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VIA Federal eRulemaking Portal

DOJ Docket Number EOIR-18-0002: Public Comment of the Immigration Reform Law Institute Re: Procedures of Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review

Dear Director Reid:

The Immigration Reform Law Institute (IRLI) respectfully submits the following public comment in response to the notice of public rulemaking (NPRM) issued jointly by the Executive Office for Immigration Review (EOIR) of the U.S. Department of Justice (DOJ) and the U.S. Citizenship and Immigration Services of the U.S. Department of Homeland Security, as published in the Federal Register. *See Procedures of Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 Fed. Reg. 36264 (June 15, 2020).

IRLI is a non-profit public interest law organization that exists to defend individual Americans and their local communities from the harms and challenges posed by mass migration to the United States, both lawful and unlawful.

IRLI works to monitor and hold accountable federal, state, and local government officials who undermine, fail to respect, or fail to comply with our national immigration and citizenship laws. IRLI also provides expert immigration-related legal advice, training, and resources to public officials, the legal community, and the general public.

I. Introduction.

IRLI has carefully reviewed the joint agency NPRM and fully endorses this historic reform of application and screening procedure for asylum, withholding of removal (WOR), and Convention Against Torture (CAT) relief. For each of the three main regulatory projects encompassed by the proposed rule—improvement of expedited removal and credible fear screening; better integration of the legal elements of asylum and refugee status into the asylum application form itself; and the historic addition of an integrated set of definitions and standards for refugee status that fully reflects the uniquely American statutory scheme for humanitarian relief and protection adapted by Congress from United Nations principles—the agencies have produced a rulemaking that is impressive in its integration of fundamental elements of asylum and refugee law that have suffered for half a century from piecemeal and often reactionary administration and adjudication.

Piecemeal regulation has been catastrophic not only for United States sovereignty and national interests, but for progress in global anti-corruption, anti-trafficking, anti-genocide, and rule of law initiatives. Worldwide, relatively small numbers of *bona fide* refugees can access and receive protection, while organized crime and Marxist revolutionaries engage in violent conflicts to control and expand the international black market in human labor that exploits tens of millions of economic migrants.

This corruption is the major threat to protection of the persecuted in the twenty-first century. Without sustainable reforms on the scale of those so carefully integrated into the NPRM, the American public, as one eminent legal scholar put it, "will not allow governments to be generous [because] it [will] believe[] they have lost control." David A, Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia,* 138 Pa. L. Rev. 1247, 1269 (1990).

IRLI fully endorses the NPRM as a whole, but respectfully submits comments on six topics of particularly high importance.

II. Regulatory reform for credible fear determinations within a viable expedited removal program.

IRLI fully agrees with the agencies' determination that the 1997 expedited removal regulations have failed to implement correctly the statutory language of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), codified in INA § 235(b), 8 U.S.C. § 1225(b). *See* 85 F.R. 36267. Congress did not intend for IIRIRA to add to or expand the five statutory grounds for asylum, or to authorize immigration judges to review the asylum claims of applicants for admission who were inadmissible due to lack of immigration documents or false statements to

immigration inspectors, or stowaways, per 8 U.S.C. §§ 1225(a) and 1225(b)(1)(A)(i). Rather, IIRIRA reaffirmed that these aliens are lawbreakers with no constitutionally cognizable connections to the United States, and restricted the eligibility of these aliens even to apply for admission on any ground other than the humanitarian basis authorized by INA § 208.

Comprehensive reform of current dysfunctional practices is urgently needed. It is well-established that Congress expected that the discretionary placement of aliens in expedited removal would constitute an administrative determination of removability. Yet piecemeal regulation has deviated to make the subset of aliens in expedited removal who can actually articulate a credible fear of persecution eligible for a full INA § 240 removal proceeding. This practice nullifies IRRIRA's legislative language, which—as the NPRM points out—(1) designates applicants for admission placed in expedited removal as among the three classes of aliens expressly ineligible for INA § 240 adjudication; (2) only authorizes "further consideration of the application for asylum" for those who establish credible fear, *see* 85 F.R. 36266 (citing and describing the interplay between 8 U.S.C. §§ 1225(b)(2)(A), 1225(b)(2)(B)(ii), and 1225(b)(1)(B)(ii)); and (3) requires the streamlining of adjudication of expedited removal proceedings by imposing detailed substantive and procedural restrictions on administrative and judicial review, *see* 8 U.S.C. §§ 1225(b)(1)(C) (Limitation on administrative review), 1225(b)(1)(B)(iii)(III) (Review of credible fear determination), and 1252(e) (Judicial review of orders under section 235(b)(1).

IRLI comments that the statutory construction creating asylum/WOR-only proceedings is even more obvious than the NPRM summary suggests. INA § 235 further provides two narrow statutory exceptions where full INA § 240 proceedings would be required: first, where the applicant for admission is an arriving alien from Mexico or Canada and has received a positive credible fear determination, but is then returned to one of those contiguous states "pending a proceeding under section 240," 8 U.S.C § 1225(b)(2)(C); second, where a "challenge by any other officer" has been made to an inspector's decision "*favorable* to the admission" of an alien who, unlike a stowaway, crewman, or detainee in expedited removal, is *eligible to apply* for admission, 8 U.S.C § 1225(b)(3). Read together, these provisions set forth a sharp statutory distinction between unadmitted aliens who are eligible for full section 240 proceedings and those who are ineligible to apply for admission and thus may only seek a discretionary grant of asylum—in what the NPRM is now formally classifying as asylum/WOR-only proceedings.

The timing of this reform, whose reasonableness will likely be attacked by special interests that are ideologically opposed to any limits on eligibility for U.S. humanitarian relief, has a compelling rational basis. Over the generation since enactment of IIRIRA in 1996, an enormous and steadily increasing disparity has emerged between the numbers of aliens claiming a credible

fear of persecution, both in expedited and section 240 removal proceedings, and the small and diminishing proportion of such aliens whose asylum or WOR applications are successful. For example, in FY 2019, only 15.33 percent of all aliens whose cases originated with a credible-fear claim were granted asylum, while a staggering 41.53 percent of those aliens failed to file an asylum application at all. *See* Andrew R. Arthur, https://cis.org/Arthur/DHSDOJ-Empower-Asylum-Officers-Apply-Immigration-Laws-Credible-Fear (CIS July 2, 2020).

IRLI supports the agencies' common-sense proposal to require immigration judges to consider applicable legal precedent when reviewing a negative credible fear determination. 85 F.R. 36267, proposed 8 C.F.R. § 1003.42(f). In general, every reform by the government that provides additional objective criteria for credible fear and merits adjudications reduces the need for the adjudicator to rely on necessarily subjective assessments of the applicant's credibility. While the proposed rule does not change the *de novo* scope of IJ review, it will curtail the existing abuse of IJs' scouring out-of-circuit case precedent to nullify in-circuit precedent they personally consider unhelpful.

Closely related is the agencies' proposal to authorize asylum officers to screen for mandatory bars to eligibility for asylum, WOR, or CAT relief during the credible fear interview. *See* 85 F.R. 36272, proposed amendments to 8 C.F.R. § 208.30(e). The current regulation, which delays consideration of mandatory bars until the alien receives a full section 240 hearing, is yet another example of how the current regime of piecemeal and contradictory adjudication of applications for relief promotes chaos, delay, uncertainty, and waste. As the NPRM notes, an applicant can establish a credible fear of persecution or torture and still be statutorily ineligible for relief. It makes no sense not to screen for these bars at the earliest stage possible, and resolve any disputes about whether the bars were properly applied in an asylum/WOR-only proceeding.

IRLI also endorses the agencies' proposal to amend credible fear regulations so that they correctly reflect the congressionally-required difference in burdens of proof between establishing credible fear for asylum and establishing credible fear for WOR and CAT relief. 85 F.R. 3626871, proposed 8 C.F.R. §§ 208.30(e), 1208.30(e). Correction of WOR/CAT screening standards to reflect the higher standard of proof required on the merits for an ultimate grant of the latter forms of relief is important because of the staggering rate of fraud and misrepresentation in the current uniform credible fear screening procedure. As one former IJ put it: "If you are wondering, for example, how cartel members can make credible fear claims, look no further [than this uniform procedure]." Andrew R. Arthur, *Raise Credible Fear Standard for Statutory Withholding and CAT* (CIS June 25, 2020), https://cis.org/Arthur/DHSDOJ-Raise-Credible-Fear-Standard-Statutory-Withholding-and-CAT.

III. **Better screening of asylum applications for frivolous claims of law.**

IRLI fully supports the decision of the agencies to amend the arbitrary and unmerited existing regulatory interpretation of INA § 208(d)(6), 8 U.S.C. § 1158(d)(6), which limits the statutory term "frivolous applications" to claims in which an essential element is fraudulent. *See* 85 F.R. 36273-77, proposed 8 C.F.R. §§ 208.20, 1208.20. IRLI has long expressed concern about the adverse effect of this counterproductive interpretation on reduction of the chronic backlogs in EOIR immigration courts, and has called for the reform now proposed in the NPRM.

For a decade after passage of IIRIRA in 1996, the Board of Immigration Appeals ("BIA" or "Board") provided no standards for applying or reviewing an immigration judge's application of § 1158(d)(6). Then, in July 2006, the Second Circuit, frustrated by the Board's reticence to clarify this important area of the law, remanded a case involving a frivolousness finding and ordered the Board to "set down clear and explicit standards by which frivolousness decisions may be judged." *Liu v. U.S. Dep't of Justice*, 455 F.3d 106, 116 (2d Cir. 2006. But, as the NPRM summary notes, the definition promulgated by the George W. Bush Administration as a result of this litigation arbitrarily limited the meaning of frivolousness to applications where any material element was deliberately fabricated, and omitted without explanation an obvious additional meaning included in the proposed rule—that the application was submitted for an improper purpose. *See* 85 F.R. 36274, citing 62 F.R. 10312, 10347 (Mar. 6, 1997) (final rule).

The narrow 1997 definition was arbitrary because, *inter alia*, it ignored the paramount legislative objective of IIRIRA—the prompt exclusion or removal of the unentitled. *See, e.g.*, H.R. Rep. No. 104-469, pt. 1, at 111 (1996) ("Our immigration laws should enable the prompt admission of those who are entitled to be admitted, the prompt exclusion or removal of those who are not so entitled, and the clear distinction between these categories."); S. Rept. No. 104–249, at 2 (1996) (IIRIRA would "reduce the likelihood that fraudulent or frivolous applications will enable deportable or excludable aliens to remain in the U.S. for substantial periods."). Addition of the three new criteria for a frivolous asylum application, proposed 8 C.F.R. § 208.20(c)(2)-(4), will finally bring the agencies' construction of the frivolous application bar into full conformity with IIRIRA.

These clear statements of congressional intent also strongly support the proposal, 85 F.R. 36275, to allow asylum officers to make initial frivolity determinations, subject to de novo review by an immigration judge. It is both in the national interest and consistent with international standards of *nonrefoulement* that statutorily frivolous claims are identified as soon as is feasible in the screening process. IRLI agrees that the first and best opportunity, from both operational and legal perspectives, is at the stage of asylum officer review.

IRLI also strongly supports the proposal to add a new application-based screening authority at EOIR (pretermission) that would allow denial without a hearing for applications that do not establish a *prima facie* claim for asylum, WOR, or CAT relief. 85 F.R. 36277, proposed 8 C.F.R. § 1208.13(e). Under both U.S. law and U.N. doctrine, only mentally incompetent aliens are exempted from the requirement that applicants personally identify the specific reasons they seek protection and the specifics of their claimed fear. The NPRM correctly notes that immigration judges already use similar *prima facie* screening for legal insufficiency to deny motions to reopen to apply for asylum, and that such screening has been upheld by the U.S. Supreme Court in *INS v. Abdu*, 485 U.S. 94 (1988). The procedure has been correctly analogized to summary judgement under F.R.C.P. 56, and is already used in employer sanction proceedings under EOIR's Office of the Chief Administrative Hearing Officer (OCAHO). *See* 28 C.F.R. § 68.38 (summary decisions).

The proposed requirement, 8 C.F.R. § 1208.13(e)(2), of ten days' notice of intent to pretermit by the immigration judge to the alien, and the availability of BIA and further judicial review carefully balances IIRIRA's heightened sanctions for filing frivolous applications with multiple levels of review. Under current practice, an alien has strong incentives to file a legally deficient or frivolous application. IRLI believes that the proposed ten days' notice rule will enable DHS or the IJ to identify these defects promptly and provide the alien the opportunity to present missing legal arguments, where the facts in the record are not in dispute. The notice period is also the optimal point in a proceeding for the alien to introduce any additional evidence not in the application, to be proven at a merits hearing, as opposed to wasting scarce adjudicatory resources by blindsiding the government with novel claims in the hearing itself.

IV. Regulatory definitions for the elements of an approvable claim of refugee status.

One of the most damaging and frustrating aspects of U.S. regulation of humanitarian claims for asylum has been the absence, since the initiation of the current asylum scheme in 1980, of regulatory definitions of many of the core elements of refugee status: membership in a particular social group, political opinion, persecution, and nexus. The Naturalization Power Clause of the Constitution mandates that federal immigration and naturalization law be "uniform." U.S. Const., Art. 1, § 8, cl. 4. The constitutional mandate for uniformity strongly implies that regulation is the primary method by which uniform federal law, that is, the INA, is to be implemented. That the meaning of core elements of U.S. asylum and refugee law has been left to the political whims of prior administrations for fifty years is in IRLI's view indefensible. The resulting chaos and uncertainty have provoked and facilitated persecution, trafficking, exploitation of vulnerable persons, international organized crime, and corrupting lawlessness worldwide.

The proposed definitions are a historic legal development that will, once implemented, over time advance both the national interest and human rights. IRLI observes that a prominent common feature of the new definitions is their careful grounding in agency practice, judicial precedent, and statutory developments since enactment of the Refugee Act of 1980. Congress has gradually developed a humanitarian relief regime that diverges in basic respects from United Nations agency doctrines interpreting the Refugee Convention and Protocol. In the crucible of continuous border crises and mass influxes of unauthorized aliens, the agencies have recognized that asylum and refugee policy as thoughtlessly envisioned in 1980 was unworkable. The Supreme Court has ultimately affirmed these doctrinal and procedural developments in domestic humanitarian law. IRLI notes that these new definitions are also core elements of refugee law. It would thus be arbitrary for the agencies to fail also to apply these definitions to screenings of overseas refugee applications pursuant to INA § 207.

As for the drafting approach adopted for the proposed new definitions, IRLI endorses the agencies' combination of formal definitions along with various lists of adverse factors that would disfavor or in some circumstances foreclose approval of an application. *See, e.g.,* proposed 8 C.F.R. §§ 1208.1(c) (list of factors that generally will preclude a favorable claim of membership in a particular social group); 1208.1(d) (list of circumstances where a claim of persecution on account of political opinion generally will not be approved); 1208.1(e) (list of claims of harm that generally will not demonstrate the requisite severity to constitute persecution); 1208.1(e) (providing a "nonexhaustive" list of circumstances where in general a nexus to one of the five statutory grounds for persecution is not present); 1208.13(d)(1) (significant adverse factors for exercise of discretion); 1208.13(d)(2) (adverse factors precluding a favorable exercise of discretion); 1208.13(d)(2)(ii) (providing for discretionary approval of asylum notwithstanding the existence of (d)(2)(i) mandatory preclusion factors in cases of exceptional and extremely unusual hardship to the alien); and 1208.18(a)(1) (listing exceptions to the proposed definition of torture for acts not committed under color of law). While the subject matter of the NPRM is extraordinarily broad, it does appear that the proposed legal definitions, lists of exceptions, and the consistent treatment of these standards as strong legal presumptions that can be rebutted in rare and unusual circumstances, rather than absolute bars, together form a sustainable regulatory policy that is consistent with decades of evolving statutory construction and due process litigation in the field of immigration law.

IRLI also endorses the addition of a definition of "firm resettlement." *See* 85 F.R. 36303, proposed parallel regulations 8 C.F.R. §§ 208.15, 1208.15. IRLI, like the agencies, believes that the firm resettlement bar functions as a screening device for economic refugees, limiting refugee protection to "'those with nowhere else to go.'" 85 F.R. 36286 (quoting *Matter of A-G-G-*, 25 I&N Dec. 486, 502 (BIA 2011)). The current regulation, of which at least three different circuit

court interpretations exist, would produce uncertain results in all three circumstances addressed in the proposed regulations, depending on the venue of the immigration court. IRLI supports the standard in the proposed regulation of whether physical or *de jure* settlement was available under the law of the intermediary nation, as coming closest to the historic humanitarian standard as first implemented by the displaced persons relief laws in the post-World War II era.

V. Consideration of Internal Relocation in Credible Fear and Merits Determinations.

IRLI endorses the proposal of EOIR to exclude persecution by private actors from the presumption that internal relocation to escape persecution is not reasonable. 85 F.R. 36282, proposed 8 C.F.R. § 1208.13(b)(3)(iii)-(iv). Prioritizing the internal relocation of refugees is critical to the ultimate viability of international humanitarian protection law. The cost of protection of internally relocated refugees is a tiny fraction of the expense of resettling the same refugee—or asylee—in the United States. Only through development of robust internal resettlement programs can the international community ever hope to assist more than a miniscule and arbitrary subset of the world's refugees.

It is quixotic for stakeholders to expect that the availability of asylum in the United States could ever ameliorate conditions of widespread violent crime by private actors in foreign nations. As the NPRM properly reflects, moreover, that problem was never a concern of the drafters of the Refugee Convention, and certainly not of the U.S. Congress. If the agencies are seeking to exercise immigration authority that would help reduce overseas lawlessness, the most practical tool in the INA is the visa suspension provisions at 8 U.S.C. § 1182(f) and 1253(d). Restrictions on the entry of legal immigrants and visitors, in particular government officials and their families, are an efficient means of deterring influxes of unauthorized aliens who are not refugees but suffer from inferior law enforcement regimes and organized crime. The agencies should consider an addition to the NPRM that would authorize immigration judges to identify candidates for INA § 243(d) visa sanctions when granting relief pursuant to asylum/WOR-only proceedings, and authorize the Attorney General to forward such referrals to the Department of Homeland Security.

IRLI believes the role of internal relocation is as important for credible fear determinations as it is for adjudication of claims on the merits, and endorses the agencies' proposed changes to 8 C.F.R. § 208.16(b)(3). 85 F.R. 36272. The totality of the circumstances is the appropriate credible fear adjudication standard, given the fact-specific nature of the inquiry. IRLI strongly endorses the proposed presumptions, 8 C.F.R. § 208.16(b)(3)(iii)-(iv), against findings that relocation would be unreasonable, where the persecutor is a private actor.

VI. Information Disclosure.

IRLI strongly supports the proposal to define who is a third party to whom information about an applicant for humanitarian relief may not be disclosed. 85 F.R. 36289, proposed revisions to 8 C.F.R. §§ 208.6 and 1208.6. The clarification is needed given the undisputed high incidence of fraud and deception in applications, especially where multiple applicants make claims based on common facts in separate proceedings or appeals. It is common sense that officials adjudicating or defending against common claims in separate proceedings should have access to all applications which share those factual claims.

IRLI itself has been adversely affected by the current trend of routine grants of anonymity and confidentiality to applicants for relief. IRLI is known for its active program of amicus and supplemental briefing to the BIA and the Attorney General, dating back twenty-five years. Where up until 2008 it was routine to obtain access to IJ decisions and party briefs on dispositive legal issues, for more than a decade IRLI has faced increasing difficulty in confirming the facts upon which many BIA precedential cases are decided. Preparing amicus briefs in such circumstances, where almost nothing is publicly known about the key circumstances of anonymous BIA petitioners seeking rulings on novel issues of law, has become increasingly difficult. By contrast, the overbroad restriction of access to application information rarely affects counsel filing supplemental briefs for open borders interests, as they routinely obtain unredacted immigration court filings and IJ decisions from counsel for alien petitioners.

On a technical note, IRLI would recommend deleting the word "deter" from proposed subclause 8 C.F.R. § 208.6(d)(1)(iv) concerning disclosure of information relevant to "the effects of child abuse." The agencies have not included "deter" in similar language in subclause (e)(2), authorizing disclosure to "prevent" or "ameliorate" crime in general. "Deter" would add an unnecessary inquisitorial ground for inquiry. A parallel structure limited to "prevent" and "ameliorate" is appropriate for subclause (d)(1)(iv).

VII. Due process objections to the NPRM and the discretionary review of relief applications.

IRLI believes it necessary to emphasize that the elements of this historic proposed restatement of the regulation of humanitarian relief adjudication will function fully within the parameters of due process afforded to aliens under the Fifth Amendment and the Administrative Procedure Act.

First, obviously, the issuance of the NPRM itself means that the reform proposals have been fully subjected to APA public notice and comment. The agencies' summary of the legal, legislative, and policy origins of the multiple reforms is in itself remarkably comprehensive, as is critical in allowing the agencies to establish the reasonableness of this historic attempt to clean up an Augean stable of conflicting and piecemeal precedent and policymaking, where decades of chaos and dysfunction have attracted the support of an astonishing range of special interests that oppose limitations on humanitarian relief in general.

Second, a common omission by the thousands of commentators who assert the NPRM will suppress due process "rights" of alien applicants is any consideration of the paramount role assigned by the Constitution and the Supreme Court to agency constructions of the federal laws that they have been directed by Congress to administer. Although the NPRM summary is dense with citations to long-established doctrines of deference to agency expertise, and carefully notes the absence in many instances of any prior regulation construing relevant provisions of IIRIRA and the INA itself, these angry commenters still appear oblivious to basic separation of powers concepts.

Third, IRLI's review of thousands of comments in opposition, the majority of which appear to be repetitive mass mailings, reveals that only a handful can articulate non-frivolous arguments for due process defects. For example, one critical commentator complains that "[t]he sections allowing judges to pretermit asylum applications, and allowing asylum officers much broader latitude to deny access to the asylum system, go against fundamental notions of due process and the long-standing tradition that applicants be given a fair chance to make their claims." Comment of J. Martin Steinman. In a similar vein: "Taken as a whole, [the sections] seek to undermine the delicate balance of our asylum laws developed over many years through thoughtful case law." Comment of Judith B. Baker. Neither of these commenters, who both appear to be attorneys, even acknowledge the agencies' primary grounds for reasonableness: The massive delta between applicants and grantees under current procedure, the massive backlog in adjudications caused by and large by the uncertainty and conflict resulting from "years of thoughtful case law," and the massive injustice that occurs when economic migrants and organized crime hijack a humanitarian regime designed to offer relief from true persecution for aliens who have absolutely no other recourse.

With rare exceptions, commentators claiming due process violations do not support their assertions with legally meaningful critiques of the impressively integrated body of case and administrative precedent and legislative history proffered by the agencies for each area of reform. In one illustrative exception, commenter Baker argues: "Asylum would also be denied to those who have accrued one year or more of unlawful presence. This portion of the rule is in direct contradiction to the statute which allows a person to apply for asylum when there are

'changed circumstances' without a one year bar. INA § 208(a)(2)(d)." But this INA clause only allows aliens claiming changed or extraordinary circumstances to *apply* for asylum notwithstanding the time and previous application bars. The regulation that Baker insinuates is contrary to statute and the Fifth Amendment is a rebuttable presumption that "cumulative unlawful presence of more than one year's duration will be considered a significant adverse factor" when considering whether the alien merits relief *in the exercise of discretion*—a statutory vehicle for "granting" asylum that is distinct from the bars to application, and the INA § 208(a)(2)(d) exception therefrom. *See* 8 U.S.C. § 1158(b)(1)(A). The many protests by commentators against one or more of the nine proposed adverse factors that would weigh against a favorable exercise of discretion, which they persist in calling "bars," suffer from the same defect.

Finally, another common error in many hundreds of mass-produced comments opposing the NPRM is the casually misstated argument that "international law" or the United Nations Protocol to the Refugee Convention constitute binding due process protections that constrain the agencies' discretion to restrict humanitarian relief under the INA by regulation. The U.S. Supreme Court has repeatedly rejected variation after variation of that theory. *See, e.g.*, *INS v. Doherty,* 502 U.S. 314, 327 (1992) (holding that return of a terrorist claiming asylum without a removal hearing was an exercise of the Attorney General's "broad discretion" as "the final administrative authority in construing the regulations, and in deciding questions under them"); *INS v. Aguirre-Aguirre*, 526 U.S. 415, 427-28 (1999) ("[T]he determination of refugee status under the 1951 Convention and the 1967 Protocol … *is incumbent upon the Contracting State* in whose territory the refugee finds himself... The [UNHCR] Handbook … is *not binding* on the Attorney General, the BIA, or United States courts."); *The Paquete Habana*, 175 U.S. 677, 700 (1900) (holding that customary international law "is controlling *only* 'where there is no … controlling executive or legislative act or judicial decision.'").

Respectfully submitted,

Immigration Reform Law Institute
by Michael M. Hethmon, Senior Counsel