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Daniel Delgado, Director for Immigration Policy
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U.S. Department of Homeland Security
Washington, DC 20528

**RE: Comment in Opposition to the Notice of Proposed Rulemaking entitled
“Application of Certain Mandatory Bars in Fear Screenings,”
(RIN: 1615-AC91; DHS Docket No. USCIS-2024-0005)**

Dear Director Delgado:

The Black Alliance for Just Immigration (“BAJI”), Cameroon Advocacy Network (“CAN”), Haitian Bridge Alliance (“HBA”), Robert F. Kennedy Human Rights (“RFK Human Rights”), and Southeast Dignity Not Detention Coalition (“SDND Coalition”) submit the following comment to the Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Departments on May 13, 2024 (“the proposed rule”). If enacted, the proposed rule will deny due process of law to people entitled to humanitarian protection, resulting in disproportionate *refoulement* of detained people and Black people. We therefore call on DHS to withdraw the proposed rule in its entirety.

INTRODUCTION

The proposed rule contravenes statutory standards for humanitarian protection from persecution and torture by asking USCIS officers to analyze and apply fact-intensive, legally complex bars during an expedited initial screening process. These radical changes to humanitarian processing will result in *refoulement*, the forcible return of people to persecution and torture. They will also disproportionately deny protection to people isolated from legal resources in Immigration and Customs Enforcement (“ICE”) detention centers and deepen racial disparities in the denial of protection to Black people that are rooted in discriminatory application of criminal laws around the world. The proposed rule therefore violates U.S. statutes implementing binding commitments under international human rights treaties and should be withdrawn in its entirety.

Over a quarter-century ago, Congress designed the intentionally “low screening standard” of the credible fear interview (“CFI”) to ensure U.S. compliance with the international legal

prohibition of *refoulement*.¹ With the proposed rule, DHS contravenes congressional intent by requiring asylum officers (“AOs”) to “quickly screen out” people during an initial interview through the application of five legally complex bars to humanitarian protection.² These bars, ordinarily applied only by an immigration judge during a removal hearing after the passage of the initial screening interview, are codified at 8 U.S.C. § 1158(b)(2)(A)(i-v). They include the persecutor bar; the particularly serious crime bar; the serious nonpolitical crime bar; the security bar; and the material support to terrorism bar.

This comment proceeds in three parts. First, it explains how the proposed rule denies due process to people held in immigration detention centers, requiring them to defend themselves in legally complex matters without access to counsel and in cruel and degrading conditions that prevent fair application of the bars in the initial screening process. Representative stories of people held in immigration detention centers under the jurisdiction of the New Orleans Louisiana ICE Field Office (“NOLA ICE”) further illustrate this point. Second, this comment shows how the proposed rule will exacerbate the racially disproportionate *refoulement* of Black asylum seekers by increasing the likelihood of erroneous application of racially disproportionate criminal bars. Finally, it explains how the proposed rule and comment timeline adversely impact the undersigned organizations.

The undersigned organizations urge DHS to withdraw this proposed rule in its entirety and instead adopt humane solutions to immigration processing challenges that comply with domestic and international law. The U.S. government should end the incarceration of immigrants seeking humanitarian protection in the United States and rely on research-backed programs that increase efficient processing of claims for humanitarian protection, including provision of counsel in removal proceedings and community-based case management services.³

I. The Proposed Rule Denies Due Process to Detained Immigrants.

The proposed rule will deny due process to people held in isolated immigration detention centers cut off from legal assistance, including those detained in the notorious NOLA ICE region. The five statutory bars in the proposed rule present some of the most factually intensive and legally

¹ See *Grace v. Whitaker*, 344 F. Supp. 3d 96, 107 (D.C. Cir. 2018) (“Congress intended the credible fear determinations to be governed by a low screening standard”), *aff’d in part, rev’d in part sub nom. Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020); see also 8 U.S.C. § 1225(b)(1)(B)(v) (defining a credible fear of persecution); 8 C.F.R. 235.3(b)(4) (requiring officers to conduct a credible fear interview where a person expresses a fear of return to her home country); 8 C.F.R. 208.31(c) (requiring officers to conduct a reasonable fear interview where a person with a reinstated previous order of removal expresses fear of return to her home country).

² U.S. Dep’t of Homeland Security (DHS), Application of Certain Mandatory Bars in Fear Screenings, 89 Fed. Reg. 41347, 41351 (May 11, 2024).

³ See, e.g., Human Rights Watch, *Dismantling Detention: International Alternatives to Detaining Immigrants*, (Nov. 3, 2021), <https://www.hrw.org/report/2021/11/03/dismantling-detention/international-alternatives-detaining-immigrants> (examining alternatives to immigrant detention in six countries and finding that alternatives that are community-based and offer a person-centered, holistic approach offer a rights-respecting alternative to detention while simultaneously furthering the government’s immigration enforcement aims); David Secor et al., *A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration* (Apr. 22, 2019), <https://immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration> (profiling three successful community-based programs providing legal orientation and social services to people seeking humanitarian protection from removal).

complex issues in all of immigration law. The proposed rule would force people exhausted from overland journeys made in flight of persecution and torture to contest the erroneous application of the bars from inside a punitive detention cell and without the assistance of a lawyer or other legal resources.

A. The bars' complexity invites arbitrary and capricious application in cursory initial screenings.

As other commenters have noted, the five statutory bars included in the proposed rule are ill-suited for application in initial screening interviews because they contain some of the most legally complex issues in all of immigration law.⁴ The bars' analysis and interpretation regularly clog dockets of the Board of Immigration Appeals and the federal Courts of Appeals.⁵ To take only one example of one of several complex legal issues contained in one of the bars, the "particularly serious crime" bar implicates complex legal questions on whether a conviction is an "aggravated felony" under the Immigration and Nationality Act and therefore per se "particularly serious" for purposes of asylum eligibility. Depending on the conviction at issue, answering this question requires analysis under the categorical approach, itself requiring separate analysis of whether there is a realistic probability that a convicting jurisdiction would actually prosecute minimum conduct implicated under the statute;⁶ the modified categorical approach, itself requiring separate analysis of whether the elements of the statute of conviction are divisible or indivisible;⁷ or a circumstance-specific approach, a time and resource-intensive task better suited to judges than AOs.⁸

Similarly, the serious non-political crime bar invites conflicting interpretations due to its complexity. Whether survivors of violence who are trafficked by criminal groups have a duress defense to the serious non-political crime bar is an unsettled question of law.⁹ So, too, is the use of an Interpol "Red Notice" as reliable evidence of a serious non-political crime. The Board of

⁴ National Immigration Project, Comment Letter on Proposed Rule entitled Application of Certain Mandatory Bars in Fear Screenings 5-9 (June 11, 2044), https://nipnlg.org/sites/default/files/2024-06/2024_NIPNLG-bars-border-rule-comment.pdf

⁵ See, e.g., Immigrant Legal Resource Center, "Particularly Serious Crime" Bars to Asylum and Withholding 11-12 (Dec. 2023), https://www.ilrc.org/sites/default/files/2023-12/Particularly%20Serious%20Crimes%20Advisory_Dec%202023.pdf (listing 27 decisions by Courts of Appeals and the Board of Immigration Appeals concerning interpretation of the particularly serious crime bar).

⁶ See, e.g., Immigrant Defense Project and National Immigration Project, *Practice Advisory: "Realistic Probability" in Immigration Categorical Approach Cases* (June 3, 2021), <https://www.immigrantdefenseproject.org/wp-content/uploads/Realistic-Probability-PA-FINAL-06.04.21-1.pdf> (discussing conflicting case law on realistic probability and litigation issues currently before the immigration agencies and federal courts).

⁷ See, e.g. Immigrant Defense Project, *Challenging Divisibility: Litigation Strategies and Post-Mathis Case Law Survey* app. A (Nov. 2022), https://www.immigrantdefenseproject.org/wp-content/uploads/IDP_DivisibilityResource_FINAL_Compressed_111722.pdf (taking 43 pages to survey federal court decisions since 2016 on statute divisibility in only 4 federal circuits).

⁸ See, e.g., Immigrant Legal Resource Center, *How to Use the Categorical Approach Now* (Oct. 2021), https://www.ilrc.org/sites/default/files/resources/2021_categorical_approach_oct_final2.pdf (a 47-page resource explaining application of the categorical approach to criminal convictions).

⁹ See, e.g., David Baluarte, *Refugees Under Duress: International Law and the Serious Nonpolitical Crime Bar*, 9 Belmont L. Rev. 406, 406 (2022) (finding support for a duress exception to the serious non-political crime bar in Board of Immigration case law).

Immigration Appeals has held that an Interpol “Red Notice” alone may establish “serious reasons for believing” a serious non-political crime has been committed.¹⁰ But federal courts have held the opposite or otherwise recognized that Red Notices are unreliable sources of information.¹¹

Conflicting and sometimes contradictory holdings between the Board of Immigration Appeals and among the different Courts of Appeals also raise difficult legal questions concerning deference to administrative decisions and choice of law. For instance, which interpretation of a potential bar should an asylum officer located in Circuit A apply when conducting a telephonic credible fear interview of a person detained in Circuit B? What if appellate law in one jurisdiction has interpreted the bar at issue in a manner different from the Board of Immigration Appeals? Though doctrinal administrative law provides a general framework for answering some of these questions, their complex and fact or issue-specific nature is prone to misapplication in the cursory initial screening process of the CFI. With its aim to “quickly screen out” legal claims for protection, the proposed rule fails to account for the complexity inherent in applying the statutory bars and an AO’s lack of time and capacity to adequately apply them.

The following stories of individuals held in NOLA ICE jails show how the complexity inherent in application of the proposed rule is likely to lead to *refoulement* of detained individuals.

Ahmed, a man detained at River Correctional Center in Ferriday, Louisiana, escaped Somalia after his life was threatened by members of the Somali militant group al-Shabaab.¹² In Somalia, Ahmed was a doctor. When his community was raided by al-Shabaab, armed militants held Ahmed at gunpoint and forced him to perform surgery on one of their wounded men. When the men then instructed Ahmed to join them as one of their medical providers, he refused. They then threatened to kill him, forcing Ahmed to flee. Ahmed’s case requires complex factual analysis of whether a duress defense applies to a potential material support or national security bar, issues he was litigating pro se before an immigration judge. Under the proposed rule, Ahmed would have been subject to the material support or security bars before he had the opportunity to appear before an immigration judge, resulting in his removal back to his persecutors.

Jessica Barahona-Martínez, an openly lesbian woman detained at the South Louisiana ICE Processing Center in Basile, Louisiana, fled persecution in El Salvador on the basis of her sexuality. In El Salvador, police seeking to harm her on the basis of her lesbian identity falsely accused her of aggravated extortion of \$30 in connection with the MS-18 gang. She was acquitted, but because the government had falsely broadcasted her purported gang affiliation, rival gang members threatened to kill her. When Jessica entered the United States, her name appeared in the Interpol Red Notice system. At removal proceedings, ICE argued that the Interpol Red Notice proved she was ineligible for asylum under the serious nonpolitical crime bar. Only after pro bono

¹⁰ *Matter of W-E-R-B-*, 27 I. & N. Dec. 795 (BIA 2020).

¹¹ *Gonzalez-Castillo v. Garland*, 47 F.4th 971 (9th Cir.2022) (Interpol Red Notice did not rise to substantial evidence in support of application of the serious non-political crime bar); *Barahona v. Garland*, 993 F.3d 1024, 1028 (8th Cir.2021) (finding error in reliance on Interpol Red Notice to establish serious reason to believe a serious non-political crime); *Radiowala v. Attorney Gen. United States*, 930 F.3d 577 n.1 (3d Cir.2019) (refusing to afford evidentiary weight to an Interpol Red Notice).

¹² Ahmed is a pseudonym used to protect this individual’s identity in light of persecution he has faced. A declaration detailing the facts of Ahmed’s case is on file with the authors of this comment.

counsel contacted the Interpol Commission with evidence of Jessica’s pretextual prosecution was the Red Notice withdrawn. The factual and legal complexities of her case required advocacy by a team of five pro bono legal attorneys and intervention by a federal district court.¹³ Under the proposed rule, Jessica could have been subject to the serious nonpolitical crime bar at the initial screening phase and summarily removed back to her persecutors. Because she had an opportunity to secure legal representation and develop the facts of her case, she successfully defended herself against this bar to asylum and is now reunited with her three children.¹⁴

B. The proposed rule unfairly prejudices detained immigrants.

When the proposed rule is applied to detained people, the lack of legal resources and suitable facilities for legal interviews in immigration detention centers will result in misapplication of the statutory bars and *refoulement* of people entitled to humanitarian protection.¹⁵ Many of the screenings envisioned by the proposed rule will therefore occur in Louisiana, home to the second-largest immigration detention population in the country, outranked only by Texas.¹⁶

NOLA ICE, the federal office that oversees Louisiana immigration detention, currently incarcerates over 6,000 immigrants in Louisiana in a network of nine jails in isolated regions of the state where legal resources are practically nonexistent. No NOLA ICE jail is less than 100 miles from the nearest urban center. In these remote locations, local economies have few private lawyers and even fewer community organizations able to provide representation to detained people.¹⁷ Nationwide, only 1% of detained immigrants have legal counsel during a CFI.¹⁸

Three NOLA ICE jails—Adams County Correctional Center, Jackson Parish Correctional Center, and Richwood Correctional Center—are outfitted to rapidly process and deport people through expedited removal. Asylum officers with the Houston Asylum Office (“Houston AO”) conduct telephonic credible fear interviews in these jails. At these detention centers, legal staff from the undersigned organizations have documented denial of access to counsel, legal orientation

¹³ See Complaint, *Barahona Martinez v. Mayorkas*, 6:23-cv-01212 (W.D.La. Sept. 6, 2023), <https://www.aclu.org/documents/barahona-martinez-v-mayorkas-petition-for-writ-of-habeas-corpus>.

¹⁴ Nicole Acevedo, *A Mother Got Ensnared by an Interpol List. She Ended Up in Immigration Detention*, NBC News (Feb. 24, 2024), <https://www.nbcnews.com/news/latino/interpol-mothers-immigration-case-detention-edited-rcna137904>.

¹⁵ See U.S. Dep’t of Homeland Security (DHS), Application of Certain Mandatory Bars in Fear Screenings, 89 Fed. Reg. 41347, 41353. (“ICE ERO may detain some noncitizens to whom this rule might apply during the immigration court process, following a credible or reasonable fear determination.”)

¹⁶ <https://trac.syr.edu/immigration/quickfacts/>

¹⁷ See American Civil Liberties Union et al., *Justice-Free Zones: U.S. Immigration Detention under the Trump Administration* 20-22 (Apr. 20, 2020), <https://www.aclu.org/publications/justice-free-zones-us-immigration-detention-under-trump-administration> (identifying six Louisiana detention centers within the 10 lowest rates of attorney availability nationwide).

¹⁸ American Immigration Lawyers Association, *Policy Brief: The Asylum Credible Fear Standard 2* (Nov. 27, 2023), <https://anywhere.aila.org/aila-files/84232834-ec30-4264-8726-6388f5a060ec/23112244b.pdf> (citing USCIS data from June 2022 to April 2023).

programs, and language-specific legal resources, including interpretation during credible fear interviews.¹⁹ Documented systemic deficiencies at the Houston AO include:

- Scheduling credible fear interviews without informing the asylum seeker's attorney;
- Forcing asylum seekers to be interviewed in languages in which they are not fluent;
- Applying incorrect legal standards in evaluating asylum seekers' claims;
- Using adversarial interview techniques on vulnerable people, including children and survivors of persecution and torture.

Reports of due process deficiencies in Houston AO credible fear interviews are so pervasive that DHS's Office for Civil Rights and Civil Liberties has opened an investigation into its practices.²⁰

Compounded with lack of access to counsel and systemic due process deficiencies at the Houston AO, the proposed rule unfairly expects detained people in Louisiana to mount legally complex defenses while facing abhorrent conditions of confinement.²¹ Public reports and lawsuits document the cruel and degrading conditions of confinement in NOLA ICE immigration detention, including detention of children with adults; the unlawful use of torture, physical abuse and shackles against Black immigrants to obtain coerced fingerprints and signatures on deportation paperwork; racist harassment and physical abuse; and racial disparities in bond amounts, parole grants and release rates among Black and African immigrants.²² The authors of this comment have also met

¹⁹ See, e.g. Letter from American Gateways et al., to Peter Mina, Acting Director of the Office for Civil Rights and Civil Liberties et al. (Apr. 27, 2022), https://nlpnl.org/sites/default/files/2023-04/2022_27April-CFI-complaint.pdf (detailing systemic deficiencies at the Houston AO in CFIs and RFIs); Letter from Africa Communities Together et al., to Tracy L. Renaud, Acting Director U.S. Citizenship and Immigration Services et al. (June 30, 2021), https://www.splcenter.org/sites/default/files/detained_asylum_seeker_grievance_letter_30_june_2021.pdf (describing problems with procedural due process, language access, and significant delay in CFIs and RFIs nationwide, including at the Houston AO).

²⁰ Memorandum from Dana Salvano-Dunn, Director, Compliance Branch Office for Civil Rights and Civil Liberties, to Ur M. Jaddou Director U.S. Citizenship and Immigration Services (Aug. 22, 2022), https://www.dhs.gov/sites/default/files/2022-09/08.22.2022%20CRCL%20Retention%20Memo%20to%20USCIS%20-%20Houston%20Asylum%20CF%20RF_Redacted_508.pdf (notifying USCIS of initiation of investigation of complaints alleging multiple deficiencies during CFIs and RFIs conducted by the Houston AO).

²¹ See e.g., Letter from ACLU of Louisiana et al., Alejandro Mayorkas, Secretary, (Dec. 16, 2021), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/61bb36c9cc4c282092cbd145/1639659209877/DHS+NOLA+ICE+Investigation+Follow-Up+Letter+%281%29.pdf> (describing systemic abuses in NOLA ICE jails, including use of torture, physical abuse, and verbal threats, solitary confinement, anti-Black racial discrimination and harassment, deprivation of basic human necessities, and life-threatening denial of medical care and other medical mistreatment).

²² Daniella Silva, *Detainees and Advocates Decry "Horrific" Conditions at Louisiana Ice Detention Center*, NBC News (July. 17, 2023), <https://www.nbcnews.com/news/detainees-advocates-decry-horrific-conditions-louisiana-ice-detention-rcna92339> ; <https://lailluminator.com/2023/02/23/deportations-out-of-louisiana-part-of-racist-immigration-policies-advocates-say/> (describing cruel and degrading conditions at Winn Correctional Center, including undrinkable water, the constant threat of solitary confinement and limited access to doctors); Frances Madeson, *Deportations out of Louisiana Part of Racist Immigration Policies, Advocates Say*, Louisiana Illuminator (Feb. 23, 2023), <https://www.nbcnews.com/news/detainees-advocates-decry-horrific-conditions-louisiana-ice-detention-rcna92339> ; <https://lailluminator.com/2023/02/23/deportations-out-of-louisiana-part-of-racist-immigration-policies-advocates-say/> (documenting anti-Black culture among management-level employees in NOLA ICE facilities); Bobbi-Jeanne Misick, *Formerly Detained Immigrants Claim "Abusive, Inhumane, Criminal*

with people in NOLA ICE detention whose CFIs were conducted under coercive conditions that compromised interview fairness. Examples include:

- A Honduran man detained at Richwood Correctional Center who was forced to undergo a CFI from inside the medical unit in a non-confidential setting while infected with chickenpox.²³
- A woman detained at Basile awoken at 5:00 am for her RFI, then made to wait in a processing cell for three and a half hours until the interview began. Officials did not provide her with food or water during that time, leaving her disoriented.

Moreover, NOLA ICE detention officials fail to provide confidential legal settings for CFIs, inhibiting people from freely communicating sensitive personal details with asylum officers about their political or religious beliefs, sexuality, and past histories of physical and sexual abuse—information that might bear decisively on application of the statutory bars where investigation of the facts and circumstances relevant to application of an underlying bar is required. As a Haitian man with a denied CFI who was detained at Jackson Parish reported:

I left some details of my political persecution out of my interview because I did not believe it was a confidential interview. I could see the feet of officers walking past the booth I was in. There was a large gap above and below the door. I could hear everything outside and I knew the officers and others could hear every word I said.

II. The Proposed Rule Will Disproportionately Subject Black People to *Refoulement*.

Worldwide, Black people are subjected to racially discriminatory enforcement of criminal law and are thus more likely than people of other races to be erroneously barred from humanitarian protection under the proposed rule. The proposed rule is also likely to reproduce already-existing racially disproportionate disqualifications of Black people at the preliminary screening stage, including erroneous applications of the national security and material support bars. The proposed rule will thus disproportionately harm Black people seeking humanitarian protection.

Anti-Black racial discrimination in criminal legal enforcement is well documented throughout the world. In the United States, Black people are arrested at 2.5 times the rate of whites.²⁴ Even when crime rates for Black and white people are the same, as in marijuana

and Racially Discriminatory Practices” at Two Louisiana ICE Detention Centers, WWNO New Orleans Public Radio (Aug. 6, 2021), <https://www.wwno.org/immigration/2021-08-06/formerly-detained-immigrants-claim-abusive-inhumane-criminal-and-racially-discriminatory-practices-at-two-louisiana-ice-detention-centers> (describing abusive conditions of confinement at Allen Parish Public Safety Complex and at Pine Prairie ICE Processing Center); Letter from Sofia Casini, Director of Visitation Advocacy Strategies, Freedom for Immigrants, to Diane L. Witte, Acting Field Office Director, Immigration and Customs Enforcement (Oct. 7, 2020), <https://www.splcenter.org/presscenter/ice-using-torture-against-cameroonian-immigrants-coerce-deportation-according-new> (describing use of excessive force in NOLA ICE detention to coerce Cameroonian asylum seekers into signing their own deportation papers);

²³ Interview with detained person at Richwood July 2022.

²⁴ Black Alliance for Just Immigration & NYU School of Law Immigrant Rights Clinic, *The State of Black Immigrants* (Jan. 2022) (citing Christopher Hartney & Linh Vuong, *Created Equal: Racial and Ethnic Disparities in the U.S. Criminal Justice System*, National Council on Crime & Delinquency 3 (March 2009)).

possession, Black people are 3.7 times more likely than whites to be arrested.²⁵ Similar racial disparities are found worldwide, where “in a number of States, Africans and people of African descent are particularly vulnerable to racial profiling, notably as a basis for discriminatory identity checks, stops-and-searches, arrests and related abuses and violence, including serious injury and deaths.”²⁶ These “entrenched racial disparities in the [global] criminal justice system reflect harmful stereotypes grounded in the historical legacies of the global trafficking in enslaved Africans, colonisation, and the ways in which modern social narratives evolved from rhetoric designed to justify these institutions and the exploitation of people of African descent.”²⁷

By incorporating these entrenched racial disparities via criminal-based bars to humanitarian protection, the proposed rule will worsen anti-Black discrimination already present in U.S. immigration law. Data from one study showed that Black people are around only 7% of the U.S. immigrant population, but are over 20% of the immigrant population charged with removability on criminal grounds, notwithstanding the lack of evidence that Black immigrants commit crime at greater rates than other immigrants.²⁸ And in one representative year of removal data, more than three quarters of Black immigrants were removed on criminal grounds, contrasted with less than half of immigrants overall—likely due to higher rates of criminal-based disqualification for humanitarian protection, an outcome the proposed rule seeks to replicate.²⁹

Indeed, if current racial disparities in preliminary screening interviews are any indication, the proposed rule is likely to be wielded in a racially discriminatory manner against Black people. Under current credible fear interview procedures, asylum seekers from Black-majority countries including Burkina Faso, Cameroon, the Dominican Republic, Ghana, Mauritania, and Senegal receive negative credibility findings in their initial credible fear interview at rates double to quadruple times the global average.³⁰ Positive credible fear interview determinations for Haitians are persistently lower than average over multi-year periods, in some years by almost half.³¹

The following stories illustrate the harms the proposed rule would disproportionately cause Black people.

Jacques, a man detained at South Texas Detention Center, was accused of providing material support for terrorism because he had sent money to his parents to buy food while he was in hiding. Able to challenge this allegation before an immigration judge with the help of an attorney

²⁵ *Id.* (citing American Civil Liberties Union, *The War on Marijuana in Black and White* 4 (2013)).

²⁶ United Nations High Commissioner for Human Rights, *Conference Room Paper on Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, U.N. Doc. A/HRC/47/CRP.1 ¶84 (2021).

²⁷ *Id.* at ¶ 90 (internal quotations removed).

²⁸ Black Alliance for Just Immigration & NYU School of Law Immigrant Rights Clinic, *supra* n. 25 at 20.

²⁹ *Id.* at 21.

³⁰ Black Alliance for Just Immigration et al., *Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD): Anti-Black Discrimination Against Non-citizens and Ongoing Violations of International Protections for Migrants, Refugees, and Asylum Seekers of African Descent* 10 (Aug. 2022) https://humanrightsfirst.org/wp-content/uploads/2022/09/US-Coalition-anti-Black-Discrimination-inImmigration_CERD-Report_072222.pdf (citing statistics from FY2020).

³¹ *Id.* at 11.

from the Haitian Bridge Alliance, Jacque won his freedom from detention and secured a ruling that the government didn't have sufficient evidence to sustain a material support charge. Under the proposed rule, Jacque would have been summarily denied the opportunity to seek an attorney and deported back to a country that the Board of Immigration Appeals determined had persecuted him.

Emmanuel, a man detained at Jackson Parish Correctional Center in Jonesboro, Louisiana, engaged in political protests as a teacher in Cameroon.³² He later fled the country to escape imprisonment and torture after the Cameroonian government erroneously labeled him a member of the Amba Boys, an armed separatist group. Though Emmanuel was never affiliated with the Amba Boys, the proposed rule would have resulted in his summary removal under the material support or national security bars, resulting in Emmanuel's forced return to Cameroon, where he would likely be persecuted and tortured again.

III. The Proposed Rule and Comment Timeline Adversely Impact Signatory Organizations.

The undersigned organizations object to the limited 30-day comment period imposed by this rule. This limited timeline has prevented us from providing complete details about the ways in which the proposed rule will impact detained people in Louisiana, including those particularly vulnerable to race-based discrimination.

The racially disproportionate impact of this proposed rule will also make it significantly harder to provide legal and social services to detained immigrants in this region, including detained people who speak rare languages from majority-Black countries. The undersigned organizations will be forced to divert limited financial and time resources to emergency legal support to stop impending deportations traceable to disqualifications for humanitarian relief in the proposed rule.

In addition, the proposed rule adversely impacts the undersigned organization's mission to promote fairness and equity in the U.S. immigration system. By applying complex legal bars to asylum during the initial screening interview, the proposed rule will have a disparate impact on particularly vulnerable individuals seeking asylum, including Black asylum seekers. The undersigned organizations collectively seek to empower Black immigrants to vindicate their human rights under U.S. and international law, including the right to seek asylum. Below follow descriptions of the missions of each signatory organization.

The Black Alliance for Just Immigration (BAJI) fights for the rights of Black migrants and African Americans through organizing, legal advocacy, research, policy, and narrative building to improve the conditions of Black communities by advancing racial justice and migrant rights. BAJI's legal team works to combat the criminalization of and deportation of Black immigrant communities through a powerful three-pronged approach which includes direct legal representation, impact litigation, and legal training in communities facing removal.

³² Emmanuel is a pseudonym used to protect this individual's identity in light of persecution he has faced. A declaration detailing the facts of Ahmed's case is on file with the authors of this comment.

The Cameroon Advocacy Network is a coalition of organizations and activists across the United States and Cameroon, advocating for the freedom and dignity of Cameroonians seeking asylum in the United States. We stand in solidarity with all Black immigrants fighting for liberation. Founded and led by Cameroonians in the diaspora in coalition with immigration and human rights activists and advocacy organizations, we are uniquely situated to champion the freedom and dignity of Cameroonians, center the issues of black migrants, and build our communities to thrive.

The Haitian Bridge Alliance (HBA), also known as “The BRIDGE,” is a 501(c)(3) grassroots nonprofit community organization that advocates for fair and humane immigration policies and provides migrants and immigrants with humanitarian, legal, and social services, with a particular focus on Black people, the Haitian community, women and girls, LGBTQIA+ individuals, and survivors of torture and other human rights abuses.

Robert F. Kennedy Human Rights is a nonpartisan, not-for-profit organization that has worked to realize Robert F. Kennedy’s dream of a more just and peaceful world since 1968. The U.S. Advocacy and Litigation Program at RFK Human Rights partners with grassroots organizations to seek accountability for human rights abuses in the U.S. criminal legal and immigration systems and to promote fairness, equity, and dignity for all people whose lives are touched by those systems.

The Southeast Dignity Not Detention Coalition is a group of immigrants, children of immigrants, advocates, organizers, legal workers, justice seekers and community members who share resources, organize and take action together to end the caging and surveilling of people in the southeastern region of the U.S. This includes seeking the permanent closure of all immigration detention centers run by private prison companies and localities under the authority of the New Orleans ICE Field Office.

CONCLUSION

The proposed rule will require people to challenge complex legal determinations, typically within days of their arrival to the United States, while detained in cruel and degrading conditions like the NOLA ICE detention centers, and without the assistance of an attorney. It will also worsen currently existing racial disparities in bars to humanitarian protection, disproportionately *refouling* Black people to persecution and torture. The proposed rule should be withdrawn in its entirety.

Respectfully,

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