



Working to Reduce Poverty in America

October 25, 2019

Submitted via www.regulations.gov

Lauren Alder Reid
Assistant Director, Office of Policy
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2616
Falls Church, VA 22041

**Re: Executive Office for Immigration Review, Department of Justice, EOIR
Docket No. 18-0502; A.G. Order No.4515-2019; RIN 1125-AA85**

Chair of the Board
Charles Cornelio

Vice Chair
Robert McCann

Secretary
Martina O'Sullivan

Treasurer
Michael Erne

President & CEO
Sr. Donna Markham OP, PhD

Assistant Director Alder Reid:

Catholic Charities USA (CCUSA) submits these comments in opposition to the Department of Justice's Executive Office of Immigration Review (EOIR) regarding the interim rule that makes organizational changes within EOIR.

CCUSA is a national membership organization representing more than 167 diocesan Catholic Charities member agencies. These member agencies operate more than 2,600 service locations across the 50 states, the District of Columbia, and five U.S. territories. Their diverse array of social services reached more than 10 million individuals in need last year. These services include immigration and refugee services. In 2017, nearly 100 Catholic Charities agencies served over 25,000 immigrants and refugees through 217 programs. Our Catholic heritage includes a scriptural call to provide hospitality to newcomers as if welcoming Christ Himself. The Catholic Church, like our nation as a whole, finds its identity and roots in various immigrant communities. We affirm the inherent dignity bestowed by God on every human person, including immigrants and refugees, no matter the circumstances that compel a person to begin a new life in our community.

I. Introduction

The EOIR's interim rule ("the rule") outlines the functions of the Office of Policy and the roles of this newly formed office and the Office of General Counsel within EOIR. The rule transfers the Office of Legal Access Program's (OLAP) responsibilities to a division in the Office of Policy and removes references in the regulations to OLAP and



the OLAP Director, effectively moving OLAP to the Office of Policy.¹

The rule updates the organizational regulations in § 28 CFR with EOIR's current organizational structure outlined in § 8 CFR 1003, changes the titles of members of the Board of Immigration Appeals (BIA), and delegates authority from the Attorney General to the Director in situations in which appeals pending before the BIA have not been timely resolved. This rule also explains 8 CFR 1003.0(c) on the Director's authority to adjudicate or to direct the adjudication of specific cases under the INA, and § 8 CFR 1292.18 regarding the Director's authority to adjudicate requests for review arising under the regulations in the context of the Recognition & Accreditation Program (R&A Program), along with any similar issues related to the Director's new authority to adjudicate appeals that have not been timely resolved by the BIA.²

EOIR argues in its analysis that the rule both improves efficiency by reducing redundant activities performed by multiple components and ensures consistency and coordination of legal and policy activities across multiple components within EOIR.³ EOIR also argues that OLAP and its functions most appropriately belong in the Office of Policy to help coordinate OLAP's work across adjudicatory components.⁴ We submit our opposition to this rule and request it be withdrawn in its entirety.

II. The Faith Community's Assistance to Immigrants

CCUSA provides essential services to immigrants and newcomers to this country and advocates for immigration and refugee policies that protect family unity and allow newcomers an opportunity to contribute and participate more fully in our communities.⁵ Pope Francis, who is also the son of immigrants,⁶ stated on September 29, 2019's World Migrants Day:

Loving our neighbor as ourselves means being firmly committed to building a more just world, in which everyone has access to the goods of the earth, in which all can develop as individuals and as families, and in which fundamental rights and dignity are guaranteed to all...loving our neighbor means feeling compassion for the sufferings of our brothers and sisters, drawing close to them, touching their sores and sharing their stories, and thus manifesting concretely God's tender love for them. This means being a neighbor to all those who are mistreated and abandoned on the streets of our world, soothing their wounds and bringing them to the nearest shelter, where their needs can be met...it is not only about foreigners; it is about all those in existential peripheries who, together with migrants and refugees, are victims of the throwaway culture...the Lord calls us to practice charity towards them. He calls us to restore their humanity, as well as our own, and to leave no one behind.⁷

¹ Organization of the Executive Office for Immigration Review, 84 Fed. Reg. 44,537 (August 26, 2019) available at: <https://www.federalregister.gov/documents/2019/08/26/2019-18196/organization-of-the-executive-office-for-immigration-review>.

² *Id.*

³ *Id.*, at 44538.

⁴ *Id.*, at 44539.

⁵ "Immigration and Refugee Services," Catholic Charities USA, October 2019, available at: <https://www.catholiccharitiesusa.org/our-ministry/immigration-refugee-services/>.

⁶ "Pope Francis reminds Christians that migrants and refugees should be welcomed around the world," O'Connell, Gerard, September 29, 2019, available at: <https://www.americamagazine.org/faith/2019/09/29/pope-francis-reminds-christians-migrants-and-refugees-should-be-welcomed-around>

⁷ *Id.*

The Catholic community continues to care for our brothers and sisters in need and advocates for solutions to address the root causes of migration. According to the U.S. Conference of Catholic Bishops (USCCB), “following the constant teaching of the Holy See, the bishops of the United States have long supported the right of all persons to remain in their homeland and to find there the means to support themselves and their families in dignity. The choice to migrate, often perilous and of last resort, should be driven by choice, not absolute necessity...Addressing root causes must be part of the solution to solving the present immigration crisis, so that migrants can remain in their homelands and support their families in dignity. This will require a long-term, multi-pronged effort that addresses many factors, including: human security, development, corruption, the rule of law, as well as the adjustment of aspects of our trade relationships.”⁸

Until the root causes of migration are addressed, those fleeing persecution, famine, violence and even death in search of a better life must be cared for, not only with humanitarian assistance to fulfill basic human needs, but also regulated high-quality immigration legal assistance. Programs such as DOJ’s R&A Program aim to provide this type and quality of immigration assistance. The immigration debate remains a highly contentious issue in a volatile policy climate. We fear EOIR’s reorganization that places key programs into the newly formed Office of Policy will jeopardize these programs to the detriment of the migrants we serve.

III. The Importance of the R&A Program

The R&A program “aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice. Accredited Representatives may only provide immigration legal services through recognized organizations. Only non-profit, federally tax-exempt entities may apply to be recognized.”⁹ CCUSA has 89 member agencies with at least one full- or partial-accredited representative on staff to serve immigrant populations. OLAP’s website states, “[the office] has worked to improve the efficiency of immigration court hearings by increasing access to information and raising the level of representation for individuals appearing before the immigration courts and Board of Immigration Appeals (BIA).”¹⁰ As the root causes of migration remain unaddressed, the need for immigration attorneys and DOJ accredited representatives to assist in ensuring fair trials and due process continues to mount. The R&A program allows us to ameliorate the needs of immigrant families as they apply for immigration benefits in a complex area of law. The need for these services is particularly profound amongst the low-income and vulnerable populations we serve. We fear that, should these programs be affected by either budgetary cuts or injected with the toxic politicization currently gripping the country, immigrants will suffer. It would increase the likelihood that immigrants would seek assistance from a *notario* or other unregulated and unscrupulous service provider. They may forego seeking legal assistance altogether, minimizing the likelihood of their legal claims’ success. Both of these fears contradict OLAP’s stated goals of improving the efficiency of immigration court hearings with increased access to information and a raised level of representation for individuals appearing before the immigration courts and BIA. Further, efforts to minimize or politicize these programs will lead to more immigrants choosing to live in the shadows rather than pursue their legal claims. By maintaining robust programs bereft of political influence, government processes will be permitted to pursue efficiency and adjudicate filings and more immigrants will be able to rely on our court system’s due process protections

⁸ “Background on the Root Causes of Migration,” Unites States Conference of Catholic Bishops, October 2019, available at: <http://www.usccb.org/issues-and-action/human-life-and-dignity/global-issues/backgrounder-on-root-causes-of-migration.cfm>.

⁹ “Recognition & Accreditation Program,” Department of Justice, October 8, 2019, available at: <https://www.justice.gov/eoir/recognition-and-accreditation-program>.

¹⁰ “Office of Legal Access Programs,” Department of Justice, October 8, 2019, available at: <https://www.justice.gov/eoir/office-of-legal-access-programs>.

to ensure fair hearings with representation. Our agencies and clients rely on an R&A program that is above political and partisan influence and that is provided appropriate resources. The rule threatens these benefits and should be rescinded.

IV. Granting Expansive Authority to the Director of EOIR Invites Politicization and Injustice

According to the DOJ, “The BIA has been given nationwide jurisdiction to hear appeals from certain decisions rendered by immigration judges and by district directors of the Department of Homeland Security (DHS) in a wide variety of proceedings in which the Government of the United States is one party and the other party is an alien, a citizen, or a business firm. BIA decisions are binding on all DHS officers and immigration judges unless modified or overruled by the Attorney General or a federal court. Most BIA decisions are subject to judicial review in the federal courts.”¹¹ The rule would enable an EOIR Director to act on his or her own to issue decisions heavily influenced by the current political climate rather than sound policy and the perspective of career government employees with extensive immigration law backgrounds. Removing the aforementioned process with its additional oversight is not in the best interest of our clients or the country’s judicial system. Our form of government prides itself on promoting systems of checks and balances to ensure the pursuit of justice. The rule caters to politics rather than jurisprudence and should be withdrawn.

V. The EOIR Reorganization Rule Violates the Administrative Procedures Act

The Administrative Procedures Act requires regulations to go through a Notice of Public Rule-making process to allow public comment. The EOIR claims the rule does not affect the general public and is a matter of internal organization. We disagree. This rule directly affects nationwide non-profits, including our agencies. Most importantly, it affects the immigrants we serve. The rule’s changes should not have taken effect prior to the public voicing its concerns about this reorganization. In turn, EOIR should review the comments in good faith and not dismiss the public’s legitimate concerns. We urge EOIR to suspend the rule pursuant to the Administrative Procedures Act and, upon review of the concerns submitted by the public, rescind the rule in its entirety.

VI. Conclusion

EOIR’s arguments in support of this rule are not persuasive. EOIR will not become more efficient with this rule, only more politicized. The rule invites the use of critical programs such as R&A to be used as a political weapon against immigrants rather than a vehicle for the pursuit of justice and due process. As a member of the faith community, we are called to challenge such policies that increase the number of victims of what Pope Francis described as the “throwaway culture.” We submit our fervent opposition to this rule and respectfully request the rule be withdrawn in its entirety.

Respectfully submitted,



Brian R. Corbin
Executive Vice President, Member Services
Catholic Charities USA

¹¹ “Board of Immigration Appeals,” Department of Justice, October 8, 2019, available at: <https://www.justice.gov/eoir/board-of-immigration-appeals>.