







Third, the IFR returns to the “significant possibility” standard and removes the review of security bars during initial fear screenings (8 C.F.R. § 208.30(b) and (e)). The SPLC is encouraged by the IFR’s return to the preexisting standard that asylum seekers need only demonstrate “a significant possibility” that they can prevail on their claim for asylum, withholding of removal, or protection under the Convention Against Torture. The SPLC applauds the amendment to 8 CFR § 208.30(e)(5) not apply any bars to asylum or other protection at the initial fear screening stage, a welcome return to long-standing practice. To screen for such bars during this initial phase of the process could be an unnecessary barrier to protection, particularly when individuals are often going through these initial fear screenings without the benefit of legal representation.

Fourth, the IFR allows Asylum Officers to grant withholding of removal and protection under CAT for individuals who have received a positive Credible Fear Determination (8 CFR § 208.9(b)). The SPLC applauds this change to the process for individuals who have passed their CFIs and who proceed to the Asylum Merits Interview with USCIS.<sup>12</sup> This would reduce the number of people who will proceed in immigration court and streamline the process by which an individual may obtain relief. It would also allow individuals to be eligible for work authorization sooner.

- II. The Interim Final Rule eliminates essential due process protections of asylum seekers in the name of efficiency.

still premised on the erroneous assumption that an individual seeking protection will be able to fully disclose information about their fear and reasons for fleeing their home country to a government official while they are detained (and frequently experiencing re-traumatization), usually without the benefit of counsel, shortly after arriving, without appropriate language access, and in the face of asylum officers who may be overtly adversarial in their interviewing or hostile to their claims.<sup>14</sup> These issues are addressed more fully in

not be able to secure legal representation for the Asylum Merits Interview under the revised unreasonable expedited time constraints. The impact of the IFR will be exacerbated in areas like the Southeast where many individuals are detained and the rates of representation are already abysmally low. At the Stewart Immigration Court, for example, only 6 percent of respondents are represented, which is one of the lowest rates among detained courts and is less than half of the national average (14 percent) of representation for detained respondents.<sup>22</sup> In addition to direct representation, SIFI also provides some *pro se* assistance to individuals proceeding before the Stewart Immigration Court, where it is the only organization listed on the court's *FOR* list that provides direct representation.<sup>23</sup>

SIFI's experiences working with individuals detained across the Southeast indicate that such a restrictive timeline will prevent many individuals from securing legal representation ahead of the Asylum Merits Interview, let alone within the shorter timeframe to submit corrections or supplemental evidence into the record. When an individual calls SIFI's Helpline seeking legal representation, SIFI staff member typically conducts an intake with the individual and undertakes a subsequent screening process to determine whether SIFI will offer its representation. Due to the volume of calls and the need to review cases before committing to representation, SIFI is often unable to complete the intake, screening, and decision-making process within a week. Under the IFR's proposed process, therefore, SIFI could have as little as one week to meet with a client, establish the rapport essential to attorney-client conversations involving the disclosure of traumatic history, review the record of the credible fear determination, and collect and submit any supplemental evidence.

The IFR's timeline is particularly concerning given the numerous barriers to access to counsel that individuals face when in ICE detention.<sup>25</sup> For example, at the Stewart Detention Center in Lumpkin, Georgia, SIFI staff have primarily conducted legal visits via legal phone calls and video technology conferencing since the COVID pandemic began, although in-person legal visits are permitted. However, legal phone calls at Stewart are limited to 30 minutes, and VTC visits are limited to 60 minutes, once a day if the call is allowed to proceed as scheduled.<sup>26</sup> It is not uncommon for SIFI attorneys to meet with a client several times a week in order to prepare for a hearing. It would be extremely difficult, if not outright impossible, for a legal services organization such as SIFI to obtain all the relevant case information from a detained client if they were retained shortly before their Asylum Merits Hearing.

The IFR's singular focus on swift adjudication of asylum proceedings will rush individuals into some cases, proceed with their Asylum Merits Interview within the month of arriving in the United States.

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Marco<sup>30</sup> fled political persecution in Nicaragua and came to the United States seeking safety. He was detained by CBP for six days and placed directly into removal proceedings without first having a CFI. Marco was initially detained in El Paso, Texas, before being transferred to Stewart Detention Center. Marco was unable to reach the SIFI Hearing until almost a month later, and SIFI confirmed representation several weeks later. Over the course of the next three months, until Marco's Individual Hearing, SIFI gathered and translated at least nine supporting documents and submitted multiple expert reports and a written closing statement. Marco was ultimately granted asylum by the immigration judge, but under the IFR's timeline, Marco may have had the Asylum Merits Interview well before he was able to contact SIFI to seek legal representation or possibly even before he was transferred to Stewart Detention Center.<sup>31</sup>

Jean<sup>32</sup> fled his home country to seek safety from persecution on account of religious beliefs. Shortly over a month after he sought safety in the United States, Jean had a CFI and received a positive determination. His merits hearing was six months later, and Jean remained in detention throughout the course of immigration proceedings. Throughout that time, his SIFI attorney secured experts and each needed time to review the asylum application, CFI notes, and Jean's declaration, as well as speak with Jean himself, before they could complete their reports. After five months, those declarations were submitted to the immigration court. Under the IFR's timeline, it would be impractical, if not impossible, to have an expert—let alone two—review the documents and either write a declaration or testify.

The persistent push of the timeline proposed by the IFR fails to consider that the vast majority of individuals who will be subjected to this process are survivors of trauma. It is well-documented that trauma can have a significant impact on a person's memory, which can affect the ability of an asylum seeker to recount the basis for their claim for relief, both to a legal representative, should they manage to secure one, and with an asylum officer or immigration judge.<sup>33</sup> Many asylum seekers who recently arrived in the United States will still be suffering from the trauma they endured and will be unable to gather the evidence and articulate their claims in such a short timeframe, particularly when enduring dehumanizing and traumatizing conditions of confinement in detention. This will result in an increase in denials.



The consequences of these truncated time frames ~~are~~ not be more dire for individuals fleeing persecution.

first time—that they are entitled to counsel (at their own expense), the IFR then provides that the status conference is to be scheduled within



Thomas<sup>49</sup> and his wife fled Russia after facing religious persecution. After coming to the United States to seek asylum, they were separated and detained. Thomas passed his CFI and was scheduled for an Individual Hearing seven months later.

SIFI connected Thomas with counsel to represent him at his Individual Hearing. While his case was pending, SIFI was able to obtain Thomas's medical records from Russia and the United States, which revealed that Thomas had suffered a traumatic brain injury and ongoing memory loss as a result. SIFI represented Thomas in several efforts to secure his release from detention, but ICE denied the requests for parole and the IJ denied Thomas's claim for asylum. SIFI subsequently represented Thomas as his appeal to the BIA and the BIA remanded Thomas's case back to the IJ. SIFI was able to work with medical experts who reviewed Thomas's medical records and wrote a letter explaining Thomas's medical issues and requesting extra time to prepare for his hearing before the IJ. His case remained pending before the immigration court. Under the IFR's timeline, SIFI would not have had enough time to collect the medical records and work with the medical experts before the IJ. (b)(7)(D) Td2[(e)6 (x)2

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