

*Via email*

October 8, 2020

Lauren Alder Reid  
Assistant Director, Office of Policy  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 2616  
Falls Church, VA 22041

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

**RE: Request for 60-Day Comment Period for the Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), Notice of Proposed Rulemaking on Asylum and Withholding of Removal Procedures/EOIR Docket No. 19-0010**

Dear Assistant Director Reid and Acting Administrator Ray:

We, the undersigned 86 organizations, write to respectfully request that the Executive Office for Immigration Review (EOIR) extend the public comment period for the above-referenced Notice of Proposed Rulemaking (NPRM) from 30 days to a minimum of 60 days. We make this request because this proposal involves substantial changes that will have far-reaching ramifications on asylum seekers (which, for the purpose of this letter, include people seeking withholding of removal and those seeking protections under the Convention Against Torture) in this country. We also want the public to have a meaningful opportunity to comment while we continue navigating the challenges presented by a global pandemic.

On September 23, 2020, EOIR released a proposed rule that would change various procedures related to the adjudication of applications for asylum, withholding of removal, and protection under the Convention Against Torture. In summary, the NPRM seeks to further erode the fairness in our immigration courts and proposes significant changes to procedures involving the adjudication of asylum and withholding of removal, including but not limited to:

1. Imposing a filing deadline, in most cases, for those in asylum-only or withholding-only proceedings, of 15 days after the first master calendar hearing to submit, Form I-589 and required supporting documents.
2. Codifying recently imposed form instructions that asylum applications must be rejected if legally irrelevant boxes on the form are not completed.
3. Forcing applicants to pay the recently proposed I-589 filing fee at the time of filing.

4. Authorizing immigration judges to submit their own evidence into the record and consider that evidence.
5. Allowing immigration judges to reject evidence from non-governmental organizations and media, typically submitted by respondents, while allowing judges to rely on reports created by executive agencies of the U.S. government.
6. Severely restricting judges' ability to continue asylum cases beyond 180 days.

## **I. A Minimum of 60 Days is Required for Meaningful Public Comment on the NPRM**

### **A. The NPRM Raises Significant Due Process Concerns that Require Careful Analysis**

Executive Order 12866 states that agencies should allow “not less than 60 days” for public comment in most cases, in order to “afford the public a meaningful opportunity to comment on any proposed regulation.” Executive Order 13563 states that “[t]o 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.”

The NPRM seeks to further erode protections historically offered to asylum seekers through various measures. The immigration court backlog currently consists of 1,246,164 applicants.<sup>1</sup> EOIR states that as of August 14, 2020, there are over 560,000 pending asylum and withholding of removal cases. These cases deal with fear of persecution meaning that oftentimes these are matters of life and death. In recent years, the administration has made efforts to curtail the ability of asylum seekers to seek protection from the country. There have been concerning reports of high numbers of asylum case denials—many of which have led to deaths.<sup>2</sup> Changes that could further exacerbate these issues require close attention as they adversely affect due process rights that all people are entitled to under the Constitution of the United States.

We urge you to provide a minimum of 60 days to review and comment on this NPRM, as it erects further procedural barriers to asylum seekers finding counsel and presenting their claims, thus eroding critical due process rights. Although immigration courts, which fall under the executive branch, operate differently than courts under the judicial branch, they still must adjudicate cases fairly which means upholding both human rights and constitutional rights. Thirty days does not permit the necessary time to fully grasp the scope and impact of such proposals.

The NPRM states that the proposed rule will only apply “minimal direct costs on the public.” However, any one of the proposed changes, such as the requirement that judges complete asylum cases within 180 days, or the requirement to submit complete asylum applications within

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<sup>1</sup> Immigration Court Backlog Tool, Data through August 2020, *available at* [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/)

<sup>2</sup> Human Rights Watch, *Deported to Danger* (February 5, 2020), *available at* <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and>

15 days of a first master calendar hearing, will have a profound impact on asylum seekers and their representatives.

Legal representatives and immigrant advocates have been inundated with issues that require their attention, including a steady stream of regulatory changes, proposals, and decisions that implicate the due process rights of asylum seekers. While this NPRM was published, there were already other significant immigration-related rules being implemented<sup>3</sup> and NPRMs still within their comment period.<sup>4</sup> Stakeholders and the public deserve sufficient time to adequately review and respond to all of these initiatives and analyze how this set of newly proposed rules would interact with the other rules, which include the proposed new asylum regulations released in June,<sup>5</sup> the EOIR appellate procedures regulations, the EOIR fee rule, and the complex, recently published asylum-pending EAD rules<sup>6</sup>.

We are writing to respectfully request a minimum 60-day comment period, in keeping with common and past practices, particularly for rules that would have a significant impact on the public.

#### B. The COVID-19 Pandemic has Created Unprecedented Challenges for the U.S. Workforce

Since March of this year, the United States has had to deal with the COVID-19 global pandemic. Members of the House and Senate have previously requested that the Administration freeze the formal federal rulemaking process and administrative actions unrelated to the COVID-19 pandemic response, and extend public comment periods for a reasonable period after the crisis has lifted.<sup>7</sup> As fourteen House Committee Chairs correctly noted, “The right of the American people to meet with federal agencies and comment on proposed actions is invariably affected by the ongoing pandemic.” This observation is uniquely true in the context of immigration law as procedures shifted, and continue to shift, to accommodate the new circumstances. Practitioners have had to remain up to date and readily inform clients of the ever-changing legal landscape. Those working remotely have more limited and inconsistent access to physical documents, clients, information, and technology needed to fully analyze and comment on proposed rules, with minimal advance warning.

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<sup>3</sup> 85 Fed. Reg. 46788 (Aug. 3, 2020).

<sup>4</sup> 85 Fed. Reg. 52491 (Aug. 26, 2020); 85 Fed. Reg. 56338 (Sep. 11, 2020)

<sup>5</sup> 85 Fed. Reg. 36264 (June 15, 2020).

<sup>6</sup> 85 Fed. Reg. 37502 (June 22, 2020).

<sup>7</sup> Letter from Representatives to Office of Management and Budget (April 1, 2020), *available at* <https://edlabor.house.gov/imo/media/doc/Committee%20Chairs%20Letter%20re%20Comment%20Period%20Extension.pdf>, (requesting that OMB direct federal agencies to extend public comment periods by at least 45 days beyond the end of the declared national emergency); See also Letter from Senators to Office of Management and Budget (April 8, 2020), *available at* <https://www.tomudall.senate.gov/imo/media/doc/4.8.20%20United%20States%20Senate%20Letter%20to%20OMB%20Acting%20Director%20Vought%20FINAL%5b1%5d.pdf>.

Normal business operations have been dramatically disrupted, including those of your and other federal agencies. Stakeholders are struggling to perform their jobs, in many instances doing so while simultaneously providing childcare and/or assisting children with remote learning—particularly now at the start of a new school year. A rule that would have such far-reaching impacts on the very lives of those who have come to the United States seeking refuge should be given ample time for review. Other federal agencies have recognized that the COVID-19 pandemic justifies the extension of comment periods.<sup>8</sup> EOIR should do the same.

## II. Conclusion

We request this extension of the comment period in order to allow our organizations and the public adequate time to review the proposed changes and provide meaningful feedback. A continuous and minimum 60-day comment period would allow more organizations and affected groups to carefully examine the changes and weigh-in, in turn providing EOIR with more meaningful information to better address and consider the scope of related issues, assess unintended consequences, and ensure that due process and human rights are upheld.

Given the nature of the proposed rule and the vulnerable populations it affects, we believe that these expansive proposed changes warrant additional time for review and comment. We thank you for your consideration of our request. Please contact Jill Marie Bussey, Director of Advocacy, at the Catholic Legal Immigration Network, Inc. at [jbussey@cliniclegal.org](mailto:jbussey@cliniclegal.org) for any questions or concerns.

Sincerely,

African American Ministers In Action  
Alianza Americas  
Alianza Nacional de Campesinas  
American Immigration Council  
American Immigration Lawyers Association  
Americans for Immigrant Justice  
Asian Pacific Institute on Gender-Based Violence  
ASISTA  
Asylum Seeker Advocacy Project (ASAP\_  
AsylumWorks  
California Partnership to End Domestic Violence  
Capital Area Immigrants' Rights (CAIR) Coalition  
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities  
Catholic Charities of Central Colorado  
Catholic Legal Immigration Network, Inc.  
Catholic Migration Services, Inc.  
Center for Gender & Refugee Studies

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<sup>8</sup> See Bureau of Consumer Financial Protection, *Debt Collection Practices (Regulation F); Extension of Comment Period*, 85 Fed. Reg. 30890 (May 21, 2020) (agreeing that “the pandemic makes it difficult to respond to the SNPRM thoroughly” and providing an additional 90 days to comment on a proposal “in light of the challenges posed by the COVID-19 pandemic”).

Center for Victims of Torture  
Center Global, a program of the DC Center for the LGBT Community  
Central American Legal Assistance  
Church World Service  
Coalition for Humane Immigrant Rights (CHIRLA)  
Coalition to Abolish Slavery & Trafficking  
Colorado Asylum Center  
Columbia Law School Immigrants' Rights Clinic  
New York Law School Asylum Clinic  
Disciples Home Missions; Immigration Legal Counsel  
Disciples Refugee & Immigration Ministries  
El Pueblo (Mississippi)  
Equality North Carolina  
Erie County Bar Association Volunteer Lawyers Project, Inc.  
Farmworker Association of Florida  
Florence Immigrant & Refugee Rights Project  
Freedom Network USA  
Futures Without Violence  
Harvard Immigration and Refugee Clinical Program  
HIAS  
Human Rights First  
Human Rights Initiative of North Texas  
Immigrant Legal Advocacy Project  
Immigrant Legal Resource Center  
Immigration Equality  
International Human Rights Law Clinic, American University Washington College of Law  
International Refugee Assistance Project  
International Rescue Committee  
Law Office of Matthew J. Olsman  
Legal Aid Justice Center  
Los Angeles LGBT Center  
Medrano Immigration Law PA Corp  
Monterrosa Law Group, LLC  
National Equality Action Team (NEAT)  
National Immigrant Justice Center  
National Immigration Law Center  
National Resource Center on Domestic Violence  
National Women's Law Center  
Neighbors Link Community Law Practice  
NETWORK Lobby for Catholic Social Justice  
New Mexico Immigrant Law Center  
New Sanctuary Coalition  
New York Law School Asylum Clinic  
New York Legal Assistance Group (NYLAG)  
Oxfam America  
Pangea Legal Services  
Proyecto de Ayuda para Solicitantes de Asilo (PASA)  
Refugee Support Network  
Safe Horizon  
Safe Passage Project  
Southeast Asia Resource Action Center

Southern Poverty Law Center  
Tahirih Justice Center  
TakeRoot Justice  
TASSC (Torture Abolition & Survivors' Support Coalition) International  
Texas Civil Rights Project  
The Advocates for Human Rights  
The Door  
The First Community Christian Pentecostal Church of God Inc.  
The Legal Project  
Thrive International Programs, Inc.  
UDC Law Immigration & Human Rights Clinic  
Village Independent Democrats  
Washington State Coalition Against Domestic Violence  
Wind of the Spirit Immigrant Resource Center  
Witness at the Border  
Women's Refugee Commission  
Young Center for Immigrant Children's Rights