William P. Barr, Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530

James McHenry, Director Executive Office for Immigration Review 5107 Leesburg Pike, 18th floor Falls Church, VA 22041

Chad Wolf, Acting Secretary Department of Homeland Security Washington, D.C. 20528

January 2, 2020

Kenneth Cuccinelli, Acting Director U.S. Citizenship and Immigration Services 20 Massachusetts Avenue, N.W. Washington, D.C. 20529

Paul Ray, Acting Administrator
Office of Information & Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

RE: Request for 60-Day Comment Period for DHS and DOJ Joint Notice of Proposed Rulemaking--USCIS RIN 1615-AC41; EOIR Docket No. 18-0002; A.G. Order No. 4592-2019

Dear Attorney General Barr, Director McHenry, Acting Secretary Wolf, Acting Director Cuccinelli, and Acting Administrator Ray:

We, the undersigned organizations, write to respectfully request that U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR) extend the comment period for the recent rulemaking issued with regard to asylum eligibility (EOIR Docket No. 18-0002; A.G. Order No. 4592-2019) from 30 days to 60 days. The proposed rule puts forth numerous complex and substantial changes to the existing system of asylum adjudication in the United States; we believe that a 60 day comment period is necessary to ensure that organizations and individuals are able to exercise the meaningful opportunity to comment required by law.

The joint notice of proposed rulemaking was issued on December 19th and broken into three sections. The first section proposes to add seven new bars to eligibility for asylum to the federal rules, with varying processes and explanations for how the immigration adjudicator will determine whether an offense or conduct falls within the newly defined category. The second section provides a multi-factored test for immigration adjudicators to determine whether a criminal conviction or sentence is valid for the purpose of determining asylum eligibility. The

third section rescinds a provision in the current rules regarding the reconsideration of discretionary asylum.

The current joint notice provides for a 30-day comment period to respond to these proposals. Executive Order 12866¹ directs agencies to "afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days." This directive is echoed in Executive Order 13563,² which states: "To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days."

Given the complexity of the legal and policy issues implicated by this rule, the vast scope of impact on those seeking safety in the United States, and the potential implications for the United States' compliance with its obligations under international and domestic asylum law, a 60 day comment period—at minimum—is necessary to ensure that the opportunity to comment is meaningful. This is particularly so given that the originally prescribed 30 day comment period includes two federal holidays and a 10 day work period when many organizations are closed.

Meaningful analysis and commentary on the proposed rule will require research and examination of complex and overlapping areas of law and policy. Specifically, the joint rule:

- ... implicates the United States' obligations under international treaty law, including the Refugee Convention and the Convention Against Torture, and the manner by which these treaties are incorporated into domestic law;
- ... adds *seven* new bars to the regulations governing eligibility for asylum, which will result in a significant change to current asylum adjudications in the affirmative and defensive postures and remove many otherwise eligible applicants from asylum eligibility; and
- ... implicates complex questions regarding the authority of the immigration adjudicator to
 examine evidence and documents relevant to the facts surrounding alleged criminal
 conduct, suggesting a deviation from the long-standing categorical approach to
 determining the impact of a criminal conviction in immigration court and raising
 important questions of judicial efficiency and fairness;³

³ For one of many academic analyses of the quite complex intersection between the categorical approach the determination of what constitutes a "particularly serious crime" barring asylum eligibility, *see* Fatma Marouf, 97 Boston Univ. Law Review 1427, "A particularly serious exception to the categorical approach," Sept. 2017,

http://www.bu.edu/bulawreview/files/2017/09/MAROUF.pdf.

¹ Executive Order 12866 of Sept. 30, 1993, 58 Fed. Reg. 190, Oct. 4, 1993, https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf.

² Executive Order 13563 of Jan. 18, 2011, 76 Fed. Reg. 14, Jan. 21, 2011, https://www.reginfo.gov/public/jsp/Utilities/EO 13563.pdf.

In addition to the complexity of the legal and policy implications of the joint rule, its massive impact on vulnerable communities merits sufficient time for study and consideration. Those individuals who meet the definition of a refugee but are rendered ineligible for asylum under the rule will suffer very real harms. Although the joint rule discusses alternative forms of relief known as withholding of removal and protection under the Convention Against Torture, these forms of relief require a higher burden of proof than asylum, meaning that many asylum seekers excluded from eligibility under the rule will face deportation back to harm if they cannot meet this higher burden.⁴ Furthermore, withholding of removal and Torture Convention protection do not provide a path to lawful permanent residence or the opportunity to reunify with immediate family members who may remain abroad in imminent danger.⁵

A minimum period of 60 days is necessary to ensure that organizations and individuals have a real and meaningful opportunity to engage and comment upon the non-exhaustive list of legal and policy issues described above as well as the economic and human costs that the joint rule will impose.

Thank you in advance for your time and consideration of this request. With any questions or concerns, please contact Heidi Altman at the National Immigrant Justice Center at haltman@heartlandalliance.org or 312-718-5021.

Sincerely,

National organizations

ACLU Immigrants' Rights Project

ADL (the Anti-Defamation League)

Alianza Americas

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)

American Friends Service Committee

American Immigration Lawyers Association

Asian Pacific Institute on Gender-Based Violence

ASISTA

Black Alliance for Just Immigration (BAJI)

Campaign for Youth Justice

Catholic Legal Immigration Network, Inc.

3

⁴ For a discussion of the different standards and benefits associated with asylum versus withholding of removal or protection under the Convention Against Torture, *see* Human Rights First, "Withholding of Removal and the U.N. Convention Against Torture--No Substitute for Asylum, Putting Refugees at Risk," Nov. 2018, https://www.humanrightsfirst.org/sites/default/files/CAT_Withholding.pdf.

⁵ *Id*.

Center for American Progress

Center for Victims of Torture

Church World Service

Coalition on Human Needs

CREDO

Detention Watch Network

Freedom for Immigrants

Freedom Network USA

Government Accountability Project

Government Information Watch

HIAS

Hispanic Federation

Human Rights First

Human Rights Watch

Immigrant Defense Project

Immigrant Legal Resource Center

Immigration Equality

Innovation Law Lab

International Refugee Assistance Project (IRAP)

Just Futures Law

Justice Strategies

Kids In Need of Defense (KIND)

Latin America Working Group (LAWG)

National Center for Transgender Equality

National Council of Jewish Women

National Crittenton

National Education Association

National Immigrant Justice Center

National Immigration Forum

National Immigration Law Center

National Immigration Project of the National Lawyers Guild

National LGBTQ Task Force

National Network for Immigrant & Refugee Rights

Quixote Center

Refugee Congress

Refugee Council USA

Service Employees International Union (SEIU)

Tahirih Justice Center

U.S. Committee for Refugees and Immigrants

Union for Reform Judaism

Unitarian Universalist Service Committee Young Center for Immigrant Children's Rights

Regional / local organizations

Advocates for Basic Legal Equality, Inc.

Asylum and Human Rights Clinic, University of Connecticut School of Law

Bellevue Program for Survivors of Torture

Brooklyn Defender Services

California Collaborative for Immigrant Justice

Cape Cod Coalition for Safe Communities

Capital Area Immigrants' Rights Coalition

Catholic Migration Services

Center Global of the DC Center for LGBT Community

Church Council of Greater Seattle

Church of Our Saviour/La Iglesia de Nuestro Salvador

Cleveland Jobs with Justice

Coalition for Humane Immigrant Rights (CHIRLA)

Columbia Law School Immigrants' Rights Clinic

Connecticut Shoreline Indivisible

Deportation Research Clinic, Buffett Institute for Global Studies, Northwestern University

First Friends of NJ & NY

Georgia Asylum and Immigration Network

Harvard Immigration and Refugee Clinical Program

Human Rights Initiative of North Texas

Illinois Coalition for a Immigrant and Refugee Rights

Immigrant and Non-Citizen Rights Clinic, CUNY School of Law

Immigrant Defenders Law Center

Immigrant Justice Clinic, James E. Rogers College of Law

Immigrant Legal Advocacy Project

Immigrant Rights Project, University of Tulsa

International Human Rights Law Clinic, American University Washington College of Law

Iowa Coalition Against Domestic Violence (ICADV)

IRIS - Integrated Refugee & Immigrant Services

Kitsap Immigrant Assistance Center

Legal Aid Justice Center

Los Angeles LGBT Center

Loyola University New Orleans College of Law

Massachusetts Immigrant and Refugee Advocacy Coalition

Mid-South Immigration Advocates

Migrant Justice

New Jersey Coalition to End Domestic Violence

New Sanctuary Coalition

New York Immigration Coalition

Northwest Immigrant Rights Project

NWIndiana Resist

Public Counsel

Quinnipiac University School of Law Civil Justice Clinic

Reformed Church of Highland Park Affordable Housing Corp

Rocky Mountain Immigrant Advocacy Network

Southern Poverty Law Center

Taos Immigrant Allies

The Bronx Defenders

The Florence Immigrant & Refugee Rights Project

The North Carolina Coalition Against Domestic Violence

Transformations CDC

ULA - Unidad Latina en Acción

University of Maryland Carey Immigration Clinic

Washington Immigrant Solidarity Network