**PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL**

**TEMPLATE COMMENT - INSTRUCTIONS**

Attached is a template to help immigration services organizations draft a public comment in response to the administration’s proposed rule that would further restrict the rights of asylum seekers before immigration court. The proposed rule would speed up hearings and allow immigration judges to present their own evidence to deny cases. (The Notice of Proposed Rulemaking is available [here.](https://www.regulations.gov/document?D=EOIR-2020-0005-0001))

**What is a regulation?** While statutes are enacted by Congress and signed into law by the president, most statutes, including the Immigration and Nationality Act, provide the broad structure of the law but leave agencies within the executive branch to flesh out the details through regulations. The current administration has taken unprecedented steps to alter established immigration adjudication procedures and substantive law by issuing sweeping regulations, especially during the past few months.

**Why submit a public comment?** When the government proposes a new rule, it is required (by the Administrative Procedure Act) to give the public an opportunity to read the rule and submit comments. The comment you submit will be public record and available for anyone to read. After the comment period closes, the government agency that proposed the rule must read all of the comments submitted, and take them into consideration when drafting the final version of the rule. If a very large number of people submit comments, and/or the comments identify significant problems with the regulation, then it will take longer for the final rule to be published and take effect, or the agency may make amendments to the rule after considering the comments. Furthermore, if the agency disregards substantive comments, the comments can be helpful to later litigation about the process followed in publishing the rule.

**How do I submit a comment?** You can submit comments online at regulations.gov [click [here](https://www.regulations.gov/document?D=EOIR-2020-0005-0001) to go directly to the proposed rule]. Click on the “comment now” button and either enter your comment in the text box (must be fewer than 5,000 characters) or upload your comment as a PDF. CLINIC has published step-by-step commenting instructions that are available [here](https://cliniclegal.org/resources/step-step-instructions-how-submit-public-comment). Below are some important tips to keep in mind as you are drafting your comment.

**Write comments in your own words.** The template on the following pages is intended to guide and give you an example and ideas, but ***the comment should be edited with your original words***. Feel free to delete whole sections or paragraphs and replace them with your organization’s perspective on the issue. It is extremely important to use your own words as much as possible because the agency will bundle any comments that are too similar to each other, and they will consider this bundle as one comment, rather than as individual submissions.

To find your own words in drafting your comment, it may be helpful, to do some research on your own program and practice, the demographics of your clients, and the local community. Consider what aspects of the rule would be particularly troublesome to your organization and your clients. Gather some numbers and statistics that you can use to demonstrate how many of your clients or people in your community will be affected, how and to what extent, and at what financial cost.

**Attach research and supporting documents.** If you cite to statistics or supporting documents in your comments, we recommend including them as an attachment so that they are clearly part of the administrative record. Another option is to include a live link to cited sources.

**If you have experience in an issue area, say so.** If you are a subject matter expert and want to offer comments on your area of expertise, explain why you are qualified to offer this perspective. Feel free to explain your educational and professional background, or attach a copy of your CV to your comment. If you are called to work with immigrants by your faith, feel free to talk about your faith in your comment.

**Provide contact information for a representative of the organization.** Organizational comments should be signed by a representative of the organization, and provide the business contact information of the representative for any follow-up questions or concerns. However, keep in mind that this comment will be publicly available, so do not include personal addresses or cell phone numbers.

Submitted via [www.regulations.gov](http://www.regulations.gov)

DATE

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**RE: RIN 1125–AA93; EOIR Docket No. 19–0010; A.G. Order No. 4843–2020,**

**Public Comment Opposing Proposed Rules on Procedures for Asylum and Withholding of Removal**

Our organization, NAME, submits this comment urging the Department of Justice (DOJ) to withdraw these proposed rules in their entirety. The Notice of Proposed Rulemaking (NPRM) would further eviscerate procedural protections for asylum seekers in removal proceedings, making it more difficult for bona fide asylum seekers to find safety in the United States. The proposed rule would require immigration judges to adjudicate most asylum applications within 180 days of the applications’ filing, making it more difficult for asylum seekers to find counsel or fully prepare their cases. Likewise, the proposed rule would create a 15-day filing deadline for asylum applications for those in asylum-only proceedings, again making it very difficult to obtain counsel or to fully develop their asylum claims. The rule would further require judges to reject asylum applications for minor errors in completing the form, or for failing to pay the asylum fee,[[1]](#footnote-1) potentially making the asylum seeker waive their ability to ever seek asylum. And the proposed rule would fundamentally alter the role of the immigration judge by allowing judges to submit their own evidence in asylum proceedings.

We strongly object to these proposed changes and we further object to the mere 30-day time period to respond to these changes.

ORGANIZATION NAME’s MISSION IS . . . [DESCRIBE ORGANIZATION’S WORK WITH IMMIGRATION. IF ORGANIZATION IS FAITH-BASED, DESCRIBE RELATIONSHIP BETWEEN THE ORGANIZATION’S FAITH-BASED ROOTS AND ITS WORK WITH IMMIGRANTS.

IF POSSIBLE INCLUDE DATA ABOUT THE POPULATION YOU SERVE.

IF POSSIBLE, INCLUDE ANECDOTES ABOUT THE IMPORTANCE OF ADMINISTRATIVE CLOSURE IN IMMIGRATION COURT TO YOUR ORGANIZATION AND/OR THE IMPORTANCE OF MOTIONS TO REOPEN.]

Because these regulations would make multiple changes to established practices, we are not able to comment on every proposed change. The fact that we have not discussed a particular proposed change to the law in no way means that we agree with it; it simply means we did not have the resources or the time, as explained below, to respond to every proposed change.

**We Object to DOJ Allowing Only 30 Days to Respond to Comment on the Notice of Proposed Rulemaking (NPRM)**

As discussed below, the proposed regulations would further accelerate asylum hearings and curtail immigration judges’ ability to manage their own dockets. The proposed rules would require many asylum seekers to submit applications before they would have time to retain counsel, would severely limit their ability to obtain continuances in immigration court, and would allow immigration judges to reject asylum application forms for technical errors in completing them, potentially leading the asylum seeker to forever waive their claim. We are particularly concerned that one proposed rule change would further tilt adjudications in the government’s favor by allowing immigration judges to submit their own evidence in asylum hearings as if they were a party to the proceedings rather than a neutral adjudicator. At the same time, this rule would require immigration judges to evaluate evidence presented by asylum seekers to ensure the evidence is sufficiently “credible and probative” before considering it in their decision-making. Taken together these proposed rules, along with the myriad other proposed rules that are currently pending, are designed to make it nearly impossible for asylum seekers to prevail on their claims.

Moreover, the extensive changes being proposed through rapid-fire, staggered rulemaking make it impossible for the public to fully comprehend the interplay among the myriad proposed rules and therefore deny us our right to adequately comment on the effect of the proposed rules in this NPRM. Specifically, the NPRM issued on June 15, 2020 titled “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review” 85 Fed. Reg. 36264 (June 15, 2020), proposed the most sweeping changes to asylum eligibility since the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. Without knowing how the agencies may alter that proposed rule based on the 88,933 comments they received,[[2]](#footnote-2) it is impossible to adequately comment on the current proposed rule. Likewise, on August 6, 2020 the Executive Office for Immigration Review (EOIR) issued an NPRM which would substantially alter the procedural rights of asylum seekers and others in removal proceedings, titled “Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure,” 85 Fed. Reg. 52491 (Aug. 26, 2020), which would dramatically alter procedures and rights before EOIR. The deadline to comment on those proposed rules which would significantly alter due process rights in removal hearings was just four days before the current NPRM was issued.

The Administrative Procedure Act requires agencies to give the public a meaningful opportunity to provide input on proposed regulatory changes. Over the past several months, the Department of Justice, and in some instances the Department of Homeland Security, have been furiously rewriting the rules on which noncitizens and their counsel have relied for decades without giving adequate opportunity for thoughtful comments, or considered review of those comments by the agencies. For this procedural reason alone, we urge the administration to rescind the proposed rule. If it wishes to reissue the proposed regulations, it should wait until it has finalized (or withdrawn) overlapping proposed rules that are still pending, and then grant the public at least 60 days to have adequate time to provide comprehensive comments.

The public should be given adequate time to consider these dramatic revisions to existing law in order to provide thoughtful and well-researched comments. Instead, DOJ has given no reason for allowing only 30 days for the public to submit comments to these complicated proposed rules rather than the customary 60-day comment period. The shortened comment period presents particular challenges given that the United States continues to be in the midst of an unprecedented pandemic, forcing many members of the public, including government workers, to work from home and balance childcare with work activities.

[FILL IN ANY SPECIFIC COVID RELATED CHALLENGES HERE. ARE YOU STILL PHYSICALLY NOT IN YOUR OFFICE? HAVE STAFF, FAMILY, OR CLIENTS BEEN AFFECTED DIRECTLY BY COVID? IS STAFF FINDING IT DIFFICULT TO WORK BECAUSE OF CHILDCARE DUTIES OR COVID-RELATED NEEDS TO CARE FOR A FAMILY MEMBER?]

**We Strongly Object to the Substance of the Proposed Rule and Urge the Administration to Rescind It in Its Entirety**

Although we object to the agency’s unfair 30-day deadline in which to submit a comment to the proposed rule, we submit this comment, nonetheless, because we feel compelled to object to the proposed regulations which would greatly reduce the rights of asylum seekers[[3]](#footnote-3) appearing before EOIR and would result in the wrongful removal of bona fide asylum seekers to the countries they fled where they would likely face further persecution or even death.

**8 CFR §§ 1003.10(b), 1003.29, 1003.31, and 1240.6—The Proposed Rule Would Prioritize Speed over Fairness in Asylum Adjudications**

Proposed sections 8 CFR §§ 1003.10(b), 1003.29, 1003.31, and 1240.6 would require immigration judges to complete asylum cases within 180 days after the asylum application is filed in all cases, unless the respondent can demonstrate exceptional circumstances. Although these changes are derived from language in the INA, *see* INA §208(d)(5)(ii), in more than two decades since Congress added that language to the asylum statute, it has never been implemented through regulations. At the time Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (1996), imposing the 180-day completion deadline, there were 231,649 cases pending before EOIR.[[4]](#footnote-4) Since that time, the immigration court backlog has ballooned by more than one million cases, and currently stands at 1,246,164 cases.[[5]](#footnote-5) What may have been a sensible timeframe for Congress to enact in 1996, is unreasonable today given the extraordinarily large number of pending cases and backlog in immigration court. It defies logic and compassion to implement the 180 day filing requirement now, at a time when the immigration courts are overburdened and unable to adjudicate cases that lack filing deadlines, and when asylum seekers face increasing difficulties in finding pro or low bono counsel.

The NPRM does not explain whether EOIR’s intent would be to apply the 180-day rule to all pending cases or whether it would apply the rule prospectively only; either option would raise serious due process concerns. Many cases in the current backlog have been pending for years. If, following publication of this rule, EOIR imposed a deadline on immigration judges to adjudicate these cases within 180 days of the rule’s publication, the courts would be overwhelmed, and practitioners who have caseloads of, in some instances, hundreds of asylum cases with individual hearing dates scheduled years in advance, would be forced to choose between withdrawing from cases or providing inadequate representation. On the other hand, if EOIR applies the rule prospectively, EOIR would essentially recreate the “Last In, First Out” policy that the Asylum Offices use. Those who would file asylum cases after the rule is published would have to go forward on their applications, in many cases before they are ready to do so. At the same time, asylum seekers whose cases have already been languishing in the EOIR backlog, would be pushed to the end of the line as immigration judges would struggle to comply with the newly imposed requirement that no asylum adjudication could take more than 180 days absent exceptional circumstances. Asylum seekers face serious due process concerns if their cases are scheduled too quickly for them to adequately prepare, and equally serious concerns if their cases languish so long that evidence becomes stale and memories fade. [[6]](#footnote-6)

Although INA § 208(d)(5)(ii) does not define the term “exceptional circumstances,” EOIR here gives examples of qualifying circumstances that would almost never be met—“such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances.” Proposed 8 CFR § 1003.10(b). There are many reasons that an asylum seeker might not be able to proceed within 180 days of filing their asylum application. For example, the asylum seeker may need mental health counseling so be able to articulate their asylum claim or they may be waiting to receive critical documentation from abroad. Though the proposed rule would generally allow for continuances for reasons such as these if an immigration judge finds there is “good cause,”[[7]](#footnote-7) the immigration judge would be prohibited from granting a continuance for these reasons if doing so would push the hearing beyond the 180-day mark.

Furthermore, this NPRM does not take into account the recently published asylum employment authorization document (EAD) rules, which now prohibit asylum seekers from applying for an EAD until 365 days after their asylum application has been pending. 8 CFR § 208.7(a)(ii). The overlap of that rule with the currently proposed rule would mean that asylum seekers who file defensive asylum applications would not be authorized to work until after there is a decision on their application, thereby making it much less likely that they could afford counsel for their individual hearing, and interfering with their statutory right to representation. *See* INA § 292.

ADD ANY ANECDOTE WHERE YOUR OFFICE HAD GOOD CAUSE TO POSTPONE AN ASYLUM HEARING BEYOND 180 DAYS, BUT THE GOOD CAUSE WOULD NOT HAVE MET THE NEW EXCEPTIONAL CIRCUMSTANCES STANDARD—SUCH AS GATHERING IMPORTANT EVIDENCE FROM THE HOME COUNTRY OR ADDRESSING YOUR CLIENT’S MENTAL HEALTH ISSUES

**8 CFR § 1208.3(c)(3)—The Proposed Rule Would Require Immigration Judges to Reject Asylum Applications Based on Minor, Technical Errors**

The proposed rule at 8 CFR § 1208.3(c)(3) would prevent bona fide asylum seekers from pursuing protection if they accidentally leave a box blank on the asylum application form or cannot afford the asylum filing fee.

Since 2019, USCIS has been rejecting affirmative asylum applications if any box on the Form I-589 is left blank, even boxes that have no legal relevance to the case, or questions that obviously do not apply, such as the name of a child when the applicant has no children. The proposed rule would now codify these “Kafkaesque”[[8]](#footnote-8) rejections and require immigration judges to reject any incomplete application. Under the proposed rule, immigration judges, or the under-staffed EOIR support staff, would similarly be required to comb through the 12-page application form[[9]](#footnote-9) to see whether any box is not completed and reject the application. Once the court rejects the application, the applicant would have 30 days to make the correction or their ability to seek asylum would be waived.

This rule change would have a devastating impact on pro se asylum seekers, in a legal system that does not provide appointed counsel despite the life or death consequences of adjudications. The effects of the proposed rule would be especially profound on those in detention and those subjected to the “Migrant Protection Protocols” (MPP). For example, an asylum seeker with no middle name might leave that box blank rather than writing in the word “none.” If the immigration judge rejected the application on that basis and the asylum seeker still did not understand the need to write the word “none” in the box, they would be unable to seek asylum. Depriving asylum seekers of their right to pursue asylum because of a missing word on the application is cruel and undercuts U.S. obligations pursuant to the Refugee Act of 1980.

Equally troubling, this rule would require the court to reject the asylum application of any asylum seeker who cannot pay the 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. We are again especially concerned about the effect of the filing fee on those who are detained or subjected to MPP. The rule lays out the steps an asylum seeker must take to fee in the application with the Department of Homeland Security (DHS), but does not clarify how an unrepresented detained person would be able to accomplish these steps. Moreover, asylum seekers who are forced to remain in Mexico have no ability to visit a DHS office in the United States to “fee in” an asylum application. Moreover, many asylum seekers subject to MPP are living in shelters or tent cities in Mexico and if EOIR adopts the proposed $50 filing fee, many, if not most, would be unable to pay. 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 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.

 ADD ANECDOTES ABOUT CASES WHERE YOU HAVE HAD AN I-589 RETURNED BY THE SERVICE CENTER FOR FAILURE TO CHECK A BOX THAT IS NOT LEGALLY RELEVANT AND EMPHASIZE THAT YOU ARE AN ATTORNEY AND THE EFFECTS ON PRO SE APPLICANTS WOULD BE WORSE

 ADD ANECDOTES ABOUT THE EXTREME POVERTY OF MANY ASYLUM SEEKERS AND THAT A $50 FILING FEE WOULD PREVENT MANY FROM FILING THEIR APPLICATION

**8 CFR § 1208.4—The Proposed Rule Would Create an Impossible Filing Deadline for Individuals in Asylum-only or Withholding-only Proceedings**

Proposed 8 CFR § 1208.4(d) would require many asylum seekers to file their asylum applications within 15 days of their first master calendar hearing. This proposed rule, when coupled with the proposed asylum rule from June 15, 2020, *see* 85 Fed. Reg. 36264, would mean that all asylum seekers who have gone through the credible fear process would have a severely time-limited ability to submit their asylum application.

To justify this proposed change, DOJ notes that there is already a comparable filing deadline for crewmembers, indicating that attorneys “may be familiar” with the crewmember deadline and implying that, as a result, the newly proposed 15-day filing deadline would not pose a problem for counsel. *See* 85 Fed. Reg. 59698. However, the NPRM does not discuss the vast expansion of asylum-only proceedings proposed in the June 15, 2020 rule. *See* Proposed 8 C.F.R. § 208.2(c)(3)(i); 8 C.F.R. § 1208.2(c)(3)(i). Currently only individuals in the Visa Waiver Program and crewmembers are subject to asylum-only proceedings. And as of 2018, there were only 726 asylum-only proceedings pending before EOIR.[[10]](#footnote-10) Under proposed 8 C.F.R. § 208.2(c)(3)(i); 8 C.F.R. § 1208.2(c)(3)(i), any asylum seeker who is put through expedited removal and passes a credible fear interview would be placed in asylum-only proceedings. Thus, instead of asylum-only proceedings comprising fewer than 1 percent of cases before EOIR, a huge proportion of asylum cases would fall within the purview of this proposed rule. In 2018, DHS found a credible fear in 74,287 cases it heard.[[11]](#footnote-11) Thus, tens of thousands of asylum seekers would be subject to the new 15-day deadline. Yet the NPRM contains no analysis of how the deadline would affect asylum seekers, their counsel, or court operations.

Again, with the staggered rulemaking that DOJ is using, it is impossible to adequately comment on the scope of this change since there is no way to know whether the June 15 rule will be published in the same form in which it was proposed. However, if tens of thousands of asylum seekers are placed into asylum-only proceedings, they would all have to file their asylum applications within 15 days of their first master calendar hearing. The NPRM does not analyze how this expedited process would affect their ability to find counsel. As asylum rules change on a nearly daily basis, through regulations and attorney general decisions restricting noncitizens’ rights, it is critical that asylum seekers have legal representation to prepare their application for asylum. The legal completeness of the application would only become more important if the June 15 asylum rule allowing immigration judges to pretermit asylum cases if the asylum seeker “has not established a prima facie claim for relief,” *see* proposed 8 CFR § 1208.13(e), without holding a hearing goes into effect.

While the NPRM indicates that those who have gone through the credible fear process have “no reason not to expect to” present their protection claim quickly, 85 Fed. Reg. 59694, the NPRM does not discuss the very different statutory legal standard between establishing a “significant possibility” of succeeding on an asylum claim that is required to demonstrate a credible fear, versus bearing the burden of proof on every element of the asylum claim. *See Matter of A-C-A-A-,* 28 I&N Dec. 84 (A.G. 2020).

While the proposed rule would allow immigration judges to extend this filing deadline “for good cause,” if the asylum seeker misses the newly set deadline, the proposed rule does not authorize the immigration judge to further extend the filing deadline; instead the proposed rule issues a mandate that if the deadline is missed, the immigration judge “shall” deem the ability to file waived and “the case shall be returned to the Department of Homeland Security for execution of an order of removal.”

ADD ANECDOTES ABOUT CHALLENGES COMPLETING AN I-589

 8 CFR § 1208.12—The Proposed Rule Would Severely Limit Immigration Judges’ Ability to Consider Country Conditions Evidence Submitted by Asylum Seekers While Allowing Immigration Judges’ to Compile and Introduce Their Own Evidence, Turning Immigration Judges into Prosecutors Instead of Adjudicators

8 CFR § 1208.12 would impose new hurdles for asylum seekers to meet their burden of proving that they would face persecution if returned to their country. Under the proposed rule there would be a bifurcated standard for supporting documentation about country conditions: 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.” We strongly oppose these revised standards. 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. In fact, a DHS whistleblower recently filed a 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.”[[12]](#footnote-12) Non-governmental organizations—whose evidence the immigration judge could only consider after it has been found to be “credible and probative”—have likewise found that DOS reports are subject to political pressure.[[13]](#footnote-13) Thus, as the DOS reports become less critical of government abuses in countries with high numbers of asylum seekers, asylum seekers have no choice but to supplement the record with other, non-governmental materials. If the proposed rule is published, immigration judges would have to first conduct an analysis of whether that evidence is “credible and probative” while being able to “rely” on potentially biased U.S. government reports with no comparable analysis.

This section of the rule would further tilt the playing field against asylum seekers by allowing judges to introduce their own evidence into the record. This proposed rule would fundamentally alter the role of the judge who 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,[[14]](#footnote-14) 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.

The NPRM disingenuously likens this proposed change to the immigration judge’s existing duty to develop the record. 85 Fed. Reg. 59695. However, the immigration judge’s duty to elicit testimony about their claims from unrepresented respondents is wholly consistent with the role of a fact-finding adjudicator. The role of the immigration judge is to weigh the facts that the parties put before the court, not to introduce their own facts into the record. Allowing the immigration judge to create their own record in the case would fundamentally alter the immigration judge’s role in removal proceedings and even further erode the rights of respondents who appear in immigration court.

ADD ANECDOTES ABOUT CASES WHERE DOS REPORTS WERE INCORRECT AND/OR THE EVIDENCE INTRODUCED BY THE RESPONDENT MADE THE DIFFERENCE IN THE CASE OUTCOME

**Conclusion**

These proposed rules rewrite many aspects of long-established immigration court practice concerning asylum adjudication. The proposed rule would prioritize speed over fairness and would introduce new hurdles for asylum seekers to ever have their day in court. Moreover, the proposed rule would change the balance of power in the courtroom, allowing immigration judges to introduce their own evidence and rely on it, while forcing them to evaluate whether evidence introduced by the asylum seeker from non-governmental sources is “credible and probative.” The far-reaching changes proposed through these rules do not account for the multiple, pending rulemakings that have been issued over the summer. By staggering its rulemaking in this way, the Department of Justice has made it impossible to fully consider the reach of these rules and how they might be affected by the proposed rules on which agencies are currently evaluating the comments that have been submitted. For these reasons, we urge you to rescind this NPRM.

 [Name, position and signature]

1. While there is not currently a filing fee for defensive asylum applications, EOIR proposed a fee for asylum applications through a proposed rulemaking February 28, 2020. *See* 85 Fed. Reg. 11866. Throughout this comment we raise the substantial concern that the agency’s decision to engage in staggered rulemaking has made it impossible for us to adequately comment on the potential effects of this rule. While we are commenting on the proposed rule against the backdrop of current asylum rules and procedures, several pending rulemakings, could radically alter procedures for considering asylum applications and procedures for all litigants before the Executive Office for Immigration Review. Without knowing which proposed rules will ultimately be published, and how they might be altered in their final form, we are forced to comment blindly here without being able to consider the full aggregate effect of all of the proposed rules. [↑](#footnote-ref-1)
2. *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, [https://www.regulations.gov/‌document?D=EOIR-2020-0003-0001](https://www.regulations.gov/document?D=EOIR-2020-0003-0001). [↑](#footnote-ref-2)
3. To the extent that this comment addresses issues that affect applicants for asylum, withholding of removal and protection under the Convention Against Torture, it will use the term “asylum seekers” to mean applicants for all of these forms of protection. [↑](#footnote-ref-3)
4. U.S. DOJ, EOIR, Statistical Yearbook 2000, at 6, [https://www.justice.gov/‌sites/‌default/‌files/‌eoir/‌legacy/‌2001/‌05/‌09/‌SYB2000Final.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2001/05/09/SYB2000Final.pdf). [↑](#footnote-ref-4)
5. TRAC, Immigration Court Backlog Tool, [https://trac.syr.edu/phptools/‌immigration/‌court\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/). [↑](#footnote-ref-5)
6. *See,* Southern Poverty Law Center and Innovation Law Lab, *The Attorney* *General's Judges How The U.S. Immigration Courts Became A Deportation Tool* at 20 (June 2019), [www.splcenter.org/‌sites/‌default/‌files/‌com\_policyreport\_the\_attorney\_generals\_judges\_final.pdf](http://www.splcenter.org/sites/default/files/com_policyreport_the_attorney_generals_judges_final.pdf), (“‘arbitrary prioritizations wreak havoc on case management,’ giving so-called ‘priority’ cases inadequate time to prepare while further extending the backlog for pending cases that may have been waiting for years.’”) [↑](#footnote-ref-6)
7. The attorney general has already substantially limited the definition of “good cause” for continuing cases in *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018) while DOJ has imposed performance metrics that give immigration judges a financial incentive to complete cases quickly. *See,* Judge A. Ashley Tabaddor, President National Association of Immigration Judges, *Testimony Before the Senate Judiciary Committee, Border Security and Immigration Subcommittee Hearing on “Strengthening and Reforming America’s Immigration Court System”* (Apr. 18, 2018), [www.judiciary.senate.gov/‌imo/‌media/‌doc/‌04-18-18%20Tabaddor%20Testimony.pdf](http://www.judiciary.senate.gov/imo/media/doc/04-18-18%20Tabaddor%20Testimony.pdf) (“production quotas and time-based deadlines violate a fundamental canon of judicial ethics which requires a judge to recuse herself in any matter in which she has a financial interest that could be affected substantially by the outcome of the proceeding.”) [↑](#footnote-ref-7)
8. Catherine Rampell, *The Trump Administration’s No-Blanks Policy Is the Latest Kafkaesque Plan Designed to Curb Immigration*, The Washington Post, Aug. 6, 2020, [www.washingtonpost.com/‌opinions/‌the-trump-administration-imposes-yet-another-arbitrary-absurd-modification-to-the-immigration-system/‌2020/‌08/‌06/‌42de75ca-d811-11ea-930e-d88518c57dcc\_story.html](http://www.washingtonpost.com/opinions/the-trump-administration-imposes-yet-another-arbitrary-absurd-modification-to-the-immigration-system/2020/08/06/42de75ca-d811-11ea-930e-d88518c57dcc_story.html). [↑](#footnote-ref-8)
9. It is worth noting that pursuant to the Information Collection that accompanied the June 15, 2020 Procedures Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, NPRM, [www.regulations.gov/‌document?D=EOIR-2020-0003-0001](http://www.regulations.gov/document?D=EOIR-2020-0003-0001), the form I-589 would jump to 16 pages and would include complex questions calling for legal analysis by the applicant. The current NPRM makes no reference to the pending change in the asylum application form or how that might affect an asylum seeker’s ability to fully complete the form. [↑](#footnote-ref-9)
10. U.S. DOJ, EOIR, Statistical Yearbook 2000, at 13, [www.justice.gov/‌sites/‌default/‌files/‌eoir/‌legacy/‌2001/‌05/‌09/‌SYB2000Final.pdf](http://www.justice.gov/sites/default/files/eoir/legacy/2001/05/09/SYB2000Final.pdf) [↑](#footnote-ref-10)
11. See DHS, *Credible Fear Cases Completed and Referrals for Credible Fear Interview*, [www.dhs.gov/‌immigration-statistics/‌readingroom/‌RFA/‌credible-fear-cases-interview](http://www.dhs.gov/immigration-statistics/readingroom/RFA/credible-fear-cases-interview). [↑](#footnote-ref-11)
12. *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](https://intelligence.house.gov/uploadedfiles/murphy_wb_dhs_oig_complaint9.8.20.pdf). [↑](#footnote-ref-12)
13. *See* Amanda Klasing & Elisa Epstein, Human Rights Watch *US Again Cuts Women from State Department’s Human Rights Report*, (Mar. 13, 2019) [www.hrw.org/‌news/‌2019/‌03/‌13/‌us-again-cuts-women-state-departments-human-rightsreports](http://www.hrw.org/news/2019/03/13/us-again-cuts-women-state-departments-human-rightsreports); Tarah Demant, Amnesty International *A Critique of the US Department of State 2017 Country Reports on Human Rights Practices*, (May 8, 2018) [https://medium.com/‌@amnestyusa/‌a-critiqueof-the-us-department-of-state-2017-country-reports-on-human-rights-practices-f313ec5fe8ca](https://medium.com/%40amnestyusa/a-critiqueof-the-us-department-of-state-2017-country-reports-on-human-rights-practices-f313ec5fe8ca). [↑](#footnote-ref-13)
14. EOIR, Immigration Court Practice Manual, at 36 (Jul. 2, 2020), [www.justice.gov/‌eoir/‌page/‌file/‌1258536/‌download](http://www.justice.gov/eoir/page/file/1258536/download). [↑](#footnote-ref-14)