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RE: RIN 1125-AA96; EOIR Docket No. 19-0022; A.G. Order No. 4800-2020, Proposed Rules on Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure
Submitted via: www.regulations.gov

Assistant Director Alder Reid:

Please accept the enclosed comment, submitted by the Ohio Alliance to End Sexual Violence (OAESV), in response to the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) proposed rule, *Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure,* initially published in the Federal Register on August 26, 2020 (proposed rule).[1] The Ohio Alliance to End Sexual Violence (OAESV) serves as Ohio's statewide sexual violence coalition.[2] Every state and U.S. Territory has one sexual assault coalition, a nonprofit, nongovernmental organization designated by the federal government, representing the state's rape crisis centers and advocating for critical public policy change. OAESV, like other statewide coalitions, serves as the main training and technical assistance provider for our state's rape crisis centers on best practices, and advocates on behalf of rape crisis centers and the survivors they serve in public policy advocacy efforts at the state

[1] Executive Office for Immigration Review, Department of Justice. "Notice of Proposed Rulemaking: Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure" (hereinafter "proposed rule" (85 FR 52491) August 26 2020, available at https://www.federalregister.gov/documents/2020/08/26/2020-18676/appellate-procedures-and-decisional-finality-in-immigration-proceedings-administrative-closure.

and federal levels. State coalitions also lead statewide public awareness efforts and support local programs in engaging with diverse communities, survivors, and service providers in their service areas.

OAESV's mission is to advocate for comprehensive responses and rape crisis services for survivors and empower communities to prevent sexual violence. In that work, OAESV provides legal advocacy and legal representation to immigrant survivors of sexual violence and intimate partner violence and human trafficking, including cases involving child abuse. In the past few years, OAESV's application for services from members of immigrant populations has dramatically shifted, indicating increased fear of seeking resources and thus additional unmitigated harm. The proposed rule will only expand the harm immigrant survivors have experienced, in that it will foreclose Congressionally-created humanitarian relief. For the reasons outlined below, we urge EOIR to withdraw the proposed rule entirely.

OAESV's core mission and values lead to our utmost opposition to this proposed rule – the latest in a series of efforts to put boundaries between individuals with immigration court matters and due process. This proposed rule makes the already burdensome and dangerous task of navigating immigration court systems to plead their case an even more potentially fatal endeavor. Specifically, survivors of sexual and domestic violence and human trafficking will, as a result of increasing barriers and this proposed rule, likely find their case denied. This is particularly likely when survivors are unrepresented – and just about 37% of immigrants are represented in removal proceedings, and 86% of immigrants in detention facilities went unrepresented.[3] It is exceedingly difficult for respondents without counsel to navigate the enormous complexity of the U.S. immigration system. As survivors whose cases have been denied are often deported back to extremely dangerous, even life-threatening, situations, it is crucial that immigration court proceedings provide all immigrants with every opportunity to have their fair day in court.

I. The Comment Period Provided by the DOJ for Review is Insufficient

Per Executive Order 12866, agencies "should 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."[4] DOJ has placed unjustified administrative and personal burdens on OAESV and other stakeholders by providing this excessively brief notice and comment period. The challenges to respond to the Asylum NPRM are magnified at this time by the additional stress survivor advocates have been placed under during the ongoing pandemic. Ohio advocates currently face a severe lack of equipment necessary for distance advocacy, both for advocates and the survivors they serve. As a result, advocates and their employers face increased stress and time-consuming decision processes about how to best provide advocacy without putting advocates and their families at risk. Survivors seeking care and assistance face new challenges that programs must innovate to meet. Notwithstanding these additional challenges, many advocates have to juggle working from home while caring for children or other dependents.

Despite these limitations, requests for sexual violence services have increased in a majority of Ohio counties. In cases where the perpetrator of sexual violence is a family member or intimate partner, an estimated 1 in 5 of such cases for women and 1 in 10 men, survivors have been in close and constant proximity to their abusers, placing them in unsafe housing situations. Many survivors of sexual violence have experienced heightened stress and tension due to the pandemic and isolation during stay-at-home and quarantine orders. If a survivor has recently lost their job due the pandemic,

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[3] *Id.* "Only 14 percent of detained immigrants acquired legal counsel, compared with two-thirds of non detained immigrants."

[4] [Emphasis added]. Executive Order 12866 58 Fed. Reg. 190 (September 30, 1993), available at https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf

and therefore their health insurance, they may fear seeking medical care and treatment for sexual violence, resulting in health concerns as well as a potential loss of important forensic evidence.

Ultimately, survivor needs have increased and the pandemic has restricted time available to already understaffed agencies. As a result, the comments below are less detailed than they would have been with sufficient time to respond. This overly brief and burdensome Notice and Comment period restricts access to and review of information critical to the administrative rulemaking process. Simply, COVID-19 presents substantial barriers to participating in democratic processes and procedures. Providing adequate time for stakeholders to respond requires acknowledging and responding to the ways in which COVID-19 impacts our citizens. For this reason, we urge the Departments to rescind the proposed rule immediately as a matter of procedural fairness to the public and key stakeholders like OAESV and our member rape crisis centers. At a minimum, the public should be given at least 60 days to respond in order to have adequate time to provide comments.

We also urge the Departments to rescind the proposed rule because of OAESV's serious opposition to the proposed rule's substantive provisions, as highlighted in non-exclusive part below:

II. The Proposed Rule will Create Barriers for Immigrant Survivors of Violence

Immigrant survivors already have tremendous challenges to accessing safety, especially at this time. Approximately 76% of advocates report that immigrant survivors have concerns about reporting abuse to authorities, with 52% reporting that immigrant survivors have dropped civil or criminal cases because they were fearful to continue with their cases, many due to fear of removal proceedings or a lack of a fair day in court. OAESV's own legal program saw a blunt and pronounced reduction in applications for services as U.S. lawmakers sought to reduce access to safety. During the COVID-19 pandemic, when orders to socially distance and shelter in place are in effect, abusers are more easily able to perpetrate violence upon survivors. Survivors are cut off from family and friends. With the wide-spread loss of employment, many immigrant survivors have lost jobs and are unable to apply for unemployment, leading to an increased dependence on abusive partners and family members to provide food, shelter, and access to services.

Notwithstanding these conditions, the DOJ has increased barriers to immigration relief in the past several years by several means, including by broad regulatory changes on asylum, shifts to certification procedures,[5] and other discrete and calculated procedural shifts. This proposed rule is DOJ's latest attempt to leverage bureaucracy to limit access to protections.

A. Limits to Administrative Closure

The proposed rule prohibits judges from using "administrative closure" to temporarily halt deportation proceedings for any reason. Survivors typically rely on judges to close their cases while United States Citizenship and Immigration Services (USCIS) reviews their petitions for relief. This review can take years as USCIS works its way through a massive, historic backlog. For example, it currently takes nearly five years to even be put on the waitlist for a U visa.[6] Without administrative closure, survivors are at increased risk of deportation before their applications or petitions are considered. Upon deportation, survivors will face hardships including:

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[5] Lisa Riordan Seville and Adiel Kaplan. "AG Barr using unique power to block migrants from U.S., reshape immigration law" NBC News. (July 31, 2019), available at https://www.nbcnews.com/politics/immigration/ag-barr-using-unique-power-block-migrants-u-s-reshape-n1036276

[6] See USCIS Case Processing Times: https://egov.uscis.gov/processing-times/

- lack of access to social services, counseling, and safe housing;
- renewed threats from abusers in countries where protection from domestic and sexual violence may be inadequate or nonexistent;
- loss of child custody/separation from children or being forced to leave children in the custody of an abuser; and
- challenges to receiving and responding to critical case correspondence such as requests for additional evidence.

Eliminating administrative closure thwarts Congressional intent in creating survivor-based immigration protections, and the proposed rule's provisions on administrative closure wastes DOJ and Department of Homeland Security (DHS) time and resources, unnecessarily contributing to significant backlogs instead of reducing them. In addition, the proposed rule will squander USCIS' limited resources as applicants will seek expedited review of their matters before they are deported, adding to USCIS' backlog and processing delays.

B. Erosion of Due Process

The proposed rule reduces due process and endangers survivors by giving more power to non-neutral political appointees, and inappropriately allows immigration judges to ask the AG to review decisions overturned by the Board of Immigration Appeals (BIA). In this circumstance, the AG could then reinstate a judge's decision, upending long standing legal precedent to promote a specific political ideology, as former AG Sessions did in *Matter of A-B-* by narrowing standards for asylum claims involving domestic violence. Under the rule, the BIA cannot remand cases after a change in the law. Thus, survivors wouldn't have an opportunity to submit evidence that meets the new legal standard.

C. Limits on Briefs

The proposed rule drastically limits the time allowed to file and respond to appellate briefs. Under the proposed rule, there will be a very short window of time within which respondents, including survivors, can prepare their own and respond to DHS' legal arguments. This will make it much harder for survivors to retain *pro bono* counsel for their appeals, or to convince current counsel to continue representation. It is already difficult for survivors to secure low cost or *pro bono* representation in Ohio – this limitation will make it next to impossible for the pre-existing legal service providers in our state to keep taking cases while maintaining representation for other matters, as such complex filings with limited timelines will create unpredictable case load conflicts that will endanger some or all clients. Virtually eliminating access to legal representation serves no purpose other than to further endanger immigrant survivors.

In addition, the limits on briefing deeply prejudice gender-based asylum claims in particular as these cases involve 1) highly technical legal arguments requiring sufficient time to adequately develop; and 2) sensitive facts that survivors of severe trauma need time to process before recounting. Furthermore, these limits on briefings will result in swift, unlawful *refoulement* (return) of asylum seekers in violation of US obligations as a state party to the Refugee Convention.

D. Limits on Reconsideration and Reopening

The proposed rule needlessly limits reconsideration and reopening of cases and the length of time the BIA has to review appeals and prohibits submission of new evidence by respondents, including survivors. These provisions will all contribute to increased *refoulement*, especially of those fleeing gender-based violence as explained above. In addition, abusers and traffickers notoriously manipulate survivors by confiscating important documents that they could otherwise submit as evidence in their cases. Survivors may have to put themselves at risk in trying to get their documents

back. With such limited access to evidence, survivors should certainly not be thwarted twice – first by their abusers, and again by being arbitrarily blocked from submitting whatever new evidence they are fortunate enough to procure.

Furthermore, placing restrictions on reopening cases would foreclose forms of immigration relief that might have initially been missed. This is especially true for survivor-based remedies, as applicants, immigration judges, and attorneys may not have been previously aware of them. As such, even if a survivor is eligible for an alternative form of protection, the BIA would have no authority to reconsider the survivor's case on that or any other basis. This would lead to the wrongful deportation of vulnerable survivors who desperately need protection in the U.S.

III. Conclusion

Due to the inadequate response period and additional strain from COVID-19, OAESV does not have capacity to provide a detailed comment befitting such a severe and damaging proposed rule. This rule will have a disastrous impact on immigrant sexual and domestic violence survivors, and we thus urge the DOJ to withdraw the proposed rule in full. Thank you for considering OAESV's **opposition** to this proposed rule. Please contact me at rbeltre@oaesv.org or ccrary@oaesv.org should it be beneficial for us to provide additional information.

Best Regards,



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