, additional extensions and continuances should be evaluated under “good cause” and “exceptional circumstances” standards, as exists elsewhere in asylum law and policy. More generally, ILAP recommends that every step of the interim final rule process be evaluated through a lens of access to counsel in consultation with asylum practitioners and immigration law and policy experts.

III. USCIS must address disparities in asylum office grant rates to ensure fairness and due process in the proposed asylum merits interviews

To take steps towards streamlining the asylum system in a way that does not undermine the rights of asylum seekers and access to due process, USCIS must address differences in asylum grant rates in asylum offices. The foundation of a fair and just asylum system must include sufficient and well-trained asylum officers applying the same standards without bias.

In March 2022, ILAP co-authored the report *Lives in Limbo: How the Boston Asylum Office Fails Asylum Seekers*, which shed light on the Boston Asylum Office’s asylum grant rate. Along with this comment, ILAP submitted the full report via regulations.gov to be part of the record for the Departments of Homeland Security and Justice’s consideration. The report found that, “from 2015 to 2020, the Boston Asylum Office, on average, granted a mere 15 percent of asylum applications, with some months granting as low as 1.5 percent of asylum seekers. In contrast, the national average grant rate was nearly twice as high: 28 percent.”⁵ Bias according to nationality and whether the asylum seeker spoke English was clearly identified in the Boston Asylum Office as compared to other asylum offices.⁶ Major contributors to the low grant rate included supervisory asylum officers demonstrating bias that trickled down to subordinate asylum officers and pressure on asylum officers to meet certain timelines.⁷ Findings showed that the disproportionately low grant rate translated to wrongly denied cases, forcing asylum seekers to face the court system, endure stress and re-traumatization, and be separated from family members for years longer than was needed before ultimately winning their claims.⁸

To achieve goals in increasing efficiency in the asylum system, USCIS must address the root cause issues that lead to erroneous denials and asylum seekers being subjected to more time in the system. Recommendations, detailed in full in the report, include implementing rigorous hiring standards that focus on hiring asylum officers and supervisory asylum officers with language skills and cultural literacy, providing asylum officers with support through mentorships and employee wellness programs, improving trainings by focusing on implicit bias and racism, and increasing quality trainings on trauma, compassion fatigue, and cultural literacy.⁹

⁵ *Lives in Limbo: How the Boston Asylum Office Fails Asylum Seekers*, Refugee and Human Rights Clinic at the University of Maine School of Law, Immigrant Legal Advocacy Project, American Civil Liberties Union of Maine, and Basileus Zeno, Ph.D. Political Science at Amherst College (March 2022), <https://ilapmaine.org/ilap-news/3/23/2022>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

IV. Rushed timelines in the interim final rule will create delays in obtaining work authorization, impacting asylum seekers' security and stability

The interim final rule's goal of "expeditiously beginning the waiting period for employment authorization"¹⁰ is particularly crucial for asylum seekers in Maine. In early May 2022, the City of Portland announced it was unable to continue to providing housing and arranged services for asylum seekers.¹¹ Without services or the ability to work, newly arrived asylum seekers in Maine, including children and families, are facing dire circumstances.

The interim final rule's approach will likely be counterproductive to access to work authorization, due to the timelines which limit access to counsel and the opportunity to put forward the best case possible. Without time to secure legal representation and other services needed, immigration judge denials and the number of asylum seekers forced to appeal their cases will increase. During that time, under current law and policy, the 150-day clock to apply for a work permit will stop. The process outlined in the interim final rule will also likely result in asylum seekers facing "applicant caused delays" in their cases – again because of the constraints the rule places on securing counsel – which may also stop the clock on applying for and obtaining work authorization.

To address the need for asylum seekers in Maine and beyond to have access to work permits so they can support themselves and their families while they seek asylum, ILAP recommends that all asylum seekers entering at the border be paroled in and deemed eligible to seek work permits under EAD category (c)(11).

V. Conclusion

In conclusion, ILAP recommends that the interim final rule not be implemented as proposed and instead, be revised in consultation with asylum practitioners and law and policy experts. The U.S. asylum system must ensure that asylum seekers have every opportunity to access representation and can obtain work permits as soon as possible and USCIS should prioritize meaningful steps to address the root cause bias and burnout issues in asylum offices that undermine a fair and expeditious process.

Please contact Lisa Parisio, ILAP's Policy and Outreach Attorney at lparisio@ilapmaine.org for any questions.

Sincerely,



Sue Roche, Executive Director
Immigrant Legal Advocacy Project

¹⁰ Dep't of Homeland Sec. & Exec. Office for Immigration Review, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and Convention Against Torture Protection Claims by Asylum Officers (Mar.29, 2022), 87 Fed. Reg. 18084, 18096.

¹¹ Rachel Ohm, *Portland says it can no longer guarantee housing to asylum-seeking families*, Portland Press Herald (May 5, 2022), <https://www.pressherald.com/2022/05/05/portland-declares-it-can-no-longer-guarantee-housing-to-asylum-seeking-families/>.