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October 23, 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 Procedures for Asylum and
Withholding of Removal; EOIR Docket Number 19-0010; A.G. Order
No. 4843-2020; RIN 1125-AA93**

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 procedures for asylum and withholding of removal, published in the Federal Register on September 23, 2020.

This Administration's attack on the asylum system has truly been death by one thousand cuts. At a monthly—and sometimes, even weekly—clip, the Executive Office of Immigration Review, United States Citizenship and Immigration Services, and the Departments of Justice and Homeland Security have released proposed rules and interim final rules that dramatically affect asylum seekers' access to relief. Most recently, USCIS's biometrics rule, proposed on September 11, 2020, attempts to price asylum seekers out of protection: forcing them to bear the costs of expensive and unnecessary DNA testing as part of the adjudication process.

This proposal layers on yet another attack. It would force the rejection of applications if applicants leave boxes blank, even if they have no relevance to the person's case. It would require a specific procedure to fee in an application, which would be impossible for a pro se detained applicant or asylum seeker subject to MPP. It would prevent applicants from introducing evidence that is germane to their case. It would further convert the immigration judge into another adversary in an already adversarial system.

In evaluating the proposed rule, the agency cannot examine these changes in isolation; it must consider the impact of these changes in conjunction with the myriad of changes already proposed. These changes do not occur in a vacuum.

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.

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 Tahirih Justice Center and CLINIC, as well as the reasons outlined below, we strongly oppose the proposed changes.

I. THE PROPOSED RULE WOULD FORCE THE REJECTION OF APPLICATIONS ON MEANINGLESS TECHNICALITIES.

The proposed rule seeks to implement the “blank spaces” rule that USCIS has been using to reject I-589 and I-918 (U visa) applications over the past year. Under this framework, immigration judges or their overworked support staff would be required to comb through the 12-page application form to see whether any box is incomplete. If the EOIR representative finds a blank, they would be required to reject the application.

This rule has nothing to do with ensuring an immigration judge has all of the information necessary to adjudicate the case. If it were, blank spaces that have no applicability to an application—for example, a social security number where a person has none, or a separate mailing address where a person’s residence and mailing address are the same—would have no bearing on whether an application is accepted or rejected.

Instead, the proposed rule imposes perfection as a prerequisite for relief. But our government does not provide legal representation for asylum seekers, and the vast majority of asylum applicants must navigate the process pro se. Even people like many HRI clients, who are eventually able to find representation, often file their initial I-589 applications with the court before they have retained representation. It is absurd to require form-filling perfection upon people fleeing persecution—many of whom are still grappling with severe trauma, and most of whom are entirely unfamiliar with the American legal system. It is especially cruel to impose on people who are stuck in detention or who have been forced into the MPP program: those individuals have very limited access to any resources, let alone access to people who would know to advise them that failing to write “none” in a field could mean their application is rejected on its face.

The rule is also nonsensical from a judicial efficiency perspective. There is no reason to have immigration judges and their staff examine applications to look for blanks, just to return meritorious applications missing the word “none” so that the applicant can resubmit the same application including the word “none.”

There is only one way to make sense of a requirement like this: it is deliberately designed to put asylum further out of reach to those who meet the substantive legal requirements under our laws. This is an abdication of our legal, ethical, and moral responsibilities.

II. THE PROPOSED RULE IMPOSES REQUIREMENTS TO FEE IN APPLICATIONS THAT ARE IMPOSSIBLE FOR MANY APPLICANTS.

Similarly, the proposed rule will require the court to reject any asylum applications unaccompanied by the required filing fee. Because DOJ has engaged in staggered rulemaking, there is not yet a final rule on the proposed EOIR fees, see 85 Fed. Reg. 11866 (Feb. 28, 2020), making it impossible to comment fully on this aspect of the current rule.

However, this proposal creates particularly serious barrier for people in detention or awaiting their court dates in Mexico pursuant to the MPP program. Those individuals would be unable take the steps the rule requires to fee in their application with DHS. If the asylum seeker submits the application without proof of payment of the fee, the immigration judge would be required to reject the asylum application. The asylum seeker would then have only 30 days to resubmit the application with the fee or they would waive their ability to seek asylum.

We work to assist asylum seekers in Matamoros stuck in the MPP program submit their applications pro se. They are desperate for protection as they are kidnapped and brutally assaulted by the cartel, targeted as sitting ducks in their tent community of asylum seekers and held for ransom their families cannot pay. Pulling together \$50 would be a near impossibility; even so, saving up for the proposed filing fee could subject them to even more targeting for ransom.

We strongly believe that asylum seekers should never have to pay to seek safety in the United States, but if EOIR begins charging a fee for asylum applications, it is critical that EOIR implement reasonable steps for asylum seekers who are detained or subjected to MPP easily obtain fee waivers or to pay their application fees.

III. THE PROPOSED RULE WILL PREVENT ASYLUM SEEKERS FROM INTRODUCING EVIDENCE GERMANE TO THEIR CASES.

The proposed rule seeks to create different tiers of evidence with different admissibility standards, inappropriately preferencing U.S. government sources over other reliable sources of evidence. Under the proposed rule, the immigration judge “may rely” on evidence that comes from U.S. government sources but can only rely on resources from non-governmental sources or foreign governments “if those sources are determined by the immigration judge to be credible and probative.” By allowing the executive branch to not only be the prosecutor (DHS) and the adjudicator (EOIR), but also to be the favored provider of evidence (Department of State and other reports), a presidential administration that chooses to politicize agency decision-making holds all of the power in immigration cases.

As the Asylum Research Centre, an internally recognized source of expertise on the production and use of country conditions information, highlighted just this month in its new report, the U.S.

State Department’s congressionally mandated *Country Reports on Human Rights Practices* have been structurally modified to conform with the current Administration’s goals to limit gender-based asylum claims. See COMPARATIVE ANALYSIS: U.S. DEPARTMENT OF STATE’S COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2016–2019), 8 (2020), https://asylumresearchcentre.org/wp-content/uploads/2020/10/Executive-Summary_USDOS_ARC_21-October-2020.pdf. Specifically in recent years, the Department of State has omitted information regarding the treatment of women, particularly pertaining to reproductive rights and gender-based violence; the treatment of and discrimination against LGBTQIA people; child marriage; and human rights violations including extrajudicial killings, mass arrests, and other forms of political persecution. These changes align with those the Administration has been advancing through Attorney General opinions, which it recently sought to formalize in regulation through Department of Justice and Department of Homeland Security’s proposed rule to amend the procedures for asylum and withholding of removal and credible fear and reasonable fear review, published in the Federal Register on June 15, 2020.

The Asylum Research Centre’s findings are consistent with a recent DHS whistleblower’s report accusing senior DHS officials of asking him to change reports about “corruption, violence, and poor economic conditions” in Guatemala, Honduras, and El Salvador that would “undermine President Donald J. Trump’s (“President Trump”) policy objectives with respect to asylum.” See DHS, Office of the Inspector General, Matter of Brian Murphy, (Sep. 8, 2020) https://intelligence.house.gov/uploadedfiles/murphy_wb_dhs_oig_complaint9.8.20.pdf.

Given the Administration’s attempts to erase the human rights abuses that do not conform with its anti-asylum agenda from its country reports, the rule’s proposal to disfavor non-governmental country conditions evidence will leave asylum seekers without the evidence necessary to prove their case.

IV. THE PROPOSED RULE CONVERTS IMMIGRATION JUDGES INTO ADVERSARIES INSTEAD OF ADJUDICATORS.

Finally, the proposed rule allows immigration judges to introduce their own evidence into the record, fundamentally shifting the role of the judge from an adjudicator to another adversary. Under this rule, a judge could have their own country conditions packet for each case, find their own evidence “credible and probative” and deny asylum seekers’ claims despite the evidence the asylum seeker introduces.

The only procedural safeguard the proposed rule would provide is that the immigration judge would have to provide “a copy of the evidence . . . to both parties and both parties have had an opportunity to comment on or object to the evidence *prior to the issuance of the immigration judge’s decision.*” [Emphasis added.] Thus, although the asylum seeker and DHS are required by the Immigration Court Procedures Manual to submit evidence at least 15 days before the hearing, the only temporal requirement for the immigration judge to introduce evidence, is that they do so before *issuing* a decision. The immigration judge could therefore, presumably, hand both parties a copy of the immigration judge’s own evidence packet the day of the hearing. The regulation is silent as to how a non-English speaker would be able to understand the documents in English,

nor is there any provision allowing for a continuance for the parties to respond to the newly introduced evidence.

DHS already has representatives participate in these hearings as prosecutors, who may introduce any necessary evidence into the record. Allowing the immigration judge to join the prosecution team is unnecessary and further stacks the deck against asylum seekers whose claims may be disfavored by the Administration.

V. 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,

A handwritten signature in black ink, appearing to read "Kali Cohn", with a long horizontal flourish extending to the right.

Kali Cohn
Community Education & Advocacy Director