

# HUMAN RIGHTS INITIATIVE OF NORTH TEXAS

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October 30, 2020

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

**RE: Comments in Response to Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances; EOIR Docket Number 18-0301; A.G. Order No. 4841-2020; RIN 1125-AA83**

Dear Ms. Alder Reid:

I write on behalf of the Human Rights Initiative of North Texas in strong opposition to the Executive Office of Immigration Review's proposed rule concerning new requirements for practitioners who seek to help pro se asylum seekers, published in the Federal Register on September 30, 2020.

Human Rights Initiative of North Texas ("HRI") is a non-profit legal services agency that represents people fleeing humanitarian abuses from all over the world. Our clients include asylum seekers pursuing relief through both affirmative and defensive proceedings. Every day for nearly twenty years, HRI has represented children and adults who have fled horrifying abuse in their home countries for speaking up against government corruption, for practicing their faith, and for living their authentic lives.

In response to the growing border crisis, HRI launched a partnership initiative at the U.S./Mexico border in May 2020 to prepare I-589 applications for asylum seekers stuck in Matamoros, Mexico under the Migrant Protection Protocols ("MPP"). The persecution endured by asylum seekers enrolled in MPP closely mirrors the cases of our clients who live in Dallas-Fort Worth—the only difference being asylum seekers not enrolled in MPP were fortunate enough to enter the U.S. prior to January 2019. Because MPP forces persons to remain in Mexico and their hearings take place in tent courts along the border, HRI's legal aid for asylum seekers enrolled in MPP is limited to remotely *assisting*—not representing—in preparation for their pro se final filings.

Just last week, we submitted comments to your office opposing a rule concerning asylum and withholding of removal (proposed on September 23), which creates significant technical hurdles to apply for asylum that would particularly affect asylum seekers enrolled in MPP. It comes on the heels of USCIS's biometrics rule (proposed on September 11), which attempts price asylum seekers out of protection by forcing them to participate in and bear the costs of unnecessary DNA testing—a practical impossibility for people in MPP. Those come on the heels of a litany of other proposed regulations, interim final rules, and executive orders that, together, are totally eviscerating protections for asylum seekers.

This proposal is yet another attack. Its new hurdles will dissuade practitioners from providing *any* support to asylum seekers who are forced to represent themselves in removal proceedings. Together with the proposed regulations that have come before it, this proposal will put asylum out of reach for many pro se asylum seekers. The agency must consider the impact of these changes in conjunction with the myriad of changes already proposed when finalizing any version of the rule.

Because of the 30-day comment deadline and this Administration's barrage of regulatory attacks against those seeking humanitarian relief in the United States, we are unable to catalog all of the problems posed by this rule. For the reasons discussed by our colleagues at CLINIC, as well as the reasons outlined below, we strongly oppose the proposed changes.

## **I. THE PROPOSED RULE WOULD ELIMINATE ACCESS TO CRUCIAL LEGAL AID FOR PERSONS THE GOVERNMENT EFFECTIVELY FORCED TO BE PRO SE RESPONDENTS.**

The proposed rule requires any practitioner who assists a pro se asylum seeker—be they a licensed attorney, a fully accredited representative, or a paralegal professional—to file a notice of entry of appearance with the immigration court and with DHS, under penalty of disciplinary sanctions. These new requirements will successfully block the last remaining trace of meaningful legal aid from tens of thousands of adults, children, and families who are seeking safety from life-threatening persecution.

### ***A. The proposed rule is merely the latest attempt by this Administration to rob asylum seekers of any access to crucial legal aid.***

It is well documented that, when asylum seekers do not have access to counsel to navigate the increasingly complex U.S. immigration system, they are frequently denied safety and deported back to the life-threatening realities they fled—regardless of the strength of their legal claim. By design, the Administration's border policies are preventing people from accessing counsel, rigging the already difficult system to deny as many claims as possible.

Within the first year of its implementation, between 57,000 and 62,000 people were enrolled in the MPP program and returned to Mexico to await adjudication of their asylum cases.<sup>1</sup> Those asylum seekers have very limited access to legal representation: only 9.3 percent of MPP respondents had legal representation at their hearings during that first year.<sup>2</sup>

Even that number is impressive, given the obstacles. Most attorneys who would otherwise represent these clients in their local immigration courts are unable to travel to the border tent courts. Even when asylum seekers are able to locate an attorney (internationally), there is often little time for practitioners to competently pull together a removal defense before the fast-approaching MPP hearing. In such circumstances, attorneys cannot ethically offer full representation. This has resulted in record denials out of the MPP tent court: only 2.2% of MPP respondents without an attorney were granted some form of humanitarian relief.<sup>3</sup>

As if MPP does not cause enough damage, the latest border polices, Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP), go even further. Under these pilot programs, asylum seekers are held in detention in Customs and Border Patrol custody, while their claims for asylum are adjudicated within a mere ten days. Reports expose that asylum seekers enrolled in PACR/HARP are given sometimes as few as one phone call to contact an attorney, and often that opportunity to call legal counsel is in the middle of the night—when attorneys are almost guaranteed not to answer. As with MPP’s fast-paced docket, it is highly unlikely attorneys would be able to competently prepare removal defenses in PACR/HARP’s allotted ten days time.<sup>4</sup>

***B. This proposed rule would prevent HRI’s pro bono attorneys from providing the assistance they want to for pro se asylum seekers.***

Since HRI launched its project to prepare I-589 filings for pro se asylum seekers enrolled in MPP, over 50 attorneys and paralegal professionals have volunteered to work cases. These attorneys and paralegals are brilliant and compassionate, volunteering their time to assist pro se asylum seekers, in part, because they believe doing so is one way to live out their American values: to be welcoming to those in need.

To date, HRI pro bono attorneys from across the nation (and one in London) have worked in teams to remotely prepare I-589 applications for more than 30 asylum seekers forced to remain in Mexico without representation. They are not immigration attorneys, but they are trained, mentored, and supervised by HRI’s immigration attorneys. They dutifully heed all guidance HRI provides, and they confidently sign up to assist pro se asylum seekers because they trust that HRI will take ultimate responsibility for the final deliverables.

When recruiting big law and corporate in-house firms to volunteer with HRI in assisting pro se asylum seekers, all partners and managing directors want confirmation that their attorneys will not have to file a notice of entry of appearance on the cases. Rightfully so, considering they are not actually representing the asylum seekers, and they have little to no control over the final presentation of the case. It is not a risk the firms are willing to bear. Nor should the individual practitioners bear the burden of the onerous task of filing notice and the risk of disciplinary sanctions when they are merely offering pro bono assistance and not taking on representation of the respondents.

Forcing pro bonos to file a notice of entry of appearance for assisting pro se asylum seekers will likely prevent HRI from finding attorneys and paralegal professionals to support asylum seekers

stuck in MPP, closing the opportunity for attorneys to use their professional skills to live out their American values.

***C. The proposed rule would effectively block asylum protections from people like those with whom HRI works.***

Because the Administration's policies effectively eliminate access to legal representation and force asylum seekers to represent themselves pro se in MPP proceedings, remote, pro bono legal aid is the only form of meaningful assistance left for most people forced into MPP. This proposal, which would dry up the pool of pro bono attorneys willing to offer pro se asylum seekers assistance, would all but ensure worthy claimants are denied asylum.

It is a shameless, intentional attempt by the Administration to shut America's doors to adults, children, and families with legitimate claims for asylum, like:

- Patricia,\* who fled to the U.S. from Honduras, where the government did nothing to protect her from members of her family, her greater community, and even members of the police, themselves, violently sexually assaulting her numerous times over ten years on account of her transgender identity. Patricia is currently in MPP proceedings, and HRI pro bonos are helping to prepare her I-589 application.
- Jose,\* who fled to the U.S. from El Salvador, after law enforcement refused to protect him from or prosecute those who physically assaulted and raped him as punishment for his homosexual orientation. Jose is currently in MPP proceedings, and HRI pro bonos helped to prepare his I-589 application.
- Brenda,\* who fled to the U.S. from Peru, when police refused to investigate, prosecute, or protect in any way her and her daughter from Brenda's ex-partner who repeatedly assaulted and raped them both and sold their daughter into prostitution to cover his debts with a drug lord. Brenda and her daughter are currently in MPP proceedings, and HRI pro bonos helped to prepare their I-589 applications.

Asylum seekers, like Patricia,\* Jose,\* and Brenda\* have legitimate claims for humanitarian protections in the U.S., but current policies effectively force them to represent themselves in a legal system that all but guarantees denials to those without representation. If the latest proposed rule goes into effect, they and the tens of thousands of other asylum seekers with valid legal claims will be left without pro se legal aid and will likely be returned to the life-threatening situations from which they sought refuge.

## **II. CONCLUSION**

We strongly oppose the changes laid out in the proposed rule and call on the Administration to withdraw them in their entirety.

For further information, please do not hesitate to reach us.

Respectfully,



Emily Heger  
Attorney, Equal Justice Works Fellow

\*Names changed to protect anonymity.

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<sup>1</sup> American Immigration Counsel, *Policies Affecting Asylum Seekers at the Border* (Jan, 20,

<sup>2</sup> Human Rights First, *Fact Sheet: June 2020*,

<https://www.humanrightsfirst.org/sites/default/files/AdministrationDismantlingUSAsylumSystem.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> cite tbd