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**INSTRUCTIONS FOR TEMPLATE COMMENT ON** **EOIR PROPOSED RULE,**

**“GOOD CAUSE FOR A CONTINUANCE IN IMMIGRATION PROCEEDINGS”**

Attached is a template to help immigration legal services organizations draft a public comment in response to the administration’s proposed rule that would greatly restrict immigration judges’ discretion to grant continuances to noncitizens in immigration court. (The Notice of Proposed Rulemaking is available [here](https://www.federalregister.gov/documents/2020/11/27/2020-25931/good-cause-for-a-continuance-in-immigration-proceedings?utm_source=federalregister.gov&utm_medium=email&utm_campaign=subscription+mailing+list).)

**Why submit a public comment? Is it even possible for the Trump administration to finalize this rule before January 20, 2021?** EOIR issued this proposed rule on November 27, 2020, and the comment period closes on December 28, 2020. EOIR must then “consider the relevant matter presented” and incorporate into the final rules a “concise general statement of their basis and purpose.” 5 U.S.C. § 553(c). In past immigration regulatory efforts, the agency has often taken many months after the comment period closes to issue a final rule. However, it is possible for EOIR to promulgate a final rule before the Biden administration takes office on January 20, 2021. Even if EOIR does not succeed in promulgating a final rule during the last days of the Trump administration, a future anti-immigrant administration could attempt to revive this rulemaking, and the comments submitted now would remain part of the record the agency is required to consider. If the agency disregards substantive comments in promulgating the final rule, this could be helpful for future legal challenges to the rule. Substantive comments might also provide the Biden administration with justification for formally ending the rulemaking and abandoning this rulemaking effort.

**How do I submit a comment?** You can submit comments online at regulations.gov [click [here](https://beta.regulations.gov/document/EOIR-2020-0009-0001) to go directly to the proposed rule]. You can either enter your comment in the text box (if it is 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).

**Write comments in your own words.** The template on the following pages is intended give you ideas, but ***the comment should written in your own words and should focus on your organization’s unique perspective***. 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, community, and clients. Gather some statistics that you can use to demonstrate how many of your clients or people in your community would be affected, how and to what extent, and at what financial cost. The attached template contains an introduction, comments about the inadequacy of the 30-day period, a general comment objecting to the proposed rule, and comments on specific provisions of the proposed rule. Feel free to discard those portions of the template that that you not wish to comment on and focus on drafting unique comments on those provisions that are particularly relevant to your organization.

**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 your faith motivates you to work with immigrants or requires you to advocate for immigrants, 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

Lauren Alder Reid

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**RE: RIN 1125-AB03, EOIR Docket No. 19-0410, Dir. Order No. 02-2021,**

**Public Comment Opposing Proposed Executive Office for Immigration Review Rule Titled “Good Cause for a Continuance in Immigration Proceedings”**

Our organization, [Organization Name], submits this comment urging the Executive Office for Immigration Review (EOIR) to withdraw these proposed rules in their entirety. The Notice of Proposed Rulemaking (NPRM) claims that the proposed rules will promote “efficiency,” but the proposed changes would strip important due process rights from noncitizens before the immigration court and curtail immigration judges’ (IJ) discretion to manage their cases in an individualized and fair manner. The importance of fairness in immigration court proceedings cannot be overstated: for many noncitizens, having a fair day in court can mean the difference between living in safety in the United States or being returned to a country where they may be killed. Deportation can also lead to permanent family separation because of the Immigration and Nationality Act’s draconian penalties. The U.S. government should ensure that, before it imposes such grave consequences through ordering a person’s removal, every noncitizen is afforded a meaningful opportunity to secure counsel and to seek protection from removal to which they are entitled. Because these proposed rules would deny noncitizens their right to counsel and a meaningful opportunity to seek immigration protection, we urge you to withdraw them in their entirety.

[DESCRIBE YOUR ORGANIZATION’S MISSION AND WORK IN THE IMMIGRATION FIELD. IF YOUR ORGANIZATION IS FAITH-BASED, DESCRIBE THE 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 CONTINUANCES IN IMMIGRATION COURT TO YOUR ORGANIZATION.]

**We Object to EOIR Allowing Only 30 Days for Public Comments on the Proposed Rules**

As discussed below, the proposed regulations would radically limit the circumstances in which an IJ may grant a continuance, with the result that many noncitizens who qualify for, and are pursuing, immigration protection will be ordered removed before they are able to have their claim considered. The public should be given adequate time to consider these dramatic revisions to existing law in order to provide thoughtful and well-researched comments. EOIR has given no reason for allowing only 30 days for the public to submit comments to these proposed rules rather than the customary 60-day comment period.[[1]](#footnote-1) 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 to work from home and balance childcare with work activities.

[FILL IN ANY SPECIFIC COVID-RELATED CHALLENGES HERE. IS YOUR ORGANIZATION’S STAFF WORKING REMOTELY? HAVE STAFF, FAMILY, OR CLIENTS BEEN AFFECTED DIRECTLY BY COVID? IS STAFF FINDING IT DIFFICULT TO WORK BECAUSE OF CHILDCARE DUTIES OR A NEED TO CARE FOR A FAMILY MEMBER THAT IS SICK WITH COVID?]

Moreover, the shortened comment period is even more unreasonable given that it spans multiple holidays. EOIR announced the rule over a holiday weekend (the Friday following Thanksgiving) and the comment period ends on the Monday after Christmas. The comment period also includes the entirety of Hanukkah, a major religious holiday that begins on December 10, 2020 and ends on December 18, 2020, and the first three days of Kwanzaa, which begins on December 26, 2020. EOIR thus imposed a comment period that spans multiple major holidays when many stakeholders will not be working.

EOIR issued this proposed rule, with its sweeping new restrictions on IJs’ authority to grant continuances, on the same day that it issued another proposed rule that would make sweeping and restrictive changes to the standards governing motions to reopen,[[2]](#footnote-2) on the heels of a number of other proposed immigration regulations with equally short comment periods,[[3]](#footnote-3) and during the same time period immigration agencies have promulgated numerous final rules that impose radical, harsh changes to immigration proceedings.[[4]](#footnote-4) Significant agency revisions to established practice should be well-thought-out and should allow the public a meaningful opportunity to comment. Instead, the agencies have used the final months of the current president’s administration, spanning the holidays and in the midst a pandemic, to rush through proposed rules that would radically alter procedures that have been in place for decades and leave tens of thousands of noncitizens who qualify for lawful status vulnerable to swift removal orders. For this procedural reason alone, we urge EOIR to rescind the proposed rule. If the agency wishes to reissue the proposed regulations, it should grant the public at least 60 days to have adequate time to provide comprehensive comments.

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

Continuances are essential to protect respondents’ statutory right to counsel and to ensuring that they have a meaningful opportunity to seek immigration relief during removal proceedings as required by due process. This proposed rule would essentially do away with continuances to obtain counsel, and would eradicate continuances in many circumstances where they are currently the only tool still available to allow noncitizens to pursue certain immigration relief while in removal proceedings. Continuances are often the only tool still available because the Trump administration has systematically eradicated other options IJs historically had for managing their own dockets and allowing respondents the time necessary to pursue immigration protection.[[5]](#footnote-5)

These proposed rules would disproportionately harm, and lead to the swift removal of, some of the most vulnerable respondents in immigration court proceedings, despite their eligibility for and likelihood of obtaining lawful status if the immigration court would only give them the time to pursue it. Those targeted by this rule include unaccompanied children and survivors of domestic violence and trafficking who are pursuing immigration relief with USCIS, children with approved Special Immigrant Juvenile Status petitions who are awaiting a current priority date, *pro se* respondents, and those with mental disabilities.

[DESCRIBE HOW *CASTRO-TUM*, *S-O-G- & F-D-B-*, AND THE OTHER MEASURES REFERENCED ABOVE AND LISTED IN FOOTNOTE 5 HAVE IMPACTED YOUR ORGANIZATION AND CLIENTS, AND WHY BROAD AVAILABILITY OF CONTINUANCES IS NECESSARY FOR YOUR ORGANIZATION TO FURTHER ITS MISSION AND TO ENSURE THAT CLIENTS HAVE A MEANINGFUL OPPORTUNITY TO SEEK RELIEF WHILE IN REMOVAL PROCEEDINGS. IF YOUR ORGANIZATION WORKS WITH GROUPS THAT WILL BE PARTICULARLY HARMED BY THIS RULE—*E.G.*, UNACCOMPANIED CHILDREN OR U/T/VAWA APPLICANTS—EXPLAIN THIS.]

The proposed rule is also fundamentally flawed because the NPRM falsely asserts that it will not have a significant economic impact on a substantial number of small entities and thus fails to conduct the required regulatory flexibility analysis.[[6]](#footnote-6) The NPRM fails to recognize that the proposed rule would directly regulate thousands of small entities, including our organization, by imposing draconian limitations on continuance requests, many of which target representatives directly.[[7]](#footnote-7) The proposed rule would require significant extra work by small entities like ours in preparing continuance requests, pursuing relief in immigration court while awaiting relief before USCIS, and pursuing complex and resource-intensive remedies including appeals, ICE stays, and motions to reopen for clients whose continuance requests will be denied as a result of the proposed rule. [INSERT INFORMATION HERE ABOUT WHAT COSTS/BURDENS THE PROPOSED RULE WOULD HAVE ON YOUR ORGANIZATION].

Not only does the proposed rule fail to conduct the required regulatory flexibility analysis, but it also falsely asserts that “the expected costs of this proposed rule are likely to be *de minimis*, whereas the benefits to all parties . . . are significant.”[[8]](#footnote-8) The NPRM acknowledges that the proposed rule is likely to result in fewer continuances being granted and asserts that a reduction in continuances would “benefit aliens with valid claims who would otherwise have to wait longer to receive relief or protection” and “provide some benefit to attorneys, particularly pro bono attorneys, who would not need to commit to representation for several years if the hearing process worked more efficiently.”[[9]](#footnote-9) In fact, as described in more detail below, the proposed rule would cause grave harm to large numbers of respondents—many of them particularly vulnerable—who have strong claims for legal protection but who will not qualify under the rule for a continuance for their claim to be adjudicated. Further, the rule will harm attorneys and organizations like ours, because [EXPLAIN WHY PROPOSED RULE WOULD NOT BENEFIT YOUR ATTORNEY OR FULLY-ACCREDITED DOJ REPRESENTATIVES AND, IF YOUR ORGANIZATION RUNS A PRO BONO CASE REFERRAL SERVICE, WHY THIS RULE WOULD NOT BENEFIT PRO BONO ATTORNEYS, EITHER]. The NPRM’s failure to consider these harms and costs of the rule render it unjustifiable.

The proposed rule would strip IJs of discretion to make case-by-case, individualized determinations that ensure due process. We urge EOIR to withdraw the rule in its entirety and to restore IJs’ ability to fairly and efficiently manage their dockets through the use of continuances, administrative closure, and termination. Below we provide additional comments on specific provisions of the proposed rules.

**Comments on Specific Provisions**

[Each of the below sections on specific parts of the proposed rule has the following components: Heading, topic sentence, text of the proposed regulation in question (in text box), list of implications of the proposed regulation (*i.e.*, who would be impacted) (in text box), list of ideas for comment topics (in text box). The intention is that users will delete the regulation text, the implications of the proposed regulation, and the list of ideas for comment topics in the text boxes and replace them with their own unique comment on each specific provision.]

1. **[Organization Name] Opposes the Proposed Changes to 8 CFR § 1003.29(a), as They Would Prohibit Continuances for Asylum Seekers Necessary to Ensure Due Process**

[Organization Name]strongly opposes the proposed rule’s limitation on an IJ’s authority to grant a continuance to asylum seekers if it results in the asylum application adjudication exceeding 180 days.[[10]](#footnote-10)

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| *Proposed Regulation’s Text:* “(a) Subject to paragraph (b), the immigration judge may grant a motion for continuance for good cause shown, provided that nothing in this section shall authorize a continuance that causes the adjudication of an asylum application by an immigration judge to exceed 180 days in the absence of exceptional circumstances, consistent with section 208(d)(5)(iii) of the Act and 8 CFR 1003.10(b).”  |

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| *Proposed Regulation’s Implications:* * Respondents with newly filed asylum applications would be fast-tracked and denied continuances, even when they are not ready to proceed and require additional time to secure counsel, get mental health treatment, find experts, gather evidence, etc.
* Cases that are ready for a merits hearing would further languish as IJs would be required to schedule the newly-filed asylum cases for individual hearings on an expedited basis, causing evidence to go stale and witnesses to potentially become unavailable.
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| *Ideas for Comment:** Discuss any work your organization does with newly-arrived asylum seekers and the various reasons they often need more than 180 days before a merits hearing in order to adequately prepare their case and have a reasonable chance of prevailing.
* Discuss any work your organization does on behalf of clients with pending applications who are ready to proceed but whose merits hearing dates are far in the future due to EOIR docket reshuffling to accommodate the agency’s ever-changing priorities. Explain how EOIR-caused delay harms this population, such as by requiring them to wait years to gain permanent lawful status, reunite with family, etc.
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1. **[Organization Name] Opposes the Proposed Rule’s List of Scenarios That Would Not Demonstrate Good Cause for a Continuance (Proposed 8 CFR § 1003.29(b)(2)**)

[Organization name] strongly opposes the proposed rule’s list of situations that would not show good cause for a continuance; this rule if implemented would gravely harm our organization and the clients we serve.

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| *Proposed Regulation’s Text:**“(2) Good cause not shown.* (i) Good cause for a continuance is not shown when the continuance would not materially affect the outcome of removal proceedings or, for a continuance request based on a collateral matter, when the alien has not demonstrated by clear and convincing evidence a likelihood of obtaining relief on the collateral matter.(ii) A request for a continuance in order to seek parole, deferred action, or the exercise ofprosecutorial discretion by DHS does not demonstrate good cause.(iii) A request for a continuance that would cause an immigration court to exceed a statutory or regulatory adjudication deadline does not demonstrate good cause unless the request meets the standard of any statutory or regulatory exception to the deadline.”[[11]](#footnote-11)  |

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| *Proposed Regulation’s Implications:* * The first of the three situations that would not demonstrate good cause under this provision (proposed 8 CFR § 1003.29(b)(2)(i)) mirrors *L-A-B-R-* but imposes an even higher standard—for *pro se* and represented respondents alike—of demonstrating by “clear and convincing evidence” a likelihood of obtaining relief in the “collateral matter.” This would create an unfairly high burden on the respondent and counsel, if any, and would decrease efficiency because it would require the IJ to conduct a mini-merits review of something that another entity is concurrently conducting a full merits review on.
* The requirement in proposed 8 CFR § 1003.29(b)(2)(i) that the respondent show that the continuance will materially affect the outcome of the case appears to apply to *any* continuance, even one to find counsel or to contest the charges in the Notice to Appear (NTA). This requirement—essentially requiring a prejudice showing before allowing a continuance to seek counsel or contest the government’s charges—would violate a respondent’s statutory and due process rights.[[12]](#footnote-12)
* The second situation that would not demonstrate good cause under this provision (proposed 8 CFR § 1003.29(b)(2)(ii)) would allow the IJ to enter removal orders against respondents pursuing, *inter alia*, DACA, Deferred Enforced Departure, humanitarian deferred action, parole in place, and prosecutorial discretion with DHS (which may become more available with a new administration). Continuances are particularly necessary for this population given that the Trump administration previously eliminated other available tools, such as administrative closure, through *Matter of Castro-Tum* and final regulations, and discretionary termination in the absence of DHS joinder, through *Matter of S-O-G- & F-D-B-*.[[13]](#footnote-13)
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| *Ideas for Comment:** Discuss the impact the standard found at proposed 8 CFR § 1003.29(b)(2)(i) would have on populations your organization serves, including individuals who are proceeding *pro se*.
* If your organization works with individual pursuing DACA, other deferred action, or parole, discuss how the continuance ban for individuals pursuing this type of relief would impact your organization and the clients and community you serve.
* If your organization in the past represented individuals in requests for prosecutorial discretion with DHS and would do so again under an administration that exercised prosecutorial discretion, describe how the continuance ban for this type of case would impact your organization and the clients and community you serve, particularly given the absence of other options the Trump administration previously eliminated such as administrative closure.
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1. **[Organization Name] Opposes the Proposed Regulation’s Outrageous Presumption Against Continuances for Individuals Applying for or Awaiting an Immigrant Visa (Proposed 8 CFR § 1003.29(b)(3)(i), (ii)**)

[Organization name] strongly opposes the proposed rule’s presumption against continuances for many respondents pursuing visa petitions and eventual adjustment of status as cruel, unnecessary, and contrary to congressional intent.

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| *Proposed Regulation’s Text:*“(3) *Continuances of removal proceedings related to collateral immigration applications*.(i) Subject to paragraph (b)(3)(ii) of this section, a continuance request to allow an alien or a petitioner to apply for an immigrant visa or to wait for an immigrant visa for which the alien isthe beneficiary to become available does not demonstrate good cause unless:(A)(*1*) The approval of the visa application or petition provides or would provide an immediately-available visa to the alien, or(*2*) The approval of the visa application or petition provides or would provide a visa to the alien with a priority date six months or less from the immediate action application date provided in the Visa Bulletin published by the Department of State for the month in which the continuance request is made;(B) The alien has demonstrated prima facie eligibility for the underlying visa and, if applicable, for adjustment of status and any necessary waiver(s) based on the approval of that visa, including establishing that the alien would warrant adjustment of status and any necessary waiver(s) as a matter of discretion; and(C) The immigration judge has jurisdiction over any application for adjustment of status, including any necessary waiver(s) in conjunction with that application, based on approval of the underlying visa.(ii) (A) For purposes of paragraph (b)(3)(i) of this section, approval of a visa petition orapplication does not include interim relief, prima facie determinations, parole, deferred action,bona fide determinations or any similar dispositions short of final approval of the visa application or petition. The seeking of any of these dispositions or of any disposition short offinal approval of the visa application or petition does not demonstrate good cause.(B) Notwithstanding paragraph (b)(3)(i) of this section, an immigration judge may not grant a continuance to an alien in removal proceedings based on a visa application or petition based on a marriage entered into during any pending administrative or judicial proceedings regarding the alien’s right to be admitted or remain in the United States, including during the pending removal proceedings, unless the alien establishes by clear and convincing evidence to the satisfaction of the immigration judge that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien’s admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of the petition or application.”[[14]](#footnote-14)  |

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| *Proposed Regulation’s Implications:* Individuals who would be ineligible for continuances and would face immediate removal orders under this proposed regulation include:* Youth seeking Special Immigrant Juvenile Status who are subject to the visa backlog (currently those from El Salvador, Honduras, Guatemala, and Mexico), even if they already have an approved petition, unless they have a priority date within six months of the date listed in the current month’s Visa Bulletin filing date chart.
* Violence Against Women Act (VAWA) self-petitioners whose petition is subject to a preference category, even if they already have an approved self-petition, unless they have a priority date within six months of the date listed in the current month’s Visa Bulletin filing date chart.
* Other individuals who are beneficiaries of family-based preference petitions or employment-based petitions, even if they already have an approved petition, unless they have a priority date within six months of the date listed in the current month’s Visa Bulletin filing date chart.
* Immediate relatives and others with immediately-available visas whose adjustment application is under the jurisdiction of USCIS, rather than the immigration court (*e.g.*, those charged as “arriving aliens”).
* Individuals who are beneficiaries of a relative petition based on a U.S. citizen or lawful permanent resident spouse where the marriage occurred during removal proceedings, unless the respondent demonstrates in the continuance motion by “clear and convincing evidence” that the marriage was entered into in good faith.
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| *Ideas for Comment:** Describe your organization’s work with the populations impacted by this regulation, discussed above.
* Describe any special vulnerabilities of the above populations that you work with that would make consular processing especially inappropriate (or impossible).
* Describe the burdens, hurdles, and inefficiencies that the absence of a continuance to pursue the above relief would cause your organization and the impacted clients, such as the need to file appeals of removal orders in these cases and then subsequent motions to reopen when the priority date becomes current.
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1. **[Organization Name] Opposes the Proposed Regulation’s Presumption Against Continuances to Apply for Nonimmigrant Visas (Proposed 8 CFR § 1003.29(b)(3)(iii), (iv))**

[Organization name] strongly opposes the proposed rule’s presumption against continuances for respondents pursuing nonimmigrant visas.

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| *Proposed Regulation’s Text:*“(iii) Subject to paragraph (b)(3)(iv) of this section, a continuance request to apply for a non-immigrant visa or to wait for a non-immigrant visa to become available, including any applicable waiver, in removal proceedings does not demonstrate good cause unless(A) Receipt of the non-immigrant visa, including any applicable waiver, vitiates or would vitiate all grounds of removability with which the alien has been charged; and(B) The alien demonstrates that final approval of the visa application or petition and receipt of the actual visa, including approval and receipt of any applicable waiver, has occurred or will occur within six months of the request for a continuance.(iv) For purposes of paragraph (b)(3)(iii) of this section, the receipt of interim relief, prima facie determinations, parole, deferred action, bona fide determinations or any similar dispositions short of approval of the actual visa application or petition does not constitute receipt of the actual visa or evidence that the actual visa will be received within six months of the request for a continuance.”[[15]](#footnote-15)  |

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| *Proposed Regulation’s Implications:* Individuals who would be ineligible for continuances and would face immediate removal orders under this proposed regulation include:* Individuals seeking U nonimmigrant status, including those who have received a *prima facie* determination from USCIS or who have already received deferred action (unless they can show that they will receive the actual U visa within six months of the continuance request).
* Individuals seeking T nonimmigrant status, including those who have already received a *bona fide* determination (unless they can show that they will receive final approval of the T visa and actually receive the T visa within six months of the continuance request).
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| *Ideas for Comment:** Describe your organization’s work with the populations impacted by this regulation and discussed above.
* Describe any special vulnerabilities of the above populations that you work with that would make consular processing especially inappropriate (or impossible).[[16]](#footnote-16)
* Describe the burdens, hurdles, and inefficiencies that the absence of a continuance to pursue the above relief would cause your organization and the impacted clients, such as the need to file appeals of removal orders in these cases and then subsequent motions to reopen when the priority date becomes current.
* Describe how this rule thwarts congressional intent to protect U and T applicants.[[17]](#footnote-17)
* Describe how continuance ineligibility would impact your organization’s ability to work effectively with these vulnerable populations.
* Describe your experiences with variations in USCIS processing times in U and T cases and how a bright-line six-month rule would impact your ability to demonstrate good cause under this standard.
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1. **[Organization Name] Opposes the Proposed Regulation’s Counter-Statutory Restrictions on Continuances for Individuals Seeking Relief over Which DHS Has Initial Jurisdiction (Proposed 8 CFR § 1003.29(b)(3)(v))**

[Organization name] strongly opposes the proposed rule’s limitations on continuances for individuals pursuing immigration protections over which DHS has initial jurisdiction.

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| *Proposed Regulation’s Text:*“(v) An immigration judge may grant a continuance in removal proceedings to await theadjudication of a non-visa application by DHS over which DHS has initial jurisdiction in thefollowing circumstances:(A) The alien has been found removable as charged;(B) The alien has established prima facie eligibility for the underlying benefit;(C) The alien has provided evidence that the application has been filed with DHS and remains pending with DHS;(D) DHS has initial jurisdiction over the application at issue even for an alien in immigration proceedings;(E) There are no other applications pending before the immigration judge; and (F) The non-approval of the application would transfer jurisdiction to the immigration judge to review and adjudicate the application.”[[18]](#footnote-18)  |

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| *Proposed Regulation’s Implications:*This provision would impact individuals including the following:* Unaccompanied children filing asylum applications with USCIS[[19]](#footnote-19)
* Conditional permanent residents filing, with USCIS, Form I-751 with a waiver of the joint filing requirement for a petition to remove conditions[[20]](#footnote-20)
* Individuals applying for Temporary Protected Status (TPS) with USCIS who are in removal proceedings at the time a country is designated for TPS[[21]](#footnote-21)

Under this proposed regulation, even though individuals in the above categories have a statutory or regulatory right to first pursue their relief with DHS, the regulation would allow IJs to deny continuances if they decide that the person has not shown *prima facie* eligibility for the benefit, if the person has any other relief pending before the IJ, or if pleadings have not yet been taken. |

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| *Ideas for Comment:** Describe your organization’s work with the populations impacted by this regulation and discussed above.
* Describe how the additional requirements listed above could hinder your clients’ ability to pursue the application first with DHS.
* Describe the burdens and inefficiencies anticipated by your organization by not allowing a continuance for a pending application if the respondent has any relief pending before the court (*e.g.*, forcing a client with a I-751 petition pending before USCIS to go forward with an asylum application in immigration court, even though awaiting USCIS approval of the I-751 petition would obviate the need for the immigration court asylum adjudication).
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1. **[Organization Name] Strongly Opposes the Proposed Regulation’s Harsh and Arbitrary Limitations on Continuances to Secure Representation (Proposed 8 CFR § 1003.29(b)(4)(i), (ii))**

[Organization name] strongly opposes the proposed rule’s limitations on continuances to allow a *pro se* respondent to find counsel.

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| *Proposed Regulation’s Text:*“(4) *Continuances related to an alien’s representation*. (i) Subject to paragraph (b)(4)(ii) of this section, an immigration judge is not required to grant a continuance to any alien in removal proceedings to secure representation if the time period described in section 239(b)(1) of the Act has elapsed and the alien has failed to secure counsel.(ii) In the immigration judge’s discretion, an immigration judge may grant one continuance to an alien in removal proceedings to secure representation if the date of the alien’s initial hearing occurs less than 30 days after the date the alien was served with a Notice to Appear and the alien demonstrates that the alien has been diligent in seeking representation since that date. Such a continuance shall be for a reasonable period of time but shall not exceed 30 days.”[[22]](#footnote-22)  |

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| *Proposed Regulation’s Implications:*Flouting longstanding precedent, due process principles, and the statutory right to counsel, the proposed regulation would allow an IJ to deny even a single short continuance to secure counsel so long as at least 10 days have elapsed between the date DHS served the Notice to Appear and the date of the first hearing. Even if the IJ wants to provide a *pro se* respondent a continuance to find counsel, the proposed regulation would permit the IJ to grant a maximum of one continuance of not more than 30 days, and only if fewer than 30 days have passed between the NTA service and the first hearing, and the respondent shows diligence in seeking representation since the date the NTA was served.This rule would obliterate continuances to secure representation—not only would it permit IJs to deny even a single continuance to seek counsel, but it would drastically limit IJs’ authority to grant a continuance to find counsel to a very narrow set of circumstances, and even then would only permit a single continuance of a maximum of 30 days. There would be no ability to consider individual circumstances as is required by due process. |

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| *Ideas for Comment:** Discuss any vulnerable populations that your office serves (*e.g.*, children, those with competency issues, formerly separated families, those with housing instability, survivors of trauma and torture, etc.) and the impediments to finding counsel that these populations face. If possible, provide an example story of a client’s efforts to find counsel including how long it took to ultimately find counsel for removal proceedings.
* Describe the lack of availability of free or low-cost legal services in your area. If there are waiting lists or average wait times, describe them. If your organization has an average timeline for the acceptance of representation in a removal defense case from the time of the initial intake call, describe the timeline.
* Provide any specific data or information your organization has that is responsive to this claim in the NPRM: “[A]liens in removal proceedings generally have ample time to seek representation if they exercise diligence.”[[23]](#footnote-23)
* If available, describe the statistics in your local region regarding what percentage of respondents in removal proceedings have counsel. The NPRM asserts that nearly two thirds of all respondents, and nearly 90 percent of asylum seekers, are represented.[[24]](#footnote-24) Use TRAC’s data on rates of representation by state as needed.[[25]](#footnote-25)
* Describe the difference in outcome for a *pro se* individual versus an individual with representation in your jurisdiction, based on your organization’s experience with complex removal defense litigation, in a way that is responsive to this statement in the NPRM: “[I]t is important for the Department to ensure that representation does not undermine the orderly procedure of the immigration courts and is not a hindrance to fair and timely adjudications.”[[26]](#footnote-26)
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1. **[Organization Name] Opposes the Proposed Regulation’s Blanket Rejection of Good Cause for a Continuance Based on Representative Workload (Proposed 8 CFR § 1003.29(b)(4)(iii))**

[Organization name] strongly opposes the proposed rule’s limitations on continuances based on a representative’s workload or obligations in other cases.

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| *Proposed Regulation’s Text:*“(iii) Because representatives are presumed to take on no more cases than they can handlein accordance with professional responsibility obligations of diligence and competence, arepresentative’s assertions about his or her workload or obligations in other cases do notconstitute good cause.”[[27]](#footnote-27)  |

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| *Proposed Regulation’s Implications:*The proposed regulation seeks to create minimum flexibility for respondents’ counsel in an environment where the EOIR is making repeated docket management changes and where DHS counsel is not held to the same standard. The NPRM offers no justification about why this rule would apply only to representatives and not to DHS attorneys, who are known to arrive in court without the file and to seek (and be granted) continuances for this reason. Presumably, if DHS filed fewer NTAs, DHS attorneys would come to court with the correct file for the case and not need to seek a continuance.  |

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| *Ideas for Comment:** If relevant, describe your organization’s mission related to providing representation to the maximum extent possible to low-income individuals and how the proposed rule’s limitation on continuances to allow representatives to control their workload would affect that mission.
* Describe an instance when having received a continuance to space out case deadlines has allowed a representative at your organization to provide competent and diligent representation.
* Describe how the proposed rule would create even more disparity between individuals who are able to pay private firms for representation and those who depend on low- or pro bono counsel in your community.
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1. **[Organization Name] Strongly Opposes the Proposed Regulation’s Near Eradication of Continuances for a Respondent or Legal Representative’s Preparation (Proposed 8 CFR § 1003.29(b)(4)(iv))**

[Organization name] strongly opposes the proposed rule’s unreasonable and draconian limit on continuances to prepare the case, as it conflicts with respondents’ statutory right to present evidence and examine the government’s evidence and right to due process in removal proceedings.

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| *Proposed Regulation’s Text:*“(iv) An immigration judge shall grant no more than one continuance in removal proceedings to an alien or his representative for preparation time, separate from the normal preparation time between hearings. Such a continuance may be granted solely for preparation prior to pleading to the allegations and charges in a Notice to Appear. Such continuance shall be granted for no more than 14 days.”[[28]](#footnote-28)  |

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| *Proposed Regulation’s Implications:*This provision of the proposed rule would allow for a maximum of one preparation continuance prior to pleading to the NTA, of 14 days maximum. If an individual wishes to challenge the NTA, 14 days is essentially a meaningless amount of time to investigate the validity of the NTA allegations and charge. This rule would also presumably eliminate continuances to prepare applications for relief, or for any other preparatory purpose such as to review newly-filed DHS evidence. Again, this rule does not apply to DHS attorneys. |

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| *Ideas for Comment:** Describe how your organization typically prepares a case and how you use preparation continuances. If possible, provide examples of situations where the results achieved during the prep continuance contributed to the respondent’s prevailing on the merits or termination of the case, where they otherwise would likely have lost.
* Describe the various reasons you might need a preparation continuance (*e.g.*, FOIA, gathering evidence, allowing sufficient time for a child client to develop rapport such that they will disclose facts relevant to relief, client pursuing mental health treatment, securing an expert witness) and how this proposed regulation would impact your organization’s ability to provide effective representation and your clients’ ability to meaningfully present their cases.
* Describe your experience with DHS attorneys showing up to the hearing unprepared (such as not bringing the case file) and requesting and obtaining a continuance to come prepared to a future hearing. (Again, DHS attorneys would not be subject to this proposed rule, only the respondent and the respondent’s counsel would be).
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1. **[Organization Name] Opposes the Proposed Regulation’s Eradication of Continuances for Representative Scheduling Conflicts (Proposed 8 CFR § 1003.29(b)(4)(v))**

[Organization Name] opposes the proposed rule’s overly narrow provision related to continuances for representative scheduling conflicts, as it unreasonably removes an IJ’s discretion to consider the individual circumstances surrounding a representative’s scheduling conflict.

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| *Proposed Regulation’s Text:* “(v) A representative’s scheduling conflict in another court that existed at the time the immigration judge scheduled the hearing in removal proceedings for which the representative seeks a continuance and that the representative did not disclose at the time the hearing was scheduled does not constitute good cause, unless the immigration judge scheduled the case outside of open court. An immigration judge may grant a continuance due to a representative’s scheduling conflict in another court arising after the immigration hearing in removal proceedings was scheduled in open court, but only if it involves the court appointment of a representative to a case and the immigration judge was notified of the conflict in a timely manner. Such continuance shall be granted for no more than 14 days. A representative requesting a continuance of a hearing scheduled outside of open court due to a scheduling conflict in another court that existed at the time the immigration court hearing notice was issued must file a motion for a continuance with 14 days of the issuance of the immigration court hearing notice.”[[29]](#footnote-29)  |

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| *Proposed Regulation’s Implications:*This rule would prohibit a continuance in circumstances such as the following:* If a representative overlooked or mis-noted a pre-existing court date and thus inadvertently failed to notify the court of the pre-existing court date at the time the IJ schedules the hearing in open court.
* If the representative receives a hearing notice in the mail, the hearing conflicts with a pre-existing court date, and the representative does not file a motion for a continuance with the immigration court within 14 days of the issuance of the immigration court hearing notice.
* If an obligation in another court arises after the immigration court date is scheduled and cannot be rescheduled, unless the representative was appointed by the court in that matter.
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| *Ideas for Comment:** If relevant, give examples of the hardship this rule would cause to your organization, including by explaining situations in which representatives are required to appear at later-scheduled hearings in another court and are not able to move the date of those hearings.
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1. **[Organization Name] Opposes the Proposed Regulation’s Overly Narrow Provision for Continuances Where the Representative Fails to Appear at a Hearing (Proposed 8 CFR § 1003.29(b)(4)(vi))**

While [Organization Name] agrees that respondents whose representative fails to appear for a scheduled hearing should be afforded a continuance as a matter of course, the proposed rule is overly restrictive in that permits a continuance only for a maximum of 14 days.

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| *Proposed Regulation’s Text:* “(vi) Upon motion by a respondent in removal proceedings, an immigration judge may grant a continuance of no more than 14 days in a case in which the respondent’s representative failed to appear for a scheduled hearing.”[[30]](#footnote-30)  |

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| *Proposed Regulation’s Implications** Recognizes that respondents whose counsel fails to appear at a hearing “may” be granted a continuance.
* Allows for a maximum of 14 days for the continuance, regardless of the reasons the representative may have failed to appear (*e.g.*, health emergencies, particularly during COVID-19, car accident, unsuccessful attempts to call the court the day of the hearing about the emergency).
* Presumably, if the court does not have an open hearing slot within 14 days it would be forced to deny the continuance even if it otherwise found that it was warranted.
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| *Ideas for Comment:** Describe how the 14-day limit in this rule would negatively impact your organization and clients. If relevant, provide examples of a representative having an emergency on the day of court, of being unable to contact the court on the day of a hearing, and of a 14-day continuance being insufficient to resolve the circumstances that led to the failure to appear (*e.g*., the representative’s prolonged hospitalization, which is more likely given the current COVID-19 pandemic).
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1. **[Organization Name] Opposes the Proposed Regulation’s Drastic Limitations on IJs’ Ability to Continue a Case on Their Own Motion (Proposed 8 CFR § 1003.29(b)(5))**

[Organization Name] opposes the proposed rule’s removing of IJs’ discretion to continue cases *sua sponte* where they determine that a continuance is warranted.

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| *Proposed Regulation’s Text:*“(5) *Continuances on an immigration judge’s own motion*. An immigration judge may not grant a continuance on his or her own motion, except in the following circumstances:(i) A continuance is required pursuant to § 1003.47;(ii) There is evidence of serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien;(iii) There is evidence of serious illness or death of the alien’s representative or serious illness or death of the spouse, child, or parent of the alien’s representative;(iv) There is a serious illness of the immigration judge or serious illness or death of the spouse, child, or parent of the immigration judge;(v) The immigration judge is absent and no other immigration judge is available to preside over the hearing;(vi) There are technical difficulties with the immigration court’s computer, recording system, or video teleconferencing system that prevent the case from being heard or recorded;(vii) The Department of Homeland Security or the Department of Health and Human Services fails to produce a detained alien for the hearing;(viii) An interpreter is necessary for the hearing and either an interpreter is unavailable or the interpreter present is unqualified;(ix) The record of proceedings is unavailable;(x) The respondent did not appear at a hearing because the respondent was detained by a law enforcement entity;(xi) The respondent did not appear at a hearing due to a deficient notice and service of a new notice of hearing can correct the deficiency;(xii) The immigration judge began a hearing but was unable to complete it due to no fault of the parties;(xiii) The court is closed at the time of the hearing; or(xiv) Unforeseen exceptional or extraordinary circumstances beyond the control of the alien, the alien’s representative, government counsel, or the immigration judge require a continuance.”[[31]](#footnote-31) |

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| *Proposed Regulation’s Implications:** Removes IJs’ discretion to continue cases *sua sponte* where they determine a continuance is warranted, unless the situations falls within one of 14 specific categories.
* While the last category is a catch-all, it imposes an extremely high threshold, much more burdensome than “good cause”—“Unforeseen exceptional or extraordinary circumstances beyond the control of the alien, the alien’s representative, government counsel, or the immigration judge require a continuance.”
* The purpose of *sua sponte* power is that there are many unforeseen circumstances that happen and IJs must have the power to manage their dockets and deal with these issues as they arise. Under this rule, IJs will be limited in this regard and forced to proceed even where it is unfair or inefficient to do so.
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| *Ideas for Comment:** Describe circumstances that affect your organization or client population/community that would warrant an IJ *sua sponte* continuance but that may not qualify under the proposed rule (*e.g.*, competency concerns for a *pro se* respondent).
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1. **[Organization Name] Opposes the Proposed Regulation’s Curtailing of IJ Discretion to Continue Merits Hearings (Proposed 8 CFR § 1003.29(b)(6))**

[Organization Name] opposes the proposed rule’s curtailing of IJs’ authority to continue merits hearings except in strictly limited circumstances.

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| *Proposed Regulation’s Text:* “(6) *Continuances of merits hearings*. A continuance of a merits hearing on an alien’s application for relief or protection from removal or a merits hearing on a contested charge of removability prior to or on the date of the hearing is strongly disfavored. Such continuances should only be granted in circumstances otherwise listed in paragraphs (b)(4)(v), (vi), or, upon motion by either party, paragraph (b)(5) of this section, and should be granted for no more than 30 days.”[[32]](#footnote-32)  |

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| *Proposed Regulation’s Implications:** This provision would prohibit IJs from continuing a merits hearings unless the circumstances fall within one of these categories:
	+ They meet the proposed rule’s requirements for continuances based on representative scheduling conflict (see proposed 8 CFR § 1003.29(b)(4)(v)).
	+ The noncitizen’s counsel fails to appear at the hearing.
	+ They fall within one of the 14 circumstances under which the proposed rule permits IJs to *sua sponte* grant continuances (proposed 8 CFR § 1003.29(b)(5)).
* The rule would allow a maximum continuance of a merits hearing of 30 days, without taking into account whether the issue causing the need for the continuance can be resolved in that time period, or whether there are any open merits hearing slots on the court’s docket within the 30-day time frame.
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| *Ideas for Comment:** Describe examples of seeking and being granted a merits hearing continuance that would not fall within this proposed rule (*i.e*., needed more than 30 days or did not fall within one of the listed categories) but where the continuance was important for protecting the client’s rights and ultimately resulted in a grant of relief.
* If available, provide examples or data to respond to the NPRM’s unsupported assertion that 30 days “is a reasonable amount of time to address the issue that necessitated the continuance.”[[33]](#footnote-33)
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**Conclusion**

These proposed rules would drastically curtail IJs’ authority to grant continuances in removal proceedings to allow respondents to secure representation, prepare their cases, and pursue lawful status for which they are eligible. The agency should have given the public at least 60 days to respond to these far-reaching changes, and should therefore rescind the rulemaking on this basis alone. Substantively, the rule prioritizes administrative efficiency over fairness and disregards the grave harm that these rules would cause many thousands of individuals who are eligible for immigration protections but who would become ineligible for a continuance and swiftly ordered removed under the proposed rules. The proposed rules will further erode due process in immigration court. We urge EOIR to rescind the “Good Cause for a Continuance in Immigration Proceedings” proposed rule.

 [Name, position and signature]

1. *See* Exec. Order No. 13563, Improving Regulation and Regulatory Review § 2(b) (Jan. 18, 2011). [↑](#footnote-ref-1)
2. EOIR NPRM, Motions to Reopen and Reconsider; Effect of Departure; Stay of Removal, 85 Fed. Reg. 75942 (proposed Nov. 27, 2020). [↑](#footnote-ref-2)
3. *See*, *e.g.*, Department of Homeland Security (DHS) NPRM, Employment Authorization for Certain Classes of Aliens with Final Orders of Removal, 85 Fed. Reg. 74196 (proposed Nov. 19, 2020); DHS NPRM, Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, 85 Fed. Reg. 56338 (proposed Sept. 11, 2020); EOIR NPRM, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 52491 (proposed Aug. 26, 2020). [↑](#footnote-ref-3)
4. #  *See, e.g.*, Dep’t of Justice (DOJ) & DHS, Procedures for Asylum and Bars to Asylum Eligibility, 85 Fed. Reg. 67202 (final rule published Oct. 21, 2020); DOJ & DHS, Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80274 (final rule published Dec. 11, 2020); EOIR, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81588 (final rule published Dec. 16, 2020).

 [↑](#footnote-ref-4)
5. #  *See, e.g*., *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) (removing IJ general administrative closure authority); *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018) (tightening the requirements for certain types of continuances); *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018) (ruling that IJs do not have discretionary termination authority); EOIR, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81588 (final rule published Dec. 16, 2020) (largely eradicating administrative closure and motions to remand, among many other things); EOIR NPRM, Motions to Reopen and Reconsider; Effect of Departure; Stay of Removal, 85 Fed. Reg. 75942 (proposed Nov. 27, 2020); Memorandum from James R. McHenry, EOIR Dir., PM 21-05, Enhanced Case Flow Processing in Removal Proceedings (Nov. 30, 2020), <https://www.justice.gov/eoir/page/file/1341121/download>; Memorandum from James R. McHenry, EOIR Dir., PM 19-13, Use of Status Dockets (Aug. 16, 2019), <https://www.justice.gov/eoir/page/file/1196336/download>; Priscilla Alvarez, *Justice Department Places New Pressure on Immigrants Facing Deportation*, CNN, Nov. 24, 2020, https://www.cnn.com/2020/11/24/politics/immigration-justice-department/index.html.

 [↑](#footnote-ref-5)
6. 85 Fed. Reg. at 75939. A “small entity” is statutorily defined as a “small business,” “small organization,” or “small governmental jurisdiction.” 5 U.S.C. § 601(6). [↑](#footnote-ref-6)
7. *See* proposed 8 CFR § 1003.29(b)(4). [↑](#footnote-ref-7)
8. 85 Fed. Reg. at 75939. [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. Proposed 8 CFR § 1003.29(a), 85 Fed. Reg. at 75940. On December 16, 2020, EOIR published a separate final rule with nearly identical language to the text of proposed 8 CFR § 1003.29(a). *See* Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 81698, 81750. We urge EOIR to rescind that rule for the same reasons as those discussed here. While the 180-day timeframe derives from the INA, *see* INA § 208(d)(5)(iii), in more than two decades since Congress added this language to the asylum statute, the agency has never before implemented this unworkable standard through regulations. [↑](#footnote-ref-10)
11. Proposed 8 CFR § 1003.29(b)(2); 85 Fed. Reg. at 75940. [↑](#footnote-ref-11)
12. *See* INA §§ 240(b)(4)(A) (guaranteeing respondents the “privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing”); 240(b)(4)(B) (giving respondents the right to “a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien’s own behalf, and to cross-examine witnesses presented by the Government”); *see also, e.g.*, *Castaneda-Delgado v. INS*, 525 F.2d 1295, 1302 (7th Cir. 1975) (concluding that denial of right to counsel was inherently prejudicial and rendered immigration proceedings “tainted from their roots” and “refus[ing] to indulge in ‘nice calculations as to the amount of prejudice flowing from the denial’” (internal citation omitted)). [↑](#footnote-ref-12)
13. For full citations, see *supra* note 5. [↑](#footnote-ref-13)
14. Proposed 8 CFR § 1003.29(b)(3)(i), (ii), 85 Fed. Reg. at 75940. [↑](#footnote-ref-14)
15. Proposed 8 CFR § 1003.29(b)(3)(iii), (iv), 85 Fed. Reg. at 75940. [↑](#footnote-ref-15)
16. For example, in order to be eligible for T nonimmigrant status, the applicant must be “physically present in the United States.” INA § 101(a)(15)(T)(i)(II); 8 CFR §§ 214.11(b)(2), 214.11(g)(2) (an individual who is removed from the United States after the trafficking act is generally “deemed not to be present in the United States”). A T applicant must show that he or she would suffer “extreme hardship involving unusual and severe harm” if removed. INA § 101(a)(15)(T)(i)(IV); 8 CFR § 214.11(b)(4). [↑](#footnote-ref-16)
17. *See, e.g.*, Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1464 (purposes and findings); *Matter of Sanchez Sosa*, 25 I&N Dec. 807, 809 (BIA 2012) (describing purposes of U visa statute). [↑](#footnote-ref-17)
18. Proposed 8 CFR § 1003.29(b)(3)(v), 85 Fed. Reg. at 75940–41. [↑](#footnote-ref-18)
19. *See* INA § 208(b)(3)(C) (“An asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child . . . .”) [↑](#footnote-ref-19)
20. *See* *Matter of Stowers*, 22 I&N Dec. 605, 614 (1999) (concluding that IJ erred in using a theory of “constructive denial” to assume jurisdiction over an unadjudicated waiver application, since the INA and the regulations “expressly contemplate an initial adjudication of the waiver application before the regional service center director”). [↑](#footnote-ref-20)
21. *See* 8 CFR § 1244.7(d) (providing that noncitizens in “pending deportation or exclusion proceeding . . . at the time a foreign state is designated” must be given the opportunity to apply for TPS with USCIS). [↑](#footnote-ref-21)
22. Proposed 8 CFR § 1003.29(b)(4)(i), (ii); 85 Fed. Reg. at 75941. [↑](#footnote-ref-22)
23. 85 Fed. Reg. at 75936. [↑](#footnote-ref-23)
24. 85 Fed. Reg. at 75935. While the NPRM claims that “nearly ninety percent of those seeking asylum have representation,” *id*., it cites to its own data about those with pending cases, *i.e*., those who have already filed an asylum application. The NPRM’s misleading use of the term “asylum seekers” suggests a much larger group of respondents (many of whom are likely unrepresented) than those who have successfully filed an asylum application with the immigration court. [↑](#footnote-ref-24)
25. TRAC Immigration, *Individuals in Immigration Court by Their Address* (Feb. 2019), <https://trac.syr.edu/phptools/immigration/addressrep>. [↑](#footnote-ref-25)
26. 85 Fed. Reg. at 75935. [↑](#footnote-ref-26)
27. Proposed 8 CFR § 1003.29(b)(4)(iii); 85 Fed. Reg. at 75941. [↑](#footnote-ref-27)
28. Proposed 8 CFR § 1003.29(b)(4)(iv); 85 Fed. Reg. 75941. [↑](#footnote-ref-28)
29. Proposed 8 CFR § 1003.29(b)(4)(v); 85 Fed. Reg. at 75941. [↑](#footnote-ref-29)
30. 8 CFR § 1003.29(b)(4)(vi); 85 Fed. Reg. at 75941. [↑](#footnote-ref-30)
31. Proposed 8 CFR § 1003.29(b)(5); 85 Fed. Reg. at 75941. [↑](#footnote-ref-31)
32. Proposed 8 CFR § 1003.29(b)(6); 85 Fed. Reg. at 75941. [↑](#footnote-ref-32)
33. 85 Fed. Reg. at 75938. [↑](#footnote-ref-33)