

William P. Barr, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Kenneth Cuccinelli, Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529

James McHenry, Director
Executive Office for Immigration Review
5107 Leesburg Pike, 18th floor
Falls Church, VA 22041

Paul Ray, Acting Administrator
Office of Information & Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Chad Wolf, Acting Secretary
Department of Homeland Security
Washington, D.C. 20528

January 2, 2020

RE: Request for 60-Day Comment Period for DHS and DOJ Joint Notice of Proposed Rulemaking--USCIS RIN 1615-AC41; EOIR Docket No. 18-0002; A.G. Order No. 4592-2019

Dear Attorney General Barr, Director McHenry, Acting Secretary Wolf, Acting Director Cuccinelli, and Acting Administrator Ray:

We, the undersigned organizations, write to respectfully request that U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR) extend the comment period for the recent rulemaking issued with regard to asylum eligibility (EOIR Docket No. 18-0002; A.G. Order No. 4592-2019) from 30 days to 60 days. The proposed rule puts forth numerous complex and substantial changes to the existing system of asylum adjudication in the United States; we believe that a 60 day comment period is necessary to ensure that organizations and individuals are able to exercise the meaningful opportunity to comment required by law.

The joint notice of proposed rulemaking was issued on December 19th and broken into three sections. The first section proposes to add seven new bars to eligibility for asylum to the federal rules, with varying processes and explanations for how the immigration adjudicator will determine whether an offense or conduct falls within the newly defined category. The second section provides a multi-factored test for immigration adjudicators to determine whether a criminal conviction or sentence is valid for the purpose of determining asylum eligibility. The

third section rescinds a provision in the current rules regarding the reconsideration of discretionary asylum.

The current joint notice provides for a 30-day comment period to respond to these proposals. Executive Order 12866¹ directs agencies to “afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.” This directive is echoed in Executive Order 13563,² which states: “To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.”

Given the complexity of the legal and policy issues implicated by this rule, the vast scope of impact on those seeking safety in the United States, and the potential implications for the United States’ compliance with its obligations under international and domestic asylum law, a 60 day comment period—at minimum—is necessary to ensure that the opportunity to comment is meaningful. This is particularly so given that the originally prescribed 30 day comment period includes two federal holidays and a 10 day work period when many organizations are closed.

Meaningful analysis and commentary on the proposed rule will require research and examination of complex and overlapping areas of law and policy. Specifically, the joint rule:

- ... implicates the United States’ obligations under international treaty law, including the Refugee Convention and the Convention Against Torture, and the manner by which these treaties are incorporated into domestic law;
- ... adds *seven* new bars to the regulations governing eligibility for asylum, which will result in a significant change to current asylum adjudications in the affirmative and defensive postures and remove many otherwise eligible applicants from asylum eligibility; and
- .. implicates complex questions regarding the authority of the immigration adjudicator to examine evidence and documents relevant to the facts surrounding alleged criminal conduct, suggesting a deviation from the long-standing categorical approach to determining the impact of a criminal conviction in immigration court and raising important questions of judicial efficiency and fairness;³

¹ Executive Order 12866 of Sept. 30, 1993, 58 Fed. Reg. 190, Oct. 4, 1993, <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

² Executive Order 13563 of Jan. 18, 2011, 76 Fed. Reg. 14, Jan. 21, 2011, https://www.reginfo.gov/public/jsp/Utilities/EO_13563.pdf.

³ For one of many academic analyses of the quite complex intersection between the categorical approach the determination of what constitutes a “particularly serious crime” barring asylum eligibility, see Fatma Marouf, 97 Boston Univ. Law Review 1427, “A particularly serious exception to the categorical approach,” Sept. 2017, <http://www.bu.edu/bulawreview/files/2017/09/MAROUF.pdf>.

In addition to the complexity of the legal and policy implications of the joint rule, its massive impact on vulnerable communities merits sufficient time for study and consideration. Those individuals who meet the definition of a refugee but are rendered ineligible for asylum under the rule will suffer very real harms. Although the joint rule discusses alternative forms of relief known as withholding of removal and protection under the Convention Against Torture, these forms of relief require a higher burden of proof than asylum, meaning that many asylum seekers excluded from eligibility under the rule will face deportation back to harm if they cannot meet this higher burden.⁴ Furthermore, withholding of removal and Torture Convention protection do not provide a path to lawful permanent residence or the opportunity to reunify with immediate family members who may remain abroad in imminent danger.⁵

A minimum period of 60 days is necessary to ensure that organizations and individuals have a real and meaningful opportunity to engage and comment upon the non-exhaustive list of legal and policy issues described above as well as the economic and human costs that the joint rule will impose.

Thank you in advance for your time and consideration of this request. With any questions or concerns, please contact Heidi Altman at the National Immigrant Justice Center at haltman@heartlandalliance.org or 312-718-5021.

Sincerely,

National organizations

ACLU Immigrants' Rights Project
ADL (the Anti-Defamation League)
Alianza Americas
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
American Friends Service Committee
American Immigration Lawyers Association
Asian Pacific Institute on Gender-Based Violence
ASISTA
Black Alliance for Just Immigration (BAJI)
Campaign for Youth Justice
Catholic Legal Immigration Network, Inc.

⁴ For a discussion of the different standards and benefits associated with asylum versus withholding of removal or protection under the Convention Against Torture, *see* Human Rights First, "Withholding of Removal and the U.N. Convention Against Torture--No Substitute for Asylum, Putting Refugees at Risk," Nov. 2018, https://www.humanrightsfirst.org/sites/default/files/CAT_Withholding.pdf.

⁵ *Id.*

Center for American Progress
Center for Victims of Torture
Church World Service
Coalition on Human Needs
CREDO
Detention Watch Network
Freedom for Immigrants
Freedom Network USA
Government Accountability Project
Government Information Watch
HIAS
Hispanic Federation
Human Rights First
Human Rights Watch
Immigrant Defense Project
Immigrant Legal Resource Center
Immigration Equality
Innovation Law Lab
International Refugee Assistance Project (IRAP)
Just Futures Law
Justice Strategies
Kids In Need of Defense (KIND)
Latin America Working Group (LAWG)
National Center for Transgender Equality
National Council of Jewish Women
National Crittenton
National Education Association
National Immigrant Justice Center
National Immigration Forum
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National LGBTQ Task Force
National Network for Immigrant & Refugee Rights
Quixote Center
Refugee Congress
Refugee Council USA
Service Employees International Union (SEIU)
Tahirih Justice Center
U.S. Committee for Refugees and Immigrants
Union for Reform Judaism

Unitarian Universalist Service Committee
Young Center for Immigrant Children's Rights

Regional / local organizations

Advocates for Basic Legal Equality, Inc.
Asylum and Human Rights Clinic, University of Connecticut School of Law
Bellevue Program for Survivors of Torture
Brooklyn Defender Services
California Collaborative for Immigrant Justice
Cape Cod Coalition for Safe Communities
Capital Area Immigrants' Rights Coalition
Catholic Migration Services
Center Global of the DC Center for LGBT Community
Church Council of Greater Seattle
Church of Our Saviour/La Iglesia de Nuestro Salvador
Cleveland Jobs with Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Columbia Law School Immigrants' Rights Clinic
Connecticut Shoreline Indivisible
Deportation Research Clinic, Buffett Institute for Global Studies, Northwestern University
First Friends of NJ & NY
Georgia Asylum and Immigration Network
Harvard Immigration and Refugee Clinical Program
Human Rights Initiative of North Texas
Illinois Coalition for a Immigrant and Refugee Rights
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law
Immigrant Defenders Law Center
Immigrant Justice Clinic, James E. Rogers College of Law
Immigrant Legal Advocacy Project
Immigrant Rights Project, University of Tulsa
International Human Rights Law Clinic, American University Washington College of Law
Iowa Coalition Against Domestic Violence (ICADV)
IRIS - Integrated Refugee & Immigrant Services
Kitsap Immigrant Assistance Center
Legal Aid Justice Center
Los Angeles LGBT Center
Loyola University New Orleans College of Law
Massachusetts Immigrant and Refugee Advocacy Coalition
Mid-South Immigration Advocates

Migrant Justice
New Jersey Coalition to End Domestic Violence
New Sanctuary Coalition
New York Immigration Coalition
Northwest Immigrant Rights Project
NWIndiana Resist
Public Counsel
Quinnipiac University School of Law Civil Justice Clinic
Reformed Church of Highland Park Affordable Housing Corp
Rocky Mountain Immigrant Advocacy Network
Southern Poverty Law Center
Taos Immigrant Allies
The Bronx Defenders
The Florence Immigrant & Refugee Rights Project
The North Carolina Coalition Against Domestic Violence
Transformations CDC
ULA - Unidad Latina en Acción
University of Maryland Carey Immigration Clinic
Washington Immigrant Solidarity Network