

June 16, 2014

The Honorable John Lafferty  
Chief, Asylum Division  
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Refugee, Asylum and International Operations Directorate  
Washington, DC 20529

Dear Mr. Lafferty:

We, the undersigned legal experts and nonprofit organizations working with refugees, asylum seekers, and torture survivors, write to express our deep concern with the recent revisions to the Asylum Division Officer Training Course Lesson Plan, [Credible Fear of Persecution and Torture Determinations](#), (hereinafter “Lesson Plan”) and the accompanying [memorandum announcing the revisions](#). A number of the changes effectuated through the Lesson Plan could have devastating effects for individuals fleeing persecution and torture and are inconsistent with the statutory standards and intent. We urge USCIS to immediately revise the Lesson Plan so that it is consistent with the asylum provisions of the Immigration and Nationality Act and reflective of their language and purpose.

We appreciate that USCIS is responsible for implementing the law in a way that protects *bona fide* refugees while maintaining the integrity of the asylum process, and that it is grappling with increased numbers of individuals fleeing violence and seeking the United States’ protection. However, the guidance and accompanying memorandum go well beyond just addressing gaps in training and instead indicate that asylum officers should apply a newly heightened standard when screening for credible fear. The guidance also appears to suggest that credible fear interviews should be conducted more like full-blown asylum interviews. The right response to a surge in humanitarian need, however, is a parallel build-up in resources, not a heightened restriction on access to asylum.

Both the statute and the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) make clear that Congress intended the credible fear process to serve as a low-threshold screening mechanism for protection claims. The “significant possibility” standard for credible fear determinations was set lower than the standard for full-scale asylum determinations with the understanding that potential refugees would be granted a later opportunity to prepare and present their full claims before an immigration judge. Potential refugees are often afraid of authorities, too traumatized to disclose their suffering, and unable to access legal counsel or understand what issues are relevant to support an asylum claim. Together, the process and the standard it employs were designed to ensure that the United States would continue to abide by its longstanding obligations under domestic and international law to not return an individual to a country where he or she is likely to face persecution or torture. The safeguards Congress put in place function only if individuals are appropriately referred to USCIS by ICE or CBP, and only if USCIS correctly applies the appropriate standard to credible fear screenings.

However, the Lesson Plan nonetheless deletes several references to this legislative history. The structure, tone, and content of the Lesson Plan seem, in a number of places, to require an asylum officer to complete a full assessment of the asylum-seeker's potential asylum or Convention Against Torture (CAT) claim. Although the Asylum Division claims that "these modifications... do not change the 'significant possibility' standard or alter the screening function of the credible fear process," in practice, these revisions will considerably heighten the longstanding "significant possibility" standard. The revisions also are likely to yield confusion among asylum officers by conflating the credible fear standard with the full asylum and CAT standards – often without sufficient explanation and distinction.

The potential for resulting harm cannot be overstated. With complex asylum and CAT determinations being made through a truncated process with a heightened and unclear standard and none of the mechanisms that allow for full record development, the safety net Congress created will be drastically undermined and untold numbers of bona fide refugees could be returned to their persecutors. These harms will only be exacerbated by the increase in the use of telephone interviews to conduct this critical screening process. The heightening of the "significant possibility" standard will further violate U.S. commitments under international law – including the Refugee Convention's prohibition against returning a refugee to a country where he or she is likely to face persecution. The Lesson Plan's approach will also have an inordinate effect on individuals with asylum claims that implicate rapidly evolving, unsettled areas of law, which cannot possibly be adequately developed and applied in a credible fear interview.

We urge the Asylum Division to immediately revise the portions of the Lesson Plan that are inconsistent with the statutory standard and the "screening" purpose of these interviews. We also encourage USCIS to carefully review and consider all comments on the lesson plan, and to quickly implement revisions. In the interim, we urge the Asylum Division to intensify supervisory review. Finally, given the significant increase in funding to CBP and the sharp increase in the use of expedited removal and reinstatement of removal, we urge the Asylum Division and USCIS to insist on sufficient additional funding to properly conduct credible fear and reasonable fear interviews in person and in a timely manner. Increased resources would allow USCIS to properly conduct its crucial role in these processes without adding to the backlog of affirmative asylum applications.

We greatly appreciate the willingness of the Asylum Division to engage with stakeholders, and respectfully request an in-person meeting to be scheduled by June 28, 2014 – 120 days since the memorandum was issued – to discuss the Lesson Plan and its impact on asylum seekers. Please do not hesitate to contact Kate Voigt at [kvoigt@aila.org](mailto:kvoigt@aila.org) or Katharina Obser at [obserk@humanrightsfirst.org](mailto:obserk@humanrightsfirst.org) with any questions or concerns.

Sincerely,

## **Organizations**

Advocates for Human Rights

American Civil Liberties Union

American Friends Service Committee  
American Gateways  
American Immigration Council  
American Immigration Lawyers Association  
Catholic Charities of the Archdiocese of Newark  
Catholic Legal Immigration Network, Inc.  
Center for Gender & Refugee Studies, U.C. Hastings College of the Law  
Center for Victims of Torture  
Florence Immigrant and Refugee Rights Project  
HIAS  
Human Rights First  
Human Rights Initiative of North Texas  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
Lutheran Immigration and Refugee Service  
National Immigrant Justice Center  
Tahirih Justice Center  
Women's Refugee Commission

**Law Professors\***

*\* Institutional affiliations of individual signatories are for identification purposes only.*

**Deborah Anker**

Clinical Professor of Law  
Director, Harvard Immigration and Refugee Clinical Program  
Harvard Law School

**Sabrineh Ardalan**

Assistant Director  
Harvard Immigration and Refugee Clinical Program

**David C. Baluarte**

Assistant Clinical Professor of Law  
Director, Immigrant Rights Clinic  
Washington and Lee University School of Law

**Jon Bauer**

Clinical Professor of Law and Richard D. Tulisano '69 Scholar in Human Rights  
Director, Asylum and Human Rights Clinic  
University of Connecticut School of Law

*\* Institutional affiliations of individual signatories are for identification purposes only.*

**John Willshire Carrera**

Co-Managing Attorney

Harvard Law School Immigration and Refugee Clinic at Greater Boston Legal Services

**Michael J Churgin**

Raybourne Thompson Centennial Professor in Law

University of Texas at Austin

**Marisa S. Cianciarulo**

Professor of Law

Chapman University Fowler School of Law

**Dree K. Collopy**

Immigration Litigation Clinic

Catholic University of America Columbus School of Law

**Erin B. Corcoran**

Professor of Law

University of New Hampshire School of Law

**D.C. Drake**

Adjunct Professor

George Mason University School of Law

**Niels W. Frenzen**

Clinical Professor of Law

USC Gould School of Law

**Denise Gilman**

Clinical Professor

Co-Director, Immigration Clinic

University of Texas School of Law

**Anju Gupta**

Assistant Professor of Law

Director, Immigrant Rights Clinic

Rutgers School of Law – Newark

**Dina Francesca Haynes**

Director, Human Rights and Immigration Law Project

New England Law

*\* Institutional affiliations of individual signatories are for identification purposes only.*

**Susan Hazeldean**

Assistant Clinical Professor of Law  
Director, LGBT Clinic  
Cornell Law School

**Geoffrey Heeren**

Assistant Professor and Director of the Immigration Clinic  
Valparaiso University Law School

**Kate Jastram**

Faculty Director and Lecturer in Residence  
The Honorable G. William & Ariadna Miller  
Institute for Global Challenges and the Law  
University of California, Berkeley, School of Law

**Nancy Kelly**

Co-Managing Attorney  
Harvard Law School Immigration and Refugee Clinic at Greater Boston Legal Services

**Elizabeth Keyes**

Assistant Professor, Director of the Immigrant Rights Clinic  
University of Baltimore School of Law

**David C. Koelsch**

Associate Professor and Director of the Immigration Law Clinic  
University of Detroit Mercy School of Law

**Emily B. Leung**

Albert M. Sacks Clinical Teaching & Advocacy Fellow  
Harvard Immigration and Refugee Clinic

**Beth Lyon**

Professor of Law  
Director, Farmworker Legal Aid Clinic  
Co-Director, Community Interpreter Internship Program  
Villanova University School of Law

**Lynn Marcus**

Co-Director, Immigration Law Clinic  
University of Arizona James E. Rogers College of Law

*\* Institutional affiliations of individual signatories are for identification purposes only.*

**Elizabeth McCormick**

Associate Clinical Professor of Law  
Director, Immigrant Rights Project  
Director, Clinical Education Programs  
University of Tulsa College of Law

**Isabel Medina**

Ferris Family Distinguished Professor of Law  
Loyola University New Orleans College of Law

**Nina Rabin**

Associate Clinical Professor of Law  
Director, Bacon Immigration Law and Policy Program  
James E. Rogers College of Law, University of Arizona

**Victor C. Romero**

Maureen B. Cavanaugh Distinguished Faculty Scholar & Professor of Law  
The Pennsylvania State University, Dickinson School of Law

**C. Mario Russell**

Adjunct Professor  
St. John's Law School  
Refugee and Immigrants' Rights Litigation Clinic

**Heather Scavone**

Director of the Humanitarian Immigration Law Clinic & Assistant Professor of Law  
Elon University School of Law

**Rebecca Sharpless**

University of Miami School of Law

**Gwynne Skinner**

Associate Professor of Law  
Director, International Human Rights Clinic  
Director, Externship Program  
Willamette University College of Law

**Philip L. Torrey**

Lecturer on Law, Harvard Law School  
Clinical Instructor, Harvard Immigration and Refugee Clinical Program  
Supervising Attorney, Harvard Immigration Project  
Harvard Law School

*\* Institutional affiliations of individual signatories are for identification purposes only.*

**Enid Trucios-Haynes**

Professor of Law & University  
Faculty Grievance Officer  
Brandeis School of Law

**Stephen Wizner**

William O. Douglas Clinical Professor Emeritus & Professorial Lecturer  
Yale Law School

**Lauris Wren**

Clinical Professor & Director of the Asylum Clinic  
Maurice A. Deane School of Law at Hofstra University

**Stephen Yale-Loehr**

Co-Director, Immigration Clinic  
Cornell Law School

cc: Lori Scialabba, Acting Director, U.S. Citizenship and Immigration Services  
Maria Odom, CIS Ombudsman, DHS  
Esther Olavarria, Senior Counselor to the Secretary, DHS  
Molly Groom, Acting Deputy Assistant Secretary for Policy, DHS  
Serena Hoy, Counselor to the Deputy Secretary, DHS  
Felicia Escobar, Senior Policy Advisor, White House Domestic Policy Council