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June 28, 2021

Re: Detained Asylum Seekers Deprived of Due Process in Expedited Removal Process

Dear Directors Renaud, Johnson and King:

We, a coalition of advocates and organizations serving detained asylum seekers in various regions (including but not limited to Louisiana, Mississippi, Georgia, West Texas, New Mexico, and Colorado), under your agencies' jurisdictions, write this letter to share serious grievances, seek information and request solutions regarding systemic due process concerns in the regions we serve. We thank you in advance for your service and consideration.

I. Serious Grievances

As you are likely aware, Immigration and Customs Enforcement (ICE) is funneling thousands of asylum seekers through certain detention centers around the country for their credible fear interviews (CFIs) and reasonable fear interviews (RFIs). For example, hundreds of asylum seekers are having their CFIs/RFIs conducted at the Adams County Correctional Center (“Adams facility”) in Natchez, Mississippi, before they are transferred to various facilities across Louisiana to await deportation or pursue relief in their removal proceedings. The current population in the region has alarmingly surged from around 1,000 to approximately 6,000 within the past three months. In Aurora, Colorado, the number of people detained in ICE custody increased by 400 percent over the same period, from approximately 200 to 800. Similar increases have occurred in West Texas and New Mexico. For example, advocates have encountered hundreds of new asylum seekers detained at the privately-run Torrance County Detention and Cibola Country Correctional centers.

The additional people recently entering these facilities are almost exclusively being processed for expedited removal and CFI/RFIs. They are recent entrant asylum seekers who should not fall within the administration's enforcement priorities because overwhelmingly they have credible, fear-based claims, and do not pose a threat or present security risks, but rather have strong ties to our communities. Moreover, they are people impacted by Title 42, who would have presented at a

port of entry to be processed humanely if given the opportunity. As a result, our offices have received a high volume of concerning reports. The nature of the reports are as follows:

1. Significant Delays Contributing to Prolonged Detention in Inhumane Conditions

a. Issues Under USCIS Purview:

- i. Many asylum seekers detained in these facilities report waiting several weeks, or months, for their CFI/RFI to take place. For example, the average wait time for an interview in the Aurora Detention Center is between two to three months. In Louisiana and Mississippi detention centers, asylum seekers report waiting at least one and sometimes over two months for their CFIs/RFIs. During the week of June 14, 2021, the El Paso Immigration Collaborative spoke with twenty-six asylum seekers who had been detained for over thirty days without receiving a CFI/RFI.
- ii. Many asylum seekers detained in these facilities also report waiting several weeks, or even months, for their CFI/RFI determinations after their CFIs/RFIs are conducted.

b. Issues Under ICE Purview:

- i. Upon information and belief, ICE is not providing the Asylum Office(s) sufficient phone lines within the detention centers to conduct CFIs/RFIs, especially considering the alarming number of recent arrival asylum seekers detained in these detention centers. It is our understanding that at some facilities where hundreds of asylum seekers are waiting for their CFIs/RFIs to take place, the relevant Asylum Offices are using a maximum of two phone lines per day to conduct interviews.
- ii. Upon information and belief, ICE may also be contributing to delays by not timely sending CFI/RFI triggering documents to USCIS after individuals in their custody express a fear of return to their home countries.
- iii. Upon information and belief, there are significant delays in ICE serving asylum seekers with copies of their CFI/RFI determination documents prior to hearings in which immigration judges (IJs) review their negative fear determinations, causing delays in the adjudication of cases and prolonging their detention.

2. Language Access

a. Issues Under USCIS Purview: Failure by some Asylum Officers to provide an appropriate interpreter when conducting CFIs/RFIs.

- i. In one case, a detained asylum seeker from Burkina Faso requested an interpreter in his native language, Bissa. He was told that a Bissa interpreter was not available and asked whether he wished to proceed in French or reschedule. He elected to reschedule because he does not speak French fluently enough to be able to explain his case. This happened twice more and on the third occasion, the asylum seeker proceeded with the CFI in

French because he was becoming desperate due to the punitive and inhumane conditions of his confinement. This course of action expressly violates the 2013 USCIS Memorandum “Processing Credible Fear Cases when a Rare Language Interpreter is Unavailable,” which provides that if a rare language speaker is not able to communicate in a more common language and an interpreter is not available within 48 hours, the Asylum Officer should issue a Notice to Appear (NTA).

- ii. In many cases, Brazilian asylum seekers detained in these facilities report being provided a European Portuguese interpreter, causing serious miscommunication during the CFI/RFI. Likewise, Guinean asylum seekers detained in these facilities reported being provided a Senegalese or Mauritanian Peuhlar speaker, again, causing serious miscommunication.
 - iii. In a related example, an Angolan asylum seeker detained at Winn Correctional Center was provided a Brazilian Portuguese interpreter. Angolan Portuguese is a distinct dialect from other Portuguese languages and much closer to European Portuguese than Brazilian Portuguese. Despite clear signs readily apparent from the CFI notes that the communication between the asylum seeker and the interpreter was breaking down, the asylum officer insisted on continuing with the interview, at certain points asking questions such as, “Do you understand that October is after jan[uary]?” As a result, the officer issued a negative credible fear determination based on internal inconsistencies. After the asylum seeker submitted, through counsel, a request for reconsideration (RFR) with the assistance of counsel, the Asylum Office issued an NTA in his case. In the meantime, his detention was prolonged in a detention center with documented ongoing human rights abuses. It is also crucial to note that the vast majority of detained asylum seekers have neither access to counsel nor the ability to submit RFRs to the Asylum Office *pro se*.
 - iv. In many cases, Cuban asylum seekers detained in these detention centers report that the Spanish language interpreters made available for their CFIs did not understand their Spanish, and as a result, the answers they provided to the interviewing officers were not accurately or completely reflected in their CFI/RFI determination documentation.
- b. Issues Under ICE Purview: Failure by ICE to provide an appropriate interpreter when issuing initial documentation meant to inform asylum seekers about the CFI/RFI process. In addition, failure to translate or provide an appropriate interpreter when serving asylum seekers with their CFI/RFI determinations and related documents.

3. Procedural Due Process

- a. Issues Under USCIS Purview:
 - i. CFIs/RFIs in these facilities are broadly being conducted by telephone, when other methods should be used to ensure thorough, trauma-informed communication between the interviewing officer and the applicant.

- ii. Many detained asylum seekers and legal advocates who work in these facilities report an unreasonable number of negative CFI determinations and anecdotal evidence that Asylum Officers are not adhering to the restored, lower threshold burden of proof for CFIs which suggest violations of the October 2020 *Kiakombua v. McAleenan* preliminary injunction. For example, one asylum seeker detained at the River Correctional Center reported that he and the other forty-four men detained in his unit received their CFI results at the same time and that he was one of only four men in the unit to receive a positive determination, meaning that a staggering 91% of this cohort was found to not have a credible fear. In another example, an attorney reported filing an RFR of a negative CFI determination for a Cameroonian client with a very strong asylum claim. Despite providing an expert report, certified documentation from Cameroon corroborating his client's past persecution and a psychological evaluation, all demonstrating that his client has an objectively credible fear of return to Cameroon, the AO affirmed the negative determination.
- iii. Even when making positive determinations, some asylum officers are conducting insufficient interviews. For example, asylum seekers report that interviewing officers only allowed for short one-to-two sentence answers to questions posed, sharing that the officers did not fully probe for details and did not allow them to speak freely. In some cases, this causes officers to miss critical elements of the asylum claims, such as facts to support nexus, and may lead to credibility issues at the asylum hearing stage.

b. Issues Under ICE Purview:

- i. Many detained asylum seekers in Louisiana report never being provided their CFI/RFI interview worksheets or determination documents upon or after ICE informed them of the results of their CFI/RFI.
- ii. As a result of the above, many asylum seekers are forced to face Immigration Judge (IJ) review of their negative determinations without an opportunity to review the Asylum Officer's notes that form the basis of the decision.
- iii. A Core Civic employee working at the Tarrant County Detention Center reported to the El Paso Collaborative that ICE has no presence at the facility. The relevant ICE staff are located in Otero County, 200 miles away from the detention center. As a result, asylum seekers detained there do not have contact with deportation officers, making it improbable, if not impossible, for ICE to meaningfully communicate about the CFI/RFI process or to properly serve asylum seekers with CFI/RFI related documentation.
- iv. Advocates report that ICE has deported some detained individuals without triggering an RFI despite claims of fear.
- v. Upon information and belief, ICE further prevents access to substantive due process for asylum seekers by failing to properly explain the process for IJ review of negative determinations and by failing to timely obtain asylum seekers' signatures for requesting said reviews. Upon information and

belief, ICE also delays in sending documents seeking IJ review to EOIR, further contributing to the prolonged detention of asylum seekers.

c. Issues Under EOIR Purview:

- i. Many asylum seekers report receiving little or no notice of their IJ review of negative CFI and RFI determinations. Attorneys also report EOIR's failure to notify them notice of hearings and to update its automated system to reflect scheduled IJ review hearings. As a result, even the minority of detained asylum seekers who have access to counsel in the region are being forced to proceed with their hearings *pro se*, without notice and often without having an opportunity to review their CFI or RFI determination documentation.
- ii. The scheduling of IJ reviews is completely unpredictable. Although asylum-seekers and attorneys are not being given adequate or any notice of IJ Reviews of CFIs/RFIs, there are delays of up to twenty days to conduct IJ Reviews.
- iii. Attorneys cannot file E28s in cases in time because information is only posted about IJ reviews within a 48-hour window before the court date, despite notice of the negative CFI and the IJ review request being issued five days prior, or notice of the hearing is never posted at all. Nor can attorneys gain any information from the EOIR Portal, ECAS System, or EOIR hotline, as to the timing of hearings. This causes attorneys to miss IJ review hearings.
- iv. Most asylum seekers detained in these facilities have no access to legal orientation programs (LOP) prior to their CFI/RFI. For example, in the West Texas region, LOP has not been restored and there is no way to meaningfully provide it to the population due to access issues. Providing adequate "know your rights" information and access to orientation of the legal process awaiting asylum seekers cannot be adequately conducted by phone for the large, detained populations in these facilities. For example, in Louisiana, LOP is only provided virtually at six of the more than dozen facilities. Even at the six Louisiana facilities that do receive LOP, attendance has plummeted since the programming has been conducted virtually. Moreover, LOP is simply not provided at the Adams County Detention Center in Natchez, Mississippi where the vast majority of CFIs/RFIs in the region take place.

II. Information Sought

We respectfully request that your offices share non-confidential data with respect to CFIs/RFIs out of the detention facilities in the above-listed regions (Louisiana, Mississippi, Georgia, West Texas, New Mexico and Colorado).¹ In addition, we respectfully request answers to the following questions:

¹ We also plan to file a Freedom of Information Act request to USCIS seeking this information imminently.

1. What policies and procedures apply to language interpretation requests for CFIs/RFIs in detention facilities?
2. How many, and what percentage of, detained CFIs/RFIs have required language interpretation services? How many that are considered a rare language?
3. What process is implemented if interpretation services for a requested language are unavailable for a detained CFI/RFI at the time of a scheduled interview?
4. Who do the above-addressed Asylum Offices contract with to provide interpretation services for CFIs/RFIs?
5. How many CFIs/RFIs have been granted at the detention facilities in the above-listed regions since October 2020? How many CFIs/RFIs have been denied at the same detention facilities since October 2020?
6. How many asylum seekers have been removed who expressed a fear of return and would have otherwise qualified for an RFI at the same detention facilities?
7. How long do detained asylum seekers have to wait for the results of their interviews following their CFI/RFI? Average length of time? Shortest? Longest?
8. What kind of legal orientation information is provided in lieu of or in addition to LOP programming to asylum seekers detained in the New Orleans ICE Field Office region?

III. Requested Solutions

We recognize the enormous toll that this influx of asylum seekers has taken on your offices' resources and staff as well as the difficulties and barriers presented by the fact of their detention in centers that were built on punitive, penal models. However, in light of the serious due process concerns raised in this letter and the significant harm caused to thousands of asylum seekers in these regions, we urge you to take the following steps:

1. Provide an interpreter in detained asylum seekers' best languages for all CFIs/RFIs. If an interpreter is not available within 48 hours, please issue an NTA. Recommend to ICE that any individual with an NTA be released from ICE custody, regardless of whether the AO rendered a positive fear finding, so that the person may access due process before an Immigration Court with the assistance of an interpreter fluent in their best language.
2. Implement the lower threshold burden of proof for CFIs from the October 2020 *Kiakombua v. McAleenan* preliminary injunction in full, immediately, and conduct training of all NOLA Asylum Officers regarding the impact of the Attorney General's decisions to vacate *Matter of A-B- I*, *Matter of A-B- II*, and *Matter of L-E-A*
3. Conduct timely CFIs/RFIs to prevent extended periods of detention, and timely issue decisions with corresponding Asylum Officer notes, prior to the administration of the Immigration Court's review of the AO's negative fear finding.
4. Work with ICE to immediately add additional phone lines and rooms for CFIs/RFIs, or dispatch Asylum Officers in person on an emergency basis to address the reported 500-600 people awaiting their CFIs/RFIs for weeks or months in ICE detention. If CFIs/RFIs cannot be completed timely due to issues of infrastructure, recommend to ICE that asylum seekers be released so that such delays do not contribute to prolonged, inhumane detention. We urge your offices to take all necessary steps to ensure that CFIs/RFIs are conducted within 10 days of applicants requesting asylum or expressing a fear of persecution to a DHS official, as recommended in *Padilla v. ICE*, 2:18-cv-00928-MJP (W.D. Wash.).

5. Whenever possible, please conduct interviews: (1) in person taking all necessary precautions to protect against transmission of COVID-19; (2) via tele-video conference akin to Webex in the courtroom setting; or (3) via telephone, only if the first two preferred methods are not available or feasible.
6. In facilities where there are cohorts/quarantines due to COVID-19 monitoring, please coordinate with ICE to provide private spaces where people can meaningfully and confidentially participate in their interviews (assuming they are medically cleared) to avoid significant delays caused in these circumstances.

Respectfully submitted,

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Immigration Services and Legal Advocacy
Al Otro Lado
Rocky Mountain Immigrant Advocacy Network
El Paso Immigration Collaborative
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